

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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1 MR. SGRO: Your Honor.

2 THE COURT: Yes.

3 MR. SGRO: We'd like to challenge the last juror for
4 cause if you want to talk about that for a second now.

5 MR. DiGIACOMO: Didn't you just pass for cause?

6 MS. WECKERLY: Yeah.

7 MR. ORAM: Yeah, but --

8 MR. SGRO: Well, based on Mr. Langford's colloquy,
9 we don't believe this juror has the capacity to follow the
10 law. He equivocated and, in fact, said the law is -- is wrong
11 or I don't remember now the euphemism.

12 MR. ORAM: He says he doesn't agree with it, but he
13 would follow it if he had to.

14 MR. SGRO: Well, he said if you're asking me, you
15 know -- I can't remember. Here's what he didn't say. He
16 didn't say he could. He said will you try to follow the law.
17 And that's not the operative mechanism by which jurors are
18 qualified. No one asked him can he follow the law because he
19 can't. He's sitting here arguing.

20 And by the way, Your Honor, this is an attorney so
21 it's more troubling because he has a voice potentially louder
22 than other jurors because they may have a tendency to rely
23 upon him much like they would rely on a nurse if it's a
24 medical malpractice case. He's going to have a voice on what
25 the law is. Potentially we have a man going in who admittedly

1 cannot and does not agree with the law.

2 And we're asking him to play mental gymnastics which
3 he seems like he's got a pretty strong personality, he's
4 extremely articulate, he's been practicing for 16 years, and
5 as an attorney has a pretty significant quarrel with the
6 presumption of innocence and -- and what the impact would be
7 if Mr. Burns did not testify. Clearly it's not fair to us.

8 He clearly falls under the rubric of a challenge for
9 cause at this point given what Mr. Langford -- and I don't
10 mean to step on Mr. Langford's toes, I just wanted to catch
11 you, Your Honor, before we took a break. So I apologize to
12 Mr. Langford, but it was that colloquy that causes us to renew
13 -- or to revisit our position, Your Honor.

14 MR. ORAM: And, Judge, what caused me --

15 MR. DiGIACOMO: He passed for cause, too, Mr.
16 Langford.

17 MR. ORAM: What caused me concern, too, is, you see,
18 I wasn't even questioning him about it. He -- I was almost
19 done and then all of the sudden that came out which sort of
20 surprised me given that it was an attorney that he would have
21 such a strong view on the Fifth Amendment. He didn't even
22 know what the Fifth was.

23 MR. DiGIACOMO: Judge, I would tell you that I would
24 imagine that the very articulate Jeffrey Allen, the questions
25 being asked by Mr. Langford in his Socratic method like we're

1 back in law school and the answers being given were completely
2 appropriate. It's exactly what you want a juror to do. Even
3 if you -- you ask them, even if you don't agree with the law,
4 can you follow the instructions of the Court? And he kept
5 answering that, yes, I'm telling you I don't necessarily agree
6 with it, but I can follow the instructions of the Court.

7 That --

8 THE COURT: That --

9 MR. DiGIACOMO: -- qualifies him --

10 THE COURT: That was what --

11 MR. DiGIACOMO: -- as a juror.

12 THE COURT: -- I gathered from his last testimony.
13 I'm going to deny your challenge. We're going to take a break
14 for ten minutes.

15 (Court recessed at 2:34 p.m. until 2:50 p.m.)

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

17 THE COURT: All right. Back on the record. Burns
18 and Mason. The record will reflect the presence of the
19 defendants, counsel, the deputy district attorneys and the
20 prospective jurors in the box.

21 Is it Mrs. Leasure?

22 PROSPECTIVE JUROR NO. 559: Yes.

23 THE COURT: Okay. Speak into the microphone there,
24 please. Do you know any of the witnesses or attorneys
25 involved in the case?

1 PROSPECTIVE JUROR NO. 559: No.

2 THE COURT: You are a registered nurse?

3 PROSPECTIVE JUROR NO. 559: Yes.

4 THE COURT: And it says you're with Healthcare
5 Partners?

6 PROSPECTIVE JUROR NO. 559: Correct.

7 THE COURT: What's Healthcare Partners?

8 PROSPECTIVE JUROR NO. 559: We are actually Davita
9 Healthcare Partners. I do care management. We're the third
10 party payer for Humana Gold patients and United Medicare
11 Complete.

12 THE COURT: And what kind of patients do you get?

13 PROSPECTIVE JUROR NO. 559: The senior, the Medicare
14 patients, patients who have Medicare.

15 THE COURT: Senior Medicare patients?

16 PROSPECTIVE JUROR NO. 559: Uh-huh, Medicare
17 Advantage program.

18 THE COURT: Any Medicare patient can come to you,
19 or --

20 PROSPECTIVE JUROR NO. 559: Well, they have to sign
21 up either with Humana or United Medicare Complete, and then we
22 -- I manage a group of patients.

23 THE COURT: Okay. Well, Medicare, I thought you
24 could go to any doctor?

25 PROSPECTIVE JUROR NO. 559: You can but you can buy

1 the advantage plan. It puts you into, like, HMO, and then
2 that way things are cheaper for you, but you have to do HMO.
3 You know, you have to go to a certain network. You need
4 referrals.

5 THE COURT: Is there an advantage to signing up with
6 Medicare -- what do you call it, Advantage?

7 PROSPECTIVE JUROR NO. 559: There are some. Some
8 programs have no co-pays for specialty doctors. Medications
9 are a little bit cheaper. There are some.

10 THE COURT: I'll have to talk to you about that.
11 Maybe I signed up at the wrong thing. Okay.

12 How long have you been doing that?

13 PROSPECTIVE JUROR NO. 559: Just over three years.

14 THE COURT: And do you have a particular place that
15 you work out of?

16 PROSPECTIVE JUROR NO. 559: I work off of Warm
17 Springs, by the airport.

18 THE COURT: And before that, what did you do?

19 PROSPECTIVE JUROR NO. 559: I was a hospice nurse for
20 Solari.

21 THE COURT: And your husband?

22 PROSPECTIVE JUROR NO. 559: He works for Credit One
23 Bank. He's a web designer.

24 THE COURT: He's in computers then?

25 PROSPECTIVE JUROR NO. 559: Yes.

1 THE COURT: You said in your questionnaire here that
2 you had a car that was broken into a few times; is that right?

3 PROSPECTIVE JUROR NO. 559: Yes.

4 THE COURT: What happened?

5 PROSPECTIVE JUROR NO. 559: I think it was just kids
6 in the neighborhood, stole some CDs. It was a while ago when
7 I first moved out here.

8 THE COURT: Did you report it to the police?

9 PROSPECTIVE JUROR NO. 559: No.

10 THE COURT: And you had a sister-in-law that was
11 assaulted?

12 PROSPECTIVE JUROR NO. 559: Yes.

13 THE COURT: When did that happen?

14 PROSPECTIVE JUROR NO. 559: Maybe eight years ago, in
15 Michigan.

16 THE COURT: Oh, in Michigan?

17 PROSPECTIVE JUROR NO. 559: Yes.

18 THE COURT: It has nothing to do with Las Vegas then?

19 PROSPECTIVE JUROR NO. 559: No.

20 THE COURT: Do you know very much about any case
21 involving that?

22 PROSPECTIVE JUROR NO. 559: In her case, I know the
23 guy did go to jail. He was convicted and went to jail and was
24 just recently released.

25 THE COURT: Do you think those experiences might have

1 a tendency to make you favor one side or the other in this
2 case?

3 PROSPECTIVE JUROR NO. 559: No.

4 THE COURT: You understand that under our system of
5 criminal justice you and I -- and I've mentioned this before
6 -- we're kind of like a team. You're the judge of the facts,
7 and I'm the judge of the law, and I'm going to tell the jurors
8 after the evidence what the law is, and you decide what the
9 facts are and apply those to the law to reach a fair verdict.
10 Do you think you can do that?

11 PROSPECTIVE JUROR NO. 559: Yes.

12 THE COURT: Do you understand that the defendants are
13 presumed to be innocent? That means they're presumed to be
14 not guilty. It's up to the State to prove that they are
15 guilty by evidence beyond a reasonable doubt, and if the State
16 fails to meet that burden, they're entitled to verdicts of not
17 guilty. Any quarrel with that?

18 PROSPECTIVE JUROR NO. 559: No.

19 THE COURT: If you were one side or the other in a
20 case like this, would you want 12 jurors sitting in judgment
21 of your case?

22 PROSPECTIVE JUROR NO. 559: Yes.

23 THE COURT: Do you have an open mind?

24 PROSPECTIVE JUROR NO. 559: I do.

25 THE COURT: Willing to listen to the evidence and be

1 fair to both sides?

2 PROSPECTIVE JUROR NO. 559: Yes.

3 THE COURT: Mr. DiGiacomo.

4 MR. DIGIACOMO: Thank you. Ma'am, you indicated your
5 father was a police officer back in Texas?

6 PROSPECTIVE JUROR NO. 559: Correct.

7 MR. DIGIACOMO: Kind of the same questions I'm going
8 to ask as it related to a prior juror. Do you think that
9 there are good cops in this world, and there's bad cops in
10 this world?

11 PROSPECTIVE JUROR NO. 559: Yes.

12 MR. DIGIACOMO: And really the fact that your father
13 used to be a police officer, that's nothing that's going to
14 affect your ability to be fair and impartial in this case?

15 PROSPECTIVE JUROR NO. 559: No. I was really young
16 when he was an officer. So I didn't know too much about it.

17 MR. DIGIACOMO: Let me jump to the penalty questions.
18 Maybe I could just ask you a broad question. At this point,
19 you've been in here about six hours I'm guessing, maybe five.
20 We've asked a whole heck of a lot of questions of a lot of
21 jurors. Anything you've heard that you said to yourself,
22 wait, I think maybe the lawyers need to know something about
23 me?

24 PROSPECTIVE JUROR NO. 559: I think I can -- the
25 easier part for me is going to be guilty or not guilty. The

1 hard part is going to be the sentencing because of how I feel
2 about each level of it.

3 MR. DIGIACOMO: Well, let me back up just a second,
4 and let me tell you I would probably tell you that almost
5 every juror is going to find that deciding what happened and
6 applying it to the law and deciding whether or not we met our
7 burden is kind of a mathematical equation that ultimately
8 there's a right and a wrong answer to, right?

9 PROSPECTIVE JUROR NO. 559: Right.

10 MR. DIGIACOMO: You know, did something happen? Did
11 it not happen? Did this person do it? Did he not do it?
12 That has a tendency to be easier than the second part which is
13 deciding what should happen, and there's a lot less rules that
14 apply to it. Let me ask it this way. Do you think that you
15 could be open to all four punishments?

16 PROSPECTIVE JUROR NO. 559: Yes.

17 MR. DIGIACOMO: And do you think that at the end of
18 the day they're -- let's say Ms. Weckerly and I not only --
19 obviously you had to have found him guilty at this point, but
20 not only that but we establish that the appropriate penalty
21 for Mr. Burns is the ultimate punishment. Do you envision
22 yourself as capable of voting for that punishment?

23 PROSPECTIVE JUROR NO. 559: I do, but I also feel
24 that it would be hard to deal with.

25 MR. DIGIACOMO: Okay. And I don't want to put words

1 in your mouth. So maybe you can expand on that.

2 PROSPECTIVE JUROR NO. 559: I believe in the death
3 penalty, but it's hard for me to justify -- like, who am I to
4 say this person should die? I don't know. It's hard to
5 explain, but -- but I do understand that in some cases people
6 should have the death penalty, but I just don't know if I'm
7 confident in myself and how I would feel if I had to give that
8 decision.

9 MR. DIGIACOMO: Well, let me back up, and this is --
10 we are on day three, and I don't think anyone has brought this
11 up in this group yet, but this is not an unusual feeling. So
12 let me back up a little bit. Would you agree with my
13 statement -- just so I can see if I'm clear -- that in a
14 general concept you believe that the death penalty serves a
15 purpose? Would you agree with that statement?

16 PROSPECTIVE JUROR NO. 559: Yes.

17 MR. DIGIACOMO: And that if you were the person
18 deciding what punishments there should be, that it would be
19 one of the available punishments that could be given by the
20 jury?

21 PROSPECTIVE JUROR NO. 559: Correct.

22 MR. DIGIACOMO: And I'm assuming the rest of the
23 punishments as well is something that in concept at least you
24 can agree with?

25 PROSPECTIVE JUROR NO. 559: Correct.

1 MR. DIGIACOMO: Now, there are some people who will
2 make that statement but then also say, but looking inside of
3 myself, I lack the capacity to ever vote for one of the four
4 ones, and it's either usually life with parole or the death
5 penalty. Most people, the life without the possibility of
6 parole doesn't present as much of a moral dilemma. So let me
7 -- you're the one who can tell us. I mean, if you're sitting
8 here -- let me back up. Maybe I left this part out. I
9 imagine -- had you thought of the death penalty before you
10 came down here and filled this out?

11 PROSPECTIVE JUROR NO. 559: You know, you hear about
12 it in different cases on TV, this and that, but I've never
13 considered it myself, you know, but after filling this out
14 I've definitely given it thought.

15 MR. DIGIACOMO: And then now that you've been sitting
16 in here, I mean, you've got to recognize that David Burns is a
17 living, breathing human being; would that be fair?

18 PROSPECTIVE JUROR NO. 559: Correct.

19 MR. DIGIACOMO: And, you know, not to discount
20 anything that may happen to Mr. Mason -- because none of
21 that's going to be good for him if he gets convicted -- he as
22 well is a living, breathing human being, correct?

23 PROSPECTIVE JUROR NO. 559: Correct.

24 MR. DIGIACOMO: And you're going to spend the next
25 four weeks or so in a courtroom with him, and at the end of

1 the day, if you ultimately believe that the punishment that
2 fits the crime is the death penalty, you not only would have
3 to vote for it, but you've got to come back here in court, and
4 you have to tell the world in front of Mr. Burns that that's
5 the appropriate punishment for him?

6 PROSPECTIVE JUROR NO. 559: Correct.

7 MR. DIGIACOMO: There's some people that when they
8 get into this position it becomes a much more real situation
9 than what's on a piece of paper. Would you agree with that?

10 PROSPECTIVE JUROR NO. 559: I agree.

11 MR. DIGIACOMO: Is that kind of the situation you're
12 in right now?

13 PROSPECTIVE JUROR NO. 559: Yes.

14 MR. DIGIACOMO: Well, I guess the question is --
15 because it's the only chance to talk to you -- is: In your
16 mind, can you conceive of yourself voting for the death
17 penalty?

18 PROSPECTIVE JUROR NO. 559: I could. It won't be
19 easy. You have to have a very strong case, but I could.

20 MR. DIGIACOMO: I mean, I could imagine. The death
21 penalty is a really bad punishment, but, I mean, there are a
22 lot of people here who checked off that life without is even
23 worse, right?

24 PROSPECTIVE JUROR NO. 559: Yeah.

25 MR. DIGIACOMO: And the consequences for Mr. Mason

1 and Mr. Burns from a guilty verdict are going to be severe no
2 matter what your penalty verdict is; would you agree with
3 that?

4 PROSPECTIVE JUROR NO. 559: Yes.

5 MR. DIGIACOMO: And so I would imagine that, you
6 know, the first part, when you decide that he's guilty, that's
7 a very high burden for you, beyond a reasonable doubt; would
8 that be fair?

9 PROSPECTIVE JUROR NO. 559: Yes.

10 MR. DIGIACOMO: You'd have to be very comfortable
11 with your decision before you ever made it to penalty; would
12 that be fair?

13 PROSPECTIVE JUROR NO. 559: Correct.

14 MR. DIGIACOMO: Do you believe that Ms. Weckerly and
15 I should have any concerns that in your mind you would say, I
16 believe he deserves the death penalty, but I'm just not
17 willing to vote for it, that I just can't personally do it?

18 PROSPECTIVE JUROR NO. 559: No.

19 MR. DIGIACOMO: Do we have your -- I haven't used
20 this term, but I've heard Mr. Oram say, Can you promise this?
21 Can you promise Ms. Weckerly and I a fair trial, that if we
22 establish not only the crimes that were committed but
23 establish that Mr. Burns deserves that ultimate punishment
24 that you'd be willing to vote for it and set aside any
25 concerns about what it's going to feel like the next morning?

1 PROSPECTIVE JUROR NO. 559: I do. I can.

2 MR. DIGIACOMO: Do you think you'd be a fair juror?

3 PROSPECTIVE JUROR NO. 559: I do.

4 MR. DIGIACOMO: Do you think you are basically a fair
5 person?

6 PROSPECTIVE JUROR NO. 559: I do.

7 MR. DIGIACOMO: And you're willing to sit back,
8 listen, wait to the end and weigh the evidence and make a
9 determination?

10 PROSPECTIVE JUROR NO. 559: Yes.

11 MR. DIGIACOMO: If you were sitting either where we
12 were sitting or where these two individuals are sitting, would
13 you want 12 like-minded people like yourself sitting on a jury
14 deciding, first, not only whether or not they committed the
15 crime but also what the punishment should be?

16 PROSPECTIVE JUROR NO. 559: I would.

17 MR. DIGIACOMO: Thank you very much, ma'am.

18 PROSPECTIVE JUROR NO. 559: Thank you.

19 MR. DIGIACOMO: Judge, we pass for cause.

20 THE COURT: Mr. Sgro.

21 MR. SGRO: Good afternoon.

22 PROSPECTIVE JUROR NO. 559: Good afternoon.

23 MR. SGRO: So it's funny, you know, once people get
24 confronted with a questionnaire like this, and the time that
25 passes and more reflection is had, you know, people change.

1 You've seen that today with other jurors as well. Because,
2 honestly, when I was looking at the questionnaire, I thought
3 we were going to have a much different conversation.

4 Do you remember what you wrote down when you filled
5 the questionnaire out? And I know it's been several weeks,
6 but the gist of it was if someone takes a life and they're
7 convicted of that they should forfeit theirs, and those are my
8 words, not yours, but that was the gist of it. Does that
9 sound familiar?

10 PROSPECTIVE JUROR NO. 559: Yeah, when -- at the
11 time, yes.

12 MR. SGRO: At the time. So since the time you wrote
13 this you've had a chance to think about it, and now you're at
14 a different state of mind; would that be fair?

15 PROSPECTIVE JUROR NO. 559: That's fair to say, yes.

16 MR. SGRO: Okay. So having now been faced with the
17 reality of a penalty hearing that may come down the road, is
18 -- is the opportunity for someone convicted of first-degree
19 murder, is the opportunity available for that person to get
20 back on the streets someday, in your opinion?

21 PROSPECTIVE JUROR NO. 559: Again, it would be very
22 hard, but it is an option if the case was there. I know
23 people change, but it would be hard for me though. I will say
24 that.

25 MR. SGRO: Okay. So Mr. DiGiacomo used the phrase,

1 you know, If the facts justify it, and I think it's important
2 we clarify. You understand we only talk about the penalty
3 hearing in the context of a first-degree murder conviction,
4 right?

5 PROSPECTIVE JUROR NO. 559: Correct.

6 MR. SGRO: And so I don't want there to be confusion
7 that quote, unquote, if the facts justify it; that's got
8 nothing to do with, well, if you prove to me he's guilty of
9 murder, well, then, yeah, I mean, it's the death penalty,
10 right? You get it --

11 PROSPECTIVE JUROR NO. 559: Right.

12 MR. SGRO: -- it's two different stages?

13 PROSPECTIVE JUROR NO. 559: Correct.

14 MR. SGRO: Okay. So you have heard us speak of and
15 you have read the factual scenario that exists in this case.
16 Mr. Burns is accused of shooting and killing somebody, right?

17 PROSPECTIVE JUROR NO. 559: Correct.

18 MR. SGRO: And he's accused of shooting a 12-year-old
19 girl in the stomach, right?

20 PROSPECTIVE JUROR NO. 559: Correct.

21 MR. SGRO: So now the question is to put yourself
22 mentally in a place where you have convicted someone of
23 first-degree murder, right? And as Mr. DiGiacomo says, Only
24 you know. Is the option there to put someone convicted of
25 first-degree murder, it that option there that they come back

1 into society, to have that opportunity?

2 PROSPECTIVE JUROR NO. 559: If I go with my gut
3 instinct, I would say no.

4 MR. SGRO: Okay. And that's consistent with what you
5 put on the questionnaire, right?

6 PROSPECTIVE JUROR NO. 559: I believe so.

7 MR. SGRO: Okay. So I guess -- you have heard many
8 people. Some have said parole is out. Some have said
9 struggle with the death penalty, that sort of thing. I am
10 gleaning from your answers that if you convicted someone of
11 first-degree murder -- in other words, this isn't
12 self-defense. This isn't some crazy accident -- first-degree
13 murder, and really for you, if I understand correctly, you're
14 coming down life without parole, or if it was extreme enough,
15 potentially the death penalty; would that be fair?

16 PROSPECTIVE JUROR NO. 559: That would be fair, yeah.

17 MR. SGRO: Okay. And really, in your heart of
18 hearts, there is no room for someone convicted of first-degree
19 murder to ever come back into society -- to be given the
20 opportunity to come back into society; would that be fair?

21 PROSPECTIVE JUROR NO. 559: Yeah. Yeah. I mean,
22 like I said, I know people do change, but it's -- you know,
23 taking someone else's life is in my mind not right.

24 MR. SGRO: I think in --

25 PROSPECTIVE JUROR NO. 559: Not right at all.

1 MR. SGRO: -- in everyone's minds, and I get it.
2 You've heard me talk about potentially just because you're not
3 the right juror in this case doesn't mean you can't be a juror
4 in another case, right? You'd be fine in a breach of
5 contract, a car accident, right? There's different kinds of
6 cases.

7 Our job here, our responsibility to the State, our
8 responsibility to Mr. Burns is to make sure you're okay in
9 this case, and it sounds to me like you're saying you're
10 probably not the right juror for this case because of your
11 inability to consider the punishments that would provide an
12 opportunity for Mr. Burns to get back on the street, fair?

13 PROSPECTIVE JUROR NO. 559: Fair.

14 MR. SGRO: Okay. I challenge for cause, Your Honor.

15 THE COURT: Traverse?

16 MR. DIGIACOMO: Just very briefly. Ma'am, I just
17 want to make sure -- I don't want to quarrel with you.
18 Because if that's your opinion, that's your opinion. Earlier
19 Mr. Oram said something like, you know, They're going to say
20 Mr. Burns is the shooter. So I'm assuming that in the
21 question and answer that you're having with Mr. Sgro here,
22 you're assuming that the person who is convicted of
23 first-degree murder is the person who physically killed
24 another human being; would that be fair?

25 PROSPECTIVE JUROR NO. 559: Say it one more time.

1 MR. DIGIACOMO: In the question and answer that
2 you're having with Mr. Sgro you're making an assumption in
3 your mind that he's talking about somebody who physically
4 killed the other person, took out the gun to shoot the pooch,
5 right?

6 PROSPECTIVE JUROR NO. 559: Correct.

7 MR. DIGIACOMO: Okay. You recognize obviously Mr.
8 Mason is sitting here, and he's charged with first-degree
9 murder as well -- well, he's charged with murder, and it could
10 be first-degree murder. Would that be fair?

11 PROSPECTIVE JUROR NO. 559: Yes.

12 MR. DIGIACOMO: The law provides that you may be
13 responsible for murder even though you're not the person who
14 pulled the trigger, okay?

15 PROSPECTIVE JUROR NO. 559: Okay.

16 MR. DIGIACOMO: The law provides that -- and I'm not
17 going to tell you what the definition of first-degree murder
18 is, but there is a lot of different ways in which someone may
19 ultimately be liable for first-degree murder, okay?

20 PROSPECTIVE JUROR NO. 559: Okay.

21 MR. DIGIACOMO: Do you think in a situation where
22 someone may not be the actual triggerman that that person may
23 be somebody that you might be willing to consider giving the
24 possibility of parole?

25 MR. SGRO: Objection, Your Honor. That's not

1 appropriate under NRS 7.1. He's asking for a specific
2 hypothetical for a -- I don't think that question is
3 appropriate the way it's phrased, Your Honor.

4 MR. DIGIACOMO: You've been asking about the shooter
5 all week for a matter of fact.

6 THE COURT: I don't think that that's inappropriate.

7 MR. DIGIACOMO: I don't think it's an inappropriate
8 question.

9 THE COURT: The objection is overruled.

10 MR. DIGIACOMO: Would you consider the possibility of
11 parole for somebody who may not be the shooter?

12 PROSPECTIVE JUROR NO. 559: Yes.

13 MR. DIGIACOMO: So there may be a number of factors,
14 I guess, a number of facts that you'd want to know before you
15 made the decision as to which one of the four punishments;
16 would that be fair?

17 PROSPECTIVE JUROR NO. 559: Yes.

18 MR. DIGIACOMO: You know very little about this case
19 other than the brief statement that I've made and that was in
20 that questionnaire; is that fair?

21 PROSPECTIVE JUROR NO. 559: Correct. Uh-huh.

22 MR. DIGIACOMO: All right. Would you be open to
23 listening to all the facts before you made any sort of
24 decisions about what should be the proper punishment for the
25 crimes that were committed?

1 PROSPECTIVE JUROR NO. 559: Of course.

2 MR. DIGIACOMO: Do you think you could be fair?

3 PROSPECTIVE JUROR NO. 559: I do.

4 MR. SGRO: Your Honor, may we approach briefly?

5 THE COURT: Certainly.

6 (Bench conference.)

7 MR. SGRO: Your Honor, I'm going to ask the Court to
8 instruct on the felony murder because what they are doing now
9 is inappropriate. They are --

10 THE COURT: (Inaudible) -- give them an example of a
11 felony murder. It has nothing to do with this case. How's
12 that?

13 MR. DIGIACOMO: Well, that's not true. That's a
14 felony murder rule against both of them, and it's alleged in
15 both, in the indictment and in --

16 THE COURT: It is alleged in both?

17 MR. DIGIACOMO: Oh, absolutely it is.

18 MR. SGRO: Yes, and that's the problem. Because
19 their theory is that David Burns is the shooter.

20 MR. DIGIACOMO: That's not a problem. He's alleged
21 in multiple different theories of liability. Am I going to
22 suggest to you that I'm going to argue to the jury he's not to
23 shooter? No. But that's not the question with this jury.
24 The jury -- the question for the jury is in a hypothetical
25 situation. The jury may not believe he's the shooter --

1 THE COURT: Yes, they may determine that he's not the
2 shooter.

3 MR. DIGIACOMO: Shooter and still convict him.

4 MR. SGRO: But that's not the State's theory. What
5 they're doing --

6 MR. DIGIACOMO: So what?

7 MR. SGRO: Well, here's the so what. The ethical
8 guidelines for the prosecution --

9 THE COURT: I think her answers were inconsistent.
10 At one point, she would consider all forms of punishment, and
11 then she decided that maybe she didn't like somebody ever
12 getting released. I'm going to find out which it is. I'll
13 ask some questions.

14 MS. WECKERLY: That was the same as Mr. Ramos.

15 MR. DIGIACOMO: Right. I mean, she's got the same
16 answers as Mr. Ramos, and we had to keep him, the crazy guy in
17 the back row yesterday.

18 THE COURT: I remember Mr. Ramos.

19 MR. DIGIACOMO: So, yes. I mean, this is --

20 MR. SGRO: She has -- she has suggested that she
21 thought about convicting someone of first-degree murder, and
22 we can't -- we can't disregard. It's the same as saying,
23 well, you know, there's a 12-year-old little girl. The jurors
24 have been told that a woman was shot. The jurors have been
25 told a 12 year old has been shot.

1 THE COURT: It may be that some people think that if
2 you shoot and kill somebody and then you also shoot a
3 12-year-old girl that you shouldn't get parole. People can
4 think that.

5 MR. SGRO: Right.

6 MR. DIGIACOMO: And they're still a good juror.

7 THE COURT: And they can still be a juror.

8 MR. SGRO: But what the State is doing is they're
9 suggesting to the jury that they can consider parole if Mr.
10 Burns is not the shooter, and they're never going to argue
11 anything other than Mr. Burns is the shooter, and we're
12 letting them get away with the fiction.

13 THE COURT: I don't think that that's the case. Let
14 me talk to her.

15 MR. SGRO: Okay.

16 (Bench conference ends.)

17 THE COURT: Mrs. Leasure, I think there's been some
18 confusion about what you originally said and then you said
19 later.

20 PROSPECTIVE JUROR NO. 559: Okay.

21 THE COURT: There may be some inconsistent statements
22 in this.

23 PROSPECTIVE JUROR NO. 559: Okay.

24 THE COURT: If we have a second phase where the jury
25 is to determine punishment of either one or both of the

1 defendants, the State, first of all, has not sought the death
2 penalty as to Defendant Mason but has sought the death penalty
3 as to Defendant Burns. There are four possible punishments
4 for Defendant Burns, three possible punishments for Defendant
5 Mason.

6 The four possible punishments are death, life
7 imprisonment without the possibility of parole, a life
8 imprisonment with the possibility of parole and a term of
9 years, many years. If the jury -- if the jury finds Mr. Burns
10 guilty of murder, whether he is the shooter or whether he is
11 guilty of murder for some other reason -- we call it felony
12 murder. In other words, he participated in a felony that
13 caused a murder, that resulted in a murder -- you have to
14 consider all forms of punishment. Death is one of them. Life
15 without the possibility is one. Life with the possibility of
16 parole is one, and the term of years is one.

17 Your indication was to me originally that you would
18 consider all forms of punishment. Is that true?

19 PROSPECTIVE JUROR NO. 559: I could consider it, but
20 again it would -- well, I guess not then. I guess not for
21 the --

22 THE COURT: In other words, you wouldn't follow my
23 instructions?

24 PROSPECTIVE JUROR NO. 559: I -- no.

25 THE COURT: If you won't follow the instructions, I

1 need to know. Will you consider it or not? If you will
2 follow the instructions -- you know, there's lots of people
3 who are sentenced to prison for many years, and they change.
4 They are rehabilitated in some respect, or their full outlook
5 on life changes, and after that they convince a parole board
6 that they are entitled to be released back to society.

7 I have had over a number -- I've had a number of
8 defendants in my own career that I have sentenced to prison
9 for life with the possibility of parole that have been
10 released, and there are some that have been sentenced to life
11 without the possibility of parole that have been released.
12 That's no longer the case after 1995, but there have been
13 some.

14 Are you telling me that if you find that defendant
15 guilty of murder, whichever defendant it is, you will not
16 consider life with the possibility of parole if you find that?
17 If you tell me that, I'll excuse you.

18 PROSPECTIVE JUROR NO. 559: If either one?

19 THE COURT: Either one or both.

20 PROSPECTIVE JUROR NO. 559: Can you explain it one
21 more time. It's just -- it's getting jumbled in my head.
22 It's just --

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 559: I'm sorry.

25 THE COURT: It's confusing sometimes.

1 PROSPECTIVE JUROR NO. 559: It is.

2 THE COURT: If a person is convicted of murder in the
3 state of Nevada, the law says that if there are certain
4 aggravating factors the district attorney can charge that
5 defendant with murder and seek the death penalty. If the
6 district attorney does that and the case goes to a jury, the
7 jury first in the first phase determines whether the defendant
8 is guilty of murder.

9 If the jury determines that the defendant is guilty
10 of murder, the law then says that that same jury is to decide
11 what punishment should be imposed. The law says that the jury
12 must consider four different forms of punishment, and there
13 are some rules as to how you consider those, but if a jury
14 says, no, I'm not going to follow the law, I won't consider
15 those certain forms of punishment, we can't use them as
16 jurors.

17 The four possible punishments are death penalty, life
18 without the possibility of parole, life with the possibility
19 of parole and a term of years. The question -- my question
20 is: Can you consider all four?

21 PROSPECTIVE JUROR NO. 559: I guess, no, then.

22 THE COURT: I'll grant the case challenge for cause.
23 Thank you very much for being here. If you'd hand the
24 microphone over to Mr. -- Is it Flores?

25 PROSPECTIVE JUROR NO. 563: That's correct, Your

1 Honor.

2 THE COURT: Okay. You'll be excused.

3 PROSPECTIVE JUROR NO. 559: I'm excused?

4 MR. SGRO: I apologize, Your Honor. We had one quick
5 question before we begin with this particular juror. May we
6 approach briefly?

7 THE COURT: This juror is excused.

8 MR. SGRO: I'm sorry?

9 MR. DIGIACOMO: No. No. Before we --

10 MR. SGRO: Before we begin the next one.

11 MR. DIGIACOMO: Mr. Flores. Before we begin Mr.
12 Flores, may we approach for a second?

13 THE COURT: Yes, certainly.

14 (Bench conference.)

15 MR. SGRO: Your Honor, just to make it perfectly
16 clear for the record and for this panel, can we have --
17 there's a standard jury instruction that says that life
18 without parole means what it is, and --

19 THE COURT: Well, after 1995 that's true, but before
20 that it was -- it didn't.

21 MR. SGRO: We all know that.

22 MS. WECKERLY: He said it.

23 MR. SGRO: I would like some emphasis put on the fact
24 because one of the -- one of the areas of voir dire -- and we
25 haven't had it yet, but it's not unusual for jurors to say,

1 well, I could do life without because life without doesn't
2 mean life without, words to that effect.

3 THE COURT: Okay.

4 MR. SGRO: I would like the Court to --

5 THE COURT: If we ever get to a penalty, I'll give
6 them the instruction that says that.

7 MR. SGRO: I would like this panel to know that. It
8 hasn't come up. In days of voir dire it hasn't come up.
9 Because that mention was made I would ask on behalf of Mr.
10 Burns that life without be given to the jurors by way of an
11 instruction, and it really means post-1995 life without.

12 THE COURT: We'll do that when we get to penalty.
13 Let's do it when we get to penalty.

14 (Bench conference ends.)

15 THE COURT: All right. Mr. Flores, do you know any
16 of the attorneys or witnesses involved in the case?

17 PROSPECTIVE JUROR NO. 563: Yes.

18 THE COURT: Who is it you know?

19 PROSPECTIVE JUROR NO. 563: I know the corrections
20 officer.

21 THE COURT: You're going to have to speak up.

22 PROSPECTIVE JUROR NO. 563: I'm sorry. I know one of
23 the corrections officers.

24 THE COURT: Who's that?

25 PROSPECTIVE JUROR NO. 563: Batu. That was listed,

1 and then I also -- I don't know what records you have at Texas
2 or whatever -- Texas Station, but I worked there before. So I
3 don't know if that has anything to do with it.

4 THE COURT: How is it you know this gentleman?

5 PROSPECTIVE JUROR NO. 563: Mr. Batu?

6 THE COURT: Yes.

7 PROSPECTIVE JUROR NO. 563: I know him from when he
8 used to work there. I also know him because we're --

9 THE COURT: Where did you used to work?

10 PROSPECTIVE JUROR NO. 563: I used to work at Texas
11 Station, the casino.

12 THE COURT: Okay. Do you think that that friendship
13 would have a tendency to make you favor one side or the other
14 in this case?

15 PROSPECTIVE JUROR NO. 563: It could, yeah. I mean,
16 I know him pretty good. So if he comes up, when he's a
17 witness --

18 THE COURT: Is he going to testify?

19 MR. DIGIACOMO: He is.

20 PROSPECTIVE JUROR NO. 563: Yeah, I would probably
21 say yes. I have known him for a while.

22 THE COURT: Because I don't know what the testimony
23 is about. You're a claims adjustor now, right?

24 PROSPECTIVE JUROR NO. 563: That's correct.

25 THE COURT: What kind of claims?

1 PROSPECTIVE JUROR NO. 563: I do worker's
2 compensation.

3 THE COURT: Workman's comp?

4 PROSPECTIVE JUROR NO. 563: Correct.

5 THE COURT: Do you want to ask questions, Mr.
6 DiGiacomo? Because I don't know what testimony he's going to
7 have. So you're going to have to find out.

8 MR. DIGIACOMO: Let me ask you, if Officer Batu took
9 the stand, do you think based upon your relationship that they
10 have any chance of harming his credibility?

11 PROSPECTIVE JUROR NO. 563: I would say, no. I mean,
12 I know him pretty well. We hang out outside of work or
13 whatever. We're in a fantasy football league. So I talk to
14 him pretty much --

15 MR. DIGIACOMO: You have a pretty good relationship
16 with him?

17 PROSPECTIVE JUROR NO. 563: Correct.

18 MR. DIGIACOMO: If he gets to the stand, I'm assuming
19 he comes in with a -- he's telling the truth?

20 PROSPECTIVE JUROR NO. 563: He's pretty high
21 credibility, yes. Correct. I -- yeah.

22 MR. DIGIACOMO: We'd be willing to submit it.

23 THE COURT: Do you want to make a challenge for
24 cause?

25 MR. LANGFORD: Yes, Mr. Mason does, Your Honor.

1 MR. DIGIACOMO: We'll submit it.

2 MR. ORAM: Submit it.

3 THE COURT: All right. I'll excuse Mr. Flores for
4 cause.

5 Thank you for appearing today.

6 PROSPECTIVE JUROR NO. 563: Thank you, sir, very
7 much.

8 THE COURT: All right. Ladies and gentlemen, that
9 concludes the examination of prospective jurors today. We
10 actually started Monday of this week, and we are going to
11 continue tomorrow. Hopefully by tomorrow afternoon we will
12 have enough jurors to make a final selection. So I'm going to
13 ask that you come back tomorrow afternoon at 3:30, and we hope
14 at 3:30 tomorrow afternoon we'll be able to tell you and the
15 other jurors that we have examined which ones will be the
16 jurors in the case.

17 You're excused until 3:30 tomorrow afternoon, and
18 I'll see you then.

19 PROSPECTIVE JUROR: Where do we come?

20 THE COURT: The marshal will tell you. I think
21 they're going to put you across -- down on the third floor
22 again. I'm not in charge of that.

23 Thank you for being here today.

24 (Panel of prospective jurors recessed 3:21 p.m.)

25 THE COURT: All right. The prospective jurors have

1 exited the courtroom.

2 We are scheduled at 9 o'clock tomorrow. I'd like you
3 here at a quarter to 9, and we will start on time.

4 MR. SGRO: Your Honor, may we be heard on one quick
5 issue?

6 THE COURT: Certainly.

7 MR. SGRO: Relative to -- and I don't remember if we
8 were on the record or not, but there was a proposal suggested
9 that we get through 28 -- I think -- jurors, and then exercise
10 our peremptories on the jury, and then do the alternates, and
11 the genesis of it was an idea the State had. We didn't hear
12 about it, talk about it, discuss it, et cetera.

13 Our position is we would object to that procedure,
14 and I'll let, you know, why, Your Honor. One of the things
15 that we have to decide and one of the things we have to know
16 is the alternates that are coming because in a five week trial
17 the likelihood increases significantly that an alternate is
18 going to serve as a juror. So if this was a three-day
19 hand-to-hand sale with an undercover police officer, it would
20 be one thing, but the fact of the matter is we have to
21 evaluate the alternates which means we have to determine
22 whether or not strategically we want to exercise all the
23 peremptory challenges that we are given.

24 And I know I've been asking for more throughout the
25 course of the proceedings, but at the end of the day, if we

1 are forced to exercise all of our peremptories, we do so in a
2 vacuum not knowing who the alternates are that are coming,
3 especially because we don't know when the --

4 THE COURT: It's not uncommon for me to select a jury
5 without you ever calling an alternate to be examined and have
6 the jurors sworn in and then pick the alternates. I do this
7 all the time.

8 MR. SGRO: I'm not familiar with that, Your Honor. I
9 mean obviously --

10 THE COURT: Every Judge does it differently, but
11 that's -- as a matter of fact, there's no law that says I have
12 to even call alternates.

13 MR. SGRO: Your Honor, I'm simply -- in the context
14 that --

15 THE COURT: Hopefully if we can get 28 passed for
16 cause by tomorrow, we'll select the 12 that are going to hear
17 the case. If we can't, we'll be over -- we'll be working on
18 it on Monday, but I'll do the best I can. That's all I can
19 do.

20 MR. SGRO: Okay. Thank you, Judge.

21 MR. DIGIACOMO: Thank you, Judge.

22 (Court recessed for the evening at 3:23 p.m.)
23
24
25

CERTIFICATION

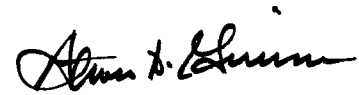
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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C-10-267882-1
)	C-10-267882-2
vs.)	DEPT NO. XX
)	
WILLIE DARNELL MASON, AKA)	
WILLIE DARNELL MASON, JR.,)	TRANSCRIPT OF
AKA G-DOGG,)	PROCEEDING
DAVID JAMES BURNS, AKA)	
D-SHOT,)	
)	
Defendants.)	

BEFORE THE HONORABLE CHARLES THOMPSON, SENIOR DISTRICT JUDGE

JURY TRIAL - DAY 4

FRIDAY, JANUARY 23, 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 0888

1 **LAS VEGAS, NEVADA, FRIDAY, JANUARY 23, 2015, 9:14 A.M.**

2 *** * * * ***

3 (Outside the presence of the prospective jurors.)

4 THE COURT: On the record. We have five jurors who
5 did not appear today, so you can take the following out of
6 your list.

7 THE MARSHAL: The following jurors that were no-show
8 today is Number 582, Amysue --

9 THE COURT: Slowly. 582.

10 THE MARSHAL: Amysue Glasz.

11 THE COURT: Okay. Next.

12 THE MARSHAL: The next one is Juror 631, Jarrett
13 Quiacusan.

14 THE COURT: Okay.

15 THE MARSHAL: The next will be Juror 719, Carlos
16 Gutierrez.

17 MR. SGRO: I don't have a 719.

18 MR. DiGIACOMO: I do.

19 MR. SGRO: You do?

20 MR. ORAM: Yes.

21 THE COURT: It's there, Gutierrez.

22 MS. WECKERLY: You don't need it.

23 MR. DiGIACOMO: You don't need it, trust me.

24 MR. SGRO: Okay.

25 THE COURT: You don't need him because he's not

1 coming.

2 THE MARSHAL: The next one will be 727, Ann Friary.

3 THE COURT: Okay.

4 MR. SGRO: Mine says Patricia -- okay. I don't have
5 the right list. Mine, 727 says Patricia S-t-c-y-r.

6 MR. LANGFORD: So does mine, Your Honor.

7 MR. DiGIACOMO: Mine says Ann Friary.

8 MR. ORAM: Mine says Ann Friary.

9 MR. SGRO: Oh, there are two lists.

10 MR. DiGIACOMO: You grabbed the new list. That's the
11 new 50, Tony.

12 MR. SGRO: Oh. I apologize. I apologize. Okay. I
13 do have it.

14 THE COURT: After 727 comes?

15 THE MARSHAL: 729, Grigor Gevorkian.

16 THE COURT: Okay. That's all.

17 THE MARSHAL: That's it.

18 THE COURT: Okay. You can bring them in. Off the
19 record.

20 MR. SGRO: Your Honor, I had a quick matter.

21 THE COURT: Let's do it later.

22 MR. SGRO: Okay.

23 (Pause in proceeding.)

24 THE MARSHAL: 716 is not here either. Susan
25 Fitzgerald.

1 (Prospective jurors enter at 9:25 a.m.)

2 THE COURT: State of Nevada vs. David Burns and
3 Willie Mason. The record will reflect the presence of the
4 defendants, counsel and the district attorneys.

5 Good morning, ladies and gentlemen. My name is
6 Charles Thompson. I'm a senior district court judge. I know
7 that you thought you were coming to Department 20 for Judge
8 Tao. Actually, this is Department 20 of the Eighth Judicial
9 District, and until the 1st of January Judge Tao was the judge
10 in this department.

11 On the first of the year the governor appointed Judge
12 Tao to the new intermediate court of appeals in Nevada. And
13 so under Nevada law, the Supreme Court of Nevada is entitled
14 to appoint certain retired district court judges as senior
15 district court judges.

16 I'm a retired district court judge, and the Supreme
17 Court has appointed me to be the judge in Department 20 until
18 the governor appoints a replacement for Judge Tao, which we
19 don't expect to happen for many weeks, probably April or so.
20 In the meantime, this case is a case that was assigned
21 regularly to this department. The jury questionnaire that you
22 all filled in had Judge Tao's name on it because he did it
23 back in the fall of last year.

24 By way of introduction, the clerk of the court, who's
25 the lady to my right here, is Linda Skinner. She's in charge

1 of taking the minutes of the court, the record of what
2 happens. And also she's in charge of exhibits that are marked
3 and admitted during the trial. She's also in charge of
4 administering oaths and doing a number of other things.

5 Next to her is a court recorder. And Susan Dolorfino
6 is the court recorder, and she's being assisted by another
7 court recorder. They're both training, I guess. And they --
8 everybody's new in this department, particularly me. Holly
9 Walker is the law clerk over here, and she's assigned to the
10 department to assist me when necessary.

11 The defendants in the case are David Burns and Willie
12 Mason. This is Mr. Burns in the purple shirt here, and
13 Mr. Mason at the end over here. Mr. -- they're accused of a
14 number of crimes including murder, burglary and robbery. The
15 district attorney will explain to you in more detail what
16 those crimes are in a little bit.

17 The defendants are represented by attorneys. David
18 Burns is represented by Tony Sgro. He's the gentleman without
19 any hair right now. And the gentleman next to him, Chris
20 Oram, who has hair.

21 MR. SGRO: I appreciate that, Judge.

22 THE COURT: Well, I -- you know, it's easy to
23 recognize you. I knew him when he did have hair. That was a
24 long time ago, wasn't it?

25 MR. SGRO: Yes, it was.

1 THE COURT: Okay. Mr. Robert Langford represents
2 attorney Willie -- or Defendant Willie Mason.

3 Now, the two deputy district attorneys that have been
4 assigned to prosecute this case are Mark DiGiacomo and Pam
5 Weckerly right here. The prosecutors are going to tell you a
6 little bit about the case now, give you an overview of what
7 we're looking at when we try this case, what they claim the
8 case is about.

9 And then they're going to list for you the names of
10 the witnesses that they may be calling to testify in the case.
11 Make a mental note of any of these witnesses that you might
12 know, because in a few minutes I'll be asking all the
13 prospective jurors if they're acquainted with the attorneys
14 and the witnesses in the case.

15 Mr. DiGiacomo.

16 MR. DiGIACOMO: Thank you, Your Honor.

17 Good morning, ladies and gentlemen. As you just
18 heard, my name is Marc DiGiacomo. This is Pam Weckerly. And
19 we are deputy district attorneys here in Clark County.
20 Mr. Burns and Mr. Mason have both been accused by the Clark
21 County grand jury of a number of crimes that occurred on
22 August 7, 2010, as you read in your questionnaire. They were
23 accused along with two other individuals, a Monica Martinez
24 and a Stephanie Cousins.

25 They are accused of conspiracy to commit robbery,

1 burglary while in possession of a deadly weapon -- or while in
2 possession of a firearm, robbery with use of a deadly weapon,
3 murder with use of a deadly weapon, and attempt murder with
4 use of a deadly weapon, and finally, battery with a deadly
5 weapon resulting in substantial bodily harm.

6 The allegations are essentially that these two
7 individuals engaged in a conspiracy to ultimately burglarize
8 and rob a residence at 5662 Meikle Avenue here in Clark
9 County, Las Vegas, Nevada, which is generally the northeast
10 area of town. They are accused of entering that residence,
11 killing the mother, Derecia Newman, who was inside the home,
12 and then shooting the 12-year-old daughter. However, the
13 daughter lived.

14 In order to establish the crimes, we're going to call
15 a number of the following witnesses. Now, we're not going to
16 call every single one of these, otherwise we'd be here for
17 months on end. But any one of these witnesses' names could
18 come up or they could hit the stand. And so if you know any
19 of them, the judge said he's going to ask you questions about
20 that.

21 I'm also going to list off a number of businesses
22 that may have records or information, or there may be
23 locations that some of you may know about that may be
24 important during voir dire.

25 The State may call Special Agent Scott Hendricks,

1 he's with the FBI. There is a corrections officer by the name
2 of Batu here at the Clark County Detention Center. There's a
3 police officer by the name of Curtis Atwood. There is a
4 fingerprint examiner with the Las Vegas Metropolitan Police
5 Department by the name of Kathryn Aoyama. There's an employee
6 of the Greyhound bus station by the name of Benjamin Baines.

7 There is a special agent out of San Bernardino, but
8 he's also with the FBI, by the name of Kevin Boles. Crime
9 scene analyst T. Brownlee; homicide detective Christopher
10 Bunting; crime scene analyst Danielle, and I'm going to
11 butcher this last name, but it's Carvounaiaris. There's a
12 Maurice Clinkscale. There's a Ulonda Cooper.

13 There's a custodian of records for Binion's hotel and
14 casino; obviously the Clark County Detention Center and the
15 Las Vegas Metropolitan Police Department; the Fremont Street
16 Experience; Greyhound bus lines; the Opera House, which is a
17 local casino as well. There is some phone companies; T-Mobil,
18 Metro PCS and Nextel. There's the Texas Station hotel and
19 casino. There's the Western hotel and Casino.

20 Crime scene analyst Robbie Dahn; two doctors at UMC
21 by the name of Dr. Filmore and Dr. Goshi. There's crime scene
22 analyst Shawn Fletcher. There's Officer Hector Gonzalez;
23 Officer Wessley Gonzalez; a retired homicide detective by the
24 name of Kenneth Hardy; an Officer Jonathan Houghton; a
25 homicide detective Barry Jensen; Matt Johns, who is an

1 investigator with the district attorney's office;

2 Samantha Knight; Detective Teresa Kyger; James Krylo,
3 who is a firearms and tool mark analyst with the metropolitan
4 police department; Anthony Lasseter; a Metro sergeant by the
5 name of Maines; Cornelius Mayo; Tyler Mitchell; Monica Monroe;
6 Devonia Newman, the surviving 12-year-old; Erica Newman; crime
7 scene analyst Sheree Norman; Dr. Alane Olson, who's a medical
8 examiner here in Clark County; Officer A. Peterson;

9 Christine Tamika Pierce; Donovan Rowland; Charisse
10 Salmon; Officer Scanlon; Officer Scott; Jan Seaman-Kelly, who
11 is a footwear analyst here in Clark County; crime scene
12 analyst William Speas; crime scene analyst Joe Szukiewicz;
13 crime scene analyst Erin Taylor; Jennifer Thomas, who's a DNA
14 analyst for the Las Vegas Metropolitan Police Department; an
15 Officer K. Thomas; a crime scene analyst, Brenda Vaandering;

16 John Vasek, who works for the San Bernardino County
17 police department; homicide detective Martin Wildemann; a
18 Marie Willis; and as I mentioned before, Monica Martinez.

19 Thank you very much.

20 THE COURT: Mr. Sgro, do you wish to tell the
21 prospective jurors of any witnesses that you may be calling?

22 MR. SGRO: I would like to, yes, Your Honor.

23 THE COURT: Okay.

24 MR. SGRO: Good morning. My name is Tony Sgro, and
25 as Judge Thompson told you, Chris Oram and I will be

1 representing Mr. Burns in this case. We are about to go
2 through a process called voir dire, which means we're going to
3 do some questions and answers with each of you, and you will
4 learn that Mr. Burns has no burden of proof and he is presumed
5 innocent as we sit here today. But what happens is when you
6 are charged with certain crimes and you plead not guilty, we
7 come to a trial.

8 So I have a list just in an abundance of caution of
9 names you might hear through the course of this case, and they
10 are as follows: Samantha Burch-Leech; Malcolm Turner; Marilyn
11 Eley, E-l-e-y; Rochelle Sparks; Shantel Amaya; Vernon Burch;
12 Craig Attmeyer; Tidelaide Oyenusi; Tina Luek; Anthony
13 Lasseter; Dr. Mel Pohl; Lyndsay Elliott; Richard Adler;
14 Natalie Brown; Paul Connor; Larry Smith, who's retired Metro;
15 Willis Eiffel; Jerome Thomas; Russell Shoemaker, who's at
16 Metro; Havis Simmons; Tiffany Flowers-Holmes; and Thomas
17 Dillard.

18 And we also have people that, as Mr. DiGiacomo said,
19 called custodian of records, and they come from -- they will
20 be coming from the following businesses potentially. Medic
21 West Ambulance; University Medical Center; Sunrise Hospital;
22 Department of Family Services; and the Dixie Regional Medical
23 Center. Thank you very much.

24 THE COURT: Mr. Langford, do you wish to advise any
25 of the prospective jurors of witnesses?

1 MR. LANGFORD: Thank you, Your Honor. Mr. Mason will
2 be relying upon witnesses called by both the State and
3 Mr. Burns to assert his defense. He has pled not guilty.

4 THE COURT: All right. Now, ladies and gentlemen,
5 this Court and the lawyers and all persons involved in the
6 case are deeply interested in having this case tried by a jury
7 composed of 12 open-minded citizens who are completely neutral
8 and do not have any personal prejudices for or against either
9 side in the case.

10 You've all filled out jury questionnaires, and the
11 attorneys each have copies of those questionnaires. In
12 addition to the written answers that you've given, I'm going
13 to ask you some questions and then the attorneys are given the
14 opportunity to ask questions.

15 I don't have any particular desire to pry into your
16 personal lives and nor do the lawyers. But in order for us to
17 learn whether or not you can serve as fair jurors in the case,
18 we have to ask you some personal questions.

19 The questioning of the jury at the beginning of the
20 case is called jury voir dire. The jurors are first placed
21 under oath before any of the questions are asked. I'll now
22 ask that you all stand, raise your right hand, and the clerk
23 will administer that oath to you.

24 (Prospective jurors sworn.)

25 THE COURT: Now, it's important that you understand

1 the significance of full, complete and honest answers to all
2 the questions that we're going to ask of you. I caution you
3 not to try to hide or withhold something, because if that --
4 if you do, that fact may tend to contaminate your verdict and
5 subject you to further inquiry even after you're discharged as
6 jurors.

7 If you are excused as a juror, we want you to go back
8 to the jury commissioner's office on the third floor, which I
9 believe is where you came from. All right. I'm going to
10 start with Ms. Austin, who's in the seat in the upper
11 left-hand corner, and then we'll just go on down the row.

12 Is it Ms. Austin?

13 PROSPECTIVE JUROR NO. 567: Mm-hmm.

14 THE MARSHAL: You have to speak directly into the
15 microphone.

16 THE COURT: Yeah. We're making a recording here, and
17 while I probably can hear you where you're seated there, the
18 recording system requires that you hold that microphone right
19 up to your mouth and speak into it, please. That will help
20 all of us here and it will help the recording system work.
21 Okay?

22 PROSPECTIVE JUROR NO. 567: Okay.

23 THE COURT: All right. Now, you got to put that
24 microphone up there. All right. First of all, are you
25 acquainted with any of the witnesses or the attorneys involved

1 in the case?

2 PROSPECTIVE JUROR NO. 567: Not that I'm aware of,
3 no.

4 THE COURT: You -- I understood you worked --

5 THE MARSHAL: Ma'am -- Judge, I'm sorry.

6 Can you speak directly into the microphone --

7 THE COURT: Yeah. You got to talk right into that
8 microphone. It's like those singers do, you know. They put
9 it right up there in their face. According to your
10 questionnaire, you work out at Nellis Air Force Base; is that
11 right?

12 PROSPECTIVE JUROR NO. 567: Yeah.

13 THE COURT: What do you do out there?

14 PROSPECTIVE JUROR NO. 567: I'm a barista for
15 Starbucks.

16 THE COURT: What is that?

17 PROSPECTIVE JUROR NO. 567: I'm a barista for
18 Starbucks. I make coffee all day.

19 THE COURT: You make?

20 PROSPECTIVE JUROR NO. 567: Coffee.

21 THE COURT: Coffee for who?

22 PROSPECTIVE JUROR NO. 567: The soldiers.

23 THE COURT: Oh, okay. Is that a -- are you a -- like
24 on a contract out there, or is there a contract -- a group out
25 there?

1 PROSPECTIVE JUROR NO. 567: Technically I'm DOD
2 civilian, Department of Defense civilian.

3 THE COURT: So you're working for the Department of
4 Defense as a civilian?

5 PROSPECTIVE JUROR NO. 567: Yes.

6 THE COURT: Okay. So you're a government employee?

7 PROSPECTIVE JUROR NO. 567: Yes.

8 THE COURT: You're not on a private contract?

9 Oh, okay. Well, I didn't know. You said in your
10 jury questionnaire that you've not been a juror before; is
11 that right?

12 PROSPECTIVE JUROR NO. 567: Nope. My number didn't
13 get called last time.

14 THE COURT: All right. And you did say that your
15 uncle and your brother had both been charged with theft. Is
16 that here locally, in Las Vegas?

17 PROSPECTIVE JUROR NO. 567: My little brother
18 locally. My uncle in Colorado.

19 THE COURT: Is that a younger brother?

20 PROSPECTIVE JUROR NO. 567: Mm-hmm.

21 THE COURT: Is he -- is that case still pending?

22 PROSPECTIVE JUROR NO. 567: No. It's been over for
23 almost a decade.

24 THE COURT: Oh, okay. In other words, these lawyers
25 wouldn't be involved in it?

1 PROSPECTIVE JUROR NO. 567: No. He lives in Colorado
2 now.

3 THE COURT: All right. We have to ask these
4 questions to find out if you've got a case involved in the
5 system yourself. You also said you and your father had cars
6 stolen. Was that here locally?

7 PROSPECTIVE JUROR NO. 567: Yeah.

8 THE COURT: And is that -- is there cases pending
9 involving your vehicles?

10 PROSPECTIVE JUROR NO. 567: My dad's thinking about
11 suing the city for it, because they're saying it was his
12 fault. And they lost all their side of the paperwork, but we
13 haven't done anything as of now.

14 THE COURT: You haven't done anything yet. In other
15 words, it isn't going to have a bearing upon your ability to
16 be a fair juror in this case?

17 PROSPECTIVE JUROR NO. 567: No.

18 THE COURT: I'm going to give each of the attorneys
19 an opportunity to ask you a few questions.

20 Mr. DiGiacomo.

21 MR. DiGIACOMO: Thank you. Good morning, ma'am. How
22 are you?

23 PROSPECTIVE JUROR NO. 567: Good. How are you?

24 MR. DiGIACOMO: I'm all right. There's good news and
25 bad news for the first juror every day. The good news is you

1 get done first. The bad news is that you haven't heard every
2 question, and by the time we get to Juror No. 20 over here,
3 she's going to have heard everything out of our mouth 20
4 times. So you might take a little bit longer and I apologize
5 in advance for that. Okay.

6 I want to start with you said you were at Nellis Air
7 Force Base. Have you been there for two years?

8 PROSPECTIVE JUROR NO. 567: This coming February is
9 two years.

10 MR. DiGIACOMO: Prior to being a barista -- is it
11 Starbucks that they have at Nellis?

12 PROSPECTIVE JUROR NO. 567: Mm-hmm.

13 MR. DiGIACOMO: Okay. But you're actually an
14 employee of the Department of Defense?

15 PROSPECTIVE JUROR NO. 567: Mm-hmm.

16 MR. DiGIACOMO: Does that mean you have to go through
17 some sort of government background check to have the job?

18 PROSPECTIVE JUROR NO. 567: Mm-hmm.

19 MR. DiGIACOMO: Is that a yes?

20 PROSPECTIVE JUROR NO. 567: Yes. Sorry.

21 MR. DiGIACOMO: It's all right. She's going to --
22 these young ladies over here are going to have a transcript
23 made of everything, and when they go to type up the uh-huh and
24 the huh-uhs, it's very difficult for them. So if we stop you,
25 this will go for all the jurors, it's --

1 THE COURT: The bottom line is you have to say yes or
2 no. You can't say uh-huh.

3 PROSPECTIVE JUROR NO. 567: Okay.

4 MR. DiGIACOMO: Okay. Prior to working out at
5 Nellis, what did you do?

6 PROSPECTIVE JUROR NO. 567: I was a cook for Maple
7 Tree Cafe, and then a cook for the hospital.

8 MR. DiGIACOMO: And you actually indicated that you
9 had a culinary degree; is that correct?

10 PROSPECTIVE JUROR NO. 567: Yes.

11 MR. DiGIACOMO: Prior to getting your culinary degree
12 though, you were also -- you have an associate's in
13 occupational science. What is occupational science?

14 PROSPECTIVE JUROR NO. 567: It's just the
15 technical -- they came together because it's -- when you don't
16 have a direct degree, it just goes into the occupation of
17 whatever.

18 MR. DiGIACOMO: Oh, so it's like the two year degree
19 and then you get the --

20 PROSPECTIVE JUROR NO. 567: The culinary certificate.

21 MR. DiGIACOMO: -- the culinary certificate after you
22 get that degree?

23 PROSPECTIVE JUROR NO. 567: Yeah. Yes.

24 MR. DiGIACOMO: There were questions asked to you in
25 this questionnaire about your feelings on the criminal justice

1 system. I know it's been about a month now. Do you remember
2 what you wrote?

3 PROSPECTIVE JUROR NO. 567: Yeah.

4 MR. DiGIACOMO: Generally what are your opinions of
5 the criminal justice system?

6 PROSPECTIVE JUROR NO. 567: I think it's somewhat
7 flawed, but it's on a case-by-case basis. Sometimes there are
8 good, sometimes there's bad in every section of the
9 department. And the flaws come when the good side does
10 nothing to stop the bad.

11 MR. DiGIACOMO: That's actually a fairly usual, I
12 guess we'll call it a fairly usual answer. You'd agree that
13 any system made up of human beings has got to be flawed
14 because nobody's perfect, right?

15 PROSPECTIVE JUROR NO. 567: Yeah. There's no way for
16 it to be a hundred percent.

17 MR. DiGIACOMO: You know, you obviously hope that,
18 you know, in any given situation you'll wind up with the good.
19 There are going to be good lawyers, there will be bad lawyers.
20 There's good judges, there's bad judges, you know, any walk of
21 life; would you agree with that?

22 PROSPECTIVE JUROR NO. 567: Yes.

23 MR. DiGIACOMO: Would you agree that the criminal
24 justice system is necessary?

25 PROSPECTIVE JUROR NO. 567: Yes.

1 MR. DiGIACOMO: Would you also agree that of all the
2 criminal justice systems in the world, this has got to be the
3 best way to do it?

4 PROSPECTIVE JUROR NO. 567: I don't know any other
5 way, so I would have to say yes, because just from ignorance
6 of other knowledge.

7 MR. DiGIACOMO: That's fair. I mean, would you agree
8 that you don't want people like just me and Ms. Weckerly
9 deciding whether or not Mr. Burns and Mr. Mason committed the
10 crime, but you'd want 12 everyday citizens who don't do this
11 day in and day out to look at the evidence and decide whether
12 or not somebody's guilty or not guilty?

13 PROSPECTIVE JUROR NO. 567: Oh, yeah. It's certainly
14 fairer.

15 MR. DiGIACOMO: That's a fairer system; would you
16 agree?

17 PROSPECTIVE JUROR NO. 567: Yes.

18 MR. DiGIACOMO: You mentioned some -- actually, in
19 various areas of your questionnaire some contact with police
20 that was less than extraordinary; would you agree with that?

21 PROSPECTIVE JUROR NO. 567: Yes.

22 MR. DiGIACOMO: Apparently as it relates to your dad,
23 and it's not something we haven't actually heard before, is
24 that a victim goes to get his car out of impound and they're
25 telling him, oh, no, you got to pay the impound fees. And

1 he's like, but I'm the victim, why should I have to do that;
2 is that fair?

3 PROSPECTIVE JUROR NO. 567: Well, it was more than
4 that, but yes.

5 MR. DiGIACOMO: Okay. What else was it?

6 PROSPECTIVE JUROR NO. 567: He had filed the report
7 for his car missing in December. We didn't find out until May
8 that the car had even been impounded, and by then they had
9 sold it.

10 MR. DiGIACOMO: Oh, my God. And so whatever
11 happened? Did he ever recover the car back from where it got
12 sold?

13 PROSPECTIVE JUROR NO. 567: No. No, because they had
14 sold it in January. But according to our notifications, we
15 didn't get it until May.

16 MR. DiGIACOMO: I'm assuming that made your dad
17 unhappy. But I imagine everybody who knew your dad, that that
18 is not exactly a shining moment for the Las Vegas Metropolitan
19 Police Department?

20 PROSPECTIVE JUROR NO. 567: No.

21 MR. DiGIACOMO: And like I said before, with cops,
22 there's got to be good cops and there's going to be bad cops;
23 would that be fair?

24 PROSPECTIVE JUROR NO. 567: Yeah. Yes.

25 MR. DiGIACOMO: And you would agree -- or maybe I

1 shouldn't put it that way.

2 Would you agree with me that individuals who take the
3 stand should be judged individually on who they are and what
4 they've done?

5 PROSPECTIVE JUROR NO. 567: Oh, yeah. I don't think
6 you should judge an entire group for one person's actions.

7 MR. DiGIACOMO: Right. And you shouldn't be painting
8 a broad brush. I'm sure that there's good baristas and bad
9 baristas, right?

10 PROSPECTIVE JUROR NO. 567: Yes.

11 MR. DiGIACOMO: Right. And so if someone had a bad
12 experience at, you know, one location, they shouldn't
13 necessarily think, assume that that's bad for everybody; is
14 that fair?

15 PROSPECTIVE JUROR NO. 567: Yeah. I don't think you
16 should be grouped into the same thing.

17 MR. DiGIACOMO: You indicated -- well, there's a
18 question that I asked you about alcohol and drugs. What's
19 your opinion as to alcohol and drugs as it correlates to
20 crime?

21 PROSPECTIVE JUROR NO. 567: I think certain drugs and
22 alcohol tend to either bring out the true person in you or to
23 change the way you perceive things, and it can make -- tend to
24 make you more aggressive, more violent.

25 MR. DiGIACOMO: Do you think people that choose to

1 use drugs should still be responsible for their actions?

2 PROSPECTIVE JUROR NO. 567: Yes, because you chose to
3 do it. It wasn't forced down your throat.

4 MR. DiGIACOMO: On the flip side of that, you know,
5 victims have a tendency at times, not always, but there are
6 victims who place themselves in risky situations where they
7 use drugs or anything else. Do you think merely because a
8 victim did something that maybe a reasonable person wouldn't
9 agree with or was using drugs at a time are still entitled to
10 the protections of the justice system?

11 PROSPECTIVE JUROR NO. 567: Yes and no. I mean, if
12 they're injured while committing something that they should
13 have been doing in the first place, then no, I don't think
14 that that protection should be covered. But if they're forced
15 into something, then yes, they should totally be protected.

16 MR. DiGIACOMO: Right. I mean, you go into a store
17 to commit a robbery and the store owner shoots you --

18 PROSPECTIVE JUROR NO. 567: That's your own fault.

19 MR. DiGIACOMO: -- you don't -- that's your own darn
20 fault, right?

21 PROSPECTIVE JUROR NO. 567: Yes.

22 MR. DiGIACOMO: But for example, just because you're
23 on drugs doesn't necessarily mean that you should be a target
24 of a violent crime --

25 PROSPECTIVE JUROR NO. 567: No.

1 MR. DiGIACOMO: -- would that be fair?

2 PROSPECTIVE JUROR NO. 567: You shouldn't.

3 MR. DiGIACOMO: I know it's a sensitive subject.

4 Particularly it's kind of a broad ranging subject in our
5 community. There were some questions as it relates to whether
6 or not you've ever personally felt any racial discrimination.
7 Do you remember answering those questions?

8 PROSPECTIVE JUROR NO. 567: Oh, yeah. Not
9 necessarily here, but in Colorado, where I technically grew up
10 most of the time, a lot. You can be pulled over -- I have
11 been pulled over randomly for being suspicious on my way to
12 school. And I mean, it -- you tend to get used to it. You
13 shouldn't have to get used to it, but sometimes you have no
14 choice.

15 MR. DiGIACOMO: And there is no doubt that in this
16 world there's a lot of racial prejudice. And but would you
17 agree with the idea that once we wind up in a room like this,
18 that that -- the idea that there is anything related to race
19 should matter in this courtroom, it should be irrelevant what
20 the race of anybody is; would you agree with that?

21 PROSPECTIVE JUROR NO. 567: Yeah. You should be
22 charged for what you did, not who you are.

23 MR. DiGIACOMO: And I imagine nothing about the fact
24 that, you know, and it sounds like it was in Colorado and it
25 was when you were younger, but nothing about that would affect

1 your ability to be fair and impartial to anybody in this case?

2 PROSPECTIVE JUROR NO. 567: No.

3 MR. DiGIACOMO: Before I get to what you and
4 everybody is going to find out is really the bigger questions
5 that are being asked here today, which is the penalty
6 questions, I want to jump to the very back of your
7 questionnaire, because there's a comment about your schooling
8 and I just want to address that. Are you currently enrolled
9 in school?

10 PROSPECTIVE JUROR NO. 567: Yes, I am.

11 MR. DiGIACOMO: And what are your class schedules
12 like?

13 PROSPECTIVE JUROR NO. 567: I have classes every
14 Monday and Wednesday from 9:00 in the morning until 4:30 in
15 the afternoon.

16 MR. DiGIACOMO: Was this a paid tuition class?

17 PROSPECTIVE JUROR NO. 567: Yes. My classes are
18 already a hundred percent paid for.

19 MR. DiGIACOMO: And of those classes, if you miss
20 them, how many are you allowed to miss before you lose a
21 semester?

22 PROSPECTIVE JUROR NO. 567: I've already spoken to my
23 teachers. I did let them know that there was a possibility
24 that I would be gone for jury duty so that they -- they did
25 say that they would be more lenient and email me whatever I

1 missed in class.

2 MR. DiGIACOMO: And I can tell you there's a couple
3 of Mondays in here throughout this time period where the
4 courtroom's going to be what we call dark. So Mondays aren't
5 going to be a problem. It's going to be probably Wednesdays
6 that are going to be a problem for you. The lawyers don't
7 make the decision on hardship, so my questions are focused
8 more on if you're here, because everybody here is going to
9 have some sort of hardship from being here.

10 If you're here, do you think that you can spend your
11 full time and attention paying to the witnesses and looking at
12 the evidence, or do you think the fact that, you know, you're
13 worrying about your schooling or you're thinking about your
14 schooling will distract you from listening to those witnesses?

15 PROSPECTIVE JUROR NO. 567: No. When I'm at a
16 particular place, that's where I am. It's just like work.
17 You separate work from home.

18 MR. DiGIACOMO: Perfect. So let me jump to the last
19 set of questions. Maybe I should give a little -- I know the
20 questionnaire did it, but since you're the first juror, I'm
21 going to give kind of a little speech here.

22 You know, there is two phases to a murder case in
23 Nevada, any murder case. There is the first phase, and in
24 that first phase Ms. Weckerly and I have the burden of
25 responsibility of proving these two individuals guilty of the

1 crimes that they have committed. They have no
2 responsibilities. They are presumed innocent.

3 Everything is on Ms. Weckerly and I to prove the case
4 beyond a reasonable doubt. Do you think there would be any
5 problem with you sitting here considering the evidence and
6 deciding whether or not Ms. Weckerly and I met our burden?

7 PROSPECTIVE JUROR NO. 567: No.

8 MR. DiGIACOMO: If we don't meet our burden, any
9 issues with you coming in here and finding Mr. Burns and/or
10 Mr. Mason not guilty?

11 PROSPECTIVE JUROR NO. 567: No.

12 MR. DiGIACOMO: Flip side, if we do meet our burden,
13 any concerns you have whatsoever coming in here and finding
14 Mr. Burns and/or Mr. Mason guilty?

15 PROSPECTIVE JUROR NO. 567: No.

16 MR. DiGIACOMO: So now assuming we get that far, so
17 for all my next questions we're past the decision as to
18 whether or not they're guilty. If we get there, there is four
19 possible punishments as it relates to Mr. Burns, and there's
20 three possible punishments as it relates to Mr. Mason. The
21 State has filed a notice of intent to seek the death penalty
22 against Mr. Burns. We have not done so against Mr. Mason.

23 So for Mr. Burns, the four possible punishments are
24 life with the possibility of parole, life without the
25 possibility of parole, what we call a term of years, which is

1 a whole lot of years with a minimum parole eligibility at some
2 period of time, and then finally there's the death penalty.
3 So there's those four possible punishments.

4 In order to sit on the jury, you have to be willing
5 to consider, should we get to a second phase, all four forms
6 of punishment as it relates to Mr. Burns. Do you think that
7 in your mind there is some factual scenario in which you would
8 consider each one of those four possible punishments?

9 PROSPECTIVE JUROR NO. 567: Yeah. I mean, if you
10 read my paper you see I'm for the death penalty. I have no
11 problem admitting that.

12 MR. DiGIACOMO: No, I do. And I'm sure Mr. Sgro or
13 Mr. Oram are going to get up here and ask you questions about
14 the flip side of that, which is, you know, if you convict
15 somebody of first degree murder, are you also willing to keep
16 an open mind to the idea that maybe a sentence which involves
17 the possibility of parole sometime in the future. Allowing a
18 parole board to consider releasing a defendant, is that
19 something you'd keep an open mind to as well?

20 PROSPECTIVE JUROR NO. 567: Yeah. It just depends on
21 what the evidence says. I mean, if it's not [unintelligible]
22 black and white scenario, then you have to look at other
23 options.

24 MR. DiGIACOMO: Would you consider yourself the type
25 of person that would want as much information as you possibly

1 could get before you made what is a very serious decision?

2 PROSPECTIVE JUROR NO. 567: Oh, yeah, because it's
3 someone's life in your hands. You need as much information as
4 possible.

5 MR. DiGIACOMO: Sure. And, you know, I'm sure
6 Mr. Sgro or Mr. Oram, someone's going to say to you, you know,
7 usually the State goes first because we carry the burden, and
8 then they get to go.

9 And so they're going to have a side to review of the
10 evidence that may be different than the view of Ms. Weckerly
11 and I. And I'm assuming you could wait until the very end
12 before you put all this stuff together in the back room with
13 your fellow jurors to make a decision; would that be fair?

14 PROSPECTIVE JUROR NO. 567: Yeah. I mean, everyone
15 has their own version of the truth. You have to look at both
16 sides and then go down the middle.

17 MR. DiGIACOMO: And find what ultimately is the truth
18 in the case; is that fair?

19 PROSPECTIVE JUROR NO. 567: Yes.

20 MR. DiGIACOMO: So assuming that we've gotten through
21 the first phase and we're now in the penalty phase, I'm
22 assuming from your answers that I don't want to forget
23 Mr. Mason, because it's as important or equally as important
24 to Mr. Mason what happens in the courtroom to him. I mean,
25 he's facing three very serious punishments. He's just not

1 facing that fourth one. I'm assuming you're willing to
2 consider all three forms of punishment for Mr. Mason as well?

3 PROSPECTIVE JUROR NO. 567: Yes.

4 MR. DiGIACOMO: Do you think you're ultimately a fair
5 person?

6 PROSPECTIVE JUROR NO. 567: I'd say so. I like to
7 get every fact before I choose just off kilter.

8 MR. DiGIACOMO: Do you think that if you were sitting
9 either where Ms. Weckerly and I are sitting or if you were
10 sitting where the defendants are sitting, would you want 12
11 people like yourself, like minded like you deciding first
12 whether or not he committed the crimes and second, what that
13 punishment should be?

14 PROSPECTIVE JUROR NO. 567: Yes.

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

16 PROSPECTIVE JUROR NO. 567: I think I would.

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

18 Judge, we'd pass for cause.

19 THE COURT: Before defense counsel starts asking
20 questions, I want to reiterate some of the things that
21 Mr. DiGiacomo just brought up. Under our system of criminal
22 justice, you and I are a team. We're both judges. You're a
23 judge of the facts and I'm the judge of the law.

24 It's your job to decide what the facts are in the
25 case listening to the evidence that the witnesses testify to,

1 the documents that are admitted into open -- in court and so
2 on. You decide what the facts are, what happened. And then
3 I'll decide what the law is.

4 And at the conclusion of the evidence, I'll give to
5 the jurors instructions on the law involving the various
6 crimes that are charged. And then you'll take the facts that
7 you have found and apply those to the law to reach a fair
8 verdict. Do you think you can do that?

9 PROSPECTIVE JUROR NO. 567: Yes.

10 THE COURT: All right. In a criminal case such as
11 this, and counsel already touched on it, but I want to
12 reiterate it, the defendants are presumed to be innocent, not
13 guilty. That means that they don't have to prove anything.
14 They don't have to prove that they didn't do anything. It's
15 up to the State to prove their guilt and they have to prove
16 that by evidence beyond a reasonable doubt.

17 And I'll define beyond a reasonable doubt in my
18 written instructions to you. But the defendants don't have to
19 prove they didn't do it. It's up to the State to prove that
20 they did. If the State fails to meet that burden, the
21 defendants are entitled to a verdict of not guilty. Do you
22 have any quarrel with that?

23 PROSPECTIVE JUROR NO. 567: No.

24 THE COURT: If you were a defendant in a case,
25 unfortunately charged in a case, would you want 12 citizens,

1 people like you sitting in judgment of the case?

2 PROSPECTIVE JUROR NO. 567: Yes. I would hope that I
3 got people that didn't come in with a bias as to, oh, this
4 person is this, so they're automatically guilty no matter
5 what.

6 THE COURT: Right. And that's the goal, to have
7 citizens with an open mind who are willing to listen to the
8 evidence, apply the law to that evidence and reach a fair
9 verdict. You're willing to do that?

10 PROSPECTIVE JUROR NO. 567: Yes.

11 THE COURT: All right. Mr. Sgro, you may examine.

12 MR. SGRO: Thank you, Your Honor.

13 THE COURT: We always take longer with the first
14 juror, by the way, ladies and gentlemen. It'll get faster as
15 we go along hopefully.

16 MR. SGRO: Good morning.

17 PROSPECTIVE JUROR NO. 567: Good morning.

18 MR. SGRO: So because you have the privilege of being
19 juror one, we're going to spend a few minutes with you talking
20 about some of the rights people have in our country when
21 they're accused of a crime. Okay. And Judge Thompson just
22 touched on one of them. Mr. Burns, like anyone else who's
23 charged, from a traffic ticket to a DUI to whatever, is
24 presumed innocent. Have you ever heard that term before?

25 PROSPECTIVE JUROR NO. 567: Yes.

1 MR. SGRO: And do you understand as Mr. Burns sits
2 here today he's not guilty of anything? Do you understand
3 that?

4 PROSPECTIVE JUROR NO. 567: Yes.

5 MR. SGRO: And are you okay with that?

6 PROSPECTIVE JUROR NO. 567: Yes.

7 MR. SGRO: Have you ever heard that saying, where
8 there's smoke there's fire?

9 PROSPECTIVE JUROR NO. 567: Yes.

10 MR. SGRO: Okay. So I need to hear from you if you
11 understand that that would have no application here. In other
12 words, Mr. DiGiacomo read from a charging document. The judge
13 told you about some very serious crimes Mr. Burns is accused
14 of, right?

15 PROSPECTIVE JUROR NO. 567: Yes.

16 MR. SGRO: And do you remember reading in the
17 questionnaire that the fact pattern in the case, where a woman
18 was shot and killed and a 12-year-old little girl was shot and
19 survived? Do you remember reading that in the questionnaire?

20 PROSPECTIVE JUROR NO. 567: Yes.

21 MR. SGRO: So we have a charging document. We have
22 those allegations. And you understand when someone says, hey,
23 I didn't do it, I plead not guilty, this trial is the natural
24 result of that. Does that make sense?

25 PROSPECTIVE JUROR NO. 567: Yes.

1 MR. SGRO: Okay. So can we have the benefit of a
2 commitment from you that you will not have any negative
3 inference from the fact that Mr. Burns finds himself here in a
4 courtroom today? Can you promise that?

5 PROSPECTIVE JUROR NO. 567: Yes.

6 MR. SGRO: There's another right that everyone
7 shares, and I want to touch on that coming at it from a sense
8 of judging people's credibility. Have you ever been in a
9 situation where you've had to figure out between two people
10 who's telling you the truth?

11 PROSPECTIVE JUROR NO. 567: Yes.

12 MR. SGRO: Do you feel comfortable doing that?

13 PROSPECTIVE JUROR NO. 567: Yes.

14 MR. SGRO: And do you have to sometimes look outside
15 what people are telling you, or information that you may have
16 and put it against what you're being told? Does that make
17 sense?

18 PROSPECTIVE JUROR NO. 567: [No audible response.]

19 MR. SGRO: Are you able to -- how do you figure out
20 if someone's telling you the truth and someone's not being
21 honest with you? What are you looking for?

22 PROSPECTIVE JUROR NO. 567: Body language.

23 MR. SGRO: Okay. Anything else?

24 PROSPECTIVE JUROR NO. 567: No. I've just always
25 gone off of people inherently have certain tics when they're

1 lying.

2 MR. SGRO: Okay. And you have a good instinct for
3 that?

4 PROSPECTIVE JUROR NO. 567: Yes.

5 MR. SGRO: In this case you're going to be called
6 upon to determine who's telling you the truth, who's not
7 telling you the truth, that sort of thing. Are you going to
8 be okay doing that?

9 PROSPECTIVE JUROR NO. 567: Yes.

10 MR. SGRO: When people come into a courtroom they
11 swear to tell the truth. And you might have seen it on TV, I
12 swear to tell the truth. We hope that they're going to be
13 honest and tell the truth; would you agree with that?

14 PROSPECTIVE JUROR NO. 567: Yes.

15 MR. SGRO: But do you think it's possible people come
16 in to court, swear to tell the truth and make mistakes?

17 PROSPECTIVE JUROR NO. 567: I think sometimes people,
18 depending on the length of time something has gone by, tend to
19 remember things a little differently than it may have actually
20 happened.

21 MR. SGRO: Fair enough. What about people -- is it
22 possible that people remember very well, but come in, swear to
23 tell the truth and just flat out lie?

24 PROSPECTIVE JUROR NO. 567: Yeah.

25 MR. SGRO: Possible?

1 PROSPECTIVE JUROR NO. 567: Yes.

2 MR. SGRO: And you feel comfortable making those
3 determinations?

4 PROSPECTIVE JUROR NO. 567: Yes.

5 MR. SGRO: Now, in terms of making those
6 determinations, would you take into consideration if people
7 changed their testimony from one thing to another? Do you
8 think you'd be able to evaluate that?

9 PROSPECTIVE JUROR NO. 567: I think if you changed it
10 halfway through, then you couldn't really be counted as a
11 reliable source of information.

12 MR. SGRO: And you'd feel comfortable making those
13 decisions?

14 PROSPECTIVE JUROR NO. 567: Yes.

15 MR. SGRO: Have you ever heard of this term, plea
16 bargain, plea negotiations? Have you ever heard of that
17 before?

18 PROSPECTIVE JUROR NO. 567: Yes. When something may
19 not be going the way that you were hoping, then you opt out
20 and tend to help more to help your own situation.

21 MR. SGRO: That's -- yeah, that's a pretty accurate
22 definition actually. In this case you're going to learn that
23 someone cut a deal, made a plea, turned State's evidence.
24 These are all the euphemisms we use to describe when someone's
25 in trouble and they make a deal to testify.

1 Do you think you'd be able to evaluate that plea
2 agreement in terms of whether or not someone's being straight
3 with you from the witness stand?

4 PROSPECTIVE JUROR NO. 567: Yes.

5 MR. SGRO: Could it provide a motive or an agenda for
6 a person to lie?

7 PROSPECTIVE JUROR NO. 567: It's always possible, but
8 it could go either way. I mean, if there's more than one
9 person, either person can be like, no, that's not really what
10 happened, and then try and go for their own.

11 MR. SGRO: Okay. Do you watch any of the science
12 shows that are on TV, Forensic Files, NCIS, any of that sort
13 of thing?

14 PROSPECTIVE JUROR NO. 567: I really don't watch TV,
15 to be honest with you.

16 MR. SGRO: Okay. Are you familiar with terms like
17 DNA, fingerprints, that kind of thing?

18 PROSPECTIVE JUROR NO. 567: Yes.

19 MR. SGRO: Do you believe that science has a place in
20 the investigation and prosecution of criminal cases?

21 PROSPECTIVE JUROR NO. 567: Yes. I think science or
22 the discoveries of new ways to figure out things have probably
23 helped a lot of people either in favor or against what's going
24 on in a case.

25 MR. SGRO: Right. And you've seen cases, I'm going

1 to assume from that answer, where people have actually been
2 released because science proved their innocence?

3 PROSPECTIVE JUROR NO. 567: Yeah. We covered that in
4 government class.

5 MR. SGRO: And would you agree with me that science
6 typically doesn't have an agenda or a motive, it is what it
7 is?

8 PROSPECTIVE JUROR NO. 567: Well, I don't think
9 science really has a way to have a motive. There's only
10 facts, and you constantly have to recheck those facts.

11 MR. SGRO: Different than a person for example,
12 right?

13 PROSPECTIVE JUROR NO. 567: Yes.

14 MR. SGRO: Now, with that as the backdrop, I want to
15 talk to you about another right that you have here in our
16 country, and that is if you're accused of a crime, you have a
17 choice whether or not you testify in your own defense or you
18 don't testify in your own defense.

19 So let's start with Option A. If Mr. Burns elects to
20 take advantage of his right to not testify, do you think you'd
21 hold it against him?

22 PROSPECTIVE JUROR NO. 567: No. I don't think it
23 makes you look any more guilty. I think not testifying can
24 sometimes be in your favor, because then you're not
25 potentially causing your own case harm.

1 MR. SGRO: All right. So let me ask you a couple
2 questions. Can you tell me a reason why someone that is not
3 guilty wouldn't get up and take the stand and express that
4 point of view?

5 PROSPECTIVE JUROR NO. 567: No.

6 MR. SGRO: You will learn that Mr. Burns was 18 at
7 the time these allegations all went down, and you have here
8 very experienced seasoned prosecutors. Let me ask you, do you
9 think one reason might be that the person considering
10 testifying might be nervous, could that be a reason?

11 PROSPECTIVE JUROR NO. 567: Yeah.

12 MR. SGRO: Do you think that a person being
13 represented by attorneys might have attorneys giving advice on
14 whether or not the State's met their burden of proof?

15 PROSPECTIVE JUROR NO. 567: I think the attorney can
16 always say, hey, you have nothing to worry about, but at the
17 end of the day it's still your life that you have to worry
18 about.

19 MR. SGRO: I totally agree. But do you believe that
20 there are people that would take that attorney's advice, to
21 use your words, you have nothing to worry about? Do you think
22 some people would listen to their lawyers?

23 PROSPECTIVE JUROR NO. 567: I think some would, some
24 wouldn't.

25 MR. SGRO: Okay. And the flip side of it is if he

1 did not testify, if he elected not to, would you have a
2 tendency when you're back in the deliberation room to say, you
3 know, if he's not guilty he should have gotten up there and
4 told me? Do you think you would do that, or do you think
5 you'd be okay with him not testifying?

6 PROSPECTIVE JUROR NO. 567: Well, you can't really
7 say if he's not guilty then he should have gotten up there and
8 told you, because he's already saying he's not guilty by the
9 whole trial being enacted.

10 MR. SGRO: Okay. On the other end of that spectrum
11 is Mr. Burns does testify. All right. He takes the witness
12 stand. Do you think because he's the person accused that you
13 would scrutinize his testimony more carefully than another
14 witness?

15 PROSPECTIVE JUROR NO. 567: No. I think they should
16 be looked at, at the same level.

17 MR. SGRO: Can you say that for every witness that
18 comes in, a non-police officer, an experienced police officer?
19 Do we have the benefit of your individual opinion as everyone
20 comes in and hits the stand?

21 PROSPECTIVE JUROR NO. 567: Well, witnesses I don't
22 think should be all looked at, at the same level, because
23 there's the people that were there and then there's the people
24 that showed up second, and then the hearsay going down.

25 MR. SGRO: Okay. In terms of -- let me ask it this

1 way. A police officer says the light was red. Someone that's
2 not a police officer says the light was green. Do you
3 automatically believe the police officer simply because he or
4 she is a police officer?

5 PROSPECTIVE JUROR NO. 567: No.

6 MR. SGRO: All right. There is something else that
7 we speak of called the burden of proof. Mr. DiGiacomo spoke
8 of it briefly. He said, you know, we carry the burden. So in
9 our system, as Judge Thompson explained, the State has to
10 prove its case beyond a reasonable doubt. And you'll hear
11 what that means later on in the case.

12 The question though is, do you have any problem with
13 the concept that the State of Nevada has to prove its case
14 beyond a reasonable doubt?

15 PROSPECTIVE JUROR NO. 567: No. I mean, if you're
16 the one charging, you need to be able to prove what you're
17 charging.

18 MR. SGRO: And this is an extreme hypothetical and
19 it's not going to be this case. But you understand the State
20 could call a hundred witnesses. Mr. Oram and I could sit down
21 and do absolutely nothing. We're going to be here for five
22 weeks and after a hundred witnesses, five weeks we don't do a
23 single thing, do you understand if they haven't proven their
24 case to you beyond a reasonable doubt you still have to vote
25 not guilty?

1 PROSPECTIVE JUROR NO. 567: Yes.

2 MR. SGRO: No problem with that?

3 PROSPECTIVE JUROR NO. 567: No.

4 MR. SGRO: There's also the notion of what your job
5 would be as a juror in this case. And one of the things that
6 these TV shows do, you know, the science shows, the Law &
7 Orders, they tell folks watching those programs, you know, we
8 have a beginning part where we figure out what the crime was,
9 we have the middle where we show the viewer the two or three
10 people we thought did it but didn't, and then at the end we
11 wrap it all up in a nice neat bow and we have a perfect
12 beginning, middle and end to our story. Do you follow what
13 I'm saying?

14 PROSPECTIVE JUROR NO. 567: Yes.

15 MR. SGRO: In this case you're going to be presented
16 a set of facts by the State, and they're either going to prove
17 the case or they're not going to prove the case. And that
18 would be your job.

19 And the reason I mention that is because sometimes
20 people have a temptation of saying to themselves, well, if it
21 didn't happen this way, and by the way, I don't believe it
22 happened the way the State did, but let me figure out what
23 actually happened. Do you understand that second part?

24 It's not your job to figure out in this case all the
25 bits and pieces here. In other words, your job is limited to

1 did the State meet its burden or did they not. Would you be
2 okay with that?

3 PROSPECTIVE JUROR NO. 567: Yes.

4 MR. SGRO: I want to speak to you a little bit too
5 about some of the evidence you might see and get your opinion
6 on it. One of the things in any murder case that happens,
7 because murder is a violent offense, people aren't used to
8 some of the things they're going to see. And regardless of
9 movies you may have seen or TV shows, seeing a real life
10 depiction of a murder is pretty gruesome, and you're going to
11 get to see a lot of gruesome photographs.

12 And what I've seen before is, you know, the jurors
13 get photographs and they do this, they look down at the photo,
14 they look over and they look at the person charged, and
15 there's that instinct to, you know, get retribution, or I'm
16 going to do justice. Does that make sense, what I'm saying?

17 PROSPECTIVE JUROR NO. 567: Yes.

18 MR. SGRO: I need you to understand, and you're going
19 to be called upon to look at some unpleasant things. Do you
20 think you'd be able to evaluate those pieces of evidence as
21 they came in, but keep an open mind, as Mr. DiGiacomo said,
22 until the case is submitted to you in totality? Do you think
23 you'd be able to do that?

24 PROSPECTIVE JUROR NO. 567: Yes.

25 MR. SGRO: There are going to be times during

1 deliberations when people are asked to cast a vote, you know,
2 how do you feel about this one, how do you feel about that,
3 this count, that count. I want to give you a scenario.

4 Eleven people in the room believe a certain way.
5 Okay. Whatever way it is. You believe a different way. It's
6 11 to 1. How do you think you'd respond, and by that I mean
7 do you think that you would assume that you must have made a
8 mistake or looked at something wrong, or would you hold to
9 your position?

10 PROSPECTIVE JUROR NO. 567: I would hold my position.
11 It's not all for one. My opinion is my opinion.

12 MR. SGRO: Now, understanding that there's nothing
13 wrong with discussing your opinion, maybe someone shows you
14 something you haven't considered before. You understand
15 you're allowed to talk and people might change their minds
16 over the course of deliberations. The point I want to make is
17 understanding from you that I have your commitment to your own
18 individual opinion in this case, and do we have that?

19 PROSPECTIVE JUROR NO. 567: Yes.

20 MR. SGRO: I want to speak to you a little bit about
21 one more question about the trial as it proceeds. I think you
22 said everyone comes in here blank slate, right? No one has a
23 leg up in terms of what kind of witness they are?

24 PROSPECTIVE JUROR NO. 567: Yes.

25 MR. SGRO: When we get to this part of our

1 conversation with the jury, it's always a little bit
2 uncomfortable, and it's part two, or the penalty hearing. All
3 right. The judge has talked a little bit about it and
4 Mr. DiGiacomo spoke a little bit about it.

5 The way the law is set up in our system, we only get
6 this time with you to speak to you. We can't say hi to you in
7 the hallway, good morning, things like that. And so what we
8 have to do is speak to you about a part of this trial that we
9 believe we'll never get to. Does that make sense? We have to
10 talk to you about a penalty which only happens if there is a
11 conviction, and we -- we don't think we're going to get a
12 conviction. Does that make sense?

13 PROSPECTIVE JUROR NO. 567: Yes.

14 MR. SGRO: So I just want to make the point with you
15 that because I have to speak to you about, you know, potential
16 punishments, that we're not conceding we're ever going to get
17 there.

18 PROSPECTIVE JUROR NO. 567: Well, yeah. You prepare
19 for the worst.

20 MR. SGRO: Exactly. Thank you. So as Mr. DiGiacomo
21 said, there are four possible punishments if someone's
22 convicted of first degree murder. And the question, the
23 question I have for you is whether you can consider all four
24 forms of punishment assuming that someone has been convicted
25 of first degree murder?

1 PROSPECTIVE JUROR NO. 567: Yes.

2 MR. SGRO: So all the options, from the most severe
3 all the way down to allowing someone convicted of murder the
4 possibility to reintegrate into society, those are all on the
5 table for you?

6 PROSPECTIVE JUROR NO. 567: Well, yeah, depending on
7 the evidence. I don't think you should be punished your
8 entire life for one moment in time.

9 MR. SGRO: Okay. Do you own a cellphone?

10 PROSPECTIVE JUROR NO. 567: Yes.

11 MR. SGRO: Have you ever looked at your cellphone
12 bill?

13 PROSPECTIVE JUROR NO. 567: I pay the cellphone bill.

14 MR. SGRO: You pay them. We all pay them. It's
15 amazing though, no one ever really looks at them. I'm just
16 curious if you actually get the bill and flip through it to
17 check it.

18 PROSPECTIVE JUROR NO. 567: Oh, yeah.

19 MR. SGRO: Oh, you do. Okay.

20 PROSPECTIVE JUROR NO. 567: Because I need to know
21 who I'm charging what.

22 MR. SGRO: And have you ever seen any mistakes on
23 your bill?

24 PROSPECTIVE JUROR NO. 567: Yes, and I call
25 immediately.

1 MR. SGRO: Let me ask you this question. Have you
2 ever had this conversation: Man, I texted you, and the person
3 on the other side says, I never got that text, or a
4 conversation like, oh, I just got your text, oh, man, I sent
5 that three hours ago? Have you had those conversations?

6 PROSPECTIVE JUROR NO. 567: Yeah. I'm usually on the
7 other side of that though.

8 MR. SGRO: So you understand if you hear evidence of
9 technology, cellphone bills, records, you'll have to evaluate
10 that evidence carefully as well. Will you commit to doing
11 that?

12 PROSPECTIVE JUROR NO. 567: Yes.

13 MR. SGRO: And would you agree that cellphone records
14 may not be a science like if I had my fingerprint on this
15 counter here at some point in my life I was at this counter?
16 We agree, right, my fingerprint's here?

17 PROSPECTIVE JUROR NO. 567: Yes.

18 MR. SGRO: That's different than a cellphone record,
19 right?

20 PROSPECTIVE JUROR NO. 567: Yes.

21 MR. SGRO: Have you ever had the misfortune of being
22 accused of something you didn't do?

23 PROSPECTIVE JUROR NO. 567: Yes.

24 MR. SGRO: Have you ever -- I want to do two
25 different scenarios. Can you recall a situation where you

1 believed that someone was telling you the truth, and sometime
2 later you found out that they actually were being dishonest
3 with you?

4 PROSPECTIVE JUROR NO. 567: Yes.

5 MR. SGRO: That's happened to you before?

6 PROSPECTIVE JUROR NO. 567: Yes.

7 MR. SGRO: And has it happened on something serious,
8 a serious matter?

9 PROSPECTIVE JUROR NO. 567: It was serious at the
10 time, but not --

11 MR. SGRO: Okay. That's fair enough. Has it ever
12 happened to you where you have doubted what you were being
13 told and it turned out that it was accurate?

14 PROSPECTIVE JUROR NO. 567: Yes.

15 MR. SGRO: There is going to be something in this
16 case called eyewitness identification. Have you ever heard
17 that term before?

18 PROSPECTIVE JUROR NO. 567: No.

19 MR. SGRO: So let me put it to you this way. People
20 will come up and say what they saw at a moment in time. So I
21 want to ask you a couple questions, just regular life
22 experience. Has anyone ever come up to you and as they're
23 about to say hello or greet you they realize you're not the
24 person that they thought they were going to say hi to?

25 PROSPECTIVE JUROR NO. 567: Yes.

1 MR. SGRO: Has it ever happened to you where you have
2 gone up to somebody you thought was a friend or a family
3 member and about to say hi and they turn around and you said,
4 oh, sorry, wrong person?

5 PROSPECTIVE JUROR NO. 567: Oh, yeah. I do it at
6 work all the time.

7 MR. SGRO: Okay. If you are presented what I'm going
8 to term eyewitness testimony where people are going to talk
9 about what they saw, do you think you'd be able to assess that
10 testimony in the context of other factors beyond what they're
11 describing that moment in time?

12 PROSPECTIVE JUROR NO. 567: Yes.

13 MR. SGRO: And just a follow-up on the -- on the
14 conversations about being able to gauge someone's credibility.
15 Have you ever been in a position where you have thought to
16 yourself, you know what, it doesn't matter what I say, they're
17 not going to believe me?

18 PROSPECTIVE JUROR NO. 567: Yes.

19 MR. SGRO: Pass for cause, Your Honor.

20 Thank you, ma'am.

21 THE COURT: Mr. Langford, do you wish to ask any
22 questions?

23 MR. LANGFORD: I do, Your Honor.

24 The good news is when I stand up we're almost done,
25 which calls to mind a couple of concepts. Because of the way

1 the trial will proceed and how it's going to play out, it's
2 going to be a similar situation where the State is going to
3 ask a lot of questions and counsel for Mr. Burns will probably
4 ask a lot of questions or not, and then I'll be given an
5 opportunity.

6 I'm not going to repeat everything that either of
7 those people, you know, the teams said. And I need to make
8 sure that you understand or don't have a concept that because
9 I didn't ask any questions then -- or I didn't ask as many
10 questions, that somehow my client doesn't have a defense.

11 Would you agree with me that, you know, sometimes
12 it's the quality of the questions or it's the state of the
13 evidence is enough that nothing needs to be asked? Would you
14 agree with that?

15 PROSPECTIVE JUROR NO. 567: Yeah. The question was
16 already asked and answered. There's no point in beating a
17 dead horse.

18 MR. LANGFORD: Exactly. Okay. But at the same time,
19 you know, I've said -- you guys aren't the first jury panel.
20 We've been doing this for a number of days. And so I've said
21 before, you know, I like to think of it as you're going to sit
22 through two jury trials.

23 Now, it's only going to be one set of witnesses and
24 one set of exhibits, one judge, you know. But it's really two
25 jury trials, because there are two individuals on trial here.

1 And as you hear the evidence, you need to listen and evaluate
2 the evidence as to both Mr. Burns and to my client, Mr. Mason.
3 Do you think you can do that?

4 PROSPECTIVE JUROR NO. 567: Yes.

5 MR. LANGFORD: And always engage in that kind of a
6 process where you're hearing it, but you're thinking, you
7 know, how does this apply to Mr. Burns, how does this apply to
8 Mr. Mason. Can you commit that that's what you'll do?

9 PROSPECTIVE JUROR NO. 567: Yes.

10 MR. LANGFORD: Sometimes there will be evidence that
11 does only apply to Mr. Burns and sometimes there will be
12 evidence that only applies to Mr. Mason. But in general, you
13 need to engage in how does this apply to him, how does that
14 apply.

15 We've also talked a lot about the death penalty. I
16 mean, you've heard a lot about that. And to make it very
17 clear, none of the death penalty questions apply to Mr. Mason.
18 Okay. He's not -- the State, the government's not trying to
19 execute Mr. Mason, only Mr. Burns. Do you understand that?

20 PROSPECTIVE JUROR NO. 567: Yes.

21 MR. LANGFORD: So as you engage in the thought
22 process of your deliberation in determining guilt or a
23 possible penalty, I need to be sure that you give him just as
24 much consideration as you would give Mr. Burns, even though
25 the penalty against him isn't as serious. Can you do that?

1 PROSPECTIVE JUROR NO. 567: Yes.

2 MR. LANGFORD: Okay. Are you going to be a fair
3 juror?

4 PROSPECTIVE JUROR NO. 567: I would hope so.

5 MR. LANGFORD: Do you want to be here?

6 PROSPECTIVE JUROR NO. 567: Not really.

7 MR. LANGFORD: Okay. That means you're normal, so.

8 THE COURT: There isn't one juror that really wants
9 to be here, I got to tell you.

10 Every one of these questionnaires, everybody's got an
11 excuse why they shouldn't be here.

12 MR. LANGFORD: I'd pass for cause, Your Honor.

13 THE COURT: Thank you. Ms. Austin, would you hand
14 that microphone to Mr. Sloan. I think you're Mr. Sloan, I
15 hope.

16 PROSPECTIVE JUROR NO. 572: Yes, sir.

17 THE COURT: All right. Mr. Sloan, do you know any of
18 the witnesses or attorneys that counsel mentioned and that are
19 seated here?

20 PROSPECTIVE JUROR NO. 572: None that I can recall.

21 THE COURT: Don't know anything about the case?

22 PROSPECTIVE JUROR NO. 572: No.

23 THE COURT: You are in security?

24 PROSPECTIVE JUROR NO. 572: Yes, sir.

25 THE COURT: I didn't understand the company that

1 you're working for. What is that?

2 PROSPECTIVE JUROR NO. 572: Templar Security &
3 Protective Services.

4 THE COURT: What kind of security work do you do?

5 PROSPECTIVE JUROR NO. 572: It's a subcontract firm.
6 So we'll have other businesses that will need security and
7 they'll subcontract it out to us. So we'll end up going and
8 guarding -- not working directly for them, we work for
9 Templar, but they hired us to do like a special event, a
10 concert.

11 THE COURT: You do construction sites?

12 PROSPECTIVE JUROR NO. 572: Yes, sir.

13 THE COURT: Hotels?

14 PROSPECTIVE JUROR NO. 572: Yes, sir.

15 THE COURT: Special events, do you have if people
16 come to town that are important, do you guard them?

17 PROSPECTIVE JUROR NO. 572: Yes, sir.

18 THE COURT: Are you an armed security officer?

19 PROSPECTIVE JUROR NO. 572: Yes, sir.

20 THE COURT: So you have permission to carry a weapon?

21 PROSPECTIVE JUROR NO. 572: Yes.

22 THE COURT: How long you been doing this?

23 PROSPECTIVE JUROR NO. 572: About five years now.

24 THE COURT: What kind of work did you do before that?

25 PROSPECTIVE JUROR NO. 572: I was a stocker at Big

1 Lots, and before that I worked in construction for Hansen
2 Mechanical on Encore.

3 THE COURT: Okay. You have one child --

4 PROSPECTIVE JUROR NO. 572: Yes, sir.

5 THE COURT: -- a female three years of age?

6 PROSPECTIVE JUROR NO. 572: Yes, sir.

7 THE COURT: And I assume at three, what is it, is she
8 in preschool or --

9 PROSPECTIVE JUROR NO. 572: Yeah, she's in preschool.

10 THE COURT: And your wife is a teacher?

11 PROSPECTIVE JUROR NO. 572: Yes.

12 THE COURT: What does your wife teach?

13 PROSPECTIVE JUROR NO. 572: She teaches social
14 studies, history.

15 THE COURT: At?

16 PROSPECTIVE JUROR NO. 572: Coral Academy of Science.

17 THE COURT: What grade would that be about?

18 PROSPECTIVE JUROR NO. 572: She's doing a couple of
19 different grades. She's doing 10th, 11th and 12th.

20 THE COURT: So it's like in high school?

21 PROSPECTIVE JUROR NO. 572: Yes.

22 THE COURT: Okay. Is Coral Academy a magnet school?

23 PROSPECTIVE JUROR NO. 572: Kind of it's like a
24 private, it's a private school.

25 THE COURT: Charter school or --

1 PROSPECTIVE JUROR NO. 572: Yeah. A charter school
2 I'd say, yes.

3 THE COURT: All right. You indicated that you have
4 an uncle who's a deputy sheriff in Arizona?

5 PROSPECTIVE JUROR NO. 572: Yes.

6 THE COURT: Do you know what kind of a deputy sheriff
7 he is; is he like a uniformed guy with a car and so on, or is
8 he a plain clothes or --

9 PROSPECTIVE JUROR NO. 572: I think he's a uniformed
10 officer.

11 THE COURT: Are you very close to him or --

12 PROSPECTIVE JUROR NO. 572: Not really, no.

13 THE COURT: All right. You heard the questions that
14 I asked of Ms. Austin having to do with we're both being
15 judges. I'm the judge of the law, but you're the judge of the
16 facts. Do you have any quarrel with that?

17 PROSPECTIVE JUROR NO. 572: No, sir.

18 THE COURT: Do you think you can decide the facts in
19 the case?

20 PROSPECTIVE JUROR NO. 572: Yes, sir.

21 THE COURT: Do you understand the burden of proof;
22 that the State has the burden to prove the defendant's guilty,
23 they don't have to prove they're not guilty, and the State has
24 to prove that by evidence beyond a reasonable doubt? Any
25 quarrel with that?

1 PROSPECTIVE JUROR NO. 572: No.

2 THE COURT: And if the State fails to meet their
3 burden, the defendants are entitled to a verdict of not
4 guilty. Do you understand that?

5 PROSPECTIVE JUROR NO. 572: Yes.

6 THE COURT: And each case is to be decided
7 separately. You got two defendants and like Mr. Langford
8 says, you've got to decide his case separate from Mr. Sgro's
9 client. Do you understand that?

10 PROSPECTIVE JUROR NO. 572: Yes.

11 THE COURT: It could be for example that you might
12 find one defendant guilty and not the other, or you could find
13 both not guilty. Do you understand that?

14 PROSPECTIVE JUROR NO. 572: Yes.

15 THE COURT: If you were a defendant in a case like
16 this, would you want 12 jurors sitting in judgment of your
17 case?

18 PROSPECTIVE JUROR NO. 572: Yes.

19 THE COURT: Do you have an open mind?

20 PROSPECTIVE JUROR NO. 572: Absolutely, yes.

21 THE COURT: Willing to listen to the evidence and be
22 fair to both sides?

23 PROSPECTIVE JUROR NO. 572: Yes.

24 THE COURT: Ms. Weckerly.

25 MS. WECKERLY: Thank you. How are you?

1 PROSPECTIVE JUROR NO. 572: Good. How are you?

2 MS. WECKERLY: Good, thank you. Sir, I'm going to
3 start at the back of your questionnaire where you all were
4 asked questions about your feelings about the death penalty.
5 Okay. You wrote that that was a penalty that you believe in,
6 in some situations at least?

7 PROSPECTIVE JUROR NO. 572: Yes.

8 MS. WECKERLY: On your questionnaire you said that
9 criminals should not walk the streets or crowd the jail
10 system. Is that your reason for why you think it can be an
11 appropriate punishment?

12 PROSPECTIVE JUROR NO. 572: Yes.

13 MS. WECKERLY: Are you someone who thinks that it's
14 automatically the appropriate punishment in all cases of first
15 degree murder?

16 PROSPECTIVE JUROR NO. 572: No.

17 MS. WECKERLY: Would you allow for the possibility
18 that there are some cases of first degree murder, it's always
19 bad, but that are less bad or deserving of less punishment
20 than other cases?

21 PROSPECTIVE JUROR NO. 572: Yes.

22 MS. WECKERLY: And individuals are different who
23 commit those crimes; would that be true?

24 PROSPECTIVE JUROR NO. 572: Yes.

25 MS. WECKERLY: And you would, I assume, want to know

1 about the individual or any other information you may receive
2 about a crime before you would impose any particular sentence?

3 PROSPECTIVE JUROR NO. 572: Yes.

4 MS. WECKERLY: So the bottom line is -- as the last
5 two lawyers had discussed with Ms. Austin, is in order to be a
6 juror on this case you have to -- as to Mr. Burns, you have to
7 be open to the possibility of imposing all four of those
8 potential punishments. The least of your punishment is still
9 severe in that it's a substantial amount of time in prison
10 where you would face -- or get the opportunity to face the
11 parole board after a substantial amount of time.

12 The next one in severity is a life sentence, still
13 having the opportunity to face the parole board and
14 potentially be released. The third most severe sentence is
15 life without the possibility of parole, meaning you never get
16 out of prison. And then of course as to Mr. Burns only, the
17 most severe punishment is the death penalty.

18 Are you able, as you sit here now, to say I can
19 listen and not make a decision about any of those punishments
20 until I hear information about the case?

21 PROSPECTIVE JUROR NO. 572: Yes, absolutely.

22 MS. WECKERLY: And you understand that this will be a
23 two step process; the first step, as we discussed with
24 Ms. Austin, is deciding whether or not the State proved the
25 case beyond a reasonable doubt?

1 PROSPECTIVE JUROR NO. 572: Yes.

2 MS. WECKERLY: And then in the event of a first
3 degree murder conviction, then you move on to the penalty
4 phase and get additional information, and then choose among
5 those four punishments as to Mr. Burns?

6 PROSPECTIVE JUROR NO. 572: Yes.

7 MS. WECKERLY: And then with regard, of course, to
8 Mr. Mason, you'd be choosing among three punishments, and you
9 understand that?

10 PROSPECTIVE JUROR NO. 572: Yes.

11 MS. WECKERLY: And then again with him, with regard
12 to Mr. Mason, are you able to tell us that you leave open the
13 possibility of imposing any of those three punishments
14 depending on what information you receive?

15 PROSPECTIVE JUROR NO. 572: Yes.

16 MS. WECKERLY: Now I'll move on to a different part
17 of your questionnaire. You were asked about your opinion
18 about how drugs may or may not interact with crime, and I
19 think you indicated that you thought the penalties were
20 certain drug offenses should be more severe?

21 PROSPECTIVE JUROR NO. 572: Yes.

22 MS. WECKERLY: What do you -- well, first, what do
23 you mean by that; what types of drug offenses?

24 PROSPECTIVE JUROR NO. 572: As far as like possession
25 and distribution, stuff like that.

1 MS. WECKERLY: And why is it that you've come to that
2 opinion? What is your -- is it based on experience, or
3 reading the news, or --

4 PROSPECTIVE JUROR NO. 572: A little bit of
5 experience. My brother had some, you know, problems growing
6 up, and I feel he would have had a better outcome in life had
7 he been, you know, put through the court system a little more,
8 a little more severe.

9 MS. WECKERLY: So your brother had some issues with
10 drugs?

11 PROSPECTIVE JUROR NO. 572: Yes.

12 MS. WECKERLY: And it sounds like he -- did he have
13 contact with the criminal justice system?

14 PROSPECTIVE JUROR NO. 572: I'm not really sure. Not
15 really a family topic they speak of a lot, so.

16 MS. WECKERLY: Yeah. Do you believe if there -- I
17 think what I got from what you were saying is if there had
18 been kind of a strict maybe intervention early on it might
19 have corrected the problem at an earlier stage?

20 PROSPECTIVE JUROR NO. 572: Yes.

21 MS. WECKERLY: Is there anything about his experience
22 that makes you think the criminal justice system isn't fair?

23 PROSPECTIVE JUROR NO. 572: No.

24 MS. WECKERLY: Okay. Do you believe though, that you
25 could be someone doing drugs and you could still be the victim

1 of a crime?

2 PROSPECTIVE JUROR NO. 572: Yes, under certain
3 circumstances.

4 MS. WECKERLY: And do you believe people who may be
5 doing drugs deserve or are entitled, I guess, to the same
6 protection as everyone else within the criminal justice
7 system?

8 PROSPECTIVE JUROR NO. 572: Yes.

9 MS. WECKERLY: Lastly, sir, can you assure us that
10 you can be fair to both sides?

11 PROSPECTIVE JUROR NO. 572: Yes.

12 MS. WECKERLY: And you can be fair to Mr. Burns and
13 Mr. Mason?

14 PROSPECTIVE JUROR NO. 572: Absolutely, yes.

15 MS. WECKERLY: Thank you very much. Pass for cause.

16 THE COURT: Mr. Oram.

17 MR. ORAM: Thank you, Your Honor.

18 Good morning, Mr. Sloan.

19 PROSPECTIVE JUROR NO. 572: Good morning.

20 MR. ORAM: How are you today?

21 PROSPECTIVE JUROR NO. 572: Good. How are you?

22 MR. ORAM: Very good. All right. I'm going to run
23 through quite a few questions with you. And as everybody
24 keeps saying, it's sort of unbelievable when you watch us do
25 this, by the last people, they start to just spit out. They

1 know exactly what we're looking for. It may not seem that way
2 when we start out.

3 Have you -- do you ever deal with science with your
4 job, forensic science, fingerprints, anything like that?

5 PROSPECTIVE JUROR NO. 572: We don't. But we deal a
6 lot with the police departments, Metro, calling them out to,
7 you know, take over. We don't really mess with a whole lot of
8 that side of the justice system, I guess.

9 MR. ORAM: But you, in your job working somewhat with
10 Metro, at times would recognize that maybe there's let's say
11 an object on the ground could be of great importance, you
12 would know to maybe stay away from it, let Metro do their
13 crime scene analyst work, right?

14 PROSPECTIVE JUROR NO. 572: Yes.

15 MR. ORAM: So to me it sounds like you're familiar
16 with the sort of concepts that fingerprints or footprints, DNA
17 could be of great importance in a particular case?

18 PROSPECTIVE JUROR NO. 572: Yes.

19 MR. ORAM: Do you ever watch those science shows?

20 PROSPECTIVE JUROR NO. 572: I have in the past. I do
21 watch, you know, a lot on the History Channel, Gangland, you
22 know, those kind of shows, yes.

23 MR. ORAM: And as we have seen with modern
24 technology, sometimes science can help someone who has been
25 let's say convicted or accused of a crime?

1 PROSPECTIVE JUROR NO. 572: Yes.

2 MR. ORAM: And sometimes, a lot of times it can be a
3 great tool for law enforcement?

4 PROSPECTIVE JUROR NO. 572: Yes.

5 MR. ORAM: If I said I'd never been in this courtroom
6 and that was a big deal, I'd never be -- I'd never walked in
7 this courtroom, and my fingerprints and my DNA are all over
8 that witness stand, that's going to look probably pretty bad?

9 PROSPECTIVE JUROR NO. 572: Yes.

10 MR. ORAM: And maybe there's explanations for it, but
11 somebody struggling to explain, would you agree?

12 PROSPECTIVE JUROR NO. 572: Yes.

13 MR. ORAM: And so these are all things that we would
14 hope that jurors actually use as tools. Do you see what I'm
15 saying?

16 PROSPECTIVE JUROR NO. 572: Yes.

17 MR. ORAM: In other words, if I was to testify I've
18 never been in this courtroom, and then scientists got up and
19 said, well, your DNA and fingerprints are all over this
20 courtroom, you could see how as jurors that could be very
21 helpful?

22 PROSPECTIVE JUROR NO. 572: Yes.

23 MR. ORAM: You have no problem with listening to a
24 scientist, whether it would be helpful to the State or helpful
25 to the defense?

1 PROSPECTIVE JUROR NO. 572: No.

2 MR. ORAM: And the question was asked, I believe, of
3 the prior juror, science doesn't have an agenda to lie.

4 PROSPECTIVE JUROR NO. 572: No.

5 MR. ORAM: Okay. Those fingerprints, if they're mine
6 and they're there, there's no reason for that to be a lie,
7 right?

8 PROSPECTIVE JUROR NO. 572: No.

9 MR. ORAM: But humans sometimes have motive to lie?

10 PROSPECTIVE JUROR NO. 572: Yes.

11 MR. ORAM: All you got to do is go to divorce court
12 and I imagine you'd see stuff like that, right?

13 PROSPECTIVE JUROR NO. 572: Yes.

14 MR. ORAM: Are you open to judging people and their
15 credibility?

16 PROSPECTIVE JUROR NO. 572: Yes.

17 MR. ORAM: You know, with you, do you ever come in
18 contact with people that you have to either stop from going
19 somewhere or apprehend and wait for the police to come?

20 PROSPECTIVE JUROR NO. 572: Yes. Every day.

21 MR. ORAM: And so I imagine part of your job is
22 determining whether someone is lying to you?

23 PROSPECTIVE JUROR NO. 572: Yes.

24 MR. ORAM: And how do you do that? Do you look at
25 the whole, all the circumstances?

1 PROSPECTIVE JUROR NO. 572: Yes. It's -- I mean,
2 it's difficult. I mean, there's no 100 percent way to tell
3 somebody that yes, you're lying.

4 MR. ORAM: Right. You can't be a lie detector,
5 right?

6 PROSPECTIVE JUROR NO. 572: Yes.

7 MR. ORAM: You're not a lie detector. Okay. But if
8 I was to tell you that the light was red, okay, and then an
9 hour later you question me and I say, no, no, the light was
10 green, okay, that may be something you'd look at?

11 PROSPECTIVE JUROR NO. 572: Yes.

12 MR. ORAM: Okay. Because I'm changing, right?
13 Somebody was to change what they told you, that would be
14 something you'd look at trying to be a lie detector; is that
15 right?

16 PROSPECTIVE JUROR NO. 572: Yes.

17 MR. ORAM: Or if I said the light was red, and ten
18 people came in and said, no, the light was green, and then the
19 videotape you saw showed the light was green, that would be
20 something you'd look at as well?

21 PROSPECTIVE JUROR NO. 572: Yes.

22 MR. ORAM: Do you own a cellphone?

23 PROSPECTIVE JUROR NO. 572: Yes, sir.

24 MR. ORAM: Do you ever look at your cellphone bills?

25 PROSPECTIVE JUROR NO. 572: I would say no. My wife

1 handles a lot of that, yes.

2 MR. ORAM: So you guys just pay it?

3 PROSPECTIVE JUROR NO. 572: Yeah.

4 MR. ORAM: You think the telephone company's going to
5 be straightforward with you?

6 PROSPECTIVE JUROR NO. 572: [Unintelligible.]

7 MR. ORAM: So you pay it, you just -- you don't look
8 at it too carefully?

9 PROSPECTIVE JUROR NO. 572: She does. She looks
10 at it.

11 MR. ORAM: Okay. Has she ever told you about
12 discrepancies or things wrong with them?

13 PROSPECTIVE JUROR NO. 572: Yes.

14 MR. ORAM: If you saw a big stack of cellphone
15 records, you'd be willing to at least look -- like if we
16 pointed out look at that phone call, it doesn't match with
17 this, that's something you'd look at, right?

18 PROSPECTIVE JUROR NO. 572: Yes.

19 MR. ORAM: Because if there was let's say two sets of
20 phone records, you and I supposedly talked, you may want to
21 look and see do they match, right?

22 PROSPECTIVE JUROR NO. 572: Yes.

23 MR. ORAM: I'll ask you the question, but I think I
24 know the answer. Photographs. Okay. Photographs are
25 sometimes very horrifying to human beings when they actually

1 see somebody who's been killed. Okay. Obviously. And I
2 always think it's best to let jurors know that they're going
3 to see that, because you see those screens around the
4 courtroom.

5 You know, it can be in opening argument, if we
6 haven't discussed this, all the sudden you have people looking
7 like, oh, my goodness, you know, it's a picture of homicide.
8 Okay. Are you going to have any problem looking at that for
9 the purpose you look at it? In other words, if you see a dead
10 person, then there may be some things that you can garner from
11 that, but it shouldn't be used to just make you purely angry
12 and convict somebody who's not guilty. Does that make sense?

13 PROSPECTIVE JUROR NO. 572: Yes, sir.

14 MR. ORAM: Do you have any problem with that concept?

15 PROSPECTIVE JUROR NO. 572: No.

16 MR. ORAM: The constitutional principles that have
17 been talked about, the burden of proof, do you have any
18 problem with that concept?

19 PROSPECTIVE JUROR NO. 572: No.

20 MR. ORAM: That we don't have -- I don't have to ask
21 you these questions. I mean, we can sit over there and do
22 nothing, right. And if the State doesn't prove the case
23 beyond a reasonable doubt, how would you find Mr. Burns?

24 PROSPECTIVE JUROR NO. 572: If they did not find him
25 guilty beyond a reasonable doubt, then they would not be

1 guilty.

2 MR. ORAM: So that's easy enough. And how about the
3 idea of our Fifth Amendment in our Bill of Rights to not have
4 to testify, how do you feel about that?

5 PROSPECTIVE JUROR NO. 572: It's everybody's choice
6 no matter if it makes them -- you know, they can either hurt
7 them or help them. It's up to the person. It shouldn't be
8 looked at by the jury as whether or not they wanted to testify
9 as, you know, admission of guilt.

10 MR. ORAM: And, you know, the framers of our country,
11 when they wrote the Bill of Rights, obviously they were a lot
12 smarter than someone like me. They came up with that and
13 that's sort of the foundation of our nation, our Bill of
14 Rights. Do you agree with that?

15 PROSPECTIVE JUROR NO. 572: Yes.

16 MR. ORAM: So this is something that's been around
17 since, you know, hundreds of years, a couple hundred years.
18 Okay. So obviously you have no difficulty applying that
19 whatsoever, do you?

20 PROSPECTIVE JUROR NO. 572: No.

21 MR. ORAM: You can think of reasons why somebody who
22 is not guilty would not want to testify? Can you think --

23 PROSPECTIVE JUROR NO. 572: Absolutely, yes.

24 MR. ORAM: Like what?

25 PROSPECTIVE JUROR NO. 572: The longer you let people

1 talk the more they'll dig themselves into a hole.

2 MR. ORAM: Or, you know, you have attorneys over
3 there -- that's a young guy, right.

4 PROSPECTIVE JUROR NO. 572: Mm-hmm.

5 MR. ORAM: Mr. Burns is a young man. As you heard,
6 he was 18 at the time of this. But we have experience in
7 these courtrooms. Do you see that? And we're the ones who
8 come in this courtroom, so we're the one, you know, maybe you
9 see me whispering in his ear occasionally. Obviously he may
10 want to listen to me like anybody, right?

11 PROSPECTIVE JUROR NO. 572: Mm-hmm.

12 MR. ORAM: Okay. Just for the record, is that a yes?

13 PROSPECTIVE JUROR NO. 572: Yes, sir.

14 MR. ORAM: We don't mean to do that. We do that just
15 because otherwise at the break the ladies over here tell us,
16 could you please make them answer so that they get a clear
17 record. Okay.

18 A police officer comes in and testifies, and she says
19 the light was red. Okay. And then another non-police officer
20 came in and said, no, the light was green. Would you
21 automatically believe the police officer?

22 PROSPECTIVE JUROR NO. 572: No.

23 MR. ORAM: You hesitated.

24 PROSPECTIVE JUROR NO. 572: It's our justice system
25 is built on a certain standard of, you know, credibility. We

1 automatically look at police officers as, you know,
2 outstanding, you know, citizens. So it's kind of hard to look
3 at a police officer and say, well, he's lying.

4 MR. ORAM: Okay. So in a perfect world, every single
5 one of us hopes that our police in Las Vegas tell the truth
6 and protect us, right? That's what we hope.

7 PROSPECTIVE JUROR NO. 572: Yes.

8 MR. ORAM: Okay. We want them to do that; would you
9 agree with that?

10 PROSPECTIVE JUROR NO. 572: Yes.

11 MR. ORAM: When they're on the street and then they
12 come in and testify, we just want them to tell the truth
13 because that [inaudible] for a really good police department;
14 would you agree with that?

15 PROSPECTIVE JUROR NO. 572: Yes.

16 MR. ORAM: And so I think that's natural human
17 instinct. You see the officer, either he or she gets up on
18 the witness stand and it's like, just tell us the truth,
19 right?

20 PROSPECTIVE JUROR NO. 572: Yes.

21 MR. ORAM: And you said it best, like there's a
22 standard in our mind. Okay. But I want to make sure that you
23 recognize that you would agree that in every profession,
24 security guards, lawyers, police officers, some are really
25 good, some are average, and there are probably a few bad

1 apples in every bunch; would you agree with that?

2 PROSPECTIVE JUROR NO. 572: Yes.

3 MR. ORAM: And so if a police officer came in and
4 testified the light was red, and then you heard ten people say
5 not a chance, the light was green, and you looked at a
6 photograph and thought, boy, that doesn't look like a red
7 light, would you automatically believe the police officer even
8 though the evidence was pointing away from it?

9 PROSPECTIVE JUROR NO. 572: No.

10 MR. ORAM: So you do believe a police officer could
11 be wrong?

12 PROSPECTIVE JUROR NO. 572: Yes.

13 MR. ORAM: Do you believe the police could arrest the
14 wrong person?

15 PROSPECTIVE JUROR NO. 572: Yes.

16 MR. ORAM: Do you believe that they could rush,
17 meaning to do the right thing, but have made a mistake?

18 PROSPECTIVE JUROR NO. 572: Yes.

19 MR. ORAM: Just like everybody makes mistakes; is
20 that fair?

21 PROSPECTIVE JUROR NO. 572: Yes.

22 MR. ORAM: Away from police officers for a second.
23 Witnesses. Okay. In the same principle, when people get up
24 on the witness stand and they swear to tell the truth, the
25 whole truth, nothing but the truth so help you God, we hope in

1 a perfect society everybody does that. That's what we're
2 hoping for, right?

3 PROSPECTIVE JUROR NO. 572: Yes.

4 MR. ORAM: It'd make your life a lot easier if you're
5 sitting on this jury if it feels like, well, this will be
6 easy, we'll just sit here and hear what the truth is. Okay.
7 Right. But you -- you believe, don't you, that people could
8 get up on that witness stand, agree to tell the truth and make
9 mistakes? Do you believe that?

10 PROSPECTIVE JUROR NO. 572: Yes.

11 MR. ORAM: Do you believe people could get up on that
12 witness stand, look you right in the face and lie through
13 their teeth?

14 PROSPECTIVE JUROR NO. 572: Yes.

15 MR. ORAM: Have you ever heard the term "eyewitness
16 identification"?

17 PROSPECTIVE JUROR NO. 572: Yes.

18 MR. ORAM: Hear it on TV and stuff, along those
19 lines?

20 PROSPECTIVE JUROR NO. 572: Yes.

21 MR. ORAM: Is that something that you would be open
22 to; in other words, can eyewitnesses make mistakes?

23 PROSPECTIVE JUROR NO. 572: Yes.

24 MR. ORAM: You seem pretty positive about that.

25 PROSPECTIVE JUROR NO. 572: Well, we've seen it many

1 times in my job.

2 MR. ORAM: What do you mean?

3 PROSPECTIVE JUROR NO. 572: I used to work at the
4 Hilton Tower, the Elara. And we'd see people, you know, come
5 in and break into rooms, and other people in different rooms
6 say, well, it was this person. We had the cameras and that
7 person was never upstairs. So it all just comes down to how
8 people perceive things and how quickly they just want to pin
9 somebody down.

10 MR. ORAM: So you have sort of a unique perspective
11 on that, that even as a young man you've been in situations
12 where you've actually seen people accused by eyewitnesses that
13 were wrongfully accused; is that a fair assessment of what you
14 said?

15 PROSPECTIVE JUROR NO. 572: Yes.

16 MR. ORAM: Was that -- when you were young and you
17 first saw that, was that sort of alarming to you?

18 PROSPECTIVE JUROR NO. 572: Yes.

19 MR. ORAM: In other words, you would think -- you
20 would think that if somebody asked you what did the lawyer who
21 questioned you look like, you would think that you'd probably
22 be able to ID me from the amount of time we've spent together?

23 PROSPECTIVE JUROR NO. 572: Yes.

24 MR. ORAM: And that's sort of alarming when you
25 realize, oh, boy, some people have made mistakes.

1 I think I know the answer to this one too. Eleven
2 people disagree with you, Mr. Sloan. Okay. Eleven people say
3 that light was red. You're sure the light was green. Do you
4 just give in, say okay?

5 PROSPECTIVE JUROR NO. 572: No.

6 MR. ORAM: Would you talk it through?

7 PROSPECTIVE JUROR NO. 572: Yes.

8 MR. ORAM: On the other side, would you listen to
9 them?

10 PROSPECTIVE JUROR NO. 572: Yes.

11 MR. ORAM: In other words, would you say okay, you
12 guys all say it's red, so why? You have no problem with that,
13 listening; is that right?

14 PROSPECTIVE JUROR NO. 572: No, I have no problem.

15 MR. ORAM: But you're not just going to fold?

16 PROSPECTIVE JUROR NO. 572: No.

17 MR. ORAM: There's always a problem in a case like
18 this. There's always a problem. If this is not a capital
19 case, I'm probably going to be done questioning you. But now
20 I'm going to move into a penalty phase.

21 Okay. And you got all these people listening to
22 this, all these other prospective jurors listening. And we
23 start asking you what would you do or could you consider
24 punishments against Mr. Burns if you found him guilty. And I
25 always think that that must make somebody think that lawyer

1 doesn't believe in his own client's case. Do you see that?

2 PROSPECTIVE JUROR NO. 572: Yes.

3 MR. ORAM: Because I start asking and it's almost
4 like what is he really saying, do you understand, Mr. Sloan,
5 that we have to ask you these questions? Okay.

6 PROSPECTIVE JUROR NO. 572: Yes.

7 MR. ORAM: And when I say we have to ask you these
8 questions, we got to find fair minded people. Okay. And so
9 can you imagine I just said, you know what, this is tactical,
10 I'm never going to do that again. And I get over there and a
11 jury walks in and says guilty of first degree murder, and now
12 I'm thinking, oh, my God, you know, I haven't asked these
13 people any questions about the death penalty. Okay. That's a
14 real problem for lawyers if we fail to do that. Do you see
15 that?

16 PROSPECTIVE JUROR NO. 572: Yes.

17 MR. ORAM: But I don't want you to be confused. At
18 the end of this trial, myself and Mr. Sgro are going to stand
19 at this podium and we're going to ask you and 11 other people
20 to come back through that back door having deliberated and say
21 that Mr. Burns is not guilty. Do you understand that?

22 PROSPECTIVE JUROR NO. 572: Yes.

23 MR. ORAM: And in the end, that's what we believe is
24 going to happen. Okay. If it doesn't, if it doesn't and you
25 say the State met their burden, okay, you come back in here,

1 you say he's guilty beyond a reasonable doubt, then we need to
2 know some things. Okay. You said that you could consider all
3 four forms of punishment; is that right?

4 PROSPECTIVE JUROR NO. 572: Yes.

5 MR. ORAM: Now, a couple of things about that. You
6 said that you thought that drugs should have harsher laws,
7 there should be harsher laws. I think you said possession,
8 trafficking; is that my understanding?

9 PROSPECTIVE JUROR NO. 572: Yes.

10 MR. ORAM: All drugs?

11 PROSPECTIVE JUROR NO. 572: Yes.

12 MR. ORAM: Prescription drugs?

13 PROSPECTIVE JUROR NO. 572: Yes.

14 MR. ORAM: Okay. So people who are abusing or
15 selling or trafficking?

16 PROSPECTIVE JUROR NO. 572: Yes.

17 MR. ORAM: Do you believe that people under the
18 influence of narcotics, that it could impair their
19 perceptions?

20 PROSPECTIVE JUROR NO. 572: Yes.

21 MR. ORAM: Does my question make sense?

22 PROSPECTIVE JUROR NO. 572: Yes.

23 MR. ORAM: Now, somebody stoned on heroin may know
24 exactly what they're talking about. Right. They may be able
25 to say, you know, it was a sunny day in Las Vegas. They may

1 be able to do that, right?

2 PROSPECTIVE JUROR NO. 572: Yes.

3 MR. ORAM: But they may also have reasons to be
4 impaired and give you answers that aren't accurate; would you
5 agree with that?

6 PROSPECTIVE JUROR NO. 572: Yes.

7 MR. ORAM: So you don't really know until you see
8 somebody testifying, right?

9 PROSPECTIVE JUROR NO. 572: Yes.

10 MR. ORAM: You could return a sentence of death; is
11 that right?

12 PROSPECTIVE JUROR NO. 572: I'm sorry?

13 MR. ORAM: I'm sorry. You could return a sentence of
14 death in the appropriate case; is that right?

15 PROSPECTIVE JUROR NO. 572: Yes.

16 MR. ORAM: And you said in your questionnaire that
17 criminals should not walk the streets or crowd the jail
18 system. Do you remember saying that?

19 PROSPECTIVE JUROR NO. 572: Yes.

20 MR. ORAM: Now, I want to tell you something. When
21 we do this thing -- what we're doing right here is called voir
22 dire. It means we're picking a jury, and translated that
23 means to tell the truth. Okay. And so what I want to assure
24 you of is there's no right or wrong answer. We just want
25 people to tell the truth. Does that make sense?

1 PROSPECTIVE JUROR NO. 572: Yes.

2 MR. ORAM: If we've terrified jurors -- yesterday a
3 juror said, You make me nervous. Okay. If we terrified
4 people into just saying, yes, no, yes, no, then we're not
5 doing our jobs and the system's sort of failing. Does that
6 make sense?

7 PROSPECTIVE JUROR NO. 572: Yes.

8 MR. ORAM: If you don't feel comfortable telling the
9 truth or telling what your true feeling is, then that's a
10 problem. Do you see that?

11 PROSPECTIVE JUROR NO. 572: Yes.

12 MR. ORAM: And so it seems to me when I see an answer
13 like that, Mr. Sloan, that you may think, you know, taxpayers'
14 money, what are we paying for, that kind of opinion?

15 PROSPECTIVE JUROR NO. 572: In a way, yeah. Yes.
16 Sorry.

17 MR. ORAM: And so it strikes me that -- well, strike
18 that.

19 You read the factual scenario a month ago on this
20 case, the little -- little factual thing at the end. The
21 State is saying that a mother was shot and killed and her
22 12-year-old was chased down a hallway and shot. Okay.

23 PROSPECTIVE JUROR NO. 572: Yes.

24 MR. ORAM: And what they're going to say is that
25 Mr. Burns has done that. Okay. Now, if you find Mr. Burns

1 guilty beyond a reasonable doubt of that, do you think that
2 you would strongly lean --

3 MS. WECKERLY: I'm going to object, Your Honor. This
4 is an improper question.

5 THE COURT: Yeah. Rephrase it.

6 MR. ORAM: Yes, sir.

7 In this case, if you have found Mr. Burns guilty of
8 murder of the first degree, do you think you would strongly
9 lean towards the death penalty?

10 PROSPECTIVE JUROR NO. 572: Depending on the
11 evidence, yes.

12 MR. ORAM: And that's fair. So what if -- when you
13 said yes at the end, the way I interpret it, and tell me if
14 I'm wrong, is that if you find Mr. Burns guilty of first
15 degree murder, it's sort of almost gut instinct that, yeah,
16 I'm favoring the death penalty?

17 PROSPECTIVE JUROR NO. 572: Not in every situation,
18 no.

19 MR. ORAM: Not in every situation. And so you're
20 open to that. Would you be open to life without the
21 possibility of parole?

22 PROSPECTIVE JUROR NO. 572: Yes.

23 MR. ORAM: Okay. Now, there is another factor where
24 it could be that having heard the facts, found him guilty of
25 murder in the first degree, would you be able to consider the

1 possibility of parole, or --

2 PROSPECTIVE JUROR NO. 572: If he was guilty beyond a
3 reasonable doubt?

4 MR. ORAM: Yes.

5 PROSPECTIVE JUROR NO. 572: No.

6 MR. ORAM: And that's a fair assessment and that's
7 sort of what I saw in your questionnaire, that you're the type
8 of individual, it seems to me you're pretty law and order; is
9 that a fair assessment of --

10 PROSPECTIVE JUROR NO. 572: Yes.

11 MR. ORAM: You're a security guard. You want people
12 to follow the rules; is that right?

13 PROSPECTIVE JUROR NO. 572: Yes.

14 MR. ORAM: And when they don't follow the rules, it
15 doesn't make you particularly happy.

16 PROSPECTIVE JUROR NO. 572: No.

17 MR. ORAM: And you don't think it's good for society.

18 PROSPECTIVE JUROR NO. 572: No.

19 MR. ORAM: When people follow the rules it's better
20 for society.

21 PROSPECTIVE JUROR NO. 572: Yes.

22 MR. ORAM: And what's better for society sometime can
23 be a harsher punishment; fair to say?

24 PROSPECTIVE JUROR NO. 572: Yes.

25 MR. ORAM: And it sounds like you're the type of

1 person who may think if we had harsher penalties, then maybe
2 people would stop this kind of behavior; is that fair?

3 PROSPECTIVE JUROR NO. 572: Yes.

4 MR. ORAM: And then we got -- we went over that with
5 the drugs. Okay. You almost think that that may help the war
6 on drugs; is that fair to say?

7 PROSPECTIVE JUROR NO. 572: Yes.

8 MR. ORAM: And so what it sounds like to me is you're
9 saying, well, I can be fair, I can be fair to the State, I can
10 be fair to Mr. Mason, I can be fair to Mr. Burns, if he didn't
11 do it, I'll find him not guilty, but if I find him guilty,
12 then I'm pretty much looking at life without parole or the
13 death sentence; fair?

14 PROSPECTIVE JUROR NO. 572: Yes.

15 MR. ORAM: Okay. And this is a strongly held belief
16 that you have; is that right?

17 PROSPECTIVE JUROR NO. 572: Yes.

18 MR. ORAM: It's not something -- it sounds like you
19 probably considered the death penalty before you came in here.
20 Not on this case. I mean just thinking about principles of
21 the death penalty.

22 PROSPECTIVE JUROR NO. 572: Yes.

23 MR. ORAM: Okay. Did filling in this questionnaire
24 cause you even more thought and pause about the death penalty?

25 PROSPECTIVE JUROR NO. 572: No. I've always been

1 open to it.

2 MR. ORAM: You've always been open to it. Okay. And
3 so it's fair to say -- now, a jury never decides whether
4 somebody gets paroled. Does that make sense? Like
5 Ms. Weckerly said, this is years down the road. Okay.

6 But it sounds to me like you're saying somebody
7 guilty of first degree murder, they're not coming back on the
8 street, nor should they get a chance. Either they're going to
9 die, be executed for this, or they're going to spend the rest
10 of their life in prison thinking about what they've done; is
11 that fair?

12 PROSPECTIVE JUROR NO. 572: Yes.

13 MR. ORAM: And so it would be fair to say that with
14 regard to the possibility of parole, you're not open to that,
15 you want to be fair, but you're just not open to that; is that
16 right?

17 PROSPECTIVE JUROR NO. 572: Depending on the
18 circumstances.

19 MR. ORAM: Depending on the circumstances and if you
20 found -- if you have found the man guilty of first degree
21 murder beyond a reasonable doubt, you and 11 others, that in
22 your mind there's two penalties, life without parole or death?

23 PROSPECTIVE JUROR NO. 572: Yes.

24 MR. ORAM: Thank you very much. I appreciate your
25 honesty.

1 Challenge for cause.

2 THE COURT: Did you say you're passing him for cause?

3 MR. ORAM: Challenge for cause.

4 THE COURT: Challenge for cause. That's what I
5 thought you'd say. Any traverse?

6 MS. WECKERLY: Can I just ask two questions?

7 THE COURT: Yes.

8 MS. WECKERLY: Sorry to keep you on the spot, but in
9 Nevada, in some cases there are -- as we've discussed, there's
10 four possible punishments for first degree murder, and those
11 are the punishments -- those are the punishments that are set
12 by law and there aren't any others.

13 And as we discussed earlier, the two least severe
14 punishments involve a possibility of parole after a certain
15 amount of time; meaning the person has the opportunity after a
16 substantial number of years to go before a parole board and
17 possibly get released. And then the more severe punishments
18 are life without and death.

19 Are you -- I think that -- I'm not trying to be
20 critical, but your answers were a little inconsistent. When I
21 was speaking to you, and maybe I misunderstood you, you said
22 that -- my understanding was that you could consider letting a
23 person go before a parole board in the case of first degree
24 murder after a substantial amount of time in some cases, and
25 then you could also consider life without and death.

1 Did I misunderstand that, that you couldn't ever
2 consider allowing someone the opportunity to go before a
3 parole board in the case of first degree murder?

4 PROSPECTIVE JUROR NO. 572: In some cases, yes.

5 MS. WECKERLY: Okay. And you -- just depending on
6 the circumstances and of course you don't know those yet?

7 PROSPECTIVE JUROR NO. 572: Yes.

8 MS. WECKERLY: I don't think that this [inaudible].

9 THE COURT: Mr. Sloan, I think you've given us some
10 inconsistent answers to questions. At one point you told
11 Ms. Weckerly that you would consider all possible forms of
12 punishment in the event we got to a penalty hearing, and then
13 you told Mr. Oram that you would only consider death or life
14 without the possibility of parole in the event we got to a
15 penalty hearing. Those are inconsistent decisions on your
16 part.

17 The question really is, there are four possible
18 punishments in the event somebody's convicted of murder in the
19 first degree. And are you telling me that you're inclined to
20 impose only death or the life imprisonment without the
21 possibility of parole, or would you consider the possibility
22 of parole for this defendant if you found him guilty of murder
23 in the first degree?

24 PROSPECTIVE JUROR NO. 572: If I found him guilty in
25 the first degree, I would have to say just the last two.

1 THE COURT: You would have to say what?

2 PROSPECTIVE JUROR NO. 572: Just the more severe two.

3 THE COURT: Just the most severe penalty?

4 PROSPECTIVE JUROR NO. 572: Yes.

5 THE COURT: Okay. I'm going to grant the challenge
6 for cause. Mr. Sloan, thank you very much for appearing. You
7 are excused. I'm going to challenge -- I'll grant the
8 challenge. You can leave.

9 All right. Let's do this. Let's take a brief break
10 and give you an opportunity to use the restrooms and come back
11 in about ten minutes. The court will be at ease. Try to
12 remember which seat you're in so we keep you in order, because
13 that's the way we've got these questionnaires. If you would
14 come back in about ten minutes, please, and the marshal will
15 tell you when we're ready.

16 The court will be at ease while the jury retires.

17 (Prospective jurors recessed at 11:00 a.m.)

18 THE COURT: The record will reflect that the
19 prospective jurors have executed -- exited the courtroom. The
20 marshal advised me just after we got on the bench that one of
21 the jurors who we thought was here was not here. Juror
22 No. 716, Ms. Fitzgerald, did not show up and I don't know why,
23 but she's on the no-show list. So you can take her
24 questionnaire out of your stack.

25 THE MARSHAL: That's the one I told you guys earlier.

1 THE COURT: Did you tell them?

2 THE MARSHAL: I told them after I --

3 THE COURT: You told them before you told me.

4 THE MARSHAL: I told you --

5 THE COURT: That's okay.

6 THE MARSHAL: I told you first, then I told them.

7 THE COURT: I don't care. All right.

8 THE MARSHAL: I always tell you first, Judge.

9 THE COURT: We take a ten minute break. Yes?

10 MR. SGRO: I just have a quick housekeeping thing,
11 but we can do it when we come back.

12 THE COURT: Well, you can do it right now.

13 MR. SGRO: Your Honor, for the record, I wanted to
14 renew my two challenges, or our two challenges for cause as to
15 Prospective Juror 509. It's the woman who works at Metro.
16 And as to Juror 521, who is the attorney for the North Las
17 Vegas Police union.

18 Essentially, Your Honor, our Supreme Court in Weber
19 vs. State, 121 Nev. 554, has defined bias -- or the test
20 whether a juror should have been removed for cause is, quote,
21 whether a prospective juror's views would prevent or
22 substantially impair the performance of his duties as a juror
23 in accordance with his instructions and his oath.

24 And they cite NRS 16.050, and Section G of that,
25 which describes the challenges for cause says, The existence

1 of a state of mind in the juror evincing enmity or bias -- I'm
2 sorry. These are -- it's an unusually phrased statute. The
3 existence of a state of mind in the juror evincing enmity
4 against or bias to either party.

5 So we pull the woman from Metro's transcript. She
6 says at page 155 of her transcript, "I mean, I don't think
7 because I work at Metro that I think our cops are all, you
8 know, a credible witness. I generally think that the cops are
9 good people that have a very good job -- very difficult job,
10 and I believe they would not be lying." That's the portion we
11 discussed yesterday.

12 She later says, "As far as their credibility as
13 witnesses versus non-Metro people," and this is at page 162,
14 "I think I would give their testimony more credibility than
15 non-police officers. Just that I know some of those people.
16 I know what kind of work they do. I just think that would be
17 my general predisposition."

18 So I understand the Court ruled. We didn't have the
19 benefit of the transcript when we were having the
20 conversation. We were doing the best we could with our
21 recollections collectively. And I did not have the definition
22 fresh in my mind out of Weber, nor the statute.

23 So as to Prospective Juror 509, I do believe she has
24 demonstrated a bias that would affect her ability to be
25 impartial towards the State insofar as she's a Metro employee,

1 she knows personally, has lunch with and socializes with one
2 of the fingerprint examiners in the case, and I don't think
3 she should be allowed to sit on the jury and I think she
4 should have been excused for cause.

5 As to Prospective Juror 521, the attorney, this is
6 the individual that had the difficulty with the -- with the
7 failure of Mr. Burns to testify. He said, "I'm just telling
8 you that's something that would be occurring to me," the
9 context of would you hold it against Mr. Burns if he didn't
10 testify.

11 He says at page 210, "If you did hold it against
12 them, the failure to testify, you would disagree that that
13 wouldn't be unfair?" His answer, "I personally think that
14 that law should not exist." His -- and that is the conclusion
15 of the colloquy and then the Court got involved briefly. And
16 then we had our discussion about him and whether or not he
17 should be excused for bias.

18 So at the end of the day, Your Honor, as to the
19 attorney who currently sits or has currently been passed for
20 cause based on the record, we believe that a close review of
21 the transcript reveals that he is unable to set aside his
22 personal beliefs. He voiced them, and there's nothing in the
23 transcript that contravenes that.

24 As to the Metro woman, I think she's actually an
25 easier call, because she flat out said she knows these people

1 personally and that's what her conversation was with us when
2 we were examining her. So I state those things for the
3 record. We would ask the Court to revisit those two
4 individuals for cause. Thank you, Your Honor.

5 MR. DiGIACOMO: Just briefly, the standard is that
6 they're substantially impaired. The -- first of all as to a
7 party in the case. And now he's arguing, well, she has some
8 sort of relationship with Metro, so therefore she has some
9 sort of relationship with the State. So it's a little twofold
10 thing.

11 It's not like she's talking about the prosecutor.
12 She's talking about the witness. And the caselaw is really
13 clear that favoring police officers' testimony over regular
14 witnesses, I know Mr. Sgro tells the jury you have to consider
15 them the same way, but that's actually not the law. You
16 don't. You can consider it.

17 It was not a fingerprint analyst that she had any
18 sort of relationship with. I don't know where Mr. Sgro got
19 that. He was telling that to her and she kept answering it
20 back. But she never once mentioned Kathryn Aoyama as the
21 individual that she had a relationship with. It was somebody
22 who works with her daughter's name may be on the list, but "I
23 don't really know her" was what her answer was. And obviously
24 she's not a fingerprint expert, so I don't know where Mr. Sgro
25 got that. So she is a finder for cause.

1 As it relates to Mr. Allen, while I recognize that
2 there are people all the time who disagree with the law, the
3 Court's instruction is can you set aside what your
4 disagreements are and follow the instructions of the Court.
5 That answer was a resounding yes.

6 THE COURT: I made my ruling. I'm not going to
7 change it.

8 Mr. Oram, and I apologize to make this -- I don't
9 mean this in criticism of you. I know you didn't
10 intentionally mean to do this, but -- and counsel didn't
11 object. But in your examination of one of the jurors, you
12 explained to them that you and Mr. Sgro personally believe
13 that your client is not guilty. And an assertion by a lawyer
14 of personal belief is really inappropriate.

15 And I know that you didn't -- I know how you meant it
16 and I don't think anybody was offended by it, but I just want
17 to remind you that you really can't do that. And don't get
18 excited about it. I'm not, so.

19 MR. ORAM: But let me tell you, Judge, I object to it
20 when the State does that in their closing arguments, so --

21 THE COURT: Well, the State can be objectionable, but
22 you guys can't commit error. I know that, so.

23 MR. ORAM: No. But my point is I shouldn't have
24 done it. What I really -- well, I think you know how I meant
25 it. I'm not --

1 THE COURT: I know how you meant it, and I'm not mad
2 at you or anything. I just thought I'd remind you that you're
3 not supposed to do that.

4 MR. ORAM: Yes, Your Honor. I apologize.

5 THE COURT: Be in recess for three minutes.

6 (Court recessed at 11:08 a.m. until 11:13 a.m.)

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

8 THE COURT: Please be seated. All right. State of
9 Nevada vs. Burns and Mason.

10 The record will reflect the presence of the
11 defendant, counsel, all the prospective jurors, jury box.

12 I think we're on Mrs. Barnard. Is it Barnard?

13 PROSPECTIVE JUROR NO. 576: Barnard, yes.

14 THE COURT: Mrs. Barnard, do you know any of the
15 witnesses or attorneys that we've mentioned here today?

16 PROSPECTIVE JUROR NO. 576: No. Nor do I have a
17 mike.

18 THE COURT: Oh, we need a microphone.

19 THE MARSHAL: Oh, that's right. I'm sorry.

20 THE COURT: I introduced everybody and I'm not sure I
21 introduced Mr. Hawkes. And he wasn't in here at the time.
22 He's the marshal that keeps the -- keeps all of you together
23 and apart and gets you here hopefully on time and so on.

24 Ms. Barnard, would you hold that microphone right up
25 to your mouth there --

1 PROSPECTIVE JUROR NO. 576: Yes.

2 THE COURT: -- and so we can hear. Yeah.

3 PROSPECTIVE JUROR NO. 576: Can you hear?

4 THE COURT: Yes. I can hear you now.

5 PROSPECTIVE JUROR NO. 576: Okay.

6 THE COURT: Okay. You said you don't know any of the
7 witnesses or attorneys, right?

8 PROSPECTIVE JUROR NO. 576: No.

9 THE COURT: You indicated that you're an office clerk
10 and I couldn't read the name of the company you're working --
11 who are you working for?

12 PROSPECTIVE JUROR NO. 576: It's called Diakon
13 Logistics. They deliver appliances for Sears.

14 THE COURT: Okay. And how long have you been doing
15 that?

16 PROSPECTIVE JUROR NO. 576: Since October.

17 THE COURT: And before that what kind of work did you
18 do?

19 PROSPECTIVE JUROR NO. 576: I worked at the EPA for a
20 little while, Nevada Environmental Protection, just part time.
21 These are both part-time positions. Before that I worked at a
22 medical instrument company I San Antonio.

23 THE COURT: San Antonio?

24 PROSPECTIVE JUROR NO. 576: Yeah. Becton-Dickinson.

25 THE COURT: How long you been in Las Vegas?

1 PROSPECTIVE JUROR NO. 576: Let's see. That'll be
2 two years in August.

3 THE COURT: And what brings you here from Texas?

4 PROSPECTIVE JUROR NO. 576: Family.

5 THE COURT: Okay. Your -- younger family? You have
6 kids here?

7 PROSPECTIVE JUROR NO. 576: I have a daughter and her
8 husband. And they have three kids and they needed a little
9 bit of help, and we were ready to move.

10 THE COURT: Okay. You said your husband is retired?

11 PROSPECTIVE JUROR NO. 576: Yes.

12 THE COURT: What's he retired from?

13 PROSPECTIVE JUROR NO. 576: He worked at the
14 airlines. He was a baggage handler.

15 THE COURT: Okay. You indicated that you had a
16 medical condition, and I don't want to go into a lot of
17 details, but --

18 PROSPECTIVE JUROR NO. 576: False alarm.

19 THE COURT: I'm sorry, false alarm?

20 PROSPECTIVE JUROR NO. 576: False alarm.

21 THE COURT: So you're going to be able to serve as a
22 juror?

23 PROSPECTIVE JUROR NO. 576: Yeah. Yeah.

24 THE COURT: Did you hear the questions that I asked
25 the other jurors about being the judge of the facts and I'm

1 the judge of the law?

2 PROSPECTIVE JUROR NO. 576: Yes.

3 THE COURT: Any problem with the procedure of the
4 State having the burden of proof and the defendants not having
5 to prove they're not guilty?

6 PROSPECTIVE JUROR NO. 576: No problem.

7 THE COURT: Okay. You understand that both -- you
8 have to be fair to both sides in the case?

9 PROSPECTIVE JUROR NO. 576: Yes.

10 THE COURT: Any reason you couldn't be a fair juror?

11 PROSPECTIVE JUROR NO. 576: No reason.

12 THE COURT: All right. State may examine.

13 MS. WECKERLY: Hi.

14 PROSPECTIVE JUROR NO. 576: Hello.

15 MS. WECKERLY: How are you?

16 PROSPECTIVE JUROR NO. 576: Fine -- well, I'm okay.

17 MS. WECKERLY: Just okay?

18 PROSPECTIVE JUROR NO. 576: Yeah, I'm okay.

19 MS. WECKERLY: Yeah. But you have good news on -- as
20 far as your health?

21 PROSPECTIVE JUROR NO. 576: Yes, yes, yes. It was --
22 yes. I'm good.

23 MS. WECKERLY: Good. If it's okay with you, I'm
24 going to start with questions about penalty and the death
25 penalty.

1 PROSPECTIVE JUROR NO. 576: Okay.

2 MS. WECKERLY: You were asked if you believe in the
3 death penalty, and you said yes, but you kind of qualified
4 your answer.

5 PROSPECTIVE JUROR NO. 576: Yes.

6 MS. WECKERLY: Can you explain that to us a little
7 bit?

8 PROSPECTIVE JUROR NO. 576: Well, you know,
9 preferably, DNA would be the perfect scenario, if it had to
10 come to something like that. And a lot of proof other than
11 that. Yeah, I -- I could possibly probably do the death
12 penalty on --

13 MS. WECKERLY: Okay.

14 PROSPECTIVE JUROR NO. 576: It's not something I'd
15 want to, but.

16 MS. WECKERLY: You've heard us talk to some of the
17 other jurors or the two or three prior jurors that the
18 situation in these cases is you first decide whether or not
19 the case has been proven beyond a reasonable doubt.

20 PROSPECTIVE JUROR NO. 576: Uh-huh.

21 MS. WECKERLY: Okay. And that's that standard. And
22 the judge will instruct you on what that is.

23 PROSPECTIVE JUROR NO. 576: Right.

24 MS. WECKERLY: And that may be with DNA, it may be
25 with different types of evidence. Maybe, you know, there's

1 fingerprints, there's eyewitness, there's all kinds of forms
2 of evidence.

3 PROSPECTIVE JUROR NO. 576: Okay.

4 MS. WECKERLY: And you decide whether or not the
5 person is guilty. And then -- then it's when -- it's after
6 that that you decide what the appropriate punishment would be.
7 Now, are you saying that you could only impose the death
8 penalty in a DNA evidence case?

9 PROSPECTIVE JUROR NO. 576: No.

10 MS. WECKERLY: Okay.

11 PROSPECTIVE JUROR NO. 576: I'm saying that would
12 probably be enough proof for me to do that.

13 MS. WECKERLY: Sure.

14 PROSPECTIVE JUROR NO. 576: But, no, there could be a
15 lesser amount of evidence, as well.

16 MS. WECKERLY: Okay. And -- and what -- and you will
17 be instructed on what -- what beyond a reasonable doubt a
18 means at the end, and you'd actually be given additional
19 instructions at the penalty hearing on how you kind of weigh
20 the evidence that's presented at that point.

21 PROSPECTIVE JUROR NO. 576: Okay.

22 MS. WECKERLY: Are you open in some situations to
23 imposing that most severe penalty?

24 PROSPECTIVE JUROR NO. 576: To opposing the death
25 penalty?

1 MS. WECKERLY: To imposing. Sorry.

2 PROSPECTIVE JUROR NO. 576: Oh, I'm sorry. Just say
3 it one more time.

4 MS. WECKERLY: Are you -- are there some situations
5 where you think the death penalty might be the right
6 punishment?

7 PROSPECTIVE JUROR NO. 576: Yes.

8 MS. WECKERLY: Okay.

9 PROSPECTIVE JUROR NO. 576: Yes.

10 MS. WECKERLY: And at the other end of the spectrum,
11 are there situations where you think there are people who
12 could be sentenced on first degree murder and should have
13 eligibility, at least, to go before a parole board?

14 PROSPECTIVE JUROR NO. 576: I -- I've not really
15 thought about it, but I guess so.

16 MS. WECKERLY: Okay.

17 PROSPECTIVE JUROR NO. 576: Yeah.

18 MS. WECKERLY: And, you know, we've discussed the
19 four possible punishments and what is required of -- of
20 jurors, in order to sit as a juror, is that in cases which are
21 severe -- all first degree murder cases are severe -- in the
22 event that you reach that verdict in the first part of the
23 trial, that you can leave your mind open to what punishment
24 you might think is appropriate.

25 PROSPECTIVE JUROR NO. 576: Yes.

1 MS. WECKERLY: And then you'll just wait to hear
2 what's presented at that point and then decide what
3 punishment. We can't have people saying, Look, I'll really
4 only consider three of them or two of them; you have to be
5 able to consider all four of them. And you can do that?

6 PROSPECTIVE JUROR NO. 576: Yes.

7 MS. WECKERLY: Okay. Are there -- I would imagine
8 there are things you'd want to hear about, or you'd want to
9 hear at least as much information as you could before making
10 that type of decision?

11 PROSPECTIVE JUROR NO. 576: Yes.

12 MS. WECKERLY: Very weighty --

13 PROSPECTIVE JUROR NO. 576: Yes. Yes.

14 MS. WECKERLY: Is there any, I guess, religious or
15 philosophical reason why it would be difficult to impose a
16 punishment on someone before you?

17 PROSPECTIVE JUROR NO. 576: Not for religious. Just
18 it's, you know, it's a pretty -- pretty -- I don't know the
19 word. It's, you know [indiscernible]. That's just --

20 MS. WECKERLY: Right.

21 PROSPECTIVE JUROR NO. 576: I'll put it that way.

22 MS. WECKERLY: I mean, and it is an --

23 THE COURT: You have to hold that microphone up to
24 you.

25 PROSPECTIVE JUROR NO. 576: Okay. I'm sorry. Okay.

1 Can you hear now?

2 MS. WECKERLY: Yes.

3 PROSPECTIVE JUROR NO. 576: Yes.

4 MS. WECKERLY: It -- I can actually always hear you,
5 it's just whether the recording is picking up --

6 PROSPECTIVE JUROR NO. 576: Okay.

7 MS. WECKERLY: -- your voice.

8 PROSPECTIVE JUROR NO. 576: Okay. All right.

9 MS. WECKERLY: It is -- it is an imposition on
10 jurors, because this is -- not to minimize other criminal
11 cases, but is the most serious type of case there is.
12 Something very serious has happened. And imposing big
13 penalties on another individual is not always an easy task. I
14 mean, it's probably never an easy task. And it shouldn't be.
15 But what we need are people that understand that it isn't an
16 easy task and that will take it seriously, but can do it and
17 can -- can take on that responsibility, because we're asking
18 you to be fair to both sides.

19 PROSPECTIVE JUROR NO. 576: Right.

20 MS. WECKERLY: And be able to tell us that whatever
21 is presented, I can be fair to both sides and listen to
22 everything before I make a decision.

23 PROSPECTIVE JUROR NO. 576: Yes.

24 MS. WECKERLY: And you can do that?

25 PROSPECTIVE JUROR NO. 576: Yes.

1 MS. WECKERLY: Okay. You were asked about your
2 feelings about the criminal justice system and you said I
3 think that you weren't sure. I assume that's because maybe
4 you haven't had a lot of first-hand experience with it?

5 PROSPECTIVE JUROR NO. 576: Probably none.

6 MS. WECKERLY: So that's probably a good thing. Do
7 you read about any cases in the newspaper or do you follow any
8 -- some people watch Court TV and --

9 PROSPECTIVE JUROR NO. 576: Oh, no.

10 MS. WECKERLY: No?

11 PROSPECTIVE JUROR NO. 576: No.

12 MS. WECKERLY: Nothing like that?

13 PROSPECTIVE JUROR NO. 576: No.

14 MS. WECKERLY: So you have better things to do?

15 PROSPECTIVE JUROR NO. 576: Yes. Yes.

16 MS. WECKERLY: Is there -- you also mentioned -- and
17 it's sort of a new -- a new topic -- are you okay?

18 PROSPECTIVE JUROR NO. 576: Yeah.

19 MS. WECKERLY: Okay. That you think that the police
20 should have body cams?

21 PROSPECTIVE JUROR NO. 576: Yes.

22 MS. WECKERLY: And that actually is a -- a thing
23 that's happening with the Las Vegas Metropolitan Police
24 Department.

25 PROSPECTIVE JUROR NO. 576: Oh, okay.

1 MS. WECKERLY: Yeah. There's several hundred
2 officers that are starting to -- to wear them.

3 PROSPECTIVE JUROR NO. 576: Oh, good.

4 MS. WECKERLY: Why is it that you think that those
5 are a good idea?

6 PROSPECTIVE JUROR NO. 576: Well, I'm originally from
7 St. Louis, this close to Ferguson. And I think that would
8 have been excellent in that --

9 MS. WECKERLY: Yeah.

10 PROSPECTIVE JUROR NO. 576: -- that --

11 MS. WECKERLY: Right. It would -- it would
12 definitely -- I mean, you can't always count on it --

13 PROSPECTIVE JUROR NO. 576: Right.

14 MS. WECKERLY: -- capturing the action, but it does
15 capture something.

16 PROSPECTIVE JUROR NO. 576: Right. Right.

17 MS. WECKERLY: And why not take advantage of the
18 technology that's there?

19 PROSPECTIVE JUROR NO. 576: Right. Yeah. Knowledge
20 is power.

21 MS. WECKERLY: Right. Is there anything about your
22 experience living in that part of the country that you would
23 say is different about interacting with the police in the two
24 different cities?

25 PROSPECTIVE JUROR NO. 576: No, I don't think so.

1 MS. WECKERLY: Okay. Have you ever had a negative
2 encounter with a police officer?

3 PROSPECTIVE JUROR NO. 576: No.

4 MS. WECKERLY: I'm sure you would agree with me that
5 I think Metro employs a couple thousand people, that there are
6 good officers and there are officers who maybe are good at
7 their job, and then there are probably some that are bad
8 apples?

9 PROSPECTIVE JUROR NO. 576: Okay. Right. Yes.

10 MS. WECKERLY: Okay. Is there anything in your life
11 that -- that would cause you to have a negative impression of
12 law enforcement such that you couldn't be fair to -- in this
13 case?

14 PROSPECTIVE JUROR NO. 576: No.

15 MS. WECKERLY: Do you have any concerns at all -- Mr.
16 Oram mentioned that some of the evidence in this case will be
17 presented photographically. And that's in the form of
18 pictures of an actual murder victim. And the pictures have
19 certain evidentiary value that you need to evaluate. Is there
20 any reason why you couldn't look at those pictures for their
21 evidentiary value?

22 PROSPECTIVE JUROR NO. 576: Well, if I had to, I
23 would, with much trepidation. But I would be able to -- to do
24 it.

25 MS. WECKERLY: Right. I mean, it's not -- it's not a

1 fun thing and it's --

2 PROSPECTIVE JUROR NO. 576: Right. Right.

3 MS. WECKERLY: But there are -- there are aspects of
4 them that could be important in terms of your assessment of
5 the evidence.

6 PROSPECTIVE JUROR NO. 576: Okay.

7 MS. WECKERLY: And we need to just have your
8 assurance that, you know, that you'll actually look at them
9 for the evidentiary value and not turn away.

10 PROSPECTIVE JUROR NO. 576: Okay.

11 THE COURT: Give these to --

12 THE MARSHAL: Yeah, I have some over here.

13 THE COURT: -- the juror down -- you got some over
14 there?

15 THE MARSHAL: Yep.

16 THE COURT: All right. We'll get you some tissue.

17 MS. WECKERLY: Just one second, I just want to check
18 one more thing.

19 The experience with your daughter, when she had her
20 ID stolen --

21 PROSPECTIVE JUROR NO. 576: Oh, yes.

22 MS. WECKERLY: -- did you contact the police?

23 PROSPECTIVE JUROR NO. 576: Yes.

24 MS. WECKERLY: And that was -- I assume that was
25 here?

1 PROSPECTIVE JUROR NO. 576: Yes.

2 MS. WECKERLY: Was there any followup, any --

3 PROSPECTIVE JUROR NO. 576: No.

4 MS. WECKERLY: No?

5 PROSPECTIVE JUROR NO. 576: It wasn't that big a
6 deal.

7 MS. WECKERLY: It wasn't that big a deal?

8 PROSPECTIVE JUROR NO. 576: There was other bigger
9 issues.

10 MS. WECKERLY: Because the police didn't follow up or
11 just...

12 PROSPECTIVE JUROR NO. 576: Well, she made the
13 report, she went to the station, you know, they had a million
14 other things going on, bigger -- bigger things.

15 MS. WECKERLY: Yeah. I mean, but is it disappointing
16 that, you know, that shouldn't have happened to her, but...

17 PROSPECTIVE JUROR NO. 576: Right. Yeah.

18 MS. WECKERLY: But, you know, are you upset with the
19 police because that -- there was not a lot of followup?

20 PROSPECTIVE JUROR NO. 576: Probably at the time.
21 But, you know, now that I can look at the big picture,
22 everybody's okay and we moved on. And --

23 MS. WECKERLY: Did she have any, like, bad credit
24 consequences?

25 PROSPECTIVE JUROR NO. 576: Luckily, it was over the

1 weekend, so she was able to stop everything before it hit on
2 that Monday.

3 MS. WECKERLY: Okay. Do you -- do you think that in
4 the -- in the end, the bottom line is if you can be fair to
5 both sides.

6 PROSPECTIVE JUROR NO. 576: Yes.

7 MS. WECKERLY: Do you think you can?

8 PROSPECTIVE JUROR NO. 576: Yes.

9 MS. WECKERLY: Thank you.

10 PROSPECTIVE JUROR NO. 576: Thank you.

11 MS. WECKERLY: I'll pass for cause, Your Honor.

12 THE COURT: All right. Mr. Sgro?

13 MR. SGRO: Thank you, Your Honor. Good morning.

14 PROSPECTIVE JUROR NO. 576: Good morning.

15 MR. SGRO: So I'm going to do the same and start
16 backwards, I guess.

17 PROSPECTIVE JUROR NO. 576: Okay.

18 MR. SGRO: You heard me discuss and you heard Mr.
19 Oram discuss all the reasons why we have to talk about the
20 penalty hearing at this point --

21 PROSPECTIVE JUROR NO. 576: Yes.

22 MR. SGRO: -- in the proceedings. And you understand
23 we're not conceding anything, right?

24 PROSPECTIVE JUROR NO. 576: Absolutely. Yes.

25 MR. SGRO: Okay. And you fully expect us to come

1 back here and do what we can to demonstrate to you why Mr.
2 Burns is not guilty of the offense, right?

3 PROSPECTIVE JUROR NO. 576: Yes. Yes.

4 MR. SGRO: And understand that we fully expect to not
5 get there.

6 PROSPECTIVE JUROR NO. 576: I understand.

7 MR. SGRO: Okay. With that, let's talk for a moment
8 about the penalty hearing and -- and some of the answers even
9 today have been along the lines of, Well, it depends on what
10 the facts are, right? And I want to make it clear that while
11 it certainly depends on what the facts are, one of the facts
12 that you have to consider, you know, putting yourself in this
13 place -- this hypothetical place is that there's been a first
14 degree murder conviction. In other words, it's not that it
15 depends on the facts of the first part, whether or not
16 someone's guilty or not guilty. If we're at penalty, you
17 understand we're already past that, right?

18 PROSPECTIVE JUROR NO. 576: Right.

19 MR. SGRO: Okay. So you read the -- the factual
20 predicate about the allegations as to Mr. Burns, a woman was
21 shot and killed, right?

22 PROSPECTIVE JUROR NO. 576: Yes.

23 MR. SGRO: And then a 12-year-old girl was also shot,
24 but she survived.

25 PROSPECTIVE JUROR NO. 576: Yes.

1 MR. SGRO: Okay. Now, in the context of the
2 questions for the penalty hearing, then, assuming that there
3 has been a conviction of first degree murder, okay, is there a
4 place in your mind where you can consider the opportunity for
5 someone to get back into society?

6 PROSPECTIVE JUROR NO. 576: Yes.

7 MR. SGRO: All right. Can you give me your best
8 argument for life with the possibility of parole? Something
9 that gives a person the chance to come back out.

10 PROSPECTIVE JUROR NO. 576: Well, I mean, I suppose
11 when you're young, you do stupid things, and hopefully you
12 could reflect and improve yourself and be useful member to
13 society. It's possible.

14 MR. SGRO: Okay. So, and that's why it's a -- it's
15 an option, even if we get to that point?

16 PROSPECTIVE JUROR NO. 576: Right.

17 MR. SGRO: You have heard us talk about some of the
18 rights that Mr. Burns has, just like anyone else accused of a
19 crime. And I understand from your answers you've never had
20 the misfortune of having that happen to you?

21 PROSPECTIVE JUROR NO. 576: Correct.

22 MR. SGRO: Okay. Do you understand that Mr. Burns is
23 presumed innocent as he sits here today?

24 PROSPECTIVE JUROR NO. 576: Yes.

25 MR. SGRO: If -- if, again, theoretically, if you had

1 to vote right now, what would your vote have to be between
2 guilty or not guilty?

3 PROSPECTIVE JUROR NO. 576: Oh, I couldn't.

4 MR. SGRO: Well, and we say this --

5 PROSPECTIVE JUROR NO. 576: If I had to, I just --
6 how could I?

7 MR. SGRO: Right. And that's sort of the point.
8 He's innocent -- if you had to vote, you'd have to vote not
9 guilty. And the point of that is that whole, you know, where
10 there's smoke, there's fire.

11 PROSPECTIVE JUROR NO. 576: Uh-huh.

12 MR. SGRO: Some people come in here and they say,
13 Okay, he's been arrested, I heard the judge tell me some very
14 serious charges. We're sitting in a courtroom. Certainly, he
15 must have done something to get him here. Do you see how that
16 could happen?

17 PROSPECTIVE JUROR NO. 576: Yes.

18 MR. SGRO: And while that happens from time to time
19 with people, it's important to understand that that sort of
20 thinking has no place inside of a courtroom. And so we ask
21 these questions because these are very common --

22 PROSPECTIVE JUROR NO. 576: Yeah.

23 MR. SGRO: -- situations. You understand how that
24 could happen, right?

25 PROSPECTIVE JUROR NO. 576: Yes. Yes.

1 MR. SGRO: Now, as you sit here, do you have any
2 quarrel with the fact that Mr. Burns is presumed innocent?

3 PROSPECTIVE JUROR NO. 576: No.

4 MR. SGRO: Do you think that because Mr. Burns was
5 arrested and he's here and we've got these serious charges, do
6 you think he must have done something to get him here?

7 PROSPECTIVE JUROR NO. 576: Well, I -- obviously
8 there was a series of events that happened somewhere somehow
9 that someone thought he should be here. But I don't know it
10 was him.

11 MR. SGRO: Okay. Fair enough. Do you remember the
12 questions we -- we talked about whether or not Mr. Burns
13 chooses to take the witness stand?

14 PROSPECTIVE JUROR NO. 576: Yes.

15 MR. SGRO: And again, there's this right we all have
16 where someone can make a choice.

17 PROSPECTIVE JUROR NO. 576: Right.

18 MR. SGRO: Do you think you would hold it against Mr.
19 Burns if he decided to not take the witness stand?

20 PROSPECTIVE JUROR NO. 576: No way. It's his --

21 MR. SGRO: Why do you say it so --

22 PROSPECTIVE JUROR NO. 576: It's his right. It's his
23 right. It's the law.

24 MR. SGRO: Is there a reason why someone that is not
25 guilty -- is there a reason you can think of why they wouldn't

1 want to testify?

2 PROSPECTIVE JUROR NO. 576: No. That -- I -- there
3 isn't. I can't -- I don't ponder on such things.

4 MR. SGRO: Okay. Let's take the -- let's take the
5 example I -- I used earlier. Mr. Burns at the time of these
6 allegations was 18. Do you think that his -- you previously
7 said something about someone being young.

8 PROSPECTIVE JUROR NO. 576: Uh-huh.

9 MR. SGRO: Do you think someone young might be a
10 little nervous to testify?

11 PROSPECTIVE JUROR NO. 576: Yeah. They -- they may
12 not be an eloquent speaker, they may, you know, there could be
13 a number of reasons.

14 MR. SGRO: And do you remember the flip side of that
15 conversation, which was if he elected to testify, whether or
16 not you'd scrutinize his words a little more harshly than you
17 would somebody else?

18 PROSPECTIVE JUROR NO. 576: I don't think -- I don't
19 know. I don't think I would, but I don't know.

20 MR. SGRO: Would you be able to commit to judging his
21 credibility like you would everyone else's credibility?

22 PROSPECTIVE JUROR NO. 576: Yes. Yeah. Yeah. Yeah.

23 MR. SGRO: In other words, people come in here --
24 this is a very serious case, right?

25 PROSPECTIVE JUROR NO. 576: Yes.

1 MR. SGRO: The most serious case we have in our
2 country.

3 PROSPECTIVE JUROR NO. 576: Yes.

4 MR. SGRO: Capital murder, right?

5 PROSPECTIVE JUROR NO. 576: Right.

6 MR. SGRO: So as people come and take the stand, I'm
7 going to expect you to be scrutinizing everyone's testimony.

8 PROSPECTIVE JUROR NO. 576: Yes. Right.

9 MR. SGRO: So -- so that part's fair.

10 PROSPECTIVE JUROR NO. 576: Okay. Yes.

11 MR. SGRO: Okay? I just don't want Mr. Burns, if he
12 makes a decision to testify, to be penalized by you because he
13 happens to be the one accused.

14 PROSPECTIVE JUROR NO. 576: No. No.

15 MR. SGRO: Okay. Now, let's talk for a minute -- go
16 -- go ahead.

17 PROSPECTIVE JUROR NO. 576: Okay. Yeah. No, it
18 wouldn't -- it wouldn't. The -- when you put it that way, no,
19 I would treat everybody the same.

20 MR. SGRO: When we talk about credibility of the
21 witnesses, can -- can you tell me a situation where you've
22 been called upon to judge whether or not someone's being
23 truthful to you?

24 PROSPECTIVE JUROR NO. 576: No, other than my kids.

25 MR. SGRO: Okay. I am, too, and you're probably used

1 to some finger-pointing?

2 PROSPECTIVE JUROR NO. 576: Yes.

3 MR. SGRO: I didn't do it, they did it?

4 PROSPECTIVE JUROR NO. 576: Yeah. Yeah.

5 MR. SGRO: Have you -- and you've resolved those
6 conflicts, obviously?

7 PROSPECTIVE JUROR NO. 576: Yes.

8 MR. SGRO: And do you listen to what they say,
9 evaluate what they say, but also look to other -- I know
10 you're not looking at evidence as a mom dealing with children,
11 but other circumstances that exist.

12 PROSPECTIVE JUROR NO. 576: Yeah. Yeah. Did -- did
13 they have the fever earlier that day, blah, blah, blah. Yeah.

14 MR. SGRO: Yeah, I'm sick today and there's an exam,
15 coincidentally?

16 PROSPECTIVE JUROR NO. 576: Yeah.

17 MR. SGRO: Right. Okay. You feel comfortable doing
18 that in this context, which it is obviously more serious, but
19 it's the same sort of skill set?

20 PROSPECTIVE JUROR NO. 576: Yeah.

21 MR. SGRO: So if we come to you and we tell you, you
22 know, there's going to be conflicts in the evidence --

23 PROSPECTIVE JUROR NO. 576: Right.

24 MR. SGRO: -- do you feel comfortable resolving
25 those?

1 PROSPECTIVE JUROR NO. 576: Yes.

2 MR. SGRO: And would you look for things like changes
3 in testimony?

4 PROSPECTIVE JUROR NO. 576: Well, I know things
5 change over time and your memory changes. So it just depends
6 on the degree of change.

7 MR. SGRO: Fair enough. So to use Mr. Oram's
8 example, if someone had said previously the light was red and
9 I'm positive, and now they come in and say the light was green
10 and I'm positive, that's different than saying I think it
11 happened at 5:25 -- no, it happened at 5:30?

12 PROSPECTIVE JUROR NO. 576: Right.

13 MR. SGRO: It's the -- it's the quality of what
14 they're --

15 PROSPECTIVE JUROR NO. 576: Yes.

16 MR. SGRO: -- changing?

17 PROSPECTIVE JUROR NO. 576: Yes.

18 MR. SGRO: All right. Have you ever heard of this
19 thing called a plea bargain or a plea negotiation?

20 PROSPECTIVE JUROR NO. 576: Yes.

21 MR. SGRO: And do you believe that there are times
22 when people can be motivated to fabricate in order to get
23 themselves out of a bad situation?

24 PROSPECTIVE JUROR NO. 576: Probably so.

25 MR. SGRO: Would you be able to evaluate that

1 situation if it presented itself here in court?

2 PROSPECTIVE JUROR NO. 576: Yes.

3 MR. SGRO: You watch any of these science shows?

4 PROSPECTIVE JUROR NO. 576: No.

5 MR. SGRO: It's amazing, so far we haven't had
6 anybody. Usually it's the majority.

7 PROSPECTIVE JUROR NO. 576: Uh-uh.

8 MR. SGRO: So no Forensic Files --

9 PROSPECTIVE JUROR NO. 576: Oh, no.

10 MR. SGRO: -- NCIS? All right.

11 PROSPECTIVE JUROR NO. 576: No.

12 MR. SGRO: Have you ever heard of these terms -- you
13 mentioned DNA in your questionnaire, fingerprint evidence?

14 PROSPECTIVE JUROR NO. 576: Yes.

15 MR. SGRO: Would you agree that science does not have
16 a motive or an agenda; it is what it is?

17 PROSPECTIVE JUROR NO. 576: Yes.

18 MR. SGRO: And that's different than a human being
19 that might have motives to fabricate, right?

20 PROSPECTIVE JUROR NO. 576: Right.

21 MR. SGRO: Would you pay attention to the science in
22 this case?

23 PROSPECTIVE JUROR NO. 576: Yes.

24 MR. SGRO: Do you think when it comes to the burden
25 of proof, you understand, we don't -- we don't have to prove

1 anything. We don't even have to be asking you these questions
2 right now; you get that right?

3 PROSPECTIVE JUROR NO. 576: Right.

4 MR. SGRO: Now, I'm going to predict that Mr. Oram
5 and I will ask questions during the trial. I'm going to
6 predict we are going to contest some of the evidence, even
7 though we don't have to.

8 PROSPECTIVE JUROR NO. 576: Right.

9 MR. SGRO: Do you have any quarrel with the fact that
10 a lot of witnesses can be called by the State, we could invest
11 five weeks in a case and you might come back not guilty? Do
12 you have trouble with that?

13 PROSPECTIVE JUROR NO. 576: No.

14 MR. SGRO: Do you remember the -- and maybe this is
15 why this puzzle question hasn't been responded to with yes,
16 because we haven't had science show watchers, or the Law &
17 Orders. Because they do a good job of wrapping up that case
18 in 60 minutes, right?

19 PROSPECTIVE JUROR NO. 576: Okay.

20 MR. SGRO: In this case, you understand your job will
21 be to simply hear what the State is alleging and match it up
22 to did they prove it?

23 PROSPECTIVE JUROR NO. 576: Right.

24 MR. SGRO: Are you okay with that?

25 PROSPECTIVE JUROR NO. 576: Yes.

1 MR. SGRO: You're never going to be asked to go the
2 next step, which is, Well if they didn't prove it, let me
3 figure out what actually happened?

4 PROSPECTIVE JUROR NO. 576: No.

5 MR. SGRO: Okay. And you're okay with that?

6 PROSPECTIVE JUROR NO. 576: Yes.

7 MR. SGRO: Remember the questions you were asked
8 about the -- or have been asked about photographs?

9 PROSPECTIVE JUROR NO. 576: Yes.

10 MR. SGRO: The gruesome nature of the photos?

11 PROSPECTIVE JUROR NO. 576: Yes. Yes.

12 MR. SGRO: And, you know, I -- I did this thing
13 where, you know, you look at that picture and then you look at
14 someone for retribution. You understand those photos, in
15 every murder case the photographs are always unpleasant and
16 they depict violence.

17 PROSPECTIVE JUROR NO. 576: Right.

18 MR. SGRO: Can you commit to compartmentalizing that
19 evidence as it comes in to understand what it is, what its use
20 is, but to not look to retaliate against --

21 PROSPECTIVE JUROR NO. 576: Yes. Yes.

22 MR. SGRO: Okay. This term eyewitness
23 identification, you ever heard of it?

24 PROSPECTIVE JUROR NO. 576: I've heard of it.

25 MR. SGRO: Have you ever been mistaken for someone?

1 Someone comes up to you and thinks they got -- they have the
2 wrong person?

3 PROSPECTIVE JUROR NO. 576: Yes.

4 MR. SGRO: Have you ever done the other --

5 PROSPECTIVE JUROR NO. 576: I'm sure I have.

6 MR. SGRO: Okay. And -- and you know what the point
7 of all of it is, right? It's -- it's --

8 PROSPECTIVE JUROR NO. 576: Right.

9 MR. SGRO: -- being able to hear what someone is
10 going to say they saw, heard, did --

11 PROSPECTIVE JUROR NO. 576: Uh-huh.

12 MR. SGRO: -- and evaluate in the context of how much
13 time went by, what else was going on, was it dark outside,
14 light outside, that kind of thing.

15 PROSPECTIVE JUROR NO. 576: Right.

16 MR. SGRO: No problem doing that?

17 PROSPECTIVE JUROR NO. 576: Right.

18 MR. SGRO: And do you own a cell phone?

19 PROSPECTIVE JUROR NO. 576: Yes.

20 MR. SGRO: Do you ever go through your records to
21 look through them?

22 PROSPECTIVE JUROR NO. 576: No. But I'm ready for
23 that question. My husband does and we were charged for Mexico
24 calls and we weren't in Mexico. But as it turns out we were
25 in El Paso, which is right on the border. And that's why we

1 got charged.

2 MR. SGRO: Okay. So you've had an experience
3 personally then with some errors on the --

4 PROSPECTIVE JUROR NO. 576: Yes.

5 MR. SGRO: -- phone bill? So you're not going to,
6 then, accept a package of records because they're computer
7 generated, they look nice, you're not going to say, Oh, they
8 must be all accurate?

9 PROSPECTIVE JUROR NO. 576: Right.

10 MR. SGRO: Okay. In the questions that have come up
11 thus far, has anything prompted you to think, you know, maybe
12 this isn't the right case for me? Or do you think you could
13 be fair in this case?

14 PROSPECTIVE JUROR NO. 576: I can be fair, but, you
15 know, it's not a good case. I can be fair.

16 MR. SGRO: And as Judge Thompson will happily remind
17 all of us --

18 PROSPECTIVE JUROR NO. 576: Right.

19 MR. SGRO: -- no one -- no one on the questionnaire
20 said, Man, I cannot wait --

21 PROSPECTIVE JUROR NO. 576: Right.

22 MR. SGRO: -- to set aside five weeks of my life --

23 PROSPECTIVE JUROR NO. 576: Yeah.

24 MR. SGRO: -- to come in and listen to a murder case.
25 Sign me up. Okay. We have one.

1 UNIDENTIFIED PROSPECTIVE JUROR: I do.

2 MR. SGRO: Two.

3 UNIDENTIFIED PROSPECTIVE JUROR: I really do want to
4 be here.

5 MR. SGRO: We are increasing. Can you --

6 THE COURT: They're the first two all week, I've got
7 to tell you.

8 MR. SGRO: Can you look at Mr. Burns and commit to
9 him you're going to give him a fair shot -- a fair trial?

10 PROSPECTIVE JUROR NO. 576: Can I look at him and
11 what?

12 MR. SGRO: Commit that you --

13 PROSPECTIVE JUROR NO. 576: Yes.

14 MR. SGRO: -- will give him a fair trial?

15 PROSPECTIVE JUROR NO. 576: Yes. I can give you a
16 fair trial.

17 MR. SGRO: Okay. Thank you. Pass for cause, Your
18 Honor.

19 THE COURT: Mr. Langford?

20 MR. LANGFORD: Thank you, Your Honor. You heard
21 earlier when I talked about, you know, two trials, but one --

22 PROSPECTIVE JUROR NO. 576: Right.

23 MR. LANGFORD: And you're okay with that concept?

24 PROSPECTIVE JUROR NO. 576: Yes. Yes.

25 MR. LANGFORD: You're going to give Mr. Mason a fair

1 trial --

2 PROSPECTIVE JUROR NO. 576: Oh, yes.

3 MR. LANGFORD: -- as well as Mr. Burns?

4 PROSPECTIVE JUROR NO. 576: Yes, sir.

5 MR. LANGFORD: The fact that they're seeking a
6 greater penalty against Mr. Burns than they are against my
7 client, you know, they're -- they're trying to execute him,
8 they're only seeking, you know, at most they're seeking life
9 without the possibility of parole as to my client.

10 PROSPECTIVE JUROR NO. 576: Right.

11 MR. LANGFORD: Can you hear those two issues
12 separately?

13 PROSPECTIVE JUROR NO. 576: Yes.

14 MR. LANGFORD: Okay. I guess do you have any other
15 questions?

16 PROSPECTIVE JUROR NO. 576: Do I have any questions?

17 MR. LANGFORD: Yeah.

18 PROSPECTIVE JUROR NO. 576: No.

19 MR. LANGFORD: Okay. Pass for cause, Your Honor.

20 THE COURT: All right. If you'd hand that microphone
21 over to Mr. Vizcarra; is that right?

22 PROSPECTIVE JUROR NO. 577: That's correct.

23 THE COURT: Tell me about yourself, Mr. Vizcarra;
24 you're -- first of all, do you know any of the attorneys or
25 the witnesses?

1 PROSPECTIVE JUROR NO. 577: Not that I know of. No,
2 sir.

3 THE COURT: All right. And you say that you're
4 retired?

5 PROSPECTIVE JUROR NO. 577: Correct.

6 THE COURT: What are you retired from?

7 PROSPECTIVE JUROR NO. 577: Well, my last job was
8 Desert Springs Hospital, retired five years from there. I
9 worked at the Planet Hollywood, assistant manager of
10 housekeeping. I did that for eight years. I did
11 Stratosphere, supervisor environmental services, I did that
12 for four years. Back and forth between here and Hawaii,
13 working with my brother's company there. So just in general,
14 retired from -- time to go fishing.

15 THE COURT: What did you do at the hospital?

16 PROSPECTIVE JUROR NO. 577: I worked in environmental
17 services department and we took care of cleaning all patient
18 rooms, surgery rooms, emergency area.

19 THE COURT: Kind of in charge of housekeeping?

20 PROSPECTIVE JUROR NO. 577: Yes, sir.

21 THE COURT: Okay. And what did you do in Hawaii with
22 your brother?

23 PROSPECTIVE JUROR NO. 577: He owned his own
24 business. He was in carpet -- carpet business. So I worked
25 with him for --

1 THE COURT: Why would you come back from Hawaii?

2 PROSPECTIVE JUROR NO. 577: Actually, I worked at
3 Pearl Harbor from 1980 to 1989 in the workman's WC, it's the
4 work center. I was an electrical inspector. I took care of
5 removing [indiscernible] transformers, PCB transformers. And
6 they educated me back and forth between Maryland and Virginia
7 and all that, to do that. And the project was a three-year
8 project that turned into a -- a nine-year project. And I
9 think being in Hawaii had a lot to do with that.

10 THE COURT: Okay. I don't blame you. Well, what do
11 you do now that you're retired?

12 PROSPECTIVE JUROR NO. 577: Actually, I was living in
13 Ensenada with my brother. He has a place down in Ensenada,
14 and I was staying down there. And my son, who was working at
15 the Harrah's, was laid off and he was going through some
16 financial difficulties. So I came back in order to assist him
17 and hopefully he's back on the right track and I can get back
18 to the more serious matters, like fishing and...

19 THE COURT: Like fishing and playing golf?

20 PROSPECTIVE JUROR NO. 577: Well, not actually. I'm
21 not into golf that much. But I do like to go to observatories
22 and all the different things that they offer down there. So.

23 THE COURT: Okay. Good. Well, you're going to go
24 back to Ensenada when this case is over with?

25 PROSPECTIVE JUROR NO. 577: Not right away, not after

1 this case is over. I have a few issues that I need to take
2 care of here so that I don't have to return unless I want to.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 577: I'd like to go down there
5 for six months and come back here for four or five months, you
6 know, when it's 150 and I'll be in Ensenada.

7 THE COURT: You said in your questionnaire that you
8 were a juror before in a civil case?

9 PROSPECTIVE JUROR NO. 577: Yes. Uh-huh.

10 THE COURT: And that was here in Las Vegas?

11 PROSPECTIVE JUROR NO. 577: Yes.

12 THE COURT: And you said it was a -- a suit for money
13 between some family members?

14 PROSPECTIVE JUROR NO. 577: Yes.

15 THE COURT: Did that jury reach a verdict?

16 PROSPECTIVE JUROR NO. 577: Yes. We went to verdict.

17 THE COURT: Were you -- were you the foreman of the
18 jury?

19 PROSPECTIVE JUROR NO. 577: No, I wasn't.

20 THE COURT: And you understand in a civil case you --
21 you listen to both sides, both sides have to testify, both
22 sides have to tell you their version. And you decide on which
23 side the evidence preponderates -- it's a preponderance of the
24 evidence.

25 PROSPECTIVE JUROR NO. 577: Yes.

1 THE COURT: And you rule for whichever side is more
2 likely true than not true.

3 PROSPECTIVE JUROR NO. 577: Yes, sir.

4 THE COURT: Okay. This is a criminal case.

5 PROSPECTIVE JUROR NO. 577: Yes.

6 THE COURT: It's completely different. The burden of
7 proof here is that the State has to prove the defendant's
8 guilt by evidence beyond a reasonable doubt. It's much higher
9 than a preponderance. Okay?

10 PROSPECTIVE JUROR NO. 577: Yes. Yes, sir.

11 THE COURT: Okay. And I'm -- the only reason I'm
12 saying that is to explain the difference between civil and
13 criminal cases.

14 PROSPECTIVE JUROR NO. 577: Yes, sir.

15 THE COURT: Do you think you could be a fair juror in
16 a case like this?

17 PROSPECTIVE JUROR NO. 577: Oh, yes, sir.

18 THE COURT: All right. Counsel?

19 MR. DiGIACOMO: Thank you, Judge. Well, we have 12
20 minutes, so good morning, sir.

21 PROSPECTIVE JUROR NO. 577: Good morning.

22 MR. DiGIACOMO: I notice on your questionnaire that
23 you served in our military?

24 PROSPECTIVE JUROR NO. 577: Yes, sir.

25 MR. DiGIACOMO: And it was the Air Force?

1 PROSPECTIVE JUROR NO. 577: Yes.

2 MR. DiGIACOMO: What was your job assignment in the
3 military?

4 PROSPECTIVE JUROR NO. 577: I was a 542X1, it's an
5 exterior electrician. So I dealt with high voltage,
6 basically, yes.

7 MR. DiGIACOMO: And then it asks your highest rank
8 attained, you say E5.

9 PROSPECTIVE JUROR NO. 577: Yes.

10 MR. DiGIACOMO: I was never in the military, so I'm
11 not exactly sure what E5 is.

12 PROSPECTIVE JUROR NO. 577: That's a staff sergeant.

13 MR. DiGIACOMO: Staff sergeant?

14 PROSPECTIVE JUROR NO. 577: Yes.

15 MR. DiGIACOMO: Okay. Did you have a number of
16 people that reported to you as a staff sergeant?

17 PROSPECTIVE JUROR NO. 577: I was -- I went in the
18 military at 21, and by 22 years old I was a noncommissioned
19 officer in charge of my unit. So other people reported to me.

20 MR. DiGIACOMO: And I imagine as a supervisor there
21 were times when you had to resolve conflicts between
22 individuals?

23 PROSPECTIVE JUROR NO. 577: Yes.

24 MR. DiGIACOMO: And I'm assuming sometimes those
25 conflicts didn't necessarily involve the same story from both

1 sides?

2 PROSPECTIVE JUROR NO. 577: Yes, sir. That's right.

3 MR. DiGIACOMO: Did you think you were capable of
4 figuring out what ultimately generally the truth was in those
5 situations?

6 PROSPECTIVE JUROR NO. 577: Ultimately, yes. Uh-huh.
7 Because I would research to find out, because everybody has
8 their own definition of what transpired and it was my job to
9 find out which one is more correct.

10 MR. DiGIACOMO: Do you think you're capable of doing
11 that?

12 PROSPECTIVE JUROR NO. 577: Yes. Uh-huh.

13 MR. DiGIACOMO: You have one of the -- I wouldn't say
14 more interesting, actually, I'd say more favorite answers to
15 the questions about the criminal justice system. Because you
16 kind of separate the system from the justice. You said, "The
17 system is great, the justice is so-so." What did you mean by
18 that?

19 PROSPECTIVE JUROR NO. 577: I think being -- I
20 traveled in Europe, I was all over Europe, I visited, I was
21 there for four years. I've been to, like, 14 countries, I've
22 been -- I lived in Hawaii for eight, nine years. I've been
23 across the United States four times. I think our system is
24 one of the most fair systems that I could see in -- in my
25 travels.

1 MR. DiGIACOMO: Sure. And but you said justice is
2 so-so. Do you think that a system made up of human beings at
3 times makes mistakes?

4 PROSPECTIVE JUROR NO. 577: I believe in justice is
5 what we're doing now, to me, is the most fair way to -- to
6 come up with a -- a fair system. So it's a so-so, depending
7 on -- I don't know. The -- the question that I always have an
8 issue with being judged by your peers. I don't know what
9 constitutes a peer.

10 MR. DiGIACOMO: Well, yeah. I mean, that -- the term
11 that you use generally for -- for us, it's just 12 average,
12 everyday people --

13 PROSPECTIVE JUROR NO. 577: Yes.

14 MR. DiGIACOMO: -- from the street. We just grab
15 people from the street. As long as you don't have any bias
16 that excludes you, 12 people, 12 fellow citizens --

17 PROSPECTIVE JUROR NO. 577: Uh-huh.

18 MR. DiGIACOMO: -- make a decision as to both guilt
19 and -- in a murder case, should you get there, penalty.

20 PROSPECTIVE JUROR NO. 577: Yes.

21 MR. DiGIACOMO: I don't mean to pry into your son's
22 issues, but did your son ever wind up being arrested for his
23 issues?

24 PROSPECTIVE JUROR NO. 577: There was one incident
25 about 20 years ago that he was arrested for. But other than

1 -- no.

2 MR. DiGIACOMO: So the modern-day issues --

3 PROSPECTIVE JUROR NO. 577: No, he hasn't.

4 MR. DiGIACOMO: -- is nothing to do with crime?

5 PROSPECTIVE JUROR NO. 577: No.

6 MR. DiGIACOMO: Okay. And then the time that he was
7 arrested, do you think the system treated him fairly overall?

8 PROSPECTIVE JUROR NO. 577: Yes.

9 MR. DiGIACOMO: Okay. I want to jump to the
10 questions on -- on the penalty. Obviously, by this point
11 everybody understands that we only get to penalty if Ms.
12 Weckerly and I prove our case beyond a reasonable doubt in a
13 first phase of the trial.

14 PROSPECTIVE JUROR NO. 577: Yes.

15 MR. DiGIACOMO: You understand that, correct?

16 PROSPECTIVE JUROR NO. 577: Yes.

17 MR. DiGIACOMO: If we get there, and I know there's
18 been questions and there may be some confusion, it's not, Hey,
19 based upon this fact pattern, can you consider all four forms
20 of punishment? It's -- in a hypothetical world, any person
21 convicted of first degree murder is entitled to a jury that's
22 willing to consider all four forms of punishment.

23 PROSPECTIVE JUROR NO. 577: Yes.

24 MR. DiGIACOMO: Do you think that you can do that?

25 PROSPECTIVE JUROR NO. 577: Yes, sir.

1 MR. DiGIACOMO: Do you think that, without telling me
2 what those scenarios are, there are certain facts or
3 circumstances that may be established in your mind where you
4 believe the ultimate punishment is the appropriate punishment?

5 PROSPECTIVE JUROR NO. 577: That's considering -- I
6 mean, that depends on how the trial transpired and --

7 MR. DiGIACOMO: Sure.

8 PROSPECTIVE JUROR NO. 577: -- then that's -- that's
9 when the decision -- and I believe that's why we have that
10 second phase, to decide what --

11 MR. DiGIACOMO: Correct.

12 PROSPECTIVE JUROR NO. 577: -- what to take.

13 MR. DiGIACOMO: I mean, and basically what I'm saying
14 is I don't want to -- want you to tell me what those
15 circumstances are --

16 PROSPECTIVE JUROR NO. 577: Uh-huh.

17 MR. DiGIACOMO: -- because everybody has their own
18 personal sense of justice. But there is some circumstance out
19 there that in your mind you could conceive of yourself voting
20 for the death penalty, whatever that --

21 PROSPECTIVE JUROR NO. 577: Oh, yes.

22 MR. DiGIACOMO: -- circumstances is.

23 PROSPECTIVE JUROR NO. 577: Yes. Uh-huh.

24 MR. DiGIACOMO: And on the flip side of that, there
25 are some circumstances, whatever those may be, that

1 ultimately, despite the fact that he's been convicted of first
2 degree murder, that you would be open to the possibility that
3 he receive a sentence that may wind up in him seeing a parole
4 board someday?

5 PROSPECTIVE JUROR NO. 577: Yes. Yes. Uh-huh.

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

7 PROSPECTIVE JUROR NO. 577: Yes, I do.

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

9 PROSPECTIVE JUROR NO. 577: Yes, I do.

10 MR. DiGIACOMO: Thank you very much, sir.

11 PROSPECTIVE JUROR NO. 577: You're welcome.

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

13 THE COURT: All right. Mr. Oram?

14 MR. ORAM: Thank you, Your Honor. Good morning, sir.

15 PROSPECTIVE JUROR NO. 577: Good morning.

16 MR. ORAM: And I'm going to get done before noon.

17 Okay. We'll get you out of here.

18 Sir, one question I -- I may have not have heard and
19 may -- how long were you in the Air Force?

20 PROSPECTIVE JUROR NO. 577: Seven years.

21 MR. ORAM: And you said that you were -- I believe
22 you were stationed all over Europe?

23 PROSPECTIVE JUROR NO. 577: I was stationed at Hahn
24 Air Base, Germany, which is right on the corner of France and
25 Luxembourg, and so I -- I was stationed at -- in Germany.

1 MR. ORAM: When did you receive discharge papers,
2 what year?

3 PROSPECTIVE JUROR NO. 577: 1973.

4 MR. ORAM: You said you hadn't seen combat. That
5 seems like the years of Vietnam.

6 PROSPECTIVE JUROR NO. 577: I went in in 1966 and we
7 filled out the dream sheet, which all the military does. So I
8 put down conflict, I wanted to go and they sent me to Europe.
9 So...

10 MR. ORAM: Never near Asia?

11 PROSPECTIVE JUROR NO. 577: No. It was reverse
12 psychology.

13 MR. ORAM: Okay. You talked about fishing. This --
14 this obviously is really serious stuff in here.

15 PROSPECTIVE JUROR NO. 577: Sure.

16 MR. ORAM: And so we're taking you away from fishing.
17 But you'd be able to concentrate, listen to this case
18 carefully?

19 PROSPECTIVE JUROR NO. 577: I'm -- you're not taking
20 me away from anything. It's -- I retired, I went down there
21 and I have friends who own charter boats. So it's not like
22 it's a must-do. But it's something I always thought of doing
23 at -- at the end of my retirement.

24 MR. ORAM: You're going to be called upon to
25 determine whether people are being truthful with you or not,

1 okay, when -- when they hit that witness stand.

2 PROSPECTIVE JUROR NO. 577: Yes, sir.

3 MR. ORAM: Okay. You've lived enough years to know
4 that some people are going to lie whether they're under oath
5 or not --

6 PROSPECTIVE JUROR NO. 577: Yes, sir.

7 MR. ORAM: -- is that fair? Okay. And we hope
8 they're not, right?

9 PROSPECTIVE JUROR NO. 577: That's correct.

10 MR. ORAM: But -- but some people have that tendency.

11 PROSPECTIVE JUROR NO. 577: Yes, sir.

12 MR. ORAM: Okay. Do you think you'd be pretty good
13 at determining whether someone's lying to you?

14 PROSPECTIVE JUROR NO. 577: I don't know. I would
15 have -- it's -- it's all -- people -- some people are very
16 good at lying. So it's -- it's hard to -- to really, without
17 all the facts, to see what -- whether they're lying or not.

18 MR. ORAM: That -- that's true. That's absolutely
19 true. I guess you have to look at all the facts and then you
20 may stand back and say, I just can't tell. Or maybe you just
21 don't know enough facts, right?

22 PROSPECTIVE JUROR NO. 577: Yes, correct.

23 MR. ORAM: I mean, I could be lying about my name,
24 right?

25 PROSPECTIVE JUROR NO. 577: Yes, correct.

1 MR. ORAM: And you just don't -- how would you know,
2 right?

3 PROSPECTIVE JUROR NO. 577: Correct.

4 MR. ORAM: Okay. But in a case like this, maybe
5 you'd hear other people come in and say that I always lie
6 about my name and it may make you suspicious, right? Make
7 sense? Let me ask a better question. I'll ask you a better
8 question.

9 You would look at all of the facts, all of the
10 evidence to make those kind of decisions, don't you think?

11 PROSPECTIVE JUROR NO. 577: Correct.

12 MR. ORAM: Okay. See, we use that
13 red-light/green-light stuff a lot.

14 PROSPECTIVE JUROR NO. 577: Yes, sir.

15 MR. ORAM: Okay. Because it makes it easy. I mean,
16 if -- if I say the light was red or a witness says the light
17 was red and then you see a videotape and you can clearly see
18 it's green --

19 PROSPECTIVE JUROR NO. 577: Yes, sir.

20 MR. ORAM: -- it's going to help you make that
21 decision.

22 PROSPECTIVE JUROR NO. 577: Yes.

23 MR. ORAM: Okay. The science that you've been
24 hearing about, you -- you have no difficulty listening to
25 that?

1 PROSPECTIVE JUROR NO. 577: No, sir.

2 MR. ORAM: Okay. You've heard DNA, fingerprints, all
3 that kind of stuff?

4 PROSPECTIVE JUROR NO. 577: Yes, sir.

5 MR. ORAM: Mr. Langford always makes a good point,
6 the gentleman who represents Mr. Mason, there are two young
7 men on trial over there. Okay. They have a right to
8 essentially separate consideration by the jury. And what I
9 mean by that is just because you thought, let's say, Mr. Burns
10 was not guilty, that wouldn't mean that you would
11 automatically think Mr. Mason was not guilty; do you see?

12 PROSPECTIVE JUROR NO. 577: That -- that's correct.
13 Yes.

14 MR. ORAM: You have to look at the facts and then
15 apply it to each individual.

16 PROSPECTIVE JUROR NO. 577: Yes, sir.

17 MR. ORAM: Okay. You've got two speeders over here,
18 you look at the evidence, you decide whether they're both
19 speeders, maybe neither one of them's a speeder, or maybe one
20 of them's a speeder and the other is not.

21 PROSPECTIVE JUROR NO. 577: Yes, sir.

22 MR. ORAM: Fair? Okay. I also always ask about the
23 Constitutional principles by the very fact that it seems you
24 spent years of your life defending that Constitution, you
25 don't have any problem with that; is that right?

1 PROSPECTIVE JUROR NO. 577: No, sir.

2 MR. ORAM: Okay. If Mr. Burns decides not to testify
3 on the advice of counsel and just his own right, you -- would
4 you hold that against him?

5 PROSPECTIVE JUROR NO. 577: No, sir.

6 MR. ORAM: If somebody was back there in that jury
7 deliberation room saying he didn't testify, do you think that
8 maybe you'd stop him and say that, Hey, wait a second, this
9 isn't the law, we're going to follow the law --

10 PROSPECTIVE JUROR NO. 577: Yes, sir.

11 MR. ORAM: -- do you think --

12 PROSPECTIVE JUROR NO. 577: That's -- that's his
13 choice.

14 MR. ORAM: Okay. And then last area I really want to
15 touch on is Mr. Burns is an African-American. Okay?

16 PROSPECTIVE JUROR NO. 577: Yes, sir.

17 MR. ORAM: Is there anything about that that would
18 cause you to feel that you could not be fair?

19 PROSPECTIVE JUROR NO. 577: No, sir.

20 MR. ORAM: Okay. As you look at Mr. Burns, he has
21 long hair, he's -- he's sitting there, you know, he has hopes
22 of what's going to happen here. There is nothing about the
23 way he looks that would think I can't be fair to that man?

24 PROSPECTIVE JUROR NO. 577: No, sir.

25 MR. ORAM: Can you look at Mr. Burns and promise him

1 a fair trial?

2 PROSPECTIVE JUROR NO. 577: Yes, sir.

3 MR. ORAM: Thank you very much. Pass for cause, Your
4 Honor.

5 THE COURT: Mr. Langford?

6 MR. LANGFORD: Mr. Oram stole my thunder, Your Honor.
7 I pass for cause.

8 THE COURT: Okay. Mrs. Korn?

9 PROSPECTIVE JUROR NO. 584: Yes.

10 THE COURT: Mrs. Korn, do you know any of the
11 witnesses or attorneys involved in the case?

12 PROSPECTIVE JUROR NO. 584: No. But I don't know if
13 it's worth mentioning, but I used to work for the Department
14 of Family Services when I first moved out here. And I think
15 they were named as a possible witness.

16 THE COURT: Okay. I don't know that the Department
17 of Family Services employees are going to be witnesses. I
18 think they're going to bring some documents from the
19 Department of Family Services.

20 PROSPECTIVE JUROR NO. 584: Okay.

21 THE COURT: I may be wrong about that. But I suspect
22 that they're more interested in the documents than they are
23 the witnesses.

24 PROSPECTIVE JUROR NO. 584: Okay.

25 THE MARSHAL: Can you hold the microphone a little

1 closer.

2 THE COURT: Okay. What did you do for the Department
3 of Family Services, while we're on that?

4 PROSPECTIVE JUROR NO. 584: I was an administrative
5 assistant for a year when I first moved out there. So this
6 was 2006 through 2007.

7 THE COURT: And as an administrative assistant, what
8 was your job?

9 PROSPECTIVE JUROR NO. 584: Just office support for
10 the adoption representative. But, I can't remember, it was a
11 social worker, but she kind of handled the adoption services
12 part of it.

13 THE COURT: Okay. And you were more interested in
14 the adoptions of children who were -- had been placed with
15 foster parents and they were then adopted by some of those
16 foster parents?

17 PROSPECTIVE JUROR NO. 584: That's right. Yes.

18 THE COURT: Okay. I did some of the -- I go down to
19 Family Court, too, by the way. So I -- I've done some of
20 those adoptions down there. I think I know what your job was.

21 PROSPECTIVE JUROR NO. 584: Okay.

22 THE COURT: You're working for AIG now?

23 PROSPECTIVE JUROR NO. 584: Yes.

24 THE COURT: And what do you do for AIG?

25 PROSPECTIVE JUROR NO. 584: I work in the

1 construction defect claims department. I'm kind of -- my role
2 is segmentation technician, which is similar to claims
3 assistant.

4 THE COURT: And do you -- do you do, like, adjusting
5 on claims?

6 PROSPECTIVE JUROR NO. 584: I don't do the adjusting.
7 I review the notices of loss and assign them to the proper
8 manager and department.

9 THE COURT: So you're kind of a -- you're in the
10 office most of the time?

11 PROSPECTIVE JUROR NO. 584: Yes.

12 THE COURT: And you're assigning work out to the
13 adjusters?

14 PROSPECTIVE JUROR NO. 584: Right.

15 THE COURT: Okay. And before that, what kind of work
16 did you do?

17 PROSPECTIVE JUROR NO. 584: I worked -- I worked in
18 work comp insurance for six years.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 584: Premium auditor.

21 THE COURT: All right. And your husband works for
22 the State of Nevada?

23 PROSPECTIVE JUROR NO. 584: Yes.

24 THE COURT: He's a fraud investigator?

25 PROSPECTIVE JUROR NO. 584: Yes.

1 THE COURT: Is he working with the attorney general's
2 office for fraud?

3 PROSPECTIVE JUROR NO. 584: Yes.

4 THE COURT: Like Medicare fraud and insurance fraud
5 and --

6 PROSPECTIVE JUROR NO. 584: Medicare, Medicaid.

7 THE COURT: Medicare fraud?

8 PROSPECTIVE JUROR NO. 584: Yes.

9 THE COURT: Medicaid fraud?

10 PROSPECTIVE JUROR NO. 584: Medicaid, yeah.

11 THE COURT: Medicaid fraud. And so he's
12 investigating both individuals who are claiming money, usually
13 physicians or other medical providers who are claiming money
14 when they didn't do the work?

15 PROSPECTIVE JUROR NO. 584: That's right. Yes.

16 THE COURT: Okay. Does he consider himself in law
17 enforcement?

18 PROSPECTIVE JUROR NO. 584: He --

19 THE COURT: You don't know?

20 PROSPECTIVE JUROR NO. 584: I -- I think it is
21 considered a law enforcement.

22 THE COURT: Does he have a gun?

23 PROSPECTIVE JUROR NO. 584: He does have a gun.

24 THE COURT: He does?

25 PROSPECTIVE JUROR NO. 584: Yes.

1 THE COURT: He carries a badge?

2 PROSPECTIVE JUROR NO. 584: Yes.

3 THE COURT: Okay. He has the power to arrest people?

4 PROSPECTIVE JUROR NO. 584: Yes.

5 THE COURT: All right. Do you think because of the
6 association that your husband has in law enforcement that
7 you're going to be more inclined to favor the prosecution in a
8 claim like this?

9 PROSPECTIVE JUROR NO. 584: I don't think so.

10 THE COURT: You think you could be fair to -- was he
11 a former police officer?

12 PROSPECTIVE JUROR NO. 584: Yes. He worked for New
13 York City Police Department.

14 THE COURT: New York City?

15 PROSPECTIVE JUROR NO. 584: Yes.

16 THE COURT: And are you from New York?

17 PROSPECTIVE JUROR NO. 584: Yes.

18 THE COURT: What -- what brings you to Las Vegas?

19 PROSPECTIVE JUROR NO. 584: Just ready for a change.

20 THE COURT: Okay. So he gave up his job and you gave
21 up yours and came here?

22 PROSPECTIVE JUROR NO. 584: Basically, yes.

23 THE COURT: All right. You don't have any children?

24 PROSPECTIVE JUROR NO. 584: No.

25 THE COURT: Do you have family out here?

1 PROSPECTIVE JUROR NO. 584: No.

2 THE COURT: Why Las Vegas?

3 PROSPECTIVE JUROR NO. 584: We liked it.

4 THE COURT: Okay. Well, that's good. We're happy to
5 have you.

6 PROSPECTIVE JUROR NO. 584: Thank you.

7 THE COURT: You heard the explanation on the roles
8 that you and I play together. We're a team. I'm the judge of
9 the law, but you're the judge of the facts. Do you think you
10 can do that?

11 PROSPECTIVE JUROR NO. 584: Yes.

12 THE COURT: You think you can follow my instructions
13 on the law that I give to the jurors at the conclusion of the
14 case?

15 PROSPECTIVE JUROR NO. 584: Yes.

16 THE COURT: There are times when there are jurors who
17 disagree with the law. Sometimes even judges do. But I'm
18 obligated to give to you the law of Nevada that applies in the
19 case, and you're obligated to follow those instructions. For
20 example, sometimes I've -- I've done drug cases where I've had
21 jurors who didn't like the fact that it was against the law to
22 use, possess, or sale -- sell drugs. Some people think drugs
23 ought to be legal. That's their opinion, and if they want to
24 change it, go to the legislature and get it changed. But I'm
25 obligated to give to the jurors the instructions on the law of

1 Nevada that apply in the case. And you're willing to follow
2 those instructions?

3 PROSPECTIVE JUROR NO. 584: Yes.

4 THE COURT: All right. Is there any reason that you
5 can't be fair to both sides in this case?

6 PROSPECTIVE JUROR NO. 584: No.

7 THE COURT: All right. Ms. Weckerly?

8 MS. WECKERLY: Thank you. Hi.

9 PROSPECTIVE JUROR NO. 584: Hi.

10 MS. WECKERLY: How are you?

11 PROSPECTIVE JUROR NO. 584: I'm good. How are you?

12 MS. WECKERLY: Good, thank you. In college you
13 majored in psych?

14 PROSPECTIVE JUROR NO. 584: Yes.

15 MS. WECKERLY: Psychology?

16 PROSPECTIVE JUROR NO. 584: Yes.

17 MS. WECKERLY: Were you planning on doing something
18 different than what you're doing now?

19 PROSPECTIVE JUROR NO. 584: Honestly, I didn't have a
20 clear plan when I was in college.

21 MS. WECKERLY: And you -- it looks like you and your
22 husband came here when you were in your 20s, right?

23 PROSPECTIVE JUROR NO. 584: Right.

24 MS. WECKERLY: So you -- was it sort of right after
25 you both -- or you graduated?

1 PROSPECTIVE JUROR NO. 584: I think I had graduated
2 three years before.

3 MS. WECKERLY: Okay. What did you -- where did you
4 work after you graduated?

5 PROSPECTIVE JUROR NO. 584: I worked for a hospital
6 in New York right after I graduated.

7 MS. WECKERLY: And was it -- it sounds like you're in
8 insurance now. Was it in an insurance-type capacity in --

9 PROSPECTIVE JUROR NO. 584: No. My first job out of
10 college was just kind of like front desk receptionist.

11 MS. WECKERLY: When your -- when your husband was
12 working as a police officer, was he uniform patrol?

13 PROSPECTIVE JUROR NO. 584: Yes.

14 MS. WECKERLY: Did he have -- was he ever in any, you
15 know, pretty violent situations?

16 PROSPECTIVE JUROR NO. 584: Yes.

17 MS. WECKERLY: Did he discuss those with you when he
18 came home?

19 PROSPECTIVE JUROR NO. 584: Yes.

20 MS. WECKERLY: Does that at all affect your ability
21 to be fair in this case, do you think?

22 PROSPECTIVE JUROR NO. 584: I don't think so. I try
23 to not, you know, generalize everything and everyone, you
24 know, and think of things as a case-by-case situation.

25 MS. WECKERLY: Okay. Was he ever -- did he have to

1 testify at a grand jury or at any trials?

2 PROSPECTIVE JUROR NO. 584: I don't think so.

3 MS. WECKERLY: Okay. So he was -- but he was patrol,
4 I mean, he would have been probably pretty young, right? So
5 he would have been not a detective yet, like a patrol officer?

6 PROSPECTIVE JUROR NO. 584: Right, a patrol officer.

7 MS. WECKERLY: When you moved out here, did he
8 consider going into Metro or was the -- the job with the State
9 a better deal?

10 PROSPECTIVE JUROR NO. 584: He was offered a position
11 with the -- a different state department. So --

12 MS. WECKERLY: Okay.

13 PROSPECTIVE JUROR NO. 584: -- still in law
14 enforcement, but not what he's doing now.

15 MS. WECKERLY: Okay. You were asked about your
16 feelings, like everyone else, about how drugs interact with
17 crime.

18 PROSPECTIVE JUROR NO. 584: Right.

19 MS. WECKERLY: And actually you put maybe you studied
20 that a little bit or a lot in college. What's your -- what's
21 your opinion on that?

22 PROSPECTIVE JUROR NO. 584: I would assume that -- or
23 think that taking drugs influences your behavior and your
24 decision-making abilities and would probably be a factor in,
25 you know --

1 MS. WECKERLY: Go ahead.

2 PROSPECTIVE JUROR NO. 584: -- if you did commit a
3 crime and you were on drugs, it might have played a role in
4 it.

5 MS. WECKERLY: Do you think people who take drugs and
6 later commit crimes have responsibility for their actions?

7 PROSPECTIVE JUROR NO. 584: Yes.

8 MS. WECKERLY: How about sort of the -- the flip side
9 of that, if -- if someone is on drugs or, you know, has
10 ingested drugs, do you think that they can still be the victim
11 of a crime?

12 PROSPECTIVE JUROR NO. 584: Yes.

13 MS. WECKERLY: And do you think people who may have
14 break -- broken the law deserve the protection of the law,
15 like everybody else?

16 PROSPECTIVE JUROR NO. 584: Yes.

17 MS. WECKERLY: You were asked your feelings about the
18 death penalty. And you wrote, "In extreme circumstances it is
19 understandable." I take from that answer -- and I don't want
20 to put words in your mouth -- that you think it might -- it
21 could be the appropriate punishment in some circumstances?

22 PROSPECTIVE JUROR NO. 584: Right.

23 MS. WECKERLY: Are there instances where you've maybe
24 seen on the news or heard about cases where you have thought
25 that it would be an appropriate punishment?

1 PROSPECTIVE JUROR NO. 584: Nothing that comes to
2 mind right away. But I'm sure I've --

3 MS. WECKERLY: Right. I don't -- I'm not going to
4 ask you to name the case. I just -- I guess I just think in
5 your mind you can maybe conceptualize a situation where it
6 would be the appropriate punishment?

7 PROSPECTIVE JUROR NO. 584: Yes.

8 MS. WECKERLY: Okay. And you've heard us discuss
9 again and again that -- that in the event of a first degree
10 murder conviction, there are lesser punishments that are
11 available for first degree murder, as well?

12 PROSPECTIVE JUROR NO. 584: Yes.

13 MS. WECKERLY: And do you foreclose any of the -- the
14 four punishments that are possible, or could you consider them
15 all at this point?

16 PROSPECTIVE JUROR NO. 584: I can consider them all.

17 MS. WECKERLY: Okay. And can you listen to whatever
18 information is presented at a penalty hearing before deciding
19 what punishment is appropriate?

20 PROSPECTIVE JUROR NO. 584: Yes.

21 MS. WECKERLY: Would it be difficult for you to come
22 in and announce that you had voted with your fellow jurors and
23 individually decided that the death penalty was appropriate?

24 PROSPECTIVE JUROR NO. 584: Would it be difficult to
25 make that decision or?

1 MS. WECKERLY: Yeah. To -- to come in and announce
2 that decision in court.

3 PROSPECTIVE JUROR NO. 584: Not if I felt it was the
4 right decision.

5 MS. WECKERLY: Okay. And the only -- the only reason
6 why I ask that, and maybe you read it too quickly, is you
7 marked on one of the questions, "Although I do not personally
8 favor the death penalty, as long as the law may require me to
9 consider it, I will follow my oath and the law and consider
10 it." And from that I took that maybe that would be difficult
11 for you.

12 And then on another part of your questionnaire, you
13 said, "A death sentence is more than I think I could handle
14 emotionally and mentally".

15 PROSPECTIVE JUROR NO. 584: Well, right. I guess
16 what I mean is I understand the need for it or the possibility
17 of death -- you know, voting for a death penalty. I don't
18 think it's something that's easy for anyone --

19 MS. WECKERLY: Right.

20 PROSPECTIVE JUROR NO. 584: -- to have to, you know,
21 make that decision. I'm sure it's the kind of thing that'll
22 keep you up at night.

23 MS. WECKERLY: Yeah.

24 PROSPECTIVE JUROR NO. 584: But -- but I would be
25 able to.

1 MS. WECKERLY: Yeah. I mean, it's -- your -- 20
2 years from now you'll remember what you decided. Okay. And
3 -- and so -- and that's true. And that should be a decision
4 -- I mean, it's not going to be something -- I think no matter
5 what you decide, you're not going to be happy about it or not
6 happy about it. What we need, though, are people that can
7 handle, I guess, making that type of decision, knowing that
8 you will always remember what you did.

9 PROSPECTIVE JUROR NO. 584: I -- I would say yes at
10 this point.

11 MS. WECKERLY: Okay.

12 PROSPECTIVE JUROR NO. 584: I have no experience with
13 it.

14 MS. WECKERLY: Right, right. You haven't done that
15 before.

16 PROSPECTIVE JUROR NO. 584: Yeah.

17 MS. WECKERLY: And it should be a decision that,
18 like, you're, I guess, confident or comfortable, I guess, with
19 the decision that you made that it was appropriate, are you
20 someone who can do that?

21 PROSPECTIVE JUROR NO. 584: I think so.

22 MS. WECKERLY: Okay. And so you -- you can sit here
23 with us through this trial and if we get to the penalty phase,
24 it is an individual decision, but you also will discuss it
25 with fellow jurors. You can decide what the punishment should

1 be?

2 PROSPECTIVE JUROR NO. 584: Yes.

3 MS. WECKERLY: And although it's -- I can tell you're
4 not going to at all take this lightly, and I don't think
5 anyone will, it's not going to overwhelm you so much that --
6 that you can't participate?

7 PROSPECTIVE JUROR NO. 584: I don't -- I don't think
8 so.

9 MS. WECKERLY: Okay. And -- and I -- I'm not trying
10 to -- I don't know what, pick on you, I guess, but I just need
11 you to -- we can only talk to you now. We can't find out
12 halfway in that you can't do it, or I can't be part of this.
13 And so only you can tell us, like, if you -- if you think you
14 can participate in this type of process. And it isn't for
15 everybody, and it's, you know, some people for whatever
16 reason, either what's going on in their life at the moment,
17 what's gone on in the past or whatever, or just, you know
18 what, I cannot -- I can't participate in that kind of
19 decision-making. If you can, that's great, just tell us you
20 can. If it's something that you, for whatever reason, can't
21 participate in, we need to know that, too.

22 PROSPECTIVE JUROR NO. 584: Well, I think I -- I can.

23 MS. WECKERLY: Okay. Thank you.

24 PROSPECTIVE JUROR NO. 584: Okay.

25 MS. WECKERLY: I would pass for cause.

1 MR. SGRO: Good afternoon.

2 PROSPECTIVE JUROR NO. 584: Hello.

3 MR. SGRO: Yeah, you still have to deal with me.

4 Sorry.

5 Let me ask you a couple of questions. There's been a
6 lot of bad situations for police officers in New York over the
7 last month or so; are you aware of those situations?

8 PROSPECTIVE JUROR NO. 584: Yes.

9 MR. SGRO: Have -- did your husband by any chance --
10 because I was just trying to figure out, they would be roughly
11 the same age as when your husband started back there. Did
12 your husband have anything to do with those folks or know them
13 or anything?

14 PROSPECTIVE JUROR NO. 584: No.

15 MR. SGRO: So he didn't fly back to New York or --
16 for any reason?

17 PROSPECTIVE JUROR NO. 584: No.

18 MR. SGRO: Okay. And also, obviously, because of
19 your husband's situation, you were asked the question by Ms.
20 Weckerly about affinity, you know, for the police. So do you
21 think as you come in here the State has an advantage in this
22 case just because of what your husband did for work?

23 PROSPECTIVE JUROR NO. 584: No.

24 MR. SGRO: Why do you see -- you seem very confident
25 when you say that. Why do you say it so confidently?

1 PROSPECTIVE JUROR NO. 584: I -- I have -- I know I
2 can separate what my husband does or used to do from what's in
3 front of me now. So I'm not going to sway one way or the
4 other just because of my -- my husband's job.

5 MR. SGRO: So five, six weeks from now you hear the
6 case, you deliberate, you don't think the State's met their
7 burden. You come in and you announce a not guilty verdict.
8 Do you think you're going to take any grief for that at home
9 with your husband, like How-could-you-have-done-that kind of
10 thing?

11 PROSPECTIVE JUROR NO. 584: No.

12 MR. SGRO: Okay. That's -- that's not even a
13 possibility?

14 PROSPECTIVE JUROR NO. 584: Not a possibility. No.

15 MR. SGRO: All right. And relative to the questions
16 that Ms. Weckerly just finished with, you understand, be a
17 pretty ugly society if people were anxious to impose the death
18 penalty, right?

19 PROSPECTIVE JUROR NO. 584: Correct.

20 MR. SGRO: And -- and you will never be told, not in
21 this case or any other case, the law never requires the
22 imposition -- the law never requires the imposition of the
23 death penalty, okay. In other words, there's not -- once we
24 hit this threshold, now you have to do the death penalty; do
25 you understand that?

1 PROSPECTIVE JUROR NO. 584: I understand.

2 MR. SGRO: So it's -- the reason why we can talk
3 about, you know, what the law requires in the first part,
4 beyond a reasonable doubt and all those sorts of things, is
5 because we have rules that apply to the first part of -- of
6 what we're doing here. At the penalty hearing, though, you --
7 we're really going to throw four options to you if we get
8 there, and then really it's between you and your conscience,
9 whatever you want to do. Do you understand that?

10 PROSPECTIVE JUROR NO. 584: Yes.

11 MR. SGRO: Okay. And -- and given that understanding
12 now, it's -- through those eyes, you could consider all the --
13 different ranges; would that be fair?

14 PROSPECTIVE JUROR NO. 584: Yes.

15 MR. SGRO: Any quarrel with any of the rights that we
16 have discussed so far, the presumption of innocence and all
17 that stuff?

18 PROSPECTIVE JUROR NO. 584: No.

19 MR. SGRO: Any problem with Mr. Burns sitting here,
20 do you think that he must have done something that they've
21 charged him with just because he's here?

22 PROSPECTIVE JUROR NO. 584: No.

23 MR. SGRO: Pretty confident about that?

24 PROSPECTIVE JUROR NO. 584: I mean, honestly, I don't
25 know if I understand enough about the process of how someone

1 is not charged with something, but yet they're here. I mean,
2 I guess something brought him to this seat. But I'm not going
3 to assume anything at this point.

4 MR. SGRO: And do you remember the questions about
5 whether or not he chooses to testify?

6 PROSPECTIVE JUROR NO. 584: Yes.

7 MR. SGRO: How do you think you'd react if he chose
8 to not testify?

9 PROSPECTIVE JUROR NO. 584: I think -- I don't think
10 it'd be a -- I don't think I'd have a negative reaction
11 automatically. I can understand why he wouldn't want to.

12 MR. SGRO: And you then would not take it back into
13 the jury room and say to yourself, Well, if he really didn't
14 do anything, why didn't he say so himself?

15 PROSPECTIVE JUROR NO. 584: No.

16 MR. SGRO: Can you think of a reason why someone that
17 didn't do anything would choose to not take the witness stand?

18 PROSPECTIVE JUROR NO. 584: Probably if they're
19 nervous, you kind of stumble on your words. You might not be
20 able to articulate as well and...

21 MR. SGRO: And you're going to hear, as I know you've
22 heard me already say, Mr. Burns was 18 at the time these
23 offenses were alleged to have occurred. Might his age have
24 something to do with his decision-making?

25 PROSPECTIVE JUROR NO. 584: Yes.

1 MR. SGRO: How about his attorney's advice, could
2 that be an issue, too?

3 PROSPECTIVE JUROR NO. 584: It could, yeah.

4 MR. SGRO: Any problem with investing five weeks in a
5 case as serious as murder and coming back and returning a
6 verdict of not guilty?

7 PROSPECTIVE JUROR NO. 584: No.

8 MR. SGRO: And do you remember those questions I
9 asked about the science shows, do you happen to watch any of
10 those?

11 PROSPECTIVE JUROR NO. 584: I don't.

12 MR. SGRO: Okay. I'm still looking for my first one
13 today. Do you have any quarrel with the fact that you're
14 going to be given a specific job to do, that is, State's going
15 to present you some facts, they're going to present you what
16 they say the charges are, and they're going to tell you, you
17 know, we've proven these facts meet these charges. You get
18 that, right?

19 PROSPECTIVE JUROR NO. 584: Right.

20 MR. SGRO: It would never be your job to decide,
21 well, I -- I do have a reasonable doubt, I don't think he's
22 guilty, but before I can vote not guilty, I want to go figure
23 out what happened. In other words, if they didn't solve it
24 for you, it's never your job to go solve the crime. You
25 understand that?

1 PROSPECTIVE JUROR NO. 584: I do.

2 MR. SGRO: And would you be okay with that?

3 PROSPECTIVE JUROR NO. 584: Yes.

4 MR. SGRO: Have you ever been mistaken for anyone?

5 Someone comes up to you and says, Hey, and then they realize,
6 when you turn around, you're not the right person?

7 PROSPECTIVE JUROR NO. 584: I don't think so.

8 MR. SGRO: Have you ever been on the other side of
9 that? Have you ever gone up to someone, thought they were
10 somebody, and...

11 PROSPECTIVE JUROR NO. 584: Probably. But...

12 MR. SGRO: Okay. Well, I -- and you know what the
13 point of that is, right? It's -- it's this whole notion of
14 eyewitness identification.

15 PROSPECTIVE JUROR NO. 584: Right.

16 MR. SGRO: Will you be able to evaluate whether
17 someone is -- is able to perceive and recall for you certain
18 events as they testify from the witness stand; will you be
19 able to take that into consideration?

20 PROSPECTIVE JUROR NO. 584: Yes.

21 MR. SGRO: And will you also evaluate other things,
22 like time, you know, whether it was dark or light? There's a
23 couple of things that are just common sense, right?

24 PROSPECTIVE JUROR NO. 584: Right.

25 MR. SGRO: If I tell you this is what I saw, you want

1 to know, well, how far away were you? You know, these common
2 sense questions. Right?

3 PROSPECTIVE JUROR NO. 584: Right, yes.

4 MR. SGRO: Have you ever been in a situation where
5 you're at a -- a sporting event, watching a movie, maybe even
6 sitting in a car and something happens, like a car accident.
7 You're with somebody else, two people see supposedly the same
8 event, come away with different memories of what occurred;
9 ever happen to you?

10 PROSPECTIVE JUROR NO. 584: It might -- nothing comes
11 to mind right away. But I understand what you mean.

12 MR. SGRO: Can you -- would you -- would you be able
13 to imagine a situation as you're sitting in a car speaking to
14 your husband, a friend, a colleague, and something happens
15 right in front of you, quick as you both look, you may see
16 different things?

17 PROSPECTIVE JUROR NO. 584: Yes.

18 MR. SGRO: You may even disagree as to what you saw.

19 PROSPECTIVE JUROR NO. 584: Right.

20 MR. SGRO: These questions about credibility, you
21 feel comfortable assessing credibility of witnesses?

22 PROSPECTIVE JUROR NO. 584: Yes.

23 MR. SGRO: You ever been in a situation, I'm sure in
24 the different jobs that you've had, you've had to figure out
25 when someone's not being straight with you?

1 PROSPECTIVE JUROR NO. 584: Yes.

2 MR. SGRO: Have you -- you've heard the questions
3 about the police officers. Your husband's a former police
4 officer. If we are critical of the police officers in this
5 case, would that be offensive to you in any way?

6 PROSPECTIVE JUROR NO. 584: No.

7 MR. SGRO: So if we criticize them because, you know,
8 you should have done this, why didn't you do that, you can
9 imagine in a case like this that there may be some criticisms
10 of the detectives in the case.

11 PROSPECTIVE JUROR NO. 584: Yes.

12 MR. SGRO: Would you hold it against us if we
13 attacked the quality of their work in this case?

14 PROSPECTIVE JUROR NO. 584: No.

15 MR. SGRO: Have you heard of DNA and fingerprints?

16 PROSPECTIVE JUROR NO. 584: Yes.

17 MR. SGRO: And you believe they have a place in the
18 criminal prosecution?

19 PROSPECTIVE JUROR NO. 584: Yes.

20 MR. SGRO: And -- and remember those questions about
21 credibility, people that have an agenda, remember we talked
22 about the person that might take a deal, save themselves some
23 -- you know, get themselves out of trouble, right?

24 PROSPECTIVE JUROR NO. 584: Yes.

25 MR. SGRO: Do you agree that there's a difference

1 between science and being it is what it is versus someone
2 speaking to you from the stand and maybe having motivation to
3 lie?

4 PROSPECTIVE JUROR NO. 584: There's a difference,
5 yep.

6 MR. SGRO: And will you accept and listen to science
7 in this particular case?

8 PROSPECTIVE JUROR NO. 584: Yes.

9 MR. SGRO: Have you ever had the misfortune of being
10 accused of something you didn't do?

11 PROSPECTIVE JUROR NO. 584: No.

12 MR. SGRO: Have you ever had to try to convince
13 someone that you were being honest with them?

14 PROSPECTIVE JUROR NO. 584: No.

15 MR. SGRO: In other words, as you speak, someone's
16 questioning your truthfulness?

17 PROSPECTIVE JUROR NO. 584: No.

18 MR. SGRO: Have you ever had an experience where
19 someone's spoken to you and you thought they were being honest
20 with you, turned out later that they were dishonest?

21 PROSPECTIVE JUROR NO. 584: Yes.

22 MR. SGRO: And did you know that person very well?

23 PROSPECTIVE JUROR NO. 584: No. This was probably
24 work-related.

25 MR. SGRO: Okay. Have you ever thought that someone

1 was being dishonest with you and later turned out they were
2 telling you the truth? Has that ever happened to you?

3 PROSPECTIVE JUROR NO. 584: Probably.

4 MR. SGRO: Let me ask you this question. Have you
5 ever found yourself in a position of saying or thinking to
6 yourself, you know what, it doesn't matter what I say at this
7 point, it's just not going to change the situation?

8 PROSPECTIVE JUROR NO. 584: Yes.

9 MR. SGRO: Were you frustrated with -- in that
10 particular situation?

11 PROSPECTIVE JUROR NO. 584: Yes.

12 MR. SGRO: And finally, you -- you remember the
13 questions about the photographs, right?

14 PROSPECTIVE JUROR NO. 584: Yes.

15 MR. SGRO: You know that thing I do, where you look
16 at the picture and then look at who's sitting next to me,
17 right?

18 PROSPECTIVE JUROR NO. 584: Right.

19 MR. SGRO: Can we have a commitment from you that
20 you'll be able to evaluate that evidence for what it is and
21 not look at something like that that depicts the violence of
22 the crime and immediately want retribution; do we have that
23 commitment from you?

24 PROSPECTIVE JUROR NO. 584: Yes.

25 MR. SGRO: Can you give Mr. Burns a fair trial?

1 PROSPECTIVE JUROR NO. 584: Yes.

2 MR. SGRO: Pass for cause, Your Honor.

3 THE COURT: Okay. Okay.

4 MR. LANGFORD: Okay. Who loves technology? Not me.
5 Hate technology.

6 Again, you know, I just need to go over the two
7 trials, one set of evidence. You're good with that?

8 PROSPECTIVE JUROR NO. 584: Yes.

9 MR. LANGFORD: Feel like you can evaluate
10 individually as to the two individuals?

11 PROSPECTIVE JUROR NO. 584: Yes.

12 MR. LANGFORD: Can you return a split verdict? You
13 know, if that's what the evidence shows, that State proved one
14 but not the other, could you return a -- a split verdict?

15 PROSPECTIVE JUROR NO. 584: Yes.

16 MR. LANGFORD: Can you return a verdict after five
17 long weeks of evidence of not guilty if the State hasn't
18 proved their case?

19 PROSPECTIVE JUROR NO. 584: Yes.

20 MR. LANGFORD: You understand that some people are
21 going to feel like that's a waste of time? You understand
22 that's not a waste of time if that's the verdict you come back
23 with, that was your oath?

24 PROSPECTIVE JUROR NO. 584: Right.

25 MR. LANGFORD: You're good with that?

1 PROSPECTIVE JUROR NO. 584: I am.

2 MR. LANGFORD: Going to give Mr. Mason a fair trial?

3 PROSPECTIVE JUROR NO. 584: Yes.

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

5 THE COURT: All right. It's about a quarter after
6 12:00. We'll go to about -- we'll take -- give you a luncheon
7 break and have you come back about a quarter after 1:00. The
8 juror -- the court will be at ease while the jury leaves.

9 You can leave at this time, see you in about an hour.

10 (Jury recessed at 12:24 p.m.)

11 THE COURT: The record reflect that the prospective
12 jurors have executed the courtroom -- or exited the courtroom.
13 Why do I keep saying that? I apologize.

14 We're going to -- and actually, I just looked at the
15 clock. It's actually a short hour. It's going to be about 50
16 minutes.

17 MR. SGRO: Your Honor, can we get the hour? We have
18 to go back to our offices and take care of --

19 THE COURT: Hurry up. Drive fast.

20 (Court recessed at 12:26 p.m. until 1:18 p.m.)

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

22 THE COURT: All right. State versus Burns and
23 Mason. The record will reflect the presence of the
24 defendants, their counsel, the district attorneys, and the
25 prospective jurors in the box.

1 Mr. Kehring, is it -- whoops.

2 THE MARSHAL: I've got to change the batteries out.

3 THE COURT: Got to change the batteries. They
4 couldn't do that over the noon hour. They had to wait until
5 you -- we got here.

6 THE MARSHAL: Well, no, when he picked up I saw the
7 red light, so --

8 THE COURT: Oh, it's got a red light.

9 THE MARSHAL: No. No batteries.

10 THE COURT: No batteries?

11 MR. LANGFORD: It's technology, Your Honor. It's
12 technology.

13 THE COURT: Let the record reflect I'm biting my
14 tongue.

15 (Pause in the proceedings.)

16 THE COURT: All right. Mr. Kehring.

17 PROSPECTIVE JUROR NO. 592: Yes.

18 THE COURT: First of all, are you acquainted with
19 any of the witnesses or lawyers involved in the case?

20 PROSPECTIVE JUROR NO. 592: None. None at all.

21 THE COURT: All right. You indicated in your
22 questionnaire that you're retired. What are you retired from?

23 PROSPECTIVE JUROR NO. 592: Last was I owned a
24 business for five years back in Minnesota selling boat docks
25 and did a lot of fishing.

1 THE COURT: Botox?

2 PROSPECTIVE JUROR NO. 592: Boat docks.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NO. 592: Back in Minnesota with
5 the ice you have to take your docks out every year. So I'd
6 sell docks that were easy to take in and out.

7 THE COURT: Boat docks.

8 PROSPECTIVE JUROR NO. 592: Yep.

9 THE COURT: Okay. And before that what kind of
10 work?

11 PROSPECTIVE JUROR NO. 592: Actually, the rest of my
12 career was all in high technology, managing large consulting
13 organizations, computers, data centers all around the world.

14 THE COURT: Really?

15 PROSPECTIVE JUROR NO. 592: Yeah.

16 THE COURT: Did you work for another company?

17 PROSPECTIVE JUROR NO. 592: IBM and Control Data, a
18 number of others like that.

19 THE COURT: Okay. And your wife is retired, too?

20 PROSPECTIVE JUROR NO. 592: Just recently, yes.

21 THE COURT: And what was she doing?

22 PROSPECTIVE JUROR NO. 592: She was a product
23 manager for a company called Landis & Gyr, a multi-billion
24 dollar energy management company.

25 THE COURT: And what did she do for them?

1 PROSPECTIVE JUROR NO. 592: Product manager.

2 THE COURT: You -- you indicated that you have no
3 problem serving on the jury. You did indicate in one -- in
4 response to one question that many, many years ago you were
5 actually charged with a misdemeanor offense. Without going
6 into any detail, was that -- is that all over with?

7 PROSPECTIVE JUROR NO. 592: Oh, yeah, many -- more
8 than 30 years ago.

9 THE COURT: And you're not going to hold that
10 against anybody in this case?

11 PROSPECTIVE JUROR NO. 592: Absolutely not, no.

12 THE COURT: All right. You were not convicted of
13 the offense, you were just charged?

14 PROSPECTIVE JUROR NO. 592: No, I actually was
15 convicted of a misdemeanor.

16 THE COURT: Did you serve time on the offense?

17 PROSPECTIVE JUROR NO. 592: Actually, I served
18 weekend time for a couple of months at like a county jail type
19 of thing.

20 THE COURT: Again, you're not going to hold that
21 against anybody here?

22 PROSPECTIVE JUROR NO. 592: Absolutely not. It gave
23 me a --

24 THE COURT: You understand my job is to tell the
25 jurors what the law is at the conclusion of the evidence, but

1 I'm not going to decide the case for you. You're going to
2 decide the case.

3 PROSPECTIVE JUROR NO. 592: Yep.

4 THE COURT: You're going to decide what the facts
5 are, apply them to the law, and then reach a fair verdict.
6 You think you can do that?

7 PROSPECTIVE JUROR NO. 592: Yeah, I've been all my
8 life called anal retentive because I'm very big on facts and
9 getting all the facts, but I've also been a decision maker my
10 entire life. So I realize that's the most critical role that
11 we play here is analyzing the facts and then making a
12 decision.

13 THE COURT: Okay. State, Ms. Weckerly.

14 MS. WECKERLY: Thank you.

15 How are you, sir

16 PROSPECTIVE JUROR NO. 592: Very good. Thank you
17 for asking.

18 MS. WECKERLY: In the offense that happened to you
19 quite a number of years ago, did you feel like you were
20 treated fairly?

21 PROSPECTIVE JUROR NO. 592: Yes, very much so.

22 MS. WECKERLY: Like I have with many of the jurors,
23 I just want to start at the back of the questionnaire with the
24 questions about penalty and punishment that was asked
25 everybody thus far. What are your feelings about the death

1 penalty, sir?

2 PROSPECTIVE JUROR NO. 592: Well, definitely in some
3 cases I do believe that it's the right -- right thing to do,
4 just as I believe on the other end that a parole -- possible
5 parole is -- is a possibility. And -- and for people that
6 could be rehabilitated, I think that's an important
7 possibility. I'm a little foggy on those two in between, and
8 I probably would need some help from a judge kind of giving
9 more guidelines about when to -- when to apply one versus the
10 other.

11 MS. WECKERLY: It's -- it's kind of interesting that
12 you mention that. It's -- the Judge certainly does give you
13 additional instructions in a penalty hearing, but it's pretty
14 much up to the jurors what they believe justice is for that
15 first degree murder.

16 PROSPECTIVE JUROR NO. 592: Uh-huh.

17 MS. WECKERLY: And so the -- I think Mr. Sgro
18 mentioned, or maybe it was Mr. Oram, you never have to impose
19 a particular punishment. And -- and the law isn't going to
20 tell you if you have one, two, and three it's death. If you
21 have one and two it's life without. It's never like that.
22 There are certain requirements that must be met before someone
23 is eligible for the death penalty. But then after that, you
24 know, it's kind of up to your --

25 PROSPECTIVE JUROR NO. 592: Okay.

1 MS. WECKERLY: -- yourself and your -- all your
2 fellow jurors what the punishment can be.

3 PROSPECTIVE JUROR NO. 592: Okay.

4 MS. WECKERLY: Knowing that, do you have any
5 problems with kind of reserving judgment on what a punishment
6 should be until you hear all the information?

7 PROSPECTIVE JUROR NO. 592: Oh, absolutely. You
8 know, you have to do that, so --

9 MS. WECKERLY: Okay.

10 PROSPECTIVE JUROR NO. 592: -- I would not -- try
11 not to get any preconceived opinions.

12 MS. WECKERLY: Okay. Now, you wrote on your
13 questionnaire that people that are convicted of murder should
14 essentially suffer the same consequence that they caused. And
15 I guess my question is do you believe that's the case in all
16 cases of first degree murder?

17 PROSPECTIVE JUROR NO. 592: No, not at all.

18 MS. WECKERLY: Okay. So --

19 PROSPECTIVE JUROR NO. 592: So -- so for somebody
20 that was going in for a robbery and it was premeditated or a
21 hardened criminal and they -- they were going to leave no
22 witnesses alive, I mean, something like that I think it's a
23 clear cut case of the death penalty. But in many other
24 instances there's so many other factors that would lead to one
25 of the other three that that should be applied.

1 MS. WECKERLY: Okay. And we -- we don't need to
2 know what the particular factual scenarios would be for you
3 for, you know, if I hear this it's going to be death.

4 PROSPECTIVE JUROR NO. 592: Right. Right.

5 MS. WECKERLY: I just need to know that there are
6 instances or you can imagine a scenario of first degree murder
7 where you would impose a sentence of less than death, and even
8 one where someone could go before a parole board.

9 PROSPECTIVE JUROR NO. 592: Oh, absolutely.
10 Absolutely. I --

11 MS. WECKERLY: Okay.

12 PROSPECTIVE JUROR NO. 592: I believe that's the
13 case.

14 MS. WECKERLY: Is there any -- any instance either
15 personally or someone close to you in the past where you've
16 had bad or frustrating experience with a police officer?

17 PROSPECTIVE JUROR NO. 592: No. Never -- never had
18 a ticket in my life, never had an accident, so I've had very
19 little contact --

20 MS. WECKERLY: Okay.

21 PROSPECTIVE JUROR NO. 592: -- with police.

22 MS. WECKERLY: And you wrote you have a generally
23 positive view of the criminal justice system.

24 PROSPECTIVE JUROR NO. 592: Yes, I do.

25 MS. WECKERLY: Okay. Is that based on stuff you've

1 read or maybe you've followed cases in the news?

2 PROSPECTIVE JUROR NO. 592: Again, like the other
3 gentleman here, I've lived in Europe, I've traveled all over
4 the world, I read the newspaper cover to cover every day. I
5 -- I just -- you know, compared to other countries, I just
6 think we've done very well at the system we've put together.
7 And, you know, again, it's not absolutely perfect, but I think
8 it's a very, very good system.

9 MS. WECKERLY: And you have a basis of comparison
10 from your travels?

11 PROSPECTIVE JUROR NO. 592: Yes. Yep.

12 MS. WECKERLY: How about people that are committing
13 a crime, can those people still be victims of a crime?

14 PROSPECTIVE JUROR NO. 592: Yes, absolutely. Yep.

15 MS. WECKERLY: And do they still deserve the
16 protection, do you think, of the criminal justice system?

17 PROSPECTIVE JUROR NO. 592: Most assuredly. That's
18 why it's such a good system. Yep.

19 MS. WECKERLY: How do you feel about -- what's your
20 assessment of how drugs interact with criminal activity?

21 PROSPECTIVE JUROR NO. 592: I do -- again, I've
22 never tried drugs in my life so I -- it's hard for me to
23 exactly relate. But I do believe in everything I've studied
24 that it -- it can influence people to do crimes that they may
25 not have done otherwise. But it still doesn't take away the

1 fact that they -- they've committed the crime. But I think it
2 certainly is a factor in -- in many crimes that happen.

3 MS. WECKERLY: Something to consider.

4 PROSPECTIVE JUROR NO. 592: Yes.

5 MS. WECKERLY: But I think you also just said in
6 your answer there it doesn't really change accountability.

7 PROSPECTIVE JUROR NO. 592: That's correct.

8 MS. WECKERLY: Do you have any concerns at all about
9 seeing pretty graphic photos of -- of murder scenes or --

10 PROSPECTIVE JUROR NO. 592: None whatsoever. Nope.

11 MS. WECKERLY: And you can assure both sides, and I
12 include Mr. Mason in that, too, you can assure all -- all
13 parties here a fair trial?

14 PROSPECTIVE JUROR NO. 592: I truly believe that's
15 been part of my role throughout my whole career is acting in
16 that kind of a capacity.

17 MS. WECKERLY: Thank you, sir.

18 State will pass for cause, Your Honor.

19 THE COURT: Mr. Oram.

20 MR. ORAM: Thank you, Your Honor.

21 Good afternoon, sir.

22 PROSPECTIVE JUROR NO. 592: Same to you.

23 MR. ORAM: Thank you. When the Judge asked who
24 would want to be on the jury or something, you remember you
25 raised your hand?

1 PROSPECTIVE JUROR NO. 592: Yeah, I have -- I am 69
2 years old and I have never in my entire career been selected
3 to be a potential juror and I've always felt that's one of my
4 main civic responsibilities and I've always wanted to be
5 selected. So now that I'm retired, I have the time, and quite
6 frankly, I'd really like to be able to be selected. I just
7 would like to do my duty.

8 MR. ORAM: Okay. And that is. I mean, one time I
9 heard a Judge say that it's one of the very few things that an
10 American citizen really should do.

11 PROSPECTIVE JUROR NO. 592: Right.

12 MR. ORAM: Okay.

13 PROSPECTIVE JUROR NO. 592: I agree.

14 MR. ORAM: And so you want to do it and you're being
15 as straight as you possibly can saying I want --

16 PROSPECTIVE JUROR NO. 592: As a matter of fact,
17 because I want to be on one so bad, I probably won't be
18 selected. But I'd even like to be the foreman. I mean, I've
19 done -- been a manager all my life and I can see myself, you
20 know, performing that role if -- if I had the possibility, or
21 at least I'd offer my services as that.

22 MR. ORAM: You know, as a -- as a juror, obviously
23 the sides, the parties, are looking for people who can be fair
24 minded. As you can see, there are certain parts of people and
25 their opinions that can make them incapable of serving on

1 certain types of juries, okay.

2 PROSPECTIVE JUROR NO. 592: Uh-huh.

3 MR. ORAM: It sounds to me like you're saying that
4 I'm listening to all of this process, I filled in the
5 question, I feel I can be fair to the State of Nevada.

6 PROSPECTIVE JUROR NO. 592: Correct.

7 MR. ORAM: I feel I can be fair to Mr. Mason and Mr.
8 Burns.

9 PROSPECTIVE JUROR NO. 592: I truly believe that.

10 MR. ORAM: You've listened to numerous questions.
11 You're starting to see what we meant from the beginning. You
12 hear it over and over. And it sounds as though you're saying
13 I really think I'm really a fair-minded person and I can
14 consider this case.

15 PROSPECTIVE JUROR NO. 592: I -- I really believe
16 that.

17 MR. ORAM: Okay. I want to ask you something, okay.
18 Forget about this case for a second. We're downstairs in a
19 car burglary, okay, and I'm asking you the same questions in a
20 -- in a car theft or, you know, some other kind of much less
21 serious case. And it's a concern. It's something -- because
22 I have never been a juror that I wonder, okay. And that is
23 you've heard the Judge and he'll -- he'll tell you what beyond
24 a reasonable doubt means at the end, okay. But in our system
25 we use beyond a reasonable doubt.

1 PROSPECTIVE JUROR NO. 592: Right.

2 MR. ORAM: Okay. If the State doesn't prove beyond
3 a reasonable doubt that the defendant is guilty of the car
4 theft --

5 PROSPECTIVE JUROR NO. 592: Yeah.

6 MR. ORAM: -- then she would be entitled to a
7 verdict of not guilty.

8 PROSPECTIVE JUROR NO. 592: Uh-huh.

9 MR. ORAM: No problem with that?

10 PROSPECTIVE JUROR NO. 592: No, none. None
11 whatsoever.

12 MR. ORAM: But what I wonder just in any criminal
13 case is if jurors go back there and they think, you know what,
14 probably, probably she is guilty of car theft, but all 12
15 jurors think there's a reasonable doubt as to whether she's
16 guilty of car theft, don't you think it would be pretty hard
17 to come into a courtroom and say, you know what, probably she
18 did it, but they didn't prove it beyond a reasonable doubt.
19 Do you see that as something that seems difficult for
20 outsiders to look at and think that jurors have to struggle
21 with that concept?

22 PROSPECTIVE JUROR NO. 592: I don't think so because
23 I think if there's any possibility that it wasn't the case,
24 that they should not have a guilty. You look at all the cases
25 now that have been overturned through new DNA evidence or

1 otherwise, if there had been a proper true possibility in
2 those cases, they probably wouldn't have been convicted. So I
3 think --

4 MR. ORAM: Okay. And I want to make sure again,
5 Judge Thompson is going to tell you that -- what the standard
6 is. It's beyond a reasonable doubt.

7 PROSPECTIVE JUROR NO. 592: Right.

8 MR. ORAM: He'll define that for you, okay.

9 PROSPECTIVE JUROR NO. 592: Yeah.

10 MR. ORAM: It's not beyond all possibility.

11 PROSPECTIVE JUROR NO. 592: Right.

12 MR. ORAM: It's beyond a reasonable doubt.

13 PROSPECTIVE JUROR NO. 592: Yes.

14 MR. ORAM: Okay. And so it sounds like you feel you
15 would be a very conscientious juror.

16 PROSPECTIVE JUROR NO. 592: I truly believe that,
17 yes.

18 MR. ORAM: And by the fact that you said you wanted
19 to -- you would like to be the foreperson sounds like you
20 would also like to ensure that everybody else on the jury was
21 doing the same thing.

22 PROSPECTIVE JUROR NO. 592: It's a role that I've
23 played throughout my life and I think I honed those skills to
24 be able to have everybody have a say and to get everybody
25 involved and to make sure that everybody participates fully in

1 -- in coming to the right conclusion.

2 MR. ORAM: You talked for a second about science.
3 Do you ever watch any of those shows?

4 PROSPECTIVE JUROR NO. 592: Yeah. Bones is my
5 favorite, by the way. Bones.

6 MR. ORAM: Is that -- I only have seen the ones that
7 are actual documentaries. I don't want the --

8 PROSPECTIVE JUROR NO. 592: Oh.

9 MR. ORAM: I don't watch the ones where they -- the
10 murder happens and they solve everything in an hour and the
11 jury knows the answer. Is this a -- is this a real
12 documentary?

13 PROSPECTIVE JUROR NO. 592: Yeah, it's like CSI and
14 that sort of thing where they -- they study bones, you know,
15 dead people and try to figure out what might have happened to
16 them, what killed them, etcetera.

17 MR. ORAM: But they're actual cases?

18 PROSPECTIVE JUROR NO. 592: No, it's all -- it's all
19 made up.

20 MR. ORAM: It's made up.

21 PROSPECTIVE JUROR NO. 592: Yeah.

22 MR. ORAM: Okay. All right. So you're familiar
23 with these terms that you heard, fingerprints, DNA; right?

24 PROSPECTIVE JUROR NO. 592: Absolutely. Yep.

25 MR. ORAM: And that can be a great tool. In fact,

1 it is a great tool for law enforcement.

2 PROSPECTIVE JUROR NO. 592: Correct.

3 MR. ORAM: Right? We see those fingerprints, we see
4 DNA, footprints, tire tracks, these are all great tools;
5 right?

6 PROSPECTIVE JUROR NO. 592: Correct, but there is
7 always the slight possibility of planted evidence and so you
8 always have to be -- you know, you can't take everything
9 absolutely 100 percent. You know, in most cases it is, but
10 there always is the possibility. You've got to be watching
11 out for, you know, that the evidence isn't correct.

12 MR. ORAM: Well, in any science there can be human
13 error.

14 PROSPECTIVE JUROR NO. 592: Yes.

15 MR. ORAM: So have you ever heard the term garbage
16 in, garbage out?

17 PROSPECTIVE JUROR NO. 592: Absolutely, all my life.

18 MR. ORAM: So if by accident I put in, let's just --
19 the wrong tire track let's say.

20 PROSPECTIVE JUROR NO. 592: Yep.

21 MR. ORAM: Tire tracks [inaudible].

22 PROSPECTIVE JUROR NO. 592: Right.

23 MR. ORAM: But by accident I put in the wrong track,
24 then maybe I come out as a scientist with a wrong answer.

25 PROSPECTIVE JUROR NO. 592: Absolutely.

1 MR. ORAM: Okay.

2 PROSPECTIVE JUROR NO. 592: It happens all the time.

3 MR. ORAM: Do you think it happens all the time or
4 just --

5 PROSPECTIVE JUROR NO. 592: No, in all industries.
6 I mean, it -- I mean, it doesn't happen all day, every day,
7 all the time, but it -- it -- it's human nature that those
8 types of things can happen, so yes.

9 MR. ORAM: Would you tend to believe a police
10 officer over what I would call a lay witness? In other words,
11 a police officer comes in and says red light, another person
12 comes in and says, no, I saw a green light. Would you
13 necessarily believe the police officer simply because she was
14 a police officer?

15 PROSPECTIVE JUROR NO. 592: I believe I would
16 carefully consider both of them. But the only factor is a
17 police officer is trained to observe things and remember
18 things and -- and might possibly have a better ability to have
19 a correct answer than just a lay person. But they still
20 should be equally considered. But in that instance I think a
21 police officer might have better training to be able to -- to
22 recognize what happened.

23 MR. ORAM: And that would depend on a bunch of
24 factors, too.

25 PROSPECTIVE JUROR NO. 592: Sure.

1 MR. ORAM: In other words, if the police officer who
2 is trained like you're saying --

3 PROSPECTIVE JUROR NO. 592: Yeah. Yep.

4 MR. ORAM: -- said I was 500 feet from the red light
5 and the other person was right below it --

6 PROSPECTIVE JUROR NO. 592: Absolutely.

7 MR. ORAM: -- these are all factors.

8 PROSPECTIVE JUROR NO. 592: All of those factors.
9 Yep.

10 MR. ORAM: Okay. I want to ask you a little bit
11 about penalty. And you understand -- I know we keep repeating
12 it, but obviously it's because there's an inherent fear that
13 by talking about penalty that jurors will somehow think we're
14 conceding something. Do you understand what I mean?

15 PROSPECTIVE JUROR NO. 592: Uh-huh.

16 MR. ORAM: Okay. Is that a yes?

17 PROSPECTIVE JUROR NO. 592: Yes.

18 MR. ORAM: Okay.

19 PROSPECTIVE JUROR NO. 592: Sorry.

20 MR. ORAM: In the questions regarding the death
21 penalty, you specifically wrote people convicted of murder
22 should suffer the same consequences that they caused and not
23 be allowed to live out their lives in our expensive prison
24 system. Do you remember writing that?

25 PROSPECTIVE JUROR NO. 592: Yes. Yep.

1 MR. ORAM: Okay. Do you see from my point of view
2 that would cause some pause --

3 PROSPECTIVE JUROR NO. 592: Sure.

4 MR. ORAM: -- and make us think that maybe if you
5 found an individual guilty of first degree murder, in this
6 case Mr. Burns, that you are then going to return a sentence
7 of death, and not return or consider any other form of
8 punishment.

9 PROSPECTIVE JUROR NO. 592: Yep. I think at the
10 time, again, because I'm not that involved in the -- the
11 system, I was thinking of first degree murder is -- is
12 absolutely the type that I described before, premeditated, you
13 know, leave no witnesses, you know. And -- and in those
14 instances I think the death penalty is fair. Knowing that
15 there are -- I guess when I think of murder where you get a
16 possibility of parole, I view that quite a bit different than
17 premeditated, you know, type of thing. It's -- it's somebody
18 that could possibly be rehabilitated and there were other
19 factors that influenced him to perhaps make that -- maybe to
20 kill that person, you know. Maybe they were in a gang and
21 they were pressured to be able to do it and he was so young
22 that -- you know, that he made a mistake in doing it type of
23 thing. There are factors like that that could lead to a
24 lesser penalty.

25 MR. ORAM: Okay. But you specifically read, did you

1 not, the scenario that was given to you in this questionnaire
2 about what -- what had occurred?

3 MS. WECKERLY: Your Honor, I object. That's an
4 improper question.

5 MR. ORAM: What's in the questionnaire?

6 THE COURT: I don't know what's improper about it.

7 MS. WECKERLY: If he's asking about the penalty in
8 terms of the factual context.

9 THE COURT: If you're asking him about the penalty
10 for a particular factual content, I suppose it is, but --

11 MR. ORAM: Did -- did you read this in the
12 questionnaire where it describes what the allegations are?

13 PROSPECTIVE JUROR NO. 592: I don't remember reading
14 it. I thought we had somebody come in and tell us what the
15 whole factor was at the time. So I don't -- I don't recall
16 reading about it. I remember somebody coming in, and I forget
17 who -- what his role was, but described the exact situation of
18 the two -- you know, what happened.

19 MR. ORAM: What do you remember?

20 PROSPECTIVE JUROR NO. 592: Well, we were -- we were
21 in this -- again, on the third floor in a large room, and they
22 finally dismissed all these other people and said, okay,
23 you're going to be filling out this extensive questionnaire.
24 And he went -- that person, this man, went and described, you
25 know, what the situation was, okay. Now, again, see, this is

1 where I'm getting a little confused. I thought at the time he
2 said it was a double murder type of case, but then when we
3 came in here today they said there was just one person that
4 was murdered.

5 MR. ORAM: Yes. And in the questionnaire it
6 describes how a mother was shot and killed.

7 PROSPECTIVE JUROR NO. 592: I don't remember that.

8 MR. ORAM: And a 12 year old girl is shot, but
9 lives, okay.

10 PROSPECTIVE JUROR NO. 592: I remember that being
11 discussed today, but I don't remember reading that.

12 MR. ORAM: And -- and I think when Mr. DiGiacomo got
13 up he described some of the charges as being --

14 PROSPECTIVE JUROR NO. 592: Yeah.

15 MR. ORAM: -- murder, attempted murder, robbery,
16 burglary.

17 PROSPECTIVE JUROR NO. 592: Correct.

18 MR. ORAM: Okay. And so given what I'm -- what
19 we're talking about now, don't you think that in a scenario
20 like that --

21 MS. WECKERLY: Objection.

22 THE COURT: Well, if you're trying to say that --
23 you're trying to ask for a commitment as to a particular
24 verdict after -- on this particular scenario is probably
25 improper.

1 MR. ORAM: Do you think from what you know, from
2 what you've heard, that you, having convicted, you found Mr.
3 Burns guilty of first degree murder, you found him guilty of
4 the charge --

5 PROSPECTIVE JUROR NO. 592: Yeah.

6 MR. ORAM: -- that you could actually consider a
7 form of punishment of less than death?

8 PROSPECTIVE JUROR NO. 592: Oh, absolutely. I mean,
9 again, it's all based on many factors in terms of how that
10 murder was committed and -- and other influences on the -- on
11 the person that could -- and I'll say that he deserves not to
12 have the death penalty, but deserves to have, you know, severe
13 penalty, but perhaps even with the possibility of parole. I
14 absolutely believe in that.

15 MR. ORAM: Okay. And so when you wrote that -- that
16 sentence before -- you know, I know that some people that get
17 down there with the questionnaire, it's not that they're
18 rushing, it's that, okay, I've got to fill this in and go
19 about my life. And then they come in here, and a lot of
20 people, I've heard it over the years, come into a courtroom
21 like this and look over and see a breathing human being and
22 think, oh, my goodness. Okay, wait. Wait, I can -- I will
23 consider and follow the law. Does that make sense?

24 PROSPECTIVE JUROR NO. 592: Uh-huh.

25 MR. ORAM: In other words, there's some people who

1 say I'm going to -- I'll execute anybody, but when they come
2 in they realize the magnitude of the -- of the case.

3 PROSPECTIVE JUROR NO. 592: Yep.

4 MR. ORAM: Okay. And do you feel like you could
5 consider all four forms of punishment?

6 PROSPECTIVE JUROR NO. 592: Yeah, I really do.
7 Again, when -- when I filled out that question, my
8 interpretation was capital murder was my version of a hardened
9 criminal that went in there with the intent to -- to leave no
10 witnesses and was going to, you know, kill anybody if they got
11 in the way and that sort of thing. And that was my
12 understanding of what -- what capital murder was at that point
13 in time. I didn't realize that, you know, murder can, you
14 know, have many different degrees with four different types of
15 punishments being possible for it.

16 MR. ORAM: Well, the only time we have those four
17 types of punishment is if we have murder of the first degree.

18 PROSPECTIVE JUROR NO. 592: Okay.

19 MR. ORAM: There's different punishments for murder
20 of the second degree.

21 PROSPECTIVE JUROR NO. 592: Okay.

22 MR. ORAM: Okay? So you would have had to have
23 already found murder of the first degree before you consider
24 those.

25 PROSPECTIVE JUROR NO. 592: Right.

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No. 80834

APPELLANT'S APPENDIX

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