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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

RAMON MURIL DORADO,	) Supreme Court Case No.: 79556
	) Dist. Ct. Case No.: C-17-323098-1
	)
Petitioner,	)
	)
vs.	)
	)
THE STATE OF NEVADA,	)
	)
Respondent.	)

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**APPELLANT'S APPENDIX**

Volume 6

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<sup>1</sup> N.B. Volumes 3 and 4 of the Appellant's Appendix are comprised of Recorder's Transcript of Hearing: Jury Trial – Day 1, 6/17/19

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1 lot of tourists that go there for sex tourism.

2 MR. SCHWARTZ: I see. Okay.

3 MR. YAMPOLSKY: And apparently, that was one of  
4 them. He was one of them.

5 MR. SCHWARTZ: Right.

6 PROSPECTIVE JUROR #1174: And, yeah. You know,  
7 it's --

8 MR. SCHWARTZ: Okay. I'm very sorry to hear that.  
9 Thank you for sharing with us.

10 I take it that there was -- you know, it sounds like you  
11 tried to tell people, but there would have been no police  
12 investigation into the subject?

13 PROSPECTIVE JUROR #1174: No. If my older cousins  
14 were there, they would have done something, but --

15 MR. SCHWARTZ: Sure.

16 PROSPECTIVE JUROR #1174: -- they weren't.

17 MR. SCHWARTZ: Okay. And then, I guess, with  
18 regards to this case, do you think that -- you know, I know,  
19 given what happened to you, but would you be able to kind of  
20 set that aside and view this case -- view the evidence kind of  
21 aside from your experiences and judge this case based on the  
22 evidence you hear and, at the end, make a decision based on  
23 this evidence?

24 PROSPECTIVE JUROR #1174: I think I can.

1 MR. SCHWARTZ: Okay.

2 PROSPECTIVE JUROR #1174: I think I can.

3 MR. SCHWARTZ: Okay. Thank you, sir. I appreciate  
4 your time.

5 THE COURT: Counsel?

6 MR. YAMPOLSKY: And I'm sorry if you said, but  
7 approximately how old were you --

8 PROSPECTIVE JUROR #1174: I think I was about 12 or  
9 13.

10 MR. YAMPOLSKY: Okay. And you recognize -- well,  
11 you've heard some. You haven't heard the evidence, but you  
12 recognize that these allegations are an adult male who  
13 allegedly sexually assaulted an adult female; right? Correct?

14 PROSPECTIVE JUROR #1174: That's --

15 MR. YAMPOLSKY: So you don't think what happened  
16 would have any bearing on your ability to determine the  
17 evidence.

18 PROSPECTIVE JUROR #1174: I don't think so, sir.

19 MR. YAMPOLSKY: Okay. Thank you.

20 THE COURT: Thank you, sir. We'll have you come  
21 back at 1:00 o'clock. You can go on lunch break at this time.

22 PROSPECTIVE JUROR #1174: Copy that. Thank you.

23 THE COURT: Counsel, your next witness -- or next  
24 voir dire.

1 MR. SCHWARTZ: [JUROR NO. 1124].

2 THE COURT: [JUROR NO. 1124], just go ahead --  
3 Schwartz is gonna hand you the microphone and you can just sit  
4 in any of those seats that you feel comfortable in.

5 Ma'am, when we talked about -- basically we're gonna ask  
6 questions to continue with the process. We're gonna do it in  
7 private. Understand by "private" we mean without the rest of  
8 the potential jurors. Of course, my staff and the officers of  
9 the court are here and the attorneys are here. Understand,  
10 everything that's said in these proceedings stays right here  
11 in these proceedings; okay?

12 Thank you.

13 Counsel?

14 MR. SCHWARTZ: Thank you.

15 And, [JUROR NO. 1124], I think you actually were one that  
16 said you could talk about in front of everybody. But since we  
17 were doing this, figure we could just do it in private as  
18 well.

19 PROSPECTIVE JUROR #1124: [Indiscernible].

20 MR. SCHWARTZ: Could you tell us a little bit about  
21 what had happened to you when you were the victim of sexual  
22 assault?

23 PROSPECTIVE JUROR #1124: All right. So it kind of  
24 happened two times. And I'm not gonna like, exaggerate it.

1 'Cause, honestly, it wasn't, like, the worst thing that could  
2 happen.

3 So the first time was, I think I was about 16. So I  
4 think it was eight years ago.

5 MR. SCHWARTZ: Okay.

6 PROSPECTIVE JUROR #1124: I was at this guy's house  
7 that I was, like, kind of with. And he was pretty much -- he  
8 was a few years older than me. And he was pretty much one of  
9 those guys that was, like -- they didn't want a relationship,  
10 but I did. So I kind of forced him into one. I didn't force  
11 him into one. But I was kind of just, like, "I'm not gonna do  
12 anything with you unless we're dating." And so we started  
13 dating.

14 And then I went to his house and then -- oh, my God. I'm  
15 gonna sound like such a bad person. I was only, like, 16 or  
16 17, but --

17 THE COURT: Ma'am, please understand, there's  
18 absolutely no judgment being done. All we're gonna do is ask  
19 you facts and how it may affect you as a potential juror.

20 PROSPECTIVE JUROR #1124: Okay. He did get me high  
21 on weed. And -- but I was like, still, like, 100 percent --  
22 like, I knew what was happening. My mind wasn't clouded or  
23 anything like that. Like, I knew what was happening. And I  
24 knew what I was saying and everything.



1           And so he pretty much started to touch me. And I was  
2           like, "No, stop." Like, "Don't do that. I don't want to do  
3           anything." And he literally would not stop. And I just kept  
4           telling him, "No, stop." Like, "Don't do it." And he just  
5           kept touching me and I just let it happen after, like, five  
6           minutes of telling him to stop. 'Cause he just wouldn't  
7           listen to me.

8           He only did things with his hands. So I'm glad about  
9           that. But I didn't really know much about anything about that  
10          stuff back then. So I kind of didn't think it was a big deal.  
11          I thought it was kind of normal.

12          But after, like, a few years, I was, like, thinking about  
13          it and I was like, "Wait. I was telling him to stop and he  
14          didn't stop. That's molestation." Like what is wrong --  
15          like, what -- and so I just -- what -- like, I didn't do  
16          anything. Like, what can you do?

17          And then the second time actually happened this year. I  
18          was having consensual sex with somebody that I met. And I  
19          told him firmly, don't -- don't finish inside of me. And he  
20          did. And -- and I was, like -- I was like, "Why would you do  
21          that?"

22          And so pretty much all I did was make him pay for the  
23          Plan B and I blocked him out of my life forever. And that's  
24          pretty much it.

1 THE COURT: Counsel, any questions?

2 MR. SCHWARTZ: Just quickly about -- I believe you  
3 had mentioned that your best friend had also been the victim.  
4 Do you know much about what happened to her?

5 PROSPECTIVE JUROR #1124: I don't know too much.  
6 She hasn't said that much about it. What she has said, it was  
7 -- I think it was her sophomore year. It was when she first  
8 came to Vegas. I met her in high school.

9 MR. SCHWARTZ: Okay.

10 PROSPECTIVE JUROR #1124: And she started dating a  
11 guy named Billy. He was a few years older than her, too. I  
12 think he was a senior at the time. And she -- what -- based  
13 off what she was telling me, she kept telling him that she  
14 doesn't want to. She doesn't feel comfortable. But he  
15 actually proceeded to have sex with her.

16 MR. SCHWARTZ: Was there any type of -- that you're  
17 aware of, any type of criminal investigation or police  
18 involvement or anything --

19 PROSPECTIVE JUROR #1124: No, I don't think she did  
20 anything. 'Cause I think she was so young at that time, I  
21 don't think she really, like, understood -- the same as me,  
22 too.

23 MR. SCHWARTZ: Kind of like you? Yeah.

24 PROSPECTIVE JUROR #1124: Yeah.

1           MR. SCHWARTZ: Okay. I don't have any further  
2 questions.

3           THE COURT: Counsel for the Defense, any questions?

4           MR. YAMPOLSKY: When you said you were having  
5 consensual sex and then you told him not to finish inside of  
6 you, would you agree that you had -- had agreed to actually  
7 have the consensual sex?

8           PROSPECTIVE JUROR #1124: Yeah, we agreed to it.  
9 But I told him prior to that that I don't want him to finish  
10 inside of me.

11          MR. YAMPOLSKY: I understand that. But if somebody  
12 asks you the question -- and I'm asking you the question, in  
13 that scenario, even though you told him not to finish and he  
14 did, if somebody said, did you -- did you consent to  
15 consensual sex, what was your answer?

16          PROSPECTIVE JUROR #1124: Yes.

17          MR. YAMPOLSKY: Okay. And we were -- yesterday, you  
18 were talking and you -- and if I'm paraphrasing or if I have  
19 it wrong, please correct me -- is something like, "I have  
20 strong feelings," or I -- basically, "I go with my feelings,"  
21 or something like that. Do you remember saying that?

22          PROSPECTIVE JUROR #1124: Yes, I go with my gut  
23 instinct.

24          MR. YAMPOLSKY: Okay. So my question is that you

1 heard the Prosecution's witness testify; okay? And in your  
2 head, you're thinking, "Gee, I don't think they met their  
3 burden." But your gut says, "Something happened. I know he  
4 did something." If that were the case, what would your  
5 verdict be?

6 PROSPECTIVE JUROR #1124: Well, because of the whole  
7 evidence thing, if I do hear what she says but my gut instinct  
8 tells me otherwise, but there's no evidence to prove my gut  
9 instinct, then there's really nothing I can do.

10 MR. YAMPOLSKY: Well, would you go with your  
11 feelings or would you go what you think the evidence was?

12 PROSPECTIVE JUROR #1124: In that case, I would have  
13 to go with what the evidence shows.

14 MR. YAMPOLSKY: Okay. And yesterday, I believe you  
15 said something like, "Well, I would want to hear from the  
16 Defendant." Remember, you said that?

17 PROSPECTIVE JUROR #1124: Mm-hmm.

18 MR. YAMPOLSKY: Can you explain a little about that?

19 PROSPECTIVE JUROR #1124: Yes. It would -- in every  
20 case scenario, it would be nice to hear both sides of the  
21 story, even though, now, I do realize that I don't have to  
22 hear your side of the story. And I've become okay with that.  
23 So pretty much, I would just have to go off her story, if it  
24 makes sense, and any evidence and any questions, anything that

1       you guys have to say.

2               MR. YAMPOLSKY:  So even though -- let me give you  
3       this scenario:  My client doesn't testify.  I don't ask any  
4       questions of anybody.  Would you hold that against him?

5               PROSPECTIVE JUROR #1124:  I wouldn't -- I can't.  So  
6       I wouldn't let myself.

7               MR. YAMPOLSKY:  So you're okay with that?

8               PROSPECTIVE JUROR #1124:  Yeah.

9               MR. YAMPOLSKY:  Okay.

10              THE COURT:  Any follow up to that, Counsel?

11              Thank you, ma'am.  We'll see you back here at  
12       1:00 o'clock.  Okay.  Go on lunch break.  Thank you.  
13       Counsel, next venire.

14              MR. SCHWARTZ:  [JUROR NO. 1229].

15              THE COURT:  [JUROR NO. 1229].

16              [DISCUSSION OFF THE RECORD]

17              THE COURT:  [JUROR NO. 1229], if you'll just come up  
18       here and take one of the seats in the box, please.  Yeah, any  
19       one that you want.  That's fine.

20              [JUROR NO. 1229], badge number 229.  Please understand  
21       what we're doing now is the continuation of the voir dire  
22       process.  However, we're doing it in private due to request  
23       made by certain juror members, prospective juror members.

24              By "private," it means the rest of the prospective jurors

1 are not here. Of course, all my staff is here, the officers  
2 of the court and members of the court and the bar are here.  
3 But please understand that everything that's said in this  
4 courtroom basically stays in this courtroom. All the  
5 individuals in here are either under an oath not to convey any  
6 of this material to anyone else or, basically, they know by  
7 penalty of law they can't. So it is technically in private.

8 Counsel?

9 MR. SCHWARTZ: [JUROR NO. 1229], you mentioned --  
10 did you have a question?

11 PROSPECTIVE JUROR #1229: Actually, it was, like,  
12 correction. Your Honor, I think you said 229. It's 1229.

13 THE COURT: Yeah, I just did the last three.

14 PROSPECTIVE JUROR #1229: Oh, okay.

15 THE COURT: It's okay. 1229.

16 PROSPECTIVE JUROR #1229: You got it.

17 MR. SCHWARTZ: Good catch, though. Good catch.

18 You had mentioned yesterday that you had a friend who was  
19 the victim of, I believe, a sexual assault.

20 PROSPECTIVE JUROR #1229: Yes, sir.

21 MR. SCHWARTZ: Could you tell us, like, whatever you  
22 know about it that you're comfortable telling us.

23 PROSPECTIVE JUROR #1229: I actually found out about  
24 it yesterday.

1 MR. SCHWARTZ: Okay.

2 PROSPECTIVE JUROR #1229: Because as I mentioned, it  
3 was [JUROR NO. 1191], who is currently not here, I believe --

4 MR. SCHWARTZ: Oh, okay.

5 PROSPECTIVE JUROR #1229: It was her sister. And I  
6 actually had only just found about it yesterday.

7 MR. SCHWARTZ: When [JUROR NO. 1191] said it out  
8 loud?

9 PROSPECTIVE JUROR #1229: Yes.

10 MR. SCHWARTZ: Okay. So you don't know any other  
11 details, other than what we heard yesterday, huh?

12 PROSPECTIVE JUROR #1229: No, I had only just found  
13 out about it, like, literally, right then.

14 MR. SCHWARTZ: And that was the connection between  
15 you two. You know her sister.

16 PROSPECTIVE JUROR #1229: Yes. She was a friend of  
17 mine in middle school and then we reconnected in high school.

18 MR. SCHWARTZ: Okay. Okay. Did you also -- I wrote  
19 it down, so it could have been wrong. But you -- did you also  
20 say you had a friend that was a victim of a violent crime?

21 PROSPECTIVE JUROR #1229: Yes.

22 MR. SCHWARTZ: Okay. Could you tell us a little bit  
23 more about that?

24 PROSPECTIVE JUROR #1229: He doesn't like to

1 disclose it. But he is a citizen of the United States, but he  
2 was not born in the United States. He was born in  
3 Sierra Leone during the time that the civil war was  
4 happened -- the civil war was going on. And he doesn't  
5 remember it. But according to his uncle, he witnessed his  
6 whole family get killed in front of him.

7 MR. SCHWARTZ: Oh, wow. Okay.

8 PROSPECTIVE JUROR #1229: He doesn't like to talk  
9 about it and I don't know anything other than beyond that.

10 MR. SCHWARTZ: Okay. Okay. I have no further  
11 questions. Thank you, sir.

12 THE COURT: Counsel, any questions at all?

13 MR. YAMPOLSKY: Just, based on what you know,  
14 [JUROR NO. 1191], whatever her name is --

15 PROSPECTIVE JUROR #1229: [JUROR NO. 1191].

16 MR. YAMPOLSKY: I'm sorry. What?

17 PROSPECTIVE JUROR #1229: [JUROR NO. 1191].

18 MR. YAMPOLSKY: [JUROR NO. 1191], her sister and  
19 your friend, that wouldn't have any affect on your ability to  
20 determine what -- to determine whether the government met  
21 their burden or not?

22 PROSPECTIVE JUROR #1229: Oh, no, not at all. In  
23 fact, because I had only found out about it after this court  
24 case had gotten, is that I'm going to ask her about it,



1 afterwards, of course.

2 MR. YAMPOLSKY: Okay. I have nothing further.

3 THE COURT: Okay. Thank you, sir. We'll see you  
4 back here at 1:00 o'clock. Go on lunch break; okay?

5 PROSPECTIVE JUROR #1229: Thank you.

6 THE COURT: Thank you, sir.

7 MR. SCHWARTZ: [JUROR NO. 1238].

8 MR. YAMPOLSKY: Badge number?

9 MR. SCHWARTZ: She's a new one. She's --

10 MS. CRAGGS: 1238.

11 MR. SCHWARTZ: -- 1238.

12 MR. YAMPOLSKY: 1238? [JUROR NO. 1238]?

13 MS. CRAGGS: Yes, correct. 1238.

14 [DISCUSSION OFF THE RECORD]

15 THE COURT: Go ahead, ma'am. And if you'll just  
16 have a seat. And Mr. Schwartz will hand you the microphone.

17 Ma'am, I want you to understand that, basically, what  
18 we're doing here is a continuation of the voir dire process.  
19 The question's going to be asked, but they're being done in  
20 private, meaning there's no other members of the potential  
21 jury pool in front of you. Of course, there's individuals  
22 here from my department, law enforcement, and officers of the  
23 court and attorneys. Please understand that everything that  
24 is said in this room basically stays absolutely in this room;

1       okay?

2               PROSPECTIVE JUROR #1240:   Okay.

3               THE COURT:   Go ahead, Counsel.

4               MR. SCHWARTZ:   Okay.   Ma'am, you had mentioned  
5       that -- I think you said maybe not technically, you didn't  
6       think it was, technically, a sexual assault.   Could you just  
7       kind of maybe elaborate a little bit for us?

8               PROSPECTIVE JUROR #1240:   Like --

9               MR. YAMPOLSKY:   Your Honor, could the Court have  
10       [JUROR NO. 1238] hold the mic closer to --

11              THE COURT:   Oh, yeah.   [JUROR NO. 1238], a little  
12       bit louder.   Outside voice.   And hold that microphone like  
13       you're auditioning for one of those song shows; all right?

14              PROSPECTIVE JUROR #1240:   Okay.

15              THE COURT:   Thank you.

16              PROSPECTIVE JUROR #1240:   He told me to do stuff,  
17       but like nothing actually happened.

18              MR. SCHWARTZ:   Okay.

19              PROSPECTIVE JUROR #1240:   And my mom called the  
20       cops.

21              MR. SCHWARTZ:   Okay.   So when you had mentioned that  
22       your mom and you, I guess, was it a home invasion or burglary  
23       situation?

24              PROSPECTIVE JUROR #1240:   They came in and they just

1 slashed the couches. It was an ex.

2 MR. SCHWARTZ: Okay. And you and your mom were  
3 home?

4 PROSPECTIVE JUROR #1240: No.

5 MR. SCHWARTZ: Were not.

6 PROSPECTIVE JUROR #1240: No.

7 MR. SCHWARTZ: When was this? Like, how many years  
8 ago, approximately?

9 PROSPECTIVE JUROR #1240: Thirteen.

10 MR. SCHWARTZ: Thirteen years ago?

11 PROSPECTIVE JUROR #1240: Yeah.

12 MR. SCHWARTZ: So how old would you have been at  
13 that time?

14 PROSPECTIVE JUROR #1240: Like six.

15 MR. SCHWARTZ: Six?

16 PROSPECTIVE JUROR #1240: Yeah.

17 MR. SCHWARTZ: So they came in and slashed the  
18 couches and then did you guy -- were you and your mom coming  
19 home when they were there?

20 PROSPECTIVE JUROR #1240: No, we came home and,  
21 like, we just saw the couches --

22 MR. SCHWARTZ: Okay.

23 PROSPECTIVE JUROR #1240: -- but, like, we knew who  
24 it was because something happened after that too.

1           MR. SCHWARTZ: Okay. So let me make sure I get it  
2 in order. I think I'm -- I thought it was all the same  
3 incident. So the first thing that happens is the couch  
4 slashing?

5           PROSPECTIVE JUROR #1240: I think so, yeah.

6           MR. SCHWARTZ: Okay. So then what happens next?

7           PROSPECTIVE JUROR #1240: I don't think my mom -- I  
8 don't remember if she called the cops for that one.

9           MR. SCHWARTZ: Okay.

10          PROSPECTIVE JUROR #1240: But then -- it's, like,  
11 all in the same, like, time, not the same day.

12          MR. SCHWARTZ: Not the same day?

13          PROSPECTIVE JUROR #1240: Yeah.

14          MR. SCHWARTZ: Okay. So maybe like a couple days  
15 later, something else happened?

16          PROSPECTIVE JUROR #1240: Yeah.

17          MR. SCHWARTZ: Okay. Who were the people that did  
18 it?

19          PROSPECTIVE JUROR #1240: It was one of my mom's  
20 exes.

21          MR. SCHWARTZ: Oh, okay.

22          PROSPECTIVE JUROR #1240: Yeah.

23          MR. SCHWARTZ: So what was the next thing that  
24 happened after the couch slashing that you remember?

1 PROSPECTIVE JUROR #1240: There were two things, but  
2 I don't know which one came first.

3 MR. SCHWARTZ: Okay. Let's -- tell me about one of  
4 'em.

5 PROSPECTIVE JUROR #1240: I was outside playing with  
6 my cousin. And then, like, a big rock just, like, flew by  
7 right here and it hit the house.

8 MR. SCHWARTZ: A rock?

9 PROSPECTIVE JUROR #1240: Yeah.

10 MR. SCHWARTZ: Okay. Did you see who threw it?

11 PROSPECTIVE JUROR #1240: My mom's ex.

12 MR. SCHWARTZ: Okay.

13 PROSPECTIVE JUROR #1240: I know 'cause of the  
14 truck. It was kind of hard to miss. It was red with white  
15 polka dots.

16 MR. SCHWARTZ: Red with white polka dots?

17 PROSPECTIVE JUROR #1240: Yeah.

18 MR. SCHWARTZ: That's kind of an interesting  
19 truck --

20 PROSPECTIVE JUROR #1240: Yeah.

21 MR. SCHWARTZ: -- color.

22 Okay. So did anything happen as a result of that, the  
23 rock hit the window? Did anyone get hurt or anything?

24 PROSPECTIVE JUROR #1240: No. We lived in a

1 trailer, so it hit, like, the bottom part of it.

2 MR. SCHWARTZ: Okay. And you just told your mom  
3 what happened?

4 PROSPECTIVE JUROR #1240: Yeah. She called the cops  
5 and they came and that's it.

6 MR. SCHWARTZ: Okay. So then what's the other thing  
7 that happened?

8 PROSPECTIVE JUROR #1240: The -- technically not  
9 the -- yeah. It was at school.

10 MR. SCHWARTZ: Okay. You were at school?

11 PROSPECTIVE JUROR #1240: Mm-hmm.

12 MR. SCHWARTZ: You said you're about six, maybe?  
13 And it -- is it the same ex-boyfriend?

14 PROSPECTIVE JUROR #1240: No, it was --

15 MR. SCHWARTZ: Oh, okay.

16 PROSPECTIVE JUROR #1240: -- a stranger, actually.

17 MR. SCHWARTZ: Were you walking home? At recess or  
18 where were you?

19 PROSPECTIVE JUROR #1240: I had asked to go to the  
20 bathroom.

21 MR. SCHWARTZ: Okay.

22 PROSPECTIVE JUROR #1240: And it was like -- it was  
23 like the bathroom and then it was my classroom. But I guess  
24 they had a soft lockdown when I was in the bathroom or

1 something.

2 MR. SCHWARTZ: A what lockdown?

3 THE COURT: Soft lockdown.

4 PROSPECTIVE JUROR #1240: A soft lockdown.

5 MR. SCHWARTZ: A soft lockdown. Okay.

6 PROSPECTIVE JUROR #1240: And I didn't know what  
7 that was. So I was just in the bathroom. And he -- he held  
8 the door open for me. I thought it was a teacher, honestly.  
9 Then I went in; he came in after and he locked the door.

10 MR. SCHWARTZ: Okay. And I know you said -- it  
11 sounded like he told you to do stuff to him?

12 PROSPECTIVE JUROR #1240: Mm-hmm.

13 MR. SCHWARTZ: And you didn't?

14 PROSPECTIVE JUROR #1240: No, I started crying.

15 MR. SCHWARTZ: Okay.

16 PROSPECTIVE JUROR #1240: And I think he got scared  
17 or something 'cause --

18 MR. SCHWARTZ: And then --

19 PROSPECTIVE JUROR #1240: -- he left.

20 MR. SCHWARTZ: He just left.

21 PROSPECTIVE JUROR #1240: Yeah.

22 MR. SCHWARTZ: And then you told, like, your mom  
23 what happened --

24 PROSPECTIVE JUROR #1240: Yeah.

1 MR. SCHWARTZ: -- or did you tell the teachers?

2 PROSPECTIVE JUROR #1240: No. I --

3 MR. SCHWARTZ: Okay.

4 PROSPECTIVE JUROR #1240: I was confused. So I just  
5 told my teacher I missed my brother. Because he had passed  
6 away recently.

7 MR. SCHWARTZ: Okay. I'm sorry.

8 PROSPECTIVE JUROR #1240: Yeah. So then, like, when  
9 I got home, I told my mom.

10 MR. SCHWARTZ: I see. And were they ever able to  
11 find this guy?

12 PROSPECTIVE JUROR #1240: No, they -- they took me  
13 in a police car and they showed me suspects.

14 MR. SCHWARTZ: Uh-huh.

15 PROSPECTIVE JUROR #1240: But, no.

16 MR. SCHWARTZ: Didn't recognize him?

17 PROSPECTIVE JUROR #1240: No.

18 MR. SCHWARTZ: Okay. Thank you.

19 THE COURT: Counsel for Defense, any questions?

20 MR. YAMPOLSKY: [JUROR NO. 1238], just based on  
21 those incidents, would you have a problem determining whether  
22 or not you thought the evidence was credible on the witness  
23 stand or whatever's admitted?

24 PROSPECTIVE JUROR #1240: No, I'm --



1 MR. YAMPOLSKY: I have nothing further.

2 THE COURT: Thank you, ma'am. We'll see you back  
3 here at 1:00 o'clock. Go ahead and go on lunch break.

4 State, next prospective juror member.

5 MR. SCHWARTZ: [JUROR NO. 1239], please.

6 THE COURT: [JUROR NO. 1239], we'll just go ahead  
7 and have you sit in one of these black chairs over here,  
8 whichever's more comfortable for you.

9 PROSPECTIVE JUROR #1239: Okay.

10 THE COURT: Those seem to be the most comfy chairs I  
11 have.

12 And, [JUROR NO. 1239], 1239, I want you to understand  
13 that we're basically continuing the process of questioning,  
14 the voir dire process, but we're gonna do these in private.  
15 And by "private," I mean the rest of the prospective jurors  
16 are not here.

17 Of course my staff and the officers of the court and  
18 police officers still in the courtroom. Please understand  
19 that everything that's being said in this room basically stays  
20 in this room. It's private; okay?

21 PROSPECTIVE JUROR #1239: Mm-hmm.

22 THE COURT: Go ahead, Counsel.

23 MR. SCHWARTZ: [JUROR NO. 1239], you had mentioned  
24 that your daughter was the victim of a sexual assault?

1 PROSPECTIVE JUROR #1239: Yes.

2 MR. SCHWARTZ: How old was she at that time?

3 PROSPECTIVE JUROR #1239: Either three or four. I  
4 can't remember.

5 THE COURT: Ma'am, if you talk a little bit louder.  
6 Outside voice.

7 PROSPECTIVE JUROR #1239: About three or four.

8 MR. SCHWARTZ: And who was the assaulter?

9 PROSPECTIVE JUROR #1239: My co-worker's 15-year-old  
10 son.

11 MR. SCHWARTZ: How did you end up finding out about  
12 that?

13 PROSPECTIVE JUROR #1239: She told her dad a few  
14 months later that Brian looked at her pee pee when she came  
15 out of the bathroom. So --

16 MR. SCHWARTZ: Okay.

17 PROSPECTIVE JUROR #1239: It's like, I don't know if  
18 it was more than one incident or a little bit. 'Cause he  
19 wasn't usually with her alone. But one week he was.

20 MR. SCHWARTZ: The kid?

21 PROSPECTIVE JUROR #1239: The 15-year-old, yeah.

22 MR. SCHWARTZ: What did you guys do once you found  
23 out about it?

24 PROSPECTIVE JUROR #1239: I went -- I called

1 Child Haven or Child Safe Nest, I don't know, whatever the --

2 MR. SCHWARTZ: CPS or --

3 PROSPECTIVE JUROR #1239: Yeah, I don't know. The  
4 child place is in -- and they went over to do an  
5 investigation. But they already had a lawyer and kind of  
6 blocked it. And I didn't want to put her through court. So I  
7 sent her to therapy and stopped talking to my co-worker.

8 And she didn't -- she didn't really bring it up that many  
9 times. I mean, he had a lot of issues with my ex-husband.  
10 And seemed like the therapy mostly was about how annoying he  
11 was rather than how she was affected by the --

12 MR. SCHWARTZ: Okay.

13 PROSPECTIVE JUROR #1239: -- thing, so --

14 MR. SCHWARTZ: Well, I guess that's good --

15 PROSPECTIVE JUROR #1239: Yeah.

16 MR. SCHWARTZ: -- in the sense -- okay.

17 Were you disappointed that there -- I guess you didn't  
18 want there to be more of an investigation at that point;  
19 right? Because you didn't want her to have to go court --

20 PROSPECTIVE JUROR #1239: Right. Yeah.

21 MR. SCHWARTZ: -- and stuff like that  
22 [indiscernible].

23 PROSPECTIVE JUROR #1239: Yeah, I was sort of  
24 disappointed. More of my co-worker because she just kept

1 sending me e-mails that kids make up stuff. I go, "She's  
2 three. She didn't know anything. She couldn't make this up."

3 MR. SCHWARTZ: Yeah.

4 PROSPECTIVE JUROR #1239: I mean, they showed her on  
5 I doll, "Show what happened."

6 MR. SCHWARTZ: Okay. So they did do like a little  
7 interview with her?

8 PROSPECTIVE JUROR #1239: Yeah.

9 MR. SCHWARTZ: Like a forensic interview, I think  
10 they might call it?

11 PROSPECTIVE JUROR #1239: Yeah.

12 MR. SCHWARTZ: Okay. I guess, would anything about  
13 that experience in your life affect you from being able to  
14 kind of be fair in this case and listen to the evidence and  
15 judge it for what you hear in this case?

16 PROSPECTIVE JUROR #1239: I don't think so.

17 MR. SCHWARTZ: Okay. Thank you, ma'am.

18 THE COURT: Counsel, any questions?

19 MR. YAMPOLSKY: Just, you don't think that that --  
20 those experience would keep you from evaluating the evidence,  
21 do you?

22 PROSPECTIVE JUROR #1239: No.

23 MR. YAMPOLSKY: Nothing further.

24 THE COURT: Thank you, ma'am. We'll see you back

1 here at 1:00 o'clock. Go ahead and have a lunch break.

2 PROSPECTIVE JUROR #1239: Thank you.

3 THE COURT: State?

4 MR. SCHWARTZ: Your Honor, this is our last one.  
5 [JUROR NO. 1246]. The Marshal didn't say whether he got proof  
6 from her yet -- right -- about the --

7 THE COURT: No, we're -- I -- have her back in.

8 [JUROR NO. 1246], if you would just come and take one of  
9 the cushy black chairs there in the box.

10 THE MARSHAL: Your Honor, [JUROR NO. 1246] did show  
11 me the e-mail that her plane ticket leaving Friday --

12 THE COURT: Okay.

13 THE MARSHAL: -- at [indiscernible] o'clock.

14 THE COURT: All right, Counsel. That maybe can  
15 solve that problem right away.

16 MR. SCHWARTZ: Yes.

17 THE COURT: [JUROR NO. 12:46], due to the fact that  
18 you have flight arrangements for Mexico that I'm sure were  
19 made months and months ago and probably quite expensive and  
20 they're family trips and the fact that we could not assure you  
21 this case would be done before that period, we're gonna excuse  
22 you. Okay? Thank you, ma'am. You may be excused.

23 Counsel, what we'll do is, after lunch, we'll replace  
24 that one seat. I'll do the general questions and then we'll

1 follow up with the State's questions. And then, Counsel, be  
2 ready to go. And once we're done picking the jury, make sure  
3 you're ready to do opening arguments today.

4 MR. YAMPOLSKY: Your Honor, before we break, can I  
5 do one challenge for cause?

6 THE COURT: You may.

7 MR. YAMPOLSKY: Okay. On [JUROR NO. 1164] -- and  
8 the Court saw what she's like and she hesitated this and that.  
9 But the one question was -- the last question I asked and  
10 it's, like, well, if you believe -- essentially, if you  
11 believe it could have happened or couldn't happen and it's  
12 like even, you know, what would your verdict be?

13 She goes, "I can't answer that."

14 And, Your Honor, even though we didn't go into it and I  
15 know what the law says, it sounds like that's reasonable and  
16 she couldn't determine whether or not she would have a verdict  
17 of not guilty. And based on that, I think that she should be  
18 excused for cause.

19 THE COURT: Counsel?

20 MR. SCHWARTZ: First, to be clear, you're talking  
21 about [JUROR NO. 1087] --

22 THE COURT: [JUROR NO. 1087], not [JUROR NO. 1164].

23 MR. SCHWARTZ: -- you said [JUROR NO. 1164].

24 MR. YAMPOLSKY: Oh, I'm sorry.

1 THE COURT: It's 1087, [JUROR NO. 1087].

2 MR. YAMPOLSKY: Right.

3 MR. SCHWARTZ: And so I would object. I think at  
4 this time she said several times that she would be fair,  
5 listen to the evidence. If there was no evidence, she would  
6 find not guilty.

7 At that one question that Mr. Yampolsky asked her, didn't  
8 feel like she was saying she couldn't be fair but maybe she  
9 just was confused about the question. Maybe you can follow up  
10 with her and --

11 THE COURT: No, Counsel, I went through it. And  
12 basically, the hypothetical that was posed to her was  
13 confusing to this Court. Once it was clarified by a direct  
14 question, she basically said, no, she could be fair. She  
15 could understand it. If the State couldn't prove its burden,  
16 that she'd come back with a not guilty. Therefore,  
17 [JUROR NO. 1087] will stay.

18 We'll see you back here at 1:00 o'clock.

19 [RECESS AT 12:03 P.M.; PROCEEDINGS RESUMED AT  
20 1:02 P.M.]

21 [OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY]

22 [DISCUSSION OFF THE RECORD]

23 THE COURT: Counsel, anything that needs to come  
24 before the Court before we get the jury in here?

1 MS. CRAGGS: Would you like us to talk about that  
2 motion now, Your Honor?

3 THE COURT: I've looked through it and we're gonna  
4 do it at the break time because I got a jury sitting out  
5 there.

6 MS. CRAGGS: Okay. Thank you.

7 MR. SCHWARTZ: We're ready.

8 THE COURT: Okay. Let's go. Let's go ahead and get  
9 my jury in. Officers, can you alert my Marshal, let her know  
10 we're ready?

11 COURT OFFICER: Yes, sir.

12 THE COURT: Thank you, sir.

13 [DISCUSSION OFF THE RECORD]

14 THE MARSHAL: All rise for the jury.

15 [IN THE PRESENCE OF THE PROSPECTIVE JURY]

16 THE MARSHAL: Your Honor, we're missing one juror.  
17 He had to run to the restroom after we lined up.

18 THE COURT: Okay. Is he an individual that's in the  
19 gallery or in the box?

20 THE MARSHAL: He was back here.

21 THE COURT: Okay. We'll begin without him.

22 Welcome back, everyone. Madam Clerk, if you would please  
23 fill the vacancies.

24 THE CLERK: In seat number five will be



1 [JUROR NO. 1254], badge 254. And seat number 28 will be  
2 [JUROR NO. 1255], badge 255.

3 THE COURT: All right. Marshal, if you can get that  
4 microphone up there to [JUROR NO. 1254] in the background,  
5 badge 1254.

6 [JUROR NO. 1254], how you doing today?

7 PROSPECTIVE JUROR #1254: Doing good.

8 THE COURT: Okay. Let's see how good your memory  
9 is. How long you been here in Clark County?

10 PROSPECTIVE JUROR #1254: About 16 years.

11 THE COURT: All right. Are you currently employed?

12 PROSPECTIVE JUROR #1254: Yes, sir.

13 THE COURT: What do you do?

14 PROSPECTIVE JUROR #1254: I'm a cashier, the  
15 Harbor Freight Tools.

16 THE COURT: Okay. Another one of my favor stores.  
17 I wish you guys would stop sending me all those coupons,  
18 though. Actually, my wife would prefer that you stop sending  
19 me all those coupons.

20 All right. Are you currently married?

21 PROSPECTIVE JUROR #1254: No.

22 THE COURT: Okay. How far did you go in school?

23 PROSPECTIVE JUROR #1254: High school.

24 THE COURT: Okay. Do you have any close family

1 members or close family friends who have ever been a victim of  
2 a violent crime?

3 PROSPECTIVE JUROR #1254: No.

4 THE COURT: What about a victim of a sexual assault?

5 PROSPECTIVE JUROR #1254: No.

6 THE COURT: Any close family members or friends of  
7 the family that have been accused of committing a sexual  
8 assault?

9 PROSPECTIVE JUROR #1254: No.

10 THE COURT: Any close family members or close family  
11 friends that are in law enforcement?

12 PROSPECTIVE JUROR #1254: No.

13 THE COURT: That was easy. All right.

14 All right. You know the drill. How long you been here  
15 in Clark County?

16 PROSPECTIVE JUROR #1255: Eighteen years.

17 THE COURT: Eighteen years?

18 All right. I noticed a little accent there. What's your  
19 native language?

20 PROSPECTIVE JUROR #1255: Excuse me?

21 THE COURT: What's your native language?

22 PROSPECTIVE JUROR #1255: Spanish --

23 THE COURT: Spanish? Okay.

24 PROSPECTIVE JUROR #1255: -- my language. Spanish.

1 Mm-hmm.

2 THE COURT: Okay. How well do you read, write, and  
3 understand the English language?

4 PROSPECTIVE JUROR #1255: Like maybe 60 percent  
5 listen.

6 THE COURT: Okay. In listening.

7 PROSPECTIVE JUROR #1255: Mm-hmm.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR #1255: Maybe 60 percent.

10 THE COURT: Are you better -- is it better or easier  
11 for you to listen to the English language or to read it?

12 PROSPECTIVE JUROR #1255: Listen.

13 THE COURT: Okay. Listen to it. Okay.

14 And are you currently employed?

15 PROSPECTIVE JUROR #1255: Yes, I work --

16 THE COURT: What do you --

17 PROSPECTIVE JUROR #1255: -- for Bellagio.

18 THE COURT: Okay. And what do you do for them?

19 PROSPECTIVE JUROR #1255: Housekeeping.

20 THE COURT: Okay. And are you currently married?

21 PROSPECTIVE JUROR #1255: No.

22 THE COURT: Okay. Any grown children here in  
23 Clark County?

24 PROSPECTIVE JUROR #1255: Yes.

1 THE COURT: Okay. How old's the oldest?

2 PROSPECTIVE JUROR #1255: Twenty-seven.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR #1255: And 22.

5 THE COURT: Okay. What does the 27-year-old do?

6 PROSPECTIVE JUROR #1255: She's a -- she work for  
7 Hoover Dam.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR #1255: She do -- she does  
10 contracts.

11 THE COURT: Okay. Contracts for Hoover Dam?

12 PROSPECTIVE JUROR #1255: Mm-hmm.

13 THE COURT: Okay. And the younger one, what does he  
14 or she do?

15 PROSPECTIVE JUROR #1255: The youngest, he work for  
16 BJ's Restaurant.

17 THE COURT: Okay. All right. And have you or any  
18 close family member of your friends or tight-knit group like  
19 friends, family, close associates ever been the victim of a  
20 violent crime?

21 PROSPECTIVE JUROR #1255: My daughter.

22 THE COURT: Okay. Approximately how long ago was  
23 that?

24 PROSPECTIVE JUROR #1255: I believe when she was

1 13 years old or 14.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR #1255: I'm not really remember.

4 THE COURT: Okay. And where did that take place?

5 PROSPECTIVE JUROR #1255: Here, in America.

6 THE COURT: Here in Las Vegas?

7 PROSPECTIVE JUROR #1255: Las Vegas, mm-hmm.

8 THE COURT: Okay. And what type of crime was  
9 committed against her?

10 PROSPECTIVE JUROR #1255: She have sex with a guy  
11 19 years old.

12 THE COURT: Okay. So it was an act of sex between  
13 her and a 19-year-old?

14 PROSPECTIVE JUROR #1255: Nineteen years old.

15 THE COURT: Okay. To your understanding or  
16 recollection, was there any prosecution or was the law ever  
17 involved in that?

18 PROSPECTIVE JUROR #1255: Excuse me?

19 THE COURT: Did the law get involved, the police  
20 department get involved --

21 PROSPECTIVE JUROR #1255: Yes.

22 THE COURT: -- [indiscernible] attorney?

23 PROSPECTIVE JUROR #1255: Yes. Yes.

24 THE COURT: Okay. Were you an individual who had to

1       come to court on behalf of your daughter?

2               PROSPECTIVE JUROR #1255: I came to court.

3               THE COURT: Okay.

4               PROSPECTIVE JUROR #1255: Mm-hmm.

5               THE COURT: Other than that act that was committed  
6       against your daughter, any other violent acts against family  
7       members, close family friends?

8               PROSPECTIVE JUROR #1255: Only I was victim  
9       violence, domestic.

10              THE COURT: Okay. Domestic violence.

11              PROSPECTIVE JUROR #1255: Yeah, for my ex-husband.

12              THE COURT: Okay. And how long ago was that?

13              PROSPECTIVE JUROR #1255: Like maybe eight years  
14       ago.

15              THE COURT: Okay.

16              PROSPECTIVE JUROR #1255: Or nine. I don't really  
17       remember.

18              THE COURT: About eight or nine years ago?

19              PROSPECTIVE JUROR #1255: Yeah.

20              THE COURT: Okay. Was there any legal action taken  
21       against your ex-husband?

22              PROSPECTIVE JUROR #1255: Uh, yes.

23              THE COURT: Okay. Did you have to go to trial in  
24       regards to that domestic violence?

1 PROSPECTIVE JUROR #1255: No, but he went to jail  
2 for my daughter.

3 THE COURT: Okay. He went to jail based upon the  
4 crime he committed against your daughter?

5 PROSPECTIVE JUROR #1255: Mm-hmm.

6 THE COURT: Is that a "yes"?

7 PROSPECTIVE JUROR #1255: Yes.

8 THE COURT: Okay. Any members of your family or  
9 close friends that were victims of a sexual assault?

10 PROSPECTIVE JUROR #1255: No.

11 THE COURT: Okay. Any members of your family or  
12 close family friends that are in law enforcement?

13 PROSPECTIVE JUROR #1255: No.

14 THE COURT: Okay. Have either of the two of you  
15 been a juror before?

16 PROSPECTIVE JUROR #1255: Excuse me?

17 THE COURT: Have you ever been a juror before?

18 PROSPECTIVE JUROR #1255: No, I got called once, but  
19 they let me go.

20 THE COURT: Okay. You got called but you weren't  
21 chosen as a juror. Okay.

22 PROSPECTIVE JUROR #1255: Mm-hmm.

23 THE COURT: State, your panel.

24 MR. SCHWARTZ: Thank you, Your Honor.

1 JURY VOIR DIRE (resumed)

2 MR. SCHWARTZ: You can keep -- ma'am, if you don't  
3 mind keeping the microphone for a second. [JUROR NO. 1255]?

4 PROSPECTIVE JUROR #1255: [JUROR NO. 1255].

5 MR. SCHWARTZ: Just a couple questions. Do you mind  
6 if I ask you a couple questions about your daughter?

7 PROSPECTIVE JUROR #1255: Yes.

8 MR. SCHWARTZ: Okay. You remember, like we talked  
9 about, if you wanted to talk in private, we can also do that  
10 as well.

11 PROSPECTIVE JUROR #1255: I'd rather talk to him in  
12 private.

13 MR. SCHWARTZ: Okay.

14 PROSPECTIVE JUROR #1255: Yes.

15 MR. SCHWARTZ: Do you have -- were you able to  
16 listen to some of the questions that I was asking yesterday to  
17 most of these people?

18 PROSPECTIVE JUROR #1255: Like pretty much, but not  
19 really.

20 MR. SCHWARTZ: Okay.

21 PROSPECTIVE JUROR #1255: I understand maybe the  
22 60 percent or 80 percent.

23 MR. SCHWARTZ: Okay. Did you have any feelings  
24 about -- opinions about no means no or the #MeToo movement?



1 PROSPECTIVE JUROR #1255: Yes. My opinion is when  
2 you say no, that means no.

3 MR. SCHWARTZ: Okay.

4 PROSPECTIVE JUROR #1255: Right?

5 MR. SCHWARTZ: Yes. That will work. Yes.

6 Okay. Anything else that you thought maybe I or the  
7 defense attorney would like to know about you so we can decide  
8 if you'd be a good juror?

9 PROSPECTIVE JUROR #1255: I don't know what to say.

10 MR. SCHWARTZ: Okay.

11 PROSPECTIVE JUROR #1255: I don't know what to say.

12 MR. SCHWARTZ: Okay. No, that's fine.

13 PROSPECTIVE JUROR #1255: I don't feel, like,  
14 comfortable because for that situation I had before. So --

15 MR. SCHWARTZ: Okay. We'll talk more about that in  
16 private.

17 PROSPECTIVE JUROR #1255: Okay.

18 MR. SCHWARTZ: Does that sound good?

19 PROSPECTIVE JUROR #1255: Okay. Thank you.

20 MR. SCHWARTZ: Okay. Grab that microphone from ya.  
21 And [JUROR NO. 1254], pass this over to you.

22 [JUROR NO. 1254], your number's 1254?

23 PROSPECTIVE JUROR #1254: Yes.

24 MS. CRAGGS: Okay. Did you listen to most of the

1 questions I asked yesterday?

2 PROSPECTIVE JUROR #1254: Yes.

3 MR. SCHWARTZ: Okay. Anything that kind of stood  
4 out that you thought, "I wish I was in here so I could talk  
5 about it."

6 PROSPECTIVE JUROR #1254: Just the time frame.  
7 Twenty years is a long time.

8 MR. SCHWARTZ: Okay. Do you think that -- I mean,  
9 what about it is kind of -- what about that?

10 PROSPECTIVE JUROR #1254: Why'd it take so long?

11 MR. SCHWARTZ: Okay. And there will be some  
12 information about that in the trial. Do you think, you know,  
13 if there's a reason that it took a little while, do you think  
14 it's appropriate that we go forward with the prosecution --

15 PROSPECTIVE JUROR #1254: Oh, yeah --

16 MR. SCHWARTZ: -- still?

17 PROSPECTIVE JUROR #1254: -- it's justice.

18 MR. SCHWARTZ: Okay.

19 PROSPECTIVE JUROR #1254: Right?

20 MR. SCHWARTZ: Okay. Any other thoughts about, kind  
21 of, questions?

22 PROSPECTIVE JUROR #1254: No, no questions.

23 MR. SCHWARTZ: Anything --

24 PROSPECTIVE JUROR #1254: No.

1           MR. SCHWARTZ: Anything that you think I should know  
2 about you just before I kind of -- we decide --

3           PROSPECTIVE JUROR #1254: No.

4           MR. SCHWARTZ: No?

5           Okay. Your Honor, if we could approach?

6           THE COURT: Approach.

7           [BENCH CONFERENCE]

8           MR. SCHWARTZ: Your Honor, we'll pass for cause.

9           THE COURT: Thank you, State.

10          At this time, Defense.

11          MR. YAMPOLSKY: Thank you, Your Honor.

12          Finally I get a chance to talk. Not saying Mr. Schwartz  
13 talks a lot, but it takes him a half an hour to tell you he's  
14 gonna add a few words. Be that as it may --

15          THE COURT: Counsel, questions, please.

16          MR. YAMPOLSKY: And what I want to get into first --  
17 and I know we've talked about it. I know Mr. Schwartz talked  
18 about it, but it's the burden of proof. Now, you'll be  
19 instructed by the Court at the end of -- after all of evidence  
20 has been presented. And you'll talk about the Prosecution,  
21 which has the burden of proof.

22          And the burden of proof in a criminal case is different  
23 than a civil case. Now, I know a couple of you have been  
24 civil jurors. And the burden of proof there is by a

1 preponderance of the evidence, which is more likely than not.  
2 However, the burden of proof here is beyond a reasonable  
3 doubt. And the Prosecution has to prove each and every  
4 element beyond a reasonable doubt. And once again, you'll be  
5 instructed as to what reasonable doubt is.

6 But one of the things -- and my concern is that many  
7 times I don't ask a lot of questions. And there'll be many  
8 witnesses I won't even ask any questions. And what I'm  
9 concerned about is that, you know, some of the jurors might  
10 say, "Oh, well, he had nothing to say." You know, "The guy  
11 must be guilty," or something like that.

12 And I know we had one juror talk about it. But does  
13 anyone feel that it's not fair if I don't say anything? That  
14 the Defense doesn't put on any evidence?

15 No one.

16 And, I mean, we've talked about the right to remain  
17 silent and everyone's heard it. And Mr. Schwartz talked about  
18 it. And that means that Mr. Dorado does not need to testify.  
19 And once again, my concern is if I have Mr. Dorado not  
20 testify, that someone may hold that against him.

21 And I know the law says you can't or you shouldn't. But  
22 also, I know some people have very strong opinions. And in  
23 the back of their mind, they may think, "You know, I know  
24 there's a right to remain silent. But I really think that

1 after what was said, he should say something."

2 Does anyone feel that way?

3 No?

4 All right. And, also, there's times -- and just because  
5 of the sensitive area -- that I might need to ask questions,  
6 embarrassing questions which, you know, might embarrass a  
7 witness on the stand. And I'm concerned that some of you  
8 might hold that against my client.

9 So does anyone feel that that may affect their -- the way  
10 they look at the witnesses to decide whether or not your  
11 verdict is guilty or innocent?

12 No one?

13 All right. I -- I want to question some of you. Where's  
14 the microphone?

15 PROSPECTIVE JUROR #1066: Right here.

16 MR. YAMPOLSKY: Okay. [JUROR NO. 1124]? Okay.

17 THE COURT: Go ahead and pass the mic down.

18 MR. YAMPOLSKY: I know we've talked about the burden  
19 of proof and innocence. And I know you -- you're gonna follow  
20 the law. But can you think of any reasons why an innocent  
21 person may not want to take the stand?

22 PROSPECTIVE JUROR #1124: Like a witness?

23 MR. YAMPOLSKY: Well, no, like a Defendant.  
24 Somebody that has the right to remain silent and also has a

1 right to testify. Can you think of reasons how someone who's  
2 innocent just doesn't want to take the stand?

3 PROSPECTIVE JUROR #1124: Uh --

4 MR. YAMPOLSKY: How about if they had a speech  
5 impediment? Do you think maybe that might be a reason why  
6 someone wouldn't want to talk in public?

7 PROSPECTIVE JUROR #1124: Could be, yeah. And like  
8 social anxiety. Things like that.

9 MR. YAMPOLSKY: Social anxiety. That's a good  
10 thing. Absolutely. And I mean, how many people in the jury,  
11 you know, have to speak publicly for their job?

12 A couple. But all the rest of you don't. And I forget  
13 the exact order, but public speaking is one of the three  
14 biggest fears, after death or snakes. So it's a big deal.

15 Now, we do it all the time. So we're used to it. You  
16 know, just like someone drove a truck. I couldn't drive a  
17 truck, but they do it all the time. And that's -- you know,  
18 that's why -- could you pass that to [JUROR NO. 1088]? That's  
19 how you pronounce it; right?

20 PROSPECTIVE JUROR #1124: I had one more reason.

21 MR. YAMPOLSKY: Oh, you have something? Please.

22 PROSPECTIVE JUROR #1124: Just, well, personally,  
23 there are, like, situations where people know for a fact that  
24 they're innocent. And that's the only reason why they don't

1 say anything.

2 MR. YAMPOLSKY: Okay.

3 PROSPECTIVE JUROR #1124: You know?

4 MR. YAMPOLSKY: So you think that there may be  
5 reason, someone who's totally innocent just doesn't want to  
6 say anything.

7 PROSPECTIVE JUROR #1124: Yeah. They like -- I  
8 don't know. That's like a personal thing. A lot of -- they  
9 probably think that, you know, "Why should I? I'm innocent.  
10 I know I'm innocent."

11 MR. YAMPOLSKY: And could they be, you know, afraid  
12 that some tricky lawyer's gonna twist their words or  
13 something?

14 PROSPECTIVE JUROR #1124: That is a definite thing  
15 that probably happens in court, yeah.

16 MR. YAMPOLSKY: Okay. Can anyone think of any other  
17 reasons?

18 [JUROR NO. 1229]. Yes.

19 PROSPECTIVE JUROR #1229: I believe that it could be  
20 out of just general fear. Like she said, that the words could  
21 be twisted. That it could be -- they're meaning to say one  
22 thing and it comes out a different way that they're not  
23 meaning to say it.

24 MR. YAMPOLSKY: Maybe because they're not, you know,

1       that articulate when speaking in public?

2               PROSPECTIVE JUROR #1229:  Yes.  Like they're trying  
3       to say one thing and they are -- and they can't really get the  
4       words out.

5               MR. YAMPOLSKY:  Okay.  And sometimes it may be  
6       difficult to express themselves.

7               PROSPECTIVE JUROR #1229:  Yeah.

8               MR. YAMPOLSKY:  All right.  And I mean, speaking on  
9       the witness stand with all these people watching, that's got  
10      to be a stressful situation; right?

11              PROSPECTIVE JUROR #1229:  Oh, most definitely.  
12      Especially when it comes to judgment of one -- of other  
13      person, one would be afraid to speak.

14              MR. YAMPOLSKY:  Could you please hold the microphone  
15      closer to your mouth.

16              PROSPECTIVE JUROR #1229:  Yeah.  Yeah, sorry.

17              It could be that -- they could be afraid that -- if  
18      someone was defending themselves (sic), that is, they could be  
19      afraid that -- of the judgment that other people might say.  
20      So like an example would be, oh, if someone says they're  
21      innocent but then everybody thinks their guilty.  Well, then,  
22      no matter what they say, it could just --

23              MR. YAMPOLSKY:  You think that maybe --

24              PROSPECTIVE JUROR #1229:  -- they wouldn't care.



1 MR. YAMPOLSKY: -- they might think it's futile and  
2 it doesn't matter what they say.

3 PROSPECTIVE JUROR #1229: Yes.

4 MR. YAMPOLSKY: Okay. Anyone else?

5 All right. [JUROR NO. 1088]. I didn't forget about you.

6 When Mr. Schwartz was asking you questions yesterday, I  
7 believe he asked you about the #MeToo movement. Remember?

8 PROSPECTIVE JUROR #1088: Yes.

9 MR. YAMPOLSKY: And if I'm right, you said that, you  
10 know, some people may be telling the truth but some people may  
11 not. Do you believe that happens?

12 PROSPECTIVE JUROR #1088: Yes.

13 MR. YAMPOLSKY: And do you have any thoughts on why  
14 that may happen?

15 PROSPECTIVE JUROR #1088: I think there's times --  
16 well, and you look in particularly in political situations.  
17 If they've got a bias against somebody and, you know, like I  
18 said yesterday, all you have to do is make an accusation and  
19 now that stigma is on them, whether it's truth or not.

20 MR. YAMPOLSKY: Whether it's true or not, if someone  
21 makes an accusation, that might follow you for a long time.

22 PROSPECTIVE JUROR #1088: Yeah. Exactly. Exactly.

23 MR. YAMPOLSKY: And when -- would you agree that --  
24 well, that sometimes people do things that they feel like she

1 shouldn't have done?

2 PROSPECTIVE JUROR #1088: Yes.

3 MR. YAMPOLSKY: Okay. And if they're discussing  
4 that, don't they usually, like, try and put themselves in,  
5 like, the best light?

6 PROSPECTIVE JUROR #1088: Oh, yes.

7 MR. YAMPOLSKY: And we also talked -- and I don't  
8 mean to pick on you, but you said a lot. We also talked about  
9 someone who's consumed alcohol. And I understand you don't.

10 PROSPECTIVE JUROR #1088: Correct.

11 MR. YAMPOLSKY: But, I mean, do you believe that  
12 that could affect somebody's judgment?

13 PROSPECTIVE JUROR #1088: Definitely.

14 MR. YAMPOLSKY: Okay.

15 PROSPECTIVE JUROR #1088: Yes.

16 MR. YAMPOLSKY: And, you know, after the alcohol has  
17 worn off, they may look at it and think, "Gee, that really  
18 wasn't a good idea." Right?

19 PROSPECTIVE JUROR #1088: Correct.

20 MR. YAMPOLSKY: Okay. So, you know, everyone's  
21 imperfect. And I think everyone's done things that, in  
22 retrospect, they wish they hadn't. But have you ever heard  
23 the expression "hindsight's 20/20"?

24 PROSPECTIVE JUROR #1088: Many.

1 MR. YAMPOLSKY: What does that mean to you?

2 PROSPECTIVE JUROR #1088: Well, if you could look --

3 if you had your crystal ball and could look into it and see

4 what was gonna happen, you'd do things differently. So,

5 obviously, being able to look back on it, there's many

6 instances where you'd -- would have done things differently

7 had you -- you know --

8 MR. YAMPOLSKY: And you'd agree with me, that

9 probably happens to everyone.

10 PROSPECTIVE JUROR #1088: Oh, yeah.

11 MR. YAMPOLSKY: All right. We'll let you off the

12 hook for now.

13 [JUROR NO. 1111]. Got it?

14 PROSPECTIVE JUROR #1111: Yeah, I got it.

15 MR. YAMPOLSKY: All right. Now, you said you work

16 for the school district?

17 PROSPECTIVE JUROR #1111: Yeah.

18 MR. YAMPOLSKY: Right now, you're a custodian?

19 PROSPECTIVE JUROR #1111: I'm a custodian now.

20 MR. YAMPOLSKY: All right. And in your job,

21 sometimes you encounter students that are doing things they

22 probably shouldn't --

23 PROSPECTIVE JUROR #1111: Yeah.

24 MR. YAMPOLSKY: -- right?

1           Now, have you ever been in a situation where there's been  
2 a couple of students fighting?

3           PROSPECTIVE JUROR #1111: No, just 'cause when I  
4 work, there's no kids there.

5           MR. YAMPOLSKY: I'm sorry. Say it again.

6           PROSPECTIVE JUROR #1111: Like, when I'm working --

7           MR. YAMPOLSKY: Yeah.

8           PROSPECTIVE JUROR #1111: -- I'm not really  
9 interacting with the kids just 'cause they should already be  
10 out of school by the time I'm there.

11          MR. YAMPOLSKY: Okay. So you come afterwards. But  
12 you're a -- you're training to be a security guard; isn't that  
13 right?

14          PROSPECTIVE JUROR #1111: Well, I took the training,  
15 just the pay wasn't there. So I'm kind of content being a  
16 custodian.

17          MR. YAMPOLSKY: Okay. Now, how long was the  
18 training to be a security guard?

19          PROSPECTIVE JUROR #1111: It was only a day's worth.

20          MR. YAMPOLSKY: Okay. Did you talk about how to --  
21 let me take a step back. When there's a dispute, were you  
22 instructed on how you should examine a dispute?

23          PROSPECTIVE JUROR #1111: Well, it was actually --  
24 so it's a day's worth of training. Literally, 90 percent of

1 it was just defense tactics. And then maybe, like, like the  
2 last segment was like a role play. But they didn't really  
3 teach you on how to interact with, like, a student.

4 So it was kind of like, "Hey, we're gonna teach you all  
5 the defense tactics at the very end. And now someone's gonna  
6 role play and you got to break it up." But it was all off,  
7 like, your own instinct. Nobody taught you exactly what to  
8 say.

9 MR. YAMPOLSKY: Okay. So if I -- defense tactics is  
10 like --

11 PROSPECTIVE JUROR #1111: It was like fighting.

12 MR. YAMPOLSKY: -- how to defend yourself?

13 PROSPECTIVE JUROR #1111: Yeah.

14 MR. YAMPOLSKY: And how to break up a fight?

15 PROSPECTIVE JUROR #1111: Well, it was more like  
16 someone coming at you.

17 MR. YAMPOLSKY: Right.

18 PROSPECTIVE JUROR #1111: It wasn't like me  
19 defending a kid or me defending anybody in general.

20 MR. YAMPOLSKY: And you said that there was role  
21 playing. Role playing about what?

22 PROSPECTIVE JUROR #1111: That's like when the  
23 fighting came in. Like, "Hey, so-and-so's fighting. I need  
24 to go break it up." But it wasn't only off my -- it was off

1 my instinct. It wasn't -- nobody came in there and taught me  
2 how to do it.

3 MR. YAMPOLSKY: Right.

4 PROSPECTIVE JUROR #1111: It was just me purely  
5 going in there, looking at the situation, and breaking it up.

6 MR. YAMPOLSKY: And as a security guard, would some  
7 of the things you have to do, if there was a fight, determine  
8 who was responsible?

9 PROSPECTIVE JUROR #1111: Yeah, absolutely.

10 MR. YAMPOLSKY: Okay. And in doing that, you would  
11 talk to both parties --

12 PROSPECTIVE JUROR #1111: Yeah.

13 MR. YAMPOLSKY: -- correct?

14 And if someone -- one of the parties said something that,  
15 you know, just didn't make any sense, you would take that into  
16 account in making a decision --

17 PROSPECTIVE JUROR #1111: Yeah, of course.

18 MR. YAMPOLSKY: -- right?

19 And usually when you have two people fighting, they point  
20 fingers at each other. "No, he caused it." "He caused it."

21 PROSPECTIVE JUROR #1111: Yeah.

22 MR. YAMPOLSKY: Right? Correct?

23 PROSPECTIVE JUROR #1111: Yeah. Correct.

24 MR. YAMPOLSKY: And if someone, you know, made a

1 statement -- I know this is ridiculous -- "Oh, I've been  
2 abducted by aliens." Obviously, that would put their  
3 credibility into, you know, into question; right?

4 PROSPECTIVE JUROR #1111: Yeah.

5 MR. YAMPOLSKY: And if two students were about the  
6 same size and one said, "Oh, he carried me for 50 yards," you  
7 know, "and I was struggling." That probably wouldn't make  
8 sense; right?

9 PROSPECTIVE JUROR #1111: Yeah.

10 MR. YAMPOLSKY: Okay. [JUROR NO. 1224]? Yes? No?  
11 Did I miss someone?

12 Court's indulgence.

13 THE COURT: Go ahead.

14 [DISCUSSION OFF THE RECORD]

15 MR. YAMPOLSKY: [JUROR NO. 1218].

16 PROSPECTIVE JUROR #1218: Yes.

17 MR. YAMPOLSKY: I want -- and was it you that talked  
18 about how -- do you have the mic? Great -- how drivers may be  
19 affected by alcohol? Was that you?

20 PROSPECTIVE JUROR #1218: No.

21 MR. YAMPOLSKY: No. Do you have any opinions on  
22 drivers maybe affected by alcohol?

23 PROSPECTIVE JUROR #1218: Opinion as it's not a good  
24 thing. But, yeah, I mean, probably my age all did it. So --

1 MR. YAMPOLSKY: Wouldn't you agree that alcohol  
2 affects people differently?

3 PROSPECTIVE JUROR #1218: Correct.

4 MR. YAMPOLSKY: And would you agree that some people  
5 may be more affected than others?

6 PROSPECTIVE JUROR #1218: I guess by how much they  
7 actually consume, yes.

8 MR. YAMPOLSKY: Exactly. And my question is --

9 PROSPECTIVE JUROR #1218: And the physiology --

10 MR. YAMPOLSKY: Say that again.

11 PROSPECTIVE JUROR #1218: -- physiological aspects  
12 of it, yes.

13 MR. YAMPOLSKY: Right. And by the same token, if  
14 someone -- if there are two people and they drink the same  
15 amount of alcohol, they could be affected differently;  
16 correct?

17 PROSPECTIVE JUROR #1218: Height, body weight, male,  
18 female -- it all --

19 MR. YAMPOLSKY: Right.

20 PROSPECTIVE JUROR #1218: -- it works differently,  
21 yes.

22 MR. YAMPOLSKY: Okay. Court's indulgence.

23 THE COURT: Go ahead.

24 MR. YAMPOLSKY: And if I pronounce your name wrong,



1 please for give me. [JUROR NO. 1255], is that how you  
2 pronounce it?

3 PROSPECTIVE JUROR #1255: Yes.

4 MR. YAMPOLSKY: Could someone pass the mic to her.

5 Well, you're the one -- and you've heard all the  
6 questions; correct? Now, how do you feel that someone maybe  
7 wouldn't take the stand?

8 PROSPECTIVE JUROR #1255: Excuse me?

9 MR. YAMPOLSKY: Somebody who -- like my client, how  
10 would you feel if, after the Government's case, that he  
11 doesn't get up on the stand and testify, how do you feel about  
12 that?

13 PROSPECTIVE JUROR #1255: Well, I feel, like,  
14 uncomfortable because --

15 MR. YAMPOLSKY: He's not comfortable.

16 PROSPECTIVE JUROR #1255: -- I don't know the  
17 situation. I don't know the evidence.

18 MR. YAMPOLSKY: Okay. But what I'm saying -- this  
19 is hypothetical. You're in the jury box --

20 PROSPECTIVE JUROR #1255: Uh-huh.

21 MR. YAMPOLSKY: -- okay? And the Government's put  
22 on their case. Let's say they have all these witnesses. They  
23 have these exhibits for two or three days. And then it's our  
24 turn, the Defense side. And I decide that I don't want to put

1 any evidence on. And I'm not gonna have my client testify.  
2 How would that make you feel if he didn't get up there and  
3 say, "Hey, I didn't do it."

4 PROSPECTIVE JUROR #1255: Disappointed.

5 MR. YAMPOLSKY: You'd be disappointed. Would you  
6 hold that against him?

7 PROSPECTIVE JUROR #1255: I don't understand the  
8 question.

9 MR. YAMPOLSKY: Well, you said you'd be  
10 disappointed.

11 PROSPECTIVE JUROR #1255: Mm-hmm.

12 MR. YAMPOLSKY: So in other words, you wish that he  
13 would have got up and testified; right?

14 PROSPECTIVE JUROR #1255: Mm-hmm.

15 MR. YAMPOLSKY: Is that a "yes"?

16 PROSPECTIVE JUROR #1255: Yes.

17 MR. YAMPOLSKY: Okay. But of course you would  
18 follow the law; right?

19 PROSPECTIVE JUROR #1255: Right.

20 MR. YAMPOLSKY: And according to the law, he doesn't  
21 need to get up there and testify. You understand that.

22 PROSPECTIVE JUROR #1255: Yes.

23 MR. YAMPOLSKY: But I'm asking for your opinion.  
24 You said you'd be disappointed. If you were disappointed,

1 would you hold that against him? Do you understand what I'm  
2 saying?

3 PROSPECTIVE JUROR #1255: No.

4 MR. YAMPOLSKY: Okay.

5 PROSPECTIVE JUROR #1255: I don't understood that  
6 question.

7 MR. YAMPOLSKY: All right. You -- you'll hear all  
8 these witnesses that will testify.

9 PROSPECTIVE JUROR #1255: Yeah.

10 MR. YAMPOLSKY: And as a juror, you have to decide,  
11 "Gee, are they telling the truth or not?" "Do I believe  
12 them?" That kind of stuff; right? No?

13 PROSPECTIVE JUROR #1255: No.

14 MR. YAMPOLSKY: All right. Let me see if I can  
15 break this down.

16 PROSPECTIVE JUROR #1255: I don't understand what  
17 you say.

18 MR. YAMPOLSKY: No problem. No problem. It's me.  
19 I'm not asking the right questions.

20 PROSPECTIVE JUROR #1255: Mm-hmm.

21 MR. YAMPOLSKY: So in the trial, there's going to be  
22 people, witnesses that will get up in this box. They'll swear  
23 to tell the truth, the whole truth, nothing but the truth.  
24 And then the DA will question them and I'll question them.

1           So what -- are you comfortable in deciding, you know,  
2           whether their testimony makes sense or not, something like  
3           that?

4           PROSPECTIVE JUROR #1255: No.

5           MR. YAMPOLSKY: You're not comfortable?

6           PROSPECTIVE JUROR #1255: No.

7           MR. YAMPOLSKY: Because you don't think you'd really  
8           understand what they're saying?

9           PROSPECTIVE JUROR #1255: Right.

10          MR. YAMPOLSKY: Okay.

11          PROSPECTIVE JUROR #1255: I wish I can understand  
12          more.

13          MR. YAMPOLSKY: Say that again.

14          PROSPECTIVE JUROR #1255: I wish I can understand  
15          more.

16          MR. YAMPOLSKY: Okay.

17          PROSPECTIVE JUROR #1255: And I can -- I make a  
18          decision.

19          MR. YAMPOLSKY: All right. I understand.

20          PROSPECTIVE JUROR #1255: Thank you.

21          MR. YAMPOLSKY: Who was -- who else did we have  
22          that's new?

23                Ah, yes. [JUROR NO. 1254]. Wait, [JUROR NO. 1254].  
24                [JUROR NO. 1254]'s your last name.

1 PROSPECTIVE JUROR #1254: Yes.

2 MR. YAMPOLSKY: [JUROR NO. 1254]'s your first name.

3 PROSPECTIVE JUROR #1254: Yes.

4 MR. YAMPOLSKY: Do you have any relatives in Texas?

5 PROSPECTIVE JUROR #1254: No.

6 MR. YAMPOLSKY: Okay. I was just wondering because

7 it's [JUROR NO. 1254].

8 So I mean, you sat here for -- since yesterday and you've

9 heard all these questions; right?

10 PROSPECTIVE JUROR #1254: Yes.

11 MR. YAMPOLSKY: And do you have any problem because

12 the nature of this is a sexual assault?

13 PROSPECTIVE JUROR #1254: No, no problem.

14 MR. YAMPOLSKY: I mean, even with the sensitive

15 subject area, you would have no problem in being a juror in

16 this case.

17 PROSPECTIVE JUROR #1254: No problem.

18 MR. YAMPOLSKY: And can you think of any reason why

19 you wouldn't be a good juror?

20 PROSPECTIVE JUROR #1254: Nope.

21 MR. YAMPOLSKY: Court's indulgence.

22 THE COURT: Go ahead.

23 MR. YAMPOLSKY: All right. I'll pass the panel,

24 Your Honor.

1 THE COURT: Okay. Counsels, approach.  
2 [BENCH CONFERENCE]  
3 THE COURT: At this time we will be replacing juror  
4 number 1255, [JUROR NO. 1255]. You're excused. Thank you.  
5 PROSPECTIVE JUROR #1255: Thank you, sir.  
6 THE COURT: Thank you.  
7 Madam Clerk?  
8 THE CLERK: Replacing her will be [JUROR NO. 1257],  
9 badge 257.  
10 THE COURT: Good afternoon, ma'am.  
11 PROSPECTIVE JUROR #1257: Good afternoon.  
12 THE COURT: Is it [JUROR NO. 1257] or Miss --  
13 PROSPECTIVE JUROR #1257: [JUROR NO. 1257].  
14 THE COURT: -- [JUROR NO. 1257]?  
15 Okay. Want to make sure.  
16 All right. Ma'am, how long you been here in  
17 Clark County?  
18 PROSPECTIVE JUROR #1257: Eleven years now.  
19 THE COURT: Okay. And are you currently employed?  
20 PROSPECTIVE JUROR #1257: Yes, I am.  
21 THE COURT: What do you do, ma'am?  
22 PROSPECTIVE JUROR #1257: Office manager.  
23 THE COURT: What do you do for?  
24 PROSPECTIVE JUROR #1257: It's a laundry company.

1 THE COURT: Oh.

2 PROSPECTIVE JUROR #1257: We wash linen for, like,  
3 all the casinos here.

4 THE COURT: Okay. Is it like a Mission Linen or --

5 PROSPECTIVE JUROR #1257: It's Brady, actually.

6 THE COURT: Brady? Okay.

7 PROSPECTIVE JUROR #1257: Mm-hmm.

8 THE COURT: See, I'm so old, I can tell you the  
9 original Mission Linen people.

10 Okay. And are you currently married?

11 PROSPECTIVE JUROR #1257: No, I'm not.

12 THE COURT: Okay. How far did you go in school,  
13 ma'am?

14 PROSPECTIVE JUROR #1257: Graduated as an MA.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR #1257: Mm-hmm.

17 THE COURT: And any family members and/or close  
18 friends of the family ever been a victim of a violent crime?

19 PROSPECTIVE JUROR #1257: No.

20 THE COURT: Okay. Any close family members or  
21 members of the family that you know of been a victim of a  
22 sexual assault?

23 PROSPECTIVE JUROR #1257: No, but a report was filed  
24 for myself.

1 THE COURT: Okay. When was that report filed, give  
2 or take a year?

3 PROSPECTIVE JUROR #1257: Ten years ago.

4 THE COURT: Ten years ago? And was that here in  
5 Clark County?

6 PROSPECTIVE JUROR #1257: Yes, it was.

7 THE COURT: Okay. And was that a sexual assault  
8 that was perpetrated on you?

9 PROSPECTIVE JUROR #1257: Yes.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR #1257: But it was because of the  
12 age difference.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR #1257: I was a minor and this  
15 person was 30-something years old.

16 THE COURT: Okay. So basically you were a minor and  
17 the other individual was an adult.

18 PROSPECTIVE JUROR #1257: Correct.

19 THE COURT: Okay. To your understanding, was there  
20 actually a criminal prosecution done in that case?

21 PROSPECTIVE JUROR #1257: Uh-huh, no.

22 THE COURT: You don't know or --

23 PROSPECTIVE JUROR #1257: [Indiscernible] huh-uh, I  
24 don't know.



1 THE COURT: Okay. To your understanding, was that  
2 handled by your parents?

3 PROSPECTIVE JUROR #1257: Yes.

4 THE COURT: Okay. You remember having to testify in  
5 a courtroom?

6 PROSPECTIVE JUROR #1257: No, I didn't testify.

7 THE COURT: Okay. In regards to any family members  
8 or close family friends that are -- ever been accused of  
9 committing a sexual assault?

10 PROSPECTIVE JUROR #1257: No.

11 THE COURT: Okay. Any close family members or close  
12 family friends that are in law enforcement?

13 PROSPECTIVE JUROR #1257: No.

14 THE COURT: Have you ever been a member of a jury  
15 before, ma'am?

16 PROSPECTIVE JUROR #1257: No.

17 THE COURT: Counsel for the State, your panel  
18 member.

19 MR. SCHWARTZ: Thank you, Your Honor.

20 [JUROR NO. 1257], how you doing, ma'am?

21 PROSPECTIVE JUROR #1257: Good. Doing good.

22 MR. SCHWARTZ: Just ask you a couple questions about  
23 what you were just bringing up. Is that okay to talk about?

24 PROSPECTIVE JUROR #1257: Mm-hmm. That's okay.

1 MR. SCHWARTZ: Who was that person to you at the  
2 time that this all happened?

3 PROSPECTIVE JUROR #1257: It was a roommate.

4 MR. SCHWARTZ: A roommate?

5 PROSPECTIVE JUROR #1257: Mm-hmm.

6 MR. SCHWARTZ: About how old were you?

7 PROSPECTIVE JUROR #1257: I was 15, 16 years old.

8 MR. SCHWARTZ: And was he living at your parent's  
9 house with you guys?

10 PROSPECTIVE JUROR #1257: Mm-hmm. Yes.

11 MR. SCHWARTZ: How did your parents get involved?

12 PROSPECTIVE JUROR #1257: They found out because of  
13 my sister. My little sister. And my mom found out and then  
14 she went and filed a report.

15 MR. SCHWARTZ: Okay.

16 PROSPECTIVE JUROR #1257: And that's all I know.

17 MR. SCHWARTZ: Did you want a report to be filed  
18 about it?

19 PROSPECTIVE JUROR #1257: Not really. 'Cause it was  
20 consensual. But --

21 MR. SCHWARTZ: So the issue was really just the age  
22 difference --

23 PROSPECTIVE JUROR #1257: Mm-hmm.

24 MR. SCHWARTZ: -- statutorily.

1 PROSPECTIVE JUROR #1257: Yes. Mm-hmm.

2 MR. SCHWARTZ: And do you know if he was prosecuted  
3 or -- I thought you said you didn't know.

4 PROSPECTIVE JUROR #1257: No, I don't know. Yeah.  
5 I don't know.

6 MR. SCHWARTZ: Did he -- was he moved out of the  
7 house after this happened?

8 PROSPECTIVE JUROR #1257: Yeah, we moved out of the  
9 house.

10 MR. SCHWARTZ: Okay.

11 PROSPECTIVE JUROR #1257: Mm-hmm.

12 MR. SCHWARTZ: I guess, any negative feelings  
13 towards law enforcement or DA's for prosecuting --

14 PROSPECTIVE JUROR #1257: No, at all.

15 MR. SCHWARTZ: -- based on that?  
16 Okay. Your Honor, we'll pass for cause.

17 THE COURT: Defense.

18 MR. YAMPOLSKY: Thank you.

19 But this [indiscernible] situation, so this person didn't  
20 force you to have sex.

21 PROSPECTIVE JUROR #1257: No.

22 MR. YAMPOLSKY: I have nothing further, Your Honor.

23 THE COURT: Okay. Thank you, Counsels. Approach.

24 [BENCH CONFERENCE]

1           THE COURT: Ladies and gentlemen, at this time  
2 period what we have now is what we call a qualified pool.  
3 What that means is there are 32 individuals who the members of  
4 the State Prosecution team and the Defense team believe that  
5 they can now select a jury from.

6           So what's gonna happen is my 32 people that are, quote,  
7 "In the box," these individuals here and that first row right  
8 there, you are to remain with us. The rest of the  
9 individuals, you are free to go as soon as I'm done.

10          What I'm gonna ask you is this, understanding the next  
11 question that always comes out is, "Can we talk about the case  
12 now?" Those individuals who are being released, you can. I  
13 don't know what you're gonna say because you really don't know  
14 anything. But if you want to say or say some great  
15 complementary words about the judge, go ahead and do it.

16          Besides that, the next question always is, "Your Honor,  
17 do I have to go back and report on the third floor?" No, you  
18 are done with jury duty on this term period.

19          The last question they always ask me is, "Judge, how long  
20 do I have before the next jury that I can be possibly called  
21 on?" One is the statute says two years. But we have a whole  
22 lot of different courts in this jurisdiction. You could go  
23 tomorrow and get a summons from the federal courthouse. And  
24 the one you did here doesn't qualify as jury duty.

1 But like I asked you at the very beginning, the next time  
2 someone says, "Yes, I got a jury summons. It's the worst  
3 experience of my life." Ask them if they actually got a jury  
4 summons and it was the worst experience of their life.  
5 Because I don't understand what they could possibly saying is  
6 the worst experience.

7 If this is the worst thing you've ever gone through in  
8 your life, come see me. I'd really like you to adopt me.  
9 Okay? And if you could, just out of respect for the court  
10 system itself, make sure those individuals know they're  
11 totally wrong; okay?

12 I thank you from the bottom of my heart, appreciation of  
13 Clark County and all the judges. I know it is an  
14 inconvenience to be part of a jury pool. I understand that.  
15 But please understand, it is truly the last great right you  
16 have as a citizen. It's one of those few things that, if we  
17 ever get to that point where they decide that they're going to  
18 do away with the jury system, I -- I'll hang up my robe.

19 Thank you from the bottom of my heart. Safe travels.

20 The rest of you remain here. I'll wait to -- give 'em  
21 about 30 seconds, I'm gonna kind of walk you through the  
22 process.

23 Okay. I'm gonna -- I understand, sir. What I'm gonna  
24 have you do, sir, is I'm gonna have my Marshal give you a

1 piece of paper so you can write. 'Cause I need to have a  
2 record of any of those statements.

3 Ladies and gentlemen, what's gonna happen for the rest of  
4 you is this is -- I have had this described in so many  
5 different ways, I don't know if I've ever come up with a great  
6 thing. I've heard the thing -- the term "speed dating." I've  
7 heard the term "fish bowl." I've heard the term  
8 "bachelorette, bachelor contest." I don't watch those shows.  
9 But apparently they're pretty popular.

10 What happens now is the attorneys have the ability to do  
11 what's called a preemptory strike. Okay? And what they get  
12 to do, basically, is they go through their notes and through  
13 the stuff that they just heard over the last two days and what  
14 they believe is who are the best individuals -- because you  
15 got to understand, there are only a few group of individuals  
16 who really, really know this case backwards and forward. And  
17 they're sitting at these tables; okay? They know these cases  
18 because they've living with this case since basically the  
19 inception of this case.

20 Sir Marshal, if you could give this gentleman,  
21 [JUROR NO. 1237] a piece of paper for me. The gentleman right  
22 here in the purple shirt.

23 So they know in their minds which people they believe,  
24 based upon the questions and some of the stuff you filled out

1 previously, who would be the best juror for this case in their  
2 opinion.

3 I can tell you this: If this same exact jury pool came  
4 in front of 20 different attorneys, I would have 20 different  
5 juries. Okay? That's obvious to say. Kind of like those  
6 individuals that believe lawyers. You put five lawyers in one  
7 room, you will get five different opinions. You put five  
8 older lawyers in a room, you'll get 20 different opinions;  
9 okay?

10 It has nothing to do with your quality as a person or  
11 anything else. What it basically has to do with is their  
12 personal belief as to who they believe, based upon very few  
13 answers, very few questions, who would fit the facts for this  
14 case the best. Okay?

15 So what's funny is, I have a lot of people who sit there  
16 and say, "Well, I can't believe I didn't get picked." And  
17 they almost act as if it's some type of personality contest or  
18 some type of, like I said, the bachelorette, bachelor contest.  
19 It is not. It has absolutely nothing to do with that.

20 I can guarantee you, there are a lot of people -- as a  
21 practicing attorney, and I tried hundreds and hundreds of  
22 trials -- that I would love to have as good friends that I  
23 struck on prospective jurors; okay?

24 Perfect example was, I tried the Hells Angels case that

1 were here in Laughlin and Clark County for years on the civil  
2 side. Judge Kephart and Judge Johnson tried it on the  
3 criminal side. What is amazing is, one of the individuals who  
4 I took his deposition multiple, multiple, multiple times, just  
5 taking his deposition, he was a very likeable person. You  
6 read his criminal scope or his criminal history and you would  
7 think, "Oh, my goodness, this's an evil human being." But in  
8 person, he didn't appear that way. Okay?

9 Now, if I had a jury and we were talking about a  
10 motorcycle defect case, for example a motorcycle that fell  
11 apart for some reason and caused someone's injury, would I  
12 want this individual with the Hells Angels on my jury?  
13 Absolutely. The guy knows the motorcycle in and out.

14 Do I want him on a criminal conviction against a drug  
15 trafficker who rides a motorcycle? No. Same person. Two  
16 completely different cases. He'd be on one; he'd be stricken  
17 on the other. And that's what this case is about.

18 Once they go through and do those selections, they will  
19 then choose from four potential alternates. Each of the sides  
20 will get to strike one individual, leaving two alternates.  
21 What that does is that gives us 12 jurors. This is a criminal  
22 case. We must have 12 jurors. And the jury must come back  
23 with a verdict that is unanimous. That is completely  
24 different than in a civil side, when it does not have to be



1 unanimous. It's a simple majority. But in a criminal  
2 setting, it must be a unanimous decision.

3 I always put a minimum of two jurors as potentials.  
4 Therefore, there'll be 14 people sitting in the box. If  
5 during this trial one of the 12 main jurors, I'll call them  
6 the main jurors, should happen to have a family emergency or a  
7 sickness or an illness or death and is unable to fulfill their  
8 role, the alternate, number one, steps in that person's shoes.

9 Now, the next question always comes about is,  
10 "Your Honor, do we get to know who the alternates are?" Yes.  
11 At the end of the case. Okay? So that means 14 people will  
12 listen to all of the facts. And you can quite simply  
13 understand it. If you're an alternate and I told you day one  
14 you're an alternate, you might have a tendency to kind of zone  
15 out some of the trial. Not a good idea. Therefore, the 14  
16 people in the box are treated exactly the same. They are the  
17 14 jurors.

18 Once you are chosen, you will get a blue fancy ID badge  
19 that identifies you as a juror in this department. If you  
20 think you were alienated wearing the little white badges, you  
21 haven't seen anything yet. You put on the blue official badge  
22 and no one, other than people in uniform, are going to speak  
23 to you.

24 The reason why is they see that badge that says "juror,"

1 court employees, even the postman is instructed, basically,  
2 not to have contact with jurors. Okay? The reason why is the  
3 last thing someone would want to have happen is say something  
4 about a case that you happen to be a juror on.

5 For example, for some reason the Court staff wanted all  
6 of us to know that Wayne Newton is in the building. Okay.  
7 He's in the building. Well, if one of the security officers  
8 or one of the attorneys walked by and said, "Oh, I cannot  
9 believe Wayne Newton's in the building. He's a terrible man.  
10 This's what he did." And you happen to be a juror on his  
11 case, that case is now a mistrial because you got information  
12 about Mr. Newton that was not part of the case. You just  
13 heard it in the courtroom or out in the hallways or in the  
14 bathroom. And it would basically taint that case. Okay?

15 That's why when you are a member of the jury, all of  
16 the -- you can tell the attorneys. They see the blue badge,  
17 their heads go down and they just walk past you. Okay?

18 Understand this: I'm going to give you specific  
19 instructions. You cannot, as a juror, talk to anyone about  
20 the case, including your fellow jurors, until the case is  
21 finally submitted to you; okay? So in other words, when we  
22 take a break, if you're one of the 14, you cannot go out in  
23 the hallway and compare notes. You can't go, "Well, hey,  
24 witness one was on the stand, what do you think about he or

1 she?" You don't do that. Because to do that would bring in  
2 other influences. 'Cause what will happen is someone will  
3 walk by and they'll get in on your conversation and now we've  
4 tainted the jury.

5 Now, the process is really simple. It's probably the  
6 only thing that TV ever gets correct. What happens in a  
7 criminal case is the State has the burden to prove the case.  
8 They must prove the elements of the crime committed and they  
9 must prove to you beyond a reasonable doubt that the Defendant  
10 committed that crime.

11 Therefore, they have the burden of proof. Therefore,  
12 they get to start the case off. They will do what is known as  
13 an opening argument.

14 Now, notice I labeled that as "argument." That's all it  
15 is. Unfortunately, for attorneys, every attorney, whether it  
16 be one of the practicing attorneys here or someone  
17 fresh-out-of-law-school or someone as old as me who's been  
18 doing it a long time, our opinion, our statements, our  
19 argument, they're not evidence.

20 So when a lawyer says the sky is blue and he's in a  
21 trial, that's his argument. That's not a piece of evidence  
22 before you. That's that attorney's personal belief. Because  
23 if you listen to my son, who happens to be the nuclear  
24 engineer, he'll tell you that the sky is actually not blue,

1 it's a split prism. And, therefore, depending on what portion  
2 of the earth you're standing on, it can be a variation of  
3 different colors.

4 He's a nerd. That's why he says that. All the rest of  
5 us know that it's actually the reflection of the ocean and not  
6 the sky itself; okay? Therefore, when an attorney makes an  
7 argument or an attorney makes a question, it is not evidence.  
8 It's purely argument.

9 So the State will present its opening argument. The  
10 Defense then has the opportunity, but is not required, to do  
11 their own argument. They do not have to present an argument  
12 at that time. They can reserve it until the time they do  
13 their Defense or they can waive it completely.

14 And you'll be instructed at the end of the case that  
15 that's immaterial. The Defense has no burden in this matter.  
16 Therefore, they are not obligated to do anything. Okay? As  
17 one of the counsels once said, they can actually sit there  
18 like a bump on a log and actually sleep. Yes, they could for  
19 about two seconds in my courtroom. But theoretically, they  
20 don't have to do a thing because they have absolutely no  
21 burden in this case; okay?

22 If they decide to do an opening argument, they will do  
23 their opening argument. Again, it's purely argument. It's  
24 really a road map. "Ladies and gentlemen, this is what we

1 believe the evidence we're gonna present to you means. We're  
2 gonna present witness A, B, and C and this is what we believe  
3 their evidence that they're gonna produce to you on the stand  
4 is going to say."

5 It's just a road map. It's a way of getting that fancy  
6 little brochure before you go on your trip when you see that  
7 hotel and it looks like a five-star hotel and you get there  
8 and it's a one-star. Okay? It's a road map.

9 Once those opening arguments are then done, the State has  
10 the obligation to put on its case-in-chief. That means they  
11 will call witnesses, introduce evidence. The only evidence  
12 that comes before the jury is the testimony you hear from that  
13 stand and the evidence that I allow to be admitted, such as a  
14 document or a paragraph.

15 One side or the other may say, "Your Honor, we'd like to  
16 present Exhibit A and move it into evidence." If I move it  
17 into evidence, I accept it, it is evidence in this case. If  
18 during the case -- and you will hear this. It happens in  
19 every case. One side or the other will make an objection.  
20 The objection is not evidence. It's an argument by counsel.

21 They'll make an objection. I will rule on it. For  
22 example, if I rule on a photograph and they say, "Your Honor,  
23 we object to the introduction of that photograph." And I  
24 sustain that objection. I agree to it. That photograph does

1 not become evidence. You can't go, then, back in the jury  
2 room and say, "You know, I wish we could have seen that  
3 photograph." You're not allowed to even consider it because  
4 it's not before you. If I agree to it and allow it in, then  
5 it is part of the evidence.

6 If I have to, during the case, admonish the attorneys, I  
7 may say something to an attorney -- and a lot of times you'll  
8 hear it from me. You'll hear me say, "Counsel, move it  
9 along," or "Counsel, next question," or "Counsel, move on."  
10 Okay? That's not my way of, quote, unquote, "punishing" one  
11 side or the other. That is my way as the, quote, "referee" in  
12 here to keep the case moving correctly.

13 When I make rulings from the bench, periodically I may  
14 instruct you to disregard something. Now, every time you hear  
15 that, that sounds really, really hard. For example, if I told  
16 you this morning to disregard the fact that I'm wearing a  
17 black robe. Okay. Who cares? If I ask you to disregard a  
18 photograph that you saw of me pointing a gun at you, that's  
19 hard to do, but you have to do it. Okay? You must disregard  
20 something that I instruct you to disregard.

21 I heard one of the counsels earlier talk about ringing  
22 the bell and unringing a bell. Okay. We all talk about that  
23 in law school. It's a fancy way of saying, once you hear a  
24 bell ring, you can't say, "Oh, let me erase that from my

1 mind." And sometimes in a courtroom you have to do that. It  
2 would be a violation of your oath if you went back in the jury  
3 room and said, "Even though I know the judge told us we have  
4 to disregard it, I think that's why I'm gonna base my decision  
5 one way or the other." Okay?

6 That would be a violation of your oath. So when you hear  
7 those things and I say, "You're instructed to disregard it,"  
8 disregard it.

9 During the trial, you will receive a steno notebook and a  
10 writing utensil. Fancy word to say pen or pencil. I don't  
11 know what the budget is right now. So I couldn't tell you  
12 which one we're gonna give you. Hopefully it's not a  
13 Crayola Crayon.

14 During the trial, you can take notes. The only kind of  
15 statement I make about that is, make sure while you're taking  
16 notes that you don't spend so much attention to your notes  
17 that you don't listen to the questions and the answers being  
18 given to you on the stand.

19 Some people are very meticulous at taking notes. They  
20 like to draw lines and squirrel points and all that sort of  
21 stuff. If you are missing the next two or three questions and  
22 answers because you're taking such detailed notes, you need to  
23 caution yourself; okay? You want to be able to hear all of  
24 the evidence; okay? But you're allowed to take notes.

1           In the State of Nevada, the jury is also allowed to ask  
2 questions of a juror -- excuse me -- of a witness. I caution  
3 you at this time, I can tell you this: Between the counsel  
4 sitting here, there's probably 120 years of legal experience;  
5 okay? There's probably a question that you think, "Oh, boy, I  
6 can't believe those attorneys. They're so stupid. They  
7 didn't ask this question. This is obvious."

8           Well, the reason they didn't ask that question is, it's  
9 not a proper question to ask. Okay? That happens all the  
10 time. For example, a police officer comes up to an automobile  
11 accident. He writes up a report. A lot of times the police  
12 officer and/or trooper will be asked to make a determination  
13 as to who caused the accident.

14          That officer, that trooper, wasn't there. What they're  
15 basing that decision on is their training, what they observed  
16 when they got there, the demeanor of the people, and what they  
17 physically know happens in car accidents. But for that person  
18 to come in front of a jury -- and I have this all the time --  
19 when a cop is on the stand, someone will write out, "Officer,  
20 who's at fault?"

21          Okay. That's an improper question. Because if that  
22 officer was to say, "Well, it's Mr. Jones that's at fault,"  
23 what are you guys doing here? There would be no reason for a  
24 jury to be here. It would be the officer making a



1 determination.

2 Believe it or not, every officer I know -- and I know  
3 most of them since I represented the police department for  
4 25 years -- they will all tell you, they are not perfect.  
5 They make mistakes. To ask a police officer to come up to a  
6 scene and in 60 seconds determine who's at fault is not  
7 legitimate. It's not fair to either party; okay?

8 Believe it or not, I've had rear-end car collisions where  
9 the person in front's the one who caused the accident. It's  
10 called backing up. Okay? It happens.

11 So just because someone in authority who has a badge says  
12 "this is the person at fault," that would be an improper  
13 question. So if you have a question that you believe a  
14 witness should be asked, write it down. You'll give it to the  
15 Marshal. The Marshal will present it to me. I will bring the  
16 counsels up here and we will discuss whether or not we can ask  
17 that question. Okay?

18 Ninety-nine percent of the time, the question cannot be  
19 asked; okay? And, therefore, it's not asked. Sometimes it is  
20 asked. Once in a while I'll get a question and the four or  
21 five attorneys at the front desk will look at me and I'll go,  
22 "You guys didn't even think about that, did ya?"

23 And the attorneys will go, "That's a good question." And  
24 we'll ask that question.

1           But the same time, you don't get to go and put in points,  
2       "My question, 100 points; attorney's question, 1 point, 1  
3       point, 1 point." That's not how you score things; okay? You  
4       score things based upon the perception of the evidence you  
5       received, all of the evidence.

6           After the entire case is put on by the State, the Defense  
7       has the opportunity to call witnesses. But they're not  
8       obligated to do that. Okay? So they may put on their defense  
9       of a case; they may have absolutely no witnesses and put on  
10      zero witnesses and zero case.

11          At the end of that, if they do put on a case, they  
12      then -- the State then has an opportunity to do what's called  
13      rebuttal witnesses. That means, they can put someone on that  
14      says, "Yeah, whatever that person said is not correct and  
15      here's why."

16          At the end of that, what'll happen is I read, read  
17      verbatim what's called jury instructions. That's known as the  
18      law. I will read those to you. You will actually have copies  
19      of them in front of you. You'll actually get to follow along  
20      and see what the law is. That law is what you apply to the  
21      facts of the case.

22          Once the law is read to you, each side will then have the  
23      opportunity to do what's called summation or closing  
24      arguments. Again, arguments of counsel. That's all it is.

1       Instead of it being a road map, this is the summation.

2       "Ladies and gentlemen, you remember witness A. He told you  
3       this. You remember witness B. She told you that. You  
4       remember witness C from the other side, don't even worry about  
5       them. They're not trustworthy."

6               That's just argument. That's not the facts. But they  
7       have the ability to, quote, unquote, come in here and argue.  
8       The State goes first; Defense has the right to go. Because  
9       the State has the burden, they can then do rebuttal close,  
10      which is basically to rebut what you just heard from the other  
11      side.

12             After that, the case is submitted to you. It's not like  
13      in Hollywood. We don't close you in a dark dungeon and you  
14      can't leave, you can't breath, you can't do anything else.  
15      But you are, what we call, sequestered. You are by yourself  
16      and you are going to then deliberate. Okay?

17             In everyday cases you'll see what we refer to as direct  
18      evidence and circumstantial evidence. For lawyers, it's kind  
19      of -- they actually write books about that, the argument of  
20      what is direct evidence and what is circumstantial evidence.

21             Simple, simple story. Six to eight years ago, if you  
22      were in Las Vegas and you walked out one night, especially up  
23      here in this end of town and up in Summerlin, and it's really,  
24      really cold and it was really, really cloudy and all of a

1 sudden stuff came out of the sky and it was white and it was  
2 solid and it looked like snow. You could actually say it was  
3 snowing outside.

4 That's direct evidence. I'm standing there and it's  
5 coming down. I can see it. I can feel it. I know what it  
6 is. Even if I've never ever seen it anywhere else. Direct  
7 evidence.

8 If you're like me, you went to sleep, outside was nice  
9 and dry, little bit of clouds up there, it was cold but no big  
10 deal. You woke up the next morning and there were two inches  
11 of that funny white stuff on your car. You can deduct from  
12 circumstantial evidence it must have snowed last night. Okay?

13 Circumstantial and direct evidence are evidence. They  
14 have the same weight. It's up to you as to what weight you  
15 place upon them. Just because it's just, quote, unquote,  
16 "circumstantial evidence" doesn't mean it's any different than  
17 direct evidence. It's what weight you place upon that.

18 Counsel, approach.

19 [BENCH CONFERENCE]

20 THE COURT: Ladies and gentlemen, at this time what  
21 we're gonna do is we're gonna take a brief recess just because  
22 I have to go through some housekeeping matters before we tell  
23 you who's gonna be the individuals that are gonna remain with  
24 us. What we're gonna do is we're gonna take a break until 25

1 after the hour.

2 During this recess, you are admonished not to talk or  
3 converse among yourselves or with anyone else on any subject  
4 connected to this trial or read, watch, or listen to any  
5 report of or commentary on the trial or any person connected  
6 with this trial by any medium of information, including  
7 without limitation: Newspapers, television, radio, the  
8 Internet, or form or express any opinion on any subject  
9 connected with the trial until the case is finally submitted  
10 to you.

11 You're not to do any experiments or investigation  
12 regarding any matters raised in this trial, nor are you to  
13 post on any social media forums about the trial or attempt to  
14 investigate anything you've heard in this trial using any form  
15 of social media or the Internet.

16 We'll see you back here at 25 after the hour.

17 THE MARSHAL: All rise for the jury.

18 [OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY]

19 THE COURT: All right. Counsel, at this time, it's  
20 my understanding that Counsel for the Defense has a Batson  
21 challenge; is that correct?

22 MR. YAMPOLSKY: Yes, Your Honor. And --

23 THE COURT: Okay. Hold on a second. Let me get my  
24 notes. I also have a note from my Marshal. I'm sure it's

1 from [JUROR NO. 1237].

2 Is that from [JUROR NO. 1237]?

3 THE MARSHAL: Yes, Your Honor.

4 THE COURT: Okay. All right. Let's deal with this  
5 matter first, just because it is one of those ones where it'll  
6 be separate by itself.

7 I have received from my Marshal a handwritten note from  
8 the potential juror, [JUROR NO. 1237]. And this's  
9 [JUROR NO. 1237]'s statement now -- he's tried the work. He's  
10 tried the inconvenience. He's tried the money. Quote, "I  
11 won't be able to hand down a guilty verdict."

12 MR. YAMPOLSKY: And there's a problem with that,  
13 Your Honor?

14 THE DEFENDANT: Yeah, we think that's swell.

15 THE COURT: Okay. Here's the problem with it. This  
16 Court believes that [JUROR NO. 1237] is trying desperately to  
17 get off this jury duty. We're going to deal with the Batson  
18 challenge. And if this remains, then I'm going to call  
19 [JUROR NO. 1237] in here and basically ask him questions  
20 directly from the bench in regards to his now fine  
21 philosophical choice.

22 MR. YAMPOLSKY: Didn't you [indiscernible] him?

23 MS. CRAGGS: Yeah.

24 THE COURT: He was stricken but, Counsel, if you

1 have a Batson issue, he may be another issue --

2 MR. YAMPOLSKY: Okay.

3 THE COURT: -- okay? You can't go through and  
4 strike him when you're dealing with a Batson matter.

5 Okay. Counsel, we have a Batson challenge from the  
6 Defense; correct?

7 MR. YAMPOLSKY: Yes, Your Honor.

8 THE COURT: Let's articulate it.

9 MR. YAMPOLSKY: On the first five strikes of the  
10 State, four were Hispanic. [JUROR NO. 1229] was not. But  
11 [JUROR NO. 1084], [JUROR NO. 7698], [JUROR NO. 1180], and the  
12 fifth one, Your Honor, it's --

13 THE COURT: [JUROR NO. 1257]?

14 MR. YAMPOLSKY: -- it's Hispanic woman, I believe.

15 THE COURT: [JUROR NO. 1257].

16 MR. MARGOLIS: [JUROR NO. 1226], I believe.

17 THE COURT: Okay.

18 MR. YAMPOLSKY: Yeah. And based on that --

19 MR. SCHWARTZ: That's a male.

20 MR. YAMPOLSKY: What was that?

21 THE COURT: Here we go. Let's make sure we get the  
22 record clear, Counsel. The first strike by the State was  
23 [JUROR NO. 1084]. You believe that's a Batson issue; correct?

24 MR. YAMPOLSKY: Yes.

1 THE COURT: Okay. Second strike is  
2 [JUROR NO. 1229]. You do not believe that's a Batson  
3 challenge; correct?

4 MR. YAMPOLSKY: Correct.

5 THE COURT: The third strike was [JUROR NO. 1180].  
6 Do you believe that is a Batson issue?

7 MR. YAMPOLSKY: Yes.

8 THE COURT: Okay. The fourth strike was  
9 [JUROR NO. 1257], you believe that is a Hispanic issue?

10 MR. YAMPOLSKY: Yes.

11 THE COURT: Okay. The fifth strike was  
12 [JUROR NO. 1123]. Do you believe that is a Batson issue?

13 MR. YAMPOLSKY: Yes.

14 THE COURT: Okay. Now, Counsel for the State, let's  
15 articulate, if possible, your reasoning for the nonracial  
16 striking.

17 MR. SCHWARTZ: Can I clarify, number three, the  
18 third person you're Batsoning me on, who is that?

19 THE COURT: [JUROR NO. 1180] is what --

20 MR. YAMPOLSKY: [JUROR NO. 1180].

21 THE COURT: -- number 24.

22 MR. SCHWARTZ: I had -- I'm sorry. Then number  
23 four. 'Cause whatever he's --

24 THE COURT: The number four is [JUROR NO. 1257].



1 MR. SCHWARTZ: [JUROR NO. 1257]. Okay. Excellent.

2 THE COURT: Okay. Go ahead and let's deal with  
3 number one, [JUROR NO. 1084].

4 MR. SCHWARTZ: And, Your Honor, just to -- the way  
5 that we usually like to do it, are you finding that there was  
6 a pattern? Because this first step --

7 THE COURT: No, the very first step -- this is the  
8 way I do it, Counsel --

9 MR. SCHWARTZ: Okay.

10 THE COURT: -- the way that I read Batson is there  
11 has to be a systematic striking of individuals based upon  
12 something other than the answers that they gave you, i.e., a  
13 gender and/or racial and/or preference matter. Okay?

14 At this time, from a general finding, what I see is a  
15 pure Batson based only on surname; okay? That's usually why I  
16 see Batson challenges. Because everybody automatically infers  
17 because they have a Hispanic or Latino surname that those  
18 individuals are somehow Hispanic or Latino actually.

19 I never judge race and/or gender or gender neutrality at  
20 all because the fact is, I have a lot of people that come in  
21 here, including my family members, who happen to be last name  
22 Miranda and they are Hispanic only by Miranda. They're  
23 actually Asian. So the fact that they have a surname that  
24 happens to be Latino or Hispanic based does not influence this

1 Court as to a pattern. Okay?

2 But what I do see, in my recollection of those  
3 individuals, is they are Hispanic in appearance. And by  
4 looking over what they told the Court system, they -- at least  
5 two of them claim to be of Hispanic origin. Okay? So I am  
6 not finding at this time that there is a pattern, but I am  
7 finding purely on the, quote, surface, the Hispanic names and  
8 or appearances that they have individuals of Hispanic or Latin  
9 base that were stricken. Along with individuals who were  
10 stricken that were not Hispanic and Latino.

11 So I want you to address, Counsel, a reasonable  
12 explanation to this Court dealing down with number one,  
13 [JUROR NO. 1084].

14 MR. SCHWARTZ: [JUROR NO. 1084], Your Honor, couple  
15 things with him. For most of my questioning, he was sitting  
16 in the back row with his head against the wall looking up at  
17 the ceiling. When I asked if everyone agrees no means no,  
18 everyone shook their head, except for him. And that's when I  
19 said, "Uh, sir, behind [JUROR NO. 7698], do you disagree and  
20 shake your head?" And then he's like, "Oh, no. Yeah, I  
21 agree."

22 I felt like he wasn't paying attention, was  
23 disinterested. And also, when I was talking about the sexual  
24 assault, no means no, did not nod in the affirmative when

1 everyone was [indiscernible].

2 So those were my -- he was also, I guess, one of the ones  
3 that -- I guess probably should have started with this. This  
4 is a great point. He said he would need more.

5 THE COURT: Right.

6 MR. SCHWARTZ: He would need more than just the  
7 victim saying something.

8 THE COURT: Okay. I can tell you, Counsel, from my  
9 notes, that was one of the major issues that I had with him is  
10 his basic statements with -- and Mr. Schwartz did it in  
11 detail -- if the only thing is out here is this individual  
12 testifying and it's the victim, and it's the victim, and he  
13 specifically said, "I would need more."

14 I was actually, Counsel, expecting a challenge on him for  
15 that reason, outside of the preemptory. He basically was  
16 acknowledged that he would need more than just a victim's  
17 statement. Okay?

18 And for the record, [JUROR NO. 1084] refers to himself  
19 not as Hispanic but "other race." So that means to the court  
20 that he is not purely of Hispanic or Latin race, but he is a  
21 mixture of races and, therefore, does not consider himself of  
22 Hispanic race; okay?

23 Let's go down to the next one, [JUROR NO. 1180].

24 MS. CRAGGS: Your Honor, I can take that one.

1 THE COURT: Okay.

2 MS. CRAGGS: The reason that I suggested striking  
3 [JUROR NO. 1180] is because I have watched his body language  
4 when Mr. Schwartz was asking the questions about sexual  
5 assault, about the no means no, and kind of was going down the  
6 line and asking people different things. To me, he appeared  
7 disinterested -- him and [JUROR NO. 1183]. Those are two  
8 people that we struck.

9 [JUROR NO. 1183] was not part of this challenge because I  
10 believe he identifies as "white/Caucasian." But those two  
11 individuals, throughout the entire time he was asking the  
12 other people, were disinterested. I believe they both rolled  
13 their eyes at one point. And so those are the two individuals  
14 that I suggested that we struck, which was why I wanted to be  
15 the one to tell the Court.

16 THE COURT: Okay.

17 MR. SCHWARTZ: [JUROR NO. 1180] also identifies as  
18 "other race."

19 THE COURT: Correct.

20 Okay. Let's deal with [JUROR NO. 1257].

21 MR. SCHWARTZ: [JUROR NO. 1257], Your Honor -- and  
22 that was -- that's the female who was sitting behind me.

23 THE COURT: Correct.

24 MR. SCHWARTZ: Let me just make sure -- I don't

1 think -- I believe she was -- identifies as "white/Caucasian,"  
2 to start. But -- correct. "White/Caucasian."

3 THE COURT: Correct.

4 MR. SCHWARTZ: My issue with her, Your Honor, is  
5 that my understanding is that the Defense is gonna probably go  
6 with the consent route here. And she had an issue where she  
7 was consenting to a sexual assault -- age issue that was later  
8 charged or addressed as a sexual assault.

9 My concern was that, essentially, that she would be more  
10 favorable to the Defense in the sense that she was in a  
11 relationship that was consensual, but ultimately charges were  
12 filed against him.

13 THE COURT: Okay. Basically, you had an individual  
14 who said that she consented even though, legally, she could  
15 not consent to that relationship. And she basically had  
16 sexual relations with a man who clearly could have been  
17 charged with a statutory rape because of her age here in  
18 Clark County.

19 MR. SCHWARTZ: Correct.

20 THE COURT: Okay. And she does identify herself as  
21 "white/Caucasian."

22 Okay. The next one to be [JUROR NO. 1123].

23 MR. SCHWARTZ: Your Honor, [JUROR NO. 7698]  
24 identifies "other race." My main issue with him was,

1 yesterday, when we were discussing no means no, he made that  
2 comment, "Well, women who dress provocatively" -- I think the  
3 quote was, "That their butt hanging out" or "their boobs  
4 hanging out should kind of expect something to happen.

5 And he clarified what he was talking about, which I think  
6 was -- he didn't mean what it came off, but the way that he  
7 said it kind of rubbed me the wrong way. So that was the  
8 reason. I didn't really like that he kind of was indicating  
9 that some women maybe had it coming, so to speak.

10 THE COURT: Okay. And, Counsel, in regards to the  
11 Batson challenge, here's my other issue that I have: We  
12 basically have gone over a little bit extensively in removing  
13 two individuals who were Hispanic speaking solely because of  
14 the fact that they were Hispanic speaking.

15 Both parties agreed to stipulate to remove those  
16 individuals that, based solely upon their native tongue, is  
17 not a valid reason to strike them. An inability to comprehend  
18 is one. But just because they have a tendency to speak one  
19 language over the other is purely picking on an individual  
20 race because of that.

21 Based upon all of the arguments here today on regard to  
22 [JUROR NO. 1084], [JUROR NO. 1180], [JUROR NO. 1257], and  
23 [JUROR NO. 1123] the request for Batson challenge is hereby  
24 denied. I do not find a systematic approach.

1           We had gone through -- one, two, three, four, five, six,  
2       seven -- eight other people of Hispanic or Latin gender  
3       names -- or excuse me -- surnames and individuals -- one, two,  
4       three, four -- five that identify themselves as Hispanic in  
5       nature that were not stricken by the State. I do not see a  
6       systematic attempt to strike only individuals of Hispanic.

7           The State has articulated a very valid basis for each and  
8       every one of their strikes. Therefore, we are going to stick  
9       with the jury we have.

10          We're going to come back here in about two minutes.  
11       We're gonna sit this jury and we're gonna do opening.

12           MS. CRAGGS: And, Your Honor, can we address the  
13       motion before we --

14           THE COURT: Oh, absolutely.

15           MS. CRAGGS: -- deal with openings?

16           THE COURT: I was hoping to use the restroom, but go  
17       ahead.

18           MS. CRAGGS: Oh, I --

19           THE COURT: No, let's go ahead.

20           MS. CRAGGS: I am, as well.

21           THE COURT: We'll have to tell my jury to sit a  
22       little bit longer.

23           MR. YAMPOLSKY: Yes, we'll stipulate to a restroom  
24       break.

1 MS. CRAGGS: Okay. Your Honor received our motion?

2 THE COURT: I received the motion and I received the  
3 opposition. I read through both of 'em. I actually had the  
4 ability to pull up Mr. Bub's CV, because it was not supplied  
5 to the Court, and reviewed through his CV. He has 33 years of  
6 law enforcement in the Los Angeles Police Department, of which  
7 22 were investigating homicide, suicides, and political  
8 deaths.

9 And then he mentions that he -- all he does mention is  
10 that he does work -- or did work on sexual assault cases, also  
11 RICO and homicides.

12 So go ahead, Counsel.

13 MS. CRAGGS: Thank you, Your Honor.

14 I mean, Your Honor, our main issue, which is what we put  
15 in our motion, is that there's not a lot of factual  
16 conclusions in this expert report. I mean, our -- basically  
17 what we're saying to Your Honor is that he's coming to  
18 conclusions that, one, are common sense. Because it's, "Well,  
19 if there was a witness that they could have found that they  
20 could have talked to, then maybe it would be helpful for the  
21 State, maybe it would have been helpful for the Defense. We  
22 don't know."

23 So this conclusion is not only common sense, but it's  
24 also conjecture. It's assumption, which it specifically



1 states in the case law that, if there's going to be expert  
2 testimony on something, it should not be conjecture. It  
3 should not be assumption or generalization. It should be  
4 based on particularized facts.

5 And so, Your Honor, going through the report that we  
6 received, I didn't really see any conclusions that were  
7 actually drawn, other than sort of, "Well, this would have  
8 been great if it was done, but it wasn't done. So it could  
9 have been good for this side or it could have been good for  
10 this side. We don't really know."

11 That's not an expert opinion that's going to help the  
12 jury come to a conclusion. Those are arguments that can be  
13 made on closing. And when we call an officer, those are  
14 things that that officer can be crossed on.

15 So with that, Your Honor, unless you had other questions,  
16 I would submit it to you.

17 THE COURT: So if I understand correctly, do you  
18 believe that this seasoned, lengthy officer doesn't have the  
19 ability to come in and say, "Officer, the detective violated  
20 Metro's specific detective handbook by not doing A, B, and C.  
21 And as a result therein, may have caused the delay or may have  
22 caused this case to go one way or the other." Can't an expert  
23 come in and say, "Look, this individual didn't even follow  
24 their own code, their own law, their own books, their own

1 procedures." And as a result of that, not come up with a  
2 summation.

3 I never allow an expert to basically take the position of  
4 the jury and say, "Now, you can't trust this individual," or  
5 "this person's testimony should be stricken." But -- and I  
6 agree, this individual goes well beyond what an expert's  
7 requested to do. There's more "mays" in this report than  
8 there is in a honeymoon; okay?

9 But there's a problem here. You have an individual who  
10 clearly has some points where he's very critical of other  
11 detectives, i.e., to the point where he says too much. He  
12 basically goes too far. "Well, that's the reason why the  
13 detective didn't go forward." He doesn't know that. That's  
14 the biggest guess I've ever heard.

15 Or the one I thought was the best one, "That these two  
16 females would have clearly been the best witnesses for the  
17 Defense." Really? That they're independent? How does he  
18 know that? How does he know they're not the parent of one of  
19 the individuals? How does he know they're not the girlfriend  
20 of one of the individuals? How does he know they're not the  
21 mother of one of these individuals?

22 For an expert to come in and say, "These witnesses would  
23 have been the best thing," that's the most conjecture I've  
24 ever heard. But how do we not allow an individual with

1 specialized training, based upon Hallmark, to come in and tell  
2 a jury, beyond just, "Hey, this is cross-examination." And  
3 you can always argue to the detective, "Detective, here's your  
4 handbook. Shouldn't he have done this?"

5 Can't an expert come in and say, "Look, the failure to do  
6 that causes these problems."

7 MS. CRAGGS: And, Your Honor, I guess reading  
8 through his report, I don't know -- and maybe I didn't read it  
9 closely enough. But I didn't necessarily see -- I don't know  
10 how we can say that the failure, potentially, of a detective  
11 not to do X, Y, and Z, which frankly we have records that  
12 we've turned over, which are the records we've been able to  
13 get from 20 years ago, but we don't know -- I mean, this has  
14 been litigated in this Court --

15 THE COURT: Right.

16 MS. CRAGGS: -- which, you know, obviously.

17 We don't know if those are all those records. I didn't  
18 see that he said, you know, because this detective didn't do  
19 X, Y, and Z that that made the investigation go a certain way.

20 I mean, my impression of his conclusions, if you can call  
21 them conclusions, was it may have been, "It may have caused A;  
22 It may have caused B, but we don't really know."

23 And I guess my argument would be that that is better  
24 suited to ask the -- a detective that we call. You know, and

1 I don't know who we're going to call at this point. But,  
2 obviously, depends on Your Honor's ruling. But it felt, to  
3 me, reading through his report, that he was just kind of  
4 making these sort of generalizations based on what we were  
5 able to get, not particularized facts, but just assumptions.

6 THE COURT: Okay.

7 MS. CRAGGS: Not saying that he doesn't have -- not  
8 saying he doesn't have expertise, not saying that he doesn't  
9 have experience --

10 THE COURT: Well, he's clearly qualify --

11 MS. CRAGGS: -- I get that.

12 THE COURT: He qualifies for the abilities and  
13 experience. There's no doubt about it. Just because of his  
14 background alone. For some reason people don't understand,  
15 the best person to talk about car maintenance is not the  
16 engineer for General Motors but the guy down here at the sweat  
17 shop that does oil changes five times every minute.

18 MS. CRAGGS: Right.

19 THE COURT: That's the best guy. And that person  
20 may not have a sixth grade education, but he's still the best  
21 witness when it comes to, "Why does my car leak oil?" Okay?

22 But in this situation, I get -- and I agree that he's  
23 qualified credentially, but how do I not allow him to come in  
24 and at least educate the jury, beyond the cross-examination

1 questions; okay? But come into the jury and say, "Look, a  
2 proper investigation should have entailed this, this, this,  
3 and that." Not allow him to make the next jump and say, "Had  
4 they done this, this could have happened." I'm not gonna  
5 allow that.

6 MS. CRAGGS: Okay.

7 THE COURT: So any argument about "he gets to come  
8 in and say if they did this, this should have happened. This  
9 may have happened." That's nice for writing a book -- okay --  
10 this is not a book. I'm not gonna allow a detective to come  
11 in here and basically say, "They could have done this, this,  
12 and that and it could have changed everything." Okay. That's  
13 a nice crystal ball analysis, but it has no bearing in  
14 Hallmark nor does it have any bearing in this courtroom.

15 But to allow him to come in and be critical of the way  
16 that the detectives handled it -- now, I -- reading over this  
17 report -- and I take an hour -- I only took about ten minutes  
18 to read over his report because I read the arguments more. I  
19 would love to cross-examine this guy.

20 MS. CRAGGS: So will Mr. Schwartz.

21 THE COURT: Okay. This will be --

22 MS. CRAGGS: -- I'm sure.

23 THE COURT: -- a blast to cross-examine this guy on  
24 his theories of how things could have gone. Because he

1 switches from, "I thought at first whodunit and this isn't the  
2 right guy to, oh, it's consensual." Okay. If -- you know, if  
3 he wants to go both ends of the spectrum, as an expert, I say  
4 earn your money.

5 But how do I not allow him to get on the stand? Because  
6 our criteria is much lower than across the street. And our  
7 criteria is, can he assist a jury? Can he not come in and  
8 say, "The reason why we have these rules is because this."  
9 Because I can tell you, a detective from this department at  
10 Metro, if you ask 'em, "Why do we have these guidelines?"  
11 He's gonna probably say, "Because my superiors tell me we have  
12 these guidelines." How or why they came up may be beyond his  
13 pay grade.

14 He may say, "I don't know," or he may respond, "I think  
15 they're stupid and I wouldn't do 'em, but they're still  
16 guidelines."

17 MS. CRAGGS: And, Your Honor, if it's limited to  
18 that, you know, I'd submit it to the Court. And my  
19 recollection of the report was that was about a half of a page  
20 of it. And the rest of it --

21 THE COURT: It took me till page 9 to realize where  
22 he was going, yes.

23 MS. CRAGGS: And so that was the main concern that  
24 the State had, was all of these --

1 THE COURT: Mays, would haves, could haves.

2 MS. CRAGGS: Yes.

3 THE COURT: Okay.

4 MS. CRAGGS: And so if Your Honor is limiting it to  
5 that specifically --

6 THE COURT: Well, let me hear from the other side.

7 MS. CRAGGS: -- then I'll submit it to you.

8 THE COURT: Counsel?

9 MR. MARGOLIS: I understand Counsel's concern about  
10 the expert per, you know, invading the province of the jury so  
11 to speak, but I think if he ultimately --

12 THE COURT: Well, I don't care about her -- what's  
13 my -- about my concerns. It's the same thing.

14 MR. MARGOLIS: I understand Your Honor wants to  
15 limit him to being critical of police work. And as far as the  
16 mays and the should haves and could haves and hypotheses on  
17 steroids, that's not allowed. And to that extent, we have no  
18 issue with that.

19 But clearly, Mr. Bub is qualified. And clearly, he can  
20 illuminate some issues of material fact for this jury about  
21 this investigation about what ordinarily happens, about what  
22 happened here. Okay? I understand the State's concern about  
23 him providing the conclusions for the jurors as to what that  
24 information means. But I think that he's certainly more

1 qualified than even anyone in this room to opine about a  
2 sexual assault investigation and the way that it plays out and  
3 the actors involved and whom is responsible for what.

4 Do I, as a layperson who watched Law and Order from 1991  
5 until I went to law school and beyond, do I have the same  
6 ability to describe a sexual assault investigation as  
7 Robert Bub does? I do not.

8 THE COURT: Counsel, do we actually need an expert  
9 to say that taking one hour versus 20 years could probably  
10 have an adverse affect?

11 MR. MARGOLIS: I believe that Mr. Bub goes beyond  
12 that, though, Your Honor. I mean, I would agree that any old  
13 person can say that, "Hey, a case is probably gonna be easier  
14 to prosecute and defend and witnesses are gonna be easier to  
15 find if we do it inside of one, two, five years as opposed to  
16 twenty." But he can also opine, specifically, about what  
17 these investigations entail.

18 And I don't think you or I, or certainly the 12 people in  
19 the jury box, are gonna know exactly what those steps are.  
20 Okay. We might know what we've seen in an episode of  
21 Law and Order, but I kind of feel like they want to ride both  
22 horses here. Wants to exalt DNA and exalt the CSI effect,  
23 while at the same time diminishing it when it suites their  
24 purposes and saying here --