

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO CARROLL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
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1 also currently I'm planning a wedding. My sister's getting
2 married June 12th and we're having the reception at my house.

3 THE COURT: Okay. Let me ask you this: How many
4 children do you have?

5 PROSPECTIVE JUROR NO. 504: I do have two children.
6 They're 24 and 19.

7 THE COURT: Okay. So you're not really supporting
8 them?

9 PROSPECTIVE JUROR NO. 504: No.

10 THE COURT: Okay. You just -- you said you were a
11 single parent, I thought.

12 PROSPECTIVE JUROR NO. 504: Well, they're with me.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 504: Yes, they are with me.
15 They are home, but I'm the only support in the house.

16 THE COURT: Okay. Don't they have jobs?

17 PROSPECTIVE JUROR NO. 504: They are part times.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 504: So they go to school.

20 THE COURT: Okay. But you support your household?

21 PROSPECTIVE JUROR NO. 504: That is correct.

22 THE COURT: Okay. Have a seat.

23 And I think -- did I get everyone who had raised
24 their hands? All right.

25 Is there anyone who is not a United States citizen?

1 Is there anyone who has been previously convicted of
2 a felony crime?

3 All right. In a moment I'm going to confer with
4 counsel in the hallway. Ladies and gentlemen, from time to
5 time I will have conferences with attorneys either up here, at
6 the bench or in the hallway. When I do, I know that these
7 chairs can be very uncomfortable, feel free to stand or if you
8 need water or something, get the marshal's attention.

9 Yes, ma'am.

10 PROSPECTIVE JUROR NO. 323: Your Honor, I have a
11 question. I'm not too confident with my language. Your
12 Honor, I want to be a fair juror.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 323: I think that's my only
15 concern.

16 THE COURT: Okay. We'll get to the language issue.

17 PROSPECTIVE JUROR NO. 323: Okay.

18 THE COURT: And I need your name and badge number so
19 we can make sure we get --

20 PROSPECTIVE JUROR NO. 323: Oh, I'm sorry. Aracely
21 Sorto-De-McGough, 323.

22 THE COURT: All right. Thank you very much. Where
23 are you from, ma'am?

24 PROSPECTIVE JUROR NO. 323: Honduras.

25 THE COURT: Okay. All right. I'll see counsel in

1 the back, please.

2 (Pause in proceedings)

3 THE COURT: All right. At this time Badge No. 271,
4 Ms. Price, is excused from these proceedings. You may be
5 called back.

6 At this time Badge No. 307, Ms. Avila is excused --
7 I'm sorry, Mr. You probably don't get that very often, do
8 you? I was just reading it wrong. You are excused for the
9 trip.

10 Badge No. 327, Ms. Collins, is excused.

11 Badge No. 330, Ms. Dawson is excused.

12 Badge No. 342, Mr. Markel is excused.

13 Badge No. 353, Mr. Tagg is excused.

14 And again, for some of you with plane tickets, you
15 might be told that you need to come back.

16 Badge No. 376, Ms. Druan, is excused.

17 Badge No. 387, Mr. Montarbo, is excused.

18 Badge No. 399, Ms. Anderson, is excused.

19 Badge No. 430, Ms. Lishnevsky, is excused.

20 Badge No. 452, Ms. Robinson, is excused.

21 And Badge No. 504, Ms. Zelaya-Melendez, is excused.

22 All right. Ladies and gentlemen, for the rest of
23 you, as I told --

24 Yes, sir?

25 PROSPECTIVE JUROR NO. 377: My name's Javier Michel,

1 377.

2 THE COURT: Yes.

3 PROSPECTIVE JUROR NO. 377: I also [inaudible] of --
4 my grand kids -- I parent the four children and I only work.
5 My wife does not work.

6 THE COURT: Where are you from, sir?

7 PROSPECTIVE JUROR NO. 377: Mexico.

8 THE COURT: And what do you do for a living? What's
9 your job?

10 PROSPECTIVE JUROR NO. 377: Golf course landscaper.

11 THE COURT: You're a landscaper. Okay. Have a
12 seat.

13 Counsel.

14 (Off-record bench conference)

15 THE COURT: Mr. Michel, you are excused from these
16 proceedings. Officer Wooten will direct you from the
17 courtroom.

18 All right. Ladies and gentlemen, as I told you at
19 the outset, we cannot fit all of the prospective jurors in
20 this courtroom. We've spent the whole other part of the day
21 on questioning the first part of the panel. We're almost done
22 with that part of the panel and then we'll move into more
23 specific questioning of all of you.

24 Obviously you can all appreciate what kind of a
25 serious matter this is for both sides and that's why jury

1 selection does take a long time and I apologize for you.

2 I could make you all sit in here now and listen to
3 us finish questioning the rest of the jurors, but the reality
4 is we're probably not going to get to you tonight, so rather
5 than make you stay, what I'm going to do is I'm going to
6 excuse you for the evening and have you come back tomorrow
7 when we will get to you.

8 This department as well as all the other departments
9 has about 2,000 other active cases, so in the morning we have
10 hearings on the other cases. For that reason, we don't start
11 at 8:00 or 8:30. We will not be beginning until 10:30
12 tomorrow morning. So we're about to take an evening recess.
13 Officer Wooten will tell you where to report in the morning at
14 10:30.

15 A couple of things before we take our evening
16 recess. Obviously you've not heard any evidence in this case,
17 but you have heard some discussion on what the case is about
18 and who the witnesses are. During the afternoon or the
19 evening recess, please don't discuss anything relating to the
20 case or what's transpired in the courtroom with each other or
21 with anyone else. Anyone else would include members of your
22 family and your friends. You may, of course, tell them that
23 you are participating in jury selection in a criminal jury
24 trial, but please don't discuss anything else relating to this
25 matter.

1 Additionally, do not read, watch, listen to any
2 reports of or commentaries on any subject matter relating to
3 the case. Don't do any independent research on any subject
4 connected with the trial by way of the Internet or any other
5 medium. Please don't visit the Palomino Club location during
6 the evening.

7 One final thing, Court personnel, the attorneys, the
8 parties, everyone other than the uniformed marshals are
9 prohibited from speaking with members of the jury and the
10 prospective jurors until after the case is completely over.
11 Should you see one of these individuals in the elevators or in
12 the hallway, please don't think that they're being unfriendly
13 or antisocial to you. They are simply precluded by the rules
14 of ethics as well as the law from speaking directly to you.

15 Having said that, I'm going to excuse all of you for
16 the evening recess until 10:30 tomorrow.

17 If anyone has any questions about where to meet,
18 where to park, anything like that, please direct them of
19 Officer Wooten and I'll see -- in a moment -- just everyone
20 stay seated.

21 (Off-record bench conference)

22 BAILIFF: Everyone in here, when we go outside, can
23 you go to the left. I've got to get the other group in and
24 then I'm going to answer questions of where do you report and
25 where do you park and those types of things. Okay. So if

1 everyone would gather their things up and follow me out.

2 (Second jury panel recessed at 5:16 p.m.)

3 (First jury panel reconvened at 5:17 p.m.)

4 THE COURT: All right. Court is now back in
5 session. The record will reflect the presence of the State
6 through the deputy district attorneys, the defendant and his
7 counsel, the officers of the Court and the members of the
8 first part of the prospective jury panel.

9 And, Ms. Husted, if you would please call up the
10 next prospective juror.

11 MR. DIGIACOMO: May we approach?

12 (Off-record bench conference)

13 THE MARSHAL: One of the prospective jurors said
14 that she went to get a bottle of water.

15 THE COURT: Okay. All right. Thank you, sir.
16 We'll just proceed with the questioning of Mr. Ortiz until the
17 juror in chair No. 3 returns from break. So I believe the
18 defense needed to question Ms. Ortiz.

19 MR. ERICSSON: I believe that's you; is that right?

20 PROSPECTIVE JUROR NO. 165: Yes.

21 MR. ERICSSON: It's been a long day. Sorry about
22 this slow process.

23 Are you currently employed?

24 PROSPECTIVE JUROR NO. 165: Yes, I am.

25 MR. ERICSSON: [Inaudible].

1 THE COURT: It's the woman --

2 PROSPECTIVE JUROR NO. 165: I work for Triple A
3 Insurance. I'm a claims adjuster.

4 MR. ERICSSON: And you work a typical 9:00 to 5:00
5 type schedule?

6 PROSPECTIVE JUROR NO. 165: Yes.

7 MR. ERICSSON: You indicated there was some concerns
8 about scheduling as far as your child. Is that --

9 PROSPECTIVE JUROR NO. 165: Yeah, I made -- that's
10 resolved.

11 MR. ERICSSON: We -- just due to the nature of
12 courtrooms, there's sometimes joking and frivolity that goes
13 on between the Court and counsel and jurors, but you do
14 understand the importance of both sides on getting honest and
15 detailed answers from prospective jurors, don't you?

16 PROSPECTIVE JUROR NO. 165: Yes, I do.

17 MR. ERICSSON: Any concerns that you have with your
18 perspective on life and being able to hold the prosecution to
19 its burden of proof in a criminal case?

20 PROSPECTIVE JUROR NO. 165: There are no concerns.

21 MR. ERICSSON: Now, you understand that
22 Mr. Carroll -- that he doesn't have to take the stand in a
23 case such as this?

24 PROSPECTIVE JUROR NO. 165: Correct, I understand
25 that.

1 MR. ERICSSON: It's something that every one of us
2 has the constitutional right not to -- not to testify in a
3 case if we don't want to.

4 PROSPECTIVE JUROR NO. 165: Yes, I understand that.

5 MR. ERICSSON: Would you be able to --- if
6 Mr. Carroll decided not to testify in this case, to not
7 take -- or not consider the fact that he didn't testify?

8 PROSPECTIVE JUROR NO. 165: I would not use that
9 against him.

10 MR. ERICSSON: Okay. You answered that better than
11 I asked the question. Thank you.

12 PROSPECTIVE JUROR NO. 165: I heard you ask it a
13 couple of times.

14 MR. ERICSSON: The questions regarding the death
15 penalty, we only get there if, in fact, the jury, after
16 hearing evidence, decides beyond a reasonable doubt that
17 Mr. Carroll, in fact, is guilty of first-degree murder. And
18 we -- I know we've asked this jury -- a lot of times these
19 legal definitions are not common to the prospective jurors and
20 that's why I need to make sure we're on the same page when
21 we're talking about first degree murder. And that would be an
22 intentional killing that was not based on passion or a -- a
23 heated exchange. It was not accidental. It was not anything
24 other than a deliberate intentional killing. You understand
25 that?

1 PROSPECTIVE JUROR NO. 165: Yes, I do understand
2 that.

3 MR. ERICSSON: And in that situation would you be
4 able to consider each of the four potential sentences that
5 Nevada allows?

6 PROSPECTIVE JUROR NO. 165: Yes, I would.

7 MR. ERICSSON: What is your position on the death
8 penalty?

9 PROSPECTIVE JUROR NO. 165: I am not against it or I
10 would not oppose it, and I am for it if the crime meets that
11 standard, if it's that excessive.

12 MR. ERICSSON: Now, would you be able to consider
13 mitigation evidence in your determination whether the death
14 penalty or some lesser sentence was appropriate?

15 PROSPECTIVE JUROR NO. 165: Yes, I would.

16 MR. ERICSSON: And in your own words, why do you
17 believe that the law of Nevada allows for somebody who is
18 convicted of first-degree murder to be able to present
19 mitigation evidence in consideration of the sentencing?

20 PROSPECTIVE JUROR NO. 165: There's always
21 extenuating circumstances behind why somebody does a crime and
22 I think there -- that needs to be looked at and from -- once
23 it's presented, it needs to be determined from there what that
24 person -- what that crime is and where it lies and what the
25 penalty should be.

1 MR. ERICSSON: Last question. Anything about your
2 background or your frame of mind that you think -- that would
3 cause you concern to be sitting on a juror on this type of
4 case if you were either at the prosecution table or in
5 Mr. Carroll's --

6 PROSPECTIVE JUROR NO. 165: No.

7 MR. ERICSSON: Thank you very much.

8 THE COURT: All right. Pass?

9 MR. ERICSSON: Yes, Your Honor.

10 THE COURT: All right. State's second?

11 MR. DIGIACOMO: Judge, the State would thank and
12 excuse the juror in Seat No. 5, Juror No. 20, Ms. Keith.

13 THE COURT: Ms. Keith, thank you very much for being
14 here and your willingness to serve as a juror. You are
15 excused at this time and just exit through the double doors.

16 All right. Ms. Husted, call up the next prospective
17 juror.

18 THE CLERK: Badge 168, Howard Hotchkiss.

19 THE COURT: All right. Mr. Hotchkiss, if you'll
20 just have that empty seat there in the front row, please, sir.

21 And, State, you may question Mr. Hotchkiss.

22 MR. PESCI: Thank you, Judge.

23 Sir, I think you said you have some litigation that
24 might conflict with your schedule here in court?

25 PROSPECTIVE JUROR NO. 168: Yeah, I don't think

1 that's going to be a problem.

2 MR. PESCI: It shouldn't be a problem now?

3 PROSPECTIVE JUROR NO. 168: No, I have a problem
4 getting the person served.

5 MR. PESCI: I couldn't hear you.

6 PROSPECTIVE JUROR NO. 168: I've got a problem
7 getting the person served so, you know --

8 MR. PESCI: Oh, okay. So it's not an issue at this
9 point?

10 PROSPECTIVE JUROR NO. 168: Not an issue at this
11 point.

12 MR. PESCI: Okay. All right. You talked about, in
13 response to the questions about the death penalty, that --
14 specifically one of the questions, you said, That's a tough
15 one and that it would have to be in the worse cases.

16 PROSPECTIVE JUROR NO. 168: Yeah. You know, I'm not
17 against the death penalty in capital cases. There's a
18 finality to it when somebody is executed, you know, and
19 there's been stories in the newspaper through the years,
20 people finding DNA and stuff like that, so people have been
21 wrongly prosecuted. But depending on evidence that's
22 presented to the case -- of course, I've never served on a
23 jury before, but subjectively, if it called for the death
24 penalty, I don't think I would have a problem.

25 MR. PESCI: All right. So could you consider all

1 four possible punishments beside the death penalty?

2 PROSPECTIVE JUROR NO. 168: You know, that's a
3 puzzle for me because when you talk about mitigating
4 circumstances, I would like to think that any mitigating
5 circumstances would be presented at trial rather than at the
6 sentencing, and then if the jury still found the person, you
7 know, was guilty of the crime, I think I could still look at
8 all four issues, but I would have a strong preponderance
9 towards -- in a cold-blooded murder case, I would have a
10 strong preponderance towards the death penalty if I was on a
11 jury that found that person guilty unless those mitigating
12 circumstances came up during the trial and they were taken
13 into consideration.

14 MR. PESCI: Okay.

15 PROSPECTIVE JUROR NO. 168: You know, such as if
16 somebody had a very low IQ or something, but, you know -- or
17 there was some coercion involved where somebody was kind of
18 coerced into committing a crime.

19 MR. PESCI: So if I understand correctly, you have
20 no problem considering mitigation --

21 PROSPECTIVE JUROR NO. 168: Exactly.

22 MR. PESCI: You just maybe would prefer it in the
23 guilty phase as opposed to the penalty phase?

24 PROSPECTIVE JUROR NO. 168: Yeah, in that respect I
25 would. And then, of course, if it wasn't presented, then, of

1 course, I could still consider it, but the burden would be on
2 the defendants and the defendant -- the defense to show me
3 that there were truly, truly some mitigating circumstances
4 surrounding --

5 THE COURT: Yeah, and just to make it clear, and
6 this may already be clear --

7 PROSPECTIVE JUROR NO. 168: Yeah. Yeah.

8 THE COURT: I'm getting tired. Mitigating
9 circumstances, we don't mean something that minimizes or is a
10 defense to the crime itself such as --

11 PROSPECTIVE JUROR NO. 168: Right.

12 THE COURT: -- maybe, you know, they were coerced
13 into doing it or they felt that they -- it was self-defense or
14 something like that. That's why it doesn't come in in the
15 guilt phase. Mitigation goes to what the punishment is, not
16 to the culpability for the crime itself. Do you understand
17 what I'm saying?

18 PROSPECTIVE JUROR NO. 168: Yeah. And -- yeah.

19 THE COURT: It doesn't go to culpability on the
20 guilt phase. It only goes to, is it appropriate for this
21 person to spend life -- for the rest of their life with no
22 possibility or is it appropriate that they should, at some
23 future point, have a chance, not necessarily get it, but have
24 a chance at parole.

25 So do you see the difference between that?

1 PROSPECTIVE JUROR NO. 168: Yes.

2 THE COURT: And I just want to make sure that when
3 you're talking about mitigation, you're not talking about
4 something that excuses the person's culpability on the crime
5 itself.

6 PROSPECTIVE JUROR NO. 168: Yeah, I get you. And
7 that could be very subjective too. I think the degrees of
8 mitigation -- you know, I -- there's a time in a person's life
9 when they have to, you know, stand by their own judgments and
10 be responsible for themselves.

11 MR. PESCI: Can I build on that for a second? You
12 talked about that in the context of mitigation, but when you
13 first started talking, you said burden. You used the word
14 burden. Are you okay with the concept that the law says that
15 the defendant has absolutely no burden in the guilt phase or
16 even the penalty phase?

17 PROSPECTIVE JUROR NO. 168: Not even the penalty
18 phase either.

19 MR. PESCI: He has no burden. Now, he may put on
20 mitigation. The State's not going to put on mitigation.

21 PROSPECTIVE JUROR NO. 168: Right.

22 MR. PESCI: Rest assured of that. We're not going
23 to. He might put on mitigation, but he has no duty in the
24 guilt phase to do that. He has no duty in the penalty phase.
25 Are you okay with that concept?

1 PROSPECTIVE JUROR NO. 168: Yeah, I'm okay with that
2 concept. But how does the mitigation come up if he's not
3 presented it?

4 MR. PESCI: Well, it may not come up. I can tell
5 you that the chances are very, very, very high it will.

6 PROSPECTIVE JUROR NO. 168: Okay.

7 MR. PESCI: It will come up, but what I'm saying
8 is --

9 PROSPECTIVE JUROR NO. 168: So it is going to be
10 presented to me if it comes up?

11 MR. PESCI: If we get to penalty --

12 PROSPECTIVE JUROR NO. 168: Right.

13 MR. PESCI: If we get to penalty, the defendant may
14 present that, but he's not required to. Are you okay with
15 that concept?

16 PROSPECTIVE JUROR NO. 168: Oh, yeah.

17 MR. PESCI: All right. And are you okay with the
18 concept that the State has the burden of proof beyond a
19 reasonable doubt to establish guilt before we even get to any
20 penalty?

21 PROSPECTIVE JUROR NO. 168: Absolutely.

22 MR. PESCI: All right. You indicated, I believe it
23 was, your brother-in-law -- that he was in the Secret Service?

24 PROSPECTIVE JUROR NO. 168: Uh-huh.

25 MR. PESCI: Is he still now or retired?

1 PROSPECTIVE JUROR NO. 168: He's retired from the
2 Secret Service, but he's still active in law enforcement.
3 He's like TSA at McCarran International Airport.

4 MR. PESCI: Does he live here locally or somewhere
5 else?

6 PROSPECTIVE JUROR NO. 168: He lives locally.

7 MR. PESCI: And that interaction with him, would
8 that affect your ability to be fair to either side?

9 PROSPECTIVE JUROR NO. 168: Not at all.

10 MR. PESCI: Do you think you can be fair?

11 PROSPECTIVE JUROR NO. 168: Yes.

12 MR. PESCI: Pass for cause, Judge.

13 THE COURT: Defense.

14 MR. BUNIN: Good afternoon.

15 PROSPECTIVE JUROR NO. 168: Good afternoon.

16 MR. BUNIN: All right. I want to talk about some of
17 the things that you've said and make sure I understand.

18 When -- in this questionnaire, one of the questions was,
19 Characterize your feelings about the death penalty, and you
20 went on certain things where you thought the death penalty
21 might be justified. You wrote, Multiple murders, crimes
22 against children, acts of terrorism.

23 PROSPECTIVE JUROR NO. 168: Right.

24 MR. BUNIN: But when you answered some questions
25 earlier, you said you might be leaning towards the death

1 penalty in any premeditated case. Do you -- just so I
2 understand it, because it's a little confusing --

3 PROSPECTIVE JUROR NO. 168: You know, like I said,
4 it's so subjective and until the case is presented and I can
5 form, you know, some kind of idea, you know, that's my problem
6 with it. You know, like some cold-blooded, just get rid of
7 this guy because he looks at me the wrong way or something and
8 just a cold-blooded act of murder --

9 MR. BUNIN: Well, what I'm trying to talk about just
10 in the abstract is nothing more than premeditated, which is
11 serious, first-degree murder, premeditated deliberate murder.
12 Is there any circumstance, if the State proved to you beyond a
13 reasonable doubt that there was first-degree murder, where you
14 would not give the death penalty, or is that all that's needed
15 for you to give the death penalty?

16 PROSPECTIVE JUROR NO. 168: Oh, no. It's -- no, it
17 all depends on the circumstances like how -- how --

18 MR. BUNIN: So if it's proven that there is
19 first-degree murder, then you would want to look at the
20 individual that's convicted and look at different factors to
21 see if he's the type of person that you would want to give the
22 death penalty to or some other sentence?

23 PROSPECTIVE JUROR NO. 168: Right. And, you know,
24 let me say, I won't give the death penalty lightly, you know.
25 Like I said, to me, it's final -- it's such a finality to.

1 MR. BUNIN: Of the four options, would you agree
2 it's the most serious option?

3 PROSPECTIVE JUROR NO. 168: It is.

4 MR. BUNIN: And do you also agree that the other
5 three options are all pretty serious penalties?

6 PROSPECTIVE JUROR NO. 168: Very serious.

7 MR. BUNIN: All right. And then, you know, I know
8 you had discussion with the Judge just now to clarify as well
9 mitigating factors. Do you think you understand, as you sit
10 here now, why you won't hear anything about mitigating factors
11 during the guilt phase? You'll only hear that during the
12 penalty phase, if we get there.

13 PROSPECTIVE JUROR NO. 168: I do.

14 MR. BUNIN: The reason is, just to clarify one more
15 time, is that mitigating factors are not a defense to the
16 crime.

17 PROSPECTIVE JUROR NO. 168: Right. [Inaudible].

18 MR. BUNIN: In other words, self-defense and a
19 justified killing, shooting somebody in war, you know, those
20 are all defenses to any crime. Here we're talking about --
21 explaining to you why a person is the way he is and you need
22 to judge and examine this person and make a decision as to
23 what's just and punishment. That's a separate thing. Do you
24 understand?

25 PROSPECTIVE JUROR NO. 168: Mm-hmm.

1 MR. BUNIN: So that's -- you know, that's not
2 something you would hear at all until a penalty phase, if
3 there's a penalty phase.

4 PROSPECTIVE JUROR NO. 168: Right.

5 MR. BUNIN: Are you okay with that?

6 PROSPECTIVE JUROR NO. 168: Yes.

7 MR. BUNIN: Are you sure?

8 PROSPECTIVE JUROR NO. 168: Yes.

9 MR. BUNIN: Okay. I want to make sure that we're on
10 the same page before we make our decision about who ends up on
11 the jury.

12 Do you think the mitigating factor that we've listed
13 in the questionnaire are legitimate factors to be taken into
14 consideration when you decide what the sentence is going to
15 be?

16 PROSPECTIVE JUROR NO. 168: Can you just -- I want
17 to be a little bit [inaudible].

18 MR. BUNIN: We listed things such as the defendant's
19 health, his mental status, age, childhood experiences,
20 education, those types of things. Are those -- the IQ, we
21 didn't write it down there, maybe just, you know, general
22 guidance, family guidance when he was a child. Are those
23 things that you think are fair to take into consideration when
24 determining what the right sentence is?

25 PROSPECTIVE JUROR NO. 168: Yeah, it would have to

1 be -- some of them, I think -- the others would have to --
2 there would have to be a huge degree of abuse or something
3 that would affect the person as he grows that I thought would
4 be appropriate, but as I said, that's subjective. I mean,
5 there's people that go through all kinds of situations.
6 People went through the Holocaust. They don't go out and kill
7 people and commit crimes.

8 MR. BUNIN: And certainly there are people that live
9 great lives that have never been abused in their lives --

10 PROSPECTIVE JUROR NO. 168: Right. Right.

11 MR. BUNIN: -- and they can --

12 PROSPECTIVE JUROR NO. 168: And it's not like --
13 this is a murder charge. It's not like you went out and
14 ripped off cigarettes from a corner store or something, you
15 know. You took somebody's life. So the mitigating
16 circumstances would have to be shown to be effectively --
17 damage the person.

18 MR. BUNIN: So you mean damaging to the extent that
19 maybe the way he was raised affected the way he thinks and
20 makes decisions compared to people that would --

21 PROSPECTIVE JUROR NO. 168: Right.

22 MR. BUNIN: -- not have those problems?

23 And you'd be able to look at that and say, you know,
24 certainly we're not excusing anyone of the crime. It's
25 first-degree murder. The best he could hope for is --

1 PROSPECTIVE JUROR NO. 168: It would have to be
2 serious enough to persuade me.

3 MR. BUNIN: Okay. Serious enough to persuade you
4 not to impose the death penalty?

5 PROSPECTIVE JUROR NO. 168: Uh-huh.

6 MR. BUNIN: So do you think --

7 PROSPECTIVE JUROR NO. 168: I can look at it
8 different, as I said, but --

9 MR. BUNIN: Well, do you think if a person's
10 committed of a first-degree murder, before you hear about any
11 mitigating or aggravating circumstances, you don't hear
12 anything else, do you start with death and work your way down?
13 Do you view them all equally and say, I'm not going to think
14 about any of them until I start hearing some of the evidence,
15 or do you have an opinion to start somewhere and sort of work
16 your way to the --

17 PROSPECTIVE JUROR NO. 168: Yeah, you know, I can
18 see where you are. I am struggling with it.

19 MR. PESCI: Judge, I apologize for the -- for
20 looking at them equally. We've already discussed the issue
21 about the equality between the different [inaudible].

22 MR. BUNIN: I disagree. I think I have a right to
23 ask --

24 THE COURT: Well, state your question again.

25 MR. BUNIN: Do you -- if a person is convicted of

1 first-degree murder, are you automatically starting with the
2 presumption that you would vote for the death penalty and then
3 you might work your way down to a different sentence,
4 depending on the evidence, or without hearing any evidence, do
5 you view them all as equal or at least you'll consider all the
6 possibilities before you hear any evidence? So that's a long
7 way of saying, are you -- are you automatically starting with
8 death or --

9 PROSPECTIVE JUROR NO. 168: Am I -- yeah, no,
10 it's -- it would be a matter of what's -- how everything's
11 presented to me.

12 MR. BUNIN: And I guess what I'm saying is, let's
13 presume that there's a first-degree murder verdict, that you
14 find him guilty of that verdict. Are you now, in your mind,
15 saying, I should impose the death penalty unless I hear
16 certain evidence from the defense? And if the defense -- what
17 if the State, in your opinion, doesn't show any aggravator
18 beyond a reasonable doubt? Would you still want the defense
19 to show --

20 PROSPECTIVE JUROR NO. 168: I don't understand --

21 THE COURT: Yeah, that's sustained. Because that's
22 not the state of the law, so...

23 PROSPECTIVE JUROR NO. 168: I don't understand that
24 question.

25 THE COURT: You don't have to answer it because --

1 again, this is difficult. Because we'll instruct you on the
2 law and how you have to go through the penalty phase, but I
3 think that was a little bit of a -- I mean, basically you
4 don't know what the law is and it's a little -- I always say
5 this, but it's kind of tough. We ask you questions and we use
6 these terms and you may or may not know what they mean. But
7 there's going to be instructions on -- if you even get there,
8 to what goes -- happens at the penalty phase.

9 Would you follow the instructions that I give to you
10 even if maybe they're different from a preconception you might
11 have as to how it's all supposed to work?

12 PROSPECTIVE JUROR NO. 168: Yes. Of course.

13 THE COURT: Okay. I'm not sure if that's where you
14 were going in your question.

15 MR. BUNIN: It is.

16 THE COURT: Okay.

17 MR. BUNIN: I think I'm getting tired. Sorry about
18 that.

19 Is there anything that we've discussed, whether it's
20 in the penalty phase or in the guilt phase -- you know, we've
21 had -- talked about a lot of different topics from a lot of
22 different people. Is there anything that you would like to
23 comment on based on anything you agree with or disagree with
24 where you think it's important to comment?

25 PROSPECTIVE JUROR NO. 168: No.

1 MR. BUNIN: Do you agree with the presumption of
2 innocence that as Deangelo sits here today he is innocent?

3 PROSPECTIVE JUROR NO. 168: Yes.

4 MR. BUNIN: And you can look at him and honestly say
5 that if right now you went back to the jury room, of course,
6 you would have to vote not guilty because the State hasn't
7 presented any evidence?

8 PROSPECTIVE JUROR NO. 168: Yes, I would.

9 MR. BUNIN: And can I trust that unless the
10 prosecutors show beyond a reasonable doubt the elements of the
11 crime, you will vote not guilty?

12 PROSPECTIVE JUROR NO. 168: Yes, I will.

13 MR. BUNIN: All right. You'd be comfortable doing
14 that? You'd have no hesitation if you don't believe they've
15 met their legal burden?

16 PROSPECTIVE JUROR NO. 168: No problem. No.

17 MR. BUNIN: Pass for cause, Your Honor.

18 THE COURT: All right. Thank you. Defendant's
19 second.

20 MR. ERICSSON: Your Honor, the defense would thank
21 and excuse Juror 132, Christie Baker.

22 THE COURT: Ms. Baker, thank you very much for your
23 participation and your willingness to serve as a juror. You
24 are excused at this time.

25 Ms. Husted, please call up the next prospective

1 juror.

2 THE CLERK: Yes, Your Honor. Badge 175, Erin
3 Schwartz.

4 THE COURT: Ms. Schwartz, if you'd just take the
5 empty seat there in the back row, please.

6 And, State, you may question Ms. Schwartz.

7 MR. DIGIACOMO: Good afternoon, ma'am. I'm going
8 to -- this may be somewhat short.

9 PROSPECTIVE JUROR NO. 175: Okay.

10 MR. DIGIACOMO: We've been sitting here talking
11 about the death penalty all day.

12 PROSPECTIVE JUROR NO. 175: Yes.

13 MR. DIGIACOMO: And you wrote in here that you don't
14 believe in the death penalty under any circumstances.

15 PROSPECTIVE JUROR NO. 175: No.

16 MR. DIGIACOMO: A personal and religious belief of
17 yours?

18 PROSPECTIVE JUROR NO. 175: Yes.

19 MR. DIGIACOMO: And it's one that you felt obviously
20 for some period of time before the questionnaire.

21 PROSPECTIVE JUROR NO. 175: Yes.

22 MR. DIGIACOMO: So I imagine there's nothing that
23 myself or the defense is going to say to change your mind?

24 PROSPECTIVE JUROR NO. 175: No.

25 MR. DIGIACOMO: At the end of the day, you're not

1 going to consider it?

2 PROSPECTIVE JUROR NO. 175: No.

3 MR. DIGIACOMO: Thank you very much.

4 PROSPECTIVE JUROR NO. 175: Thank you.

5 THE COURT: Submit it.

6 MR. ERICSSON: Yes, Your Honor.

7 THE COURT: All right. Ms. Schwartz, thank you for
8 your participation. You are excused at this time.

9 And, Ms. Husted, please call up the next prospective
10 juror.

11 THE CLERK: Yes, Your Honor, Badge 191, James Kerr.

12 THE COURT: Mr. Kerr, come on down and just have
13 that empty chair there in the back row, please, sir.

14 State, you may question Mr. Kerr.

15 MR. DIGIACOMO: Good evening.

16 PROSPECTIVE JUROR NO. 191: How are you?

17 MR. DIGIACOMO: Good. How long did you live in
18 Scotland?

19 PROSPECTIVE JUROR NO. 191: 20 years.

20 MR. DIGIACOMO: 20 years or so. And how long have
21 you been in the United States? You went to Canada for a
22 period of time?

23 PROSPECTIVE JUROR NO. 191: Right.

24 MR. DIGIACOMO: And how long have you been here?

25 PROSPECTIVE JUROR NO. 191: 46 years.

1 MR. DIGIACOMO: 46 years. You indicated that you've
2 never been involved in the court system at all.

3 PROSPECTIVE JUROR NO. 191: Not at all.

4 MR. DIGIACOMO: Never been called for jury duty or
5 anything?

6 PROSPECTIVE JUROR NO. 191: Never.

7 MR. DIGIACOMO: I don't think there's probably a lot
8 of questions that I want to ask you; although, there are some
9 questions related to the death penalty. They were somewhat
10 confusing because they asked it about 19 different ways to get
11 the same answer. So now that you've been sitting here for the
12 better part of the day, do you think -- let me ask you this:
13 If you got to a penalty phase, do you think you could consider
14 all four forms of punishment and make a decision as to what
15 the punishment should be in the case?

16 PROSPECTIVE JUROR NO. 191: Depending on, you know,
17 if it was, you know, intentional, you know, if the defendant
18 intentionally shot the victim.

19 MR. DIGIACOMO: Sure. And, look, if we get to that
20 point -- if you get to the point where 12 people have raised
21 their hands and said Mr. Carroll's guilty of first-degree
22 murder, then the 12 people have said Mr. Carroll committed an
23 intentional killing. He may not be the trigger man, but he's
24 responsible for the murder, first-degree intentional murder.

25 So if we get to that point, the question is would

1 you be able to consider all four forms of punishment in
2 deciding what someone's punishment for being guilty of murder
3 should be?

4 PROSPECTIVE JUROR NO. 191: I believe, you know, if
5 he was guilty of first-degree murder, then I would consider
6 the death penalty only.

7 MR. DIGIACOMO: Okay.

8 THE COURT: Only the death penalty.

9 MR. DIGIACOMO: You say only the death penalty?

10 PROSPECTIVE JUROR NO. 191: Right.

11 MR. DIGIACOMO: And I'm not going to belabor this
12 point. It's late. So some people have kind of said, look,
13 there maybe certain things out there, motive -- I mean, it
14 hasn't really been stated this way, but, you know,
15 theoretically, you know, I've heard it said, you know, some
16 people just deserve killing, that someone may commit a
17 first-degree murder but they might have had a pretty
18 compelling reason to do it.

19 Would you consider those type of factors in making
20 your decision, or if you get to the point where you say he
21 intentionally killed the guy, I don't care what the victim
22 did, whether or not he deserved it or not, whether or not the
23 defendant had a bad background, if you get to that part,
24 you're just going to say the death penalty?

25 PROSPECTIVE JUROR NO. 191: In this case, I believe

1 Mr. Carroll was asked to kill this person.

2 MR. DIGIACOMO: That's the allegation.

3 PROSPECTIVE JUROR NO. 191: That's the allegation.

4 MR. DIGIACOMO: Sure.

5 PROSPECTIVE JUROR NO. 191: And if that is true,
6 there's no other answer. Yeah, it would be the death penalty.

7 MR. DIGIACOMO: Thank you very much, sir.

8 THE COURT: All right. Thank you.

9 Ladies and gentlemen, Ms. Husted is going to read
10 some names. Please listen very carefully to see if your name
11 is called by Ms. Husted.

12 Ms. Husted, go ahead.

13 THE CLERK: Yes, Your Honor.

14 Badge 34, Stacey Long; Badge 76, Cindy Ternay; 119,
15 John Turner; 152, Dennis Johnson; 163 -- I said it this
16 morning. I just can't do it now. 172, Kenneth Lieberman;
17 181, Cindy Strebing; 185, Gordon Zorn; and 239, Edward Baier.

18 THE COURT: All right. Those of you whose names
19 were called -- I'll see Officer Wooten at the bench, please.

20 (Off-record bench conference)

21 THE COURT: All right. Those of you whose names
22 were just called by Ms. Husted, please follow Officer Wooten
23 through the double doors.

24 And at this time, Mr. Kerr you are excused from
25 these proceedings. Thank you. Just put the microphone in

1 your chair, please.

2 I'll see the attorneys at the bench.

3 (Off-record bench conference)

4 THE COURT: All right. Ladies and gentlemen, we're
5 going to take our afternoon recess at this point in time.

6 Obviously we haven't selected our jury yet so you
7 all are going to have to come back tomorrow. The Court has
8 about 1500 to 2,000 other cases, so every morning we have
9 calendars on unrelated matters. For that reason, we won't be
10 able to start until 10:30 tomorrow morning, so we will
11 reconvene with jury selection at 10:30 tomorrow morning.

12 I remind everyone of the admonition not to discuss
13 anything relating to the case with each other or with anyone
14 else. You may tell people, of course, you're participating in
15 jury selection in a criminal jury trial, but please don't
16 discuss anything else relating to the matter.

17 Additionally, do not read, watch, listen to any
18 reports of or commentaries on any subject matter relating to
19 the trial. Don't do any independent research by way of the
20 Internet or other media. Don't visit the Palomino Club or any
21 of the locations at issue and please do not form or express an
22 opinion on the trial.

23 Yes, sir?

24 PROSPECTIVE JUROR NO. 231: I failed to answer this
25 morning the question, personal question, whatever --

1 THE COURT: About the IRS case?

2 PROSPECTIVE JUROR NO. 231: Not only that, I'm
3 self-employed and I work [inaudible] on --

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 231: And this procedure
6 today -- you know, I [inaudible] wouldn't be able to provide.

7 THE COURT: Okay. Well, if you're selected, time
8 accommodations can be made. For tomorrow, everyone has to
9 come back at 10:30, but for those people who may have issues,
10 you would address those with our marshal if you're selected.

11 Yes?

12 PROSPECTIVE JUROR NO. 218: I didn't put it on the
13 questionnaire, but I basically -- hardship -- like was said at
14 the beginning of the trial, hardships, so I [inaudible] -- I'm
15 watching tomorrow, and I already had to take two days off of
16 work just for me to come here.

17 THE COURT: Okay. Unfortunately, for those people
18 who are still here, we do need you to come back tomorrow at
19 10:30.

20 Officer Wooten, I'll see you at the bench.

21 (Off-record bench conference)

22 THE COURT: Sir, I need your name and badge number
23 for the record.

24 PROSPECTIVE JUROR NO. 218: Ed Clark, 218.

25 THE COURT: Badge 218? All right.

1 And, sir, I need your name and badge number for the
2 record, too, because otherwise we don't know who's speaking.

3 PROSPECTIVE JUROR NO. 231: Kerry Loso, Badge
4 No. 231.

5 THE COURT: All right. Thank you, sir.

6 And, ladies and gentlemen, also, I would -- of
7 course, if you see the lawyers or other court personnel in the
8 hallway or the elevator tomorrow, once again you're reminded
9 they're not being rude or unfriendly. They are precluded by
10 the law and ethics from speaking directly with members of the
11 jury. So should you run into one of these people, please be
12 mindful of that.

13 I'm going to have everyone exit the courtroom in a
14 moment following Officer Wooten. If anyone has any additional
15 questions, you need to address them of Officer Wooten and then
16 if it's something very pressing, he will bring it to my
17 attention; otherwise, some of these issues may be addressed
18 tomorrow.

19 Just so you all know, you know, I wish we had a room
20 full of people excited about being here, and I really have to
21 say I'm very impressed by the willingness to serve that I've
22 seen demonstrated today. Unfortunately, that's not always the
23 case in jury selection. I just want to say I really
24 appreciate that. Almost everyone has been willing to serve.

25 I can just tell you this, you know, I have, in

1 between doing this 20 years as either a lawyer or a judge, I
2 have spoken literally to thousands of people who have wound up
3 serving on jurors -- juries, either civil cases or criminal
4 cases. And I can tell you almost to a person, well over
5 99 percent of the time they are glad they had to do it even
6 though it has been some personal hardship for them and they
7 have found it to be an interesting and rewarding experience.

8 Again, I can't excuse everyone and if you do serve,
9 like I said, almost to a person, people are glad that they had
10 to serve once they do because they do find it rewarding.

11 My job, as I said at the outset, is to make sure we
12 have enough prospective jurors available to serve because I
13 need to make sure that everyone exercises all of their
14 challenges fully. Both sides have ten challenges on this
15 case, so you can see by the timing and the number of people
16 left in the courtroom that, you know, we're going to be hard
17 pressed to allow both sides to exercise all ten challenges.
18 And it's part of the process designed to ensure that both
19 sides have a completely neutral jury, a jury that can consider
20 everything and is impartial, isn't weighted one way or the
21 other as we sit here and proceed.

22 So I apologize for the time that this has taken, but
23 obviously you can all appreciate what an important process it
24 is for everyone who is involved in this case.

25 Again, any questions, please address Officer Wooten

1 out in the hallway. He will give you instructions on parking,
2 any other questions you may have and where to meet tomorrow.

3 All right. Thank you very much. If everyone will
4 please rise and get all of their belongings obviously and
5 follow Officer Wooten through the double doors.

6 (Jury panel recessed at 5:57 p.m.)

7 THE COURT: All right.

8 MR. DIGIACOMO: Did you kick some of those people at
9 the end that were --

10 THE COURT: Those were the people at the end, I just
11 kicked them because I think we have enough.

12 MR. DIGIACOMO: Okay. So the --

13 THE COURT: I couldn't sort through -- I'm too
14 tired. I couldn't sort through who really had the better
15 excuses. So I think we have enough from the group, the second
16 group.

17 MR. DIGIACOMO: No. I mean the last two people,
18 Kerry Loso --

19 MR. ERICSSON: Did we drop those?

20 THE COURT: No. No.

21 MR. DIGIACOMO: 231, are they coming back?

22 THE COURT: No, the IRS guy and the lady with the
23 kid, they're coming back. I told Jeff, you know, she might
24 talk to him in the hall. If she says something really
25 compelling, get her phone number, if we decide to kick her

1 tomorrow.

2 (Off-record colloquy)

3 (Court recessed at 5:59 p.m. until the following
4 day, Tuesday, May 18, 2010, at 10:30 a.m.)

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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


KIMBERLY LAWSON
TRANSCRIBER

ORIGINAL

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAY 18 2010

BY, Denise Husted
DENISE HUSTED, DEPUTY

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO: C212667
)	DEPT NO: XXI
vs.)	
)	
DEANGELO RESHAWN CARROLL)	Transcript of
)	Proceedings
Defendant.)	
)	

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 2
JURY VOIR DIRE

TUESDAY, MAY, 18, 2010

APPEARANCES:

FOR THE STATE:

MARC DiGIACOMO, ESQ.
Chief Deputy District Attorney
GIANCARLO PESCI, ESQ.
Chief Deputy District Attorney

FOR THE DEFENDANT:

DANIEL M. BUNIN, ESQ.
THOMAS A. ERICSSON, ESQ

RECORDED BY JANIE OLSEN, COURT RECORDER
TRANSCRIBED BY: KARReporting and Transcription Services

KARR REPORTING, INC.

AA 0475

1 LAS VEGAS, NEVADA, TUESDAY, MAY 18, 2010, 10:49 A.M.

2 (Court was called to order.)

3 (Outside the presence of the prospective jurors.)

4 THE COURT: Okay.

5 MR. BUNIN: We wanted to make a record.

6 THE COURT: Oh, before you do that, Jeff, they need
7 to put something on the record.

8 Okay. Yes.

9 MR. BUNIN: It has to do with -- it has to do with a
10 juror that we had moved for cause. It was Warren Koch, 136.
11 I think counsel will make a record on that.

12 MR. ERICSSON: Your Honor, we would -- at this point
13 we believe that this juror should have been removed for cause
14 based on his responses, as well as, even more troubling to us,
15 were the responses that he had made in his questionnaire. And
16 I'll -- I would like --

17 THE CLERK: Can I have the number again? I'm sorry.
18 Which juror number?

19 THE COURT: 136. Is that what you said?

20 MR. ERICSSON: Yes. 136.

21 THE CLERK: Okay.

22 MR. ERICSSON: And we would move to have a copy of
23 this questionnaire --

24 THE COURT: Made a Court's Exhibit?

25 MR. ERICSSON: Yes.

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1 THE COURT: That's fine. I mean, they're all a part
2 of the record anyway, but we can make that specially a Court's
3 Exhibit. And my understanding, based on the contemporaneous
4 challenge for cause as well as the conference at the bench,
5 was that you felt both his answers to the questions orally as
6 well as what he wrote in the questionnaire -- and the Court
7 concedes. The questionnaire does indicate more strongly that
8 he is or does believe that the death penalty should always be
9 imposed.

10 However, the Court's feeling was that after extensive
11 questioning he clarified that, no, there were conditions where
12 he didn't feel the death penalty was appropriate or would
13 consider all four options in cases of first degree murder.
14 That was my recollection. Obviously the transcript will speak
15 for itself.

16 State, is there anything you want to put on the
17 record regarding that?

18 MR. PESCI: That's the one you're going to make a
19 record; right?

20 MR. ERICSSON: Yes.

21 MR. PESCI: Okay.

22 Judge, I'll bring this to you, if I may. Question 38
23 specifically asks --

24 THE COURT: That's correct.

25 MR. PESCI: -- if you would automatically vote in

1 favor, and his answer was no. So internally, within the very
2 document that they're saying shows that he would undoubtedly
3 go with death is an answer to the contrary. This is what
4 happens when we have questionnaires and we ask seven times --

5 THE COURT: Right.

6 MR. PESCI: -- a question about their opinion on
7 death.

8 THE COURT: And I know other questions -- question
9 36, do you believe the death penalty should always be imposed
10 if the defendant is found guilty of intentional murder no
11 matter what the circumstances? He answers yes, which appears
12 to be inconsistent.

13 Question 37, he says I think that when it is -- that
14 asks the death penalty is appropriate in some murder cases but
15 not others, he writes, I think that when it is an act of
16 defense, the death penalty may not be always appropriate.
17 That is why I told him we're not talking about self defense,
18 we're talking about only cases where there isn't self defense.
19 I think that that was covered as I -- again, the transcript
20 speaks for itself. That was covered with the juror to make
21 sure he wasn't talking about situations that wouldn't be first
22 degree murder where it would be a defense to the charge
23 himself -- itself, excuse me. And I think he did then clarify
24 the answer. But, again, the transcript speaks -- speaks for
25 itself.

1 So I just wanted to make it clear. If you look just
2 at the questionnaire, it appears that he's saying everything
3 but self defense should get the death penalty. Obviously self
4 defense, if the jury believed that, wouldn't be a first degree
5 murder. I think that orally he clarified that that wasn't the
6 only exception that he would consider. But, again, the
7 transcript speaks for itself. That was certainly my
8 understanding.

9 Denise, make this a Court's Exhibit.

10 MR. ERICSSON: And to finalize the record, one of the
11 other major areas of concern for us is his response to whether
12 he would consider mitigation, on the questionnaire he said no,
13 and I think he hand wrote in there it would be irrelevant or
14 something to that nature. When he was pushed on --

15 THE COURT: Mitigation.

16 MR. ERICSSON: -- mitigation, he basically said that
17 if somebody had some major schizophrenic or other mental
18 disorder that he might be able to consider that. It sounded
19 like any other type of mitigation was completely irrelevant to
20 him.

21 THE COURT: I believe he also said some kind of
22 cognitive -- he didn't use the word cognitive impairment,
23 but --

24 MR. BUNIN: He said 70 IQ.

25 THE COURT: Right. Low intelligence, borderline

1 mental retardation.

2 MR. ERICSSON: Right.

3 MR. PESCI: He also talked about facts about not
4 being the shooter. He also talked about intent. And as we
5 argued at the bench, there is no requirement that a juror
6 accept mitigation in whatever form it's presented to them.
7 They -- they listen and they can choose, attach whatever
8 weight they want to it. So this is what we get. If we have
9 questionnaires and we have questioning in court, you have to
10 live with everything, not just a questionnaire.

11 THE COURT: And I just want to say, now that we've
12 thoroughly said what a terrible questionnaire it was, that was
13 the questionnaire was agreed to. The Court did not write the
14 questionnaire. The questionnaire was agreed to by Mr.
15 Carroll's prior counsel, Mr. Dayvid Figler, as well as one or
16 both of the prosecutors.

17 MR. PESCI: Right.

18 THE COURT: Mr. Pesci?

19 MR. PESCI: Yes.

20 THE COURT: And so that's why the questionnaire is
21 the way that it is. Not because of any intervention by the
22 Court because if both sides agree, we give the jury the
23 questionnaire that's been agreed to by both sides.

24 I don't know, Mr. Bunin. I'm assuming you also
25 weighed in on that one. Mr. Figler was your prior co-counsel

1 on the revised questionnaire.

2 You know, hindsight is 20/20, and, you know, it
3 probably seemed good at the time. Next time at least I know
4 I'm not going to use that same questionnaire regardless of
5 what the lawyers want to do. So, you know, but at the time it
6 seemed good. Who knew?

7 MR. DiGIACOMO: Well, and just for the record, so
8 there's no confusion, we did forward the questionnaire around
9 saying to Mr. Ericsson as well before we actually sent it out
10 to the jury services. So I don't want it to seem like Mr.
11 Figler did anything in this case that the other lawyers in the
12 case are not --

13 THE COURT: On board with.

14 MR. DiGIACOMO: -- on board.

15 THE COURT: Right. And, again, hindsight is 20/20.
16 At the time it seemed good. You know, we didn't realize it
17 would create these ambiguous responses. So I would also just
18 note that I don't think that there's anything prejudicial in
19 the questionnaire.

20 I think that the kind of problem with the
21 questionnaire is there are a lot of jurors that we can't
22 automatically exclude one way or the other because of their
23 answers, and that's creating sort of a -- it's causing the
24 trial and jury selection to take longer than maybe it
25 otherwise would've taken had we had a better questionnaire

1 where the responses weren't as ambiguous.

2 And I also just want to reiterate, everybody else
3 that did have ambiguous responses and I think were challenged
4 for cause by the defense, all of those for cause challenges
5 were granted by the Court. All of those people were excused.
6 So we really just have one -- I mean, I know one, in your
7 view, is one too many, but one juror that did have ambiguous
8 responses that was challenged that's still there. So I think
9 we've made a complete records, such as it is.

10 Yes?

11 MR. ERICSSON: Your Honor, one last thing. I believe
12 for the record that we need to request, based on that
13 decision, one more peremptory challenge, and we would make
14 that request at this time.

15 THE COURT: Right. That's denied. Obviously if the
16 Court believed that it had made a mistake, that would be your
17 remedy.

18 All right. Mr. -- Officer Wooten, bring them in.

19 THE MARSHAL: Jury is coming in.

20 (Prospective jury panel enters 10:58 a.m.)

21 THE COURT: All right. Court is now back --

22 Oh, I'm sorry. Excuse me.

23 (Off-record bench conference)

24 THE COURT: All right. Court is now back in
25 session. The record will reflect the presence of the State

1 through the deputy district attorneys, the presence of the
2 defendant and his counsel, the officers of the court, and the
3 members of the prospective jury panel.

4 Now that we have eliminated a number of people we
5 have room in the courtroom for both group one and group two of
6 the prospective jurors at this point in time.

7 Ms. Husted is going to call the roll of the remaining
8 prospective jurors. And, ladies and gentlemen, once again,
9 when your name is called, please answer present or here.

10 Ms. Husted.

11 THE CLERK: Juror 61, Kevin Johnson.

12 PROSPECTIVE JUROR NO. 061: Here.

13 THE CLERK: 64, Jason Sleeter

14 PROSPECTIVE JUROR NO. 064: Here.

15 THE CLERK: 66, Yul Melonson.

16 PROSPECTIVE JUROR NO. 066: Here.

17 THE CLERK: 68, Ginger Ortiz.

18 PROSPECTIVE JUROR NO. 068: Here.

19 THE CLERK: 71, Vanida Fripp.

20 PROSPECTIVE JUROR NO. 071: Here.

21 THE CLERK: 81, Michael Redondo.

22 PROSPECTIVE JUROR NO. 081: Here.

23 THE CLERK: 92, Sharon Overton.

24 PROSPECTIVE JUROR NO. 092: Ma'am.

25 THE CLERK: 138, Nicole Delong.

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1 PROSPECTIVE JUROR NO. 138: Here.
2 THE CLERK: 158, Patrick Gallahan.
3 PROSPECTIVE JUROR NO. 158: Present.
4 THE CLERK: 165, Tiffany Ortiz.
5 PROSPECTIVE JUROR NO. 165: Here.
6 THE CLERK: 168, Howard Hotchkiss.
7 PROSPECTIVE JUROR NO. 168: Here.
8 THE CLERK: 193, Elvie Malasarte.
9 PROSPECTIVE JUROR NO. 193: Here.
10 THE CLERK: 196, Fortis Ford.
11 PROSPECTIVE JUROR NO. 196: Here.
12 THE CLERK: 209, Ruth Crisler.
13 PROSPECTIVE JUROR NO. 209: Crisler. Here.
14 THE CLERK: 210, Emilio Dizon.
15 PROSPECTIVE JUROR NO. 210: Here.
16 THE CLERK: 211, Robert A. Mathias, II.
17 PROSPECTIVE JUROR NO. 211: Here.
18 THE CLERK: 217, Julie McNicholas.
19 PROSPECTIVE JUROR NO. 217: Here.
20 THE CLERK: 218, Brittney Clark. 218, Brittney
21 Clark.
22 MR. ERICSSON: I believe she was excused at the end
23 of the day.
24 THE CLERK: 230, Brittany Webb.
25 PROSPECTIVE JUROR NO. 230: Here.

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1 THE CLERK: 231, Kerry S. Loso.
2 PROSPECTIVE JUROR NO. 231: Present.
3 THE CLERK: 238, Lita King.
4 PROSPECTIVE JUROR NO. 238: Here.
5 THE CLERK: Is -- was 239 excused yesterday?
6 MR. ERICSSON: Yes.
7 THE CLERK: Edward Baier?
8 MR. ERICSSON: Yes.
9 MR. DiGIACOMO: Yes.
10 THE CLERK: 247, William Brodfuehrer.
11 PROSPECTIVE JUROR NO. 247: Here.
12 THE CLERK: 256, Judy Madden.
13 PROSPECTIVE JUROR NO. 256: Here.
14 THE CLERK: 259, Higo Mendoza.
15 PROSPECTIVE JUROR NO. 259: Here.
16 THE CLERK: 263, Bill J. Grattan.
17 PROSPECTIVE JUROR NO. 263: Here.
18 THE CLERK: 154, Jennifer Lee.
19 PROSPECTIVE JUROR NO. 154: Here.
20 THE CLERK: 267 -- 266, Laura Cox.
21 PROSPECTIVE JUROR NO. 266: Here.
22 THE CLERK: 267, Daisy --
23 PROSPECTIVE JUROR NO. 267: Here.
24 THE CLERK: Thank you.
25 269, Michelle Rinaldi.

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1 PROSPECTIVE JUROR NO. 269: Present.
2 THE CLERK: 284, Dan Smith.
3 PROSPECTIVE JUROR NO. 284: Present.
4 THE CLERK: 294, Feda Davis.
5 PROSPECTIVE JUROR NO. 294: Here.
6 THE CLERK: 300, Brandy Kuntz.
7 PROSPECTIVE JUROR NO. 300: Here.
8 THE CLERK: 302, Abraham Ruelas.
9 PROSPECTIVE JUROR NO. 302: Here.
10 THE CLERK: 308, Richard Rettinger.
11 PROSPECTIVE JUROR NO. 308: Here.
12 THE CLERK: 320, Kevin Peterson.
13 PROSPECTIVE JUROR NO. 320: Here.
14 THE CLERK: 323, Aracely Sorto-De --
15 PROSPECTIVE JUROR NO. 323: Here.
16 THE CLERK: Thank you.
17 326, Gerald Hill.
18 PROSPECTIVE JUROR NO. 326: Here.
19 THE CLERK: 343, Antoinette Champion.
20 PROSPECTIVE JUROR NO. 343: Here.
21 THE CLERK: 354, Elizabeth Stessel.
22 PROSPECTIVE JUROR NO. 354: Here.
23 THE CLERK: 356, Norma Koot.
24 PROSPECTIVE JUROR NO. 356: Here.
25 THE CLERK: 360, Christopher Pennewell.

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1 MR. DiGIACOMO: He was excused, Your Honor.
2 THE CLERK: He was a no show, so I thought maybe he
3 might've shown up.
4 378, Simonetta Meza.
5 PROSPECTIVE JUROR NO. 378: Simonetta. Here.
6 THE CLERK: Sorry. Simonetta.
7 380, Christopher Gibase.
8 PROSPECTIVE JUROR NO. 380: Here.
9 THE CLERK: 386, Kayla Evans.
10 PROSPECTIVE JUROR NO. 386: Here.
11 MR. ERICSSON: Excuse me. 369? Is that --
12 THE CLERK: What did I say?
13 THE COURT: 368.
14 MR. ERICSSON: You said --
15 THE CLERK: 386.
16 MR. ERICSSON: You skipped 369. We show her --
17 THE CLERK: I have excused.
18 369, Stefani Galvan.
19 MR. ERICSSON: Was that person excused?
20 THE CLERK: I have excused.
21 388, Patricia O'Connor.
22 PROSPECTIVE JUROR NO. 388: Present.
23 THE CLERK: 389, Kaye Willis.
24 PROSPECTIVE JUROR NO. 389: Here.
25 THE CLERK: 394, Kristina Marie Templin.

1 PROSPECTIVE JUROR NO. 394: Here.
2 THE CLERK: 402, Sandra Gonzalez.
3 407, Philip Korinis.
4 PROSPECTIVE JUROR NO. 407: Here.
5 THE CLERK: 421, John Cordier.
6 PROSPECTIVE JUROR NO. 421: Here.
7 THE CLERK: 432, Mark Stefl.
8 PROSPECTIVE JUROR NO. 432: Present.
9 THE CLERK: 436, Yvonne Roybal-Hanley.
10 PROSPECTIVE JUROR NO. 436: Here.
11 THE CLERK: 441, Donald A Rendal.
12 PROSPECTIVE JUROR NO. 441: Here.
13 THE CLERK: 445, Leon P. Clark.
14 PROSPECTIVE JUROR NO. 445: Here.
15 THE CLERK: 456, Kimberly Maltman.
16 PROSPECTIVE JUROR NO. 456: Here.
17 THE CLERK: 459, Ronald Peters.
18 PROSPECTIVE JUROR NO. 459: Here.
19 THE CLERK: 462, Judi Jones.
20 PROSPECTIVE JUROR NO. 462: Here.
21 THE CLERK: 474, Joseph Gaglio.
22 PROSPECTIVE JUROR NO. 474: Here.
23 THE CLERK: 480, Derrick Hillburn.
24 481, Lolita Bowens.
25 PROSPECTIVE JUROR NO. 481: Here.

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1 THE CLERK: 484, Jared Bilberry.
2 PROSPECTIVE JUROR NO. 484: Here.
3 THE CLERK: 492, Clifford Moss.
4 PROSPECTIVE JUROR NO. 492: Here.
5 THE CLERK: 498, Felicidad Morrison.
6 PROSPECTIVE JUROR NO. 498: Present.
7 THE CLERK: 508, Gherezgher Ghebrekristos.
8 634, Martha Anaya.
9 Okay. Is there anyone I didn't call?
10 THE COURT: All right. No one is here whose name was
11 not called?
12 All right. Ms. Husted, please call up the next
13 prospective juror to take chair No. 10.
14 THE CLERK: Badge 193, Elvie Malasarte in seat 10.
15 THE COURT: All right. Ma'am, if you'd just have
16 that empty chair there in the back row.
17 And, State, you may question the prospective juror in
18 chair No. 10.
19 MR. DiGIACOMO: Thank you, Judge.
20 Good morning.
21 PROSPECTIVE JUROR NO. 193: Good morning.
22 MR. DiGIACOMO: Ma'am, I'm going to just kind of jump
23 to the back. You had indicated that I guess before you ever
24 filled out this form you never really thought of the death
25 penalty?

1 PROSPECTIVE JUROR NO. 193: Huh-uh. No.

2 MR. DiGIACOMO: Then your initial reaction, the first
3 time you come to the question you say, I'm not really sure
4 about it.

5 PROSPECTIVE JUROR NO. 193: Right.

6 MR. DiGIACOMO: And then throughout your -- kind of
7 your questionnaire, you say, well, I think about maybe during,
8 you know, mass killings, those types of things. But the
9 impression I get is that you don't the -- if you yourself
10 could ever vote for it.

11 PROSPECTIVE JUROR NO. 193: Exactly.

12 MR. DiGIACOMO: Okay. So let's talk about that. Now
13 that you've had kind of like a week to -- maybe a week and a
14 half, I don't even know when you guys filled these out -- to
15 think about kind of what your position is. As you sit here
16 today, do you honestly think that you could consider the
17 possibility of the death penalty in judging the case?

18 PROSPECTIVE JUROR NO. 193: I'm not against it, but
19 I'm not eager to vote for it.

20 MR. DiGIACOMO: Sure. I can't imagine that anybody
21 is --

22 PROSPECTIVE JUROR NO. 193: Right.

23 MR. DiGIACOMO: -- eager to do it. The question is,
24 you know, look -- and only you can tell us. At the end of the
25 day if you wind up in the back room as one of the 12 people

1 and there's a discussion and the consensus in the room is, for
2 any verdict, let's say -- you have to be able to raise your
3 hand and you have to say, yes, I agree with that verdict.
4 There are some people who say, yeah, I conceptually agree that
5 the death penalty is a good idea, but I just don't see myself
6 as ever, under any circumstances, raising my hand and voting
7 yes for the death penalty. And that's really the question.

8 PROSPECTIVE JUROR NO. 193: I -- I probably can do it
9 if I need to. But I have to take in the facts and --

10 MR. DiGIACOMO: Sure.

11 PROSPECTIVE JUROR NO. 193: -- everything.

12 MR. DiGIACOMO: And so you know, the law never
13 requires a juror to do it.

14 PROSPECTIVE JUROR NO. 193: Right.

15 MR. DiGIACOMO: You know, it's an option --

16 PROSPECTIVE JUROR NO. 193: Right.

17 MR. DiGIACOMO: -- in certain murder cases. And in
18 certain murder cases it's not an option. Currently in this
19 case it is an option.

20 PROSPECTIVE JUROR NO. 193: Okay.

21 MR. DiGIACOMO: And so the question is is in your
22 mind can you conceive of a possibility where maybe you would
23 raise you -- raise your hand and say yes?

24 PROSPECTIVE JUROR NO. 193: I really don't know how
25 to answer that. I don't have the facts in front of me, so --

1 MR. DiGIACOMO: It's a terrible --

2 PROSPECTIVE JUROR NO. 193: -- I don't know.

3 MR. DiGIACOMO: -- position for us to put you in.

4 PROSPECTIVE JUROR NO. 193: Right.

5 MR. DiGIACOMO: But unfortunately for myself and Mr.

6 Pesci, for example, and the defense to a certain extent as

7 well because they don't know, maybe you'll change your mind

8 later on or whatever.

9 PROSPECTIVE JUROR NO. 193: Right.

10 MR. DiGIACOMO: But this is the only chance, during

11 jury selection, that there is any interaction between you and

12 us. After this point, you basically get to listen, and maybe

13 ask a question or two of a witness, but essentially we don't

14 ever have a chance to find out if something changes your mind

15 and so forth.

16 PROSPECTIVE JUROR NO. 193: I can always change my

17 mind. Yes.

18 MR. DiGIACOMO: Sure. And so what we're trying to

19 figure out is what the likeliness of that is. And so I know

20 it's --

21 PROSPECTIVE JUROR NO. 193: To a degree.

22 MR. DiGIACOMO: I'm not saying you need to give me a

23 degree of certainty, but, I mean, if you're honestly a person

24 who can't do it, we need to know now. If you think you can do

25 it, then that's fine as well.

1 PROSPECTIVE JUROR NO. 193: It's likely. A small
2 chance.

3 MR. DiGIACOMO: A small chance you can do it?

4 PROSPECTIVE JUROR NO. 193: Yes.

5 MR. DiGIACOMO: Let me ask you just a couple other
6 questions. You indicated in your questionnaire, and you
7 indicated some yesterday that you had a -- that you have a
8 child that you're struggling to find arrangements for. Have
9 you been able to fix that problem?

10 PROSPECTIVE JUROR NO. 193: Yesterday I was able to
11 ask a favor from a neighbor, so -- but family members, they're
12 all working right now, so I'm still working on it.

13 MR. DiGIACOMO: Does the child have or does the child
14 need afternoon supervision or is it more he needs to be taken
15 to his various activities?

16 PROSPECTIVE JUROR NO. 193: He needs to be taken to
17 his activities.

18 MR. DiGIACOMO: So if you're here essentially,
19 though, it's not going to be like he's going to be
20 unsupervised or something. It's more that --

21 PROSPECTIVE JUROR NO. 193: Right.

22 MR. DiGIACOMO: -- he's going to miss out on certain
23 opportunities.

24 PROSPECTIVE JUROR NO. 193: Uh-huh.

25 MR. DiGIACOMO: You sat here most of the day

1 yesterday, or maybe you were here all the day. I guess we're
2 still on the first panel. So is there anything anybody has
3 asked that you feel important to tell the lawyers that we
4 haven't asked at this point?

5 PROSPECTIVE JUROR NO. 193: No.

6 MR. DiGIACOMO: Thank you very much, ma'am.

7 PROSPECTIVE JUROR NO. 193: You're welcome.

8 THE COURT: All right. Pass?

9 MR. DiGIACOMO: Yes, Judge.

10 THE COURT: All right.

11 Mr. Bunin.

12 MR. BUNIN: Thank you, Your Honor.

13 Good morning.

14 PROSPECTIVE JUROR NO. 193: Good morning.

15 MR. BUNIN: I'm going to ask you a few questions on
16 the -- the guilt phase of the trial.

17 PROSPECTIVE JUROR NO. 193: Okay.

18 MR. BUNIN: You know we went over a lot of times
19 yesterday, and I might repeat things a few times just because
20 we're on a new day and there's a lot of people that weren't in
21 the room yesterday too. But there's two phases to any first
22 degree murder trial.

23 PROSPECTIVE JUROR NO. 193: Okay.

24 MR. BUNIN: And you understand that the first part is
25 whether you just decide guilt or not guilt. And we only get

1 the second part if the jury decides that the defendant is
2 guilty of first degree murder. Do you understand?

3 PROSPECTIVE JUROR NO. 193: Right.

4 MR. BUNIN: So if you make any decision other than
5 first degree murder, there never will be a penalty phase.

6 PROSPECTIVE JUROR NO. 193: Okay.

7 MR. BUNIN: And we've been asking a lot of questions
8 about the penalty phase, and like we said yesterday, you know,
9 the defense, we don't want you to think the defense in any way
10 believes we're ever going to get to a penalty phase. We
11 absolutely are going to argue for not guilty in this case, and
12 that's our belief that the -- that the evidence will show.

13 But we have to discuss with you the penalty phase at
14 times only because we have no other chance to talk with you
15 just like the prosecutor just told you.

16 PROSPECTIVE JUROR NO. 193: Right.

17 MR. BUNIN: Okay. Now that I've given you all that,
18 I'm not going to talk to you about that for a minute. I'm
19 going to talk to you about the guilt phase. We talked about a
20 couple of concepts yesterday, different things that we know
21 you're going to hear, and different concepts of how you
22 determine, you know, whether or not the State proves their
23 case. And I'm not going to go into details. The Judge is
24 going to give you instructions on that.

25 But as we sit here today, when you look at Deangelo,

1 is he guilty, is he not guilty based on what you know so far?

2 PROSPECTIVE JUROR NO. 193: I cannot say anything
3 about it because I don't know the facts.

4 MR. BUNIN: Right.

5 PROSPECTIVE JUROR NO. 193: So as you said, it's --
6 he has to be proven guilty first before.

7 MR. BUNIN: And if at no point the State proves
8 beyond a reasonable doubt to you that Deangelo is guilty, then
9 your vote would have to be?

10 PROSPECTIVE JUROR NO. 193: I'm sorry. What was it
11 again?

12 MR. BUNIN: What would your vote be if the State
13 never proved beyond a reasonable doubt --

14 PROSPECTIVE JUROR NO. 193: Not guilty.

15 MR. BUNIN: And as we sit here today he's presumed
16 innocent.

17 PROSPECTIVE JUROR NO. 193: Yes.

18 MR. BUNIN: And do you believe in that, that concept
19 in the law and our justice system --

20 PROSPECTIVE JUROR NO. 193: Yes.

21 MR. BUNIN: -- that he is presumed innocent?

22 PROSPECTIVE JUROR NO. 193: Uh-huh.

23 MR. BUNIN: And, you know, because we're at a point
24 where, obviously, no evidence has been introduced --

25 PROSPECTIVE JUROR NO. 193: Right.

1 MR. BUNIN: -- as he sits here today, you would look
2 at him and you would have to vote not guilty. If somebody
3 handed you a slip right now and says vote guilty or not
4 guilty --

5 PROSPECTIVE JUROR NO. 193: Yes.

6 MR. BUNIN: Because no evidence has been presented.
7 And then during the trial, it's the prosecution's burden and
8 their burden only. The defense has no burden whatsoever. We
9 don't have to put any evidence on. It's their burden only to
10 show beyond a reasonable doubt every element of the crime
11 charged, otherwise you must find him not guilty.

12 PROSPECTIVE JUROR NO. 193: Right.

13 MR. BUNIN: Would you have any hesitation in voting
14 not guilty if the prosecution does not prove their case beyond
15 a reasonable doubt?

16 PROSPECTIVE JUROR NO. 193: No.

17 MR. BUNIN: And then realize once the prosecution's
18 case is done, the defense has to make a choice. And our
19 choice is do we present evidence at all? Does Deangelo
20 testify at all? You know, these are decisions we make after
21 the prosecution finishes their case. And would you be okay
22 with the -- if the defense made the decision that we don't
23 need to put any evidence on?

24 PROSPECTIVE JUROR NO. 193: It's all up to you. Yes.

25 MR. BUNIN: Well, and, you know, what we -- the

1 possibility if maybe the defense believes the prosecution
2 didn't prove their case, so we just make a choice not to put
3 any evidence on. Do -- is that a legitimate --

4 PROSPECTIVE JUROR NO. 193: Yes. Yes.

5 MR. BUNIN: -- reason for you not to do it? Okay.
6 And would it bother you when you go back to deliberation if
7 Deangelo chose not to testify?

8 PROSPECTIVE JUROR NO. 193: No.

9 MR. BUNIN: And in the end it's, you know, Deangelo's
10 choice. And he'll listen to the advice of his attorneys, but
11 he makes the choice. But we don't make that decision until
12 after the State is finished with their case for all the
13 reasons I just said. They have the sole burden, so we don't
14 know whether or not we need to present any evidence.

15 PROSPECTIVE JUROR NO. 193: Right.

16 MR. BUNIN: Are you okay with that as a --

17 PROSPECTIVE JUROR NO. 193: Yes.

18 MR. BUNIN: Okay. The last thing --

19 You know, I'm going to pass for cause, Your Honor.

20 THE COURT: All right. Thank you.

21 MR. BUNIN: Thank you.

22 THE COURT: All right. I believe we're on State's
23 third.

24 MR. DiGIACOMO: Judge, the State would thank and
25 excuse juror No. 92, Ms. Overton.

1 THE COURT: Ms. Overton, thank you very much for
2 being here and your willingness to serve as a juror. Don't
3 trip running out of here. You are excused at this time.
4 Officer Wooten is going to direct you from the courtroom.

5 And, Ms. Husted, if you would please call up the name
6 of the next prospective juror.

7 THE CLERK: Yes, Your Honor. Badge 196, Fortis Ford.

8 THE COURT: Mr. Ford, come on down and have that
9 empty chair there in the front row of our jury box, please.

10 MR. BUNIN: Judge, can we -- can we approach?

11 THE COURT: You may.

12 (Off-record bench conference)

13 THE COURT: All right. The State may question the
14 juror in chair No. 3.

15 MR. PESCI: Thank you, Judge.

16 How are you this morning, sir?

17 PROSPECTIVE JUROR NO. 196: So far so good.

18 MR. PESCI: So far so good. All right. You got to
19 keep that up close and she'll be able to hear everything.
20 Okay?

21 PROSPECTIVE JUROR NO. 196: Okay.

22 MR. PESCI: Thank you. You explained in your
23 questionnaire that someone in your family had actually had
24 some interaction with the criminal justice system before; is
25 that correct?

1 PROSPECTIVE JUROR NO. 196: Yes.

2 MR. PESCI: And you indicated you felt as if that

3 person was treated fairly?

4 PROSPECTIVE JUROR NO. 196: Yes, more than fairly.

5 MR. PESCI: All right. Was that something that

6 happened here?

7 PROSPECTIVE JUROR NO. 196: Yes, it was.

8 MR. PESCI: How long ago?

9 PROSPECTIVE JUROR NO. 196: 15, 18 years ago.

10 MR. PESCI: Do you know if it was the district

11 attorney's office that prosecuted it?

12 PROSPECTIVE JUROR NO. 196: Oh, yes.

13 MR. PESCI: You don't harbor any ill will or bad

14 feelings towards the State based on that?

15 PROSPECTIVE JUROR NO. 196: No.

16 MR. PESCI: Would you hold that against the defendant

17 in any way, shape, or form?

18 PROSPECTIVE JUROR NO. 196: I don't see how.

19 MR. PESCI: You served on a jury before; correct,

20 sir?

21 PROSPECTIVE JUROR NO. 196: Yes.

22 MR. PESCI: And without telling us what your verdict

23 was, the question I have for you is was it criminal or was it

24 civil?

25 PROSPECTIVE JUROR NO. 196: Criminal.

1 MR. PESCI: And was that here as well?
2 PROSPECTIVE JUROR NO. 196: Yes, it was.
3 MR. PESCI: How long ago was that?
4 PROSPECTIVE JUROR NO. 196: 1979.
5 MR. PESCI: Okay. Would you follow the law as Her
6 Honor gives it to you? Forget what it was in 1979 and just
7 apply what she tells you now?
8 PROSPECTIVE JUROR NO. 196: Oh, of course.
9 MR. PESCI: Okay. Touching on the issue of the death
10 penalty, you've indicated that you felt in some situations it
11 was necessary.
12 PROSPECTIVE JUROR NO. 196: Yeah. Some -- some
13 situations it is appropriate.
14 MR. PESCI: Okay. And I think you said that you
15 would automatically vote for the death penalty.
16 PROSPECTIVE JUROR NO. 196: No, I wouldn't
17 automatically.
18 MR. PESCI: Okay. But is it one of the options of
19 the four potential sentences that you could consider?
20 PROSPECTIVE JUROR NO. 196: Yes, it is.
21 MR. PESCI: Pass for cause, Judge.
22 THE COURT: All right. Defense may question the
23 juror in chair three.
24 MR. ERICSSON: Thank you.
25 Good morning, sir.

1 PROSPECTIVE JUROR NO. 196: Good morning.

2 MR. ERICSSON: I just want to cover a few things with
3 you. I appreciate you guys returning today. I know that
4 yesterday was a long day. On the issue of your ability to be
5 fair to both sides, you -- when you went through the
6 questionnaire it outlined the -- the four different penalty
7 possibilities if, after the first phase you, in fact, find Mr.
8 Carroll guilty of first degree murder. And one of those
9 potential penalties is death. You've indicated that in
10 appropriate circumstances you could render a death verdict; is
11 that correct?

12 PROSPECTIVE JUROR NO. 196: Yes, sir. Correct.

13 MR. ERICSSON: On the -- on the other end of the four
14 possibilities would be a sentence of 40 years in prison with
15 the possibility of parole. Is that a sentence that you could
16 consider in a first degree intentional murder case?

17 PROSPECTIVE JUROR NO. 196: Yes, it is.

18 MR. ERICSSON: One of the things you were asked about
19 is whether or not you could consider mitigation -- or -- or,
20 yeah, mitigation information related to a person's background
21 or intelligence level, things of that nature. But what --
22 what is your opinion as to the Nevada law that mitigation
23 evidence is something that a jury is to consider in
24 determining what an appropriate sentence would be?

25 PROSPECTIVE JUROR NO. 196: I think that all those factors

1 have to be taken into consideration.

2 MR. ERICSSON: And just a little bit further, why do
3 you think those factors should be considered?

4 PROSPECTIVE JUROR NO. 196: Oh, because there is, you
5 know -- no crime is exactly the same. No two people are
6 exactly the same. People have different motives, you know,
7 different reasons, different morals, different judgments.

8 MR. ERICSSON: Thank you. And it indicates that you
9 are currently working for the school district; is that right?

10 PROSPECTIVE JUROR NO. 196: Yes.

11 MR. ERICSSON: Prior to working for the school
12 district, what kind of work did you do?

13 PROSPECTIVE JUROR NO. 196: I did casino work.

14 MR. ERICSSON: Okay. How many years did you work in
15 the casinos?

16 PROSPECTIVE JUROR NO. 196: I worked in the casinos
17 20 years.

18 MR. ERICSSON: And primarily what types of work or --

19 PROSPECTIVE JUROR NO. 196: I was -- I was a dealer,
20 and I worked downtown for a couple years as a floor man.

21 MR. ERICSSON: What -- you've heard there will likely
22 be police officers who are called to testify in this case.
23 What is your opinion regarding law enforcement?

24 PROSPECTIVE JUROR NO. 196: I believe they have a job
25 to do, and they do it.

1 MR. ERICSSON: Okay. And the fact that somebody is a
2 law enforcement officer, would you automatically give them
3 more or less credence to their testimony?

4 PROSPECTIVE JUROR NO. 196: No, I would give, you
5 know, everybody the -- the same amount of credence to their
6 testimony. You know, they're here and sworn to tell the
7 truth. I expect them to tell the truth.

8 MR. ERICSSON: You understand that police officers
9 can make mistakes just like the rest of us?

10 PROSPECTIVE JUROR NO. 196: Well, sure.

11 MR. ERICSSON: The last area I'll ask you about, and
12 you've heard this asked of other jurors, the fact that under
13 our constitution a person does not have to testify in his or
14 her trial, a defendant can -- can elect to not present any
15 evidence whatsoever. Do you have any thoughts about if
16 somebody in a murder trial decides not to testify in a trial?

17 PROSPECTIVE JUROR NO. 196: I can understand.

18 MR. ERICSSON: And what do you mean by that?

19 PROSPECTIVE JUROR NO. 196: Well, because, you know,
20 sometimes they're -- they're asked a question where it's hard
21 to give the correct answer, you know, so it's better off not
22 to say anything.

23 MR. ERICSSON: And can you -- do you believe that
24 there are situations where someone who -- who is completely
25 innocent would, for whatever reason, elect not to take the

1 stand in a criminal charge?

2 PROSPECTIVE JUROR NO. 196: Yes.

3 MR. ERICSSON: Thank you very much.

4 THE COURT: All right. Pass?

5 MR. ERICSSON: Yes, Your Honor.

6 THE COURT: All right. Defendant's next challenge.

7 MR. ERICSSON: Your Honor, the defense would thank
8 and excuse juror 138, Nicole Delong.

9 THE COURT: Ma'am, thank you very much for being here
10 and your willingness to serve as a juror in this case. You
11 are excused.

12 And, Ms. Husted, please call up the name of the next
13 prospective juror.

14 THE CLERK: Yes, Your Honor. Badge 209. Ruth
15 Crisler.

16 THE COURT: ma'am, if you'd just have that empty
17 chair there in the front row, please.

18 And, State, you may, as soon as she sits down,
19 obviously, question Ms. Crisler.

20 MR. DiGIACOMO: Good morning, ma'am.

21 PROSPECTIVE JUROR NO. 209: Hi.

22 MR. DiGIACOMO: How are you?

23 PROSPECTIVE JUROR NO. 209: Fine, thank you.

24 MR. DiGIACOMO: I want to start kind of more at the
25 beginning of your questionnaire.

1 PROSPECTIVE JUROR NO. 209: Okay.

2 MR. DiGIACOMO: You probably know what I want to talk
3 about a little bit.

4 PROSPECTIVE JUROR NO. 209: How I feel about lawyers.

5 MR. DiGIACOMO: Well, prosecutors -- prosecutors in
6 general would be my concern.

7 PROSPECTIVE JUROR NO. 209: Okay.

8 MR. DiGIACOMO: Let's talk first about, obviously I
9 don't want to get into the facts, but your son had a
10 situation --

11 PROSPECTIVE JUROR NO. 209: Uh-huh.

12 MR. DiGIACOMO: -- with law enforcement.

13 PROSPECTIVE JUROR NO. 209: Uh-huh.

14 MR. DiGIACOMO: And is that the situation that kind
15 of colored your view of --

16 PROSPECTIVE JUROR NO. 209: Yes.

17 MR. DiGIACOMO: -- of prosecutors and police
18 officers?

19 PROSPECTIVE JUROR NO. 209: Yes.

20 MR. DiGIACOMO: So let me talk a little bit about
21 that. Was that here in Las Vegas?

22 PROSPECTIVE JUROR NO. 209: Yes, it was.

23 MR. DiGIACOMO: And obviously I wasn't the criminal
24 division and probably the juvenile division --

25 PROSPECTIVE JUROR NO. 209: Yes.

1 MR. DiGIACOMO: -- of the DA's office. And you had a
2 bad experience with the prosecutor in that situation?

3 PROSPECTIVE JUROR NO. 209: Yes.

4 MR. DiGIACOMO: Okay. What about what he did made
5 you think that prosecutors are harsh? I guess maybe the way
6 he treated your son?

7 PROSPECTIVE JUROR NO. 209: Yes. And -- and also I'd
8 ask to have a word with him. If I had been told we can't
9 speak to you, I would've understood that. He just plain
10 ignored me, didn't send word back that, you know, the defense
11 lawyer that we had, it was a public defender. And I just
12 wanted him to understand a little bit about my son. He --

13 MR. DiGIACOMO: Sure.

14 PROSPECTIVE JUROR NO. 209: -- did have problems. He
15 had mental issues, and they didn't take that into
16 consideration.

17 MR. DiGIACOMO: Okay. You would agree with me that
18 there's got to be good prosecutors and bad prosecutors?

19 PROSPECTIVE JUROR NO. 209: Absolutely.

20 MR. DiGIACOMO: Okay. And so you know that because a
21 juvenile DA, who, you know, may or may not --

22 PROSPECTIVE JUROR NO. 209: Uh-huh.

23 MR. DiGIACOMO: -- have been appropriate to speak to
24 the mother of the defendant did something you didn't like, do
25 you think you could set that aside and judge the facts of just

1 this case?

2 PROSPECTIVE JUROR NO. 209: Yes, absolutely.

3 MR. DiGIACOMO: All right. That was the other
4 question I had, which is you wrote down there that sometimes I
5 feel like the only one with notches on their belt.

6 PROSPECTIVE JUROR NO. 209: Yes.

7 MR. DiGIACOMO: Now, is that also a product of --

8 PROSPECTIVE JUROR NO. 209: Yes.

9 MR. DiGIACOMO: -- the situation of your son?

10 PROSPECTIVE JUROR NO. 209: Yes. I felt that -- that
11 nobody cared that there were issues involved. Not his public
12 defender, not anyone. He didn't lie. He told the truth
13 immediately, and all we were -- I'll be honest, we were lied
14 to by the police officers. There was only two people involved
15 in the five years that he was on probation for it that were
16 trustworthy and never lied to us and treated us decently.

17 MR. DiGIACOMO: So you felt like the system kind of
18 failed you and your son?

19 PROSPECTIVE JUROR NO. 209: Yes, I do, but that
20 doesn't mean it fails everyone. And I feel like, you know,
21 there is always good and bad.

22 MR. DiGIACOMO: Okay. Let me ask you this much.
23 Your son, because he was a juvenile, obviously didn't have a
24 chance to go to a jury trial --

25 PROSPECTIVE JUROR NO. 209: No.

1 MR. DiGIACOMO: -- and allow 12 people of the
2 community to make the decision. Do you think maybe that
3 situation is a lot different than what's going to happen here
4 in the courtroom where you've got to judge the credibility of
5 what these people are saying?

6 PROSPECTIVE JUROR NO. 209: Absolutely.

7 MR. DiGIACOMO: Let's talk about your views, then, on
8 the death penalty. You indicated that in some cases you think
9 that death is an appropriate punishment.

10 PROSPECTIVE JUROR NO. 209: Absolutely.

11 MR. DiGIACOMO: Okay. Do you think -- can you
12 envision in your mind a situation where you would vote for the
13 death penalty for a particular person?

14 PROSPECTIVE JUROR NO. 209: Yes, I do.

15 MR. DiGIACOMO: But you also indicated that life
16 without the possibility of parole might be worse for --

17 PROSPECTIVE JUROR NO. 209: I think it would be a
18 horrible life.

19 MR. DiGIACOMO: Would you agree with me that that
20 would be a horrible life for somebody who has a conscience,
21 who thought about their crime, and was --

22 PROSPECTIVE JUROR NO. 209: Yes.

23 MR. DiGIACOMO: -- upset about their crime? What if
24 that person didn't? Do you think life without the possibility
25 wouldn't be that bad for them?

1 PROSPECTIVE JUROR NO. 209: If they don't have a
2 conscience, they're not going to get one. But that makes it,
3 to me, more important that they're kept away from society.

4 MR. DiGIACOMO: Sure.

5 PROSPECTIVE JUROR NO. 209: Because if they don't
6 have a conscience, if they did it to one person, they'll do it
7 to another.

8 MR. DiGIACOMO: Sure. And somebody like that is a
9 recidivist or something like that, you know, maybe the death
10 penalty is appropriate for him versus somebody else who cared
11 about the crime they committed.

12 PROSPECTIVE JUROR NO. 209: I think every case is
13 different and it's got to be judged strictly on its own merit
14 and, you know, what you really believe.

15 MR. DiGIACOMO: Do you think you'd be a good juror?

16 PROSPECTIVE JUROR NO. 209: Yes, I do.

17 MR. DiGIACOMO: Thank you very much.

18 Judge, we pass --

19 THE COURT: Pass?

20 MR. DiGIACOMO: -- for cause.

21 THE COURT: All right. Defense.

22 MR. BUNIN: Thank you.

23 Good morning.

24 PROSPECTIVE JUROR NO. 209: Hi.

25 MR. BUNIN: So when you say every case should be

1 judged on a case by case basis --

2 PROSPECTIVE JUROR NO. 209: Absolutely.

3 MR. BUNIN: -- when we're -- when we're talking about
4 the penalty phase -- so you only get to a penalty phase if the
5 conviction is the same.

6 PROSPECTIVE JUROR NO. 209: Uh-huh.

7 MR. BUNIN: It has to be a first degree murder
8 conviction, meaning an intentional, deliberate murder. So if
9 we're at that penalty phase, even at that point, do you still
10 believe it should be judged on a case by case basis, or should
11 everybody convicted of first degree murder get the same
12 sentence?

13 PROSPECTIVE JUROR NO. 209: It's got to be a case by
14 case basis.

15 MR. BUNIN: And, you know, I think you marked on your
16 sheet that you'd be willing to listen to the mitigators and
17 determine what the proper sentence is?

18 PROSPECTIVE JUROR NO. 209: Absolutely. I -- I would
19 -- my husband is a very logical person, and he's taught me to
20 listen and think and reassess. So I would listen to everyone
21 else. Their views might be important and maybe I missed
22 something.

23 MR. BUNIN: And you understand there are four
24 possible sentences if a person is convicted?

25 PROSPECTIVE JUROR NO. 209: Yes.

1 MR. BUNIN: And one of them is a term of years, one
2 is a term of years to life without the possibility of parole,
3 and one is life without -- life with the possibility of
4 parole, the other one is life without, and then there is
5 death. Would you be able to consider all four of those
6 options?

7 PROSPECTIVE JUROR NO. 209: Yes.

8 MR. BUNIN: Can you foresee a scenario where you
9 might even think a term of years is the right sentence for a
10 person convicted of first degree murder?

11 PROSPECTIVE JUROR NO. 209: Yes.

12 MR. BUNIN: Okay. And, you know, some of the
13 mitigators that we listed on the sheet, we talked about things
14 like childhood experiences, mental status, IQ. Are those
15 things that will be important to you in determining what's
16 appropriate for that particular person who is convicted?

17 PROSPECTIVE JUROR NO. 209: I just explained with my
18 son. Of course I do.

19 MR. BUNIN: Okay.

20 PROSPECTIVE JUROR NO. 209: Of course I do. It's my
21 own experience. I -- you know, it has to be considered.

22 MR. BUNIN: Okay. You know, I've asked this question
23 to some other people. I'll probably ask it a few more times,
24 but do you think it's appropriate that the defense might be
25 concerned about race in a case like this?

1 PROSPECTIVE JUROR NO. 209: Yes, I do.

2 MR. BUNIN: And, I mean, as I said before, obviously
3 Deangelo is black. The person who died in this case is not.
4 He was white. And, you know, the defense does have a concern.
5 Why do you think it's correct that we should have some
6 concern?

7 PROSPECTIVE JUROR NO. 209: Well, because if you look
8 at the population as a whole and you look at what percentage
9 the black population is compared to what percentage they are
10 in prison, it just seems really one sided that there's so many
11 -- I think it has to be considered that -- that it seems that
12 there's an overwhelming amount of -- of different minorities
13 in jail, where if it was a white person they might not be.

14 MR. BUNIN: When you look around this room even,
15 agreeing with what you say. I mean, we see a judge who is
16 white and prosecutors who are white --

17 PROSPECTIVE JUROR NO. 209: But I --

18 MR. BUNIN: -- and defense attorneys who are white.

19 PROSPECTIVE JUROR NO. 209: But I hope --

20 MR. BUNIN: Look around the whole jury pool too.
21 Because I -- you know, yesterday I saw three or four people
22 that might be the same race as my client. A second group came
23 in, and I may have seen a few more, but a couple of them were
24 excused. Are these reasons, do you think, that's legitimate
25 for Deangelo to have some concern when you look around the

1 jury pool?

2 MR. DiGIACOMO: Objection, Judge.

3 MR. BUNIN: This is directly on line with --

4 THE COURT: All right. I think the object -- you can
5 ask the question do you think the defense should be concerned
6 about race or is race important to her, an issue that would --

7 MR. BUNIN: And that's where I'm going. I promise,
8 Judge.

9 THE COURT: Okay. But we don't need the --

10 MR. BUNIN: We'll just get right to it then.

11 THE COURT: -- commentary.

12 MR. BUNIN: I can't help myself.

13 So you agree that race is something the defense
14 should be concerned about. Is it a concern for -- should we
15 be concerned about you as a juror when we're looking at the
16 issue of race?

17 PROSPECTIVE JUROR NO. 209: No.

18 MR. BUNIN: Do you believe you're prejudice in any
19 way?

20 PROSPECTIVE JUROR NO. 209: I'm not racist. I'm
21 color blind. I raised my children to be color blind. It has
22 to be that way in this world today. That's why I look around
23 and say I hope we've learned.

24 MR. BUNIN: So it's fair to say you don't believe
25 because Deangelo is black it's more likely that he's guilty

1 or --

2 PROSPECTIVE JUROR NO. 209: Oh, no, no, no, no, no.

3 MR. BUNIN: And the crime isn't any more or less
4 terrible because the -- the victim here is white? You would
5 agree with that?

6 PROSPECTIVE JUROR NO. 209: No.

7 MR. BUNIN: I'll pass for cause, Your Honor.

8 THE COURT: All right.

9 State's fourth.

10 MR. DiGIACOMO: The State would thank and excuse Ms.
11 Crisler, juror No. 209.

12 THE COURT: All right. Ma'am, thank you very much
13 for being here and your willingness to serve as a juror in
14 this matter. You are excused at this time. Officer Wooten
15 will direct you from the courtroom.

16 And, Ms. Husted, if you would please call up the name
17 of the next prospective juror.

18 THE CLERK: Yes, Your Honor. Badge 210, Emilio
19 Dizon.

20 THE COURT: Mr. Dizon, if you'd just have that empty
21 chair there in the front row of the jury box.

22 And, State, you may question this prospective juror.

23 MR. PESCI: Thank you, Judge.

24 How are you, sir?

25 PROSPECTIVE JUROR NO. 210: Good.

1 MR. PESCI: Good. I wanted to ask you some
2 questions. We have about five or six questions about the
3 death penalty. Sometimes the answers seem to be internally
4 inconsistent, so I just want to follow up on that. There's
5 not a right or a wrong answer, but just to see if there is
6 some difference of opinion within those. You specifically
7 said to question 31 that would you automatically vote either
8 for or against the death penalty, you said yes. And then the
9 explanation was I would vote for. So are you saying you would
10 vote for the death penalty?

11 PROSPECTIVE JUROR NO. 210: Yes.

12 MR. PESCI: Okay. The question about when it asks if
13 you could consider all four punishments, you said that you
14 could consider all four punishments. And so we're just trying
15 to figure out can you actually consider the other options
16 other than death?

17 PROSPECTIVE JUROR NO. 210: Yes.

18 MR. PESCI: And I think later on in your
19 questionnaire, there's question No. 38, you were asked if you
20 would automatically vote in favor of the death penalty and you
21 said no, and automatically vote against it and you said no.
22 So as the defense sits here today, should they be comfortable
23 with the idea that you could, in fact, listen to all the
24 potential -- or consider all the potential sentences?

25 PROSPECTIVE JUROR NO. 210: Yes.

1 MR. PESCI: Thank you. You were asked also to
2 describe some of the court personnel, and you talked about the
3 different people, and one of them in particular was
4 prosecutors. And you said -- the way you worded it was out to
5 hunt the guilty.

6 PROSPECTIVE JUROR NO. 210: Yes.

7 MR. PESCI: Can you explain that a little bit?

8 PROSPECTIVE JUROR NO. 210: Well, it works both ways.
9 The defense is to prove like their defendants innocent, and
10 the prosecutors is to prove that they're guilty. You know,
11 it's just the job of each other that I was explaining.

12 MR. PESCI: All right. So we're -- I mean, we're
13 trying to prove our case. Do you feel that we're trying to
14 hunt people? I mean, was it just a phrase?

15 PROSPECTIVE JUROR NO. 210: Oh, no. It was just a
16 phrase.

17 MR. PESCI: Okay.

18 PROSPECTIVE JUROR NO. 210: I'm not like saying
19 you're trying to prove someone that's innocent guilty. I'm
20 just saying like --

21 MR. PESCI: All right.

22 PROSPECTIVE JUROR NO. 210: -- you know, the defense
23 is to defend, and the prosecutor is to prove, you know.

24 MR. PESCI: Okay.

25 THE COURT: Well, let me just clarify something you

1 said. You understand that the defense -- you said the defense
2 has to prove. Do you understand the defense --

3 PROSPECTIVE JUROR NO. 210: Oh, yeah, they don't --

4 THE COURT: -- in our constitutional system, they
5 don't have to prove anything. It's 100 percent the burden of
6 the State to prove the defendant's guilt beyond a reasonable
7 doubt. Do you understand that?

8 PROSPECTIVE JUROR NO. 210: Yeah.

9 THE COURT: Okay. I just wanted to clarify and make
10 sure that you don't think the defense is obligated to do
11 anything.

12 PROSPECTIVE JUROR NO. 210: Oh, no. I know that the
13 burden is all on the prosecutor.

14 THE COURT: Okay. Thank you.

15 Go on.

16 MR. PESCI: Thank you, Judge.

17 And then finally you were asked the question about do
18 you want to serve on a jury. You said, yes, you thought it
19 would be interesting. And then you pointed out -- you said
20 you would like to -- I also want to help the innocent. What
21 do you mean by that?

22 PROSPECTIVE JUROR NO. 210: I've just seen so many
23 things on TV and like read a lot of stuff when I was in
24 government about people that were innocent ended up going to
25 prison for like 20 years, and then like while they were in

1 prison they find out they were innocent. So I just want to
2 help whoever is innocent to stay innocent.

3 MR. PESCI: Okay. How -- how do you think you would
4 go about doing that?

5 PROSPECTIVE JUROR NO. 210: Just judging by the
6 facts. If like the facts can prove everything beyond a
7 reasonable doubt, then, you know, he's innocent or guilty.

8 MR. PESCI: I think you just said you saw some of
9 these situations on TV or in the newspaper maybe?

10 PROSPECTIVE JUROR NO. 210: Yeah.

11 MR. PESCI: Would you be able to confine your
12 decision based on the testimony that comes in here in the
13 courtroom, the witnesses and the evidence, physical evidence?

14 PROSPECTIVE JUROR NO. 210: Yes.

15 MR. PESCI: And set aside what you might think or
16 heard from other cases?

17 PROSPECTIVE JUROR NO. 210: Yeah.

18 MR. PESCI: We pass for cause, Judge.

19 THE COURT: All right. Defense.

20 MR. ERICSSON: Thank you, Your Honor.

21 Good morning, sir.

22 PROSPECTIVE JUROR NO. 210: Good morning.

23 MR. ERICSSON: Now, you indicated this would be the
24 first time for you to serve on a jury if you were selected;
25 correct?

1 PROSPECTIVE JUROR NO. 210: Yes.

2 MR. ERICSSON: And you, obviously, having gone
3 through this long questionnaire and sat through all the
4 questioning yesterday, understand that this is -- this is the
5 most serious type of case that we have in the United States, a
6 murder case involving the potential imposition of the death
7 penalty. I -- your -- did you just graduate from high school
8 last year?

9 PROSPECTIVE JUROR NO. 210: 2009.

10 MR. ERICSSON: 2009. All right. Is this accurate?
11 Are you 18?

12 PROSPECTIVE JUROR NO. 210: I just turned 19 a couple
13 days ago.

14 MR. ERICSSON: I want to follow up with one of the
15 responses that you had given, because as indicated by Mr.
16 Pesci there are a little bit of conflict between some of your
17 responses. And I want to make sure that you're the right type
18 of juror for this -- this particular case. You indicated that
19 -- in question 31, would you automatically vote for or against
20 the death penalty, and you checked the box yes. And then in
21 the explanation you said I would vote for. Now, help me
22 understand what -- what -- why was it that you put that you
23 would automatically vote for the death penalty?

24 PROSPECTIVE JUROR NO. 210: Depending on the -- the
25 case and the crimes. If it was like a serial killer or like a

1 rape murder case, I think it would be like -- I would just go
2 for -- vote for death penalty. If it's multiple murders like
3 from one person, then I would do the death penalty. That's
4 what -- that's what I had in mind.

5 MR. ERICSSON: Okay. And you understand that the
6 only point at which a jury would get to considering a sentence
7 would be if the jury came back and found the defendant guilty
8 of first degree, intentional murder?

9 PROSPECTIVE JUROR NO. 210: Yeah, that's why I
10 checked automatically. That was only -- in my mind I was
11 thinking only if he was proven guilty then I would check
12 automatically for the penalty.

13 MR. ERICSSON: Okay. And that -- just to be clear,
14 you under -- if you got to the point where you were deciding
15 the sentence, it would be that the jury has found the
16 defendant guilty beyond a reasonable doubt of first degree
17 intentional murder. If you were on a jury that found somebody
18 guilty of first degree intentional murder, would you
19 automatically select the death penalty?

20 PROSPECTIVE JUROR NO. 210: No, I would consider all
21 four of the choices like four years without probation, four
22 years with chance of parole, and all of them. It's only
23 depending on the crime, like what it was that I would choose
24 death penalty.

25 THE COURT: So you are saying the type of murder, if

1 there were --

2 PROSPECTIVE JUROR NO. 210: Yeah, the type --

3 THE COURT: -- multiple victims?

4 PROSPECTIVE JUROR NO. 210: -- of murder if it was.

5 Like more heinous like, say, stabbed 50 times, then, you know,

6 that's when I would consider the death penalty, but not

7 something less heinous I guess you would say.

8 MR. ERICSSON: What -- what type of career or

9 occupation do you plan to go into as you get older?

10 PROSPECTIVE JUROR NO. 210: I'm going to do web

11 design.

12 MR. ERICSSON: And are you pursuing any education

13 right now for that or --

14 PROSPECTIVE JUROR NO. 210: Yeah, I start school in

15 the fall.

16 MR. ERICSSON: Do you have -- well, tell me what your

17 thoughts are on this, the issue of under the law, even if

18 someone is found guilty of first degree murder, a jury has to

19 be able to consider miti -- mitigating factors such as family

20 history, intelligence level, background, things of that

21 nature. But what are your thoughts on -- on mitigation

22 issues?

23 PROSPECTIVE JUROR NO. 210: I've known people that

24 came from really bad backgrounds and turned out to be the most

25 nicest and down to earth people. I've known people that were

1 raised by very wealthy families and still they're -- they've
2 done bad choices. The only -- the only time I would consider
3 or like think about mitigation is if they have mental problems
4 like schizophrenia or stuff like that.

5 MR. ERICSSON: Would you be able to consider other --
6 other types of mitigation, such as a person's upbringing or --

7 PROSPECTIVE JUROR NO. 210: Yeah, I would -- I would
8 consider it.

9 MR. ERICSSON: Thank you very much.
10 Pass for cause.

11 THE COURT: All right. Defendant's next.

12 MR. BUNIN: We'll thank and excuse juror 210, Emilio
13 Dizon.

14 THE COURT: Sir, thank you very much for being here
15 and your participation. You are excused at this time.

16 And, Ms. Husted, please call up the next prospective
17 juror.

18 THE CLERK: Yes, Your Honor. Badge 211, Robert A.
19 Mathias, II.

20 THE COURT: Sir, just have that empty chair there in
21 the --

22 PROSPECTIVE JUROR NO. 211: Yes, ma'am.

23 THE COURT: -- front row, please.

24 And, State, you may question Mr. Mathias.

25 MR. DIGIACOMO: Thank you.

1 Good afternoon -- or it's still morning. Good
2 morning, sir.

3 PROSPECTIVE JUROR NO. 211: Good morning, sir.

4 MR. DiGIACOMO: How long did you spend in the Navy?

5 PROSPECTIVE JUROR NO. 211: 20 years, 13 days.

6 THE COURT: But who's counting?

7 PROSPECTIVE JUROR NO. 211: Hey, you don't get
8 retirement pay for 13 days.

9 MR. DiGIACOMO: What was your final assignment or
10 rank? We'll just start with your final rank.

11 PROSPECTIVE JUROR NO. 211: Aviation store keeper
12 first class.

13 MR. DiGIACOMO: What does that mean you do?

14 PROSPECTIVE JUROR NO. 211: Just dealing with
15 airplanes.

16 MR. DiGIACOMO: Okay. The only thing I really want
17 to talk to you is about the death penalty, a couple of
18 questions that you answered. You indicated that you believed
19 in it in the worst types of cases at least; right?

20 PROSPECTIVE JUROR NO. 211: Correct.

21 MR. DiGIACOMO: But you also thought it should be
22 used almost sparingly.

23 PROSPECTIVE JUROR NO. 211: Correct. Because once
24 you use it and you find out if something didn't go right, you
25 know what I mean, there's no repercussion to correct it.

1 MR. DiGIACOMO: Right. You'd want to be pretty darn
2 sure before you raised your hand that, you know, what you were
3 doing was the right thing to do.

4 PROSPECTIVE JUROR NO. 211: When you go and authorize
5 the State's sanction execution, you want to make sure
6 everything is done properly. Even though we're the first
7 step, I mean, there's a lot of other steps along the way, but
8 we're going to sanction it to start off with.

9 MR. DiGIACOMO: Sure. Other than the, I guess the
10 desire to make sure you're -- you're right in what the
11 decision is, and honestly, I'm not going to tell you what the
12 law is, but at the end of the day there's going to be no, hey,
13 you have to impose it or, hey, you don't. It's a decision, a
14 collective decision of 12 people in the community.

15 And you may just find that it just doesn't even apply
16 in this particular case. But would you be willing to consider
17 everything, the law that the Court gives you as to how it is
18 you reach your decision, the mitigating circumstances, the
19 facts of the crime, and ultimately if you believe it's the
20 right choice, you'll be able to raise your hand in the back
21 room and say yes?

22 PROSPECTIVE JUROR NO. 211: Yes, sir. I didn't think
23 any of the choices were that generous.

24 MR. DiGIACOMO: Right. They're all pretty bad
25 choices for Mr. Carroll if we get to that point; is that fair?

1 PROSPECTIVE JUROR NO. 211: That's more than fair.

2 MR. DiGIACOMO: Thank you very much.

3 Judge, we pass for cause.

4 THE COURT: All right. Defense, you may question Mr.
5 Mathias.

6 MR. BUNIN: Thank you.

7 And just to follow up on a few of those questions.

8 PROSPECTIVE JUROR NO. 211: Yes, sir.

9 MR. BUNIN: You talk about the need to use the death
10 penalty sparingly; correct?

11 PROSPECTIVE JUROR NO. 211: Yes, sir.

12 MR. BUNIN: And, again, tell us why you think it
13 needs to be used sparingly?

14 PROSPECTIVE JUROR NO. 211: It's a one shot deal.
15 Once you use it and you find out something wasn't properly
16 done, I mean, there's no way you can ever correct it. So you
17 want to make sure before you authorize a state action
18 execution, you know what I mean, everything is perfectly done.
19 And we're the first step on that way.

20 MR. BUNIN: So you think it's possible that as a jury
21 you could find beyond a reasonable doubt, and that doesn't
22 mean beyond all doubt, but beyond a reasonable doubt that a
23 person is guilty of first degree murder, but you're still not
24 comfortable saying the death penalty is the appropriate
25 sentence?

1 PROSPECTIVE JUROR NO. 211: Yes, sir. There's always
2 -- I mean, you can look at the mitigating incidents, you know
3 what I mean, throughout his life, you know what I mean, and
4 judge on that too.

5 MR. BUNIN: And you agree, I think you said that all
6 four of the possibilities are very serious sentences?

7 PROSPECTIVE JUROR NO. 211: There's nothing generous
8 on any of them.

9 MR. BUNIN: The least amount a person can serve is 40
10 years. You agree with that?

11 PROSPECTIVE JUROR NO. 211: Yes, sir. I mean, you
12 look -- assuming somebody is in their 20s, they're going to be
13 in their late 60s before they even get out, if they even ever
14 do.

15 MR. BUNIN: But they only have the possibility after
16 40 years.

17 PROSPECTIVE JUROR NO. 211: Correct. I didn't
18 understand that earlier until yesterday.

19 MR. BUNIN: Somebody is listening. It's nice. You
20 know, does anything -- well, let's talk real quick about the
21 guilt phase. I've talked to some other people about how you
22 judge credibility. Because part of what you're going to have
23 to do as a juror is listen to witnesses who swear to tell the
24 truth, and then decide whether or not they're telling the
25 truth. Do you agree, number one, just because you swear to

1 tell the truth it doesn't mean you're necessarily going to be
2 truthful?

3 PROSPECTIVE JUROR NO. 211: Yes, sir, I do believe
4 that.

5 MR. BUNIN: And how is it that you would judge a
6 person's credibility on the stand? Do you think you're
7 capable of doing that?

8 PROSPECTIVE JUROR NO. 211: I believe I'm more than
9 fair and able to do that. I'm going to look for
10 inconsistencies.

11 MR. BUNIN: Inconsistencies. That would be important
12 to you?

13 PROSPECTIVE JUROR NO. 211: Yes, sir. I realize, you
14 know what I mean, depending on how the questions are phrased
15 there might be some inconsistencies, but really not truly be
16 inconsistencies.

17 MR. BUNIN: Okay.

18 PROSPECTIVE JUROR NO. 211: But I'm going to look for
19 something that's really blatant.

20 MR. BUNIN: You're going to look for those things,
21 use your common sense, and make your own decision as to if a
22 person --

23 PROSPECTIVE JUROR NO. 211: Correct, sir.

24 MR. BUNIN: Okay. And then, again, you know, we
25 talked about this a few times too, but this -- you know, there

1 is no difference when a person gets on the stand between a lay
2 person and -- and a person who is a professional, like a
3 police officer, or do you believe there is? Do you believe a
4 police officer is more likely to be truthful than a lay
5 person?

6 PROSPECTIVE JUROR NO. 211: No, sir, I do not believe
7 that. I mean, everybody is going to be up there trying to do
8 their best because this is such an important case.

9 MR. BUNIN: Or even when -- maybe the word truthful
10 is too strong. Do you think it's possible a lay person or a
11 police officer can get on the stand and testify? And maybe
12 they're not necessarily trying to be untruthful. Maybe they
13 made some mistakes. Is that something that you acknowledge?

14 PROSPECTIVE JUROR NO. 211: That's always a
15 possibility. Somebody that's not used to being on the stand
16 versus somebody who is, you know what I mean? I'm going to
17 give them just a tad more leeway just because of nervousness.

18 MR. BUNIN: If -- if the defense feels it's
19 appropriate to possibly cross-examine police officers, you
20 know, in a way where we need to point out mistakes or errors
21 that they may have made, is that something that you would hold
22 against us?

23 PROSPECTIVE JUROR NO. 211: No, sir. This is a very
24 serious case. You know what I mean? A man's life could be
25 possibly at stake.

1 MR. BUNIN: And everybody, I think, including
2 defense, acknowledges the difficulty of police officers' jobs,
3 but we just want to make sure, you know, some people wouldn't
4 get insulted or think it's unfair of us to scrutinize the way
5 they did their work, and I want to make sure you're not a
6 person that would do that.

7 PROSPECTIVE JUROR NO. 211: No, sir.

8 MR. BUNIN: We'll pass for cause, Your Honor.

9 THE COURT: All right. State's fifth.

10 MR. DiGIACOMO: Court's indulgence.

11 Judge, we would waive.

12 THE COURT: All right. Defendant's fifth.

13 MR. ERICSSON: Your Honor, the defense would thank
14 and excuse juror No. 81, Michael Redondo.

15 THE COURT: Sir, thank you very much for being here
16 and your willingness to serve as a juror. You are excused at
17 this time.

18 Ms. Husted, please call up the next prospective
19 juror.

20 THE CLERK: Yes, Your Honor. Badge 217, Julie
21 McNicholas.

22 THE COURT: Ma'am, just have that empty chair there
23 in the bottom corner of the jury box, please.

24 Everyone in the box okay on a break? All right.
25 We're going to go a little bit longer, then, before our lunch

1 break.

2 All right. Mr. DiGiacomo, you may question Ms.
3 McNicholas.

4 MR. DiGIACOMO: Thank you.

5 This may be the first questionnaire when I don't have
6 a highlight on it, so this is going to be somewhat brief.
7 You've sat here now for the better part of a day and a half.
8 Anything that any one of us have asked that you think is
9 important to tell us?

10 PROSPECTIVE JUROR NO. 217: No.

11 MR. DiGIACOMO: You think you can be fair?

12 PROSPECTIVE JUROR NO. 217: Yes.

13 MR. DiGIACOMO: If you were sitting either where Mr.
14 Pesci and I are or where Mr. Carroll is seated, would you want
15 12 people in your state of mind sitting on this jury?

16 PROSPECTIVE JUROR NO. 217: Yes.

17 MR. DiGIACOMO: Do you want to sit on this jury?

18 PROSPECTIVE JUROR NO. 217: Yes.

19 MR. DiGIACOMO: Why?

20 PROSPECTIVE JUROR NO. 217: I think it would be very
21 interesting and rewarding as well.

22 MR. DiGIACOMO: Thank you very much, ma'am.

23 PROSPECTIVE JUROR NO. 217: Thank you.

24 MR. DiGIACOMO: Judge, we pass for cause.

25 PROSPECTIVE JUROR NO. 217: All right. Thank you,

1 Mr. DiGiacomo.

2 Defense may question Ms. McNicholas.

3 MR. ERICSSON: Thank you, Your Honor.

4 Good morning, ma'am.

5 PROSPECTIVE JUROR NO. 217: Good morning.

6 MR. BUNIN: You gave nice long answers. You write a
7 lot. I appreciate that. It helps us in assessing whether
8 people are appropriate for this type of case. You indicated
9 that -- that you would be willing to serve on a case like
10 this. What -- what do you think would be important
11 characteristics of somebody sitting on the most serious type
12 of case we have in this courtroom.

13 PROSPECTIVE JUROR NO. 217: Just the evidence that
14 would be presented forth to, you know, make the decision of
15 whether he was guilty or not. I'd take into consideration all
16 the charges or, you know, what is presented there as far as
17 the life with parole, without parole, death penalty. I mean,
18 it just has to be presented before you to know. I can't make a
19 decision on something that I don't know anything about.

20 MR. BUNIN: and I know that this has been repeated so
21 many times, but this is our one chance of understanding your
22 mind.

23 PROSPECTIVE JUROR NO. 217: Sure.

24 MR. BUNIN: The only time we get to a penalty phase
25 is if the jury has found the defendant guilty beyond a

1 reasonable doubt of a first degree intentional murder. And by
2 that we mean it wasn't accidental, it wasn't heat of the
3 moment, some type of passion issues. It was an intentional,
4 first degree taking the life of another person.

5 PROSPECTIVE JUROR NO. 217: Right.

6 MR. BUNIN: Are you able to, in that situation where
7 hypothetically you have come to that decision with the other
8 12 jurors, are you able to consider that even that type of a
9 defendant who is guilty of that first degree murder could be
10 sentenced to life with the possibility of parole sentence?

11 PROSPECTIVE JUROR NO. 217: Yes, sir.

12 MR. BUNIN: And tell me what your feelings are about
13 mitigation issues that you would be presented if we got to
14 this in a sentencing phase.

15 PROSPECTIVE JUROR NO. 217: I believe there is a lot
16 of reasons to take into consideration as far as mitigation.
17 You know, it could be things that he went through in his life.
18 It could be psychological things. It could be a lot of
19 things, and you have to consider all of those things.

20 MR. BUNIN: Why do you -- why do you think that? Why
21 do we have -- why should the jury consider those types of
22 things?

23 PROSPECTIVE JUROR NO. 217: People do things for
24 various reasons, even if it was premeditated. There's -- I
25 mean, there's -- you know, you have children out there that

1 have committed these types of crimes but have been in abusive
2 situations for very long times and, you know, they grow up and
3 they end up murdering their parents or their grandparents, you
4 know. So there's a lot of reasons that I feel that you should
5 take into consideration.

6 MR. BUNIN: Thank you very much.

7 PROSPECTIVE JUROR NO. 217: You're very welcome.

8 MR. BUNIN: Judge, we would pass for cause.

9 THE COURT: All right. Thank you.
10 State's sixth.

11 MR. DiGIACOMO: Judge, we would waive.

12 THE COURT: Thank you.

13 Defense's sixth.

14 MR. BUNIN: The defense would thank and excuse juror
15 165, Tiffany Ortiz.

16 THE COURT: Ma'am, thank you very much for being here
17 and your willingness to serve as a juror. You are excused at
18 this time.

19 And I'll see counsel at the bench, please.

20 (Off-record bench conference)

21 THE COURT: I need to see counsel at the bench
22 again.

23 (Off-record bench conference)

24 THE COURT: All right. Ms. Husted, call up the next
25 prospective juror.

1 THE CLERK: Yes, Your Honor. Badge 230, Brittany
2 Webb in seat two.

3 THE COURT: All right. Ms. Webb, have a seat.
4 And, State, you may question Ms. Webb.

5 MR. PESCI: Thank you, Judge.

6 Ma'am, are you on break from school right now?

7 PROSPECTIVE JUROR NO. 230: Yes, I am.

8 MR. PESCI: All right. And do you have the whole
9 summer, or is it just a track break?

10 PROSPECTIVE JUROR NO. 230: I have until like
11 September.

12 MR. PESCI: You were asked some questions about the
13 death penalty in this questionnaire, and we want to kind of
14 follow up on that. But before we get to that, law
15 enforcement, you said that they were okay, but partially
16 because they don't pull you over?

17 PROSPECTIVE JUROR NO. 230: Yes.

18 MR. PESCI: Okay. So you haven't had any real
19 problems with law enforcement?

20 PROSPECTIVE JUROR NO. 230: No.

21 MR. PESCI: All right. In talking about the death
22 penalty, you mentioned that you -- if I understood correctly,
23 that you could go for it.

24 PROSPECTIVE JUROR NO. 230: Uh-huh.

25 MR. PESCI: You could consider all four options?

1 PROSPECTIVE JUROR NO. 230: Yeah. For sure.

2 MR. PESCI: She just needs a yes.

3 PROSPECTIVE JUROR NO. 230: Yes.

4 MR. PESCI: Yeah.

5 PROSPECTIVE JUROR NO. 230: Okay.

6 MR. PESCI: But you also said in that answer you
7 talked about how it could be hard considering the family of
8 this defendant.

9 PROSPECTIVE JUROR NO. 230: Uh-huh. Yes. Yes.

10 MR. PESCI: And is that -- is that somewhat of an
11 emotional reaction to it?

12 PROSPECTIVE JUROR NO. 230: Well, I think it's all
13 just the mitigating circumstances all falls into that. And so
14 once it got to that point, obviously I would have to consider
15 all of that.

16 MR. PESCI: So you -- you would be willing to
17 consider the mitigation in the case?

18 PROSPECTIVE JUROR NO. 230: Yes.

19 MR. PESCI: And attach whatever weight, if any, you
20 feel is appropriate to that mitigation?

21 PROSPECTIVE JUROR NO. 230: Yes.

22 MR. PESCI: And I think you said you would not
23 automatically vote for death.

24 PROSPECTIVE JUROR NO. 230: No.

25 MR. PESCI: You communicate that in your -- towards

1 the end of your questionnaire.

2 PROSPECTIVE JUROR NO. 230: It depends on all; the
3 circumstances.

4 MR. PESCI: All right. So you'd consider all four
5 possible punishments?

6 PROSPECTIVE JUROR NO. 230: Yes.

7 MR. PESCI: We'll pass for cause.

8 THE COURT: All right. Thank you.
9 Defense.

10 MR. BUNIN: Good afternoon.

11 PROSPECTIVE JUROR NO. 230: Good afternoon.

12 MR. BUNIN: Are you glad to be here?

13 PROSPECTIVE JUROR NO. 230: Am I glad to be here?
14 It's actually very interesting, so, yes.

15 MR. BUNIN: Thought I'd ask the one person that
16 looked like they had a chance to say yes. You put on your --
17 let's see. When we talk about the death penalty, you --
18 you're not against the death penalty; is that correct?

19 PROSPECTIVE JUROR NO. 230: No.

20 MR. BUNIN: But the way you worded it, I wanted to
21 talk to you about it.

22 PROSPECTIVE JUROR NO. 230: Okay.

23 MR. BUNIN: You said that you're not always for it.
24 You can think of some circumstances where you might; is that
25 correct?

1 PROSPECTIVE JUROR NO. 230: Yes.

2 MR. BUNIN: So you can envision -- And I'm asking
3 this, again, because there was some confusion yesterday and
4 maybe a little bit today about when you would consider the
5 death penalty. The death penalty only comes into
6 consideration if there is a first degree murder conviction,
7 meaning an intentional murder.

8 PROSPECTIVE JUROR NO. 230: Uh-huh.

9 MR. BUNIN: Do you understand that?

10 PROSPECTIVE JUROR NO. 230: Yes.

11 MR. BUNIN: So once there -- you know -- once you
12 decide beyond a reasonable doubt a person deliberately and
13 premeditated and potentially killed somebody, would you
14 consider all four options at that point?

15 PROSPECTIVE JUROR NO. 230: Of course.

16 MR. BUNIN: Do you think all four options are
17 legitimate at that point?

18 PROSPECTIVE JUROR NO. 230: Of course.

19 MR. BUNIN: Okay. And the mitigating circumstances
20 we talked about, you're [indecipherable] you'd be somewhat
21 concerned about if the defendant had a family. That's
22 something you'd be concerned about; is that right?

23 PROSPECTIVE JUROR NO. 230: Yes.

24 MR. BUNIN: Would you also consider some of the other
25 factors or maybe all of them that we listed?

1 PROSPECTIVE JUROR NO. 230: Yes.

2 MR. BUNIN: So I'm talking about the mental health of
3 the defendant.

4 PROSPECTIVE JUROR NO. 230: Yeah.

5 MR. BUNIN: His age when the crime occurred.

6 PROSPECTIVE JUROR NO. 230: Yes.

7 MR. BUNIN: Family background, guidance, that sort of
8 thing?

9 PROSPECTIVE JUROR NO. 230: Yes. That was just the
10 one that I put down, but all of them apply.

11 MR. BUNIN: And do you think those are all important
12 and legitimate to consider when looking at an individual --

13 PROSPECTIVE JUROR NO. 230: Of course.

14 MR. BUNIN: -- and then what's right for him at
15 sentencing?

16 PROSPECTIVE JUROR NO. 230: Of course.

17 MR. BUNIN: And you would have no problem if you felt
18 it was correct making a decision for life?

19 PROSPECTIVE JUROR NO. 230: No.

20 MR. BUNIN: And you have no problem if you thought it
21 was correct, making a decision for death?

22 PROSPECTIVE JUROR NO. 230: Right.

23 MR. BUNIN: I thought I had something else that I
24 wanted to talk about, but maybe not. You know, we talked
25 briefly yesterday about some issues that are -- that may come

1 up, and I want to see if these are things that might prejudice
2 you in any way.

3 PROSPECTIVE JUROR NO. 230: Okay.

4 MR. BUNIN: One is you are going to hear just about
5 gun use. I mean, somebody used a gun. Is there anything in
6 your background, family, friends, or anything that would
7 prejudice one side or the other because you're going to hear
8 about somebody using a gun?

9 PROSPECTIVE JUROR NO. 230: No.

10 MR. BUNIN: What about marijuana use or alcohol use?

11 PROSPECTIVE JUROR NO. 230: No.

12 MR. BUNIN: Anything in your family or your friends
13 or anybody you know who might -- who might think if a person
14 uses then they must be more likely to be guilty of something
15 else?

16 PROSPECTIVE JUROR NO. 230: No.

17 MR. BUNIN: It wouldn't bother you at all?

18 PROSPECTIVE JUROR NO. 230: No.

19 MR. BUNIN: And is there anything about Deangelo that
20 you've seen, his background or his race or anything that might
21 concern you as a juror?

22 PROSPECTIVE JUROR NO. 230: No.

23 MR. BUNIN: We also talked about -- what we really
24 haven't talked about is, you know, a lot of the people you're
25 going to hear about in this case worked at the Palomino Club.

1 PROSPECTIVE JUROR NO. 230: Okay.

2 MR. BUNIN: Are you familiar with what the Palomino
3 Club is?

4 PROSPECTIVE JUROR NO. 230: I've driven by it a few
5 times before.

6 MR. BUNIN: Okay.

7 PROSPECTIVE JUROR NO. 230: Not yesterday, though.
8 Don't worry.

9 MR. BUNIN: Not yesterday? Good. You know -- you
10 know Palomino Club is an adult club?

11 PROSPECTIVE JUROR NO. 230: Yes.

12 MR. BUNIN: And you're going to hear that some of the
13 people concerned work at that club.

14 PROSPECTIVE JUROR NO. 230: Yes.

15 MR. BUNIN: Does that in any way prejudice you --

16 PROSPECTIVE JUROR NO. 230: No.

17 MR. BUNIN: -- one way or the other?

18 PROSPECTIVE JUROR NO. 230: I live in Vegas.

19 MR. BUNIN: Okay.

20 PROSPECTIVE JUROR NO. 230: No, it doesn't.

21 MR. BUNIN: All right. So it wouldn't make any --
22 there's not a higher chance that you would find Deangelo
23 guilty just because he worked in the club?

24 PROSPECTIVE JUROR NO. 230: No.

25 MR. BUNIN: Okay. I don't have any other questions.

1 We would pass for cause.

2 THE COURT: All right. State's seventh.

3 MR. DiGIACOMO: Judge, we'll waive it.

4 THE COURT: Defense.

5 MR. ERICSSON: Your Honor, can we have just a moment?

6 Your Honor, the defense would thank and excuse juror
7 168, Mr. Hotchkiss.

8 THE COURT: Sir, thank you very much for being here
9 and your willingness to serve as a juror. You are excused at
10 this time.

11 All right, ladies and gentlemen. We're going to take
12 our lunch break. We will be in recess for the lunch break
13 until 1:30.

14 I would like juror no. 238, Ms. King, to please
15 remain in the courtroom for a few moments after the rest of
16 the jury has left.

17 And, ladies and gentlemen, I do need to remind you
18 that during the lunch time recess, obviously, the admonition
19 is still in effect not to discuss the case or do anything
20 related to the case. Don't read, watch, or listen to any
21 reports of or commentaries on any subject matter relating to
22 the case. Don't do any independent research. Don't, you
23 know, go to the Palomino Club. And, of course, please don't
24 form or express an opinion on the trial.

25 Everyone except for badge No. 238, if all of you

1 would please follow Officer Wooten through the double doors.

2 We will be in recess until 1:30.

3 (Prospective jury panel recessed at 12:15 p.m.)

4 THE COURT: Ms. King, come on and have a seat in the
5 jury box. And I didn't mean to single you out, but since
6 we're taking a break anyway, I thought we could just ask you a
7 few questions that I need to ask you out of the presence of
8 the other jurors, that way we won't have to take a break, you
9 know, once we resume for about ten minutes.

10 The reason I kept you in here is earlier, yesterday,
11 you had indicated that you saw something, you remembered
12 seeing something about this case on the news. Do you remember
13 saying that?

14 PROSPECTIVE JUROR NO. 238: Yes.

15 THE COURT: Okay. And I'd like for you to tell us
16 what it is that you remember hearing or seeing about this
17 particular case or anything to do with the crime that -- what
18 do you remember?

19 PROSPECTIVE JUROR NO. 238: It was just somebody was
20 shot down there and somebody was arrested. And I thought the
21 case was actually closed.

22 THE COURT: Okay. So you don't remember specifically
23 hearing anything about this particular individual, Mr.
24 Carroll; is that right?

25 PROSPECTIVE JUROR NO. 238: No.

1 THE COURT: Okay. Now, obviously the news, you know,
2 reports things inaccurately or what not. Would you be able to
3 set aside anything you saw or heard or maybe now later
4 remember seeing or hearing and decide this case just on the
5 evidence presented during the trial if you're selected? And,
6 of course, the evidence would be the testimony of the
7 witnesses and the exhibits that are admitted. I'm sorry?

8 PROSPECTIVE JUROR NO. 238: Yes.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 238: Yes.

11 THE COURT: State, do you have any follow up with Ms.
12 King?

13 MR. PESCI: As to the media?

14 THE COURT: As to the media only. The regular
15 questions we'll ask --

16 MR. PESCI: No, thank you, Judge.

17 THE COURT: Defense, do you have any follow with Ms.
18 King as to the media?

19 MR. ERICSSON: Just a --

20 THE COURT: Sure.

21 MR. ERICSSON: -- couple.

22 Good afternoon, ma'am. Just to be clear, any -- have
23 you formed any type of opinions based on the news articles or
24 information that you received?

25 PROSPECTIVE JUROR NO. 238: Well, initially, when I

1 heard it and when I heard that they caught the individual, and
2 like I said, I thought the case was closed, so I was like, oh,
3 good, they found the guilty party. But having known --
4 knowing now that the case is still ongoing, you know, and I
5 can't form an opinion because there is no evidence presented
6 yet. But at the time, of course, I thought, oh, they caught
7 the -- you know, the guilty party.

8 MR. ERICSSON: And when you -- are you comfortable
9 with the -- the concept that sometimes the police arrest
10 people who later are shown not to be guilty parties?

11 PROSPECTIVE JUROR NO. 238: Yes, because people make
12 mistakes.

13 MR. ERICSSON: And that can include the police;
14 correct?

15 PROSPECTIVE JUROR NO. 238: Yes.

16 MR. ERICSSON: Okay. Thank you.

17 I have no further questions.

18 THE COURT: All right.

19 Ma'am, please don't discuss with the other jurors
20 anything you may remember seeing or hearing in the media. And
21 then also they may want to know why we kept you in the
22 courtroom. Please don't discuss, don't tell them why, and
23 don't discuss anything that's transpired, anything I asked you
24 or Mr. Ericsson asked you or anything like that. Do you
25 understand that?

1 PROSPECTIVE JUROR NO. 238: Yes.

2 THE COURT: All right. Thank you very much. Come
3 back at 1:30 with the rest of the jurors.

4 PROSPECTIVE JUROR NO. 238: Okay.

5 THE COURT: All right.

6 (Prospective Juror No. 238 exits at 12:19 p.m.)

7 THE COURT: All right. We can quickly put on the
8 record while it's fresh in everyone's mind. The defense had
9 made -- said they wanted to preserve a Batson challenge when
10 the gal in chair No. 3, whose name escapes me, was excused by
11 the State.

12 THE CLERK: Sharon Overton.

13 THE COURT: Ms. Overton was excused by the State. As
14 Ms. Overton appears to be an African-American female that I
15 would note my understanding is before they have to state their
16 race neutral reason, you have to show a pattern and practice.
17 And that was the first African -- first and only --
18 African-American that's been excused by the State.

19 Is that correct?

20 MR. DiGIACOMO: That's correct.

21 THE COURT: All right. And then I would just put on
22 the record the gentleman in chair No. 2, I think his name was
23 Mr. Hartzel; is that right? Hart-something.

24 MR. DiGIACOMO: He was in chair No. 2. His name was
25 Hart -- Hartfield.

1 THE COURT: Hartfield. Thank you very much.

2 Mr. Hartfield was an African-American gentleman and
3 he was excused pursuant to a for cause challenge. I didn't
4 put his race on the record because it hadn't been germane at
5 that point. He was excused pursuant to a for cause challenge
6 which was made by the defense. Those are the only individuals
7 from the jury box that have been excused by either side, as I
8 recollect. Does that comport with everyone's recollection?

9 MR. ERICSSON: Only individuals who are
10 African-American.

11 THE COURT: That's all we're talking about now.

12 MR. ERICSSON: Okay. I just wanted --

13 THE COURT: Right.

14 MR. DiGIACOMO: As far as I know that have been
15 excused that were in the box, yeah. I mean --

16 THE COURT: Yeah, well --

17 MR. DiGIACOMO: -- to the best of my recollection,
18 yeah.

19 THE COURT: -- if anyone else was African-American,
20 then they were excused because of a hardship situation. And I
21 don't recall any of them being yet in the box.

22 MR. BUNIN: None were in the --

23 THE COURT: In terms of the challenges, either a
24 peremptory challenge which was exercised by the State, or a
25 for cause challenge which was exercised by the defense, those

1 were the only two African-Americans as I recall.

2 MR. BUNIN: I think that's correct. I think the
3 other ones released were not in the box. There were some
4 yesterday that were released for other reasons.

5 THE COURT: Right. For hardship reasons.

6 MR. BUNIN: That's correct. That's correct.

7 And just briefly, you know, we are in a situation
8 where we had 120 potential jurors, and I think I only saw
9 maybe six or seven people of the same race as my client. We
10 passed this person for cause, and especially in this type of
11 case, and I think just statistically that it's just true that
12 when there is a black defendant and a white victim in a death
13 penalty case there is a much more likelihood not only of
14 guilt, but of death at a penalty phase.

15 And it's extremely concerning for the defense that --
16 that the prosecution would -- would use a challenge in such a
17 way knowing these facts. And I guess our concern -- I
18 understand this is the first one, so there's not a pattern
19 beyond this person right now. I totally understand that,
20 Judge. But I just think it's still important to make a record
21 at how few African-Americans were in this jury pool, and now
22 we have the State using a peremptory challenge.

23 THE COURT: Yeah, I -- I would actually note in my
24 view just of jury pools in general, this was kind of unusual
25 because we had four African-Americans in the box almost to

1 start, two African-Americans being left, one having been
2 excused by the defense's challenge, the other being excused by
3 the State. So I think it's somewhat unusual that you have
4 four of the 12, we're not even counting our alternates at this
5 point in time, and there are several more in the audience
6 remaining. I don't know if we'll get to them or not get to
7 them.

8 I don't know if the State wants to put their reason
9 on the record. Like I said, they're not -- certainly not
10 required to do that because we haven't established a pattern
11 or practice. I think, you know, Ms. Overton was a bit of a --
12 I'll use the term character, and I think that is born out on
13 the record.

14 MR. DiGIACOMO: And, you know, I don't think we --

15 THE COURT: She had a lot of spunk.

16 MR. DiGIACOMO: I don't think we should be required
17 to put it on the record.

18 THE COURT: And I -- you're not.

19 MR. DiGIACOMO: However, I would ask this of the
20 Court. I would ask the record to reflect certain things that
21 may not be in a, quote, transcript. Because I actually came
22 across this in a case where the trial judge was no longer the
23 trial judge because it was 20 years later, and they said,
24 well, the judge is making a determination without saying what
25 actually happened as to the demeanor of this particular juror.

1 Aside from her immediately having some sort of
2 conflict with the way Mr. Pesci addressed her, throughout her
3 questioning she had a number of answers to questions that made
4 it abundantly clear that she did not take the situation
5 seriously.

6 And to note that there are some things that didn't
7 happen that -- on the record. For example, in the middle of
8 the courtroom during the proceeding when she wasn't being
9 addressed at any point in time, she blurts out asking what are
10 we doing on our computers and wanting to know what type of
11 information --

12 THE COURT: That is in the record.

13 MR. DiGIACOMO: -- we were typing --

14 THE COURT: That is in the record.

15 MR. DiGIACOMO: -- on our computer.

16 At another point while we were at a bench conference
17 I hear from your clerk and the court reporter that she
18 actually waived down a CO and asked him to validate her
19 parking. Her behavior in this courtroom is an example of what
20 appeared to be someone who wasn't taking the situation very
21 seriously at all.

22 Her answers to the questions, honestly, in her
23 questionnaire, I thought that the defense was going to get her
24 for cause.

25 THE COURT: and she was a CO.

1 MR. DiGIACOMO: Yeah. She was a corrections officer.
2 I thought they were going to get her for cause. They didn't,
3 and then they did not get her with perempts. My concern being
4 leaving somebody who is that much of a wild card, it doesn't
5 matter what her race is, on a jury --

6 THE COURT: Yeah, like I said --

7 MR. DiGIACOMO: -- is divisive.

8 THE COURT: -- she was a character. I don't know if
9 this was off the record, but even when she handed the
10 headphones -- she handed something to the CO.

11 MR. BUNIN: The microphone.

12 THE COURT: The microphone to the CO. And I said,
13 oh, thank you, that's -- I wanted -- and I always call them
14 all uniformed marshals so that it's not clear that they're
15 COs. I said thank you for handing it to the uniformed marshal
16 or something like that, and then she said, oh, I wasn't going
17 to steal it. And I said, oh, no, that's -- I just meant we're
18 on the same page or something to that affect. So that was a
19 little different. In any event --

20 MR. DiGIACOMO: Judge, there's one other matter.

21 THE COURT: Yes.

22 MR. DiGIACOMO: There is juror No. 231, which I think
23 is the next person to be called into the box. And while the
24 Court hasn't excused them --

25 THE COURT: This is the person that indicated the IRS

1 situation?

2 MR. DiGIACOMO: Correct. He's currently in an IRS
3 situation. Like Ms. Overton, he's one of those people that
4 his answers are such that the defense doesn't want him, but
5 his demeanor and affect is such that the State doesn't want
6 them. I've talked to Mr. Bunin and Mr. Ericsson, and they
7 have agreed that we can --

8 THE COURT: Not to waste any time with him?

9 MR. DiGIACOMO: Not waste any time with him.

10 THE COURT: To just go ahead and excuse him?

11 MR. DiGIACOMO: Just excuse him.

12 MR. BUNIN: That's fine.

13 THE COURT: All right. All right. So we'll do that
14 and --

15 MR. DiGIACOMO: I would, for the record, ask that
16 231 also be made -- I guess it is part of the record; right?
17 The Court makes it? Because now I don't want to get banded up
18 with Ms. Overton's questionnaire later on and put on the
19 record that Mr. Loso is a Caucasian former law enforcement
20 officer who gives good answers to the question, but clearly,
21 from his demeanor and his affect and his behavior in this
22 courtroom is not an individual the State wants on the jury.

23 THE COURT: Yeah, I would describe Mr. Loso as a
24 character as well, meaning -- I don't mean that necessarily in
25 a pejorative way. But suffice it to say as to both of them,

1 they distinguish themselves among the group of prospective
2 jurors, either with their answers or the fact that they had no
3 qualms or inhibitions about sort of raising their hand and
4 interrupting the proceedings in some way or making comments
5 that were audible either to us up here or to the other members
6 of the jury panel so that they -- they did -- like I said, I
7 don't mean character in a pejorative way, but they did stand
8 out among the group of other prospective jurors who tended to
9 more not distinguish themselves and sort of all behave in a
10 certain -- certain manner.

11 So anything else you want to put on?

12 MR. BUNIN: Yes, because I can't discourage your
13 description, but actually, from a defense prospective, none of
14 those things would make us want to exclude anybody in
15 particular. I have no problem excluding this particular juror
16 based on the answers to his questions on the questionnaire.
17 But his behavior in court is not a factor that we took into
18 consideration at all.

19 THE COURT: Right. Well --

20 MR. BUNIN: And I may not even mind that sort of
21 thing --

22 THE COURT: Right.

23 MR. BUNIN: -- in a jury sometimes.

24 THE COURT: Well, of course because --

25 MR. DiGIACOMO: Well, the defense wouldn't.

1 THE COURT: -- because the defense wants sort of wild
2 cards and the State doesn't. But I would just -- I'm just
3 sort of saying that in terms of the things that aren't
4 recorded into the written transcript that both of those
5 individuals, Mr. Loso and Ms. Overton, manifested behavior
6 that distinguished them --

7 MR. BUNIN: I think that's accurate.

8 THE COURT: -- from the other members of the jury
9 panel.

10 MR. BUNIN: Right.

11 THE COURT: And like I said, I don't mean that in a
12 derogatory way against either of them.

13 MR. BUNIN: Okay.

14 THE COURT: I just mean that -- that they stood out.
15 All right. Thank you.

16 MR. ERICSSON: And, Your Honor, one more issue as to
17 Mr. Loso. His last answer is that he's deaf in both ears.
18 What I don't hear I guess to fill in the blanks. Sometimes
19 I'm right --

20 THE COURT: And for the record, he has been wearing
21 the headphones throughout the proceedings.

22 MR. ERICSSON: -- but mostly I'm wrong and people
23 have to repeat themselves over and over. So it was the
24 hearing issue that was a concern.

25 THE COURT: All right. And just to also note he is

1 the only headphone person that's come up. I just would remind
2 everybody if we do have somebody with the headphones, you guys
3 need to turn off your mikes when you're conferring at -- at
4 counsel table. I don't know that that's been done. I just
5 would remind -- I know Janie, our court recorder, had told you
6 guys. But if we pick anybody that does wear the earphones,
7 you need to be really, really careful about that. So far
8 there's nobody in the box, but just remind everybody.

9 MR. ERICSSON: Thank you.

10 (Court recessed at 12:32 p.m. until 1:45 p.m.)

11 (In the presence of the jury.)

12 THE COURT: All right. Court is now back in
13 session. The record will reflect the presence of the State
14 through the deputy district attorneys, the defendant and his
15 counsel, the officers of the Court and the members of the
16 prospective jury panel.

17 And, Ms. Husted, if you would please call up the
18 next prospective juror.

19 THE CLERK: Yes, Your Honor.

20 Badge 238, Lita King.

21 THE COURT: Ms. King, come on down and take that
22 empty chair in the front row, please.

23 And, State, you may -- State, you may question
24 Ms. King.

25 MR. PESCI: Thank you, Judge.

1 Hi, ma'am. Good afternoon. I wanted to focus in a
2 little bit on the unfortunate situation that happened with you
3 when you were younger, without getting into any details.

4 Did anyone ever -- did anyone ever pursue it
5 criminally?

6 PROSPECTIVE JUROR NO. 238: No.

7 MR. PESCI: And how do you feel about that? Do you
8 feel the system let you down?

9 PROSPECTIVE JUROR NO. 238: No.

10 MR. PESCI: Is that anything you would hold against
11 the State?

12 PROSPECTIVE JUROR NO. 238: No.

13 MR. PESCI: And it happened not even here, correct?

14 PROSPECTIVE JUROR NO. 238: Correct.

15 MR. PESCI: Is there anything in that experience
16 that would make you -- or bias you against the defendant at
17 all?

18 PROSPECTIVE JUROR NO. 238: In this case, no.

19 MR. PESCI: The experience you had has nothing to do
20 with him in this case?

21 PROSPECTIVE JUROR NO. 238: Correct.

22 MR. PESCI: In the context of the death penalty, I
23 think you've indicated that you're for the death penalty; is
24 that correct?

25 PROSPECTIVE JUROR NO. 238: Yeah.

1 MR. PESCI: Okay. You kind of tilted your head and
2 shook --

3 PROSPECTIVE JUROR NO. 238: Just going over from
4 what was said yesterday, yes, I lean towards that, yes.

5 MR. PESCI: Okay. Because you indicated -- you said
6 yes, I believe in that.

7 PROSPECTIVE JUROR NO. 238: Yes.

8 MR. PESCI: Notwithstanding the fact that the
9 state -- the fact that you say you believe in it, you did, in
10 fact, indicate that you could consider all four options of
11 punishment, didn't you?

12 PROSPECTIVE JUROR NO. 238: Yes.

13 MR. PESCI: I believe you said that you could
14 consider mitigation.

15 PROSPECTIVE JUROR NO. 238: Yes.

16 MR. PESCI: And that -- the one question I had is --
17 Can I approach her, Your Honor?

18 THE COURT: Of course.

19 MR. PESCI: Showing you your questionnaire, I
20 couldn't tell if you checked or didn't on 38 because it seems
21 like there's some scribbling. So the question really I have
22 for you is, would you vote on -- would you vote automatically
23 for the death penalty if you found the defendant guilty of
24 first-degree murder?

25 PROSPECTIVE JUROR NO. 238: No.

1 MR. PESCI: Would you vote automatically against it?

2 PROSPECTIVE JUROR NO. 238: No.

3 MR. PESCI: Okay. Could you be fair to both sides?

4 PROSPECTIVE JUROR NO. 238: Yes.

5 MR. PESCI: Is there anything in your personal
6 makeup that makes it such that you cannot stand in judgment of
7 another human being?

8 PROSPECTIVE JUROR NO. 238: No. I mean, I try not
9 to, but if the evidence is there, yes, then that's what I'm
10 here for.

11 MR. PESCI: All right. Pass for cause.

12 THE COURT: All right. Thank you.

13 Defense.

14 MR. ERICSSON: Thank you, Your Honor.

15 Good afternoon, ma'am.

16 PROSPECTIVE JUROR NO. 238: Good afternoon.

17 MR. ERICSSON: I'm going to jump to an area that
18 you've heard a lot about and that is the mitigation issue.
19 Tell me what your feelings are about if you were on a jury
20 that found a defendant guilty of first degree intentional
21 murder, what -- what are your thoughts about considering
22 mitigation issues as to someone's background, their
23 childhood --

24 PROSPECTIVE JUROR NO. 238: I would take that in
25 consideration, but I also believe you are -- I mean, just

1 because you have had a bad childhood doesn't mean that you can
2 get away with -- you have to be responsible for your
3 consequences -- or there's consequences to your action.

4 MR. ERICSSON: Why do you think that the law in
5 Nevada is that even in a case where someone is found guilty of
6 premeditated intentional murder that jurors have to be able to
7 consider mitigation in coming to an appropriate sentence?

8 PROSPECTIVE JUROR NO. 238: Why I think that? Well,
9 you've got to be fair, you know, if there's other issues going
10 on -- psychological, yes, you have to take that into
11 consideration, but because you were abused as a child, that's
12 no excuse, in my opinion.

13 MR. ERICSSON: You've heard a number of times, the
14 four potential sentences in a first-degree murder case are
15 death penalty, life without the possibility of parole, a fixed
16 term of years with parole after 40 years or potential parole
17 after 40 years -- or a life sentence with parole after 40
18 years.

19 In your opinion, is it fair to say that all four of
20 those potential services are very severe?

21 PROSPECTIVE JUROR NO. 238: Yes.

22 MR. ERICSSON: Would you -- if you found somebody
23 guilty of first degree intentional murder, would you be able
24 to consider giving them life with the possibility of parole?

25 PROSPECTIVE JUROR NO. 238: I believe so. I

1 believe -- I think I can.

2 MR. ERICSSON: Anything about your background that
3 you think should cause any concern to either side in this
4 case?

5 PROSPECTIVE JUROR NO. 238: My only concern is now
6 I'm kind of preoccupied with work, but that's the only thing.
7 But that has nothing to do with the case and I feel that he
8 deserves a fair trial, you know.

9 MR. ERICSSON: And let's talk about that a little
10 bit, your preoccupation with work. I mean --

11 PROSPECTIVE JUROR NO. 238: I'm the only HR payroll
12 for my location here. And we laid off my backup person about
13 two weeks ago, so I've picked up her responsibilities too and
14 that includes an audit with the airport badging office that I
15 don't know anything about. So I'm kind of worried about that,
16 the outcome of it. So I don't know if I'm going to be able to
17 focus 100 percent without -- everybody's here thinking about
18 their work too, but I'm also dealing with, you know, an audit
19 at the airport, so I'm kind of preoccupied with that because
20 there's nobody else to do it at my job.

21 MR. ERICSSON: And I appreciate you bringing that
22 up. Do you feel that right now with that issue going on in
23 your work situation that this would not be an appropriate time
24 for you to be sitting on a jury of this magnitude?

25 PROSPECTIVE JUROR NO. 238: I don't think so. I

1 mean, yesterday I thought I could, but then going home and
2 waking up really early this morning going, oh, my God, I have
3 this to worry about, and then I'm thinking am I going to be
4 fit to give him a fair trial. That was my honest thought this
5 morning.

6 MR. ERICSSON: I appreciate that honesty. Thank
7 you.

8 Your Honor, may we approach?

9 THE COURT: Of course.

10 (Off-record bench conference)

11 THE COURT: All right. Ms. King, I guess my
12 question to you is this: It sounds like yesterday you were
13 okay with serving, but then today you woke up and kind of --
14 what happened between yesterday and today that causes you to
15 now be concerned?

16 PROSPECTIVE JUROR NO. 238: Well, yes, I'm still
17 here. I want to serve.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 238: I want to do my civic
20 duty. I'm not trying to get out of it, I'm not. I'm just
21 saying all -- you know, I went home, talked to my husband
22 about his schedule. If I'm here, I have to be here until
23 5:00. I have a two and a half year old. Other people have
24 kids, I know that.

25 THE COURT: Right.

1 PROSPECTIVE JUROR NO. 238: But I have to put my
2 daughter in extra care, additional cost to me. We have some
3 other issues going on, but that's irrelevant here. But then I
4 also got stressed because there's nobody else at my job to do
5 my work. I do payroll. Payroll's coming up Monday. If I'm
6 on the trial, which is fine, I'll go on my day off, that takes
7 time away from my family.

8 THE COURT: Right.

9 PROSPECTIVE JUROR NO. 238: You know, but I'm not
10 trying to get out of it. If I'm here, I'm here. I'm going to
11 give it my best, I'm going to try. But also, I'm being
12 honest. In the back of my mind, I'm going to be thinking
13 about my family, my daughter being in daycare for ten and a
14 half hours a day, which, you know, she's not used to, but --

15 THE COURT: Now, today --

16 PROSPECTIVE JUROR NO. 238: -- that's fine.

17 THE COURT: -- I'm sorry. Today, obviously we
18 started at 10:30 and we would have probably a 10:30 start
19 tomorrow as well as possibly Thursday with an earlier start on
20 Friday. Would that later start in the day help you either
21 with your child care issues or with your work issues, meaning,
22 you know, you could probably get some work done in the morning
23 before we start court? I mean, obviously, just, you know, so
24 you know, we are all here doing other unrelated matters, but
25 that's why we don't start the trial until 10:30.

1 PROSPECTIVE JUROR NO. 238: Yeah. Like this morning
2 it worked out fine because I took my daughter into daycare. I
3 ran into my office real quick, took care of some things that
4 came in that was for unemployment offices. I had to send for
5 it. I had some people with wage garnishments that are
6 important that I have to forward on. I was able to answer a
7 few questions from my employees, my fellow coworkers, and then
8 I came here, which is fine.

9 Then that way, you know, we can make later on
10 arrangements, but my husband works from 9:00 to 6:00. If I'm
11 here, you know, 8:00 to 5:00 --

12 THE COURT: Right. But you won't be here 8:00 to
13 5:00.

14 PROSPECTIVE JUROR NO. 238: That's, you know --

15 THE COURT: I just want to know if that kind of
16 helps alleviate some of your pressures and concerns --

17 PROSPECTIVE JUROR NO. 238: Oh, absolutely.

18 THE COURT: -- with the fact that we don't start at
19 8:00. I mean, we all do, but --

20 PROSPECTIVE JUROR NO. 238: And that's a relief, you
21 know, because that helps me out. I can concentrate more and
22 I'm not -- you know, like I said, today I went into work for a
23 little bit, took care of some things and I was glad for that
24 because I was able to do that.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NO. 238: And like again, I'm not
2 trying to get out of it. That's not the case.

3 THE COURT: No, I understand. I mean, obviously,
4 you know, me as well as the lawyers, the defendant, everyone
5 wants a jury of people who, of course, are fair and impartial
6 and keeping an open mind, but also who are paying attention to
7 the evidence. And I'm not suggesting you wouldn't, but you
8 know what I'm saying, paying attention, giving it their full
9 focus when they're here --

10 PROSPECTIVE JUROR NO. 238: Correct.

11 THE COURT: -- until they, you know, begin
12 deliberating and -- at that time, obviously, with their fellow
13 jurors. And is that something you would be able to do, kind
14 of set aside your problems -- I mean, your problem with work
15 and what not --

16 PROSPECTIVE JUROR NO. 238: Yeah.

17 THE COURT: -- and focus on the evidence and, you
18 know, listen to the testimony, obviously as it comes in?

19 PROSPECTIVE JUROR NO. 238: Absolutely.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR NO. 238: I'm going to pay
22 attention as much as I can and anybody else. I know everybody
23 has an expression, you know, that you kind of block things out
24 a little bit, but I'm going to give it my fullest.

25 THE COURT: And then just to also remind you if you

1 didn't hear me yesterday or maybe I didn't make it clear, the
2 week of the Memorial -- it's actually -- I'll just use
3 English. Next week we may be in session Monday, but then you
4 should have the whole rest of that week as well as the Tuesday
5 after Memorial Day, if that would help you get a lot of your
6 work done during that time before -- if -- and this -- we may
7 not come back. But if you did need to come back for the
8 penalty phase, you would have that window of time when court
9 is not in session.

10 PROSPECTIVE JUROR NO. 238: Yeah. That takes a lot
11 of stress off my shoulders.

12 THE COURT: Okay. All right.

13 PROSPECTIVE JUROR NO. 238: Because I am worried
14 about my 65 other employees at my company.

15 THE COURT: Sure.

16 PROSPECTIVE JUROR NO. 238: And I know they're --
17 they depend on their checks and I want to make sure I get that
18 correct too.

19 THE COURT: Right.

20 PROSPECTIVE JUROR NO. 238: But I also want to be
21 able to serve.

22 THE COURT: Okay. All right. And I'm going to let
23 Mr. Ericsson resume his questioning.

24 And then obviously, just for everybody, if there is
25 somebody who has an issue with child care that they have to

1 leave at a particular time on a particular day for child care,
2 just let my marshal know. And typically as long as we know
3 ahead of time, we can accommodate that sort of situation. And
4 that's one reason, just so anyone who has this concern knows,
5 we try to stop at 5:00 every day. Sometimes we don't. I know
6 we went later yesterday. Because we understand that sometimes
7 kids need to be picked up at a particular time from daycare
8 and so we try to accommodate that because we don't want, you
9 know, Child Haven called and, you know -- as long as you
10 remind us, we can accommodate that.

11 So go on.

12 MR. ERICSSON: Thank you, Your Honor. I pass for
13 cause.

14 THE COURT: All right. Thank you.

15 State's eight.

16 MR. DiGIACOMO: Judge, the State would thank and
17 excuse Juror No. 66, Mr. Melonson.

18 THE COURT: Sir, thank you very much for being here
19 and your willingness to serve as a juror in this matter. You
20 are excused. Officer Wooten will direct you from the
21 courtroom.

22 And Ms. --

23 MR. BUNIN: Can we approach?

24 THE COURT: Of course.

25 (Off-record bench conference)

1 THE COURT: Ms. Husted, if you would please call up
2 the name of the next prospective juror.

3 THE CLERK: Yes, Your Honor. Badge 247, William
4 Brodfuehrer.

5 THE COURT: And, sir, if you could just have that
6 empty chair there, please. And the State is going to ask you
7 some questions.

8 Mr. DiGiacomo.

9 MR. BUNIN: And I'm sorry. I fell behind here.
10 Which juror number is this?

11 THE COURT: It's Badge No. 247, Mr. Brodfuehrer.

12 MR. ERICSSON: Thank you.

13 THE COURT: Is that how you say your name?

14 PROSPECTIVE JUROR NO. 247: Perfect.

15 MR. DiGIACOMO: Just like one of the other jurors, I
16 don't have a lot of questions for you. Really, I guess my
17 only question is now that you've kind of sat here and thought
18 about some of the questions that relates to the death penalty,
19 whether or not anything's really changed. You've heard now
20 that in order to be a juror you have to be able to consider
21 all four forms of punishment should we reach that stage. Are
22 you willing to do that?

23 PROSPECTIVE JUROR NO. 247: Yes.

24 MR. DiGIACOMO: Okay. And you've taken into
25 consideration all the evidence that's presented. You may

1 reject some of it, but, I mean, obviously you'll listen to it,
2 you'll consider it, and you'll make a decision based upon the
3 evidence and the law the Judge gives you?

4 PROSPECTIVE JUROR NO. 247: Yes.

5 MR. DiGIACOMO: Anything that anybody has said in
6 this case or in the last two days that you feel important that
7 the lawyers should know before we decide on our jury?

8 PROSPECTIVE JUROR NO. 247: No.

9 MR. DiGIACOMO: Thank you very much, sir.
10 Judge, we pass for cause.

11 THE COURT: All right. Thank you.

12 I was trying to see if it would be Mr. Bunin or
13 Mr. Ericsson.

14 MR. BUNIN: Sorry, Judge. It's me.

15 All right. I'm going to butcher your name,
16 Brodfuehrer.

17 PROSPECTIVE JUROR NO. 247: That's good. Yes,
18 Brodfuehrer.

19 MR. BUNIN: You've been sitting here for a couple of
20 days, right, listening to everything we've been saying?

21 PROSPECTIVE JUROR NO. 247: Yes, sir.

22 MR. BUNIN: Is there anything specifically that
23 we've talked about that you strongly agree with, disagree with
24 or think you'd like to comment on?

25 PROSPECTIVE JUROR NO. 247: No. I'm trying to keep

1 an open mind on everything.

2 MR. BUNIN: Let me look at how you answered some of
3 these questions relating to the penalty phase. And while I'm
4 looking, just generally tell me how you feel about the death
5 penalty.

6 PROSPECTIVE JUROR NO. 247: I think if it's
7 warranted, yes.

8 MR. BUNIN: Do you think it's used enough?

9 PROSPECTIVE JUROR NO. 247: No.

10 MR. BUNIN: You think it should be used a little
11 more than it has been?

12 PROSPECTIVE JUROR NO. 247: Yes.

13 MR. BUNIN: Why do you feel that way?

14 PROSPECTIVE JUROR NO. 247: I think there's a lot of
15 convicted criminals that have been convicted of murder that --
16 some that I can think of, in my mind, Charles Manson, he's a
17 ward of the State of California for the rest of his life. He
18 did not get the death penalty, but there's overwhelming
19 evidence of what he did.

20 MR. BUNIN: Would that apply to anybody convicted of
21 first-degree murder, the way you feel?

22 PROSPECTIVE JUROR NO. 247: I would have to take
23 into consideration all the factors. I wouldn't, you know --
24 in his case, yes, but not in all situations. It depends on
25 the situation.

1 MR. BUNIN: Can you give me an -- can you gave me an
2 example where you think it should have been used? Can you
3 tell me the difference? Give me maybe an example of something
4 you're thinking about where you'll consider a factor of where
5 it should not be used in the death penalty.

6 MR. DiGIACOMO: Judge, objection.

7 THE COURT: Yeah, it's sustained.

8 MR. BUNIN: He specifically gave an example --

9 THE COURT: I'll see counsel up here, please,
10 Mr. Bunin.

11 (Off-record bench conference)

12 MR. BUNIN: Well, would you say, based upon your
13 belief, that most people convicted of first-degree murder
14 should be getting the death penalty?

15 PROSPECTIVE JUROR NO. 247: No. Again, it depends
16 on the situation. I have to hear the full case and all the
17 facts and evidence.

18 MR. BUNIN: Well, and again, we're only talking
19 about people that you, beyond a reasonable doubt, believe
20 committed first-degree murder. So, in other words, there
21 won't be a self-defense argument. There won't be
22 it-was-an-accident argument. You would believe beyond a
23 reasonable doubt that this was an intentional, deliberate
24 killing. Once you believe that, that the person intentionally
25 and deliberately killed somebody, do you believe anybody that

1 did that should get anything other than the death penalty?

2 PROSPECTIVE JUROR NO. 247: Yes, I think necessarily
3 they don't have to get the death penalty.

4 THE COURT: Let me ask you this: Do you think it
5 depends more or kind of equally -- or just your feelings -- on
6 the circumstances of the crime itself, meaning what kind of a
7 murder it was, you know, who the victim was, that sort of
8 thing, or also or as much on factors that we talked about,
9 mitigating factors in the defendant's life, meaning, you know,
10 their mental state, IQ, history -- you know, childhood
11 history, that sort of thing?

12 PROSPECTIVE JUROR NO. 247: Yes, I think, you know,
13 you'd take all that into consideration to make the proper
14 decision.

15 THE COURT: Okay.

16 Mr. Bunin.

17 MR. BUNIN: Do you remember some of the factors --
18 and we talked about them a lot -- that we listed in the
19 questionnaire that are potential mitigating factors?

20 PROSPECTIVE JUROR NO. 247: Yes.

21 MR. BUNIN: Would you take those into consideration?

22 PROSPECTIVE JUROR NO. 247: Yes.

23 MR. BUNIN: Are there any that you absolutely
24 believe you shouldn't take into consideration that we talked
25 about?

1 MR. DiGIACOMO: Objection.
2 PROSPECTIVE JUROR NO. 247: No.
3 MR. BUNIN: Lots of people have answered --
4 THE COURT: I'll let him answer.
5 MR. BUNIN: If I could ask one more time the race
6 question. Do you think that that's something the defense
7 should be concerned about?
8 PROSPECTIVE JUROR NO. 247: Absolutely not.
9 MR. BUNIN: Why is that?
10 PROSPECTIVE JUROR NO. 247: I'm very open about
11 everything and I don't even think about those types of things.
12 MR. BUNIN: You don't think because Deangelo's black
13 it makes him more likely to be guilty?
14 PROSPECTIVE JUROR NO. 247: Absolutely not.
15 MR. BUNIN: You also would agree that because he's
16 black it doesn't make it more likely that he should receive a
17 worse sentence than somebody if they were accused of the same
18 type of --
19 PROSPECTIVE JUROR NO. 247: Yes.
20 MR. BUNIN: Did I frame that poorly, that question?
21 PROSPECTIVE JUROR NO. 247: It's kind of confusing.
22 MR. BUNIN: Let me rephrase it. Just because
23 Deangelo is black, if you found him guilty, you wouldn't lean
24 more towards a more severe sentence, would you?
25 PROSPECTIVE JUROR NO. 247: No.

1 MR. BUNIN: That one is better.

2 You know, but do you think it's a legitimate
3 concern, just from everything you've heard from potential
4 facts from the defense, that this is something that we're
5 concerned about and that's why we're asking you these
6 questions?

7 PROSPECTIVE JUROR NO. 247: Yes, I can understand
8 that.

9 MR. BUNIN: All right. You answered one question --
10 again, it's about the death penalty. I just want to make sure
11 I understand your feelings on it. But you said -- we asked if
12 the death penalty is sought -- and one of your options was too
13 seldom and that's the one you checked. Do you remember?

14 PROSPECTIVE JUROR NO. 247: What was that?

15 MR. BUNIN: You checked "too seldom" is your belief.
16 You think it should be sought more often.

17 PROSPECTIVE JUROR NO. 247: We went over that.

18 MR. BUNIN: And the reason you put -- or one of the
19 reasons anyway is that a lot of murderers are let go or get
20 life in prison without the death penalty; meanwhile, the
21 taxpayer has to support that prisoner for the rest of their
22 life.

23 PROSPECTIVE JUROR NO. 247: And again, I was -- what
24 we went over, I was thinking of Charles Manson and then he
25 becomes celebrity.

1 MR. BUNIN: Okay. And you've heard me mention a
2 couple of different people and I want to make sure that you
3 understand that this is the reality of it, that no matter what
4 sentence a person receives, if they're convicted of
5 first-degree murder in a case like this, the minimum time
6 before they'd be eligible for parole would be 40 years. Do
7 you understand that?

8 PROSPECTIVE JUROR NO. 247: Yes.

9 MR. BUNIN: So, you know, I know you put that they
10 get let go at times. In this situation, in this case, the
11 best a person can hope for from the jury is 40 years minimum,
12 whether you give him a term of years or life with the
13 possibility of parole. Do you understand that?

14 PROSPECTIVE JUROR NO. 247: Yes.

15 MR. BUNIN: So he really wouldn't even be eligible
16 for parole -- I mean, the first time he goes up in front of
17 the parole board to say, Please let me out, would be 40 years.

18 PROSPECTIVE JUROR NO. 247: Yes. I think the media
19 confuses me sometimes on that.

20 MR. BUNIN: Well, I think maybe the rule is bent a
21 lot in the past or maybe in different states and that's what
22 you hear, but here that is the rule and it absolutely is
23 followed.

24 PROSPECTIVE JUROR NO. 247: Yes, sir.

25 MR. BUNIN: Do you consider all of the four options

1 to be serious options?

2 PROSPECTIVE JUROR NO. 247: Yes.

3 MR. BUNIN: I mean, if you listen to the entire case
4 and you felt that first-degree murder occurred and you made a
5 decision to sentence him to a term of years, 40 minimum up to
6 a hundred maximum, would you leave thinking you let somebody
7 off the hook?

8 PROSPECTIVE JUROR NO. 247: No.

9 MR. BUNIN: Is that a legitimate possibility for
10 you, 40 to 100, or is that probably not one that you would
11 consider?

12 PROSPECTIVE JUROR NO. 247: I would consider that.

13 MR. BUNIN: You think that's a legitimate option to
14 be considered in any first-degree murder case?

15 PROSPECTIVE JUROR NO. 247: Yes.

16 MR. BUNIN: I'm going to pass for cause, Your Honor.

17 THE COURT: Okay. Thank you.

18 We're on defense's eight.

19 MR. ERICSSON: Your Honor, the defense would thank
20 and excuse Juror 238, Lita King.

21 THE COURT: Ma'am, thank you very much for being
22 here and your willingness to serve. You are excused at this
23 time.

24 And, Ms. Husted, if you would please call up the
25 next prospective juror.

1 THE CLERK: Yes, Your Honor. Badge 256, Judy
2 Madden.

3 THE COURT: Ms. Madden, if you'll just have that
4 empty chair there, please, in the front row.

5 And, State, you may question Ms. Madden.

6 MR. PESCI: Thank you, Judge.

7 How are you?

8 PROSPECTIVE JUROR NO. 256: Good, and you?

9 MR. PESCI: Good. I want to focus in --
10 unfortunately, you and your husband were the victims of more
11 than one crime and that was here in Las Vegas?

12 PROSPECTIVE JUROR NO. 256: Yes.

13 MR. PESCI: Okay. And you said that your car you
14 were able to recover --

15 PROSPECTIVE JUROR NO. 256: Yes.

16 MR. PESCI: But then the very next day --

17 PROSPECTIVE JUROR NO. 256: My husband's car got
18 broken into.

19 MR. PESCI: How long ago was that?

20 PROSPECTIVE JUROR NO. 256: That was probably around
21 2004, 2005. It was at work.

22 MR. PESCI: You said Metro responded?

23 PROSPECTIVE JUROR NO. 256: Yes.

24 MR. PESCI: And that you were able to recover your
25 car. Was that your car or your husband's?

1 PROSPECTIVE JUROR NO. 256: My car.

2 MR. PESCI: But they didn't process any of the
3 evidence inside your car?

4 PROSPECTIVE JUROR NO. 256: No.

5 MR. PESCI: Well, I guess what you mean by that is
6 things that were left there to see if there were fingerprints?

7 PROSPECTIVE JUROR NO. 256: Yes.

8 MR. PESCI: Okay. It seems maybe based on that
9 that -- some of your comments about the criminal justice
10 system, you felt that it isn't perfect.

11 PROSPECTIVE JUROR NO. 256: Right.

12 MR. PESCI: Okay. And accepting the fact that it
13 isn't perfect, do you feel that it's just fallen down too
14 much?

15 PROSPECTIVE JUROR NO. 256: No.

16 MR. PESCI: Okay. Do you feel as if -- that you
17 would kind of hold Metro to a different standard if they were
18 to come in and testify?

19 PROSPECTIVE JUROR NO. 256: No.

20 MR. PESCI: Do you think that you could give the
21 detectives a fair shot, so to speak?

22 PROSPECTIVE JUROR NO. 256: Yes.

23 MR. PESCI: You could assess their testimony just
24 like any other witness?

25 PROSPECTIVE JUROR NO. 256: Yes.

1 MR. PESCI: All right. Do you think you would in
2 any way, shape or form, hold what happened to you against this
3 defendant?

4 PROSPECTIVE JUROR NO. 256: No.

5 MR. PESCI: You would accept the fact that these are
6 separate incidents that had nothing to do with each other?

7 PROSPECTIVE JUROR NO. 256: Right.

8 MR. PESCI: Do you think you could be fair to both
9 sides?

10 PROSPECTIVE JUROR NO. 256: Yes.

11 MR. PESCI: When it comes to the death penalty, you
12 talked about how if it was -- it depends on the crime, whether
13 or not you think it was appropriate.

14 PROSPECTIVE JUROR NO. 256: Right.

15 MR. PESCI: I believe that you characterized
16 whether -- that it was something horrific.

17 PROSPECTIVE JUROR NO. 256: Yes.

18 MR. PESCI: Okay. Could you consider all four
19 possible punishments?

20 PROSPECTIVE JUROR NO. 256: Yes.

21 MR. PESCI: Including the death penalty?

22 PROSPECTIVE JUROR NO. 256: Yes.

23 MR. PESCI: And you wouldn't vote automatically for
24 or against it?

25 PROSPECTIVE JUROR NO. 256: Correct.

1 MR. PESCI: Do you have any reasons that you could
2 not sit in judgment of another human being?

3 PROSPECTIVE JUROR NO. 256: No.

4 MR. PESCI: Is there anything that we haven't asked
5 you that you wanted to when you heard someone else ask a
6 question?

7 PROSPECTIVE JUROR NO. 256: No.

8 MR. PESCI: All right. Pass for cause.

9 THE COURT: All right. Thank you.
10 Defense, Mr. Ericsson.

11 MR. ERICSSON: Thank you, Your Honor.

12 Good afternoon, ma'am.

13 PROSPECTIVE JUROR NO. 256: Good afternoon.

14 MR. ERICSSON: I just want to follow up with a
15 question that -- it just may have been the way it was worded,
16 a response that you gave, but make sure I understand it. You
17 were asked, would you automatically vote either for or against
18 the death penalty, and in your response you checked the box
19 yes. But then in your explanation you said it depends on the
20 crime or the situation.

21 PROSPECTIVE JUROR NO. 256: Correct.

22 MR. ERICSSON: So just so we're clear, if you were
23 on a jury that found somebody guilty of first degree
24 intentional murder, no excuses, no justification, it was
25 first-degree intentional murder, would you be able to consider

1 all four options?

2 PROSPECTIVE JUROR NO. 256: Yes.

3 MR. ERICSSON: And that would include the death
4 penalty?

5 PROSPECTIVE JUROR NO. 256: Yes.

6 MR. ERICSSON: To the other end, that would include
7 considering a 40-year sentence with the possibility of parole
8 after 40 years?

9 PROSPECTIVE JUROR NO. 256: Yes.

10 MR. ERICSSON: What -- do you feel that you have the
11 right frame of mind to be able to sit on a jury of this
12 serious nature?

13 PROSPECTIVE JUROR NO. 256: Yes.

14 MR. ERICSSON: Do you feel that you would be able to
15 listen to all of the evidence and be equally fair to both the
16 prosecution and the defense?

17 PROSPECTIVE JUROR NO. 256: Yes.

18 MR. ERICSSON: If you felt that the prosecution had
19 not presented sufficient evidence to prove the charges beyond
20 a reasonable doubt, would you have any hesitation of coming in
21 and entering a not guilty verdict?

22 PROSPECTIVE JUROR NO. 256: No.

23 MR. ERICSSON: Tell me what your thoughts are on
24 this issue of mitigation, that in a first-degree murder case
25 when -- if it gets to that point and you're considering the

1 sentence, that you would be likely presented with evidence of
2 mitigation giving background information on the defendant.

3 But what is your opinion --

4 PROSPECTIVE JUROR NO. 256: I would consider all of
5 the background, mental issues, all of that option into
6 consideration.

7 MR. ERICSSON: And do you think that that is
8 appropriate in --

9 PROSPECTIVE JUROR NO. 256: Yes.

10 MR. ERICSSON: Thank you very much.

11 THE COURT: Pass for cause.

12 MR. ERICSSON: Pass for cause.

13 THE COURT: All right. Thank you.

14 Ms. Husted, if you would please call up the name of
15 the next prospective juror.

16 THE CLERK: 259, Hugo Mendoza.

17 THE COURT: Mr. Mendoza, I need you to come down and
18 have that empty chair there next to chair No. 12.

19 And, State, you may question Mr. Mendoza.

20 MR. DiGIACOMO: Good afternoon, sir. You mention in
21 here about your truck, but yesterday when the Court asked, I
22 didn't hear anything about the truck. Were you able to solve
23 the problem with the truck?

24 PROSPECTIVE JUROR NO. 259: No.

25 MR. DiGIACOMO: No.

1 PROSPECTIVE JUROR NO. 259: I had to be here.
2 THE COURT: How did you get here today?
3 PROSPECTIVE JUROR NO. 259: They dropped me off.
4 THE COURT: Okay.
5 MR. DiGIACOMO: I guess my question is -- you didn't
6 answer the question of financial burden when she asked, but
7 I'm going to ask a couple of questions about those. Are you
8 going to be able to sit here? Are you going to be able to pay
9 your rent, those type of things, if we make you stay here?
10 PROSPECTIVE JUROR NO. 259: (No audible answer).
11 MR. DiGIACOMO: No?
12 PROSPECTIVE JUROR NO. 259: I had to work two hours.
13 MR. DiGIACOMO: Okay. I need you to speak up and
14 talk right into --
15 PROSPECTIVE JUROR NO. 259: This morning I had to
16 work two hours.
17 MR. DiGIACOMO: So you worked a couple hours and
18 then you came here. Okay. If that goes on for a couple of
19 weeks, are you going to be able to pay the rent?
20 PROSPECTIVE JUROR NO. 259: No.
21 THE COURT: What do you do?
22 PROSPECTIVE JUROR NO. 259: Pad-a-rack [phonetic]
23 THE COURT: You're a what?
24 PROSPECTIVE JUROR NO. 259: We extend out pad-a-rack
25 for our warehouses.

1 THE COURT: Oh, okay.

2 MR. DiGIACOMO: Let me ask a couple of questions
3 about the death penalty too. In answering the questions on
4 the death penalty, there's actually quite a lot that you
5 didn't answer, but there's a couple that you did, in one of
6 which you indicated that if you reach the penalty phase, if
7 you get to that point, you would automatically vote for the
8 death penalty.

9 Now that you've been sitting here now for the better
10 part of two days, have your feelings changed or is it -- if
11 you convict Mr. Carroll of first-degree murder, you're going
12 to impose the death penalty or that's all you're going to
13 worry about?

14 PROSPECTIVE JUROR NO. 259: Yeah.

15 MR. DiGIACOMO: Okay. Thank you very much, sir.

16 Judge, we'd submit.

17 THE COURT: Defense.

18 MR. BUNIN: We need to approach; otherwise, we'd
19 submit on it.

20 THE COURT: All right. Mr. Mendoza, we're going to
21 go ahead and excuse you at this time. Thank you for being
22 here the past couple of days. And -- just go through the
23 double doors, sir.

24 Ms. Husted, call up the next prospective juror.

25 THE CLERK: Juror 263, Bill Grathan.

1 THE COURT: Sir, come on down and just have that
2 empty chair in the jury box next to the last juror.

3 Mr. DiGiacomo, you may proceed.

4 MR. DiGIACOMO: Thank you, Judge.

5 Good afternoon, sir.

6 PROSPECTIVE JUROR NO. 263: Good afternoon.

7 MR. DiGIACOMO: You previously served on a jury.
8 Was it here or some other state?

9 PROSPECTIVE JUROR NO. 263: It was in San Diego.

10 MR. DiGIACOMO: All right. How long ago?

11 PROSPECTIVE JUROR NO. 263: 12 years, maybe, 15.

12 MR. DiGIACOMO: Do you remember if it was civil or
13 criminal?

14 PROSPECTIVE JUROR NO. 263: It was criminal.

15 MR. DiGIACOMO: Do you remember the charge?

16 PROSPECTIVE JUROR NO. 263: Burglary.

17 MR. DiGIACOMO: Without telling us what the verdict
18 is, did you actually wind up deliberating and reaching a
19 verdict?

20 PROSPECTIVE JUROR NO. 263: Well, we tried to be a
21 hung jury until 5:00 o'clock Friday rolled around and then
22 they sent us back into the jury room about four times and we
23 finally straightened it out.

24 MR. DiGIACOMO: You finally straightened it out and
25 you were able to reach a verdict?

1 PROSPECTIVE JUROR NO. 263: Yes.

2 MR. DiGIACOMO: Were you the foreperson?

3 PROSPECTIVE JUROR NO. 263: No.

4 MR. DiGIACOMO: What do you think about that
5 experience? Do you think even though it's 5:00 o'clock
6 Friday, do you think --

7 PROSPECTIVE JUROR NO. 263: It looked like it was
8 going to be a hung jury and I would have been really
9 disappointed if that would have happened, you know, because
10 that would have been the whole week. It took a week. You
11 know, it would have been for nothing, but since we resolved
12 it, it was kind of rewarding.

13 MR. DiGIACOMO: You think even though that happened
14 at 5:00 o'clock on Friday, you think the right result
15 happened?

16 PROSPECTIVE JUROR NO. 263: Yes.

17 MR. DiGIACOMO: The only other questions I have is
18 as it relates to the death penalty. Obviously you indicated
19 it's necessary sometimes.

20 PROSPECTIVE JUROR NO. 263: Yes.

21 MR. DiGIACOMO: Okay. As you're sitting here now
22 learning what the law is, do you think you'd consider all four
23 forms of punishment if it reaches that far?

24 PROSPECTIVE JUROR NO. 263: Yes.

25 MR. DiGIACOMO: Okay. You did indicate that

1 sometimes you thought -- that it's a little arbitrary as
2 opposed -- as compared to similar cases.

3 PROSPECTIVE JUROR NO. 263: You know, I don't even
4 know if that's the right word. I think I heard on a news
5 program or something back in JD's --

6 MR. DiGIACOMO: That maybe there --

7 PROSPECTIVE JUROR NO. 263: You know, it just seems
8 like sometimes why did this guy get it and this guy didn't,
9 but --

10 MR. DiGIACOMO: Sure. There's nothing about that
11 fact, though, that would influence your decision in this case?
12 You'd follow what the evidence was, the law the Court gave you
13 and you'd make a determination?

14 PROSPECTIVE JUROR NO. 263: Yes.

15 MR. DiGIACOMO: Anything that we haven't asked you
16 that you think would be important to tell us?

17 PROSPECTIVE JUROR NO. 263: No.

18 MR. DiGIACOMO: Would you be a good juror?

19 PROSPECTIVE JUROR NO. 263: (No audible answer).

20 MR. DiGIACOMO: Thank you.

21 THE COURT: All right. Pass, Mr. DiGiacomo?

22 MR. DiGIACOMO: Yes, Judge.

23 THE COURT: Mr. Bunin.

24 MR. BUNIN: Thank you.

25 You know, it's funny. Remember, yesterday I asked

1 one of the potential jurors the question I called the Friday
2 question? Remember, I said, you know --

3 PROSPECTIVE JUROR NO. 263: Yeah.

4 MR. BUNIN: It's something that happens sometimes.

5 PROSPECTIVE JUROR NO. 263: It certainly did in my
6 case.

7 MR. BUNIN: Yeah, I've seen it a lot. And, you
8 know, this is kind of what I want to talk about. And
9 obviously you were happy there was a verdict. And don't tell
10 what the verdict was, you know, whatever it was.

11 PROSPECTIVE JUROR NO. 263: Right.

12 MR. BUNIN: But what I try to find out from jurors
13 is I kind of want to know, you know, the script from the
14 characters sometimes, and many people have answered the
15 question -- we put it on the questionnaire differently, but
16 it's, are you the type of person that will stick with what you
17 believe if you believe that's right, or are you the type that
18 will kind of go with the flow? And that seems to be a problem
19 sometimes around 5:00 o'clock on a Friday.

20 PROSPECTIVE JUROR NO. 263: It wasn't me that went
21 with the flow.

22 MR. BUNIN: So put yourself in a different position.
23 And obviously it wasn't because you said you were happy with
24 the verdict.

25 PROSPECTIVE JUROR NO. 263: Yes.

1 MR. BUNIN: So obviously you knew you were in the
2 majority at that moment. But can you put yourself in the
3 position of the other person and think about if you were in
4 that position where you were the one that maybe was holding
5 out and it's late on a Friday and nobody wants to come back --

6 PROSPECTIVE JUROR NO. 263: Against 11 others?

7 MR. BUNIN: Yeah. Would you change your mind?

8 PROSPECTIVE JUROR NO. 263: I think I'd probably ask
9 to talk to the judge under those conditions.

10 MR. BUNIN: Well, you know, would you change your
11 mind just because 11 people disagreed with you?

12 PROSPECTIVE JUROR NO. 263: No.

13 MR. BUNIN: Do you think you're the type of person
14 that if you believed against the 11 others and they didn't
15 convince you, would you stay with that or would you be the
16 type that might change it over just to get it done?

17 PROSPECTIVE JUROR NO. 263: No, I wouldn't change it
18 over to get it done. That -- not this type of a case.

19 MR. BUNIN: And you, you know -- you used -- I'm
20 not -- again, we used phraseology like, you know, we don't
21 want to waste the whole week with a hung jury. Do you
22 believe --

23 PROSPECTIVE JUROR NO. 263: That was just my
24 opinion. If we would have had a hung jury, the entire thing
25 would have been a waste. They would have had to retry it or

1 whatever they do with hung juries.

2 MR. BUNIN: If you were the one person that was
3 holding out and you were not convinced that you should change
4 your mind, do you believe it would be a waste of time unless
5 you change your mind? I mean, do you think you would be
6 wasting the Court's time if you didn't go with the majority?

7 PROSPECTIVE JUROR NO. 263: I don't know. I'd have
8 to think about that.

9 MR. BUNIN: Well, I guess the bottom line is, are
10 you the type of person that will vote purely on your belief
11 based on the evidence or do you think that you could be swayed
12 over by things that have nothing to do with the evidence such
13 as a lot of other people might disagree with you?

14 PROSPECTIVE JUROR NO. 263: No, I don't believe I
15 can be swayed.

16 MR. BUNIN: Okay. It sounds like you liked your
17 prior jury experience.

18 PROSPECTIVE JUROR NO. 263: I did. I found it
19 rewarding.

20 MR. BUNIN: How long ago was that?

21 PROSPECTIVE JUROR NO. 263: 12 to 15 years.

22 MR. BUNIN: 12 to 15. Now, tell me -- I know you
23 obviously support the death penalty. Tell me some of the
24 reasons why you think the death penalty's okay.

25 PROSPECTIVE JUROR NO. 263: Well, I don't

1 necessarily support it. I don't -- you know, I'm not for it
2 or -- and I'm not against it. Sometimes it's necessary in
3 extreme crimes.

4 MR. BUNIN: Sure. Now, of course, it's only
5 allowed, you understand, for an extreme crime, and that's
6 first-degree murder. So once we get beyond that, when you say
7 extreme crimes, I assume you mean once a person's already been
8 convicted of first-degree murder, then you look at that
9 particular individual and determine if it's so extreme that
10 the death penalty should be used or if there should be some
11 other sentence; is that what you mean by that?

12 PROSPECTIVE JUROR NO. 263: Yes.

13 MR. BUNIN: Okay. And can you look at all four
14 sentences fairly in a case like this?

15 PROSPECTIVE JUROR NO. 263: Yes.

16 MR. BUNIN: Are all four legitimate option? Is a
17 term of years a legitimate option for you?

18 PROSPECTIVE JUROR NO. 263: Is what a legitimate
19 option?

20 MR. BUNIN: A term of years. In other words, one of
21 the four options is not life in prison. It's 40 years minimum
22 and 100 maximum. Is that a legitimate option for you?

23 PROSPECTIVE JUROR NO. 263: Yes.

24 MR. BUNIN: And then the other options are 40 to
25 life or life without. Are those legitimate things you would

1 consider?

2 PROSPECTIVE JUROR NO. 263: Yes.

3 MR. BUNIN: And then death is another one. Is that
4 something you would legitimately consider?

5 PROSPECTIVE JUROR NO. 263: Yes.

6 MR. BUNIN: I know you just explained a little bit,
7 but you said you were concerned about the death penalty being
8 arbitrary in terms of who they choose to charge with the death
9 penalty and who they don't choose.

10 PROSPECTIVE JUROR NO. 263: Well, that's just my
11 opinion of it over a long period of years, you know, going all
12 the way back to, say, the early '80s, what I've seen on the
13 news and stuff. Sometimes it just seems kind of weird why one
14 person got it and another didn't.

15 MR. BUNIN: Okay.

16 PROSPECTIVE JUROR NO. 263: It wouldn't have any
17 bearing, you know, on how I made any decisions in this case.

18 MR. BUNIN: You would look at this case just on the
19 facts of this case?

20 PROSPECTIVE JUROR NO. 263: Yes.

21 MR. BUNIN: In the guilt phase, can I trust you to
22 hold the prosecution to their burden?

23 PROSPECTIVE JUROR NO. 263: Sure.

24 MR. BUNIN: So you understand under the rules the
25 prosecution has to show each and every element of the crime

1 charged beyond a reasonable doubt. If they don't show that,
2 the law may be that you vote not guilty. Can I trust you
3 would do that without hesitation if you don't believe the
4 prosecution met their burden?

5 PROSPECTIVE JUROR NO. 263: Yes.

6 MR. BUNIN: Certainly if they meet their burden, you
7 would vote guilty; is that --

8 PROSPECTIVE JUROR NO. 263: Yes.

9 MR. BUNIN: Okay. And then again in the penalty
10 phase, you would listen to the evidence and follow the
11 instructions that the Judge gives you about how you judge
12 aggravating and mitigating factors; is that a fair statement?

13 PROSPECTIVE JUROR NO. 263: Yes.

14 MR. BUNIN: And mitigating factors that we've
15 listed, are those things you would be willing to take into
16 consideration when determining the final sentence?

17 PROSPECTIVE JUROR NO. 263: I didn't see any I
18 objected to; so, yes.

19 MR. BUNIN: Okay. You didn't see any where you'd
20 say, no, that one would never be a factor for me?

21 PROSPECTIVE JUROR NO. 263: Right.

22 MR. BUNIN: Right?

23 PROSPECTIVE JUROR NO. 263: Right. They were all
24 okay with me. Yes, I would take them into consideration.

25 MR. BUNIN: I was just speaking at the same time as

1 you. It was my fault. I couldn't hear what you said.

2 Is there anything otherwise that I or any counsel
3 said to any people over the last two days that you would like
4 to comment on that maybe you strongly agree or disagree with
5 or just have a question about?

6 PROSPECTIVE JUROR NO. 263: Not really. I think you
7 guys covered everything pretty well.

8 MR. BUNIN: And I know. And then I stand here
9 thinking, oh, I'm about to say the same thing again, everybody
10 wants to throw things at us, but, you know, the -- you
11 understand the gravity of the situation?

12 PROSPECTIVE JUROR NO. 263: Yes.

13 MR. BUNIN: This is an extremely serious charge and
14 we're trying to pick a jury for literally life and death.
15 Death is at stake. So that's why we do that. But I do
16 appreciate it. I know we're beating ourselves a bit.

17 Thank you. I'll pass for cause, Your Honor.

18 THE COURT: All right. Thank you, Mr. Bunin.

19 Ms. Husted, call up the next prospective juror.

20 THE CLERK: Badge 266, Laura Cox.

21 THE COURT: Ms. Cox, if you'd just have that empty
22 chair there next to the last juror.

23 And, State, you may question Ms. Cox.

24 MR. PESCI: Thank you.

25 How are you, ma'am?

1 PROSPECTIVE JUROR NO. 266: Pretty good.

2 MR. PESCI: Okay. I want to just kind of cut to the
3 chase. You indicated in your questionnaire that you would
4 automatically vote against the death penalty.

5 PROSPECTIVE JUROR NO. 266: Yes.

6 MR. PESCI: Is there any change in you opinion on
7 that?

8 PROSPECTIVE JUROR NO. 266: No.

9 MR. PESCI: Submit it, Judge.

10 MR. BUNIN: I'm going to ask a couple of questions,
11 Your Honor, if you don't mind -- oh, I'm sorry.

12 THE COURT: I'm sorry. My bailiff needed to confer
13 with me. Did you need to approach? Please.

14 (Off-record bench conference)

15 THE COURT: All right. Mr. Bunin, or was -- okay.

16 MR. BUNIN: You answered the questions on the
17 questionnaire in a way that I think might be a little
18 inconsistent, and again, we've all complained about these
19 questionnaires, so I'm not getting you. I'm getting the
20 authors of it which might be some of us in this room --

21 PROSPECTIVE JUROR NO. 266: Okay.

22 MR. BUNIN: -- so we take responsibility for it.
23 But you -- one of the answers that you gave -- here is the
24 question: If you were selected as a juror, could you consider
25 fairly all four possible forms of punishment in a case in

1 which you have convicted the defendant of first-degree murder,
2 and you're answer was yes. That's what you marked.

3 PROSPECTIVE JUROR NO. 266: Correct.

4 MR. BUNIN: Now, there were four possible forms of
5 punishment, which I know I'm repeating myself from earlier,
6 and they are a term of years, life with the possibility of
7 parole, life without the possibility of parole and death.
8 Those are the four options you would have. So that -- and
9 those are listed, you know, at the beginning of that question,
10 and then the question ends with, if you were selected, can you
11 consider fairly all four possible options. Is that a correct
12 answer that you gave me when you put yes?

13 PROSPECTIVE JUROR NO. 266: No.

14 MR. BUNIN: And tell me why not.

15 PROSPECTIVE JUROR NO. 266: I just -- my conscience
16 could not let me put somebody to death.

17 MR. BUNIN: So under any circumstance, if you
18 reviewed the facts, there is no aggravating factor that the
19 prosecution could give where you thought maybe it was such a
20 heinous crime that the death penalty is appropriate?

21 PROSPECTIVE JUROR NO. 266: No.

22 MR. BUNIN: Not under any circumstances?

23 PROSPECTIVE JUROR NO. 266: No.

24 MR. BUNIN: Submit it, Your Honor.

25 THE COURT: All right. Ms. Cox, go ahead and hand

1 the microphone to the gentleman next to you. You are excused,
2 through the double doors.

3 And, Ms. Husted, please call up the next prospective
4 juror.

5 THE CLERK: Badge 154, Jennifer Lee.

6 THE COURT: Wait a minute. Oh, I get it.

7 Ma'am, just have that empty seat there next to the
8 last juror.

9 State, you may question Ms. Lee.

10 MR. PESCI: Thank you.

11 How are you, ma'am?

12 PROSPECTIVE JUROR NO. 154: Good.

13 MR. PESCI: I want to focus in on your answer about
14 law enforcement. Specifically, you replied that -- you said
15 you had mixed feelings about law enforcement. Tell me about
16 that.

17 PROSPECTIVE JUROR NO. 154: My mixed feeling is that
18 I do come aboard what -- law enforcement for a different
19 state --

20 THE COURT: Ma'am, I need you to hold the microphone
21 closer to your voice because you have a real soft voice.

22 PROSPECTIVE JUROR NO. 154: I do live in another
23 state and I was encountered with law enforcement, so I see my
24 firsthand so I have mixed feeling with it.

25 MR. PESCI: Okay. And in this other state when you

1 encountered law enforcement, I'm assuming it wasn't positive.

2 PROSPECTIVE JUROR NO. 154: No.

3 MR. PESCI: Do you think that that interaction shows
4 how all officers are or just the men and women that you dealt
5 with?

6 PROSPECTIVE JUROR NO. 154: With the men who I dealt
7 with.

8 MR. PESCI: Okay. Have you had these kinds of
9 interactions with law enforcement here in Nevada?

10 PROSPECTIVE JUROR NO. 154: No, besides speeding
11 ticket.

12 MR. PESCI: All right. Well, we're going to be
13 calling some law enforcement -- some officers in this case.
14 Should we be concerned, based on your prior experience with
15 law enforcement?

16 PROSPECTIVE JUROR NO. 154: Not really.

17 MR. PESCI: You paused for a minute there. Why --

18 PROSPECTIVE JUROR NO. 154: Yeah. Well, I have to
19 think because -- and my answer is, I don't know what's real,
20 what's not real, the truth or not truth, so I have to be open
21 minded to hear it.

22 MR. PESCI: Okay. All right. Are you willing to do
23 that, to be open minded?

24 PROSPECTIVE JUROR NO. 154: Yes.

25 MR. PESCI: Do you think you could be fair to both

1 sides?

2 PROSPECTIVE JUROR NO. 154: I have to look and see
3 the case -- wise.

4 MR. PESCI: You've indicated that as far as the
5 death penalty goes that you're for the death penalty.

6 PROSPECTIVE JUROR NO. 154: Yes.

7 MR. PESCI: But I think you also indicated that you
8 would not automatically vote for the death penalty.

9 PROSPECTIVE JUROR NO. 154: Yes.

10 MR. PESCI: Could you consider all four possible
11 punishments?

12 PROSPECTIVE JUROR NO. 154: Yes.

13 MR. PESCI: And will you take into consideration any
14 mitigation that might be given to you?

15 PROSPECTIVE JUROR NO. 154: It depends on the case.

16 MR. PESCI: Okay. Are you open to the idea of
17 considering it, though? Will you listen to it?

18 PROSPECTIVE JUROR NO. 154: Yes.

19 MR. PESCI: And you'll decide whatever you think
20 it's worth?

21 PROSPECTIVE JUROR NO. 154: Yes.

22 MR. PESCI: Pass for cause.

23 THE COURT: All right. Defense.

24 MR. ERICSSON: Thank you, Your Honor.

25 Good afternoon, Ms. Lee.

1 PROSPECTIVE JUROR NO. 154: Good afternoon.

2 MR. ERICSSON: I do want to go over some of your
3 responses on your questionnaire here. One of the questions
4 asked, do you believe the death penalty should always be
5 imposed if the defendant is found guilty of intentional murder
6 no matter what the circumstance is, and you answered yes. Is
7 it your belief that if somebody is found guilty of intentional
8 murder that they should be given the death penalty no matter
9 what other circumstances there are?

10 PROSPECTIVE JUROR NO. 154: If they are found
11 intentionally, yes, it's what I feel.

12 MR. ERICSSON: And so in the case where a jury has
13 come to the conclusion that somebody is guilty beyond a
14 reasonable doubt of intentional first-degree murder, it's your
15 belief and it's what you indicated here that you believe that
16 they should receive the death penalty no matter what the
17 circumstances?

18 PROSPECTIVE JUROR NO. 154: Yes.

19 MR. ERICSSON: Thank you. We would submit it.

20 THE COURT: Okay. State.

21 MR. PESCI: Can I do a follow-up question?

22 THE COURT: Sure.

23 MR. PESCI: Thank you.

24 Ma'am, in your questionnaire you were asked
25 specifically to respond to this statement: The death penalty

1 is appropriate in some murder cases, but not in others. How
2 do you feel about that? You said that you agreed with that
3 statement.

4 PROSPECTIVE JUROR NO. 154: Yes.

5 MR. PESCI: Okay. So in some cases you think it is
6 appropriate to be given, the death penalty?

7 PROSPECTIVE JUROR NO. 154: As on the questionnaire,
8 that's what -- my understand what the questionnaire. That's
9 why I answered that way.

10 MR. PESCI: Okay.

11 THE COURT: Let me ask you this: What do you mean
12 in your own words? Because we try to say what you mean and
13 maybe twist it or -- I mean, all of us lawyers do that. Tell
14 me what you mean, because you said one thing to Mr. Ericsson
15 that always intentional murders you believed in the death
16 penalty, but something else. And again, you know, there's no
17 correct answer here. It's as Mr. Bunin said before, only a
18 dishonest answer is an incorrect answer. So just kind of
19 explain to me what your feelings are. Because again, we're
20 only talking about first-degree murder, intentional deliberate
21 murder. We're not talking about second degree or any other
22 kind of murder or, you know, defense or anything like that.
23 So can you tell me what you mean?

24 PROSPECTIVE JUROR NO. 154: Well, intentional
25 what -- the first answer is if intentional means he meant to

1 kill the person, that, to me, in his mind, the defendant --
2 the person is -- already have in their mind to kill that
3 person, so that's -- I agree with the death penalty. You are
4 planning to take somebody else's life.

5 On the other answer is what is depend on the degree
6 of the case is. That's why I agree with it. I don't know
7 what the case's going to be. So that's my opinion.

8 THE COURT: Okay. Thank you.

9 Mr. Pesci.

10 MR. PESCI: Submit it.

11 THE COURT: All right. I'll see counsel up here.

12 (Off-record bench conference)

13 THE COURT: Ms. Husted, please call up the next
14 prospective juror.

15 THE CLERK: 267, Daisy Nepomuceno.

16 THE COURT: Ma'am, come on down and have that seat
17 there, please, next to the last juror.

18 And is it Mr. DiGiacomo?

19 MR. DiGIACOMO: Yes, Judge.

20 THE COURT: All right.

21 MR. DiGIACOMO: You figured our patterns pretty
22 easily, right?

23 THE COURT: Well, it only took me what 30, 40 hours.

24 MR. DiGIACOMO: Good afternoon, ma'am.

25 PROSPECTIVE JUROR NO. 267: Hello.

1 MR. DiGIACOMO: You said you were a full-time
2 college student.

3 PROSPECTIVE JUROR NO. 267: Yeah.

4 MR. DiGIACOMO: Are you currently in classes?

5 PROSPECTIVE JUROR NO. 267: No, it's over until
6 fall.

7 MR. DiGIACOMO: When do you go back?

8 PROSPECTIVE JUROR NO. 267: Fall.

9 MR. DiGIACOMO: Okay.

10 PROSPECTIVE JUROR NO. 267: Yeah.

11 MR. DiGIACOMO: I'm going to ask you a question when
12 asked about your attitude towards law enforcement. You'd
13 indicated that while you've never really dealt with police
14 officers before that you've seen some police officers that --
15 or at least you wrote they are rude and mean for no reason.

16 PROSPECTIVE JUROR NO. 267: Yeah.

17 MR. DiGIACOMO: Can you tell me how it is that you
18 saw this going on?

19 PROSPECTIVE JUROR NO. 267: Well, like I said, one
20 time we got -- my boyfriend got pulled over and I was in the
21 car and when I get nervous, I tend to giggle, so he kind of
22 like -- he was like being mean towards me saying that, why was
23 I laughing at him and, you know --

24 MR. DiGIACOMO: You thought the behavior was
25 inappropriate?

1 PROSPECTIVE JUROR NO. 267: Yeah.

2 MR. DiGIACOMO: Has that happened on more than one
3 occasion that you've seen officers behaving like this?

4 PROSPECTIVE JUROR NO. 267: Yeah.

5 MR. DiGIACOMO: Okay. Have you ever seen an officer
6 who wasn't behaving like that?

7 PROSPECTIVE JUROR NO. 267: Yeah.

8 MR. DiGIACOMO: So you'd agree with me that there's
9 some good cops and bad cops?

10 PROSPECTIVE JUROR NO. 267: Yeah. It just depends
11 on the person.

12 MR. DiGIACOMO: In your answers to the death
13 penalty, I take it from that, that you don't necessarily
14 believe the death penalty's the best idea.

15 PROSPECTIVE JUROR NO. 267: It just depends on the
16 situation.

17 MR. DiGIACOMO: You said, I don't think the death
18 penalty is necessary or it should be done if it would teach
19 the person a lesson. What did you mean by that?

20 PROSPECTIVE JUROR NO. 267: Like if the person
21 doesn't feel remorse for what they did or, you know, keeping
22 them in jail isn't going to fix -- you know, teach them a
23 lesson, then --

24 MR. DiGIACOMO: Sort of like what some of the other
25 jurors said --

1 PROSPECTIVE JUROR NO. 267: Yeah.

2 MR. DiGIACOMO: -- like if he doesn't have a
3 conscience, the death penalty might be appropriate, but if he
4 does, maybe life without the possibility of parole is more
5 appropriate?

6 PROSPECTIVE JUROR NO. 267: Yeah. And then it also
7 depends like if they've killed more than one person, then,
8 yeah, but if it's just like one time that it happened, then
9 you should take other things into consideration.

10 MR. DiGIACOMO: You think you can do that?

11 PROSPECTIVE JUROR NO. 267: Yeah.

12 MR. DiGIACOMO: Do you think you could be a fair
13 juror?

14 PROSPECTIVE JUROR NO. 267: Yes.

15 MR. DiGIACOMO: Thank you.

16 Pass for cause, Judge.

17 THE COURT: Pass. All right. Mr. Bunin.

18 MR. BUNIN: I don't think I have a lot of questions
19 for you, but it sounds like you covered it all, but you can
20 take a -- you can take all four potential sentences into
21 consideration if Deangelo's convicted of first-degree murder?

22 PROSPECTIVE JUROR NO. 267: Yes.

23 MR. BUNIN: So that is something you would consider.
24 Will you also consider something all the way down to a term of
25 year?

1 PROSPECTIVE JUROR NO. 267: Yeah.

2 MR. BUNIN: Do you think the death penalty is
3 something -- have you thought about it? Is it used enough?

4 PROSPECTIVE JUROR NO. 267: I don't really know.

5 MR. BUNIN: Haven't really thought it through?

6 PROSPECTIVE JUROR NO. 267: No.

7 MR. BUNIN: You probably have no reason to?

8 PROSPECTIVE JUROR NO. 267: No.

9 MR. BUNIN: All right. Now let me talk to you about
10 a few things in the guilt phase real quick. Is there anything
11 about the fact that -- you're going to hear about people who
12 worked in this Palomino Club and they worked in that industry.
13 Is that going to prejudice you in any way against either side,
14 the prosecution or the defense?

15 PROSPECTIVE JUROR NO. 267: No.

16 MR. BUNIN: It won't bother you at all or make a
17 person seem like they're more likely to be guilty because they
18 work at the Palomino Club?

19 PROSPECTIVE JUROR NO. 267: No.

20 MR. BUNIN: You're also going to hear about people
21 that use marijuana and alcohol. You're going to hear things
22 about guns. Are any of those things -- is there anything in
23 your personal life or experience that, you know, would give
24 you such a response that you wouldn't be the right juror for
25 this type of case?

1 PROSPECTIVE JUROR NO. 267: No.

2 MR. BUNIN: Is there anything we've talked about
3 with anybody that you think is important for you to mention
4 now?

5 PROSPECTIVE JUROR NO. 267: No.

6 MR. BUNIN: Pass for cause, Your Honor.

7 THE COURT: All right. Thank you.

8 At this time we're going to excuse Ms. Lee. Thank
9 you very much for being here and your willingness to serve as
10 a juror.

11 And Ms. -- I'm going to try to say your name --
12 Nepomuceno, move down one.

13 And, Ms. Husted, call the next prospective juror.

14 THE CLERK: Badge 269, Michelle Rinaldi.

15 THE COURT: And, Mr. DiGiacomo, you may question the
16 juror now.

17 MR. DiGIACOMO: Thank you, Judge.

18 Good afternoon.

19 PROSPECTIVE JUROR NO. 269: Good afternoon.

20 MR. DiGIACOMO: I'm going to start asking you
21 questions about Ms. Luzaich.

22 PROSPECTIVE JUROR NO. 269: Okay.

23 MR. DiGIACOMO: Okay. You indicated that your ex
24 fiance -- that's his mom?

25 PROSPECTIVE JUROR NO. 269: Mm-hmm.

1 MR. DiGIACOMO: Okay. You have to say yes --

2 PROSPECTIVE JUROR NO. 269: Yes. Sorry, yes.

3 MR. DiGIACOMO: Okay. And my question is more
4 related to, have you ever had conversations with Ms. Luzaich
5 concerning what she does for a living?

6 PROSPECTIVE JUROR NO. 269: I know she's a district
7 attorney, but, no, we have never talked about any of her
8 trials or anything.

9 MR. DiGIACOMO: Okay. That was my question.

10 PROSPECTIVE JUROR NO. 269: No.

11 MR. DiGIACOMO: All right. Anything about the fact
12 that you know her son, anything about that situation which
13 either side should have any concerns about, or can you set
14 that aside and just view the facts appropriately?

15 PROSPECTIVE JUROR NO. 269: Yeah, not a problem.

16 MR. DiGIACOMO: Okay. When asked the question about
17 your general attitude towards law enforcement, you actually
18 wrote down "indifferent." What did you mean?

19 PROSPECTIVE JUROR NO. 269: I don't have an opinion
20 against them. I mean, they do --

21 MR. DiGIACOMO: You don't have --

22 PROSPECTIVE JUROR NO. 269: -- their job. I'm
23 happy with it.

24 MR. DiGIACOMO: Right. Have you ever had any
25 negative contact with law enforcement, you know, officers

1 didn't treat you right or anything like that?

2 PROSPECTIVE JUROR NO. 269: No.

3 MR. DiGIACOMO: Let's talk a little bit about the

4 death penalty. Had you ever -- I guess you have thought about

5 the death penalty before --

6 PROSPECTIVE JUROR NO. 269: Mm-hmm, yes.

7 MR. DiGIACOMO: -- you filled out the questionnaire.

8 Now that you've sat here for two days, has anything changed

9 from what you said in your questionnaire?

10 PROSPECTIVE JUROR NO. 269: No.

11 MR. DiGIACOMO: Do you think that in the right

12 circumstance you could consider it?

13 PROSPECTIVE JUROR NO. 269: Yeah.

14 MR. DiGIACOMO: And do you think you could consider

15 everything else that may be presented to you?

16 PROSPECTIVE JUROR NO. 269: Yes.

17 MR. DiGIACOMO: Do you think you'd be a fair juror?

18 PROSPECTIVE JUROR NO. 269: Yes.

19 MR. DiGIACOMO: Thank you very much.

20 PROSPECTIVE JUROR NO. 269: You're welcome.

21 THE COURT: Pass?

22 MR. DiGIACOMO: Yes.

23 THE COURT: All right. Mr. Bunin -- Ericsson.

24 MR. ERICSSON: Good afternoon, ma'am.

25 PROSPECTIVE JUROR NO. 269: Good afternoon.

1 MR. ERICSSON: In one of your responses you were
2 asked if there was any reason that you might feel rushed or
3 hurried in this case and then you had indicated that simply
4 missing two weeks of pay is difficult.

5 Can you explain that.

6 PROSPECTIVE JUROR NO. 269: I'm a graveyard
7 bartender. I live off of tips only, so two weeks without pay
8 is just two weeks without pay. So that in itself would be
9 difficult.

10 MR. ERICSSON: Sure. And we do understand and
11 appreciate that serving would be a great sacrifice for almost
12 everybody on the jury. And what I'm trying to understand is
13 if -- even though it's going to be a hardship, would you be
14 able to serve for two weeks if you were selected on this jury?

15 PROSPECTIVE JUROR NO. 269: Yes.

16 MR. ERICSSON: And would you be able to give your
17 full attention to this matter?

18 PROSPECTIVE JUROR NO. 269: Yes.

19 MR. ERICSSON: Tell me what your thoughts are on --
20 you've heard lots of questions about mitigation, and if you
21 were in a situation where you came to a decision that the
22 defendant was guilty beyond a reasonable doubt of intentional,
23 deliberate murder, would you be able to consider mitigation in
24 coming to an appropriate sentence?

25 PROSPECTIVE JUROR NO. 269: Yes.

1 MR. ERICSSON: And tell me what your thoughts are
2 on --

3 PROSPECTIVE JUROR NO. 269: Well, I mean, to be able
4 to decide between the different penalties, I think you
5 certainly need to know more of the background. I mean, if
6 there is an illness, a mental illness, you sort of do need to
7 know the things to help you make the correct decision.

8 MR. ERICSSON: Do you feel that you have the frame
9 of mind and life experience that you could be equally fair to
10 both sides in this type of case?

11 PROSPECTIVE JUROR NO. 269: Yes.

12 MR. ERICSSON: Thank you.

13 PROSPECTIVE JUROR NO. 269: You're welcome.

14 THE COURT: Pass.

15 MR. ERICSSON: Pass for cause, Your Honor.

16 THE COURT: All right. State's final challenge.

17 MR. DiGIACOMO: May we approach first, Judge?

18 (Off-record bench conference)

19 THE COURT: All right. State's final.

20 MR. DiGIACOMO: Thank you, Judge. The State would
21 thank and excuse the juror in spot 14, Juror No. 267,
22 Nepomuceno.

23 THE COURT: Nepomuceno; is that right?

24 PROSPECTIVE JUROR NO. 267: Yeah.

25 THE COURT: Ma'am, thank you very much for being

1 here and your willingness to serve as a juror in this matter.

2 Ms. Husted, please call up the next prospective
3 juror.

4 THE CLERK: Badge 284, Dan Smith.

5 THE COURT: Mr. Smith, have that empty chair there.
6 And is it Mr. Pesci?

7 MR. PESCI: Yes, Judge. Thank you.

8 All right. Mr. Smith, let's cut to the chase.

9 PROSPECTIVE JUROR NO. 284: How are you?

10 MR. PESCI: Good.

11 THE COURT: You don't know why we're laughing
12 because you weren't in group one yesterday.

13 PROSPECTIVE JUROR NO. 284: No.

14 THE COURT: The reason we're laughing is because
15 this is the second time that Mr. Pesci has neglected to greet
16 a juror prior to launching into the questioning.

17 Go on, Mr. Pesci.

18 MR. PESCI: I apologize. How are you today?

19 PROSPECTIVE JUROR NO. 284: Very good. Very good.

20 MR. PESCI: All right. To the point, from reading
21 your questionnaire, it would appear as if you would always, no
22 matter what, go with the death penalty.

23 PROSPECTIVE JUROR NO. 284: Yes, sir.

24 MR. PESCI: All right. And please don't get
25 offended by this, okay? Sometimes we fill these out because

1 we don't want to be here.

2 PROSPECTIVE JUROR NO. 28four: Right.

3 MR. PESCI: But you've already been here for two
4 days.

5 PROSPECTIVE JUROR NO. 284: Right.

6 MR. PESCI: So my question is, were these answers
7 because you didn't want to be here --

8 PROSPECTIVE JUROR NO. 284: No.

9 MR. PESCI: -- or because that's what you really
10 feel?

11 PROSPECTIVE JUROR NO. 284: No, that's what I feel.
12 I mean, he needs a fair trial, and I would give him a fair
13 trial. I just feel that if he is found guilty that he should
14 get the death penalty.

15 MR. PESCI: You wouldn't be able to consider all
16 four?

17 PROSPECTIVE JUROR NO. 284: No.

18 MR. PESCI: All right. We'll submit it, Judge.

19 THE COURT: Submit it.

20 MR. BUNIN: Submit it.

21 THE COURT: All right. Mr. Smith, thank you very
22 much for being here. You are excused.

23 And, Ms. Husted, call up the next juror.

24 THE CLERK: Badge 300, Brandy Kuntz.

25 THE COURT: And if you'd have, ma'am, that empty

1 chair there in the back row, please.

2 And the State may question Ms. Kuntz.

3 MR. PESCI: Thank you.

4 How are you?

5 PROSPECTIVE JUROR NO. 300: I'm fine. Thank you for
6 asking.

7 MR. PESCI: You're welcome. Thanks for being so
8 kind.

9 Ma'am, looking at your responses, based on some
10 individuals in your family, you felt as if maybe this -- or
11 the justice system wasn't necessarily the best; is that an
12 accurate rendition?

13 PROSPECTIVE JUROR NO. 300: No, I think it was fair.
14 It's just that I've been involved.

15 MR. PESCI: Okay. I guess let me rephrase then. I
16 think on one of the answers you thought that a sentence was,
17 as you put it, rather stiff.

18 PROSPECTIVE JUROR NO. 300: Yes.

19 MR. PESCI: Okay. Is that based on maybe you didn't
20 think that the punishment fit the crime?

21 PROSPECTIVE JUROR NO. 300: It's based on the
22 mitigation and that case, as far as I knew it, as a child.

23 MR. PESCI: Okay. Now, when you were a receptionist
24 in a law office before, what kind of law was it?

25 PROSPECTIVE JUROR NO. 300: I think they did taxes,

1 corporate law, Swanson Flangas [phonetic]

2 MR. PESCI: Okay. And I believe that you indicated
3 in your feelings about the death penalty that -- it looks like
4 you checked off that you would consider all four, then you
5 scribbled that out, and then you said that you would not
6 consider all four.

7 PROSPECTIVE JUROR NO. 300: I checked that off due
8 to the wording of the question being automatically. I would
9 never automatically do anything. I'd think about it first.

10 MR. PESCI: Okay. But then you followed up by
11 saying that you much prefer options one, two, and three and
12 those options are not the death options.

13 PROSPECTIVE JUROR NO. 300: I'm not quite sure why
14 this day and age we can't eliminate the death penalty.

15 MR. PESCI: Okay. In considering your feelings
16 about the death penalty in that regard, how is it that you
17 could consider the death penalty?

18 PROSPECTIVE JUROR NO. 300: Just the wording of the
19 sentence being automatically, would you automatically make one
20 decision or another.

21 MR. PESCI: Right. Let's throw that sentence away.

22 PROSPECTIVE JUROR NO. 300: Okay.

23 MR. PESCI: Throw that whole question away. Just
24 put it all aside. And if you had to get to the point that you
25 were on the jury and if you found the defendant guilty of

1 first-degree murder, there are four possible options under the
2 law. And so I guess my question is that based on your
3 feelings that you think at this time or day and age we
4 shouldn't have the death penalty, is it really possible that
5 you could consider it as an option?

6 PROSPECTIVE JUROR NO. 300: No.

7 MR. PESCI: Challenge.

8 THE COURT: All right. Defense, anything for
9 Ms. Kuntz?

10 MR. BUNIN: And I think, you know, maybe you've
11 answered the question sufficiently, but based on your answers,
12 I just want to make sure we're clear on this. You obviously
13 put in here that you're not a fan of the death penalty.

14 PROSPECTIVE JUROR NO. 300: I'm not.

15 MR. BUNIN: But you said in here that, you know, you
16 would prefer housing inmates for life, but you oppose the
17 death penalty in most cases due to not personally wanting to
18 be involved. Is that an accurate answer?

19 PROSPECTIVE JUROR NO. 300: I don't want to make the
20 judgment for or against anyone's life regardless of their
21 actions.

22 MR. BUNIN: You don't want to do that?

23 PROSPECTIVE JUROR NO. 300: No.

24 MR. BUNIN: If you were on this jury and you were
25 instructed that you have to consider all options including the

1 death penalty, would you be able to do that?

2 PROSPECTIVE JUROR NO. 300: I don't believe so.

3 MR. BUNIN: I'll submit it, Your Honor.

4 THE COURT: All right. Thank you.

5 Ms. Kuntz, thank you very much for being here. We

6 are going to go ahead and excuse you at this time.

7 And, Ms. Husted, please call up the next prospective

8 juror.

9 THE CLERK: Yes, Your Honor. Badge 302, Abraham

10 Ru --

11 THE COURT: Ruelas.

12 THE CLERK: -- Ruelas.

13 THE COURT: Sir, go ahead and have that empty chair

14 there in the back row, please.

15 I believe Mr. Pesci will be questioning you.

16 MR. PESCI: Yes, ma'am. Thank you.

17 How are you, sir?

18 PROSPECTIVE JUROR NO. 302: Fine. Thank you.

19 MR. PESCI: Okay. This seems to be the hot seat for

20 the death penalty question, so we'll just get right to it. I

21 think you stated in your conclusion that you will not give the

22 death penalty to another person. Is that accurate?

23 PROSPECTIVE JUROR NO. 302: Yes.

24 MR. PESCI: Okay. Is there any changing your

25 opinion on that?

1 PROSPECTIVE JUROR NO. 302: [Inaudible].

2 THE COURT RECORDER: I'm sorry. Hold your
3 microphone up, please.

4 PROSPECTIVE JUROR NO. 302: It depends on the case.

5 MR. PESCI: Depends on the case. Okay. I think you
6 said in answer to another question that you would
7 automatically vote against the death penalty. Is that your
8 answer?

9 PROSPECTIVE JUROR NO. 302: Yes.

10 MR. PESCI: Okay. So how would it be possible for
11 you to consider it as an option?

12 PROSPECTIVE JUROR NO. 302: Like an option, you say?

13 MR. PESCI: Yes. Because if we get to the second
14 phase, the penalty phase, there's four possible options and
15 you've indicated in your questionnaire that you would
16 automatically vote against the death penalty.

17 PROSPECTIVE JUROR NO. 302: Yeah.

18 MR. PESCI: And then in a summary you said
19 specifically that you will not give the death penalty. Those
20 are accurate statements?

21 PROSPECTIVE JUROR NO. 302: That's not what I say,
22 no.

23 MR. PESCI: So --

24 THE COURT: I -- sorry.

25 MR. PESCI: Go ahead, Judge.

1 THE COURT: No, I was going to interrupt, but I'll
2 let you try.

3 MR. PESCI: Okay.

4 So is it accurate to say that you cannot consider
5 all the options? You cannot consider all the options?

6 PROSPECTIVE JUROR NO. 302: No.

7 MR. PESCI: Okay.

8 THE COURT: Defense, do you wish to question
9 Mr. Ruelas?

10 MR. ERICSSON: Court's indulgence.

11 MR. ERICSSON: We'll submit it, Your Honor.

12 THE COURT: All right. Mr. Ruelas, thank you for
13 being here these last couple of days. You are excused.

14 Officer Wooten will direct you from the courtroom.

15 And, Ms. Husted, please call up the next prospective
16 juror.

17 THE CLERK: Yes, Your Honor.

18 Badge 308, Richard Rettinger.

19 THE COURT: Sir, just have that empty chair there in
20 the back row of the jury box.

21 And I believe Mr. Pesci will be questioning you.

22 MR. PESCI: Yes, Judge. Thank you.

23 How are you, sir?

24 PROSPECTIVE JUROR NO. 308: I'm fine. Thanks.

25 MR. PESCI: Good. You indicated that you served on

1 a jury before.

2 PROSPECTIVE JUROR NO. 308: Many, yes.

3 MR. PESCI: Many. How many?

4 PROSPECTIVE JUROR NO. 308: Four.

5 MR. PESCI: Was that here?

6 PROSPECTIVE JUROR NO. 308: New Mexico, Texas and

7 Maryland.

8 MR. PESCI: And of those four, how many were

9 criminal?

10 PROSPECTIVE JUROR NO. 308: Two, federal case, human

11 trafficking.

12 MR. PESCI: Can you hear him?

13 THE COURT: Okay. Thank you.

14 MR. PESCI: Thank you.

15 Without telling us your verdict in those cases, did

16 you come to a verdict?

17 PROSPECTIVE JUROR NO. 308: Yes.

18 MR. PESCI: Did you ever serve as a foreperson?

19 PROSPECTIVE JUROR NO. 308: Yes, twice.

20 MR. PESCI: How did you feel about that, your

21 service? Did you enjoy it or --

22 PROSPECTIVE JUROR NO. 308: It's my civil duty and

23 we get it done.

24 MR. PESCI: As far as the death penalty goes, you've

25 indicated that you are for the death penalty.

1 PROSPECTIVE JUROR NO. 308: A necessary evil, yes.
2 MR. PESCI: Okay. And I think that you explained
3 that you could consider all four possible options.
4 PROSPECTIVE JUROR NO. 308: Of course. Any
5 alternative to death I'm going to consider.
6 THE COURT: Sir, you need to hold that up.
7 PROSPECTIVE JUROR NO. 308: Thank you. Any
8 alternative to death I will certainly listen to the case, yes.
9 THE COURT: Thank you.
10 PROSPECTIVE JUROR NO. 308: Yes.
11 MR. PESCI: Pass for cause.
12 THE COURT: All right. Defense.
13 MR. ERICSSON: Good afternoon, sir.
14 PROSPECTIVE JUROR NO. 308: Hello. What type of
15 work do you do?
16 PROSPECTIVE JUROR NO. 308: Care giver. Understand
17 what that is?
18 MR. ERICSSON: Well, it could be a lot of things.
19 PROSPECTIVE JUROR NO. 308: Take care of the
20 elderly.
21 MR. ERICSSON: You've indicated in your response to
22 your -- turn to the right page here. When you were asked to
23 characterize your feelings about the death penalty, you
24 answered, I am in favor of an eye for an eye.
25 PROSPECTIVE JUROR NO. 308: Correct.

1 MR. ERICSSON: What do you mean by that?

2 PROSPECTIVE JUROR NO. 308: Just as it's stated. If
3 you killed a person, you're going to have to answer to that.

4 MR. ERICSSON: So if you were picked to sit on a
5 jury and in that -- after hearing all the evidence in the
6 guilt or innocence phase you came to a verdict that the person
7 was guilty of intentional first-degree murder, there was no
8 excuse, there was no provocation, no anything, No accident,
9 that it was intentional first-degree murder, based on this,
10 would it be your opinion that the appropriate sentence would
11 be the death penalty?

12 PROSPECTIVE JUROR NO. 308: Yes.

13 MR. ERICSSON: Because I know a lot of times you
14 hear different types of homicides, different murders. There
15 are varying degrees and it's confusing oftentimes for
16 attorneys, but there's first degree, there's second degree,
17 there's manslaughter. There's all types of different
18 homicides. And in those type of cases where you may be
19 selected as a juror, we need to understand if you were
20 selected as a juror if you came back with a decision, a
21 verdict that somebody was guilty of first-degree murder, no
22 excuse whatsoever, it was intentional. In that circumstance
23 would it be your opinion that the appropriate sentence would
24 be a death penalty?

25 PROSPECTIVE JUROR NO. 308: Correct.

1 MR. ERICSSON: Would it be your opinion that an
2 appropriate sentence could be a term of years with parole?

3 PROSPECTIVE JUROR NO. 308: Oh, yes. Absolutely.

4 THE COURT: So you're saying you're not sure what
5 the appropriate sentence would be --

6 PROSPECTIVE JUROR NO. 308: Not just sitting here
7 giving you an answer like that, no. Of course not.

8 THE COURT: Okay.

9 MR. ERICSSON: Okay. I'm having a little hard time
10 following exactly what you're saying. And I know that it's
11 late and we've been asking lots of questions. If you found
12 somebody guilty of intentional first-degree murder, would you
13 be able to consider all four of the possibilities that Nevada
14 law provides?

15 PROSPECTIVE JUROR NO. 308: Yes.

16 MR. ERICSSON: You would be able to, if you felt it
17 appropriate, sentence the person to a term of 40 years in
18 prison with the possibility of parole after 40 years?

19 PROSPECTIVE JUROR NO. 308: Yes.

20 MR. ERICSSON: What are your opinions -- what is
21 your opinion on the presentation of mitigation factors in a
22 sentencing or penalty phase?

23 PROSPECTIVE JUROR NO. 308: You're going to have to
24 present them to me and I'll listen and I'll weigh those facts.

25 MR. ERICSSON: And do you think that it is

1 appropriate to -- when you're considering the fate of someone
2 who's been found guilty of first-degree intentional murder, do
3 you think it is appropriate to consider that person's
4 background in determining a sentence?

5 PROSPECTIVE JUROR NO. 308: Yes.

6 MR. ERICSSON: Sir, do you think that you can be
7 equally fair to both Mr. Carroll and the prosecution in this
8 type of a case?

9 PROSPECTIVE JUROR NO. 308: Yes, sir.

10 MR. ERICSSON: Thank you very much.

11 Pass for cause, Your Honor.

12 THE COURT: Pass. Defense's final.

13 MR. ERICSSON: Your Honor, the defense would thank
14 and excuse juror 263, Mr. Grathan.

15 THE COURT: Sir, Mr. Grathan, thank you very much
16 for being here and your willingness to be a juror on this
17 particular case. You are excused at this time.

18 Ms. Husted, please call up the next prospective
19 juror.

20 THE CLERK: Badge 320, Kevin Peterson.

21 THE COURT: Mr. Peterson, if you'll just have that
22 empty chair there in the jury box. I believe Mr. Pesci will
23 be questioning you.

24 MR. PESCI: Thank you.

25 How are you, sir?

1 PROSPECTIVE JUROR NO. 320: Very well, thank you.

2 MR. PESCI: Great. You know, we'll put the
3 questionnaire aside. There are questions that you answered
4 that kind of seem -- at one point you say you'd automatically
5 go with death and another point you say that you wouldn't. So
6 let's just throw that aside and ask you this: If you get to a
7 penalty phase, four options are possible, can you consider all
8 four options?

9 PROSPECTIVE JUROR NO. 320: Yes. The word automatic
10 doesn't belong in that sentence.

11 MR. PESCI: Okay. So you could conceive of a
12 situation where you could give less than death?

13 PROSPECTIVE JUROR NO. 320: Yes.

14 MR. PESCI: You could consider even what's -- this
15 sounds bad, but the lowest option, which is the 40 to 100
16 years.

17 PROSPECTIVE JUROR NO. 320: That's one of the
18 options.

19 MR. PESCI: Pass.

20 THE COURT: Mr. Bunin.

21 MR. BUNIN: Thank you.

22 All right. I'm not setting aside the questionnaire.
23 I want to go over a couple of your answers. Okay?

24 PROSPECTIVE JUROR NO. 320: Certainly.

25 MR. BUNIN: And good afternoon.

1 PROSPECTIVE JUROR NO. 320: Good afternoon.

2 MR. BUNIN: Let's start with this one, No. 30. If
3 you were selected as a juror, could you consider fairly all
4 four possible forms of punishment in a case in which you have
5 convicted the defendant of first-degree murder? Your answer
6 was, no, if convicted of first-degree murder, you don't get
7 life. That's what you wrote. That's not -- is that the -- an
8 accurate statement of what you believe?

9 PROSPECTIVE JUROR NO. 320: I'd have to -- I --

10 MR. BUNIN: Do you want to read it and take a look
11 at it?

12 PROSPECTIVE JUROR NO. 320: Yeah, sure.

13 MR. BUNIN: Do you mind if I --

14 THE COURT: No, not at all.

15 MR. BUNIN: Start on No. 30 on page 10.

16 THE COURT: Sir, you can go back and sit down.

17 PROSPECTIVE JUROR NO. 320: Do you want me to sit
18 down?

19 THE COURT: Or if you want to read it there, either
20 one.

21 PROSPECTIVE JUROR NO. 320: I'm fine.

22 MR. BUNIN: So what you wrote is, If you're
23 convicted of first-degree murder, you don't get life, and you
24 checked the box no, that you could not fairly consider all
25 four forms of punishment if convicted of first-degree murder.

1 PROSPECTIVE JUROR NO. 320: Correct. Looking back,
2 I went back and forth through that, thinking it over, because
3 I hadn't thought about the death penalty and as it being --
4 having more than one option.

5 MR. BUNIN: I understand. And, you know, let's look
6 at the next question just so I can get an understanding of
7 what you're thinking. The question was, Would you
8 automatically vote either for or against the death penalty,
9 and you wrote down here, If convicted of first-degree murder,
10 yes; if not, then no.

11 So if a person is convicted of an intentional
12 killing, you would automatically pick the death penalty? If
13 they were convicted of some other type of murder, you're
14 saying you would not pick the death penalty as appropriate?
15 Is that an accurate statement of what you're saying?

16 PROSPECTIVE JUROR NO. 320: These questions, do they
17 come after the four options?

18 MR. BUNIN: That's a good question.

19 PROSPECTIVE JUROR NO. 320: Because -- I mean, I
20 went back through --

21 MR. BUNIN: Yes, they did come after the four
22 options.

23 PROSPECTIVE JUROR NO. 320: So then I think they
24 should be before it, so you understand there's four options
25 versus one. Do you know where I'm coming from?

1 MR. BUNIN: The question before, just so we're on
2 the same page here -- let me see, on page 9, at the bottom,
3 under attitudes regarding death penalty, the four options are
4 listed for you.

5 PROSPECTIVE JUROR NO. 320: Correct.

6 MR. BUNIN: And then the very next section, it says,
7 Characterize your feelings about the death penalty, and you
8 put, It takes too long to put them out, prolongs agony for
9 victim's family.

10 And then the next question right after that is the
11 one we just read where it says, Can you fairly consider all
12 four options, the four that were just listed on the page
13 before. You checked no, and then you wrote down, If convicted
14 of first-degree murder, you don't get life.

15 Look, nobody's upset at you for your answer at all.
16 Like I said, the only wrong answer in this room is one that's
17 not an honest one and we're just trying to get a good
18 understanding of what you feel.

19 PROSPECTIVE JUROR NO. 320: Then my answer to that
20 question is incorrect, that it would be an option of four.

21 MR. BUNIN: The very next one to where you wrote, If
22 the person is convicted of first-degree murder, yes; if not,
23 then, no, is that a correct or incorrect answer?

24 PROSPECTIVE JUROR NO. 320: If convicted of
25 first-degree murder --

1 MR. BUNIN: The question was, Would you
2 automatically vote for or against the death penalty, and your
3 answer -- you hand wrote, If convicted of first-degree murder,
4 yes; and if not, then, no. Is that an accurate reflection of
5 your answer?

6 THE COURT: Well, I mean, that is the answer. I
7 think what -- I think what you mean is -- oh, I'm sorry. Is
8 that a reflection today of your opinion --

9 MR. BUNIN: You're right.

10 THE COURT: -- as you sit here today?

11 PROSPECTIVE JUROR NO. 320: Am I capable of looking
12 at the four options, yes.

13 THE COURT: Okay. Let me maybe ask --

14 I'm sorry, Mr. Bunin, to interrupt you.

15 Let me ask you this: Obviously if you're selected
16 as a member of the jury, after the guilt phase, you'll go in
17 the back and you'll deliberate and collectively unanimously --
18 you would have rendered a verdict of guilty of murder in the
19 first degree if it goes to a penalty phase. If you don't
20 render that verdict, if it's a lesser degree of murder or it's
21 an acquittal or something else, it never gets to a penalty
22 phase. You understand that now, right?

23 PROSPECTIVE JUROR NO. 320: Right.

24 THE COURT: Okay. So we're only talking again about
25 first-degree murder. Now, if the -- you and the fellow jurors

1 determine that the State has proven that charge against the
2 defendant beyond a reasonable doubt, and that's your verdict,
3 then you and the fellow jurors would be deliberating on the
4 appropriate penalty.

5 PROSPECTIVE JUROR NO. 320: Correct.

6 THE COURT: If you're selected as a juror, do you
7 think that, depending on the circumstances of the crime itself
8 as well as the aggravating factors that the State would
9 present and the mitigating factors that the defense would
10 present, you could raise your hand and possibly say, yes, I
11 believe that this is someone who deserves life with the
12 possibility of parole or a term of years after 40 years has
13 been spent that person is eligible for parole? Again, not
14 necessarily paroled, but eligible possibly to receive parole.
15 Do you honestly -- again, there's no right or wrong answer.
16 Do you honestly believe that after you hear everything, you
17 could sit in the back and raise your hand and say, yes,
18 that -- this person should get a chance at parole after a
19 time?

20 PROSPECTIVE JUROR NO. 320: Yes, I do.

21 THE COURT: Okay.

22 MR. BUNIN: Can I follow up on that?

23 THE COURT: Sure. Of course. Absolutely.

24 MR. BUNIN: Because I appreciate Your Honor's
25 question, but you were asked that exact question on the

1 questionnaire, and I just want to understand your exact
2 answer. You were asked if you would consider the defendant's
3 background, if there are mitigating circumstances such as
4 health, mental status, age, childhood experiences, education
5 which affect your decision on whether the defendant is
6 eligible for the death penalty. Do you feel you could
7 consider those types of factors fairly? And your answer on
8 the sheet is no. You said you could not consider those
9 fairly. And to me, you know, that seems consistent with your
10 other answers where you wrote down a couple of times, If it's
11 first-degree murder, it should be the death penalty. But,
12 if -- you know, if that's not an accurate reflection of your
13 feelings, that's what I need to know. But you wrote here that
14 you could not fairly consider those factors. Is that your
15 honest answer as you sit here now?

16 PROSPECTIVE JUROR NO. 320: I think it should be
17 considered. I mean, that's what I wrote there. I mean,
18 that's -- you know, you get handed a 16-page -- 16-page
19 questionnaire and trying to figure out what's going on here.
20 I've never done that before and I'm just trying to make heads
21 or tails of it.

22 MR. BUNIN: Nope. I absolutely appreciate that.
23 You know, there was another question at the bottom of page 11
24 and it was, Do you believe the death penalty should always be
25 imposed if found intentional murder. You checked no. But

1 below it, you wrote "self-defense." Is that the only
2 situation you could think of where the death penalty should
3 not be imposed in a murder case?

4 PROSPECTIVE JUROR NO. 320: Death penalty should not
5 be imposed in a murder case.

6 MR. BUNIN: Yeah. You wrote "self defense." In
7 other words, if there was self defense, then you don't think
8 there should be the death penalty?

9 PROSPECTIVE JUROR NO. 320: Well, if it was self
10 defense, then it's not murder. I mean --

11 MR. BUNIN: Can we approach?

12 THE COURT: Sure. Why don't we take a -- unrelated,
13 we need a break up here. Let's go ahead and take our
14 afternoon recess. We're just going to take until 3:30.

15 And once again I remind everyone of the admonition
16 not to discuss the case or do anything relating to the case on
17 the afternoon break.

18 Sir, if you'd just put the microphone down in your
19 chair, please. And if all of the jurors would please
20 follow -- or exit through the double doors.

21 (Court recessed at 3:23 p.m. until 3:34 p.m.)

22 THE COURT: Are we going to get to openings today?

23 MR. DiGIACOMO: My hope is not to, but --

24 THE COURT: Okay.

25 MR. DiGIACOMO: -- but it's up to you.

1 THE COURT: How long is your opening?

2 MR. DiGIACOMO: Right now it's literally somewhere
3 between a half hour and 45 minutes. I haven't decided how
4 much of Mr. Carroll's statement I'm going to put in the
5 opening.

6 THE COURT: Okay. And then who's opening for the
7 defense?

8 MR. BUNIN: I am, Your Honor.

9 THE COURT: And how long about?

10 MR. ERICSSON: Your Honor, a lot of it's going to be
11 somewhat dependent on how much detail they go into, so I don't
12 know -- but it's not going to be real long. I would think
13 somewhere -- 20 to 40 minutes.

14 THE COURT: All right. We were going to bring in --
15 I mean, here's the problem. His answers on the questionnaire
16 are all wrong. His answers in here are all fine for cause.
17 When I asked him about --

18 We're on the record, Janie.

19 When I asked him, could you raise your hand,
20 honestly I anticipated a no answer on possibility of parole.
21 So he had some issues about anxiety and different things like
22 that, so we're going -- we talked in the hall with Mr. Pesci.
23 We're going to bring him in and question him privately on the
24 anxiety issues because maybe then that might be embarrassing
25 him or something like that.

1 MR. DiGIACOMO: I did notice also -- I don't know if
2 we're on or off the record.

3 THE COURT: We're on the record.

4 MR. DiGIACOMO: But we've been asking Jeff to sit
5 not too far down there and maybe that has to do with his
6 anxiety. I didn't know.

7 MR. BUNIN: He wrote in the back that he worries
8 about the safety and wellbeing of his wife and children. I
9 don't know what that means.

10 MR. DiGIACOMO: The gentleman who is now being
11 questioned, he asked you to sit --

12 THE MARSHAL: Oh, that was -- he was complaining
13 about the three ladies in front of him, that he couldn't stand
14 the perfume.

15 MR. DiGIACOMO: Oh, okay. Never mind. It has
16 nothing to do with his anxiety.

17 THE MARSHAL: So that's why he was hold -- he was
18 standing back to get some distance between that other lady.

19 THE COURT: Because I don't know -- I mean, you
20 know, of course, I can kick him for cause on the
21 questionnaire, but then his other answers are fine in here.
22 Now, if he's just kind of kooky, then that might be a for
23 cause challenge, but so far he's been fine in here. I mean --
24 so --

25 MR. BUNIN: That last page -- I mean, if you want to

1 question him about it maybe, or do you want me to do it, I
2 worry about the safety and wellbeing of my wife and children,
3 I don't know what that means.

4 THE COURT: Okay. Jeff, just bring him in.

5 THE MARSHAL: Do you know his badge number?

6 MR. ERICSSON: Yes, it's 320.

7 THE MARSHAL: 320. And his name, his last name?

8 MR. ERICSSON: Peterson.

9 THE COURT: Unless you guys can just stipulate to
10 excuse him.

11 MR. ERICSSON: I'm sorry, Your Honor?

12 THE COURT: Unless you guys just want to stipulate
13 to excuse him. Well, be careful what you wish for, though.

14 Sir, come on in. I just wanted to follow up. Have
15 a seat there back where you were in the jury box, please. I
16 just wanted to follow up on some things that might be
17 sensitive outside of the presence of the other jurors.

18 And in your questionnaire you had indicated
19 something -- a concern about anxiety. Do you have a condition
20 involving an anxiety disorder?

21 PROSPECTIVE JUROR NO. 320: I did in the past.

22 THE COURT: You did in the past. Okay. Is that
23 resolved or are you taking medication for that? Again, I
24 don't mean to pry but --

25 PROSPECTIVE JUROR NO. 320: No, I'm good now. I

1 mean, I'm staying ahead, looking out these windows and pretty
2 much saying, you know, that's a thing of the past. You know,
3 before I could feel the building moving, you know what I'm
4 saying, just thinking -- anxiety.

5 THE COURT: Okay. Because obviously, you know, any
6 trial can be stressful for jurors --

7 PROSPECTIVE JUROR NO. 320: Right.

8 THE COURT: -- whether, you know, it's certain civil
9 trials or criminal trials, but, you know, this -- clearly, a
10 first-degree murder case, I think one of the defense attorneys
11 said this is as serious as it gets, that can be a stressful
12 gets. And we just want to make sure that that's not something
13 that is -- you know, we don't want people to become ill, God
14 forbid, because they're serving as jurors. So I just need to
15 make sure from you that that's not going to be something
16 that's going to be a problem for you. You know what I mean?
17 We don't want to push anyone kind of over the --

18 PROSPECTIVE JUROR NO. 320: I've been good for some
19 time, and I think if I were to take that questionnaire now,
20 after being two days of hearing questioning and what have you,
21 it would be different.

22 THE COURT: Okay. So you're not under a doctor's
23 care or anything like that --

24 PROSPECTIVE JUROR NO. 320: No.

25 THE COURT: -- for your anxiety?

1 And again, I don't mean to pry, but obviously these
2 are important issues. Have you ever been under a doctor's
3 care for anxiety?

4 PROSPECTIVE JUROR NO. 320: I saw a doctor, told him
5 I had anxiety, and they gave me some Valium, you know, and
6 that was it.

7 THE COURT: Okay. And then another question, you
8 said you fear for the safety and wellbeing of your wife and
9 children. Is that relating to serving as a juror or just kind
10 of generally in the community you fear for their safety? What
11 did you mean by that?

12 PROSPECTIVE JUROR NO. 320: Well, I don't under --
13 the way I look at it is how any prolonged attitudes towards
14 the jurors' decision could be passed on to other people,
15 whether it be guilty or not guilty, in effect -- in gang
16 atmosphere, mob atmosphere kind of thing like that.

17 THE COURT: Okay. Let me ask you this, because we
18 don't want a juror who's going to have that in the back of
19 their mind and have that impact their verdict one way -- you
20 know, one way or the other. Is that something that you would
21 be worried about when you went in the back to deliberate with
22 the other jurors?

23 PROSPECTIVE JUROR NO. 320: Possibly. I just
24 don't -- I don't know the -- the -- not the outcome, but the
25 basis of this, you know, whether it be -- you know, I don't --

1 I know the Palomino is a gentleman's club and years ago they
2 were run not so much on the up and up.

3 THE COURT: And that's just what from -- why do you
4 have that opinion?

5 PROSPECTIVE JUROR NO. 320: Just some -- opinion?

6 THE COURT: Right.

7 PROSPECTIVE JUROR NO. 320: From what I've read in
8 the news, not necessarily the Palomino --

9 THE COURT: Just that industry.

10 PROSPECTIVE JUROR NO. 320: -- the -- Gallardi's,
11 whatever, you know, the -- the other clubs, stuff like that.

12 THE COURT: Okay. So you're afraid you could be,
13 what, afraid of --

14 PROSPECTIVE JUROR NO. 320: Retaliation from, you
15 know -- I'm not saying anybody's guilty, I mean, because I
16 don't know what has gone on. Stranger things have happened.

17 THE COURT: Okay. And again, you know, we just want
18 to flush out what your feelings are.

19 State, do you have any follow-up questions based on
20 his responses?

21 MR. PESCI: No.

22 THE COURT: Defense, any follow-up questions?

23 MR. BUNIN: We just --

24 THE COURT: They might have some questions.

25 MR. BUNIN: I don't have any other ones, Judge. I

1 just want to be able to argue to you, I guess.

2 THE COURT: All right. Sir, thank you very much.
3 I'm going to have you return to the outside there. Please
4 don't discuss the questions of what we've discussed.

5 PROSPECTIVE JUROR NO. 320: Can I just say one
6 thing?

7 THE COURT: Sure. Of course.

8 PROSPECTIVE JUROR NO. 320: I took to heart being in
9 here and that it is very serious and just that the status of
10 laughing and giggling and stuff, that really kind of bothered
11 me because it's -- life or death is on the line, and I didn't
12 get that --

13 THE COURT: Okay.

14 PROSPECTIVE JUROR NO. 320: -- you know.

15 THE COURT: All right. Thank you, sir. Let me just
16 ask -- well, I'm going -- and again, you know, the other
17 jurors may want to know what we discussed in here. Please
18 don't discuss anything that we've just discussed --

19 PROSPECTIVE JUROR NO. 320: I won't.

20 THE COURT: -- with your fellow --

21 PROSPECTIVE JUROR NO. 320: I'm hitting the
22 elevator.

23 THE COURT: All right. Thank you, sir. And if
24 you'll just place that microphone back on the chair.

25 PROSPECTIVE JUROR NO. 320: Thank you.

1 (Juror No. 320 exited the room)

2 THE COURT: He's going back in the hallway.

3 Defense.

4 MR. BUNIN: I think this person has to be removed
5 for cause. Aside from the answers to the questionnaire, which
6 were very, very clear -- I know he's now given an explanation,
7 he's thought about it --

8 THE COURT: Frankly, I'm not sure the -- well, I'll
9 see counsel at the bench.

10 (Off-record bench conference)

11 THE COURT: All right. I just don't think I can
12 remove this person for cause. Honestly, if I were sitting
13 where the State was sitting, I wouldn't be totally comfortable
14 with this person as a juror, but I don't think he said
15 anything that I can remove him for cause. You know, his
16 answers on the questionnaire were inconsistent. We're going
17 to make that a Court's exhibit. That will be Court's Exhibit
18 No. 2. His answers in here were completely, you know,
19 consistent.

20 On the anxiety issue, you know, I worried that he
21 had psychiatric problems, but it doesn't sound like he's --
22 that's why I asked what he had been treated with. You know, I
23 was looking for, I don't know, Thorazine or something. He's,
24 you know, got Valium. A lot of people get Valium or -- what's
25 the other one -- Xanax for anxiety. That doesn't mean any

1 kind of -- you know what I saying, any serious organic brain
2 dysfunction or anything like that. That's why I asked it.

3 He's not currently under, it doesn't sound like, any
4 kind psychiatric care. I asked that. So I don't think I can
5 have grounds to kick him because, you know, of any kind of
6 mental illness to where he can't function as a juror. He
7 certainly didn't answer in any way that would indicate that;
8 although, you know, again, it was something I was concerned
9 about.

10 I don't have anything concrete now to say that yes,
11 he has, you know, serious dysfunction. Like I just said, you
12 know, Valium, everybody -- you know, that's a common drug that
13 a lot of everyday people get.

14 Anything, State?

15 MR. DiGIACOMO: No, Your Honor.

16 MR. ERICSSON: Okay. Your Honor, if I may make our
17 record on -- as to this potential juror.

18 Whether it is a lack of understanding in the way he
19 made -- the way he responded to this questionnaire, or if,
20 after two days listening to other responses, he now knows the
21 appropriate way to answer so that he can get onto this jury,
22 either way, it is our position that this is not a fair person
23 to sit in judgment on a capital murder case. His answers were
24 unambiguous in this questionnaire.

25 When he was asked, If you were selected as a juror,

1 could you fairly consider all four possible forms of
2 punishment in a case in which the defendant were convicted of
3 first-degree murder. His answer was no.

4 And if -- he said, If no, why not. Answer,
5 handwritten, If convicted of first-degree murder, you don't
6 get life.

7 Then the next question, Would you automatically vote
8 either for or against the death penalty. His answer was no.
9 But then he writes, in the explanation, If convicted of
10 first-degree murder, yes; if not, then no.

11 Unambiguous at this time that if it is first-degree
12 murder it is automatic death penalty.

13 And then when he's asked if he can consider
14 mitigation, his answer is no.

15 When he is asked, in 36, Do you believe the death
16 penalty should always be imposed if the defendant's found
17 guilty of intentional murder, no matter what the circumstance,
18 he writes, No, and handwrites, "self defense."

19 It is clear from -- and then we have the issues of
20 him being concerned -- when he's asked in the conclusion if --
21 his explanation to No. 50 is, I have suffered from anxiety
22 attacks in the past and hope this will not cause them to
23 return.

24 So once again, we have one of two options: He is
25 either not bright enough to understand written questions and

1 gave wrong responses, or he now understands how to answer
2 these so that he can get on this jury. Either way, he is not
3 a fair potential juror on this case and we would ask that he
4 be stricken for cause.

5 I think based on his responses that there are some
6 serious issues as to either his intelligence level or some
7 type of psychiatric problems. He's indicating he has been on
8 medication in the past. We certainly don't have his medical
9 records to know the extent of that, and so we would ask that
10 this juror be stricken for cause.

11 THE COURT: State.

12 MR. DiGIACOMO: Thank you, Judge. All due respect
13 to Mr. Ericsson, almost half the jurors we've talked to have
14 had inconsistent statements on their questionnaire. And if
15 you continue to read the questions that he didn't read to the
16 Court, the juror indicates that he thinks life without the
17 possibility of parole's actually a worse punishment than
18 death. He indicates that when he had thought about the death
19 penalty before in situations like 9-1-1 and terrorism. He
20 indicates that he doesn't think it should always be imposed if
21 the defendant is found guilty of intentional murder no matter
22 what the circumstances.

23 And when asked the question, The death penalty's
24 appropriate in some cases, but not others, how do you feel
25 about this statement, he indicates, It depends on the

1 circumstances.

2 He was asked, If you're convinced beyond a
3 reasonable doubt the defendant was guilty of first-degree
4 murder, you would say: A, your beliefs about the death
5 penalty are such that you would automatically vote in favor of
6 the death penalty, he checks off no. He also checks off no
7 when asked the opposite question.

8 Was he the most articulate person that has been up
9 here to answer these questions for the defense? I would
10 submit to the Court, no. But is that grounds in which to kick
11 him? A lot of people fill out questionnaires, they don't pay
12 as much attention to them, they write down the answers, they
13 don't understand the situation that's going on. They come
14 here, they sit here for two days, they hear how it works and
15 now they have an understanding of the system. And that's no
16 different than any other juror that's been up there now.

17 The reason that there's been such a fight over this
18 particular juror is that we're all out of perempts. And I
19 don't think it's appropriate to kick him when -- for both
20 sides. The Court has been very down the middle if they can
21 answer the questions appropriately during the time period of
22 their questioning. I got no impression that there was any
23 problem with this particular juror or that somehow having an
24 anxiety attack precludes you from become a juror. And I think
25 he's an appropriate juror to sit on the case.

1 THE COURT: All right. I mean, I would just say two
2 things. The first thing is in all of these we have to presume
3 the jurors are being truthful unless it's very clear to us
4 they're not being truthful. We've presumed that with
5 everybody else. And so we can't -- you know, unless it's
6 clear there's something in their answers that indicates that
7 they're being dishonest with us. And so I think we have to
8 presume -- that's why we place them under oath -- that they're
9 being truthful.

10 You know, I know the defense's position is somehow
11 he wants to be on the jury and that's why he's changed, you
12 know, his answers. I don't see anything here to suggest that
13 suddenly after sitting here for two days he's decided that he
14 wants to be on this jury and therefore is being dishonest in
15 his answers.

16 And as I've just said, you know, at some basic point
17 we have to presume these people are answering us honestly
18 unless there's something to indicate otherwise. We have had
19 on both sides a number of people who have changed their
20 answers from either never the death penalty, oh, well, yeah, I
21 could consider it, to always the death penalty, well, no, I
22 didn't really mean always, I could consider it now that I
23 understand what is really, you know, going on here.

24 So I don't share Mr. DiGiacomo's view that the only
25 reason you're arguing about it so much -- that makes it more

1 important that you're out of perempts, but you did argue
2 vociferously for Mr. Koch, I believe, who was before we'd gone
3 through our perempts, and so I don't see that as your
4 motivation, for what that's worth. It doesn't really matter.
5 But I think he's okay based on his answers.

6 And again, you know, I can't sit up here and assume
7 everybody's lying. You know, sometimes -- I mean, I guess
8 typically when you do see people being less than honest, it's
9 because they want to get out of jury duty, but I don't know --
10 you know, see anything -- what's his number again?

11 THE CLERK: 320.

12 MR. DIGIACOMO: 320.

13 THE COURT: Show me his questionnaire, please.

14 There was some concern about his cognition or
15 cognitive ability. He is a college -- he did attend college
16 for four years, for whatever that's worth.

17 The only other thing I would say is -- well, I mean,
18 okay. 51, Do you want to serve on this jury? Yes, no. I
19 mean -- well, I mean, he has a few of these.

20 43, pretrial publicity, have you seen or heard
21 anything? No, maybe.

22 The only other -- I'm going to follow up on 33,
23 which is the four. He circles two. Did we cover that? I
24 asked him the raising the hand question, but obviously if he
25 can't consider life with -- I'm going to follow up.

1 Jeff, bring him back.

2 MR. ERICSSON: He'll be in the elevator.

3 (Pause in proceedings)

4 THE MARSHAL: What was his last name again? I
5 don't --

6 THE CLERK: Peterson.

7 THE MARSHAL: What was his last name?

8 THE COURT: Mr. --

9 MR. ERICSSON: Peterson, Kevin Peterson.

10 THE COURT: Mr. Peterson.

11 MR. DiGIACOMO: I'm telling you he got on the
12 elevator and left.

13 MR. PESCI: He said --

14 MR. DiGIACOMO: I'm going right to the elevator. He
15 thought he got kicked off.

16 THE COURT: Maybe he --

17 MR. DiGIACOMO: I think he did. We've been fighting
18 over nothing at this point.

19 THE CLERK: You asked him not to talk and he said --

20 MR. DiGIACOMO: I'm going right to the elevator.

21 MR. BUNIN: He said that.

22 THE CLERK: He's gone.

23 MR. BUNIN: I thought he meant he was going to hide
24 in the elevator until we needed him so he wouldn't talk to
25 anyone.

1 THE COURT: I didn't know if he was getting a snack
2 or --

3 OFFICER: She said, Don't say nothing about it. He
4 said, Don't worry. I'm going straight to the elevator.

5 THE COURT: I didn't really hear that.

6 MR. BUNIN: Oh, this would be perfect.

7 THE COURT: Thirty minutes of fighting, the guy's
8 probably halfway home.

9 MR. DiGIACOMO: That's so unfair. We should get an
10 extra perempt for that.

11 (Pause in proceedings)

12 THE MARSHAL: He's gone.

13 MR. BUNIN: How much time have we spent on this?

14 THE COURT: I think like 40 minutes.

15 THE MARSHAL: The jury said he left.

16 THE COURT: All right. Let's -- sorry. It's not
17 funny, but, I mean --

18 Go ahead and bring the rest of them in.

19 Just on the record, my bailiff has combed the hall
20 and apparently Mr. Peterson was confused and thought he had
21 been discharged and has left.

22 And the jurors said he's gone; is that --

23 THE MARSHAL: The jury -- the rest of the jurors
24 said he left about 10 or 15 minutes ago.

25 MR. DiGIACOMO: And he's not coming back.

1 Judge, what number are we on, two?

2 THE COURT: That must be why he said he was offended
3 by the frivolity.

4 MR. DiGIACOMO: Will you do the language?

5 THE MARSHAL: The jurors are coming in.

6 (Jury reconvened at 4:03 p.m.)

7 THE COURT: All right. Court is now back in
8 session. The record will reflect the presence of the State,
9 the defendant and his counsel, the officers of the Court and
10 the members of the prospective jury panel.

11 And the next juror who is up is Aracely
12 Sorto-McGough.

13 Ma'am, come on down, please, and have that empty
14 chair. Ma'am, just have that chair.

15 And I believe, ma'am, yesterday you told us you're
16 from Honduras; is that correct?

17 PROSPECTIVE JUROR NO. 323: Yes, ma'am.

18 THE COURT: How long have you lived in the United
19 States?

20 PROSPECTIVE JUROR NO. 323: 30 and something years.

21 THE COURT: What do you do for a living?

22 PROSPECTIVE JUROR NO. 323: Housekeeping supervisor
23 at the Mirage.

24 THE COURT: Okay. And have you lived here in Clark
25 County the whole time?

1 PROSPECTIVE JUROR NO. 323: No, ma'am. I have 15
2 years getting over here. I used to live in Long Beach.

3 THE COURT: In Long Beach, okay. And have you ever
4 attended school in the United States?

5 PROSPECTIVE JUROR NO. 323: Yes, ma'am.

6 THE COURT: Where did you -- what level of school
7 did you go to?

8 PROSPECTIVE JUROR NO. 323: I just got my GED.

9 THE COURT: Okay. Here in the U.S.?

10 PROSPECTIVE JUROR NO. 323: Yes.

11 THE COURT: And how far in school did you go in
12 Honduras?

13 PROSPECTIVE JUROR NO. 323: 12 years.

14 THE COURT: Okay. So you did high school in
15 Honduras? Did you graduate or --

16 PROSPECTIVE JUROR NO. 323: Yeah, I was a secretary
17 over there.

18 THE COURT: Okay. Did you graduate high school in
19 Honduras?

20 PROSPECTIVE JUROR NO. 323: Over there is kind of
21 different.

22 THE COURT: Kind of different, okay.

23 PROSPECTIVE JUROR NO. 323: Elementary, the nine
24 grades over there is kind of a high school, finishing high
25 school over here. And then two more years as a secretary.

1 THE COURT: Okay. So was that like a business
2 college?

3 PROSPECTIVE JUROR NO. 323: Yeah.

4 THE COURT: Like secretary college?

5 PROSPECTIVE JUROR NO. 323: Yes.

6 THE COURT: Okay. And then you took your GED exam
7 here?

8 PROSPECTIVE JUROR NO. 323: Yes.

9 THE COURT: Okay. And I'm assuming that was in
10 English.

11 PROSPECTIVE JUROR NO. 323: I'm sorry?

12 THE COURT: I'm assuming the test was in English.

13 PROSPECTIVE JUROR NO. 323: Yes.

14 THE COURT: Okay. So you're at least proficient
15 enough in English to pass a GED test; is that right?

16 PROSPECTIVE JUROR NO. 323: Yes. I went quite a few
17 years to English school.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 323: I'm just not confident
20 with my accent and a few words, understanding a few words.

21 THE COURT: Okay. Now, other than maybe some --
22 well, let me not try to put words in your mouth. Have you
23 understood everything that's been going on here in the
24 courtroom these past --

25 PROSPECTIVE JUROR NO. 323: Most of it.

1 THE COURT: Most of it. What haven't you been able
2 to understand?

3 PROSPECTIVE JUROR NO. 323: Maybe when somebody
4 speaks very -- too quick or very low.

5 THE COURT: Okay. So you can understand the words,
6 it's just if somebody speaks really quickly, you might not
7 catch everything?

8 PROSPECTIVE JUROR NO. 323: Exactly.

9 THE COURT: Okay. Now what about with me speaking,
10 have you been -- am I speaking at an appropriate --

11 PROSPECTIVE JUROR NO. 323: Yes, very clear.

12 THE COURT: -- speed? Okay.

13 What about the prosecutors, have you understood what
14 they've been able to --

15 PROSPECTIVE JUROR NO. 323: I have problems with one
16 that is -- yeah.

17 THE COURT: Is that because he speaks too quickly or
18 too softly?

19 PROSPECTIVE JUROR NO. 323: Both.

20 THE COURT: Both. Okay. And what about the defense
21 attorneys, have you been able to understand what they've been
22 saying?

23 PROSPECTIVE JUROR NO. 323: Yes.

24 THE COURT: Okay. So it's more speed than the
25 content of what we're saying?

1 PROSPECTIVE JUROR NO. 323: Mostly.

2 THE COURT: Okay. Do you feel like -- now that
3 you've sat here and listened to the proceedings, do you feel
4 like if you're selected to be as -- a juror that you would be
5 able to follow along and understand the testimony and
6 everything that's being said?

7 PROSPECTIVE JUROR NO. 323: I think so.

8 THE COURT: Okay. And then also another thing --
9 you're -- I find you very easy to understand. I just want to
10 make sure that you wouldn't feel in any way hindered, if
11 you're a juror, from participating fully in the deliberations
12 and making sure your opinion is heard and considered by
13 everyone. Is that something that you feel you would be
14 willing and able to do?

15 PROSPECTIVE JUROR NO. 323: Like I say, I'm just not
16 confident. Probably I could be able to do it. And I'm --
17 maybe not confidence because it's the first time that I'm in
18 something like that.

19 THE COURT: Okay. Because, you know, we don't want
20 anybody to feel -- everybody's opinion is important,
21 obviously, as a juror, so we don't want anyone to feel like,
22 oh, they're not going to listen to me because maybe I have an
23 accent or maybe English isn't my first language.

24 PROSPECTIVE JUROR NO. 323: Yeah. Because that
25 happens sometimes, you know.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. approximate 23: You have the
3 feeling sometimes when they don't understand what I'm saying.

4 THE COURT: Okay. I'll see counsel at the bench.

5 (Off-record bench conference)

6 THE COURT: All right. Ma'am, if you're selected to
7 serve, can you promise me that if somebody's speaking too
8 quickly or something like that you'll let us know so we can
9 tell them to slow down?

10 PROSPECTIVE JUROR NO. approximate 23: Yes.

11 THE COURT: All right. Thank you. Mr. DiGiacomo's
12 going to ask you some questions.

13 MR. DiGIACOMO: Good afternoon, ma'am.

14 PROSPECTIVE JUROR NO. 323: Good afternoon.

15 MR. DiGIACOMO: Likewise, if you don't understand
16 something I'm saying, stop me. Okay?

17 PROSPECTIVE JUROR NO. 323: Yes.

18 MR. DiGIACOMO: I actually don't have a lot of
19 questions. I just want to go to the death penalty and then
20 I'll probably be done.

21 You kind of heard the past couple of days on what
22 the law is and how it works, so could you consider all four
23 forms of punishment?

24 PROSPECTIVE JUROR NO. 323: Yes.

25 MR. DiGIACOMO: Okay. And if it reaches that point,

1 could you envision yourself, in some situation, raising your
2 hand and voting for the death penalty? You don't have to tell
3 us what the situation is, but could you see yourself as being
4 able to do that?

5 PROSPECTIVE JUROR NO. 323: Yes.

6 MR. DiGIACOMO: Okay. Thank you very much, ma'am.

7 THE COURT: All right. Thank you, Mr. DiGiacomo.

8 Mr. Ericsson.

9 MR. ERICSSON: Thank you.

10 Good afternoon, ma'am.

11 PROSPECTIVE JUROR NO. 323: Good afternoon.

12 MR. ERICSSON: I just want to make sure that as far
13 as your background and experience in life you feel that you
14 could be equally fair to both the prosecution and the defense
15 in this case.

16 PROSPECTIVE JUROR NO. 323: Yes, sir.

17 MR. ERICSSON: And you would be comfortable that if
18 you were either sitting at the prosecution table or sitting at
19 the defense table having somebody with your mindset and
20 background sitting as a juror on this type of a case?

21 PROSPECTIVE JUROR NO. 323: Could you repeat the
22 question?

23 MR. ERICSSON: You bet. Would you be comfortable if
24 you were sitting either at the prosecution table or at the
25 defense table with somebody with your mindset and background

1 sitting as a juror on this case?

2 PROSPECTIVE JUROR NO. 323: Yes.

3 MR. ERICSSON: Thank you. And do you -- do you feel
4 that if you did find a defendant guilty of first-degree
5 intentional murder that you would still be able to consider
6 mitigation factors in determining the appropriate sentence?

7 PROSPECTIVE JUROR NO. 323: Yes, I think everybody
8 deserves a second chance in life.

9 MR. ERICSSON: Thank you, very much.

10 THE COURT: All right. Thank you.

11 MR. ERICSSON: Your Honor, we'll pass for cause.

12 THE COURT: All right. Ladies and gentlemen, all of
13 the challenges having been exercised or waived, you are the 15
14 members of our jury.

15 To the rest of you, I want to thank all of you for
16 being here. I'm sorry that jury selection has taken so long.
17 I know you had to come in the first day to do the
18 questionnaires. Well, it's two additional days. But I'm sure
19 all of you can appreciate how important the process is for
20 both sides to make sure that the jury panel that ultimately is
21 selected is composed of 15 people who aren't biased and who
22 can give both sides a completely fair hearing. And that's why
23 it does take so long in this process.

24 Again, thank you to all of you who have been here
25 who were willing to serve, and those of you in the audience

1 are all excused. And just follow Officer Wooten through the
2 double doors.

3 (Remainder of the jury panel dismissed at 4:13 p.m.)

4 THE COURT: All right. Ladies and gentlemen, it
5 being so late in the day, we're going to go ahead and take our
6 evening recess. We're going to reconvene tomorrow morning at
7 10:00 a.m. The Court has some introductory comments that I
8 make and then that will be followed by the opening statements
9 from the lawyers and then the presentation of evidence in this
10 case.

11 Officer Wooten is passing out notepads and badges.
12 When you leave today, you're going to be leaving your notepads
13 in your chairs, but take the badges with you. It's very
14 important that you wear the Department XXI juror badges
15 whenever you're in the building so that people recognize you
16 as jurors and a witness or somebody else doesn't inadvertently
17 start talking about the case in your presence. So make sure
18 that you put those on whenever you're in the building
19 including when you leave tonight.

20 Once again, of course, the admonition is in place.
21 During the evening recess you're not to discuss the case or
22 anything relating to the case with each other, with anyone
23 else. That would, of course, include members of your family
24 and your friends. You may, of course, tell them that you have
25 been selected to serve as a juror in a murder case, but please

1 don't discuss -- actually just a criminal case. Please don't
2 discuss anything else relating to this trial with them.

3 Additionally, do not read, watch, listen to any
4 reports of or commentaries on any subject matter relating to
5 the case. Don't do any independent research. Don't visit the
6 location at issue. And please do not form or express an
7 opinion on the trial until the very end when you begin
8 deliberating.

9 Any questions regarding parking, which will be
10 different tomorrow --

11 Right, Jeff?

12 THE BAILIFF: Yes, Judge.

13 THE COURT: -- as well as where to meet, please
14 address Officer Wooten. He'll give you instructions regarding
15 that. And we'll see you all back here at 10:00 a.m. tomorrow
16 morning. Once again, notepads in your chairs and follow
17 Officer Wooten through the double doors.

18 (Court recessed at 4:16 p.m. until the following
19 day, Wednesday, May 19, 2010, at 10:00 a.m.)

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ATTEST: I hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.


KIMBERLY LAWSON
TRANSCRIBER

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEANGELO CARROLL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 78081

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 30th day of May, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions