

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

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
Aug 12 2020 02:21 p.m.  
Elizabeth A. Brown  
Supreme Court Case No. 80834  
Clerk of Supreme Court

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**ATTORNEY FOR APPELLANT**

RESCH LAW, PLLC d/b/a  
Conviction Solutions  
Jamie J. Resch  
Nevada Bar Number 7154  
2620 Regatta Dr., Suite 102  
Las Vegas, Nevada, 89128  
(702) 483-7360

**ATTORNEYS FOR RESPONDENT**

CLARK COUNTY DISTRICT ATTY.  
Steven B. Wolfson  
200 Lewis Ave., 3rd Floor  
Las Vegas, Nevada 89155  
(702) 455-4711

NEVADA ATTORNEY GENERAL  
Aaron Ford  
100 N. Carson St.  
Carson City, Nevada 89701  
(775) 684-1265

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1 PROSPECTIVE JUROR NO. 101: Yes, sir.

2 MR. DiGIACOMO: And nothing about -- you'd be able to  
3 set aside, I'm guessing, kind of the notions of maybe overall,  
4 as a broad view, the criminal justice system may not be fair,  
5 and focus on your role in it, in this one situation?

6 PROSPECTIVE JUROR NO. 101: Yes, sir.

7 MR. DiGIACOMO: You also noted something about drugs  
8 and alcohol and addicts as being a pretty strong motivation  
9 for people to do some pretty bad things?

10 PROSPECTIVE JUROR NO. 101: Yes, sir.

11 MR. DiGIACOMO: Would you agree with me that people,  
12 whether they're a drug addict or they just want drugs or they  
13 just want money, whatever their motivations are, people on  
14 drugs should be held responsible for their crimes?

15 PROSPECTIVE JUROR NO. 101: Yes, sir.

16 THE MARSHAL: I'm sorry, jurors. I need you to speak  
17 directly into that microphone --

18 PROSPECTIVE JUROR NO. 101: Okay.

19 THE MARSHAL: -- because if you don't --

20 THE COURT: Yeah, the -- the recorder doesn't hear  
21 your voice just even though we can hear it, the recorder can't  
22 hear it unless you speak into the microphone.

23 PROSPECTIVE JUROR NO. 101: Okay.

24 THE COURT: Thank you.

25 MR. DiGIACOMO: I just lost my train of thought, but

1 I think you said that -- that, you know, people that are on  
2 drugs should be held responsible. So I'm going to flip it to  
3 the other side. Would you agree with the idea that, you know,  
4 people make bad decisions, ultimately victims in cases may not  
5 live the way you would expect them to live or do things that  
6 you would expect them to do, but are they still entitled to  
7 the protections of our justice system?

8 PROSPECTIVE JUROR NO. 101: Yes, sir.

9 MR. DiGIACOMO: And some of the questions about your  
10 opinions about defense attorney prosecutor judges, you put  
11 some question marks, I'm assuming, because you don't have a  
12 lot of contact with anybody other than Mr. Langford, and that  
13 wasn't in the capacity as a defense attorney; would that be  
14 fair?

15 PROSPECTIVE JUROR NO. 101: Yes, sir, correct.

16 MR. DiGIACOMO: Okay. But you did indicate that --  
17 I'm going to paraphrase there -- there's probably good cops  
18 and there's bad cops?

19 PROSPECTIVE JUROR NO. 101: Yes, sir.

20 MR. DiGIACOMO: And you'd agree with me that being a  
21 police officer is no different than being anybody else, a  
22 lawyer, a sporting goods salesman, a judge, there's probably  
23 good ones and there's probably bad ones?

24 PROSPECTIVE JUROR NO. 101: Yes.

25 MR. DiGIACOMO: Would you be willing to give each cop

1 individual treatment and make a decision on whether or not  
2 he's a good cop or a bad cop based upon what happens on the  
3 stand and not some sort of prior notion?

4 PROSPECTIVE JUROR NO. 101: Yes, sir.

5 MR. DiGIACOMO: Have you ever had a bad experience  
6 with a police officer?

7 PROSPECTIVE JUROR NO. 101: Not super bad, just like  
8 attitude. You know, like, I've had some police officers that  
9 have gone out of their way to help me when, you know, I don't  
10 know they really had to go that far. You know, I've been  
11 like, I've had a major blowout on 95 and I was in a airline  
12 dress uniform. And I told the state trooper I could, you  
13 know, change my own tire, it was no problem. But he would not  
14 allow me to do it, he insisted on doing it for me.

15 But I've also had, like, when we first moved here,  
16 and we -- I've only been here about two days and I brought  
17 down my aunt and uncle's collection of our handguns and  
18 shotguns that they used to have. One of them was an antique  
19 that was given to my -- passed down from family member to  
20 family member. It was my great-grandfather's. And it was all  
21 pure silver plated. And it was, like, it wasn't really to be  
22 used, it was just, like, a display piece. And we'd just  
23 gotten down here, like, two days, and our house got robbed and  
24 broke into. And Christmas gifts were stolen and everything.

25 But I guess that officer had had a bad day or

1 something, but they started scolding my aunt, Why wasn't it  
2 registered? And we're trying to explain to them, We just got  
3 it down here two days ago. And we didn't even know at that  
4 time, you know, how long we had to have it. And, you know, he  
5 seemed to be more upset that we hadn't had a decorative  
6 handgun registered already instead of, you know, my aunt was  
7 falling apart because Christmas had been ruined and everything  
8 else.

9 So, you know, there's good and bad to everything.

10 MR. DiGIACOMO: And I'm guessing then, from your  
11 answers, that you can set aside kind of your -- the bad  
12 experience, the home invasion, or even necessarily the good  
13 experience with the trooper that, you know, basically, you  
14 listen to the witness, decide whether or not the witness is  
15 not only being truthful, but also, you know, could he have  
16 seen what he saw, was he mistaken? You know, there may be any  
17 number of reasons to challenge the credibility of a witness.

18 PROSPECTIVE JUROR NO. 101: Yes, sir.

19 MR. DiGIACOMO: Mr. Sgro asked us a couple of jurors  
20 before, and I thought I would just ask you, I mean, you would  
21 agree or would you agree with the idea that, you know, there  
22 are times when people have pretty strong motivations to tell  
23 lies.

24 PROSPECTIVE JUROR NO. 101: Yes, sir.

25 MR. DiGIACOMO: And those motivations may be

1 different in the -- in the future than they were at the time  
2 that they were first asked the questions; would you agree with  
3 that kind of idea?

4 PROSPECTIVE JUROR NO. 101: Yes, sir.

5 MR. DiGIACOMO: Do you think that you could assess  
6 people's motivations for when they made the statements that  
7 they made versus maybe the statements they're saying from the  
8 stand?

9 PROSPECTIVE JUROR NO. 101: Yes, sir.

10 MR. DiGIACOMO: And merely just because someone may  
11 have lied in the past doesn't necessarily mean they're lying  
12 now; would you agree with that statement?

13 PROSPECTIVE JUROR NO. 101: Correct. Yes.

14 MR. DiGIACOMO: I guess I'm going to skip, then, to  
15 -- to penalty. Prior to coming in here, had you ever thought  
16 of the death penalty before?

17 PROSPECTIVE JUROR NO. 101: Yes, sir.

18 MR. DiGIACOMO: All right. Do you believe in the  
19 death penalty?

20 PROSPECTIVE JUROR NO. 101: Yes, sir.

21 MR. DiGIACOMO: If you were let's say king of Nevada,  
22 so you get to make the rules, would you have death penalty as  
23 one of the options potentially in a murder case?

24 PROSPECTIVE JUROR NO. 101: Yes, sir. Depending on  
25 the circumstance.



1 MR. DiGIACOMO: Can -- Mr. Sgro asked this question.  
2 I'm assuming this means that at least in some circumstances  
3 you'd be willing to impose the death penalty?

4 PROSPECTIVE JUROR NO. 101: Yes, sir.

5 MR. DiGIACOMO: Let's talk about the flip side. Mr.  
6 Sgro was asking the prior juror, you know, can you conceive of  
7 an idea where you might be willing to consider parole for  
8 somebody who's convicted of first degree murder?

9 PROSPECTIVE JUROR NO. 101: Yes, sir.

10 MR. DiGIACOMO: Can you think of a situation in your  
11 -- in your mind, not telling us what it is, but can you  
12 contemplate some situation where that might happen?

13 PROSPECTIVE JUROR NO. 101: Yes, sir.

14 MR. DiGIACOMO: Mr. Sgro made a lot of statements  
15 about, you know, first degree murder, it's not self-defense,  
16 it's not accidental. The court's going to give you what the  
17 law is as it relates to that. You are going to also find out  
18 that you could be guilty of first degree murder and never  
19 physically have killed anybody before, there might be any  
20 number of mitigating factors. Would you agree, that might say  
21 to yourself, Some people deserve parole where others don't?

22 PROSPECTIVE JUROR NO. 101: Yes, sir.

23 MR. DiGIACOMO: If at the end of the day Ms. Weckerly  
24 and I prove our case beyond a reasonable doubt, any hesitation  
25 in coming in here and finding the defendants guilty?

1 PROSPECTIVE JUROR NO. 101: No, sir.

2 MR. DiGIACOMO: And likewise, if we get to the  
3 situation, and I don't want to exclude Mr. Mason, I don't ever  
4 want the jury to not think this is just as important to Mr.  
5 Mason as it is to Mr. Burns, but since Mr. Burns has four  
6 possible punishments, I mean it for both Mr. Mason and Mr.  
7 Burns, but for Mr. Burns it's only four. If at the end of the  
8 day you think the maximum punishment is appropriate for either  
9 defendant, any issue coming in here and -- and announcing that  
10 verdict here in court?

11 PROSPECTIVE JUROR NO. 101: No, sir.

12 MR. DiGIACOMO: Thank you very much, sir. The three  
13 pass for cause.

14 THE COURT: Mr. Oram?

15 MR. ORAM: Thank you. Good afternoon. Mr. Newton,  
16 you -- you can hear how this is going along, some of the same  
17 questions are starting to come out. Had you ever watched any  
18 of these shows, CSI shows or anything like that?

19 PROSPECTIVE JUROR NO. 101: No, sir. I have no  
20 interest in them.

21 MR. ORAM: You have no interest in them? Do -- do  
22 you ever watch the documentaries where it talks about crimes  
23 and maybe The First 48 or something like -- like that?

24 PROSPECTIVE JUROR NO. 101: No, sir. I -- my basic  
25 interest for, like, TV, is more dealing with camping, hunting,

1 fishing, cooking, photography, that sort of stuff. But I've  
2 -- I tried watching stuff with my aunt and uncle, like NCIS or  
3 whatever once or twice, and I just found it not to my taste.

4 MR. ORAM: Because a lot of what happens in these  
5 courtrooms is very negative, would you agree with me?

6 PROSPECTIVE JUROR NO. 101: I -- you know, from what  
7 I've seen on, like, news reports or something once in a great  
8 while.

9 MR. ORAM: Well -- well, what we're doing here is,  
10 there's a negativity.

11 PROSPECTIVE JUROR NO. 101: There's a -- yeah,  
12 there's a -- there's --

13 MR. ORAM: And it's [indiscernible], right?

14 PROSPECTIVE JUROR NO. 101: Yes, sir.

15 MR. ORAM: And that's -- so it's something you -- you  
16 stay away from. You don't watch any of that stuff at all?

17 PROSPECTIVE JUROR NO. 101: No. Just because I know  
18 it's, like, fiction. But I, you know, like for me, everything  
19 has always been about camping, fishing, and that's just always  
20 been my -- my forte in, you know, like, there's a saying that  
21 life is fishing, fishing is life. So that's just all I'm in  
22 to. So.

23 MR. ORAM: Okay. Fair enough. But you wouldn't  
24 close down to it. In other words, you're going to hear  
25 scientists get up on that witness stand.

1 PROSPECTIVE JUROR NO. 101: Yes, sir.

2 MR. ORAM: And you're familiar with some of those  
3 terms, like DNA and fingerprints?

4 PROSPECTIVE JUROR NO. 101: Yes, sir.

5 MR. ORAM: Okay. And have you ever heard of stories  
6 where they later found out somebody was convicted and found  
7 out that they hadn't done the crime?

8 PROSPECTIVE JUROR NO. 101: Yes, sir.

9 MR. ORAM: And a lot of times that's based on  
10 science?

11 PROSPECTIVE JUROR NO. 101: Yes, sir.

12 MR. ORAM: So you'd -- you'd be looking at science  
13 pretty carefully; is that fair?

14 PROSPECTIVE JUROR NO. 101: Both the scientific  
15 evidence and from the two sides parties.

16 MR. ORAM: Okay.

17 PROSPECTIVE JUROR NO. 101: What they present.

18 MR. ORAM: And -- and again, just so we're clear, we  
19 don't have to present anything, right?

20 PROSPECTIVE JUROR NO. 101: Correct.

21 MR. ORAM: I don't have to ask you these questions?

22 PROSPECTIVE JUROR NO. 101: Correct.

23 MR. ORAM: And I think the sort of silly example, but  
24 it is, it's true, okay, so I'll give it to you and you can all  
25 hear this, okay? I don't want to do anything more in this

1 case. So Mr. Sgro and I are going to sit over there. And  
2 we're going to -- you know, clearly, you guys look over,  
3 you're like, I think they're playing Twiddly-Winks, those two.  
4 We don't want to do anything. We're just lazy. Okay. You  
5 start feeling sorry, maybe you think, Boy, glad those aren't  
6 my lawyers. Okay.

7 And at the end of this case, having not asked a  
8 single question after this, we didn't call a witness, we could  
9 barely stay awake, but the end of the case you had a  
10 reasonable doubt as to whether Mr. Burns was guilty. How  
11 would you find him?

12 PROSPECTIVE JUROR NO. 101: Not guilty.

13 MR. ORAM: So I -- I think that's -- it's kind of a  
14 silly example, but it proves the -- the constitutional point,  
15 that we don't have to prove anything. It wouldn't be like  
16 you'd be back there going, Well, how come those lawyers didn't  
17 ask this? Or how come the lawyers didn't ask that, right?  
18 Because we have no burden to [indiscernible] and you have no  
19 problem with that at all?

20 PROSPECTIVE JUROR NO. 101: That's right. I have no  
21 problem.

22 MR. ORAM: You've heard questions about the Fifth  
23 Amendment. It's our Bill of Rights. Our Constitution. Gives  
24 everybody the right to just sit there and see if the State can  
25 prove the case against them. Do you have a problem with that

1 at all?

2 PROSPECTIVE JUROR NO. 101: No, sir.

3 MR. ORAM: Questions about race. Mr. Burns is  
4 obviously African-American. Do you have any difficulty with  
5 that concept, judging somebody who's of a different race?

6 PROSPECTIVE JUROR NO. 101: Race? No. As far as,  
7 like, I know that what you're getting at is in my  
8 questionnaire. It's more or less when I said what I've said  
9 in there is because if somebody just sits there and, Why me,  
10 everything is against me, I can't get ahead because, you know,  
11 everybody's against me, it's not true. You know, like I've  
12 told you earlier, I grew up in a low-income family. My  
13 mother, you know, I grew up on the powdered milk and the  
14 government cheese. Nobody ever stopped me. The only one that  
15 can stop you from achieving what you want is you. So instead  
16 of blaming somebody else, the only person you have at the end  
17 of the day to blame if something that you don't get is  
18 yourself.

19 MR. ORAM: Okay. And, you know, I -- I appreciate  
20 your honesty. Actually, voir dire, what we call voir dire  
21 actually means -- the translation is to tell the truth. And  
22 so we appreciate -- there's no right or wrong answer. You  
23 know, you're going to hear all sorts of -- if -- if there were  
24 100 people in here, 100 jurors, you hear all sorts of answers.

25 So I appreciate you -- you telling us your feelings.

1 But what I want to make sure of is obviously when I see a race  
2 question like that and you say that, you know, you've had  
3 these feelings, okay, I want to make sure -- because the  
4 State's going to try to execute that young man over there,  
5 okay -- that we have people that wouldn't be just thinking,  
6 Well, he's black, I'm going to do something about it.

7 PROSPECTIVE JUROR NO. 101: That would have no, what  
8 would you call it, gravity on me. I wouldn't care if it was  
9 black, white, yellow, green, Asian, me, you know, my race, any  
10 -- Native American. It doesn't matter about the race. It's  
11 just the evidence before you.

12 MR. ORAM: So what -- what you're telling me is that  
13 could a white female, an Asian female sitting over there, and  
14 in the end all you're judging is whether the State proved the  
15 case beyond a reasonable doubt?

16 PROSPECTIVE JUROR NO. 101: Correct.

17 MR. ORAM: And you can do that?

18 PROSPECTIVE JUROR NO. 101: Yes, sir.

19 MR. ORAM: And you see Mr. Burns as he's sitting  
20 there. Is there any reason, the way he looks, you know, his  
21 ponytail, is there anything about him that makes you think, I  
22 just can't be fair to that guy?

23 PROSPECTIVE JUROR NO. 101: No.

24 MR. ORAM: Mr. DiGiacomo was asking questions about  
25 some -- some victims put themselves in bad situations.

1 Essentially, that's what he's saying. Okay? Okay? And do  
2 they still deserve justice?

3 PROSPECTIVE JUROR NO. 101: Yes, sir.

4 MR. ORAM: Just because a person -- let's just make  
5 something up, okay -- just because a person's a heroin addict  
6 doesn't mean somebody should be able to rob them; is that  
7 fair?

8 PROSPECTIVE JUROR NO. 101: Correct.

9 MR. ORAM: Okay. If I say I'm a heroin addict, I  
10 still have a right to keep my wallet, right?

11 PROSPECTIVE JUROR NO. 101: Yes, sir.

12 MR. ORAM: And Mr. DiGiacomo also asked you that just  
13 because somebody lied before doesn't mean they'll necessarily  
14 lie again, right?

15 PROSPECTIVE JUROR NO. 101: Correct.

16 MR. ORAM: I could lie and say I'm a -- a doctor.  
17 But maybe I'm going to come to court, tell the truth, and say  
18 I'm a lawyer, right?

19 PROSPECTIVE JUROR NO. 101: Yes, sir.

20 MR. ORAM: But the fact somebody has lied and admits  
21 they've been lying, that's something you'd want to take into  
22 consideration for determining whether they're telling the  
23 truth in the future?

24 PROSPECTIVE JUROR NO. 101: Yes, sir.

25 MR. ORAM: Okay. Drug addicts can tell the truth,



1 can't they?

2 PROSPECTIVE JUROR NO. 101: Yes, sir.

3 MR. ORAM: They can also lie.

4 PROSPECTIVE JUROR NO. 101: Yes, sir.

5 MR. ORAM: You look for people's motivations for  
6 lying, would you want to do that?

7 PROSPECTIVE JUROR NO. 101: I'd want to -- yeah. I'd  
8 want to know why they were lying or why they were telling the  
9 truth.

10 MR. ORAM: Sometimes you -- you have to, as jurors,  
11 search for them; think you can do that?

12 PROSPECTIVE JUROR NO. 101: Yes, sir.

13 MR. ORAM: Now, they keep talking about Mr. Burns  
14 facing the death penalty and Mr. Mason is not, okay?

15 PROSPECTIVE JUROR NO. 101: Right.

16 MR. ORAM: So that you just sort of understand,  
17 they're going to say Mr. Burns is the shooter. Okay?

18 PROSPECTIVE JUROR NO. 101: Yes, sir.

19 MR. ORAM: He's the person that pulled the trigger is  
20 what they're going to say. So I want to ask you something.  
21 Do you think you could hear all this evidence, now that I've  
22 told you what I just told you, and you think you could  
23 actually walk in here, let's just say completely hypothetical,  
24 okay? You think, yeah, probably something happened. But you  
25 know what, I have a reasonable doubt. Do you really think you

1 could really walk into this courtroom with 11 other people and  
2 say, Yeah, I got a reasonable doubt, not guilty; can you  
3 really do that?

4 PROSPECTIVE JUROR NO. 101: Yes, sir.

5 MR. ORAM: You say it like that's not a problem at  
6 all. You don't think that would be a problem?

7 PROSPECTIVE JUROR NO. 101: No, sir.

8 MR. ORAM: We think we're going to win. We think  
9 we're -- Mr. Burns in the end, if jurors are doing their jobs  
10 -- and I respectfully say that, okay -- we think they'll come  
11 in here and say not guilty. Okay. But if they don't, then we  
12 as lawyers have to fight for that young man's life. You  
13 understand that?

14 PROSPECTIVE JUROR NO. 101: Yes, sir.

15 MR. ORAM: And like Mr. Sgro said, I don't get  
16 another chance. If you -- if you come in here and say,  
17 Guilty, and say, Oh, Mr. Newton, I have some questions, okay,  
18 do you believe in the death penalty? It's too late for that.  
19 Okay?

20 Now, one thing I noticed in your questionnaire is you  
21 -- you talk about fair statement, eye for an eye; do you  
22 remember that? You actually wrote it out.

23 PROSPECTIVE JUROR NO. 101: Yes, sir.

24 MR. ORAM: And you talk about taxpayers, that we  
25 shouldn't waste taxpayers' money, words to those effect; do

1 you remember that?

2 PROSPECTIVE JUROR NO. 101: Yes, sir.

3 MR. ORAM: What that would lead me to believe, at  
4 least when I read this, was that, you know, your opinion is  
5 that if I've convicted somebody of first degree murder, not  
6 second degree murder, not manslaughter, first degree murder,  
7 that the appropriate punishment is death. Is that -- is that  
8 a fair assessment of what you -- you believe?

9 PROSPECTIVE JUROR NO. 101: Yes, sir. Depending on  
10 the situation. If it -- you know, for me, if it's a  
11 deliberate act or a -- what do you call it, premeditated --

12 MR. ORAM: Okay.

13 PROSPECTIVE JUROR NO. 101: -- and it was sought out  
14 and they've been, like, stewing on doing it, then yes. But it  
15 was like in a robbery or something like that and a gun goes  
16 off accidentally or whatever and it ricochets, and he wasn't  
17 really trying to do it, and a bullet ricochets and hits the  
18 person, then another, you know, a different kind of a  
19 punishment could fit that rather than just, you know, then it  
20 always being one -- one punishment fits everything.

21 MR. ORAM: Okay. So you're saying you'd look at  
22 different -- different avenues?

23 PROSPECTIVE JUROR NO. 101: Yes.

24 MR. ORAM: But -- okay. If -- if this is a --  
25 somebody pulled the trigger on purpose, chased another person

1 and pulled the trigger on purpose, and you found that person  
2 guilty, would you sentence them to death automatically?

3 MR. DiGIACOMO: Mr. Oram, I apologize. Judge, I  
4 object to the question.

5 THE COURT: Why?

6 MR. DiGIACOMO: Because he's putting his facts and  
7 asking him, Hey, can you still consider something else? He's  
8 not allowed to put in the factual scenario in this case and  
9 ask the question.

10 THE COURT: I'll let him ask the question.  
11 Objection's overruled.

12 MR. ORAM: You understand my question?

13 PROSPECTIVE JUROR NO. 101: I believe so, sir. I  
14 believe that if, well, you're saying that, basically, it would  
15 be like if the person's running away and trying to flee, then,  
16 you know, then they're not a threat to the other person. But  
17 if they meditated, like, chase him down, it's more like a -- I  
18 guess what they call a thrill kill. Or that's how I would see  
19 it. Or like a bloodlust kill type thing. And that would, you  
20 know, to me that would --

21 MR. ORAM: Warrant the death penalty?

22 PROSPECTIVE JUROR NO. 101: -- warrant it.

23 MR. ORAM: In a scenario like that, could you  
24 consider parole for somebody like that?

25 PROSPECTIVE JUROR NO. 101: Honestly, I don't know.

1           MR. ORAM: Okay. And listen, you know, that's -- we  
2 appreciate that. Okay. Because again, there's no right or  
3 wrong answer. Some people come in and say, Look, I -- you  
4 know, some people say, I can't consider the death penalty, I  
5 don't care if it's Osama bin Laden, I can't do it. Okay. To  
6 a lot of us that may seem strange. Okay.

7           PROSPECTIVE JUROR NO. 101: Yes, sir.

8           MR. ORAM: But that's their honest belief. And it's  
9 good that they tell us. Okay. So there's no right or wrong  
10 answers. So if your answer is I don't think so, you know, I'm  
11 a -- I'm a law-abiding citizen, I believe in justice, I  
12 believe if -- you know, this is the scenario, I would not  
13 consider parole; is that fair to say?

14          PROSPECTIVE JUROR NO. 101: Yes, sir.

15          MR. ORAM: You could consider the death penalty? Is  
16 that yes?

17          PROSPECTIVE JUROR NO. 101: Yes, sir.

18          MR. ORAM: And you could consider life without parole  
19 or would you only consider the death penalty?

20          PROSPECTIVE JUROR NO. 101: It -- like I said, if it  
21 was, like I've said before, if they accidentally shot them and  
22 they were, like, just trying to scare them and put a fire --  
23 like, a -- a warning shot to say, you know, don't move or  
24 whatever, and the bullet ricochets and hits them, then I could  
25 consider, you know, parole or life with or without. Just --

1           MR. ORAM: But -- but not where somebody was -- shot  
2 somebody intentionally and then chased another person down and  
3 shot them?

4           PROSPECTIVE JUROR NO. 101: Correct.

5           MR. ORAM: So in a scenario like that, you -- you  
6 don't think you could consider anything other than the death  
7 penalty?

8           PROSPECTIVE JUROR NO. 101: Correct.

9           MR. ORAM: And I -- you know, sometimes we lawyers,  
10 we try to ask questions differently. Is it fair to say that  
11 that's just your honest belief and that there's no question  
12 that could be asked of you, you're saying under those  
13 circumstances you're going to return a sentence of death,  
14 because that's what you think is fair?

15          PROSPECTIVE JUROR NO. 101: Yes, sir.

16          MR. ORAM: And you wouldn't even consider life  
17 without parole; is that fair?

18          PROSPECTIVE JUROR NO. 101: Correct.

19          MR. ORAM: And you know as the State I believe has  
20 said to you in here, I believe, that there was a -- a child  
21 involved?

22          PROSPECTIVE JUROR NO. 101: Correct.

23          MR. ORAM: A 12-year-old, okay, was shot, chased down  
24 and shot. You don't think you could consider parole in that  
25 scenario, do you?

1 PROSPECTIVE JUROR NO. 101: No, sir.

2 MR. ORAM: You know, I really appreciate your  
3 honesty, sir.

4 Your Honor, he -- we would challenge for cause.

5 THE COURT: Traverse?

6 MR. DiGIACOMO: Sure. Mr. Oram wants you to tell him  
7 exactly -- he gave you some facts as to what the State's going  
8 to allege. And then he's asking you, Well, gee, what would  
9 your verdict be? I want to back up a little bit.

10 First of all, are you the type of person who wants to  
11 know everything before you make a decision? Particularly an  
12 important decision?

13 PROSPECTIVE JUROR NO. 101: Yes, sir.

14 MR. DiGIACOMO: And there may be any number of  
15 factors that affect your ability to -- or affect the decision  
16 you're going to make, would that be fair?

17 PROSPECTIVE JUROR NO. 101: Yes, sir.

18 MR. DiGIACOMO: If Mr. Burns is guilty, but not the  
19 shooter, that might be something that's relevant to you; would  
20 that be fair?

21 PROSPECTIVE JUROR NO. 101: Yes, sir.

22 MR. DiGIACOMO: Somebody who may be legally  
23 responsible for the murder, but may not be even the trigger  
24 man; that'd be something that you would take into  
25 consideration?

1 PROSPECTIVE JUROR NO. 101: Yes, sir.

2 MR. DiGIACOMO: And that would be a situation where  
3 you might be willing to consider one of those other forms of  
4 punishment; would that be fair?

5 PROSPECTIVE JUROR NO. 101: Yes, sir.

6 MR. DiGIACOMO: And likewise, there may be any number  
7 of other bases [sic] for you to decide that one punishment  
8 matters over the other, but ultimately you would wait till the  
9 end to see what all the evidence is; is that fair?

10 PROSPECTIVE JUROR NO. 101: Yes, sir.

11 MR. DiGIACOMO: And then ultimately if there is --  
12 the circumstances warranted, you'd obviously vote for the  
13 circumstances warranted a life with parole, you'd vote for  
14 that; would that be fair?

15 PROSPECTIVE JUROR NO. 101: Yes, sir.

16 MR. DiGIACOMO: And as you sit here today, you've  
17 been told both these defendants are presumed innocent; would  
18 that be fair?

19 PROSPECTIVE JUROR NO. 101: Yes, sir.

20 MR. DiGIACOMO: You know zero facts that are  
21 [indiscernible] this case; would that be fair?

22 PROSPECTIVE JUROR NO. 101: Yes, sir, correct.

23 MR. DiGIACOMO: And if you had to go vote, you'd  
24 never get to penalty, because you'd have to find him not  
25 guilty at this moment?



1 PROSPECTIVE JUROR NO. 101: Correct.

2 MR. DiGIACOMO: And being that they are presumed to  
3 have done nothing wrong, ultimately you have an open mind as  
4 to what the facts are going to show and what punishment you'd  
5 impose?

6 PROSPECTIVE JUROR NO. 101: Yes, sir.

7 MR. DiGIACOMO: Thank you very much.

8 MR. ORAM: May I just follow up, Your Honor?

9 THE COURT: Sure.

10 MR. ORAM: Your Honor, if there's an objection, I'm  
11 citing to Paul Lewis Browning, my next question.

12 THE COURT: You're mumbling.

13 MR. ORAM: I'm citing to Paul Lewis Browning as  
14 question that was asked by Mr. DiGiacomo, Paul Lewis Browning,  
15 and was affirmed by the Supreme Court.

16 So what I would ask you, sir, is --

17 MR. DiGIACOMO: Judge I'm already going to object  
18 before he asks the question. I know currently we can't  
19 approach. But the question, first of all, was asked by a  
20 court in a penalty re-do only. It does not apply to a  
21 pre-guilt situation.

22 THE COURT: I understand what you're saying.

23 MR. ORAM: Let me ask you this, sir. This -- we know  
24 what the State is arguing, okay. The State is saying that Mr.  
25 Burns shot a woman, a mother, and then chased her 12-year-old

1 child down a hallway and shot her. If you find him guilty of  
2 that, could you consider anything other than the death  
3 penalty?

4 MR. DiGIACOMO: Objection to the question under Rule  
5 7.71. That's an inappropriate question.

6 THE COURT: I'll let him ask it. Objection's  
7 overruled.

8 PROSPECTIVE JUROR NO. 101: Would I be able to?

9 MR. ORAM: Consider parole.

10 PROSPECTIVE JUROR NO. 101: No, sir.

11 MR. ORAM: In fact, would -- would it be fair to say  
12 that you believe if -- as I hear you, you're saying, Well, I  
13 don't know if the guy did it. If the guy didn't do it, I'm --  
14 if there's a reasonable doubt, I'm not going to find him  
15 guilty.

16 THE COURT: I'm going to grant the challenge for  
17 cause, Mr. Oram.

18 MR. ORAM: Thank you very much.

19 THE COURT: Mr. -- I'm going to excuse you and I want  
20 to thank you very much for being a prospective juror, but  
21 you're going to be excused.

22 All right. Mrs. Encinas?

23 PROSPECTIVE JUROR NO. 106: It's Mrs. Cibrian.

24 THE COURT: Cibrian?

25 PROSPECTIVE JUROR NO. 106: Yes.

1 THE COURT: Okay. Mrs. Cibrian, you -- you wrote in  
2 here that you are working for True Dreams. I believe your  
3 husband works there, too?

4 PROSPECTIVE JUROR NO. 106: Yes. We own the company,  
5 actually.

6 THE COURT: Oh, it's your company?

7 PROSPECTIVE JUROR NO. 106: Yes.

8 THE COURT: Oh, okay. What does True Dreams do? I  
9 -- I'm sorry. I've never heard of True Dreams.

10 PROSPECTIVE JUROR NO. 106: There's no reason you  
11 would. We are a culinary consulting company. My husband and  
12 I are both chefs. And we are in the process of opening our  
13 own restaurant right now.

14 THE COURT: Where's your -- we'll give you free  
15 advertising here. Where's -- where's the restaurant going to  
16 be?

17 PROSPECTIVE JUROR NO. 106: It's located on Desert  
18 Inn. It's directly across the street from the  
19 [indiscernible]. It's between Eastern and Pecos.

20 THE COURT: And what -- what's the name of the  
21 restaurant?

22 PROSPECTIVE JUROR NO. 106: La Rue Marche Cafe.

23 THE COURT: Okay. What kind of food?

24 PROSPECTIVE JUROR NO. 106: We do global. My husband  
25 and I both have been around the world cooking. My husband's

1 cooked in over 40 countries and I've been through South  
2 America and some European countries.

3 THE COURT: When's the grand opening?

4 PROSPECTIVE JUROR NO. 106: We don't know. Actually,  
5 that's kind of how this worked out well for me. The partner  
6 we had that supposedly had the money doesn't have the money.  
7 So we have been forced to go apply for an SBA loan. And we  
8 should be hearing back from them at any day. But construction  
9 is at a halt until we get our loan approved.

10 THE COURT: So you're probably a ways off before you  
11 open?

12 PROSPECTIVE JUROR NO. 106: Yes. I would say at  
13 least three months.

14 THE COURT: Okay. Well, good luck to you.

15 PROSPECTIVE JUROR NO. 106: Thank you very much.

16 THE COURT: Okay. You -- you indicated in your  
17 questionnaire that -- oh, by the way, have you -- do you know  
18 any of the witnesses or the lawyers in the case?

19 PROSPECTIVE JUROR NO. 106: No, I do not.

20 THE COURT: You indicated in your questionnaire that  
21 your brother was the victim of a homicide?

22 PROSPECTIVE JUROR NO. 106: Yes.

23 THE COURT: When was that, approximately?

24 PROSPECTIVE JUROR NO. 106: In -- approximately in  
25 1994.

1 THE COURT: In Nevada?

2 PROSPECTIVE JUROR NO. 106: Yes.

3 THE COURT: Was the individual that killed him  
4 prosecuted for that offense?

5 PROSPECTIVE JUROR NO. 106: Yes, he was.

6 THE COURT: And were any of these attorneys involved  
7 in that case?

8 PROSPECTIVE JUROR NO. 106: Not that I can recall.  
9 It's been so many years ago, I -- I couldn't possibly remember  
10 that.

11 THE COURT: Did you go to the trial?

12 PROSPECTIVE JUROR NO. 106: I did. I believe he  
13 pled, to be honest with you. I don't think --

14 THE COURT: Oh, he pled guilty?

15 PROSPECTIVE JUROR NO. 106: -- there was a trial. He  
16 pled guilty, yes.

17 THE COURT: Do -- do you know what happened to him?

18 PROSPECTIVE JUROR NO. 106: Yes. He served two and a  
19 half years and --

20 THE COURT: And --

21 PROSPECTIVE JUROR NO. 106: -- was released.

22 THE COURT: -- he was released, then?

23 PROSPECTIVE JUROR NO. 106: Yes.

24 THE COURT: Okay. Have you had any contact with him  
25 since then?

1 PROSPECTIVE JUROR NO. 106: No. I don't know where  
2 he's at.

3 THE COURT: Was he associated with your brother, or  
4 do you know?

5 PROSPECTIVE JUROR NO. 106: Yes. They were  
6 roommates. And the gentleman stabbed my brother in his sleep.  
7 And I know there was mental issues, that was why he had a  
8 lighter sentence. But again, we -- we didn't get through a  
9 whole lot of it. He -- he took a plea and there was no trial.

10 THE COURT: Do you feel that the criminal justice  
11 system was fair in that -- in that case? Or do you have an  
12 opinion?

13 PROSPECTIVE JUROR NO. 106: I -- I really don't have  
14 an opinion. I mean, it -- it rendered what it rendered.  
15 It's...

16 THE COURT: Were you close to your brother?

17 PROSPECTIVE JUROR NO. 106: Yes, very.

18 THE COURT: And you obviously feel a loss for him --

19 PROSPECTIVE JUROR NO. 106: Absolutely.

20 THE COURT: -- having lost him?

21 PROSPECTIVE JUROR NO. 106: Yes.

22 THE COURT: Do you think that that's going to have an  
23 effect upon your ability to be fair in this case?

24 PROSPECTIVE JUROR NO. 106: No.

25 THE COURT: It has nothing to do with this case, does

1 it?

2 PROSPECTIVE JUROR NO. 106: No. It's completely  
3 different circumstances. It's not --

4 THE COURT: You're going to set aside those facts and  
5 decide this based upon the facts that are presented here?

6 PROSPECTIVE JUROR NO. 106: Absolutely.

7 THE COURT: You'll listen to the evidence, listen to  
8 the law that I give the jurors, and reach a fair verdict?

9 PROSPECTIVE JUROR NO. 106: Yes.

10 THE COURT: Any reason you couldn't be fair to both  
11 sides?

12 PROSPECTIVE JUROR NO. 106: No.

13 THE COURT: Do you -- do you understand what I've  
14 explained about the burden of proof and the defendant not  
15 having to prove that they're not guilty, but the State has to  
16 prove they are by evidence beyond a reasonable doubt,  
17 otherwise, they're entitled to a verdict of not guilty?

18 PROSPECTIVE JUROR NO. 106: Correct. Yes.

19 THE COURT: You have no quarrel with that procedure?

20 PROSPECTIVE JUROR NO. 106: No. Absolutely none.

21 THE COURT: Okay. Mr. DiGiacomo?

22 MR. DiGIACOMO: Actually, Ms. Weckerly. It's an even  
23 number.

24 THE COURT: Oh, Ms. Weckerly.

25 MS. WECKERLY: I haven't gone yet.

1 THE COURT: Good morning. Good afternoon, Ms.  
2 Weckerly.

3 MS. WECKERLY: Good afternoon, Your Honor. How are  
4 you?

5 PROSPECTIVE JUROR NO. 106: Good. How are you?

6 MS. WECKERLY: Good, thank you. Have you always  
7 worked in -- in -- as a chef or in that type of field?

8 PROSPECTIVE JUROR NO. 106: Yes. I've done side jobs  
9 here and there, but I've -- that's been primarily my field.

10 MS. WECKERLY: And was that an interest that you  
11 developed, I think you said you traveled in South America and  
12 Europe?

13 PROSPECTIVE JUROR NO. 106: Uh-huh.

14 MS. WECKERLY: Sort of a cultural thing that you  
15 became interested in and so then you went into culinary school  
16 or?

17 PROSPECTIVE JUROR NO. 106: I actually did not attend  
18 culinary school, to be honest with you. All my advancement  
19 has been through on-the-job training and working. I have  
20 always been called to it. I started cooking for my family  
21 when I was five years old, so it's just always been something  
22 in me.

23 MS. WECKERLY: On-the-job training?

24 PROSPECTIVE JUROR NO. 106: Yes.

25 MS. WECKERLY: And you and your husband I think you



1 said had a -- you're starting a restaurant and you're sort of  
2 in the process of getting the financing?

3 PROSPECTIVE JUROR NO. 106: Yes.

4 MS. WECKERLY: Was this a -- is this sort of a long,  
5 I guess, long-held dream that you and your husband have had or  
6 is this a recent venture?

7 PROSPECTIVE JUROR NO. 106: Well, it's our first  
8 venture. We've both -- like I said, we've both been chefs,  
9 we've both been in the field for over 20 years. And we have  
10 wanted to outdo our -- our own. I mean, you only have one  
11 chance in this life --

12 MS. WECKERLY: Right.

13 PROSPECTIVE JUROR NO. 106: -- you know, do it or  
14 don't. So.

15 MS. WECKERLY: So you're a little bit of a -- you and  
16 your husband, you guys can take a risk and -- and see where  
17 that takes you?

18 PROSPECTIVE JUROR NO. 106: Yes. Our -- our children  
19 are grown and we -- so it's just us right now. So.

20 MS. WECKERLY: Is there anything about, like, the  
21 finances or sort of where you're at in the loan process that  
22 would make it difficult for us to have your full attention?

23 PROSPECTIVE JUROR NO. 106: No. Uh-uh.

24 MS. WECKERLY: Judge Thompson talked to you a bit  
25 about losing your brother?

1 PROSPECTIVE JUROR NO. 106: Uh-huh.

2 MS. WECKERLY: Is that --

3 PROSPECTIVE JUROR NO. 106: Yes.

4 MS. WECKERLY: -- yes?

5 PROSPECTIVE JUROR NO. 106: Yes, sorry.

6 MS. WECKERLY: Were your -- were your parents in town  
7 or were they part of the process at all?

8 PROSPECTIVE JUROR NO. 106: No. My -- I was raised  
9 by my mother. My father, I didn't see him since I was a  
10 little kid. And my mother had passed away a year and a half  
11 prior to my brother dying.

12 MS. WECKERLY: So were you sort of the point of  
13 contact for the police when that -- when they were  
14 investigating?

15 PROSPECTIVE JUROR NO. 106: Actually, how I found out  
16 about it was a mutual friend that lived near where the  
17 situation had happened. He tracked me down and -- and called  
18 me and said the coroner was looking for us. And so that was  
19 how I learned of it.

20 MS. WECKERLY: And were you -- were you interviewed  
21 by the police or did you have any dealing with detectives at  
22 all?

23 PROSPECTIVE JUROR NO. 106: No. None whatsoever.

24 MS. WECKERLY: And any dealings at all with the DA's  
25 office?

1 PROSPECTIVE JUROR NO. 106: The only thing we had  
2 with them was they gave us, like, the victims support group  
3 number and helped us with burying him. The State helped us  
4 pay for the burial. And that was really about it.

5 MS. WECKERLY: And you mentioned that you were really  
6 close with your brother?

7 PROSPECTIVE JUROR NO. 106: Yeah. Yes.

8 MS. WECKERLY: But I think you said that you can  
9 separate that situation from what you would hear as a  
10 prospective juror in this case?

11 PROSPECTIVE JUROR NO. 106: Yes.

12 MS. WECKERLY: You also mentioned sort of on the  
13 other side of the criminal justice system that you had a  
14 nephew who had some negative contact with the CCW?

15 PROSPECTIVE JUROR NO. 106: Correct.

16 MS. WECKERLY: And are you close to your nephew or?

17 PROSPECTIVE JUROR NO. 106: Yes. Yeah. I suppose.

18 MS. WECKERLY: And do you have -- do you have any  
19 opinion at all about how he -- how he's been treated?

20 PROSPECTIVE JUROR NO. 106: No. I'm actually glad it  
21 happened. He needed -- he was starting to go down a wrong  
22 path and he -- that was a wake-up call for him, that if he  
23 continued on that path, that was going to be a life that he  
24 was going to have. And he -- as soon as he got out, he  
25 enrolled in trucking school. He's set to graduate next month.

1 So it helped him get his life in order. So I appreciated the  
2 fact that it happened to him.

3 MS. WECKERLY: So he kind of had a negative  
4 experience, but as I think Juror No. 1 said, you know, that --  
5 he learned from it and sort of set his life on a better path.

6 PROSPECTIVE JUROR NO. 106: Correct.

7 MS. WECKERLY: Your -- on your questionnaire you  
8 wrote that you thought the criminal justice system was good or  
9 that it generally worked well?

10 PROSPECTIVE JUROR NO. 106: I do.

11 MS. WECKERLY: Is that based on the experience with  
12 your nephew or other experiences?

13 PROSPECTIVE JUROR NO. 106: I think taken in a whole,  
14 I mean, to -- to say that it works 100 percent I think is  
15 naive. And yes, we -- there have been false convictions in  
16 there. But I believe as a whole it works. It's the system  
17 that we have, and we have to work within it. So I -- I  
18 appreciate the system that we have because I -- we could have  
19 it worse. I've seen other justice systems in other countries,  
20 how they work, and -- and they're not faring very well. So --

21 MS. WECKERLY: Absolutely.

22 PROSPECTIVE JUROR NO. 106: -- I appreciate the one  
23 that we have in place.

24 MS. WECKERLY: Yeah. And then while there's -- plus,  
25 some of that can be avoided by -- by diligence.

1 PROSPECTIVE JUROR NO. 106: Correct.

2 MS. WECKERLY: I assume if people taking it  
3 seriously.

4 PROSPECTIVE JUROR NO. 106: Correct.

5 MS. WECKERLY: Your opinion about the death penalty  
6 as a form of punishment, how would you describe that?

7 PROSPECTIVE JUROR NO. 106: I am pro-death penalty in  
8 extreme cases. I believe that if the person is not going to  
9 stop, then yes, it calls for a death penalty. However, I  
10 would really have to be beyond a reasonable doubt that the  
11 person is guilty and deserving of it, because it is a life.  
12 And I am deciding whether or not to put that life to an end.  
13 And I understand very well what that means.

14 THE COURT: I'm sorry, Ms. Weckerly. Can I get you a  
15 little closer to the microphone.

16 MS. WECKERLY: Sure.

17 THE COURT: You're --

18 MS. WECKERLY: It's -- I mean, it's a serious -- it's  
19 a serious consideration, and I don't think anyone would take  
20 that lightly.

21 I just wanted to touch, though, on one thing you  
22 said. You said if the person was guilty beyond a reasonable  
23 doubt. It's probably a little bit confusing based on the  
24 questionnaire, but this was sort of a two-part process. What  
25 happens in the first part is -- is the jurors individually and

1 collectively decide if we've proven the case beyond a  
2 reasonable doubt. So, in Mr. Burns' case, that would be  
3 whether he's guilty or not guilty of first degree murder.

4 PROSPECTIVE JUROR NO. 106: Correct.

5 MS. WECKERLY: In the event of that first degree  
6 murder conviction, then you move onto a penalty phase, you're  
7 given different information, and you're actually given  
8 different instructions by the Court and as a juror, again,  
9 individually and collectively, you decide what the appropriate  
10 punishment is.

11 PROSPECTIVE JUROR NO. 106: Correct.

12 MS. WECKERLY: So you'd already be -- you'd already  
13 have been convinced that he was guilty.

14 PROSPECTIVE JUROR NO. 106: Correct.

15 MS. WECKERLY: Okay. And then you hear whatever is  
16 presented at penalty and then decide an appropriate  
17 punishment.

18 PROSPECTIVE JUROR NO. 106: Yes.

19 MS. WECKERLY: Okay. On your -- on your  
20 questionnaire, you referenced a notorious serial killer and  
21 said, In that type of situation, that would be one where I  
22 could consider imposing the death penalty.

23 PROSPECTIVE JUROR NO. 106: Yes.

24 MS. WECKERLY: Where the person won't stop.

25 PROSPECTIVE JUROR NO. 106: Correct.

1 MS. WECKERLY: Is that the only -- like, a serial  
2 killer, is that the only type of situation that you can see?

3 PROSPECTIVE JUROR NO. 106: I -- I wouldn't say it's  
4 the only. I -- it would have to depend on the maliciousness  
5 of the crime.

6 MS. WECKERLY: Okay.

7 PROSPECTIVE JUROR NO. 106: And whether I felt that  
8 it deserved the death penalty.

9 MS. WECKERLY: Okay. Do you think it serves a  
10 purpose, the death penalty, a positive or -- or do you think  
11 it's something that is -- is not something that's appropriate  
12 in the criminal justice system?

13 PROSPECTIVE JUROR NO. 106: I do believe it does  
14 serve a purpose. Someone that fully understands that this is  
15 maybe a penalty for their action, it may deter them from  
16 committing a crime.

17 MS. WECKERLY: Right.

18 PROSPECTIVE JUROR NO. 106: So yes, I do believe it  
19 does serve a purpose.

20 MS. WECKERLY: Okay. There may be some deterrent  
21 value?

22 PROSPECTIVE JUROR NO. 106: Correct.

23 MS. WECKERLY: How about like in terms of -- of what  
24 is justice for actions? You know what I mean? Separate and  
25 apart from -- from deterrents, from scaring, you know, someone

1 from doing something, do you think it's ever a just  
2 punishment, given what someone has done?

3 PROSPECTIVE JUROR NO. 106: Again, I would have to  
4 say it depends on the maliciousness of the crime. Yes, if  
5 it's absolutely a malicious crime, then yes, I do believe it's  
6 justice.

7 MS. WECKERLY: Then it could be appropriate in those  
8 situations?

9 PROSPECTIVE JUROR NO. 106: Yes. Absolutely.

10 MS. WECKERLY: You also indicated on your  
11 questionnaire that you'd be open to hearing whatever  
12 information is presented before you'd make that type of  
13 decision?

14 PROSPECTIVE JUROR NO. 106: Correct.

15 MS. WECKERLY: When you -- when you open your  
16 business, how many employees do you expect to -- to hire?

17 PROSPECTIVE JUROR NO. 106: 60.

18 MS. WECKERLY: 60?

19 PROSPECTIVE JUROR NO. 106: Yes.

20 MS. WECKERLY: That's quite a bit. So you'll have  
21 managers and are all those people in place?

22 PROSPECTIVE JUROR NO. 106: The managerial team is in  
23 place.

24 MS. WECKERLY: And are they people that you've met  
25 sort of with your husband working in the industry?



1 PROSPECTIVE JUROR NO. 106: Yes, correct.

2 MS. WECKERLY: Okay. Have you had any development  
3 agreements with any of the management team, or have you had to  
4 switch it up and -- and get rid of people?

5 PROSPECTIVE JUROR NO. 106: Well, yes. I've actually  
6 been a pastry chef, an executive pastry chef for the last 10  
7 years of my working experience, and I've had to be a mediator  
8 between employees. And I've had to dissolve development  
9 agreements and I've had to take sides or things like that.  
10 So.

11 MS. WECKERLY: Okay. So if you're back in the  
12 deliberation room, we can count on you having a voice in the  
13 deliberations?

14 PROSPECTIVE JUROR NO. 106: Yes, absolutely.

15 MS. WECKERLY: What is your experience or what is  
16 your knowledge about drugs and how drugs may or may not  
17 interact with criminal activity?

18 PROSPECTIVE JUROR NO. 106: I don't have intimate  
19 knowledge of it. I -- in the case of my nephew, my nephew was  
20 doing drugs. We found out later. I pretty much had guessed  
21 it. I saw a change in his personality. Things that I don't  
22 believe he would have done any other time, the drugs  
23 influenced him. So yes, I do believe that plays a factor in  
24 someone's decision-making process.

25 MS. WECKERLY: And because you hold that belief that

1 it -- it changes how they make decisions, does that affect, in  
2 your mind, how someone may be responsible for criminal  
3 activity?

4 PROSPECTIVE JUROR NO. 106: No, absolutely not. It  
5 was their decision to do the drugs to begin with. So it was  
6 -- I believe you have to pay a price for the things that you  
7 do in this life.

8 MS. WECKERLY: So your -- your bad choices, you're --  
9 you're held accountable for them?

10 PROSPECTIVE JUROR NO. 106: Right. I mean, I believe  
11 that someone can change and I believe that somebody can be  
12 redeemed. I've seen time and time again how that's happened.  
13 But there -- I believe that there is a consequence to your  
14 actions.

15 MS. WECKERLY: And to change and to be redeemed, does  
16 that -- I think our Juror No. 1 thought that would naturally  
17 occur in every person. Do you think that's -- that's the  
18 case?

19 PROSPECTIVE JUROR NO. 106: No. I don't believe it  
20 naturally occurs in every person. But I have seen examples  
21 where even if somebody is in prison, say, for life, when I say  
22 to be redeemed, I mean, there -- there are things that they  
23 can do even within the prison system that makes a difference.

24 MS. WECKERLY: Right.

25 PROSPECTIVE JUROR NO. 106: So even if you are

1 sentenced to a lifetime in prison, you still have an  
2 opportunity to make up for it in some way --

3 MS. WECKERLY: Right.

4 PROSPECTIVE JUROR NO. 106: -- the life that you  
5 choose prior to getting there. I -- I believe there's always  
6 something that you can do.

7 MS. WECKERLY: There's -- yeah. There's value or  
8 something you can contribute even under those --

9 PROSPECTIVE JUROR NO. 106: Correct.

10 MS. WECKERLY: -- really confined circumstances.  
11 Would you agree with me, though, that the person has to -- has  
12 to want to or has to have some contrition or feel bad about  
13 what they've done?

14 PROSPECTIVE JUROR NO. 106: Yes. I believe they have  
15 to. Yes.

16 MS. WECKERLY: Thank you. I'll pass for cause.

17 MR. SRGO: Good afternoon.

18 PROSPECTIVE JUROR NO. 106: Good afternoon.

19 MR. SRGO: So I'd like to sort of start backwards and  
20 then work from where you just left off.

21 PROSPECTIVE JUROR NO. 106: Okay.

22 MR. SRGO: So, relative to something you just said  
23 about being accountable, right, people are just accountable  
24 for their actions, and there might be drugs, alcohol, other  
25 things. But your position is they're still accountable,

1 right?

2 PROSPECTIVE JUROR NO. 106: Correct.

3 MR. SRGO: Okay. And let's take that from the --  
4 from the general to the specific. I think what we're talking  
5 about here is -- is the different levels of accountability, in  
6 so far as we have four different possible outcomes for a  
7 person if you, to use your phrase, hold them accountable; do  
8 you understand that?

9 PROSPECTIVE JUROR NO. 106: Correct.

10 MR. SRGO: Okay. So the -- the accountability to  
11 which a person is held can differ from person to person,  
12 right?

13 PROSPECTIVE JUROR NO. 106: Correct.

14 MR. SRGO: And I guess it might be backwards way of  
15 saying it, but that's why the legislature, when they created  
16 the way -- how people are going to get punished, they gave us  
17 different options, because not everyone's going to held to the  
18 same standard; would that be fair?

19 PROSPECTIVE JUROR NO. 106: Yes.

20 MR. SRGO: So, for example, Mr. Burns was 18 at the  
21 time. So potentially, an 18-year-old may not be held at the  
22 same level of accountability as a 45-year-old; would that be  
23 -- would that be something that makes sense?

24 PROSPECTIVE JUROR NO. 106: I think it depends on the  
25 person, to be honest with you. I don't -- I don't really

1 think it has to do with the age. You can have a very smart  
2 18-year-old and a very stupid 45-year-old, so it depends on  
3 the person.

4 MR. SRGO: Fair enough. Would you look at the  
5 background, their life experience, what brought them to a  
6 particular situation?

7 PROSPECTIVE JUROR NO. 106: Yes.

8 MR. SRGO: Okay. And then with respect to the  
9 incident with your brother --

10 PROSPECTIVE JUROR NO. 106: Uh-huh.

11 MR. SRGO: -- obviously something like that happens,  
12 it's horrible, and -- and it could potentially cut both ways.  
13 So for example, if when you were going through the process of  
14 dealing with the case, you know -- you said you went to court  
15 from time to time; is that right?

16 PROSPECTIVE JUROR NO. 106: I went to one court date.  
17 The gentleman pleaded, took a plea. So we were really only  
18 there one day. We were there to read a -- a victim impact  
19 statement --

20 MR. SRGO: Okay.

21 PROSPECTIVE JUROR NO. 106: -- which we were -- ended  
22 up not allowed to do under Nevada law. We found out that day  
23 that sisters are not considered legal next-of-kin. And so we  
24 didn't -- we -- it was only me and my sister was left out of  
25 our family. So we didn't get to really do anything.

1 MR. SRGO: Okay. So that experience could have left  
2 you with a bad taste in your mouth -- could have -- with,  
3 let's say, you know, I can't believe the DA did X, Y, and Z.  
4 They let him off too easy, they should have fought harder for  
5 me to read my statement, things of that nature. Is there --  
6 and on the other hand, I can't believe that defense attorney  
7 did X, Y, and Z to me while he was defending that -- that dirt  
8 bag that killed my brother.

9 Do -- do you understand what I'm getting to?

10 PROSPECTIVE JUROR NO. 106: I understand what you're  
11 saying. I don't agree with what you're saying.

12 MR. SRGO: Okay. Good. So does either -- does  
13 either table have anything to worry about relative to that  
14 particular situation --

15 PROSPECTIVE JUROR NO. 106: No.

16 MR. SRGO: -- in terms of you being able to leave  
17 that at the door?

18 PROSPECTIVE JUROR NO. 106: No, there's no reason to  
19 worry.

20 MR. SRGO: Okay. We have -- we have spoken at some  
21 length about credibility of witnesses, and -- and one of the  
22 things you'll be called upon to do in this case is to judge  
23 credibility of witnesses. Do you think you'll be able to do  
24 that?

25 PROSPECTIVE JUROR NO. 106: Yes.

1 MR. SRGO: Do you think you'll be able to look at  
2 motivations why someone may be inclined to not tell the truth?

3 PROSPECTIVE JUROR NO. 106: Yes.

4 MR. SRGO: Okay. Now, you mentioned in the  
5 particular case that involved your family member, there was a  
6 plea agreement. Have you -- other than that, have you ever  
7 heard that word used, plea agreement or plea negotiation?

8 PROSPECTIVE JUROR NO. 106: I'm sure I have. I  
9 can't, like, say exactly where I've heard it. But I'm sure I  
10 have.

11 MR. SRGO: In this particular case, you may hear  
12 someone that's take what's called a plea agreement, taken a  
13 deal.

14 PROSPECTIVE JUROR NO. 106: Yes.

15 MR. SRGO: And agreed to testify in this case in  
16 exchange for some favorable treatment.

17 PROSPECTIVE JUROR NO. 106: Yes.

18 MR. SRGO: Do you think you'd be able to examine  
19 motivations to determine whether the person that took a deal  
20 is telling you the truth?

21 PROSPECTIVE JUROR NO. 106: Yes.

22 MR. SRGO: Okay. And do you believe that taking a  
23 deal might be something that's a motive to fabricate?

24 PROSPECTIVE JUROR NO. 106: Yes.

25 MR. SRGO: Okay. And you have heard us talk at some

1 length about Mr. Burns not having any burden of proof, right?

2 PROSPECTIVE JUROR NO. 106: Correct.

3 MR. SRGO: And remember, I promised Mr. Oram and I  
4 are definitely going to ask some questions as the case goes  
5 on, as you might imagine by how many questions we're asking  
6 just even at this point. Right? We're not going to sit idly  
7 by.

8 PROSPECTIVE JUROR NO. 106: Correct.

9 MR. SRGO: But do you have any quarrel with the fact  
10 that we don't have to do anything, that we have no burden of  
11 proof, and if the State doesn't prove a case, you have to come  
12 in and vote not guilty. Does that bother you?

13 PROSPECTIVE JUROR NO. 106: No, that doesn't bother  
14 me.

15 MR. SRGO: Does it bother you at all that Mr. Burns,  
16 as he sits here right now, is presumed not guilty?

17 PROSPECTIVE JUROR NO. 106: No, I have no problem  
18 with that.

19 MR. SRGO: Okay. And do you think just because he's  
20 sitting here, because we have a charging document, a lot of  
21 really serious charges, do you think that, you know, that  
22 adage where there's smoke there's fire, have you ever heard  
23 that?

24 PROSPECTIVE JUROR NO. 106: I have heard it.

25 MR. SRGO: Do you -- do you -- can you resist the



1 temptation to jump into, Well, he's here, he must have done  
2 something?

3 PROSPECTIVE JUROR NO. 106: I can resist that, yes.

4 MR. SRGO: Okay. And do you remember the  
5 conversation we had about whether or not someone accused of a  
6 crime testifies? Do you remember that?

7 PROSPECTIVE JUROR NO. 106: Yes, I do.

8 MR. SRGO: Okay. Can you think of any reason why  
9 someone who is not guilty of a crime would elect to not take  
10 the witness stand?

11 PROSPECTIVE JUROR NO. 106: Yes.

12 MR. SRGO: Okay. Do you think if you were selected  
13 as a juror, you'd go in the back room, do you think you'd ever  
14 bring it up; Oh, wait a second, if he's really not guilty, he  
15 should have testified?

16 PROSPECTIVE JUROR NO. 106: No. Because if I was  
17 being charged with a crime, I'm not sure I would testify,  
18 either. So I -- I don't see any problem with that.

19 MR. SRGO: Okay. So you are okay with the notion  
20 that some people are not guilty, they just want to rely on our  
21 system, which is that if the State can't prove it, that it's  
22 over?

23 PROSPECTIVE JUROR NO. 106: Correct.

24 MR. SRGO: Okay. Now, let's take it from the other  
25 angle. If Mr. Burns elected to testify, would you scrutinize

1 his testimony more carefully because he's the one accused as  
2 opposed to another witness just came in?

3 PROSPECTIVE JUROR NO. 106: I -- no, I would think I  
4 would pay attention to every -- whatever's being said up  
5 there.

6 MR. SRGO: Right. So -- and I notice a tiny bit of a  
7 pause. And the point is this. We want to make sure that  
8 everyone as they come through the door, whether they're in  
9 uniform as a -- as a police officer, whether they're an  
10 eyewitness to something, a lay person, or whether they're the  
11 person accused, that in your mind as -- as they hit the stand,  
12 they're all -- they all start out the same.

13 PROSPECTIVE JUROR NO. 106: Correct. Yes.

14 MR. SRGO: Okay. You'd be able to do that?

15 PROSPECTIVE JUROR NO. 106: Yes, absolutely.

16 MR. SRGO: All right. And -- and the last thing  
17 relative to credibility, would you be able to evaluate changes  
18 in peoples' testimony, so, you know, Hey, we have a police  
19 statement that says you said the light was green, and now at  
20 trial you're swearing under oath it's red. And you have to  
21 make heads or tails of that in terms of whether the person's  
22 believable at all.

23 PROSPECTIVE JUROR NO. 106: Correct.

24 MR. SRGO: And you feel comfortable doing that?

25 PROSPECTIVE JUROR NO. 106: Yes, absolutely.

1 MR. SRGO: All right. Let me ask you a question that  
2 no one's been asked yet. We're down the road five weeks,  
3 that's our approximate trial estimate.

4 PROSPECTIVE JUROR NO. 106: Okay.

5 MR. SRGO: You're in the back deliberating. It's  
6 Friday, it's late, you are so sick of the lawyers in this  
7 case, you can't stand it. And it is 11 to 1. Okay. I want  
8 one thing and you want another thing. Okay.

9 PROSPECTIVE JUROR NO. 106: Right.

10 MR. SRGO: Do you think -- and there's -- by the way,  
11 there's nothing wrong with reevaluating evidence and then  
12 changing your mind because you feel like you missed something  
13 or -- do you understand --

14 PROSPECTIVE JUROR NO. 106: Yes. Yes.

15 MR. SRGO: The point of the question is do you feel  
16 like you'd be under pressure to change your mind simply  
17 because you find yourself in the 11-to-1 position?

18 PROSPECTIVE JUROR NO. 106: No.

19 MR. SRGO: Do you feel like you are firm in your --  
20 if you really believe something, that's it?

21 PROSPECTIVE JUROR NO. 106: Yes. For the most part.  
22 I mean, my mind can be changed if I am persuaded by concrete  
23 evidence.

24 MR. SRGO: Sure.

25 PROSPECTIVE JUROR NO. 106: But for somebody that

1 just wants to fly out of there because they're tired of being  
2 here, no.

3 MR. SRGO: Right. And obviously I chose an extreme  
4 example. I guess the more relevant example would strictly be  
5 it's 11 to 1 --

6 PROSPECTIVE JUROR NO. 106: Uh-huh.

7 MR. SRGO: -- all right. Whatever it is, 11-1, you  
8 want another.

9 PROSPECTIVE JUROR NO. 106: Yes.

10 MR. SRGO: Would you change your mind simply because  
11 you were the one? Would you assume you must be mistaken?

12 PROSPECTIVE JUROR NO. 106: No.

13 MR. SRGO: Okay. Okay. There have been some  
14 questions about science. Do you watch any of those TV shows  
15 like that?

16 PROSPECTIVE JUROR NO. 106: I do. I'm the only one  
17 that'll admit it, but I do.

18 MR. SRGO: Can you give me a for instance on what --  
19 which one you like to watch?

20 PROSPECTIVE JUROR NO. 106: I like the show Snapped.  
21 I watch that a lot.

22 MR. SRGO: Okay. And you have to forgive me, and I'm  
23 -- what's the concept of that show?

24 PROSPECTIVE JUROR NO. 106: I'm kind of embarrassed  
25 to say. But its mostly women that freak out and kill their

1 husbands. Not that I would. But it's usually -- it has to do  
2 with family members that they just trip one day and that's it,  
3 you know, they go off the handle.

4 MR. SRGO: Does your husband know you watch that  
5 show?

6 PROSPECTIVE JUROR NO. 106: Yeah. He watches it with  
7 me.

8 MR. SRGO: I'm not familiar with the show. So do  
9 they -- do they go into science and how it's used in the  
10 criminal prosecution of things, or not so much?

11 PROSPECTIVE JUROR NO. 106: Sometimes. They mostly  
12 will point out where they went wrong, how they got caught.

13 MR. SRGO: Gotcha.

14 PROSPECTIVE JUROR NO. 106: Kind of thing. But they  
15 don't, like -- I mean, not that I really remember.

16 MR. SRGO: Have you -- have you heard these terms  
17 DNA, fingerprint evidence, you've heard those before?

18 PROSPECTIVE JUROR NO. 106: Yes.

19 MR. SRGO: Do you own a cell phone record? Oh, my  
20 goodness.

21 PROSPECTIVE JUROR NO. 106: A cell phone? Yes, I do.

22 MR. SRGO: There's a record in there somewhere.

23 PROSPECTIVE JUROR NO. 106: Yes.

24 MR. SRGO: You have a phone, right?

25 PROSPECTIVE JUROR NO. 106: Yes.

1           MR. SRGO: Have you ever had that experience about  
2 someone saying, Hey, I texted you, and you didn't get it, or  
3 vice versa?

4           PROSPECTIVE JUROR NO. 106: Yes.

5           MR. SRGO: And the -- the voicemail that someone said  
6 you left, or you left and the person never got it, that sort  
7 of thing?

8           PROSPECTIVE JUROR NO. 106: Yes.

9           MR. SRGO: All right. Have you ever gone through  
10 your actual cell phone bill to check it out?

11          PROSPECTIVE JUROR NO. 106: No. I just assume it got  
12 lost. I just -- sometimes calls get dropped or they get sent  
13 or they never -- you never receive them or --

14          MR. SRGO: And so would you be willing to scrutinize  
15 evidence even as it appears in records to make sure the  
16 records are accurate?

17          PROSPECTIVE JUROR NO. 106: Yes.

18          MR. SRGO: All right. I asked a question earlier  
19 about being mistaken for someone else. Have you ever had that  
20 experience where someone's come up to you and thought you were  
21 somebody different?

22          PROSPECTIVE JUROR NO. 106: I don't think I've been  
23 told I look like someone else, but they knew I wasn't the  
24 person. I have mistaken somebody else, myself.

25          MR. SRGO: Okay. So you've gone up to someone

1 thinking it was someone you knew and then realized it wasn't?

2 PROSPECTIVE JUROR NO. 106: Yes.

3 MR. SRGO: Okay. In terms of the -- the penalty  
4 portion, if we get there, you understand how odd this is,  
5 right, for lawyers that expect to get a not guilty verdict to  
6 have to talk about penalty?

7 PROSPECTIVE JUROR NO. 106: Correct.

8 MR. SRGO: Okay. You understand this is the only  
9 time I get a chance to speak to you and -- and all that sort  
10 of thing?

11 PROSPECTIVE JUROR NO. 106: Right.

12 MR. SRGO: Okay. Have you ever thought of the death  
13 penalty prior to doing the questionnaire?

14 PROSPECTIVE JUROR NO. 106: I have, yes.

15 MR. SRGO: And has your opinion -- and I heard the --  
16 the back-and-forth with you and Ms. Weckerly; has your opinion  
17 pretty much remained the same?

18 PROSPECTIVE JUROR NO. 106: Yes.

19 MR. SRGO: Has there ever been a time where you were  
20 way more in favor of the death penalty or on the other end of  
21 the pendulum, couldn't consider it at all?

22 PROSPECTIVE JUROR NO. 106: No. Not in general. I  
23 mean, I -- I feel it just -- it's each person. I mean, it's  
24 -- each case is different. And each circumstance is  
25 different. So I think it all goes back to the maliciousness

1 of the act.

2 MR. SRGO: Okay. I -- I need to -- and -- and in  
3 this particular case, you're telling us under oath that you  
4 can conceive a situation where someone's convicted of the  
5 factual predicate that's been relayed to you, you know, the  
6 shooting and the little girl?

7 PROSPECTIVE JUROR NO. 106: Uh-huh.

8 MR. SRGO: Right? Without going into the details of  
9 it anymore than you've already heard, you can envision a  
10 situation where someone is convicted of those crimes and then  
11 is later allowed to come back out on the street?

12 PROSPECTIVE JUROR NO. 106: Yes.

13 MR. SRGO: Okay. And I don't remember if you  
14 addressed this yet or not, but relative to the credibility  
15 question, have you ever been called upon to decide between two  
16 people's version of events?

17 PROSPECTIVE JUROR NO. 106: Yes.

18 MR. SRGO: And have you had to examine not only what  
19 they're telling you, but other external circumstances?

20 PROSPECTIVE JUROR NO. 106: Yes.

21 MR. SRGO: Have you ever seen an event, a traffic  
22 accident, maybe -- you're driving and you have a passenger in  
23 the car and you see something, or you're watching a TV show,  
24 or you're watching a comedy show, and you and the person  
25 you're with see things differently?



1 PROSPECTIVE JUROR NO. 106: Yes.

2 MR. SRGO: Remember different things?

3 PROSPECTIVE JUROR NO. 106: Yes.

4 MR. SRGO: Does it surprise you when you're sitting  
5 right next to someone else and you see totally different  
6 things?

7 PROSPECTIVE JUROR NO. 106: No.

8 MR. SRGO: It doesn't?

9 PROSPECTIVE JUROR NO. 106: No.

10 MR. SRGO: Why not?

11 PROSPECTIVE JUROR NO. 106: Because things that I  
12 would pay attention to is not necessarily what they would pay  
13 attention to. So no, it doesn't surprise me when somebody  
14 sees things differently.

15 MR. SRGO: So sometimes, you would agree with me, two  
16 people observing the same event, their focus might be on  
17 different things?

18 PROSPECTIVE JUROR NO. 106: Exactly.

19 MR. SRGO: Okay. I have nothing else, Your Honor.  
20 Pass for cause.

21 THE COURT: Mr. Langford?

22 MR. LANGFORD: Thank you, Your Honor. The good news  
23 is I'm not going to ask a lot of questions. That's kind of  
24 the good news throughout the trial.

25 That's probably going to be the way it is throughout

1 the trial. Partly because of, as you'll hear the facts of the  
2 case, you'll understand more why I just won't have as many  
3 questions of the State's witnesses or witnesses that Mr. Burns  
4 might call. You know, so it's -- I want to assure you it's a  
5 quality, not a quantity. And I need to ask you, is that going  
6 to trouble you if -- if I don't ask as many questions as the  
7 prosecutors or Mr. Burns' attorneys?

8 PROSPECTIVE JUROR NO. 106: No.

9 MR. LANGFORD: Okay. Because again, it goes back to  
10 these are two separate trials with the same evidence; you  
11 understand that concept?

12 PROSPECTIVE JUROR NO. 106: Yes.

13 MR. LANGFORD: Okay. And you have to evaluate things  
14 separately; are you okay with that?

15 PROSPECTIVE JUROR NO. 106: Yeah.

16 MR. LANGFORD: Okay. And so again, that -- that's  
17 part of it. They're probably going to ask both sides a lot of  
18 questions. And I'm going to come in and I'm going to focus on  
19 what applies to Mr. Mason. And it probably won't be as many  
20 questions as either side, because they'll have asked them.  
21 Just like now between the judge and the other two attorneys,  
22 they've asked most of the questions that are also important to  
23 Mr. Mason, but they just don't need to be asked again. Are  
24 you okay with that?

25 PROSPECTIVE JUROR NO. 106: Yes.

1 MR. LANGFORD: I mean, I could stand here and I could  
2 ask you all those questions over again.

3 PROSPECTIVE JUROR NO. 106: No, that's okay.

4 MR. LANGFORD: Okay. I think the judge would  
5 probably say the same -- he'd say, no, no, we don't need to do  
6 that. So.

7 Penalties are different, as well. The penalties as  
8 to Mr. Burns, the death penalty; as to Mr. Mason, the maximum  
9 penalty is life without the possibility of parole.

10 PROSPECTIVE JUROR NO. 106: Yes.

11 MR. LANGFORD: You have to judge individuals, these  
12 two individuals separately, both for what they're accused of  
13 doing and for their different background. Are you comfortable  
14 with that?

15 PROSPECTIVE JUROR NO. 106: Yes.

16 MR. LANGFORD: Okay. That's an important concept.  
17 You need to definitely judge the two individuals differently.  
18 So I'm going to ask you just one last time, you're comfortable  
19 with that?

20 PROSPECTIVE JUROR NO. 106: Yes, absolutely.

21 MR. LANGFORD: Pass for cause, Your Honor.

22 THE COURT: Mr. Porter?

23 PROSPECTIVE JUROR NO. 123: Yes, sir.

24 THE COURT: Do you know any of the witnesses or the  
25 lawyers involved in the case?

1 PROSPECTIVE JUROR NO. 123: No, sir.

2 THE COURT: I understand that you're a pilot and a  
3 skydiver?

4 PROSPECTIVE JUROR NO. 123: Yes, sir.

5 THE COURT: You work for Sky West?

6 PROSPECTIVE JUROR NO. 123: Yes, sir.

7 THE COURT: And you're a regular pilot?

8 PROSPECTIVE JUROR NO. 123: Yes, sir.

9 THE COURT: You have a regular schedule for when you  
10 are flying?

11 PROSPECTIVE JUROR NO. 123: My route changes from  
12 week to week, but I typically fly four days a week and have  
13 three days home.

14 THE COURT: Okay. They understand that if you're  
15 summoned as a juror, you -- you won't be flying?

16 PROSPECTIVE JUROR NO. 123: Yes, sir.

17 THE COURT: Okay. And you're a skydiver. I never  
18 knew anybody that was a skydiver before.

19 PROSPECTIVE JUROR NO. 123: Yes, sir.

20 THE COURT: What -- do you just do this as a hobby?

21 PROSPECTIVE JUROR NO. 123: Yes, sir.

22 THE COURT: Okay. And you do this locally?

23 PROSPECTIVE JUROR NO. 123: Up in Mesquite.

24 THE COURT: In Mesquite?

25 PROSPECTIVE JUROR NO. 123: Yes.

1           THE COURT: Okay. Is that -- is that where they do  
2 skydiving around here?

3           PROSPECTIVE JUROR NO. 123: They -- they do it in the  
4 valley here, too. But the experienced jumpers tend to go to  
5 Mesquite.

6           THE COURT: Why is that?

7           PROSPECTIVE JUROR NO. 123: They -- the places in  
8 Vegas tend to cater towards the tourists, what they call a  
9 tandem jump. They're not real big on the -- on the other  
10 jumpers showing up. There's no money in it for them.

11          THE COURT: All right. Do you do, like, pictures  
12 when you're diving or?

13          PROSPECTIVE JUROR NO. 123: Yes, sir.

14          THE COURT: Okay. You -- you said your father was a  
15 police officer in Dallas?

16          PROSPECTIVE JUROR NO. 123: Yes, sir.

17          THE COURT: Is he still a police officer?

18          PROSPECTIVE JUROR NO. 123: No, sir. He's -- he's  
19 retired.

20          THE COURT: He's retired?

21          PROSPECTIVE JUROR NO. 123: Yes, sir.

22          THE COURT: Okay. Do you know whether he was a -- a  
23 uniform officer or a plainclothes or detective or do you know  
24 what he did?

25          PROSPECTIVE JUROR NO. 123: He was uniform and he was

1 also what they call a tactical squad, which is I guess their  
2 version of S.W.A.T. But they -- they didn't roll around in  
3 the vans like that.

4 THE COURT: Did he have anything to do with going to  
5 court and testifying on cases or do you know?

6 PROSPECTIVE JUROR NO. 123: As far as I know, he did.  
7 Yes, sir.

8 THE COURT: Anything -- have you discussed any of his  
9 cases with him?

10 PROSPECTIVE JUROR NO. 123: None of them, no.

11 THE COURT: And he lives in Texas?

12 PROSPECTIVE JUROR NO. 123: He does, sir.

13 THE COURT: Okay. Is that going to have any effect  
14 on your ability to be a fair juror in this case?

15 PROSPECTIVE JUROR NO. 123: No, sir.

16 THE COURT: You -- you understand that police  
17 officers are people, too --

18 PROSPECTIVE JUROR NO. 123: Yes -- Yes, sir.

19 THE COURT: -- and how they -- they're going to offer  
20 testimony, and it may or may not be believable depending upon  
21 the facts?

22 PROSPECTIVE JUROR NO. 123: Yes, sir.

23 THE COURT: Do you have any problem with that?

24 PROSPECTIVE JUROR NO. 123: No, sir.

25 THE COURT: You heard the comments I made to the

1 other jurors about the burden of proof and the presumption of  
2 innocence?

3 PROSPECTIVE JUROR NO. 123: Yes, sir.

4 THE COURT: Have any problem with that procedure?

5 PROSPECTIVE JUROR NO. 123: No, sir. Not at all.

6 THE COURT: You'll follow the instructions on the law  
7 that I give to the jurors?

8 PROSPECTIVE JUROR NO. 123: Yes, sir.

9 THE COURT: Any reason you couldn't be fair to both  
10 sides?

11 PROSPECTIVE JUROR NO. 123: I -- something was said  
12 earlier, I have to admit, I -- it kind of stopped me for a  
13 second. And it was posed with that question that had the  
14 objection.

15 THE COURT: What was the question? What was the  
16 problem?

17 PROSPECTIVE JUROR NO. 123: The question was whether  
18 or not I could find a parole. And -- and I kind of had a hard  
19 time with that for a second, I have to admit.

20 THE COURT: The -- the question probably had to do  
21 with the death penalty, because actually parole is not an  
22 option for the jury.

23 PROSPECTIVE JUROR NO. 123: Okay.

24 THE COURT: What is an option is a sentence, in the  
25 event you were to find in this case Mr. Burns guilty of murder

1 in the first degree, you would be at a separate penalty  
2 hearing --

3 PROSPECTIVE JUROR NO. 123: Okay.

4 THE COURT: -- given the option to decide whether he  
5 should receive the death penalty or life imprisonment with the  
6 possibility of parole, or life imprisonment without the  
7 possibility of parole, or the -- a term of years. You don't  
8 decide whether somebody's paroled. That --

9 PROSPECTIVE JUROR NO. 123: Understood. Okay.

10 THE COURT: Maybe you misunderstood. Is that --

11 PROSPECTIVE JUROR NO. 123: The way I -- yeah. The  
12 way I understood it was how we would find it guilty or not.

13 THE COURT: No, no. It has nothing to do with guilt  
14 or innocence.

15 PROSPECTIVE JUROR NO. 123: Okay. Okay.

16 THE COURT: A -- a case where a defendant is accused  
17 of murder is really in two phases. The first phase is guilt  
18 or innocence.

19 PROSPECTIVE JUROR NO. 123: Yes, sir.

20 THE COURT: If you find the defendant, Mr. Burns, or  
21 both defendants not guilty, that ends the case.

22 PROSPECTIVE JUROR NO. 123: Understood.

23 THE COURT: You go home. If you find Mr. Burns  
24 and/or Mr. Mason guilty of murder in the first degree, then we  
25 have to have a penalty hearing. That's the law of Nevada.



1 And at the penalty hearing, which I give you different  
2 instructions on the law and you decide punishment, okay, you  
3 would not be deciding parole in any circumstance.

4 PROSPECTIVE JUROR NO. 123: Understood.

5 THE COURT: Okay?

6 PROSPECTIVE JUROR NO. 123: Okay.

7 THE COURT: Any question about that now?

8 PROSPECTIVE JUROR NO. 123: No, sir.

9 THE COURT: All right. You indicated that you and  
10 your wife are the victim of -- of a fraud?

11 PROSPECTIVE JUROR NO. 123: Yes, sir.

12 THE COURT: What kind of a fraud is this?

13 PROSPECTIVE JUROR NO. 123: This was -- it's felony  
14 fraud. She has pled guilty and took a --

15 THE COURT: She, your wife or --

16 PROSPECTIVE JUROR NO. 123: No, no. The lady that  
17 committed the fraud --

18 THE COURT: The lady that defrauded you?

19 PROSPECTIVE JUROR NO. 123: -- against us. She --  
20 she pled guilty and now she's since skipped. She didn't make  
21 her sentencing. So they've got a bench warrant out for her.

22 THE COURT: Oh, okay. What kind of a fraud was this?

23 PROSPECTIVE JUROR NO. 123: She was introduced to us  
24 by an HOA that we had a rental in as a lawyer that was doing  
25 work for the HOA. We were working on an eviction. And she

1 took a lot of money from us and turns out she wasn't even  
2 close to being a lawyer and she did nothing for it.

3 THE COURT: I see.

4 PROSPECTIVE JUROR NO. 123: And then she's also  
5 embezzled the HOA and a lot of elderly citizens that lived in  
6 the HOA.

7 THE COURT: You're not the only victim, huh?

8 PROSPECTIVE JUROR NO. 123: Not at all.

9 THE COURT: All right. So you were among a number of  
10 victims that were --

11 PROSPECTIVE JUROR NO. 123: My wife and I's case was  
12 separate. When we filed we were advised by the fraud unit at  
13 Metro to not say anything to any of the other people to taint  
14 theirs.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR NO. 123: And so we -- ours was a  
17 separate. But there -- she's got three or four different  
18 cases going against her.

19 THE COURT: And -- and you lost -- there's some money  
20 involved in this?

21 PROSPECTIVE JUROR NO. 123: Yes, sir.

22 THE COURT: A substantial amount?

23 PROSPECTIVE JUROR NO. 123: 7,000.

24 THE COURT: Okay. You're not going to hold that  
25 against anybody in this case?

1 PROSPECTIVE JUROR NO. 123: No, sir. Not in here.

2 THE COURT: It has nothing to do with the prosecutors  
3 or the defense attorneys?

4 PROSPECTIVE JUROR NO. 123: No, sir. No, sir.

5 THE COURT: All right. You also indicated that you  
6 were arrested for a DUI 15 years ago?

7 PROSPECTIVE JUROR NO. 123: I was.

8 THE COURT: And that was reduced. Do you think you  
9 were treated unfairly by the police or the prosecution of that  
10 case?

11 PROSPECTIVE JUROR NO. 123: I was.

12 THE COURT: Why is that?

13 PROSPECTIVE JUROR NO. 123: Because the breathalyzer  
14 was under the limit. The law's the law.

15 THE COURT: And so you -- you think you were treated  
16 unfairly?

17 PROSPECTIVE JUROR NO. 123: I was arrested anyway. I  
18 should have been -- I didn't break a law.

19 THE COURT: Again, are you going to hold that against  
20 anybody in this case?

21 PROSPECTIVE JUROR NO. 123: Nobody in here. No, sir.

22 THE COURT: Okay. And again, you have a friend who  
23 was involved in an armed robbery and a manslaughter?

24 PROSPECTIVE JUROR NO. 123: Yes, sir. Two --

25 THE COURT: Same person?

1 PROSPECTIVE JUROR NO. 123: -- two different people.  
2 Two different people, sir.

3 THE COURT: Two different people?

4 PROSPECTIVE JUROR NO. 123: Yes, sir.

5 THE COURT: And what happened to them?

6 PROSPECTIVE JUROR NO. 123: They're both here in town  
7 working -- well, one lives in Moab, Utah. Works over there  
8 for the government. And the other one lives here in town and  
9 works.

10 THE COURT: Do you think that they were treated  
11 unfairly?

12 PROSPECTIVE JUROR NO. 123: I'm not sure. I don't  
13 have the whole particulars to what they got -- what they had.

14 THE COURT: Again, you're not going to hold that  
15 against anybody in this case?

16 PROSPECTIVE JUROR NO. 123: No, sir. I've only heard  
17 their stories.

18 THE COURT: If -- if you're selected as a juror, will  
19 you promise me that you'll be fair to both sides?

20 PROSPECTIVE JUROR NO. 123: Yes, sir.

21 THE COURT: All right. Mr. DiGiacomo?

22 MR. DiGIACOMO: Thank you, Your Honor.

23 After -- well, it's been almost four hours at this  
24 point, there's probably not a lot we could say. So let me  
25 just go to a few specific areas.

1           You said you spoke to two friends who've had fairly  
2 significant charges earlier in their life?

3           PROSPECTIVE JUROR NO. 123: Yes, sir.

4           MR. DiGIACOMO: And I'm just going to guess from your  
5 answer both of them felt like they weren't treated very  
6 fairly?

7           PROSPECTIVE JUROR NO. 123: One of them -- well, they  
8 both claim that, you know -- well, the one of them says, I had  
9 something coming; it wasn't necessarily that. And then the  
10 other one says the same thing, I was heading down the wrong  
11 road.

12          MR. DiGIACOMO: Ultimately, you know, they did  
13 whatever their time is and they're now productive members of  
14 society?

15          PROSPECTIVE JUROR NO. 123: Yes, sir. One of them --  
16 the -- the manslaughter case was let go by the courts. I  
17 guess they finally -- they just released her. And I don't  
18 know the details on that. But she did time in prison.

19          MR. DiGIACOMO: She did time, she ultimately -- she  
20 was released, she was rehabilitated?

21          PROSPECTIVE JUROR NO. 123: Yeah. The -- the case  
22 was dropped or whatever. I don't understand how -- exactly  
23 how it worked.

24          MR. DiGIACOMO: Being that you don't know a lot about  
25 it, I'm assuming none of that's going to affect your ability

1 to be fair and impartial in this situation?

2 PROSPECTIVE JUROR NO. 123: No, sir.

3 MR. DiGIACOMO: I'm assuming as an individual,  
4 certainly if Ms. Weckerly and I prove our case beyond a  
5 reasonable doubt, you're not going to have any problem in  
6 coming in the courtroom and saying, You know what, they're  
7 guilty?

8 PROSPECTIVE JUROR NO. 123: Not at all.

9 MR. DiGIACOMO: On the flip side of that, you'd want  
10 your government, if we cannot prove that these two individuals  
11 are guilty, that you'd come in here and find them not guilty,  
12 I'm assuming.

13 PROSPECTIVE JUROR NO. 123: That has to be the way.

14 MR. DiGIACOMO: Correct. I mean, you wouldn't want a  
15 situation where the government can just decide these two  
16 people need to go to jail?

17 PROSPECTIVE JUROR NO. 123: Absolutely not.

18 MR. DiGIACOMO: All right. You want 12 people to do  
19 that?

20 PROSPECTIVE JUROR NO. 123: Yes, sir.

21 MR. DiGIACOMO: Do you think you're a fair person?

22 PROSPECTIVE JUROR NO. 123: I think so.

23 MR. DiGIACOMO: And do you think that you would be  
24 able to fairly consider, well, all the evidence, either from  
25 the witness stand or the physical evidence or they've been

1 talking about the scientific evidence. You'd want to find out  
2 everything you could possibly know?

3 PROSPECTIVE JUROR NO. 123: Yes, sir.

4 MR. DiGIACOMO: And then at that point you'd make a  
5 decision; is that fair?

6 PROSPECTIVE JUROR NO. 123: Yes.

7 MR. DiGIACOMO: It's -- is it the same thing for  
8 penalty for you?

9 PROSPECTIVE JUROR NO. 123: Yes, sir. If -- if the  
10 -- if the penalty's there, it's there. Or if the -- I mean,  
11 if the law's been broken, it's there.

12 MR. DiGIACOMO: And that's essentially if -- if we  
13 get to Phase 2 of these trial --

14 PROSPECTIVE JUROR NO. 123: Yes, sir.

15 MR. DiGIACOMO: -- you know, assuming Ms. Weckerly  
16 and I are capable of shouldering the burden of proving these  
17 two individuals guilty --

18 PROSPECTIVE JUROR NO. 123: Yes, sir.

19 MR. DiGIACOMO: -- no matter what choice you pick,  
20 it's going to be bad for these two individuals. Would that be  
21 fair?

22 PROSPECTIVE JUROR NO. 123: It's -- if they're  
23 guilty, they're guilty.

24 MR. DiGIACOMO: Sure. Would you want to know  
25 everything about now just not only the crime, but do you want

1 to know something about who Mr. Mason and Mr. Burns are before  
2 you pick what their penalty is; would that be fair?

3 PROSPECTIVE JUROR NO. 123: It would probably  
4 influence. But -- yes.

5 MR. DiGIACOMO: Okay. I mean, you'd want to know  
6 everything you could possibly know about somebody before you  
7 ultimately decide not only how bad is this crime, but how bad  
8 is this person and what the punishment should be --

9 PROSPECTIVE JUROR NO. 123: Yes, sir.

10 MR. DiGIACOMO: -- do you agree with that?

11 PROSPECTIVE JUROR NO. 123: Yes.

12 MR. DiGIACOMO: Are you willing to wait until all  
13 that evidence comes in before you pick one of the four  
14 punishments or three punishments, depending on --

15 PROSPECTIVE JUROR NO. 123: Yes, sir.

16 MR. DiGIACOMO: You made some statements in your  
17 questionnaire that suggest that perhaps you believe in the  
18 death penalty?

19 PROSPECTIVE JUROR NO. 123: I do.

20 MR. DiGIACOMO: After hearing kind of how the system  
21 works, do you think that as you sit here today, that you could  
22 keep your mind open to all the possibilities, all the  
23 evidence, and all the circumstances before making a decision  
24 as to what penalty's appropriate?

25 PROSPECTIVE JUROR NO. 123: Yes, sir.



1 MR. DiGIACOMO: And you think you could consider all  
2 four forms of punishment?

3 PROSPECTIVE JUROR NO. 123: I -- I would.

4 MR. DiGIACOMO: Thank you very much, sir. Judge, we  
5 pass for cause.

6 THE COURT: Mr. Oram.

7 MR. ORAM: Good afternoon, Mr. Porter.

8 PROSPECTIVE JUROR NO. 123: Good afternoon.

9 MR. ORAM: I'll just go right to the point I want to  
10 discuss. You had told the judge, sort of indicated that you  
11 had some type of issue with other questions that had been  
12 asked of another juror?

13 PROSPECTIVE JUROR NO. 123: Yes, sir.

14 MR. ORAM: And as the judge pointed out, you're not a  
15 -- you know, the jury's not a parole board, they're not  
16 deciding whether --

17 PROSPECTIVE JUROR NO. 123: No.

18 MR. ORAM: -- somebody gets off --

19 PROSPECTIVE JUROR NO. 123: No.

20 MR. ORAM: -- you understand? Okay. But one of the  
21 things you specifically were asked in your questionnaire is  
22 could you consider all four forms of punishment; do you  
23 remember that?

24 PROSPECTIVE JUROR NO. 123: I -- I remember the  
25 question, but I don't remember my answer.

1 MR. ORAM: Okay.

2 PROSPECTIVE JUROR NO. 123: I don't think that I  
3 could, if I remember right.

4 MR. ORAM: Yeah, and -- and that's fair enough.  
5 First of all, you know, you guys fill this stuff in, then we  
6 come in and act like you're taking some kind of exam.

7 PROSPECTIVE JUROR NO. 123: No, I -- it's okay. This  
8 is -- I understand the seriousness here.

9 MR. ORAM: Okay. But -- and so I want to tell you  
10 what your answer was. You said no, you didn't think you could  
11 consider all four.

12 PROSPECTIVE JUROR NO. 123: Yeah. That's what -- I  
13 thought I'd remembered the answer correctly.

14 MR. ORAM: And you did. And that seems to me, if I  
15 may have misunderstood you, but when you were indicating to  
16 Judge Thompson your concern, it sounded to me like maybe that  
17 was your concern.

18 PROSPECTIVE JUROR NO. 123: That was -- and -- and I  
19 don't want to confuse it, but when you had asked that other  
20 gentleman that, it caught me.

21 MR. ORAM: Okay.

22 PROSPECTIVE JUROR NO. 123: That's -- that's what  
23 caught me.

24 MR. ORAM: And you know there are people, there are,  
25 there are people that will come in here, you may not see them,

1 and I don't want to say what other people are going to say.  
2 But, you know, if there were 100 jurors in here who filled  
3 this out, there are some people who just say, I'm not  
4 considering the death penalty for anyone.

5 PROSPECTIVE JUROR NO. 123: Right. Right.

6 MR. ORAM: They're opposed to it for religious  
7 reasons or moral reasons, right? And there's other people who  
8 just think, Look, an eye for an eye. You take a human life, I  
9 don't mean to be rude about it, but I'm going to execute you.  
10 You know, that's my feeling. Okay. And that's fine. But it  
11 sounds to me like you're leaning in that direction.

12 PROSPECTIVE JUROR NO. 123: No, sir. It's -- they're  
13 going to have to prove their case.

14 MR. ORAM: The State is?

15 PROSPECTIVE JUROR NO. 123: The State.

16 MR. ORAM: And as -- as we're talking about  
17 penalty --

18 PROSPECTIVE JUROR NO. 123: Uh-huh.

19 MR. ORAM: -- obviously, as the judge said, if you  
20 find Mr. Burns not guilty, you can't be punished for something  
21 you didn't do. If you're -- if you're below the legal  
22 limit --

23 PROSPECTIVE JUROR NO. 123: Absolutely. Absolutely.  
24 If -- if he's innocent, he's innocent.

25 MR. ORAM: Okay. Or as we like to say and the -- and

1 the Constitution says, if he's -- they haven't proven him  
2 guilty --

3 PROSPECTIVE JUROR NO. 123: Yes, sir.

4 MR. ORAM: -- beyond a reasonable doubt.

5 PROSPECTIVE JUROR NO. 123: Yes, sir.

6 MR. ORAM: So when you indicated that you couldn't  
7 consider all four forms of punishment and you said that, in  
8 fact, you'd have to be pushed to a lesser punishment -- excuse  
9 me, you say, Honestly, I'm not sure how to answer. I wouldn't  
10 think I could be pushed to a lesser punishment if other jurors  
11 thought it appropriate. The facts would really have to  
12 convince me against the death penalty. Which sounds like you  
13 thought it through and that's your answer.

14 PROSPECTIVE JUROR NO. 123: Uh-huh. Yes, sir.

15 MR. ORAM: And that's your answer as you sit here  
16 today?

17 PROSPECTIVE JUROR NO. 123: Yes, sir.

18 MR. ORAM: So, and it'd be fair to say that you -- if  
19 you find somebody guilty of first degree murder, you're  
20 leaning towards the death penalty or at least life without  
21 parole?

22 PROSPECTIVE JUROR NO. 123: At least.

23 MR. ORAM: And it's -- the State has a right to a  
24 fair trial.

25 PROSPECTIVE JUROR NO. 123: Uh-huh.

1 MR. ORAM: Is that a yes, just for the record?

2 PROSPECTIVE JUROR NO. 123: Oh, I'm sorry. Yes, sir.

3 MR. ORAM: No, no.

4 PROSPECTIVE JUROR NO. 123: And -- and so does that  
5 gentleman over there.

6 MR. ORAM: Right. And so if somebody didn't believe,  
7 you know, that -- they didn't believe in the death penalty,  
8 okay?

9 PROSPECTIVE JUROR NO. 123: Uh-huh.

10 MR. ORAM: You see, if they were not straightforward  
11 about it, that wouldn't be fair to the State.

12 PROSPECTIVE JUROR NO. 123: Exactly.

13 MR. ORAM: Okay. Because the State's sitting over  
14 there thinking maybe we can get the death penalty, and there's  
15 a person sitting back going, you've got no change, because I'm  
16 never going to impose a death penalty, right?

17 PROSPECTIVE JUROR NO. 123: Uh-huh.

18 MR. ORAM: And so I -- what I'm asking you is sort of  
19 the inverse of that, the flip side of that. Do -- do you  
20 think, basically, based upon your inner feelings -- you're an  
21 intelligent man, obviously you've thought things through --  
22 that if you find somebody guilty of first degree murder, he  
23 has no chance of life with a possibility of parole?

24 PROSPECTIVE JUROR NO. 123: I -- I'm honestly not  
25 sure. I mean, there's -- the case -- I'm have -- I'm going to

1 have to see the whole case before I can make a -- before I can  
2 make that statement and be honest about it.

3 MR. ORAM: Okay. And -- and that -- and that's fine.  
4 But at the end, let's take the other person who says -- writes  
5 on this question here, I don't believe in the death penalty.  
6 Okay. And then says what you've said -- which seems like an  
7 honest answer -- well, maybe if I hear the whole case, then  
8 I'll decide.

9 But, you see, at that point then, the State has a  
10 person that may think, I just don't believe in it. Do you  
11 see? And so --

12 PROSPECTIVE JUROR NO. 123: I see what you're saying.  
13 But I don't know what this case is yet. I don't know what I  
14 can tell you. I mean...

15 MR. ORAM: And so you -- you could conceive of a  
16 situation where you could consider all four forms of  
17 punishment for a first degree murder?

18 PROSPECTIVE JUROR NO. 123: It's -- I guess it's  
19 possible. I don't know what the facts are.

20 MR. ORAM: When -- when you wrote that answer, what  
21 -- what was going through your mind?

22 PROSPECTIVE JUROR NO. 123: We had -- we had been  
23 told just the basics when they handed us the questionnaires.  
24 And I was trying to weigh the gravity of what I was putting on  
25 paper.

1 MR. ORAM: Do you think anything's changed in your  
2 mind?

3 PROSPECTIVE JUROR NO. 123: No, sir.

4 MR. ORAM: So it'd be fair to say that you can say if  
5 you were selected, could you consider all four forms of  
6 punishment, your answer would be no; is that fair?

7 PROSPECTIVE JUROR NO. 123: Well, my answer would be  
8 I would consider all four if there was facts in the case that  
9 brought that to a different light to me.

10 MR. ORAM: And you said I wouldn't think it could --  
11 I could be pushed to a lesser punishment by other jurors; is  
12 that still accurate?

13 PROSPECTIVE JUROR NO. 123: I will hold my ground on  
14 whatever it is I believe at the end of it.

15 MR. ORAM: And then my question is, only you know  
16 what's inside you, sir.

17 PROSPECTIVE JUROR NO. 123: Right.

18 MR. ORAM: If you were sitting where Mr. Burns is  
19 sitting, okay, or had a loved on sitting there --

20 PROSPECTIVE JUROR NO. 123: Yeah.

21 MR. ORAM: -- would you want someone like you on this  
22 jury?

23 PROSPECTIVE JUROR NO. 123: Absolutely.

24 MR. ORAM: Why?

25 PROSPECTIVE JUROR NO. 123: Because I'm going to look

1 at it at the end and -- and see what the facts were.

2 MR. ORAM: When Mr. DiGiacomo asked you would you  
3 want to consider everything about the person, do you remember  
4 he asked you --

5 PROSPECTIVE JUROR NO. 123: Yeah, I do remember.

6 MR. ORAM: And you sort of hesitated. Was there --  
7 do you remember doing that?

8 PROSPECTIVE JUROR NO. 123: It's -- yeah, I do.

9 MR. ORAM: What was the hesitation? What were you  
10 thinking?

11 PROSPECTIVE JUROR NO. 123: Just whether or not --  
12 whether or not you can bring up past events or anything. I'm  
13 not sure how that plays into the court.

14 MR. ORAM: Okay. Well, you know what, maybe it's  
15 time to just -- I think it's almost like if I get into a  
16 plane, I don't know anything about it --

17 PROSPECTIVE JUROR NO. 123: Uh-huh.

18 MR. ORAM: -- and all of a sudden the pilot's asking  
19 me questions. If there's a penalty phase, you get to do this  
20 weighing thing, which the judge will instruct you on  
21 aggravating and mitigating --

22 PROSPECTIVE JUROR NO. 123: Uh-huh.

23 MR. ORAM: -- circumstance.

24 PROSPECTIVE JUROR NO. 123: Uh-huh.

25 MR. ORAM: Okay. And, by the way, in Nevada law, you



1 never have to return a -- a verdict of death.

2 PROSPECTIVE JUROR NO. 123: Sure.

3 MR. ORAM: Okay?

4 PROSPECTIVE JUROR NO. 123: Sure.

5 MR. ORAM: It's not a mathematical formula came up  
6 with --

7 PROSPECTIVE JUROR NO. 123: Exactly.

8 MR. ORAM: Does that make sense?

9 PROSPECTIVE JUROR NO. 123: Yes, it does.

10 MR. ORAM: So could you consider all of these other  
11 factors?

12 PROSPECTIVE JUROR NO. 123: That's what I'm saying.

13 MR. ORAM: You would do that?

14 PROSPECTIVE JUROR NO. 123: If it come down to that,  
15 yes, it would be a different decision.

16 MR. ORAM: Do you believe that too many offenders are  
17 treated too lenient -- leniently?

18 PROSPECTIVE JUROR NO. 123: I don't know.

19 MR. ORAM: Do you remember writing that?

20 PROSPECTIVE JUROR NO. 123: I don't.

21 MR. ORAM: How about science? You ever watch an of  
22 those scientific shows?

23 PROSPECTIVE JUROR NO. 123: I -- I have seen those  
24 shows, yes.

25 MR. ORAM: Do -- do you watch them often or --

1 PROSPECTIVE JUROR NO. 123: I -- when I'm on the  
2 road, they're on. Sometimes that's all that's on. I've seen  
3 them.

4 MR. ORAM: Do you believe in science?

5 PROSPECTIVE JUROR NO. 123: I do.

6 MR. ORAM: It makes planes fly?

7 PROSPECTIVE JUROR NO. 123: Yes, sir.

8 MR. ORAM: By the way, just --

9 PROSPECTIVE JUROR NO. 123: Physics makes plane  
10 flies.

11 MR. ORAM: Side question. Can a plane really go up  
12 6,000 feet in a minute?

13 THE COURT: You okay?

14 PROSPECTIVE JUROR NO. 123: If you can make a brick  
15 go 6,000 a minute if you put a big enough engine --

16 THE COURT: You need a break? All right. We're  
17 going to have to take a break for about 10 minutes, we'll take  
18 a break.

19 (Prospective jury recessed at 4:54 p.m.)

20 MR. DiGIACOMO: It's 4:55.

21 THE COURT: So you guys are through?

22 MR. DiGIACOMO: With all 12 of these?

23 THE COURT: Of course.

24 MR. DiGIACOMO: Okay.

25 THE COURT: You've got another 20 coming in tomorrow

1 morning.

2 MR. DiGIACOMO: Okay. We just thought that we were  
3 stopping at 5:00. But if not, we'll keep going.

4 THE COURT: I'd like to stop at 5:00, if you guys  
5 would quit asking questions.

6 MR. DiGIACOMO: I'm with you, Judge.

7 (Court recessed at 4:55 p.m. until 5:03 p.m.)

8 (In the presence of the prospective jury panel.)

9 THE COURT: All right. The record will reflect the  
10 presence of the prospective jurors in the box.

11 Mr. Oram, were you through with your examination?

12 MR. ORAM: No, I just had a few more questions, Your  
13 Honor.

14 THE COURT: Okay. We're on Mr. Porter, and he has  
15 the microphone. Okay.

16 PROSPECTIVE JUROR NO. 123: Yes, sir.

17 MR. ORAM: Mr. Porter, you answered in the  
18 questionnaire that you thought maybe you have heard something  
19 about the case. Your answer was a little vague.

20 PROSPECTIVE JUROR NO. 123: I wasn't sure, but I  
21 thought I had remembered something on one of the news radios  
22 about a break-in and a murder or something to that extent. I  
23 don't know if that was what it was or not, but I wanted to be  
24 honest about everything I thought.

25 MR. ORAM: And anything you've heard outside of the

1 courtroom, you could put that aside and decide the case just  
2 on what's --

3 PROSPECTIVE JUROR NO. 123: I have not heard anything  
4 else. So, yes.

5 MR. ORAM: And I want to make sure of something, just  
6 because again we're coming in, and sometimes people don't  
7 understand the procedures.

8 PROSPECTIVE JUROR NO. 123: Uh-huh.

9 MR. ORAM: You understand that the first portion of a  
10 trial is whether the person is guilty or not guilty?

11 PROSPECTIVE JUROR NO. 123: Absolutely, yes.

12 MR. ORAM: And so the questions I was asking you  
13 about penalty, you would understand you've already found the  
14 man guilty?

15 PROSPECTIVE JUROR NO. 123: Right. Right.

16 MR. ORAM: And you're saying you could still consider  
17 all four forms of punishment?

18 PROSPECTIVE JUROR NO. 123: If -- it's going to  
19 depend on what comes out in the case.

20 MR. ORAM: Your father was a longtime police officer?

21 PROSPECTIVE JUROR NO. 123: 18 years.

22 MR. ORAM: Do you believe that you would believe a  
23 police officer's testimony over a lay witness's?

24 PROSPECTIVE JUROR NO. 123: Not necessarily.

25 MR. ORAM: You'd judge everybody based upon what they

1 say?

2 PROSPECTIVE JUROR NO. 123: If the fact's there, it's  
3 there. If it's not, it's not.

4 MR. ORAM: And you described that situation with  
5 yourself where you felt that you had been hard done by getting  
6 the DUI?

7 PROSPECTIVE JUROR NO. 123: Uh-huh.

8 MR. ORAM: Okay. So you felt the police officer had  
9 done you wrong?

10 PROSPECTIVE JUROR NO. 123: No, the police officer  
11 did his job, but when I did the breathalyzer and passed, that  
12 should've been the end of the story right there.

13 MR. ORAM: So would it be fair to say that you felt  
14 that you were wrongfully accused?

15 PROSPECTIVE JUROR NO. 123: He -- I think he was  
16 prejudiced. He had told me all the way down to the courthouse  
17 or wherever, the station, that he had a perfect record for  
18 DUIs.

19 MR. ORAM: You said that you thought that you would  
20 be fair to Mr. Burns and the State?

21 PROSPECTIVE JUROR NO. 123: That's the way it's got  
22 to be.

23 MR. ORAM: Is there anything about this case that we  
24 haven't asked you that you felt was important to tell us?

25 PROSPECTIVE JUROR NO. 123: No, sir.

1 MR. ORAM: Pass for cause.

2 THE COURT: Mr. Langford.

3 MR. LANGFORD: Don't forget about me.

4 PROSPECTIVE JUROR NO. 123: Sorry.

5 MR. LANGFORD: Again, I'm going to be very brief.

6 It's two trials, one set of evidence.

7 PROSPECTIVE JUROR NO. 123: Understood.

8 MR. LANGFORD: You got that, okay. And the burden of  
9 proof is the same?

10 PROSPECTIVE JUROR NO. 123: Yes.

11 MR. LANGFORD: The State has to prove beyond a  
12 reasonable doubt all of the elements of the crime as to my  
13 client as well; do you have a problem with that?

14 PROSPECTIVE JUROR NO. 123: No.

15 MR. LANGFORD: Okay. Do you feel like if there was a  
16 split decision, that you believe they prove their case as to  
17 one person but not as to the other, then you could return a  
18 verdict of not guilty as to one of the people -- one of the --

19 PROSPECTIVE JUROR NO. 123: Yes, sir, these are two  
20 different individuals.

21 MR. LANGFORD: Same thing with the penalty, you  
22 could, you know --

23 PROSPECTIVE JUROR NO. 123: Yes, sir.

24 MR. LANGFORD: Because they're not even seeking the  
25 death penalty against --

1 PROSPECTIVE JUROR NO. 123: I understand that.  
2 MR. LANGFORD: Anything else you want to tell us?  
3 PROSPECTIVE JUROR NO. 123: No, sir.  
4 MR. LANGFORD: Now, is the time.  
5 PROSPECTIVE JUROR NO. 123: No, sir.  
6 MR. LANGFORD: Pass for cause, Your Honor.  
7 THE COURT: All right. Mr. Shipman.  
8 PROSPECTIVE JUROR NO. 133: Thank you, sir.  
9 THE COURT: Okay. You've got to speak up.  
10 PROSPECTIVE JUROR NO. 133: Thank you, sir.  
11 THE COURT: All right. Do you know any of the  
12 witnesses or the attorneys involved in the case?  
13 PROSPECTIVE JUROR NO. 133: No, sir, I don't.  
14 THE COURT: It says here that you -- that your  
15 employer is the DOA, Department of Aviation?  
16 PROSPECTIVE JUROR NO. 133: No, Department of Air  
17 Force, sir.  
18 THE COURT: The what?  
19 PROSPECTIVE JUROR NO. 133: Department of the Air  
20 Force.  
21 THE COURT: Oh, of the Air Force.  
22 PROSPECTIVE JUROR NO. 133: I'm in civil service.  
23 THE COURT: Oh, okay. I thought -- all right. Well,  
24 what do you do with the air force?  
25 PROSPECTIVE JUROR NO. 133: I am a Operations

1 Logistics Manager.

2 THE COURT: What does that mean?

3 PROSPECTIVE JUROR NO. 133: We move things. We help  
4 people move back and forth, different clients and stuff like  
5 that, equipment, electronics and all that kind of stuff.

6 THE COURT: Are you out here at Nellis?

7 PROSPECTIVE JUROR NO. 133: No, sir.

8 THE COURT: Where are you stationed?

9 PROSPECTIVE JUROR NO. 133: 821 Grier Street is the  
10 address that we have to use.

11 THE COURT: Where is that?

12 PROSPECTIVE JUROR NO. 133: Off of Losee Road -- off  
13 of Grier Street, off of, say, Las Vegas Boulevard.

14 THE COURT: Are you one of those guys that goes out  
15 to --

16 PROSPECTIVE JUROR NO. 133: I'm one of those guys.

17 THE COURT: They fly you out, and I'm not supposed to  
18 ask you what you do and where you go.

19 PROSPECTIVE JUROR NO. 133: I don't say -- that would  
20 be correct, sir.

21 THE COURT: I know about you. I've heard about your  
22 kind. Okay. How long have you been doing this?

23 PROSPECTIVE JUROR NO. 133: Approximately now about  
24 18 years, sir.

25 THE COURT: And you've been -- 18 years you've been



1 doing this?

2 PROSPECTIVE JUROR NO. 133: Yes, sir, when I was in  
3 the military. I'm retired military as well.

4 THE COURT: Okay. Is there anything else I can ask  
5 you about your employment?

6 PROSPECTIVE JUROR NO. 133: You can ask me, sir. It  
7 doesn't mean I'll answer it, but you can ask me.

8 THE COURT: Does your employment have anything to do  
9 with law enforcement?

10 PROSPECTIVE JUROR NO. 133: Yes, sir.

11 THE COURT: And do you think because it does that  
12 you'd be more inclined to favor one side or the other in a  
13 case like this?

14 PROSPECTIVE JUROR NO. 133: No, sir.

15 THE COURT: Do you think you could be fair to both  
16 sides?

17 PROSPECTIVE JUROR NO. 133: Yes, sir.

18 THE COURT: You've heard the questions that I asked  
19 about the evidence. The evidence is going to be presented  
20 here, and the jurors are going to be required to decide what  
21 the facts are, and I'll decide what the law is, and then  
22 you're going apply the facts to the law and reach a fair  
23 verdict. Do you think you can do that?

24 PROSPECTIVE JUROR NO. 133: Yes, sir.

25 THE COURT: Do you understand that the defendants are

1 accused of serious crimes, but they're presumed to be not  
2 guilty, and unless the State proves their guilt you are to  
3 find them not guilty; do you understand that?

4 PROSPECTIVE JUROR NO. 133: Yes, sir.

5 THE COURT: The burden of the State is to prove that  
6 guilt beyond a reasonable doubt. You've heard of that before?

7 PROSPECTIVE JUROR NO. 133: Yes, sir.

8 THE COURT: Do you have any quarrel with that  
9 procedure?

10 PROSPECTIVE JUROR NO. 133: No, sir, I don't.

11 THE COURT: If you were one side or the other in a  
12 case like this, would you want 12 jurors of your frame of mind  
13 sitting in judgment in the case?

14 PROSPECTIVE JUROR NO. 133: Absolutely. Yes, sir.

15 THE COURT: Do you have an open mind?

16 PROSPECTIVE JUROR NO. 133: Yes, sir.

17 THE COURT: All right. Ms. Weckerly.

18 MS. WECKERLY: Thank you, Your Honor. How are you,  
19 sir?

20 PROSPECTIVE JUROR NO. 133: Fine, ma'am. And you?

21 MS. WECKERLY: I'm good. Thank you. I'm going to  
22 ask you just a couple questions about your job, and then you  
23 tell me what you want to answer; is that okay?

24 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

25 MS. WECKERLY: To have the job you have, I would

1 imagine you have a security clearance?

2 PROSPECTIVE JUROR NO. 133: Yes, ma'am, I do.

3 MS. WECKERLY: And to get that clearance, is that  
4 something that you test for in addition to sort of a  
5 background check?

6 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

7 MS. WECKERLY: And -- well, let me ask this. Did you  
8 have to undergo specialized training to do the job you do now?

9 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

10 MS. WECKERLY: I'm going to move away from that.

11 PROSPECTIVE JUROR NO. 133: Thank you.

12 MS. WECKERLY: Your adult children, do they live here  
13 locally?

14 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

15 MS. WECKERLY: And did they grow up here, or did you  
16 live somewhere else?

17 PROSPECTIVE JUROR NO. 133: No, they grew up here.

18 My wife was a diversion investigator with the DEA.

19 MS. WECKERLY: Right.

20 PROSPECTIVE JUROR NO. 133: And my children -- one of  
21 my daughters was born -- well, she went to school here. My  
22 oldest one did not.

23 MS. WECKERLY: Now, your wife worked for DEA, and she  
24 was in the investigation arm of that?

25 PROSPECTIVE JUROR NO. 133: Right, diversion

1 investigator with DEA.

2 MS. WECKERLY: Was she out in the field dealing with  
3 bad guys and --

4 PROSPECTIVE JUROR NO. 133: Yes, she was.

5 MS. WECKERLY: Okay. And when you -- I guess when  
6 she was doing that that would've been when you were in the  
7 military, before you have the job you have now?

8 PROSPECTIVE JUROR NO. 133: No, it was after I  
9 retired.

10 MS. WECKERLY: Oh, I see. Okay. Did she talk to you  
11 about her work a lot?

12 PROSPECTIVE JUROR NO. 133: No. No, ma'am, she  
13 wouldn't.

14 MS. WECKERLY: Okay. Was her work sometimes secret,  
15 too?

16 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

17 MS. WECKERLY: You both can keep a secret?

18 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

19 THE COURT: They didn't talk to each other much.

20 MS. WECKERLY: Your wife, obviously her work would've  
21 involved cases with large trafficking of narcotics, that sort  
22 of thing?

23 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

24 MS. WECKERLY: In your questionnaire, you mentioned  
25 that -- you were asked about your opinion about how drugs

1 maybe interact with criminal activity.

2 PROSPECTIVE JUROR NO. 133: Yes.

3 MS. WECKERLY: And you said, Essentially if you --  
4 I'm interpreting your answer as, if you decide to take the  
5 drugs, you're sort of responsible for your conduct?

6 PROSPECTIVE JUROR NO. 133: Yes.

7 MS. WECKERLY: Is that -- I mean, I don't want to put  
8 words in your mouth. Is that what you meant by your answer?

9 PROSPECTIVE JUROR NO. 133: Well, I'm saying that if  
10 a person is under the influence, of course they don't know  
11 they're out of their mind.

12 MS. WECKERLY: Right.

13 PROSPECTIVE JUROR NO. 133: But you shouldn't be  
14 taking drugs in the beginning, and that's what I meant by  
15 that.

16 MS. WECKERLY: If someone takes drugs and then  
17 engages in criminal conduct, do you think they should be held  
18 accountable for their conduct?

19 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

20 MS. WECKERLY: And is that based on sort of, like,  
21 your own moral code -- your code of what you think is -- is  
22 proper behavior or what you think we should expect of people?

23 PROSPECTIVE JUROR NO. 133: No, I believe that drugs  
24 has an effect on anybody. If your taking drugs that you  
25 shouldn't be taking, then it's going to alter your thinking

1 and the way you do things.

2 MS. WECKERLY: Do you have any first-hand experience  
3 dealing with someone who might've been under the influence of  
4 drugs?

5 PROSPECTIVE JUROR NO. 133: Oh, I've seen people that  
6 have been under the influence of drugs, yes, ma'am.

7 MS. WECKERLY: Okay. And was it anybody close to  
8 you, or was it --

9 PROSPECTIVE JUROR NO. 133: No, ma'am.

10 MS. WECKERLY: -- kind of, like, maybe when you were  
11 in the military?

12 PROSPECTIVE JUROR NO. 133: Just some people I've  
13 seen before on the streets and some people that's been in the  
14 military as well.

15 MS. WECKERLY: Sir, you, like everyone else, you were  
16 asked about your feelings about the death penalty.

17 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

18 MS. WECKERLY: And from reading your questionnaire,  
19 my understanding is that you think it is a proper punishment  
20 in some instances?

21 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

22 MS. WECKERLY: It's not a situation where you would  
23 always impose it?

24 PROSPECTIVE JUROR NO. 133: No.

25 MS. WECKERLY: Okay. And are you able to listen to

1 whatever additional information you might hear in a penalty  
2 hearing before making that type of decision?

3 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

4 MS. WECKERLY: If you thought that was the  
5 appropriate punishment in this case for Mr. Burns, would it --  
6 would you have any hesitation coming back in the courtroom and  
7 announcing that as your verdict?

8 PROSPECTIVE JUROR NO. 133: If the evidence proves  
9 that he is guilty, then that's what I would have to go with  
10 because that's the law.

11 MS. WECKERLY: Okay. And we've discussed this with a  
12 couple other prospective jurors. First-degree murder trials  
13 are in two phases. The first one is just simply deciding if  
14 the State proved the case beyond a reasonable doubt. So  
15 that's a guilty or not guilty.

16 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

17 MS. WECKERLY: And then you hear additional  
18 information and actually get additional instructions on the  
19 law, and then you decide between the four punishments.

20 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

21 MS. WECKERLY: Are you able to do that?

22 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

23 MS. WECKERLY: And you leave open the possibility for  
24 each of the four punishments?

25 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

1 MS. WECKERLY: So you can envision a situation -- I'm  
2 assuming from your answer -- where someone committed  
3 first-degree murder, but the proper punishment is they should  
4 have at least a shot at parole?

5 PROSPECTIVE JUROR NO. 133: Yes, ma'am, if the  
6 evidence proved that they -- yes, ma'am.

7 MS. WECKERLY: Okay. And sort of the intermediate  
8 sentence is, I don't think the death penalty is appropriate,  
9 but I believe this person should never get out of prison.

10 PROSPECTIVE JUROR NO. 133: I think that the law is  
11 what we have to go by.

12 MS. WECKERLY: Okay.

13 PROSPECTIVE JUROR NO. 133: So if the law states  
14 that, then I have to go along with that because that is the  
15 law.

16 MS. WECKERLY: Now, the law is never going to tell  
17 you what punishment to impose. That would be something that  
18 you decide individually and then as the -- as a group, as the  
19 jury panel.

20 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

21 MS. WECKERLY: Is that something that you could do,  
22 is impose -- decide what do you think is justice? What do you  
23 think is the proper punishment?

24 PROSPECTIVE JUROR NO. 133: I could do that.

25 MS. WECKERLY: Okay.



1 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

2 MS. WECKERLY: And I would imagine this isn't a  
3 decision that you would make lightly?

4 PROSPECTIVE JUROR NO. 133: No, ma'am, I wouldn't.

5 MS. WECKERLY: Serious circumstances?

6 PROSPECTIVE JUROR NO. 133: Yes, ma'am.

7 MS. WECKERLY: Do you have any concerns at all about  
8 your ability to be fair either to the State or to Mr. Burns or  
9 Mr. Mason?

10 PROSPECTIVE JUROR NO. 133: No, ma'am, no concerns.

11 MS. WECKERLY: Thank you, sir. We'll pass for cause,  
12 Your Honor.

13 MR. SGRO: Good afternoon.

14 PROSPECTIVE JUROR NO. 133: Good afternoon.

15 MR. SGRO: So I'm going to pick it up sort of where  
16 you left off with Ms. Weckerly.

17 PROSPECTIVE JUROR NO. 133: Yes, sir.

18 MR. SGRO: And speak to you for a minute about the  
19 penalty. Do you appreciate the fact that Mr. Oram and I and  
20 Mr. Burns, we don't think we're ever going to get to the  
21 penalty? Do you understand that?

22 PROSPECTIVE JUROR NO. 133: Yes, sir.

23 MR. SGRO: Okay. And you understand we have to speak  
24 to you about that now because we don't have another  
25 opportunity to do so?

1 PROSPECTIVE JUROR NO. 133: All right, sir.

2 MR. SGRO: Okay. So one of the things I want to make  
3 clear -- and Ms. Weckerly touched on it -- the law doesn't  
4 ever tell a jury what is the right punishment, right? And  
5 Judge Thompson will tell you later on that essentially,  
6 listen, you have found someone guilty of first-degree murder.  
7 So the only law is now the jurors have to decide which is the  
8 right punishment. So this exercise that we do about the  
9 penalty assumes a couple things, right? It assumes that  
10 someone's already been found guilty of first-degree murder.  
11 Do you understand that?

12 PROSPECTIVE JUROR NO. 133: Yes, sir.

13 MR. SGRO: Okay. And so when it comes to following  
14 the law, what you have to do is pick one of four, right?

15 PROSPECTIVE JUROR NO. 133: Yes, sir.

16 MR. SGRO: Okay. So do you think you have the  
17 ability -- do you remember that factual predicate that was  
18 delved into earlier, the shooting, and then a little girl gets  
19 shot?

20 PROSPECTIVE JUROR NO. 133: Yes, sir.

21 MR. SGRO: You have to get to a point -- we have to  
22 do, like, mental gymnastics. You have to get to a place where  
23 you think that, okay, I just found someone guilty. Now, is  
24 parole an option, right?

25 PROSPECTIVE JUROR NO. 133: Yes, sir.

1 MR. SGRO: So is parole an option in that situation?

2 PROSPECTIVE JUROR NO. 133: It depends on the  
3 circumstances and once again what the law states.

4 MR. SGRO: Okay. And see this -- this is kind of  
5 where I think that we're disconnecting. The law is going to  
6 tell you, you get to pick.

7 PROSPECTIVE JUROR NO. 133: Okay.

8 MR. SGRO: Okay?

9 PROSPECTIVE JUROR NO. 133: All right, sir.

10 MR. SGRO: And so you remember some examples have  
11 been given about people that could never pick the death  
12 penalty?

13 PROSPECTIVE JUROR NO. 133: Right, sir.

14 MR. SGRO: Some examples have been given of people  
15 that could never --

16 (Audio recording interrupted 5:19:36 p.m. to 5:20:05 p.m.)

17 MR. SGRO: -- I found someone guilty of first-degree  
18 murder, right?

19 PROSPECTIVE JUROR NO. 133: Yes, sir.

20 MR. SGRO: It was a 12-year-old little girl that got  
21 shot.

22 PROSPECTIVE JUROR NO. 133: Yes, sir.

23 MR. SGRO: I think parole is the appropriate  
24 punishment, possible? not possible?

25 PROSPECTIVE JUROR NO. 133: It's possible, sir.

1 MR. SGRO: Okay. And you would be willing then to  
2 keep an open mind to see what all the other facts and  
3 circumstances were in terms of knowing Mr. Burns and that sort  
4 of thing?

5 PROSPECTIVE JUROR NO. 133: Yes, sir.

6 MR. SGRO: All right. Now let's dispense with that  
7 and get to the trial part. In your job and as -- in the  
8 military, did you ever get called upon to decide between two  
9 different versions of what people were telling you?

10 PROSPECTIVE JUROR NO. 133: Yes, sir.

11 MR. SGRO: Okay. Do you feel comfortable doing that?

12 PROSPECTIVE JUROR NO. 133: Yes, sir.

13 MR. SGRO: Okay. I promise you things are going to  
14 come out from the witness stand that are going to be  
15 conflicting, right?

16 PROSPECTIVE JUROR NO. 133: Yes, sir.

17 MR. SGRO: You know how there -- there's a statement  
18 you made about people needing to be accountable even though  
19 they took drugs, right?

20 PROSPECTIVE JUROR NO. 133: Yes, sir.

21 MR. SGRO: Part of that accountability in this case  
22 is going to be whether or not they're believable; do you  
23 understand that?

24 PROSPECTIVE JUROR NO. 133: Yes, sir.

25 MR. SGRO: You're going to hear from witnesses that

1 are going to tell you, in some cases, they did drugs every  
2 day, every day.

3 PROSPECTIVE JUROR NO. 133: Okay.

4 MR. SGRO: And you're going to have to decide whether  
5 you give them any credit at all for being able to tell the  
6 truth; do you understand?

7 PROSPECTIVE JUROR NO. 133: Yes, sir.

8 MR. SGRO: It's not like you have to pick this part's  
9 true, that part's true. You have the right to say, I don't  
10 care what that -- if that person tells me it's 2 p.m., I'm  
11 checking my watch, like, three times. Do you understand?

12 PROSPECTIVE JUROR NO. 133: Yes, sir.

13 MR. SGRO: Okay. No problem with that?

14 PROSPECTIVE JUROR NO. 133: No problem with that,  
15 sir.

16 MR. SGRO: Okay. All right. Given your military  
17 background, I'm going to assume you're very comfortable with  
18 the rights that people accused of crime have; would that be  
19 fair?

20 PROSPECTIVE JUROR NO. 133: Yes, sir.

21 MR. SGRO: All right. So any quarrel with the fact  
22 that Mr. Burns is presumed innocent?

23 PROSPECTIVE JUROR NO. 133: I don't have a problem  
24 with that, sir, as long as the facts state --

25 MR. SGRO: Well, there's no -- there's no -- right

1 now --

2 PROSPECTIVE JUROR NO. 133: Okay.

3 MR. SGRO: If you had to vote as to whether or not  
4 Mr. Burns was guilty or not guilty right now, what would your  
5 vote have to be?

6 PROSPECTIVE JUROR NO. 133: I don't know him. I  
7 don't know anything about what he's done. That's why I have  
8 to give him a fair shake on it. I can't say that he's done  
9 anything wrong.

10 MR. SGRO: Do you understand right now Mr. Burns is  
11 presumed innocent?

12 PROSPECTIVE JUROR NO. 133: Yes, I understand that.

13 MR. SGRO: Right. And you haven't heard any  
14 evidence?

15 PROSPECTIVE JUROR NO. 133: No, sir.

16 MR. SGRO: So in this theoretical example, right now  
17 you'd have to vote not guilty?

18 PROSPECTIVE JUROR NO. 133: That's correct, sir.

19 MR. SGRO: Because you haven't heard anything?

20 PROSPECTIVE JUROR NO. 133: No, sir, I haven't heard  
21 anything.

22 MR. SGRO: Do you think you'd hold it against Mr.  
23 Burns if he elected to not testify?

24 PROSPECTIVE JUROR NO. 133: I have nothing against  
25 it, for Mr. Burns not to testify.

1           MR. SGRO: Can you think of a reason why someone that  
2 didn't do what he's -- what he or she is accused of doing, why  
3 they wouldn't testify?

4           PROSPECTIVE JUROR NO. 133: Yes, because of  
5 nervousness. There's a lot of things that could happen that  
6 could cause a person to be nervous, not to testify.

7           MR. SGRO: All right. Do you think you'd look at him  
8 a little more carefully if he did testify?

9           PROSPECTIVE JUROR NO. 133: No, sir.

10          MR. SGRO: So tell me about -- okay. So your wife  
11 was in the DEA?

12          PROSPECTIVE JUROR NO. 133: Yes, sir.

13          MR. SGRO: You have an affiliation with some law  
14 enforcement in terms of what you're doing now?

15          PROSPECTIVE JUROR NO. 133: Yes, sir.

16          MR. SGRO: So obviously from our side, you understand  
17 that our concern would be that you would have an affinity with  
18 the police officers in the case. Do you understand how we  
19 might think that?

20          PROSPECTIVE JUROR NO. 133: I understand that.

21          MR. SGRO: Okay. Do we have anything to be worried  
22 about as police officers come in and take the stand and swear  
23 to tell the truth?

24          PROSPECTIVE JUROR NO. 133: Absolutely not, sir.

25          MR. SGRO: I mentioned earlier today, some of the

1 police officers in this case may be criticized for some of  
2 their work. Are you going to hold that against us for doing  
3 that?

4 PROSPECTIVE JUROR NO. 133: No, sir.

5 MR. SGRO: Do you think you'd be able to evaluate  
6 that police officer on the strength of his or her testimony?

7 PROSPECTIVE JUROR NO. 133: Yes, sir.

8 MR. SGRO: If a police officer says the light is red,  
9 person accused, light is green, do you automatically go with  
10 the police officer?

11 PROSPECTIVE JUROR NO. 133: No, sir, you don't.

12 MR. SGRO: Okay. Do you own a cell phone, sir?

13 PROSPECTIVE JUROR NO. 133: Yes, sir, I do.

14 MR. SGRO: Do you remember the questions I asked?

15 PROSPECTIVE JUROR NO. 133: Yes, sir.

16 MR. SGRO: Have you ever found yourself in that  
17 situation?

18 PROSPECTIVE JUROR NO. 133: Well, sir, I'll go  
19 through my phone sometime, not a lot. I've looked at my bill,  
20 and said, Okay, something's not right, and then I look at my  
21 minutes but not in that detail like that.

22 MR. SGRO: Okay. And you remember the point of that  
23 is even sometimes records that look very official,  
24 computer-generated stuff, sometimes there's mistakes even on  
25 those records, right?



1 PROSPECTIVE JUROR NO. 133: Yes, sir.

2 MR. SGRO: Sometimes people can miss stuff on the  
3 records even though it's very nicely packaged?

4 PROSPECTIVE JUROR NO. 133: Yes, sir.

5 MR. SGRO: Have you ever been mistaken for somebody  
6 else?

7 PROSPECTIVE JUROR NO. 133: Well, some people tell me  
8 I look like Sammy Davis Junior, but I don't believe that.

9 MR. SGRO: Okay. Fair enough. Have you ever gone up  
10 to someone you thought was a friend or someone you knew and  
11 realized at the last minute that you had the wrong person?

12 PROSPECTIVE JUROR NO. 133: I've done that, sir.

13 MR. SGRO: Okay. Let me ask it from a different  
14 perspective. Have you ever been accused of something you  
15 haven't done?

16 PROSPECTIVE JUROR NO. 133: Sure, everybody has been  
17 accused of something they not have done.

18 MR. SGRO: How did that make you feel?

19 PROSPECTIVE JUROR NO. 133: I didn't like at all. I  
20 didn't think it was right.

21 MR. SGRO: Okay. And do you think -- you know that  
22 -- the adage, where there's smoke there's fire?

23 PROSPECTIVE JUROR NO. 133: Yes, sir.

24 MR. SGRO: You've heard of that?

25 PROSPECTIVE JUROR NO. 133: Yes, sir.

1 MR. SGRO: Do you think because Mr. Burns is sitting  
2 here and Mr. DiGiacomo read that charging document, something  
3 must've happened?

4 PROSPECTIVE JUROR NO. 133: Yes, I believe that  
5 something must've happened.

6 MR. SGRO: Okay. Do you --

7 PROSPECTIVE JUROR NO. 133: But I still don't have  
8 the proof.

9 MR. SGRO: Okay. Let me put it a different way.  
10 Something obviously happened. No one is going to dispute that  
11 there wasn't a homicide in this case.

12 PROSPECTIVE JUROR NO. 133: Right, sir.

13 MR. SGRO: Let me ask it better. Do you believe  
14 because Mr. Burns is sitting here he must have done something?  
15 Do you believe that that's the case?

16 PROSPECTIVE JUROR NO. 133: We wouldn't be in here if  
17 he hadn't done -- if somebody hadn't done something. I still  
18 need the evidence to prove that somebody in here done  
19 something. I have to be open. I don't know the man. I don't  
20 know anything about it. I didn't get the facts on anything.  
21 So I have to be open.

22 MR. SGRO: Okay. Does Mr. Burns get the benefit of  
23 sitting here right now innocent of all charges?

24 PROSPECTIVE JUROR NO. 133: Yes, he does.

25 MR. SGRO: Okay. And you understand you're not

1 allowed to say this: Well, he's sitting here. The police  
2 arrested the man. He must've done something wrong.

3 PROSPECTIVE JUROR NO. 133: I have not heard any  
4 facts on Mr. Burns. So there is no reason for me to accuse  
5 him of anything until I see the facts.

6 MR. SGRO: Fair enough. You have heard different  
7 questions and answers relative to different prejudices people  
8 have.

9 PROSPECTIVE JUROR NO. 133: Yes, sir.

10 MR. SGRO: And you articulated -- you put in your  
11 questionnaire that you have had to go through some of that  
12 yourself.

13 PROSPECTIVE JUROR NO. 133: Well, yes, sir.

14 MR. SGRO: Okay. Can you give me one for instance.

15 PROSPECTIVE JUROR NO. 133: Well, just as being a  
16 young black man coming from the south, for example. I'm from  
17 Alabama, and there's some prejudices that I've seen, you know,  
18 as a young man. It doesn't have any effect on me today  
19 because I am who I am, and that's the way it is, and I don't  
20 walk around with no chip on my shoulder. I don't -- nobody  
21 owes me anything. I don't owe anybody anything. To respect,  
22 and that's all it's about.

23 MR. SGRO: Okay. It's 11 people believe one thing.  
24 You believe something different. How are you going to feel in  
25 that situation?

1 PROSPECTIVE JUROR NO. 133: My belief is my belief.  
2 Theirs is theirs. The facts of the case and the law is going  
3 to determine the outcome of what I believe.

4 MR. SGRO: Do you think you would ever change your  
5 mind just because 11 people saw it a different way?

6 PROSPECTIVE JUROR NO. 133: No, I'm not going to  
7 change my mind.

8 MR. SGRO: Do you remember when we talked about  
9 credibility? Have you ever heard of this thing called a plea  
10 bargain? a plea negotiation?

11 PROSPECTIVE JUROR NO. 133: Yes, sir.

12 MR. SGRO: When people have been asked about motives,  
13 where people might fabricate, what's a motive to lie, right?

14 PROSPECTIVE JUROR NO. 133: Right.

15 MR. SGRO: Different people have different agendas?

16 PROSPECTIVE JUROR NO. 133: Yes, sir.

17 MR. SGRO: Would you agree with that?

18 PROSPECTIVE JUROR NO. 133: Yes, sir.

19 MR. SGRO: Could you imagine a situation where  
20 someone that took a deal where they're testifying, that that  
21 might motivate them to not tell the truth?

22 PROSPECTIVE JUROR NO. 133: Yes, sir.

23 MR. SGRO: And in terms of this particular case,  
24 we're going to go through this for five weeks, a lot of work,  
25 talented prosecutors, dozens of witnesses. Would you be able

1 to come in if the State hadn't met their burden of proof and  
2 announce a verdict of not guilty?

3 PROSPECTIVE JUROR NO. 133: Yes, sir.

4 MR. SGRO: No trouble with that?

5 PROSPECTIVE JUROR NO. 133: No trouble with that,  
6 sir.

7 MR. SGRO: Pass for cause, Your Honor.

8 THE COURT: Mr. Langford.

9 MR. LANGFORD: May I address the jury from here, Your  
10 Honor?

11 THE COURT: Sure.

12 MR. LANGFORD: Two trials, one set of evidence,  
13 right?

14 PROSPECTIVE JUROR NO. 133: Yes, sir.

15 MR. LANGFORD: A trial for this man, a trial for this  
16 man?

17 PROSPECTIVE JUROR NO. 133: Yes, sir.

18 MR. LANGFORD: Are you okay with that?

19 PROSPECTIVE JUROR NO. 133: Yes, sir.

20 MR. LANGFORD: You could be fair to both?

21 PROSPECTIVE JUROR NO. 133: Yes, I can, sir.

22 MR. LANGFORD: Two penalty hearings, okay. There  
23 will be two penalty hearings, one as to this man, one as to  
24 this man. Different possible penalties, you understood that,  
25 right?

1 PROSPECTIVE JUROR NO. 133: Yes, sir.

2 MR. LANGFORD: And you can be fair to both?

3 PROSPECTIVE JUROR NO. 133: I can, sir.

4 MR. LANGFORD: Consider the fact that there is a  
5 maximum penalty of death here and only life without here?

6 PROSPECTIVE JUROR NO. 133: Yes, sir.

7 MR. LANGFORD: And you're not going to bleed it over  
8 based upon this person affecting this person -- and I'm  
9 pointing --

10 PROSPECTIVE JUROR NO. 133: Not at all, sir.

11 MR. LANGFORD: And I'm pointing to Mr. Burns, and I'm  
12 pointing to Mr. Mason.

13 PROSPECTIVE JUROR NO. 133: Yes, sir.

14 MR. LANGFORD: Okay. Pass for cause, Your Honor.

15 THE COURT: All right. Ms. Green, they're going to  
16 give you the microphone here.

17 It says here -- well, first of all, do you know any  
18 of the attorneys or the witnesses in the case?

19 PROSPECTIVE JUROR NO. 137: No.

20 THE COURT: You're going to have to speak into that  
21 microphone.

22 PROSPECTIVE JUROR NO. 137: No.

23 THE COURT: All right. Really close to your mouth  
24 there.

25 PROSPECTIVE JUROR NO. 137: Okay.

1 THE COURT: It says here you work for the C. Martin  
2 Company?

3 PROSPECTIVE JUROR NO. 137: Yes, sir.

4 THE COURT: What's the C. Martin Company.

5 PROSPECTIVE JUROR NO. 137: We're government  
6 contractors.

7 THE COURT: You're a government contractor, too?

8 PROSPECTIVE JUROR NO. 137: Yes.

9 THE COURT: Are you like -- are you secret, like he  
10 is?

11 PROSPECTIVE JUROR NO. 137: Somewhat.

12 THE COURT: Somewhat?

13 PROSPECTIVE JUROR NO. 137: Uh-huh.

14 THE COURT: Okay. Are you in town, or are you out at  
15 the --

16 PROSPECTIVE JUROR NO. 137: At Creech.

17 THE COURT: You're what?

18 PROSPECTIVE JUROR NO. 137: At Creech.

19 THE COURT: Oh, you're at Creech?

20 PROSPECTIVE JUROR NO. 137: Uh-huh.

21 THE COURT: Oh, okay. You do the drones?

22 PROSPECTIVE JUROR NO. 137: Yes.

23 THE COURT: Okay. I know what they do out at Creech.  
24 I really like that outfit out there. There are some nice  
25 people out there at Creech.

1 PROSPECTIVE JUROR NO. 137: Yes.

2 THE COURT: I've had contact with them in other  
3 contexts, other circumstances.

4 It says here that you were shot at by some Hispanics?

5 PROSPECTIVE JUROR NO. 137: Yes, sir.

6 THE COURT: What happened?

7 PROSPECTIVE JUROR NO. 137: Myself and my daughter --  
8 she was a year at the time -- and her father were leaving my  
9 mother's house, and we're literally parked in front of her  
10 house, getting in the car. They drive by. So they see that  
11 we have our child with us. They go up to the top of the  
12 street, turn around, come back down to the point where they're  
13 so close to our car my kid's dad had to close the door, and  
14 the little dude just got out as I'm putting my daughter in the  
15 back seat in her car seat, and he just starts shooting at us.

16 THE COURT: Why?

17 PROSPECTIVE JUROR NO. 137: I have no clue.

18 THE COURT: No clue. Did they ever catch him?

19 PROSPECTIVE JUROR NO. 137: I have no clue.

20 THE COURT: You don't know what ever happened?

21 PROSPECTIVE JUROR NO. 137: No.

22 THE COURT: Did you report it to the police?

23 PROSPECTIVE JUROR NO. 137: Oh, yes, most definitely.

24 THE COURT: But as far as you know, they never found  
25 anybody that did that?



1 PROSPECTIVE JUROR NO. 137: I never heard anything  
2 about it again.

3 THE COURT: Okay. Are you going to take that out on  
4 anybody here?

5 PROSPECTIVE JUROR NO. 137: Oh, no.

6 THE COURT: Okay. It has nothing to do with this  
7 case, right?

8 PROSPECTIVE JUROR NO. 137: No.

9 THE COURT: Okay. You heard the questions that I  
10 asked of all the jurors about the evidence, that I'm the judge  
11 of the law. You are the judge of the facts, and we are a  
12 team, and we work together. You decide what the facts are. I  
13 decide what the law is, and you reach a fair verdict, fair  
14 enough?

15 PROSPECTIVE JUROR NO. 137: Yes.

16 THE COURT: Do you have any quarrel with that  
17 procedure?

18 PROSPECTIVE JUROR NO. 137: No.

19 THE COURT: Any reason you couldn't be a fair juror?

20 PROSPECTIVE JUROR NO. 137: Well, I don't believe in  
21 the death penalty.

22 THE COURT: Well, a lot of people don't believe in  
23 the death penalty.

24 PROSPECTIVE JUROR NO. 137: Okay.

25 THE COURT: Do you think that there are occasions

1 when somebody does something so serious the death penalty is  
2 appropriate?

3 PROSPECTIVE JUROR NO. 137: No.

4 THE COURT: Ever?

5 PROSPECTIVE JUROR NO. 137: No.

6 THE COURT: You were asked in your questionnaire with  
7 reference to the death penalty: Which of the following  
8 statements most accurately reflects your belief? And you  
9 checked: I believe that the death penalty is appropriate in  
10 some murder cases, and I could return a verdict in a proper  
11 case which imposed the death penalty, right?

12 PROSPECTIVE JUROR NO. 137: If that's what you're  
13 reading, okay.

14 THE COURT: Well, right now there's a man on trial on  
15 the east coast for bombing the Boston Marathon. Did you hear  
16 about that?

17 PROSPECTIVE JUROR NO. 137: Yes.

18 THE COURT: I mean, just about everybody has heard  
19 about that I think.

20 PROSPECTIVE JUROR NO. 137: Yes.

21 THE COURT: And he -- if -- assuming that he is  
22 convicted of that offense, they're going to ask for the death  
23 penalty because he killed a number of people and injured an  
24 awful lot of people. Is that a kind of case that you might at  
25 least consider it?

1 PROSPECTIVE JUROR NO. 137: I have to say no because  
2 who am I to say, yes, kill this man.

3 THE COURT: Why did you then in answer to this  
4 question check that?

5 PROSPECTIVE JUROR NO. 137: I have no clue.

6 THE COURT: You have no clue why you checked it?

7 PROSPECTIVE JUROR NO. 137: I do not.

8 THE COURT: Because you really don't believe in the  
9 death penalty?

10 PROSPECTIVE JUROR NO. 137: I do not believe in it.  
11 I think it's all for God to figure out and handle.

12 THE COURT: Mr. DiGiacomo.

13 MR. DIGIACOMO: We challenge.

14 THE COURT: Traverse?

15 MR. ORAM: Briefly. Good afternoon. Right before  
16 the question that the Judge was asking you about, you said  
17 that pretty much that you were concerned about the death  
18 penalty, but you did say only if it involves an innocent  
19 child. Do you remember writing that?

20 PROSPECTIVE JUROR NO. 137: Yes, sir.

21 MR. ORAM: Okay. And so, you know, the Judge gave  
22 you the bombing example. Would there be considerations of  
23 let's say a murder case that involves an innocent child that  
24 you would consider the death penalty?

25 PROSPECTIVE JUROR NO. 137: Yes.

1 MR. ORAM: Okay. And that's fair. So what you're  
2 saying is that it has to be a particular kind of case for you  
3 to even consider it?

4 PROSPECTIVE JUROR NO. 137: I -- because I feel that  
5 the babies are just so innocent.

6 MR. ORAM: And that's fine.

7 PROSPECTIVE JUROR NO. 137: So any and everything  
8 that's going on, whether it's parents have things going on or  
9 whatnot.

10 MR. ORAM: So there were some gentlemen that we  
11 talked to a little bit ago who sort of wondered about parole.  
12 Do you remember them?

13 PROSPECTIVE JUROR NO. 137: Uh-huh.

14 MR. ORAM: Okay.

15 PROSPECTIVE JUROR NO. 137: Yes.

16 MR. ORAM: And they struggled with that. Again, they  
17 don't know anything about the facts, but they thought, Boy, if  
18 I've convicted somebody of first-degree murder, I may struggle  
19 on the idea of considering life with the possibility of  
20 parole. Do you remember that?

21 PROSPECTIVE JUROR NO. 137: Yes.

22 MR. ORAM: So it sounds to me like you are in an  
23 equal struggle, that, boy, in order to consider the death  
24 penalty, you could do it, but it would have to be a very rare  
25 kind of case, one involving a child?

1 PROSPECTIVE JUROR NO. 137: A child, yes. Uh-huh.

2 MR. ORAM: And you know that the State is going to  
3 argue there is a child involved in this case?

4 PROSPECTIVE JUROR NO. 137: Yes.

5 MR. ORAM: So under the circumstances, is it fair to  
6 say that although you're not in favor of it and it would be a  
7 struggle, in the right case you would just consider it, that  
8 you could consider the death penalty?

9 PROSPECTIVE JUROR NO. 137: I don't know. I can't  
10 say yes or no to that.

11 MR. ORAM: And is that because you haven't heard the  
12 facts?

13 PROSPECTIVE JUROR NO. 137: I don't know. I don't  
14 know. I just never want to say, yes, kill this person because  
15 they killed someone.

16 MR. ORAM: Okay. And I hear that, and Mr. Burns has  
17 a right to a fair trial. You realize that, right?

18 PROSPECTIVE JUROR NO. 137: Yes.

19 MR. ORAM: And the State does, too?

20 PROSPECTIVE JUROR NO. 137: Yes.

21 MR. ORAM: Okay. And so, you know, if we have  
22 everybody on this jury who -- who really is, you know, only  
23 leaning one way before we start, it isn't fair to Mr. Burns,  
24 right?

25 PROSPECTIVE JUROR NO. 137: Right.

1 MR. ORAM: Okay. And so we want fair-minded people.  
2 Okay. They're talking about killing that man over there,  
3 okay?

4 PROSPECTIVE JUROR NO. 137: Uh-huh.

5 MR. ORAM: So I want to know, could you consider the  
6 death penalty? If the right case came up, would you consider  
7 it?

8 PROSPECTIVE JUROR NO. 137: I can't -- I just -- I  
9 can't.

10 THE COURT: I'm going to have to grant the challenge.

11 MR. ORAM: Thank you.

12 THE COURT: Thank you for being a prospective juror,  
13 Ms. Green. I'm going to excuse you.

14 Mr. -- Ms. Bombard, is that --

15 PROSPECTIVE JUROR NO. 153: Yes, it is.

16 THE COURT: Ms. Bombard, do you know any of the  
17 witnesses or the attorneys in the case?

18 PROSPECTIVE JUROR NO. 153: I do not.

19 THE COURT: Nobody, all right. You and your husband  
20 have Bombard Electric?

21 PROSPECTIVE JUROR NO. 153: That's right.

22 THE COURT: How's Bombard Electric doing?

23 PROSPECTIVE JUROR NO. 153: We're holding our own  
24 right now.

25 THE COURT: It's -- it was kind of slow a few years

1 ago?

2 PROSPECTIVE JUROR NO. 153: Uh-huh. Yeah.

3 THE COURT: Coming back?

4 PROSPECTIVE JUROR NO. 153: It is coming back.

5 THE COURT: Do you do just home stuff, or do you do  
6 some general construction, too?

7 PROSPECTIVE JUROR NO. 153: Actually, our solar  
8 department does homes. We have -- we have a mechanical  
9 department. We do a lot of the big casinos.

10 THE COURT: Oh, do you?

11 PROSPECTIVE JUROR NO. 153: Yeah. Uh-huh.

12 THE COURT: Okay. Well, then you've been busy all  
13 along?

14 PROSPECTIVE JUROR NO. 153: Yes.

15 THE COURT: All right.

16 PROSPECTIVE JUROR NO. 153: Yeah.

17 THE COURT: Well, good.

18 PROSPECTIVE JUROR NO. 153: Thanks.

19 THE COURT: I asked some questions of each of the  
20 jurors about -- if they understood that while I was the judge  
21 of the law, you are the judge of the facts. Do you have any  
22 problem with that?

23 PROSPECTIVE JUROR NO. 153: No, sir.

24 THE COURT: I'm not going to tell you how to decide  
25 this case. This is up to you to decide the case. All I can

1 do is tell you what the law is, and then you have to reach a  
2 fair decision. Do you think you can do that?

3 PROSPECTIVE JUROR NO. 153: Yes, sir.

4 THE COURT: If you were one of the parties in this  
5 case, would you want 12 jurors of your same frame of mind  
6 sitting in judgment of the case?

7 PROSPECTIVE JUROR NO. 153: Yes, sir.

8 THE COURT: You understand the presumption of  
9 innocence and the burden that the State has?

10 PROSPECTIVE JUROR NO. 153: Yes, sir.

11 THE COURT: Any quarrel with that procedure?

12 PROSPECTIVE JUROR NO. 153: No, sir.

13 THE COURT: You said in your answers to the  
14 questionnaire that you had a brother-in-law that was arrested?

15 PROSPECTIVE JUROR NO. 153: Yes.

16 THE COURT: What was he arrested for, or do you know?

17 PROSPECTIVE JUROR NO. 153: Well, I know a little bit  
18 about it. I don't know the specifics. He's been arrested  
19 numerous times, and it was regarding drugs. He was a drug  
20 dealer.

21 THE COURT: Here in town?

22 PROSPECTIVE JUROR NO. 153: No, in northern  
23 California.

24 THE COURT: In northern California?

25 PROSPECTIVE JUROR NO. 153: Yes, sir.



1 THE COURT: Was he ever imprisoned?

2 PROSPECTIVE JUROR NO. 153: Yes, sir.

3 THE COURT: And is he out now, or do you know?

4 PROSPECTIVE JUROR NO. 153: Yeah, he's out, sir.

5 THE COURT: Okay. How do you feel about drugs?

6 PROSPECTIVE JUROR NO. 153: Well, they mess you up.

7 So it's not a -- it's not a pretty sight.

8 THE COURT: You're not very pleased with them I

9 gather?

10 PROSPECTIVE JUROR NO. 153: No, I'm not.

11 THE COURT: Okay. You're not going to hold that

12 against anybody involved in this case?

13 PROSPECTIVE JUROR NO. 153: No, sir.

14 THE COURT: Any reason you couldn't be a fair juror?

15 PROSPECTIVE JUROR NO. 153: No, I'm pretty fair.

16 THE COURT: All right. Mr. DiGiacomo.

17 MR. DIGIACOMO: Very briefly. I'm counting. Now

18 we're at four hours and 40 minutes.

19 PROSPECTIVE JUROR NO. 153: Right.

20 MR. DIGIACOMO: And I don't think anyone's asked a

21 different question yet.

22 PROSPECTIVE JUROR NO. 153: Right.

23 MR. DIGIACOMO: So you've heard everything that

24 everyone asked.

25 PROSPECTIVE JUROR NO. 153: Yes, sir.

1 MR. DIGIACOMO: Is there anything you think is  
2 important for the lawyers to know before we decide on who  
3 should be our jurors?

4 PROSPECTIVE JUROR NO. 153: Is there anything that --  
5 that I --

6 MR. DIGIACOMO: That we should know, from all the  
7 questions that have been asked here today?

8 PROSPECTIVE JUROR NO. 153: No, I think that you've  
9 asked all the questions.

10 MR. DIGIACOMO: Do you think you're a fair person?

11 PROSPECTIVE JUROR NO. 153: I do think I'm a fair  
12 person.

13 MR. DIGIACOMO: Do think you could wade through the  
14 evidence and make a decision as to whether or not Ms. Weckerly  
15 and I were able to prove our case beyond a reasonable doubt?

16 PROSPECTIVE JUROR NO. 153: I do.

17 MR. DIGIACOMO: And if we do, any problem coming in  
18 this courtroom and announcing that verdict in the presence of  
19 the two defendants?

20 PROSPECTIVE JUROR NO. 153: No, sir.

21 MR. DIGIACOMO: Likewise, should we get to a penalty  
22 -- who knows what the evidence will be at that point -- do you  
23 think you could keep your mind open to all four forms of  
24 punishment until we get there?

25 PROSPECTIVE JUROR NO. 153: Yes, sir.

1 MR. DIGIACOMO: Any concerns whatsoever?

2 PROSPECTIVE JUROR NO. 153: No. Just one thing, if I  
3 have questions -- as a jury, we can ask questions, right,  
4 about what's going on? That's the only thing that I do want  
5 to ask, is -- I've never served on anything like this. So as  
6 a jury, when we go out at the end, we can ask questions  
7 amongst -- I mean, and who gives us the answers of what we're  
8 hearing?

9 THE COURT: Ms. Bombard.

10 PROSPECTIVE JUROR NO. 153: Yes?

11 MR. DIGIACOMO: That's his department.

12 THE COURT: There is a procedure that I will explain  
13 to the jurors after they are actually finally selected for the  
14 jurors to ask questions. It has to do with the jurors writing  
15 the questions down, asking the marshal to -- giving it to the  
16 marshal, do it before the witness leaves the stand. So we can  
17 still ask questions. I review the question. If it's  
18 appropriate to ask it, I will ask it on your behalf. The  
19 attorneys are entitled to follow-up questions, but the answer  
20 is, yes, there is a procedure --

21 PROSPECTIVE JUROR NO. 153: Okay.

22 THE COURT: -- for the jurors to be able to ask  
23 questions if they're appropriate questions under the law.

24 PROSPECTIVE JUROR NO. 153: Okay.

25 THE COURT: There are some things you can't ask.

1 PROSPECTIVE JUROR NO. 153: Right.

2 THE COURT: Some things that I can't ask, but if you  
3 can ask it and if it's appropriate, I'll see that it's done.

4 PROSPECTIVE JUROR NO. 153: Okay.

5 THE COURT: Okay.

6 MR. DIGIACOMO: Great.

7 PROSPECTIVE JUROR NO. 153: That's it.

8 MR. DIGIACOMO: He answered the question. So I'm  
9 assuming that if, you know, God forbid, you wound up sitting  
10 at this table being accused of a crime, you'd want somebody  
11 with your same mindset to sit in judgment and make a  
12 determination on both guilt and penalty should you get picked?

13 PROSPECTIVE JUROR NO. 153: Yes.

14 MR. DIGIACOMO: Thank you very much, ma'am. Judge,  
15 we pass for cause.

16 PROSPECTIVE JUROR NO. 153: Thank you.

17 THE COURT: Mr. Sgro.

18 MR. SGRO: Thank you, Your Honor. With respect to  
19 Bombard Electric, it's a well-respected company, been in town  
20 for a long time, right?

21 PROSPECTIVE JUROR NO. 153: Correct.

22 MR. SGRO: Have you ever worked there with your  
23 husband?

24 PROSPECTIVE JUROR NO. 153: No, I have not.

25 MR. SGRO: Okay. Do you have any knowledge of any of

1 the ins and outs of the court stuff that they do?

2 PROSPECTIVE JUROR NO. 153: No, I don't.

3 MR. SGRO: Okay. Have you ever spoken to your  
4 husband about any cases that they have?

5 PROSPECTIVE JUROR NO. 153: No, I don't. I'm not --  
6 I just know how well it's going, but I don't have anything to  
7 do with the day-to-day business.

8 MR. SGRO: Okay.

9 PROSPECTIVE JUROR NO. 153: As a matter of fact, when  
10 he comes home, work isn't discussed. So.

11 MR. SGRO: Okay. Fair enough. So let's go  
12 backwards.

13 PROSPECTIVE JUROR NO. 153: Okay.

14 MR. SGRO: Let's talk about the penalty, okay?

15 PROSPECTIVE JUROR NO. 153: Okay. Uh-huh.

16 MR. SGRO: You understand we're forced to talk about  
17 it now?

18 PROSPECTIVE JUROR NO. 153: Uh-huh. Yes.

19 MR. SGRO: Okay. No problem with that, right?

20 PROSPECTIVE JUROR NO. 153: Not a problem.

21 MR. SGRO: Okay. So I read your answer in the  
22 questionnaire, and I'm hoping that there's been some  
23 clarification now in terms of when you were asked, you know,  
24 can you consider all four forms of punishment.

25 PROSPECTIVE JUROR NO. 153: Yes.

1           MR. SGRO: That clarification being, we take away  
2 accident, you know, self-defense, that sort of thing, and we  
3 put you in a position mentally where you have to assume, okay,  
4 someone has already been convicted of first-degree murder,  
5 right?

6           PROSPECTIVE JUROR NO. 153: Okay.

7           MR. SGRO: And you heard my conversation with the  
8 prior juror about, you know, the law just says you have to  
9 pick one of four?

10          PROSPECTIVE JUROR NO. 153: Correct.

11          MR. SGRO: All right. Any quarrel with imagining  
12 there's someone in front of you convicted of first-degree  
13 murder -- you heard about the 12-year-old little girl --

14          PROSPECTIVE JUROR NO. 153: Uh-huh.

15          MR. SGRO: -- and then coming back and saying, you  
16 know what, a chance at parole is what this individual  
17 deserves; any quarrel with that?

18          PROSPECTIVE JUROR NO. 153: No.

19          MR. SGRO: Okay. So you are open to that  
20 possibility?

21          PROSPECTIVE JUROR NO. 153: Yes. Originally -- I'll  
22 have to say -- when I read the transcripts of it, just to be  
23 honest, I -- it would have to depend on the evidence I guess  
24 or what's been presented to us on what I find myself.  
25 Originally, when I read the transcript or the sentence about

1 what the case was about and involving a child, you know, my  
2 first reaction was, Ugh, that's not good. You know, that's a  
3 cruel -- you know, that's a cruel thing. You don't get any  
4 worse than that.

5 Sitting here -- and I'm not -- you know, quite --  
6 just being honest, sitting here, it also has to depend on the  
7 circumstance because we were just given a brief discussion --

8 MR. SGRO: Sure.

9 PROSPECTIVE JUROR NO. 153 -- or a brief statement of  
10 what the -- of what the charges or what happened I guess in  
11 the case. So it's all about circumstances and what's been  
12 presented. So I don't remember exactly what I wrote in my  
13 thing, but I think I did say I was for the death penalty --

14 MR. SGRO: Right.

15 PROSPECTIVE JUROR NO. 153: -- if, you know -- I  
16 guess my other thing would be is if it were a Jeffrey Dahmer  
17 situation. To me, there is no excuse, and, you know, that  
18 would be death penalty. With -- in regards to this man, he's  
19 innocent until proven guilty. So.

20 MR. SGRO: We like to say, Unless.

21 PROSPECTIVE JUROR NO. 153: Unless, okay.

22 MR. SGRO: Right.

23 PROSPECTIVE JUROR NO. 153: Unless he's proven  
24 guilty. Right.

25 MR. SGRO: Correct. Okay. So now let's break that

1 down a little bit.

2 PROSPECTIVE JUROR NO. 153: Okay.

3 MR. SGRO: Relative to the discussion we just had,  
4 you know, there's no more serious a case than this, right?

5 PROSPECTIVE JUROR NO. 153: Uh-huh.

6 MR. SGRO: Right?

7 PROSPECTIVE JUROR NO. 153: Correct.

8 MR. SGRO: So that's why we delved so deeply into the  
9 answers, and on the questionnaire, it did look like you were  
10 leaning away from the possibility of ever having someone being  
11 able to walk the street, right?

12 PROSPECTIVE JUROR NO. 153: Correct.

13 MR. SGRO: Okay. But now that you've had a chance to  
14 listen, you understand a little bit better, and you're saying  
15 that you can close your eyes and get to that place mentally  
16 where someone's okay -- okay with you to walk the street  
17 again?

18 PROSPECTIVE JUROR NO. 153: Yeah, I would have to --  
19 like it's been said, it would have to be -- depend on what is  
20 being presented and how it's being -- you know, what's being  
21 said.

22 MR. SGRO: All right. So any problem with any of the  
23 rights we discussed? You understand the presumption of  
24 innocence?

25 PROSPECTIVE JUROR NO. 153: Yes.



1 MR. SGRO: Any quarrel with that?

2 PROSPECTIVE JUROR NO. 153: No.

3 MR. SGRO: Would you hold it against Mr. Burns if he  
4 decides not to testify?

5 PROSPECTIVE JUROR NO. 153: No.

6 MR. SGRO: Any reason why someone that was not guilty  
7 would refuse to take the stand?

8 PROSPECTIVE JUROR NO. 153: Yeah, they're afraid, or  
9 they don't do very well being able to speak. So it doesn't  
10 make -- look very favorable in their defense. It doesn't do  
11 them any good.

12 MR. SGRO: Okay.

13 PROSPECTIVE JUROR NO. 153: Yeah.

14 MR. SGRO: Credibility --

15 PROSPECTIVE JUROR NO. 153: Uh-huh.

16 MR. SGRO: Yes.

17 PROSPECTIVE JUROR NO. 153: Yeah, what about it?

18 MR. SGRO: You remember -- you're going to be called  
19 upon to decide whether or not someone is telling you the  
20 truth.

21 PROSPECTIVE JUROR NO. 153: Right.

22 MR. SGRO: Any problem with that?

23 PROSPECTIVE JUROR NO. 153: No.

24 MR. SGRO: Can someone swear to tell the truth, get  
25 on the witness stand and lie?

1 PROSPECTIVE JUROR NO. 153: Yes.

2 MR. SGRO: Can a police officer swear to tell the  
3 truth and lie?

4 PROSPECTIVE JUROR NO. 153: Unfortunately, yes.

5 MR. SGRO: And you remember my conversation earlier.  
6 We hope that doesn't happen, correct?

7 PROSPECTIVE JUROR NO. 153: Correct.

8 MR. SGRO: We don't want it to happen. We want to  
9 rely on those folks, right?

10 PROSPECTIVE JUROR NO. 153: Right.

11 MR. SGRO: But can it happen?

12 PROSPECTIVE JUROR NO. 153: Sure.

13 MR. SGRO: All right. Can the police arrest someone  
14 that's actually committed no crime?

15 PROSPECTIVE JUROR NO. 153: I don't think so -- or, I  
16 mean, they're arrested. I don't really know how that works.  
17 I mean, they get arrested. I guess it's the jury decides if  
18 they're guilty or not, correct?

19 MR. SGRO: Exactly.

20 PROSPECTIVE JUROR NO. 153: Okay.

21 MR. SGRO: Exactly. So is it possible -- let me put  
22 it -- give you a different perspective.

23 PROSPECTIVE JUROR NO. 153: Okay.

24 MR. SGRO: Mr. Burns is sitting here right now.

25 PROSPECTIVE JUROR NO. 153: Correct.

1 MR. SGRO: And you're going to learn he was arrested.  
2 You saw a charging document. Is it possible that even though  
3 there's an arrest, a charging document, is it possible that  
4 person's not guilty?

5 PROSPECTIVE JUROR NO. 153: It depends on what is  
6 presented to us I suppose.

7 MR. SGRO: How would you have to vote right now if  
8 you had to vote?

9 PROSPECTIVE JUROR NO. 153: Well, he's not guilty  
10 right now.

11 MR. SGRO: That's right. Okay. Good. In terms of  
12 the credibility questions, would you be able to gauge persons  
13 and whether or not they're telling you the truth?

14 PROSPECTIVE JUROR NO. 153: I like to believe I have  
15 a pretty good sense of someone lying or not.

16 MR. SGRO: Okay. Are there people that when they  
17 testify they're going to have an agenda or motives potentially  
18 to not tell you the truth?

19 PROSPECTIVE JUROR NO. 153: Unfortunately, probably  
20 some do.

21 MR. SGRO: And we had a conversation about drug use  
22 and accountability. Are you going to hold these witnesses  
23 accountable if they come forward and say things like, you  
24 know, I do drugs every single day? Would you take that into  
25 account when you're evaluating their testimony?

1 PROSPECTIVE JUROR NO. 153: Yes.

2 MR. SGRO: Have you ever heard this term plea  
3 bargain? plea negotiation?

4 PROSPECTIVE JUROR NO. 153: Uh-huh.

5 MR. SGRO: Yes?

6 PROSPECTIVE JUROR NO. 153: Yes. Sorry. Yes.

7 MR. SGRO: And would you agree that sometimes persons  
8 can be motivated simply by virtue of agreeing to testify?

9 PROSPECTIVE JUROR NO. 153: Excuse me. Say that  
10 again.

11 MR. SGRO: Can people be motivated to tell you things  
12 that aren't true by a plea agreement? a plea negotiation?

13 PROSPECTIVE JUROR NO. 153: Yes.

14 MR. SGRO: The cell phone questions, I assume you own  
15 a cell phone?

16 PROSPECTIVE JUROR NO. 153: Yes.

17 MR. SGRO: Have you ever gone through your bill and  
18 scrutinized it?

19 PROSPECTIVE JUROR NO. 153: No, I haven't.

20 MR. SGRO: Isn't it amazing no one ever looks at that  
21 bill?

22 PROSPECTIVE JUROR NO. 153: I know, and I'm thinking  
23 maybe I should start checking a little more often. There's  
24 stuff going on I guess.

25 MR. SGRO: Would you agree to commit that just

1 because something comes in a package and it looks like very  
2 official looking records you'd still evaluate the records  
3 independently? You'd make your own assessment?

4 PROSPECTIVE JUROR NO. 153: Oh, yes, definitely.  
5 Uh-huh.

6 MR. SGRO: Okay. We are going to ask you to look at  
7 some cell phone records in this case.

8 PROSPECTIVE JUROR NO. 153: Okay.

9 MR. SGRO: And you'll be willing to do that?

10 PROSPECTIVE JUROR NO. 153: Yes.

11 MR. SGRO: All right. Have you ever heard this term  
12 eyewitness identification?

13 PROSPECTIVE JUROR NO. 153: You -- I haven't, but you  
14 said something. I forgot what it was. So you might want to  
15 repeat that again.

16 MR. SGRO: Let's do it by way of example. Have you  
17 ever been sitting in a car or sitting in a movie and you --  
18 some event occurs, and you discuss it, and you and your friend  
19 or your spouse or whatever see it totally different?

20 PROSPECTIVE JUROR NO. 153: Yes. Yes. Uh-huh.

21 MR. SGRO: Okay. Have you had that experience?

22 PROSPECTIVE JUROR NO. 153: Yes.

23 MR. SGRO: Has anyone ever come to you and thought  
24 you were someone else?

25 PROSPECTIVE JUROR NO. 153: Yes.

1           MR. SGRO: And have you ever gone to someone else  
2 mistaking them for a friend or --

3           PROSPECTIVE JUROR NO. 153: Yes. Uh-huh.

4           MR. SGRO: Have you ever been accused of something  
5 you didn't do?

6           PROSPECTIVE JUROR NO. 153: Oh, yeah. I think  
7 everybody has at some point.

8           MR. SGRO: Can you recall in your mind a specific  
9 example of that?

10          PROSPECTIVE JUROR NO. 153: Of something that I've  
11 done -- been accused of doing?

12          MR. SGRO: Yes, ma'am.

13          PROSPECTIVE JUROR NO. 153: Yeah. Do you want me to  
14 give you a scenario? I mean, I have. Do you want a scenario  
15 of it?

16          MR. SGRO: I guess the more relevant part is how did  
17 it make you feel when that happened?

18          PROSPECTIVE JUROR NO. 153: Oh, I defended myself, of  
19 course. Obviously, if I didn't do something, I explain why I  
20 didn't do it, and this is the reason why.

21          MR. SGRO: Okay. Do you watch any of the TV shows  
22 we've been talking about?

23          PROSPECTIVE JUROR NO. 153: Yeah, unfortunately. I  
24 haven't -- I've never seen --

25                What did you say?

1 PROSPECTIVE JUROR: Snapped.

2 PROSPECTIVE JUROR NO. 153: -- Snapped, I've never  
3 seen Snapped, no, but I have NCIS, Criminal -- Criminal Minds.

4 MR. SGRO: Okay.

5 PROSPECTIVE JUROR NO. 153: And that's it.

6 MR. SGRO: So you're going to hear some testimony  
7 about science in the case, things like DNA, fingerprints, that  
8 sort of thing. These are things you've heard of, even through  
9 these shows, right?

10 PROSPECTIVE JUROR NO. 153: Right. Right. Uh-huh.

11 MR. SGRO: Are you a believer in the science part of  
12 the case?

13 PROSPECTIVE JUROR NO. 153: Yeah, I am.

14 MR. SGRO: Do you believe that sometimes science can  
15 be a little more consistent than someone that maybe is  
16 motivated or has an agenda to say certain things from the  
17 witness stand?

18 PROSPECTIVE JUROR NO. 153: You know, I believe --  
19 yes, I think science, it can't lie with science. It is what  
20 it is at that point.

21 MR. SGRO: Okay. Can you come up with an argument as  
22 to why -- what's the best argument -- someone is convicted of  
23 first-degree murder. What's the best argument you can think  
24 of on the spot -- I'm going to put you on the spot --

25 PROSPECTIVE JUROR NO. 153: Okay.

1 MR. SGRO: -- for why they should ever be allowed  
2 parole?

3 PROSPECTIVE JUROR NO. 153: Why they should be  
4 allowed parole, an argument?

5 MR. SGRO: Yes, ma'am.

6 PROSPECTIVE JUROR NO. 153: Well, it would be --  
7 that's a tough one. It would be rehabilitation that they've  
8 -- I mean, they better themselves. They've learned. They,  
9 you know -- that's the only thing I can think of. Does that  
10 answer your question?

11 MR. SGRO: Sure. Sure.

12 PROSPECTIVE JUROR NO. 153: Okay.

13 MR. SGRO: Pass for cause, Your Honor.

14 THE COURT: Mr. Langdon.

15 MR. LANGFORD: Very briefly --

16 PROSPECTIVE JUROR NO. 153: Uh-huh. Yes.

17 MR. LANGFORD: Same things you've been hearing me say  
18 all afternoon, okay.

19 PROSPECTIVE JUROR NO. 153: Right.

20 MR. LANGFORD: Two trials in essence, one set of  
21 evidence and you're okay with that?

22 PROSPECTIVE JUROR NO. 153: Yes.

23 MR. LANGFORD: Do you understand that concept that  
24 you've got to judge both men individually?

25 PROSPECTIVE JUROR NO. 153: Yes.



1 MR. LANGFORD: Both as to the evidence of guilt and  
2 as to the possible penalties?

3 PROSPECTIVE JUROR NO. 153: Yes. Can I ask a  
4 question?

5 MR. LANGFORD: Yes.

6 THE COURT: It depends upon the question.

7 PROSPECTIVE JUROR NO. 153: Okay. Why are they not  
8 being tried separately if we're supposed to have it -- just  
9 because I've been curious. If they're not being -- I'm sorry.

10 THE COURT: It's actually -- when two individuals are  
11 jointly accused of an offense, it's often the case that  
12 they're tried together.

13 PROSPECTIVE JUROR NO. 153: Okay.

14 THE COURT: There are some times when they are tried  
15 separately.

16 PROSPECTIVE JUROR NO. 153: Okay.

17 THE COURT: It depends upon the circumstances, and  
18 there's a bunch of legal reasons that you and I don't have to  
19 worry about in this case.

20 PROSPECTIVE JUROR NO. 153: Okay. That's why I was  
21 -- okay.

22 MR. LANGFORD: So can you set that aside --

23 PROSPECTIVE JUROR NO. 153: Yes.

24 MR. LANGFORD: -- the fact that they are being  
25 tried --

1 PROSPECTIVE JUROR NO. 153: Uh-huh.

2 MR. LANGFORD: -- together?

3 PROSPECTIVE JUROR NO. 153: Yes.

4 MR. LANGFORD: And if you find that there is a whole  
5 lot of guilt as to one person but not very much, are you going  
6 to say, well, since there's so much against one, then I'm  
7 going to go ahead and find the other person guilty as well?  
8 Are you going to do that?

9 PROSPECTIVE JUROR NO. 153: No, it'd have to be on  
10 the presentation, what we find as the jurors on each  
11 individual person.

12 MR. LANGFORD: Exactly.

13 PROSPECTIVE JUROR NO. 153: Right.

14 MR. LANGFORD: Okay.

15 PROSPECTIVE JUROR NO. 153: Uh-huh.

16 MR. LANGFORD: You're going to ask a lot of  
17 questions. I can tell.

18 PROSPECTIVE JUROR NO. 153: Yeah. I know. Sorry.  
19 Sorry. Yeah, I'm a question person.

20 MR. LANGFORD: The Judge said there's going to be a  
21 procedure for that, and part of that though is that you're  
22 going to be also told that you can't decide the case until the  
23 very end of the case.

24 PROSPECTIVE JUROR NO. 153: Right.

25 MR. LANGFORD: Any problem with that?

1 PROSPECTIVE JUROR NO. 153: No.

2 MR. LANGFORD: In other words, you can't say, oh,  
3 that was a great opening argument. That guy is guilty. Or,  
4 that was a great opening argument, no way the State's going to  
5 prove their case. You understand you can't engage in that  
6 kind of thinking?

7 PROSPECTIVE JUROR NO. 153: Right.

8 MR. LANGFORD: And you're going to be okay with that?

9 PROSPECTIVE JUROR NO. 153: Uh-huh.

10 MR. LANGFORD: You can't prejudge the case. You have  
11 to hear all of the evidence. Are you okay with that?

12 PROSPECTIVE JUROR NO. 153: Yes.

13 MR. LANGFORD: Do you want somebody -- Mr. Mason --  
14 do you want somebody like you, if you were sitting where Mr.  
15 Mason is, sitting on the jury panel?

16 PROSPECTIVE JUROR NO. 153: Yeah. Yes, definitely.

17 MR. LANGFORD: Why?

18 PROSPECTIVE JUROR NO. 153: Because I think I'm  
19 impartial, and I think I have -- the gentlemen are trusting us  
20 with whether they're guilty or not. Right, that's the first  
21 thing, is whether they're guilty or not? So we have to decide  
22 that, and if I were sitting on that end of it, I would want  
23 someone like me to make that decision. I would trust someone  
24 like me to make that decision for them.

25 MR. LANGFORD: Pass for cause, Your Honor.

1 THE COURT: All right. If you'd hand the microphone  
2 to Mr. Richardson.

3 Mr. Richardson, do you know any of the witnesses or  
4 the attorneys involved in the case?

5 PROSPECTIVE JUROR NO. 174: No, I do not.

6 THE COURT: I believe you said you had a  
7 brother-in-law that works in Metro?

8 PROSPECTIVE JUROR NO. 174: Yes, I do.

9 THE COURT: What does he do?

10 PROSPECTIVE JUROR NO. 174: He's a computer  
11 programmer, writes all the software for all of the computers  
12 that Metro uses.

13 THE COURT: Okay. Is he a sworn deputy, or is he a  
14 civil servant?

15 PROSPECTIVE JUROR NO. 174: I think he's a civil  
16 servant is what he is.

17 THE COURT: All right. Do you have any other  
18 connection with Metro?

19 PROSPECTIVE JUROR NO. 174: No.

20 THE COURT: All right. You're a dealer at the  
21 Venetian?

22 PROSPECTIVE JUROR NO. 174: Yes.

23 THE COURT: And what shift do you work?

24 PROSPECTIVE JUROR NO. 174: I work swing shift.

25 THE COURT: You work swing?

1 PROSPECTIVE JUROR NO. 174: Yes.

2 THE COURT: Okay. You're going to be gone on the  
3 swing shift, you know?

4 PROSPECTIVE JUROR NO. 174: Yeah.

5 THE COURT: All right. And your spouse is also in  
6 gaming?

7 PROSPECTIVE JUROR NO. 174: Yes.

8 THE COURT: Okay. And you have another  
9 brother-in-law that was involved in drugs at one point?

10 PROSPECTIVE JUROR NO. 174: Yes.

11 THE COURT: What happened to him?

12 PROSPECTIVE JUROR NO. 174: He's living at home right  
13 now with his --

14 THE COURT: He's living at your home?

15 PROSPECTIVE JUROR NO. 174: No, his mother's house,  
16 my mother-in-law's house.

17 THE COURT: Here in town?

18 PROSPECTIVE JUROR NO. 174: Yes.

19 THE COURT: Was he prosecuted for drugs?

20 PROSPECTIVE JUROR NO. 174: Yes. I think he's gone  
21 15 to 20 times to jail -- 15 to 20 times, jail.

22 THE COURT: 15 to 20 times?

23 PROSPECTIVE JUROR NO. 174: He's not a violent  
24 offender. So they just -- he keeps going in and out, in and  
25 out.

1 THE COURT: You don't think he's ever going to get  
2 off?

3 PROSPECTIVE JUROR NO. 174: No. No, I don't think  
4 so.

5 THE COURT: All right. You heard the questions that  
6 I've asked about the job of the jurors to listen to the  
7 evidence and decide what the facts are?

8 PROSPECTIVE JUROR NO. 174: Yes.

9 THE COURT: Do you think you could do that?

10 PROSPECTIVE JUROR NO. 174: Yes.

11 THE COURT: Do you think you could be a fair juror?

12 PROSPECTIVE JUROR NO. 174: Yes.

13 THE COURT: And you'll follow the instructions on the  
14 law that I give to the jurors?

15 PROSPECTIVE JUROR NO. 174: Yes.

16 THE COURT: You understand the burden of proof, that  
17 the State has the burden to prove the defendant's guilt beyond  
18 a reasonable doubt. The defendant doesn't have to prove  
19 they're not guilty.

20 PROSPECTIVE JUROR NO. 174: Yes.

21 THE COURT: Any problem with that procedure?

22 PROSPECTIVE JUROR NO. 174: No problem.

23 THE COURT: Mr. DiGiacomo or Ms. Weckerly.

24 MS. WECKERLY: It's actually my turn, Your Honor.

25 THE COURT: I apologize.

1 MS. WECKERLY: That's okay. How are you, sir?

2 PROSPECTIVE JUROR NO. 174: Good. And yourself?

3 MS. WECKERLY: Good. Thank you. I'm going to work  
4 backwards on your questionnaire.

5 PROSPECTIVE JUROR NO. 174: Okay.

6 MS. WECKERLY: You mentioned that you might've heard  
7 something about the case, and before you answer, I don't want  
8 you to say what you've heard about it.

9 PROSPECTIVE JUROR NO. 174: Okay.

10 MS. WECKERLY: But can you describe what the format  
11 was, like was it a newspaper article?

12 PROSPECTIVE JUROR NO. 174: It was a news blurb I  
13 think, like on Channel 8 News.

14 MS. WECKERLY: And of course you understand that if  
15 you were to be seated as a juror in this case, your decision  
16 would have to be based on what you hear off the witness stand  
17 or pieces of evidence, that sort of thing?

18 PROSPECTIVE JUROR NO. 174: Correct. Yes.

19 MS. WECKERLY: Okay. And you wrote on your  
20 questionnaire -- and this is the reason why I ask you. So I  
21 don't want to give you a hard time, but you said, I may have  
22 already made up my mind with the news coverage.

23 PROSPECTIVE JUROR NO. 174: Yes, because I'm -- well,  
24 at that time, the way the news presented it, it just seemed,  
25 you know, like they had already done -- and so you kind of go

1 by what they say.

2 MS. WECKERLY: Okay. And we're in a courtroom now  
3 though.

4 PROSPECTIVE JUROR NO. 174: Yes.

5 MS. WECKERLY: And so you understand you have to put  
6 whatever news coverage you saw, whatever you believed -- I  
7 mean, sometimes the media gets things wrong?

8 PROSPECTIVE JUROR NO. 174: Yes. Oh, yeah.

9 MS. WECKERLY: And these two are now presumed  
10 innocent?

11 PROSPECTIVE JUROR NO. 174: Yes.

12 MS. WECKERLY: And it's a whole different ballgame  
13 than what you heard on the news or read?

14 PROSPECTIVE JUROR NO. 174: Right.

15 MS. WECKERLY: Okay. Any problem putting that aside?

16 PROSPECTIVE JUROR NO. 174: No.

17 MS. WECKERLY: Okay. Now I'm going to move on to  
18 questions about penalty and the death penalty.

19 PROSPECTIVE JUROR NO. 174: Okay.

20 MS. WECKERLY: From your questionnaire, it appears  
21 that there are some circumstances where you think that would  
22 be an appropriate penalty?

23 PROSPECTIVE JUROR NO. 174: Yes.

24 MS. WECKERLY: Would that be the penalty that you  
25 would impose in every instance of first-degree murder?



1 PROSPECTIVE JUROR NO. 174: If I believe what  
2 first-degree murder is, yes.

3 MS. WECKERLY: Do you have an understanding of what  
4 that is?

5 PROSPECTIVE JUROR NO. 174: That it's premeditated,  
6 that you thought, you made a plan to take someone's life, and  
7 the only thing you can give back is your life.

8 MS. WECKERLY: Okay. And if I were to tell you that  
9 there are other forms of first-degree murder, even instances  
10 where the killing could have been an accident that can be --

11 MR. SGRO: Objection, Your Honor.

12 THE COURT: I'm not sure that that's an accurate  
13 statement.

14 MR. SGRO: I'm not -- that's not -- I don't think  
15 that's accurate.

16 MS. WECKERLY: Felony murder.

17 THE COURT: Well, let's go on.

18 MS. WECKERLY: If I were to tell you that you do not  
19 have to be planning a murder to be guilty of first-degree  
20 murder as it's defined in Nevada?

21 PROSPECTIVE JUROR NO. 174: Then I would -- my -- for  
22 me to give death penalty, it would have to be premeditated.  
23 So if it's first degree and not premeditated, then I could  
24 understand not giving the death penalty. I don't know if that  
25 answers --

1 MS. WECKERLY: Okay. And premeditation, I'm not  
2 going to tell you what the definition is, but it is actually a  
3 legal term that's defined by the Court.

4 PROSPECTIVE JUROR NO. 174: Okay.

5 MS. WECKERLY: Okay. And so you'll actually hear the  
6 definition of what premeditation is, okay?

7 PROSPECTIVE JUROR NO. 174: Yeah.

8 MS. WECKERLY: And I don't know, but my guess is you  
9 might not know what the definition is legally in Nevada.

10 PROSPECTIVE JUROR NO. 174: I'm sure I don't.

11 MS. WECKERLY: And let's say that you think a killing  
12 meets that definition, or let's say it doesn't meet it. I  
13 assume you want to hear what the law is before you make a  
14 decision about whether someone is guilty of first-degree  
15 murder?

16 PROSPECTIVE JUROR NO. 174: Yes.

17 MS. WECKERLY: And I would assume before you would  
18 consider any of the punishments -- because all of them are  
19 very serious punishments. I mean, it's a long time, and  
20 certainly the death penalty is the ultimate punishment.

21 PROSPECTIVE JUROR NO. 174: Yes.

22 MS. WECKERLY: All four options are severe; would you  
23 agree?

24 PROSPECTIVE JUROR NO. 174: Yes.

25 MS. WECKERLY: Before making that type of decision as

1 to what would be a proper punishment for an individual, would  
2 you want to hear as much information as you could before  
3 making such a decision?

4 PROSPECTIVE JUROR NO. 174: Yes.

5 MS. WECKERLY: As and as you sit here now, you  
6 haven't heard anything. So I assume you don't have a decision  
7 yet on what you think a punishment would be or even if these  
8 two are guilty?

9 PROSPECTIVE JUROR NO. 174: No, I haven't.

10 MS. WECKERLY: Are you open to listening to whatever  
11 is presented and also listening to the law as the Judge gives  
12 you the instructions at the end of the case before you make  
13 any decision?

14 PROSPECTIVE JUROR NO. 174: Yes.

15 MS. WECKERLY: Can you be fair to both sides?

16 PROSPECTIVE JUROR NO. 174: Yes.

17 MS. WECKERLY: Thank you, sir. Pass for cause.

18 THE COURT: Mr. Sgro.

19 MR. SGRO: Thank you, Your Honor.

20 Good afternoon, sir. So I want to get right to the  
21 heart of the penalty questions because I have your  
22 questionnaire.

23 PROSPECTIVE JUROR NO. 174: Right.

24 MR. SGRO: And so I'm going to use Mr. Oram's prior  
25 example. In this case, the State's going to allege that David

1 Burns -- David Burns shot someone, killed them and then shot  
2 at a 12-year-old little girl, okay?

3 PROSPECTIVE JUROR NO. 174: Yes.

4 MR. SGRO: Now, from what you said in your  
5 questionnaire and when you saw that factual predicate there,  
6 do you remember saying, If you murder someone, you should give  
7 what you took?

8 PROSPECTIVE JUROR NO. 174: Yes. Yes.

9 MR. SGRO: Okay. So on the questionnaire -- and I  
10 understand what you said, you know, If first-degree is what I  
11 think it is, and premeditation is a term you're going to hear  
12 about later. Trust me, accidents, self-defense, those are not  
13 included in this situation, okay. And you've heard all the --  
14 all the questions from the State and from the defense about  
15 everyone needs a fair trial.

16 PROSPECTIVE JUROR NO. 174: Yes.

17 MR. SGRO: And you understand that, and you agree  
18 with it?

19 PROSPECTIVE JUROR NO. 174: Yes.

20 MR. SGRO: Mr. Burns needs a fair trial, too?

21 PROSPECTIVE JUROR NO. 174: Yes.

22 MR. SGRO: Okay. As you sit there and close your  
23 eyes, when you think about what you put in the questionnaire,  
24 it didn't have anything to do with, you know, how you define  
25 murder, right? Would it be fair to say you believe if someone

1 is convicted of murder they are forfeiting their right to  
2 live?

3 PROSPECTIVE JUROR NO. 174: When I was -- for the  
4 questionnaire, I thought it was like when you drive in a car  
5 and it's, you know, manslaughter or whatever, I don't think  
6 you should give your life for that, but if you go out, take a  
7 gun, I'm going to do something and you shoot someone, yeah.

8 MR. SGRO: And you understand that's the allegation  
9 in this case?

10 PROSPECTIVE JUROR NO. 174: Yes.

11 MR. SGRO: And you understand there's no talk of  
12 manslaughter --

13 PROSPECTIVE JUROR NO. 174: Correct. Yes.

14 MR. SGRO: -- and it's not an accident -- so in this  
15 case, okay, given what you know -- and I know you know little  
16 because --

17 PROSPECTIVE JUROR NO. 174: Right.

18 MR. SGRO: -- you just have the questionnaire.

19 PROSPECTIVE JUROR NO. 174: Correct.

20 MR. SGRO: This isn't that driving a car and having  
21 an accident kind of case. Remember, this is about --

22 PROSPECTIVE JUROR NO. 174: Yes.

23 MR. SGRO: -- a human being being accused of shooting  
24 somebody, right?

25 PROSPECTIVE JUROR NO. 174: Yes.

1 MR. SGRO: And if you get to a point where you accept  
2 that the State has met their burden, you're going to get to a  
3 point where you think, okay, this guy shot someone. At that  
4 moment, parole is really off the table, fair?

5 PROSPECTIVE JUROR NO. 174: Correct.

6 MR. SGRO: Okay.

7 PROSPECTIVE JUROR NO. 174: I wouldn't -- yeah, I  
8 wouldn't --

9 MR. SGRO: So you really in this case -- and I  
10 understand the other stuff you're talking about. In this  
11 case, you would agree with me that you have a belief that if  
12 someone shoots somebody they're forfeiting their life?

13 PROSPECTIVE JUROR NO. 174: Yes.

14 MR. SGRO: Okay. And you really can't consider  
15 parole?

16 PROSPECTIVE JUROR NO. 174: No, not parole. No.

17 MR. SGRO: All right. Challenge for cause, Your  
18 Honor.

19 THE COURT: Traverse?

20 MS. WECKERLY: Just briefly. As you sit here now,  
21 we've discussed how your -- you don't know the facts of the  
22 case because nothing's been presented?

23 PROSPECTIVE JUROR NO. 174: Correct.

24 MS. WECKERLY: Can you imagine a scenario where  
25 someone actually did shoot somebody but they're -- either

1 because of the circumstances or because of information you  
2 hear you would leave open the possibility of letting them out  
3 on -- giving them a sentence where they'd be eligible for  
4 parole?

5 PROSPECTIVE JUROR NO. 174: No, I don't think that's  
6 fair to the family.

7 THE COURT: I'm going to grant the challenge for  
8 cause.

9 MR. SGRO: Thank you, Your Honor.

10 THE COURT: All right. Thank you very much for being  
11 a prospective juror, Mr. Richardson. You'll be excused.

12 PROSPECTIVE JUROR NO. 174: Thank you.

13 THE COURT: All right. Ladies and gentlemen, we've  
14 now completed the voir dire of the prospective jurors that  
15 came in today. We're going to continue selecting jurors for  
16 the next three days, Wednesday, Thursday and Friday. We hope  
17 by Friday afternoon we'll have a jury, and then you or many of  
18 you will probably be part of that jury. We won't know until  
19 Friday afternoon, but you're going to be excused until 3:30  
20 Friday afternoon, right here.

21 Okay. They're having a problem with the recording  
22 system. That's -- we've had a lot of problems. Nothing works  
23 right. The good news is it wasn't my courtroom to begin with,  
24 and I just inherited it.

25 So we're going to excuse you until 3:30 on Friday

1 afternoon. You'll be asked to come back. I think they're  
2 going to want you to go to the jury room for --

3 No? Where you want them to go?

4 THE MARSHAL: No, because they're part of the panel  
5 still. We'll have to e-mail Mariah and let them know that  
6 they'll be coming back on Friday at 3:30.

7 THE COURT: Who's Mariah?

8 THE MARSHAL: She's the commissioner.

9 THE COURT: Can't we have them come to the  
10 commissioner's office over there?

11 THE MARSHAL: They're already gone for the day, sir.

12 THE COURT: No, Friday.

13 THE MARSHAL: Oh, yeah, Friday.

14 THE COURT: When they come back Friday?

15 THE MARSHAL: Yeah, I'll explain that to them.

16 THE COURT: Oh, okay. I don't know who Mariah is,  
17 but anyway.

18 THE MARSHAL: I gotcha. Don't worry about it.

19 THE COURT: Good luck with Mariah on Friday. So  
20 you're off until Friday, and then you'll be coming in here,  
21 and we'll decide which of you or all of you are going to be  
22 the jurors on the case along with many others. Okay. You  
23 have a nice week. I will see you Friday at 3:30 in the  
24 afternoon.

25 THE MARSHAL: Thank you. Jurors, please come with



1 me.

2 (Panel of prospective jurors recessed 6:09 p.m.)

3 THE COURT: All right. The prospective jurors have  
4 exited the courtroom.

5 The staff tells me that at some point they had a  
6 problem with JAVS, and I don't know whether we've been --

7 Is everything being recorded, or do we know?

8 THE COURT RECORDER: It seems like it's being  
9 recorded. My record-on button is on, and it's going.

10 THE COURT: Then what's the problem?

11 THE COURT RECORDER: In the earlier session, I don't  
12 know if it recorded it, Judge.

13 THE COURT: Okay.

14 MR. DIGIACOMO: Judge, just because I have some  
15 personal knowledge about this, this happened in Judge  
16 Villani's courtroom last week. It appeared like perhaps the  
17 recorder wasn't working, but it did actually ultimately record  
18 everything, even though we didn't know if it was or if it  
19 wasn't.

20 THE COURT RECORDER: Your Honor, there are  
21 (inaudible). So we need to check and see if they're in these  
22 other two places.

23 MR. DIGIACOMO: There's supposedly a backup failsafe  
24 system.

25 THE COURT: I think that there -- I've heard that

1 there's a backup. Now, you guys are more -- this is far more  
2 complicated than I will ever understand.

3 Anything on the record, assuming we're making one?

4 MR. SGRO: What time tomorrow?

5 THE COURT: 9:30.

6 MR. SGRO: Okay. So what's -- does the Court have a  
7 calendar tomorrow morning?

8 THE COURT: I have one matter at 9 o'clock that'll  
9 take five minutes, if they're delaying.

10 MR. SGRO: Okay. So --

11 THE COURT: It's a civil matter.

12 MR. SGRO: So that should give the JAVS folks 20  
13 minutes.

14 THE COURT: I hope they're here at 6 in the morning,  
15 but we'll see. I'll be here at 6:30.

16 MR. DIGIACOMO: And just so we're clear, it's through  
17 318 would be the next 20?

18 THE COURT: I'm sorry?

19 MR. DIGIACOMO: Juror No. 318 is the next 20? I just  
20 want to confirm --

21 THE COURT: I don't have that.

22 THE CLERK: I have that. Yes.

23 MR. DIGIACOMO: But it's the next 20 on our list  
24 after the --

25 THE COURT: I'll go home tonight, and I will read

1 every one of them.

2 MS. WECKERLY: Okay.

3 MR. DIGIACOMO: Okay. Nothing else from the State.

4 MR. SGRO: That's it. Obviously we have to know if  
5 we're on the record because we did some pretrial stuff.

6 THE COURT: We'll see at 9:30 tomorrow morning.

7 MR. SGRO: Thank you, Your Honor.

8 MR. ORAM: Thank you, Judge.

9 (Court recessed for the evening at 6:11 p.m.)

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**CERTIFICATION**

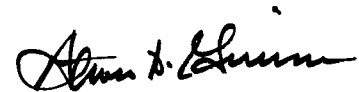
I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C267882-1
	)	C267882-2
vs.	)	DEPT NO. XX
	)	
WILLIE DARNELL MASON, AKA	)	
WILLIE DARNELL MASON, JR.,	)	<b>TRANSCRIPT OF</b>
AKA G-DOGG,	)	<b>PROCEEDING</b>
DAVID JAMES BURNS, AKA	)	
D-SHOT,	)	
	)	
Defendants.	)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

**JURY TRIAL - DAY 2**

WEDNESDAY, JANUARY 21, 2015

APPEARANCES:

For the State:	MARC P. DIGIACOMO, ESQ. PAMELA C. WECKERLY, ESQ. Chief Deputy District Attorneys
For Defendant Mason:	ROBERT L. LANGFORD, ESQ.
For Defendant Burns:	CHRISTOPHER R. ORAM, ESQ. ANTHONY P. SGRO, ESQ.

RECORDED BY SUSAN DOLORFINO, COURT RECORDER  
TRANSCRIBED BY: KARR Reporting, Inc.

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**AA 0362**

1       **LAS VEGAS, NEVADA, WEDNESDAY, JANUARY 21, 2015, 9:29 A.M.**

2                               **\* \* \* \* \***

3               (Outside the presence of the prospective jury panel.)

4               THE COURT: All right. We're on the record.

5               MR. SGRO: Your Honor, we just have a quick  
6 housekeeping matter relative to some jail phone calls. The  
7 Court has been kind enough to assist in some orders relative  
8 to jail calls of Monica Martinez and Stephanie Cousins who are  
9 co-defendants in the case Monica Martinez --

10              THE OFFICER: You let me know when you want them and  
11 we'll bring them in.

12              THE COURT: Bring them in.

13              MR. SGRO: Monica Martinez is a testifying  
14 co-defendant. We were able to get everything on the phone  
15 calls from, I think, October of 2011 to present. The jail  
16 sent us a letter back saying that from August of 2010 when she  
17 got arrested up until the time of 2011 they had a different  
18 carrier and so they weren't able to provide us those  
19 particular phone calls.

20              Now, someone told us via conversation, they said,  
21 you know, the State got a bunch of calls that happened in '10.  
22 They didn't know when the State cut off, and these are my  
23 words, not theirs, but the State had a request to get the  
24 calls. What no one is sure of is when the State turned that  
25 switch off. And so I want to try to limit my search.

1           So, in other words, what I'm saying is if the State  
2 has those calls that go consecutive to up through October of  
3 '11, we want them from the State. If they don't have the  
4 calls, they can tell me what they have so I can narrow my  
5 search when I go to the new subscriber that I have to go  
6 [inaudible]. So if we could just have a record of that that  
7 would be great.

8           MR. DiGIACOMO: Well, Mr. Sgro filed a motion which  
9 set out specific dates. When I made the request to the jail,  
10 I made the request to the jail from August of 2010 when the  
11 crime occurred up until the date of my request, which I  
12 believe was October of 2014. They provided me records  
13 starting, I believe, it's April 5th of 2011.

14           MR. SGRO: '11, right.

15           MR. DiGIACOMO: April 5th of 2011. They provided me  
16 no calls prior to April 5th of 2011. In his motions he had  
17 specific dates that he wanted that he said he didn't have. I  
18 provided them all available calls. I don't have access to  
19 attorney calls, so all available calls from April '11 through  
20 the dates in his motion. If he's talking about different  
21 dates, he's going to have to let me know. Because if it's the  
22 ones that are in his motion, he was provided that some time  
23 ago.

24           MR. SGRO: Right. We're all saying the same thing.  
25 2011, from that moment forward I have them. What I don't have

1 is the ones that predated it. I didn't realize -- I didn't  
2 realize that they were going to take the position that they  
3 had a new -- or a different subscriber at the time and weren't  
4 available. And so they asked me to check with the State to  
5 see if the State has them because the State had phone calls  
6 from 2010, some of which they've given me from San Bernardino,  
7 etcetera. So if the State is saying that they don't have the  
8 calls, then I've got to take the next step. I just want the  
9 record to --

10 MR. DiGIACOMO: I made no request for Monica  
11 Martinez's phone calls until October of 2014.

12 MR. SGRO: And that's what I need.

13 MR. DiGIACOMO: So the only thing I received was  
14 April of 2011 forward.

15 THE COURT: You're saying the same thing.

16 MR. DiGIACOMO: Correct.

17 MR. SGRO: Yeah. Thank you, Judge.

18 THE COURT: All right. While we're on the record,  
19 two things. Number one, a JAVS person or a county employee,  
20 I'm not too sure which he is, was here a couple of hours ago  
21 and he has changed settings or something. I have a button  
22 here that says bench calendar, and when I hit it, white noise  
23 appears in the audience, and these microphone -- this  
24 microphone here works. So that's the best I can -- I can do.

25 MR. ORAM: Thank you, Judge.



1 THE COURT: All right. Number two, if you will look  
2 at Prospective Juror No. 289. His last name is Garcia. He's  
3 the second to the last one for today. On pages -- on page 5  
4 it was clear to me in reading this that he should have been  
5 excluded under Witherspoon, and he was not. The jury  
6 commissioner has been directed to keep him downstairs while  
7 the other jurors are being brought up. And assuming you agree  
8 with me, he won't be brought in today.

9 MR. SGRO: Your Honor, may I -- may I make a quick  
10 inquiry?

11 THE COURT: When I read these last night, it was  
12 clear to me that he should have been excused.

13 MR. SGRO: I -- I had flipped through maybe with an  
14 eye towards the same objective. I would -- I would tell you  
15 relative to the one the Court just indicated, No. 31, it does  
16 say he could consider all forms of punishment.

17 THE COURT: I understand he says that. I don't  
18 think he knows what he's talking about because he makes it  
19 very clear that he doesn't believe in the death penalty, and  
20 he checks the box I could never, under any circumstances,  
21 return a verdict which imposed either the death penalty or  
22 life imprisonment without the possibility of parole. Under  
23 those circumstances, I don't have any alternative but to  
24 excuse him. And we did excuse all those other ones like this  
25 that checked those boxes.

1           MR. SGRO: The only thing, it occurred to me last  
2 night when I was reading this. This is someone who looks to  
3 me like English is his second language. And the question  
4 shows misspelled words that are relatively simple to spell.  
5 Our position would be, Your Honor, we would like to -- if we  
6 gleaned quickly that he understood what he was saying, I think  
7 we're going to have to agree with the Court. My only dilemma  
8 is that this appears --

9           THE COURT: Do you want to bring him up?

10          MR. SGRO: I would like to bring him up.

11          THE COURT: If you want to spend time examining him,  
12 that's fine.

13          MR. SGRO: Not a lot, Your Honor. I do have a  
14 question, though, on -- on Juror No. 315, 315.

15          THE COURT: Ms. Daly? Yeah, Steve Wolfson is a  
16 client of his.

17          MR. SGRO: Well, not only that, but if you look at  
18 the death penalty questions, Your Honor, if we look at 24, it  
19 says society shouldn't be responsible to bear the weight of  
20 proven repeat offenders, particularly violent crime. Which,  
21 you know, that's -- that's potential problem. But you look at  
22 that in conjunction with No. 31, he says clearly if guilty  
23 without doubt, only the last two, meaning he could only  
24 consider life without and death.

25          THE COURT: We won't take a long time with him.

1 MR. SGRO: Okay.

2 MR. DiGIACOMO: Judge, can I address one other issue  
3 before we bring the panel in?

4 THE COURT: Yes.

5 MR. DiGIACOMO: Judge, yesterday I made an objection  
6 as it relates to EDCR 7.70, which specifically precludes a  
7 question, and in subsection (c) touch upon the verdict a juror  
8 would return based upon hypothetical facts. I know that this  
9 issue is somewhat contentious between me and Mr. Oram. We've  
10 had this argument done on a number of occasions.

11 But as an example, when you asked Ms. Green later in  
12 the evening, well, don't you think in the bombing suspects in  
13 Boston, don't you think that that case might be a case that  
14 you would be willing to consider it? If you thought about  
15 this rule from the standpoint of the bombing suspects, then  
16 asking the bombing suspects' jury, don't you think that if we  
17 can establish or it's established he killed xnumber of people  
18 and injured this many more people that you would agree to  
19 never have parole? And you would imagine that all, even  
20 qualified jurors, would answer that question with, no, I won't  
21 leave that person with parole.

22 So the rule is created in such a way that it's  
23 supposed to be based upon a hypothetical murder case. It's  
24 not supposed to be based upon the individual facts of this  
25 case. And when the defense says, well, if they establish that

1 he shot this woman in the head and then chased her 12 year old  
2 daughter down and shoot them, then you're going to have a  
3 number of qualified jurors who may say based on those  
4 hypothetical facts I will never give parole.

5 And so I just wanted to make a record about the  
6 objection because I think that that's going to slow down jury  
7 selection because I think you're going to lose a lot of very  
8 qualified jurors based upon the nature of that question.

9 MR. ORAM: Judge, can I -- can I make a comment on  
10 that? I thought your question was excellent because it puts  
11 things into perspective. You got people to -- to make  
12 answers, definitive answers, just based on that question.

13 Additionally, I think Mr. DiGiacomo is incorrect.  
14 You saw I couldn't budge two of those people who said they  
15 wouldn't consider -- they wouldn't consider parole on the  
16 questionnaire, then they said they would consider parole even  
17 though I was giving them that example. It speeds it along  
18 because then the jurors have some idea of what we're dealing  
19 with. And, Judge --

20 THE COURT: If I am in error, the Supreme Court, I'm  
21 sure, will tell me.

22 MR. SGRO: Your Honor, I have one other -- one other  
23 one I would like the Court to look at and that's 280, Badge  
24 No. 280. If -- if we look --

25 THE COURT: We're going to bring in Mr. Garcia with

1 the other jurors.

2 THE MARSHAL: I will call them and have her -- have  
3 him sent up, sir.

4 THE COURT: Okay. Thank you.

5 All right. Hold on. 280?

6 MR. SGRO: Yes, sir, 280.

7 THE COURT: Do we have a list of the jurors who did  
8 appear?

9 THE MARSHAL: I do, sir.

10 THE COURT: Okay. I assume we didn't get them all?

11 THE MARSHAL: Well, we're only missing one.

12 THE COURT: Good.

13 THE MARSHAL: It would have been two, but we're  
14 having Mr. Garcia sent up.

15 THE COURT: All right.

16 MR. SGRO: So, Your Honor, I'm looking at question  
17 -- has the Court had a chance to get there yet?

18 THE COURT: Ms. Olguin. Yes.

19 MR. SGRO: Yes, sir. So No. 24, if you take  
20 someone's life or commit a serious crime that warrants the  
21 death penalty then you do not deserve to live and cost  
22 taxpayer money. Unless you're defending yourself or a family  
23 member, it should result in the death penalty. 31, if charged  
24 and convicted of first degree murder, I don't believe release  
25 should ever be an option. Clearly, this falls under the --

1 the rubric of what we --

2 THE COURT: Don't take a lot of time with her.

3 MR. SGRO: Well, Your Honor --

4 MS. WECKERLY: She does say on Question 26 that she  
5 could consider mitigating circumstances which might --

6 THE COURT: And on Question 25 she says while she  
7 believes the death penalty is appropriate, she could return a  
8 proper verdict.

9 MR. SGRO: Okay. So I guess, Your Honor, I'm trying  
10 to figure out what we're -- if we're trying to be reasonable,  
11 what we would do is we would take the two that -- that I just  
12 mentioned for the record and Mr. Garcia, and say, you know  
13 what, let's agree to release all three, or we can take the  
14 time --

15 THE COURT: If you guys want to come to an  
16 agreement, that's fine. If not, we're going to interview  
17 them.

18 MR. SGRO: Okay. And we'll just -- you know, to do  
19 20, we'll do --

20 THE COURT: Mr. DiGiacomo, would you like to come to  
21 an agreement?

22 MR. DiGIACOMO: Want to agree?

23 MS. WECKERLY: No.

24 MR. DiGIACOMO: No. That's fine.

25 MR. SGRO: Okay.

1 THE COURT: All right. All right. When Mr. Garcia  
2 is here, you can bring all the -- where's the defendants?

3 THE OFFICER: They're right here, sir.

4 THE COURT: Well, we need them.

5 THE OFFICER: Yes, sir.

6 THE COURT: And we need to unchain them quick.  
7 Quick.

8 (Pause in the proceedings.)

9 THE COURT: Can you tell me which juror did not  
10 appear?

11 THE MARSHAL: Yes, sir. That would be Juror Badge  
12 No. 0225, Ricardo Silva.

13 THE COURT: When Mr. Garcia is here you can bring  
14 all the jurors in.

15 (Pause in the proceedings.)

16 (Inside the presence of the prospective jury panel.)

17 THE COURT: Please be seated. All right. State of  
18 Nevada versus Willie Mason and David Burns. The record will  
19 reflect the presence of the defendants' counsel and the  
20 District Attorneys.

21 Good morning, ladies and gentlemen.

22 PROSPECTIVE JURY PANEL: Good morning.

23 THE COURT: My name is Charles Thompson. I'm a  
24 Senior District Court Judge. This is Department No. 20 of the  
25 Eighth Judicial District Court. You received a jury

1 questionnaire signed by Judge Tao. And up until the first of  
2 this year, Judge Tao was the judge in this department. Judge  
3 Tao has recently been appointed to the new Intermediate Court  
4 of Appeals in Nevada. So he is no longer the judge in this  
5 department and there is no judge in this department.

6 I am a retired District Court Judge. Under Nevada  
7 law, the Supreme Court of Nevada is authorized to appoint  
8 certain retired District Court Judges to sit as Senior  
9 District Court Judges and then handle matters by designation.  
10 And so I have been directed to handle all the matters in  
11 Department 20, which is this department, until the governor  
12 appoints a replacement for Judge Tao, which we anticipate in  
13 about two or three months. In the meantime, this is one of  
14 the cases that was assigned to Department 20, so I'll be the  
15 Judge in this particular case until its conclusion.

16 You have been summoned to serve as jurors in the  
17 case. I should probably introduce some of the staff here  
18 before I go any further. To my right is Linda Skinner. Linda  
19 is the clerk of the court, and she swears in the witnesses,  
20 she's in charge of all the exhibits, and she takes all the  
21 minutes of all the -- of what happens in the court for the  
22 benefit of the lawyers and staff and myself.

23 To her right is the recorder, Susan Dolorfino.  
24 Susan is recording everything that we say here, everything  
25 that I say, everything that you say, and that the lawyers say,



1 and then eventually transcripts of the -- what occurs in court  
2 will be presented to the lawyers for their -- for their use.

3           You've already met the marshal Randy Hawks who has  
4 disappeared again. Okay. He's the gentleman that -- he's the  
5 marshal that got you up here. And the young lady that was  
6 sitting over here is a law clerk. Her name is Holly Walker  
7 and she's not here. There's Mr. Hawks right there. And  
8 occasionally you may see the secretary for this department  
9 come in and out. Her name is Paula Walsh, and she  
10 occasionally assists us in a variety of things.

11           As you're already aware, you've been summoned to  
12 serve as jurors in the case. It's a criminal case. The  
13 defendants in the case are David Burns, that's the gentleman  
14 in the blue shirt right there.

15           Would you stand up, Mr. Burns, so the prospective  
16 jurors can see. Thank you, Mr. Burns.

17           And next to -- and the other defendant is Willie  
18 Mason. This is Mr. Mason to the far right there.

19           THE DEFENDANT MASON: Good morning.

20           THE COURT: They're charged with multiple offenses  
21 of murder, burglary, and robbery. The exact offenses will be  
22 explained in more detail for you by the District Attorney in a  
23 few minutes. And then I'll be explaining them in more detail  
24 later in the written jury instructions that I give to the  
25 jurors.

1           Mr. Marc DiGiacomo and Pam Weckerly are the two  
2 Deputy District Attorneys that have been assigned to prosecute  
3 this case. This is Marc DiGiacomo here and Pam Weckerly right  
4 next to him.

5           Attorney Tony Sgro is right here. He's the  
6 gentleman without the hair on, and he represents Mr. Burns.  
7 And Mr. Chris Oram is co-counsel with Mr. Sgro, and he also  
8 represents Mr. Burns.

9           Robert Langford is the District Attorney -- or the  
10 public -- pardon me, is the defense attorney for Mr. Mason.

11          There are a couple other attorneys you may see in  
12 here from time to time. Mr. Sgro is assisted by Melinda  
13 Weaver. And I don't see her right now, but she occasionally  
14 is in the -- the courtroom. And Mr. Langford is assisted by  
15 Margaret McLetchie, and she is occasionally in the courtroom,  
16 as well.

17          Now, the -- the prosecutor is going to tell you a  
18 little bit about the case now, expand on what you learned from  
19 the jury questionnaire, and also list for you the names of the  
20 witnesses that may be called to testify in the case. Make a  
21 mental note of any of these witnesses that you're acquainted  
22 with because in a few minutes I'll be asking all of you if  
23 you're acquainted with the witnesses and the lawyers in the  
24 case.

25          Mr. DiGiacomo.

1 MR. DiGIACOMO: Thank you, Your Honor.

2 Good morning, ladies and gentlemen. As you just  
3 heard, my name is Marc DiGiacomo and this is Pam Weckerly, and  
4 we are both Deputy District Attorneys here in the State of  
5 Nevada for Clark County.

6 We've been assigned the prosecution of Mr. Burns and  
7 Mr. Mason, and they are charged with a number of crimes,  
8 including conspiracy to commit robbery, burglary while in  
9 possession of a firearm, robbery with use of a deadly weapon,  
10 murder with use of a deadly weapon, and attempt murder with  
11 use of a deadly weapon, and finally a count of battery with a  
12 deadly weapon resulting in substantial bodily harm.

13 The allegations stem from August 7th of 2010 in an  
14 apartment that's located generally in the northeast area of --  
15 of town. It's a street named Meikle or Meikle. It is 5662  
16 Meikle, Apartment No. C, I believe. They are alleged, these  
17 two individuals, with conspiring with two other individuals,  
18 one is a Stephanie Cousins, and another one is a Monica  
19 Martinez, to have driven over to this apartment to commit a  
20 robbery.

21 Mr. Mason and Mr. Burns are accused of entering that  
22 apartment, shooting the homeowner, or the person who lives in  
23 that apartment, a woman by the name of Derecia Newman. And  
24 then ultimately shooting her 12 year old daughter, who lives,  
25 in the stomach during the course of the robbery that occurred

1 there.

2 In order to establish these charges, the State may  
3 call some, but certainly not all, of the following witnesses.  
4 We read out all of the names that you might hear during the  
5 course of the case just in case any of you know any of them,  
6 work at any of the particular locations, because that's a  
7 question that's going to be asked of you. So while you're  
8 about to hear dozens and dozens of names, we are not going to  
9 call every single one of these people, but these are names  
10 that you might hear during the course of the trial.

11 They include a corrections officer by the name of J.  
12 Batu, B-A-T-U, an Officer C. Atwood, Kathryn Ayoama who is a  
13 fingerprint expert here in -- at Metro, there is a Benjamin  
14 Baines who works at Greyhound, an FBI agent by the name of  
15 Kevin Boles, a CSA or crime scene analyst by the name of T.  
16 Brownlee, Homicide Detective Chris Bunting, Crime Scene  
17 Analyst Daniel, this is a tough one, Carvounaiaris, Maurice  
18 Clinkscale, Ulonda Cooper.

19 There is a number of custodian of records that  
20 include the Binion's Hotel & Casino, the Clark County  
21 Detention Center, the Fremont Street Experience, Greyhound Bus  
22 Lines, obviously the Metropolitan Police Department, Opera  
23 House, which is a casino here in town, T-Mobile, Metro PCS,  
24 Nextel for phone records, Texas Station Hotel & Casino, and  
25 the Western Hotel & Casino.

1           There's Crime Scene Analyst Robbie Dahn, two doctors  
2 from UMC, a Dr. Filmore and a Dr. Goshi, Crime Scene Analyst  
3 Shawn Fletcher, Officer Hector Gonzalez, Officer Wessley  
4 Gonzalez, a retired homicide detective by the name of Ken  
5 Hardy, Jonathan Houghton who is an officer, Detective Barry  
6 Jensen, Matt Johns who is an investigator with the Clark  
7 County District Attorney's office, Samantha Knight, Detective  
8 Teresa Kyger, James Krylo who is a firearms and tool mark  
9 expert at Metro, Anthony Lassiter, Sergeant Maines, Cornelius  
10 Mayo, Tyler Mitchell, Monica Monroe, Devonia Newman who is the  
11 12 year old who was shot and survived, Erica Newman, Crime  
12 Scene Analyst Sheree Norman, Dr. Alane Olson who is a medical  
13 examiner here in Clark County, Officer Peterson, Christine  
14 Tamika Pierce, Donovan Rowland, Charisse Salmon, Officer  
15 Scanlon, Officer Scott, Jan Seaman-Kelly who happens to be a  
16 footwear analysis person at Metro, Crime Scene Analyst Speas,  
17 Crime Scene Analyst Szukiewicz, Crime Scene Analyst Taylor,  
18 Jennifer Thomas who is a DNA analyst Las Vegas Metropolitan  
19 Police Department, Officer K. Thomas, Crime Scene Analyst  
20 Branda Vaandering, John Vasek who is an officer with the San  
21 Bernardino County Police Department, Homicide Detective Martin  
22 Wildemann, and Marie Willis. Thank you.

23           THE COURT: All right. Mr. Sgro, do you wish to  
24 tell the prospective jurors of any witnesses that you may be  
25 calling?

1 MR. SGRO: I do want to mention a few names, Your  
2 Honor, yes.

3 THE COURT: All right.

4 MR. SGRO: Good morning, ladies and gentlemen. My  
5 name is Tony Sgro, and with Chris Oram we'll be representing  
6 Mr. David Burns in this case.

7 Now, as we go through this process through the rest  
8 of the day you're going to learn a number of things, including  
9 that Mr. Burns has what they call no burden of proof. He's  
10 presumed innocent. And as a result of those very important  
11 constitutional rights, Mr. Oram and I really don't have any  
12 obligation to do anything, ask questions of witnesses, call  
13 people, etcetera.

14 However, trials are typically an organic thing.  
15 They evolve over the course of days or weeks and so we have a  
16 list of names we'd like to give to you now so as to avoid any  
17 problem just in case any of these people end up showing up.  
18 If any of you know them, please keep these folks in mind.

19 Samantha Burch-Leech (phonetic), Malcolm Turner,  
20 Marilyn Eley, E-L-E-Y, Rochelle Sparks, Shantel Amaya, Vernon  
21 Burch, Craig Altmeyer (phonetic) who is a CPS worker, Titalay  
22 (phonetic) Oyenusi, O-Y-E-N-U-S-I, Tina Luek (phonetic),  
23 Anthony Lassiter, Dr. Mel Pohl, P-O-H-L, Lyndsay Elliot, Dr.  
24 Richard Adler, Natalie Brown, Larry Smith, Paul Connor, Willis  
25 Ifill, Jerome Thomas, Russell Shoemaker who is at Metro police

1 officer. Larry Smith is also former Metro. Hava Simmons,  
2 Tiffany Flowers-Holmes, Carla who is a former hospital  
3 administrator at UMC.

4 And then we too have a number of what they call  
5 custodian of records for records we may talk about in the case  
6 and they come from the following businesses, Medic West  
7 Ambulance, UMC, University Medical Center, Sunrise Hospital,  
8 the Department of Family Services, and Dixie Regional Medical  
9 Center, which is in St. George. And I neglected to mention  
10 Thomas Dillard. Thank you very much.

11 Thank you, Your Honor.

12 THE COURT: All right. Mr. Langford, do you wish to  
13 tell the prospective jurors of any witnesses that you might be  
14 calling?

15 MR. LANGFORD: Your Honor, Mr. Mason will be relying  
16 upon witnesses called by the State and by Mr. Burns to assert  
17 his defense. He's entered a not guilty plea.

18 THE COURT: Thank you, Mr. Langford.

19 All right. Now, ladies and gentlemen, this Court  
20 and the lawyers and everybody involved in the case are deeply  
21 interested in the having the case tried by a jury composed of  
22 12 open-minded, unbiased individuals who have no particular  
23 bias or prejudice for either side in the case and can be fair  
24 minded.

25 In order for us to select such a jury, it's

1 necessary that we ask you some questions. I don't have any  
2 particular desire to pry into your personal lives, nor do the  
3 lawyers. But in order for us to learn whether or not you can  
4 serve as fair jurors, we do have to ask you some personal  
5 questions.

6 The questioning of the jury is called jury voir  
7 dire. The first -- the jurors are first place under oath  
8 before any of the questions are asked. I'll now ask that you  
9 all stand, raise your right hand, and the clerk will  
10 administer that oath to you.

11 (Prospective jury panel sworn.)

12 THE COURT: You may be seated. It's important that  
13 you understand the significance the full, complete, and honest  
14 answers to all of the questions we're going to ask of you. I  
15 caution you not to try to hide or withhold something touching  
16 upon your qualifications. Should you do so, that fact may  
17 tend to contaminate your verdict and subject you to further  
18 inquiry even after you're discharged as -- as jurors. If you  
19 are excused, you have to report back to the jury commissioner  
20 on the third floor where you came from.

21 I'm going to start now with each of the jurors and  
22 asking them some questions. We'll start with Juror 175. I'm  
23 using the number on the badge that you have, the last three  
24 digits of every number. That's how we -- and I believe your  
25 name, is it Aco?



1 PROSPECTIVE JUROR NO. 175: Aco.

2 THE COURT: Okay, Mr. Aco. And the marshal will  
3 give you a microphone. You've got to hold it right up to your  
4 mouth there.

5 PROSPECTIVE JUROR NO. 175: Yes, sir.

6 THE COURT: Even though I can hear you talking here,  
7 the recording system requires that you keep that microphone  
8 right up to your mouth so that they can get everything you  
9 say.

10 PROSPECTIVE JUROR NO. 175: Yes, sir.

11 THE COURT: Okay. Mr. Aco, do you know any of the  
12 attorneys or witnesses involved in the case?

13 PROSPECTIVE JUROR NO. 175: No, sir.

14 THE COURT: Your questionnaire -- and by the way,  
15 the -- the questionnaires were done -- they were actually  
16 written by Judge Tao before I ever got involved in this  
17 department. But the attorneys have copies of all of these  
18 questionnaires, and so they're going to use them assist  
19 themselves in asking you questions. In your questionnaire you  
20 indicated that you were not employed, but were looking for  
21 employment. Are you now employed or are you still unemployed?

22 PROSPECTIVE JUROR NO. 175: Still unemployed.

23 THE COURT: Okay. What -- when you were last  
24 employed what kind of work did you do?

25 PROSPECTIVE JUROR NO. 175: I'm a chef.

1 THE COURT: Where?

2 PROSPECTIVE JUROR NO. 175: Nowhere right now.

3 THE COURT: I know, but where did you use to work?

4 PROSPECTIVE JUROR NO. 175: Mandarin Oriental Hotel.

5 THE COURT: Okay. Have you worked in a number of  
6 different places?

7 PROSPECTIVE JUROR NO. 175: Yes, sir.

8 THE COURT: How long have you been here in Las Vegas  
9 now?

10 PROSPECTIVE JUROR NO. 175: About ten years.

11 THE COURT: And your wife is in clothing sales?

12 PROSPECTIVE JUROR NO. 175: Yes, sir.

13 THE COURT: All right. You've indicated that you've  
14 been a juror before; is that right?

15 PROSPECTIVE JUROR NO. 175: Yes, sir.

16 THE COURT: What kind of a case were you a juror on?

17 PROSPECTIVE JUROR NO. 175: That was in Colorado  
18 Springs. It was --

19 THE COURT: You said domestic violence.

20 PROSPECTIVE JUROR NO. 175: Yes. Thank you.

21 THE COURT: Was it a criminal domestic violence or a  
22 civil case where they were suing somebody for money?

23 PROSPECTIVE JUROR NO. 175: It was criminal.

24 THE COURT: It was criminal. Okay. Without  
25 indicating what the verdict was in the case, did the jury

1 reach a verdict?

2 PROSPECTIVE JUROR NO. 175: Yes, we did.

3 THE COURT: And were you the foreperson of that  
4 jury?

5 PROSPECTIVE JUROR NO. 175: I was.

6 THE COURT: All right. Is that the only time that  
7 you've been a juror before?

8 PROSPECTIVE JUROR NO. 175: Yes, sir.

9 THE COURT: And about how long ago was that?

10 PROSPECTIVE JUROR NO. 175: 11, 12 years ago.

11 THE COURT: Okay. And when did you come to Las  
12 Vegas? Ten years ago?

13 PROSPECTIVE JUROR NO. 175: 2004.

14 THE COURT: And for the most part you've been a chef  
15 on and off?

16 PROSPECTIVE JUROR NO. 175: Yes, sir.

17 THE COURT: Okay. You indicated that at one point  
18 you were attacked by somebody who was intoxicated.

19 PROSPECTIVE JUROR NO. 175: Correct.

20 THE COURT: What happened?

21 PROSPECTIVE JUROR NO. 175: They wanted to fight.

22 THE COURT: When was this?

23 PROSPECTIVE JUROR NO. 175: This was about four --  
24 four years ago.

25 THE COURT: Okay. At your home or someplace else?

1 PROSPECTIVE JUROR NO. 175: No, I was driving and we  
2 were at a -- stopped at a stop light.

3 THE COURT: Why would somebody attack you at a  
4 stoplight?

5 PROSPECTIVE JUROR NO. 175: I don't -- I keep asking  
6 myself the same thing.

7 THE COURT: Okay. Did -- did you report that to the  
8 police?

9 PROSPECTIVE JUROR NO. 175: Yes, sir.

10 THE COURT: Did they catch the person or persons  
11 that did that?

12 PROSPECTIVE JUROR NO. 175: Yes.

13 THE COURT: And do you know what happened to them?

14 PROSPECTIVE JUROR NO. 175: The gentleman just got a  
15 DUI.

16 THE COURT: Okay. He was arrested and charged with  
17 a DUI?

18 PROSPECTIVE JUROR NO. 175: Correct.

19 THE COURT: Okay. Do you -- do you think that the  
20 police or law enforcement handled that appropriately depending  
21 upon the circumstances?

22 PROSPECTIVE JUROR NO. 175: No, I don't.

23 THE COURT: What do you think should have been done?

24 PROSPECTIVE JUROR NO. 175: He should have been  
25 arrested for felony assault.

1 THE COURT: Okay. Are you going to hold that  
2 against anybody involved in this case?

3 PROSPECTIVE JUROR NO. 175: No, that was -- that  
4 was --

5 THE COURT: It has nothing to do with this case;  
6 right?

7 PROSPECTIVE JUROR NO. 175: No, not at all.

8 THE COURT: And you're not going to get mad at the  
9 prosecution here because they --

10 PROSPECTIVE JUROR NO. 175: No.

11 THE COURT: -- didn't do a better job of prosecuting  
12 him; right?

13 PROSPECTIVE JUROR NO. 175: No, I let that go a long  
14 time ago.

15 THE COURT: Okay. Were you hurt in that incident?

16 PROSPECTIVE JUROR NO. 175: Yes, I received a  
17 concussion.

18 THE COURT: Okay. And did you require some  
19 hospitalization?

20 PROSPECTIVE JUROR NO. 175: No.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NO. 175: I did go to the  
23 hospital, though.

24 THE COURT: But you're okay now?

25 PROSPECTIVE JUROR NO. 175: Correct. Yes.

1           THE COURT: All right. In a criminal case such as  
2 this, your -- you're the judge the facts in the case. It's  
3 your job to listen to the evidence and decide what the facts  
4 are. But we're a team. I'm the judge of the law. It's my  
5 job to decide what the law is, and then you listen to the  
6 instructions on the law that I give to the jurors at the  
7 conclusion of the case, apply the facts to those instructions,  
8 and reach a fair verdict. Do you think you can do that?

9           PROSPECTIVE JUROR NO. 175: Absolutely.

10          THE COURT: There is a procedure in criminal cases,  
11 in every criminal case, whereby the defendants are presumed to  
12 be innocent of the charges against them. That means that they  
13 don't have to prove that they're not guilty. It's up to the  
14 prosecution to prove that they are guilty, and the prosecution  
15 has to prove that by evidence beyond a reasonable doubt. Do  
16 you have any quarrel with that procedure?

17          PROSPECTIVE JUROR NO. 175: Not at all.

18          THE COURT: And if the defendant -- if the State  
19 fails to meet that burden, the defendants are entitled to a  
20 verdict of not guilty. Do you have any quarrel with that?

21          PROSPECTIVE JUROR NO. 175: No, not at all.

22          THE COURT: If you were charged with an offense, any  
23 kind of an offense in a criminal case, would you want 12  
24 citizens of your frame of mind, people like you sitting in  
25 judgment of your case?

1 PROSPECTIVE JUROR NO. 175: Absolutely.

2 THE COURT: Is that because you have an open mind?

3 PROSPECTIVE JUROR NO. 175: Yes, sir.

4 THE COURT: You're willing to be fair to both sides?

5 PROSPECTIVE JUROR NO. 175: Yes, sir.

6 THE COURT: Do the best job you can? And that's all  
7 we can ask of anybody. Is that a yes?

8 PROSPECTIVE JUROR NO. 175: Yes, sir.

9 THE COURT: All right. Mr. DiGiacomo.

10 MR. DiGIACOMO: Yes, Your Honor.

11 Good morning, sir.

12 PROSPECTIVE JUROR NO. 175: Good morning.

13 MR. DiGIACOMO: I can't make any promises, but the  
14 good news is that you get to be done first. The bad news is  
15 is that the first person has a tendency to take longer because  
16 we're going to pretty much ask the same questions of everybody  
17 else and they're going to know the answers before we ask them.

18 I want to start sort of at the beginning of your  
19 questionnaire. The Judge asked a lot of the questions I would  
20 have asked, but there is a -- you are married; is that  
21 correct?

22 PROSPECTIVE JUROR NO. 175: Yes, sir.

23 MR. DiGIACOMO: And what does -- what does your wife  
24 do?

25 PROSPECTIVE JUROR NO. 175: She's in retail clothing

1 sales.

2 MR. DiGIACOMO: Okay. And I just couldn't read the  
3 name of her employer.

4 PROSPECTIVE JUROR NO. 175: Loro Piana.

5 MR. DiGIACOMO: Loro Piana. And what type of  
6 clothing is that?

7 PROSPECTIVE JUROR NO. 175: High-end cashmere. Just  
8 really nice \$8,000 sweaters, stuff like that.

9 MR. DiGIACOMO: Is it women's clothing?

10 PROSPECTIVE JUROR NO. 175: No, it's men and women.

11 MR. DiGIACOMO: Men and women. And she's been doing  
12 that for about a year?

13 PROSPECTIVE JUROR NO. 175: Yes, at the current job,  
14 yes.

15 MR. DiGIACOMO: Okay. Has she always been in  
16 retail?

17 PROSPECTIVE JUROR NO. 175: For the past 14 years,  
18 yes. Before that she was in wholesale jewelry.

19 MR. DiGIACOMO: Okay. You indicated that your  
20 nephew was an air marshal.

21 PROSPECTIVE JUROR NO. 175: Correct.

22 MR. DiGIACOMO: Is that the only person in your life  
23 that are closely associated to you that is involved in law  
24 enforcement?

25 PROSPECTIVE JUROR NO. 175: Yes.



1 MR. DiGIACOMO: How often do you talk to your  
2 nephew?

3 PROSPECTIVE JUROR NO. 175: Once a year.

4 MR. DiGIACOMO: So rarely?

5 PROSPECTIVE JUROR NO. 175: Yeah.

6 MR. DiGIACOMO: Do you talk at all about what he  
7 does for a living?

8 PROSPECTIVE JUROR NO. 175: He can't talk a lot  
9 about the stuff that he does.

10 MR. DiGIACOMO: There's a lot of things he probably  
11 can't tell you about.

12 PROSPECTIVE JUROR NO. 175: Yeah.

13 MR. DiGIACOMO: Okay. I imagine that you would  
14 agree that there are good people and bad people in every  
15 profession; right? Just because your -- your nephew is in law  
16 enforcement, that doesn't necessarily mean that the cops that  
17 are coming in here are entitled to any more deference than any  
18 other witness. Would you agree with that statement?

19 PROSPECTIVE JUROR NO. 175: Yes, I -- I agree.

20 MR. DiGIACOMO: Do you think that every person,  
21 whether a police officer, a lay witness, or anybody else, they  
22 should all be judged on who they are and their qualifications  
23 and what the reasonableness of their testimony is?

24 PROSPECTIVE JUROR NO. 175: Absolutely.

25 MR. DiGIACOMO: And do you think you're a type of

1 person who could ferret out the truth from a variety of pieces  
2 of information and ultimately make a determination as to what  
3 happened?

4 PROSPECTIVE JUROR NO. 175: Yes, sir.

5 MR. DiGIACOMO: I just need to clarify because I  
6 just didn't hear it. How long ago was this incident with the  
7 individual who -- it sounded like there was maybe some sort of  
8 DUI road rage and then he attacked you?

9 PROSPECTIVE JUROR NO. 175: About five years ago.

10 MR. DiGIACOMO: So it was here in Las Vegas?

11 PROSPECTIVE JUROR NO. 175: Correct.

12 MR. DiGIACOMO: Was it Metro that's the officers  
13 that came in contact with you?

14 PROSPECTIVE JUROR NO. 175: Yes, sir.

15 MR. DiGIACOMO: Okay. You also indicated, and I  
16 apologize, I don't mean to pry, but that you had a prior  
17 arrest some 30 years ago for a misdemeanor DUI.

18 PROSPECTIVE JUROR NO. 175: Yes, sir.

19 MR. DiGIACOMO: And ultimately that was resolved.  
20 And assuming by the way you wrote this, it was by way of plea?

21 PROSPECTIVE JUROR NO. 175: Yes, sir.

22 MR. DiGIACOMO: And you pled to a reduced charge of  
23 reckless driving.

24 PROSPECTIVE JUROR NO. 175: Reckless driving.

25 MR. DiGIACOMO: Do you think the system treated you

1 fairly?

2 PROSPECTIVE JUROR NO. 175: Yes.

3 MR. DiGIACOMO: Other than the -- the incident that  
4 you indicated in -- in the question about being attacked and  
5 then obviously your own contact, and I don't want to talk  
6 about your jury service just yet, but have you had any other  
7 contact with the justice system where you -- you had to sue  
8 somebody for a car accident, you were a witness, somebody  
9 subpoenaed you because something happened at the restaurant  
10 you were working, anything like that?

11 PROSPECTIVE JUROR NO. 175: No, sir. Nothing.

12 MR. DiGIACOMO: Last about your feelings about the  
13 criminal justice system. You kind of said you had no opinions  
14 about it. Is that because of your limited contact with the  
15 system?

16 PROSPECTIVE JUROR NO. 175: Yeah. Yeah. I don't  
17 get in trouble very often, so --

18 MR. DiGIACOMO: Right.

19 PROSPECTIVE JUROR NO. 175: I'm glad.

20 MR. DiGIACOMO: Would you agree that your prior jury  
21 service, you think ultimately that was a positive experience  
22 in your life?

23 PROSPECTIVE JUROR NO. 175: Yeah, I think I did my  
24 duty as a -- as a --

25 MR. DiGIACOMO: Citizen.

1 PROSPECTIVE JUROR NO. 175: Yeah, as a citizen.  
2 Just doing my job.

3 MR. DiGIACOMO: Do you perceive being a citizen of  
4 now Nevada it being a civic duty to sit on a jury?

5 PROSPECTIVE JUROR NO. 175: Absolutely.

6 MR. DiGIACOMO: Would you agree that while it may  
7 not be a perfect system, it's the best system that anybody has  
8 come up with so far?

9 PROSPECTIVE JUROR NO. 175: Yes, sir.

10 MR. DiGIACOMO: That ultimately you don't want the  
11 government making decisions about what should happen in  
12 criminal cases, you want 12 people?

13 PROSPECTIVE JUROR NO. 175: Yes, sir.

14 MR. DiGIACOMO: Okay. And I noticed in your  
15 questionnaire, we're going to get to penalty shortly, that you  
16 even reference one of the rights that the defendant have;  
17 right? I am assuming you agree with the idea that these two  
18 individuals are presumed innocent; is that correct?

19 PROSPECTIVE JUROR NO. 175: Yes, sir.

20 MR. DiGIACOMO: Okay. And I am sorry. The -- the  
21 court takes down everything we say, and when they do the  
22 transcript it's not going to catch head nods or uh-huhs or  
23 huh-uhs. So every once in awhile, and you'll see it all day  
24 long, we'll be stopping people saying can you just answer out  
25 loud. I imagine that the death penalty, is it something that

1 you had thought about before you came in to fill out your  
2 questionnaire?

3 PROSPECTIVE JUROR NO. 175: Yes, sir.

4 MR. DiGIACOMO: Okay. So let's talk about, and this  
5 is going to be old and rote in a little while for some of  
6 these people. Let's talk about the system as it works here in  
7 Nevada in a murder case. First of all, I want to make one  
8 thing perfectly clear. The State of Nevada has filed a notice  
9 of intent to seek the death penalty against Mr. Burns. We  
10 have not done so against Mr. Mason.

11 So when we ask these questions about all four forms  
12 of -- of punishment, I don't want to leave Mr. Mason kind of  
13 out of the consideration here. He -- he has serious charges  
14 and serious consequences that may -- may flow from that, but  
15 he is not facing a potential death sentence, only Mr. Burns  
16 is. Do you understand that?

17 PROSPECTIVE JUROR NO. 175: Yes, sir.

18 MR. DiGIACOMO: Okay. The way this works is that in  
19 the first phase, Ms. Weckerly and I have all of the burdens.  
20 We have to prove beyond a reasonable doubt that these two  
21 individuals committed the crimes that we have accused them of.  
22 And they never have to do anything. They can sit there and  
23 play tiddlywinks, although I'm pretty sure you're going to be  
24 able to find out pretty quickly that that's not going to  
25 happen with these lawyers. But ultimately, at the end of the

1 day, if we don't shoulder our burden, your responsibility is  
2 to find them not guilty. Any problems with that?

3 PROSPECTIVE JUROR NO. 435: Not at all.

4 MR. DiGIACOMO: Now, there's the flip side to that.  
5 I mean, Mr. Burns and Mr. Mason, they're living, breathing  
6 human beings that you're going to spend a very substantial  
7 portion of time in a courtroom with. And you're not going to  
8 have contact with them, but they're going to be sitting there,  
9 you're going to be sitting in the box for, you know, a long  
10 period of time listening to a lot of evidence about what  
11 happened on August 7th and around that date.

12 Any concerns that if Ms. Weckerly and I are able to  
13 prove that they've committed the crimes that we've accused  
14 them of that you'd have any concerns that you wouldn't be able  
15 to vote guilty or come into this Court and announce in their  
16 presence that they're guilty of the crimes they've been  
17 accused of?

18 PROSPECTIVE JUROR NO. 175: No.

19 MR. DiGIACOMO: So let's talk about if we get to  
20 that second phase. And, you know, Ms. Weckerly and I are  
21 going to assume we're going to get to that second phase, and  
22 I'm sure the defense is going to tell you they're going to  
23 assume we're not going to get there. The problem presents  
24 that we get one chance to talk to jurors. It's right now. So  
25 we don't get to find out after the guilt phase if you can

1 handle the situation that's going to result in the penalty  
2 phase, okay.

3 MR. SGRO: I'm sorry, Your Honor. May we approach  
4 very briefly. Quick question.

5 THE COURT: Yes.

6 (Bench conference.)

7 MR. SGRO: We filed -- we filed a pretrial motion.

8 MR. DiGIACOMO: I'm sorry. Yeah, I --

9 MR. SGRO: They're not supposed to say --

10 MR. DiGIACOMO: Guilt.

11 MR. SGRO: -- guilt phase. They're supposed to say  
12 trial phase, so --

13 MR. DiGIACOMO: That's fine. I apologize.

14 MR. SGRO: Okay.

15 (End of bench conference.)

16 MR. DiGIACOMO: So let's talk about the -- the  
17 second phase for just a second. If we get to that point,  
18 you've already found one or both of these individuals guilty.  
19 And if Mr. Burns is an individual that you found guilty,  
20 there's four possible punishments that apply to them. There  
21 is on the top end the death penalty, then it goes life without  
22 the possibility of parole, life with the possibility of  
23 parole, and then a term of years. You don't ever make the  
24 decision as to whether or not they get parole. That's  
25 something that goes on to the parole board if -- if that's the

1 choice you pick. It's merely the possibility that they get to  
2 see the parole board sometime in the future. Now, do you  
3 understand that?

4 PROSPECTIVE JUROR NO. 175: Yes, sir.

5 MR. DiGIACOMO: Okay. There was some questions  
6 asked about the death penalty and your response was that  
7 generally you believe that the death penalty serves a purpose.  
8 Would that be fair?

9 PROSPECTIVE JUROR NO. 175: Yes.

10 MR. DiGIACOMO: Okay. Do you think that if you were  
11 the legislature or you were the King of Nevada, to make it  
12 easy, that the death penalty would be one of the punishments  
13 that you would have as a potential punishment in a murder  
14 case?

15 PROSPECTIVE JUROR NO. 175: Yes.

16 MR. DiGIACOMO: Now, you also indicated that should  
17 it get to that point that, you know, obviously if the crime is  
18 that bad that you're going to have a lot of empathy for the  
19 victims, as well as the defendant's families and everything  
20 else?

21 PROSPECTIVE JUROR NO. 175: Yes.

22 MR. DiGIACOMO: You'd agree with me that the  
23 consequence here, no matter what the punishment would be for  
24 first degree murder is going to be severe for either one of  
25 these individuals if they get convicted?



1 PROSPECTIVE JUROR NO. 175: Yes, sir.

2 MR. DiGIACOMO: Would you agree with me it's a very  
3 serious undertaking for a jury to do?

4 PROSPECTIVE JUROR NO. 175: It's a very hard job.

5 MR. DiGIACOMO: Now, when it got to the next  
6 question you indicated that you don't personally favor the  
7 death penalty. Do you remember answering that question?  
8 That's fair. That's no further --

9 PROSPECTIVE JUROR NO. 175: I don't.

10 MR. DiGIACOMO: Okay. And, look, this is -- part of  
11 the thing is when you're filling out the questionnaire people  
12 check boxes and then it's not necessarily what their personal  
13 views are. Let me ask you this question. Can you conceive of  
14 a situation in which -- without knowing what any of the facts  
15 are, just in a general idea in your mind where you can see  
16 yourself in a back room raising your hand and indicating that  
17 the ultimate punishment is appropriate for an individual?

18 PROSPECTIVE JUROR NO. 175: If the crime fits.

19 MR. DiGIACOMO: If the crime fits. Correct.

20 PROSPECTIVE JUROR NO. 175: Yes.

21 MR. DiGIACOMO: Are you an individual who would want  
22 to know pretty much everything there is to know both about the  
23 crime as well as the individual before you ever made that  
24 decision?

25 PROSPECTIVE JUROR NO. 175: Yes.

1           MR. DiGIACOMO: Would you agree with the idea that  
2 -- obviously you must agree with this, that not all -- not all  
3 murders should result in the death penalty. Would that be  
4 fair?

5           PROSPECTIVE JUROR NO. 175: Absolutely. Sure.

6           MR. DiGIACOMO: And that the legislature has  
7 provided those four separate ranges because all cases are  
8 different.

9           PROSPECTIVE JUROR NO. 175: Yes.

10          MR. DiGIACOMO: And are you willing to wait until  
11 the end to hear everything, both about the crime, about the  
12 individual, any other aggravating or mitigating circumstances  
13 before making your decision?

14          PROSPECTIVE JUROR NO. 175: Yes, sir.

15          MR. DiGIACOMO: Would you do that for both the first  
16 phase, as well as the second phase of this proceeding, that  
17 you'll wait until the end, get in the back room, talk with  
18 your fellow jurors and ultimately, if all 12 of you can agree,  
19 come back with a verdict?

20          PROSPECTIVE JUROR NO. 175: Yes, sir.

21          MR. DiGIACOMO: If we get to the point where you've  
22 convicted Mr. Burns and Mr. Mason of first degree murder and  
23 you get to the point where all 11 -- you and your 11 fellow  
24 jurors believe that the maximum possible punishment is  
25 appropriate, and for Mr. Burns that would be the death

1 penalty, and for Mr. Mason that would be life without the  
2 possibility of parole, any concerns in your mind about raising  
3 your hand, voting for it, or returning your verdict here in  
4 court?

5 PROSPECTIVE JUROR NO. 175: No.

6 MR. DiGIACOMO: Do you think ultimately you're a  
7 fair person?

8 PROSPECTIVE JUROR NO. 175: Yes.

9 MR. DiGIACOMO: Do you think that if you were  
10 sitting, God forbid if you wound up sitting in the position of  
11 these two individuals right now that you would want 12 people  
12 kind of in your frame of mind deciding first whether or not  
13 they committed the crime, and second what appropriate the  
14 punishment should be?

15 PROSPECTIVE JUROR NO. 175: Yes.

16 MR. DiGIACOMO: Any concerns you have at all about  
17 being a juror in this case?

18 PROSPECTIVE JUROR NO. 175: No.

19 MR. DiGIACOMO: Thank you very much, sir.

20 PROSPECTIVE JUROR NO. 175: You're welcome.

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

22 THE COURT: Mr. Sgro.

23 MR. SGRO: Thank you, Your Honor.

24 Good morning, sir.

25 PROSPECTIVE JUROR NO. 175: Good morning.

1 MR. SGRO: The State and I aren't going to agree on  
2 very much during this case, but we do agree you're going to be  
3 the -- the test juror for all others as you're first. So let  
4 me start off with this. You are being asked questions about  
5 something we call a penalty phase in a case, right. So in --  
6 in murder cases in the State of Nevada, the way it works is  
7 there's first the part where juries decide is the defendant  
8 guilty or not guilty; right?

9 And then there's the part, okay, we have now  
10 determined that an individual in front of us is -- is guilty  
11 of first degree murder. Now we are given discretion to  
12 sentence that person, right. And there's four terms of  
13 sentences as -- as Mr. DiGiacomo said. You understand how the  
14 process works?

15 PROSPECTIVE JUROR NO. 175: Yes, sir.

16 MR. SGRO: Okay. So from -- from our standpoint, we  
17 are put in a somewhat uncomfortable position because we don't  
18 get to speak to you guy again and we have to speak about a  
19 penalty that we believe will never occur. You get that we  
20 just have to do it now?

21 PROSPECTIVE JUROR NO. 175: Yes.

22 MR. SGRO: And -- and we're not conceding anything.  
23 This is just what the system says we have to do.

24 PROSPECTIVE JUROR NO. 175: Yes, sir.

25 MR. SGRO: Okay. So then to start backwards and

1 move forward, I'll pick it up where the State left off.  
2 Relative to death penalty, I just want to make it clear from  
3 our standpoint. You -- you saw the factual predicate that's  
4 in the jury questionnaire; right?

5 PROSPECTIVE JUROR NO. 175: Yes, sir.

6 MR. SGRO: Okay. This is alleged to have been a  
7 first degree murder case where a woman was shot and killed;  
8 right? Do you remember that?

9 PROSPECTIVE JUROR NO. 175: Yes, sir.

10 MR. SGRO: And then a 12 year old little girl was  
11 also shot.

12 PROSPECTIVE JUROR NO. 175: Yes.

13 MR. SGRO: But not killed.

14 PROSPECTIVE JUROR NO. 175: Correct.

15 MR. SGRO: Okay. And it is that set of  
16 circumstances that I want you put yourself in a place  
17 mentally, okay, let's assume that that is the case. You have  
18 a conviction with that fact pattern in front of you, under  
19 those circumstances can you consider every letting an  
20 individual coming back out on the street again?

21 MR. DiGIACOMO: Judge, I apologize. For the record,  
22 I object under Rule 7.70(c).

23 MR. SGRO: Submit it based on yesterday, Your Honor.

24 THE COURT: Why don't you rephrase it.

25 MR. SGRO: Sure.

1 Can you consider in a first degree murder conviction  
2 the opportunity for an individual to return back into society?

3 PROSPECTIVE JUROR NO. 175: Sure, yes.

4 MR. SGRO: Okay. Fair enough. Now, I want to get  
5 back to the trial portion of this case. You put in your  
6 questionnaire that persons accused of crime are innocent  
7 unless proven guilty; right?

8 PROSPECTIVE JUROR NO. 175: Yes.

9 MR. SGRO: You have any quarrel with that right?

10 PROSPECTIVE JUROR NO. 175: No.

11 MR. SGRO: You understand the State has read to you  
12 a long witness list, they have a charging document. Mr. Burns  
13 is sitting in -- in trial. You understand this is all the  
14 natural consequence when someone is accused of a crime. They  
15 say I -- I didn't do it. They enter a plea of not guilty, and  
16 this is what happens. Any problem with that?

17 PROSPECTIVE JUROR NO. 175: No, sir.

18 MR. SGRO: Okay. Have you ever heard that saying  
19 where there's smoke there's fire?

20 PROSPECTIVE JUROR NO. 175: Yes.

21 MR. SGRO: Okay. Do you understand because Mr.  
22 Burns -- well, let me ask you. Because Mr. Burns is here, do  
23 you automatically assume he must have done something wrong?

24 PROSPECTIVE JUROR NO. 175: No.

25 MR. SGRO: Okay. Have you ever had the misfortune

1 of being accused of something you didn't do?

2 PROSPECTIVE JUROR NO. 175: Yes.

3 MR. SGRO: Okay. I want to stay on track with the  
4 rights that Mr. Burns has, and Mr. Mason, as well. I'll let  
5 Mr. Langford speak to that, as well. One of the things that  
6 we enjoy in our country is -- is a privilege where if we're  
7 accused of a crime we either can elect to testify in our own  
8 defense, or we can elect to not testify, okay. Let's -- so  
9 let's start with the first one. If Mr. Burns decides to not  
10 testify, do you think you'd hold that against him?

11 PROSPECTIVE JUROR NO. 175: No.

12 MR. SGRO: Can you think of a reason if someone is  
13 not guilty of an offense why they wouldn't get up on the stand  
14 and talk about it?

15 PROSPECTIVE JUROR NO. 175: No.

16 MR. SGRO: You have -- you can't think of -- do you  
17 think that someone might be nervous?

18 PROSPECTIVE JUROR NO. 175: Absolutely. But, you  
19 know, that's why they hire you.

20 MR. SGRO: Well, let me put it a different way. Do  
21 you think that -- by the way, you'll learn that Mr. Burns was  
22 18 years old at the time that all these offenses that are  
23 alleged have occurred. Do you think that there might be  
24 something in the fact that he was only 18 at the time that  
25 might impact his decision on whether or not he feels

1 comfortably testifying and having seasoned prosecutors  
2 examining. Could that have a bearing?

3 PROSPECTIVE JUROR NO. 175: No.

4 MR. SGRO: On the other -- let's take it the other  
5 direction, if Mr. Burns did testify, do you think you would  
6 look at him more carefully than you would another witness?

7 PROSPECTIVE JUROR NO. 175: No.

8 MR. SGRO: So I'll give you an example. Police  
9 officer -- a police officer, 20 year detective, says the light  
10 is green. Mr. Burns said the light is red. Do you  
11 automatically go with the police officer simply because he or  
12 she is a police officer?

13 PROSPECTIVE JUROR NO. 175: No.

14 MR. SGRO: Okay. You'd be able to weight the other  
15 factors and make a decision?

16 PROSPECTIVE JUROR NO. 175: That's my job.

17 MR. SGRO: All right. Part of your job is going to  
18 be deciding credibility. I'm going to promise you right now  
19 there will be things in this case that will be conflicting,  
20 okay. This is not like a puzzle. It's not like a one-hour  
21 crime drama show where everything gets neatly put together at  
22 the end. That's not this case, okay. Let's talk about  
23 credibility of witnesses. Have you ever been put in the  
24 position where two people have come to you and told you  
25 inconsistent things and you had to sort it out?



1 PROSPECTIVE JUROR NO. 175: Yes, sir.

2 MR. SGRO: Do you feel comfortable doing that?

3 PROSPECTIVE JUROR NO. 175: Yes, sir.

4 MR. SGRO: And you feel comfortable doing that in  
5 the context of how serious this case is?

6 PROSPECTIVE JUROR NO. 175: Yes, sir.

7 MR. SGRO: All right. Do you believe that you will  
8 be able to evaluate change -- if someone changes their  
9 testimony and what the impact should be on their credibility?

10 PROSPECTIVE JUROR NO. 175: I believe I can.

11 MR. SGRO: Okay. So if someone has been saying the  
12 light is red and then at trial we hear for the first time the  
13 light is green, that's something you might look at?

14 PROSPECTIVE JUROR NO. 175: Yes, sir.

15 MR. SGRO: Have you ever heard of this term plea  
16 bargain?

17 PROSPECTIVE JUROR NO. 175: Yes, sir.

18 MR. SGRO: What -- what does that term mean to you?

19 PROSPECTIVE JUROR NO. 175: Trying to get a reduced  
20 charge.

21 MR. SGRO: Okay. In this case you're going to learn  
22 that a plea bargain is in play. Do you have the ability, in  
23 your opinion, to evaluate what motivation someone might have  
24 for testifying in a case after they made a deal to testify?

25 PROSPECTIVE JUROR NO. 175: Could you ask that

1 again?

2 MR. SGRO: Yeah, that was very poorly worded. If  
3 someone makes a deal and agrees to testify on behalf of the  
4 State, do you think you'd be able to evaluate that in terms of  
5 motives for fabrication, motive to lie?

6 PROSPECTIVE JUROR NO. 175: Yes.

7 MR. SGRO: Okay. Let me ask you this question, too.  
8 I came up here when we started and I read you a list of names.  
9 Do you remember that?

10 PROSPECTIVE JUROR NO. 175: Yes, sir.

11 MR. SGRO: Okay. And one of the things I said very  
12 briefly was we're going to talk about the fact that Mr. Burns  
13 has no burden of proof. So in terms of the right that Mr.  
14 Burns, as any other person accused enjoys, is we never have to  
15 prove anything. That means -- and I'm going to give you an  
16 extreme hypothetical. The State calls 100 witnesses. We  
17 never ask a single question. At the end of the case you  
18 believe the State hasn't proven their case beyond a reasonable  
19 doubt. You understand you have an obligation to come back at  
20 that point and say not guilty if that's how you feel?

21 PROSPECTIVE JUROR NO. 175: Absolutely. Yes.

22 MR. SGRO: Okay. So in terms of what you're going  
23 to go through here, let's go from the extreme to something a  
24 little more realistic. A five-week trial is the projected  
25 estimate. Lots of witnesses, police officers coming in,

1 seasoned prosecutors. They argue to you and you just don't  
2 feel it. You just don't feel that they've met their burden.  
3 Any quarrel coming in and announcing not guilty?

4 PROSPECTIVE JUROR NO. 175: No.

5 MR. SGRO: And let me give you a wrinkle in there.  
6 Sometimes in cases, particularly in these -- and let -- before  
7 I start, do you watch any of those crime drama shows, Forensic  
8 Files, NCIS, anything like that?

9 PROSPECTIVE JUROR NO. 175: No, sir.

10 MR. SGRO: Those shows have a tendency to allow us  
11 to believe that this -- this might be how it actually works.  
12 And I'll tell you in real life sometimes, even after five  
13 weeks worth of trial and all these witnesses that come  
14 forward, you may not know what actually occurred. Can you put  
15 yourself in place where you -- could you imagine that might be  
16 frustrating? We've got all this time invested. This is the  
17 most serious crime we have in our country, right, capital  
18 murder. Do you think you'd be able to deal with the potential  
19 frustration of not knowing what happened? Could you -- do you  
20 think you'll be able to deal with that?

21 PROSPECTIVE JUROR NO. 175: I can deal with it. I  
22 don't see any reason to be frustrated.

23 MR. SGRO: Let me ask it a different way. You  
24 understand your job in this case will be to evaluate a set of  
25 facts that the State produces and then evaluate whether or not

1 they've proven a case as opposed to, well, if they didn't give  
2 it to me the right way, let me figure out what really  
3 happened. Do you understand that?

4 PROSPECTIVE JUROR NO. 175: Yes, sir.

5 MR. SGRO: It's not your job to go figure it out.  
6 You have a very specific job task, evaluating the set of facts  
7 in front of you. Any problem with that?

8 PROSPECTIVE JUROR NO. 175: No, sir.

9 MR. SGRO: All right. Have you ever had any  
10 exposure to or -- or interaction with any science that's  
11 involved in a criminal case? And let me give you an example.  
12 Have you ever heard of DNA?

13 PROSPECTIVE JUROR NO. 175: Yes, sir.

14 MR. SGRO: And what -- what do you know about DNA,  
15 or what's -- what's your exposure to it?

16 PROSPECTIVE JUROR NO. 175: Just that we each have  
17 our own set of DNA. It's different than everybody else.

18 MR. SGRO: Okay.

19 PROSPECTIVE JUROR NO. 175: It's our own  
20 fingerprint.

21 MR. SGRO: Fingerprints is another one. There's --  
22 there's blood, there's saliva, there's all these -- hair. I  
23 point, but you get the picture; right? Do you have a sense  
24 that science is important in the -- in the decision making  
25 process when you're evaluating what happened in a criminal

1 case? Do you think science can be important?

2 PROSPECTIVE JUROR NO. 175: It's a tool, yes.

3 MR. SGRO: One of the issues in this case is going  
4 to have to do with the identification of certain individuals.  
5 We might refer to it as eyewitness identification. Have you  
6 ever heard that before?

7 PROSPECTIVE JUROR NO. 175: Yes, sir.

8 MR. SGRO: Okay. Did you have any personal  
9 experience with that?

10 PROSPECTIVE JUROR NO. 175: No, sir.

11 MR. SGRO: Okay. Have you ever walked up to  
12 somebody thinking it was someone you knew, a friend, family  
13 member. And as you say the word hey, you know, they turn  
14 around and you realize it's not them?

15 PROSPECTIVE JUROR NO. 175: Yes, sir.

16 MR. SGRO: Okay. Has that ever happened to you  
17 where someone has mistaken you for somebody else?

18 PROSPECTIVE JUROR NO. 175: Yes.

19 MR. SGRO: Do you believe you have the ability to  
20 evaluate someone that talks about what they saw, heard, or did  
21 on a particular day or not and evaluate whether or not that's  
22 accurate?

23 PROSPECTIVE JUROR NO. 175: Yes.

24 MR. SGRO: Do you think that it's possible that  
25 someone swears to tell the truth, comes on the stand, and

1 makes a mistake?

2 PROSPECTIVE JUROR NO. 175: Yes.

3 MR. SGRO: Do you think it's possible that someone  
4 swears to tell the truth, gets on the stand, and lies?

5 PROSPECTIVE JUROR NO. 175: Yes.

6 MR. SGRO: And -- and is the person that either  
7 makes the mistake or lies, is it possible that that person is  
8 a police officer?

9 PROSPECTIVE JUROR NO. 175: Yes.

10 MR. SGRO: Can a police officer arrest somebody if  
11 they have not committed a -- or let me strike that. Can a  
12 police officer arrest someone and it turns out that person  
13 really didn't do anything?

14 PROSPECTIVE JUROR NO. 175: Yes.

15 MR. SGRO: Do you own a cell phone?

16 PROSPECTIVE JUROR NO. 175: Yes.

17 MR. SGRO: Have you ever looked at your cell phone  
18 bill?

19 PROSPECTIVE JUROR NO. 175: Yes.

20 MR. SGRO: To look at, you know, the calls that --  
21 and the entries that are made there specifically?

22 PROSPECTIVE JUROR NO. 175: Yes, sir.

23 MR. SGRO: Have you ever had the situation where  
24 you've texted somebody and then later talked to them and have  
25 the following conversation. Did you get my text? No, I

1 didn't get your text.

2 PROSPECTIVE JUROR NO. 175: Yes.

3 MR. SGRO: Has that ever happened to you?

4 PROSPECTIVE JUROR NO. 175: Yes, sir.

5 MR. SGRO: Have you been on the receiving end, hey,  
6 I left you a voicemail, and your -- your response is I never  
7 got it.

8 PROSPECTIVE JUROR NO. 175: Yes.

9 MR. SGRO: Okay. So will you also make a commitment  
10 that when it comes to cell phone records, you would agree that  
11 simply because the records come in and are nice and neatly  
12 packaged, they get on a computer generated printout, will you  
13 be willing to examine those records for accuracy?

14 PROSPECTIVE JUROR NO. 175: Yes.

15 MR. SGRO: Okay. You wouldn't take those records  
16 just at face value just because they showed up; right?

17 PROSPECTIVE JUROR NO. 175: Right.

18 MR. SGRO: Okay. Is there any reason that you  
19 believe, based on what we've discussed so far, any -- any  
20 issue give you any heartburn about serving as a juror in this  
21 case?

22 PROSPECTIVE JUROR NO. 175: No, sir.

23 MR. SGRO: Okay. Pass for cause, Your Honor.

24 THE COURT: Mr. Langford, you may examine.

25 MR. LANGFORD: Thank you.

1           The good news is when I stand up it's almost over.  
2 I do have a couple of questions, a couple things I have to go  
3 over, though. And it's going to be directed at you, but, you  
4 know, as everyone listens, you'll understand why I'm  
5 addressing it a certain way. I like to think that there are  
6 going to be two trials in this courtroom. One set of facts  
7 and circumstances, but two trials because two individuals are  
8 on trial here. And you need to listen to the evidence in such  
9 a way that you're evaluating the evidence as to that guilt of  
10 each individual, and only as to that individual.

11           That's a little confusing, but what it means is when  
12 you hear something come from the witness stand, you need to  
13 say, now, how does that prove what the State is alleging as to  
14 Mr. Burns, and then secondly how does it apply -- you're only  
15 going to hear it once, but how does it apply first to Mr.  
16 Burns, second to Mr. Mason, okay. Do you have -- would you  
17 have a problem doing that?

18           PROSPECTIVE JUROR NO. 175: No.

19           MR. LANGFORD: So it has to be an evaluation where  
20 you do it for each person, okay. Part of that is at some  
21 point it may seem like there is more evidence against one  
22 person than there is against the other person. And you need  
23 to be able to say at some point that if that's the case, that  
24 one person the State has met its burden, and as to the other  
25 person the State has not met its burden. Would you be able to



1 do that?

2 PROSPECTIVE JUROR NO. 175: Yes, sir.

3 MR. LANGFORD: If there's a lot of evidence against  
4 one, that person could be guilty. The other person could be  
5 not guilty. You'd be okay coming in and saying, hey, it's a  
6 split decision?

7 PROSPECTIVE JUROR NO. 175: Yes, sir.

8 MR. LANGFORD: Do you want to serve on this jury?

9 PROSPECTIVE JUROR NO. 175: Not really.

10 THE COURT: I think every juror here would answer  
11 that way.

12 MR. LANGFORD: Of reasonable sense and intelligence.  
13 Yes, that's probably true.

14 THE COURT: As a matter of fact, there was a  
15 question that asked them if they could sit and if there was  
16 any reason they couldn't. Everyone said no. Or just about  
17 everyone.

18 MR. LANGFORD: Is there a particular reason you don't  
19 want to sit as a juror?

20 PROSPECTIVE JUROR NO. 175: It's -- this is serious  
21 business.

22 MR. LANGFORD: I understand.

23 PROSPECTIVE JUROR NO. 175: It's a hard job.  
24 Somebody's life is at stake potentially.

25 MR. LANGFORD: Probably not many people want to sit

1 as a juror, but are you willing to sit as a juror?

2 PROSPECTIVE JUROR NO. 175: Yes, sir.

3 MR. LANGFORD: Okay. Let me talk about two trials.  
4 There are also going to be two penalty phases if it gets to  
5 that point, you know. I need to make sure that you understand  
6 that the State is only seeking to execute Mr. Burns. The  
7 maximum penalty as to Mr. Mason is life without the  
8 possibility of parole.

9 So there are -- there are three penalties as to Mr.  
10 Mason. The first is life without the possibility of parole.  
11 The second is life with the possibility of parole after a  
12 number of years, and the last penalty that's possible is a  
13 specific term of years in the Nevada State Prison with parole  
14 eligibility at a certain point, but a maximum term of years.  
15 Do you understand that?

16 PROSPECTIVE JUROR NO. 175: Yes, sir.

17 MR. LANGFORD: So there are four possible penalties  
18 as to Mr. Burns, but only three as to Mr. Mason. Can you,  
19 hearing both of those, evaluate Mr. Mason independently of Mr.  
20 Burns?

21 PROSPECTIVE JUROR NO. 175: Yes, sir.

22 MR. LANGFORD: And you commit to the fact that even  
23 though you may feel one way about Mr. Burns, you won't let  
24 that influence your decision as to Mr. Mason if it gets to  
25 that point?

1 PROSPECTIVE JUROR NO. 175: Yes, sir.

2 MR. LANGFORD: The evidence that comes out, some --  
3 at some point may indicate that there -- there might be other  
4 people involved. You understand that you're only here to hear  
5 evidence as to these two individuals and determine their guilt  
6 only. Do you understand?

7 PROSPECTIVE JUROR NO. 175: Yes, sir.

8 MR. LANGFORD: Do you have a problem with that?

9 PROSPECTIVE JUROR NO. 175: No, sir.

10 MR. LANGFORD: Do you have a problem holding the  
11 State to their burden of proof of having to prove these  
12 allegations beyond a reasonable doubt?

13 PROSPECTIVE JUROR NO. 175: No.

14 MR. LANGFORD: Pass for cause, Your Honor.

15 THE COURT: Would you do me a favor and hand that  
16 microphone to the gentlemen next to you there. Mr. -- is it  
17 Welde?

18 PROSPECTIVE JUROR NO. 176: Yes.

19 THE COURT: Weld or --

20 PROSPECTIVE JUROR NO. 176: Welde.

21 THE COURT: Welly?

22 PROSPECTIVE JUROR NO. 176: Welde.

23 THE COURT: Welde. Okay, Mr. Welde. If -- you need  
24 to speak up, too. It's on, I think. Do you know any of the  
25 witnesses whose names were mentioned by counsel or do you know

1 any of these attorneys?

2 PROSPECTIVE JUROR NO. 176: No.

3 THE COURT: Don't know anybody involved in the case?

4 PROSPECTIVE JUROR NO. 176: Nobody.

5 THE COURT: Okay. I think from your questionnaire  
6 that I understand you came for the country of Ethiopia; is  
7 that right?

8 PROSPECTIVE JUROR NO. 176: Yes, sir.

9 THE COURT: That's like the horn of African?

10 PROSPECTIVE JUROR NO. 176: The horn of Africa.

11 THE COURT: Okay. I think I remember that. I've  
12 never been there, but I -- it's a long ways a way. It's a  
13 place where they've had a lot of violence lately, haven't  
14 they?

15 PROSPECTIVE JUROR NO. 176: Yes.

16 THE COURT: Next to Sudan?

17 PROSPECTIVE JUROR NO. 176: Next to Sudan, yes.

18 THE COURT: Yeah. How long has it been since you  
19 came from Ethiopia?

20 PROSPECTIVE JUROR NO. 176: I've been here seven  
21 years and --

22 THE COURT: What brings you to Nevada?

23 PROSPECTIVE JUROR NO. 176: Nevada, my sponsor was  
24 here.

25 THE COURT: Okay. And where did you come from?

1 Well, you came from Ethiopia. You didn't come directly to  
2 Nevada, did you?

3 PROSPECTIVE JUROR NO. 176: I came direct to Nevada,  
4 to Las Vegas.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR NO. 176: Yeah.

7 THE COURT: And you're a cab driver now?

8 PROSPECTIVE JUROR NO. 176: Yes.

9 THE COURT: How long have you been a cab driver?

10 PROSPECTIVE JUROR NO. 176: Almost five years.

11 THE COURT: Okay. There are a lot of cab drivers  
12 who have been the victims of crimes, people stealing from them  
13 or even holding them up. Are you -- are you aware of that?

14 PROSPECTIVE JUROR NO. 176: Yes.

15 THE COURT: Have you ever been the victim of a  
16 crime?

17 PROSPECTIVE JUROR NO. 176: Never.

18 THE COURT: Okay. How about -- you got any friends  
19 that have been?

20 PROSPECTIVE JUROR NO. 176: [Indecipherable].

21 THE COURT: You just -- you don't -- you've heard  
22 about it?

23 PROSPECTIVE JUROR NO. 176: Yeah, I hear.

24 THE COURT: But you don't know any of them that have  
25 been the victim; is that right?

1 PROSPECTIVE JUROR NO. 176: Yes. By the way, let me  
2 tell you, I'm not well speak English.

3 THE COURT: Okay. Well --

4 PROSPECTIVE JUROR NO. 176: So if you ask me some  
5 question, I --

6 THE COURT: It sounds pretty good, though. You  
7 sound like you --

8 PROSPECTIVE JUROR NO. 176: Yeah.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 176: But I'm not well speak  
11 English.

12 THE COURT: I understand that you don't speak  
13 English well, but you do speak English.

14 PROSPECTIVE JUROR NO. 176: I understand some parts.  
15 I --

16 THE COURT: Will you do the best job you can as a  
17 juror?

18 PROSPECTIVE JUROR NO. 176: Yes, sir. I understand.

19 THE RECORDER: I can't understand him.

20 THE COURT: You need to speak up. Did you -- will  
21 you do the best job you can if you're selected as a juror?

22 PROSPECTIVE JUROR NO. 176: Yes, I can. Yes, I do.

23 THE COURT: Under our system of criminal justice,  
24 you and I are a team. It's your job to decide what the  
25 evidence is, what the facts are, and it's my job to decide

1 what the law is. And then you apply the facts to the law and  
2 reach a fair verdict. Will you do that for me.

3 PROSPECTIVE JUROR NO. 176: Yes.

4 THE COURT: You understand that the defendants don't  
5 have to prove they're not guilty. It's up to the State to  
6 prove that they are guilty by evidence beyond a reasonable  
7 doubt. And if the State fails to meet that burden, the  
8 defendants are entitled to a verdict of not guilty. Do you  
9 have any quarrel with that procedure?

10 PROSPECTIVE JUROR NO. 176: No.

11 THE COURT: All right.

12 THE MARSHAL: You need to speak directly into that  
13 microphone.

14 THE COURT: You need to speak right into the  
15 microphone there.

16 PROSPECTIVE JUROR NO. 176: Yeah, okay. Okay.

17 THE COURT: Okay. If -- if you were one of the  
18 parties in this case, would you want a juror like yourself  
19 sitting in judgment of that case?

20 PROSPECTIVE JUROR NO. 176: Yes.

21 THE COURT: Okay. Mr. -- or Ms. Weckerly.

22 MS. WECKERLY: Thank you.

23 Good morning, sir.

24 PROSPECTIVE JUROR NO. 176: Good morning.

25 MS. WECKERLY: How are you?

1 PROSPECTIVE JUROR NO. 176: I'm good.

2 MS. WECKERLY: You mentioned obviously that English  
3 is your second language.

4 PROSPECTIVE JUROR NO. 176: Yes.

5 MS. WECKERLY: Have you understood everything that's  
6 been said so far this morning?

7 PROSPECTIVE JUROR NO. 176: Not all.

8 MS. WECKERLY: Not all of it? Okay. Is that part  
9 of your concern about serving as a juror? You wrote that on  
10 your questionnaire.

11 PROSPECTIVE JUROR NO. 176: I conserve.

12 MS. WECKERLY: You conserve?

13 PROSPECTIVE JUROR NO. 176: Yeah, about what I  
14 understand.

15 MS. WECKERLY: Okay. Is there -- is it -- I mean, I  
16 -- I guess it's probably hard to estimate what you're missing,  
17 but when you -- as you've sat here this morning, do you feel  
18 like you understood over half of what's been said or less than  
19 that?

20 PROSPECTIVE JUROR NO. 176: Less than that.

21 MS. WECKERLY: Less than that?

22 PROSPECTIVE JUROR NO. 176: Yes.

23 MS. WECKERLY: Okay. In your -- in your work, I  
24 assume you're conversing with people quite a bit.

25 PROSPECTIVE JUROR NO. 176: Uh-huh.



1 MS. WECKERLY: But in short, you know, directions or  
2 where want to go?

3 PROSPECTIVE JUROR NO. 176: Yes. Yes, I understand.

4 MS. WECKERLY: When you -- when you go home are you  
5 -- do you live with people that are English speakers or --

6 PROSPECTIVE JUROR NO. 176: No, no. I'm -- right  
7 now I'm live alone.

8 MS. WECKERLY: Okay.

9 PROSPECTIVE JUROR NO. 176: My family is abroad.

10 MS. WECKERLY: Okay.

11 PROSPECTIVE JUROR NO. 176: Hopefully I will -- they  
12 will come soon.

13 MS. WECKERLY: Okay.

14 PROSPECTIVE JUROR NO. 176: And that's why.

15 MS. WECKERLY: Is -- are you -- I guess do you think  
16 you can understand the proceedings that -- as we go through  
17 this? Because it's important that you understand that law  
18 when the Judge instructs you, do you think you'll be able to  
19 do that?

20 PROSPECTIVE JUROR NO. 176: I'll try.

21 MS. WECKERLY: Okay. Do you think you would be able  
22 to understand the witness's testimony?

23 PROSPECTIVE JUROR NO. 176: I'll try my best.

24 MS. WECKERLY: Okay. And is your -- would you be  
25 able to tell us if you're not understanding it?

1 PROSPECTIVE JUROR NO. 176: Yes, I can tell you if  
2 I'm --

3 MS. WECKERLY: Okay.

4 PROSPECTIVE JUROR NO. 176: -- not understand, yeah.

5 MS. WECKERLY: And -- and as we sit here this  
6 morning, are you able to describe the parts that you might not  
7 have understood yet, you know, that have happened already?

8 PROSPECTIVE JUROR NO. 176: Say again? I did not  
9 understand.

10 MS. WECKERLY: Okay.

11 THE COURT: I don't think you know how much you  
12 don't know.

13 MS. WECKERLY: I mean, when we were speaking with  
14 the first juror --

15 PROSPECTIVE JUROR NO. 176: Yeah.

16 MS. WECKERLY: -- did you understand the  
17 conversations that he was having?

18 PROSPECTIVE JUROR NO. 176: Not all.

19 MS. WECKERLY: Not all.

20 PROSPECTIVE JUROR NO. 176: All questions I didn't  
21 understand because I'm not well speak English.

22 MS. WECKERLY: Okay.

23 PROSPECTIVE JUROR NO. 176: That's why.

24 MS. WECKERLY: May we approach, Your Honor?

25 THE COURT: Yes.

1 (Bench conference.)

2 MS. WECKERLY: We either need to get an interpreter  
3 or --

4 THE COURT: I'm not going to get an Ethiopian  
5 interpreter.

6 MS. WECKERLY: If he's not understanding what's being  
7 said --

8 THE COURT: He's understanding a lot of it. I don't  
9 know. It's up to you guys. You want him? I want him too.

10 MS. WECKERLY: Okay.

11 THE COURT: Okay.

12 (End of bench conference.)

13 MS. WECKERLY: Sir, I'm going to move through your  
14 questionnaire when you were asked questions about the death  
15 penalty, okay?

16 PROSPECTIVE JUROR NO. 176: No. No, I don't -- I  
17 don't say death penalty.

18 MS. WECKERLY: Right. I wanted -- I just want to  
19 talk to you about your opinion.

20 PROSPECTIVE JUROR NO. 176: Okay. [Inaudible.] Yeah.

21 MS. WECKERLY: Okay. And I -- I think you said that  
22 the death penalty isn't a penalty that you agree with? Okay.  
23 Is that an opinion that's based on your own beliefs or your  
24 religious beliefs?

25 PROSPECTIVE JUROR NO. 176: Yes.

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

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 80834

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**APPELLANT'S APPENDIX**

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12th day of August, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office

Aaron Ford, Nevada Attorney General

Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By: 

Employee, Resch Law, PLLC d/b/a Conviction Solutions