

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: Okay. Submit it, Your Honor.

2 THE COURT: All right. I'll grant the challenge.

3 Mr. Powell, thank you very much for being a prospective juror.

4 You'll be excused.

5 PROSPECTIVE JUROR NO. 648: Thank you.

6 THE COURT: You can leave. And hand that microphone
7 to the next juror, Mr. Andazola.

8 PROSPECTIVE JUROR NO. 675: Yes, sir.

9 THE COURT: All right. Do you know any of the
10 attorneys or witnesses involved in the case?

11 PROSPECTIVE JUROR NO. 675: No, sir.

12 THE COURT: You didn't -- you didn't tell us where
13 your employment was. I assume you're retired?

14 PROSPECTIVE JUROR NO. 675: I'm retired.

15 THE COURT: What are you retired from?

16 PROSPECTIVE JUROR NO. 675: I was a construction
17 electrician for 36 years.

18 THE COURT: Here in Las Vegas?

19 PROSPECTIVE JUROR NO. 675: Of those 36, 16 were --
20 16 years were here in Vegas.

21 THE COURT: And before that?

22 PROSPECTIVE JUROR NO. 675: All over the country.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 675: Boston, New York, New
25 Mexico, wherever there was work.

1 THE COURT: So your specialty was electrician?

2 PROSPECTIVE JUROR NO. 675: Yes, sir.

3 THE COURT: And how about your wife, was she
4 employed?

5 PROSPECTIVE JUROR NO. 675: I don't have a wife.

6 THE COURT: You don't have a wife?

7 PROSPECTIVE JUROR NO. 675: I have a girlfriend.

8 THE COURT: Okay. Well, that's all right. You can
9 have a girlfriend. You indicated in your questionnaire that
10 at one time you were arrested for domestic violence; is that
11 right?

12 PROSPECTIVE JUROR NO. 675: Yes, sir. It was my
13 ex-wife --

14 THE COURT: Ex-wife?

15 PROSPECTIVE JUROR NO. 675: Yes. And basically, it
16 was dropped.

17 THE COURT: And was that here in Las Vegas?

18 PROSPECTIVE JUROR NO. 675: No, sir. It was in
19 Phoenix, Arizona.

20 THE COURT: All right. So you're not going to hold
21 that against anybody in this case?

22 PROSPECTIVE JUROR NO. 675: Not yet.

23 THE COURT: Okay. You also said your home was broken
24 into. Was that here in Las Vegas?

25 PROSPECTIVE JUROR NO. 675: Yes, sir. It's been --

1 somebody ransacked trying to find things. They came out with
2 -- I had gold -- silver coins, and they took that away. I
3 know -- I don't know who did it. So.

4 THE COURT: Okay. How long ago has that been?

5 PROSPECTIVE JUROR NO. 675: I'd say about two years
6 ago, somewhere in there.

7 THE COURT: Did you report that to the police?

8 PROSPECTIVE JUROR NO. 675: Yes. But they says,
9 Well, we don't know who -- who did it. So I had to drop it.

10 THE COURT: Okay. You're not going to hold that
11 against law enforcement because they couldn't find the
12 individual that did that?

13 PROSPECTIVE JUROR NO. 675: No, sir.

14 THE COURT: In other words, when prosecutors here and
15 police officers are going to be testifying, you're not going
16 to be mad at them because they couldn't find the person that
17 broke into your home?

18 PROSPECTIVE JUROR NO. 675: No, sir.

19 THE COURT: All right. You -- you heard the
20 questions that I asked about the burden of proof, presumption
21 of innocence, and the job of the jury?

22 PROSPECTIVE JUROR NO. 675: Yes, sir.

23 THE COURT: Any reason that you couldn't follow my
24 instructions on the law and reach a fair verdict?

25 PROSPECTIVE JUROR NO. 675: I don't think so.

1 THE COURT: All right. Mr. DiGiacomo, you may
2 examine.

3 MR. DiGIACOMO: Thank you. Good afternoon, sir. How
4 are you?

5 PROSPECTIVE JUROR NO. 675: How are you doing?

6 MR. DiGIACOMO: Good. I don't want to belabor a
7 sensitive subject, but how long ago was it that you had this
8 incident with your ex-wife?

9 PROSPECTIVE JUROR NO. 675: Shoot, I'd say about 40
10 years ago.

11 MR. DiGIACOMO: Okay. You said it was ultimately
12 dismissed. I'm guessing from that that you think the criminal
13 justice system treated you fairly?

14 PROSPECTIVE JUROR NO. 675: Yes.

15 MR. DiGIACOMO: All right. Was there any hesitation
16 there?

17 PROSPECTIVE JUROR NO. 675: No.

18 MR. DiGIACOMO: Okay. Like, whoa, hey, first guy
19 that got a dismissal.

20 You indicated in your questionnaire, they asked you
21 some opinions, there's an answer that says, "Judges," and you
22 put, "Some are good."

23 PROSPECTIVE JUROR NO. 675: Well, basically, if you
24 read some of the articles in the RJ, they give you a review of
25 judges every -- every year. So you have to take what they

1 have in the -- the newspapers telling you who's a good judge
2 and who's a bad judge. So they're not all perfect.

3 MR. DiGIACOMO: Yeah. I mean, being a judge is like
4 any other profession, right? There's got to be good ones and
5 there's got to be bad ones. Would that be fair?

6 PROSPECTIVE JUROR NO. 675: Yes, sir.

7 MR. DiGIACOMO: If you read the RJ, there's a few of
8 them that get themselves even into criminal trouble.

9 PROSPECTIVE JUROR NO. 675: True.

10 MR. DiGIACOMO: Before I get to the questions on
11 penalty, let me just ask you about the -- the first phase of
12 this trial.

13 Is there anything that anybody said here that you
14 think might be important for the lawyers to know as it relates
15 to whether or not you can do it -- your job, as the jurors to
16 do, which is look at the evidence from the stand, listen to
17 the witnesses, look at the physical evidence that's going to
18 be admitted, and take the law from the judge, and make a
19 determination as whether or not Ms. Weckerly and I are able to
20 prove these two individuals guilty; any concern with doing
21 that job?

22 PROSPECTIVE JUROR NO. 675: I don't think so.
23 Basically, I guess to say I'm a little bit open-minded. I --
24 I have to get all the facts first before I say whether he's
25 guilty or not.

1 MR. DiGIACOMO: Sure.

2 PROSPECTIVE JUROR NO. 675: But other than that, the
3 crime, I see, it's -- it's pretty -- it's going to be pretty
4 hard to prove this and proving that. So I don't know until I
5 get all the facts.

6 MR. DiGIACOMO: Sure. I imagine you're somebody who
7 -- I mean, we can all acknowledge that this is about as
8 serious as it gets in the criminal justice system, at least as
9 -- this is as serious as it gets in Nevada. You'd want to
10 take that job seriously, I assume?

11 PROSPECTIVE JUROR NO. 675: Very definitely.

12 MR. DiGIACOMO: And I'm assuming you'd want to get
13 all of the information you could possibly know before you made
14 any sort of decision?

15 PROSPECTIVE JUROR NO. 675: I think I would, because
16 one man's life or two man's life, it's pretty hard to decide
17 whether -- what really happened. So.

18 MR. DiGIACOMO: Sure.

19 PROSPECTIVE JUROR NO. 675: Other than that, I...

20 MR. DiGIACOMO: And you're going to hear Mr. Sgro say
21 this -- I don't know if he said it yet. Well, he did on the
22 first juror, I think, maybe, you know. The question here is
23 whether or not Ms. Weckerly and I can establish the elements
24 of the offense. Okay. You know, we may not be able to
25 establish whether or not a particular light bulb was on or

1 off, but ultimately the allegations or the charges against the
2 defendant, we have to prove that beyond a reasonable doubt.
3 If we don't do that, you come in here, you find him not
4 guilty. If we do do that, you come in here and you find him
5 guilty. Do you think you're capable of doing that?

6 PROSPECTIVE JUROR NO. 675: I'm pretty sure I am.
7 But as I keep saying, is that it's going to be pretty
8 difficult seeing their perspective and your perspective. But
9 I think I can make a judgment.

10 MR. DiGIACOMO: Let me get to the second part of
11 this. Assuming we get there, assuming Ms. Weckerly and I
12 prove these two individuals guilty beyond a reasonable doubt,
13 then there's a second phase. That second phase you hear a
14 little bit more evidence, you get a little more instruction
15 from the judge on the law. And at that point in time, there
16 has to be a determination by the jury as to what the
17 punishment should be or the penalty should be for both of
18 these individuals.

19 And I will tell you that, you know, it's one thing
20 for guilt and -- for guilt or innocence, or guilty or not
21 guilty, right? There's basically -- it's almost like a
22 mathematical equation, here's what the law is, here's what the
23 facts are, let me put the facts to the law, and boom, we have
24 an answer.

25 Whereas in penalty the law's never going to tell you

1 which one of the four punishments is the appropriate
2 punishment. There's some jurors who say, I can do the first
3 part, I can make a decision as to what happened and what the
4 law is and decide if they're guilty or not. But I personally
5 can't sit in judgment of another person and decide what
6 physically happens to that person.

7 Are you somebody who can?

8 PROSPECTIVE JUROR NO. 675: It's back to the scenario
9 that I have to hear everybody's word before I say, Oh, he's
10 guilty or --

11 MR. DiGIACOMO: Sure.

12 PROSPECTIVE JUROR NO. 675: -- that's what he
13 deserved. And until I find exactly what really happened, I --
14 I can't just read the one article telling what they did and --

15 MR. DiGIACOMO: Right. Nobody would -- nobody would
16 want you to do that, right?

17 PROSPECTIVE JUROR NO. 675: That's right.

18 MR. DiGIACOMO: But I'm -- I guess my question is
19 more in the general sense, are you somebody who thinks that at
20 the end of the day you can make that decision and sit in
21 judgment of another person?

22 PROSPECTIVE JUROR NO. 675: I think so. I -- I think
23 I would decide what transpired.

24 MR. DiGIACOMO: Do you think you're generally a fair
25 person?

1 PROSPECTIVE JUROR NO. 675: Hope so.

2 MR. DiGIACOMO: Are you willing to be open minded and
3 wait until the end to make a decision?

4 PROSPECTIVE JUROR NO. 675: Yes, sir.

5 MR. DiGIACOMO: If you were sitting either where Ms.
6 Weckerly and I were or where these two defendants were, would
7 you want 12 people like yourself sitting on this jury deciding
8 whether or not first you committed the crime, and second what
9 your punishment should be?

10 PROSPECTIVE JUROR NO. 675: I think so.

11 MR. DiGIACOMO: Thank you very much, sir. Judge, we
12 pass.

13 THE COURT: Mr. Oram?

14 MR. ORAM: Thank you, Your Honor. Good morning.

15 PROSPECTIVE JUROR NO. 675: Good morning.

16 MR. ORAM: You were in the military?

17 PROSPECTIVE JUROR NO. 675: Yes, sir.

18 MR. ORAM: How long were you in the military?

19 PROSPECTIVE JUROR NO. 675: Three years.

20 MR. ORAM: And in the questionnaire, you checked off
21 the box that you saw combat.

22 PROSPECTIVE JUROR NO. 675: I was in Vietnam from '69
23 to '71.

24 MR. ORAM: So you were stationed in Vietnam for one
25 year?

1 PROSPECTIVE JUROR NO. 675: For one year.

2 MR. ORAM: Where were you stationed?

3 PROSPECTIVE JUROR NO. 675: [Indiscernible.]

4 MR. ORAM: You also said in your questionnaire that
5 your house had been broken into.

6 PROSPECTIVE JUROR NO. 675: Yes, sir.

7 MR. ORAM: It has nothing to do with this case,
8 right? You don't hold any bad feelings towards prosecutors or
9 defense attorneys or the system of justice, do you?

10 PROSPECTIVE JUROR NO. 675: Well, the people that did
11 it, I hold -- hold something against.

12 MR. ORAM: Yeah. So it's something that, you know,
13 you're not coming in here and somebody in this courtroom is --
14 is in bad shape because that happened to you?

15 PROSPECTIVE JUROR NO. 675: No, I don't think so.

16 MR. ORAM: Some people -- some people harbor bad
17 feelings, let's say, that police didn't come and respond quick
18 enough. And we've been doing this for about a week. And some
19 people make statements that they -- they feel agitated by
20 certain things that happened. But you just see it as
21 something that happened to you, has nothing to do with this
22 case?

23 PROSPECTIVE JUROR NO. 675: That's right.

24 MR. ORAM: Okay. Do you ever watch any of those
25 scientific programs on TV?

1 PROSPECTIVE JUROR NO. 675: Yes. But they only last
2 one hour.

3 MR. ORAM: They do. But, you know, what -- the
4 reason we ask you that is because in this case you're going to
5 hear scientists get up on the witness stand. Okay. And do
6 you believe that science can be a good tool for law
7 enforcement?

8 PROSPECTIVE JUROR NO. 675: I'm -- I'm sure it can.
9 And I think so. I believe --

10 MR. ORAM: Sure. Because I think -- since -- let's
11 say that scientists have discovered fingerprints; if I was to
12 say I'd never ever been in this courtroom, ever, in fact, I
13 don't think I've ever, you know, ever stepped in this
14 particular courtroom, and my fingerprints were all over here
15 and over the witness stand, obviously, if you as jurors were
16 deciding that, that would be something you'd consider, isn't
17 it?

18 PROSPECTIVE JUROR NO. 675: That's right.

19 MR. ORAM: So science doesn't lie, but the very fact
20 that my fingerprints were in here may be something that you
21 would consider and use it for whatever inference you thought
22 was appropriate, right?

23 PROSPECTIVE JUROR NO. 675: That's right.

24 MR. ORAM: In that case, it'd be like, Hey, Chris,
25 you're lying, you were in that courtroom or it sure looks that

1 way, doesn't it?

2 PROSPECTIVE JUROR NO. 675: Yes, sir.

3 MR. ORAM: Okay. So science is a tool that law
4 enforcement can use and -- but it's also something that can
5 help an innocent person, too, right?

6 PROSPECTIVE JUROR NO. 675: Very true.

7 MR. ORAM: Okay. Because I'm -- I'm sure you've
8 heard of cases where people have gone to prison and then been
9 released based on the new discovery of DNA and things like
10 that?

11 PROSPECTIVE JUROR NO. 675: Yes, sir.

12 MR. ORAM: So you have no problem with the concepts
13 of hearing scientists and -- and trying to determine what you
14 can use from the information that they give; is that fair?

15 PROSPECTIVE JUROR NO. 675: I hope so.

16 MR. ORAM: Okay. Sir, if you were in a situation,
17 okay, in a deliberation room, let's say you were here in a car
18 accident case and it was important whether the light was red
19 or the light was green, you believe the light was red, okay.
20 And you heard everything, you thought the light was red. 11
21 other jurors say, No, no, the light's green. Okay. So you're
22 in an 11-to-1 situation where you're essentially the person
23 who has a different idea of the facts, would you immediately
24 just adopt what everybody else said?

25 PROSPECTIVE JUROR NO. 675: No, not really.

1 MR. ORAM: Would you be willing to listen to what the
2 others said?

3 PROSPECTIVE JUROR NO. 675: Very true. I -- I try to
4 listen to everybody in there.

5 MR. ORAM: Okay. You know, some people are -- feel
6 that if 11 people differ in their opinion than what they
7 believe, that they must be wrong. So in other words those
8 hands go up, 11 people disagree, Oh, my goodness, that must --
9 I must be wrong. You don't sound like you're in that type of
10 situation. It sounds like you probably think, I'm right,
11 what's wrong with them?

12 PROSPECTIVE JUROR NO. 675: I'd probably stick to my
13 guns.

14 MR. ORAM: Okay. You'd stick to your guns, but you'd
15 also be willing to listen, let's say they showed you, Hey,
16 look at this photograph, and you'd be willing to listen to
17 what others had to say?

18 PROSPECTIVE JUROR NO. 675: Yes, sir.

19 MR. ORAM: There are bad photos in this case you're
20 going to see on those screens. Okay. Is there any reason why
21 you don't think you could do that or why that would make you
22 so emotionally angry you didn't think you could be fair?

23 PROSPECTIVE JUROR NO. 675: I would say no. But I
24 still would have to see the overall -- the overall picture.

25 MR. ORAM: Okay. You know, and you've said that,

1 like, three times since I've been listening to you. And don't
2 you think that we -- the parties, that's what we want with a
3 juror. We don't want somebody to come in here and say, you
4 know, I already figured this out, I already -- I -- I read
5 this little synopsis, I've been looking over at Mr. Burns and
6 I think I've got it figured out; that'd be pretty scary, don't
7 you agree?

8 PROSPECTIVE JUROR NO. 675: Very true. But I don't
9 know the gentleman. You know, I can't -- I can't judge him
10 right now until -- I -- I really don't know until I -- I
11 hear --

12 MR. ORAM: So -- so what you're -- what you're saying
13 is you -- you want -- if you serve, you're going to listen to
14 what everybody has to say, you'll wait until the very end,
15 you'll go in the back room, deliberation back room there, and
16 then you'll make your determination; is that fair?

17 PROSPECTIVE JUROR NO. 675: I think so.

18 MR. ORAM: You're a pretty open-minded person?

19 PROSPECTIVE JUROR NO. 675: Sometimes.

20 MR. ORAM: Okay.

21 PROSPECTIVE JUROR NO. 675: On things.

22 MR. ORAM: Why do you say it that way?

23 PROSPECTIVE JUROR NO. 675: Well, it -- it varies on
24 the things that really are important to me, whether I'm open
25 minded.

1 MR. ORAM: So there's some things that are really
2 important to you where you feel you're closed minded?

3 PROSPECTIVE JUROR NO. 675: Yes, sir.

4 MR. ORAM: Could you give me an example of that?

5 PROSPECTIVE JUROR NO. 675: Drugs.

6 MR. ORAM: What's your feeling on that?

7 PROSPECTIVE JUROR NO. 675: Basically, I don't -- I
8 don't like them. But other than that, that's it.

9 MR. ORAM: I once heard a judge when I was a very
10 young lawyer call it some of the street drugs can be like a
11 cancer on our society. Is that the way you feel?

12 PROSPECTIVE JUROR NO. 675: I think so.

13 MR. ORAM: Okay. And I remember you actually wrote
14 in your questionnaire about drugs. You said, "Very high need
15 to stop people selling drugs."

16 PROSPECTIVE JUROR NO. 675: Very true.

17 MR. ORAM: Okay. The State has a right to a fair
18 trial, as well as Mr. Burns and Mr. Mason. You understand
19 that, don't you?

20 PROSPECTIVE JUROR NO. 675: Yes, sir.

21 MR. ORAM: Okay. If -- if a person was selling
22 drugs, you would agree that doesn't give somebody the right to
23 rob them, does it?

24 PROSPECTIVE JUROR NO. 675: No.

25 MR. ORAM: If I was under the influence of drugs,

1 that wouldn't give somebody the right to physically hurt me,
2 would it?

3 PROSPECTIVE JUROR NO. 675: No, sir.

4 MR. ORAM: So it's not as though you would think,
5 Well, if this person's involved in drugs, I don't care what
6 happens to them? You're not of that mindset, are you?

7 PROSPECTIVE JUROR NO. 675: No, sir.

8 MR. ORAM: They can still be victims?

9 PROSPECTIVE JUROR NO. 675: Very true.

10 MR. ORAM: But it sounds to me like you believe drugs
11 affect people's perceptions?

12 PROSPECTIVE JUROR NO. 675: It does.

13 MR. ORAM: So maybe I have a sip of beer, okay, if I
14 take a sip of beer, maybe it has almost no effect on my
15 perception. But if I have a, you know, a fifth of Jack
16 Daniel's right now, it may have a great effect upon my
17 perception; is that fair?

18 PROSPECTIVE JUROR NO. 675: No, because it's up to
19 the individual as to how much --

20 MR. ORAM: Tolerance I have?

21 PROSPECTIVE JUROR NO. 675: -- tolerance.

22 MR. ORAM: Okay. Good. So it's fair to say that if
23 somebody was testifying from the witness stand and said they
24 ingested a drug, that you may have a whole bunch of questions
25 about their perception and whether the drugs actually effected

1 their perceptions; is that fair?

2 PROSPECTIVE JUROR NO. 675: I think so.

3 MR. ORAM: Okay. So in your mind it may make a
4 difference whether I drink a fifth of Jack Daniel's every day
5 or if I've never drank alcohol in my life, right?

6 PROSPECTIVE JUROR NO. 675: That's true.

7 MR. ORAM: Okay. Do you think, sir, that you would
8 believe a police officer more simply because she's a police
9 officer?

10 PROSPECTIVE JUROR NO. 675: All depends. I read -- I
11 can't -- I can't judge the person if I -- until I see her or
12 whatever, I can't.

13 MR. ORAM: So, good answer. Okay. So what you're
14 saying is that you would judge everybody and compare it to all
15 the facts; is that right?

16 PROSPECTIVE JUROR NO. 675: Yes, sir.

17 MR. ORAM: So a police officer, she may be telling
18 the truth, and there may be occasions where she absolutely has
19 it wrong, right?

20 PROSPECTIVE JUROR NO. 675: I hope not.

21 MR. ORAM: You hope not. Okay. And in our society,
22 we hope that police are going to come into a courtroom and be
23 absolutely truthful, don't we?

24 PROSPECTIVE JUROR NO. 675: Yes, sir.

25 MR. ORAM: It's what you expect, isn't it?

1 PROSPECTIVE JUROR NO. 675: That's what they get paid
2 for.

3 MR. ORAM: Okay. And that makes for a much better
4 police department if that's what happens. But you're open to
5 the idea that -- that a police officer could come in and be
6 mistaken, right?

7 PROSPECTIVE JUROR NO. 675: Yes, sir.

8 MR. ORAM: Do you believe a police officer could
9 arrest somebody and the person not be guilty?

10 PROSPECTIVE JUROR NO. 675: Yes, sir.

11 MR. ORAM: Okay. And that's what 12 members of
12 society supposed to come in, jury of the peers, and make that
13 determination under our Constitution; is that fair?

14 PROSPECTIVE JUROR NO. 675: Yes, sir.

15 MR. ORAM: You sound as though you have sort of the
16 motto, If it's true, prove it to me.

17 PROSPECTIVE JUROR NO. 675: Very true.

18 MR. ORAM: You have no problem with the concept that
19 Mr. Burns has no burden of proof? In other words, we don't
20 have to prove anything to you; does that make sense?

21 PROSPECTIVE JUROR NO. 675: No.

22 MR. ORAM: Okay.

23 PROSPECTIVE JUROR NO. 675: Well, basically, you guys
24 are going to have to prove something to me. You're -- because
25 there's -- there's a crime that has been committed. I don't

1 know who did it until I find out at the whatever.

2 MR. ORAM: Okay. The judge talked about burden of
3 proof. Okay. And what that means is that the State has to
4 prove Mr. Burns guilty beyond a reasonable doubt. Okay. You
5 don't have a problem with that?

6 PROSPECTIVE JUROR NO. 675: No, sir.

7 MR. ORAM: And the way our Constitution is written,
8 it says that we -- we being counsel for Mr. Burns -- we don't
9 have any burden of proof, we don't have to prove anything.
10 Okay. If at the end of this case you and 11 other people
11 think there's a reasonable doubt as to the guilt of Mr. Burns,
12 you would have to find him not guilty whether he had done
13 anything in terms of presenting evidence; does that make
14 sense?

15 PROSPECTIVE JUROR NO. 675: No.

16 MR. ORAM: Okay. So -- so let's make it a ridiculous
17 scenario, but it may be easy for you to understand. Okay. I
18 don't have to ask you these questions under the law. I can go
19 sit down with Mr. Sgro and Mr. Burns. We can just sit there
20 for the rest of the trial, not even paying attention. We
21 could just be, you know, playing Tiddly-Winks, okay. The
22 State's working hard, they're presenting all their witnesses.
23 They rest their case. We don't even get up and make an
24 argument to you, we're just over there doing nothing. Okay.
25 So you've heard all this evidence.

1 But when you go back in the jury deliberation room,
2 you think I have a reasonable doubt that the man is not
3 guilty. The law would require you, our Constitution would
4 require you to find Mr. Burns not guilty. Does that make
5 sense?

6 PROSPECTIVE JUROR NO. 675: Yes.

7 MR. ORAM: You hesitate. Why do you hesitate with
8 that?

9 PROSPECTIVE JUROR NO. 675: It's because don't say a
10 word about the -- what happened, something's wrong. It would
11 need to in my mind, it says they must be guilty.

12 MR. ORAM: Simply because we don't -- because we
13 don't try?

14 PROSPECTIVE JUROR NO. 675: That's right.

15 MR. ORAM: Okay. Well, I can promise you, as you're
16 going to see, that Mr. Sgro and I are going to stand up and
17 ask questions. But we want to make sure that you have no
18 difficulty with the concept or the Constitutional principles,
19 okay, that are given to every one of our citizens. Okay. And
20 one of those is that Mr. Burns -- anybody accused of a crime
21 has no burden of proof. Can you set aside your personal
22 feelings and follow that Constitutional principle?

23 PROSPECTIVE JUROR NO. 675: I think I could.

24 MR. ORAM: Okay. So in other words, you know, that
25 example where we do nothing and you go back there and say,

1 Yeah, there's a reasonable doubt, I have a reasonable doubt as
2 to whether he did it, you could come back in here and return a
3 verdict of not guilty, couldn't you?

4 PROSPECTIVE JUROR NO. 675: Very true.

5 MR. ORAM: Okay. And last area, last couple of areas
6 I want to talk about, Mr. Burns does not need to testify. Do
7 you have a problem with that concept?

8 PROSPECTIVE JUROR NO. 675: Yes, sir.

9 MR. ORAM: You do? Okay. Why?

10 PROSPECTIVE JUROR NO. 675: If it was my life, I'd be
11 there telling everybody why I'm not guilty.

12 MR. ORAM: And you're articulate. You're -- as
13 you've pointed out, you're a pretty strong-willed guy. You
14 can -- you can tell that. You're strong-willed, you're
15 articulate, and I don't think it'd be pretty hard for you to
16 look at me and say, I'm not a speeder, you got the wrong guy.
17 Fair?

18 PROSPECTIVE JUROR NO. 675: Very true.

19 MR. ORAM: Okay. But you recognize that not all
20 people are that way?

21 PROSPECTIVE JUROR NO. 675: Not really.

22 MR. ORAM: When you say that --

23 PROSPECTIVE JUROR NO. 675: Well, they're -- every --
24 every one is different, no matter how you see it.

25 MR. ORAM: Some people aren't that smart?

1 PROSPECTIVE JUROR NO. 675: Very true.

2 MR. ORAM: Some people are not that articulate, they
3 can't -- they can't communicate well, right?

4 PROSPECTIVE JUROR NO. 675: That's right.

5 MR. ORAM: Some people have -- the Constitution
6 guarantees a right to an attorney, somebody like myself,
7 right?

8 PROSPECTIVE JUROR NO. 675: Yes, sir.

9 MR. ORAM: You heard Mr. Sgro say that Mr. Burns was
10 18 at the time of these allegations. That makes him pretty
11 young; would you agree with that?

12 PROSPECTIVE JUROR NO. 675: Very true.

13 MR. ORAM: And so he's sitting next to attorneys who
14 are -- I don't -- I can't go into what we talk about, but you
15 would imagine we give him advice, right?

16 PROSPECTIVE JUROR NO. 675: That's true.

17 MR. ORAM: So, can you imagine a scenario not in
18 here, but let's say in a, you know, a car burglary where the
19 State presents the evidence and the attorneys for the defense
20 think they haven't proved it, so we're just going to go and
21 tell the jury they haven't proved it. Do you see that?

22 PROSPECTIVE JUROR NO. 675: Yes.

23 MR. ORAM: These could be all reasons why somebody
24 elects not to testify.

25 PROSPECTIVE JUROR NO. 675: Very true.

1 MR. ORAM: Okay. You could follow all four forms of
2 punishment if you found somebody guilty of first degree
3 murder; is that fair?

4 PROSPECTIVE JUROR NO. 675: That's very true.

5 MR. ORAM: And as I heard you loud and clear, you
6 were saying, Hey, how do you expect me to make a
7 determination? I haven't heard anything, right?

8 PROSPECTIVE JUROR NO. 675: Very true.

9 MR. ORAM: So what you're saying is I'd wait to hear
10 everything and then I'll make a fair decision?

11 PROSPECTIVE JUROR NO. 675: Yes, sir.

12 MR. ORAM: The fact that Mr. Burns is
13 African-American, that plays no bearing in this case other
14 than maybe for identification purposes, does it?

15 PROSPECTIVE JUROR NO. 675: No.

16 MR. ORAM: Sir, some people come into the courtroom
17 -- obviously not yourself -- but they have racial prejudice.
18 Some people tell us they have racial prejudice. We want to
19 make sure that when people are deciding Mr. Burns' fate back
20 there, that they are -- they're fair-minded people; does that
21 make sense?

22 PROSPECTIVE JUROR NO. 675: Very true.

23 MR. ORAM: Okay. Do you think you'd be good at this
24 job as a juror?

25 PROSPECTIVE JUROR NO. 675: Hopefully.

1 MR. ORAM: If you sit as a juror in this case, okay,
2 if you're one of the -- one of the people who are going to
3 sit, can you look at him and promise him a fair trial?

4 PROSPECTIVE JUROR NO. 675: Sure, I would.

5 MR. ORAM: Thank you very much. Pass for cause.

6 THE COURT: All right. Mr. Langford?

7 MR. LANGFORD: Thank you, Your Honor. As I said
8 earlier, if I'm up, it's almost done.

9 So -- but I do want to ask you a bit about your
10 concerns regarding somebody not testifying even though they're
11 the person that's accused of the crime. I want to ask you a
12 few questions basically about the United States Constitution,
13 okay. And most all of us agree that one of the best things
14 about living in the United States of America is that we have
15 the United States Constitution that governs us. Would you
16 agree with that?

17 PROSPECTIVE JUROR NO. 675: Very true.

18 MR. LANGFORD: Okay. And the people, the men who
19 formed the Constitution and especially the first 10 amendments
20 to the Constitution, they did that to create a more just
21 society; would you agree with that?

22 PROSPECTIVE JUROR NO. 675: Very true.

23 MR. LANGFORD: Okay. And part of that is having a
24 system of justice that is fair. I mean, if we're going to
25 have a good society, we need a system of justice that's fair;

1 would you agree with that?

2 PROSPECTIVE JUROR NO. 675: Yes, sir.

3 MR. LANGFORD: Okay. So they gave us rules. And one
4 of those rules in the Fifth Amendment to the Constitution,
5 which says you do not have to testify in a case against
6 yourself; you understand that?

7 PROSPECTIVE JUROR NO. 675: Yes, sir.

8 MR. LANGFORD: Okay. Reason they did that is because
9 it's not fair to have to do that. For all of the reasons that
10 -- that Mr. Oram talked about, essentially the founding
11 fathers said it's not fair to make somebody come into court
12 and stand up and have to testify in their case. It's not
13 fair. Now, would you agree that you want to be a fair juror?

14 PROSPECTIVE JUROR NO. 675: Yes, sir.

15 MR. LANGFORD: And so you understand that to be a
16 fair juror you have to obey that rule, and you have to say,
17 I'm not going to take that into account as I hear the evidence
18 in the case. I'm going to listen to the evidence and I'm
19 going to decide is that person guilty. But I'm not going to
20 think about whether that person testified.

21 PROSPECTIVE JUROR NO. 675: That's very true. But I
22 get to a point that if there's so much evidence against those
23 -- whomever --

24 MR. LANGFORD: We're not sure about that yet.

25 PROSPECTIVE JUROR NO. 675: Well, that's -- okay. I

1 don't --

2 MR. LANGFORD: There may not be.

3 PROSPECTIVE JUROR NO. 675: I really don't know.

4 MR. LANGFORD: But go ahead.

5 PROSPECTIVE JUROR NO. 675: Right.

6 MR. LANGFORD: Go ahead.

7 PROSPECTIVE JUROR NO. 675: I -- I don't know, like
8 I'm telling you that I don't know until I hear everything
9 which may be I -- what you're saying about the Constitution,
10 hey, they might not say, but they -- they might give us enough
11 evidence, tell them, Hey, they're guilty. So.

12 MR. LANGFORD: And if they do, then, of course, you
13 know, you'd have to return a verdict of guilt. That's going
14 to be your job as a -- as a juror. But the point is more
15 about, you know -- do you have children?

16 PROSPECTIVE JUROR NO. 675: Yes, sir. Two.

17 MR. LANGFORD: So as a father, you sometimes would
18 have to settle disputes between your children. You'd have --
19 might have to ask your child whether or not they did something
20 wrong, right?

21 PROSPECTIVE JUROR NO. 675: Yes.

22 MR. LANGFORD: And they couldn't just say, Well, I'm
23 invoking my right in the Fifth Amendment to the Constitution
24 not to say anything, Dad. Right? You weren't going to let
25 them do that, correct?

1 PROSPECTIVE JUROR NO. 675: Correct.

2 MR. LANGFORD: Right. Okay. But so this is
3 different. You understand? This is a court of law, and
4 there's all sorts of rules that you're going to have to follow
5 that the judge is going to give you. And it's not like you're
6 just the dad trying to figure out what happened with the kids.
7 Now we're in a court of law and we're dealing, as you
8 indicated earlier, with some people's lives on the line here.
9 Would you agree that it's probably better to have rules in
10 place that make sure things are fair?

11 PROSPECTIVE JUROR NO. 675: Yes, sir.

12 MR. LANGFORD: Would you agree that as a juror,
13 taking an oath to follow those rules, that that's something
14 you have to do; would you agree with that?

15 PROSPECTIVE JUROR NO. 675: Yes, sir.

16 MR. LANGFORD: So I've got to ask you, could you set
17 aside -- it's natural. I mean, everybody says, Gosh, I mean,
18 why won't somebody stand up and just say it? And we've talked
19 about some of the myriad -- there's a bunch of reasons
20 somebody might not come into court and want to testify. Has
21 nothing to do with whether they did it or not. But there's a
22 lot of reasons somebody might not want to take the stand.
23 Okay. That's not really the issue.

24 The issue is can you, as a juror, set aside those
25 personal feelings and hear only the evidence in the case

1 that's presented by -- to -- to you by the court, only the
2 evidence in deciding whether my client, Mr. Mason, is guilty
3 of what the State accuses him of; can you do that?

4 PROSPECTIVE JUROR NO. 675: I think I can. But the
5 other thing is my prejudice. If they give you a -- give me a
6 case that, Hey, they're guilty, then I -- it says, Hey, if
7 they don't want to open their mouths, hey, they proved to me
8 that they were guilty.

9 MR. LANGFORD: Sure. Everybody -- look, you -- when
10 you walk through the door, you're a human being. We're not
11 asking you to stop being a human being when you sit as a
12 juror. Okay. But we are asking you to follow the rules. We
13 all -- we've just told you one of those rules is you can't
14 take into account whether they testified. Are you okay with
15 that and can you set aside your prejudices -- that's what you
16 just called it -- can you set that aside and hear only the
17 evidence in deciding whether the State has met its burden of
18 proof?

19 PROSPECTIVE JUROR NO. 675: I think I can.

20 MR. LANGFORD: Okay. Okay. That's all I need you to
21 say, just make sure that that's what you could do. Okay.

22 You heard earlier also, they talked about that this
23 is -- there's two trials here, right?

24 PROSPECTIVE JUROR NO. 675: Yes, sir.

25 MR. LANGFORD: One trial having to do with Mr. Burns

1 and the other trial having to do with Mr. Mason. And I need
2 you to listen and make sure that you will commit to listen
3 carefully to the evidence as to Mr. Burns, and then the
4 evidence as to Mr. Mason. Can you do that?

5 PROSPECTIVE JUROR NO. 675: Yes, I can.

6 MR. LANGFORD: Okay. And evaluate them
7 independently. Not just say, Well, you know, there's evidence
8 -- this evidence -- and there will be evidence that applies to
9 both, but sometimes there'll be evidence that only applies to
10 one, and you need to weigh it just against that person; can
11 you do that?

12 PROSPECTIVE JUROR NO. 675: Yes, I can.

13 MR. LANGFORD: Okay. Something you said earlier, as
14 well. You used the term that -- that people's lives are on
15 the line here. And in a large sense, yes, because it may
16 determine what happens to them. We all -- we know the
17 penalties are -- are death as to Mr. Burns, life without, life
18 with the possibility of parole, and a term of years. So
19 literally his life, physical human life is in the balance.

20 But as to my client, Mr. Mason, he's not facing the
21 death penalty. You understand that?

22 PROSPECTIVE JUROR NO. 675: Yes, sir.

23 MR. LANGFORD: Okay. So when you said lives are on
24 the line here, you meant in the larger sense as to what's
25 happening to them for the rest of their lives, is that right?

1 PROSPECTIVE JUROR NO. 675: Yes, sir.

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

3 THE COURT: All right. We're going to take our
4 luncheon recess now. It's noon and so we're going to recess
5 until 1:00 this afternoon. The court will be at ease while
6 the jury leaves.

7 We got kind of a slow start this morning, but we're
8 going to go faster this afternoon. You'll be excused until
9 1:00, and the marshal will tell you where to -- when to
10 return.

11 THE MARSHAL: Thank you, jurors.

12 MR. DiGIACOMO: Can we make it 1:15? We discussed
13 with your clerk a 1:00 appointment --

14 THE COURT: You did?

15 MR. DiGIACOMO: -- for the projectors. Yes.

16 THE COURT: Oh, my clerk knows more than I do.

17 MR. DiGIACOMO: Can we make it 1:15?

18 THE COURT: All right. 1:15 this afternoon.

19 THE MARSHAL: Thank you. Jurors, please.

20 MR. SGRO: We can leave our stuff here, Your Honor?

21 THE COURT: Sure. Yeah, I do not have a luncheon
22 calender call.

23 (Prospective jury panel recessed at 12:05 p.m.)

24 THE COURT: The record will reflect that the
25 prospective jurors have exited the courtroom. Anything

1 further on the record?

2 MR. DiGIACOMO: No. Just -- well, two things. Just
3 real quickly. Barry Jensen was bringing the physical evidence
4 down to Linda, and I didn't want the jury to have to be
5 waiting while he's carrying the physical evidence into the
6 clerk.

7 THE COURT: Oh. Okay. That's why we're doing this.

8 MR. DiGIACOMO: Yes. And then the -- the second
9 issue --

10 THE COURT: You mean my clerk doesn't get till 1:15?

11 MS. WECKERLY: That's right.

12 MR. DiGIACOMO: Nope. That's true.

13 MS. WECKERLY: We impose upon...

14 MR. DiGIACOMO: Linda's --

15 THE COURT: The best clerk in the courthouse, let me
16 tell you.

17 MR. DiGIACOMO: Yes, she is. Other thing is, by my
18 count, and I -- I could be wrong, but I believe 23 jurors,
19 five of which are African-American, that finishes our tally
20 for the entire time period, which I believe turned out to be
21 somewhere in the range of 14 total jurors for about 80 jurors.
22 So 14 African-Americans for -- for 80 jurors. So --

23 MS. WECKERLY: This is a --

24 MR. DiGIACOMO: -- there's no basis for a -- an
25 argument that there has been an exclusion of a fair

1 cross-section of the community, because there's certainly,
2 actually, an overrepresentation based upon statistics, not an
3 underrepresentation of African-Americans.

4 THE COURT: Anything further on the record?

5 MR. SGRO: No, Your Honor.

6 THE COURT: In recess till 1:15. Off the record.

7 (Court recessed at 12:07 p.m. until 1:16 p.m.)

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

9 THE COURT: All right. State versus Burns and
10 Mason. The record will reflect the presence of the
11 defendants, their counsel, the District Attorneys. And we're
12 up to Mr. Nunez, I think. Oh, have you got the microphone?

13 PROSPECTIVE JUROR NO. 677: Yes, sir.

14 THE COURT: Good.

15 PROSPECTIVE JUROR NO. 677: I don't think it's on.

16 THE COURT: You don't think it's on?

17 THE MARSHAL: It's on.

18 PROSPECTIVE JUROR NO. 677: Can you hear me?

19 THE COURT: You've got to hold it right up to
20 your --

21 PROSPECTIVE JUROR NO. 677: Can you hear me?

22 THE COURT: There we go.

23 THE MARSHAL: Yep.

24 THE COURT: Good.

25 PROSPECTIVE JUROR NO. 677: Okay.

1 THE COURT: All right. Mr. Nunez, do you know any
2 of the attorneys or witnesses involved in the case?

3 PROSPECTIVE JUROR NO. 677: I do recall one of the
4 pediatric surgeons that work at UMC, Dr. John Goshi. I did
5 know him professionally.

6 THE COURT: How do you know him?

7 PROSPECTIVE JUROR NO. 677: He used to work at UMC.
8 I work at the University of Nevada School of Medicine. He is
9 no longer at the hospital, however.

10 THE COURT: He's no longer at the hospital?

11 PROSPECTIVE JUROR NO. 677: Right. I think he moved
12 to another state.

13 MR. DiGIACOMO: That's correct. Dr. Goshi is out of
14 state.

15 THE COURT: Is he going to testify or --

16 MR. DiGIACOMO: I believe he's being brought in to
17 testify, yes.

18 THE COURT: How is it that you know him?

19 PROSPECTIVE JUROR NO. 677: As I said, I work at the
20 University of Nevada School of Medicine. I'm in marketing.
21 And so professionally we -- we've had occasion to work
22 together.

23 THE COURT: Have you ever seen him socially?

24 PROSPECTIVE JUROR NO. 677: No, sir.

25 THE COURT: Has he ever done anything for you or to

1 you or with you that would have a tendency to make you favor
2 his testimony over others?

3 PROSPECTIVE JUROR NO. 677: No, sir.

4 THE COURT: Do you have an opinion about his -- his
5 profession or his work?

6 PROSPECTIVE JUROR NO. 677: No, sir.

7 THE COURT: You -- you work at the hospital?

8 PROSPECTIVE JUROR NO. 677: I work at the School of
9 Medicine, which is right next to University Medical Center.

10 THE COURT: Okay. How long have you been doing
11 that?

12 PROSPECTIVE JUROR NO. 677: Almost nine years.

13 THE COURT: And you are -- cause I -- I thought you
14 were like a graphic artist.

15 PROSPECTIVE JUROR NO. 677: I am.

16 THE COURT: Oh, okay. That's all right. I don't
17 think of somebody working at the School of Medicine as being a
18 graphic artist, but maybe they need artists.

19 PROSPECTIVE JUROR NO. 677: For marketing and
20 communications materials, absolutely they need a graphic
21 designer.

22 THE COURT: So I -- I would think that they would.

23 PROSPECTIVE JUROR NO. 677: Yes.

24 THE COURT: And so you help promote the School of
25 Medicine?

1 PROSPECTIVE JUROR NO. 677: Yes, sir.

2 THE COURT: All right. And as I understand it,
3 you're expecting a baby in March sometime?

4 PROSPECTIVE JUROR NO. 677: That's correct.

5 THE COURT: All right. We're going to be through
6 before that baby comes, okay?

7 PROSPECTIVE JUROR NO. 677: Okay.

8 THE COURT: Okay. How's your wife?

9 PROSPECTIVE JUROR NO. 677: She's doing great.

10 THE COURT: Good.

11 PROSPECTIVE JUROR NO. 677: She's not too thrilled
12 about this situation, but --

13 THE COURT: She's not too thrilled? Well --

14 PROSPECTIVE JUROR NO. 677: Well, she's --

15 THE COURT: -- at least it's not --

16 PROSPECTIVE JUROR NO. 677: -- she's afraid that I
17 might --

18 THE COURT: -- her down here.

19 PROSPECTIVE JUROR NO. 677: -- somehow miss the
20 birth of my first child because of the proceedings here. But
21 other than that, she's fine.

22 THE COURT: Okay. You also indicated that your
23 brother-in-law is a police officer in North Las Vegas; is that
24 right?

25 PROSPECTIVE JUROR NO. 677: Yes, sir.

1 THE COURT: He wasn't -- his name wasn't mentioned
2 in the list?

3 PROSPECTIVE JUROR NO. 677: That's correct.

4 THE COURT: As far as I know this incident occurred
5 in Las Vegas, not North Las Vegas; is that right?

6 MR. DiGIACOMO: That is correct. I don't believe we
7 have a North Las Vegas officer noticed.

8 THE COURT: Okay. You can't call your
9 brother-in-law and ask him how he feels about the case. Do
10 you understand that?

11 PROSPECTIVE JUROR NO. 677: I understand.

12 THE COURT: All right. Did you understand the
13 questions that I asked about the burden of proof, presumption
14 of innocence, and the job of the jury?

15 PROSPECTIVE JUROR NO. 677: Yes, sir.

16 THE COURT: Any quarrel with that procedure?

17 PROSPECTIVE JUROR NO. 677: I do not have any
18 quarrel.

19 THE COURT: Any reason you couldn't be a fair juror?

20 PROSPECTIVE JUROR NO. 677: No, sir.

21 THE COURT: Mr. DiGiacomo.

22 MR. DiGIACOMO: Just briefly.

23 Sir, let me allay your wife and your fears. If you
24 suddenly get a text that she went into labor early, that's why
25 we have alternates. So nobody is going to make you miss the

1 birth of your child, all right.

2 PROSPECTIVE JUROR NO. 677: Thank you.

3 MR. DiGIACOMO: Is that your first child?

4 PROSPECTIVE JUROR NO. 677: Yes, sir.

5 MR. DiGIACOMO: You said you were a creative
6 director -- or it says you're a creative director and you've
7 been with the School of Medicine for nine years.

8 PROSPECTIVE JUROR NO. 677: Correct.

9 MR. DiGIACOMO: Have you always been at the School
10 of Medicine since you started your career in graphic design?

11 PROSPECTIVE JUROR NO. 677: No, I was previously at
12 the University of Miami School of Medicine.

13 MR. DiGIACOMO: Oh. But in the area of medicine and
14 graphic design as it relates to promotion of either a school
15 of medicine or something related to medicine?

16 PROSPECTIVE JUROR NO. 677: Yes.

17 MR. DiGIACOMO: What does your brother-in-law do for
18 North Las Vegas, do you know?

19 PROSPECTIVE JUROR NO. 677: He's a police officer.

20 MR. DiGIACOMO: Regular patrol guy on the street in
21 a car, uniform, that type of thing?

22 PROSPECTIVE JUROR NO. 677: Yes, sir.

23 MR. DiGIACOMO: This is a theme that you'll read
24 throughout all of the questionnaires that generally the -- the
25 criminal justice system, there's good and bad to it. Would

1 that be fair?

2 PROSPECTIVE JUROR NO. 677: Yes, sir.

3 MR. DiGIACOMO: Okay. You would acknowledge that
4 any system made up of human beings, it's got to have -- it
5 can't be perfect, would that be fair?

6 PROSPECTIVE JUROR NO. 677: Correct.

7 MR. DiGIACOMO: Would you agree with the notion that
8 it's the best system in the world, at least that anyone has
9 figured out so far?

10 PROSPECTIVE JUROR NO. 677: Yes, sir.

11 MR. DiGIACOMO: We've asked questions about drugs.
12 Do you think people on drugs should be responsible for their
13 actions?

14 PROSPECTIVE JUROR NO. 677: Absolutely.

15 MR. DiGIACOMO: Flip side, do you think someone who
16 is on drugs can still be a victim of a crime and should still
17 have the protections of our criminal justice system?

18 PROSPECTIVE JUROR NO. 677: Yes.

19 MR. DiGIACOMO: Do you think essentially you're a
20 fair person?

21 PROSPECTIVE JUROR NO. 677: Yes.

22 MR. DiGIACOMO: Are you willing to look at both
23 sides of an issue and ultimately search for what the truth is?

24 PROSPECTIVE JUROR NO. 677: Yes.

25 MR. DiGIACOMO: Any issue whatsoever with at least

1 the first phase, the -- the -- whether or not the defendants
2 are guilty or not guilty?

3 PROSPECTIVE JUROR NO. 677: No.

4 MR. DiGIACOMO: Any question any of the lawyers have
5 asked that you think might be important for us to know at this
6 point?

PROSPECTIVE JUROR NO. 677: No.

7 MR. DiGIACOMO: Do you -- have you heard the term
8 presumption of innocence before?

9 PROSPECTIVE JUROR NO. 677: Yes.

10 MR. DiGIACOMO: And do you believe that's a right
11 that every American should have?

12 PROSPECTIVE JUROR NO. 677: Of course.

13 MR. DiGIACOMO: And if -- well, you'd be willing to
14 follow the Judge's instructions and give the defendants the
15 rights to which they're entitled, would that be fair?

16 PROSPECTIVE JUROR NO. 677: Yes, sir.

17 MR. DiGIACOMO: Let me jump to the penalty phase,
18 should we get there, Ms. Weckerly and I are able to prove this
19 case to you, any concerns whatsoever about considering all
20 four forms of punishment?

21 PROSPECTIVE JUROR NO. 677: No, sir.

22 MR. DiGIACOMO: Now, do you think that if you were
23 sitting where me and Ms. Weckerly were, or the defendants for
24 that matter, that you'd want 12 people in your state of mind
25 to judge the evidence against you?

1 PROSPECTIVE JUROR NO. 677: Yes.

2 MR. DiGIACOMO: Do you think you're essentially a
3 fair person?

4 PROSPECTIVE JUROR NO. 677: Yes.

5 MR. DiGIACOMO: Thank you very much, sir.

6 Judge, we pass for cause.

7 THE COURT: Mr. Sgro.

8 MR. SGRO: Thank you, Your Honor.

9 Good afternoon, sir.

10 PROSPECTIVE JUROR NO. 677: Good afternoon.

11 MR. SGRO: What is your best argument to consider
12 giving someone life with parole if someone has been convicted
13 of first degree murder? Give me -- give me an argument why
14 that should be.

15 PROSPECTIVE JUROR NO. 677: I think some of that in
16 my mind would be depending on the -- the severity of -- of the
17 criminal case. The heinousness of the act, the maliciousness,
18 basically the severity of -- of -- of the case at hand.

19 MR. SGRO: And I'm going to take that to mean you
20 understand every first degree murder case is severe and
21 heinous and all of those things. You're -- do I hear you
22 correctly if I said to you you mean an extreme situation?

23 PROSPECTIVE JUROR NO. 677: Yes.

24 MR. SGRO: Okay. So there are possibilities, and in
25 an extreme situation you're going to vote for the death

1 penalty; right?

2 PROSPECTIVE JUROR NO. 677: Yes.

3 MR. SGRO: And on the other end, am I hearing
4 correctly that if it's not -- however you define extreme, and
5 you're going to find that these definitions of how you view
6 things, that they're going to be yours if you do not find
7 something, to use your word, extreme, those are the ones
8 that's going to slide more over towards life with parole?

9 PROSPECTIVE JUROR NO. 677: Correct.

10 MR. SGRO: All right. So no quarrel with the
11 ability to consider all four forms of punishment; right?

12 PROSPECTIVE JUROR NO. 677: No.

13 MR. SGRO: And you understand we're here talking to
14 you about it now even though we don't believe we're going to
15 ever get there; right?

16 PROSPECTIVE JUROR NO. 677: Correct.

17 MR. SGRO: You understand why we have to talk about
18 it?

19 PROSPECTIVE JUROR NO. 677: Yes, sir.

20 MR. SGRO: And you're not going to think that this
21 is somehow a concession from us that we're conceding the case?

22 PROSPECTIVE JUROR NO. 677: Correct.

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

25 PROSPECTIVE JUROR NO. 677: No, sir.

1 MR. SGRO: Have you ever had a conversation with
2 somebody and you thought that they were telling you the truth
3 and then later on it turned out that they were not truthful
4 with you?

5 PROSPECTIVE JUROR NO. 677: I'm sure I have, but
6 nothing jumps out.

7 MR. SGRO: Let me ask -- the other -- the other
8 direction is have you ever thought someone was lying to you
9 and then it turned out they were being honest with you?

10 PROSPECTIVE JUROR NO. 677: Can you rephrase that?

11 MR. SGRO: Sure. You're speaking to someone, they
12 give you information for whatever you're asking, and you walk
13 away thinking, man, that person is not telling me the truth.
14 And then as it turns out, that person was telling you the
15 truth. Has that ever happened to you?

16 PROSPECTIVE JUROR NO. 677: There's a possibility of
17 that. I'm not -- I don't recall a moment like that.

18 MR. SGRO: You understand the point of what I'm
19 getting to; right? You're not going to have an opportunity in
20 this case to build relationships with witnesses. Some people
21 will be here for ten minutes, some people will be here a day,
22 a couple days. But you're not going to go have dinner with
23 them and talk to them about their -- you know, whatever else
24 is going on in their world. You understand you're going to be
25 called upon to gauge credibility from the time they hit the

1 stand until the time they leave and that's it.

2 PROSPECTIVE JUROR NO. 677: Correct.

3 MR. SGRO: Do you think you'd be able to do that?

4 PROSPECTIVE JUROR NO. 677: Yes.

5 MR. SGRO: Do you think that you'll be able to
6 decide if someone says -- one person says the light is red,
7 one person says the light is green, you'll be able to look at
8 other factors to decide who's telling you the truth?

9 PROSPECTIVE JUROR NO. 677: Sure. Yes.

10 MR. SGRO: And -- and you understand when people
11 come into Court and they swear to tell the truth, you would
12 agree everyone hopes that they're going to be honest with us;
13 right?

14 PROSPECTIVE JUROR NO. 677: Yes.

15 MR. SGRO: That the oath is serious. The Judge gave
16 you all an oath today and I'm assuming you took it seriously;
17 right?

18 PROSPECTIVE JUROR NO. 677: Yes.

19 MR. SGRO: And sometimes we ask jurors uncomfortable
20 questions. They took an oath. They answer as best they can,
21 would you agree?

22 PROSPECTIVE JUROR NO. 677: Yes.

23 MR. SGRO: On the other hand, do you think it's
24 possible for someone to swear to tell the truth, come into
25 court, look you dead in the eye, and just flat out lie to you.

1 Is that possible?

2 PROSPECTIVE JUROR NO. 677: Yes, of course.

3 MR. SGRO: Are there persons that can have motives
4 to lie?

5 PROSPECTIVE JUROR NO. 677: Yes.

6 MR. SGRO: Do you think that you would be able to
7 evaluate evidence as it comes in in conjunction with other
8 pieces of evidence to gauge whether someone is being straight
9 with you?

10 PROSPECTIVE JUROR NO. 677: Yes.

11 MR. SGRO: You heard me ask some questions about
12 science. Do you want any of those shows --

13 PROSPECTIVE JUROR NO. 677: Yes, sir.

14 MR. SGRO: -- the science shows? Which one do you
15 watch?

16 PROSPECTIVE JUROR NO. 677: First 48 jumps out.

17 MR. SGRO: Okay. And do you believe, then, that
18 science has a role in criminal cases?

19 PROSPECTIVE JUROR NO. 677: Yes.

20 MR. SGRO: And do you agree that science usually
21 doesn't have a motive or an agenda. It is what it is; right?

22 PROSPECTIVE JUROR NO. 677: Yes.

23 MR. SGRO: And can you see the point of how that
24 might be different with an individual that may have a motive?

25 PROSPECTIVE JUROR NO. 677: Yes.

1 MR. SGRO: If people get up here on the stand and
2 they start to change their testimony, you know, they said one
3 thing a week ago, they said something different a month ago,
4 and now here today we are on yet another rendition. Is that
5 something that's going to send some red flags maybe in your
6 opinion?

7 PROSPECTIVE JUROR NO. 677: Yes.

8 MR. SGRO: Have you ever heard of this concept
9 called a plea bargain or a plea agreement?

10 PROSPECTIVE JUROR NO. 677: Yes.

11 MR. SGRO: Tell me what that means to you.

12 PROSPECTIVE JUROR NO. 677: That means that the
13 defendant accepts the charges, is guilty, and in doing so has
14 the punishment reduced, apparently so that it doesn't have a
15 long court proceeding or something like that.

16 MR. SGRO: Okay. Can someone who -- and that's very
17 accurate. Now, can someone who has a plea agreement and
18 agrees to testify for the State, could they have a motive to
19 fabricate? They're saving themselves a lot of time.

20 PROSPECTIVE JUROR NO. 677: Yes.

21 MR. SGRO: Do you think you'd be able to evaluate,
22 even a person like that, what motive for fabrication that they
23 would have?

24 PROSPECTIVE JUROR NO. 677: Yes.

25 MR. SGRO: Do you have a cell phone?

1 PROSPECTIVE JUROR NO. 677: Yes, sir.

2 MR. SGRO: Have you ever actually gone through your
3 cell phone bill and looked at it carefully?

4 PROSPECTIVE JUROR NO. 677: Yes.

5 MR. SGRO: Have you ever seen any mistakes on it?

6 PROSPECTIVE JUROR NO. 677: No.

7 MR. SGRO: Okay. Have you ever had a conversation
8 that went something like this. Hey, man, I texted you several
9 hours ago, and your response is I never got it. Have you ever
10 had that kind of conversation?

11 PROSPECTIVE JUROR NO. 677: Yes.

12 MR. SGRO: And vice versa; right? You know what I'm
13 talking about; correct?

14 PROSPECTIVE JUROR NO. 677: Yes.

15 MR. SGRO: You would agree that sometimes even
16 technology can be off a little bit, would that be fair?

17 PROSPECTIVE JUROR NO. 677: Yes.

18 MR. SGRO: In this case there might be nicely
19 packaged sets of records. Do we have a commitment from you
20 that you'll be able to look at even computer generated -- I
21 think we have an instinct, right, if it came from the computer
22 it must be right. Would you be willing to even go through
23 records if they come packaged from a computer just to see if
24 there's any mistakes on them?

25 PROSPECTIVE JUROR NO. 677: Yes.

1 MR. SGRO: Had you ever heard of DNA or fingerprints
2 before coming into court today?

3 PROSPECTIVE JUROR NO. 677: Yes, sir.

4 MR. SGRO: I want to ask you the same question -- a
5 couple of the same questions. The photographs that you may
6 see, do you think you'd be able to take those and evaluate
7 those as pieces of evidence as they come in as opposed to the
8 knee jerk reaction to want to seek retribution? Do you think
9 you'd be able to do that?

10 PROSPECTIVE JUROR NO. 677: Yes, sir.

11 MR. SGRO: And I spoke earlier about this notion of
12 the puzzle. You know, not so much the First 48 because that's
13 more of a developing story, but some of these shows that have,
14 you know, beginning and a middle and an end and you know all
15 the answers at the end of the case, do you understand that --
16 that this case is not that case?

17 PROSPECTIVE JUROR NO. 677: Yes, sir.

18 MR. SGRO: And are you okay, are you okay, just
19 deciding whether or not Mr. Burns is guilty or not guilty as
20 opposed to solving all those loose ends? Would you be okay
21 with that?

22 PROSPECTIVE JUROR NO. 677: Yes.

23 MR. SGRO: And do you remember the question about
24 the burden of proof? Remember the hypothetical, they call 100
25 witnesses? Do you understand in our -- in our system -- we

1 had a juror -- as you heard, we've been doing this for several
2 days. We had one juror from a different country that said,
3 you know what, I love this system because where I'm from, if
4 you're accused of a crime you start guilty and you sort of
5 work backwards from there. In our country we do the opposite.
6 We say everyone starts out presumed innocent. And if the
7 evidence never gets to beyond a reasonable doubt, they never
8 lose that -- that protection. And are you okay with that?

9 PROSPECTIVE JUROR NO. 677: Yes, sir.

10 MR. SGRO: So the -- the notion that the State of
11 Nevada could call 100 witnesses, we could be here for five
12 weeks, if at the end of the case you just don't think they
13 proved their case, any quarrel with coming back and returning
14 a verdict of not guilty?

15 PROSPECTIVE JUROR NO. 677: No, sir.

16 MR. SGRO: Are you going to have any expectation
17 from Mr. Burns or his attorneys to produce evidence to
18 convince you of something?

19 PROSPECTIVE JUROR NO. 677: No.

20 MR. SGRO: Okay. So no -- no problem with that;
21 right?

22 PROSPECTIVE JUROR NO. 677: No, sir.

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

24 THE COURT: All right. Mr. Langford.

25 MR. LANGFORD: I'll pass for cause, Your Honor.

1 THE COURT: All right. If you'd had that microphone
2 to Mr. -- is it Rosales?

3 PROSPECTIVE JUROR NO. 689: Yes.

4 THE COURT: Mr. Rosales, do you know any of the
5 attorneys here or the witnesses in the case?

6 PROSPECTIVE JUROR NO. 689: No.

7 THE COURT: As I understand it you're a receiver at
8 the Palms?

9 PROSPECTIVE JUROR NO. 689: Correct.

10 THE COURT: How long have you been doing that?

11 PROSPECTIVE JUROR NO. 689: Nine years.

12 THE COURT: And before that were you working for
13 other hotels?

14 PROSPECTIVE JUROR NO. 689: Yes.

15 THE COURT: What hotels?

16 PROSPECTIVE JUROR NO. 689: Texas Station.

17 THE COURT: You were arrested for fighting at one
18 time?

19 PROSPECTIVE JUROR NO. 689: It was my friend.

20 THE COURT: Oh, that was your friend?

21 PROSPECTIVE JUROR NO. 689: Yes.

22 THE COURT: Not you personally?

23 PROSPECTIVE JUROR NO. 689: No, I was just there.

24 THE COURT: All right. You heard the questions that
25 I've been asking about the burden of proof. Presumption of

1 innocence is one.

2 PROSPECTIVE JUROR NO. 689: Yes.

3 THE COURT: Have any quarrel with that procedure?

4 PROSPECTIVE JUROR NO. 689: No.

5 THE COURT: Do you think you could be a fair juror
6 in this case?

7 PROSPECTIVE JUROR NO. 689: Yes.

8 THE COURT: All right. Mr. -- or Ms. Weckerly. Or
9 Mr. --

10 MS. WECKERLY: We switched.

11 MR. DiGIACOMO: I got the odd numbers, Judge. So if
12 you --

13 THE COURT: Oh, you got the --

14 MR. DiGIACOMO: -- see an odd --

15 THE COURT: I didn't know what your --

16 MR. DiGIACOMO: -- number, it's me.

17 THE COURT: I didn't know what your plan was.

18 MR. DiGIACOMO: How are you, sir?

19 PROSPECTIVE JUROR NO. 689: Good. How are you?

20 MR. DiGIACOMO: Good. You said you're a receiver at
21 the Palms. What does a receiver do?

22 PROSPECTIVE JUROR NO. 689: We receive everything
23 that comes in, food, alcohol, furniture, everything.

24 MR. DiGIACOMO: And you said you've been doing that
25 for nine years. Do you supervise any people?

1 PROSPECTIVE JUROR NO. 689: No.

2 MR. DiGIACOMO: I'm going to guess that your answers
3 to the criminal -- you opinion on the criminal justice system
4 is based upon your very limited connection to it. Would that
5 be fair?

6 PROSPECTIVE JUROR NO. 689: Yes.

7 MR. DiGIACOMO: Okay. You said something about your
8 friend one time got arrested for fighting. How long ago was
9 that?

10 PROSPECTIVE JUROR NO. 689: Last year.

11 MR. DiGIACOMO: Last year? Did he get charged?

12 PROSPECTIVE JUROR NO. 689: He got -- he got a plea.

13 MR. DiGIACOMO: He got a plea?

14 PROSPECTIVE JUROR NO. 689: Yes.

15 MR. DiGIACOMO: Did someone get pretty injured
16 during the fight?

17 PROSPECTIVE JUROR NO. 689: Murder.

18 MR. DiGIACOMO: With murder?

19 PROSPECTIVE JUROR NO. 689: Yes.

20 MR. DiGIACOMO: Okay. How do you think your -- do
21 you think your friend was treated fairly?

22 PROSPECTIVE JUROR NO. 689: Yes.

23 MR. DiGIACOMO: I'm assuming that means that my
24 office prosecuted him. It was here?

25 PROSPECTIVE JUROR NO. 689: Yes.

1 MR. DiGIACOMO: Okay. If it was here and it was
2 murder, the odds are that it's going to be the Clark County
3 District Attorney's office. Nothing about that situation
4 would affect your ability to be fair and impartial in this
5 case?

6 PROSPECTIVE JUROR NO. 689: No.

7 MR. DiGIACOMO: Let me jump sort of to the back of
8 your questionnaire. Have -- before you came in and you filled
9 out this questionnaire, had you ever thought of the death
10 penalty before?

11 PROSPECTIVE JUROR NO. 689: Just sometimes when you
12 read the newspapers, watch TV, and people that do get
13 convicted of the death penalty, some do, I guess, pretty much
14 deserve what they have done or get like sentenced for.

15 MR. DiGIACOMO: Let me ask this. Do you think the
16 death penalty serves a purpose?

17 PROSPECTIVE JUROR NO. 689: In some circumstances,
18 yes.

19 MR. DiGIACOMO: You think in some circumstances it
20 just is justice?

21 PROSPECTIVE JUROR NO. 689: Pretty much, yes.

22 MR. DiGIACOMO: You indicated that you believe in
23 the death penalty because, as you put it, some crimes are just
24 too bad and some people just don't need to live.

25 PROSPECTIVE JUROR NO. 689: Uh-huh.

1 MR. DiGIACOMO: Is that a fair characterization?

2 PROSPECTIVE JUROR NO. 689: That's fair.

3 MR. DiGIACOMO: And there are some people who do
4 something so bad they forfeit their rights?

5 PROSPECTIVE JUROR NO. 689: Fair.

6 MR. DiGIACOMO: And then -- and I realize this
7 questionnaire can be somewhat confusing, that it's kind of a
8 multiple choice question on here and you actually checked off
9 two, so let me ask you this. In your mind as you sit here
10 today, can you conceive of a situation where you personally
11 would vote for the death penalty on some set of facts?

12 PROSPECTIVE JUROR NO. 689: Yes.

13 MR. DiGIACOMO: Okay. On the flip side, do you
14 think that the legislature was right when they decided there
15 should be four possible punishments for first degree murder
16 and so there must be circumstances where each one of those
17 four is appropriate?

18 PROSPECTIVE JUROR NO. 689: Yes.

19 MR. DiGIACOMO: Can you conceive in your mind some
20 situation where that you would be willing to consider giving
21 somebody the opportunity, not that a jury ever makes a
22 decision who gets parole, but at least an opportunity to see a
23 parole board?

24 PROSPECTIVE JUROR NO. 689: Yes.

25 MR. DiGIACOMO: I noticed at the back that you

1 indicated that you're off next week.

2 PROSPECTIVE JUROR NO. 689: Two weeks.

3 MR. DiGIACOMO: Two weeks.

4 PROSPECTIVE JUROR NO. 689: I think it's two weeks.

5 MR. DiGIACOMO: So you --

6 PROSPECTIVE JUROR NO. 689: February 3rd to at least
7 the 7th or 6th.

8 MR. DiGIACOMO: I think next Monday is February 2nd.

9 PROSPECTIVE JUROR NO. 689: 2nd. Yeah, I'm off.

10 MR. DiGIACOMO: Do you work Monday to Friday?

11 PROSPECTIVE JUROR NO. 689: Monday, Tuesday, Friday,
12 Saturday.

13 MR. DiGIACOMO: Monday, Tuesday, Friday, Saturday?

14 PROSPECTIVE JUROR NO. 689: Yeah, split days off.

15 MR. DiGIACOMO: Okay. I can tell you we're going to
16 be dark some of that time period. Like the 2nd and 3rd we're
17 not going to be in session, so that's not going to be a
18 problem. But you indicate here that you were going out of
19 town.

20 PROSPECTIVE JUROR NO. 689: We're trying to plan to
21 go out of town for my birthday.

22 MR. DiGIACOMO: Okay.

23 PROSPECTIVE JUROR NO. 689: That's --

24 MR. DiGIACOMO: But you don't have that currently
25 set?

1 PROSPECTIVE JUROR NO. 689: No. Well, since I got
2 summonsed.

3 MR. DiGIACOMO: Yeah.

4 PROSPECTIVE JUROR NO. 689: The plan got put on
5 hold.

6 MR. DiGIACOMO: Okay. Let me ask you this. We've
7 kind of asked this of other people. Myself, Ms. Weckerly, the
8 lawyers, we don't make the decisions on hardships. That's up
9 to Judge Thompson, and we don't ever argue with Judge
10 Thompson. So -- but the question --

11 THE COURT: Never?

12 MR. DiGIACOMO: -- for us is if you were forced
13 to --

14 THE COURT: I'm going to hold you to that.

15 MR. DiGIACOMO: Well, I'm a lawyer. Let me ask you
16 this, if you're here and Judge Thompson tells you you're here
17 on February 5th which is your birthday, are you going to be
18 able to listen to the evidence, listen to the witnesses, pay
19 attention to what's going on, or are you going to be in the
20 frame of mind where you're just not able to focus on what
21 we're doing here?

22 PROSPECTIVE JUROR NO. 689: No, I'll be prepared.
23 Yes.

24 MR. DiGIACOMO: And you recognize this is a very
25 serious undertaking that we're -- we're talking about here?

1 PROSPECTIVE JUROR NO. 689: Yes.

2 MR. DiGIACOMO: And you'd be willing to take your
3 oath seriously and follow the instructions of the Court --

4 PROSPECTIVE JUROR NO. 689: Of course.

5 MR. DiGIACOMO: -- and do your duty?

6 PROSPECTIVE JUROR NO. 689: Yes.

7 MR. DiGIACOMO: Do you think you're the type of
8 person who is a fair person?

9 PROSPECTIVE JUROR NO. 689: Very.

10 MR. DiGIACOMO: Do you think you're willing to keep
11 an open mind and listen to both sides?

12 PROSPECTIVE JUROR NO. 689: Yes.

13 MR. DiGIACOMO: Do you think that if you were
14 sitting where Ms. Weckerly or I are or where the defendants
15 are that you'd want 12 people like yourself making a decision
16 as to whether or not first you committed the crime, and second
17 whether or not what the punishment should be?

18 PROSPECTIVE JUROR NO. 689: Yes.

19 MR. DiGIACOMO: Thank you very much, sir.

20 PROSPECTIVE JUROR NO. 689: Thank you.

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

22 THE COURT: Mr. Oram.

23 MR. ORAM: Thank you, Your Honor.

24 Good afternoon.

25 PROSPECTIVE JUROR NO. 689: How you doing?

1 MR. ORAM: I'd like to move directly into that. You
2 were present when your friend was arrested, is that fair?

3 PROSPECTIVE JUROR NO. 689: Yeah.

4 MR. ORAM: Okay. And just out of curiosity, what
5 was his name? Do you mind telling us?

6 PROSPECTIVE JUROR NO. 689: Louis.

7 MR. ORAM: His last name?

8 PROSPECTIVE JUROR NO. 689: Louis Charvin.

9 MR. ORAM: Okay. How do you spell that last name?

10 PROSPECTIVE JUROR NO. 689: C-H-A-R-V-I-N.

11 MR. ORAM: And when did that occur?

12 PROSPECTIVE JUROR NO. 689: Last year around Super
13 Bowl time.

14 MR. ORAM: And so you were present when he was
15 arrested, but you didn't actually see the fight; is that
16 right?

17 PROSPECTIVE JUROR NO. 689: Yeah, I was turned
18 around when everything happened.

19 MR. ORAM: Okay. And somebody lost their life?

20 PROSPECTIVE JUROR NO. 689: Correct.

21 MR. ORAM: And you were -- so you were in real close
22 proximity to your friend, you were hanging out with your
23 friend at that time?

24 PROSPECTIVE JUROR NO. 689: Correct.

25 MR. ORAM: That brings me to another subject. Have

1 you ever heard of the terms guilt by association?

2 PROSPECTIVE JUROR NO. 689: Yeah.

3 MR. ORAM: Okay. In other words, that people could
4 be looked at in a poor light simply because of the people
5 they're hanging around?

6 PROSPECTIVE JUROR NO. 689: Yeah.

7 MR. ORAM: Sometimes parents, as parents we often
8 tell our kids, you know, be careful of who you hang around,
9 you don't want to get a bad reputation, that kind of thing,
10 okay. You understand that that can happen, people look at a
11 group of people and assume they're all doing bad things.

12 PROSPECTIVE JUROR NO. 689: Been there.

13 MR. ORAM: You've been there. Okay. And so you --
14 you understand that concept and you're aware that that
15 sometimes happens, people get grouped together, and sometimes
16 they're not all bad?

17 PROSPECTIVE JUROR NO. 689: Correct.

18 MR. ORAM: Okay. Do you ever watch those crime
19 scene or crime shows?

20 PROSPECTIVE JUROR NO. 689: Not as much.

21 MR. ORAM: That's fine.

22 PROSPECTIVE JUROR NO. 689: Yeah, I stopped watching
23 it awhile ago.

24 MR. ORAM: You stopped watching. Okay. Well, you
25 understand that in a case like this it's not going to be nice

1 and neatly packaged up in a one-hour episode and you all walk
2 out of here feeling good because you figured out the answer.
3 You understand that?

4 PROSPECTIVE JUROR NO. 689: I understand.

5 MR. ORAM: Okay. We're talking about five weeks.
6 And you're listening to a lot of different people say a lot of
7 different things. You understand that?

8 PROSPECTIVE JUROR NO. 689: I understand.

9 MR. ORAM: At work are you ever called upon to
10 determine whether somebody is lying to you?

11 PROSPECTIVE JUROR NO. 689: No.

12 MR. ORAM: Never?

13 PROSPECTIVE JUROR NO. 689: No.

14 MR. ORAM: Sir, you don't have children, either; is
15 that right?

16 PROSPECTIVE JUROR NO. 689: No, no children.

17 MR. ORAM: Okay. So do you think you'd be
18 comfortable making a determination whether witnesses are
19 telling you the truth or not?

20 PROSPECTIVE JUROR NO. 689: Yes.

21 MR. ORAM: What type of things do you think you'd
22 want to look for?

23 PROSPECTIVE JUROR NO. 689: The facts, the truth.

24 MR. ORAM: Do you think just because someone comes
25 in here and swears to tell the truth, the whole truth, nothing

1 but the truth so help them God, that that's what they're going
2 to do every single time?

3 PROSPECTIVE JUROR NO. 689: I hope they are.

4 MR. ORAM: You hope they are. But you know, don't
5 you --

6 PROSPECTIVE JUROR NO. 689: Yes.

7 MR. ORAM: -- that sometimes in courtroom people get
8 in and they have motive to lie and sometimes they lie?

9 PROSPECTIVE JUROR NO. 689: Yes, I know.

10 MR. ORAM: Okay. Would you want to look for things,
11 changes of testimony, in other words I saw the light, the
12 light was red --

13 PROSPECTIVE JUROR NO. 689: Uh-huh.

14 MR. ORAM: -- it was a real clear day and I was only
15 about ten feet away and the light was red. Then I come into
16 court two weeks later and now the light was green. Maybe also
17 tell you another time that, you know, I never even saw the
18 light, I was at home watching the Super Bowl. Those are
19 things you'd want to look for?

20 PROSPECTIVE JUROR NO. 689: Yeah.

21 MR. ORAM: Okay. Because obviously those look like
22 prior inconsistent statements; right?

23 PROSPECTIVE JUROR NO. 689: Of course.

24 MR. ORAM: Okay. You would also want to look to
25 what others said, maybe I said that, you know, the light was

1 red, but two police officers or three nuns said that I wasn't
2 even there. Those are things you'd want to look for; right?

3 PROSPECTIVE JUROR NO. 689: Yes.

4 MR. ORAM: Do you think drugs affects people's
5 perceptions?

6 PROSPECTIVE JUROR NO. 689: Yes.

7 MR. ORAM: And they may not, is that true? In other
8 words, they could be an alcoholic who drinks a lot every day
9 and he or she is on their first beer. Maybe their perception
10 is good at that time.

11 PROSPECTIVE JUROR NO. 689: Uh-huh.

12 MR. ORAM: Would you agree with that?

13 PROSPECTIVE JUROR NO. 689: Under alcohol, yes.

14 MR. ORAM: Okay. And -- and, you know, it's not a
15 trick question. I'm just trying to show you that there are
16 different ways to look at things, that ultimately you're the
17 finder of fact for your own --

18 PROSPECTIVE JUROR NO. 689: Yes.

19 MR. ORAM: -- ideas; right?

20 PROSPECTIVE JUROR NO. 689: Right.

21 MR. ORAM: And you -- you can make a determination,
22 but those are things you would look at; is that right?

23 PROSPECTIVE JUROR NO. 689: Correct.

24 MR. ORAM: Okay. If somebody is on drugs it doesn't
25 mean that they can be victimized, that, you know, we shouldn't

1 care about them; right?

2 PROSPECTIVE JUROR NO. 689: Right.

3 MR. ORAM: I mean, just because if you're a heroin
4 addict, if I'm a heroin addict, somebody doesn't have the
5 right to kill me.

6 PROSPECTIVE JUROR NO. 689: No.

7 MR. ORAM: Have any problem with these
8 constitutional principles we're talking about, burden of
9 proof?

10 PROSPECTIVE JUROR NO. 689: No.

11 MR. ORAM: Okay. It sounds like you understand that
12 well.

13 PROSPECTIVE JUROR NO. 689: Yes.

14 MR. ORAM: We don't have to prove anything to you;
15 right?

16 PROSPECTIVE JUROR NO. 689: Correct.

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

18 PROSPECTIVE JUROR NO. 689: Yes.

19 MR. ORAM: Mr. Burns doesn't have to get up on that
20 witness stand and testify.

21 PROSPECTIVE JUROR NO. 689: Yes.

22 MR. ORAM: If we -- if this is the last time you
23 ever hear the defense, okay, we sit over there and do nothing
24 more the rest of this trial, at the end of this trial, will
25 you go back in that back room, the deliberation room, and you

1 and 11 other people think there's a reasonable doubt, there's
2 a reasonable doubt, and you think there's a reasonable doubt,
3 that Mr. Burns is not guilty, can you come back in this
4 courtroom and tell these find prosecutors they didn't prove
5 the case?

6 PROSPECTIVE JUROR NO. 689: Yes.

7 MR. ORAM: Do you have any problem with that
8 whatsoever?

9 PROSPECTIVE JUROR NO. 689: No.

10 MR. ORAM: I want to ask you something that I think
11 is always human instinct.

12 PROSPECTIVE JUROR NO. 689: Uh-huh.

13 MR. ORAM: Human nature. I've never been a juror,
14 but I always wonder. And let's say -- use speeding. Speeding
15 doesn't get jury trials, but let's say it did. And you were
16 sitting there and you thought, you know, there is a reasonable
17 doubt. I'm not sure the man was a speeder. I think he was.

18 PROSPECTIVE JUROR NO. 689: Uh-huh.

19 MR. ORAM: I think he was, but I have a reasonable
20 doubt as to whether the man was a speeder. Do you think it's
21 something that would be easy for you to walk back into the
22 courtroom and say, yeah, I think he probably is a speeder, but
23 they didn't prove it beyond a reasonable doubt.

24 PROSPECTIVE JUROR NO. 689: Yeah. Thinking is not
25 knowing.

1 MR. ORAM: Okay. So you can follow the Judge's
2 instructions; is that right?

3 PROSPECTIVE JUROR NO. 689: Correct.

4 MR. ORAM: Do you have any -- any problem with
5 considering four types of punishment in the event that you
6 found Mr. Burns guilty of first degree murder?

7 PROSPECTIVE JUROR NO. 689: No.

8 MR. ORAM: Okay. Mr. Burns is African American.
9 Any problem with that?

10 PROSPECTIVE JUROR NO. 689: None whatsoever.

11 MR. ORAM: You know, some people have come in here,
12 we've been doing this for days, and some people have racial
13 motivations. You understand that? Some --

14 PROSPECTIVE JUROR NO. 689: Yes.

15 MR. ORAM: -- people say I can't be fair to one race
16 or to another, okay? If you were back in that jury
17 deliberation room, wouldn't you recognize with 11 other people
18 that race is just absolutely irrelevant other than maybe
19 identification purposes?

20 PROSPECTIVE JUROR NO. 689: No.

21 MR. ORAM: Okay. Do you have any problem with that
22 concept whatsoever?

23 PROSPECTIVE JUROR NO. 689: No. No.

24 MR. ORAM: Would you believe a police officer just
25 because he or she was a police officer over other witnesses?

1 PROSPECTIVE JUROR NO. 689: No.

2 MR. ORAM: Let me give you that example, a police
3 officer comes in and she says the light was red. Two other
4 people come in and say, no, the light was green. Would you
5 automatically believe the police officer, or would you just
6 look at all the facts and then determine who's telling the
7 truth?

8 PROSPECTIVE JUROR NO. 689: All the facts.

9 MR. ORAM: Okay You were asked about -- I
10 understand it's your birthday and you were hoping to have a
11 nice time with your friends. Your girlfriend?

12 PROSPECTIVE JUROR NO. 689: Girlfriend.

13 MR. ORAM: Okay. You know, Mr. Burns, this is his
14 life. It's really important.

15 PROSPECTIVE JUROR NO. 689: Yes.

16 MR. ORAM: So what we need to understand and we need
17 a promise from you. If you're sitting as a juror in this
18 case, okay, and it's your birthday, you're excited, and you're
19 thinking about what you're going to do. It's natural.

20 PROSPECTIVE JUROR NO. 689: Yes.

21 MR. ORAM: You would be able to pay careful
22 attention in here, wouldn't you?

23 PROSPECTIVE JUROR NO. 689: I'll try for him.

24 MR. ORAM: Okay. And that's all we can ask is that
25 you concentrate because, you know, there could be -- there

1 could be facts said that would be very important, obviously;
2 right? Is that right?

3 PROSPECTIVE JUROR NO. 689: Right.

4 MR. ORAM: Okay. Can you look at that young man and
5 promise him a fair trial?

6 PROSPECTIVE JUROR NO. 689: I'll promise you a fair
7 trial.

8 MR. ORAM: Thank you very much. Pass for cause.

9 THE COURT: Mr. Langford.

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

11 THE COURT: All right. Would you hand that
12 microphone to -- is it Ms. Spears?

13 PROSPECTIVE JUROR NO. 693: Yes.

14 THE COURT: Can you hold that microphone right up
15 there? Good. As I understand it, you are a director of a
16 Boys and Girls Club?

17 PROSPECTIVE JUROR NO. 693: Yeah, I'm a senior area
18 director, so I oversee 7 of our 15 clubs.

19 THE COURT: 7 clubs?

20 PROSPECTIVE JUROR NO. 693: Uh-huh.

21 THE COURT: You've got a lot of work to do.

22 PROSPECTIVE JUROR NO. 693: Yeah.

23 THE COURT: Okay. How long have you been doing
24 that?

25 PROSPECTIVE JUROR NO. 693: I've been with the Boys

1 and Girls Clubs for nine years, and area director for two.

2 THE COURT: Okay. By the way, do you know any of
3 the attorneys in this case or the witnesses?

4 PROSPECTIVE JUROR NO. 693: One of the names sounded
5 familiar, Hava Simmons.

6 MR. DiGIACOMO: That may be one of Mr. Sgro's.

7 THE COURT: Is that one of Mr. Sgro's?

8 MR. SGRO: It is, Your Honor. Department of Family
9 Services, Your Honor, and CPS.

10 THE COURT: All right. Is this just for records
11 or --

12 MR. SGRO: There might --

13 THE COURT: Is that a percipient witness to
14 something?

15 MR. SGRO: Potentially. It's mostly records. I
16 apologize, Judge.

17 THE COURT: Mostly records?

18 MR. SGRO: It's mostly records and potential some
19 percipient witness information.

20 THE COURT: Okay. Apparently they're -- they've
21 subpoenaed this individual to bring some records from CPS in.
22 Do you know this individual as working at CPS?

23 PROSPECTIVE JUROR NO. 693: Yes.

24 THE COURT: How long have you known her?

25 PROSPECTIVE JUROR NO. 693: Oh, I don't know, a few

1 years.

2 THE COURT: Is she a neighbor or a friend or --

3 PROSPECTIVE JUROR NO. 693: No, one of the
4 departments I supervise is the family resource center, and
5 we're first responders to child abuse and neglect cases. So
6 she at one point was our CPS counterpart, and we met on an
7 ongoing basis to discuss cases.

8 THE COURT: To discuss various cases where they had
9 the kids and --

10 PROSPECTIVE JUROR NO. 693: Well, we take cases, as
11 well.

12 THE COURT: You do take them, too?

13 PROSPECTIVE JUROR NO. 693: Yeah, so it's cases that
14 we have that we needed guidance on CPS on. So --

15 THE COURT: Is there anything in your relationship
16 with her that would tend to make you favor or disfavor her
17 testimony?

18 PROSPECTIVE JUROR NO. 693: I probably would favor
19 it because I just know her for so many years professionally.
20 I know how she works and the logistics of it.

21 THE COURT: You think she's a believable person,
22 then?

23 PROSPECTIVE JUROR NO. 693: Yes.

24 THE COURT: Okay. Well, the defense will like to
25 hear that. You -- oh, your husband, by the way, works for

1 Three Square Food Bank; is that right?

2 PROSPECTIVE JUROR NO. 693: Correct.

3 THE COURT: And how long has he been doing that?

4 PROSPECTIVE JUROR NO. 693: About a year and a half.

5 THE COURT: And after that -- or before that what
6 did he do?

7 PROSPECTIVE JUROR NO. 693: He was a caregiver for
8 -- in a group home with adults with disabilities.

9 THE COURT: All right. Did he have any contact with
10 the justice system?

11 PROSPECTIVE JUROR NO. 693: I mean, he's gotten like
12 tickets, but --

13 THE COURT: All right. Well, I don't mean --

14 PROSPECTIVE JUROR NO. 693: -- not in court in that
15 I know of.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR NO. 693: Unless you guys want to
18 tell me something.

19 THE COURT: He wasn't a caregiver for individuals
20 that were assigned to him by courts?

21 PROSPECTIVE JUROR NO. 693: No.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR NO. 693: Uh-huh.

24 THE COURT: You also indicated that you have to go
25 to Reno on the 10th and 11th of February.

1 PROSPECTIVE JUROR NO. 693: Correct.

2 THE COURT: Is that something that you, if you're
3 assigned as a juror and you can't go, you understand your
4 employer can't punish you for that?

5 PROSPECTIVE JUROR NO. 693: Right. I mean, they've
6 already bought my ticket.

7 THE COURT: They've already bought your ticket?

8 PROSPECTIVE JUROR NO. 693: Yeah. It's our state
9 youth of the year competition, and this year it's being held
10 in Reno. We alternate. Last year it was in Vegas, this year
11 it's in Reno. And as a senior management --

12 THE COURT: If you're selected as a juror you're not
13 going to be able to go, I hate to tell you.

14 PROSPECTIVE JUROR NO. 693: Yeah.

15 THE COURT: So maybe they can get a refund or get
16 you a different date.

17 PROSPECTIVE JUROR NO. 693: Yeah.

18 THE COURT: Okay. You said your home was
19 burglarized at one point?

20 PROSPECTIVE JUROR NO. 693: Yes, it was burglarized
21 two times in last year.

22 THE COURT: And did they -- did you report that to
23 the police department?

24 PROSPECTIVE JUROR NO. 693: Absolutely.

25 THE COURT: Did they do anything about it?

1 PROSPECTIVE JUROR NO. 693: Yeah, they came the
2 first time and took inventory of everything. And there wasn't
3 anything to fingerprint because it didn't look like they had
4 done any -- any of that. Two months later I was burglarized
5 again, and this time they sent like -- there was a ton of
6 fingerprints that they pulled, but it looked like they used
7 gloves, so they didn't get anything.

8 THE COURT: You say they -- they didn't find the
9 individuals that did that?

10 PROSPECTIVE JUROR NO. 693: No, they have not, not
11 that we are aware of.

12 THE COURT: Okay. There was something there about
13 pre-law. Were you in pre-law?

14 PROSPECTIVE JUROR NO. 693: As an undergrad one of
15 our -- my -- I was a double major, so one of my majors was law
16 and society.

17 THE COURT: But you decided not to pursue that?

18 PROSPECTIVE JUROR NO. 693: I did decide not to
19 pursue that.

20 THE COURT: Smart.

21 All right. Ms. Weckerly or Mr. DiGiacomo.

22 MR. DiGIACOMO: Odd numbers, Judge. It's me again.
23 Somehow all the evens left.

24 How are you, ma'am?

25 PROSPECTIVE JUROR NO. 693: I'm great.

1 MR. DiGIACOMO: Law and society UC Santa Barbara.
2 Oh, that's a pretty campus.

3 PROSPECTIVE JUROR NO. 693: Yeah.

4 MR. DiGIACOMO: Now, that -- this was pre -- well,
5 it's your undergrad.

6 PROSPECTIVE JUROR NO. 693: Right.

7 MR. DiGIACOMO: It's sociology and then they have
8 kind of this law and society --

9 PROSPECTIVE JUROR NO. 693: Right.

10 MR. DiGIACOMO: -- the kind of mixture of you get
11 some psych classes and various other things that you go to.

12 PROSPECTIVE JUROR NO. 693: Uh-huh. Correct.

13 MR. DiGIACOMO: Do you remember any specific cases
14 or any specific classes directly related to law itself?

15 PROSPECTIVE JUROR NO. 693: Yeah, we had like the
16 basic ones. Like at one point in time they were talking about
17 torts and the research methodology portion of it, the
18 forensics part, but it was a long time ago.

19 MR. DiGIACOMO: Yeah, and it's mostly kind of
20 theoretical like, you know --

21 PROSPECTIVE JUROR NO. 693: Right. Uh-huh.

22 MR. DiGIACOMO: -- why is it that we have laws type
23 stuff.

24 PROSPECTIVE JUROR NO. 693: Right.

25 MR. DiGIACOMO: Would that be fair?

1 PROSPECTIVE JUROR NO. 693: Yes.

2 MR. DiGIACOMO: Okay. And you now have a Master's
3 in education?

4 PROSPECTIVE JUROR NO. 693: Correct.

5 MR. DiGIACOMO: And what did you say exactly that
6 you do for the Boys and Girls club?

7 PROSPECTIVE JUROR NO. 693: I'm a senior area
8 director, so I oversee seven our clubs and our family resource
9 center.

10 MR. DiGIACOMO: So I imagine that in your line of
11 work, at least in some point in time, there's got to be some
12 factual disputes that you have to figure out what the answer
13 is?

14 PROSPECTIVE JUROR NO. 693: Correct.

15 MR. DiGIACOMO: And you think you're capable of
16 doing that?

17 PROSPECTIVE JUROR NO. 693: I -- I am, yeah. My
18 boss thinks so.

19 MR. DiGIACOMO: That's good. There was some
20 questions related to the death penalty, obviously, in here.
21 And let me ask you this, had you ever thought of the death
22 penalty before you came down here?

23 PROSPECTIVE JUROR NO. 693: Sure.

24 MR. DiGIACOMO: And do you think the death penalty
25 serves a purpose?

1 PROSPECTIVE JUROR NO. 693: Yes.

2 MR. DiGIACOMO: You noted that your religious
3 background is against the death penalty.

4 PROSPECTIVE JUROR NO. 693: Right.

5 MR. DiGIACOMO: Do you -- you know, not all of us
6 follow every single rule of our religion. Is that something
7 that's, you know, part of your religion, but ultimately you
8 personally believe in the death penalty?

9 PROSPECTIVE JUROR NO. 693: Yes. It's part of my
10 religion, but there's a lot of part of my religion that I
11 don't necessarily agree with.

12 MR. DiGIACOMO: You and me both. You also check off
13 kind of both. And then I don't know if I circled one of these
14 or if you circled one of these. So there was a multiple
15 choice question that says I believe the death penalty is
16 appropriate in some murder cases and I can return a verdict in
17 the proper case. And you also checked off the one right below
18 that says although I do not personally favor the death
19 penalty, as long as the law may require me to consider it, I
20 can follow my oath and the law and consider it. Those aren't
21 necessarily inconsistent, but can you maybe explain to me why
22 you checked off both?

23 PROSPECTIVE JUROR NO. 693: Well, the way -- the way
24 the questionnaire was written and by the time we got the
25 questionnaire, I kind of was trying to finish --

1 MR. DiGIACOMO: Sure.

2 PROSPECTIVE JUROR NO. 693: -- so I could leave.

3 But, yes, I believe in the death penalty. I don't believe
4 it's always necessarily necessary to have the death penalty on
5 the table. I think it's very disproportionately just thrown
6 out there at times and the people who are on the other side of
7 having received it may not be necessarily -- it's just
8 proportionately issue, if that makes any sense.

9 MR. DiGIACOMO: Sure. Let me ask you this. You
10 agree that there -- the death penalty has a purpose. And I'm
11 assuming you, from the way you're answering these questions,
12 it should be limited in the cases that it's used in, would
13 that be fair?

14 PROSPECTIVE JUROR NO. 693: Yes.

15 MR. DiGIACOMO: Okay. There are some crimes that
16 are -- are that bad or some people, I guess, maybe that are
17 that bad that ultimately they've earned the ultimate
18 punishment. Would that be fair?

19 PROSPECTIVE JUROR NO. 693: Yes.

20 MR. DiGIACOMO: But not every person who is
21 convicted of first degree murder deserves that punishment. Is
22 that fair, too?

23 PROSPECTIVE JUROR NO. 693: Yes.

24 MR. DiGIACOMO: The flip side of that is, you know,
25 there are four possible punishments here, one of which is an

1 opportunity at some point to -- to see a parole board. Do you
2 agree that some people convicted of first degree murder should
3 have that right?

4 PROSPECTIVE JUROR NO. 693: It -- I -- it's kind of
5 like a two-point answer. Like I believe that, but I'm
6 uncomfortable with it because if they've been convicted of
7 murder, I'm uncomfortable with walking around knowing that
8 people who have been convicted of murder are now back on the
9 streets.

10 MR. DiGIACOMO: Okay. Well, and, you know, that's
11 -- you kind of heard Mr. Sgro, I think, said this before.
12 That's sort of the issue that we're kind of delving into. I
13 mean, Ms. Weckerly and I are entitled to 12 people who are
14 willing to consider the death penalty, as well as it relates
15 to Mr. Mason, life without the possibility of parole. But
16 these guys are also -- both Mr. Burns and Mr. Mason, they're
17 entitled to 12 jurors who are going to be willing to keep an
18 open mind on the possibility that they may receive parole
19 should they be convicted. And really we can't crawl into your
20 head. And, unfortunately for you, it's the only time we ever
21 get to talk to you. It's not like we get to put that first
22 phase on, if you convict him then we can do this all over
23 again.

24 So, I mean, I don't want to really press you, but
25 ultimately, in your mind, can you comprehend a situation where

1 you would be willing to consider parole as a possibility for
2 somebody, of if it -- if you look in yourself and go, man, I
3 can't see myself after convicting somebody of first degree
4 murder ever really considering parole?

5 PROSPECTIVE JUROR NO. 693: I can't really see
6 myself considering someone who has been convicted of murder of
7 putting them back on the streets.

8 MR. DiGIACOMO: Thank you very much.

9 Judge, we'd submit it.

10 THE COURT: You want to challenge?

11 MR. ORAM: No, just briefly traverse here.

12 Good afternoon.

13 PROSPECTIVE JUROR NO. 693: Good afternoon.

14 MR. ORAM: Okay. In order to sit on the jury we
15 need fair-minded people. I think people -- that doesn't mean
16 that you're not fair-minded if you can't -- if you can't
17 answer certain questions, okay.

18 PROSPECTIVE JUROR NO. 693: Uh-huh.

19 MR. ORAM: You really don't know anything about this
20 case other than that little synopsis; right?

21 PROSPECTIVE JUROR NO. 693: Right.

22 MR. ORAM: Okay. And our legislature has said in
23 the state of Nevada that if you're convicted of first degree
24 murder, someone is convicted of first degree murder, that a
25 jury must consider, be able to consider all four forms of

1 punishment, okay.

2 PROSPECTIVE JUROR NO. 693: Okay.

3 MR. ORAM: Sometime the State will charge first
4 degree murder as the getaway driver, okay. You can consider a
5 getaway driver for possibility of parole, couldn't you?

6 PROSPECTIVE JUROR NO. 693: I don't know. I mean, I
7 don't know. I'd have to hear --

8 MR. ORAM: Okay. That's fair. So what I hear you
9 saying is you don't know because you haven't heard the facts;
10 right?

11 PROSPECTIVE JUROR NO. 693: Right. But if they're
12 convicted of murder, I don't -- it's -- it's uncomfortable.

13 MR. ORAM: It is uncomfortable.

14 PROSPECTIVE JUROR NO. 693: That's an uncomfortable
15 choice to knowingly put someone who has been convicted of
16 murder back on the streets. That's an uncomfortable thing. I
17 have kids.

18 MR. ORAM: And I can -- I can imagine that. And if
19 you were sitting as a parole commissioner, that must be a very
20 difficult job because that's who actually makes those
21 decisions. A parole commissioner someday, 20, 30, 40 years
22 from now can listen to an inmate in the Nevada Department of
23 Prisons say I'm up for parole, could you please release me,
24 okay. And that's what they -- they make a decision on that,
25 not a jury.

1 PROSPECTIVE JUROR NO. 693: Uh-huh.

2 MR. ORAM: Does that make sense?

3 PROSPECTIVE JUROR NO. 693: Yes.

4 MR. ORAM: So I just want to be clear that you as a
5 juror wouldn't be deciding parole. That's obvious, isn't it?

6 PROSPECTIVE JUROR NO. 693: Right.

7 MR. ORAM: All you would be doing is considering the
8 different forms of punishment, but only if you found first
9 degree murder.

10 PROSPECTIVE JUROR NO. 693: Right.

11 MR. ORAM: Okay. So you could consider the death
12 penalty if you found first degree murder?

13 PROSPECTIVE JUROR NO. 693: Right.

14 MR. ORAM: You could consider life without parole?

15 PROSPECTIVE JUROR NO. 693: Right.

16 MR. ORAM: And don't you think if you heard all of
17 the facts and heard everything about the case then you could
18 consider life with the possibility of parole? Without saying
19 that you're going to do that, you would be able to consider
20 it, would you not?

21 PROSPECTIVE JUROR NO. 693: I don't know.

22 MR. ORAM: Okay. And I -- when you say that, tell
23 me what you're feeling. Why do you say it that way?

24 PROSPECTIVE JUROR NO. 693: Well, it's that
25 uncomfort. Like I think I've said that. It's uncomfortable

1 considering that if it's been the conviction. I don't know.
2 I don't know for sure.

3 MR. ORAM: You know, and I think that it sounds to
4 me as though you're thinking if I've convicted someone of
5 first degree murder, I want to punish them to the fullest
6 extent of the law, is that fair?

7 PROSPECTIVE JUROR NO. 693: No, what I'm saying is
8 if someone is convicted of murder, they should not be back on
9 the streets. Like I am uncomfortable with that.

10 MR. ORAM: You could not even consider letting them
11 go to a parole board 40 years from now or something like that?
12 That's not something you can consider?

13 PROSPECTIVE JUROR NO. 693: Right now I would say
14 I'm not comfortable with that.

15 MR. ORAM: Is it to the point where you feel it
16 would impair your ability to be fair as a juror in this case?

17 PROSPECTIVE JUROR NO. 693: I don't know that it would impair
18 it. I just -- if there is that conviction, I don't know that
19 that would be something I could do. I mean, I don't know -- I
20 don't think that that would change my views on what I'm
21 hearing. But if there is that conviction, I am uncomfortable
22 with that option.

23 MR. ORAM: If there is a conviction, Judge Thompson
24 would advise you of the law in a second phase, what's called a
25 penalty phase, okay. And one of the things you would be asked

1 to do is consider all four forms of punishment. If you cannot
2 consider all four forms of punishment in some type of
3 hypothetical --

4 PROSPECTIVE JUROR NO. 693: Uh-huh.

5 MR. ORAM: -- okay, then you need to let us know.
6 If you can, if you think, well, I've got to hear everything,
7 I'll hear the facts, I won't close my mind to anything, and
8 then I'll consider it.

9 PROSPECTIVE JUROR NO. 693: Yeah.

10 MR. ORAM: And if you can do that, let us know.

11 PROSPECTIVE JUROR NO. 693: Well, I think I've
12 already said I couldn't.

13 MR. ORAM: You couldn't under any circumstances?

14 PROSPECTIVE JUROR NO. 693: Yeah, no. I'm very --
15 that's very uncomfortable.

16 MR. ORAM: Court's indulgence.

17 Thank you very much.

18 We'd submit it, Your Honor.

19 THE COURT: You're not challenging, then?

20 MR. ORAM: We do. We do.

21 THE COURT: You do challenge?

22 MR. ORAM: Yes, sir.

23 THE COURT: Well, I didn't understand that.

24 MR. ORAM: I'm sorry. We do, Your Honor.

25 THE COURT: Okay. Any traverse?

1 MR. LANGFORD: No.

2 THE COURT: All right. I'm going to excuse you, Ms.
3 Spears. Thank you for being a prospective juror. You can
4 leave. And you need to give that to the marshal.

5 Mr. Murphy?

6 PROSPECTIVE JUROR NO. 702: Yes, sir.

7 THE COURT: Do you know any of the attorneys or the
8 witnesses involved in the case?

9 PROSPECTIVE JUROR NO. 702: No.

10 THE COURT: You were an AMR transporter?

11 PROSPECTIVE JUROR NO. 702: Yes, sir.

12 THE COURT: Does that mean you're the driver or --

13 PROSPECTIVE JUROR NO. 702: Yes. We transport
14 non-emergency patients from one health facility to another,
15 like from the hospital to a rehab facility.

16 THE COURT: Okay. There are -- there are some AMR
17 transporters that are there for emergency cases, and you're
18 not one of those; is that right?

19 PROSPECTIVE JUROR NO. 702: That's right. Yes, sir.
20 It's non-emergency only.

21 THE COURT: Non-emergencies. Do you have -- you're
22 not an EMT?

23 PROSPECTIVE JUROR NO. 702: No.

24 THE COURT: You have somebody that has that kind of
25 training with you in case the person being transported needs

1 assistance?

2 PROSPECTIVE JUROR NO. 702: No, sir. There are two
3 people in my crew, and neither one of us are even a basic EMT.

4 THE COURT: So when you have a patient in the -- in
5 the ambulance they're in the back with the individual but they
6 don't have training as an EMT?

7 PROSPECTIVE JUROR NO. 702: That's right.

8 THE COURT: How long have you been doing this?

9 PROSPECTIVE JUROR NO. 702: Only one month.

10 THE COURT: And before that what kind of work did
11 you do?

12 PROSPECTIVE JUROR NO. 702: I was with Delta
13 Airlines at McCarran Airport as a ticketing agent for 20
14 years.

15 THE COURT: And you're retired from that position?

16 PROSPECTIVE JUROR NO. 702: Yes, sir.

17 THE COURT: And -- okay. You didn't indicate
18 whether or not you had been a juror before. Have you been a
19 juror?

20 PROSPECTIVE JUROR NO. 702: No, sir, I have not.

21 THE COURT: Have you ever been the victim of a
22 crime?

23 PROSPECTIVE JUROR NO. 702: No.

24 THE COURT: Have you ever been involved in any
25 lawsuits where you sued somebody or been sued?

1 PROSPECTIVE JUROR NO. 702: No, sir.

2 THE COURT: Do you know anything about this case?

3 PROSPECTIVE JUROR NO. 702: No, sir, other than
4 the --

5 THE COURT: Any reason you couldn't be a fair juror?

6 PROSPECTIVE JUROR NO. 702: No, sir.

7 THE COURT: All right. Mr. -- Ms. Weckerly.

8 MS. WECKERLY: It is an even number, Your Honor.
9 How are you, sir?

10 PROSPECTIVE JUROR NO. 702: Good, thank you.

11 MS. WECKERLY: You mentioned that you're still in
12 training for your work.

13 PROSPECTIVE JUROR NO. 702: Yes, ma'am.

14 MS. WECKERLY: You're -- are you missing like
15 training that you couldn't go back to if we impose on you to
16 sit as a juror?

17 PROSPECTIVE JUROR NO. 702: My first two weeks was
18 the training period. I'm over that now, but I'm still in a
19 probationary period --

20 MS. WECKERLY: Okay.

21 PROSPECTIVE JUROR NO. 702: -- for three months.

22 MS. WECKERLY: And does that suspend if you're here
23 with us for a couple weeks?

24 PROSPECTIVE JUROR NO. 702: I don't know. I don't
25 think so.

1 MS. WECKERLY: Okay. I mean, are you -- I guess
2 what I'm asking are you worried about negative employment
3 consequences if you sit?

4 PROSPECTIVE JUROR NO. 702: That was a concern, yes.

5 MS. WECKERLY: Okay.

6 THE COURT: I can tell you that Nevada law does not
7 allow your employer to provide any detrimental consequences
8 because you've been summoned as a juror. If you have any
9 problems with that, you tell me and -- and we will write a
10 letter to them and explain it to them.

11 PROSPECTIVE JUROR NO. 702: Yes, sir. Thank you.

12 MS. WECKERLY: So with that assurance, do you think
13 -- I mean, I'm sure no one wants to necessarily sit here with
14 us for a month, but with that assurance that you wouldn't
15 suffer an adverse employment consequence, do you think you
16 could sit as a juror?

17 PROSPECTIVE JUROR NO. 702: Yes, I could.

18 MS. WECKERLY: Okay. And you can give us your full
19 attention even though you're kind of in a transition period
20 into your new job?

21 PROSPECTIVE JUROR NO. 702: Yes, no problem.

22 MS. WECKERLY: Sir, you -- your questionnaire is
23 kind of interesting in that you didn't indicate that you had
24 much of a feeling one way or the other about the death
25 penalty.

1 PROSPECTIVE JUROR NO. 702: That's true, I don't. I
2 guess what I meant by that was I can see both sides.

3 MS. WECKERLY: Okay. And -- and that's actually a
4 good thing. If I could just ask you a couple questions about
5 -- about some of your feelings about it. Is it a punishment
6 that you think has a place in a criminal justice system?

7 PROSPECTIVE JUROR NO. 702: Yes.

8 MS. WECKERLY: Okay. And have you -- you don't have
9 to tell me what they are, but could you imagine, have you read
10 about a case or heard about a case or thought about
11 circumstances in your mind that might warrant the death
12 penalty?

13 PROSPECTIVE JUROR NO. 702: Nothing that I can
14 remember right now.

15 MS. WECKERLY: Okay. Do you think that you just on
16 your own could conceive of a situation where it might be
17 appropriate?

18 PROSPECTIVE JUROR NO. 702: Yes.

19 MS. WECKERLY: Okay. Can you conceive of a
20 situation where it might be, I guess what we would call a just
21 punishment given what had happened in a crime?

22 PROSPECTIVE JUROR NO. 702: Yes.

23 MS. WECKERLY: Sort of the flip side of that, can
24 you see that someone could be convicted of first degree murder
25 and warrant a sentence less than that?

1 PROSPECTIVE JUROR NO. 702: Yes.

2 MS. WECKERLY: Do you allow for the possibility that
3 someone can be convicted of first degree murder and deserve a
4 sentence where they would be allowed to go before a parole
5 board and possibly be released?

6 PROSPECTIVE JUROR NO. 702: Yes.

7 MS. WECKERLY: The lady just ahead of you, she --
8 she had problems with letting someone go before a parole
9 board. And everybody is entitled to their opinion. But to
10 sit as a juror, you understand, of course, that you have to be
11 able to consider all those types of punishments?

12 PROSPECTIVE JUROR NO. 702: Yes, I do.

13 MS. WECKERLY: Okay. And what -- what happens in
14 first degree murder trials is first the jury individually and
15 as a group assesses whether or not the State, meaning Mr.
16 DiGiacomo and I, have proven the case beyond a reasonable
17 doubt. And in the event of a first degree murder conviction
18 we move into a penalty phase and you'll receive additional
19 information, and actually additional legal instructions from
20 the Judge. Are you able to wait until you hear that all --
21 all that new information and all of the additional
22 instructions before you decide what punishment might be
23 appropriate?

24 PROSPECTIVE JUROR NO. 702: Yes, I can.

25 MS. WECKERLY: And certainly I'm sure I don't have

1 to tell you that, you know, this is as serious a proceeding as
2 -- as we have in our justice system and it's important to the
3 State, as well as the two defendants. And I would imagine you
4 would want to hear as much as you could before making such a
5 weight decision.

6 PROSPECTIVE JUROR NO. 702: Absolutely. That is
7 correct.

8 MS. WECKERLY: Do you have, sir, any concerns at all
9 about -- about your ability to be fair to both sides in this
10 case?

11 PROSPECTIVE JUROR NO. 702: No, I do not.

12 MS. WECKERLY: Okay. Have you had -- I -- I would
13 think, maybe, in some of your prior experience, either through
14 reading the newspaper or anything, have you ever had an
15 experience where it gave you an impression or do you have an
16 opinion about how drugs maybe interact with criminal activity?

17 PROSPECTIVE JUROR NO. 702: No, I don't.

18 MS. WECKERLY: Do you have any opinion about that or
19 any thoughts about that?

20 PROSPECTIVE JUROR NO. 702: I haven't really thought
21 about that, no.

22 MS. WECKERLY: Okay. Can you -- well, let me ask
23 you it this way. Do you think it's possible for someone to be
24 themselves doing something illegal, but also become a victim
25 of a crime?

1 PROSPECTIVE JUROR NO. 702: Yes.

2 MS. WECKERLY: And so even if you're doing something
3 illegal, you deserve the protection of the law, as well?

4 PROSPECTIVE JUROR NO. 702: Yes.

5 MS. WECKERLY: Thank you, sir.

6 State will pass for cause, Your Honor.

7 THE COURT: Mr. Sgro.

8 MR. SGRO: Thank you, Your Honor.

9 Good afternoon, sir.

10 PROSPECTIVE JUROR NO. 702: Good afternoon.

11 MR. SGRO: So I noticed the same that Ms. Weckerly
12 did that a lot of things you put, you know, no opinion. And
13 I'm going to take it that's because of lack of interaction
14 with, would that be fair?

15 PROSPECTIVE JUROR NO. 702: Yes, that -- that's
16 true, yes.

17 MR. SGRO: So now you've been here for several hours
18 today. You've heard us talk about the system, the questions,
19 and all that. Have you formed any opinions while you've been
20 sitting here for half a day?

21 PROSPECTIVE JUROR NO. 702: No.

22 MR. SGRO: Okay. It's unusual for someone to come
23 into a criminal case and not have had any sort of opinion
24 formed whether or not, you know, the system is too harsh or
25 it's too easy or there are not enough rights or too many

1 rights. And you -- you see yourself kind of down the middle
2 on those issues?

3 PROSPECTIVE JUROR NO. 702: Yes, sir.

4 MR. SGRO: All right. Have you thought about the
5 death penalty from the time when you filled out the
6 questionnaire to coming into court today?

7 PROSPECTIVE JUROR NO. 702: Yes, sir.

8 MR. SGRO: Okay. How did that come about, just to
9 yourself or discussions with others?

10 PROSPECTIVE JUROR NO. 702: No, just thinking about
11 it on my own.

12 MR. SGRO: And what -- what's -- give me some
13 guidance on, you know, what's going through your mind when you
14 think about the death penalty.

15 PROSPECTIVE JUROR NO. 702: Well, like I said, I can
16 see both sides to it. If somebody is steadfastly proclaiming
17 their innocence, sometimes the death penalty is not applicable
18 in that case. I guess that's -- that's really all I've
19 thought about it.

20 MR. SGRO: Okay. So let me do it from the other
21 direction. I asked somebody earlier. Someone is convicted of
22 first degree murder, okay. Let's assume that for this
23 hypothetical. Give me your best argument why that person
24 should be entitled an opportunity to rejoin society someday
25 down the road.

1 PROSPECTIVE JUROR NO. 702: I guess I'm not -- I
2 really don't understand the question. Sorry.

3 MR. SGRO: You can consider giving someone the
4 opportunity to get back out on the street somebody that's
5 convicted of murder; right?

6 PROSPECTIVE JUROR NO. 702: Yes.

7 MR. SGRO: Okay. What would be the rationale behind
8 that decision?

9 PROSPECTIVE JUROR NO. 702: You mean for somebody to
10 be granted parole?

11 MR. SGRO: Yes, sir. In your opinion, why would you
12 give someone that opportunity? What would you be looking for?

13 PROSPECTIVE JUROR NO. 702: I'm not really sure. I
14 can't answer. I don't know.

15 MR. SGRO: Okay. Do you have opinions as to why you
16 would impose the death penalty, what you're looking for?
17 You've heard some people use adjectives like, well, if it's
18 the most severe. Remember someone said that earlier? Or the
19 most extreme. Do you remember those adjectives?

20 PROSPECTIVE JUROR NO. 702: Yes, sir.

21 MR. SGRO: Would you tend to agree with those folks
22 that the death penalty should be reserved -- Ms. Weckerly uses
23 this phrase, not today but another day, the worst of the worst
24 offenders?

25 PROSPECTIVE JUROR NO. 702: Yes, sir.

1 MR. SGRO: Okay. You understand there's -- there's
2 never going to be a first degree murder case that's not
3 heinous, that's not violent, you know, where someone didn't
4 lose their -- all murder cases are bad, okay. And so what we
5 need to explore with you is your thought process on in the
6 midst of a bad situation where someone has been convicted of
7 the worst crime that we have in our country, can that person
8 get a shot at getting back on the street someday. And you're
9 -- you're telling me given the right circumstances that that
10 would be a possibility?

11 PROSPECTIVE JUROR NO. 702: Yes, sir.

12 MR. SGRO: Would you look at things like the age of
13 the person that committed the crime?

14 PROSPECTIVE JUROR NO. 702: No, I wouldn't.

15 MR. SGRO: You would not. Would you look at the
16 circumstances of that individual as to how he or she got
17 involved in the crime in the first place?

18 PROSPECTIVE JUROR NO. 702: No, sir.

19 MR. SGRO: So what would you look at?

20 PROSPECTIVE JUROR NO. 702: I'm not really -- I
21 don't think I can answer that one. Sorry.

22 MR. SGRO: Okay. So I need to -- I need to have you
23 help me understand how you could consider it, but not know any
24 theoretical thing that you would be looking for, does that
25 make sense? I need -- I need you to help me understand why --

1 why is parole an option in your opinion? Why? Other than the
2 Judge has said you need to consider it to be on the jury.

3 PROSPECTIVE JUROR NO. 702: I'm not really sure what
4 a parole board, what behaviors they're looking for in a --

5 MR. SGRO: I understand and I'm not going to ask you
6 that. But why would you -- why would you ever give someone
7 the chance to go before a parole board?

8 PROSPECTIVE JUROR NO. 702: Because that's one of
9 the four options you have to decide on.

10 MR. SGRO: I understand that. And I apologize for
11 pressing you on this, but I need to -- I need you to have me
12 -- help me understand beyond, well, it's one of the four.
13 You're not going to roll dice in the jury room and the number
14 that matches is the sentence you're going to pick; right?

15 PROSPECTIVE JUROR NO. 702: Right.

16 MR. SGRO: Okay. So what are things you would look
17 for in considering giving someone a chance to reintegrate into
18 society? What would some of those things be?

19 PROSPECTIVE JUROR NO. 702: I -- the first word I
20 could think of would be the severity of the crime.

21 MR. SGRO: Okay. The least -- the less severe the
22 more likely towards life with parole?

23 PROSPECTIVE JUROR NO. 702: Yes.

24 MR. SGRO: Okay. Now, understanding that that is
25 kind of a play on words because all first degree murder cases

1 are severe, you understand that; right?

2 PROSPECTIVE JUROR NO. 702: Yes, sir.

3 MR. SGRO: Okay. So in the context of first degree
4 murder cases, can you think of an example of a first degree
5 murder case where you believe the person convicted, the proof
6 was beyond a reasonable doubt, the person convicted gets an
7 opportunity to come back on the street someday?

8 PROSPECTIVE JUROR NO. 702: No, sir, I really can't.

9 MR. SGRO: Okay.

10 PROSPECTIVE JUROR NO. 702: Other than what I've --
11 what I've already said I don't -- I can't really think of
12 anything.

13 MR. SGRO: Okay. Is there anything you can offer to
14 me to help me understand why you believe that parole is an
15 option in your opinion other than it's one of the options?

16 PROSPECTIVE JUROR NO. 702: Other than, like I said,
17 the severity of the case. That's all I can think of.

18 MR. SGRO: Okay. Do you have any quarrel with any
19 of the rights that Mr. Burns has like the presumption of
20 innocence?

21 PROSPECTIVE JUROR NO. 702: No, sir.

22 MR. SGRO: Do you think you'd hold it against him if
23 he did not testify?

24 PROSPECTIVE JUROR NO. 702: No, sir.

25 MR. SGRO: Why would someone that wasn't guilty of

1 an offense, why would they make a decision to not testify?
2 Can you think of a reason?

3 PROSPECTIVE JUROR NO. 702: It's their right to do
4 so.

5 MR. SGRO: Okay. Other than it's their right to do
6 so, is there a reason why they might not want to testify?

7 PROSPECTIVE JUROR NO. 702: To not -- to not
8 endanger their case.

9 MR. SGRO: Okay. You've heard me say earlier Mr.
10 Burns was 18 at the time these offenses are alleged to have
11 occurred. Do you think his age might have something to do
12 with a decision like that?

13 PROSPECTIVE JUROR NO. 702: No, sir.

14 MR. SGRO: You don't think so?

15 PROSPECTIVE JUROR NO. 702: No, sir.

16 MR. SGRO: Do you think that people can be nervous
17 and not want to testify because they're not articulate or they
18 don't feel they're going to deliver their story the best way
19 they could?

20 PROSPECTIVE JUROR NO. 702: Yes, sir.

21 MR. SGRO: Do you think that people can rely on
22 attorneys to give them input as to whether or not they should
23 testify?

24 PROSPECTIVE JUROR NO. 702: Yes.

25 MR. SGRO: Do you watch any of these science shows?

1 PROSPECTIVE JUROR NO. 702: No, I don't. No, sir.

2 MR. SGRO: Have you ever heard of DNA or fingerprint
3 evidence?

4 PROSPECTIVE JUROR NO. 702: Yes.

5 MR. SGRO: Do you think it's important to have
6 evidence like that in a criminal case?

7 PROSPECTIVE JUROR NO. 702: Yes, sir.

8 MR. SGRO: Do you have any difficulty holding the
9 State to their burden of proof of beyond a reasonable doubt?

10 PROSPECTIVE JUROR NO. 702: No, I don't.

11 MR. SGRO: And if they don't prove their case after
12 we're here for several weeks, if you don't feel like they've
13 proven their case, how would you vote?

14 PROSPECTIVE JUROR NO. 702: Not guilty.

15 MR. SGRO: Do you think you're going to be able to
16 judge the credibility of witnesses as they testify here?

17 PROSPECTIVE JUROR NO. 702: I don't know whether I
18 would be able to tell if they're telling the truth or not.

19 MR. SGRO: Okay. Well, one of the -- so the Judge
20 used an example earlier. He said we're a team. He's going to
21 give us what the law is, you all individually, and then
22 collectively will decide what the facts are. There are going
23 to be things in this case that conflict: right? Not
24 everything will match. It will be up to you to determine what
25 actually took place in this case. Do you think you'll be able

1 to do that?

2 PROSPECTIVE JUROR NO. 702: Yes, sir.

3 MR. SGRO: Do you have any experience where you've
4 had to resolve issues where people have come to you with
5 different stories?

6 PROSPECTIVE JUROR NO. 702: No, sir.

7 MR. SGRO: Do you have any questions about this
8 process?

9 PROSPECTIVE JUROR NO. 702: No, sir, I don't.

10 MR. SGRO: Do you want to be a juror in this case?

11 PROSPECTIVE JUROR NO. 702: Yes, sir.

12 MR. SGRO: Why is that?

13 PROSPECTIVE JUROR NO. 702: It's all of our duty to
14 do so.

15 MR. SGRO: Okay. I'll -- I'll submit it, Your
16 Honor. I'll submit it.

17 THE COURT: Mr. Langford?

18 MR. LANGFORD: Thank you, Your Honor.

19 Good afternoon.

20 PROSPECTIVE JUROR NO. 702: Good afternoon, sir.

21 MR. LANGFORD: Now, you understand there's only
22 three options for Mr. Mason; right?

23 PROSPECTIVE JUROR NO. 702: Yes, sir.

24 MR. LANGFORD: Three possible penalties.

25 PROSPECTIVE JUROR NO. 702: Yes.

1 MR. LANGFORD: Okay. And so, you know, it's even
2 more important really kind of in a way that you be able to
3 consider all three because there are really only three. Can
4 you consider all three?

5 PROSPECTIVE JUROR NO. 702: Yes, I could.

6 MR. LANGFORD: Including the possibility of parole
7 or parole after a term of years.

8 PROSPECTIVE JUROR NO. 702: Yes, sir, I could.

9 MR. LANGFORD: Okay. Are you going to hear the
10 evidence as to Mr. Mason exclusive of what you're hearing
11 about Mr. Burns?

12 PROSPECTIVE JUROR NO. 702: Yes, sir.

13 MR. LANGFORD: In other words, they've got to prove
14 their case specifically against Mr. Mason; right?

15 PROSPECTIVE JUROR NO. 702: Right.

16 MR. LANGFORD: You agree with that?

17 PROSPECTIVE JUROR NO. 702: Yes, I do.

18 MR. LANGFORD: Are you going to hold them to that
19 duty?

20 PROSPECTIVE JUROR NO. 702: Yes, I will.

21 MR. LANGFORD: Beyond a reasonable doubt?

22 PROSPECTIVE JUROR NO. 702: Yes.

23 MR. LANGFORD: Pass for cause, Judge.

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

25 THE COURT: Certainly.

1 (Bench conference.)

2 MR. SGRO: Judge, just very briefly. The reason I
3 did not pass for cause with this juror, and maybe it's me, but
4 it strikes me that mentally he may not be all there. When I
5 asked him questions, he did this thing where he repeated all
6 the questions, mouthed -- he mouthed the words to himself, and
7 then thereafter would respond. I found it odd some of the
8 context of his responses. So maybe that's just me and I'm on
9 an island. It struck me that this may not be an appropriate
10 juror. I'll -- that's my record, Your Honor. The Court
11 obviously saw the examination in all due --

12 THE COURT: What do you want me to do?

13 MR. SGRO: I think we should excuse him because I'm
14 not sure he's about to grasp what we're doing here. He was
15 unable to articulate conceptually different hypotheticals
16 which, by the way, we have posed to almost every juror.

17 THE COURT: Does the State agree?

18 MS. WECKERLY: No.

19 MR. DiGIACOMO: No.

20 THE COURT: All right.

21 MS. WECKERLY: I mean, he [inaudible].

22 THE COURT: If he doesn't -- if he -- you're not
23 challenging him for cause --

24 MR. SGRO: I am. I am.

25 THE COURT: I don't think that there's cause shown.

1 MR. SGRO: He's not, in our view, he's not in
2 possession of the requisite mental faculties to serve as a
3 juror, Your Honor, in our view.

4 THE COURT: I mean, he was a ticket agent for 20
5 years. He's retired from that. He's got a new job as a
6 driver. If he's -- if he was a ticket agent for 20 years and
7 now he's a driver of a -- of an ambulance --

8 MR. SGRO: He was a -- he was a ticket agent at a
9 very basic level. He was garbage in, garbage out. I just
10 don't see him having --

11 THE COURT: I don't think that that's enough.

12 MS. WECKERLY: Well, there's no -- there's no
13 intelligence [inaudible].

14 THE COURT: I don't have a grounds for -- for cause.

15 MR. SGRO: Your Honor, like I said, that was the
16 vibe that I got from him.

17 THE COURT: I don't have grounds.

18 MS. WECKERLY: [Inaudible].

19 (End of bench conference.)

20 THE COURT: All right. Ms. Arnold.

21 PROSPECTIVE JUROR NO. 703: Yes.

22 THE COURT: Okay. Ms. Arnold, do you know any of
23 the witnesses or attorneys in this case?

24 PROSPECTIVE JUROR NO. 703: No, sir.

25 THE COURT: Okay. Did I understand correctly that

1 you actually are from Nevada, that you were born here?

2 PROSPECTIVE JUROR NO. 703: Yes, sir.

3 THE COURT: You've been here for a few more years
4 than --

5 PROSPECTIVE JUROR NO. 703: Just a couple years.

6 THE COURT: -- even I have.

7 PROSPECTIVE JUROR NO. 703: Yeah. Native.

8 THE COURT: Okay. And you work for -- is DOA, is
9 that the Department --

10 PROSPECTIVE JUROR NO. 703: Department --

11 THE COURT: -- of Aviation?

12 PROSPECTIVE JUROR NO. 703: -- of Aviation.

13 THE COURT: All right. What do you do for the
14 Department of Aviation?

15 PROSPECTIVE JUROR NO. 703: I work in the security
16 division, in the badging and fingerprinting department. We
17 badge and fingerprint everybody at the airport.

18 THE COURT: Okay. How long have you been doing
19 that?

20 PROSPECTIVE JUROR NO. 703: This year will be eight
21 years.

22 THE COURT: And before that what kind of work did
23 you do?

24 PROSPECTIVE JUROR NO. 703: I spent about 23 years
25 with the title industry before it went south.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR NO. 703: And I worked for the
3 City Attorney's office for about six months, a couple
4 miscellaneous jobs, but pretty much the title industry.

5 THE COURT: What did you do for the City Attorney?

6 PROSPECTIVE JUROR NO. 703: I worked in discovery.

7 THE COURT: In discovery for criminal cases?

8 PROSPECTIVE JUROR NO. 703: Yes.

9 THE COURT: All right. Those were misdemeanor cases
10 at the City Attorney's office?

11 PROSPECTIVE JUROR NO. 703: Yes.

12 THE COURT: All right. And your husband is an
13 electrician?

14 PROSPECTIVE JUROR NO. 703: Yes.

15 THE COURT: Who does he work for?

16 PROSPECTIVE JUROR NO. 703: Right now Tiger
17 Communications.

18 THE COURT: What is Tiger Communications?

19 PROSPECTIVE JUROR NO. 703: They're low voltage.

20 THE COURT: All right. They do the --

21 PROSPECTIVE JUROR NO. 703: Telephones, that kind of
22 thing.

23 THE COURT: -- telephone and security systems?

24 PROSPECTIVE JUROR NO. 703: Yes.

25 THE COURT: You -- you indicated that you've been

1 the victim of grand larceny?

2 PROSPECTIVE JUROR NO. 703: Yes.

3 THE COURT: When was that?

4 PROSPECTIVE JUROR NO. 703: A long time ago.

5 THE COURT: All right. You're not going to hold
6 that against anybody -- that against anybody in this case?

7 PROSPECTIVE JUROR NO. 703: No, sir.

8 THE COURT: And you have a father-in-law that was
9 arrested?

10 PROSPECTIVE JUROR NO. 703: He was arrested but he
11 wasn't convicted.

12 THE COURT: What was he arrested for, or do you
13 know?

14 PROSPECTIVE JUROR NO. 703: Prostitution. I mean,
15 he was trying to get somebody to --

16 THE COURT: Okay. Where was that?

17 PROSPECTIVE JUROR NO. 703: -- be his companion.

18 THE COURT: Was that here in Nevada?

19 PROSPECTIVE JUROR NO. 703: Yes, it was.

20 THE COURT: Okay. That was a long time ago?

21 PROSPECTIVE JUROR NO. 703: He was having dementia
22 problems.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR NO. 703: He was very ill.

25 THE COURT: You -- you understand that -- that I'm

1 the judge of the law and you're the judge of the facts. It's
2 your job to decide what the facts are and reach a fair
3 verdict. Do you think you can do that?

4 PROSPECTIVE JUROR NO. 703: Yes, sir.

5 THE COURT: You -- you understand the burden of
6 proof and presumption of innocence that we've talked about?

7 PROSPECTIVE JUROR NO. 703: Yes, sir.

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

9 PROSPECTIVE JUROR NO. 703: No, sir.

10 THE COURT: Do you think you can be a fair juror to
11 both sides in the case?

12 PROSPECTIVE JUROR NO. 703: Yes, sir.

13 THE COURT: All right. Mr. DiGiacomo.

14 MR. DiGIACOMO: Good afternoon.

15 PROSPECTIVE JUROR NO. 703: Good afternoon.

16 MR. DiGIACOMO: By about this time, I think jurors
17 are ready to just, you know, strangle all of us because we
18 keep asking the same thing over and over again. So I'm just
19 going to do this generally. Do you think you're a fair
20 person?

21 PROSPECTIVE JUROR NO. 703: Yes, sir.

22 MR. DiGIACOMO: Is there anything anybody said so
23 far that you think might be important to one of us before we
24 make the decision on who sits on the jury?

25 PROSPECTIVE JUROR NO. 703: No, I don't have any

1 comments to them.

2 MR. DiGIACOMO: Do you think you make a good juror?

3 PROSPECTIVE JUROR NO. 703: Yes, sir.

4 MR. DiGIACOMO: Assuming Ms. Weckerly and I carry
5 our burden and prove these two individuals guilty, any issue
6 with coming in here and finding them guilty?

7 PROSPECTIVE JUROR NO. 703: No, sir.

8 MR. DiGIACOMO: The flip side, if Ms. Weckerly and I
9 don't do our jobs, if we can't prove it, any issue coming in
10 here and finding them not guilty?

11 PROSPECTIVE JUROR NO. 703: No, sir.

12 MR. DiGIACOMO: Let's go to the second phase. Can
13 you consider all four forms of punishment?

14 PROSPECTIVE JUROR NO. 703: Yes, sir.

15 MR. DiGIACOMO: Do you believe the death penalty, at
16 least in some circumstances, serves a purpose?

17 PROSPECTIVE JUROR NO. 703: In some circumstances,
18 yes.

19 MR. DiGIACOMO: But not every -- not every
20 circumstance?

21 PROSPECTIVE JUROR NO. 703: Not every.

22 MR. DiGIACOMO: And on the flip side of that, there
23 are some people who are guilty of first degree murder that
24 should someday see a parole board. Would that be fair?

25 PROSPECTIVE JUROR NO. 703: Yes, sir.

1 MR. DiGIACOMO: Do you think you'd be a fair person,
2 a fair juror?

3 PROSPECTIVE JUROR NO. 703: Absolutely.

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

6 THE COURT: Mr. Oram.

7 MR. ORAM: Thank you, Your Honor.
8 Good afternoon.

9 PROSPECTIVE JUROR NO. 703: Good afternoon.

10 MR. ORAM: How long did you work with the City
11 Attorney's?

12 PROSPECTIVE JUROR NO. 703: It was just six months.

13 MR. ORAM: Oh, six months?

14 PROSPECTIVE JUROR NO. 703: Yeah.

15 MR. ORAM: And so you were in discovery preparing
16 stuff and sending it off to the attorneys?

17 PROSPECTIVE JUROR NO. 703: Yes.

18 MR. ORAM: Did you enjoy the work?

19 PROSPECTIVE JUROR NO. 703: Yes.

20 MR. ORAM: Do you think it gave you a feeling one
21 way or another about a criminal justice system?

22 PROSPECTIVE JUROR NO. 703: I'm not sure that I can
23 form an opinion on that. Obviously a criminal justice system
24 is necessary. I think I'm a very unconditional person, too,
25 you know, meaning I make decisions on the facts.

1 MR. ORAM: Okay. And that's what we want, too,
2 obviously. It sounds like you've been listening carefully.
3 We're looking for people who are going to listen to facts and
4 then make a determination, and also have the willingness to
5 listen to others. Do you have any problem with that
6 whatsoever?

7 PROSPECTIVE JUROR NO. 703: No, sir.

8 MR. ORAM: Do you want to be on this jury?

9 PROSPECTIVE JUROR NO. 703: Yes, sir.

10 MR. ORAM: Why?

11 PROSPECTIVE JUROR NO. 703: I know it's going to
12 sound a little corny, but I enjoy this. I mean, I enjoy the
13 field, anything that has to do with law, litigation, anything
14 of that nature. It's just very interesting to me. And, yes,
15 I do watch all the programs. That doesn't mean that it has
16 anything to do with me forming any kind of judgments, it's
17 just something I very interested in.

18 MR. ORAM: Well, actually, you know, those programs,
19 we don't ask that for -- we're worried that you're going to
20 form a judgment. But some people will come in and they may
21 not have heard of certain scientific terms, or they think
22 that, you know, why is this going to last five weeks? You
23 know, when I watch it it's an hour and we know everything.
24 Okay. So we just want to talk about it. So it sounds to me
25 like you're open to everything, but you're well aware of some

1 of the science that comes out in a case like that.

2 PROSPECTIVE JUROR NO. 703: Yes, sir.

3 MR. ORAM: A case like this.

4 PROSPECTIVE JUROR NO. 703: Uh-huh.

5 MR. ORAM: You are familiar with DNA, fingerprints,
6 that kind of stuff?

7 PROSPECTIVE JUROR NO. 703: Yes.

8 MR. ORAM: It can convict the guilty, can't it?

9 PROSPECTIVE JUROR NO. 703: Yes.

10 MR. ORAM: Okay. And it can help show that someone
11 is not guilty, too, can't it?

12 PROSPECTIVE JUROR NO. 703: True.

13 MR. ORAM: Okay. So if I said, you know, I've
14 never been in this courtroom and you saw the example I gave
15 about fingerprints that it's going to make you think you were
16 in this courtroom; right?

17 PROSPECTIVE JUROR NO. 703: Correct.

18 MR. ORAM: But maybe somebody put my fingerprints
19 there.

20 PROSPECTIVE JUROR NO. 703: Sure.

21 MR. ORAM: I can make that claim and then you can
22 make a determination of what a bunch of nonsense that was;
23 right?

24 PROSPECTIVE JUROR NO. 703: Yes.

25 MR. ORAM: Okay. But these are all factors that go

1 into considering a case; is that right?

2 PROSPECTIVE JUROR NO. 703: Yes.

3 MR. ORAM: Have you ever heard the term where
4 there's smoke there's fire?

5 PROSPECTIVE JUROR NO. 703: Yes.

6 MR. ORAM: Do you think by the very fact that Mr.
7 Burns is sitting in this courtroom that he must have done
8 something wrong because otherwise he wouldn't be sitting in
9 this courtroom?

10 PROSPECTIVE JUROR NO. 703: Correct.

11 MR. ORAM: Do you think that? Do --

12 PROSPECTIVE JUROR NO. 703: That's why we're here
13 today.

14 MR. ORAM: Okay.

15 PROSPECTIVE JUROR NO. 703: So --

16 MR. ORAM: To determine whether he has.

17 PROSPECTIVE JUROR NO. 703: To determine.

18 MR. ORAM: Okay. But as you sit here, you don't
19 feel like he has done something wrong, he must have?

20 PROSPECTIVE JUROR NO. 703: I don't know that.

21 MR. ORAM: Okay. And so it sounds to me as though
22 you're willing to listen. And if at the end of this case you
23 don't think beyond a reasonable doubt, along with 11 other
24 people, that he is guilty of this crime, do you have any
25 problem walking in and announcing a verdict of not guilty?

1 PROSPECTIVE JUROR NO. 703: No.

2 MR. ORAM: How about the right to remain silent
3 under our Fifth Amendment, under our Bill of Rights, do you
4 have any problem with that concept?

5 PROSPECTIVE JUROR NO. 703: No.

6 MR. ORAM: Okay. You know, because some people do.
7 Some people think, you know, why do we have that; right?

8 PROSPECTIVE JUROR NO. 703: Right.

9 MR. ORAM: Okay. But that's not a problem, you have
10 no problem whatsoever with that?

11 PROSPECTIVE JUROR NO. 703: I have no problem with
12 that.

13 MR. ORAM: Now, I want to make sure that when we
14 talk about a penalty phase, okay, that doesn't mean in any way
15 Mr. Sgro and I are conceding anything. Does that make sense?

16 PROSPECTIVE JUROR NO. 703: True.

17 MR. ORAM: Okay. We are going to ask you at the end
18 of this case to come back through that back door with a not
19 guilty verdict, okay. But if you do not and you come back in
20 here with a guilty verdict, we can't stop the proceeding and
21 say, oh, by the way, can we ask you about the death penalty?
22 You see that?

23 PROSPECTIVE JUROR NO. 703: Yes.

24 MR. ORAM: Okay. So we would be remiss in our
25 duties if we don't ask you these questions, okay. You could

1 consider all four forms of punishment?

2 PROSPECTIVE JUROR NO. 703: Yes.

3 MR. ORAM: And I want to -- I want to tell you
4 something. With regard to burden of proofs, in a penalty
5 phase Nevada law dictates that a jury never has to return a
6 sentence of death, okay. And what that really means is it's
7 not like the State can prove something -- in other words, this
8 is not the case here so I'm just making it up, okay, but if
9 the State says if we can prove four dead bodies, then we have
10 automatic death. Do you understand that never happens in the
11 State of Nevada?

12 PROSPECTIVE JUROR NO. 703: Yes.

13 MR. ORAM: It's not as though they -- you can say,
14 okay, well, they've proved X, Y, and Z, so, therefore, we have
15 to come in here with a death sentence. They can prove 100
16 different things, 100 aggravating circumstances, and we could
17 do nothing and a jury can say, well, I don't want to execute,
18 I want to spare his life. You understand that Nevada law
19 gives you that right?

20 PROSPECTIVE JUROR NO. 703: Yes.

21 MR. ORAM: Am I making sense?

22 PROSPECTIVE JUROR NO. 703: Yes.

23 MR. ORAM: It's not a mathematical formula.

24 PROSPECTIVE JUROR NO. 703: Yes.

25 MR. ORAM: It's almost like a more -- there's --

1 there's certain laws that you have to look at, and I won't go
2 into those because Judge Thompson will do that for you if
3 there is a penalty phase. But in the end whether you choose
4 life or death is a very individual decision a jury makes. You
5 understand that and have any problem with that?

6 PROSPECTIVE JUROR NO. 703: No, I don't have a
7 problem with that.

8 MR. ORAM: It seems fair, doesn't it?

9 PROSPECTIVE JUROR NO. 703: I guess.

10 MR. ORAM: Well, to let 12 people in our -- in our
11 community make that decision as opposed to lawyers and judges
12 who may have become jaded. Does that seem fair?

13 PROSPECTIVE JUROR NO. 703: Yes. Yes.

14 MR. ORAM: Okay. That's the way the framers of our
15 country did it. They were real wise people and that's the way
16 they decided. Make sense?

17 PROSPECTIVE JUROR NO. 703: Yes.

18 MR. ORAM: Okay. Are you good at determining
19 whether someone is lying to you?

20 PROSPECTIVE JUROR NO. 703: For the most part, yes.

21 MR. ORAM: Well, you've raised two children?

22 PROSPECTIVE JUROR NO. 703: Yes.

23 MR. ORAM: Okay. And my experience with children is
24 that sometimes you get sort of the finger pointing, he did,
25 no, she did it. Have you ever had that?

1 PROSPECTIVE JUROR NO. 703: A little bit.

2 MR. ORAM: Well, then you're lucky as a parent.

3 Fair to say that sometimes in life, even parenting, you have
4 to make a determination who is responsible for something?

5 PROSPECTIVE JUROR NO. 703: Absolutely.

6 MR. ORAM: Okay. You think you're going to be open
7 to that concept and look carefully at what witnesses say?

8 PROSPECTIVE JUROR NO. 703: Absolutely.

9 MR. ORAM: So if I was a witness and I said the
10 light was red, and then I came into this court and said, oh,
11 no, it's always been green, that's something you're going to
12 look at, isn't it?

13 PROSPECTIVE JUROR NO. 703: Absolutely.

14 MR. ORAM: Okay. Any -- any problem with the
15 concept that Mr. Burns is an African American?

16 PROSPECTIVE JUROR NO. 703: No, sir.

17 MR. ORAM: I know it seems like a silly question,
18 but some people have come in here --

19 PROSPECTIVE JUROR NO. 703: I understand that.

20 MR. ORAM: -- and they have a problem with that.
21 You can look at that young man and promise him a fair trial?

22 PROSPECTIVE JUROR NO. 703: Absolutely.

23 MR. ORAM: Thank you so much.

24 PROSPECTIVE JUROR NO. 703: Absolutely.

25 MR. ORAM: Pass for cause.

1 THE COURT: Mr. Langford.

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

3 THE COURT: You want to move -- hand that microphone
4 to Ms. -- is it Pettit?

5 PROSPECTIVE JUROR NO. 716: Pettit. Uh-huh.

6 THE COURT: Ms. Pettit, do you know any of the
7 attorneys or witnesses in the case?

8 PROSPECTIVE JUROR NO. 716: No, I don't.

9 THE COURT: I understand you're a phlebotomist with
10 Quest?

11 PROSPECTIVE JUROR NO. 716: Yes.

12 THE COURT: How long have you been doing that?

13 PROSPECTIVE JUROR NO. 716: A year and a half.

14 THE COURT: Before that what were you doing?

15 PROSPECTIVE JUROR NO. 716: I was working with the
16 St. Rose Hospital reference lab doing phlebotomy.

17 THE COURT: Okay. Now that you're with Quest, do
18 you get some of the individuals who are sent there by the
19 courts to do their blood work?

20 PROSPECTIVE JUROR NO. 716: No, it's in a doctor's
21 office.

22 THE COURT: Okay. You -- you say your husband is
23 retired?

24 PROSPECTIVE JUROR NO. 716: Yes.

25 THE COURT: What's he retired from?

1 PROSPECTIVE JUROR NO. 716: He was a nurse, and then
2 his last five years he worked for the Federal Government in
3 the Veteran's Administration.

4 THE COURT: The VA?

5 PROSPECTIVE JUROR NO. 716: The VA doing their case.
6 You know, they're all back logged.

7 THE COURT: Is that -- is that out in Boulder City?

8 PROSPECTIVE JUROR NO. 716: We were -- we were in
9 Wisconsin.

10 THE COURT: Oh, that's when you were in Wisconsin.

11 PROSPECTIVE JUROR NO. 716: Right. He hasn't worked
12 since we moved here.

13 THE COURT: Okay. Why did you come here from
14 Wisconsin?

15 PROSPECTIVE JUROR NO. 716: The weather. We were
16 sick of the winter.

17 THE COURT: It's a good place to be away from right
18 now, isn't it?

19 PROSPECTIVE JUROR NO. 716: Yeah. Yeah. The last
20 two years.

21 THE COURT: Okay. And you said you had a niece that
22 was violently attacked.

23 PROSPECTIVE JUROR NO. 716: Correct.

24 THE COURT: When did that -- how long ago was that?

25 PROSPECTIVE JUROR NO. 716: Last month.

1 THE COURT: Was that here in --

2 PROSPECTIVE JUROR NO. 716: Right before Christmas.

3 No, back in Illinois.

4 THE COURT: Oh, that's back in Illinois. That's
5 not --

6 PROSPECTIVE JUROR NO. 716: Right.

7 THE COURT: -- here?

8 PROSPECTIVE JUROR NO. 716: No.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR NO. 716: It was in Illinois.

11 THE COURT: Do you know whether the law enforcement
12 caught the individual that did that?

13 PROSPECTIVE JUROR NO. 716: Yes, they have him.

14 THE COURT: Okay. And you don't know what's
15 happening with that case at this point?

16 PROSPECTIVE JUROR NO. 716: No. I know he didn't
17 make bail. He's still sitting in jail.

18 THE COURT: Okay. All right. Is there any reason
19 you couldn't be fair to both sides in this case?

20 PROSPECTIVE JUROR NO. 716: No.

21 THE COURT: Ms. Weckerly.

22 MS. WECKERLY: Thank you.

23 How are you?

24 PROSPECTIVE JUROR NO. 716: I'm good, thank you.

25 MS. WECKERLY: With the -- the incident with your

1 niece being so recent, do you think that would kind of be in
2 your mind if you were selected to be a juror?

3 PROSPECTIVE JUROR NO. 716: No.

4 MS. WECKERLY: No.

5 PROSPECTIVE JUROR NO. 716: I'm fine with it. I
6 know she's okay and she's doing better, you know.

7 MS. WECKERLY: I mean, and I'm not saying you're of
8 these people, some people with a personal experience like
9 that, you know, it's just something they can't get out of
10 their head and so sitting on a case like this would be --
11 bring up a lot of emotions and be kind of difficult. But you
12 seem --

13 PROSPECTIVE JUROR NO. 716: I'm fine with it.

14 MS. WECKERLY: Okay. And as the Judge said, there's
15 -- that was back in Illinois, so there's nothing really that
16 that case has to do with what we'd be sitting here.

17 PROSPECTIVE JUROR NO. 716: Correct.

18 MS. WECKERLY: Okay. And you're able to -- to
19 assess all of the facts in this courtroom based on what you
20 hear from the witness stand and exhibits and things like that?

21 PROSPECTIVE JUROR NO. 716: Correct.

22 MS. WECKERLY: Okay. No carry over at all?

23 PROSPECTIVE JUROR NO. 716: No carry over.

24 MS. WECKERLY: Okay. Ma'am, I'd just like to
25 briefly ask you some questions about the death penalty.

1 You're comment on the question is if the crime is severe
2 enough it could be a punishment.

3 PROSPECTIVE JUROR NO. 716: Correct.

4 MS. WECKERLY: And as we've discussed with everybody
5 before you, I'll do it with you again just briefly. I take it
6 from that that there are situations in your mind that don't
7 warrant the death penalty?

8 PROSPECTIVE JUROR NO. 716: Correct.

9 MS. WECKERLY: Okay. And if someone were convicted
10 of first degree murder, you could consider all four of the
11 possible punishments that we've discussed?

12 PROSPECTIVE JUROR NO. 716: Correct.

13 MS. WECKERLY: And if the circumstances were right,
14 in your mind there are situations where the death penalty
15 would be a proper punishment?

16 PROSPECTIVE JUROR NO. 716: Yes.

17 MS. WECKERLY: And at the other end of the spectrum
18 there are situations of first degree murder where someone
19 would warrant a sentence where they could go before a parole
20 board?

21 PROSPECTIVE JUROR NO. 716: Correct.

22 MS. WECKERLY: Okay. And you could reserve
23 judgment, I would think, and listen to all the information
24 that would be presented at a penalty hearing before imposing
25 such a serious punishment?

1 PROSPECTIVE JUROR NO. 716: Correct.

2 MS. WECKERLY: And with regard to Mr. Mason, you
3 understand we're not seeking the death penalty against him?

4 PROSPECTIVE JUROR NO. 716: Correct.

5 MS. WECKERLY: Nonetheless, I mean, these are very
6 extremely severe punishments even without that fourth option.
7 As to Mr. Mason, could you consider all three possible
8 punishments?

9 PROSPECTIVE JUROR NO. 716: Yes, I could.

10 MS. WECKERLY: Okay. Do you think you're a fair
11 person?

12 PROSPECTIVE JUROR NO. 716: I am.

13 MS. WECKERLY: Can you assure the State and the
14 defense that you can listen to the evidence and be fair to
15 both sides?

16 PROSPECTIVE JUROR NO. 716: I think I could, yes.

17 MS. WECKERLY: Okay. If you believe the State has
18 proven the case beyond a reasonable doubt, would you be able
19 to come in and announce your verdict in court?

20 PROSPECTIVE JUROR NO. 716: Yes, I could.

21 MS. WECKERLY: Okay. And the flip side to that, if
22 you sit here all these weeks and you're just not convinced
23 beyond a reasonable doubt, would you be able to come in and
24 announce a not guilty verdict?

25 PROSPECTIVE JUROR NO. 716: Yes, I could.

1 MS. WECKERLY: Thank you very much.

2 Pass for cause, Your Honor.

3 MR. SGRO: Good afternoon.

4 PROSPECTIVE JUROR NO. 716: Hi there.

5 MR. SGRO: So I want to start sort of backwards and
6 -- and speak to you for a minute about the penalty hearing.
7 And you're fully aware we're not conceding, we're going to get
8 there, we think you're going to vote not guilty, all of those
9 things. But we have to talk about the penalty hearing now.
10 Do you understand the system makes us do this this way?

11 PROSPECTIVE JUROR NO. 716: Yes.

12 MR. SGRO: Now, as to -- as to the answer that you
13 gave in the questionnaire, it said, you know, in the most
14 severe cases, the death penalty would be something that would
15 be warranted. So I want to sort of give you the same preface
16 that I've used in the past. All murder cases are severe.

17 PROSPECTIVE JUROR NO. 716: Correct.

18 MR. SGRO: So if I understand -- tell me if I have
19 this correct. Amongst murder cases, which are all severe,
20 there are degrees of severity even amongst the murder cases;
21 right?

22 PROSPECTIVE JUROR NO. 716: Correct.

23 MR. SGRO: Okay. Can you articulate to me a reason
24 to give someone a chance to reenter society?

25 PROSPECTIVE JUROR NO. 716: I think after they've

1 been in jail a long time, there -- there is some remorse. And
2 at that point I think that they would be able to come back
3 out, you know, so --

4 MR. SGRO: So some --

5 PROSPECTIVE JUROR NO. 716: They've -- they've done
6 their time, you know. There's --

7 MR. SGRO: So there -- there could be those groups
8 of people that will realize the impact of what happened, spend
9 enough time, and then be prepared to come out?

10 PROSPECTIVE JUROR NO. 716: Correct.

11 MR. SGRO: Okay. Relative to the incident that
12 happened with your niece --

13 PROSPECTIVE JUROR NO. 716: Uh-huh.

14 MR. SGRO: -- obviously we want to make sure you're
15 okay with our side of the table, as well. You're not going to
16 take anything out on us or on Mr. Burns because of that
17 experience that you had, are you?

18 PROSPECTIVE JUROR NO. 716: No, sir.

19 MR. SGRO: How -- how do you feel about all these
20 right we've discussed, the presumption of innocence, the
21 burden of proof, that we don't have to prove anything? What's
22 your take on all that?

23 PROSPECTIVE JUROR NO. 716: Well, it's part of the
24 justice system and they have -- you have to have rules and
25 laws and things to go by in order to get a fair trial, and

1 this is part of it.

2 MR. SGRO: Do you think you'd hold it against Mr.
3 Burns if you made a decision to not testify?

4 PROSPECTIVE JUROR NO. 716: No.

5 MR. SGRO: Can you think of a reason why someone
6 that wasn't guilty would make a choice to not testify?

7 PROSPECTIVE JUROR NO. 716: I think it sometimes
8 people aren't good on the stand, they can't articulate things
9 well enough.

10 MR. SGRO: Okay.

11 PROSPECTIVE JUROR NO. 716: Maybe they don't
12 remember, you know, at the time because of everything that
13 went on, you know.

14 MR. SGRO: Let me ask it a different way. Let's say
15 he did testify.

16 PROSPECTIVE JUROR NO. 716: Uh-huh.

17 MR. SGRO: Do you think he'd be more critical of his
18 testimony because he's the one accused?

19 PROSPECTIVE JUROR NO. 716: No.

20 MR. SGRO: So would you agree that in your opinion
21 everyone comes in here on a level playing field?

22 PROSPECTIVE JUROR NO. 716: Correct.

23 MR. SGRO: So you're not going to defer to police
24 officers versus non-police officers, you'd -- you'd keep them
25 level?

1 PROSPECTIVE JUROR NO. 716: Correct.

2 MR. SGRO: Now, we've -- we've talked about this a
3 little bit. When people come in and swear to tell the truth,
4 we hope that they're going to tell the truth.

5 PROSPECTIVE JUROR NO. 716: Correct.

6 MR. SGRO: You agree with that; right? Is it
7 possible, though, that people come in and they make mistakes
8 from the witness stand, is that possible?

9 PROSPECTIVE JUROR NO. 716: It is possible.

10 MR. SGRO: Is it possible that they swear to tell
11 the truth, look you right in the eye, and just lie to you?

12 PROSPECTIVE JUROR NO. 716: Correct.

13 MR. SGRO: Have you had the opportunity to have to
14 decide conflicts, two different stories?

15 PROSPECTIVE JUROR NO. 716: Not really.

16 MR. SGRO: Okay. You understand that's going to be
17 your role in this case?

18 PROSPECTIVE JUROR NO. 716: Right. Correct.

19 MR. SGRO: And do you watch the science shows --

20 PROSPECTIVE JUROR NO. 716: Yeah.

21 MR. SGRO: -- the -- the crime shows as we call
22 them?

23 PROSPECTIVE JUROR NO. 716: Uh-huh.

24 MR. SGRO: Are you going to be comfortable that this
25 is not like a puzzle where every piece fits neatly in a square

1 or rectangle and you have the whole thing laid out in front of
2 you? Are you going to be okay with that?

3 PROSPECTIVE JUROR NO. 716: Yes, I can.

4 MR. SGRO: And you realize your job would be to
5 determine, okay, here's what the State has told me has
6 happened; right?

7 PROSPECTIVE JUROR NO. 716: Uh-huh.

8 MR. SGRO: Here's the charges. I don't think they
9 met their burden. Do you realize your job would stop there as
10 opposed to, well, if it didn't happen this way, I don't want
11 to say not guilty until I figure out what did happen?

12 PROSPECTIVE JUROR NO. 716: Correct.

13 MR. SGRO: Okay. That secondary part, which is what
14 TV does for us, right, they always go through this thing where
15 they blame the wrong person a few times and then they figure
16 it out. You don't have to do that here. It's one job, one
17 task; right?

18 PROSPECTIVE JUROR NO. 716: CORRECT.

19 MR. SGRO: And you have very capable experienced
20 prosecutors that are going to do their best to -- to advocate
21 on behalf of what they think the verdict should be.

22 PROSPECTIVE JUROR NO. 716: Correct.

23 MR. SGRO: And you understand we don't have to do
24 anything or challenge that evidence. If you don't feel it's
25 there, are you okay coming back with a not guilty verdict?

1 PROSPECTIVE JUROR NO. 716: I am.

2 MR. SGRO: Even though there's an investment of five
3 weeks of time. And, by the way, how are you going to feel
4 about these photographs, the gruesome photos that you're going
5 to have to see?

6 PROSPECTIVE JUROR NO. 716: I worked in a hospital
7 for a lot of years with the phlebotomy. And I've been in
8 autopsies and everything else.

9 MR. SGRO: Okay.

10 PROSPECTIVE JUROR NO. 716: So I don't have a
11 problem.

12 MR. SGRO: And actually that gives you a little
13 insight to -- you understand that that's one piece you're
14 going to look at in in conjunction with everything else;
15 right?

16 PROSPECTIVE JUROR NO. 716: Correct.

17 MR. SGRO: Have you ever testified?

18 PROSPECTIVE JUROR NO. 716: No.

19 MR. SGRO: Have you ever been subpoenaed as a
20 witness?

21 PROSPECTIVE JUROR NO. 716: No.

22 MR. SGRO: Given a deposition?

23 PROSPECTIVE JUROR NO. 716: In an accident case.

24 MR. SGRO: But nothing related to --

25 PROSPECTIVE JUROR NO. 716: No, nothing.

1 MR. SGRO: -- your career?

2 PROSPECTIVE JUROR NO. 716: No, not to work, no.

3 MR. SGRO: So you are going to agree, obviously, the
4 importance of science in a criminal investigation; right?

5 PROSPECTIVE JUROR NO. 716: Yes.

6 MR. SGRO: And remember the -- the distinctions we
7 made about people maybe with a motive to fabricate versus is a
8 fingerprint there or it's not; right? In science it's more it
9 is what it is. Would you agree with that?

10 PROSPECTIVE JUROR NO. 716: Yes, I do.

11 MR. SGRO: Have you ever heard of this concept, this
12 plea bargain, plea negotiation --

13 PROSPECTIVE JUROR NO. 716: Yes.

14 MR. SGRO: -- concept? Do you have the wherewithal
15 to evaluate whether a plea bargain or, you know, it's called
16 turning State's evidence, cooperating witness, all these
17 different adjectives are used. Can you evaluate that and
18 determine whether or not that's a motive for someone to
19 fabricate

20 PROSPECTIVE JUROR NO. 716: Yes, I could.

21 MR. SGRO: Would you also be someone who would look
22 for changes in testimony? If I said a month ago this trial is
23 going to take, you know, a week, and then I said, well, maybe
24 it's going to be five months, and then maybe it's going to be
25 a year and a half. At some point you're going to look at me

1 like, okay, he's got problems here; right?

2 PROSPECTIVE JUROR NO. 716: Yes.

3 MR. SGRO: Okay. Changes in testimony would be
4 something you would look at; right?

5 PROSPECTIVE JUROR NO. 716: Correct.

6 MR. SGRO: Have you ever heard of this term, this
7 eyewitness identification? Have you ever heard that used
8 before?

9 PROSPECTIVE JUROR NO. 716: Somewhat.

10 MR. SGRO: Have you ever had someone walk up to you
11 and they thought you were somebody and it turned out that they
12 were wrong?

13 PROSPECTIVE JUROR NO. 716: Yeah, they've done it
14 with my sister.

15 MR. SGRO: Okay.

16 PROSPECTIVE JUROR NO. 716: They thought I was her.

17 MR. SGRO: All right. And have you done that? Have
18 you walked up to someone whether it's a friend or maybe you
19 thought you saw somebody famous, you walked up to them and you
20 realize it's not that person?

21 PROSPECTIVE JUROR NO. 716: Correct. I've don't
22 that.

23 MR. SGRO: And you understand the point of that is
24 people are going to come here and tell you what they saw and
25 what they heard. You're not going to just take that as gospel

1 when you hear it. You're going to look at the overall
2 circumstances of what occurred; right?

3 PROSPECTIVE JUROR NO. 716: Correct.

4 MR. SGRO: Whether it was dark, what time was it,
5 were they sober, would all of these things be fair to evaluate
6 if someone is telling you accurately what they saw?

7 PROSPECTIVE JUROR NO. 716: Yes.

8 MR. SGRO: And keeping an open mind. You've heard
9 that phrased used probably 418 times so far today. You
10 understand that there is an order to things. The State is
11 going to go first, and then we, if we want to, get to talk to
12 you in an opening statement. The State puts on evidence, we
13 can ask questions on what's called cross-examination. Will
14 you wait until everything is done before making up your mind
15 in this case?

16 PROSPECTIVE JUROR NO. 716: Yes.

17 MR. SGRO: So you wouldn't be tempted to hear an
18 opening statement, hear the State's version of the story or
19 how things happened, right, and then say, well, wow, okay, I'm
20 done. You would wait and let the trial play out; right?

21 PROSPECTIVE JUROR NO. 716: Correct.

22 MR. SGRO: Do you own a cell phone?

23 PROSPECTIVE JUROR NO. 716: I have one. I don't use
24 it. I use it in emergency.

25 MR. SGRO: Okay. Do you -- are -- are you someone

1 who goes through your cell phone bill to check it for
2 accuracy?

3 PROSPECTIVE JUROR NO. 716: No, because I don't use
4 it.

5 MR. SGRO: Fair enough. Have you ever had a
6 conversation with someone where you thought they were being
7 straight with you and then later turned out that they were not
8 being truthful?

9 PROSPECTIVE JUROR NO. 716: I'm sure I have.

10 MR. SGRO: And have you ever had a conversation with
11 someone where you doubted them, you thought they were lying,
12 and it turned out that they were being honest with you?

13 PROSPECTIVE JUROR NO. 716: I'm sure that's
14 happened.

15 MR. SGRO: And you understand, as I mentioned
16 earlier, you're going to have to make those kinds of
17 assessments without the benefit of years of a relationship
18 with somebody.

19 PROSPECTIVE JUROR NO. 716: Correct.

20 MR. SGRO: All right. And you feel comfortable
21 doing that?

22 PROSPECTIVE JUROR NO. 716: Yes.

23 MR. SGRO: Do you have any questions of anything
24 that's come up as you've sat here for half a day and
25 understand the system a little bit better?

1 PROSPECTIVE JUROR NO. 716: No.

2 MR. SGRO: Do you want to be a juror on this case?

3 PROSPECTIVE JUROR NO. 716: Yes, I do.

4 MR. SGRO: Why?

5 PROSPECTIVE JUROR NO. 716: Because I think it's
6 part of what you should do in your life. If you're called, do
7 it.

8 MR. SGRO: Okay. And you have no trouble promising
9 Mr. Burns you can give him a fair trial?

10 PROSPECTIVE JUROR NO. 716: No, I don't have any
11 problem.

12 MR. SGRO: Okay. Pass for cause, Your Honor.

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

14 THE COURT: All right. That concludes seven passed
15 for cause.

16 Ladies and gentlemen, we began jury selection in
17 this case on Tuesday of this week -- last week. And we were
18 working through Friday. We needed seven more passed for cause
19 to complete the selection. We have now completed that. Those
20 of you that have not been asked questions are now excused to
21 report back to the jury commissioner and you can leave at this
22 time.

23 (Prospective jurors dismissed at 2:51 p.m.)

24 THE COURT: Are you ready to do perempts right now?

25 MR. DiGIACOMO: Yes, Your Honor.

1 THE COURT: All right. Ladies and gentlemen, each
2 side is entitled to excuse up to two jurors. We'll explain to
3 you why later.

4 Mr. DiGiacomo, you can excuse the State's first
5 peremptory challenge.

6 MR. DiGIACOMO: The State thanks and excuses Juror
7 No. 689, Daniel Rosales.

8 THE COURT: Mr. Rosales, thank you very much for
9 being a prospective juror. You're excused to go to the jury
10 commissioner, too.

11 The defendants may exercise the defendants' first
12 peremptory challenge.

13 MR. ORAM: Your Honor, the defense would like to
14 thank and excuse Badge No. 645, Ms. Jeanne Nomura.

15 THE COURT: Nomura. Ms. Nomura, thank you for being
16 a prospective juror. You'll be excused. Return to the jury
17 commissioner.

18 The State's second peremptory challenge.

19 MR. DiGIACOMO: We would thank and excuse Juror No.
20 675, Mr. Peter Andazola.

21 THE COURT: Mr. Andazola, you're excused.

22 MR. ORAM: Can we have the Court's indulgence.

23 THE COURT: Certainly.

24 MR. ORAM: Your Honor, the defense would like to
25 thank and excuse Juror No. 702, Mr. Scott Murphy.

1 THE COURT: Thank you, Mr. Murphy, for being a
2 prospective juror. You'll be excused, as well.

3 Ladies and gentlemen, last week we went through this
4 selection process for -- well, for four days, and we passed
5 enough jurors to select the 12 that will actually hear -- the
6 original 12 to hear the case. We also needed to have three
7 alternate jurors. You are now the alternate jurors in the
8 case, and the clerk is going to swear you in. If you would
9 stand and raise your right hand.

10 (Alternate jurors sworn)

11 THE COURT: Please be seated. First of all, Nevada
12 law requires that I read to you the following direction.
13 You're admonished that no juror may declare to a fellow juror
14 any fact relating to this case as of his own knowledge. And
15 if any juror discovers during the trial or after the jury has
16 retired that any other juror has personal knowledge of any
17 fact or any controversy in this case, he shall disclose the
18 situation to me in the absence of the other jurors.

19 They write these so that it's tough to understand
20 them. What this really means is if you learn during the
21 course of the trial that you knew something about the case or
22 maybe you knew one of the witnesses, you didn't recognize
23 their name or it turns out he lives on your block or
24 something. It doesn't necessarily disqualify you, but you
25 have to correct the record and tell us that you did know a

1 witness and -- and so on. And you communicate with the Court
2 through the marshal who is somewhere about the courtroom.

3 Now, we're going to recess and you're going to be
4 going home until tomorrow morning. I have a motion calendar
5 in this department every Tuesday, Wednesday, and Thursday.
6 And so the motion calendars are at 8:30. We're going to start
7 the trial at 10:00. That's when you and the other 12 jurors
8 will be here to start the trial at 10:00 tomorrow morning.

9 If we're delayed for a few minutes, don't blame
10 these lawyers. It'll be some other lawyers. I've got 17
11 calendar calls tomorrow morning. I don't know how that
12 happened, but, anyway, that's what I get because I got
13 Department 20.

14 Anyway, before you leave, I have to read to you an
15 admonition. This is the same admonition that's read to every
16 jury in every case in the State of Nevada before every recess
17 and you're going to hear it every time we take a recess.

18 During the recess you're admonished it is your duty
19 not to converse among yourselves or with anyone else on any
20 subject connected with this trial. You may not read, watch,
21 or listen to any report of or commentary on the trial from any
22 medium of information, including, without limitation,
23 newspapers, television, radio, and Internet. And you may not
24 form or express an opinion on any subject connected with this
25 case until it is finally submitted to you.

1 Last Friday the attorneys said, Judge, tell them not
2 to use -- what do they call it?

3 MR. SGRO: Facebook.

4 MR. DiGIACOMO: Facebook.

5 MR. SGRO: Social media.

6 THE COURT: I don't -- I don't use social media and
7 I don't think these two ladies will. I don't know about Mr.
8 Nunez. But anyway, you're not supposed to put this on, what
9 do they call it, Facebook. You won't find me on Facebook, but
10 apparently some people are. But you can't tell people on
11 Facebook what you're doing, either. Anyway, you're in recess
12 now until 10:00 tomorrow morning. We'll see you then. Have a
13 good evening.

14 (Alternate jurors recessed at 2:57 p.m.)

15 THE COURT: The record will reflect the jurors have
16 left the courtroom. Anything further on the record tonight?

17 MR. DiGIACOMO: Not from the State.

18 MR. SGRO: No, Your Honor.

19 MR. LANGFORD: Nothing from Mr. Mason, Your Honor.

20 THE COURT: Have a good evening.

21 MR. LANGFORD: Thank you, Your Honor.

22 THE COURT: Off the record.

23 (Court recessed for the evening at 2:58 p.m.)
24
25

CERTIFICATION

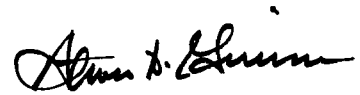
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DISTRICT COURT
CLARK COUNTY, NEVADA
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|----------------------------|---|------------------------|
| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff, |) | CASE NO. C-10-267882-1 |
| |) | C-10-267882-2 |
| 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 6

TUESDAY, JANUARY 27, 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. |

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1 **LAS VEGAS, NEVADA, TUESDAY, JANUARY 27, 2015, 10:07 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: We're on the record. You can bring in
5 the jurors.

6 THE MARSHAL: Yes, sir.

7 (Pause in proceeding.)

8 (Jurors enter at 10:10 a.m.)

9 THE COURT: State of Nevada vs. Burns and Mason. The
10 record will reflect the presence of the defendants, their
11 counsel, the district attorneys, all members of the jury.

12 Good morning, ladies and gentlemen. What I'm going
13 to say to you now is intended to serve as an introduction to
14 the trial of the case. It's not a substitute for the
15 instructions on the law that I will give to you both orally
16 and in writing at the conclusion of the evidence.

17 This is a criminal case. It's commenced by the State
18 of Nevada, which we sometimes refer to as the State, against
19 the defendants, Mr. Burns and Mr. Mason. The charging
20 document that is filed by the State is called an Indictment.
21 The clerk is going to read that Indictment to you now, and
22 state the plea of the defendant to the Indictment. She's
23 going to read the entire Indictment to you and state their
24 pleas.

25 (Indictment read - not transcribed.)

1 THE COURT: Now, ladies and gentlemen, you should
2 distinctly understand that the Indictment that the clerk has
3 just read to you is simply the charges. It's not in any sense
4 evidence of the allegations that it contains.

5 The defendants have pled not guilty to the charges,
6 therefore it's the burden of the State to prove the
7 defendants' guilt by evidence beyond a reasonable doubt. The
8 purpose of the trial of course is to determine whether the
9 State will meet that burden. If the State fails to meet the
10 burden, it will be the duty of the jury to return a verdict of
11 not guilty.

12 Now, the trial is going to proceed in the following
13 order. First the attorneys have the right to make opening
14 statements to you. The State goes first and makes the first
15 opening statement. Keep in mind that an opening statement by
16 any of the parties is not evidence. It's a guideline for you
17 to follow so you'll know what evidence is going to be
18 presented, so you'll get an idea of what you're going to be
19 hearing when the witnesses testify.

20 It's up to you to determine whether or not the party
21 making an opening statement will be able to produce the
22 evidence that he or she says they will be able to produce.
23 The statements then serve as an introduction to the trial of
24 the case.

25 Now, after the State's opening statement, each

1 defendant is given the opportunity to make an opening
2 statement. After the opening statements, the State is given
3 the opportunity to call witnesses and present its evidence.
4 After the State's evidence, each defendant is given the
5 opportunity to call witnesses. Keep in mind that the burden
6 is always upon the State to prove the defendants' guilt, and
7 the defendants don't have to call witnesses or present
8 evidence if they don't want to.

9 After all the evidence is produced, I'll read to you
10 instructions on the law that apply in the case. And when you
11 retire to consider your verdict, you'll get a copy of my
12 written instructions to take with you. So you don't have to
13 write them down when I'm reading them to you, because they're
14 long and complicated.

15 Your purpose as jurors is to find and determine the
16 facts of the case. And I explained this to you when we did
17 voir dire and you were selected. You do this from the
18 testimony of the witnesses that are testifying here in court,
19 also from the documents that are marked and admitted as
20 exhibits during the trial, and from any facts that are
21 stipulated by the parties. Occasionally, to save you time,
22 the parties agree to certain facts. If they do that, you
23 accept those facts as true.

24 You may not conduct any investigation on your own.
25 Don't go out and research the law or try to talk to anybody

1 else about the case. Let the lawyers do their job. It's
2 their job to present the evidence to you. You're not
3 investigators to go out and try to find out what happened in
4 the case.

5 Now, occasionally an attorney may make an objection
6 to a question that's asked a witness. You're not to hold it
7 against the lawyer because he makes an objection. That's part
8 of his job. If he thinks that a question is improperly
9 phrased or seeks to elicit information or evidence that isn't
10 admissible under our evidence code, a lawyer has not only the
11 right but the duty to make an objection to that evidence.

12 If I overrule the objection, the witness is permitted
13 to answer the question. But if I sustain an objection, then
14 the witness is not permitted to answer the question and you
15 can't speculate what that answer might have been. Anything
16 you may have seen or heard outside the courtroom is not
17 evidence and must also be disregarded.

18 No statement, ruling, remark or comment which I might
19 make during the course of this trial is intended in any way to
20 indicate my opinion as to how you should decide the case. I'm
21 not going to decide this case for you. You're going to decide
22 the case.

23 At times I can even ask a question of a witness
24 myself. If I do, it's for the purpose of bringing out
25 something that I think might be confusing or to clarify

1 something, and you're not to give more weight or credence to
2 that particular opinion -- or that particular question.

3 Do we have somebody that needs the microphones?

4 (Pause in proceeding.)

5 THE COURT: We also permit jurors to ask questions.
6 However, asking questions is primarily the responsibility of
7 the attorneys, not of you. The procedure for a juror to ask a
8 question is somewhat complicated and has a tendency to prolong
9 the trial. Any question that you ask must be factual in
10 nature and designed to bring out or clarify information
11 already presented. You're not permitted to become an advocate
12 or become a third attorney in the case.

13 If you feel you have to ask a question, write out the
14 question on a piece of paper. Do so while the witness is
15 still present. Raise your hand and give it to the marshal
16 before the witness leaves. I'll halt the trial, examine the
17 question with the lawyers. If the question is appropriate,
18 I'll ask it on your behalf. The attorneys will then be
19 permitted to ask follow-up questions.

20 Until the case is submitted to you, you may not
21 discuss it with anyone, even your fellow jurors. After it's
22 submitted to you, you can discuss it only in the jury room
23 with your fellow jurors pursuant to my instructions. It's
24 important that you keep an open mind in the case. Wait until
25 you've heard everything. Wait until you've heard all the

1 evidence, the closing arguments of the lawyers, and then
2 decide the case.

3 After all the evidence and after the instructions
4 that I read to you, each lawyer will be given the opportunity
5 to argue the case to you. That's the first time they'll be
6 given the opportunity to argue to you how they feel the
7 evidence should be applied to the law and what verdict you
8 should reach. The opening statements are not times for
9 argument. It's just to serve as a guide so you'll know what
10 evidence is going to be presented.

11 If you can't hear a witness, please raise your hand.
12 I want you to be able to hear something. We'll make the
13 witness talk into the microphone so that you can hear them.
14 You can take notes if you want to during the trial. I caution
15 you not to rely upon your respective notes if there's a
16 conflict between them, because the court recorder is taking
17 down the official record in the case.

18 If during your deliberations you desire to hear again
19 portions of the testimony, there's a procedure for that to be
20 played back to you if there's a disagreement among you as to
21 what the testimony was. Again, that takes a lot of time, so
22 we don't encourage it unless it's absolutely necessary. But
23 that's up to you.

24 All right. As I indicated, we start with opening
25 statements. Now, the State is given the opportunity to make

1 the first opening statement.

2 Ms. Weckerly, I understand you're going to do the
3 opening for the State.

4 MS. WECKERLY: Yes, Your Honor.

5 STATE'S OPENING STATEMENT

6 MS. WECKERLY: Good morning. No one is above the
7 law, no one is below it, and we do not ask someone's
8 permission when we ask them to follow it. This essentially
9 means that everybody must follow the law, and everyone is
10 entitled to protection of the law.

11 The victim in this case is a lady by the name of
12 Derecia Newman. She was 28 years old at the time she was
13 murdered. Her friends called her Ree. She was the mother of
14 four children, and three of those children were under age 11
15 at the time she was murdered.

16 She lived with a man by the name of Cornelius Mayo.
17 He was the father of her three youngest children. And
18 Ms. Newman and Cornelius Mayo sold small amounts of drugs
19 outside of their apartment to various people. They used their
20 home and they sold drugs out of it.

21 Now, these two lived in a very modest apartment. It
22 was a two bedroom apartment for the entire family, so they
23 certainly weren't engaging in high level sales. This wasn't a
24 drug cartel. But this was definitely a lifestyle that they
25 were engaging in. And this lifestyle is really of no

1 relevance in this case except for one thing.

2 It is because of that, that danger arrived at the
3 doorstep of Derecia Newman quite literally. The fact that
4 they were engaging in this activity is what ended up making
5 her a target for murder. It's what made a stranger to her
6 arrive at her doorstep, come in, hold a gun literally on her
7 forehead and blow off quite literally a third of her head.

8 The second violent crime victim in this case is
9 Derecia Newman's 12-year-old daughter. Her name is Devonia.
10 She of course lived in the residence too. She was actually at
11 the doorstep when her mother was murdered. Her instincts took
12 over and she turned and ran down the hallway towards the two
13 bedrooms. As she was running down that small hallway, shots
14 were fired at her.

15 She ran into the master bedroom. She got through
16 there and she ran into the bathroom of the master bedroom as
17 well. The gunman followed her. Her step-dad, Cornelius Mayo,
18 was hiding in the bathroom. She got on the other side of the
19 bathroom door at one point and a shot went through the door.
20 There was a struggle.

21 Devonia eventually is outside the bathroom door. She
22 actually struggles with the intruder. She gets shot in the
23 stomach. As she's laying on the floor of the master bedroom,
24 the intruder, the shooter goes through her pockets and is
25 saying, Where's the money. She remembered what the gunman was

1 wearing. He was wearing overalls.

2 On -- well, during the course of this case, you won't
3 all only hear from Devonian Newman, who was a child during the
4 course of these events. You'll actually hear from another
5 witness who was a child during the course of these events.
6 And because both of these children witnessed things and saw
7 things, they have become witnesses in this case about 4 1/2
8 years later.

9 Now, these two witnesses were both quite young when
10 these events took place in 2010. They look different now, 4
11 1/2 years later. They talk different. And they've
12 essentially lived in the aftermath of these events. But keep
13 in mind who they were back when these events took place,
14 particularly Devonian, who was 12 years old at the time these
15 events took place.

16 Now, what happened in a nutshell is that on August 7,
17 2010, four people went to Meikle Lane, went to the Meikle Lane
18 apartment. The driver, the getaway driver and the person who
19 drove the four people to the house or to the apartment was a
20 woman by the name of Monica Martinez.

21 The person who set up the transaction in order for
22 them to get access into the apartment was a woman by the name
23 of Stephanie Cousins. And the other two people in the car
24 were Willie Mason and David Burns. When Monica Martinez drove
25 the car to the apartment on Meikle Lane, she parks, she waits

1 in the car.

2 The other three get out of the car. Stephanie
3 Cousins goes up to the door and acts like she's going to buy
4 drugs. The other two bust in. Devonian -- or Derecia is shot
5 in the head, and then Devonian runs to the back of the
6 apartment and is shot as well. And then the four left.

7 Now, there were other people inside that apartment at
8 the time the murder and attempt murder took place. As I
9 mentioned, the people inside this two bedroom apartment were
10 Derecia, were Devonian, and then Cornelius Mayo, who is the
11 father of the three younger children, and then Derecia's
12 sister, her younger sister, Erica Newman was present as well.

13 Erica Newman was actually in the other bedroom, not
14 the master bedroom, and she was asleep with the three -- the
15 three younger children, and they were all on bunk beds. At
16 the time the intruders came in the residence, Cornelius Mayo
17 was in the bathroom of the master bedroom, and Devonian and her
18 mother, Derecia, were the ones who were at the door.

19 Now, in this case you'll of course learn of the
20 lifestyle of Derecia Newman and Cornelius Mayo. And some of
21 you may be familiar with that, maybe not. It may be troubling
22 to some of you, it may not be. But it really isn't relevant
23 in this case except to the extent that it made them a target.
24 It doesn't matter what they were doing except that it explains
25 the chain of events that took place.

1 What the focus in this case is, is people who decided
2 to do a takedown robbery, a violent crime, and people who
3 picked this residence for the very reason that they knew that
4 children would be present and guns wouldn't be. So this was
5 essentially an easy target for the defendants in this case.

6 Now, the four defendants that I mentioned that are
7 involved in this are Monica Martinez, David Burns, and Willie
8 Mason. Throughout the case though, you'll learn of a man by
9 the name of Jerome Thomas, and you'll learn of the
10 relationships between these individuals.

11 Monica Martinez was living in Las Vegas and she was
12 dating Jerome Thomas. And Jerome Thomas was friends with the
13 two defendants before you, David Burns and Willie Mason. Now,
14 Mason knew another individual who was living in Las Vegas at
15 the time, and her name is Stephanie Cousins.

16 On the night of the incident, on the late, late night
17 hours of August 6, 2010 into the early morning hours of the
18 7th, you'll learn that Monica Martinez was out with David
19 Burns and Willie Mason, and they were going to various places
20 that you'll eventually see on surveillance tape. They went to
21 Jerry's Nugget. They went to the Opera House.

22 Jerome Thomas wasn't with them that night. Monica
23 Martinez was driving around Mason and Burns. They eventually
24 decide that they're going to commit a robbery, and Willie
25 Mason knows someone who will help them target the place for

1 the robbery, and that person is Stephanie Cousins.

2 Now, Willie Mason knew Stephanie Cousins through
3 Stephanie's daughter. Stephanie is in fact a generation older
4 than Willie Mason, so her daughter knew Willie Mason back when
5 the two were quite a bit younger. But Stephanie Cousins is
6 involved this night for one reason.

7 She is someone, her daughter will tell you, who has
8 been addicted to drugs for a number of years. And as someone
9 addicted to drugs, she's someone who would know where to buy
10 drugs. And if you know where to buy drugs, you know a
11 location where there's likely to be drugs and/or money, and
12 that's how Stephanie Cousins gets involved.

13 Talk about Jerome Thomas. At the time of these
14 events he was living in Las Vegas, and he is someone who had a
15 pending felony case in California as of 2010. He wanted money
16 to help aid in his defense in his California case, so he was
17 with Monica Martinez moving drugs, trying to make money in all
18 sorts of illegal ways.

19 In fact, just prior to our events which are August 7,
20 2010, Jerome Thomas, with some other individuals, attempted to
21 commit a burglary at a Walmart. That burglary was ultimately
22 unsuccessful. He didn't get arrested, but in the process of
23 attempting to commit that crime, he went over a wall and hurt
24 his leg so much so that he ended up on crutches.

25 Well, as of August 7, 2010, Jerome Thomas or Job-Loc

1 was dating Monica, but he was hurt. Monica Martinez was the
2 girlfriend of Job-Loc at the time of these events. She was
3 about 38 years old at the time this crime was committed.

4 She was someone who was actually working in a
5 clerical job at a pharmaceutical company when she started
6 dating Jerome Thomas. She was a single mom renting a house.
7 She had three kids. And she was someone who was pretty much
8 making one bad decision after another, and kind of involved in
9 one bad relationship after another.

10 A couple months prior to August 7, 2010, she hooks up
11 with Jerome Thomas, and literally within months of dating him
12 she found herself facing murder and robbery charges, and
13 you'll ultimately learn that she is in fact going to prison
14 for her involvement. But we'll talk a little bit more about
15 that later.

16 Now, Stephanie Cousins, as I said, was the link to
17 Derecia Newman. Stephanie Cousins used to live in the same
18 part of California as our two defendants and Jerome Thomas,
19 and she was someone who has been addicted to drugs for a
20 number of years. And on the night of the incident, she is the
21 one who comes up with the location of Derecia Newman's house
22 for this robbery murder.

23 She had personally known Derecia Newman. She knew
24 the family. She knew who was in the house. And she expressed
25 to the other individuals committing this robbery that there

1 weren't going to be any guns in the house, it was just a mom,
2 a bunch of kids and a boyfriend, so it would be a relatively
3 easy target.

4 So what happens in this case is the four of them
5 drive to Meikle Lane after Stephanie has called to set up the
6 transaction, or alleged drug transaction. And you know what
7 happened after that. The -- as I said, the three get out of
8 the car. Derecia opens the door. She's killed immediately.
9 Devonian runs into the master bedroom and bathroom and she's
10 shot, and then the four of them leave in Monica Martinez's
11 car.

12 Now, when the police arrive to investigate, they know
13 very quickly the name of one individual involved in this case.
14 They know the name Stephanie Cousins because Derecia Newman
15 and Cornelius Mayo, her boyfriend, know Stephanie. They have
16 sold drugs to her. They know that she was involved.

17 And you will hear that within minutes of this crime
18 taking place Cornelius Mayo knew Stephanie was involved, and
19 he understandably is extremely angry after the crime occurs,
20 and he calls Stephanie and threatens to kill her within
21 minutes of the crime occurring. But in terms of the police
22 investigation, they have Stephanie Cousins.

23 Now, because Cornelius threatens to kill Stephanie,
24 Stephanie eventually through her daughter makes contact with
25 the police, and the police get some information from

1 Stephanie's daughter. They get a phone number for a Willie
2 Mason and they get the name Monica, and the name doesn't have
3 a last name attached to it. So that's sort of all they have
4 to go on. They get this phone number of Willie Mason and they
5 get the name Monica.

6 The police do what's called a pen register on the
7 phone number of Willie Mason, and that's sort of like a search
8 warrant on a phone. It's not a wiretap where you can hear
9 conversations. But you can take a phone number and research
10 the numbers that that phone is calling. And so they look
11 during the relevant time period at what numbers are this -- is
12 this Willie Mason phone calling at the time of our events.

13 And they learn that Willie Mason's phone is calling a
14 person by the name of Jerome Thomas, who is later identified
15 as Job-Loc. They look at his phone and they find out that his
16 phone during this relevant time period is calling a woman by
17 the name of Monica Martinez, which matches their initial
18 information that a Monica is involved.

19 Now, this is said pretty quickly. In actuality, the
20 way the investigation works is there's warrants served on
21 phone companies and information comes back, and then you have
22 to cross-reference it. And sometimes Monica's phone and
23 certainly her property weren't all in her name, so it takes a
24 day or two for them to actually find who is the right Monica.

25 But they eventually go to Monica where she's working,

1 at the pharmaceutical company, about two days after the murder
2 took place. And she's there at her job and homicide
3 detectives show up. She goes with them and they have what
4 starts out as a pretty combative conversation.

5 The police aren't messing around. They have a dead
6 mother of four and they have a 12-year-old girl who's in
7 critical condition. So they are definitely leaning on her and
8 trying to get information out of her. Monica initially says,
9 well, I don't really know what you're talking about and I, you
10 know, I wasn't involved in this and I have no idea what
11 happened.

12 But eventually, through a very long interview, Monica
13 gives what happened and where these individuals were on the
14 night of the murder and robbery. She explains how she was the
15 driver, and she explains various places that they went to
16 before they arrived at Derecia Newman's house.

17 The police actually pull some of the videotape of the
18 places that Monica mentioned, and they see Monica Martinez on
19 surveillance tape with Willie Mason and David Burns on the
20 night as she described. And they see something else too.
21 They see David Burns dressed in overalls, just like Devonia
22 Newman described.

23 Now, once they have Monica, she had given names.
24 They had the name Willie Mason. They certainly knew Stephanie
25 Cousins' name. But Monica didn't know David Burns as David

1 Burns. She only knew him by a nickname of D-Shock or D-Shot,
2 and she wasn't sure at the time she was describing it to the
3 police.

4 And they don't really have anything to go on, because
5 it's not like you can look up that nickname in a phonebook.
6 There's no Social Security card with that name on it. It was
7 just a nickname that he went by, and so they're kind of stuck
8 for a while. Eventually the police serve a search warrant at
9 Monica's house, because they're still missing the murder
10 weapon, and they don't really find it. They don't find
11 anything there.

12 They serve a search warrant at where Job-Loc was
13 living at the time, and that's another apartment, and that
14 place looks cleaned out. It looks like someone left in a
15 hurry. But the police do collect evidence from there. They
16 collect a lot of cigarette butts that were in that vacant
17 apartment. And they don't get immediate testing at the time
18 like you see on TV. But some cigarette butts that were at
19 Job-Loc's apartment were later tested and they had the DNA of
20 David Burns and Willie Mason on it.

21 The police got another break fairly early on in the
22 case about the murder weapon. As the police were looking for
23 it, someone calls in to the police just out of the blue and
24 reports that a young man by the name of Donovan Rowland, who
25 goes by the nickname West, was in possession of the gun.

1 The police eventually through some effort make
2 contact with Mr. Rowland, and he is someone who is, they
3 learn, associated with Job-Loc, and they had never heard his
4 name before. But remember how earlier on I told you that
5 Job-Loc attempted to do that burglary at the Walmart where he
6 broke his leg and it didn't really work out. Donovan Rowland
7 was involved in that.

8 And he tells the police that he's an associate of
9 Job-Loc and he's kind of evasive with the police and not fully
10 candid with them, but he does tell them that he gave the gun
11 that Job-Loc gave him to a friend of his. The police follow
12 up on that and they find the gun.

13 They eventually test the gun, and an expert will tell
14 you that the barrel of this gun was actually altered, damaged
15 on the inside; meaning that it could not be matched to bullets
16 recovered from the crime scene. But the police eventually
17 ended up in possession of the gun.

18 So as the police were doing this investigation, what
19 was going on with everyone else? Well, Monica was sitting in
20 jail charged with murder, robbery, burglary and attempt
21 murder. Stephanie Cousins was in town still. And these two
22 defendants, along with Job-Loc, had left Las Vegas and gone to
23 San Bernardino, where they're all from, on the Greyhound bus.

24 And the police eventually recovered surveillance
25 tape. That's David Burns in the blue. You'll see Job-Loc

1 come by on crutches, and then you'll see Willie Mason come by
2 on the surveillance tape, and he has something white on top of
3 his head. So the three defendants, they go down to San
4 Bernardino on the bus. Eventually the police enlist the aid
5 of the FBI and they're able to locate Willie Mason in San
6 Bernardino.

7 They still don't end up -- they still are for weeks
8 not having a name for David Burns. And a local detective down
9 there sends them a picture that Monica Martinez later
10 identifies as David Burns, so they're able to take him into
11 custody as well. And Job-Loc is taken into custody on his
12 original California charge.

13 Now, since 2010 some things have happened. In fact
14 very recently, in December, like a month ago, 2014, Monica
15 agreed to testify in this case. And in her agreement she will
16 receive a lesser sentence in exchange for her testimony that
17 she will give before you all in this trial.

18 Since that time Job-Loc has been charged as an
19 accessory to this murder, and Stephanie Cousins has been
20 charged with her involvement in these crimes as well. This
21 case though, will focus on these two defendants, David Burns
22 and Willie Mason.

23 You will hear evidence about fingerprints, evidence
24 about DNA. You'll get eyewitness testimony. And you'll also
25 have -- well, you'll also receive evidence in the form of

1 photographs and firearms testing. In addition, you will also
2 hear evidence or be able to read evidence about -- that are
3 communications between Job-Loc, David Burns and Willie Mason.

4 And this excerpt is in fact a letter that David Burns
5 sent to Willie Mason so he could send it to Job-Loc, or Jerome
6 Thomas. And it gives you some insight into their assessment
7 of the evidence. David Burns writes, "They told me they just
8 got pictures and DVDs of us walking through casinos and on the
9 Strip. Damn, it's true what they say, conspiracy will
10 railroad the clique. That only shows what I was wearing
11 though basically, and that the three of us were together on
12 the Strip. They also got pictures of you walking onto the
13 Greyhound in L.A., which don't mean anything. But they're
14 trying to say you basically was helping us get away of some
15 sort. That just means we were done with our visit to Las
16 Vegas."

17 And done they were by the time they eventually got to
18 San Bernardino. After you hear all the evidence in this case,
19 hear more of their communications, you will know the lengths
20 they went to, to avoid sitting exactly where they are now, and
21 you will know they are guilty of all of the crimes charged.

22 THE COURT: Mr. Sgro.

23 MR. SGRO: Thank you, Your Honor. If I could just
24 have a second to switch the computer and all that.

25 (Pause in proceeding.)

1 MR. SGRO: Thank you, Judge.

2 DEFENDANT BURNS' OPENING STATEMENT

3 MR. SGRO: Good morning. As Judge Thompson has told
4 you, you are to keep an open mind until the case is concluded,
5 because this very thing of opening statements and the way that
6 they're going to try to get the pendulum to swing. And it's
7 only fair we get to speak to you for a minute about what we
8 think the evidence is going to show in this case.

9 Now, we start with how does a case break down? And
10 there's really two ways this case break down -- breaks down.
11 There are the counts related to attempted murder. Okay. And
12 this -- these counts are the group of counts that relate to
13 Devonia Newman being shot in the stomach. Then there are the
14 counts related to the murder charge. Okay. And that is
15 Derecia Newman being shot and killed.

16 Now, when we analyze what the evidence is going to be
17 in this case and how do we break these counts down, we start
18 with, Well, who did what? Maybe we can get some guidance from
19 the charging documents. Now, the -- the clerk just read to
20 you a long charging document that had a -- a lot of detail to
21 it. I want to break down a couple of things.

22 The first thing we know, Jerome Thomas is named in
23 every count, but he's not charged. Which I think you're going
24 to find interesting as the evidence unfolds in this case.

25 And you heard the Indictment. I just picked a couple

1 of examples. You see, for example, Count 1 -- or, I'm sorry,
2 Count 2, Conspiracy to Commit Murder, Jerome Thomas, also
3 known as Job-Loc; Count -- Count 1, Conspiracy to Commit
4 Robbery, Jerome Thomas, also know as Job-Loc. The State
5 includes him as a coconspirator, but never charges him, which
6 is going to be interesting in this case.

7 The other -- the other thing we look at is, okay,
8 well, let's -- at least do we have consistency on who the
9 shooter or shooters were? If we look at our charging document
10 to begin to get some guidance, we see that the State, in what
11 you just had read to you, named, well, either Mr. Mason or Mr.
12 Burns possessing the firearm, both are named as potentially
13 being a shooter. And the point of this is that it would be a
14 tremendous error to pick and choose through this case
15 different items without looking at this case in the totality.

16 Now, at the grand jury, you -- you heard the clerk
17 read to you what's called a Grand Jury Indictment. There's
18 reference to a grand jury. Essentially, it's a setting where
19 people come in, they get sworn under oath, there's no defense
20 attorneys there. The State of Nevada just puts on witnesses
21 one by one, they ask them what they want, and then there's --
22 there's a decision whether or not the case should go to trial.

23 There's a guy named Detective Wildemann, he's one of
24 the homicide detectives in this case, who testified before the
25 grand jury that they had information that Job-Loc was the

1 shooter.

2 Now, that leads us to this point. How do you
3 investigate a case? There's two ways, right? The first way
4 is you look at every detail. You interview everybody that's
5 important. And at the conclusion of your investigation you
6 decide what happened.

7 The other, Plan B, is you pick your suspect. You
8 then decide that you will only attribute importance to the
9 things that cause the person you picked to be the suspect, to
10 be the one you're ultimately going to charge. I'm going to
11 tell you that's what the evidence is going to show you in this
12 case.

13 So how does this case start? Cornelius Mayo finds
14 himself on a cell phone while paramedics are going in and out,
15 crime scene people are going in and out, and he starts shaking
16 down Stephanie Cousins, threatens to kill her. And I'm going
17 to tell you that there's a number of phone calls where he's
18 extremely aggressive with her.

19 Stephanie Cousins needs a fall guy. Who can I blame?
20 And we're going to talk about the relationships in this case,
21 which are going to be critical. And Cornelius Mayo, as he is
22 sitting outside of his apartment, while police officers are
23 overhearing, begins to shake Stephanie Cousins down for
24 details about what happened and who's involved.

25 Now, Stephanie Cousins, who knows David Mason -- or,

1 I'm sorry, Willie Mason -- my apologies -- tells Cornelius
2 things like, Well, I don't even know who that is. You know, I
3 don't know that other dude. This, ladies and gentlemen, is
4 the birth of -- this shaking-down episode is the birth of, Oh,
5 it was the guy with the overalls.

6 Now, let's examine why that is. We start with who
7 are the people involved in this case? Stephanie Cousins is
8 almost 50 at the time; she's older than 50 now. She's almost
9 50 years old. Willie Mason is 27; Monica's almost 40; Jerome
10 Thomas is 30; David Burns is 18. You're going to hear these
11 -- he's the outsider. No -- half -- most of these people
12 didn't even know him until all these events unfolded. So
13 clearly Stephanie Cousins makes an election to give up David
14 Burns to Cornelius Mayo.

15 Now, what happens with Cornelius Mayo? This is him
16 here photographed some time after all the events unfold after
17 the homicide. Now, Cornelius Mayo leaves the police interview
18 that he gives. Now, if you understand, there's going to be
19 some time that goes by where Mr. Mayo's just sitting there. A
20 police officer's watching him. He's making these calls. He's
21 extremely pissed off and wants to know what happened.

22 After he gets this information, he literally sneaks
23 into the hospital to see Devonia. Now, Devonia's 12 years
24 old, she's just been shot. You're not going to hear evidence
25 that he goes to check on her, and you're going to -- you're

1 not going to hear things like, Hey, are you okay? Or, We're
2 going to be okay. Or, Man, this is horrible. Instead, what
3 he talks to Devonia about is an eye for an eye, shooters, and
4 revenge.

5 This is what's documented relative to the
6 conversation he had with his daughter. He has the opportunity
7 to tell her what he knows and the evidence is going to show
8 you that he wanted to make sure he got to her before the
9 police did.

10 Now, I want to go through the timeline of how these
11 events unfold. And these are approximate times, because we're
12 going to talk about the cell phone records and the minute --
13 and the cell phones aren't always consistent with each other,
14 which -- which carrier and -- and they're inconsistent with
15 caller ID, etcetera. But I want to give you the basics.

16 At around 3:45 a.m. the incident occurs. Now, we're
17 going to talk about Cornelius Mayo and the fact that time went
18 by where he made a different phone call before he called
19 9-1-1. He called 9-1-1, he says, from the bushes about eight
20 or so minutes later. Five calls between Cornelius Mayo and
21 Stephanie Cousins between 3:57 and 4:09, and those are the
22 calls where he's shaking her down. He's going to admit to you
23 he threatened to kill her, send people over, You'd better
24 bring your army, all that kind of stuff.

25 Cousins reaches out through -- I can't remember now

1 if it's personally through her daughter or a combination, but
2 at 4:33, about 20 minutes. And she's -- she's very scared.
3 And she reaches out through 9-1-1. Cornelius Mayo gives a
4 police statement at 6:26 a.m. Now, this is about three hours
5 after everything happens. Okay.

6 At 7:20, Stephanie Cousins would be in the police
7 station, about an hour later. And this, ladies and gentlemen,
8 10:25 a.m., is where he's caught. You know, when you sneak
9 in, you don't expect to get caught. But there are incident
10 reports and a security log that memorialize the time that you
11 snuck into the hospital at 10:25 a.m. to speak with Devonia.

12 Once CPS gets involved -- and you'll learn that once
13 -- anytime children are involved in situations like this, CPS
14 gets involved and they're given the job task of keeping an eye
15 on -- on the kids. So CPS gets involved and that's that in
16 terms of Cornelius Mayo.

17 Now, Cornelius Mayo is asked at the grand jury, you
18 know, this proceeding where he gets sworn under oath, there's
19 no defense attorneys, he's asked, Hey, did you go to the
20 hospital? And he says under oath, No. And the State -- don't
21 think I can do it with the pointer. But you see, "I mean,
22 you've seen her since back in August, I'm sure?"

23 Answer, "No." Next question, "You haven't?" "No."
24 That's what he said in front of the grand jury under oath.

25 Now, remember the 9-1-1 call. He initially said very

1 generically, you know, once everything died down, I called
2 9-1-1. Well, then he changed his mind. Now, two times -- and
3 remember, we talked a lot about credibility, a lot about red
4 flags. I'm going to encourage you as we go through this case
5 to look for changes, changes in testimony and -- and evaluate
6 those as to whether they should be red flags or not. He
7 changed his mind.

8 What he did, according to the police -- and you'll
9 learn, too, we have the opportunity to go interview witnesses
10 before the case starts, and when we interviewed him, he told
11 our investigator the same thing he told the police, which was,
12 I first, though, decided to call some friends to handle their
13 business. That's the phrase he used with us. With others he
14 said, I called family. And he actually later would tell our
15 investigators, actually, his brothers that he called.

16 So bottom line is, handle their business, means I
17 needed someone to come over and take some stuff out of here.
18 Drugs and property. That's what he told us.

19 During this entire time while he's cleaning out his
20 apartment, Devonia is bleeding on the threshold of the
21 bathroom. Now, what was his first priority? Drugs. Whether
22 or not he's small time or a drug cartel, whatever it is, drugs
23 is definitely going to be relevant in this case, because it
24 proved -- it proves a motive to do a lot of things as this
25 investigation unfolds.

1 Cornelius's first motive was to protect the crime
2 scene in terms of eliminating materials that he thought would
3 make him look bad. There's crack cocaine all over the floor.
4 This is a vial of crack cocaine that's later collected by the
5 police. And, in fact, there came time, remember, Cornelius is
6 standing outside interacting with the police? Well, he went
7 outside, he didn't have shoes on. So he asked for a pair of
8 shoes. And rock cocaine fell out of his shoes, which was --
9 which were in the master bedroom.

10 Now, the police have been sitting with Cornelius Mayo
11 for several hours. They have heard threats. They have heard
12 that he's collected information. When they interview him,
13 though, they don't ask him anything about whether or not he
14 owned a gun. Now, I just heard Ms. Weckerly state a couple of
15 times this whole thing about there's a family and kids and
16 there's no gun. Make no mistake, Cornelius Mayo was a drug
17 dealer. Drug dealers typically own weapons. And I'm going to
18 tell you what he told us here in a minute.

19 The police don't even ask him, Do you own a gun?
20 They didn't ask him on tape, Tell us about what just happened
21 with you and Stephanie Cousins and tell us the information she
22 gave you. They don't ask him about the threats to anybody,
23 about the -- the suspects he's speaking to. And -- and
24 understand that some detail was given to you about
25 relationships and Cornelius calls Stephanie Cousins.

1 Cornelius Mayo is speaking to Willie Mason, Jerome Thomas, and
2 Stephanie Cousins. He gets the information, he gets the phone
3 numbers.

4 Now, as I told you, CPS is involved. They -- they
5 ask Cornelius some questions also. What's the -- if --
6 because Cornelius Mayo, to Child Protective Services, keeps
7 saying, I don't get it, I don't sell drugs, I am not a drug
8 dealer. Okay. Well, if that's the case, why, then, did
9 people come to your home and target you, to borrow the State's
10 word.

11 Well, I won \$2,500 on a basketball bet. I picked 10
12 teams, I bet \$5, and I won.

13 Well, a judge would later point out that in August of
14 2010 there weren't enough basketball games to bet 10 games.
15 And a \$5 bet would have been 500 to 1, which doesn't exist on
16 any parley card in Las Vegas. So then he'll say, Oh, well,
17 maybe it was basketball and baseball, I don't know.

18 He tells CPS, though, that the only things that were
19 taken were \$120, some cigarettes, and a stick of deodorant.
20 He would continue to say he smokes marijuana but doesn't sell
21 any drugs. And incidentally, remember those photos I showed
22 you about the drugs? It's all crack cocaine.

23 Several times during the interview Cornelius
24 reiterated he doesn't sell drugs out of that house. Now, CPS,
25 to verify, contacts people that interacted with him over those

1 several hours. One of those people is Detective Shoemaker, I
2 read his name off of our defense witness list, in case he
3 shows up.

4 Detective Shoemaker says, you know what, Cornelius is
5 lying to you. He is selling drugs out of the home, he told me
6 that. And not only that, but our investigation is Devonia was
7 the one who would go the front door, collect the money from
8 Derecia, and walk it back to Cornelius and retrieve the drugs
9 from him, which makes sense as to why Derecia was at that
10 front door at 3:30 in the morning. Cornelius had trained
11 Devonia to be a courier, effectively.

12 Now, unbelievably, not on tape and not at the grand
13 jury, did Cornelius Mayo ever get asked about his interactions
14 with Jerome Thomas, Job-Loc. Right? He was the one that
15 Detective Wildemann said he had a tip that he might be the
16 shooter and they are communicating. This is Cornelius Mayo's
17 inbox on his cell phone, and I want you to see that, the text
18 messages. Now, just so you know how it works, I -- the only
19 way to do this is to hit click, and then it's going to run
20 through the text messages one by one till they're finished.
21 Okay.

22 (Video of text messages played.)

23 Now, the final text message that had queued up, "Love
24 your family, babe." This is Cornelius Mayo trying to engage
25 Jerome Thomas in heated conversation, because Cornelius Mayo

1 is saying, I know what you did. You're involved. And those
2 aren't responses from David Burns. Those are responses from
3 Jerome Thomas.

4 Now, let's talk about the State's theory. One of the
5 things that you're going to learn, and they showed you a photo
6 of it, is the six-shot Redhawk .44 Magnum revolver. Okay.
7 Now, let's start out with this. There is no evidence, zero,
8 that this weapon was loaded -- loaded -- before any gunman
9 went into this home. Okay. It holds six, but there's no
10 evidence as to how many bullets were actually in the chamber
11 of this revolver.

12 Now, on August 7th, 2010, the day of the homicide,
13 crime scene analysts go and they're going to talk about three
14 bullet paths. And the way they do it is they follow strike
15 paths of bullets, and -- and let -- and they name them. Like,
16 here's A-1, here's A-2. And they go A-1 through A-whatever,
17 until they find where the bullet has its resting place. Makes
18 sense.

19 And so the crime scene analysts trace three travel
20 paths of bullets. A-1 through something, B-1 through
21 something, C-1 through something. That happens the day of the
22 homicide.

23 On August 15th, there is another bullet, and I
24 believe this comes from the buttocks area of Devonia Newman,
25 because the travel path of the bullet was through her stomach

1 and lodged somewhere in her buttock area. So that's another
2 bullet that -- that the police recovered in this case.

3 Now, on September 14th, 2010, Cornelius Mayo is
4 moving. He moves a shelf and he says someone should come out
5 here. The crime scene analysts go out there and they see two
6 more bullet holes that they trace. And they trace the path
7 and the reports all say -- remember now, I'm doing this,
8 they're listening, Monica Martinez's attorneys are in the
9 courtroom, watch for changes. Okay. Because the reports
10 right now all say a bullet -- A, the flight path of a bullet
11 went into one hole; Bullet B, the flight path of another
12 bullet. Okay. They talk about different trajectory paths and
13 different bullets.

14 Now, what happens at the grand jury? Another
15 homicide detective. His name is Chris Bunting. Chris Bunting
16 is asked about this particular day, these two bullet holes.
17 Mistakenly, confused, who knows? For whatever reason, Chris
18 Bunting changes this crime scene analyst report and tells the
19 grand jury under oath that there's only one hole in that wall.
20 I predict he's going to have an explanation when he shows up.

21 Now, another thing that happens is they get a bullet
22 fragment from a TV. They open up a big-screen TV, and this
23 again is going to be some -- this TV gets moved when they find
24 the holes. They say -- they recall there's a TV, there's a
25 bullet fragment, they locate a bullet fragment from the TV.

1 Why is this important? Well, because it shows you the level
2 of detail that they examined this television with. They found
3 a fragment.

4 Now, what happens, 15 months later -- 15 months later
5 -- Cornelius Mayo contacts the police and says, I have another
6 bullet from that crime scene. And literally somebody from
7 Metro goes to meet Cornelius Mayo and he hands them another
8 bullet. Now, Cornelius Mayo -- whose credibility is suspect
9 at best -- Cornelius Mayo says, This is from the crime scene.

10 Where'd you get it? I got it from the back of the
11 TV. The same TV that was taken apart and it's difficult to --
12 even to see on a blown-up photo where that fragment was.
13 Police found it. Cornelius Mayo's going to suggest to you
14 that this bullet, too, came from the same TV.

15 Now, if we do the math, the crime scene analysts
16 recovered three bullets from the scene. There's two more
17 bullets that are identified as this A and B bullet, the two
18 new holes that were found when shelving was removed.

19 Of course, there's the bullet that killed Derecia
20 Newman. There's also a bullet from Devonian. And, of course,
21 there's this mystery bullet that Cornelius produced. Remember
22 I said there's no evidence, no evidence, that this revolver
23 was loaded when any assailant went into this residence. Best
24 case scenario, if it was loaded, there's still too many shots
25 that were fired inside that residence.

1 So Cornelius owns a gun. How do we know that?
2 Despite what you just heard Ms. Weckerly say, we interviewed
3 him. And interestingly, the police never looked for a gun.
4 They did, however, do a gunshot residue test, which as of
5 yesterday or the day before when we last checked, the gunshot
6 residue test to determine if there was any evidence that he'd
7 fired a weapon, went from his hand into the evidence vault
8 where it sits today, some four years later. They never did
9 anything with it.

10 They didn't give a gunshot residue test to the
11 neighbor or to the person across the street. The police gave
12 a gunshot residue test to Cornelius Mayo, which they did not
13 do anything with.

14 Cornelius says to us, Yeah, I own a gun. But you
15 know what's weird? On the exact day that this homicide went
16 down, I loaned that gun to my friend. Remember the two ways
17 to investigate a case. It is going to be a challenge through
18 this case to explain if you bother to take the gunshot residue
19 test, why not complete it? Why not, instead of arguing about
20 it, why not just complete it? And -- and tell us, yeah, we
21 did the test and -- and it's all good.

22 Now, Devonian Newman was also there. Remember, this
23 is just as to who shot her. Remember the sequence of events.
24 The shooting occurs, she's running, she is running away.
25 Cornelius Mayo is in the back bedroom, where arguably his gun

1 would be. It is dark. He hears gunshots. I think the
2 evidence is going to suggest he's a little worried. And the
3 evidence is in conflict where he was at. You know, Ms.
4 Weckerly had to pick a scenario. The scenario she picked was
5 he was in the bathroom, right? That's what she said.

6 Now, his statements and Devonia's statements are all
7 over the board, because there's one statement that says that
8 Cornelius, when he heard gunshots, goes and grabs money first,
9 and the two of them go in the bathroom together. There's
10 another statement where he says, I was actually using the
11 bathroom and Devonia busted in as I was pulling my pants up.

12 So, as the case unfolds, understand that, as they
13 tell you what happened in this case, that they are picking and
14 choosing different parts of statements, but that they are not
15 consistent.

16 Now, Devonia gets shot, no doubt about that. In the
17 gunshot situation that is occurring, whether or not there's
18 one revolver being used, two revolvers being used, we don't
19 know what the brothers came and cleaned up, because no one
20 ever asked them about it other than they handled their
21 business. That's all he told us.

22 We get copies of what are called voluntary
23 statements, and we get transcriptions of those statements.
24 You can see there's questions and answers, and occasionally on
25 those witness statements there's blank lines. And you can see

1 one has an "A" for "answer."

2 Now, Devonian Newman is medicated. She is recovering
3 from a very serious injury. She's speaking very softly. And
4 the police officers in this case, when they do the
5 transcripts, you know, they -- they -- from time to time they
6 come up with something that they call "unintelligible," right?
7 The blank lines.

8 So what we do is we listen to these tapes. And --
9 and I want you to hear, as she's laying on the ground,
10 remember, remember the scenario of what's happening, the gun
11 battle that's occurring in this home, what does Devonian say?

12 (Audio played.)

13 Now, obviously, we've had this case for a long time.
14 We've -- we've listened to this thing a thousand times. I
15 want you to just listen to the portion that we have filled in.

16 (Audio played.)

17 Now, you all will be the judges of what occurred.
18 And despite the giggle and unprofessionalism to my right, this
19 is serious. And when you listen to this statement, you tell
20 me -- or not tell me, I apologize -- you decide if Cornelius,
21 scared, in the back bedroom with a gun, not on purpose,
22 potentially felt that an assailant was about to shoot him, as
23 well.

24 Now, this is what Devonian said, and I'm going to tell
25 you this, too. Throughout Devonian's statement the police

1 constantly go back and say, Okay, let me clarify this, let me
2 clarify that. All right. When this comes out, the police
3 officer taking this interview moves onto a different subject.
4 He doesn't clarify anything. Listen to the tape and
5 understand this, too, if you don't know these people, right,
6 and Ms. Weckerly -- the State was going to concede Mr. Burns
7 doesn't know these people. They were "targets" because of a
8 need to get some drugs.

9 When you think of this statement, rifling through
10 pockets to look for drugs, the persons that would know that
11 Devonia may have drugs on her -- remember, she's a 12-year-old
12 little girl. She's not the -- the -- the drug dealer. That's
13 the adult at the front door. It seems that it's going to make
14 more sense as this case unfold that it would be Cornelius's
15 friends or family that knew the situation that would know
16 enough to rifle through a 12-year-old girl's pockets.

17 Now we move to the second component of -- of counts
18 in this case, and that's who killed Derecia. Again, the
19 charging document gives us alternative people that could have
20 been -- could have been the shooter. The State's not, at
21 least in this charging document, telling us who the shooter
22 is.

23 Now, the police in this case begin with, Well, let's
24 analyze the murder weapon. Well, how do they get the murder
25 weapon? First thing is there -- there is evidence of the

1 murder weapon being damaged. Okay. The -- the rifling, the
2 barrel, it's -- it's altered and causes testing to not be
3 possible.

4 How'd they find the gun? Well, the gun was at
5 Anthony Lasseter's house. Anthony Lasseter is an individual
6 with big, bushy hair and very striking eyes, and the eyes are
7 going to be important in this case. How did Anthony Lasseter
8 get the gun? Anthony Lasseter got the gun from Donovan
9 Rowland.

10 Donovan Rowland and Jerome Thomas are extremely
11 tight. Donovan Rowland and Jerome Thomas speak to each other
12 while Jerome is in custody in San Bernardino. Donovan Rowland
13 tells Jerome Thomas, Man, I'm -- I'm your guy. So much so
14 that I think I'm going to apply to be a prison guard, so I'm
15 going to get a job at your jail, I'm going to break you out.

16 These two are attached at the hip. Donovan Rowland
17 is the one that tells the police that he gave it to Lasseter.
18 Well, what's Donovan Rowland doing? How did he get the gun?
19 He's interviewed by the police.

20 (Video played.)

21 Jerome Thomas is cleaning the murder weapon. And I
22 want you to ask yourself questions as this case unfolds, what
23 would they tell you the value of each of these pieces of
24 evidence if it had been David Burns? In other words, if David
25 Burns was cleaning the murder weapon, would they rely on that

1 for a conviction? And the answer is absolutely.

2 And I want you to think about these different
3 components of the case, which, by the way, were almost
4 completely ignored during the opening presentation.

5 So Donovan Rowland later is asked, Well, okay, you
6 saw him cleaning the gun, then what happened? Well, Job-Loc,
7 Jerome Thomas, says, "'Something happened, I got a lead. So
8 pretty soon I'm going to be gone. Hold this for me.' Then I
9 got the gun and I left." So Jerome Thomas is telling his
10 buddy something happened, I have to go. Now, understand, I
11 have to go is I have to go to a place where there are warrants
12 for my arrest for charges that involve life sentences. You've
13 got to wonder what happened here that causes him to think that
14 he's better off going there.

15 Donovan Rowland tries to sell the gun. He didn't
16 just try to hold onto it. What happens when he tries to sell
17 the gun? Well, he's out there asking questions and -- and Ms.
18 Weckerly alluded to this a little bit. But what she didn't
19 say is that the people that he tried to sell it to, the
20 Coopers, Yolanda Cooper said that, Hey, Donovan said he was
21 involved in the murder. Donovan said they took \$4,000 and
22 Donovan got \$1,000 for participating. For participating.
23 Remember that question, man, if this was David Burns, would
24 they use this evidence to convict David Burns? You bet.

25 Now, Jerome Thomas, also known as Albert Davis, also

1 known as Job-Loc, also known as Cowboy, also known by about 22
2 other names, is the boyfriend, and it's unclear if it's just
3 boyfriend/girlfriend or -- or pimp and prostitute.

4 But there's -- there's also some prostitution type of
5 relationship that exists between him and Monica Martinez. He
6 knows Mr. Mason. He is buddies with Donovan Rowland. And
7 he's also buddies with Anthony Lasseter, the other individual
8 who was involved in the murder weapon. And there's calls, a
9 lot of calls to Mr. Rowland and Mr. Lasseter.

10 Who's Albert Davis? Well, Albert Davis is a fake
11 name. How do we get Albert Davis? Because Monica Martinez is
12 working in that pharmacy company, right? And she's a clerk
13 there. Monica Martinez has a spiral notebook where she writes
14 down names, dates of birth, and Social Security numbers so she
15 can use those identities down the road. For what purpose,
16 it's not totally clear. She has a notebook full of these
17 names. You see here, Albert Davis is the one with asterisk,
18 right?

19 Now, why is Albert Davis important? It's important
20 for a couple of reasons. Do you remember the incident that
21 the State told you about where he tried to rob a Walmart and
22 it was unsuccessful? You know -- and -- and keep in mind,
23 Donovan Rowland and Job-Loc are -- are tight. They're out
24 committing burglaries together. The Walmart one was foiled,
25 right? Well, he hurt his leg. He's got an active warrant in

1 California. So to evade police and get medical treatment, he
2 uses the name Albert Davis, which Monica Martinez stole from
3 her office. That's who Albert Martinez is.

4 And who else is he? Monica Martinez will tell the
5 police she doesn't know a Job-Loc. She says, on the way to
6 the interview, you know, My boyfriend's name is Albert Davis.
7 She maintains her boyfriend's name is the fake name that she
8 stole from the pharmacy, which he used to get medical
9 treatment.

10 Now, on the night of the homicide, it's Jerome that's
11 stressed out about money. And this is Monica Martinez. And
12 you'll find at the -- at the end of this case that police keep
13 saying to her, "Who are you protecting? Who are you trying to
14 help?" She ultimately says, "Job-Loc." Now, Job-Loc, Jerome
15 Thomas, wanted money. He's calling her, Go out, you've got to
16 get me money, you've got to get me money.

17 He owns a gun. And, in fact, during the interview
18 with Ms. Martinez, Ms. Martinez identifies the gun that I
19 showed you a picture of. Detective Wildemann gets on the
20 phone and calls another officer, and he says, "Hey, just so
21 you know, Job carries a big silver revolver."

22 Now, there's going to be some evidence in this case
23 about cell phones. We spoke about it voir dire for a little
24 bit about the accuracy of information received and testimony
25 received about cell phones. Okay. Now, the grand jury, when

1 they decided to charge this case, probably had some questions
2 about, Well, where's Job-Loc? I mean, there seems to be an
3 awful lot of evidence about him.

4 So testimony's adduced that they -- that the State
5 put on -- remember, there's no defense attorneys there to
6 challenge it. The testimony is through phone calls, his phone
7 keeps pinging off the same tower -- right -- through the
8 night. And they -- they're very careful how they choose the
9 generic description of what happens with his cell phone
10 records. And they say, "Through the course of the evening his
11 phone seems to be at the same spot."

12 You know what, in a vacuum -- in a vacuum, probably
13 true, probably -- there is a problem even with that. But
14 understand this. This is what the State's looking at. Well,
15 there's a call at 2:03, and then the next time Jerome Thomas
16 uses his cell phone's at 4:07. So while they fed the grand
17 jury that there's this two-hour -- or there's only, you know,
18 this one tower, they neglected to tell them, But there's no
19 calls during these relevant timeframes.

20 And the police notice that. The police initially,
21 before they go to the grand jury they pointed out, they
22 confront Monica Martinez. Why aren't you on the phone with
23 Job-Loc? You guys talk every 15 minutes. Because the
24 inference is you don't call someone if you're together.
25 Right?

1 And this whole thing about the tower and where it
2 hit, Ms. Weckerly told you about a PIN register. Now, I just
3 showed you a record that shows Job-Loc's phone was at
4 2-something -- 2:03 and 4:06 or something like that. This is
5 the PIN register which conflicts, which shows a call from
6 Monica Martinez to Jerome Thomas minutes before the homicide.
7 And you're going to hear that there was, according to Monica,
8 some frustration on Jerome Thomas's part because she was
9 unsuccessful in getting money. She tried to prostitute
10 herself, she tried to do all these things and wasn't making it
11 work.

12 Now, why is this call important? Because Monica
13 Martinez lives on a street called Cinnabar. Homicide happens
14 on a street called Michael, or Mickle. It takes literally
15 about a minute to do this drive. You literally go out on
16 Monica's street, go down two blocks, turn left, and you are at
17 the homicide scene. At 3:30 in the morning, that takes a
18 minute.

19 Now, after the homicide's done, Jerome has the money.
20 Would it be incriminating if David Burns had the money after
21 the murder was done? Of course it would be. Jerome Thomas
22 has the money. He's the one doling it out. The police,
23 incredibly -- and you may find this as one of the most
24 remarkable parts of this story -- they search Jerome Thomas's
25 home, they make a list of a bunch of items that are there.

1 There are three cell phones on the counter which are not
2 taken.

3 Remember the grand jury testimony about, Well, he had
4 a phone? There's this mistake that sometimes people make
5 where people assume that if there's a phone that does
6 something, that automatically the person on the other end of
7 it is the person that the phone is attributed to. Mr. Thomas
8 had access to three, none of which were taken. But they took
9 that disposable camera just six inches to the left of it.
10 They didn't take the phones, though, after the homicide.

11 These are still photos lifted from a video at Texas
12 Station that happens about 4:30 in the morning. You see
13 Monica Martinez walk in, you see her on her way out, and you
14 see she's looking for Jerome Thomas. And this still shot, and
15 I'm going to tell you it's hard to see, but there certainly
16 appears to be a man on crutches exiting the Texas right after
17 Monica leaves.

18 Now, what did they charge Jerome Thomas with?
19 Remember, this is the new thing, Jerome Thomas is now charged.
20 Well, they filed something against him back in 2011, Accessory
21 After the Fact. Accessory. Accessory.

22 There's no conspiracy charges in what he's actually
23 facing. There's no conspiracy to commit murder. There's no
24 conspiracy to commit robbery. It's all accessory. Which is
25 going to be relevant. Because if you go to Plan B and you

1 just assume David Burns is our guy, you can't charge him,
2 because then you create confusion beyond that which already
3 exists.

4 Now, we do know one thing amongst all these cell
5 records; David Burns doesn't have a cell phone. You will
6 never be called upon to determine who David Burns was on his
7 phone with, because he doesn't have one.

8 Now, Monica Martinez, the woman who turned State's
9 evidence, the woman who's a snitch, the woman who's working
10 with the State, pick your adjective, tells the police on the
11 way to her interview -- now, this is the person, by the way,
12 that the State has cut a significant amount of time off of her
13 sentence in order to come in here and testify. And we talked
14 about plea agreements, we've talked about plea bargains and
15 the impact they might have on people and why they might want
16 to lie.

17 Now on the way to the interview Monica says, I can't
18 remember what happened, because I was blacking in and out. I
19 was so high, I used all these drugs, I don't know what
20 happened. She is setting the stage for I don't know. Right?
21 And this is the woman, now, that's going to come in and
22 suddenly elect to tell the truth. Right?

23 One of the reasons to look at someone's interview is
24 not only -- not only the content of what they say, but it's
25 for tone and demeanor. In other words, does this particular

1 person have the capacity to look you in the eye and lie to
2 you? We talked about that in voir dire. Remember? Can --
3 can a witness take the stand, swear to tell the truth, look
4 you in the eye, and lie? Okay.

5 Now, I only have examples, because her interview was
6 very long. But I want you to get a little bit of a feel for
7 what she said and the kind of body language she has, etcetera.

8 (Video played.)

9 Honestly -- honestly, Chris -- Chris Bunting, you
10 guys know more than I do. And it was at that moment that she
11 decided to look him in the eye and say that.

12 Now, her tone and demeanor here, she's going to flail
13 and say, I don't know, I don't know.

14 (Video played.)

15 The animation that she adds is another sign of how
16 committed she is to what she is saying. And the question, by
17 the way, in that clip was, Who's Albert? I don't know, I
18 don't know. Albert, remember, is that fake name that she gave
19 Jerome Thomas when he needed medical care.

20 This is one of several references throughout the
21 course of the interview process where she says she's loaded
22 and she doesn't know Willie Mason and can't describe him.

23 (Video played.)

24 I don't know, I was loaded. This is the man she
25 claims to have been intimate with, doesn't know anything about

1 him. Zero.

2 Now, pages and pages of this transcript are laced
3 with a reference to the fourth person in the car and that --
4 that fourth person in the car had braids. Now, through the
5 course and of the braids, you know, because they keep
6 referring to this fourth individual, she says, "He had braids.
7 They looked old." Okay. So again, it's not only that he had
8 braids, but they looked old.

9 "How long were the braids?"

10 "They weren't that long." And -- and the police
11 officer in the interview is saying, you know, To the ears, to
12 the shoulder? And when he -- when he goes, "To the shoulder?"

13 She says, "No, not that long."

14 "Was he wearing a hat?"

15 No, he didn't have a hat, "Because I saw the braids."

16 "What about the guy with the braids?" Yeah, he was
17 sitting in the back. He was in the front? Yeah, the guy with
18 the braids was in the back. The guy with the braids, when you
19 say the braids, did he have, like, beads, stuff in it, just
20 braids? And then she says, "No, just braids."

21 And this goes on, ladies and gentlemen, there's
22 another 20 examples of the level of detail to the braids.

23 (Video played.)

24 He doesn't have braids. And then the police are
25 trying to ascertain from her, Okay, when is the time where we

1 get a story that we can rely on? And -- and the bottom line
2 is when you look at the motive, she has an extreme amount of
3 anxiety about being in jail. Her letters bear it out, her
4 phone calls to her friends and family bear it out. And she,
5 from day one, had anxiety about being arrested and going to
6 jail.

7 (Video played.)

8 She said, I was in that car, I'm going to jail. And
9 the tape is replete with, I want to go home now. There are
10 sections in her statement where she says to the homicide
11 detective, I want to go home, I want to go home. And the
12 detective never says yes or no. He just sort of blows her off
13 and says, Well, let me check on this, let me check on that.

14 There came a time when the storytelling and later
15 changing her mind on what the story was became so often that
16 the detectives ran out of technique, and so they tried this
17 novel approach.

18 (Video played.)

19 Now, the detectives put her under oath. Obviously,
20 it's not like a courtroom oath, but they say, you know, maybe
21 this'll work. Let's cause her to look at us in the eye, swear
22 to tell the truth.

23 Right after they do this oath, she's asked some
24 questions about, Well, what did you do after? And -- and we
25 get all kinds of details about going to a park. Pages of

1 details about going to the park.

2 (Video played.)

3 Okay. Now, the most impressive part of that story
4 and something that I don't know if I've ever seen before is
5 she actually says, The point where I lied was this. She was
6 fully aware of when she breaks off from the truth, but her
7 tone and demeanor never change. But she can remember back,
8 okay, this is the part that I told you that wasn't true.

9 Now, we spoke a lot about the difference between
10 witnesses that have motives to lie and science. And in this
11 case you're going to hear some evidence of DNA. Ms. Weckerly
12 alluded to some.

13 Now, police officers in a case like this with these
14 kinds of witnesses, they know that persons may question
15 motives to lie. And they also know that science typically
16 does not lie. And this is a -- a memorandum of a conversation
17 that exists between the DNA expert in the case and Chris
18 Bunting, the homicide detective. And he says, "We need to put
19 the suspects in the car and in both residences to corroborate
20 the story."

21 There is an affirmative recognition that without
22 science they don't have anything. So what do they do? They
23 elect to not take Jerome Thomas's DNA. Why? Because they
24 have already gone with Plan B; David Burns is our guy, why
25 bother?

1 And by the way, the prior slide was authority to take
2 all the samples. Jerome Thomas gets neglected. They check
3 the crime scene, they check the victims, they check the gun
4 and the holster, they check Monica Martinez's car. And -- and
5 imagine, and the testimony is going to be, you know, this
6 gunshot wound right to her -- right to her head, the trigger
7 was pulled, blood would have immediately come out. Devonia is
8 -- is bleeding from her stomach. She just got shot in the
9 stomach. They're going to tell you David Burns went through
10 her pockets. He shot, he went through pockets, he's got to
11 have blood on him.

12 There will be evidence that when he came out, I think
13 that they're going to say from the stand he had blood on him,
14 right? Okay. Let's check the car. They say, Monica, did you
15 clean the car?

16 No, I didn't. And -- and just as an aside, would it
17 have made a difference that they cleaned the car? No.
18 Because the technology would have shown the cleaning agent.

19 Bottom line, they check everything; nothing. Nothing
20 related to David Burns. Other than he is guilty of smoking a
21 cigarette and drinking some juice and having a soda.

22 Now, they did some testing on the gun. Guess who
23 could not be eliminated? David Burns was eliminated. Monica
24 Martinez can't be excluded. Donovan Rowland can't be
25 excluded. David Burns was.

1 Now, let's talk about Devonian Newman. When it came
2 down to the second part of this case, which is who shot and
3 killed her mom, she's asked questions, you heard some of the
4 statement that was taken in the hospital. Now, I'm -- I'm
5 going to talk about something just to allow the opportunity to
6 evaluate how much time she really had. These are seconds,
7 moments in time. From her perspective, I can't even begin to
8 imagine the stress, anxiety, and how things looked.

9 She actually told CPS that she was shot in the back.
10 Nobody -- nobody is going to say she was shot in the back.
11 This is only a reflection of a 12-year-old girl's inability to
12 really remember everything and how it went down. She couldn't
13 even remember where she was shot, which is a pretty --
14 relatively simple detail, I would think.

15 Now, she's asked to describe the assailant. She says
16 a white t-shirt, white shoes, orange hat, 27-30 years old.

17 This is the person State's going to say is David
18 Burns, right there in the overalls. He's not wearing a white
19 t-shirt or white shoes or the right hat. And he's not 27-30.
20 He's 18.

21 Now, the only thing that they have, then, that is
22 consistent would be this notion of the overalls. And even as
23 to the overalls, I want you to listen to the difference
24 between what Devonian will say and the difference of what's
25 attributed to her. And it's subtle, but it's important.

1 Now, you see here, "What was he wearing?" The police
2 is going through and -- and there's a couple of sections in
3 her statement. And you see where it says, question -- answer
4 you can't hear, or -- or they couldn't -- or they did not
5 transcribe.

6 And then it says, "White t-shirt with blue -- with
7 blue overalls."

8 Okay. Now compare that to what she said.

9 (Audio played.)

10 Now, she says a white t-shirt with overalls. The
11 police officer says, A white t-shirt with blue? And you can
12 tell it's instinctive, because that's what he believes. And
13 remember, the police officer spoke to Devonia before ever
14 hitting record on the -- on the interview device. Right?

15 He says, A white t-shirt with blue -- oh, blue
16 overalls? And I don't know, you can't tell whether she's
17 nodding. And then he says, And they were rolled up to the
18 pant leg, when she comes back and says, The overalls? She
19 says, They're white.

20 But this matches with the police theory. So all the
21 transcripts from this point on will say, Yeah, Devonia told us
22 it was someone with blue overalls. And again, it's a subtle
23 thing, but it's -- it underscores the importance for you all
24 to make your own assessment. Now, this is when she's at the
25 hospital.

1 I told you that we get to interview people. Right?
2 We interviewed, as I told you, Mr. Mayo. We interviewed
3 Devonia. Now, I -- strike that.

4 We asked, Tell us about this person. You know what?
5 This person had a bandanna. And it was from the bridge of the
6 nose -- the bridge of the nose all the way down. This person
7 had a hat. Came down right to the rim just above his eyes.
8 All I could see, really, was his eyes.

9 And remember, I -- I mentioned earlier, I mean, I'm
10 not sure who it was, but of all the people in this case,
11 Anthony Lasseter has the -- the most striking eyes in this
12 whole situation.

13 But this is what she told us; bandanna and a hat.
14 And the only thing I remember at all was his eyes. And not
15 only that, but I read through what they said that I told them
16 about certain things about this case, and it didn't seem right
17 to me. She told us it -- my statement when I read it didn't
18 seem right to me. And I told the DA that my statement didn't
19 seem right to me, and the DA said, Don't worry about it.
20 That's what I expect she's going to say on the stand when she
21 testifies here in a few days.

22 Two ways to investigate a case. You go with Burns is
23 our guy, it's a relatively simple road. You ignore the cell
24 phone records, you don't do the gunshot residue test on
25 Cornelius Mayo, you don't get Jerome Thomas's DNA, you don't

1 allow Devonian to talk about her statement, you don't ask
2 Cornelius the tough questions about do you own a gun -- how in
3 God's name do you not ask this guy if he owns a gun? -- you
4 keep things from the grand jury, and you ignore the
5 description of the bandanna, you ignore the fact that there's
6 no science to support your accusation, and you give Monica
7 Martinez a deal. If you follow this -- these steps, you get
8 to Plan B.

9 Ladies and gentlemen, at the end of this case you
10 will see that there's nothing reliable to support a conclusion
11 that David Burns had any role in this case. You will have
12 doubt, it will be a reasonable doubt, you will have many
13 doubts about how this actually went down. And remember the
14 job task. The job task is holding the State to their burden.
15 They're going to tell you this is what happened. And if they
16 don't meet that burden and you have a doubt, you will find at
17 the end of this case, ladies and gentlemen, Mr. Burns is not
18 guilty.

19 Thank you for your time.

20 THE COURT: All right. Ladies and gentlemen, the
21 clock says it's noon now so we'll take our luncheon recess,
22 come back at 1:00. Court will be at ease while the jury
23 leaves.

24 (Jury recessed at 12:01 p.m.)

25 THE COURT: All right. Record will reflect that the

1 jurors exited the courtroom. We'll see you at 1:00 this
2 afternoon.

3 MS. WECKERLY: Your Honor, can I just make a quick
4 record?

5 THE COURT: Yes.

6 MS. WECKERLY: Mr. Sgro's last Powerpoint slide,
7 which we'd like a copy of, entered into evidence, the whole
8 Powerpoint, it says, doubt equals not guilty. The State
9 recently had a case reversed by the Nevada Supreme Court when
10 we put the word "guilty" in an opening statement slide. The
11 Nevada Supreme Court said that was improper. I would assume
12 the same rules apply to the defense. So I would hope that Mr.
13 Langford, if he has a Powerpoint, doesn't say the same thing.

14 And I just note it for the record that, although this
15 case has been out and it's used against the State, the defense
16 opted to put that in their opening, as well.

17 THE COURT: All right. We'll see you at 1:00.

18 (Court recessed at 12:02 p.m. until 1:08 p.m.)

19 (In the presence of the jury.)

20 THE COURT: All right. State versus Burns and Mason.
21 The record will reflect the presence of the defendants, their
22 counsel, the district attorney and all members of the jury.

23 It is now the opportunity of Mr. Langford to present
24 an opening statement for Mr. Mason.

25 Mr. Langford.

1 MR. LANGFORD: Thank you, Your Honor.

2 DEFENDANT MASON'S OPENING STATEMENT

3 MR. LANGFORD: Good afternoon. As you heard
4 throughout the course of jury selection, we mentioned various
5 times that the defense doesn't have to put on a case. The
6 defense doesn't have to present evidence. I said -- you know
7 when everybody was standing up and giving the list of
8 witnesses, I said that we would use the witnesses of the State
9 and the witnesses called by Mr. Burns to assert the defense of
10 Mr. Mason, okay.

11 The evidence is presented by the State -- let me
12 stop. When you walk through the door as jurors, nobody is
13 ever going to ask you to check your common sense at the door
14 and enter, leaving your common sense outside. So as you look
15 at the evidence going through this case, look at the evidence
16 with your common sense because what you will become convinced
17 of is there is reasonable doubt as to the theory that the
18 State wants you to believe. Because common sense, as you look
19 at the evidence, is going to tell you that there's no grand
20 conspiracy to commit robbery.

21 If you look at the evidence with a critical eye as
22 you're going along and say, wait a minute, how does this
23 evidence support Mr. Mason's defense that there was no
24 conspiracy? There was no agreement to commit a robbery. How
25 does the evidence prove that? Because the evidence is that a

1 person who knows the people in the house, Stephanie Cousins,
2 she makes the call to come buy dope. They know her well.

3 You're going to hear a lot about the relationship
4 between the victim in this case and Stephanie Cousins. So
5 does that make sense? Is it common sense that she would set
6 up a robbery at somebody's house that she knew? Does it make
7 sense then that she's going to take one person up to -- or
8 into the apartment with her -- to the apartment, rather, with
9 her. She could take one person to that apartment with her who
10 has a gun. Why then if it's just one person going with a gun
11 to do the robbery, what do you need Mr. Mason for? Does that
12 make sense?

13 Does it make sense then that the person who has the
14 gun who's going to do the robbery if this is all planned that
15 this person is going to burst through the door, guns blazing
16 and shoot the person right away if this is a robbery? Why do
17 you have to have all these people to do this kind of a
18 robbery? Don't you just really need one person, if you're
19 going to do this kind of a robbery, to be involved?

20 So as you listen to the evidence, you're going to --
21 if you say, how does this support Mr. Mason's defense that
22 there is no conspiracy to commit a robbery, think about all of
23 those things, and this is the worst planned robbery in the
24 world by the stupidest people in the world, or it was the
25 spur-of-the-moment act of a lone individual who decided for

1 whatever reason to start shooting.

2 When you hear the testimony of various people about
3 what took place, you will become convinced that Mr. Mason
4 wasn't there as the robbery -- alleged robbery occurred and
5 that the shooter pushed Stephanie Cousins out of the way to
6 shoot people. That's -- it doesn't make sense. What the
7 State is going to present doesn't make sense. That's the
8 defense of Mr. Mason.

9 Now, Mr. Sgro has already directed you to look at
10 certain evidence in such a way that provides reasonable doubt
11 about a lot of things, and essentially, the State -- if you
12 look up at the sky -- it's kind of like you look up at the
13 sky, like the ancient Greeks did, and you see a bunch of
14 different stars up there, and you point to different stars,
15 and you connect those stars, and you get an archer, right? Or
16 you get a crab or a scorpion.

17 But if you look at those stars from the perspective
18 of Mr. Mason or Mr. Burns, you're going to see that you can
19 make just about anything out of those stars, and isn't that
20 the definition of reasonable doubt? Look at this critically
21 every time a witness from the State takes the stand and ask
22 them, does that make sense?

23 Who is Monica Martinez really covering for? Well,
24 first off, Monica Martinez, I mean, that's pretty obvious, and
25 you'll see that. Who is she really covering for? She's not

1 covering for Mr. Mason. She's not covering for Mr. Burns.
2 She's covering for the lone shooter in this case, and that's
3 really about the only thing that makes sense out of all of
4 this. It's a commonsense case. There is reasonable doubt.

5 Thank you.

6 THE COURT: All right. Ladies and gentlemen, it's
7 now the opportunity of the State to call witnesses and present
8 its evidence.

9 Mr. DiGiacomo.

10 MR. DIGIACOMO: Erica Newman.

11 ERICA NEWMAN, STATE'S WITNESS, SWORN

12 THE CLERK: Please be seated. Please state you're
13 name and spell your first and last name for the record.

14 THE WITNESS: Erica Newman. E-r-i-c-a, N-e-w-m-a-n.

15 MR. DIGIACOMO: May I inquire, Judge?

16 THE COURT: Yes, sir.

17 MR. DIGIACOMO: Thank you.

18 DIRECT EXAMINATION

19 BY MR. DIGIACOMO:

20 Q Ma'am, as you sit here today how old are you
21 right now?

22 A I am 16.

23 Q 16 years old?

24 A Yes, I'll be 17 in April.

25 Q Did you know Derecia Newman?

1 A Yes, she was my sister.

2 Q She was your sister?

3 A Yes.

4 THE COURT: You're going to have to speak up a little
5 bit louder.

6 THE WITNESS: Oh, okay.

7 THE COURT: Okay.

8 BY MR. DIGIACOMO:

9 Q There's also a microphone right in front of you.
10 It doesn't amplify much, but everything you say is going to be
11 taken down by the court recorders over here. That's probably
12 going to help a little bit. Okay.

13 I want to ask you about Derecia. Did Derecia have
14 any children?

15 A Yes, she had four kids.

16 Q Four kids. And what are their names?

17 A Cashmere, Cordazia, Junior and Devonia.

18 Q Cashmere, Cordazia, Junior --

19 A Cornelius I should say.

20 Q Cornelius Junior?

21 A Yes.

22 Q Okay. And Devonia?

23 A Yes.

24 Q In relationship to Devonia, was she older or
25 younger than you?

1 A She's older than me.

2 Q How much older?

3 A By four months.

4 Q About four months. So you're about the same

5 age.

6 A Yes.

7 Q Let me -- did you grow up here in Las Vegas?

8 A Yes.

9 Q Who's your mother?

10 A My mom is Wanda.

11 Q Wanda?

12 A Yes.

13 Q And so that would be -- Derecia's mother as well

14 is Wanda?

15 A Yes.

16 Q Which would be Devonia's grandmother?

17 A Yes.

18 Q Now, I realize that you're technically Devonia's

19 aunt, but what -- would you describe your relationship with

20 Devonia.

21 A It's more like a sister relationship, but we

22 call each other cousins. So.

23 Q Because you're about the same age?

24 A Yeah, so I call her my cousin.

25 Q Did you grow up with her?

1 A Uh-huh.

2 Q Is that a yes?

3 A Yes.

4 Q I want to talk about the night that Derecia
5 wound up being killed. Did you call Derecia Derecia, or did
6 you use a different name for her?

7 A I called her -- we called her Ree.

8 Q Ree?

9 A Yeah, R-e-e.

10 Q R-e-e. Were you present at Ree's residence on
11 the night that she wound up being killed?

12 A Yes.

13 Q How is it that you wound up being over at Ree's
14 house that night?

15 A My sister was -- my second sister -- her name
16 was Jamaiah -- she was in Cleveland, and I was just the only
17 other child. So I was at home by myself. So I went over to
18 my sister's because there was kids there for the summertime.

19 Q So it's August 6th into August 7th of 2010 --

20 A Uh-huh. Yes.

21 Q -- so it's summertime. So you're not in school?

22 A Yeah.

23 Q All right. Who else is at the house?

24 A It was just me, my sister, Devonia, Cashmere,
25 Cornelius and Cornelius Senior and Cashmere.

1 Q So the other little kids are there. How old are
2 the -- how much younger are the other kids than you?

3 A Six years, seven years and I think eight and
4 nine I think.

5 Q Now, does your sister wind up spending the
6 night?

7 A My other sister?

8 Q Yes.

9 A No, she had just got back from Cleveland that
10 night -- well, that morning.

11 Q So she left, and did you stay the night?

12 A Yes.

13 Q So once everybody went to bed, who were the
14 adults in the house?

15 A Cornelius and my sister.

16 Q Ree?

17 A Ree.

18 Q And there is the four children of Derecia?

19 A Yes.

20 Q And then there's you?

21 A Yeah.

22 MR. DIGIACOMO: May I approach, Judge?

23 THE COURT: Yes.

24 BY MR. DIGIACOMO:

25 Q Ma'am, I'm going to show you State's Proposed

1 Exhibits 150 through 154 and ask you to just briefly flip
2 through those photographs for me.

3 Ma'am, do you recognize the people that are depicted
4 in those photographs?

5 A Yes.

6 Q And are they true, fair and accurate depictions
7 of the way each looked on August 7th of 2010?

8 A Yes.

9 MR. DIGIACOMO: I move to admit 150 through 154,
10 Judge.

11 MR. SGRO: No objection, Your Honor.

12 MR. LANGFORD: No objection, Your Honor.

13 THE COURT: They'll be received.

14 (State's Exhibit 150 through 154 admitted.)

15 BY MR. DIGIACOMO:

16 Q Ma'am, I'm going to go slowly through. If you
17 look at that screen just off to your side there, each one of
18 these -- each one of these are going to come up on -- up there
19 in front of you.

20 To your left, there are Kleenex if you need them, and
21 to your right, I believe there's going to be water in that cup
22 or water in that jug if you need it.

23 A Uh-huh.

24 Q Okay. And you let me know, I'll come up there
25 and pour it for you if you need it, okay?

1 A I'm fine.

2 Q All right. So let's start with 150. Who's

3 that?

4 A That's me.

5 Q 151?

6 A That's Cornelius Senior.

7 Q That's the dad?

8 A Yes.

9 Q 152?

10 A That's Cashmere.

11 Q Cashmere. And about how old do you think she

12 was in 2010?

13 A About 7 maybe.

14 Q Okay. 153?

15 A That's Cordazia.

16 Q And is she younger than --

17 A Yes.

18 Q -- Cashmere?

19 A Yeah.

20 Q How old do you think she is about?

21 A She was, like, two years younger. So she was

22 probably about 5.

23 Q And then 154?

24 A That's Cornelius Junior, and he was about, like,

25 6.

1 Q About 6 years old. Now, you indicated that
2 these individuals, Ree and Devonian, are inside Ree's
3 apartment; is that correct?

4 A Yes.

5 Q When you went to bed, what room did you sleep
6 in?

7 A I slept in the room with the bunk beds, the
8 kids' room.

9 Q And who else was in that room with you that
10 night?

11 A Me and the three other kids.

12 Q The three little kids?

13 A Yeah.

14 MR. DIGIACOMO: May I approach again, Judge?

15 THE COURT: Yes, sir.

16 BY MR. DIGIACOMO:

17 Q Ma'am, I showed you outside a schematic of your
18 apartment or of Ree's apartment. I'm going to show you what's
19 been marked as State's Proposed Exhibit No. 13. I know
20 there's a lot of other information on here, but generally the
21 layout of your apartment, is that consistent with the layout
22 of your apartment?

23 A Yes.

24 Q And then I'm going to show you State's Exhibit
25 No. 67 -- Proposed Exhibits 66 and 67 and ask you, are those

1 the bunk beds you're talking about?

2 A Yes.

3 MR. DIGIACOMO: Judge, I move to admit 13, 66 --

4 MR. SGRO: No objection.

5 MR. DIGIACOMO: -- and 67.

6 MR. LANGFORD: No objection, Your Honor.

7 THE COURT: They'll be received.

8 (State's Exhibit 13, 66, and 67 admitted.)

9 BY MR. DIGIACOMO:

10 Q Now I'm going to put first State's Exhibit No.
11 13 up for the ladies and gentlemen of the jury, and if you
12 touch that screen in front of you, you can actually make a
13 mark on the screen itself.

14 A Uh-huh.

15 Q So I'm going to ask you to circle the bedroom
16 that you're in.

17 A This one.

18 Q And then if I clear this off for you -- just a
19 second here -- can you tell me, are you on the top bunk or the
20 bottom bunk in that bedroom?

21 A I was on the top bunk.

22 Q And there are two top bunks; is that correct?

23 A Yes.

24 Q Which top bunk are you on?

25 A I was on this one.

1 Q Now, in the middle of the night, do you get
2 awoken by anything?

3 A Yes.

4 Q Can you describe for the ladies and gentlemen of
5 the jury what you hear.

6 A I was woken up by, like, a couple of gunshots,
7 which I didn't know were gunshots at first.

8 Q So you hear some loud noises and you wake up?

9 A Yes.

10 Q Which way is your head facing?

11 A My head is facing this way towards the other
12 bunk. So I was looking at the other bunk at first.

13 Q Looking at the other bunk at first?

14 A Yes.

15 Q At some point do you move?

16 A Yes.

17 Q Okay. How do you move?

18 A I got up, and I looked over the door. So I
19 could see over the door.

20 Q Okay. And I'm going to put up for the ladies
21 and gentlemen of the jury State's Exhibit No. 67. Looking at
22 State's Exhibit No. 67, do you see the bunk that you're on?

23 A Yes.

24 Q And is the door that you're talking about that
25 you kind of looked over in State's Exhibit No. 67?

1 A Yes.

2 Q Now, that door, if you were to look out that
3 door, what direction are you looking in?

4 A I would be looking into the door of the master
5 bedroom.

6 Q So there is a master bedroom across the way?

7 A Yes.

8 Q When you look over that door, what do you see?

9 A I saw a man standing there with a gun.

10 Q You saw a man standing there with a gun?

11 A Yes.

12 Q Do you remember anything about the man?

13 A He was, like, medium build, maybe skinny and had
14 on, like, overalls, and I remember a hat. That's about it.

15 Q Do you remember as you sit here whether or not
16 he was white, black or Hispanic?

17 A I couldn't really tell you, but I was -- he was
18 black as I can remember.

19 Q You said you saw him skinny. Do you remember if
20 he was short? tall?

21 A I would say he was tall because he was, like,
22 kind of, like, to the top of the door almost, like, but
23 shorter than that. He wasn't that tall.

24 Q So he wasn't quite as tall as the doorframe?

25 A Yeah.

1 Q But based upon the doorframe --

2 A Yeah.

3 Q -- you think he was tall?

4 A Yes.

5 Q You said you saw him holding a gun. Do you
6 remember anything about the gun?

7 A No.

8 Q When you saw this individual holding a gun, what
9 else do you remember?

10 A Just a whole lot of smoke and just being scared.

11 Q Okay. Do you hear any noises after the noises
12 that woke you up?

13 A I heard the bed bunk, like, creak or whatever.
14 So I -- I assumed it was my nephew because he was on the bunk
15 below me. So I immediately, like, got up and jumped down to
16 grab him because I assumed the man was still standing there,
17 but he was gone when I had, you know, finally looked up.

18 Q You go and -- your attention is drawn to --
19 which child is it?

20 A Cornelius.

21 Q Junior?

22 A Yes.

23 Q Okay. Your attention is drawn to Cornelius
24 Junior. How long between the time period that -- well, at
25 some point does something else happen after the man is gone?

1 A Yes, I went to the hallway because that's where
2 he was -- that's where he ran to, and I looked down the hall,
3 and I saw my sister and Cornelius. The dad, he was on the
4 phone with the police.

5 Q So you hear noises. You wake up. You look out.
6 You see the man with the gun and the overalls. You turn your
7 attention to the -- Cornelius Junior?

8 A Yes.

9 Q And you go out in the hall, and now you see your
10 sister. Where is your sister? Do you know?

11 A She was on the couch, on -- it was the smaller
12 couch. There was a big couch and a small couch. So she was
13 in the living room.

14 Q Okay. So you saw your sister on the couch, and
15 your sister being Ree?

16 A Yes.

17 Q Okay. And you saw Cornelius on the phone?

18 A Yes.

19 Q How long after you see Cornelius on the phone
20 does help arrive?

21 A Like, less than, like, two minutes later maybe.

22 Q And when I say help, who shows up at your
23 apartment?

24 A The police.

25 Q And when the police arrive, are -- do you guys

1 -- what happens to you and the rest of the kids?

2 A They just basically escorted us all outside.

3 Q They take you all outside?

4 A Yes.

5 Q Once you're outside, what happens to you?

6 A They had me talk to a couple of people. I don't
7 really remember who or who they were, and then they had set us
8 in, like, a squad car for forever.

9 Q And eventually where do you get taken?

10 A We got taken to Child Haven.

11 MR. DIGIACOMO: Thank you. Thank you, ma'am. Judge,
12 I pass the witness.

13 MR. SGRO: May I proceed?

14 THE COURT: Yes.

15 CROSS-EXAMINATION

16 BY MR. SGRO:

17 Q Good afternoon. I'm going to ask you a couple
18 of questions. First of all, you spoke to the police --

19 MR. SGRO: Oh, and can we take the photo down.

20 MR. DIGIACOMO: Sure.

21 MR. SGRO: Thank you.

22 BY MR. SGRO:

23 Q You spoke to the police about what happened,
24 right?

25 A Yes.

1 Q And they tape-recorded your statement, right?

2 A Yes.

3 Q And they asked you a lot of the same questions

4 that -- do you know this man behind me? His name is Marc

5 DiGiacomo. Do you know his name, the guy that just asked you

6 questions?

7 A Oh, yes.

8 Q Do you know his name is Marc?

9 A Now I do, yes.

10 Q Mr. DiGiacomo. The police asked you the same

11 questions that Mr. DiGiacomo just asked you, right, about what

12 you saw? what you heard? where you were, right?

13 A Yes.

14 Q And you were honest with the police, right?

15 A Yes.

16 Q And the police talked to you at around 6:51 in

17 the morning, so several hours after everything happened; would

18 that be right?

19 A Yes.

20 Q And now about four years have gone by, right?

21 A Yes.

22 Q You remember things better right away than you

23 do four years later, right?

24 A Yeah.

25 Q Let me ask you this first. Do you know the

1 photos you just saw?

2 A Yes.

3 Q Had you seen those before today?

4 A No.

5 Q Do you have those photos?

6 A No.

7 Q When you spoke with the police, you were asked
8 if you saw the man that was there, right?

9 A Yes.

10 Q And you were asked if you saw the gun, right?

11 A Yes.

12 Q And this is right after everything happened, a
13 few hours later, right?

14 A Uh-huh.

15 Q Yes?

16 A Yes.

17 Q Now, Cornelius, who you say is the dad,
18 Cornelius is the natural father of some, and your sister is
19 the natural mother of some, and they lived together, right, a
20 blended family?

21 A Yes.

22 Q Okay. Did you hear Cornelius, the dad as you
23 call him, talking on the phone with people before you were
24 interviewed with the police?

25 A No, other than the cops.

1 Q All right. Did you see him outside on his cell
2 phone calling people?

3 A No.

4 Q Did you know someone named Stephanie Cousins?

5 A Yes.

6 Q Do you remember Cornelius -- if I want to talk
7 about the child, I'll say Cornelius Junior, okay. If we're
8 talking about Cornelius Mayo, the older one, can I just say
9 Cornelius?

10 A Yes.

11 Q All right. Do you remember Cornelius on his
12 cell phone speaking with Stephanie Cousins?

13 A No.

14 Q You don't remember him being angry or
15 threatening her or anything like that?

16 A No.

17 Q When you told the police what happened, do you
18 remember saying, I didn't see who the person was, but I saw
19 the gun?

20 A No.

21 Q No. Well, let me ask you this. Today, today,
22 four years later, you said, Medium build or skinny, right?

23 A Uh-huh. Yes.

24 Q Today you said, Overalls, right?

25 A Yes.

1 Q Today you said, Black, right?

2 A Yes.

3 Q And today you said, Tall?

4 A Yes.

5 MR. SGRO: May I approach the witness, Your Honor?

6 THE COURT: Yes.

7 BY MR. SGRO:

8 Q I'm showing you page 4 of your statement that
9 was taken just a few hours after. Tell me if I'm reading this
10 right, okay.

11 THE COURT: Is this in evidence?

12 MR. SGRO: I'm just refreshing her recollection, Your
13 Honor.

14 THE COURT: She hasn't indicated her recollection
15 needed refreshing.

16 MR. SGRO: I said, Do you remember telling the
17 police, and she said, no.

18 THE COURT: Okay.

19 BY MR. SGRO:

20 Q So does it -- do you answer, I woke up because I
21 heard gunshot noises, and I didn't want to get up at first
22 because I had no clue what was going on until I raised up. I
23 didn't see who the person was, but I did see the gun? Did I
24 read that right?

25 A Yes.

1 Q And then when you're asked about the gun, you
2 say, I don't know because it wasn't really clear, right?

3 A Yes.

4 Q Do you remember telling the police that you did
5 not know that Devonia -- strike that. You didn't know your
6 sister had been shot?

7 A Yes.

8 Q And do you remember when the police ask you more
9 questions, later in your statement you say, I don't know what
10 happened? I don't -- I didn't see the man. I saw a gun. Do
11 you remember that?

12 A No.

13 Q You don't remember that?

14 A No.

15 Q Ma'am, would you agree with me that what you
16 said closer in time, over four years ago, would be more
17 accurate than what you're being -- what you're telling us
18 today?

19 A Yes.

20 Q Have you spent time with either the police or
21 with the district attorneys looking at things to get ready for
22 your testimony today?

23 A Not often, but, yes.

24 Q Pardon me?

25 A Not often, but, yes.

1 Q You have?

2 A Yeah.

3 Q Did they ever show you your statement?

4 A No.

5 Q Did they mention to you things about overalls,
6 and then did you just say, yeah, overalls? I mean, how --

7 A No.

8 Q Okay. You understand what you're saying today,
9 four years later, is a lot different than what you said
10 earlier, right?

11 MR. DIGIACOMO: Objection.

12 THE WITNESS: Yes.

13 MR. DIGIACOMO: Argumentative.

14 THE COURT: Sustained.

15 MR. SGRO: I'll rephrase it. I apologize.

16 BY MR. SGRO:

17 Q Do you remember telling Mr. DiGiacomo that you
18 saw Cornelius on the phone calling 9-1-1 and then help was on
19 the way?

20 A Yes.

21 Q Cornelius has -- had brothers at the time,
22 correct?

23 A I don't know.

24 Q You don't know if he had brothers?

25 A No, I don't know.

1 Q Do you remember him calling anyone to come over
2 to the house before the police were there?

3 A No, I only know of him talking to the police,
4 and that's it.

5 Q Okay. Do you know anything about a big sports
6 bet that he won right before the shooting happened?

7 A No.

8 Q Do you know where Devonian was when you heard
9 everything happened?

10 A Like, in the moment when everything -- no, I did
11 not know where she was.

12 Q Okay. And were you aware that your sister sold
13 drugs from that apartment?

14 A Yes.

15 Q Were you aware that Cornelius sold drugs from
16 that apartment?

17 A Yes.

18 Q Were you aware that sometimes they sold
19 marijuana, and sometimes they sold crack cocaine?

20 A I didn't assume they sold it, but, yes.

21 Q Okay. Were you aware that Devonian -- the girl
22 that you call your cousin -- sometimes she would help in the
23 drug transaction, where she'd go to the front and get the
24 money and go to the back and get the drugs?

25 A No.

1 Q That didn't happen?

2 A That never has happened.

3 Q When you say you spoke to a couple people about
4 what happened, would those be the police officers that took
5 your statement?

6 A Yes.

7 Q Are you aware of -- strike that. Have you ever
8 written out a statement -- prior to today, have you ever
9 written anything out where you've said, Hey, I did see the man
10 that was there?

11 A I can't recall. I don't know.

12 Q Okay. Are you aware of any tape-recorded
13 statement that exists prior to today where you have ever said,
14 I did see the man and can now provide a description?

15 A No.

16 Q So the only thing we have that's ever been
17 recorded, which was at the time, was the statement that you
18 saw a gun but didn't see the man, right?

19 A Yes.

20 MR. SGRO: Court's indulgence, Your Honor. Pass the
21 witness, Your Honor.

22 MR. LANGFORD: I have no questions, Your Honor.

23 THE COURT: Okay.

24 MR. DIGIACOMO: May I approach the clerk?

25 THE COURT: Yes.

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