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Respondent.

Electronically Filed
May 19 2020 11:04 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Docket 79861 Document 2020-19012

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GUSTAVO GUNERA-PASTRANA
Case No. 79861

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1 MR. SPEED: You don't agree with that?

2 PROSPECTIVE JUROR 068: Yeah. And I wasn't aware that
3 the defendant doesn't have to speak. I don't agree with that.

4 MR. SPEED: Tell me what part of it you don't agree with.
5 And tell me if I'm fair in saying --

6 PROSPECTIVE JUROR 068: I think the reason that they can't
7 speak is, so they don't get themselves, you know, to say the wrong thing.
8 And, you know, that's -- you should have to speak so maybe you do say
9 the wrong thing.

10 MR. SPEED: You think a person should have to speak when
11 he's accused of a crime?

12 PROSPECTIVE JUROR 068: I think if you're accused of a
13 crime, I think you should have to speak.

14 MR. SPEED: Okay.

15 PROSPECTIVE JUROR 068: Yeah. And then yeah, you might
16 put your foot in your mouth and get in trouble.

17 MR. SPEED: Do you believe as Mr. Gunera-Pastrana, my
18 client, is sitting here right now, that if you didn't hear from him --

19 PROSPECTIVE JUROR 068: Uh-huh.

20 MR. SPEED: -- and you know what he's been accused of --

21 PROSPECTIVE JUROR 068: Uh-huh.

22 MR. SPEED: -- if you didn't hear him say anything in his
23 defense, or if I or Ms. Machnich didn't ask any questions --

24 PROSPECTIVE JUROR 068: Yeah.

25 MR. SPEED: -- do you think that you could decide his case

1 right now or at that point?

2 PROSPECTIVE JUROR 068: No, I couldn't decide his case.

3 MR. SPEED: You couldn't decide?

4 PROSPECTIVE JUROR 068: No. No. I didn't hear him speak.

5 And like I said, I think that's set up to protect him, so he doesn't say the
6 wrong thing.

7 MR. SPEED: So before you can make a decision, you would
8 have to hear his side of the story?

9 PROSPECTIVE JUROR 068: Yes.

10 MR. SPEED: Okay. I want everyone to hold onto that for a
11 few minutes while I get back to and keep my promise to -- I believe it's
12 Ms. Pender-Bey and Ms. Harvey, yes? Pass the microphone --

13 PROSPECTIVE JUROR 068: Thank you.;

14 MR. SPEED: -- three people down, please. Ms. Pender-Bey
15 first, and then we'll come back because we have to pass to the lady
16 behind you, Ms. Harvey, that is Ms. Argentine.

17 PROSPECTIVE JUROR 035: Yes.

18 MR. SPEED: Yes. But we'll get to you in a second.

19 Ms. Pender-Bey, you were talking about -- or we were talking
20 about blended families.

21 PROSPECTIVE JUROR 094: Yes.

22 MR. SPEED: Talk to us about your experience there.

23 PROSPECTIVE JUROR 094: Well, of course, I always take my
24 mom's side. That's number one. I'm not going to deny it. But self-
25 preservation comes first. So of course, I'm going to make sure that I'm

1 going to do what's best for me. And then I'm going to take care of
2 whoever else. And that's how we were taught with it. So I am going to
3 protect my mom first, and then anybody else afterwards.

4 MR. SPEED: So me and mine first?

5 PROSPECTIVE JUROR 094: Absolutely. Us four, no more.

6 MR. SPEED: Us four, no more. And that's -- if I'm wrong
7 here, you said that you grew up in a blended family environment?

8 PROSPECTIVE JUROR 094: Yes.

9 MR. SPEED: And when you say us four and no more, that's
10 yourself, two siblings, and your mother?

11 PROSPECTIVE JUROR 094: That's how we started. Yeah.
12 There's eight of us now.

13 MR. SPEED: Ms. Harvey, badge number --

14 PROSPECTIVE JUROR 086: Sheree Harvey, 86.

15 MR. SPEED: -- 86. Thank you. You said that you grew up in
16 a blended family situation also?

17 PROSPECTIVE JUROR 086: Yes. My mom married a guy
18 that had two sons before they married.

19 MR. SPEED: Older than you --

20 PROSPECTIVE JUROR 086: They were older.

21 MR. SPEED: -- or younger than you?

22 PROSPECTIVE JUROR 086: They were older than me.

23 MR. SPEED: How was that relationship?

24 PROSPECTIVE JUROR 086: It was good. I gained two older
25 brothers, so I didn't have to be the responsible one.

1 MR. SPEED: So that was a positive?
2 PROSPECTIVE JUROR 086: Yeah.
3 MR. SPEED: That was a positive addition to your family
4 sphere, yes?
5 PROSPECTIVE JUROR 086: Yes.
6 MR. SPEED: Still close to them?
7 PROSPECTIVE JUROR 086: Both of them are deceased.
8 MR. SPEED: Both are deceased. When the three of you were
9 growing up --
10 PROSPECTIVE JUROR 086: There was actually five of us.
11 MR. SPEED: Oh five?
12 PROSPECTIVE JUROR 086: Yes.
13 MR. SPEED: Two other siblings of yours, yes?
14 PROSPECTIVE JUROR 086: Yes.
15 MR. SPEED: I see.
16 PROSPECTIVE JUROR 086: And then me.
17 MR. SPEED: I see. Not yours; we're all siblings. Two other
18 siblings in the house when the two brothers came?
19 PROSPECTIVE JUROR 086: Right.
20 MR. SPEED: Go ahead.
21 PROSPECTIVE JUROR 086: That's it.
22 MR. SPEED: Oh I thought I interrupted you.
23 PROSPECTIVE JUROR 086: No.
24 MR. SPEED: I apologize. Do you remember times growing
25 up when your feelings were the same as Ms. Pender-Bey's, it's yes, I

1 have two big brothers now, but until I get to know you, I'm going to look
2 out for me and the folks who were here from the jump like we say, right?

3 PROSPECTIVE JUROR 086: Right. Mom.

4 MR. SPEED: Mom first?

5 PROSPECTIVE JUROR 086: Mom first --

6 MR. SPEED: All right.

7 PROSPECTIVE JUROR 086: -- because that stepdad, I just
8 met him. Why would I have his back? And mom is responsible for me.

9 MR. SPEED: That's the natural thing to do.

10 PROSPECTIVE JUROR 086: Yes.

11 MR. SPEED: Now, there was one person I think nodding her
12 head, Ms. Argentine.

13 PROSPECTIVE JUROR 035: Kathryn Argentine, 35.

14 MR. SPEED: Blended family situation?

15 PROSPECTIVE JUROR 035: No.

16 MR. SPEED: Children being dishonest?

17 PROSPECTIVE JUROR 035: Yes. So as a teacher -- I teach
18 freshman English, so I have the middle school to high school transition.
19 And I, kind of, agree with the gentleman down here that not necessarily
20 do children lie all the time. A lot of times they're very honest. And I've
21 noticed with my students over the years, there are some that are very
22 honest, and, like, overshare struggles with adults because they are
23 looking for help. So sometimes I think they can be extremely honest
24 about their feelings and -- yeah, feelings. And I agree that sometimes
25 they lie. I have students that plagiarize every year. So --

1 MR. SPEED: Oh boy. Yeah, there's this new fact check thing.

2 You can type in a paragraph and it'll let you know --

3 PROSPECTIVE JUROR 035: Turnitin.com.

4 MR. SPEED: -- if you plagiarized. It's amazing. I spent so
5 much time -- never mind. My question --

6 PROSPECTIVE JUROR 035: And I would also say I'm a
7 leader.

8 MR. SPEED: You would be a leader?

9 PROSPECTIVE JUROR 035: Absolutely.

10 MR. SPEED: Consider yourself a leader?

11 PROSPECTIVE JUROR 035: 100 percent.

12 MR. SPEED: You have to be; you're a teacher.

13 PROSPECTIVE JUROR 035: Yes, sir.

14 MR. SPEED: You have to be.

15 Show of hands, everybody, no one thinks Mr. Coleman was
16 saying that all children lie all the time, do they?

17 PROSPECTIVE JURORS: No.

18 MR. SPEED: All right. Relax, Mr. Coleman. They got the
19 point. I believe they did.

20 Ms. Argentine, if you'll hold on to it for just a second.

21 PROSPECTIVE JUROR 035: Sure.

22 MR. SPEED: I want to talk about something that Ms. Sudano
23 touched on for a moment. One of her questions dealt with whether you
24 would consider the word of someone if you heard information, or
25 testimony evidence indicating that they are not U.S. citizens.

1 PROSPECTIVE JUROR 035: Correct.

2 MR. SPEED: Talk to me about that.

3 PROSPECTIVE JUROR 035: I have -- that does not impact my
4 decision at all.

5 MR. SPEED: Doesn't impact your decision?

6 PROSPECTIVE JUROR 035: No. And you know, with
7 teaching, we have students who are undocumented and things like that.
8 And I don't want to know, but even if I do know, it doesn't impact my
9 reception.

10 MR. SPEED: Okay. What do you think about -- give me some
11 of your thoughts, your impressions about what you're seeing in the
12 news about issues dealing with immigration?

13 PROSPECTIVE JUROR 035: I'm not going to lie, I don't feel
14 very educated on the topic. I know only really from my students. Some
15 of them have worries about, like, being deported, or their families being
16 deported. But I don't follow the news enough on that topic.

17 MR. SPEED: Mr. Noyce, badge number 71.

18 PROSPECTIVE JUROR 071: Good afternoon, counsel.

19 MR. SPEED: Good afternoon, sir. You made a comment, I
20 believe it was earlier this morning, it could have been yesterday -- I'm
21 not sure -- about the 14th Amendment. And I have it circled here. Tell
22 me -- and I didn't hear the first part, and I apologize, I was slipping a little
23 bit there. Tell me what you said about the 14th Amendment.

24 PROSPECTIVE JUROR 071: That there are parts of it -- well,
25 let me say, there's an interpretation of it that I personally disagree with.

1 But on the whole, of course, equal protection, equal rights under the law.

2 MR. SPEED: The 14th --

3 PROSPECTIVE JUROR 071: You know, Dred Scott was
4 terrible.

5 MR. SPEED: The 14th Amendment has to do with citizenship.
6 And you just said -- and I stepped on your comment a little bit. You said
7 Dred Scott was terrible?

8 PROSPECTIVE JUROR 071: Dred Scott was a terrible
9 decision. Yes.

10 MR. SPEED: Okay.

11 PROSPECTIVE JUROR 071: But I also think that the 14th
12 Amendment has been interpreted a little too far. And I'm talking
13 specifically about anchor babies. A citizen from another country coming
14 here --

15 MR. SPEED: A lot to unpack now.

16 PROSPECTIVE JUROR 071: Right, right. I'll slow down.

17 MR. SPEED: Let's slow down for just a second. And if you
18 all will excuse me for just a minute. Someone said keep going. All right.

19 THE COURT: We're only going to do five more minutes.

20 MR. SPEED: Five more minutes. Oh boy.

21 Quick American history lesson and civics lesson. All right.

22 14th Amendment has to do with citizenship. You said Dred Scott was a
23 terrible decision. If you can, Mr. Noyce, can you tell the rest of the
24 veneer panel what the Dred Scott decision had to do with?

25 PROSPECTIVE JUROR 071: Essentially it said that African

1 American slaves were never intended to have citizenship and essentially
2 rights.

3 MR. SPEED: Chief Justice Roger Taney of the U.S. Supreme
4 Court in his opinion in Dred Scott, yes. We'll talk about that more later.
5 When we're talking about citizenship and issues pertaining to
6 immigration in this country, with your understanding of Dred Scott as
7 being bad law, right -- we had to fight a civil war about that, but that's
8 another story -- what are your thoughts, your feelings about people who
9 aren't citizens in this country enjoying things that should probably be
10 reserved for citizens?

11 PROSPECTIVE JUROR 071: The phrasing of that should
12 probably be for citizens, almost makes it sound like it really probably
13 should -- let me put it this way. If they're here and we have the
14 jurisdiction to pass any sort of laws or any sort of things that may affect
15 them, then I'm fine with that; then they should be granted equal
16 protection under the law.

17 MR. SPEED: Okay. Should they receive certain benefits that
18 say military service members aren't able to enjoy, or people who were
19 born here and spent their entire lives here aren't able to enjoy?

20 PROSPECTIVE JUROR 071: I generally tend to take issue
21 with that.

22 MR. SPEED: You think --

23 PROSPECTIVE JUROR 071: If you are a non-citizen taking
24 and receiving resources that a citizen may not, I have issues with that.
25 Sure.

1 MR. SPEED: Do you think a child as young as 12 or 13
2 understands some of the concepts, some of the ideas that you've just
3 been talking about with me, a lawyer?

4 PROSPECTIVE JUROR 071: I don't think so. No.

5 MR. SPEED: You don't think so?

6 PROSPECTIVE JUROR 071: No. Many of them may not even
7 have agency to change those situations, let alone understand them.
8 So --

9 MR. SPEED: Explain to the venire panel what an anchor baby
10 is.

11 PROSPECTIVE JUROR 071: Well, as I understand it, this
12 would be a person coming from another country, not residing here, and
13 coming over around the due date, especially, and having a child here.
14 And that would then grant citizenship towards the child because under
15 the 14th Amendment the child is now, you know, given the protection
16 under the law, and it is now a citizen of the United States. Under those
17 circumstances, you can apply and tend to bring in more family members.

18 MR. SPEED: Not the child. The child -- the adults?

19 PROSPECTIVE JUROR 071: Yes. The anchor part.

20 MR. SPEED: Right. Fair or not fair?

21 PROSPECTIVE JUROR 071: Fair or not fair?

22 MR. SPEED: Honest opinion with your gut.

23 PROSPECTIVE JUROR 071: With my gut. I think unfair.

24 MR. SPEED: Do you think that -- and I was asking Ms.
25 Carothers about how we've done as a society. Do you think we've done

1 a -- and that was related to another question obviously. But do you think
2 we've done a good job in transmitting to the rest of the world that you
3 can come, but this isn't a free for all, this isn't everything is going to be
4 given to you by virtue of the fact that you were born in a different
5 nation?

6 PROSPECTIVE JUROR 071: Truthfully, I don't know. I don't
7 know what kind of attitudes are in different countries. How many? I
8 don't know the statistics as to whom is doing this. It could be very little;
9 it could be very many. So it's hard for me to form an opinion as to
10 whether we're doing a good job of, you know, getting out that message.

11 MR. SPEED: Do you think that you would be a fair and
12 impartial juror? I'll ask Ms. Sudano's question. I don't believe that this
13 was posed directly to you. After hearing that some of the witnesses in
14 this case, and potential witnesses in this case are not U.S. citizens?

15 PROSPECTIVE JUROR 071: Yes, surprisingly enough. I
16 mean, you may be surprised to hear that. Yes, I think I would be because
17 we're here right now and I presume that we've got jurisdiction over this.
18 So it seems like we're here to answer a question right now. So the
19 circumstances, country of origin, things like that, doesn't really make
20 much of a difference to the primary facts.

21 MR. SPEED: Do you think something like -- and we use terms
22 like anchor babies, and the granting or bestowing of citizenship on
23 certain people, do you think that the opportunity to reside and live in the
24 United States versus someone's country of origin, even if it is a very
25 close neighbor to us in this hemisphere, do you think that's a strong

1 motivation for someone to be dishonest?

2 PROSPECTIVE JUROR 071: Can you repeat that question?

3 MR. SPEED: The opportunity to reside in the United States --

4 PROSPECTIVE JUROR 071: Yes.

5 MR. SPEED: -- if that were presented to a person --

6 PROSPECTIVE JUROR 071: Uh-huh.

7 MR. SPEED: -- do you think that that is a strong motivation --

8 and that person is not a citizen of our country, do you think that that's a
9 strong motivation for someone to be dishonest?

10 PROSPECTIVE JUROR 071: I would say it could be. But it
11 doesn't necessarily mean that it is. You can just easily hop on a plane
12 and have an anchor baby here. You can come from Sweden and have
13 an anchor baby right here. Just because you're maybe not a proximate
14 neighbor, you know, sharing a land border, doesn't necessarily mean
15 that you'd be motivated to be dishonest.

16 MR. SPEED: But then enjoy all of the fruits and privileges
17 and rights of a U.S. citizen if you have an anchor baby here?

18 PROSPECTIVE JUROR 071: Right.

19 MR. SPEED: And your thought on that is that that's unfair?

20 PROSPECTIVE JUROR 071: Mostly unfair. Yeah.

21 MR. SPEED: Mostly unfair?

22 PROSPECTIVE JUROR 071: Yeah.

23 MR. SPEED: I think my time is up, Your Honor.

24 THE COURT: Yeah. We might as well take a break now.

25 Ladies and gentlemen, the good news is you don't have to be

1 here until 10, and you get to leave early. We're going to be done at 2:30.
2 So what I'll do is -- we're going to pretty much work through lunch. So
3 we'll give you a short break. If you feel that between 10 and 2:30 you
4 absolutely need to eat something, I mean, there is -- we'll give you a
5 break to get something to eat. But you'll be out of here by 2:30.

6 So during this recess you're once again admonished do not
7 talk or converse amongst yourselves or with anyone else on any subject
8 connected with this trial, or read, watch, or listen to any report of or
9 commentary on this trial, or any person connected with this trial by any
10 medium of information, including without limitation newspapers,
11 television, radio, or internet. Do not form or express any opinion on any
12 subject connected with the trial until the case is finally submitted to you.

13 We'll see you tomorrow. 10 a.m. 10 a.m.

14 THE MARSHAL: Make sure you grab all your personal items.

15 [Prospective jurors out at 4:54 p.m.]

16 [Outside the presence of the prospective jurors]

17 THE COURT: Okay. We're on the record. We're outside the
18 presence. I have a question. What happened to the guy with the hair?

19 MS. DIGIACOMO: Oh he put it down today.

20 THE COURT: Oh.

21 MR. SPEED: Yeah.

22 MS. DIGIACOMO: It's just down.

23 THE COURT: I thought -- yeah.

24 MS. DIGIACOMO: The State has a challenge for cause, and I
25 presume the Defense does as well.

1 MS. MACHNICH: We do. If you want to hear it now, Your
2 Honor.

3 THE COURT: Okay. Here -- the State passed for cause. And
4 although there are different points of view on that, and I've heard them,
5 how is it that the State can now bring up a new challenge for cause --

6 MR. SPEED: Right.

7 THE COURT: -- and tell me where --

8 MS. DIGIACOMO: Well, it was --

9 THE COURT: -- we get that because although I can tell you
10 other judges just let it go back and forth until beating a dead horse, but
11 I'm not sure how that's appropriate.

12 MS. DIGIACOMO: Well, and that's fine if you're going to
13 deny it. But when Mr. Speed was questioning Mr. Hedges and he kept
14 talking a lot about how Mr. Hedges needs more evidence than one
15 person, and even said that with the mugging example, he needed more
16 than just that victim testifying and went over and over, and he said
17 basically just -- the -- like the other ones, that he needs more evidence.
18 He would not be able to base a decision only on the witness, which Mr.
19 Speed brought out. He did not say that when we were questioning him.

20 He -- when Ms. Sudano was doing the jury and was even
21 doing the example, he never volunteered anything. Mr. Speed brought
22 that out. So the State feels that he is not going to be able to follow the
23 instructions because he's requiring more than we are required to prove
24 at trial. So --

25 THE COURT: What do you want to do? Comments?

1 MS. MACHNICH: I mean, Your Honor, our position would be
2 that they passed the panel for cause, and they could've delved further in
3 with these witnesses. They did not. They shouldn't get to benefit from
4 our delving deeper. And they shouldn't be allowed to do that as this
5 time there are certainly perempts.

6 MR. SPEED: And I will say this, Your Honor, also. I'm not
7 sure if the Court has done it this way. I believe that Your Honor was
8 referencing his observations of other courtrooms. But when I passed the
9 panel for cause in every other department in this building, that was the
10 end of it as far as the defendant was concerned.

11 So I think what's good for the accused should be good for
12 the government in this situation. The State passed the panel for cause.
13 We are at our portion of questioning the jury panel. If you didn't delve
14 deep enough in your day and a half examination of the veneer --

15 THE COURT: Well, that's always been in the -- you know, my
16 entire time. Although, I can tell you my next door neighbor has seen it
17 differently.

18 MR. SPEED: When you pass, you pass, Your Honor. That's --

19 THE COURT: You didn't ask which side.

20 MR. SPEED: I'm sorry?

21 THE COURT: You didn't ask which side.

22 MS. MACHNICH: Which neighbor or which party?

23 THE COURT: Which neighbor. Which neighbor.

24 MR. SPEED: Far be it from us to presume how to tell --

25 THE COURT: But anyway --

1 MR. SPEED: -- judges to do their job.

2 THE COURT: -- anyway, that has always been my -- I can't
3 understand how you could do it otherwise. So --

4 MR. SPEED: Right.

5 THE COURT: -- I'm denying the challenge for cause. And
6 you --

7 MR. SPEED: By the State?

8 THE COURT: By the State, yes.

9 MS. MACHNICH: Your Honor, do you want our strikes for
10 cause at this -- that we have so far?

11 THE COURT: Go ahead. We're in -- we're taking a break.

12 MS. MACHNICH: Your Honor, we'd be moving to strike
13 number 197, He, in seat 6 for cause. She was questioned at length and
14 ultimately does not believe that she is qualified to serve here. She is not
15 confident about how the justice system works. This morning was the
16 first time she heard about the Defendant not having to say anything or
17 testify. And she's having problems understanding issues. She's hesitant
18 to volunteer that lack of understanding. We believe at this time it'd be an
19 appropriate time to dismiss her.

20 THE COURT: Do you want to -- I'm going to certainly let you
21 traverse, but I'll tell you off the -- unqualified is not a challenge for cause.
22 Fair and impartial, et cetera. None of them are qualified. I'm going to
23 give them the law.

24 MS. MACHNICH: Right.

25 THE COURT: And she specifically said she could follow the

1 instructions as given. I'll quote her as best I could, she will hold the
2 State to burden and follow the law. She is -- you know, I don't see that
3 she has a -- she's highly educated in case you didn't pick up on that. And
4 although she's not a citizen -- and yes, you're right, this was the first time
5 she's heard that -- let's see here. There may be other things I need to
6 learn, I'm going to be learning.

7 So I'll let the State traverse. But I -- that's not a proper
8 challenge.

9 MS. DIGIACOMO: And Your Honor --

10 THE COURT: I'm going to tell her what the law is, and she --
11 as I said in questioning before, she specifically said she will hold the
12 State to the burden and follow the law.

13 MS. DIGIACOMO: And that's the State's position, Your
14 Honor. I didn't hear anything from her that would allow for a challenge
15 for cause.

16 THE COURT: Do you want to traverse?

17 MS. DIGIACOMO: Well, if you think I need to. I don't know
18 what -- I mean, she said that she was learning some of the rules as she
19 was sitting here for the first time. But she said she would listen to the
20 law and follow it and be fair and impartial. So I don't see what there is to
21 traverse.

22 THE COURT: Right.

23 MR. SPEED: And I don't think they can at any rate, Your
24 Honor. They have passed the panel.

25 MS. DIGIACOMO: Yes, I can. No, I can traverse.

1 THE COURT: Well, they have the right to traverse. They
2 have the -- that's the whole -- you're making your challenges for cause --

3 MR. SPEED: Right.

4 THE COURT: -- and they can rehabilitate. I just -- although
5 you're not done, but I don't see it.

6 MS. MACHNICH: If we're not there, we're not there yet, Your
7 Honor. We can always renew later.

8 THE COURT: Well, and this is why -- there's the other reason
9 why we shouldn't be discussing it yet because it doesn't mean you get to
10 take another bite of the apple. But we -- because it was a break, I said
11 that we'll discuss --

12 MS. MACHNICH: Okay.

13 THE COURT: -- that. And as I said, she's already said that
14 she will hold the State to the burden and follow the law.

15 All right. Let's go home.

16 MS. MACHNICH: Okay.

17 MR. SPEED: Thank you, Your Honor.

18 THE COURT: 9 a.m. -- 9 or 9:30?

19 MS. DIGIACOMO: 9.

20 MS. MACHNICH: 9 a.m. for us.

21 MR. SPEED: 9 tomorrow morning.

22 THE COURT: For you. I'm guessing you have a couple more
23 hours?

24 MR. SPEED: I think so.

25 THE COURT: And --

1 MR. SPEED: But we're leaving early tomorrow, remember,
2 Your Honor?

3 THE COURT: I know. What I'm saying is I don't even think
4 you'll get into your openings.

5 MS. DIGIACOMO: No.

6 MS. MACHNICH: We can agree not to open tomorrow if
7 that's the position the State would like, as well.

8 MS. DIGIACOMO: And Your Honor, I would prefer not
9 opening and then them having the whole weekend. I'd rather just open
10 and go into the evidence. Our openings should not be that long.

11 THE COURT: That's --

12 MS. MACHNICH: And we're fine with that.

13 THE COURT: -- fine with me. If he's a couple hours, right?

14 MS. MACHNICH: Yeah. There's going to be --

15 THE COURT: And then we have -- so 9 to 10. So they come
16 in at 10, hopefully, 10:15, or thereabouts. A couple of hours at the very
17 best. And discussions -- yeah, I doubt we're going to get into openings.
18 So -- all right. Number 86, oh, this is --

19 MS. DIGIACOMO: Ms. Harvey?

20 THE COURT: I've been here two days, and I'm missing work,
21 which is costing me \$120 a day that I'm not making money and I'm a
22 single parent of two kids. Is she on the --

23 MS. DIGIACOMO: She's seat 26.

24 THE COURT: And it's only going to get worse.

25 MR. SPEED: It'll get better, Your Honor. I promise.

1 MS. MACHNICH: No, it won't.
2 MR. SPEED: American flag, civic duty, all that.
3 MS. MACHNICH: Not if we're not done by next Friday.
4 THE COURT: And you're not on track anymore to be done by
5 next Friday. Now, granted we have that misstep.
6 All right. Think about that. If you want to see it, it's here.
7 That's what -- I read it verbatim. Talk to me in the morning.
8 MS. DIGIACOMO: Thank you.
9 THE COURT: She did --
10 MR. SPEED: Thank you, Judge.
11 MS. MACHNICH: Thank you, Your Honor.
12 THE COURT: She left her phone number. I think she wants --
13 MR. SPEED: Expects a call.
14 MS. MACHNICH: A call.
15 THE COURT: Does anybody want to let her off?
16 MS. MACHNICH: No.
17 MS. DIGIACOMO: Sure. That's who we tried to challenge --
18 MS. MACHNICH: Of course they want to.
19 MS. DIGIACOMO: -- for cause before.
20 MS. MACHNICH: No from the Defendant.
21 MS. DIGIACOMO: Oh it's not?
22 MR. SPEED: Right. We've got to bring her back.
23 MS. DIGIACOMO: Oh I thought we did her because I have --
24 MR. SPEED: We have to bring her back.
25 THE COURT: What do you mean? You mean you have to

1 keep her on?

2 MR. SPEED: Well, yes. Not let her off just from the letter.

3 THE COURT: Yeah. Okay. She may not show up, but we'll
4 find out. Goodnight.

5 [Proceedings concluded at 5:06 p.m.]

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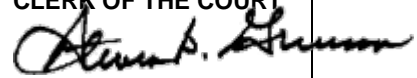
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23

24 
Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708



1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,
9 Plaintiff,

10 vs.

11 GUSTAVO ADONAY GUNERA-
12 PASTRANA,
13 Defendant.

)
) CASE#: C-16-318461-1
)
) DEPT. XXVIII
)
)
)
)
)

14 BEFORE THE HONORABLE RONALD J. ISRAEL
15 DISTRICT COURT JUDGE
16 FRIDAY, JUNE 7, 2019

17 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 4**

18 APPEARANCES:

19 For the Plaintiff:

SANDRA DIGIACOMO, ESQ.
MICHELLE SUDANO, ESQ.

20 For the Defendant:

21 KEVIN SPEED, ESQ.
22 TEGAN MACHNICH, ESQ.

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25 RECORDED BY: JUDY CHAPPELL, COURT RECORDER

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FOR THE PLAINTIFF

MARKED

RECEIVED

None

FOR THE DEFENDANT

MARKED

RECEIVED

None

1 Las Vegas, Nevada, Friday, June 7, 2019

2

3 [Case called at 9:01 a.m.]

4 THE COURT: Case 318461. Where is he?

5 MR. SPEED: Good morning, Your Honor. Kevin Speed for
6 Mr. Gunera-Pastrana. He is present in custody. However, we do not
7 have a Spanish interpreter, so we'll have to call down to the office. I will
8 call him right away.

9 MS. DIGIACOMO: I have one, but it's for my witness.

10 THE COURT: Just so you have a heads up, I'm letting that
11 juror who only makes \$121 a day, go. I had, you know, a pitbull nicely
12 for sitting here telling somebody who makes minimum wage that she's
13 going to be out of her house. So --

14 MS. DIGIACOMO: Who was that?

15 THE COURT: The one we got the note.

16 MS. DIGIACOMO: Is that Harvey?

17 MR. SPEED: Oh Harvey.

18 MS. MACHNICH: Okay.

19 THE COURT: Frankly, when I would imagine many of us here
20 spend that on a dinner, and I know I do, I'm not going to have somebody
21 -- so she's gone. It was the one we got last night. And I'm going to have
22 him call now so she can go to work.

23 MR. SPEED: Yes, sir.

24 THE COURT: We still don't have a -- all right. So --

25 MS. DIGIACOMO: Your Honor -- just a moment.

1 THE COURT: We'll come back and I'll say it all again. But I
2 just wanted you to get a heads up.

3 [Recess taken from 9:03 a.m. to 9:17 a.m.]

4 THE COURT: Okay. Now that we have a translator, I'll put
5 back on the record yet again that -- do you have the -- yeah -- no, the
6 juror number.

7 THE CLERK: Yeah. It's -- she was juror number 0086, Sheree
8 Harvey.

9 THE COURT: 0086 who sent us a letter, or a note last night
10 before we retired. And you all saw that, or certainly I had read it. I'm not
11 going to keep somebody who makes \$121 apparently a day and is, you
12 know, risking everything, et cetera. If she was, if you would, desperate
13 enough to write us a note after not -- well, telling us, but we kept her on.
14 I'm -- I let her go. So she's excused. So we'll have to fill her -- fill that
15 seat.

16 And did you get the next in line? What seat number?

17 MS. DIGIACOMO: It was seat 26.

18 THE CLERK: Yeah.

19 THE COURT: Okay.

20 MS. DIGIACOMO: It should be on 208. That should be the
21 next one.

22 THE CLERK: Knitalya Worthy.

23 THE COURT: And since the Defense was -- you can just keep
24 going. And I mean, I'll ask her the starting questions, but you can just
25 keep going. And when you pass for cause, the State will get to question

1 whoever this next person is.

2 MS. DIGIACOMO: Okay.

3 MR. SPEED: Your Honor, while the Court was retired, Ms.
4 DiGiacomo and Ms. Machnich and myself came to an agreement about
5 another prospective juror. He is in seat number --

6 THE COURT: Oh very good, I guess.

7 MR. SPEED: -- 23, and his last name is Chipparelli, badge
8 number 068.

9 THE COURT: Okay.

10 MR. SPEED: He stated yesterday during our questioning that
11 he has to have the Defendant tell his side of the story in order to reach a
12 conviction or to weigh in on the case in any event. And we believe that
13 that makes him unsuitable. He cannot be fair and impartial because he
14 does not grasp fully the Defendant's right to remain silent.

15 MS. DIGIACOMO: That's correct.

16 THE COURT: That's fine. If you agree, I'm thrilled. Anybody
17 else?

18 MS. DIGIACOMO: No, that's it.

19 MR. SPEED: That was all, Your Honor. Thank you.

20 THE COURT: Okay. So did she give you the next --

21 MS. DIGIACOMO: No, we need --

22 THE CLERK: Well, we just replaced 26 with Knitalya Worthy.
23 Now we're going to replace --

24 THE COURT: Warren --

25 THE CLERK: -- seat 23 --

1 THE COURT: Yeah.

2 THE CLERK: -- with badge 216, Brenna Meicher.

3 THE COURT: Okay. The witness, correct?

4 MR. SPEED: That is correct, Your Honor.

5 THE COURT: State?

6 MS. DIGIACOMO: Yes, we're ready.

7 THE COURT: We're down to 15 in the gallery?

8 MS. MACHNICH: Yes.

9 MS. DIGIACOMO: Correct.

10 THE MARSHAL: Watch your step. Face the Clerk and the

11 Court.

12 THE CLERK: Please raise your right hand.

13 MEILE CASILLIAS, STATE'S WITNESS, SWORN

14 [Witness testifies by and through an interpreter]

15 THE CLERK: Please state and spell your first and last name

16 for the record.

17 THE WITNESS: So Meile Casillas. It's M-E-I-L-E, Casillas is

18 C-A-S-I-L-L-A-S.

19 THE CLERK: Can you please spell the first and last name

20 again, Interpreter? Yeah.

21 THE INTERPRETER: Hers?

22 THE CLERK: No. Yes.

23 THE INTERPRETER: Mine?

24 THE CLERK: No, hers.

25 THE INTERPRETER: Hers. Okay.

1 THE CLERK: Yeah.

2 THE INTERPRETER: Meile Casillias is --

3 THE CLERK: Yeah.

4 THE INTERPRETER: -- M-A-I-L-I --

5 MS. DIGIACOMO: I think it's M-E-I-L-I.

6 THE INTERPRETER: Yeah, because she said it in both

7 languages.

8 THE CLERK: Please spell your first and last name.

9 THE INTERPRETER: M-E-I-L-I, Casillias is --

10 THE COURT: I was going to say --

11 THE INTERPRETER: Casillas is C-A-S-I-L-L-I-A-S.

12 THE CLERK: Okay. Thank you. And then if I could get your

13 first and last name.

14 THE INTERPRETER: Yes. My name is Ximena Chica, spelled

15 X-I-M-E-N-A, Chica, C-H-I-C-A, state certification number NVCX763.

16 THE CLERK: Thank you. Please be seated.

17 THE MARSHAL: Excuse me, there's somebody's phone or

18 something near one of the microphones. So -- is there an electronic

19 device in there?

20 MS. DIGIACOMO: No. It's right here.

21 THE MARSHAL: Okay. It's gone now.

22 THE COURT: Okay.

23 MS. DIGIACOMO: May I, Your Honor?

24 THE COURT: Yes.

25 MS. DIGIACOMO: Okay.

1 DIRECT EXAMINATION

2 BY MS. DIGIACOMO:

3 Q Ms. Casillias, directing your attention back to 2016, did
4 something happen that caused you to call the police?

5 A Yes.

6 Q Okay. And as a result of calling the police, did you eventually
7 go to a place called the Children's Advocacy Center?

8 A Yes.

9 Q And did a CPS case get opened based upon you going there?

10 A Yes.

11 Q Okay. At some point in the process, did you talk to
12 somebody about your immigration issue?

13 A During that process, further ahead, I was told that there was
14 aid for victims of domestic violence.

15 Q Okay. Did you do anything to try and get help based upon
16 that aid you were told about?

17 A I looked at the brochures. I researched information. And
18 yes, I applied.

19 Q Okay. What did you specifically apply for?

20 A For domestic violence.

21 Q Okay. Was it a visa?

22 A Yes.

23 Q Okay. So you applied to be able to stay in this country as the
24 victim of domestic violence?

25 A Well, it was just accepting the help that they offered.

1 Q Okay. But what I'm saying is the visa that you applied for
2 that was based upon being the victim of domestic violence, it would
3 allow you to remain in this country legally?

4 A Yes, I think so. That is what that visa request said.

5 Q Okay. Have you been granted the visa as you sit here today?

6 A Not yet. The process is ongoing.

7 Q Okay. When you applied for the visa, you said you did it
8 based upon being the victim of domestic violence?

9 A Yes.

10 Q Who were you the victim of domestic violence by?

11 A Gustavo Adonay Pastrana.

12 Q Did you also apply for the visa based upon any other crimes?

13 A The file contains the violence that he performed against me
14 and against my daughter.

15 MS. DIGIACOMO: Your Honor, I have nothing further.

16 THE COURT: Cross?

17 CROSS-EXAMINATION

18 BY MR. SPEED:

19 Q Ms. Casillias Ortiz, you said that you researched the
20 information pertaining to your receiving the U visa, yes?

21 A I just accepted the information that was given to me about
22 the process, and I applied.

23 Q That was not my question, Ms. Casillias Ortiz. You stated
24 earlier that you researched information and looked at brochures
25 pertaining to receiving the U visa; isn't that correct?

1 A Yes. All the people -- because all the people that I spoke to
2 that gave me information on this process told me that there was that
3 possibility in requesting the U visa. So I followed that information.

4 Q And that information included you conducting your own
5 research, correct?

6 A I just -- I read the pamphlets, and I went and applied.

7 Q And did someone assist you in applying for that U visa?

8 A Yes.

9 Q You had a lawyer assist you with that process?

10 A It's an NGO, nonprofit organization called Mexican Brother or
11 Sisterhood.

12 Q Is it Immigrant Home Foundation? I'm not sure how that
13 translates into Spanish.

14 A I think so.

15 Q Was the lawyer's name Kathia Pereira?

16 A Of that organization?

17 Q Was the lawyer who assisted you in applying for your U visa,
18 was that person's name Kathia Pereira?

19 A I don't recall properly. It could be.

20 Q Do you remember in January of this year executing an
21 affidavit pertaining to your applying for the U visa?

22 A Yes.

23 Q And did a lawyer assist you in preparing that document, the
24 affidavit?

25 A The same person.

1 Q And was that person's name Kathia Pereira, or do you know?

2 A Well, I don't remember the name precisely. But yes, that is
3 the only person who I might have had contact with and worked with.

4 Q Would you describe her, please?

5 A She's thin, a little bit taller than myself, straight hair. I don't
6 remember anything else.

7 Q And without getting into your address where you live now, it
8 is true that you do not live in the State of Nevada any longer, correct?

9 A No, I don't.

10 Q And you stated earlier that the process for obtaining the U
11 visa is ongoing; you have not been granted the U visa yet, yes?

12 A No, they have not granted it yet.

13 Q Have you maintained or kept in your possession the
14 paperwork that you completed in the process of applying for your U
15 visa?

16 A Yes.

17 Q You have all of that paperwork?

18 A Yes.

19 Q Are those application forms printed in English or in Spanish?

20 A In English.

21 Q Who helped you to read those papers?

22 A In that same place they helped me. They translated for me.

23 Q And in your new residence, who helps you read those
24 papers?

25 MS. DIGIACOMO: Objection, Your Honor. I'm --

1 THE COURT: Yeah, what's the relevance?

2 MR. SPEED: Who's helping her read papers that are printed
3 in English?

4 MS. DIGIACOMO: No --

5 THE COURT: Today. Not back then. I -- that's fine. But
6 today?

7 MR. SPEED: Well, the process is ongoing, Your Honor. And
8 we'll get to the --

9 THE COURT: And she's --

10 MR. SPEED: -- relevance here in a moment.

11 MS. DIGIACOMO: Well, Your Honor --

12 THE COURT: I want to know why -- how that remotely is
13 relevant.

14 MR. SPEED: Well, if the witness is testifying that the process
15 is ongoing, then she's still in the process of obtaining the U visa. She
16 has not obtained it yet.

17 THE COURT: Right.

18 MR. SPEED: So her motivation to fabricate is still ongoing,
19 just like her application for the U visa.

20 THE COURT: And you -- assuming you can ask her about
21 that. But who translates the documents that -- assuming she gets new
22 documents, which you haven't even asked, but what does that have to
23 do with today?

24 MR. SPEED: I see.

25 THE COURT: It is ongoing and you've --

1 MR. SPEED: I see.

2 THE COURT: -- established that.

3 MR. SPEED: Understood.

4 THE COURT: I just don't see anything. All right. I'm going to
5 sustain the objection.

6 BY MR. SPEED:

7 Q Have you been continually receiving documents related to
8 your U visa?

9 A No.

10 Q All right. You also stated earlier that you were victimized by
11 Gustavo Gunera-Pastrana; isn't that right?

12 A Yes.

13 Q And you also said that he committed -- Gustavo committed
14 violence against your daughter, correct?

15 A Yes.

16 Q That was also one of the basis for your application for the U
17 visa; isn't that right?

18 A The main basis is domestic violence.

19 Q You testified that Gustavo performed violence against your
20 daughter, correct?

21 A What I stated -- what I have said in my statement is correct.

22 Q Okay. And what is your daughter's name?

23 A Meily Moran.

24 MS. DIGIACOMO: And just for the record, Your Honor, it's
25 M-E-I-L-Y.

1 BY MR. SPEED:

2 Q Is that the correct spelling of your daughter's name, Ms.
3 Casillias Ortiz?

4 A Yes.

5 Q And didn't you learn in the process of your research and
6 reading the brochures, and in the advice that you received from the
7 lawyers who helped you prepare your U visa application, that any
8 violence against your daughter, domestic or sexual, could also be a basis
9 for your receiving the U visa?

10 A At that time, initially I didn't know the -- what benefits or so
11 on that I -- that came with it. I just applied for the visa.

12 Q Weren't you told when you applied for the visa, Ms. Casillias
13 Ortiz, that violence committed against your daughter could be another
14 basis for you to obtain that U visa?

15 A That's why violence and sexual abuse against my daughter is
16 included in the file.

17 Q Understood. And if you obtain your U visa, that will allow
18 you to remain in the United States; isn't that correct?

19 A Yes.

20 Q In 2016, you were not a citizen of the United States; isn't that
21 right?

22 A Correct.

23 Q Do you understand, Ms. Casillias Ortiz -- well, let me back up
24 just a little bit. You said earlier that the process for you obtaining your U
25 visa, which would allow an unlawful resident to remain in the United

1 States, is ongoing. Do you understand why that process is still ongoing?

2 A Yes, because it's not a short-term process. It's a long-term
3 process. It's not just the fact in applying that they're going to give me
4 the visa. It takes time.

5 Q What takes time, according to your understanding of the
6 process?

7 A For immigration to look and check all of the papers and
8 determine that I am eligible.

9 Q Your eligibility is also based on whether Gustavo is
10 adjudicated guilty of the crimes that you allege he committed against
11 you and your daughter; isn't that right?

12 A I don't know.

13 MR. SPEED: Nothing further.

14 MS. DIGIACOMO: I just have one follow-up, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. DIGIACOMO:

17 Q You said that your application was pending for the visa?

18 A Yes.

19 Q Okay. When did you complete your application?

20 A On March 31st of '17, we sent out the package to
21 immigration, and I got a response from immigration that they had -- a
22 confirmation that they had received the papers.

23 Q Okay. So there's nothing you had to do since you submitted
24 it in 2017?

25 A On June 19th, they sent me -- I received a form or slip saying

1 that I needed to go do my fingerprints.

2 Q And was that June 19th of 2017?

3 A Yes.

4 THE COURT: You have to answer out loud.

5 Tell her she has to answer out loud. Shaking her head
6 doesn't get recorded.

7 THE WITNESS: Yes.

8 BY MS. DIGIACOMO:

9 Q Okay. So since June of 2017, you've just been waiting to
10 hear?

11 A Waiting, yes.

12 MS. DIGIACOMO: Nothing further.

13 THE COURT: Counsel, approach.

14 [Sidebar begins at 9:44 a.m.]

15 THE COURT: So this is a -- it happens all the time, I'm not
16 blaming you guys. I don't know anything about your case. So when did
17 the domestic happen and when --

18 MS. DIGIACOMO: Oh.

19 THE COURT: -- did the sexual allegations happen?

20 MS. DIGIACOMO: Okay.

21 MR. SPEED: They were all disclosed at the same time.

22 That's the problem that we're running into.

23 THE COURT: When were they disclosed?

24 MS. DIGIACOMO: So --

25 MR. SPEED: It was July of 2016 when Meily Moran, the

1 daughter, the victim in our sexual assault case, disclosed that -- or
2 alleged that our client had been molesting been her. When Meily, the
3 child, and Meile, this witness, the mother --

4 MS. DIGIACOMO: It's Meily is the child; Meile is the mom.

5 THE COURT: Okay.

6 MR. SPEED: -- called police --

7 THE COURT: The mother and the daughter.

8 MR. SPEED: -- she revealed to police both instances, that the
9 child had been abused, and that also, my baby's father is abusing me.
10 So the process for applying for the U visa --

11 THE COURT: So these happened in 2016?

12 MS. DIGIACOMO: Correct.

13 MR. SPEED: Yes, that's right.

14 THE COURT: All right.

15 MS. DIGIACOMO: The domestic violence that is the basis for
16 her application happened July 1st.

17 MR. SPEED: Right.

18 MS. DIGIACOMO: On July 11th is when the Defendant said
19 hey, you're not getting out of this anymore, tomorrow when your mom
20 goes to work, I'm going to have sex with you. So she called her mom
21 and reported to her mom on July 11th. They waited until he went to
22 work on July 12th and called the police. And the packet she's referring
23 to is when she went to the CAC to give a resource handbook. And that's
24 when she found out.

25 THE COURT: Okay. Thank you.

1 MS. DIGIACOMO: Okay.

2 THE COURT: I'll let you argue it. But anymore questions?

3 MS. DIGIACOMO: Not --

4 THE COURT: You can go and ask.

5 MR. SPEED: Okay.

6 THE COURT: Were you done?

7 [Sidebar ends at 9:45 a.m.]

8 THE COURT: Any more questions?

9 MS. DIGIACOMO: Not unless the Court needs any more

10 clarification.

11 MR. SPEED: None from us, Your Honor.

12 THE COURT: Okay. Thank you.

13 MR. SPEED: Unless the Court has a question.

14 THE COURT: No. That was -- you may step down. All right.

15 So, just so hopefully I'm clear, the reason we're here is that the --

16 [Crying outside of gallery]

17 MR. SPEED: I'm sorry, Your Honor.

18 MR. SPEED: Are the jurors out there?

19 MS. MACHNICH: No. The jurors are not out there.

20 THE COURT: Have her go into the -- are there jurors out

21 there, Counsel?

22 MR. SPEED: Yes, Your Honor. There are. There are. I don't

23 want to go back out.

24 THE COURT: Steve, can you find out who is out there now?

25 Sorry. Mr. Speeds, went out --

1 MR. SPEED: Yes, Your Honor?

2 THE COURT: -- and saw some of the jurors are -- or Speed,
3 sorry.

4 MR. SPEED: Yes.

5 THE COURT: Saw that there are some jurors. I asked Steve
6 to go and find out who is out there. All right. Let's talk about -- again,
7 my understanding is that the issue is not whether or not she's applying
8 for U visa. I'm certainly going to allow you to cross-examine her on that.
9 However, the Defense wants to preclude, I assume her testimony, not the
10 guilty plea, but the testimony regarding domestic violence, I guess you'd
11 say in total, correct?

12 MR. SPEED: Yes, Your Honor.

13 THE COURT: And now we do have the testimony that, as I
14 had maybe guessed, that maybe they're both on the application et
15 cetera. So, that's the issue we need to address. This is basically your
16 motion, I assume, to exclude her from saying anything about the
17 domestic violence as being grounds for filing.

18 MR. SPEED: That's correct, Your Honor. The Court is
19 absolutely correct. We do not want the State to present this or our client
20 in a light that says that he is a bad person. He beats his wife and/or the
21 mother of his children. They were not married at the time. He is abusive
22 to the mother of his children and therefore we should believe everything
23 that the primary complaining witness in our case, that is Mylek
24 [phonetic], the child, Meily the child, is telling the truth when she accuses
25 him of sexually abusing her. We believe that that would deprive Mr.

1 Gunera-Pastrana of his right to receive a fair trial because the jury would
2 not be weighing the evidence based on the State's ability to prove its
3 case or having proved its case beyond a reasonable doubt, but because
4 they believe that Mr. Gunera-Pastrana is a bad person.

5 That is why the Supreme Court looks on these prior bad act
6 cases and prior bad act case law has received such intense scrutiny by
7 our courts.

8 MS. DIGIACOMO: And, Your Honor, I just don't even think
9 that this is fair. They want to manufacture the evidence to fit what they
10 want. They want to say that the basis of these allegations and why
11 they're not true is that she was doing it or getting her daughter to lie so
12 that she could get a U visa. So, the fact that it's relevant that she had
13 her own basis to get the U visa, they shouldn't be able to go after her
14 and say you're only -- your daughter only reported this because you told
15 her to so that you could get a U visa, but that's not true. The Defendant
16 was violent against her, choked her to the point of unconsciousness and
17 she had her own basis regardless of these sex allegations.

18 And also, that case is resolved. The Defendant plead guilty
19 as you saw, Nolo (sic) or whatever, in that case. That case is resolved.
20 It's been adjudicated. So, also their argument that they made a
21 conviction in this case to get the U visa, that's not true. So, I don't think
22 that they get to pick and choose, you know, I want to go into a U visa,
23 and this is your reason for lying, but I don't want you to talk about the
24 real reason why you were able to apply for it. It's just not fair and it
25 amounts to a lot of side stepping and not giving the jury the truth.

1 MR. SPEED: Well, I don't think -- are you finished?

2 MS. DIGIACOMO: Yes.

3 MR. SPEED: I don't think that we are manufacturing
4 anything, Your Honor. The Court heard from a witness, the key witness
5 in our hearing, the only witness in our hearing, that abuse, both sexual
6 and domestic, was one of the basis for her application to obtain the U
7 visa. That process is ongoing that she did receive the assistance of
8 counsel in those efforts. And that the sexual abuse allegation occurred
9 at around the same time as her domestic violence allegation. Some 11
10 or 12 days after July 1st of 2016.

11 To go back, the Court heard in our conference at the bench
12 that the domestic violence allegation by Meily, Ms. Casillias Ortiz,
13 occurred -- was supposed to have occurred sometime around the 1st of
14 July 2016. Whereas the sexual abuse allegation was alleged to have
15 occurred sometime around the 11th of July in that same year.

16 After all of those allegations of abuse, both physical and
17 sexual were disclosed, and Ms. Casillias Ortiz made contact with the
18 police department, Child Protective Services agents, and various other
19 people who I assume she believed would help her in her efforts to get
20 away from our client, she learned about the possibility of being allowed
21 to remain in the United States by way of the U visa. And the application
22 process got underway at that point.

23 So, we're not manufacturing anything. The Court has heard
24 from witnesses that this was one of the basis for her applying for the U
25 visa. And all of the information was revealed to law enforcement and

1 government agencies under the same set of circumstances.

2 THE COURT: All right. Thank you. As is said it's --

3 MR. SPEED: Your Honor, and before the Court renders its
4 decision on this, we probably have to address what's going on outside
5 because the respective --

6 THE COURT: Well, we'll address that next.

7 MR. SPEED: Well, the Court's office -- go ahead.

8 MS. MACHNICH: Your Honor, they have not been instructed
9 not to speak with anyone, so right now the people who are out there
10 could speak to their fellow jurors about what just happened.

11 THE COURT: Who hasn't?

12 MS. MACHNICH: I -- we don't know how many jurors were
13 out there.

14 THE COURT: Jurors, I said a dozen times, don't say anything
15 about this case. Is that what you're talking about?

16 MS. MACHNICH: I'm concerned about them talking about
17 what they just saw.

18 MR. SPEED: The emotional breakdown by Ms. Casillias Ortiz.

19 THE COURT: Again, I told them a dozen times, don't mention
20 anything, talk about -- how many times did I say talk about the weather?
21 I mean, we've done what we can do.

22 All right. As far as this. I think the law is very clear that the
23 prior bad acts, the conviction, the Nolo, whatever doesn't come in. But
24 we're talking about something totally separate. If you're going to, and
25 you're certainly -- and I've said this again at nauseum, you're allowed to

1 impeach this witness based upon her filing for a U visa and that might be
2 the motivation, et cetera. But I have a great deal of difficulty, or let's say
3 I guess because this is my decision, I'm not going to prevent the witness
4 from telling the truth that her application was not just based on the
5 sexual allegations. But her statement that it was based on domestic
6 violence, she didn't go into the details, et cetera, and I wouldn't allow her
7 to talk about the conviction, but I think if you can't -- yeah, what is it?
8 Goose without the gander, I don't know.

9 But to preclude her from explaining that they're not just one
10 cause or one grounds, but that they were both done simultaneously and
11 together is equal to manufacturing evidence. It's not the reality and it's
12 not the factual basis of her application. It excludes her basis. And in
13 fact, you're not obligated to use that to impeach her. And I said this at
14 the beginning, it could, not even knowing the dates and all this now we
15 have that, it could open the door. But if her application at the time and it
16 was done when both incidents were fresh, et cetera, and clearly the
17 domestic violence was a subject because that in fact became a criminal
18 matter.

19 So, I am not going to preclude or require the State to instruct
20 her. I think that would be the only way that she can't say the grounds for
21 the basis for her applying for the U visa. She's limited to saying
22 domestic violence and what is alleged regarding that. If -- yeah, so I
23 don't see where we can completely ignore the reality of the facts and
24 require her to say the reason I applied was because of the child when at
25 least her testimony is that it was both. So, that deals with that.

1 MR. SPEED: She will not -- Your Honor, I'm sorry. She will
2 not be allowed to go into specific details?

3 THE COURT: Of the domestic violence?

4 MR. SPEED: Correct.

5 MS. DIGIACOMO: Well, wait a minute, Your Honor. What
6 details is she not -- is she allowed to say she was the victim of him, of
7 domestic violence?

8 THE COURT: Yeah, again, if that's the basis for the
9 application, which she's testified it is, she -- I don't think there's a
10 necessity to say what exactly occurred but that he -- that there was
11 domestic violence by Mr. Pastrana and that was the basis of that along
12 with the -- and that was against her. The domestic violence was against
13 her.

14 MR. SPEED: Along with Your Honor stated to say?

15 THE COURT: Along with the sexual allegation, of course.
16 She said that that was the basis of the U visa, the application for the U
17 visa.

18 MR. SPEED: Okay. Thank you, Your Honor.

19 THE COURT: All right. Now, what's --

20 MR. SPEED: I'll prepare an order over the weekend and run it
21 by State's counsel.

22 THE COURT: Well, it was originally sort of an off shoot of the
23 motion. But yes, the motion is denied to preclude her from testifying
24 other than how I exactly explained it. Okay.

25 MR. SPEED: Again, Your Honor, I will prepare an order and

1 run it by Ms. DiGiacomo this weekend.

2 THE COURT: All right. They're apparently -- Steve, who was
3 out there?

4 THE MARSHAL: There were approximately eight out there,
5 Judge, when the incident occurred after the --

6 THE COURT: And for the record, Ms. Casillias started to go
7 out the courtroom door, and she was crying and being supported by the
8 interpreter. Comments?

9 MS. DIGIACOMO: I don't know if the Defense has
10 preserved --

11 THE COURT: That's what I'm waiting for.

12 MS. MACHNICH: Your Honor, obviously we have concerns. I
13 believe these jurors saw her breakdown or whatever situation was
14 happening out there. She was also subsequently taken out still crying.
15 So, they --

16 THE COURT: I understand, but that does happen quite
17 frequently in these cases and it may happen again.

18 MS. MACHNICH: The crying, the ultimate removing her from
19 the courtroom is less of a concern or from courtroom area is less of a
20 concern than the breakdown that happened.

21 MR. SPEED: And the jurors observing, and I'm sorry, Your
22 Honor.

23 MS. MACHNICH: We, I mean, we don't know what they
24 thought. We don't know what they saw. And that is extremely
25 concerning to us that it would be prejudicial to the Defense. I think we

1 probably need to speak with them outside the presence either
2 individually or as a group. And we may need to strike them.

3 MS. DIGIACOMO: Well, I don't think there's any basis to
4 strike them at this point. If they want to bring them in and question them
5 and say hey, what you saw, would that affect your ability to be fair and
6 impartial? That's fine. But also, at this point they don't even know who
7 that is.

8 MS. MACHNICH: They're going to know.

9 MS. DIGIACOMO: I don't think there's any cause to strike
10 them.

11 THE COURT: Well, you can -- we can work -- have that
12 request. But --

13 MS. DIGIACOMO: It kind of --

14 THE COURT: Do we even know which eight were out there?
15 Do you know, Steve?

16 THE MARSHAL: Judge, there were approximately 8 to 12
17 jurors. They were spread out all over. The young lady had the
18 breakdown just outside the secondary doors about a foot out. After we
19 brought her back in and placed her in the conference room, I went back
20 out. I asked the jurors did they see what happened. Of the 8 to 12 that
21 were out there, two of them said not really. I was on my phone. The
22 other one said I was reading. And they don't -- my impression were (sic)
23 they didn't know who that woman was and doesn't know what this is
24 about.

25 THE COURT: All right. I think that an admonishment

1 anything that happens outside the courtroom is not to be considered and
2 other than that -- as I said, this does happen frequently in these cases
3 and I've never heard of an instruction disregard somebody crying.

4 MR. SPEED: Well, it's not as simple as that, Your Honor.
5 There is -- there are instructions that are appropriate in this situation
6 where we believe that an emotional outburst, a clearly and unprovoked
7 emotional outburst, no one said anything to Ms. Casillias Ortiz. She was
8 excused from the witness stand. I didn't find her examination, either her
9 direct examination by the State or her cross-examination by me to be
10 extremely tense or willowing. If you -- withering if you will. She went
11 outside the courtroom and started wailing almost inconsolably. And we
12 don't know how many prospective jurors witnessed that. We first heard
13 that it was approximately 8. Then the Court's officer informed us that it
14 could have been 8 to 12. At least two of them said that they were on
15 their phone, but if there were 6 or 10 --

16 THE COURT: Okay. Was is it you'd like me to do?

17 MR. SPEED: Have them come in and instruct them all either
18 a group that the officer clearly identified as being in the hallway and
19 possibly witnessing this intense emotional breakdown by Ms. Casillias
20 Ortiz as a group or individually. But we have to know for certain, with
21 some certainty, whether they observed that emotional breakdown and
22 whether that will have any impact on their ability to serve as fair and
23 impartial jurors in this trial.

24 MS. DIGIACOMO: And, Your Honor, if I may be heard?

25 THE COURT: Go ahead.

1 MS. DIGIACOMO: I think what they're asking for just
2 highlights it even more. This is the first time she has seen Mr. Gunera-
3 Pastrana in three years and she was very stoic in here, but when she left
4 is when she broke down not realizing there's jurors out there. She just
5 was trying to keep it together in here. The deputy said, nobody
6 answered, yeah, I saw what happened. They want to march them in
7 here, that's fine, but I think it's going to highlight it. I think this Court is
8 better to do as you said to do an admonishment to all of them, hey,
9 anything that happens outside of the courtroom you're not to consider.

10 THE COURT: I think that's the only way. I have seen
11 witnesses under these similar facts with the same reaction. So, this is
12 not uncommon. And there's no guarantee that this won't happen with
13 type of trial again, in this trial. But I will admonish all of them when they
14 come back that they're to, not to have -- it's part of the admonishment
15 not to basically pay attention to anything that happens outside the
16 courtroom, whether it's a witness or not. And I'll ask any of them if they
17 feel that they cannot be fair and impartial based on anything that they or
18 may not have seen. And I certainly don't see how we could or should
19 single out the individuals and bring them in since we don't even know
20 for sure who saw that. So, anything else before we get started?

21 MR. SPEED: We will stand by original request to have those
22 8 to 12 brought in, but if the Court's ruling is what it is, then we will keep
23 it.

24 THE COURT: All right. Again, I don't think -- Steve, you can't
25 -- or can you identify those people?

1 THE MARSHAL: No, I cannot, Judge. I can only identify the
2 two. I don't know these people. I can't identify them by name.

3 THE COURT: I understand. I wouldn't recognize them on the
4 street. All right. Bring them all in.

5 THE MARSHAL: Yes, Judge.

6 THE COURT: And once again since we're not doing openings
7 until Monday, if you guys find a case on point regarding the testimony,
8 I'd be glad to hear it. I don't think there is such a thing, but if you find
9 something, I'd be glad to take that into consideration.

10 MR. SPEED: Which testimony, Your Honor? I'm sorry.

11 THE COURT: Her testimony. The other hat was all the time.
12 In my one year of criminal I've seen it probably four or five times. Them
13 breaking down on the stand, off, as they leave. I've seen it exactly that
14 circumstance.

15 THE MARSHAL: We have one missing, Carmen Wong.
16 Someone said she was released yesterday.

17 MS. DIGIACOMO: She was.

18 THE MARSHAL: She was released? Okay, then we're all
19 ready.

20 THE COURT: Bring them in.

21 [Prospective jurors in at 10:13 a.m.]

22 [Inside the presence of the prospective jurors]

23 THE COURT: Please be seated. Good morning, ladies and
24 gentlemen. Parties acknowledge the presence of the venire?

25 MS. DIGIACOMO: Yes, Your Honor.

1 MR. SPEED: Yes, Your Honor.

2 THE COURT: First of all let's replace those and call the next
3 in line.

4 MS. DIGIACOMO: Replacing seat 23. Or I'm sorry, seat 26
5 with badge 208. I apologize if I mispronounce your name, Knitalya
6 Worthy.

7 THE COURT: Seat 26?

8 MS. DIGIACOMO: Yeah, seat 26 will be replaced. And seat
9 23 will be replaced with 216, Brenna Meicher.

10 THE COURT: All right. Thank you. Before we really get
11 going, ladies and gentlemen, you know, I didn't read because a lot of you
12 won't end up on the panel as we've seen. But certainly. I want to remind
13 you when I say don't discuss this case or anything to do with this case, I
14 mean don't talk about anything to do with this case. And that goes for
15 everybody in the gallery too.

16 You know, I had a, and I think I've said this again to you, oh,
17 what are they asking when they're asking that question. No. I don't
18 want you to talk about anything to do with this case. In addition, when
19 you're outside, and I said please don't talk to anybody that doesn't have
20 a badge because you never know who they are. We've had even
21 professional people that end up talking to venire persons just because
22 they don't know. So, while you're in the courthouse, please wear your
23 badge. Please only talk to your fellow venire people and then only about
24 the weather and politics. I don't care. But not about anything to do with
25 this case.

1 And further, you must not consider anything, which you may
2 see or hear when the court is not in session. Even if what you see or
3 hear is said or done by one of the parties or by one of the witnesses. So,
4 if it happens out there, you are instructed to disregard. It's right there on
5 the witness stand that is what is going to be important in this trial. So,
6 please remember that.

7 Okay. So, and I may pronounce this wrong, 208, Ms. Worthy.
8 And where are you? Raise your hand. Hi. So, I started you off. I gave
9 name and badge number. Where do you work?

10 PROSPECTIVE JUROR 208: I work for night transportation as
11 a truck driver.

12 THE COURT: And significant other?

13 PROSPECTIVE JUROR 208: Single.

14 THE COURT: And have you ever been on a jury?

15 PROSPECTIVE JUROR 208: No.

16 THE COURT: Any adult children?

17 PROSPECTIVE JUROR 208: No.

18 THE COURT: Okay. Then the other broader questions. You
19 or any member close to your family in law enforcement or the military?

20 PROSPECTIVE JUROR 208: I was in the military.

21 THE COURT: Thank you for your service. Nobody close to
22 you in law enforcement?

23 PROSPECTIVE JUROR 208: No.

24 THE COURT: Have you or anyone close to you been the
25 victim of a crime?

1 PROSPECTIVE JUROR 208: Yes.
2 THE COURT: You or somebody close to you?
3 PROSPECTIVE JUROR 208: Me.
4 THE COURT: And what type of crime?
5 PROSPECTIVE JUROR 208: Domestic.
6 THE COURT: Okay. And you or anyone close to you been
7 the victim of a sexual assault?
8 PROSPECTIVE JUROR 208: No.
9 THE COURT: Have you or anyone close to you been accused
10 of a crime?
11 PROSPECTIVE JUROR 208: Yes.
12 THE COURT: And who was that and what was the crime?
13 PROSPECTIVE JUROR 208: Mother, domestic.
14 THE COURT: Okay. And is there any reason that you know
15 of why you cannot be a fair and impartial juror?
16 PROSPECTIVE JUROR 208: No.
17 THE COURT: Thank you. 216. And I think they pronounced
18 it Mi-Sure. I don't even have it written down.
19 PROSPECTIVE JUROR 216: It's Brenna Meicher.
20 THE COURT: Oh, I really have that wrong. How do you spell
21 it?
22 PROSPECTIVE JUROR 216: My name?
23 THE COURT: Yes.
24 PROSPECTIVE JUROR 216: B-R-E-N-N-A.
25 THE COURT: Okay. I meant last name.

1 PROSPECTIVE JUROR 216: Oh. M-E-I-C-H-E-R.

2 THE COURT: Oh, okay. Thank you. So, the same questions.

3 PROSPECTIVE JUROR 216: I'm a retail associate currently. I
4 work at an Under Armor. My significant other is a certified nursing
5 assistant. She works at a nursing home.

6 THE COURT: In Las Vegas?

7 PROSPECTIVE JUROR 216: In Las Vegas, yes.

8 THE COURT: What's the name of it?

9 PROSPECTIVE JUROR 216: Of her nursing facility?

10 THE COURT: Yeah.

11 PROSPECTIVE JUROR 216: TLC Care.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR 216: Yeah. It's in Henderson actually,
14 technically.

15 THE COURT: Ever served as a juror?

16 PROSPECTIVE JUROR 216: No.

17 THE COURT: Same question, you are anyone close to you in
18 law enforcement?

19 PROSPECTIVE JUROR 216: No law enforcement. My
20 dad's -- he has two brothers and all of their sons have been in the
21 military.

22 THE COURT: Okay. Have you or anyone close to you been
23 the victim of a crime?

24 PROSPECTIVE JUROR 216: My parents had their care stolen
25 a few months ago. That's it.

1 THE COURT: You or anyone close to you been the victim of
2 a sexual assault?

3 PROSPECTIVE JUROR 216: No.

4 THE COURT: You or anyone close to you been accused of a
5 crime?

6 PROSPECTIVE JUROR 216: No.

7 THE COURT: Grown children?

8 PROSPECTIVE JUROR 216: No. Just five younger siblings.

9 THE COURT: Do any of them work in Clark County?

10 PROSPECTIVE JUROR 216: No. Just have one brother of
11 that age. He's still in Michigan.

12 THE COURT: Is there any reason why you know of that you
13 can't be a fair and impartial juror?

14 PROSPECTIVE JUROR 216: No.

15 THE COURT: Okay. Counsel, approach.

16 [Sidebar begins at 10:22 a.m.]

17 THE COURT: It's probably too late, but my appointment got
18 canceled, the doctor. So, the whole reason I was leaving early --

19 MS. DIGIACOMO: Do you want to see -- tell them that the
20 plans have changed. That we can do a lunch and stay and until we get a
21 jury together if they're cool with that?

22 THE COURT: Well, that's what I'll ask them.

23 MS. DIGIACOMO: Yeah. Say no later than 4:00, because I
24 know we had an issue.

25 THE COURT: That was -- I was the only one that had

1 something this afternoon, right?

2 MS. DIGIACOMO: Correct.

3 THE COURT: Okay.

4 MS. DIGIACOMO: And one of the jurors needs to be out so
5 she can get a check by --

6 THE COURT: Three weeks.

7 MS. DIGIACOMO: Oh, yeah. That's right. .

8 THE COURT: It doesn't say. Of course it doesn't say. She
9 probably took a vacation, playing golf, I don't know.

10 MS. DIGIACOMO: Yeah.

11 THE COURT: Okay. So, that's my problem. So, we'll ask
12 them -- as a matter of fact, I'll probably do it now --

13 MS. DIGIACOMO: Okay.

14 THE COURT: -- so we have plenty of time. Okay. Can you
15 think of anything else?

16 MS. MACHNICH: No.

17 MS. DIGIACOMO: There was something I forgot to make a
18 record about before we started. Yesterday we weren't allowed to go into
19 disclosure by a child victim because they said it was too close to the
20 facts even though I just think it's an issue we should be able to touch
21 upon. Yesterday Mr. Speed kept going over to this client and pointing to
22 his client, which I think is improper because that's basically getting the
23 facts of the case as well as every time he brought up a child victim, he
24 kept saying 12 or 13 years of age, which is how old our victim was when
25 she disclosed.

1 So, I would submit that he's getting too close to the facts as
2 well. He's getting into very specifics about the case as where we were
3 just trying to talk generally.

4 THE COURT: Anything?

5 MR. SPEED: Well, there's no objection to their talking
6 generally and when you finally raise an objection to getting to close to
7 the facts, the Court said, well, I've seen it in cases where you can. We're
8 not talking about the specific facts. There are millions of 12 or 13-year-
9 old children in the world. So, for me to use --

10 THE COURT: But you pointed to your client when asking
11 those questions in voir dire probably is improper.

12 MS. DIGIACOMO: And I would point out, he did it at least
13 five or six times.

14 MR. SPEED: Well then, if that's the complaint, I can
15 understand maybe trudging too close to the facts of the case, but if the
16 objection is to counsel walking in the well of the courtroom while picking
17 a jury, then I'm not sure --

18 THE COURT: [Indiscernible] objection.

19 MS. DIGIACOMO: No, no. He kept pointing.

20 THE COURT: I specifically saw you on at least two occasions
21 pointing to your client. So, I guess the objection is don't do it anymore.
22 And I'm sustaining that. It's -- and you are talking about your client to
23 the -- while you're picking the jury and I think that is improper.

24 MS. DIGIACOMO: And then the other point was that he
25 keeps bringing up any time someone mentions a child, he keeps talking

1 about 12 or 13-year-old, about lying, about a 12 or 13-year-old would do
2 that. And that is her age in the case.

3 MR. SPEED: I can change that to middle school aged if that
4 would make them more comfortable.

5 MS. DIGIACOMO: But that's still, that's still facts.

6 THE COURT: I think you can say child and let's leave it at
7 that.

8 MR. SPEED: All right.

9 MS. DIGIACOMO: Thank you.

10 THE COURT: All right. I'll bring up the other. I guarantee
11 somebody is going to say, oh, I have plans. I made plans. Can't -- we
12 told them the timeline, so we'll see. Maybe, you know, they'll be
13 generous. Okay. Then we'll go into questioning.

14 MR. SPEED: Thank you.

15 [Sidebar ends at 10:26 a.m.]

16 THE COURT: Okay. So, ladies and gentlemen, the reason we
17 were -- the reason that I was going to -- well, let you off early is because I
18 had an appointment with the doctor that I waited three weeks for, and
19 you saw the note and they want to reschedule. I have friends that are
20 doctors. I'm not going to make a lot of comments, but I'm sure it's
21 happened to every one of you. And, you know, the day of, I mean,
22 whatever.

23 So, my question to you, and I need to ask everybody, is if we
24 give you lunch and do it normal, can -- since I did tell you we were going
25 to -- can everybody stay till 4:30 or 5:00? I'm sorry, name and bade

1 number?

2 PROSPECTIVE JUROR 035: Kathryn Argentine, 35.

3 THE MARSHAL: Pass back the microphone please.

4 PROSPECTIVE JUROR 035: Oh, Kathryn Argentine, badge 35.

5 THE COURT: You made alternate plans?

6 PROSPECTIVE JUROR 035: No. My question was, well I
7 guess two parts. One, is there an expectation that the jury would be
8 picked today? And then part two is, there was the question, or you had
9 asked at the beginning of day one about, you know, just people have
10 plans for next Friday. Is there any chance that it could go longer than
11 that is my second question?

12 THE COURT: Well, and that's a good question. As I think I
13 usually say, I can't promise you a week. I don't have a crystal ball. We
14 certainly hope that everything goes as planned and we're done by
15 Friday. However, now I again, don't have a crystal ball. So, does that
16 answer your question?

17 PROSPECTIVE JUROR 035: Yes. Neither of those impact me.
18 I just wanted to ask on behalf of the group.

19 THE COURT: Let's, yeah go ahead.

20 PROSPECTIVE JUROR 027: Courtney Rutledge, Badge 27. I
21 actually have to pick up my check before 5:00 today, because my office
22 isn't open on the weekend.

23 THE COURT: Okay. If we let you out -- we go until 4:00?

24 PROSPECTIVE JUROR 027: That will work.

25 THE COURT: Okay. Anybody else have -- okay.

1 PROSPECTIVE JUROR 185: Mindy Rabinowitz, Badge 185. I
2 was supposed to work today from 10:00 to 4:00. And change the
3 schedule to work 4:00 to 10:00.

4 THE COURT: All right. 3:30? At least that's another hour.

5 PROSPECTIVE JUROR 185: Yeah. I can let them know I might
6 be late if I can't get there by 4:00.

7 THE COURT: Okay. There was one other hand up there.

8 PROSPECTIVE JUROR 200: It was the same as hers, but if
9 we're going to -- Gelene Estrellado, 200. I had worked scheduled at 4:00
10 as well, but if we're going to go for 3:30 then I'll just email my manager.

11 PROSPECTIVE JUROR 165: Andrew Currie, Badge 165.
12 Could we just power through and not do a lunch, no break.

13 PROSPECTIVE JUROR 035: Kathryn Argentine, Badge 35, I
14 second that.

15 THE COURT: All right. So, we're going to go like 3:30?

16 PROSPECTIVE JUROR 035: 3:30 with no lunch.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR 035: I'd like to offer the Court.

19 THE COURT: All right. We'll take it. Does anybody have --
20 okay, thank you. Then that's what we'll do. Okay Defense, you may
21 inquire. Was there something else?

22 PROSPECTIVE JUROR 035: No, we're good.

23 THE COURT: Defense, you may inquire the panel.

24 MR. SPEED: We left off yesterday afternoon, ladies and
25 gentlemen speaking with juror number 71 or badge number 71, Mr.

1 Noyce. And his feelings that illegal residents being allowed to enjoy the
2 fruits of citizenship is -- the benefits of citizenships is mostly unfair. Does
3 anybody agree with that? Pass the microphone if you would please, sir,
4 to seat number 2. That is badge number 8, Mr. Collins. We'll start with
5 Mr. Collins and work to you all's right.

6 PROSPECTIVE JUROR 005: It's Badge Number 5, William
7 Collins.

8 MR. SPEED: Mr. Collins?

9 PROSPECTIVE JUROR 005: No. I mean, I think we have a
10 great process that we go through when people get here to make them
11 part of the U.S. and when they're not here and they're obtaining our
12 benefits, yeah, that's not cool.

13 MR. SPEED: The pathway to citizenship.

14 PROSPECTIVE JUROR 005: Correct.

15 MR. SPEED: It should be followed by people?

16 PROSPECTIVE JUROR 005: Correct.

17 MR. SPEED: You shouldn't be allowed to come and just by
18 virtue of the fact that you've set in the United States, you're allowed to
19 receive the same things that lawful residents or citizens?

20 PROSPECTIVE JUROR 005: Or you apply for whatever you
21 need to apply for, and you go that pathway while you're here, I mean.

22 MR. SPEED: I understood. Next to you, sir, that is Mr. Ball.
23 Did you agree with that?

24 PROSPECTIVE JUROR 124: Christoffer Ball, just Badge
25 Number 124. I do agree with everything that my veneer member, Mr.

1 Collins says. You know, we have a naturalization process. I do believe
2 that they should go through that before receiving benefits.

3 MR. SPEED: And Mr. Hedges, next to you, Badge Number
4 130.

5 PROSPECTIVE JUROR 130: Yeah, agree.

6 MR. SPEED: You agree with that as well?

7 PROSPECTIVE JUROR 130: Yes, sir.

8 MR. SPEED: Does anybody find that opinion objectionable?
9 Who thinks that that's unfair? Raise your hand -- this is democracy in
10 action. Raise your hands, please. In front of you, Mr. Hedges. That is,
11 your name and badge number?

12 PROSPECTIVE JUROR 035: Kathryn Argentine, 35. I think as
13 a teacher I have students who are undocumented and they -- I mean, I
14 still have to provide them with an equal education. So, personally I
15 agree with the other members. But specifically, when it comes to my
16 job, I have to give a fair education that are all in front of me.

17 MR. SPEED: Education. What about consumer items, do you
18 think that people just by virtue of being here and being an unlawful
19 resident either participating in the lawful way of obtaining citizenship or
20 not, deserve to have consumer items given to them?

21 PROSPECTIVE JUROR 035: The adults, no. I have a hard
22 time with the children because they didn't make the choice for their adult
23 to come here illegally.

24 MR. SPEED: Right.

25 PROSPECTIVE JUROR 035: So, the adults, no.

1 MR. SPEED: But certainly not for those adults? Who agrees
2 with that? Almost unanimously there. Who said I do? I heard someone
3 say I do. Mr. Lesane? Ms. Worthy? Would you pass the microphone to
4 Mr. Lesane in front of you? Go ahead, sir. You said I do.

5 THE COURT: Bade number?

6 MR. SPEED: And badge number.

7 PROSPECTIVE JUROR 206: Badge number 206, Myron
8 Lesane. The reason why I say that, there's some kids in my apartment
9 complex that go hungry all the time. So, I literally feed some of the kids
10 in the apartment complex. The mom and dad, you guys are on your
11 own, but the kids, when they play with my kids, everybody is going to
12 eat that I see.

13 MR. SPEED: I was just about to ask you. Where are these
14 children's parents if you know?

15 PROSPECTIVE JUROR 206: They're either at work or in the
16 house, drunk, doing whatever they're going to do and just let the kids rip
17 and run.

18 MR. SPEED: Has anyone seen something like that?
19 Something similar to what Mr. Lesane just described? Anyone on this
20 side? I see our teacher raising her hand. Ms. Carothers, Bade Number
21 131, seat 9, yes?

22 PROSPECTIVE JUROR 131: Well, I can't really think of
23 anything specific, but I've seen generally situations.

24 MR. SPEED: What kind of situations, like those that Mr.
25 Lesane described?

1 PROSPECTIVE JUROR 131: Like children that don't have the
2 resources they need to be able to eat on the weekend or whatever.
3 Personally, I feel like children should not be held accountable for adult
4 decisions. So, if a child is here because the adult decided to come
5 illegally, I feel like they should not be denied healthcare or an education.
6 And similarly, if an adult -- I feel like we need to be empathetic if an adult
7 is here illegally but they're having an emergency medical issue or
8 something.

9 I don't think that they should be denied to go to the hospital.
10 So, I feel like in some situations we need to be empathetic. But in other
11 situations, they need to go through the correct route, the legal route in
12 order to be able to be of benefit to things that would normally be
13 provided to a taxpayer.

14 So, if they wanted to get welfare, if they wanted to get food
15 stamps, things of that nature, they should be going through the process
16 of trying to become a legal citizen. So, not necessarily that they've
17 become naturalized, but maybe they're going through the process of
18 doing it so they're making a step towards it.

19 MR. SPEED: Mr. Collins, you started to raise your hand.

20 PROSPECTIVE JUROR 050: Coleman.

21 MR. SPEED: Coleman, I'm sorry. You started raise your
22 hand, sir.

23 PROSPECTIVE JUROR 050: Number 50. Yes, sir.

24 MR. SPEED: Go ahead, please. The microphone is behind
25 you.

1 PROSPECTIVE JUROR 050: To touch on the phrase of it's
2 unfair, depends on who you're saying it's unfair to that that person is
3 getting the benefit says a non-citizen. I think it's unfair that our veterans
4 and not so well to do residents of the United States don't get the same
5 benefits that people that come in from out of the United States illegally
6 get without a problem. It seems like it's easier for a non-citizen to get
7 medical insurance and to get, you know, to get medical benefits and to
8 get food and so on and so forth then it is for our veterans that are not so
9 well to do or our citizens that are so well to do. That's where it's unfair.
10 Do I feel that somebody that comes over from another country they
11 shouldn't be fed if they're hungry? Everybody should be fed if they're
12 hungry.

13 MR. SPEED: Right.

14 PROSPECTIVE JUROR 050: You know, it doesn't matter
15 where you come from. You should be fed. If you need medical attention
16 you should get medical attention.

17 MR. SPEED: Right.

18 PROSPECTIVE JUROR 050: So, the phrase that it's unfair I
19 think is almost a selfish comment in my opinion. If it's unfair to
20 anybody, it's unfair to the fact that it's easier for a non-citizen to get
21 benefits these days than it is for somebody who is a resident of the
22 United States.

23 MR. SPEED: Can we agree that one of the things that we
24 value about our nation is its magnanimity. We agree that it's the
25 American credo to be decent to people. You provide people who are in

1 need with food, shelter, medical care.

2 PROSPECTIVE JUROR 050: That's what this country was
3 built on.

4 MR. SPEED: I agree 100 percent. But when we talk about
5 providing people with other things, consumer goods particularly, that's
6 where -- shouldn't that be where we draw a line with our charity, with
7 regard to our charity? I have a person raising his hand. This is?

8 PROSPECTIVE JUROR 164: 164.

9 MR. SPEED: Mr. Tolman.

10 PROSPECTIVE JUROR 164: Tolman, 164.

11 MR. SPEED: Go ahead, sir.

12 PROSPECTIVE JUROR 164: When you say consumer goods,
13 can you give me a definition or an example of that?

14 MR. SPEED: Athletic wear, shoes, school supplies for
15 children, things that if a person was working and taking care of their own
16 business, they could probably provide for themselves, at least mentally.

17 PROSPECTIVE JUROR 164: Okay. Are we also included in
18 that the services of someone like yourself as a public defender?

19 MR. SPEED: Well, that's an interesting point.

20 PROSPECTIVE JUROR 164: Before you answer that, let me
21 explain why I'm asking.

22 MR. SPEED: Please.

23 PROSPECTIVE JUROR 164: Our legal process is our legal
24 process. Doesn't matter who the client is.

25 MR. SPEED: Okay.

1 PROSPECTIVE JUROR 164: If you can be punished by our
2 system, should you not also receive the consumer goods or services
3 associated with that process or that system?

4 MR. SPEED: That's a great question. Who has an answer? I
5 see those. I see those. Ms. Argentine go --

6 PROSPECTIVE JUROR 164: Before I pass it on.

7 MR. SPEED: Go ahead, sir.

8 PROSPECTIVE JUROR 164: I'm asking for clarity so that we
9 can direct this discussion in a more efficient matter rather than talking
10 about shoes or sportswear when the more pertinent question is what
11 we're actually trying to figure out and talk about and agree on. So,
12 clarity would be appreciated.

13 MR. SPEED: Understood. Ms. Argentine, go ahead. Thank
14 you. Name and badge number again.

15 PROSPECTIVE JUROR 035: Kathryn Argentine, 35. So, I'm
16 thinking of what we provide children from a teacher perspective, they get
17 three meals a day. They get food on the weekends. They get dental and
18 vision through the school.

19 MR. SPEED: Decency, the necessities of life.

20 PROSPECTIVE JUROR 035: Necessities.

21 MR. SPEED: Things are guaranteed to us constitutionally like
22 Defense in a legal situation, the right to --

23 PROSPECTIVE JUROR 035: I think there is a place where you
24 draw the line. I struggle with when I spend my own money to provide
25 school supplies, you know, clothes and things to students and then

1 they're coming with Nike shoes and nice things and they're, you know,
2 on welfare and food stamps and receiving benefits of society, but there's
3 still money that they're then spending on other things. And I guess that
4 to me creates some confusion.

5 MR. SPEED: Mr. -- so that I have everyone straight, Mr.
6 Currie, you're nodding your head. Name and bad number, please.

7 PROSPECTIVE JUROR 165: Currie, 165. Well, I just agree
8 that people do take advantage of the system. It happens with non-
9 immigrants, U.S. citizens. When there's something to be taken
10 advantage of, people will take advantage of it.

11 MR. SPEED: You think so?

12 PROSPECTIVE JUROR 165: Absolutely.

13 MR. SPEED: If it's available and you can get it without
14 working for it --

15 PROSPECTIVE JUROR 165: Yes.

16 MR. SPEED: -- certainly, people will take advantage?

17 PROSPECTIVE JUROR 165: 100 percent.

18 MR. SPEED: Is there an expectation then for people who are
19 trying to follow that pathway to citizenship, that they should work for
20 what they earn?

21 PROSPECTIVE JUROR 165: Well, it seems like a lot of people
22 feel like things should be handed to them now days. So, maybe they're
23 like, oh, yeah, it should just be handed to me because I'm alive and here
24 or some shit.

25 MR. SPEED: It's entitled.

1 PROSPECTIVE JUROR 165: Yeah, entitlement.

2 MR. SPEED: Who said entitlement? Mr. Coleman?

3 PROSPECTIVE JUROR 050: Yes, sir.

4 MR. SPEED: Bade number and name, please.

5 PROSPECTIVE JUROR 050: David Coleman, Badge Number
6 50.

7 MR. SPEED: Your comment was entitlement.

8 PROSPECTIVE JUROR 050: It seem that society these days
9 has a large, large sense of entitlement. I think that's true, yes.
10 Absolutely.

11 MR. SPEED: Okay. While you have the microphone, Mr.
12 Coleman, I'll go to another topic that we want to make sure we cover
13 with everyone. We've all seen, we've all heard, most of us, I shouldn't
14 say we've all. Most of us have seen, have heard, reports in the news
15 recently dealing with believing woman or believing victims of crime,
16 alleged crime. I won't get into the name of the various different
17 movements and organizations, but we've heard them, yes? I see most
18 of the panel nodding their head in agreement with that. What are some
19 of your feelings Mr. Coleman about these movements?

20 THE COURT: 050.

21 MR. SPEED: Name and badge number, sir.

22 PROSPECTIVE JUROR 050: David Coleman, 050. I agree
23 with woman being recognized or even men being recognized in these
24 movements. I'm not real crazy about the 35 years later I was at a party
25 and this happened. I think that's a lot of politics involved. I've noticed

1 that most of that is going on in the area of politics and politics is dirty
2 and, you know, they're going to do whatever they -- politics, it's politics.
3 To live your life as a normal functioning human being and then when
4 somebody is up for office or somebody is up for a large position then all
5 of a sudden somebody comes out of the woodwork and says, hey, I was
6 at a party 35 years ago and he touched my shoulder.

7 I think that's a huge -- that's just like a red flag. It's just --
8 how do you live your life as a normal human being all those years and
9 then turn around 35 years later, it's a problem for you, now you don't
10 sleep. That to me doesn't seem realistic. It doesn't seem realistic to me.
11 I understand if -- I mean, weeks, months, a year, two years maybe, but
12 like a quarter of a decade later all of a sudden you have a problem with
13 somebody that touched your butt at a party, I can't grasp the concept of
14 that.

15 MR. SPEED: Who agrees with that? Who finds that concept
16 difficult to grasp? Mr. Delmour, please. Pass the mike to you left
17 gentlemen, thank you, and ladies.

18 PROSPECTIVE JUROR 028: Kevin Delmour, Badge 28. I
19 agree in the sense that is a very difficult scenario to think your way
20 through. And I'll give a very brief example. Mr. Coleman there speaks of
21 something that's gone on perhaps decades ago at a party, et cetera. Is
22 suddenly brought up when a particular person is up for some kind of
23 position, election or whatever it is. I've had discussions with my wife
24 and other family members about how without bringing the Hollywood
25 crowd names into it, but perhaps everybody has an idea of one or two

1 Hollywood related who are in positions of power and use that power to
2 satisfy their own selfish wishes.

3 I actually understand that because having come from a
4 hierarchical structure called the military, you can see, and I'm not saying
5 military is involved in this, I'm just saying it from a hierarchal structure,
6 you can see occasionally how someone who is of senior rank can
7 influence someone of quote on quote, lessor rank for their own benefit.
8 So, it's a very difficult situation. I mean, do you believe someone just
9 because they say something?

10 So, you're telling me in the conversation here that I should
11 be nervous when I go to sleep at night because maybe something I did in
12 1972 in high school as a teenager could come back 45, 50 years later and
13 embarrass me. My God, then none of us is safe from any accusation at
14 all. Because if it's possible to accuse someone decades after
15 something's happened, no one is safe from anything and perhaps there's
16 a lawsuit waiting for me when I walk out of the courtroom today for
17 something that I don't even remember, couldn't have imagined doing.

18 So, I think it's a very, very murky area. It's been politicized. I
19 agree with Mr. Coleman on that. And I think we all just have to use our
20 best personal judgment. And I hate to say the word common sense,
21 because if common sense was common we'd never have to refer to it.

22 MR. SPEED: That's right. That's what common sense is
23 about.

24 PROSPECTIVE JUROR 028: That we just sort of have to work
25 through it. And each situation is unique in its context, in its participants

1 if you will and needs to be scrutinized from that point and the best
2 determination made.

3 MR. SPEED: Here comes detention, ladies and gentlemen,
4 and I will get to you Ms. Carothers. I promise. Here comes detention. I
5 notice when you were relaying your thoughts to us, the first person that
6 you thought of when you were thinking of the discussions that you have
7 are your wife.

8 And also, your example dealt with people in superior
9 positions, vis-a-vis, people in subornment positions and who possess the
10 power, who is relying upon or subservient to people in those positions of
11 power. When you mentioned your wife and having that discussion and
12 when you later said none of us are safe, is it fair to assume that you were
13 thinking that when you say us, you're thinking of men in particular?

14 PROSPECTIVE JUROR 028: No. I'm actually thinking of us as
15 the combined humanity. And we'll just use this courtroom for example.
16 It shouldn't be that only woman can accuse men of something. I think
17 that is implicitly unfair. I think men can accuse woman too. Now, is it as
18 common? No, probably not. But it shouldn't be completely dismissed
19 because a man says something happened 35 years ago or whatever the
20 case is. I hate to bring up the Catholic church, having been a practicing
21 Catholic. Notice the past tense comment there.

22 MR. SPEED: Yes.

23 PROSPECTIVE JUROR 028: And it's not unique to this
24 country either. You know, the church in Ireland is -- my God, it's an
25 embarrassment. But I don't want to get off on that subject. But again, so

1 us is us, people, male, female, whatever their gender identity is, go down
2 the whole litany. It's just no one can -- could be safe.

3 MR. SPEED: Is it safe to say that as a society, our general
4 society, we've given woman the benefit of the doubt when it is a woman
5 in the subornment position or the position of the inferior position?

6 PROSPECTIVE JUROR 028: I think so. I think that's a fair
7 assessment?

8 MR. SPEED: Do you think that we should believe woman all
9 the time when an allegation of an abuse of power is made?

10 PROSPECTIVE JUROR 028: Interesting point. Let me answer
11 it this way. It comes back around to your questioning, or I don't want to
12 say questioning because it sounds like you were grilling someone, your
13 line of questioning yesterday concerning do children lie or do children
14 don't lie. Well, guess what? I think Mr. Coleman said it yesterday. Lying
15 is not unique to any age, race, religion, gender, whatever. And there will
16 be some who will just because they have perhaps some sort of personal
17 agenda.

18 So, if you're asking me do I believe everything every woman
19 would tell me about something of a sexual nature, I would say I don't
20 know the person. I don't know why they're taking a particular tact. So,
21 it's not just a blanket always believe. I think you have to scrutinize each
22 one.

23 MR. SPEED: Who believes Mr. Delmour is wrong? We
24 should believe woman all the time? I will get to you in a moment, sir.
25 Ms. Argentine, to your right, Mr. Delmour, please.

1 PROSPECTIVE JUROR 035: Kathryn Argentine, 35. So, I've
2 already expressed that I am a victim of sexual assault. But I will say I
3 agree that you should not believe people all the time, regardless of
4 gender of anything. I do agree with Mr. Coleman that people can
5 manipulate the situation for their benefit. But I'm thinking of when I
6 present this topic to my students, I present both sides.

7 I teach to Kill a Mockingbird, where an African American man
8 is wrongly accused of rape, and I also, you know, present some of the
9 more current movements and things to students. And I was also
10 thinking to what I said to the Prosecution about if I can be fair and
11 impartial. And I initially said no, and I think I've changed my mind -- now
12 I've changed my mind on that. Because as this gentlemen said, it is case
13 by case. And sometimes they're lying and that's true and sometimes
14 they're not.

15 MR. SPEED: Go ahead, Mr. Coleman. Name and badge
16 number.

17 PROSPECTIVE JUROR 050: Dave Coleman, Badge Number 50. I
18 think the general perception in the past has been that if a woman
19 accuses a man, oh, that's possible. That can happen. That's the general
20 consensus because the man has generally been perceived as the
21 stronger of the two sexes up until the recent or not so totally recent, but
22 the movement of the woman and power, you know, woman are strong,
23 which a woman can do any job that a man can do, I firmly believe in that.

24 I think for the longest of time, whether it be for pride reasons or
25 whether it be for just the sake of if I said that, just for an example, a

1 woman of power may be a woman police officer decided that -- and I
2 don't know that a police officer is a good example, but a woman -- for
3 me to say yeah, she grabbed my butt and she was groping me when she
4 was frisking me, let's say. I don't think generally that the public
5 perceives a man being assaulted by a woman as, come on. It's like come
6 one, really? You let a girl assault you? You mean you really didn't want
7 to have sex with that girl? I mean, she came on to you so you really --
8 you know, because men are always perceived or have been perceived I
9 guess I should rephrase. You know, it's says --

10 MR. SPEED: The aggressive gender?

11 PROSPECTIVE JUROR 050: Yeah, the aggressive gender.
12 You know, always into having sex. If a woman comes on to you, why
13 would you push her away, you know. That's a perception that is real. I
14 think that's changing, you know, with time. I think it's changing. But I
15 still think that a woman is more likely to be believed in a situation of
16 accusing a male of some kind of an assault. Is it always true? Probably
17 not, maybe not, hard to say, depends on the situation. Everything is an
18 individual situation. Is there something to gain? Is there not? I mean, I
19 can't speak for the situation because I've been in it, but that's my feelings
20 on it.

21 It's been the perception of general life that if a woman says a
22 man assaulted me, more likely to believe than a woman saying or a man
23 saying that woman assaulted me sexually. Do we not agree with that?

24 MR. SPEED: I do.

25 PROSPECTIVE JUROR 050: In history, in time, more likely to

1 believe a woman saying it was a man than a man saying it was a
2 woman.

3 MR. SPEED: Do you think that woman enjoy certain
4 advantages, especially in child custody situations for example because
5 they've been perceived for so long as the weaker gender or the weaker
6 sex?

7 PROSPECTIVE JUROR 050: I don't consider them the weaker
8 sex, but that again is by individual situation. I know woman that have
9 been given their children in divorce situations where the man clearly
10 would have been the better parent for the children to go with.

11 MR. SPEED: And why do you think that women were given
12 children in those situations?

13 PROSPECTIVE JUROR 050: Because that's kind of the nature
14 of the America thoughts, you know, that the mom should raise the
15 children. When I know of enough moms that are not half the parent that
16 the dads are.

17 MR. SPEED: Who agrees with that? In family court
18 situations that woman enjoy advantages? One we haven't heard from in
19 a while. This is Ms. Rutledge. To your left please. Name and badge
20 number, Ms. Rutledge?

21 PROSPECTIVE JUROR 027: Courtney Rutledge, badge 27. I
22 just completely agree just because I am a mother of four. And so, seeing
23 how even with not even my own kids but my growing up my stepdad
24 was the main person, main provider, main person to take care of me
25 because my mom wasn't always there. They -- we always think that

1 women, because we are natural -- we are nurturers. We feel like it's
2 always best for the kids to be with the mother. But at the same time, the
3 mother is not always in the right situation or right predicament to be a
4 good mother. We have them fathers that are there that can be a parent
5 20 times better than mother and would rather stay home and take care of
6 the kids then go out and part or go out and do whatever. So, it all -- I
7 guess it all just depends on the person and situation.

8 MR. SPEED: But because of the way we've been conditioned
9 as a society. You agree with me that woman do enjoy advantages in
10 those scenarios?

11 PROSPECTIVE JUROR 027: Absolutely.

12 MR. SPEED: Anybody else? To the -- who haven't we heard
13 from in some time. Go ahead, Mr. Ball. Behind you, Mr. Delmour.
14 Name and badge number. Please, sir.

15 PROSPECTIVE JUROR 124: Christoffer Ball, 124. Just for I
16 have respective of a being through that process, when my parents
17 divorced, luckily I was old enough to choose who I wanted to be with,
18 but I did have to go to court and tell them that I wanted to be with my
19 father. Its' just a preconception that mothers are the better caretakers
20 then the men. So, sometimes men in that aspect are disadvantaged.

21 MR. SPEED: To the front, to Mr. Namboonruang. Did I
22 pronounce that correctly, sir?

23 PROSPECTIVE JUROR 162: Can I say number, Badge 162.

24 MR. SPEED: Thank you. About what we've been talking
25 about, what are some of your thoughts about that?

1 PROSPECTIVE JUROR 162: Personally, I been like growing
2 up with my mom only. So, like I only have the one perspective with my
3 mom, so.

4 MR. SPEED: Do you think that just in your experiences that
5 women enjoy certain advantages in family dynamic situations?

6 PROSPECTIVE JUROR 162: I don't think so, because my
7 mom, she works as hard as she can to like take care of me and my sister.
8 And like, I can never talk bad about her.

9 MR. SPEED: Do you think because of your devotion, and it is
10 admirable to your mother, and your admiration for the job that she's
11 done in raising all of you children, do you think that you would listen to a
12 mother and give her testimony more weight than you would someone
13 else?

14 PROSPECTIVE JUROR 162: No. I would still treat them
15 equally.

16 MR. SPEED: Okay, understood. On the topic of women
17 enjoying specific advantages, did we have any other hands? No other
18 hands on that. All right.

19 PROSPECTIVE JUROR 164: I did still have a lingering
20 question.

21 MR. SPEED: Oh, there was a lingering question from Mr.
22 Tolman. Name and badge number please.

23 PROSPECTIVE JUROR 164: Tolman, 164.

24 MR. SPEED: Go ahead.

25 PROSPECTIVE JUROR 164: Can you clarify for me what you

1 mean by women should be believed?

2 MR. SPEED: Do you think that women should be believed in
3 these situations when there is an allegation of an abuse of power? And
4 that could be in any context. The professional context. The relationship
5 context. When there is an allegation of abuse by a man because he is
6 stronger against a woman because she is weaker, do you think that
7 women should be believed because society has taught us for so long
8 that women are the weaker gender.

9 PROSPECTIVE JUROR 164: Let me rephrase the question.
10 You, as a person who believes women, what is your responsibility to
11 follow up? What are your actions that you fulfill based on the fact that
12 you are one who believes women? What does that mean to you?

13 MR. SPEED: If you are, are you a person who believes
14 women?

15 PROSPECTIVE JUROR 164: Yes.

16 MR. SPEED: What do you think your responsibility should
17 be?

18 PROSPECTIVE JUROR 164: To give them the credence and
19 the reason to trust you to follow up on investigating the situation. For an
20 example, I tell Myron here that you are wearing Gucci shoes. We'll make
21 a bet of \$5 on it. Should he just believe me that you are wearing those
22 shoes and pay me the money? Or should he look for himself? Believing
23 means nothing without action.

24 So, yes. We should believe women to the integral of
25 investigating the scenario, the situation, the facts on both sides. So, I

1 just wanted to clarify that -- I feel like this whole conversation has kind of
2 picked up speed and gone off running without clarifying what that
3 means for our responsibilities and our actions after we do or don't
4 believe the accuser.

5 MR. SPEED: I believe President Regan said trust, but verify,
6 yes?

7 PROSPECTIVE JUROR 164: Agreed.

8 MR. SPEED: To the second row, and I'm talking to Mr.
9 DiGiovanni. I believe you had your hand up while Mr. Tolman was
10 speaking. Name and badge number please, sir.

11 PROSPECTIVE JUROR 146: Michael DiGiovanni, number 146.
12 No, I don't believe women and I don't believe men. That's why we have
13 courtrooms. If you make an accusation against somebody, you'll get a
14 fair hearing in court. The other side gets a fair hearing as well and then
15 it's up to the jury to decide who is telling the truth. But these
16 accusations just blatant in the press mean nothing to me, absolutely
17 nothing until I hear both sides of the story. When I hear somebody
18 testify on television in front of Congress, do I believe them? I've got to
19 hear both sides first.

20 MR. SPEED: Having to hear both sides, that touches and
21 concerns some issues that were brought up yesterday. Do you have to
22 hear from Mr. Gunera-Pastrana, the Defendant in this case?

23 PROSPECTIVE JUROR 146: No.

24 MR. SPEED: You understand that he does not have to say a
25 single word in his Defense?

1 PROSPECTIVE JUROR 146: Correct. Correct. That's his
2 choice.

3 MR. SPEED: His choice? It's more of his right.

4 PROSPECTIVE JUROR 146: His right, excuse me. Wrong
5 word.

6 MR. SPEED: Absolutely. So, would you hold that against
7 him in a case like this?

8 PROSPECTIVE JUROR 146: No.

9 MR. SPEED: Where he's being accused of something?

10 PROSPECTIVE JUROR 146: No.

11 MR. SPEED: And you do not have the benefit of hearing his
12 side of the story?

13 PROSPECTIVE JUROR 146: No. I would not hold that against
14 him.

15 MR. SPEED: To your right please, Mr. DiGiovanni. This is
16 Ms. Meicher, number 216. Name and badge number please for our
17 record.

18 PROSPECTIVE JUROR 216: Brenna Meicher, 216. I agree. I
19 think the conversation got away from what we really should be talking
20 about. I think a lot of media and the Me Too movement and the social
21 media, it makes us generalize a lot more than I think we would be
22 without those things. That's why I don't have any apps anymore. So --

23 MR. SPEED: You don't have any what? I'm sorry.

24 PROSPECTIVE JUROR 216: Like the Facebook, the Twitter, all
25 that stuff that --

1 MR. SPEED: Oh, social media?

2 PROSPECTIVE JUROR 216: Yeah, social media. It makes
3 these movements bigger. It makes us pay attention. It makes us think
4 that it's happening more, and I think, in my opinion, you should be able
5 to do your own research. Just like in here, we should be doing our own
6 listening or research -- or not research, but listening to both sides and
7 making a decision based on these facts, not based on the generalizations
8 that we see.

9 MR. SPEED: Do you think that you can be fair and impartial
10 in this case if you learned or if you're selected to serve and you only
11 heard testimony from female witnesses?

12 PROSPECTIVE JUROR 216: Yes.

13 MR. SPEED: Okay. And even though you wouldn't hear the
14 other side of the story, in a situation outside of the courtroom that Mr.
15 DiGiovanni was describing where you don't hear the other side of the
16 story?

17 PROSPECTIVE JUROR 216: Well, I mean we're in here to
18 follow the law. The law is that he doesn't have to speak if he chooses
19 not to. So, I'm going to follow the law if I'm chosen for a jury. I'm going
20 to listen to both sides or the one side if only one sides, or side says
21 something and make a decision based on that.

22 MR. SPEED: Here's a question for you. How does a person
23 go about proving that he didn't do something?

24 PROSPECTIVE JUROR 216: Proving that he didn't?

25 MR. SPEED: Right.

1 PROSPECTIVE JUROR 216: He doesn't have to, but I
2 wouldn't know. I'm not a lawyer.

3 MR. SPEED: Well, in your personal experience, how would
4 you prove to someone that you cared about them deeply who made an
5 accusation against you or someone said that you do have social media
6 applications on your phone in checking your phone. Which, a lot of our -
7 - I know significant others like to do. If you said I don't have social media
8 on my phone and you really didn't, but the person accusing you believed
9 whole heartedly that you did, how do you prove that you didn't?

10 PROSPECTIVE JUROR 216: I guess you show them your
11 phone, but, I mean, hearsay is hard for me. So, I have a hard time
12 making a decision on hearsay. So, that would be my response to that.

13 MR. SPEED: Mr. Norris, next to you, Ms. Meicher.

14 PROSPECTIVE JUROR 071: Adam Noyce, Bade Number 71.

15 MR. SPEED: How does a person prove they didn't do
16 something?

17 PROSPECTIVE JUROR 071: Well, you can provide proof in
18 the positive of something. Going back to the phone application, show
19 them your phone. It depends on what the accusation happens to be.
20 Take for instance, liable. If someone class you a jerk, you know, the
21 defense is, you know, well, are you a jerk? So, prove that you're not a
22 jerk.

23 MR. SPEED: What if there was no one to hear, and I'm
24 talking about the --

25 PROSPECTIVE JUROR 071: No corroboration?

1 MR. SPEED: The libeler in your scenario. If no one heard the
2 person say something defamatory, how does that person prove that he
3 didn't say it? How does one defend himself against the liable action if
4 there's no one to hear the liable statement other than the person making
5 the accusation?

6 PROSPECTIVE JUROR 071: Well, again, my background kind
7 of is in civil litigation. So, you know, well, it's like what are your
8 damages? You know what I mean. If there was actually some harm
9 done to you, okay then maybe we can talk. But if he just called you jerk
10 and there was no one around, I've got a he said/she said, so I don't have
11 much to go on at that point.

12 MR. SPEED: You don't have much to go on?

13 PROSPECTIVE JUROR 071: No.

14 MR. SPEED: It's hard to prove that you didn't do something;
15 isn't that right?

16 PROSPECTIVE JUROR 071: Right.

17 MR. SPEED: Who agrees with that? Oh, let's see. Next to
18 you is Ms. Parker. We haven't heard from Ms. Parker in some time.

19 PROSPECTIVE JUROR 076: Jocelyn Parker, Bade 76.

20 MR. SPEED: You just recently received a Master's in Social
21 Work. Congratulations on that.

22 PROSPECTIVE JUROR 076: Thank you.

23 THE COURT: We're going to take a break.

24 MR. SPEED: That's fine, Your Honor. Thank you.

25 THE COURT: During this recess, you're once again

1 admonished, do not talk or converse amongst yourselves or with anyone
2 else on any subject connected with this trial. Or read, watch, or listen to
3 any report of or commentary on this trial or any person connected with
4 this trial by any meeting of information, including without limitation,
5 newspapers, television, radio or internet. Do not form or express any
6 opinion on any subject connected with the trial until the case is finally
7 submitted to you. We'll take 10 minutes.

8 THE MARSHAL: Please rise for the jury.

9 [Prospective jurors out at 11:08 a.m.]

10 [Recess taken from 11:08 a.m. to 11:21 a.m.]

11 [Outside the presence of the prospective jurors]

12 THE COURT: Anything outside the presence?

13 MR. SPEED: No, Your Honor.

14 THE COURT: State?

15 MS. DIGIACOMO: No, Your Honor.

16 THE COURT: Bring them in. State, so you weren't here.

17 There's 15 people downstairs. I think we can let them go. But that's, you
18 know, obviously --

19 MS. DIGIACOMO: Okay. How many do we have left?

20 THE COURT: 11, I think. 11 or 13. I'm not sure, but.

21 MS. DIGIACOMO: That's fine. I don't think we'd go through
22 11, famous last words.

23 THE COURT: Well, we might. But it will be by the end of the
24 day, so what difference does it make?

25 MS. DIGIACOMO: Yeah.

1 THE MARSHAL: Please rise for the jury.

2 [Prospective jurors in at 11:24 a.m.]

3 [Inside the presence of the prospective jurors]

4 THE COURT: All right. Please be seated. Parties
5 acknowledge the presence of the venire?

6 MS. DIGIACOMO: Yes, Your Honor.

7 MR. SPEED: Yes, Your Honor.

8 THE COURT: Go ahead. Ms. Dusina-Bakken, Badge Number
9 97. Do you have the microphone? No, you don't.

10 PROSPECTIVE JUROR 097: I had a feeling you were going to
11 call me out.

12 MR. SPEED: Say again?

13 PROSPECTIVE JUROR 097: I had a feeling you were going to
14 call me out. Your thoughts on -- you're quite intuitive there. Your
15 thoughts on whether we should be believing women?

16 PROSPECTIVE JUROR 097: Yes.

17 MR. SPEED: All the time?

18 PROSPECTIVE JUROR 097: But I also say this coming from a
19 place of privilege. I have been believed when I say someone makes me
20 uncomfortable. I have been believed when I was a bartender and I had
21 somebody who was starting to show up in places they probably
22 shouldn't have been showing up in. Someone who I hung out with one
23 time in a group of friends and he suddenly had my phone number and
24 knew where I lived. I said I was uncomfortable.

25 I changed my phone number. I was at the end of my lease

1 and I moved. Everyone believed me when I said something is not okay
2 with this situation. I don't know what happened with him, but he
3 stopped showing up where he shouldn't have been, partially because I
4 removed myself from the situations. I had the privilege to be able to
5 remove myself to be believed. Not everyone has that option. And it is a
6 scary world for everybody, both men and women, adults and children,
7 because we don't know when we're going to be believed.

8 MR. SPEED: We have some other thoughts on that. Ms.
9 Carothers, name and badge number once you receive the microphone
10 please.

11 PROSPECTIVE JUROR 131: Carothers, 131. And I also
12 wanted to go back, way, way, way back where we were talking about if
13 someone was accused of something 35 years ago when they were in
14 high school, et cetera. If you're accused of touching someone on the
15 shoulder, yes, that's B.S. But if you're accused of murder or rape or
16 something like that, that's serious. So, I don't think that it should matter
17 that it's 35 years ago. And I would also say that if someone doesn't
18 come out with something right away, if someone comes out with
19 something later on, it might be because it took them that long to develop
20 the courage in order to do it.

21 And so, I think we have to keep an open mind and not just
22 assume that if someone said something several years down the road,
23 that we're instantly going to dismiss it. I think that anything, any kind of
24 accusation should be looked at for the facts and should be taken into
25 consideration.

1 MR. SPEED: How does a person prove that they did not do
2 something? And I'll barrow from Ms. Bakken's example. The person
3 who made her uncomfortable, if he was absolutely innocent and any of
4 his intentions or movements or anything that raise suspicion with your
5 fellow veneer person, how does that person prove that he was not doing
6 anything but minding his own business? He just happened to make
7 someone uncomfortable in that process.

8 PROSPECTIVE JUROR 131: Okay. If they chose not to
9 defense themselves, then they would have to stand on the person's
10 testimony. If they did decide to defend themselves, they might have to
11 explain. Why were you at such and such place? Why were you
12 contacting her? Why were you here? Why were you there?

13 So, I can't make a blanket statement that she should be
14 believed, or she should not be believed, or he should not, or he is guilty,
15 or he is not guilty. You would have to take all the -- you would have to
16 take everything into consideration and weight the facts.

17 MR. SPEED: But here, in this context, and this is why we're
18 asking everyone these questions. A Defendant does not have to present
19 his side of the story.

20 PROSPECTIVE JUROR 131: I completely agree with you.

21 MR. SPEED: Do you understand then how it is concerning to
22 me when you say that if a person chooses to defend himself, then you
23 will listen to his side of the story and proving that he didn't do
24 something. But if he does not, you only have to stand on the accuser's
25 testimony.

1 PROSPECTIVE JUROR 131: And that does not mean that the
2 accuser has to be believed.

3 MR. SPEED: I see.

4 PROSPECTIVE JUROR 131: What I'm saying is that if it's only
5 the accuser that's giving the information, then you have to take that
6 information into consideration, and you may not have the other side of
7 the story. That doesn't mean that you believe the side that you listen to.

8 MR. SPEED: To Mr. Hedges, to your left, please ma'am. You
9 raised your hand when veneer person Carothers was speaking. Go
10 ahead.

11 PROSPECTIVE JUROR 130: Yeah, I don't think you can -- you
12 can't disprove something. That's why the other person would have the
13 burden of proof. You have to prove it. But it would go a long way for
14 your own defense to say something. It would be under oath to say that
15 you -- to come out and say that you didn't do it. That's what I would
16 need to see you do.

17 MR. SPEED: Is that an expectation that you have for Mr.
18 Gunera-Pastrana in this case? You want to hear his side of the story?

19 PROSPECTIVE JUROR 130: Absolutely. If I got accused of
20 something, I know I'm not -- I'm innocent until proven guilty. But I know
21 what I would do, and I would say to anyone that would listen, I didn't do
22 it.

23 MR. SPEED: You would shout it from the mountain tops?

24 PROSPECTIVE JUROR 130: Exactly.

25 MR. SPEED: I didn't do this.

1 PROSPECTIVE JUROR 130: Yeah.

2 MR. SPEED: If Mr. Gunera-Pastrana does not do that, will
3 that raise your suspicion in this case?

4 PROSPECTIVE JUROR 130: Absolutely. It's not an admission
5 of guilt, but it looks sketchy.

6 MR. SPEED: That makes you start to think that perhaps what
7 people are accusing him of is true?

8 PROSPECTIVE JUROR 130: Not necessarily. I would have to
9 weigh the evidence, but it's not a good look just starting out. It's not a
10 good look if you can't say that you didn't do it.

11 MR. SPEED: Do you think that you cannot be fair and
12 impartial if after hearing the testimony from the alleged victims in this
13 case and you do not hear from Mr. Gunera-Pastrana, that he is --

14 MS. DIGIACOMO: Objection, Your Honor. May we
15 approach?

16 THE COURT: Approach.

17 [Sidebar begins at 11:32 a.m.]

18 THE COURT: Go ahead.

19 MS. DIGIACOMO: That is so fact specific. He can't ask him
20 what he's going to do in this case.

21 THE COURT: And you're asking him to rule on the case
22 already.

23 MR. SPEED: That's all.

24 THE COURT: Okay. I'm going to sustain the objection.

25 MR. SPEED: Understood.

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[Sidebar ends at 11:32 a.m.]

THE COURT: All right. The objection is sustained. Go ahead, continue.

MR. SPEED: If you don't hear from a defendant in a case and you said that this is -- it wouldn't be a good look if a person sat silently while he was being accused, do you think that you could still be a fair and impartial juror?

PROSPECTIVE JUROR 130: I think so. I mean if the evidence against him is not strong, if it doesn't -- if it's not great evidence, I'd have to weigh everything, but I'm not saying I would go guilty, but if you can't defend yourself, if you can't say under oath that you didn't do it, it makes the prosecution job a little bit easier, I think.

MR. SPEED: Who agrees with that? If you can't say under oath, if you're not willing to shout from the mountaintops like Mr. Hedge's is saying, that you're probably guilty; it makes the prosecution's job that much easier?

Ms. Rabinowitz, we haven't heard from you in a second. Name and badge number once you receive the microphone, please ma'am.

PROSPECTIVE JUROR 185: Mindy Rabinowitz, 185. While I understand that a defendant doesn't need to be put on the stand and testify, to me that like speaks of guilt because if you're innocent, you should be able to get up there and state your case and state why you're innocent.

MR. SPEED: Mr. Currie, in front of you. I saw that you were

1 nodding your head when Ms. Rabinowitz was speaking. Name and
2 badge number, please, sir. Go ahead.

3 PROSPECTIVE JUROR 165: Currie, 165. Yeah, I'd say it's a
4 bit like suspect if you're not willing to defend yourself.

5 And then backing up to a few other things, like the whole
6 being like convicted of something 35 years ago, isn't there a statute of
7 limitations for crimes?

8 MR. SPEED: We won't go into that, all right. It doesn't
9 pertain to [indiscernible].

10 PROSPECTIVE JUROR 165: And then if you can't prove that
11 you didn't do something, how do you prove that you did do something?
12 What's the burden?

13 MR. SPEED: I'm probably not the person to answer that.

14 Mr. Collins? And you were nodding when Ms. Rabinowitz
15 was speaking or expressing yourself. I'm not sure if that was a nod or a
16 shake.

17 PROSPECTIVE JUROR 005: Well, no. I mean by bringing the
18 allegations against the defendant, you're -- by him being here and
19 defending himself, he's saying that he's defending himself from this.
20 However he chooses to defend himself is his right, you know, and we
21 just have to listen to whatever's presented from both sides and go from
22 there, you know. It's a serious allegation what he's under and it's a
23 serious allegation to make if he didn't do it. So it's really our job, you
24 know.

25 MR. SPEED: What do you mean from both sides? Does he

1 have to say anything in response to these allegations?

2 PROSPECTIVE JUROR 005: Absolutely not, but whatever you
3 as the Defense will present to us, we will listen as we listen to the
4 Prosecution. It doesn't have to be him sitting on the -- that's his
5 prerogative.

6 MR. SPEED: Here's the concern. We don't have to present
7 anything. And the Court instructed all of you of that. I don't have to ask
8 any questions. Ms. Machnich doesn't have to ask any questions. We
9 don't have to say anything. Is it still not a good look for him to sit
10 silently and his counsel to sit silently in your opinion?

11 PROSPECTIVE JUROR 005: It's their burden of proof to prove
12 it beyond a reasonable doubt. So it is really your prerogative and your
13 right.

14 MR. SPEED: Mr. -- before I get to you, Ms. Carothers, Mr.
15 Montgomery, are you raising your hand on that point? Pass the
16 microphone to your right, gentlemen, please. Name and badge number,
17 sir? Hold on, hold on. Now, sir, thank you.

18 PROSPECTIVE JUROR 020: Marcus Montgomery, badge
19 number 20.

20 MR. SPEED: Go ahead.

21 PROSPECTIVE JUROR 020: I know it's your right not to -- he
22 doesn't have to say anything, but for me I would like to hear -- if I was
23 the defendant, I would want to say something. I would like to hear both
24 sides. If I'm just like going by one side, it just comes down to belief.
25 And I don't know, maybe they do. I don't know the person. So I would

1 have to decide whether he's guilty or innocent.

2 MR. SPEED: If he doesn't say anything or if a defendant in a
3 criminal case doesn't say anything, that puts the Prosecution in a case at
4 an advantage?

5 PROSPECTIVE JUROR 020: If he doesn't say anything?
6 Probably.

7 MR. SPEED: If he doesn't say a word. If his counsel doesn't
8 say a word, that would put the government, the State, at an advantage?

9 PROSPECTIVE JUROR 020: To me it does.

10 MR. SPEED: To you it does.

11 Ms. Carothers, go ahead. To your right, please, sir. Name
12 and badge number.

13 PROSPECTIVE JUROR 131: Carothers, 131. I'm going to play
14 the other side of this and let's assume that he -- well, he is of course
15 innocent until proven guilty. And anyone who is innocent, has the
16 possibility if they speak up and tell the people their side of the story, you
17 could always not believe what they're saying even if they are speaking
18 the truth.

19 It would be our perception on how we take in his story, his
20 body movements, his tone of voice. If we thought he was too
21 authoritarian, if we thought he may be intimidating, if we did not like the
22 way he was explaining his story, that might play against him even if he
23 was innocent. So whether or not he testifies, we have to take everything
24 into consideration.

25 MR. SPEED: What if he doesn't? Do you agree with the

1 other venire members who have spoken and said that it's not a good
2 look for him if he stays silent, that his silence would put the Prosecution
3 at an advantage?

4 PROSPECTIVE JUROR 131: I gotta believe -- I believe he has
5 the right to his silence, and I believe that you have to listen and make -- I
6 believe that the State needs to prove their burden in order to convict
7 him.

8 MR. SPEED: Ms. Velasquez, I saw that you were nodding
9 while the other venire members were speaking. Go ahead. Name and
10 badge number, please, ma'am.

11 PROSPECTIVE JUROR 051: Alexis Velasquez, badge number
12 51. I just feel like he, the defendant, should not have to -- you're asking
13 how would he prove his innocence. He doesn't. He does not prove his
14 innocence. You know, he has to be -- they have to prove that he's guilty,
15 so he does not have to prove anything. He doesn't have to prove that
16 he's innocent.

17 MR. SPEED: And unlike our other venire members who have
18 spoken, that doesn't put him in a bad light --

19 PROSPECTIVE JUROR 051: No.

20 MR. SPEED: -- or it's a bad look for him if he doesn't say
21 something?

22 PROSPECTIVE JUROR 051: No. I feel that if he would speak
23 up, if the defendant does speak up, even if he has -- what I'm trying to
24 say is that it could potentially -- he can potentially incriminate himself.
25 So I don't see how him not speaking up or the person, the defendant, not

1 speaking up and saying that they're not guilty or giving their side of the
2 story, I don't see how that makes him look bad or makes him look guilty.

3 MR. SPEED: Who agrees with that, that it's virtually
4 impossible to prove a negative no matter what you say? Mr. Flescher.
5 Plescher. Is that a P or an F? I think I did that yesterday.

6 PROSPECTIVE JUROR 176: It's a P.

7 MR. SPEED: It's a P. All right.

8 PROSPECTIVE JUROR 176: Bernie Plescher, badge number
9 176.

10 MR. SPEED: Mr. Plescher.

11 PROSPECTIVE JUROR 176: Yeah. I think it's virtually
12 impossible to prove a negative. What we're left with then is if not an
13 accuser, [indiscernible] and you didn't do anything.

14 MR. SPEED: Understood. That makes perfect sense.

15 PROSPECTIVE JUROR 176: That's essentially I think what
16 this is all about.

17 MR. SPEED: I'm going to get people and move the
18 microphone toward this side of our venire panel. So, Mr. Coleman first.
19 Go ahead.

20 PROSPECTIVE JUROR 050: I think that every day we --

21 MR. SPEED: Name and badge number, sir, I'm sorry?

22 PROSPECTIVE JUROR 050: David Coleman, badge number
23 50. I apologize. I think every day as people we have to make decisions
24 about things without seeing both sides of the coin.

25 For somebody to say there's two sides to every story, that's

1 somewhat true, but you don't always get to make your decisions with
2 both sides of the story. And every day you make -- every day one of us,
3 you know, we make decisions on getting only half of the information.

4 You have to apply your life experiences, you have to apply
5 your gut instincts, you have to apply what you've learned in life to make
6 decisions on something even when you don't have both sides of the
7 story. So you have to, I think as a juror, you would have to apply that,
8 your life experiences, your knowledge of past and present things, to
9 come to a decision.

10 The fact that the gentleman doesn't want to speak, that's
11 absolutely his right and you would have to make that decision based on
12 what's been placed in front of you. That's just my -- that's my
13 [indiscernible] on it.

14 MR. SPEED: To your left, sir, Ms. Argentine, you had your
15 hand up.

16 PROSPECTIVE JUROR 035: Yeah.

17 MR. SPEED: Name and badge number.

18 PROSPECTIVE JUROR 035: Kathryn Argentine, 35. So from
19 my English background I'm thinking of, you know, you make a claim in
20 an essay and you're saying, you know, this is what I'm trying to prove,
21 and there's two different ways to write that essay. You can just say your
22 side and say I'm going to prove X, Y, Z, and that's it. And you don't have
23 to acknowledge the other side.

24 Now, there is a way to do another essay with a counterclaim
25 and, you know, that would be representative of the Defense saying

1 something, but that essay's not necessarily better than the first one.

2 If the Prosecution has to prove X, Y, Z, and they only have X,
3 Y, then, you know, it's missing something. So I don't think the Defense
4 needs to say anything.

5 MR. SPEED: Mr. Hedges. Behind you, Ms. Argentine.
6 Behind you, Mr. Currie. Name and badge number, sir.

7 PROSPECTIVE JUROR 130: Garrett Hedges, 130. I just want
8 to clarify that he doesn't have to disprove anything, but all I would look
9 for is just not even his side of the story, at least just to say, to come out
10 and say that I didn't do it, that will be a big part of it. So not necessarily,
11 like I understand that he doesn't have to, you know, prove his innocence,
12 he's granted that, but he would need to say that, you know, that he didn't
13 do it, so.

14 MR. SPEED: To your right, sir, Ms. He, please. Name and
15 badge number, ma'am.

16 PROSPECTIVE JUROR 197: Bin He, badge number 197. I
17 totally second the juror number 130. Why? I mean even if the person
18 does not need to prove anything, why can under oath saying that I not
19 do it. I mean confidently show people.

20 MR. SPEED: So a person would have to, in a criminal case,
21 would have to say for himself that he didn't do something in order for
22 you to believe him?

23 PROSPECTIVE JUROR 197: Right. Like I said, if he didn't do
24 it, you cannot prove, then at least confidently say to the room under oath
25 that I didn't do it, let people see the attitude.

1 MR. SPEED: And his counsel would have to probably say
2 something, too; do you agree with that?

3 PROSPECTIVE JUROR 197: That's like I said yesterday, I
4 [indiscernible] so to me I always feel like both sides should present, but
5 now I know it's the right of the defendant, but it's hard for me to
6 understand that. But now I accept that's their right, but I second that
7 gentleman saying that.

8 MR. SPEED: It's still difficult for you to understand?

9 PROSPECTIVE JUROR 197: Yes.

10 MR. SPEED: I understand. Mr. Solis-Sauri. Name and badge
11 number, please.

12 PROSPECTIVE JUROR 018: Yes, sir. Sergio Solis-Sauri,
13 badge 18.

14 MR. SPEED: Yes, sir.

15 PROSPECTIVE JUROR 018: I don't know if I can fully express
16 this, but I'm going to --

17 MR. SPEED: Take your time, sir.

18 PROSPECTIVE JUROR 018: -- reference back to a very famous
19 case that I think we're all familiar with. A well-known celebrity, O.J.
20 Simpson, in the court of law it wasn't proven that he did it. But in the
21 public opinion I think you would find probably 50/50 with people saying
22 he did it and he didn't do it. And he didn't have to say anything.

23 And so I think the difference is between the courtroom and
24 the laws and our perception as human beings. And, furthermore, as I
25 think about your explanations of this situation, if I or any of us were to be

1 accused of something, we probably would want to have the right to not
2 say anything. And that is something -- that is the right that we have in
3 our court system and our laws.

4 And I think by reversing those roles it would be easier for us
5 to understand that if we were in that situation, we would want to
6 exercise the right to not say anything, that we wouldn't have to prove
7 what the plaintiff would have as trying to prove against us.

8 MR. SPEED: I haven't heard from Mr. Tobiasson. Pass the
9 microphone forward, please, sir.

10 PROSPECTIVE JUROR 154: James Tobiasson, 154.

11 MR. SPEED: Thank you, sir. Your thoughts on a defendant in
12 a criminal case having to share his side of the story.

13 PROSPECTIVE JUROR 154: Well, if it was me, my person, I
14 would shout it from the rooftops.

15 MR. SPEED: Like our other venire person?

16 PROSPECTIVE JUROR 154: Yes.

17 MR. SPEED: Do you think that that is a requirement for you,
18 though, as a juror in a case? You would have to hear the defendant
19 shout his innocence from the rooftops or claim it to anyone who would
20 listen?

21 PROSPECTIVE JUROR 154: No. I mean obviously not. It's
22 his right.

23 MR. SPEED: It's his right not to say anything?

24 PROSPECTIVE JUROR 154: Correct.

25 MR. SPEED: Should we be believing women when they

1 make these kinds of accusations?

2 PROSPECTIVE JUROR 154: It depends on the character of
3 the woman.

4 MR. SPEED: And what do you look for when you're making
5 character assessments?

6 PROSPECTIVE JUROR 154: Body language, just general
7 stuff.

8 MR. SPEED: What kind of general stuff, sir? I'm trying to --

9 PROSPECTIVE JUROR 154: The way she talks, the way she
10 [indiscernible].

11 MR. SPEED: Do you think motivation to say something that's
12 not true is something that you would consider when making a character
13 assessment?

14 PROSPECTIVE JUROR 154: Yes.

15 MR. SPEED: Is that a yes? I can't hear you, sir.

16 PROSPECTIVE JUROR 154: Yes.

17 MR. SPEED: All right. And do you consider yourself, I didn't
18 ask you this question yesterday, a leader or a follower in these kinds of
19 situations where you're making a decision?

20 PROSPECTIVE JUROR 154: A leader, but you have to listen
21 to the followers.

22 MR. SPEED: And how would you do that?

23 PROSPECTIVE JUROR 154: By asking them.

24 MR. SPEED: Asking them what kinds of questions?

25 PROSPECTIVE JUROR 154: It depends on what we were

1 doing.

2 MR. SPEED: Okay. You've been pretty silent here. If you
3 and Ms. Argentine, behind you, had a disagreement about a particular
4 point, how would you go about reaching consensus if the two of you
5 were selected to serve as jurors in this case; what are some of the ways
6 that you would deliberate?

7 PROSPECTIVE JUROR 154: By talking.

8 MR. SPEED: Okay.

9 PROSPECTIVE JUROR 154: Going over the transcript, the
10 facts, whatever, the testimony.

11 MR. SPEED: And you think you can do that in this case?

12 PROSPECTIVE JUROR 154: Yeah.

13 MR. SPEED: To your left, please, sir, and one row behind
14 you to Mr. Agosti -- Agosta. Another person we haven't heard from in
15 some time. Your thoughts, sir?

16 PROSPECTIVE JUROR 188: Salvatore Agosta, 188.

17 MR. SPEED: I saw you nodding sometimes and just so that
18 we're clear, your name and badge number for the record again.

19 PROSPECTIVE JUROR 188: Salvatore Agosta, 188.

20 MR. SPEED: I saw you nodding a few times and agreeing
21 with some of the people who were speaking earlier. Your thoughts on
22 some of those things if I didn't get to you?

23 PROSPECTIVE JUROR 188: I've got some mixed thoughts,
24 actually. I've always believed that there are two sides to every story.
25 And to say that you have to make a decision without hearing both sides,

1 kind of conflicts with me because I think that in order to make a sound
2 decision on something, you actually have to hear both sides of the story.

3 Mr. Collins mentioned earlier about, you know, somebody
4 from 35 years ago bringing up something now. But they also just
5 mentioned that, you know, you don't hear -- you can't always make a
6 decision from both sides because you don't hear it. Well, in that case
7 then you can't make a decision about the person from 35 years ago
8 saying something and not making a decision whether they're right or
9 wrong.

10 So in my -- for me, it would be better to hear the defendant
11 say something for himself. And I, you know, I, again, I would like to hear
12 both sides of the story. I believe there is two sides to every story.

13 MR. SPEED: A defendant -- I'm sorry, sir, were you done?

14 PROSPECTIVE JUROR 188: Go ahead.

15 MR. SPEED: A defendant sitting silently in a criminal case,
16 that would raise prejudice in your mind against that person?

17 PROSPECTIVE JUROR 188: It would raise questions, yes.

18 MR. SPEED: Okay. Questions bias against him?

19 PROSPECTIVE JUROR 188: Correct.

20 MR. SPEED: Because you don't hear his side of the story?

21 PROSPECTIVE JUROR 188: Correct.

22 MR. SPEED: Mr. Ball behind you, I see your hand, sir. Name
23 and badge number?

24 PROSPECTIVE JUROR 124: Christoffer Ball, badge number
25 124. I would just like to make a quick comment on the same subject.

1 MR. SPEED: Go ahead, sir.

2 PROSPECTIVE JUROR 124: Personally if I was in this
3 situation I would really appreciate not having the right to not speak, but
4 as for my counsel, for example, if I had you, I would expect you to
5 defend me to the best of your ability by giving another perspective on
6 certain evidence because for someone that is not trained, they couldn't
7 accurately give that position.

8 MR. SPEED: So -- and if I'm wrong here, sir, feel free to
9 correct me.

10 PROSPECTIVE JUROR 124: Of course.

11 MR. SPEED: You think that it is a person's right to be silent,
12 but a defendant, if he has counsel representing him, should have that
13 counsel present something of a defense?

14 PROSPECTIVE JUROR 124: If there is a need for a defense.
15 So if let's say if there was evidence in a certain case, I would still expect
16 you to defend me and have a cross-examination. That's why we have it.

17 MR. SPEED: And if a person's lawyer chooses not to, would
18 that create a prejudice or a bias in your mind against the defendant?

19 PROSPECTIVE JUROR 124: I don't believe so because, again,
20 it would also be based off of facts.

21 MR. SPEED: Was that a hand? Yes? In front of you, sir, is
22 who?

23 PROSPECTIVE JUROR 076: Jocelyn Parker. Jocelyn Parker,
24 badge 76.

25 MR. SPEED: Go ahead.

1 PROSPECTIVE JUROR 076: I just want to say like I agree with
2 some of the sentiments earlier in that I don't believe that the defendant
3 has to say anything, or his counsel say anything at all because it's not
4 my job as -- if I was a juror to like determine why or why not they
5 wouldn't decide to say something. There could be a multitude of
6 reasons, but they're deciding not to and that's their right, so I feel that
7 it's the accusing side's job to prove that whatever they're saying that this
8 person did, it's like their job to prove that.

9 MR. SPEED: I would not create a prejudice in your mind if
10 you didn't hear from the defendant?

11 PROSPECTIVE JUROR 076: No.

12 MR. SPEED: It would not create a bias?

13 PROSPECTIVE JUROR 076: No.

14 MR. SPEED: It would not make you partial against him?

15 PROSPECTIVE JUROR 076: No.

16 MR. SPEED: Ms. Rafferty, we haven't heard from you very
17 much. Name and badge number, please, ma'am. I saw that you nodded
18 a few times. I'd like to hear some of your thoughts on these issues.

19 PROSPECTIVE JUROR 115: Rhonda Rafferty, badge 115. I
20 don't feel I'm knowledgeable enough about the law to presume why a
21 defense team would choose to present their case as they would. And
22 although I would defend myself, we were asked on Wednesday if we
23 would be able to put aside our own experiences or values and go by the
24 letter of the law. And so I think that's what our responsibility would be
25 as jurors.

1 MR. SPEED: You're not as interested in hearing the other
2 side of the story as some of your other venire members?

3 PROSPECTIVE JUROR 115: I think I trust the process. You
4 would make the decisions you would to defend your client as you saw fit
5 and whatever you presented and the other side presented is what we
6 have to work with, whether it's we might want more, but we only have
7 what we have to work with.

8 MR. SPEED: Would you want more in a criminal situation
9 when a defendant does not shout from the mountaintops that he is not
10 guilty?

11 PROSPECTIVE JUROR 115: No, I think we have to trust that
12 you've made the decisions you have for a reason.

13 MR. SPEED: Behind you one row and to everyone's left, Mr.
14 DiGiovanni . Name and badge number, please, sir.

15 PROSPECTIVE JUROR 146: Michael DiGiovanni, number 146.
16 The Prosecution's going to present witnesses and evidence and
17 whatever. And we're going to be looking at that and listening to that.
18 And then if your side does absolutely nothing, never says a word, then
19 the Judge is going to explain to us what the law is and how we weigh
20 that evidence and if that's what we have to go on, that's what we have to
21 go on. We make a choice.

22 It's your right, the defendant's right, not to testify on his own
23 behalf, which is fine. It's not going to affect me one way or the other. It
24 depends on how good a case they bring up.

25 MR. SPEED: On your left, Ms. Kennedy.

1 PROSPECTIVE JUROR 183: Yes.

2 MR. SPEED: Have not heard from you this morning. Name
3 and badge number, please, ma'am.

4 PROSPECTIVE JUROR 183: Priscilla Kennedy, 183.

5 MR. SPEED: Do you agree with the members of the group
6 who say that they need to hear another person or the defendant's side of
7 the story or what are your thoughts on these issues?

8 PROSPECTIVE JUROR 183: Well, first of all, I wouldn't want
9 to be a witness, you know. I mean it's a very stressful thing. And if I was
10 in trial I do understand that. Attorneys are tricky and they can, you
11 know, they're going to try to take what you say and make what they
12 make of it, right? Make something of it. They can twist your words. So
13 it wouldn't surprise me, I guess, that someone would choose not to
14 testify because of that.

15 Cross-examination, I'm assuming, I've never been
16 cross-examined, it could be difficult even as an innocent person. So it
17 wouldn't surprise me. That's what -- it wouldn't surprise me. It wouldn't
18 surprise me if you, as defense counsel, felt they hadn't proved their case.
19 That wouldn't surprise me

20 Again, as this gentleman said, it would be up to what type of
21 evidence the other side presented and how that I thought -- you know,
22 how credible I thought it was and judge from that. But it would not
23 surprise me, and I obviously wouldn't hold it against them.

24 MR. SPEED: You would not hold it against someone --

25 PROSPECTIVE JUROR 183: No.

1 MR. SPEED: -- if they chose to be silent?

2 PROSPECTIVE JUROR 183: No. Like I said, I -- you know,
3 everyone here probably has had their words or something they said
4 used against them at some point, maybe, you know.

5 MR. SPEED: But that's not something that you would require
6 if you were chosen to serve as a juror in this case, to hear a defendant's
7 side of the story?

8 PROSPECTIVE JUROR 183: No.

9 MR. SPEED: It doesn't paint him in a bad light, or you don't
10 think that it's not a good look for him if he remains silent?

11 PROSPECTIVE JUROR 183: No.

12 MR. SPEED: While we're on those issues --

13 PROSPECTIVE JUROR 050: I've got a comment on that issue
14 if I could.

15 MR. SPEED: That was Mr. Coleman, yes?

16 PROSPECTIVE JUROR 050: Coleman, yes.

17 MR. SPEED: To your right and one row behind everyone.
18 Thank you, ladies and gentlemen.

19 PROSPECTIVE JUROR 050: You can't say you haven't heard
20 from me today. I'm fortunate.

21 MR. SPEED: Go ahead, sir.

22 PROSPECTIVE JUROR 050: Just a point I'd like to make for
23 the members that would feel better or would be more comfortable with
24 the fact to have the defendant stand and as you said, shout from the
25 mountaintops. The whole idea of that is awesome.

1 If he's shouting, and I mean no disrespect in any way, if he's
2 shouting from the mountaintops in English and every one of us
3 understand it, when you're proclaiming your innocence or your guilt on
4 something, your body language, the way you say it, everything is
5 relative to that comment taking it in from my perspective.

6 If that gentleman sits up there and says he's innocent
7 through an interpreter, I'm not getting what I'm after, do you follow? I'm
8 not saying that I require that, I'm just -- because people in the panel have
9 said I would like to hear him say hey, I'm not guilty.

10 You also have to consider the fact that if he's going to stand
11 up and say he's not guilty and that gentleman does not speak English,
12 then you're going to be getting that I'm not guilty through an interpreter.
13 You're not getting the same effect. Does that make sense?

14 MR. SPEED: It does, sir. It certainly does.

15 PROSPECTIVE JUROR 050: You know, you're not -- if you're
16 striving for the need to hear him say I didn't do this, now if I look at you
17 and say I didn't do this, I'm telling you, I didn't do this, and the
18 interpreter gets up and goes I didn't do this, I didn't do this, is it the same
19 effect? Are you getting the same -- are you getting what you're looking
20 for out of the interpreter, which you're actually looking for from the
21 defendant?

22 I personally don't understand Spanish. I don't speak it. So
23 for him to say he's not guilty in his native tongue, you know what I'm
24 saying? It's just something to consider in the fact of I need him to tell me
25 he's not guilty for those that need that.

1 MR. SPEED: Like Mr. Plescher said yesterday, it's hot
2 outside, it's hot outside.

3 PROSPECTIVE JUROR 050: You're going to get -- you know,
4 if you're looking for him to tell you he's not guilty, he didn't do it, if you
5 don't understand his language, you're not going to get the same effect
6 out of the interpreter telling you that.

7 MR. SPEED: And to reiterate, to reiterate, that's not
8 something that you would require if you were selected, sir?

9 PROSPECTIVE JUROR 050: Oh, absolutely not. I'm just
10 touching on the point of I'm hearing others saying that that's something
11 they may need and that was how it struck me was, when somebody said
12 hey, I need him to tell me he didn't do it, well the way it went through
13 my head was well, if he's going to do that, he's going to have to do that
14 through an interpreter and I'm not going to get -- you're not going to get
15 the same result out of that.

16 You're not going to get what you're grasping for with just a
17 look on his face, the emotion when he says it, the body language when
18 he says it, because it's all part of, you know, somebody looking at you
19 and saying where they say I love you or they say hey, I really love you,
20 it's not going to be the same effect. It's not going to have -- it's not
21 going to carry the same weight in my opinion.

22 MR. SPEED: To your left, sir, Mr. Eschardies.

23 PROSPECTIVE JUROR 166: Gene Eschardies, 166.

24 MR. SPEED: I saw that you were posing like the thinker when
25 Mr. Coleman was thinking -- or speaking. Your thoughts on these

1 issues?

2 PROSPECTIVE JUROR 166: Well, if someone chooses not to
3 represent themselves, then you take the burden of proof on the other
4 end. I don't feel that somebody needs to shout out in English just for me
5 to get their point. I don't feel they even have to speak. And I could also
6 accept someone going through an interpreter. I mean that's just the way
7 some lifestyles are right now, and we have to accept that and take it as
8 that.

9 MR. SPEED: Do you think that if someone did not say
10 anything, that it would place the Prosecution in a criminal case at an
11 advantage?

12 PROSPECTIVE JUROR 166: No.

13 MR. SPEED: Even though you don't require it?

14 PROSPECTIVE JUROR 166: No.

15 MR. SPEED: Ms. Schultz, we haven't heard from you.

16 PROSPECTIVE JUROR 045: Good morning.

17 MR. SPEED: Good morning. I feel badly now because we
18 haven't heard from you and you're saying good morning. Your thoughts
19 on this.

20 PROSPECTIVE JUROR 045: Arlene Schultz, badge number
21 045.

22 UNIDENTIFIED SPEAKER: It's afternoon.

23 MR. SPEED: It's officially afternoon.

24 PROSPECTIVE JUROR 045: Good afternoon. I personally
25 believe that the defendant being here says a lot. He does have his right

1 to not have to say anything. That is his right. I believe the juror, I don't
2 know her badge number, that we do have to trust you, we do have to
3 trust the evidence presented to us, we have to go by that, we have to
4 respect the law and give him his moment.

5 We have to decide, we need to take that information given to
6 us and we need to process that and make a, you know, come to a
7 decision. We have someone's life here. And so I don't think he should
8 be bullied into speaking. He doesn't have to shout from the rooftop, the
9 mountaintop, whatever top you want to shout, he does not because
10 there are people that would scream from the mountaintop and they're
11 not telling the truth and they're the ones that sit back and say well, you
12 know, the burden of proof is in the pudding or however you say it.

13 So for me I'm going to follow the rules and I will give him a
14 fair chance.

15 MR. SPEED: I'm probably going to get several hands on this
16 next question, probably from -- I would anticipate from our teachers, our
17 educators. This case might be difficult. I'll tell you what, Ms. Schultz,
18 why don't you pass the microphone to your left to Ms. Argentine.

19 PROSPECTIVE JUROR 035: Good afternoon. Argentine, 35.

20 MR. SPEED: We'll save a few seconds that way. You all
21 were told what this case is about yesterday morning, afternoon I believe
22 it was. You may hear testimony from children. And that may be
23 difficult. The children may express themselves the way that --

24 MS. DIGIACOMO: Objection, Your Honor. May we approach?

25 [Sidebar begins at 12:04 p.m.]

1 MS. DIGIACOMO: Again, he's getting into facts
2 [indiscernible].

3 MR. SPEED: It's just --

4 MS. DIGIACOMO: He wouldn't let us do it.

5 MS. DIGIACOMO: It's just like that --

6 THE COURT: Well, no that's --

7 MR. SPEED: -- rapid testimony. If you see testimony from
8 children who are crying, and I'm not 12 or 13 year old's, just young
9 people, crying real bad to make you weigh their testimony more heavily
10 than you would someone else who expresses themselves different.
11 Emotional displays from young people tend to color your perception of
12 their testimony.

13 MS. DIGIACOMO: And I don't think he needs to go young
14 people. He can just do in generalities. When he's talking about young
15 people, he's now getting into how they're going to feel about the kids
16 who come in and testify in this case. And it needs to be more general.

17 MR. SPEED: Well, the children aren't 12 or 13 anymore, and
18 the Court did say that I can refer to children.

19 THE COURT: I'm going to allow you to inquire whether or
20 not that would prejudice them in any way testimony, whether it's
21 emotional or not from anyone. I don't think you need to because the
22 mother is going to be emotional. We've already seen that. Whether that
23 will affect their testimony, I'll allow that, so overruled.

24 [Sidebar ends at 12:06 p.m.]

25 MR. SPEED: I believe Ms. Argentine had a microphone, yes?

1 PROSPECTIVE JUROR 035: Yep.

2 MR. SPEED: Name and badge number again?

3 PROSPECTIVE JUROR 035: Kathryn Argentine, 35.

4 MR. SPEED: If you hear testimony from our witnesses that
5 becomes emotional and that is clearly demonstrated by the witnesses
6 while they're testifying, how will that color your perception of what they
7 have to say?

8 PROSPECTIVE JUROR 035: I would actually expect anybody
9 testifying to be emotional because I think this is an uncomfortable and
10 stressful situation. So I would take the emotion into consideration, but I
11 would also be listening to what exactly they're saying and what we're
12 being presented with.

13 If there were, per se, a victim testifying, it would be
14 emotional, but it could be just as uncomfortable for even a police officer.
15 Maybe it's his first time up on the witness stand and he's nervous that he
16 doesn't want to make a mistake or say something wrong. So I think I
17 would still listen to what exactly they're saying.

18 MR. SPEED: And what about crying from witnesses?

19 PROSPECTIVE JUROR 035: I don't necessarily think that
20 would make it 100 percent believable still. I would still want to listen to
21 the whole thing.

22 MR. SPEED: Who believes that when they see witnesses
23 crying on the witness stand, that that would change the way that they
24 view their testimony, view it more favorably after someone sheds some
25 tears?

1 PROSPECTIVE JUROR: I think it goes to tone, so it would be
2 taken into consideration, but it's not an end all deal, just like the hot or
3 hot situation. It's a factor, it's not a determining factor.

4 MR. SPEED: Who else sees tears or emotional displays as a
5 factor in how they view witness' testimony? Mr. Ball, is that a hand? Go
6 ahead and raise it up. Go ahead, sir, name and badge number.

7 PROSPECTIVE JUROR 124: Christoffer Ball, badge 124. I
8 kind of agree, it's just a -- it's just a factor of the person's character and
9 how they present themselves, but it doesn't determine whether or not it
10 is what they're saying is factual.

11 MR. SPEED: Now, we've heard a great deal about the factors
12 that all of you would consider when weighing the witness' testimony and
13 the evidence in this case if you were selected as jurors.

14 Something that we have to touch on here, and we touched
15 on it a little bit in some of the other aspects of the questioning that I've
16 had for all of you. But my client is an Hispanic person. Does his race or
17 would his race play a role in how you determine or how you weigh the
18 evidence in this case?

19 PROSPECTIVE JUROR 124: Are you asking me?

20 MR. SPEED: Yes, sir.

21 PROSPECTIVE JUROR 124: Oh, no, not at all.

22 MR. SPEED: The microphone is still yours. Go ahead. Name
23 and badge number.

24 PROSPECTIVE JUROR 124: Oh, Christoffer Ball, badge
25 number 124. By no means necessary would race affect my judgment of

1 the person.

2 MR. SPEED: Do you have any views of Hispanic men that
3 you bring from your everyday experiences into the court?

4 PROSPECTIVE JUROR 124: No, sir.

5 MR. SPEED: Does anyone? A show of hands. Mr. Currie, in
6 front of you. Name and badge number, sir.

7 PROSPECTIVE JUROR 165: Andrew Currie, 165. They're
8 hard workers. I work with a lot of them in a restaurant, so I can say that.

9 MR. SPEED: Would you consider that -- you say they are
10 hard workers. Would you consider that a characteristic of some of the
11 Hispanic men that you've known?

12 PROSPECTIVE JUROR 165: Yes, sir.

13 MR. SPEED: Do you think that that is an expectation that the
14 Hispanic men that you've known have or members of their families?

15 PROSPECTIVE JUROR 165: Probably not.

16 MR. SPEED: Probably not. Why is that?

17 PROSPECTIVE JUROR 165: I don't know.

18 MR. SPEED: Anyone else? I thought I heard someone agree
19 with that, hard workers. Ms. Argentine, you have the -- no?

20 PROSPECTIVE JUROR 035: Not the hardworking thing.

21 Kathryn Argentine, 35. Not the hardworking comment, but the students I
22 work with are mostly, if not all, Hispanic. And I have noticed that in the
23 Hispanic culture they have a strong sense of family value. But that's the
24 only thing I would say, and race would have no impact of my decision-
25 making.

1 MR. SPEED: Family value, accountability, would you include
2 that under the umbrella of family values?

3 PROSPECTIVE JUROR 035: Yes. I would say, you know, at
4 parent teacher conferences and things like that, we typically see more of
5 both parents present or more dads and things coming to events than
6 some other race.

7 MR. SPEED: But the expectation is for their children to work
8 hard?

9 PROSPECTIVE JUROR 035: Yes.

10 MR. SPEED: Have you seen examples where many of your
11 students are first generation Americans or first time citizens, the children
12 are the citizens?

13 PROSPECTIVE JUROR 035: Absolutely and probably a
14 majority.

15 MR. SPEED: And in those families the expectation for those
16 children is to work hard, yes?

17 PROSPECTIVE JUROR 035: Yes.

18 MR. SPEED: Who agrees with that, our other educators? Mr.
19 Coleman to your right, ma'am. Name and badge number, sir?

20 PROSPECTIVE JUROR 050: David Coleman, badge number
21 50. I totally agree with the hardworking family values. I have a few
22 Hispanic friends. Their families are first, their values are for work as
23 their work ethics are. And, again, generally speaking, of course not
24 every single one, but generally speaking the ones that I know, the ones I
25 work with, they're hardworking, responsible family valued people.

1 MR. SPEED: And they have those expectations for their
2 children in your experience?

3 PROSPECTIVE JUROR 050: I believe so. I mean that's the
4 only way that -- I mean that's why most of the adults I work with have
5 become the way they are is because their parents taught them to be
6 strong, hard-working family-orientated human beings.

7 MR. SPEED: Ms. Velasquez, you had your hand up for that?

8 PROSPECTIVE JUROR 051: Alexis Velasquez, badge number
9 051. I will not weigh the fact that he's Hispanic at all because there are
10 hardworking Hispanics and there are non-hardworking Hispanics, just
11 like black people, white people, whoever, the race does not make any
12 difference at all.

13 MR. SPEED: May I have the Court's indulgence for a while?

14 THE COURT: Okay.

15 MR. SPEED: Just a moment.

16 THE COURT: Sure.

17 [Counsel confer]

18 MR. SPEED: May we approach, Your Honor?

19 THE COURT: Yes.

20 [Sidebar begins at 12:15 p.m.]

21 MR. SPEED: Are you thinking about [indiscernible]? Are we
22 still powering through or was the Court going to give them a break?

23 MS. DIGIACOMO: We're powering through.

24 THE COURT: Well, it's time for a short break. I mean it's
25 not --

1 MR. SPEED: So short break.

2 THE COURT: -- we're not going to give them a lunch, yeah.

3 MR. SPEED: Okay.

4 THE COURT: Yeah.

5 MR. SPEED: Then I can let them know that we're done.

6 MS. DIGIACOMO: Yeah, I'll just -- I mean we have some

7 cause challenges.

8 THE COURT: Right.

9 MS. DIGIACOMO: But other than those we pass.

10 THE COURT: -- okay. And you still have two to examine.

11 MS. SUDANO: I know. Let's just take a break and deal with

12 the cause, because I can --

13 THE COURT: Well, I get that.

14 MS. SUDANO: -- [indiscernible] and do everything at the

15 same time.

16 THE COURT: I agree with you, I'm just asking you still -- so I

17 remember because it's -- all right. So you have two. So we'll deal with

18 that. I'm going to give them 15 minutes because I'm sure it's going to

19 take that long to discuss some of that stuff. All right.

20 [Sidebar ends at 12:15 P.M.]

21 THE COURT: All right. Ladies and gentlemen, we're going to

22 take a recess. I'm going to give you 15 -- this will be your lunch. Let's

23 make it 20 minutes. We have some things we want to talk about.

24 During this recess, you're admonished do not talk or

25 converse amongst yourselves or with anyone else on any subject

1 connected with this trial or read, watch or listen to any report of or
2 commentary on this trial or any person connected with this trial by any
3 medium of information, including, without limitation, newspapers,
4 television, radio or internet. Do not form or express any opinion on any
5 subject connected with the trial, until the case is finally submitted to you.
6 Twenty minutes.

7 [Prospective jurors out at 12:16 p.m.]

8 [Outside the presence of the prospective jurors]

9 THE COURT: All right. We're on the record outside the
10 presence. Do you guys want to talk in the off chance you might agree on
11 one or two?

12 MS. DIGIACOMO: Well, we could -- they can go and then we
13 can see. I --

14 THE COURT: Okay.

15 MS. DIGIACOMO: There wasn't any like yesterday that I was
16 like yeah, they need to go.

17 THE COURT: Okay. Challenge for cause?

18 MS. MACHNICH: So Your Honor, our challenges for cause. I
19 will start at Seat 1 and work down. I have Ms. Rabinowitz, who is Seat 1,
20 Number 185. She testified that if the Defendant doesn't testify, that she
21 would assume that he was guilty. I thought she was pretty clear on that
22 and that alone is enough for a strike for cause. She's not qualified to be
23 a juror, if that is her true feeling, and we discussed with her specifically,
24 that issue and she specifically did say those words.

25 Do you want me to do all of them or let them respond to

1 each one?

2 THE COURT: Let's do them one at a time.

3 MS. MACHNICH: Okay.

4 MS. DIGIACOMO: And I'm sorry. I did not hear those strong
5 words. I did -- she did say that if he doesn't speak, it could hurt him in
6 her eyes, but I would like the chance to traverse.

7 MS. MACHNICH: Okay. And Your Honor --

8 THE COURT: And --

9 MS. MACHNICH: -- I would say that if what the State said is
10 correct, that is enough for a strike for cause. There should be no
11 prejudice based upon him testifying or not. But we'll submit on
12 traversing.

13 MS. DIGIACOMO: But she also said she knows he doesn't
14 have to testify, so that's why I'd like the chance.

15 THE COURT: Yeah.

16 MS. MACHNICH: Acknowledge and feeling --

17 THE COURT: I'll let you traverse and --

18 MS. MACHNICH: Okay.

19 THE COURT: -- it says speaks of guilt, which is very
20 borderline, but I think certainly, they're allowed to traverse and --

21 MS. MACHNICH: That's fine.

22 THE COURT: -- and all of the cases, they generally -- the
23 Supreme Court wants them to be allowed to traverse. Doesn't mean it'll
24 change anything. Okay. Who is next?

25 MS. MACHNICH: Next we would challenge for cause in seat

1 number --

2 THE MARSHAL: Excuse me, counsel.

3 MS. MACHNICH: Yes.

4 THE MARSHAL: Judge, we have one of the jurors who was
5 just notified of an emergency at home. Her boyfriend of 12 years --

6 THE COURT: In the box or no?

7 THE MARSHAL: Yes. Has just had a medical emergency.

8 And she says it's happened a while ago, but --

9 THE COURT: All right. Who is it?

10 THE MARSHAL: -- he's at the hospital. Priscilla Kennedy,
11 Badge Number 0183.

12 THE COURT: All right.

13 MS. SUDANO: Seat 21.

14 THE COURT: Let her go. I'm not going to keep somebody
15 here who has a medical emergency. Even if it's a family member, I --
16 okay.

17 MS. MACHNICH: All right. Your Honor, our next strike for
18 cause would be in Seat Number 4, Mr. Hedges, Badge Number 130. He
19 said that even when Mr. Speed tried to clarify with him and said he do --
20 do you understand that he doesn't have to disprove anything, the
21 potential juror, Mr. Hedges said he would need -- meaning he, the
22 Defendant, would need to say he didn't do it, to be found not guilty. He
23 was very clear and unequivocal and therefore, I believe that at this time,
24 it would be proper to release him for cause.

25 THE COURT: State?

1 MS. DIGIACOMO: The State has no objection to Mr. Hedges,
2 because he said the statements that were unfair to the State as well.

3 THE COURT: Okay, 130 is off. He's in Seat 4.

4 MS. MACHNICH: Next, Your Honor, I would like to address
5 Ms. He. Obviously I have already stated some issues we had yesterday.
6 I will address only what came up today. She is seat 6, 197. And I will
7 only argue what has been said since our argument yesterday and what
8 she volunteered. She did raise a hand. It was not a cold call. She said
9 that she understands --

10 THE COURT: A cold call?

11 MS. MACHNICH: Like law school, a cold call.

12 THE COURT: Okay. I've heard that in sales.

13 MS. MACHNICH: Yeah.

14 THE COURT: I don't know if I -- okay.

15 MS. MACHNICH: Cold call. She was not picked out --

16 THE COURT: Go ahead. I get it. I was just -- go ahead.

17 MS. MACHNICH: Not singled out by Mr. Speed. Okay. That
18 she understands that even if he does not need to prove anything, he
19 must say confidently under oath he didn't do it. She said that, again --
20 reiterated from yesterday that the American legal system is difficult to
21 understand, and she was having issues while she is hearing the laws for
22 the first time and would try to follow them. They're difficult for her. It
23 would be har -- she multiple times said it was hard for her.

24 But I think specifically today, she said that he would need to
25 say confidently under oath he didn't do it and therefore, it -- we believe

1 that it was for cause yesterday, but now it's certainly risen to the level of
2 for cause. She is not going to be able to set aside any preconceived
3 ideas of her home country's legal system and she would require, herself
4 require him to testify to find him not guilty, even knowing that she is a
5 very intelligent woman, who would follow the law.

6 THE COURT: State?

7 MS. DIGIACOMO: Well, I disagree, because yes, she made
8 the comment about how she thinks if somebody was innocent, that they
9 would, you know, say under oath they are. She also said, "But I know he
10 does not have to speak. And she understood that. So I don't think
11 there's enough to strike her for cause.

12 MS. MACHNICH: And Your Honor, I would only say it's
13 enough that she said she feels that way. Saying I understand the law,
14 the but I still feel this way is enough to strike someone for cause. Just
15 saying someone says they understand that law, doesn't mean that they
16 will put -- will be able to put aside their feelings. And I -- and if the --
17 obviously we'll submit on traversing.

18 THE COURT: All right. I'm going to let her talk to Ms. He.
19 Who else?

20 MS. MACHNICH: Okay. Your Honor, with regard to our next
21 strike for cause, we would put forward Mr. Montgomery, who's in Seat 8,
22 Number 020. He said he would like to hear both sides and the State
23 would be at an advantage.

24 MS. DIGIACOMO: And Your Honor, we'd like to traverse.

25 MS. MACHNICH: Okay. Next would be seat 14, Mr. Currie,

1 Number 165. And he -- his specific statement was that he would be
2 suspect, if someone did not defend themselves. And I thought he also
3 said something the first day. I'm going to go back. Just a second.
4 Maybe not. I thought that there was --

5 MS. DIGIACOMO: I don't have that.

6 MS. MACHNICH: -- a comment about being fair and
7 impartial as well, but I can't find it, so --

8 MS. DIGIACOMO: I don't -- yeah, I don't have that with Mr.
9 Currie.

10 MS. MACHNICH: I don't -- I can't find it, obviously, but I
11 would say that today during questioning, his statement was he would be
12 suspect, if a defendant did not defend himself. He asked to
13 unequivocally state that he would follow the law and not require and not
14 consider a defendant not testifying. That is the law and he said he
15 couldn't do that, to --

16 THE COURT: Well, I agree. The problem is nobody seems to
17 want to ask those direct questions, but I understand why and so yeah, I'll
18 let you traverse him.

19 MS. MACHNICH: And finally, Your Honor, I believe we only
20 have one more. This would be Seat 13, Mr. Augusta. Let me see. This
21 is Number 188. Initially he said he had mixed thoughts and there are
22 two sides to every story, which gives the Defense pause, because there's
23 one side that is the only one that has to be told. But he said to decide
24 without both is conflicting to him. To make a sound decision, he would
25 need to hear both, and it would be better for the Defendant to say

1 something for himself and it would raise questions of him, and he would
2 have bias and upon further questioning by Mr. Speed, he said that he
3 would have bias against the Defendant, if he didn't testify.

4 THE COURT: State.

5 MS. DIGIACOMO: And Your Honor, I would just ask to be
6 able to traverse.

7 THE COURT: Well, that is what I wrote on this. It would raise
8 questions. And I realize it was --

9 MS. DIGIACOMO: And Your Honor --

10 THE COURT: Wait. Let me finish. It would -- it was in
11 response to Mr. Speed, where he said would it -- or would you be bias,
12 but he did agree that he would be bias.

13 MS. DIGIACOMO: Right. But he was agreeing with Mr.
14 Speed's words. I'd like a chance to traverse.

15 THE COURT: All right.

16 MS. MACHNICH: And I believe that those are all of our
17 strikes for cause, Your Honor. Do you want us to pass the panel at this
18 time with regard to the remaining people, other than the open seats we
19 have, or would we like to put that aside for a later time?

20 THE COURT: I'm not sure I -- your -- these are your
21 challenges for cause.

22 MS. MACHNICH: Yep.

23 THE COURT: You'll get to talk to these new people the same
24 way, but I'm not sure --

25 MS. MACHNICH: Yeah, we pass --

1 THE COURT: -- I understand --
2 MS. MACHNICH: -- the remaining panel.
3 THE COURT: -- what you're asking.
4 MS. MACHNICH: At this time, we would pass the remainder
5 of the panel --
6 THE COURT: Right.
7 MS. MACHNICH: -- for cause.
8 THE COURT: Okay.
9 MS. MACHNICH: I wasn't sure if Your Honor wanted me to
10 do that at this time.
11 THE COURT: Okay. Yeah.
12 THE CLERK: Your Honor, just for clarification.
13 THE COURT: Sure.
14 THE CLERK: We're replacing Seat 21, 4 and --
15 MS. DIGIACOMO: That's it.
16 THE CLERK: That's it. Okay. Thank you.
17 THE COURT: Yeah. At this point. So give them the names
18 of the new ones and then let's take a --
19 THE CLERK: Next to replace Seat 21 will be Badge 235,
20 James Linares and replacing seat 4, badge 238, Christopher
21 Lamoureaux.
22 [Pause]
23 THE COURT: Not be pessimistic, or maybe I do, but just to --
24 we -- if I grant, 1, 2, 3, 4, 5 and then there's challenges for these new 1, 2,
25 3, 4, we're really close to not having anymore. Okay. Let optimistic or

1 pessimistic take a break.

2 [Recess taken from 12:28 p.m. to 12:41 p.m.]

3 [Outside the presence of the prospective jurors]

4 MR. SPEED: I think so, Your Honor.

5 MS. SUDANO: Yes, Your Honor.

6 THE COURT: So you did tell that -- whatever she could go,
7 right, Steve.

8 MR. SPEED: Kennedy.

9 THE MARSHAL: Yes, Judge.

10 THE COURT: Okay. Maybe I forgot to say that.

11 Did you have something?

12 MR. SPEED: No. We pass the remainder for cause, Your
13 Honor. I think we're going to -- I guess we're starting with your traverse
14 of the others.

15 THE COURT: I think -- yeah, we should it outside the
16 presence.

17 MR. SPEED: Okay.

18 THE COURT: Who's, I guess in order I'll say, not first, but
19 185.

20 MS. MACHNICH: Yeah.

21 THE COURT: Ms. Rabinowitz, can you get her, please?

22 THE MARSHAL: Ms. Rabinowitz.

23 Follow me, ma'am.

24 PROSPECTIVE JUROR 185: Okay.

25 THE COURT: As you saw previously, we've needed to talk to

1 individual jurors sometimes and we're going to be doing more of that.
2 So we're not picking on you. You were sitting here. You saw at least
3 yesterday we did I don't know how many, so it's just part of the process.

4 Okay. State.

5 MS. DIGIACOMO: Thank you.

6 All right. Ms. Rabinowitz, when we were talking -- or counsel
7 was talking about, you know, what you would need, or what you would
8 like to see in this case when we're talking about, you know, you could be
9 fair to both sides, and you would like to see both sides.

10 And you also made the comment that when talking about the
11 Defendant doesn't have to do anything -- has a right to just sit there.
12 They can sit there and read magazines while we put on our case. You
13 made a comment, though, that if he doesn't speak, you might -- it might
14 hurt him in your eyes. Can you explain that a little further?

15 PROSPECTIVE JUROR 185: Well, I guess first of all, since I
16 don't -- not really all that up on the law, I wasn't even aware that the
17 Defendant doesn't have to speak.

18 MS. DIGIACOMO: Okay.

19 PROSPECTIVE JUROR 185: Okay. So that's, you know --

20 MS. DIGIACOMO: Step one.

21 PROSPECTIVE JUROR 185: -- step one.

22 MS. DIGIACOMO: Okay.

23 PROSPECTIVE JUROR 185: But still, I just think that if you're
24 innocent, then you would want to get up and state your -- state your
25 case.

1 MS. DIGIACOMO: But do you realize that sometimes there
2 might be reasons why somebody who is innocent wouldn't want to have
3 to get on the stand and subject themselves to cross-examination?

4 I mean, I could be like the meanest Prosecutor in the building
5 and then he just doesn't want to deal with my questioning. I mean, that
6 would be one reason, right?

7 PROSPECTIVE JUROR 185: I guess. I mean, I guess I've
8 never really thought about that.

9 MS. DIGIACOMO: Okay. Well, the way our system is set up,
10 it protects those that we accuse. That's why it's our burden to show that
11 they did something against the law, right?

12 PROSPECTIVE JUROR 185: Okay.

13 MS. DIGIACOMO: And you'll be instructed on the law at the
14 end, but because it's our burden, we are the only one that has to present
15 evidence and has to prove the case. You'd agree with that?

16 PROSPECTIVE JUROR 185: Okay. I mean, that's what
17 you're --

18 MS. DIGIACOMO: Okay.

19 PROSPECTIVE JUROR 185: -- telling me, so --

20 MS. DIGIACOMO: That's what I'm telling you. So and that's
21 the way the law is. He gets to just sit back and do nothing, if they so
22 choose. I'm not saying that's what they're going to do.

23 PROSPECTIVE JUROR 185: Understand.

24 MS. DIGIACOMO: But if we get to the end of this trial, and
25 the State has put on its evidence and that's all you get, are you going to

1 be able to keep an open mind and make a decision based upon what was
2 presented to you, or are you going to sit back and go I can't make a
3 decision because I didn't hear from the Defense?

4 PROSPECTIVE JUROR 185: I don't really know the answer to
5 that, to be perfectly honest with you.

6 MS. DIGIACOMO: Well, and that is fine. I know it's kind of a
7 weird --

8 PROSPECTIVE JUROR 185: You know --

9 MS. DIGIACOMO: -- we're putting the cart before the horse.

10 PROSPECTIVE JUROR 185: Right. I -- I don't know that I can
11 answer that.

12 MS. DIGIACOMO: Okay. So then as you sit here right now,
13 you still would need to hear from both sides before you could make a
14 decision?

15 PROSPECTIVE JUROR 185: I don't know that I would say that
16 I couldn't make a decision, but clearly I would be leaning in favor of the
17 Prosecution because the Defense hasn't presented anything to defend
18 their client.

19 MS. DIGIACOMO: But what if -- with the State's case that I
20 put up -- or we put up, you think they didn't prove it, would you still want
21 to hear from the Defense?

22 PROSPECTIVE JUROR 185: I don't know, because I think I
23 would go into the jury room wondering why the Defense didn't put up a
24 case.

25 MS. DIGIACOMO: All right. Now you would be instructed

1 that you cannot consider that. A Defendant has a right not to testify -- to
2 remain silent. That's the law. And he has that right and you can't
3 consider that in the jury room. Would you be able to follow that law?

4 PROSPECTIVE JUROR 185: I don't know. I mean, I know we
5 get instructions, I just don't know that I can parse it out that way.

6 MS. DIGIACOMO: Okay. Thank you very much.

7 We'll submit it, Your Honor.

8 THE COURT: Okay. Sorry, Ms. Rabinowitz, I want to thank
9 you for being here sitting through this. We appreciate it. Sometimes
10 cases aren't the right fit for the particular juror, but I'm going to go ahead
11 and excuse you, and you have definitely done your duty sitting here
12 now -- what is this the third day -- so you should be proud of yourself.
13 But thank you.

14 Don't talk to anybody, if you will, on your way out.

15 PROSPECTIVE JUROR 185: Okay.

16 THE COURT: And you can either go to the third floor and
17 report or do it online.

18 PROSPECTIVE JUROR 185: Okay.

19 THE COURT: Thank you.

20 PROSPECTIVE JUROR 185: Thank you very much.

21 THE COURT: All right. Just so the record is clear, I certainly
22 agree with the challenge for cause, mostly because she has been told
23 what the -- that she is disregard it, and she continually said I don't know.
24 Certainly, people don't necessarily -- what's the word -- a lot of times,
25 well, I can't be perfect, I guess is an example, but because of her prior

1 question, where she said it speaks of guilt, and she doesn't seem to -- I
2 don't know is her answer, I think that it's a valid challenge for cause.

3 Next is I have 197.

4 MS. MACHNICH: Yes, Your Honor.

5 THE COURT: Ms. He.

6 Yeah, Ms. He, 197.

7 THE MARSHAL: Ms. He?

8 THE COURT: Ms. He. She's the back row, in the middle
9 more or less. Bin He.

10 Will you give them the name of the next in line for --

11 THE CLERK: Yes. Replacing seat number 1 with --

12 THE COURT: All right. Nothing. Forget it.

13 THE CLERK: -- 245, Alma Nicholas.

14 THE COURT: Ms. He, we're not picking on you. We just -- as
15 you've seen a lot of times we need to talk to people outside the
16 presence. It's totally normal. And so you shouldn't -- I know everybody
17 is nervous when they're in here, but it's not that we're picking on you.
18 We just have some questions.

19 PROSPECTIVE JUROR 197: Okay.

20 THE COURT: State, you may inquire.

21 MS. DIGIACOMO: Thank you.

22 All right. Ms. He, you talked about how this is the first time
23 you've learned that under our criminal justice system the Defense does
24 not have to do anything, right?

25 PROSPECTIVE JUROR 197: Yes.

1 MS. DIGIACOMO: The burden is completely on the State?

2 PROSPECTIVE JUROR 197: Yes.

3 MS. DIGIACOMO: But you also said that if somebody was
4 innocent, they'd want to take the stand under oath and say they didn't do
5 it?

6 PROSPECTIVE JUROR 197: Yeah, in my mind, I mean, that's
7 their opportunity

8 THE COURT: Oh, but can you use the microphone right next
9 to you?

10 PROSPECTIVE JUROR 197: Oh, sorry -- sorry.

11 MS. DIGIACOMO: Yeah.

12 PROSPECTIVE JUROR 197: I wasn't aware.

13 THE COURT: No.

14 PROSPECTIVE JUROR 197: Just in my mind, I think that's a
15 chance, or -- or -- or, at least for me, I think it's obligation, if you are
16 innocent, then you should defense [sic] yourself.

17 MS. DIGIACOMO: Okay.

18 PROSPECTIVE JUROR 197: Yes.

19 MS. DIGIACOMO: But do you -- but under our system --

20 PROSPECTIVE JUROR 197: Yes, I learn --

21 MS. DIGIACOMO: -- that doesn't have to happen.

22 PROSPECTIVE JUROR 197: -- yeah, I understand that now.

23 MS. DIGIACOMO: Okay. So if you were chosen to be on this
24 jury --

25 PROSPECTIVE JUROR 197: Uh-huh.

1 MS. DIGIACOMO: -- and the State presented their case.

2 PROSPECTIVE JUROR 197: Yeah.

3 MS. DIGIACOMO: And that's all that you got --

4 PROSPECTIVE JUROR 197: Uh-huh.

5 MS. DIGIACOMO: -- would you be able to make a decision
6 just based upon what the State presented -- make a decision whether or
7 not we met the burden?

8 PROSPECTIVE JUROR 197: I think I can try, because now I
9 understand the -- the law is this.

10 MS. DIGIACOMO: Okay. And now you said you think you
11 can try.

12 PROSPECTIVE JUROR 197: Yeah.

13 MS. DIGIACOMO: Try kind of is a -- I mean, would you be
14 able to -- if the judge instructs you the Defense does not have to do
15 anything, can you follow that and --

16 PROSPECTIVE JUROR 197: Yeah.

17 MS. DIGIACOMO: -- just listen to the evidence that is
18 presented and make your decision based upon that?

19 PROSPECTIVE JUROR 197: Yes.

20 MR. SPEED: Ms. He, Ms. DiGiacomo just asked if you can
21 make a decision after hearing the State's case and understanding now
22 that Mr. Gunera-Pastrana does not have to say anything. That decision
23 would be to convict Mr. Gunera-Pastrana, wouldn't it, because you
24 believe that it is a person's -- I believe you said, obligation to defend
25 himself; isn't that right?

1 PROSPECTIVE JUROR 197: I want to make that clear. Like
2 since this is new concept, so before I think this before -- previously I
3 thought that's obligation. Defendant should defend themselves that's
4 before. Now, I understand that's the right. Defendant can chose not to
5 defend I said make decision does not mean Defendant is actually guilty,
6 or -- or I -- I still need to hear the process.

7 MR. SPEED: Well, the process is the State presenting their
8 case, and after that the Defendant doesn't have to do anything. He
9 doesn't have to comply with the obligation that you thought a person
10 held previously. You don't believe that anymore and I understand that,
11 but that is the process.

12 The process involves the State -- or it necessarily includes, I
13 should say --

14 PROSPECTIVE JUROR 197: Uh-huh.

15 MR. SPEED: -- the State presenting their case. Now, Ms.
16 DiGiacomo asked if you could make a decision if the State presents their
17 case, and you don't believe it, then you would have to make a decision.
18 And that decision would be to acquit. Can you do that?

19 PROSPECTIVE JUROR 197: I'm not sure. I've never been in
20 this situation.

21 MR. SPEED: Thank you.

22 THE COURT: Yeah. Go ahead.

23 MS. DIGIACOMO: Okay. I'm sorry.

24 You're saying you're not sure. You're not sure about what?

25 PROSPECTIVE JUROR 197: I'm not sure, for example, if I

1 only hear one side of the presentation -- I'm not sure whether -- if the
2 evidence I feel is very convincing, I'm sure I can make it. If not, that
3 convincing, I'm not sure, because only that's one side of the --

4 MS. DIGIACOMO: So and I'm sorry. So if -- when I say you
5 make a decision, I mean, that's the jury's job is to decide whether or not
6 the --

7 PROSPECTIVE JUROR 197: Right.

8 MS. DIGIACOMO: -- if Defendant is guilty or not guilty, right?

9 PROSPECTIVE JUROR 197: right.

10 MS. DIGIACOMO: That's the decision I'm talking about. So if
11 the State presents its evidence and its witnesses --

12 PROSPECTIVE JUROR 197: Uh-huh.

13 MS. DIGIACOMO: -- do you think you can make the decision,
14 yes, guilty or no, not guilty, based upon what we present solely, and not
15 expect the Defense to do anything?

16 PROSPECTIVE JUROR 197: That's the part I'm not exactly
17 sure.

18 MS. DIGIACOMO: Okay. You don't think you can make a
19 decision without hearing from the Defendant?

20 PROSPECTIVE JUROR 197: I'm leaning to agree that, yeah.

21 MS. DIGIACOMO: Okay. I'll submit it, Your Honor.

22 THE COURT: All right. Thank you.

23 Ms. He, I appreciate you being here. You've paid attention.
24 You've done your job. I'm going to let you go. Excuse you. It's some
25 cases are a right fit for some people, and some aren't. You've

1 participated fully as a U.S. citizen and we appreciate that.

2 You've seen we've let other jurors go. And it has no
3 reflection on you. I want to thank you for being here. And I'm sure next
4 time you'll be on the jury.

5 PROSPECTIVE JUROR 197: [Indiscernible]

6 THE COURT: You get 18 months I think before you can be
7 selected again.

8 PROSPECTIVE JUROR 197: Okay. Thank you.

9 THE COURT: Thank you.

10 THE CLERK: Okay. Seat number 6 will be replaced with
11 Badge Number 254 Jeremiah Nickerson.

12 THE COURT: And again, for the record, I think there may
13 have been enough of a language barrier, or that she didn't -- or couldn't
14 fully communicate her feelings and so, although, as I said yesterday,
15 she's very educated. She obviously, with her job, but she didn't seem to
16 equate, or communicate whether or not the fact that she had the
17 prior -- what's the word -- the prior knowledge from China and couldn't
18 get over that, or not. It's difficult to tell. So I think based on *Jitnan*, I
19 excused her.

20 Where are we at? 20?

21 MS. MACHNICH: Yes, Your Honor. Did I miss who we put in
22 Seat Number 1?

23 THE CLERK: Seat number 1 is badge 245 Alma Nicholas.

24 MS. MACHNICH: Oh, thank you. I missed it. I'm so sorry.

25 THE COURT: All right. 20, who is Marcus Montgomery.

1 Mr. Montgomery, badge 20. You've seen we need to talk to a
2 lot of people individually. It doesn't mean we're picking on you. We just
3 have some questions we want to ask you. I know sometimes people are
4 nervous. There's no reason to be. We just have some questions.

5 Go ahead, State.

6 MS. DIGIACOMO: Thank you.

7 Sir, you had made a comment that if you were in a situation
8 like this, you would want to defend yourself, and you would expect that
9 the Defense in this case would do the same?

10 PROSPECTIVE JUROR 020: Yes.

11 MS. DIGIACOMO: Okay. But you understand under our law
12 that's not a requirement.

13 PROSPECTIVE JUROR 020: I understand that.

14 MS. DIGIACOMO: Okay. So if you sat as a juror on this case,
15 and the State presented its case, and rested, and then that's all you got,
16 would you be able to make a decision based upon what was presented
17 to you?

18 PROSPECTIVE JUROR 020: I personally don't think that I
19 would be, because I'm -- I'm a little -- I know the law, but -- you know,
20 what -- but for me, I would -- I -- I mean, I -- to be very honest, I would
21 draw some, you know, from my own personal, you know, beliefs, or, you
22 know, feelings.

23 MS. DIGIACOMO: So you could not -- if he didn't take the
24 stand, or put a defense, you wouldn't be able to set that aside?

25 PROSPECTIVE JUROR 020: No.

1 MS. DIGIACOMO: Okay. I'll submit it.

2 THE COURT: Okay. Thank you.

3 Mr. Montgomery, I had your number, but I don't recall -- Mr.
4 Montgomery, I want to thank you for being here. We're going to excuse
5 you. As I -- well, you weren't here -- sometimes a case is just not the
6 right kind of case for a particular individual, and it really reflects not at all
7 on you the individual.

8 I want to thank you for being here. You participated now for
9 three days. I don't know why I'm looking at the clock, because three
10 days is three days, but in any event, you spent a lot of time, and you
11 should be proud that you did your service. Thank you.

12 PROSPECTIVE JUROR 020: Thank you.

13 THE COURT: Please don't talk to anybody on the way out.
14 And you can either report to the third floor or do it online.

15 PROSPECTIVE JUROR 020: Okay. Thank you.

16 THE COURT: Thank you for being here.

17 THE CLERK: Okay. We will replace Seat Number 8 with
18 badge 267 Troy Schneider.

19 THE COURT: 165 is Andrew is who?

20 MS. MACHNICH: I believe Agosta.

21 MS. DIGIACOMO: No. 165 is Currie.

22 MS. MACHNICH: I'm sorry. Currie. Looked at the wrong
23 one.

24 THE COURT: That's who you challenged, correct? 165.

25 MS. MACHNICH: I did.

1 MS. DIGIACOMO: She challenged both.

2 MS. MACHNICH: I challenged both.

3 MS. DIGIACOMO: But she did it in the order of 165 first.

4 THE COURT: Okay. 165, please, Steve. It's --

5 Hi, Mr. Currie. As you've seen, a lot of times we need to talk
6 to the potential jurors outside the presence, and so that's what we're
7 doing. It's not that we're picking on you. And I know people get
8 sometimes nervous. You shouldn't be nervous. We just have a few
9 questions.

10 Okay.

11 PROSPECTIVE JUROR 165: Sounds good.

12 THE COURT: State.

13 MS. DIGIACOMO: Thank you, Your Honor.

14 All right. Mr. Currie, when we were talking -- or when
15 Defense was talking about the fact that a Defendant has a right to remain
16 silent, or not to present a case, you had some comments where you
17 would -- I think you said you were suspect if somebody didn't defend
18 themselves?

19 PROSPECTIVE JUROR 165: Yeah, I said that.

20 MS. DIGIACOMO: Okay. So but knowing that a Defendant
21 doesn't have to present any evidence, and the judge will instruct on that
22 at the end of the case, if you were chosen to be on this jury panel, and
23 the State presented its evidence, and its case, and then rested, and you
24 had to make a decision on the case, can you do it, based upon just what
25 the State has presented?

1 PROSPECTIVE JUROR 165: I mean, I think it would be
2 difficult not to hear the other side, because you didn't get the full weight
3 of what's going on, but I mean, I still feel like reserved when someone
4 doesn't want to speak. I still see that as -- like, I'm not very trusting of
5 people, so you have to give me a reason to trust you.

6 MS. DIGIACOMO: Right.

7 PROSPECTIVE JUROR 165: That's -- just because you have
8 the right not to speak, doesn't mean I have the right to trust you.

9 MS. DIGIACOMO: Well, no, I understand, but do you
10 understand that sometimes there's reasons why somebody wouldn't
11 want to take the stand?

12 PROSPECTIVE JUROR 165: Well, I could understand that.
13 Yeah.

14 MS. DIGIACOMO: Okay. And that's why the State is the one
15 then that brings the accusations, and the State is the entity that has to
16 prove those accusations regardless of whether or not the Defense says
17 anything.

18 PROSPECTIVE JUROR 165: But doesn't the Defense have to
19 defend those accusations?

20 MS. DIGIACOMO: It's their choice.

21 PROSPECTIVE JUROR 165: Okay.

22 MS. DIGIACOMO: They could sit here and read a magazine
23 during the whole trial and not ask one question. There is no requirement
24 on the Defense. It's just the requirement is on the State to prove the
25 case --

1 PROSPECTIVE JUROR 165: Okay.

2 MS. DIGIACOMO: -- because it is innocent until proven
3 guilty. You agree with that?

4 PROSPECTIVE JUROR 165: Right. Yes.

5 MS. DIGIACOMO: Okay. So if in this case -- and I'm not
6 going to say -- I don't think Mr. Speed can just sit there full days and not
7 say anything. I don't mean to --

8 PROSPECTIVE JUROR 165: Right.

9 MS. DIGIACOMO: -- insinuate that's going to happen, but I'm
10 saying he has that right. So would you be able to listen to
11 the -- whatever evidence the State put before you, and make a decision
12 based upon that, if that's all you have, because it is --

13 PROSPECTIVE JUROR 165: Yes.

14 MS. DIGIACOMO: -- the State's --

15 PROSPECTIVE JUROR 165: -- Well, I wouldn't really have a
16 choice. That's all I had to go with, so I'd have to.

17 MS. DIGIACOMO: Right. And you wouldn't hold it against
18 the Defense, or Defendant if he didn't testify?

19 PROSPECTIVE JUROR 165: No.

20 MS. DIGIACOMO: Okay. So you could keep a fair and open
21 mind and hold the State to its burden, and make the State prove the
22 accusations?

23 PROSPECTIVE JUROR 165: Yeah.

24 MS. DIGIACOMO: Okay. Thank you.

25 THE COURT: Defense.

1 MR. SPEED: Mr. Currie, I believe that the line of questioning
2 calls for a little bit more in the thread. Now, if you hear the State present
3 their case, and you're asked if you can make a decision, there's a little bit
4 further that you have to go. You understand that?

5 PROSPECTIVE JUROR 165: Well, yeah, of course.

6 MR. SPEED: And you also understand that Mr. Gunera-
7 Pastrana does not have to say anything, right?

8 PROSPECTIVE JUROR 165: I -- I understand that, yes.

9 MR. SPEED: But you indicated earlier that his choosing to
10 exercise his right to remain silent would breed mistrust in you; isn't it
11 that still correct?

12 PROSPECTIVE JUROR 165: Yes.

13 MR. SPEED: And you wouldn't trust him if after Ms.
14 DiGiacomo and Ms. Sudano finished presenting their case, he didn't say
15 anything, you would say I kind of don't trust you, so I can make a
16 decision, and that decision would be to convict?

17 PROSPECTIVE JUROR 165: I would -- I would have reserves
18 on -- on trusting him. I mean, I don't know what my decision would be,
19 because I haven't been presented with everything, so I can't say whether
20 I would convict or not convict, because I haven't -- I don't have all
21 the -- all the facts in front of me.

22 MR. SPEED: Well, all of the facts under our scenario here is
23 the State presenting its case.

24 PROSPECTIVE JUROR 165: Right. And I haven't heard their
25 presentation of the case yet.

1 MR. SPEED: Understood. So after you hear that, and then
2 Mr. Gunera-Pastrana chooses not to say anything, that would still breed
3 that mistrust; isn't that right?

4 PROSPECTIVE JUROR 165: For me personally, I would still
5 have some -- some mistrust.

6 MR. SPEED: And that --

7 PROSPECTIVE JUROR 165: Just -- just personally.

8 MR. SPEED: -- I'm sorry, sir. I didn't mean to interrupt you.

9 PROSPECTIVE JUROR 165: No, you're good.

10 MR. SPEED: And that mistrust would, in your mind, serve as
11 an advantage -- it would be a benefit that the State would receive from
12 you as a juror, if you were selected to serve?

13 PROSPECTIVE JUROR 165: I -- I guess you could see it that
14 way, yeah.

15 MR. SPEED: Thank you.

16 MS. DIGIACOMO: Sir, are you saying, sir, that you would
17 convict just because you didn't hear from the Defense?

18 PROSPECTIVE JUROR 165: No, I didn't say I would convict
19 just because of that, but I would have some reservations as to my
20 thoughts of him not speaking.

21 MS. DIGIACOMO: Well, I guess the question is, if you were
22 selected, and you went back in that jury room, and you were told by the
23 Court that the law is not to consider the fact he didn't testify or you didn't
24 hear from the Defense, you're saying you have some reservations, and
25 there might be trust issues, but would you be able to follow the law and

1 just make your decision based upon whether or not the State proved its
2 case?

3 PROSPECTIVE JUROR 165: Yeah, I would still be able to
4 make my decision, but I guess, I mean, you still go with, like, your gut
5 feeling or whatever, so if I had like a gut reservation of, like, ah, I feel like
6 it's a little -- like, something is telling me something is off, I'm going to
7 go with my gut.

8 MS. DIGIACOMO: Okay. But your gut could go either way,
9 like --

10 PROSPECTIVE JUROR 165: Well, yeah, it could go either
11 way --

12 MS. DIGIACOMO: -- not guilty, or guilty.

13 PROSPECTIVE JUROR 165: -- because I'm not in the position
14 yet.

15 MS. DIGIACOMO: Okay. But you'd keep a fair and open
16 mind?

17 PROSPECTIVE JUROR 165: Well, yeah, I -- I mean, I would
18 keep a fair and open mind. I'd want someone to keep a fair and open
19 mind for me.

20 MS. DIGIACOMO: Right.

21 PROSPECTIVE JUROR 165: Do -- do want onto others as you
22 want done upon yourself so --

23 MS. DIGIACOMO: Okay. We'll submit it.

24 MR. SPEED: But in this situation, Mr. Currie, you indicated
25 earlier that you would be a person who would proclaim your innocence

1 to anyone who would listen to it; isn't that right?

2 PROSPECTIVE JUROR 165: Yes.

3 MR. SPEED: That's all, Your Honor.

4 THE COURT: All right. Mr. Currie, I'm going to thank you for
5 being here and excuse you. Not every case is the right case for every
6 individual. And you've participated fully and spent three days here, and
7 definitely done your service to the community. I want to thank you for
8 that.

9 The fact that this case may not be perfect for you doesn't
10 mean that you can't be a juror sometime. And I think you will make a
11 fine one, but we're going to go ahead and excuse you. You can either
12 report on the third floor or do it online. Thank you.

13 PROSPECTIVE JUROR 165: Thank y'all so much. Have a
14 great day.

15 MS. DIGIACOMO: Thank you.

16 PROSPECTIVE JUROR 165: Did anyone say you look a little
17 like Tim Allen mixed with James Woods.

18 THE COURT: All the time. All the time, yes.

19 PROSPECTIVE JUROR 165: Thank you, Your Honor.

20 THE COURT: Have a good day.

21 THE CLERK: Okay. Seat Number 14 will be replaced with
22 badge 268 William Devirgilio.

23 THE COURT: 188 is -- who is 188? Who is 188?

24 THE CLERK: Seat 13.

25 MS. DIGIACOMO: Wait, I'm sorry. Did I say --

1 THE COURT: No, I'm asking --
2 THE CLERK: No, he's talking about Agosta.
3 MR. SPEED: Right.
4 THE COURT: Yeah. What seat is he in?
5 THE CLERK: 13
6 MR. SPEED: 13
7 THE COURT: Oh, okay. Oh, there he is.
8 How do you pronounce your last name?
9 PROSPECTIVE JUROR 188: [E ge sta].
10 THE COURT: That's what I that and somebody had said [E
11 kos sta] and I looked, and I said, oh, gee.
12 PROSPECTIVE JUROR 188: Yeah, there's no C.
13 THE COURT: 188. Thank you. As you've seen, we need to
14 talk to some people outside the presence. It is not that we're picking on
15 you. We just have some questions. You shouldn't be nervous. I know
16 just being in the courthouse makes people nervous, but there's no
17 reason to, and so State, go ahead.
18 MS. DIGIACOMO: Thank you.
19 Sir, when you were being asked about Defendant's right to
20 remain silent, or not testify, you said that you had some reservations
21 about it, and then Defense counsel asked you if you'd be biased against
22 the Defendant and you said that you would. Do you remember that?
23 PROSPECTIVE JUROR 188: Yes, I do.
24 MS. DIGIACOMO: Okay. So but you understand that under
25 our system it's the State who has to prove the accusations?

1 PROSPECTIVE JUROR 188: I do.

2 MS. DIGIACOMO: And it's regardless of whether or not the
3 Defense does anything in the case.

4 PROSPECTIVE JUROR 188: Right.

5 MS. DIGIACOMO: If the State presented its case here, and
6 you were a juror, and the Defense did not present anything, or the
7 Defendant did not testify, would you hold that against him in the jury
8 room, or would you follow the law and set that aside and just look at
9 what the State has presented and whether or not the State has proven or
10 not proven the case?

11 PROSPECTIVE JUROR 188: I -- as I said earlier, I -- I -- I see
12 things as having two sides to every story. If I was in that position, I'd
13 want to defend myself to the best I could, or have my counselors defend
14 myself or me. So to answer your question, I think I would be a little bit
15 biased.

16 MS. DIGIACOMO: Okay. So what would you be a little bit
17 biased towards?

18 PROSPECTIVE JUROR 188: The fact that they're not trying to
19 make a -- not trying to defend himself, or have him --

20 MS. DIGIACOMO: Well, what -- and I guess that could be a
21 lot of things. Like, if they got up and asked questions of the witnesses,
22 and argued, is that defending them self -- defending him?

23 PROSPECTIVE JUROR 188: Yeah.

24 MS. DIGIACOMO: What if they did all that, but he just didn't
25 testify?

1 PROSPECTIVE JUROR 188: If he didn't get up himself?

2 MS. DIGIACOMO: Correct.

3 PROSPECTIVE JUROR 188: That's -- yeah, I don't have a
4 problem with that.

5 MS. DIGIACOMO: Okay. So as long as -- you just don't -- I
6 guess you want to make sure each side is, I guess, questioning the
7 witnesses, presenting --

8 PROSPECTIVE JUROR 188: Yes.

9 MS. DIGIACOMO: -- their arguments?

10 PROSPECTIVE JUROR 188: Correct.

11 MS. DIGIACOMO: Okay. But you're not going to hold it
12 against the Defendant if he doesn't testify during this case?

13 PROSPECTIVE JUROR 188: No.

14 MS. DIGIACOMO: Okay. And if the Defense chose not to
15 question witnesses and maybe that's their strategy, or whatever, would
16 you hold that against them in making a decision?

17 PROSPECTIVE JUROR 188: Again, if -- if they -- if nobody is
18 trying to -- to defend, yes.

19 MS. DIGIACOMO: Okay. So you would hold it against the
20 attorneys for not defending him?

21 PROSPECTIVE JUROR 188: Yeah, but I would think that it
22 would be his decision to have them not defend --

23 MS. DIGIACOMO: Okay.

24 PROSPECTIVE JUROR 188: -- so I would hold it against him
25 as well.

1 MS. DIGIACOMO: Okay. But it's -- so it's not the right of him
2 to remain silent or not testify you have an issue with?

3 PROSPECTIVE JUROR 188: No, because I mean, that's the
4 law. I mean, that's --

5 MS. DIGIACOMO: Okay. You have just want -- you just want
6 to make sure that the Defense does something?

7 PROSPECTIVE JUROR 188: Yeah.

8 MS. DIGIACOMO: Even though they don't have to?

9 PROSPECTIVE JUROR 188: Yes.

10 MS. DIGIACOMO: Okay. So if they don't do anything, then
11 it's fair to say that you're going to hold it against them?

12 PROSPECTIVE JUROR 188: Yeah.

13 MS. DIGIACOMO: Okay. I'll submit it, Your Honor.

14 THE COURT: All right. I'm sorry. Mr. Agosta, I looked down
15 for a minute and forgot -- so I want to thank you for being here. I
16 appreciate you spending three days now with us. Some cases are not
17 the right case for every particular potential juror, and so I'm going to go
18 ahead and excuse you. As I said, you fully participated, and you should
19 be proud of that.

20 It's really of no consequence, it just means for this particular
21 case, you certainly would be a good juror on potentially other cases, and
22 I'm sure at some point, you'll get that opportunity. Every 18 months you
23 could be called. So thank you. You can either report third floor jury
24 services or do it online.

25 PROSPECTIVE JUROR 188: Okay.

1 THE COURT: Thank you for being here.
2 PROSPECTIVE JUROR 188: Thank you, Your Honor.
3 THE CLERK: So we're replacing Seat number 13 with badge
4 272 Timothy Glass.
5 THE COURT: So that's like eight or nine new jurors.
6 THE CLERK: Nine.
7 THE COURT: Yeah.
8 MS. MACHNICH: Seven for the Defense, nine for the State.
9 THE COURT: Right. Okay. Still think we're going to be done
10 today?
11 MS. SUDANO: Hoping.
12 THE COURT: Yeah. I was hoping you'd be done two days
13 ago, but --
14 MS. DIGIACOMO: So were we.
15 THE COURT: Bring them in, unless you guys need a break.
16 MS. MACHNICH: Nope.
17 MS. DIGIACOMO: We're running out of daylight hours.
18 THE COURT: I get it.
19 [Prospective jurors in at 1:19 p.m.]
20 [Inside the presence of the prospective jurors]
21 THE COURT: Please be seated.
22 Go ahead and fill in the -- go ahead and call the new jurors.
23 THE CLERK: Oh, I'm so sorry.
24 Okay. We're replacing Seat Number 21 with badge 235
25 James Linares.

1 Seat number 4 replace 238 Christopher Lamoreaux.
2 Replace seat number 1 with badge 245 Alma Nicholas.
3 And seat number 6 badge 254 Jeremiah Nickerson.
4 In seat number 8 badge 267 Troy Schneider.
5 Seat number 14 badge 268 William Devirgilio.
6 Seat number 14 -- or sorry -- Seat Number 13 -- badge 272
7 Timothy Glass.
8 And I believe that is --
9 THE COURT: Counsel, approach.
10 [Sidebar begins at 1:23 p.m.]
11 THE COURT: Did she re-get that right?
12 MS. MACHNICH: Yes.
13 MS. SUDANO: Yep.
14 THE COURT: One, two, three, four, five, six, seven. Then
15 who is the eighth?
16 MS. MACHNICH: No, eight and nine were the ones we
17 questioned, but they didn't --
18 MS. SUDANO: I think it's Number 23 and 26 are the seats.
19 THE COURT: Eight and nine? You mean seat 8 and 9?
20 MS. SUDANO: No, 23 and 26 are the seats, Your Honor.
21 THE COURT: Thank you.
22 MS. SUDANO: You've already questioned those two, but we
23 have to.
24 THE COURT: Right.
25 MS. SUDANO: Yeah.

1 THE COURT: All right. Okay. Thank you.

2 MS. MACHNICH: Thank you.

3 [Sidebar ends at 1:23 p.m.]

4 THE COURT: All right. So for those of you who are new,
5 welcome. Good afternoon. Let's start with Seat 1. Name and badge
6 number and do you remember everything that happened? Yeah, it's up
7 front. Do you remember all the questions?

8 PROSPECTIVE JUROR 245: Probably not, but --

9 THE COURT: Well, all right.

10 PROSPECTIVE JUROR 245: My name is Alma Nicholas. I'm
11 Badge Number 245. I'm retired. I worked in retail for a number of years.
12 I'm married. My husband is the senior network engineer for Patron
13 Spirits.

14 THE COURT: Ever served on a jury?

15 PROSPECTIVE JUROR 245: I have served on two juries
16 previously --

17 THE COURT: Start --

18 PROSPECTIVE JUROR 245: -- in Washington State. One was
19 civil. One was criminal.

20 THE COURT: Let's start with the civil. Did you reach a
21 verdict?

22 PROSPECTIVE JUROR 245: Yes, we did.

23 THE COURT: And were you the foreperson?

24 PROSPECTIVE JUROR 245: I was not.

25 THE COURT: And the criminal one. You said you served on

1 a criminal trial?

2 PROSPECTIVE JUROR 245: Yes.

3 THE COURT: Did you reach a verdict?

4 PROSPECTIVE JUROR 245: Yes.

5 THE COURT: And were you the foreperson?

6 PROSPECTIVE JUROR 245: No, I was not.

7 THE COURT: Okay. The other questions. Any -- you or any
8 close family member or friend in law enforcement or military?

9 PROSPECTIVE JUROR 245: No.

10 THE COURT: You or anyone close to you been the victim of
11 a crime?

12 PROSPECTIVE JUROR 245: My husband and I, our
13 motorhome was broken into about a year ago.

14 THE COURT: Okay. You or anyone close to you been the
15 victim of sexual assault?

16 PROSPECTIVE JUROR 245: No.

17 THE COURT: Anyone -- you or anyone close to you been
18 accused of a crime?

19 PROSPECTIVE JUROR 245: No.

20 THE COURT: Adult children?

21 PROSPECTIVE JUROR 245: Yes, three.

22 THE COURT: Do they work?

23 PROSPECTIVE JUROR 245: Yes.

24 THE COURT: What do they do?

25 PROSPECTIVE JUROR 245: My oldest daughter is a

1 schoolteacher. My middle daughter is a mom, full time mom and full
2 time student and my youngest daughter is a student at UNLV and an
3 intern at an engineering firm here in town.

4 THE COURT: Any reason that you can't be a fair and
5 impartial juror?

6 PROSPECTIVE JUROR 245: No.

7 THE COURT: Thank you. Seat 4 and I -- again, I didn't
8 anyone's name, but --

9 PROSPECTIVE JUROR 238: Hello.

10 THE COURT: -- name and badge number. Hello.

11 PROSPECTIVE JUROR 238: My name is Christopher
12 Lamoureux and my badge number is 238. My occupation is a union
13 stagehand and AV technician. The union I'm associated with is the
14 IATSE Local 720.

15 THE COURT: Significant other?

16 PROSPECTIVE JUROR 238: I'm single and I've never been on
17 a jury before.

18 THE COURT: Okay. Law enforcement or military?

19 PROSPECTIVE JUROR 238: Two who are -- they're lifelong
20 friends of my father. They visit us regularly and they're in the LAPD.

21 THE COURT: Currently?

22 PROSPECTIVE JUROR 238: Yeah, currently.

23 THE COURT: Okay. Have you ever been or anyone close to
24 you the victim of a crime?

25 PROSPECTIVE JUROR 238: My father, he was struck by a

1 driver who was under the influence.

2 THE COURT: You or anyone close to you been the victim of
3 a sexual assault?

4 PROSPECTIVE JUROR 238: None.

5 THE COURT: You or anyone close to you been accused of a
6 crime?

7 PROSPECTIVE JUROR 238: None.

8 THE COURT: Do you have any adult children?

9 PROSPECTIVE JUROR 238: No.

10 THE COURT: And is there any reason that you know of that
11 you can't be a fair and impartial juror?

12 PROSPECTIVE JUROR 238: None so far.

13 THE COURT: Thank you. Seat 6.

14 PROSPECTIVE JUROR 254: Jeremiah Nickerson, Badge 254.
15 I work at McGuire Research. It's a research firm. We do political
16 surveys. Not married. Never been on a jury.

17 THE COURT: Ever been the -- well, let's start off. Law
18 enforcement or military?

19 PROSPECTIVE JUROR 254: Yes. My father served in the
20 Navy during Vietnam. His older brother was also in the navy at the same
21 time. And I have a couple cousins that have served in the Marines.

22 THE COURT: You or anyone close to you been the victim of
23 a crime?

24 PROSPECTIVE JUROR 254: Yes. My sister was -- been a
25 victim of domestic violence.

1 THE COURT: You or anyone close to you been the victim of
2 a sexual assault?

3 PROSPECTIVE JUROR 254: Not to my knowledge.

4 THE COURT: You or anyone close to you ever been accused
5 of a crime?

6 PROSPECTIVE JUROR 254: My brother-in-law, my sister's
7 husband, he was convicted of domestic violence, served three years in
8 Carson City.

9 THE COURT: Do you have any adult children that work?

10 PROSPECTIVE JUROR 254: No children?

11 THE COURT: And is there any reason you know of you can't
12 be a fair and impartial juror?

13 PROSPECTIVE JUROR 254: No.

14 THE COURT: Thank you. Let's see here now. Next, Seat 8.

15 PROSPECTIVE JUROR 267: Troy Schneider, 267.

16 THE COURT: Remember all the questions?

17 PROSPECTIVE JUROR 267: I work for Freedom Forever
18 Solar, installing solar residentially.

19 THE COURT: Significant other?

20 PROSPECTIVE JUROR 267: Oh, single.

21 THE COURT: Ever served on a jury?

22 PROSPECTIVE JUROR 267: No.

23 THE COURT: You or anyone close to you in law
24 enforcement, in the military?

25 PROSPECTIVE JUROR 267: My uncle served in the Army.

1 My grandpa served in the Army also.

2 THE COURT: You or anyone close to you been the victim of
3 a crime?

4 PROSPECTIVE JUROR 267: My dad's house was robbed like
5 three years ago.

6 THE COURT: You or anyone close to you been the victim of
7 sexual assault?

8 PROSPECTIVE JUROR 267: No.

9 THE COURT: Have you or anyone close to you been accused
10 of a crime?

11 PROSPECTIVE JUROR 267: No.

12 THE COURT: Do you have any adult children?

13 PROSPECTIVE JUROR 267: No, I don't.

14 THE COURT: You look too young. Okay. Is there any reason
15 you know of that you can't be a fair and impartial juror?

16 PROSPECTIVE JUROR 267: No.

17 THE COURT: Thank you. Let's go to the second row. We'll
18 start with Seat 13. Right there. Name and bade number.

19 PROSPECTIVE JUROR 272: Timothy Glass, 272.

20 THE COURT: You don't remember?

21 PROSPECTIVE JUROR 272: I'm a ticket broker. My wife is a
22 stay at home mom, never served on a jury.

23 THE COURT: Okay. Very good. Law enforcement or
24 military?

25 PROSPECTIVE JUROR 272: No law enforcement. My

1 grandfather was in the Air Force. My uncle was in the Marines and two
2 cousins in the Army.

3 THE COURT: Ever been the victim of a crime or anyone close
4 you to?

5 PROSPECTIVE JUROR 272: No.

6 THE COURT: You or anyone close to you been the victim of
7 a sexual assault?

8 PROSPECTIVE JUROR 272: No.

9 THE COURT: You or anyone close to you ever been accused
10 of a crime?

11 PROSPECTIVE JUROR 272: No.

12 THE COURT: Do you have any adult children that work?

13 PROSPECTIVE JUROR 272: No adult children.

14 THE COURT: Any reason you know of you can't be a fair and
15 impartial juror?

16 PROSPECTIVE JUROR 272: No.

17 THE COURT: Thank you. Right next to you.

18 PROSPECTIVE JUROR 268: 268, William Devirgilio. I work as
19 a food server on the Strip. My wife is a critical care nurse as well as a
20 hospice nurse. No adult children. Never served on a jury. Father,
21 retired Army, lieutenant colonel, grandfather Marine.

22 THE COURT: Victim of a crime?

23 PROSPECTIVE JUROR 268: No.

24 THE COURT: Anyone -- you or anyone close to you been the
25 victim of sexual assault?

1 PROSPECTIVE JUROR 268: No.

2 THE COURT: Did you say adult children?

3 PROSPECTIVE JUROR 268: No adult children.

4 THE COURT: And is there any reason you know of that you
5 can't be a fair and impartial juror?

6 PROSPECTIVE JUROR 268: No, sir.

7 THE COURT: Thank you. Let's go up to the next row. First --
8 Seat 21. Thank you.

9 PROSPECTIVE JUROR 235: Hi. James Linares. Badge
10 number 235. I'm a sous chef at Top Golf. My girlfriend is a sous chef at
11 Bazaar Meats. No children. Never served in a jury. My brother is in the
12 Navy and --

13 THE COURT: Law enforcement?

14 PROSPECTIVE JUROR 235: No law.

15 THE COURT: Okay. Have you ever been the victim or
16 anyone close to you, the victim of a crime?

17 PROSPECTIVE JUROR 235: No.

18 THE COURT: How about you or anyone close to you been
19 the victim of sexual assault?

20 PROSPECTIVE JUROR 235: No.

21 THE COURT: No kids. Is there any reason you can't be a fair
22 impartial witness?

23 PROSPECTIVE JUROR 235: No.

24 THE COURT: A fair and impartial juror.

25 PROSPECTIVE JUROR 235: No.

1 THE COURT: Sorry. And has anyone -- you or anyone close
2 to you been accused of a crime?

3 PROSPECTIVE JUROR 235: No.

4 THE COURT: All right. Thank you. State, you may inquire.

5 MS. SUDANO: Thank you, Your Honor. All right. Hello
6 again.

7 PROSPECTIVE JURORS: Hello.

8 MS. SUDANO: So I'm just going to focus on the folks that
9 are new to the panel this morning.

10 So sir, if you could pass the microphone down to -- I think
11 we're going to start with Ms. Worthy, who is badge number 208.

12 Hello, ma'am.

13 PROSPECTIVE JUROR 208: Hello.

14 MS. SUDANO: So you escaped this morning without having
15 to talk to us too much, so I just want to ask you a couple of questions.

16 PROSPECTIVE JUROR 208: Sure.

17 MS. SUDANO: So you indicated that when you were
18 growing up, there was -- or you -- I guess you indicated that you were
19 the victim of domestic violence --

20 PROSPECTIVE JUROR 208: Yes.

21 MS. SUDANO: And that your mother had been accused of or
22 charged with domestic violence. Is that correct?

23 PROSPECTIVE JUROR 208: Correct.

24 MS. SUDANO: Was that the same situation or was that
25 different situations?

1 PROSPECTIVE JUROR 208: Both.

2 MS. SUDANO: Okay. So was your mother one of the people
3 that abused you?

4 PROSPECTIVE JUROR 208: She -- yeah, yes.

5 MS. SUDANO: Okay. And then was there also some other
6 people that were involved with that as far as your mom goes?

7 PROSPECTIVE JUROR 208: She had a separate incident --

8 MS. SUDANO: Okay.

9 PROSPECTIVE JUROR 208: -- with someone else.

10 MS. SUDANO: Okay. Was that a common thing when you
11 were growing up or was that something that just happened one time?

12 PROSPECTIVE JUROR 208: That was something that
13 happened when we moved here to Las Vegas. She just changed.

14 MS. SUDANO: Okay. Did it continue after you stayed in Las
15 Vegas?

16 PROSPECTIVE JUROR 208: I would say yes, because she had
17 another incident with another party.

18 MS. SUDANO: Okay.

19 PROSPECTIVE JUROR 208: With someone else.

20 MS. SUDANO: All right. Was that a sibling or a member of
21 your family or was it somebody she was dating or --

22 PROSPECTIVE JUROR 208: It was a person that she was --
23 like a friend --

24 MS. SUDANO: Okay.

25 PROSPECTIVE JUROR 208: -- or someone she was involved

1 with.

2 MS. SUDANO: Do you think that there's anything about your
3 personal experiences, either as a victim of domestic violence or kind of
4 at the hands of your mother that would affect your ability to be fair and
5 impartial here?

6 PROSPECTIVE JUROR 208: No.

7 MS. SUDANO: Okay. So I may have written this down
8 wrong. Was your mom -- did she actually get arrested and kind of have
9 to go through the court process?

10 PROSPECTIVE JUROR 208: Correct.

11 MS. SUDANO: Do you think that she was treated fairly
12 throughout that process?

13 PROSPECTIVE JUROR 208: I don't know.

14 MS. SUDANO: Okay. Because were you still little when that
15 all happened?

16 PROSPECTIVE JUROR 208: No. That happened about ten
17 years ago.

18 MS. SUDANO: Okay. So you just don't have personal
19 knowledge about that?

20 PROSPECTIVE JUROR 208: I just don't contact her.

21 MS. SUDANO: Okay.

22 PROSPECTIVE JUROR 208: Yeah.

23 MS. SUDANO: What about you as the victim? Were the
24 police ever involved with you as the victim of any of that?

25 PROSPECTIVE JUROR 208: Correct, yes.

1 MS. SUDANO: They were, or they were not?

2 PROSPECTIVE JUROR 208: They came to the scene, if that's
3 what you're asking.

4 MS. SUDANO: Yes. Do you think that you as the victim in
5 that situation were treated fairly? Were you kind of satisfied with the
6 efforts that law enforcement undertook?

7 PROSPECTIVE JUROR 208: Sure.

8 MS. SUDANO: Okay. So you've heard a number of my
9 questions that I had for everybody else. So we asked, I think, whether
10 you had adult kids. Do you have any that are still in the home with you?
11 Any young ones?

12 PROSPECTIVE JUROR 208: I have no kids.

13 MS. SUDANO: No kids. Okay. So I talked with a lot of
14 different people. I don't know even know what day it was yesterday.
15 We're going to go with yesterday, kind of about the crime scene, TV
16 shows, the Law and Order, the CSI, all that stuff and how that's kind of
17 different than real life. Do you have any issues with that?

18 PROSPECTIVE JUROR 208: No, I don't.

19 MS. SUDANO: Okay. Understand that that's all made for TV
20 and the TV magic is definitely not quite as realistic as people might think
21 at first?

22 PROSPECTIVE JUROR 208: Absolutely.

23 MS. SUDANO: Are you the type of person that would require
24 any sort of particular evidence in order to come back with a verdict?

25 PROSPECTIVE JUROR 208: Are you asking about like

1 physical evidence or just like --

2 MS. SUDANO: Sure. So yeah. Would you require DNA,
3 fingerprint evidence, surveillance video? Anything in particular in order
4 for you to come back with a verdict?

5 PROSPECTIVE JUROR 208: Not necessarily.

6 MS. SUDANO: Okay.

7 PROSPECTIVE JUROR 208: I mean, you -- I think you -- that
8 there's -- what am I trying to say? There's testimonial evidence, so it's
9 not necessarily just physical DNA, the things that you named.

10 MS. SUDANO: Okay. Would you agree with some of the
11 conversations that we were having earlier that different types of cases
12 might have different types of evidence?

13 PROSPECTIVE JUROR 208: That is true.

14 MS. SUDANO: And even the same type of case might have
15 different evidence than another case, because every single case is
16 different?

17 PROSPECTIVE JUROR 208: Right.

18 MS. SUDANO: Okay. Any issue whatsoever with that?

19 PROSPECTIVE JUROR 208: No, ma'am.

20 MS. SUDANO: Okay. And so we were also kind of talking
21 about the fact that you may hear from witnesses who use an interpreter
22 or witnesses who are not citizens. Would you have any issue with that?

23 PROSPECTIVE JUROR 208: No, I don't.

24 MS. SUDANO: And so, a lot of the conversation earlier today
25 was sort of, I guess macro. It was kind of big picture, if you will, right?

1 What's happening nationally, in our political climate or socially, sort of
2 big topics and big issues. Would you agree with that?

3 PROSPECTIVE JUROR 208: True.

4 MS. SUDANO: So in this particular case, would you have
5 any issues or biases, prejudices, anything like that from kind of that big
6 picture conversation that we were having this morning? Or would just
7 be able to focus on the evidence and the facts that are presented in this
8 case?

9 PROSPECTIVE JUROR 208: I have the ability to focus on the
10 evidence in the case.

11 MS. SUDANO: Okay. Do you think you would be a good
12 juror?

13 PROSPECTIVE JUROR 208: I absolutely do.

14 MS. SUDANO: What makes you say that?

15 PROSPECTIVE JUROR 208: Well, I'm a good listener. I'm
16 able to decipher what people are saying. Again, I can listen to people,
17 get a sense of what people are saying when they say what they're
18 saying, and I think those qualities are needed.

19 MS. SUDANO: Okay. Thank you. I appreciate it. You're off
20 the hotseat. If you can pass it just a couple over to Ms. Meicher, Badge
21 Number 216.

22 PROSPECTIVE JUROR 216: Brenna Meicher, 216.

23 MS. SUDANO: You guys are so trained at this point. So you
24 indicated that your parent's car was stolen at some point?

25 PROSPECTIVE JUROR 216: Yes.

1 MS. SUDANO: About when was that?

2 PROSPECTIVE JUROR 216: I think it was early December, I
3 believe.

4 MS. SUDANO: So just a few months ago?

5 PROSPECTIVE JUROR 216: Yes.

6 MS. SUDANO: Did -- was anybody ever apprehended, to
7 your knowledge?

8 PROSPECTIVE JUROR 216: No. The car was found. No one
9 was apprehended.

10 MS. SUDANO: Okay. Do you think that the police did a
11 sufficient job on that one, even though nobody was caught?

12 PROSPECTIVE JUROR 216: Yeah. I'm -- there was no way to
13 track the car, so --

14 MS. SUDANO: Okay. Anything about that experience that
15 you think would affect your ability to be fair and impartial here?

16 PROSPECTIVE JUROR 216: No.

17 MS. SUDANO: Okay. So are you the type of person that
18 would require a specific type of evidence? Would require fingerprints,
19 DNA, surveillance video? Anything like that in order to come back or
20 come to a verdict?

21 PROSPECTIVE JUROR 216: No. I think anything we hear in
22 here is evidence to us, so we just have to go based on that.

23 MS. SUDANO: Okay. So we had sort of these conversations
24 earlier like we were just talking about with Ms. Worthy. Kind of the big
25 picture conversations that we had earlier this morning and yesterday.

1 Do you think that there's anything that you would like to add about any
2 of those conversations that we were having?

3 PROSPECTIVE JUROR 216: Come from a very close, colorful
4 family. I don't really have any biases or things to say about that.

5 MS. SUDANO: Okay. So you heard these ideas that you
6 may hear from witnesses or there may be folks involved in this case that
7 either use an interpreter or are not U.S. citizens. Would you have any
8 sort of issue with that?

9 PROSPECTIVE JUROR 216: No. No issue.

10 THE COURT: Okay. Is that something that you would hold
11 against one side or another side?

12 PROSPECTIVE JUROR 216: No.

13 MS. SUDANO: Okay. So we were talking about the idea
14 yesterday that the criminal just system is meant to protect everyone
15 equally. Would you agree with that?

16 PROSPECTIVE JUROR 216: Yes.

17 MS. SUDANO: Okay. And would you agree with that
18 regardless of something like citizenship status --

19 PROSPECTIVE JUROR 216: Yes.

20 MS. SUDANO: -- or the language spoken?

21 PROSPECTIVE JUROR 216: Yes.

22 MS. SUDANO: Yes.

23 MS. SUDANO: Any issues with that whatsoever?

24 PROSPECTIVE JUROR 216: No.

25 MS. SUDANO: All right. Anything else that you think that

1 we should know about you, ma'am?

2 PROSPECTIVE JUROR 216: I don't think so.

3 MS. SUDANO: Okay. Thank you. I appreciate that. We're
4 going to pass it behind you. I'm just trying to decide where. Can you
5 pass it to Mr. Devirgilio?

6 PROSPECTIVE JUROR 268: Yes, ma'am.

7 MS. SUDANO: Did I say that right?

8 PROSPECTIVE JUROR 268: Yes.

9 MS. SUDANO: Okay.

10 PROSPECTIVE JUROR 268: 268, William Devirgilio.

11 MS. SUDANO: All right. Sir, I think we asked you as well
12 whether you have adult kids. Do you have any little ones still in the
13 home?

14 PROSPECTIVE JUROR 268: Yes, 3, 8 and 15.

15 MS. SUDANO: Okay. So I'd asked somebody yesterday kind
16 of the idea of have you ever had anything sort of upsetting happen that
17 affected all of the kids? I always give the example of maybe you had a
18 pet that passed away or you had to move and pull them out of a school
19 that they liked or something along those lines?

20 PROSPECTIVE JUROR 268: No, ma'am.

21 MS. SUDANO: Okay. Lucky kids, huh?

22 PROSPECTIVE JUROR 268: I would say so.

23 MS. SUDANO: Do you think thank you that they all respond
24 exactly the same way to the same situation?

25 PROSPECTIVE JUROR 268: Absolutely not.

1 MS. SUDANO: Why is that?

2 PROSPECTIVE JUROR 268: They are all unique individuals.

3 MS. SUDANO: Okay. Would you expect somebody -- or
4 would you expect all of your kids to react in the exact same way?

5 PROSPECTIVE JUROR 268: Not at all.

6 MS. SUDANO: Would you have any issues, if somebody
7 reacted to a situation differently than you kind of personally would or
8 you would expect yourself to?

9 PROSPECTIVE JUROR 268: No.

10 MS. SUDANO: Okay. Are you the type of person that would
11 require any sort of specific evidence in order to come back with a
12 verdict?

13 PROSPECTIVE JUROR 268: I don't believe so.

14 MS. SUDANO: Okay. An issues with witnesses that may
15 speak a different language or that may not be United States citizens?

16 PROSPECTIVE JUROR 268: No, ma'am.

17 MS. SUDANO: Is that something that you would hold
18 against one side or the other?

19 PROSPECTIVE JUROR 268: No, ma'am.

20 MS. SUDANO: Anything else about you that you think we
21 should know?

22 PROSPECTIVE JUROR 268: Not at the moment.

23 MS. SUDANO: All right. Thank you.

24 PROSPECTIVE JUROR 268: Thank you.

25 MS. SUDANO: Can you pass it over to Mr. Glass, 272? All

1 right. Hello, sir.

2 PROSPECTIVE JUROR 272: Hello.

3 MS. SUDANO: Do you have kids at all in the home?

4 PROSPECTIVE JUROR 272: 3, 8 and 10, three boys.

5 MS. SUDANO: Okay. So your home is loud?

6 PROSPECTIVE JUROR 272: It is.

7 MS. SUDANO: Okay. Do -- have they ever had a situation

8 like I just asked about, where something kind of sad or upsetting

9 happened that affected all of them?

10 PROSPECTIVE JUROR 272: Thankfully not.

11 MS. SUDANO: Okay. Do you have any sort of preconceived
12 ideas about how a victim of a crime or somebody in general should react
13 to an upsetting situation?

14 PROSPECTIVE JUROR 272: I don't, no.

15 MS. SUDANO: Okay. Do you recognize that different people
16 respond differently to upsetting situations?

17 PROSPECTIVE JUROR 272: I do.

18 MS. SUDANO: Would you hold it against somebody, if they
19 reacted differently than you might?

20 PROSPECTIVE JUROR 272: No.

21 MS. SUDANO: Are you the type of person that would require
22 any sort of specific evidence in order to come back with a verdict?

23 PROSPECTIVE JUROR 272: I don't think so.

24 MS. SUDANO: Okay. So you'd be willing to just take in the
25 testimony and the evidence that you heard?

1 PROSPECTIVE JUROR 272: I would.

2 MS. SUDANO: Okay. Do you think you would be a good
3 juror?

4 PROSPECTIVE JUROR 272: I would try to be.

5 MS. SUDANO: Okay. Something that you would be willing
6 to take seriously and kind of devote some time to?

7 PROSPECTIVE JUROR 272: Definitely.

8 MS. SUDANO: Okay. Is it better to be up here or to be back
9 there?

10 PROSPECTIVE JUROR 272: Back there.

11 MS. SUDANO: I appreciate that. All right. Could we pass it,
12 since we're over there, back to Ms. Nicholas, 245.

13 Hello, ma'am.

14 PROSPECTIVE JUROR 245: Hello.

15 MS. SUDANO: So you said that you'd been a juror on two
16 separate occasions --

17 PROSPECTIVE JUROR 245: Yes.

18 MS. SUDANO: -- in Washington. Is that right?

19 PROSPECTIVE JUROR 245: Yes.

20 MS. SUDANO: I don't want to talk about the specifics of it,
21 but overall, would you say positive or negative experiences or neutral?

22 PROSPECTIVE JUROR 245: They were both very positive --

23 MS. SUDANO: Okay.

24 PROSPECTIVE JUROR 245: -- situations.

25 MS. SUDANO: What was your reaction when you saw your

1 jury summons?

2 PROSPECTIVE JUROR 245: This time?

3 MS. SUDANO: Uh-huh.

4 PROSPECTIVE JUROR 245: Just one of inconvenience, only
5 because we're in the process of moving and I should be packing and so
6 it's --

7 MS. SUDANO: If you're anything like me, the opportunity to
8 procrastinate might be nice.

9 PROSPECTIVE JUROR 245: A little bit, yeah, but I'm a
10 planner, so --

11 MS. SUDANO: When are you supposed to move?

12 PROSPECTIVE JUROR 245: On the 18th.

13 MS. SUDANO: Okay. So next weekend-ish?

14 PROSPECTIVE JUROR 245: Yeah. I believe it's a Tuesday -- a
15 week from next Tuesday.

16 MS. SUDANO: I got you. So do you think that given kind of
17 what you have going on in your personal life, you'll be able to focus on
18 this case and give it the weight that it deserves?

19 PROSPECTIVE JUROR 245: I believe so. I've been doing a lot
20 of advanced planning, because I knew I had the jury summons.

21 MS. SUDANO: Okay. So you really are a planner, huh?

22 PROSPECTIVE JUROR 245: Yes.

23 MS. SUDANO: So you mentioned that your motorhome was
24 broken into fairly recently?

25 PROSPECTIVE JUROR 245: Yes, about a year ago.

1 MS. SUDANO: Okay. Anybody apprehended on that one.

2 PROSPECTIVE JUROR 245: They were not. It was in a
3 storage unit and we're not sure how much time had gone by before we
4 discovered it.

5 MS. SUDANO: Did you call law enforcement on that
6 situation?

7 PROSPECTIVE JUROR 245: Yes, we did. We filed a report.

8 MS. SUDANO: All right. Were you satisfied with their
9 handling of the situation or --

10 PROSPECTIVE JUROR 245: Yes. There was just nothing that
11 could be done.

12 MS. SUDANO: Do you think anything about that experience
13 would affect your ability to be fair and impartial?

14 PROSPECTIVE JUROR 245: No.

15 MS. SUDANO: Okay. Are you the type of person that would
16 require any sort of specific evidence in order to come back with a
17 verdict?

18 PROSPECTIVE JUROR 245: No, I don't think so.

19 MS. SUDANO: Okay. You're willing to just keep an open
20 mind and listen to whatever evidence is presented?

21 PROSPECTIVE JUROR 245: Yes.

22 MS. SUDANO: Okay. Anything that you think that we should
23 know about you?

24 PROSPECTIVE JUROR 245: I don't think so.

25 MS. SUDANO: Thank you, ma'am. We appreciate that. Can

1 you pass it down to Mr. -- is it Lamoureux?

2 PROSPECTIVE JUROR 238: Yes, Lamoureux.

3 MS. SUDANO: Lamoureux. Okay. 238. Sir, you indicated
4 that you had some friends or your family that were in LAPD and they
5 come and visit --

6 PROSPECTIVE JUROR 238: Yeah.

7 MS. SUDANO: -- pretty often. Do they ever talk about work?

8 PROSPECTIVE JUROR 238: Yeah, most of the time, when
9 we're having dinner together.

10 MS. SUDANO: Anything about those conversations with
11 those individuals that you think would affect your ability to be fair and
12 impartial here?

13 PROSPECTIVE JUROR 238: Well, I know them pretty well,
14 but I understand my responsibilities here as a juror. I will not use that as
15 a way that would harmfully affect my ability to make decisions.

16 MS. SUDANO: Okay. Would you feel obligated to come
17 back with a certain type of verdict one way or the other, because of your
18 relationship with those individuals?

19 PROSPECTIVE JUROR 238: Not exactly. I would focus on all
20 of the information that's provided from both sides. I will review all the
21 evidence and I will deliberate with the rest of my jurors, as I would.

22 MS. SUDANO: Okay. So -- sorry. I completely lost my train
23 of thought, so we're going to go in a different direction right now. So do
24 you have kids at all?

25 PROSPECTIVE JUROR 238: No, I don't.

1 MS. SUDANO: Okay. I couldn't remember if you had said
2 that one or not. Are you the type of person that would require any sort
3 of specific type of evidence in order to come back with a verdict?

4 PROSPECTIVE JUROR 238: Not exactly. I mean, more so I
5 would try to focus on whatever is given. I mean it's not like -- it's -- I'd
6 look at everyone's testimony. I'd review whatever is -- whether it be
7 something film, whether it's something like photographs, anything that I
8 would take into consideration.

9 MS. SUDANO: Okay. And so you said not exactly. Is that --
10 what do you mean by not exactly?

11 PROSPECTIVE JUROR 238: Oh. Repeat the question prior
12 again?

13 MS. SUDANO: I'd asked if you were the type of person that
14 would require any specific evidence in order to come back with a verdict.
15 So would you have to have DNA? Would you have to have fingerprints
16 or video evidence or are you comfortable just listening to the evidence
17 that's presented to you and coming back with a verdict?

18 PROSPECTIVE JUROR 238: I'm more comfortable listening.
19 Basically good at understanding whatever is brought towards me. I --
20 one of the things that I like to understand is by reading through whatever
21 is brought, so any form of evidence that is brought up, I will review it.

22 MS. SUDANO: Okay. And you said that you think that you're
23 a fairly good listener?

24 PROSPECTIVE JUROR 238: Yeah.

25 MS. SUDANO: Do you think that you would be a good juror?

1 PROSPECTIVE JUROR 238: I'll try. I mean, I'm -- right now,
2 I'm kind of a little nervous. I mean, it's my first time as a juror. I'm sure
3 a lot of people here kind of have the same feeling.

4 MS. SUDANO: Are you nervous, just because you're kind of
5 in the hotseat right now?

6 PROSPECTIVE JUROR 238: A little bit.

7 MS. SUDANO: Okay.

8 PROSPECTIVE JUROR 238: Yeah.

9 MS. SUDANO: And because it's kind of a different
10 experience that you haven't had before?

11 PROSPECTIVE JUROR 238: Yeah.

12 MS. SUDANO: Okay. Everybody or most everybody up here
13 is kind of in the same boat, though, right?

14 PROSPECTIVE JUROR 238: I'm pretty sure.

15 MS. SUDANO: Okay. So are you willing to take this process
16 seriously and try your best to be a good juror in this case?

17 PROSPECTIVE JUROR 238: I'll try.

18 MS. SUDANO: Okay. And you think that you can be fair and
19 impartial throughout to both sides?

20 PROSPECTIVE JUROR 238: I'll keep an open mind.

21 MS. SUDANO: Okay. Is there anything about you that you
22 think we should know?

23 PROSPECTIVE JUROR 238: Nothing so far.

24 MS. SUDANO: Okay. You're almost done, so if it hasn't
25 come up by now -- all right. Thank you, sir. I appreciate it. Can you pass

1 it over to Mr. Nickerson, Badge Number 254.

2 All right. So sir, you indicated that there was some domestic
3 violence in your family, I believe, with your sister and brother-in-law. Is
4 that fair?

5 PROSPECTIVE JUROR 254: Yes.

6 MS. SUDANO: And then you indicated that that happened, I
7 think, did you say up in Carson City?

8 PROSPECTIVE JUROR 254: No. It happened here in Vegas.
9 He was just incarcerated in Carson City.

10 MS. SUDANO: Okay. I understand. Was it sort of an
11 ongoing thing with them or is something that --

12 PROSPECTIVE JUROR 254: Yes.

13 MS. SUDANO: Okay. Were you close to your sister at the
14 time that that was going on?

15 PROSPECTIVE JUROR 254: Never really been that close with
16 this particular sister. We've always kind of butted heads, even when we
17 were little. Just two complete opposite people.

18 MS. SUDANO: Close enough that you kind of knew what
19 was going on as it was happening, or did you find out after the fact?

20 PROSPECTIVE JUROR 254: Kind of both. I didn't visit them
21 too often. They did tend to visit my fam -- or well, the rest of my family.
22 I was living with my parents. My mom was going through
23 chemotherapy and my dad's got a mental disability, so I was kind of just
24 you know, helping them out, you know, around the house and making
25 sure they got everything, so -- but yeah, they argue quite frequently.

1 Sometimes it gets even, you know, worse than that. It gets physical.
2 Shoving, punching, things of that nature. Belittling.

3 MS. SUDANO: So you mentioned that there's physic --
4 there's kind of a physical component of it, shoving and punching and
5 then you also mentioned belittling.

6 PROSPECTIVE JUROR 254: Yes.

7 MS. SUDANO: Why did the belittling go in the same
8 category for you?

9 PROSPECTIVE JUROR 254: Because he treats her like
10 garbage. Like he, you know -- one of the frequent things that constantly
11 comes up is he's always accusing her of cheating on him, which she has
12 never done, however, he has cheated on her multiple times. And he
13 just -- he's very controlling and expects her to, you know, be the money
14 maker. You know, like he's never had a job the entire time I've known
15 him, but he expects her to work. He expects her to, you know, give him
16 money. And he goes out and does what he does around town.

17 MS. SUDANO: Do you know if your sister and he are still
18 together?

19 PROSPECTIVE JUROR 254: Yes, they are currently.

20 MS. SUDANO: Do you know why she's chosen to stay in that
21 relationship?

22 PROSPECTIVE JUROR 254: She's always been one of those
23 people that thinks she needs like a boyfriend or a husband or something
24 to feel like, you know, she's worth something, I guess. Kind of the
25 middle child syndrome.

1 MS. SUDANO: So she gets some form of validation --
2 PROSPECTIVE JUROR 254: Yes.
3 MS. SUDANO: -- from being in that relationship?
4 PROSPECTIVE JUROR 254: Yes.
5 MS. SUDANO: Is part of it kind of fear that if she goes out on
6 her own, she might not find somebody else?
7 PROSPECTIVE JUROR 254: That is a big part of it, yes, I
8 would say.
9 MS. SUDANO: Okay. And then just sort of a dependence?
10 PROSPECTIVE JUROR 254: Yeah.
11 MS. SUDANO: Okay. Do you think that there's anything
12 about your knowledge of your sister's situation that would affect your
13 ability to be fair and impartial?
14 PROSPECTIVE JUROR 254: Not at all.
15 MS. SUDANO: Are you the type of person that would require
16 any sort of specific evidence in order to come back with a verdict?
17 PROSPECTIVE JUROR 254: Just what's been presented
18 would be fine with me.
19 MS. SUDANO: Okay. So asking some other folks, the issue
20 of witness or parties involved who may not be citizens or who may not --
21 PROSPECTIVE JUROR 254: Uh-huh.
22 MS. SUDANO: -- speak English. Is that going to be an issue
23 for you?
24 PROSPECTIVE JUROR 254: Not at all.
25 MS. SUDANO: Is that something that you're going to hold

1 against one side or the other?

2 PROSPECTIVE JUROR 254: Not at all.

3 MS. SUDANO: All right. So kind of going back to that idea
4 of we had a lot of conversations this morning --

5 PROSPECTIVE JUROR 254: Right.

6 MS. SUDANO: -- before you joined us up here about things
7 that were kind of macro big social issues or political issues or kind of
8 cultural issues. Do you think that any of those issues or topics would
9 affect your ability to just focus on the evidence that's presented in this
10 particular case?

11 PROSPECTIVE JUROR 254: Not at all. I'm a floor supervisor
12 at a political survey firm and you know, we're nonpartisan. We get all
13 kinds of different surveys to do, different studies. And one of the biggest
14 rules that will -- if you break, it will get you fired is, you know, influencing
15 or biasing the survey in any sort of way, so we always encourage to you
16 know, just don't interject. Just listen and record.

17 MS. SUDANO: Okay. So -- sorry, my mind just went to the
18 oh, is it hot or is it hot? Sorry. That's where my mind went. So you
19 think that you'd be a good juror in this case?

20 PROSPECTIVE JUROR 254: Yes.

21 MS. SUDANO: Okay.

22 PROSPECTIVE JUROR 254: I probably wouldn't be able to
23 work where I work, if I couldn't be.

24 MS. SUDANO: What makes you say that?

25 PROSPECTIVE JUROR 254: Again, I just -- I talk to all kinds of

1 differing and opposing viewpoints, even from my own. Some are the
2 same as mine, but I can't -- you know, I have to be, you know, pretty
3 neutral as far as, you know, the nature of my job and my employees
4 have to do the same. I -- anytime I catch, you know, somebody doing
5 something out of the ordinary that they're not supposed to do, you
6 know, I'll just be like hey, look, you know, we gotta make sure that you
7 know, we don't influence or lead them on in any sort of way. You know,
8 we gotta stay neutral as far as you know, what we're reading.

9 MS. SUDANO: All right. Thank you, sir, I appreciate that.
10 Last but not least, can we pass it over to Mr. Schneider, badge number
11 267.

12 PROSPECTIVE JUROR 267: Troy Schneider, 267.

13 MS. SUDANO: Sir, what do you do for work? I don't
14 remember if we asked you that.

15 PROSPECTIVE JUROR 267: Yeah. I install solar residentially.

16 MS. SUDANO: You did tell us that. I'm sorry. You
17 mentioned that your dad's house was broken into. Was that recently
18 or --

19 PROSPECTIVE JUROR 267: About three years ago.

20 MS. SUDANO: Okay. Do you know if anybody was ever
21 caught?

22 PROSPECTIVE JUROR 267: No, they weren't.

23 MS. SUDANO: Okay. Did law enforcement come out?

24 PROSPECTIVE JUROR 267: Yeah, they did.

25 MS. SUDANO: Were you kind of satisfied with the job that

1 they had done, or did you wish that they had done more?

2 PROSPECTIVE JUROR 267: No, I was satisfied.

3 MS. SUDANO: Okay. Anything about that experience or
4 about your dad's experience that you think would affect your ability to be
5 fair and impartial here?

6 PROSPECTIVE JUROR 267: No.

7 MS. SUDANO: All right. Are you a news junkie or a social
8 media junkie?

9 PROSPECTIVE JUROR 267: I like to read like scientific articles
10 about new studies, stuff like that.

11 MS. SUDANO: All right. So more kind of the scientific
12 medical side --

13 PROSPECTIVE JUROR 267: Yeah.

14 MS. SUDANO: Instead of --

15 PROSPECTIVE JUROR 267: Yes.

16 MS. SUDANO: Current events and things like that?

17 PROSPECTIVE JUROR 267: Uh-huh. Exactly.

18 MS. SUDANO: Okay. What's the last thing you read?

19 PROSPECTIVE JUROR 267: I'm trying to think of a good one,
20 but I can't think of anything off the top of my head right now.

21 MS. SUDANO: Fair. Do you think that something like that
22 and kind of reading the more scientific or the analytical studies would
23 affect your ability to be a juror?

24 PROSPECTIVE JUROR 267: No, I don't.

25 MS. SUDANO: Positive or negative. Do you think it'd made

1 you a better juror?

2 PROSPECTIVE JUROR 267: I think it'll make me a better
3 juror, if anything.

4 MS. SUDANO: What makes you say that?

5 PROSPECTIVE JUROR 267: There's -- just kind of hearing
6 how people like to conceptualize and articulate like their -- like how they
7 word stuff. I know that kind of like on the topic of how the Defendant
8 doesn't need to really voice his opinion or his -- or where he stands, I
9 know that it might just come across wrong or he might -- like people look
10 for tendencies in how he says it and things like that, and it might just be
11 like nervous. Like he might be doing those, just because he's nervous or
12 something like that, but other people might be seeing those cues as if
13 he's lying. But just him being nervous will just be showing something
14 different.

15 MS. SUDANO: So it sounds like you're somebody that will
16 kind of take into consideration not just what's said, but kind of how it's
17 said and the circumstances behind why it's said, even?

18 PROSPECTIVE JUROR 267: Yeah, behind why it's said, not
19 necessarily how it's said.

20 MS. SUDANO: Okay. Do you think that you'd be a good
21 juror in this particular case?

22 PROSPECTIVE JUROR 267: I do.

23 MS. SUDANO: What makes you say that?

24 PROSPECTIVE JUROR 267: I feel like what many people have
25 said before, like just a good listener. I'm unbiased, I like to believe. And

1 I would listen to both sides.

2 MS. SUDANO: Okay. Are you the type of person that would
3 require any sort of specific type of evidence in order to come back with a
4 verdict?

5 PROSPECTIVE JUROR 267: No, I wouldn't.

6 MS. SUDANO: Okay. All right. Anything else that you think
7 we should know about you?

8 PROSPECTIVE JUROR 267: My cousin's a DA, Robert
9 Daskas.

10 MS. SUDANO: Oh, okay. I forgot to ask you that question. I
11 appreciate you sharing that. Are you close with him?

12 PROSPECTIVE JUROR 267: Not really.

13 MS. SUDANO: Do you see him kind of at family functions
14 every now and then?

15 PROSPECTIVE JUROR 267: Yeah, I seen him today actually,
16 too.

17 MS. SUDANO: Oh, because you were in the building?

18 PROSPECTIVE JUROR 267: Yeah.

19 MS. SUDANO: Do you think that -- well, does he ever talk
20 about work at family functions or anything like that?

21 PROSPECTIVE JUROR 267: No, he doesn't.

22 MS. SUDANO: Okay. Anything about that relationship that
23 you think would affect your ability to be fair and impartial in this case?

24 PROSPECTIVE JUROR 267: No, it wouldn't.

25 MS. SUDANO: Okay. Would you feel obligated or pressured

1 to vote in one way or the other, because of your relationship with him?

2 PROSPECTIVE JUROR 267: No, I wouldn't.

3 MS. SUDANO: Okay. Thank you, sir. I appreciate that. And
4 so I said last, but not least, but Mr. Linares, I didn't ask you any
5 questions. Thank you. Will you pass it all the way back up. You almost
6 snuck out of that one.

7 PROSPECTIVE JUROR 235: James Linares, 235.

8 MS. SUDANO: All right. So sir, do you think you would be a
9 good juror in a case like this, or in any case?

10 PROSPECTIVE JUROR 235: Yes.

11 MS. SUDANO: What makes you say that?

12 PROSPECTIVE JUROR 235: Same thing. Like, I'm, kind of, an
13 open mind to things, facts, and someone.

14 MS. SUDANO: Are you the type of person that would require
15 any sort of specific evidence in order to come to a verdict in a case?

16 PROSPECTIVE JUROR 235: No.

17 MS. SUDANO: We talked about the fact that witnesses that
18 you may or may not hear from in this case might be people that either
19 use an interpreter, don't speak English, or people that are not U.S.
20 citizens. Would that be something that you think would affect your
21 verdict at all?

22 PROSPECTIVE JUROR 235: No.

23 MS. SUDANO: Is that something that you would hold
24 against one side or the other?

25 PROSPECTIVE JUROR 235: No.

1 MS. SUDANO: Is that something that you would hold
2 against any of those folks?

3 PROSPECTIVE JUROR 235: No.

4 MS. SUDANO: Okay. Would that factor into your
5 consideration in this case in any way?

6 PROSPECTIVE JUROR 235: No.

7 MS. SUDANO: Okay. Anything that you think that we should
8 know about you?

9 PROSPECTIVE JUROR 235: No.

10 MS. SUDANO: Do you and your significant other ever see
11 each other?

12 PROSPECTIVE JUROR 235: No, we don't.

13 MS. SUDANO: Okay. You said you're both chefs -- or sous
14 chefs on the strip, right?

15 PROSPECTIVE JUROR 235: Yeah. 12 plus hours every day.
16 Maybe at night when we sleep, but yeah.

17 MS. SUDANO: The restaurant's doing okay without you
18 there for the last couple days?

19 PROSPECTIVE JUROR 235: Well, they've been blowing up
20 my phone.

21 MS. SUDANO: All right. You think though that work
22 pressures aside, and the fact that they miss you and would like you back,
23 you think that you'll be able to focus and pay attention to the evidence in
24 this particular case?

25 PROSPECTIVE JUROR 235: Yes.

1 MS. SUDANO: Thank you, sir.

2 Court's indulgence? Thank you, Your Honor. No further
3 questions. The State would pass.

4 THE COURT: Defense?

5 [Pause]

6 MR. SPEED: All right. Let's pass the microphone, whoever
7 has it, to seat number 1, Mr. Nicholas. All right. Or Ms. Nicholas, I
8 apologize, ma'am.

9 PROSPECTIVE JUROR 245: It's okay.

10 MR. SPEED: I am sorry.

11 PROSPECTIVE JUROR 245: Alma Nicholas, juror number
12 245.

13 MR. SPEED: And just to reiterate some of the things that
14 we've already heard, you indicated that you were a juror twice in
15 Washington State; one was civil, one was criminal?

16 PROSPECTIVE JUROR 245: That's correct.

17 MR. SPEED: You've heard some of the conversation that
18 we've had with other members of the panel about Mr. Gunera-Pastrana
19 not having to say anything in his defense?

20 PROSPECTIVE JUROR 245: Correct.

21 MR. SPEED: You understand that?

22 PROSPECTIVE JUROR 245: I do understand that.

23 MR. SPEED: Would that place the State at an advantage in a
24 proceeding like this one if the only thing you heard was one side of the
25 story?

1 PROSPECTIVE JUROR 245: Not necessarily.

2 MR. SPEED: Not necessarily. What do you mean by that?

3 PROSPECTIVE JUROR 245: I guess it depends on how strong
4 the evidence against him is.

5 MR. SPEED: Okay. And when you say how strong the
6 evidence is, earlier the example --

7 PROSPECTIVE JUROR 245: Or how compelling.

8 MR. SPEED: -- or one of the examples was -- I believe from
9 the Court, was that Mr. Gunera-Pastrana's lawyers don't have to do
10 anything. They don't have to ask any questions. They can sit and look at
11 newspapers, right, the entire time these proceedings are going on. And
12 the State in presenting their case would be presenting the strongest case
13 they could, I imagine, yes?

14 PROSPECTIVE JUROR 245: Yes.

15 MR. SPEED: If you heard that, and even if we didn't ask any
16 questions in response to their witnesses' testimony, you would still keep
17 an open mind, as I believe several of your colleagues have said earlier,
18 and weigh the case exactly equally?

19 PROSPECTIVE JUROR 245: I think I would keep an open
20 mind. I think in the back of my mind I would that the Defense would be
21 foolish not to at least present something.

22 MR. SPEED: It would be foolish not to present something.
23 Why is that? Would you agree with me -- before you answer, would you
24 agree with me that attorneys for the State of Nevada are motivated to do
25 their jobs, they're going to present the best case that they can, yes?

1 PROSPECTIVE JUROR 245: I agree.

2 MR. SPEED: They're going to try to hold their burden and try
3 to prove that he is guilty beyond a reasonable doubt?

4 PROSPECTIVE JUROR 245: I agree.

5 MR. SPEED: That means that they won't be reading
6 magazines or newspapers at counsel table, yes?

7 PROSPECTIVE JUROR 245: Correct.

8 MR. SPEED: And if after they present that kind of an
9 evidence -- or that kind of a case, that manner of evidence, and Mr.
10 Gunera-Pastrana chooses not to say anything, you think that he would
11 be foolish in that regard?

12 PROSPECTIVE JUROR 245: I do.

13 MR. SPEED: Passing the microphone to seat number 4, Mr.
14 Lamoureaux.

15 PROSPECTIVE JUROR 238: Christopher Lamoureaux, badge
16 number 238.

17 MR. SPEED: Mr. Lamoureaux, you said that you're more
18 comfortable listening, that you don't require specific evidence in order to
19 -- a specific kind of evidence in order to reach a decision in this case, but
20 you're a little bit nervous. Tell me why that is.

21 PROSPECTIVE JUROR 238: I'm not normally a very social
22 person. So I mean, in general, conversations are not really my strongest
23 point.

24 MR. SPEED: Okay.

25 PROSPECTIVE JUROR 238: It's usually with people that I

1 know really well, friends, family.

2 MR. SPEED: Do you think that you're more comfortable
3 discussing very sensitive issues like the issues you'll be asked to deal
4 with if you're selected as a juror in this case with people you know?

5 PROSPECTIVE JUROR 238: I'm pretty sure.

6 MR. SPEED: It would be difficult to reach a decision is say
7 you had an opinion about a particular piece of evidence that was not
8 shared by the group widely?

9 PROSPECTIVE JUROR 238: Repeat the question again.

10 MR. SPEED: It would be difficult for you to reach a decision if
11 you had an opinion about some piece of evidence that you might be
12 presented with in this case, an opinion that wasn't shared by most of the
13 members of your jury panel?

14 PROSPECTIVE JUROR 238: Not quite. I'd try to open up
15 more if I were chosen to be a part of the jury. I'd speak to more people
16 and try to understand their take on it.

17 MR. SPEED: Could you stand up for yourself though if
18 everyone else in the room thought that you were 100 percent off base
19 with what you were thinking?

20 PROSPECTIVE JUROR 238: It'd be a little difficult, but I
21 would stand for what I believe is strongly right.

22 MR. SPEED: That kind of thing is hard, right?

23 PROSPECTIVE JUROR 238: Yeah.

24 MR. SPEED: If you believed that the State did not meet its
25 burden in a criminal case, this case or any other, but the rest of the

1 members of your jury if you were selected in a criminal case did believe
2 that, you would be uncomfortable standing up for yourself in that
3 situation or no?

4 PROSPECTIVE JUROR 238: Well, I'm pretty sure it would be
5 a little -- it would be, kind of, scary. But I'd stand up. I'd say my word.

6 MR. SPEED: But you acknowledge it would be scary --

7 PROSPECTIVE JUROR 238: Yeah.

8 MR. SPEED: -- if everyone thought that the State proved
9 their case and you did not?

10 PROSPECTIVE JUROR 238: Yeah.

11 MR. SPEED: It would be hard for you to say wait a minute,
12 everyone, we need to think about this a little bit more closely; that would
13 be --

14 PROSPECTIVE JUROR 238: Yeah.

15 MR. SPEED: -- a frightening proposition for you?

16 PROSPECTIVE JUROR 238: I'm pretty sure. I mean, it's -- I
17 don't want to be, like, the only guy that everybody thinks is nuts.

18 MR. SPEED: Because that's uncomfortable, isn't it?

19 PROSPECTIVE JUROR 238: Yeah.

20 MR. SPEED: That is a frightening proposition for all of us,
21 isn't it?

22 PROSPECTIVE JUROR 238: Yeah.

23 MR. SPEED: To be the only person who thinks that the State
24 didn't do something when everyone else says the government did do
25 something, or they performed their job?

1 PROSPECTIVE JUROR 238: Yeah.

2 MR. SPEED: Thank you, sir. Would you pass the
3 microphone to your right, please, to seat number 6? That is Mr.
4 Nickerson.

5 PROSPECTIVE JUROR 254: Jeremiah Nickerson, badge
6 number 254.

7 MR. SPEED: Mr. Nickerson, I'd like your thoughts about
8 some of the advantages that you think women enjoy in family dynamics,
9 family situations. You indicated to us earlier that your sister was the
10 victim of domestic violence?

11 PROSPECTIVE JUROR 254: That is correct.

12 MR. SPEED: Law enforcement was involved in her family
13 situation, yes?

14 PROSPECTIVE JUROR 254: I am assuming so. I'm not
15 exactly sure how that was. I was not in town at the time when it
16 happened. I was in San Diego for a couple months.

17 MR. SPEED: It is that sister's husband who was incarcerated
18 up north, yes?

19 PROSPECTIVE JUROR 254: That is correct.

20 MR. SPEED: And you said they are still together?

21 PROSPECTIVE JUROR 254: They are.

22 MR. SPEED: Can you describe your relationship with your
23 brother-in-law, that sister's husband?

24 PROSPECTIVE JUROR 254: To put it politely, I can't stand the
25 guy.

1 MR. SPEED: Okay. Because -- and I'm assuming here. If I'm
2 wrong, Mr. Nickerson, correct me. Because that person did something
3 terrible, something bad to your sister, to your family member?

4 PROSPECTIVE JUROR 254: That's only part of it.

5 MR. SPEED: What are the other parts?

6 PROSPECTIVE JUROR 254: Again, he has one child with
7 another person that he no longer --

8 MR. SPEED: He's a philanderer?

9 PROSPECTIVE JUROR 254: Well, yes. But that was prior to
10 him meeting my sister. He's not a good father. He's had all three of his
11 children taken away by the State of Nevada.

12 MR. SPEED: Irresponsible father.

13 PROSPECTIVE JUROR 254: He's a career criminal from what
14 I can tell. He goes out stealing from just wherever he goes. He's been --
15 had numerous drug charges, meth, marijuana. You know, he's --

16 MR. SPEED: A thief and a drug addict?

17 PROSPECTIVE JUROR 254: Yes.

18 MR. SPEED: And he's abusive to your sister?

19 PROSPECTIVE JUROR 254: As well as other people, yes.

20 MR. SPEED: As well as other people?

21 PROSPECTIVE JUROR 254: Yes. He's a very controlling
22 person.

23 MR. SPEED: When you first learned -- and I understand that
24 you're not very close -- you haven't been very close with that sister. I
25 believe you said that the two of you have butted heads since you were

1 small children?

2 PROSPECTIVE JUROR 254: Yes, for the most part.

3 MR. SPEED: When you first learned that this person that
4 we're talking about, her current husband, was acting the way that he's
5 been described as acting towards your sister --

6 PROSPECTIVE JUROR 254: Uh-huh.

7 MR. SPEED: -- what was the first thing you thought? What
8 was your first reaction to that?

9 PROSPECTIVE JUROR 254: Anger. I mean, we may not
10 always get along, but I mean, it's still my sister, you know.

11 MR. SPEED: It's your sister; you're going to protect her
12 instinctively, right?

13 PROSPECTIVE JUROR 254: Yeah.

14 MR. SPEED: You'll become angry when you find out that
15 someone is doing reprehensible to her, yes?

16 PROSPECTIVE JUROR 254: Yeah. Her and, you know,
17 anybody that puts hands on a woman, you know, is just -- it's not how I
18 was raised.

19 MR. SPEED: You took action right away the first time you
20 heard something, at least tell someone else?

21 PROSPECTIVE JUROR 254: Yes.

22 MR. SPEED: Passing the microphone, please, sir, to seat
23 number 8. I believe Mr. Schneider is to your right.

24 PROSPECTIVE JUROR 267: Troy Schneider, 267.

25 MR. SPEED: Mr. Schneider, you indicated that you enjoy

1 reading scientific articles, yes?

2 PROSPECTIVE JUROR 267: Yes, I do.

3 MR. SPEED: But you couldn't think of any when you were
4 thinking with Ms. Sudano. Have you thought of one? What's the most
5 recent thing that you've read that's interesting?

6 PROSPECTIVE JUROR 267: Honestly, I can't think of
7 anything.

8 MR. SPEED: Still can't? Well, I'm trying to think of the most
9 recent one I've read. If I -- if it comes to me, I'll see if we both read the
10 same things, or are interested in the same things. But you indicated how
11 being nervous might affect the way someone tells their side of the story,
12 and you wouldn't hold that against my client if he chose not to say
13 anything. Is that still true?

14 PROSPECTIVE JUROR 267: Yes, that is true.

15 MR. SPEED: You also indicated that you have a cousin who
16 serves in the district attorney's office, yes?

17 PROSPECTIVE JUROR 267: Yes, he does.

18 MR. SPEED: Do you talk about cases with Mr. Daskin
19 [phonetic]?

20 PROSPECTIVE JUROR 267: No, I have never.

21 MR. SPEED: Do you have any designs on attending law
22 school perhaps?

23 PROSPECTIVE JUROR 267: No.

24 MR. SPEED: No? Why is that? Because you have a cousin
25 who is a lawyer, right?

1 PROSPECTIVE JUROR 267: Yeah.

2 MR. SPEED: Why is that?

3 PROSPECTIVE JUROR 267: Well, I did have a -- like, a small
4 passion for it. Like, the knowledge that you get, and how to talk, and
5 articulate, and structure your guys' sentences. I find that all fascinating.
6 I just -- I honestly don't like being in the court. I don't like cases where
7 people get misrepresented and sentenced to long years of their life
8 where it's just thrown away. Obviously, that doesn't happen often, but it
9 does happen. And I just didn't really want to be a part of that.

10 MR. SPEED: Do you think that it's -- is it fair to say that you
11 believe this a difficult job for a person with your experience and the way
12 that you think about things in our world?

13 PROSPECTIVE JUROR 267: Yes, I do.

14 MR. SPEED: When you were asked earlier -- or were you
15 asked earlier if you thought you could be a good juror?

16 PROSPECTIVE JUROR 267: Yes, I was asked, and I do believe
17 so.

18 MR. SPEED: Okay. But you still recognize that something
19 like this is very difficult, yes?

20 PROSPECTIVE JUROR 267: Very difficult.

21 MR. SPEED: Do you think that you could sit in judgment of
22 another person?

23 PROSPECTIVE JUROR 267: Yes, I do believe so.

24 MR. SPEED: Okay. Do you have any pre-conceived ideas
25 about Latino men or Hispanic men?

1 PROSPECTIVE JUROR 267: No, I do not.

2 MR. SPEED: Did you hear some of those questions from
3 earlier?

4 PROSPECTIVE JUROR 267: Yeah. And one of my peers
5 referred to them as hard workers. I would agree with that from the ones
6 I do work with.

7 MR. SPEED: You install solar, yes?

8 PROSPECTIVE JUROR 267: Yes, I do.

9 MR. SPEED: Outside work?

10 PROSPECTIVE JUROR 267: Yes, sir.

11 MR. SPEED: Heavy lifting?

12 PROSPECTIVE JUROR 267: Yep.

13 MR. SPEED: Very hard?

14 PROSPECTIVE JUROR 267: Yes.

15 MR. SPEED: And the Hispanic men that you've worked with,
16 they've been hard workers, at least in your experience, yes?

17 PROSPECTIVE JUROR 267: Yes, they have.

18 MR. SPEED: Do you speak Spanish?

19 PROSPECTIVE JUROR 267: No, I do not.

20 MR. SPEED: Are you able to communicate with your
21 coworkers?

22 PROSPECTIVE JUROR 267: Yes, I can.

23 MR. SPEED: At least minimally, yes?

24 PROSPECTIVE JUROR 267: Yes.

25 MR. SPEED: Have you ever as much as you can, talk about

1 your family, and have them talk about their family? Do you
2 communicate a little bit that way?

3 PROSPECTIVE JUROR 267: Yes, I do.

4 MR. SPEED: Do you think that you've gotten the sense from
5 at least the limited communication that you've been able to have with
6 your coworkers that those hardworking fellows have an expectation that
7 their family should also work hard?

8 PROSPECTIVE JUROR 267: Yeah. From all the ones I know,
9 that's one of their main concerns, working and being able to provide for
10 their household.

11 MR. SPEED: You've got to earn everything that you get, yes?

12 PROSPECTIVE JUROR 267: Yes.

13 MR. SPEED: Down to let's see, seat number 13, badge
14 number 272. That is Mr. Glass, yes?

15 PROSPECTIVE JUROR 272: Timothy Glass, 272.

16 MR. SPEED: Three boys, Mr. Glass, ages 3, 8, and 10,
17 correct?

18 PROSPECTIVE JUROR 272: Correct.

19 MR. SPEED: I remember earlier you said that it's better being
20 out there than over here, but, you know, welcome to the arena, yes?

21 PROSPECTIVE JUROR 272: Thank you.

22 MR. SPEED: You've got three boys. Has there ever been a
23 time when -- let's start with the ten-year-old, the oldest -- when he's been
24 dishonest with you?

25 PROSPECTIVE JUROR 272: No.

1 MR. SPEED: No?

2 PROSPECTIVE JUROR 272: No.

3 MR. SPEED: What about your middle child, your eight-year-
4 old?

5 PROSPECTIVE JUROR 272: Yes.

6 MR. SPEED: All right. Let's talk about him for a few minutes.
7 There's been a time when he's been dishonest with you?

8 PROSPECTIVE JUROR 272: Yes.

9 MR. SPEED: Why do you think that is?

10 PROSPECTIVE JUROR 272: To not get himself in trouble.

11 MR. SPEED: What was it about; can you tell us?

12 PROSPECTIVE JUROR 272: It's always small things.

13 Whether he did his chores, stuff like that.

14 MR. SPEED: If you find out that your middle son hasn't done
15 his chores, or you asked him to do something and he pawned it off on
16 his big brother, or tried to pawn it off on his little brother who's only
17 three, he understands at this point -- at this age, that he'll probably get in
18 trouble with Dad, right?

19 PROSPECTIVE JUROR 272: He does.

20 MR. SPEED: And in order to avoid something like that, that
21 uncomfortable situation, your middle son will sometimes tell a fib, right?

22 PROSPECTIVE JUROR 272: He will.

23 MR. SPEED: Do you think that he understands when you tell
24 him that it's wrong to lie, exactly what you mean in the big picture
25 sense?

1 PROSPECTIVE JUROR 272: I hope eventually he will.

2 MR. SPEED: Eventually your middle son will learn what Dad
3 was trying to tell him about credibility, yes?

4 PROSPECTIVE JUROR 272: Right.

5 MR. SPEED: And accountability?

6 PROSPECTIVE JUROR 272: Yes.

7 MR. SPEED: And people being able to rely on what you say,
8 your word being your bond, yes?

9 PROSPECTIVE JUROR 272: Yes.

10 MR. SPEED: At eight years old though, your middle son
11 probably doesn't understand that, would you agree?

12 PROSPECTIVE JUROR 272: Yeah. Yeah, I'd agree.

13 MR. SPEED: And he probably doesn't understand -- this is
14 still your eight-year-old. He probably doesn't understand that the things
15 you say can often have very serious consequences, yes?

16 PROSPECTIVE JUROR 272: Right.

17 MR. SPEED: Your thoughts on Mr. Gunera-Pastrana not
18 saying anything in his defense, or his lawyers not saying anything?

19 PROSPECTIVE JUROR 272: I understand it's his right, and I
20 respect that; I'm fine with that.

21 MR. SPEED: You respect it and you're fine with it, but do you
22 think that gives Ms. DiGiacomo and Ms. Sudano an advantage in these
23 proceedings?

24 PROSPECTIVE JUROR 272: I don't.

25 MR. SPEED: You're not more likely to trust what they tell you

1 is actually the right thing?

2 PROSPECTIVE JUROR 272: If he doesn't speak?

3 MR. SPEED: That's right. Yes, sir.

4 PROSPECTIVE JUROR 272: No.

5 MR. SPEED: And to let's see -- seat 14 should be closest to

6 you. That's --

7 PROSPECTIVE JUROR 268: Devirgilio, 268.

8 MR. SPEED: Mr. -- say it again for me, sir. I'm sorry.

9 PROSPECTIVE JUROR 268: Devirgilio.

10 MR. SPEED: Devirgilio, go ahead. Name and badge

11 number?

12 PROSPECTIVE JUROR 268: Devirgilio, 268.

13 MR. SPEED: Your thoughts on what we've been talking

14 about here with Mr. Glass. You have children, yes?

15 PROSPECTIVE JUROR 268: I do.

16 MR. SPEED: 3, 8, and 15?

17 PROSPECTIVE JUROR 268: Correct.

18 MR. SPEED: Has there been a time when -- let's start with

19 your 15-year-old --

20 PROSPECTIVE JUROR 268: Oh my.

21 MR. SPEED: -- your oldest -- oh boy.

22 PROSPECTIVE JUROR 268: Yes. She's wonderful.

23 MR. SPEED: She is wonderful. All right. For the record.

24 That is in the record here, too. You can show that to her forever. Has

25 there been a time when she's been dishonest with you, in all

1 seriousness?

2 PROSPECTIVE JUROR 268: Most definitely.

3 MR. SPEED: And why is that? If you can tell us about one
4 example.

5 PROSPECTIVE JUROR 268: You know, she'll, you know, lie
6 about whether once again, chores are done, or things of that nature,
7 homework is done, things like that.

8 MR. SPEED: Do you think that your oldest child -- and she's a
9 girl, yes?

10 PROSPECTIVE JUROR 268: Correct.

11 MR. SPEED: Do you think your oldest would lie to protect
12 her younger siblings?

13 PROSPECTIVE JUROR 268: No. I think they like to rat on
14 each other.

15 MR. SPEED: Yeah.

16 PROSPECTIVE JUROR 268: Unless it had to do -- you know,
17 unless it pertained to them as a group, or you know, two of them.

18 MR. SPEED: So within the family when it's Mom and Dad
19 asking them if they've done their chores, or if they've done their
20 homework. The 15-year-old I assume is in high school. If she's studied
21 for her examinations. Inside the family, they will tell fibs on one another.
22 Yeah, Dad, I told my younger brother to sweep the garage floor when
23 you told me to, but as long as it's done it really doesn't matter, right, that
24 I didn't do what you said, that kind of thing?

25 PROSPECTIVE JUROR 268: Sure.

1 MR. SPEED: I'm talking about when the family group is
2 pitted against someone on the outside, an outsider to the family. Do you
3 think that your oldest daughter would in a situation where it's her
4 siblings, or her parents versus someone from the outside, would tell a lie
5 if she thought it was protecting those people she loves?

6 PROSPECTIVE JUROR 268: Outside the family unit?

7 MR. SPEED: Yes, sir.

8 PROSPECTIVE JUROR 268: I do not believe so.

9 MR. SPEED: What about your middle child?

10 PROSPECTIVE JUROR 268: No.

11 MR. SPEED: And your youngest probably isn't talking very
12 much, right?

13 PROSPECTIVE JUROR 268: He actually talks a lot.

14 MR. SPEED: Really?

15 PROSPECTIVE JUROR 268: I mean, he's following his older
16 siblings, so yes.

17 MR. SPEED: You said he spies on his older siblings?

18 PROSPECTIVE JUROR 268: He's following.

19 MR. SPEED: Following his older siblings.

20 PROSPECTIVE JUROR 268: Following. So what he sees
21 them do he, you know, emulates and replicates.

22 MR. SPEED: Do you understand the State's burden of proof
23 in a criminal case?

24 PROSPECTIVE JUROR 268: Yes.

25 MR. SPEED: You understand that they have to prove their

1 case beyond a reasonable doubt?

2 PROSPECTIVE JUROR 268: Correct.

3 MR. SPEED: And you believe that you can hold them to that
4 burden, yes?

5 PROSPECTIVE JUROR 268: Yes.

6 MR. SPEED: Even if Mr. Gunera-Pastrana does not say
7 anything in his defense?

8 PROSPECTIVE JUROR 268: Yes.

9 MR. SPEED: The fact of his not saying anything wouldn't
10 create a prejudice or a bias in your mind against him or his side?

11 PROSPECTIVE JUROR 268: That's his choice. That wouldn't
12 be my choice.

13 MR. SPEED: That wouldn't be your choice. Why is that?

14 PROSPECTIVE JUROR 268: Sitting that, I can say that now.
15 You know, until I'm, you know, directed from, you know, other parties
16 representing me than I can't, you know, say one way or the other right
17 now. If it was me, I would want to say something personally.

18 MR. SPEED: If it was you you would want to say something?

19 PROSPECTIVE JUROR 268: Unless I was directed otherwise
20 not to because it would incriminate me.

21 MR. SPEED: But if a person is innocent, he doesn't have to
22 worry about someone directing him not to say something out of fear that
23 he might incriminate himself; isn't that right?

24 PROSPECTIVE JUROR 268: That's correct.

25 MR. SPEED: If you don't have anything to hide, there's no

1 reason to remain silent, right?

2 PROSPECTIVE JUROR 268: Correct.

3 MR. SPEED: You can go ahead and state your piece, or
4 speak your piece, however you want to if it means someone is accusing
5 you of doing something that goes against your character, right?

6 PROSPECTIVE JUROR 268: Correct.

7 MR. SPEED: And if it was you in that chair, in that position,
8 you would want to proclaim your innocence if given the opportunity to
9 do so, yes?

10 PROSPECTIVE JUROR 268: I mean, yes. I would feel anger
11 that someone's accusing me of something that I did not do. So yes, I
12 would like to speak up.

13 MR. SPEED: And to -- I believe that's everyone.

14 MS. MACHNICH: No.

15 MR. SPEED: No? Mr. Linares, seat 21. They ratted you out,
16 man, because I heard several noes from this side of the building -- of the
17 room right here.

18 PROSPECTIVE JUROR 235: James Linares, 235.

19 MR. SPEED: You tried, but -- good try. That's all right.
20 That's all right. Mr. Linares, you'll hear from the lawyers on both sides.
21 You'll hear us -- the State for sure, say lots of things. You may even hear
22 us approach the bench like you've seen possibly the last couple of days
23 and have a conversation with the judge. Earlier, one of our venire panel
24 members said something along the lines of I believe lawyers are tricky.
25 Right; do you remember that?

1 PROSPECTIVE JUROR 235: Yes.

2 MR. SPEED: Would you hold anything that we might do in
3 the prosecution of our case, or in the defense of our client against us or
4 against him?

5 PROSPECTIVE JUROR 235: No.

6 MR. SPEED: How do you see lawyers prosecuting their case,
7 or defending their client in court, when sometimes issues become
8 contentious?

9 PROSPECTIVE JUROR 235: I know it gets -- you know, it's
10 somebody's livelihood, you know. It might get emotional. But I think,
11 you know, everyone's doing their job. If you could separate that and,
12 you know, just stick to what the testimonies are and what the facts are
13 then there shouldn't be a problem.

14 MR. SPEED: What about reactions -- emotional reactions
15 from witnesses? How do tears from people in general affect you?

16 PROSPECTIVE JUROR 235: I think it's -- to me it's effective.
17 You know, if I see a young lady crying, you know, just at the sight of
18 someone she's accusing of sexual assault or something like that, you
19 know, that's -- it just has an impact on me, you know. It's a factor, you
20 know. I know she may or may not be telling the truth, but just the
21 emotion of it, kind of, gives it to me a slight edge.

22 MR. SPEED: The expression of emotion tends to lend
23 credibility to what someone might be saying while --

24 PROSPECTIVE JUROR 235: Yes.

25 MR. SPEED: -- they're crying?

1 PROSPECTIVE JUROR 235: Yes.

2 MR. SPEED: You said it would have an impact on you if you
3 heard witnesses cry, or saw witnesses cry in this case. Would that
4 impact make you believe them more than someone else who didn't cry?

5 PROSPECTIVE JUROR 235: Yes. Yeah.

6 MR. SPEED: Do you think if -- or judging from your own
7 assessment of your reaction to tears, you could not be fair and impartial
8 in this case?

9 PROSPECTIVE JUROR 235: Probably not.

10 MR. SPEED: Ms. Nicholas, seat number 1, behind everyone,
11 yeah. Name and badge number, please, ma'am?

12 PROSPECTIVE JUROR 245: Alma Nicholas, badge number
13 245.

14 MR. SPEED: You indicated that you are planning a move
15 later on this month, yes?

16 PROSPECTIVE JUROR 245: Yes.

17 MR. SPEED: But you've done your advance planning. You
18 think that you can --

19 PROSPECTIVE JUROR 245: I have.

20 MR. SPEED: You think that you can serve as a juror in this
21 case, and that not create too much of a catastrophe in your experience
22 there?

23 PROSPECTIVE JUROR 245: I believe so.

24 MR. SPEED: Okay. No longer an inconvenience to you?

25 PROSPECTIVE JUROR 245: No.

1 MR. SPEED: Thanks to your planning?
2 PROSPECTIVE JUROR 245: Thanks to the planning.
3 MR. SPEED: All right. May I have the Court's indulgence for
4 a --
5 THE COURT: Yes.
6 MR. SPEED: -- few moments, please, sir?
7 [Pause]
8 MR. SPEED: May we approach, Your Honor?
9 THE COURT: Yes.
10 [Sidebar begins at 2:30 p.m.]
11 MS. MACHNICH: Your Honor, at this point, we have two
12 strikes for cause, and we'll pass the remainder.
13 THE COURT: Okay. Who?
14 MS. MACHNICH: We would like to strike first, number 268.
15 MS. SUDANO: Let's see.
16 THE MARSHAL: We have a few people that need bathroom
17 breaks.
18 MS. SUDANO: Sure.
19 MS. MACHNICH: Okay. Bathroom break.
20 THE COURT: All right. We're going to take a break.
21 [Sidebar ends at 2:31 p.m.]
22 THE COURT: All right. Ladies and gentlemen, suddenly we
23 -- you told me you wanted me to go straight through. During this recess,
24 you're admonished do not talk or converse amongst yourselves or with
25 anyone else on any subject connected with this trial, or read, watch, or

1 listen to any report of or commentary on the trial, or any person
2 connected with this trial by any medium of information, including
3 without limitation newspapers, television, radio, internet. Do not form or
4 express any opinion on any subject connected with the trial until the
5 case is finally submitted to you. We'll take ten minutes.

6 [Prospective jurors out at 2:31 p.m.]

7 [Outside the presence of the prospective jurors]

8 THE COURT: We're on the record outside the presence. We
9 have 58 minutes left.

10 MS. MACHNICH: Well, Your Honor, at this time, not to
11 inconvenience anyone -- I still think we're going to make it -- the Defense
12 has two strikes for cause. And otherwise, we can pass the remainder of
13 the panel, as we said up at the bench. First, we would strike for cause
14 seat 14, number 268, Devirgilio.

15 MR. SPEED: Devirgilio.

16 MS. MACHNICH: Devirgilio. Okay. I'm not talking to them.
17 That's probably a good thing at this point. All right. So when we were
18 speaking of -- and Mr. Speed was speaking with him about beyond a
19 reasonable doubt and the State having the burden, that's when things
20 started to shift. He said it would be his choice to testify if it was him.
21 And then he went on to say if it was him, he would want to proclaim his
22 innocence, he'd be angry at the accuser.

23 But what was even more important about what he said next,
24 and actually said I believe two different times during his speech -- or his
25 speaking time -- I wouldn't say -- I was going to say testimony. He said

1 that he would only not testify if he was guilty and he was instructed not
2 to testify. And that came out two separate times in slightly different
3 phrasings. I -- honestly, I didn't have it word for word; I usually do. But
4 that is what he said is that he would only not testify if his counsel told
5 him not to testify, or if he was instructed not to, or counseled not to
6 testify. But otherwise, he would testify if he was innocent and it would
7 be foolish not to.

8 So we believe that he cannot be fair and unbiased in this
9 case. He has already decided that if our client does not testify, that he is
10 guilty and has been instructed not to do so by counsel.

11 THE COURT: State?

12 MS. SUDANO: Thank you, Your Honor. So he never said
13 that oh if he doesn't testify, he's guilty. It was a situation where in
14 response to the question by Mr. Speed, oh well, your counsel could only
15 advise you not to testify if you had something to hide. If you were
16 innocent there wouldn't be anything to hide, right? So it was in
17 response to that line of questioning. So the State does not believe that
18 anything that he said indicated that he would be unable to be fair and
19 impartial in this case, so we would like the opportunity to traverse.

20 THE COURT: That's fine. I put he wants someone to speak,
21 but he didn't say he couldn't be fair and impartial. And I believe he also
22 said that he would follow -- he knew that they didn't have to. So I'll let
23 you traverse.

24 Who's the next one?

25 MS. MACHNICH: And our second and final strike for cause at

1 this time, Your Honor, would be number 235, Linares, who is seated in
2 seat 21. He specifically said he probably would not be fair and impartial
3 in this case knowing his reactions to people's testimony and people's
4 emotions, and he'd be more likely to believe them if they showed any
5 emotion, showed any crying.

6 And by nature, given the type of case that this is, having
7 someone put so much on that and even at this point having the self-
8 awareness that they cannot be fair and impartial if there are any tears.
9 We've already had an incident with tears. It's going to happen again.
10 And it's just that type of case. This is not --

11 THE COURT: State?

12 MS. SUDANO: And Your Honor, the State would also like the
13 opportunity to traverse him. Frankly, I was confused by the question that
14 Mr. Speed asked. The response that he gave back was probably not.
15 And I think that there was a negative in Mr. Speed's question. So I'm
16 frankly not sure whether he was saying that it would affect his ability, or
17 it would not affect his ability to be fair and impartial.

18 THE COURT: Well, I -- crying or -- he was explaining that that
19 would, you know, factor into his -- the credibility, not credibility. And
20 that's for the jury to decide. That's -- they can -- the fact that we would
21 be entering their providence if we said oh, crying affecting him or
22 making him feel the witness is more or less believable is not for our -- we
23 can't -- there's no inherent bias if somebody feels on looking at it.

24 But I'm going to -- he did say something about fair -- that he
25 -- it would make him not fair and impartial. So I'll let you traverse him

1 because I'm not clear as to whether the crying would not allow him to be
2 fair and impartial.

3 So let's start with 268, which is William -- how do you say it?

4 MR. SPEED: Devirgilio.

5 THE COURT: Devirgilio.

6 MR. SPEED: Yes, sir.

7 THE COURT: Seat 14.

8 MS. DIGIACOMO: Before we bring the whole panel back in,
9 will we have a chance to run to the bathroom or no? It's fine.

10 THE COURT: Are you telling me you need to? Yes. Yes, I'll
11 give you --

12 MS. DIGIACOMO: I am --

13 THE COURT: -- yes, I'll give you that opportunity.

14 MS. DIGIACOMO: All right. I will run.

15 THE MARSHAL: Go ahead and sit next to the chair with the
16 microphone. Grab the microphone.

17 THE COURT: Mr. Devirgilio --

18 PROSPECTIVE JUROR 268: Yes, sir.

19 THE COURT: -- 268. As you've seen, we've questioned
20 numerous people outside the presence. It's not that -- it's totally normal.
21 You don't need to be nervous, and you're not on the spot. But we do
22 have some questions.

23 So State?

24 MS. SUDANO: Thank you. So sir, you were asked some
25 questions. And I think you had made a comment that if you were in the

1 Defendant's situation, you would want to speak out on your own behalf.
2 Do you recall saying that?

3 PROSPECTIVE JUROR 268: I do.

4 MS. SUDANO: Okay. And you indicated though that it's
5 hard for you to say because you're not in that situation?

6 PROSPECTIVE JUROR 268: Correct.

7 MS. SUDANO: So as you're, kind of, sitting over here, it's
8 easy to say that. But you don't really know until --

9 PROSPECTIVE JUROR 268: Until I'm -- correct.

10 MS. SUDANO: -- you're there? And you also recognize that
11 it's the State, the prosecution that has the burden of proving this case; is
12 that right?

13 PROSPECTIVE JUROR 268: Correct.

14 MS. SUDANO: So we have to prove the case beyond a
15 reasonable doubt regardless of whether or not the Defendant or the
16 Defense choose to say anything or present any evidence whatsoever?

17 PROSPECTIVE JUROR 268: Okay.

18 MS. SUDANO: Our burden is the same. Do you understand
19 that?

20 PROSPECTIVE JUROR 268: Yes.

21 MS. SUDANO: And you were asked some questions of --
22 about I guess, in your mind, the only reason why you wouldn't say
23 something on your behalf is if you were actually guilty?

24 PROSPECTIVE JUROR 268: No.

25 MS. SUDANO: Okay.

1 PROSPECTIVE JUROR 268: I don't know. No. I -- if I was
2 informed by my representation not to speak, then I would not speak.

3 MS. SUDANO: Okay.

4 PROSPECTIVE JUROR 268: I'm not, you know, fluent with
5 law, so --

6 MS. SUDANO: Sure.

7 PROSPECTIVE JUROR 268: -- I'm not going to take it into my
8 own hands.

9 MS. SUDANO: Sure. So you recognize that there are a
10 number of different reasons that somebody may choose not to testify
11 other than because they're guilty, right?

12 PROSPECTIVE JUROR 268: Correct.

13 MS. SUDANO: It could be nerves. It could be because
14 myself and Ms. DiGiacomo are scary and are going to get the
15 opportunity to cross-examine somebody?

16 PROSPECTIVE JUROR 268: Sure.

17 MS. SUDANO: It could be a language issue. It could be any
18 number of things, right?

19 PROSPECTIVE JUROR 268: Correct.

20 MS. SUDANO: So knowing that we have the burden of
21 proof, we have to prove the case to you beyond a reasonable doubt. If
22 the Defendant in this case chooses not to testify, would you hold that
23 against him?

24 PROSPECTIVE JUROR 268: If he chooses personally himself
25 not to -- no. I mean, no. I will not hold that against him.

1 MS. SUDANO: Okay. And if you are instructed that that fact
2 is not to factor into your deliberations in any way, are you comfortable
3 with that instruction?

4 PROSPECTIVE JUROR 268: Absolutely.

5 MS. SUDANO: And would you be able to follow the law on
6 that particular point?

7 PROSPECTIVE JUROR 268: Yes.

8 MS. SUDANO: Okay. And if the -- not so much the
9 Defendant, but if his attorneys chose not to present any evidence on his
10 behalf, or chose not to question witnesses, you were instructed that they
11 were under no obligation to do so would you be comfortable with that?

12 PROSPECTIVE JUROR 268: I would feel that I would weigh
13 more towards the Plaintiff, you know, if they were the only ones
14 speaking.

15 MS. SUDANO: So if -- not that they would, but if Mr. Speed
16 and Ms. Machnich said literally nothing for the rest of this trial, if they
17 didn't do anything, if they were just reading newspapers, but the State
18 did not convince you beyond a reasonable doubt of the guilt of the
19 Defendant, would you have any issue coming back with a verdict of not
20 guilty?

21 PROSPECTIVE JUROR 268: No.

22 MS. SUDANO: Okay. So regardless of what they may or
23 may not do, the State has the same burden, and you still have to be
24 satisfied beyond a reasonable doubt. Do you understand that?

25 PROSPECTIVE JUROR 268: Yes.

1 MS. SUDANO: Do you have any issue with that whatsoever?
2 PROSPECTIVE JUROR 268: I do not.
3 MS. SUDANO: Okay. Thank you, Your Honor.
4 THE COURT: Counsel?
5 MR. SPEED: No, Your Honor. No questions.
6 THE COURT: Okay. You can go outside.
7 PROSPECTIVE JUROR 268: Thank you.
8 THE COURT: Thank you.
9 Anything else to add?
10 MS. MACHNICH: We're going to submit. We're not
11 withdrawing our strike for cause, but we will submit.
12 THE COURT: All right. I think he made it clear that he can
13 follow the instructions and after they're explained. And the more I --
14 maybe as a sidelight, we should be pre-instructing all this, so they
15 understand. We've had several of those come up. But he doesn't seem
16 to be equivocating in any way, and clear that he will follow the
17 instructions; he will not hold anything against the Defendant or Defense
18 counsel if they don't -- if he doesn't testify or the Defense counsel does
19 nothing. So I'm denying the challenge for cause on 268.
20 Can you get 235, James Linares. Linares?
21 MS. DIGIACOMO: Linares.
22 THE COURT: Linares.
23 THE MARSHAL: James Linares?
24 THE COURT: Yes.
25 THE MARSHAL: Have a seat next to the microphone, sir, and

1 pick up the microphone.

2 THE COURT: Mr. Linares, you've seen we've taken a lot of
3 people outside -- what we call outside the presence. It doesn't mean
4 anything. We just have some questions. You should try to not -- relax
5 and not think that -- we are not picking on you. It's just a normal
6 process.

7 State?

8 MS. SUDANO: Thank you.

9 Hello, again. So you were asked some questions about the
10 effect that emotion or people crying might have on you.

11 PROSPECTIVE JUROR 235: Yes.

12 MS. SUDANO: So would you agree with me that people
13 might cry for any number of different reasons?

14 PROSPECTIVE JUROR 235: Yes.

15 MS. SUDANO: For instance, I cry when I'm angry. Is that
16 something that you've seen happen or you've experienced?

17 PROSPECTIVE JUROR 235: Yes.

18 MS. SUDANO: People might cry because they're nervous or
19 upset. Would you agree with that?

20 PROSPECTIVE JUROR 235: yes.

21 MS. SUDANO: And then would you also agree with, kind of,
22 the opposite of that, that people may not cry even when you'd expect
23 them to cry?

24 PROSPECTIVE JUROR 235: Yes.

25 MS. SUDANO: And so that's just -- everybody's reaction to

1 emotion is, kind of, different. Would you agree with that?

2 PROSPECTIVE JUROR 235: Yes.

3 MS. SUDANO: So you were asked the impact that emotion
4 or crying might have on you specifically. And correct me if I'm wrong,
5 but I think that you started to say that that's something that you would
6 consider certainly if somebody cried, right?

7 PROSPECTIVE JUROR 235: Yes.

8 MS. SUDANO: But that's not the only thing that you would
9 consider, right?

10 PROSPECTIVE JUROR 235: No. The testimony, as well.

11 MS. SUDANO: Okay. So not just how somebody says
12 something, or the emotion that they're conveying, but just also what
13 they're saying?

14 PROSPECTIVE JUROR 235: Yes.

15 MS. SUDANO: And would you be able to, kind of, keep -- or I
16 guess put it to, like, kind of, a critical test, so that you're being critical of
17 what it is that's being said even if somebody's crying?

18 PROSPECTIVE JUROR 235: Yes.

19 MS. SUDANO: So if I came before you and I cried and I told
20 you that the sky was green, would you believe me?

21 PROSPECTIVE JUROR 235: No. I --

22 MS. SUDANO: Okay.

23 PROSPECTIVE JUROR 235: -- I would obviously listen to the
24 testimony and everything. And -- but you know, the emotions are
25 something that I see, like, that can, kind of, weigh.

1 MS. SUDANO: Sure. But so just because somebody's crying
2 when they tell you something doesn't mean that you're automatically
3 going to believe it, right?

4 PROSPECTIVE JUROR 235: Right.

5 MS. SUDANO: And you'd still, kind of, consider the
6 circumstances around it, what everybody else says, whatever other
7 evidence you may or may not have, would that be fair?

8 PROSPECTIVE JUROR 235: Yes.

9 MS. SUDANO: Okay. So just because somebody is crying or
10 emotional, could you still weigh everything even with that fact in mind?

11 PROSPECTIVE JUROR 235: Yes.

12 MS. SUDANO: And could you still be fair and impartial even
13 though there may or may not be emotion shown by somebody in a
14 particular case?

15 PROSPECTIVE JUROR 235: Yes.

16 MS. SUDANO: Okay. Thank you, sir.

17 THE COURT: Defense?

18 MR. SPEED: Mr. Linares, if I started wailing inconsolably
19 because I told you the sky is burgundy outside, you wouldn't care very
20 much, would you?

21 PROSPECTIVE JUROR 235: No.

22 MR. SPEED: Because you know the sky isn't burgundy?

23 PROSPECTIVE JUROR 235: Right.

24 MR. SPEED: That's not a situation where someone's
25 emotional outburst might have the kind of impact on you that you

1 described earlier, is it?

2 PROSPECTIVE JUROR 235: No.

3 MR. SPEED: What about when -- do you remember when
4 your fellow venire panel member said that someone made her
5 uncomfortable?

6 PROSPECTIVE JUROR 235: Yes.

7 MR. SPEED: I can't remember the name right now, or which
8 person it was in particular, but I do remember that it was a female.

9 PROSPECTIVE JUROR 235: Yes.

10 MR. SPEED: If a female person started crying and said
11 someone has made me uncomfortable, the impact that you described
12 earlier that that kind of emotion would have on you makes you tend to
13 believe that person; isn't that right?

14 PROSPECTIVE JUROR 235: Not entirely. Like, I was telling --
15 you know, I've got to hear the testimony, as well, you know. I just, kind
16 of, think, you know, when it comes to women, they do -- to me, I believe
17 them more than I would a man.

18 MR. SPEED: When they start crying?

19 PROSPECTIVE JUROR 235: Not entirely when they start
20 crying. But I believe that, like, a woman has been suppressed for a long,
21 long time. You know, it is, kind of, a man's world, and you know, like,
22 even the "me, too" movement, like, we were speaking about before, like,
23 I think it's overdue, you know. Women have equal say and equal
24 everything. But I think, kind of, a man always pushes them down. And it
25 takes a lot for a woman to speak up because they're always judged. And

1 just like we were having earlier, I see a couple of the gentlemen were all
2 getting upset about it. And it's just, kind of -- to me it's, like -- I just think
3 they don't like that idea of someone 35 years ago or something like that.
4 It doesn't matter to me if there was a rape, if there was anything like that.
5 It still happened. And the fact that a woman can't speak up because
6 they're scared about it is just, kind of, upsetting to me.

7 MR. SPEED: You believe that we live in a much better time
8 and better point in our society because women now have the ability to
9 speak up?

10 PROSPECTIVE JUROR 235: Yes.

11 MR. SPEED: If you see that a woman is displaying the kinds
12 of emotions that we've been talking about, your tendency is to believe
13 her, yes?

14 PROSPECTIVE JUROR 235: Not entirely. Again, you know,
15 like, yeah, if they come out and they're crying uncontrollably and they
16 can't seem to control themselves, you know, like, that's a factor, you
17 know? But --

18 MR. SPEED: That is a factor.

19 PROSPECTIVE JUROR 235: -- I also would hear what they
20 had to say if they can say it. That's pretty much, you know, how I would
21 view.

22 MR. SPEED: But in taking the things that you said to us a few
23 seconds ago, you would lend more credibility to the testimony of a
24 woman if she displays what you consider to be genuine, sorrowful
25 emotions, as -- I'll call it a remedy, for generation upon generation of

1 post subjective treatment by men and the patriarchy. Is that, kind of,
2 what you were saying earlier? Because women have been stepped on
3 for so long that --

4 PROSPECTIVE JUROR 235: I believe, yeah, like a -- I wouldn't
5 say -- like, everyone's their own person, you know. But I do believe that
6 it's harder for a woman to come up and say something that's person,
7 especially towards a man who's, you know, constantly just, kind of --
8 doesn't give them the opportunity, or even just passes judgment on
9 them, you know?

10 MR. SPEED: So if a woman is brave enough to display that
11 kind of courage --

12 PROSPECTIVE JUROR 235: Yes.

13 MR. SPEED: -- then you would lend more credibility as to
14 what she has to say?

15 PROSPECTIVE JUROR 235: Yeah.

16 MR. SPEED: Thank you, sir.

17 THE COURT: Thank you.

18 Anything else?

19 Thank you. Thank you. You may go outside and wait.

20 As I said before, I think we're -- your challenge is -- well, go
21 ahead. Put your challenge on the record if you have --

22 MS. MACHNICH: Your Honor, I think --

23 THE COURT: -- anything else to add?

24 MS. MACHNICH: Your Honor, I think he has continued to say
25 that a woman testifying, a woman showing any emotion would have

1 undue influence upon him. But even further, here at the end he said that
2 he would take -- he basically -- what it boils down to is he would take a
3 woman's word because she's a woman. She's going to -- he's going to
4 trust a woman more than he's going to trust a man in the same situation.
5 He's going to trust -- if she can get up there and testify, he's going to
6 believe her. And that's not correct. You're supposed to judge someone
7 on the stand based on yes, their demeanor on the stand, yes, the fact
8 that they are there, the fact that they are telling consistent stories, the
9 fact that they are telling the truth, and there's evidence to support their
10 truth.

11 There are many elements that go to that. And the fact that
12 he's already decided that a woman on the stand is more credible and
13 should be given more credence than a man because of her subjection in
14 society, is on its face biased. And if we look at the defense teams, we
15 have two females for the State. We have a female and male for the
16 Defendant and a male defendant. He is absolutely going to hold the
17 Defense to a higher standard because of the males and because of -- I
18 guess the subjection of the women in society. And that's not appropriate
19 in a juror. It's not appropriate when we're going to have that exact
20 situation.

21 I mean, if we had a female defendant and all different
22 witnesses, we would be in a different situation. But some jurors are not
23 appropriate for certain cases, Your Honor. I've said it again and again.
24 This juror is not appropriate for this case because he's going to believe a
25 woman regardless, and that's a problem.

1 THE COURT: Thank you.

2 MS. DIGIACOMO: Your Honor, I completely disagree. If you
3 looked at him when he was being questioned by Mr. Speed, you could
4 tell he was hesitant because -- and he kept saying no, I would consider
5 the testimony. They're trying to box him into a corner where he was just
6 saying hey, it's a factor I would look at. I understand.

7 Mr. Speed's the one that brought up the hashtag me, too
8 movement in front of this jury. And he's just saying I understand they've
9 been cut down, and I would consider it a factor if a woman came forward
10 and said this. He did not say he would automatically believe them. He
11 said he would have to consider the testimony. He would consider it a
12 factor. There is nothing that shows he is not going to be fair and
13 impartial in this case.

14 THE COURT: Thank you.

15 Steve, these lights are on and they're going to burn out by
16 the way. So -- okay. Thank you. Somebody turn them off.

17 All right. Thank you. I am denying the challenge for cause,
18 and here's why. It is not for me or anyone's purview to try to
19 psychoanalyze what any potential juror is thinking or would do. He said
20 several times he would use his -- well, he would observe the witness and
21 make a decision as to whether they -- how they are testifying.

22 And whether a witness laughs, or cries, or smirks, or
23 whatever, that's for the jury's providence to determine whether they're
24 testifying truthfully. For us to eliminate a juror because he said that that
25 could be a factor in whether he believes them or not is totally contrary to

1 our system. He said he could be fair, and he said he would listen to
2 them and take all of that into account in looking at a witness, in seeing
3 how they react, and whether they're crying real or fake tears, which
4 we've seen maybe more so in civil cases. I've seen -- is what juries --
5 jurors are all about. And for somebody to sit there and well, he's already
6 made his mind up, which he did not say ever that somebody who is
7 showing emotion would, I guess, curry his favor no matter what they
8 said.

9 So I do disagree that somehow that's -- he has shown any
10 bias. Okay. So that was it, correct?

11 MS. SUDANO: Correct, Your Honor.

12 MS. MACHNICH: Correct, Your Honor.

13 MR. SPEED: Yes.

14 THE COURT: All right. I'll give you a couple minutes, and
15 then we -- because we still have to -- I have to read the whole thing, and
16 you have to go through preempts and then Batson. So go.

17 MS. MACHNICH: Yeah, we can roll straight into preempts
18 now.

19 THE COURT: What's that?

20 MS. MACHNICH: We can roll straight into preempts right
21 now.

22 THE COURT: That's what I'm saying when you --

23 MS. MACHNICH: Okay.

24 THE COURT: Yeah. But I'd like to bring them in so I -- well, I
25 guess I could read them the instructions on -- yeah.

1 MS. SUDANO: And I think it would probably be the State's
2 preference -- I'm saying probably because Ms. DiGiacomo's not here.
3 But it would probably be the State's preference that we not swear them
4 until Monday just in the event that something crazy happens over the
5 weekend. And so if Your Honor wants to instruct them while we're
6 doing preempts, that's fine. Or if Your Honor wants to wait and not
7 instruct them until Monday, we're also fine with that.

8 THE COURT: I guess -- I'm thinking it's going to take you a
9 while to do your preempts. You each get nine now?

10 MS. SUDANO: That's correct.

11 THE COURT: All right. I'm going to take a quick trip.

12 [Pause]

13 THE COURT: All right. You have them the perempt thing.
14 Start doing your perempts.

15 MS. DIGIACOMO: Do you want us to start, Your Honor?

16 THE COURT: Yeah.

17 MS. DIGIACOMO: Oh.

18 THE COURT: You don't need a jury in here to --

19 MS. DIGIACOMO: Oh, yeah, you --

20 MS. MACHNICH: We prefer not to have one, so we can --

21 MR. SPEED: Right.

22 THE CLERK: So there's eight for each?

23 MS. MACHNICH: We have nine.

24 MR. SPEED: Nine, eight plus one.

25 MS. MACHNICH: It's nine.

1 THE CLERK: Eight plus one. Okay.
2 THE COURT: They've agreed to nine.
3 MS. MACHNICH: But we're doing nine total.
4 THE CLERK: I just want to make sure that we get our 15.
5 THE COURT: Yeah. That's correct.
6 MS. DIGIACOMO: And just so we're all in agreement, the
7 alternate [indiscernible]?
8 MS. MACHNICH: Oh, yes.
9 MR. SPEED: Yeah.
10 MS. DIGIACOMO: Okay.
11 MS. MACHNICH: We're doing nine, not eight plus one.
12 THE COURT: Nine.
13 MS. DIGIACOMO: Right.
14 THE COURT: You're doing nine.
15 MS. MACHNICH: Okay.
16 THE COURT: You stipulated to that. When everything is
17 done the last three, which does -- if you can multitask, if you want to let
18 one of the alternates -- the last alternate go, I figured we'd be done
19 Wednesday, and we'd have to worry the whole week. Now, we are
20 down to --
21 MS. DIGIACOMO: I say keep three. We've got a weekend.
22 THE COURT: Right. Because --
23 MS. MACHNICH: Yeah.
24 MS. DIGIACOMO: And we could -- what if we go into the
25 next --

1 MS. MACHNICH: Oh, yeah.
2 THE COURT: Well, are you are guys worried about --
3 MS. DIGIACOMO: -- week?
4 THE COURT: -- it going until next --
5 MS. DIGIACOMO: Yeah.
6 THE COURT: -- Monday?
7 MS. DIGIACOMO: Yeah.
8 MS. MACHNICH: Yeah. You know, so --
9 THE COURT: That's a week from Monday.
10 MS. DIGIACOMO: Right. I would say let's keep three.
11 THE COURT: Okay. So we're --
12 MS. DIGIACOMO: The way this is going --
13 THE COURT: I was right when I answered the question well,
14 we never know what's going to happen.
15 [Pause]
16 MR. SPEED: Judge, do you know what time we're going to
17 start on Monday, because we've got a criminal calendar?
18 THE COURT: Yeah. I'm guessing -- I'm hoping 11. You guys
19 be here 15 minutes early so --
20 MS. MACHNICH: I have a doctor's appointment that morning
21 and you had said 1 before. I will do everything in my --
22 THE COURT: Oh, really?
23 MS. MACHNICH: -- power to be here.
24 THE COURT: All right. If I had --
25 MS. MACHNICH: But we can do -- I mean, I don't want to

1 hold us up.

2 THE COURT: Then we're sure going to Monday.

3 MS. MACHNICH: No, we can -- I mean, let's do 11 --

4 THE COURT: 1 is fine.

5 MS. MACHNICH: -- and I'll be back --

6 THE COURT: You're not -- hey, if you're waiting on a doctor,
7 you won't be done.

8 MS. MACHNICH: Well, here's the thing, if we're not -- if
9 you're not instructing them, there's some wiggle room, because you're
10 going to be instructing them on Monday.

11 MS. DIGIACOMO: Right.

12 MS. MACHNICH: So --

13 MS. DIGIACOMO: If you start out with the instructions --

14 MS. MACHNICH: Yeah.

15 THE COURT: Yeah.

16 MS. MACHNICH: Just to do it and it's not that important
17 where if ultimately --

18 THE COURT: All right.

19 MS. MACHNICH: -- I had to walk out, I had to walk out.

20 MS. DIGIACOMO: We could do, Your Honor, just the
21 preliminary stuff, and then if she's not here yet, we could push -- take an
22 early lunch and do openings after.

23 MS. MACHNICH: Yeah.

24 THE COURT: That's fine.

25 MS. MACHNICH: And I think I'll be back. It's just 10:45 might

1 be pushing it.

2 THE CLERK: So 1?

3 THE COURT: No, 11.

4 THE CLERK: 11. Okay. Let me reschedule it then.

5 MR. SPEED: It always happens that Monday is a bad day.

6 THE COURT: I know. We're being optimistic.

7 MR. SPEED: And it seems like whenever we schedule stuff --

8 THE COURT: It doesn't look like there's a whole lot.

9 MR. SPEED: -- it doesn't look like it works out. Mondays
10 always takes longer than what we think.

11 [Pause]

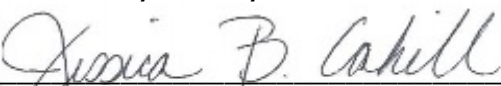
12 THE COURT: What number are you on?

13 MS. DIGIACOMO: Eight.

14 MS. SUDANO: Eight.

15 [Proceedings concluded at 3:27 p.m.]

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23 

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25 Jessica B. Cahill, Transcriber, CER/CET-708

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GUSTAVO GUNERA-PASTRANA,) No. 79861
)
 Appellant,)
)
 v.)
)
 THE STATE OF NEVADA,)
)
 Respondent.)
)

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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 19 day of May, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender's Office