

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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1 MS. WECKERLY: Your religious beliefs or --

2 PROSPECTIVE JUROR NO. 176: My belief --

3 MS. WECKERLY: Your --

4 PROSPECTIVE JUROR NO. 176: Not [inaudible], just but
5 my belief because it is not learned in others or
6 personalities. It's not -- it's final.

7 MS. WECKERLY: Right.

8 PROSPECTIVE JUROR NO. 176: It's not learned others.
9 To learn others, not say death penalty [inaudible].

10 THE COURT RECORDER: Sir, you need to speak into the
11 microphone, please.

12 MS. WECKERLY: Is it a penalty that you think you
13 could ever consider?

14 PROSPECTIVE JUROR NO. 176: No.

15 MS. WECKERLY: No?

16 PROSPECTIVE JUROR NO. 176: No.

17 MS. WECKERLY: And is that -- and I'm not trying to
18 argue with you and you're certainly entitled to your opinion.
19 Is it a -- have you had that opinion that you don't believe in
20 the death penalty, has that been your opinion for a long time?

21 PROSPECTIVE JUROR NO. 176: A long time, yes.

22 MS. WECKERLY: Okay. So it's not just since you
23 filled out the questionnaire?

24 PROSPECTIVE JUROR NO. 176: No.

25 MS. WECKERLY: Is there any circumstance where you

1 would consider the death penalty as a proper punishment?

2 PROSPECTIVE JUROR NO. 176: Would you please say
3 again?

4 MS. WECKERLY: Or just no?

5 PROSPECTIVE JUROR NO. 176: No.

6 MS. WECKERLY: Never?

7 PROSPECTIVE JUROR NO. 176: Never.

8 MS. WECKERLY: Based on that, Your Honor, I'll
9 challenge for cause.

10 THE COURT: Want to traverse, Mr. Oram?

11 MR. ORAM: Good morning.

12 PROSPECTIVE JUROR NO. 176: Good morning, sir.

13 MR. ORAM: This -- it seems to me that you're saying
14 that you have -- you're a little worried about some of the
15 language; is that fair?

16 PROSPECTIVE JUROR NO. 176: Yes, sir.

17 MR. ORAM: Okay. But you seem to be doing just fine.
18 You're trying, right?

19 PROSPECTIVE JUROR NO. 176: Okay. Thank you.

20 MR. ORAM: I want to ask you some questions about
21 what you put in the questionnaire regarding the death penalty.

22 PROSPECTIVE JUROR NO. 176: Okay.

23 MR. ORAM: Now, my understanding is you said that you
24 could consider the death penalty. You didn't normally favor
25 it, but if the case was right, you could do it; is that what

1 you said?

2 PROSPECTIVE JUROR NO. 176: Death penalty?

3 MR. ORAM: Yes.

4 PROSPECTIVE JUROR NO. 176: No, I can't do it. No.
5 Never.

6 MR. ORAM: You could never consider it?

7 PROSPECTIVE JUROR NO. 176: I not consider the death
8 penalty.

9 THE COURT: Mr. Oram?

10 MR. ORAM: Yes.

11 THE COURT: All right. I'm going to grant the
12 challenge. Mr. Welde, I'm going to excuse you. Thank you
13 very much for being a prospective juror. You'll be excused.

14 PROSPECTIVE JUROR NO. 176: Thank you.

15 THE COURT: If you hand the microphone to the next
16 juror there. Thank you. And you can leave and report to the
17 Jury Commissioner at this time.

18 Mr. -- is it Wilson?

19 PROSPECTIVE JUROR NO. 178: Yes. Dennis Wilson.

20 THE COURT: Mr. Wilson, it says here that you are
21 employed by Clark County as a safety security specialist?

22 PROSPECTIVE JUROR NO. 178: Yes, sir.

23 THE COURT: What -- I don't know what department has
24 safety security specialists. Where do you work?

25 PROSPECTIVE JUROR NO. 178: It's the -- it's the

1 Clark County Water Reclamation Department. It's where all the
2 water you flush goes. Basically everything in the Valley goes
3 to our plant that's in Clark County designated. We got like a
4 hundred million gallons of sewer a day.

5 THE COURT: And what is --

6 PROSPECTIVE JUROR NO. 178: And I do safety and
7 security. Basically my job is emergency management. I do
8 fire-drill training, heavy-equipment training, safety; and
9 then on the security side I do perimeter security, site
10 security for our -- for our plant. We have a 700-acre plant
11 that is considered by DHS to be one of the critical
12 infrastructures of the country, so we have a lot of parameters
13 we have to go through the federal government as a protection.
14 And I -- I establish that, order the materials, stuff like
15 that, and then see that it's taken care of.

16 THE COURT: Do you consider yourself in law
17 enforcement?

18 PROSPECTIVE JUROR NO. 178: No, sir.

19 THE COURT: Okay. But -- so you're -- you're
20 watching out for problems around the perimeter of the
21 facility; is that right?

22 PROSPECTIVE JUROR NO. 178: Yes. We -- we frequently
23 -- because our location is far out on the east side out by the
24 Wetlands Park, Sorbal [phonetic], the east side of the plant
25 we have -- we're out in an open area, so we do have a lot of

1 homeless people that come into the plant unknowingly a lot of
2 times, kids, people walking their dogs, things like that
3 coming from the Wetlands Park. So we have to make sure they
4 stay out just for safety purposes because it's an industrial
5 facility.

6 THE COURT: When you need assistance, does -- do you
7 call for Metro to help you or do you have somebody else you
8 call?

9 PROSPECTIVE JUROR NO. 178: We actually have a
10 contract security company that works for us and then if it's
11 -- once it gets to a serious point where it needs law
12 enforcement, they'll -- they're directed to call 911. Now, if
13 it's just a trespass-type thing, normally it's just 311; come,
14 ask the guy to leave, walk them off. But if it's a serious
15 issue, somebody's breaking in, stealing, you know, something
16 that substantial, we will -- we will call the police.

17 THE COURT: Okay. What -- what's your education for
18 this particular position?

19 PROSPECTIVE JUROR NO. 178: I spent 14 years in the
20 Air Force. I've -- for the security part of it, I was -- I
21 did security for security when I was in the Air Force. That's
22 the background for the security part, the safety [inaudible]
23 and safety officer, three different jobs. So my safety
24 background is I've been a heavy-equipment operator since I was
25 17-years-old, so I have a lot of background in that kind of

1 stuff. As far as training, I've gone through a lot of
2 training classes and courses to become a teacher.

3 THE COURT: And when -- when did you leave the Air
4 Force?

5 PROSPECTIVE JUROR NO. 178: My reserve time ended in
6 August of 2000.

7 THE COURT: What was your rank when you left?

8 PROSPECTIVE JUROR NO. 178: Sergeant before,
9 sergeant.

10 THE COURT: Did you ever serve out at Nellis?

11 PROSPECTIVE JUROR NO. 178: Yes, sir, I did. That's
12 where my active duty was at, in Nellis.

13 THE COURT: Okay. You indicated in your
14 questionnaire that you were involved or are involved in a
15 civil case that's ongoing. Is that still true?

16 PROSPECTIVE JUROR NO. 178: No, sir, it's not. It's
17 been dismissed as of last --

18 THE COURT: Resolved?

19 PROSPECTIVE JUROR NO. 178: Yes. As of last week it
20 was dismissed from the case.

21 THE COURT: And you're not unhappy with the
22 resolution of that?

23 PROSPECTIVE JUROR NO. 178: No, sir, not at all.

24 THE COURT: That's to your favor?

25 PROSPECTIVE JUROR NO. 178: Yeah. It's over.

1 THE COURT: All right. Well, you're not going to
2 hold that civil suit then against any of these lawyers in this
3 case?

4 PROSPECTIVE JUROR NO. 178: No, sir, not at all.

5 THE COURT: All right. Do -- do you know any of the
6 attorneys or the witnesses involved in this case?

7 PROSPECTIVE JUROR NO. 178: No, sir.

8 THE COURT: Under our system of criminal justice, as
9 I have previously indicated, we're a team. You are to decide
10 what the evidence is, and I'm to decide what the law is, and
11 you apply the -- the facts to the law and reach a fair
12 verdict. Can you do that in this case?

13 PROSPECTIVE JUROR NO. 178: Yes, sir.

14 THE COURT: You understand the presumption of
15 innocence that I've explained and the burden of proof that the
16 State has to prove the defendants' guilt by evidence beyond a
17 reasonable doubt, and the defendants don't have to prove
18 they're not guilty, and if the State fails to meet their
19 burden, the defendants would be entitled to a verdict of not
20 guilty. Do you have any quarrel with that procedure?

21 PROSPECTIVE JUROR NO. 178: No, sir, I do not.

22 THE COURT: You understand the procedure?

23 PROSPECTIVE JUROR NO. 178: Yes, sir.

24 THE COURT: All right. If you were a -- a party in a
25 criminal case like this, either the prosecution or the

1 defense, would you want twelve citizens like yourself sitting
2 in judgment of the case?

3 PROSPECTIVE JUROR NO. 178: Yes, sir.

4 THE COURT: Is that because you have an open mind,
5 you're willing to listen to the evidence --

6 PROSPECTIVE JUROR NO. 178: Yes, sir.

7 THE COURT: -- and do the best job you can?

8 PROSPECTIVE JUROR NO. 178: Yes, sir.

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

10 MS. WECKERLY: Thank you. Good morning, sir.

11 PROSPECTIVE JUROR NO. 178: Good morning.

12 MS. WECKERLY: How are you?

13 PROSPECTIVE JUROR NO. 178: I'm fine. How are you?

14 MS. WECKERLY: Good. If -- if it's okay with you,
15 I'd like to sort of work backwards on your questionnaire and
16 let's start with your feelings about the death penalty. And
17 you mentioned on your questionnaire that you think it's an
18 appropriate punishment in some instances?

19 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

20 MS. WECKERLY: And actually you mentioned some other
21 crimes besides murder where you thought it would be a proper
22 punishment?

23 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

24 MS. WECKERLY: In Nevada, only first degree murder is
25 the only crime that could be punishable by death. With that

1 -- with that in mind, I want to talk a little bit about your
2 feelings about first degree murder and what the appropriate
3 punishment is.

4 You noted on your questionnaire that not all murder
5 cases are cut-and-dry and a life sentence could be warranted.
6 I take it from that answer that you're not someone who would
7 automatically impose the death penalty in every case of first
8 degree murder?

9 PROSPECTIVE JUROR NO. 178: No, ma'am.

10 MS. WECKERLY: Okay. And you'll find out that this
11 is a two-step process. The first part of the process is you
12 individually and with your fellow jurors will just be deciding
13 if the State proves the case beyond a reasonable doubt --

14 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

15 MS. WECKERLY: -- as to Mr. Burns and Mr. Mason.

16 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

17 MS. WECKERLY: Now, with Mr. Burns, in the event of a
18 first degree murder conviction, we would move onto a penalty
19 phase where death would be a potential punishment. And with
20 Mr. Mason, it wouldn't be because he's not -- that's not
21 alleged against him.

22 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

23 MS. WECKERLY: And in that second phase, which is
24 called the penalty hearing, you would decide -- you would be
25 actually hearing additional information, additional evidence

1 from both sides, and the Judge would actually give you
2 instructions that you're to follow before picking among the
3 choices of punishment.

4 Would you be able to reserve making a decision until
5 you heard all of that information and the law?

6 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

7 MS. WECKERLY: Are you someone who would want to hear
8 as much information as possible before making a decision of
9 that magnitude?

10 PROSPECTIVE JUROR NO. 178: Yes, ma'am, definitely.

11 MS. WECKERLY: And I don't need to know what they --
12 what the circumstances are, but are -- are you someone who
13 could impose a sentence where there would be eligibility, at
14 least, for parole given certain circumstances?

15 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

16 MS. WECKERLY: And on sort of the far end of the
17 spectrum, if the circumstances warranted it, are you someone
18 who could come in and impose the death penalty if you thought
19 it was warranted?

20 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

21 MS. WECKERLY: So you're open to all forms of
22 punishment?

23 PROSPECTIVE JUROR NO. 178: I am.

24 MS. WECKERLY: Okay. With -- with that in mind, I
25 just have a couple of questions for you. You mentioned in

1 your questionnaire that your feelings about the criminal
2 justice system aren't too positive. What -- what do you base
3 that on? Your personal involvement or what you read in the
4 newspaper or --

5 PROSPECTIVE JUROR NO. 178: I think when I answered
6 that I was probably in a different frame of mind. I -- I
7 don't -- I respect the justice system as it is.

8 MS. WECKERLY: Okay.

9 PROSPECTIVE JUROR NO. 178: It has its ups and its
10 downs just like everything in the world, so it's -- I don't
11 disrespect the system. I -- it's -- like the other counsel
12 alluded to, it's the best system in the world that I know of.

13 MS. WECKERLY: Right.

14 PROSPECTIVE JUROR NO. 178: So I respect it in that
15 manner.

16 MS. WECKERLY: Sure.

17 PROSPECTIVE JUROR NO. 178: I -- I don't have any
18 negative things to say about the justice system. It's --
19 [inaudible].

20 MS. WECKERLY: You were sitting there filling out
21 your questionnaire, that's not too fun.

22 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

23 MS. WECKERLY: And people maybe, you know, you're
24 writing quickly and you're a little bit -- I don't know -- not
25 -- not concentrating as much as you are when you get in the

1 courtroom.

2 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

3 MS. WECKERLY: And -- and certainly we don't have to
4 tell anyone that this is obviously -- it's serious to the
5 State and it's certainly serious to the defense and I -- I'm
6 sure you're well aware of that.

7 PROSPECTIVE JUROR NO. 178: Definitely.

8 MS. WECKERLY: One -- one last question, sir, is:
9 You wrote -- you were asked about your -- your thoughts about
10 how drugs and alcohol affect crime or interact with crime.
11 And you said, "It usually leads otherwise law-abiding citizens
12 to commit crimes to support their addiction."

13 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

14 MS. WECKERLY: Is that based on, like, knowledge --
15 personal knowledge or just sort of your understanding of -- of
16 what you've read and what you've learned?

17 PROSPECTIVE JUROR NO. 178: A little bit of both. I
18 did some counseling for a church in town. I went through some
19 training and did some counseling and that was part of the
20 counseling. I had to counsel people that were either addicted
21 or coming off addiction, trying to fight it. And a lot of
22 that -- what I was told in counseling, which is obviously
23 private between those people -- but they -- they said that
24 that was what lead to a lot of their issues, is once they
25 started doing that, they kind of lose control of their lives

1 and --

2 MS. WECKERLY: Right.

3 PROSPECTIVE JUROR NO. 178: -- they have to maintain
4 -- they either have to get out of that, control it, or keep
5 spiraling out of control and --

6 MS. WECKERLY: Yeah.

7 PROSPECTIVE JUROR NO. 178: -- it leads to bad
8 things.

9 MS. WECKERLY: Now, with your -- with your counseling
10 background, you probably have a greater understanding of how
11 that progression works?

12 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

13 MS. WECKERLY: Well, I'll try it and then pretty soon
14 your life is really out of your own control --

15 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

16 MS. WECKERLY: -- or really in a -- in a bad spot.
17 Given that background, how do you feel about people's
18 responsibility for crimes if they commit them while they're
19 [inaudible]?

20 PROSPECTIVE JUROR NO. 178: They still have the same
21 responsibility, whether they're on anything or completely
22 sober. It's a personal choice, I believe. Yes, I believe
23 that drugs and alcohol influence people to do things that they
24 after may think, Why the hell -- you know, why did I do that?

25 MS. WECKERLY: Sure.

1 PROSPECTIVE JUROR NO. 178: But still ultimately that
2 person's responsibility that they committed whatever --
3 whatever actually they committed, that's their responsibility,
4 they have to deal with and society.

5 MS. WECKERLY: We're all dealing with the
6 consequences of what we choose to ingest or --

7 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

8 MS. WECKERLY: Are you someone who can be fair to
9 both sides?

10 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

11 MS. WECKERLY: If you were sitting at either table,
12 would you want someone like yourself sitting as a juror?

13 PROSPECTIVE JUROR NO. 178: Yes, ma'am.

14 MS. WECKERLY: Thank you very much, sir. We'll pass
15 for cause, Your Honor.

16 MR. SGRO: Good morning, sir.

17 PROSPECTIVE JUROR NO. 178: Good morning.

18 MR. SGRO: So I -- I too would like to work
19 backwards. So obviously you're starting to see the things
20 that we're all concerned about, which is ultimately to get
21 people that are fair. Not because, you know, they have some
22 great character, but because their judgment hasn't been jaded,
23 you know, over the course of any life experience. Makes
24 sense, right?

25 PROSPECTIVE JUROR NO. 178: Yes, sir.

1 MR. SGRO: Okay. So you just had a gentleman, for
2 example, that sat next to you that although he struggled with
3 English, he's doing the best he can, but when he comes to the
4 penalty portion, right -- the State is entitled to a fair
5 trial, just like Mr. Burns is?

6 PROSPECTIVE JUROR NO. 178: Yes, sir.

7 MR. SGRO: A lot of people oftentimes think that the
8 person accused is the only one entitled to a fair trial. Both
9 sides actually get to enjoy that right; you understand that?

10 PROSPECTIVE JUROR NO. 178: I understand.

11 MR. SGRO: That makes sense, right?

12 PROSPECTIVE JUROR NO. 178: Yes, sir.

13 MR. SGRO: So along those lines, you understand how
14 it wouldn't be fair to the State if they had someone that
15 could never consider under any circumstance the death penalty,
16 right?

17 PROSPECTIVE JUROR NO. 178: Yes, sir.

18 MR. SGRO: Okay. So on the other side of that is a
19 person that is accused of a crime that for no fault of the
20 individual than a particular belief that may have occurred
21 last week or when they were five, right, they have a different
22 view? And you understand that there are people in our
23 community that could never vote for the death penalty? We
24 just saw one, right?

25 PROSPECTIVE JUROR NO. 178: Yes, sir.

1 MR. SGRO: And you understand that there are people
2 in our community that could never allow someone convicted of
3 first degree murder back on the street, right?

4 PROSPECTIVE JUROR NO. 178: Yes, yes, sir.

5 MR. SGRO: And all that means is that they're not the
6 appropriate juror for this particular case. Doesn't mean that
7 they couldn't serve in an auto-accident case or in a case that
8 didn't have a penalty decision. You get that, right?

9 PROSPECTIVE JUROR NO. 178: Yes, sir.

10 MR. SGRO: So in that context then, I'm looking at
11 the questionnaire and I -- I want you to understand -- and
12 this is some times a misnomer -- if something happens in self
13 defense, that really is what it means. It's self defense, so
14 you're not going to be convicted if you're defending yourself.

15 PROSPECTIVE JUROR NO. 178: Yes, sir, I understand.

16 MR. SGRO: Okay. So in -- in the questionnaire you
17 wrote down that the death penalty is warranted if you take
18 someone else's life unless it's in self defense, right?

19 PROSPECTIVE JUROR NO. 178: Yes, sir.

20 MR. SGRO: So when -- when the prosecutor asked you,
21 you know: Can you imagine circumstances? What I -- what I
22 need you to do is you got to take away it was an accident
23 because -- because it was an accident, that's not first degree
24 murder. It was self defense. That's not first degree murder,
25 okay? So what I need you to do -- you read the facts -- the

1 fact pattern as alleged by the State, right?

2 PROSPECTIVE JUROR NO. 178: Yes, sir.

3 MR. SGRO: This is a case where the State's going to
4 say David Burns shot somebody and killed somebody, okay?

5 PROSPECTIVE JUROR NO. 178: Yes, sir.

6 MR. SGRO: And then there's an allegation of a
7 12-year-old little girl that was also shot, but survived. You
8 heard me discussing that earlier, right?

9 PROSPECTIVE JUROR NO. 178: Yes, sir.

10 MR. SGRO: Okay. So we're talking about -- and you
11 understand we have to do this penalty questioning now even
12 though Mr. Oram and I think we're never getting there, right?

13 PROSPECTIVE JUROR NO. 178: Yes, sir, I understand.

14 MR. SGRO: So you have to sort of do this mental
15 gymnastics game where you put yourself in a position where
16 you've convicted -- you've convicted someone of first degree
17 murder, right?

18 PROSPECTIVE JUROR NO. 178: Yes, sir.

19 MR. SGRO: Not self defense and the things we already
20 talked about. In a situation -- you know, I'm looking at your
21 -- your answer here, even crimes involving kids that aren't
22 murder should result in the death penalty in your opinion,
23 right?

24 PROSPECTIVE JUROR NO. 178: Yes, sir.

25 MR. SGRO: Okay. And when I look at that, I think,

1 Okay, this guy is a good juror for maybe a different kind of
2 case because I'm not sure that you could ever really consider
3 putting someone back on the street again if there's a first
4 degree murder conviction, would that be fair, sir?

5 PROSPECTIVE JUROR NO. 178: No, not necessarily.

6 MR. SGRO: Okay. Can -- can you explain to me then
7 what -- what you were saying in the questionnaire? Because
8 I'm reading, "If you take another's life, if not by self
9 defense, it should be punished by death."

10 PROSPECTIVE JUROR NO. 178: That -- that was a short
11 answer. It depends on the circumstances and the facts. I
12 mean, I -- I say "self defense" because that's -- that was at
13 the time when I was writing this, just what came into my head.
14 I was, you know --

15 MR. SGRO: Well, and I think --

16 PROSPECTIVE JUROR NO. 178: -- was just trying to
17 answer the question in a quick way, not to go on, you know, a
18 three-page paragraph.

19 MR. SGRO: Okay. Which I totally understand --

20 PROSPECTIVE JUROR NO. 178: I understand what you're
21 trying to get. I understand what you're saying. You know, do
22 I have the ability to allow for parole or possibility of
23 parole versus if there is a -- or if there is a conviction?

24 MR. SGRO: Right.

25 PROSPECTIVE JUROR NO. 178: That's what you're asking

1 [inaudible].

2 MR. SGRO: So we -- let's take away self defense.
3 Give me -- give me your best argument why someone who's
4 convicted of first degree murder should enjoy the benefit of a
5 sentence of life with parole, the opportunity to get back on
6 the street. What's -- what's your best argument for that?

7 PROSPECTIVE JUROR NO. 178: People change. Anybody
8 can be changed. Anybody can -- I mean, it's -- it would
9 depend on the individual. Depends on the person, if they
10 remove -- if they -- if it was -- I mean, there's so many
11 things that could go -- that could answer that question. I
12 can't specifically pinpoint one thing, but there's a
13 possibility that anybody can change. It's -- it's happened
14 throughout history.

15 MR. SGRO: Okay. Okay. So you understand how
16 reading this it -- it struck us that perhaps this was not the
17 right case for you; you understand that?

18 PROSPECTIVE JUROR NO. 178: Yes, I understand that.

19 MR. SGRO: Okay. And have you thought about the
20 death penalty since the time you wrote -- you filled out this
21 questionnaire?

22 PROSPECTIVE JUROR NO. 178: No, sir.

23 MR. SGRO: Have you ever talked about it with friends
24 or family members?

25 PROSPECTIVE JUROR NO. 178: No, I don't believe so.

1 MR. SGRO: Okay.

2 PROSPECTIVE JUROR NO. 178: Not at length. I mean,
3 it may have come up in a conversation throughout my life, but
4 as -- as far as a topic, no.

5 MR. SGRO: Okay. Let me ask you -- let me ask for
6 your -- your best argument in support of the death penalty.
7 What would be an argument where someone would deserve it?

8 PROSPECTIVE JUROR NO. 178: Extenuating
9 circumstances. The facts. I mean, if it's proven beyond a
10 reasonable doubt that, you know, an act of violence that
11 warrants the death penalty is -- is proven that warrant the
12 death penalty.

13 MR. SGRO: Okay. And -- and again, not to split
14 hairs, remember that mental gymnastics game we got to do? We
15 have to put ourselves in a position where that act of violence
16 has already been proven beyond a reasonable doubt because if
17 you don't find it, there never is a penalty, right?

18 PROSPECTIVE JUROR NO. 178: Yes, sir.

19 MR. SGRO: So relative to what we need to talk about,
20 unfortunately we have to put you in a place where you have
21 already affirmed beyond a reasonable doubt that an act of
22 violence has occurred, i.e., first degree murder.

23 PROSPECTIVE JUROR NO. 178: Yes, sir.

24 MR. SGRO: And so given what you just told me, with
25 that clarification, do you still believe that after you --

1 after you have affirmed beyond a reasonable doubt that that
2 act of violence occurred, someone was shot and killed, you
3 still believe with that clarification that there could be a
4 situation where someone gets back on the street again?

5 PROSPECTIVE JUROR NO. 178: Yes, sir.

6 MR. SGRO: Okay. Can you -- do you have any sort of
7 religious beliefs that cause you to go one way or another
8 relative to the death penalty?

9 PROSPECTIVE JUROR NO. 178: No, sir.

10 MR. SGRO: Okay. We have spoken -- we have spoken
11 about some of the rights that people accused of crimes enjoy.
12 You've heard me talk a little bit about those.

13 PROSPECTIVE JUROR NO. 178: Yes, sir.

14 MR. SGRO: Have -- had you ever heard of the
15 presumption of evidence [sic] before?

16 PROSPECTIVE JUROR NO. 178: No, sir.

17 MR. SGRO: Do you understand as Mr. Burns sits here
18 today he's presumed innocent?

19 PROSPECTIVE JUROR NO. 178: Yes, sir.

20 MR. SGRO: Any quarrel with that?

21 PROSPECTIVE JUROR NO. 178: No, sir.

22 MR. SGRO: And -- and I noticed in your answers you
23 do a lot of work with police officers; is that right?

24 PROSPECTIVE JUROR NO. 178: Only when we need to call
25 them. Other than that, I don't. I mean, it's --

1 MR. SGRO: Yeah. Perhaps "a lot of work" is a little
2 strong.

3 PROSPECTIVE JUROR NO. 178: Right.

4 MR. SGRO: I -- I guess the point I want to make is
5 that there -- there will be police officers that come here and
6 testify.

7 PROSPECTIVE JUROR NO. 178: Yes, sir.

8 MR. SGRO: And, you know, one of the things we want
9 to make sure of as people come through the door that everyone
10 enjoys the same benefit from you as they hit the witness
11 stand, right? In other words, if they come in with a badge
12 and a gun, they don't all of a sudden get greater deference.
13 Do you think you're able to do that?

14 PROSPECTIVE JUROR NO. 178: Yes, sir.

15 MR. SGRO: Do you think you would be able to set
16 aside whatever relationships you have and evaluate each police
17 officer as they come to testify?

18 PROSPECTIVE JUROR NO. 178: Yes, sir.

19 MR. SGRO: Some of the work that was done by the
20 police in this case may be criticized, sloppy, ineffective,
21 should have done this, right? Pick your adjective.

22 PROSPECTIVE JUROR NO. 178: Yes, sir.

23 MR. SGRO: Let's just use an overall term of
24 "criticism". Do you think you would be able to evaluate
25 criticism or do you think because of the relationships you

1 have, you would instinct -- you would instinctively go to
2 defending the criticism; does that make sense?

3 PROSPECTIVE JUROR NO. 178: Yes, sir. Yes, I
4 understand what you're saying. I -- I would be fair. I would
5 look at the facts for the facts.

6 MR. SGRO: Okay. A police officer says the light was
7 red. The person accused of a crime says the light's green.
8 Do you automatically go with the police officer just because
9 he or she is a police officer?

10 PROSPECTIVE JUROR NO. 178: No, sir.

11 MR. SGRO: Okay. And -- and you understand by the
12 time we get down here to this gentleman these questions will
13 have been drilled and drilled and some times there -- there
14 might be a tendency to answer out of routine, right?

15 PROSPECTIVE JUROR NO. 178: Yes, sir.

16 MR. SGRO: This is the most serious case that we
17 have. That's why we ask the same stuff of everyone. We want
18 to make sure.

19 PROSPECTIVE JUROR NO. 178: I understand.

20 MR. SGRO: So with giving it it's -- it's due
21 thought, you believe every police officer comes in here no
22 better, no worse than anyone else?

23 PROSPECTIVE JUROR NO. 178: Yes, sir.

24 MR. SGRO: Do you think you would hold it against Mr.
25 Burns if he elected to not testify?

1 PROSPECTIVE JUROR NO. 178: No, sir.

2 MR. SGRO: Can you think of a reason why someone
3 who's not guilty of a crime would choose to not testify?

4 PROSPECTIVE JUROR NO. 178: They could make their
5 case worse. I would say out of nervousness, out of a number
6 of different things. You get up on the stand and say
7 something wrong, you know, take a wrong signal from their
8 counsel or something and it could -- it could go in their --
9 or go against them.

10 MR. SGRO: Okay. So if you got back into the jury
11 room, you would be able to resist the temptation of, Man, if
12 he -- if he really isn't guilty, why didn't he take the stand;
13 you would be able to resist that?

14 PROSPECTIVE JUROR NO. 178: Yes, sir.

15 MR. SGRO: On the other hand, we've touched on it a
16 little bit. If Mr. Burns did testify, you wouldn't scrutinize
17 him more harshly simply because he's the one charged with the
18 crime?

19 PROSPECTIVE JUROR NO. 178: No, sir.

20 MR. SGRO: Let me ask you this question. Eleven
21 jurors believe one thing. You are the one person that
22 believes something else, right?

23 PROSPECTIVE JUROR NO. 178: Yeah.

24 MR. SGRO: Whatever the verdict is, eleven want one,
25 you want the other. Do you think you're the kind of person

1 that would change their mind because you would assume you've
2 missed something, made a mistake, that sort of thing?

3 PROSPECTIVE JUROR NO. 178: No, sir.

4 MR. SGRO: And you'll -- you'll learn as this case
5 progresses and Judge Thompson gives you the -- the
6 instructions, it's okay to change your mind, right?

7 PROSPECTIVE JUROR NO. 178: Yes, sir.

8 MR. SGRO: As long as you look at the facts and you
9 convince yourself that that's the right -- well, the point I'm
10 trying to make is getting a commitment from you, Mr. Burns
11 wants that commitment, that he has the benefit of your
12 individual vote, your individual opinion. Can you give that
13 to him?

14 PROSPECTIVE JUROR NO. 178: Yes, sir. Peer pressure
15 doesn't work on me.

16 MR. SGRO: Pardon me?

17 PROSPECTIVE JUROR NO. 178: Peer pressure doesn't
18 work on me.

19 MR. SGRO: Okay.

20 PROSPECTIVE JUROR NO. 178: I have my opinion. It's
21 -- I'm pretty steadfast in what I believe.

22 MR. SGRO: Have -- have you had the opportunity to
23 deal with assessing people's credibility in your work and your
24 past job as well?

25 PROSPECTIVE JUROR NO. 178: On occasion.

1 MR. SGRO: Two people come into you saying different
2 things?

3 PROSPECTIVE JUROR NO. 178: Yeah, definitely have
4 [inaudible].

5 MR. SGRO: And you have to sort through what -- what
6 actually occurred?

7 PROSPECTIVE JUROR NO. 178: Yes, sir.

8 MR. SGRO: Comfortable with that?

9 PROSPECTIVE JUROR NO. 178: Yes, sir.

10 MR. SGRO: Even in a situation like this given how
11 serious it is?

12 PROSPECTIVE JUROR NO. 178: Yes, sir.

13 MR. SGRO: You think you're able to evaluate why
14 people might be motivated to not tell the truth?

15 PROSPECTIVE JUROR NO. 178: Yes, sir.

16 MR. SGRO: Okay. Have you ever heard of this term:
17 "plea bargain, plea agreement"?

18 PROSPECTIVE JUROR NO. 178: Yes, sir.

19 MR. SGRO: In this case, you're going to hear
20 evidence of someone who made a deal, okay, or -- and is now
21 going to testify for the State. Do you think you could be
22 able to evaluate that as a motivation for fabrication?

23 PROSPECTIVE JUROR NO. 178: Yes, sir.

24 MR. SGRO: Do you think you would be able to assess
25 -- and I'm going to make a prediction for you. My prediction

1 is you're going to hear things from the witness stand that
2 will be different than things people have said to police
3 reports and that sort of thing. Do you think you would be
4 able to evaluate changes in testimony?

5 PROSPECTIVE JUROR NO. 178: Yes, sir.

6 MR. SGRO: Now, this concept of eye-witness
7 identification, you ever heard that?

8 PROSPECTIVE JUROR NO. 178: Yes, I have. I -- I
9 don't -- I'm not up on the definition of it, but I've heard it
10 before.

11 MR. SGRO: And that's fine, you've just heard the
12 term. And I asked -- I asked a juror earlier if they'd ever
13 been mistaken for someone or -- or seen someone they thought
14 was their friend and turned out it wasn't. Have you had a
15 similar experience?

16 PROSPECTIVE JUROR NO. 178: Yes.

17 MR. SGRO: Okay. I want to give you a different
18 example. Have you ever been in a situation where you've been
19 to a sporting event or driving with someone as a passenger in
20 a car and seen a car accident, and then compared notes over
21 what you've just seen, and seen two totally different things?
22 Has that ever happened to you?

23 PROSPECTIVE JUROR NO. 178: Yes, sir.

24 MR. SGRO: Would you be able to evaluate if people
25 tell you from the witness stand they saw or heard different

1 things, whether or not they're able to be accurate? You think
2 you could do that?

3 PROSPECTIVE JUROR NO. 178: Yes, sir.

4 MR. SGRO: In other words, if someone says, Here's
5 what I saw, you're not instinctively going to just accept it
6 as true, right?

7 PROSPECTIVE JUROR NO. 178: No, sir, I would not.

8 MR. SGRO: Okay. You'll -- you'll wait -- and
9 incidentally, as -- as we're doing now, the State gets to go
10 first, then the defense goes. That's going to be the way it
11 goes all the way through the case. They'll make an opening
12 statement. We may or may not make an opening statement. That
13 sort of thing. One of the things that's important that you
14 will be instructed on is to keep an open mind all the way till
15 you hit the deliberation room. Do you think you would be able
16 to do that?

17 PROSPECTIVE JUROR NO. 178: Yes, sir.

18 MR. SGRO: Okay. Do you watch any of these science
19 shows on TV? The --

20 PROSPECTIVE JUROR NO. 178: No, sir.

21 MR. SGRO: -- forensic files --

22 PROSPECTIVE JUROR NO. 178: No, sir.

23 MR. SGRO: -- NCIS, anything like that?

24 PROSPECTIVE JUROR NO. 178: No, sir.

25 MR. SGRO: Do you have an opinion as to the

1 importance of science in a criminal proceeding like this?

2 PROSPECTIVE JUROR NO. 178: It's just advancement of
3 technology. It's -- it's, to me, anything that makes
4 definition of an accusation that more credible. I mean, if
5 there is scientific proof beyond a reasonable doubt that, you
6 know, that works, yes, I accept that.

7 MR. SGRO: And -- and would you agree that science
8 doesn't have an agenda or a motive to fabricate, right?
9 Science is what it is?

10 PROSPECTIVE JUROR NO. 178: Yes, sir.

11 MR. SGRO: All right. And -- and do you remember the
12 -- the conversation I had about this case may not be the case
13 where everything gets buttoned up at the -- at the end? Do
14 you remember that conversation I had?

15 PROSPECTIVE JUROR NO. 178: Yes, sir.

16 MR. SGRO: Do you feel comfortable accepting your
17 role as a juror in this case being that of evaluating the
18 facts that the State presents and then deciding if they've met
19 their burden of proof; are you okay with that?

20 PROSPECTIVE JUROR NO. 178: Yes, sir.

21 MR. SGRO: You're not going to ever be called upon to
22 say, Well, if this didn't happen then what did; you get that?

23 PROSPECTIVE JUROR NO. 178: Yes, sir.

24 MR. SGRO: Okay. And are you okay with that?

25 PROSPECTIVE JUROR NO. 178: I am.

1 MR. SGRO: Do you own a cell phone, sir?

2 PROSPECTIVE JUROR NO. 178: I do.

3 MR. SGRO: Have you ever carefully gone through your
4 bill?

5 PROSPECTIVE JUROR NO. 178: I have, yes.

6 MR. SGRO: Okay. Have -- you know those experiences
7 that we -- we've talked about. Have you ever sent a text, and
8 then later had a conversation, and then the person you sent
9 the text to say, I never got it?

10 PROSPECTIVE JUROR NO. 178: I have, yes.

11 MR. SGRO: And have you been on the other side of
12 that conversation as well?

13 PROSPECTIVE JUROR NO. 178: Yes, sir.

14 MR. SGRO: And has it happened to you with voice
15 messages, that sort of thing?

16 PROSPECTIVE JUROR NO. 178: Yes, sir.

17 MR. SGRO: Emails, that sort of thing?

18 PROSPECTIVE JUROR NO. 178: Yes, sir.

19 MR. SGRO: Okay. So would you commit to not simply
20 looking at a record and accepting that record as wholesale
21 true?

22 PROSPECTIVE JUROR NO. 178: No, sir, I would not.

23 MR. SGRO: Okay. Is there anything that you've heard
24 or we've talked about that causes you any concern about your
25 ability to sit as a juror in this case?

1 PROSPECTIVE JUROR NO. 178: No, sir.

2 MR. SGRO: And -- and do you remember the question
3 Ms. Weckerly asked you about people that do drugs being
4 accountable, you agree with that, right?

5 PROSPECTIVE JUROR NO. 178: Yes.

6 MR. SGRO: And would you hold people that do drugs
7 accountable even as they hit the witness stand? So, for
8 example, if someone were to tell you they did drugs every
9 single day, okay?

10 PROSPECTIVE JUROR NO. 178: Yes, sir.

11 MR. SGRO: You would hold them accountable to that
12 and use that as part of your evaluation on how much you could
13 believe, right?

14 PROSPECTIVE JUROR NO. 178: No, sir. Their testimony
15 is their testimony. The past is the past.

16 MR. SGRO: No, I understand, but you're not going to
17 let it go that they did drugs. You would think, Okay, well,
18 maybe if they were doing drugs, I should be a little careful
19 what they're telling me?

20 PROSPECTIVE JUROR NO. 178: No, that's their
21 testimony. I would -- I'm assuming their testimony is
22 truthful because they're sworn in as a witness --

23 MR. SGRO: Okay.

24 PROSPECTIVE JUROR NO. 178: -- until proven
25 otherwise. I would assume that their testimony is their

1 testimony.

2 MR. SGRO: Do you think it's possible for someone to
3 swear to tell the truth and take the oath and make mistakes
4 from the witness stand?

5 PROSPECTIVE JUROR NO. 178: Yes, sir.

6 MR. SGRO: Do you think it's possible for someone to
7 swear to tell the truth and flat-out lie?

8 PROSPECTIVE JUROR NO. 178: Yes, definitely.

9 MR. SGRO: Okay. So I guess the point -- I think
10 we're agreeing -- you're -- you're -- let me put it this way.
11 Everybody hopes someone swears to tell the truth in a
12 courtroom, we all hope they're going to tell the truth.

13 PROSPECTIVE JUROR NO. 178: In a perfect world, yes.

14 MR. SGRO: In a perfect world. And we,
15 unfortunately, don't live in a perfect world.

16 PROSPECTIVE JUROR NO. 178: We do not.

17 MR. SGRO: So you will be able to evaluate whether or
18 not a person even that goes through swearing to tell the
19 truth, sees and judge, we're on a serious case, some times
20 that person is not going to be honest with us?

21 PROSPECTIVE JUROR NO. 178: Yes, sir.

22 MR. SGRO: Okay. I have nothing else, Your Honor.
23 Pass for cause.

24 THE COURT: Mr. Langford.

25 MR. LANGFORD: Thank you, Your Honor. Two trials,

1 one set of facts. You heard me say that before?

2 PROSPECTIVE JUROR NO. 178: Yes, sir.

3 MR. LANGFORD: Do you have any questions about that
4 as to how that might work?

5 PROSPECTIVE JUROR NO. 178: No, sir.

6 MR. LANGFORD: There's only going to be one trial?

7 PROSPECTIVE JUROR NO. 178: Yes, I understand.

8 MR. LANGFORD: But there are two people accused in
9 the information?

10 PROSPECTIVE JUROR NO. 178: Yes, sir.

11 MR. LANGFORD: Okay. So the question is: Are you
12 going to be able to just evaluate those set of facts that
13 you're going to be given as to Mr. Burns first and then as to
14 Mr. Mason, but do it independently?

15 PROSPECTIVE JUROR NO. 178: Yes, sir.

16 MR. LANGFORD: Not thinking, Well, if one is guilty,
17 the other must be guilty too, even though there's not as much
18 evidence?

19 PROSPECTIVE JUROR NO. 178: Yes, sir. I understand
20 that.

21 MR. LANGFORD: Are you okay with that?

22 PROSPECTIVE JUROR NO. 178: Yes, sir.

23 MR. LANGFORD: You have any problems coming back with
24 a split decision if that's the way it works out?

25 PROSPECTIVE JUROR NO. 178: No, sir.

1 MR. LANGFORD: You have any problem coming back and
2 saying the prosecutors -- to the State of Nevada -- we sat
3 here for five weeks and after hearing all of the evidence,
4 those two individuals are not guilty; would you have a problem
5 doing that?

6 PROSPECTIVE JUROR NO. 178: No, sir, I would have no
7 problem with that.

8 MR. LANGFORD: Would you agree with me that it's the
9 quality of the evidence and not necessarily the quantity of
10 the evidence --

11 PROSPECTIVE JUROR NO. 178: Yes, sir.

12 MR. LANGFORD: -- that is important?

13 PROSPECTIVE JUROR NO. 178: [Inaudible.]

14 MR. LANGFORD: Likewise, as you've already heard as
15 well, there are two -- that Mr. Mason is not facing the death
16 penalty in this case?

17 PROSPECTIVE JUROR NO. 178: Yes, sir.

18 MR. LANGFORD: You understand that?

19 PROSPECTIVE JUROR NO. 178: Yes, sir.

20 MR. LANGFORD: Maximum penalty as to my client is
21 life without the possibility of parole.

22 PROSPECTIVE JUROR NO. 178: Yes, sir.

23 MR. LANGFORD: Could you hear just the penalty
24 portion as to Mr. Mason and, regardless of what you may think
25 about Mr. Burns, independently evaluate Mr. Mason?

1 PROSPECTIVE JUROR NO. 178: Yes, sir.

2 MR. LANGFORD: And give him what you think is an
3 appropriate punishment if we get to that part?

4 PROSPECTIVE JUROR NO. 178: Yes, sir.

5 MR. LANGFORD: Any questions?

6 PROSPECTIVE JUROR NO. 178: No, sir.

7 MR. LANGFORD: It's your last chance.

8 PROSPECTIVE JUROR NO. 178: No, sir. No questions.

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

10 THE COURT: All right. Would you hand your
11 microphone to Mrs. Pope there?

12 Mrs. Pope, good morning.

13 PROSPECTIVE JUROR NO. 189: Good morning.

14 THE COURT: And you speak right into that microphone
15 and we'd appreciate it.

16 PROSPECTIVE JUROR NO. 189: Okay.

17 THE COURT: As I understand it, you're a teacher; is
18 that right?

19 PROSPECTIVE JUROR NO. 189: Substitute teacher, yes.

20 THE COURT: And you work for Creative Kids?

21 PROSPECTIVE JUROR NO. 189: Yes, that's true.

22 THE COURT: I don't happen to know Creative Kids.
23 What -- what is that?

24 PROSPECTIVE JUROR NO. 189: It's a preschool for
25 children 18 months to pre-K.

1 THE COURT: Okay. Is -- is there one school?

2 PROSPECTIVE JUROR NO. 189: There's several schools
3 all over the Valley.

4 THE COURT: Okay. And they're for preschool?

5 PROSPECTIVE JUROR NO. 189: Preschool, yeah.

6 THE COURT: All right. So little kids, two, three,
7 four years old?

8 PROSPECTIVE JUROR NO. 189: Yeah.

9 THE COURT: Okay. And what do you do?

10 PROSPECTIVE JUROR NO. 189: Everything.

11 THE COURT: Everything?

12 PROSPECTIVE JUROR NO. 189: I'm a substitute, so I
13 work in every room. I work in the office. I drive the buses.
14 I do the dishes.

15 THE COURT: Drive the buses too?

16 PROSPECTIVE JUROR NO. 189: I drive the buses too.

17 THE COURT: Okay. And they bus the kids to school?

18 PROSPECTIVE JUROR NO. 189: Yes. The older kids I
19 take to school and pick them up from school.

20 THE COURT: Okay. And it goes through what? Age
21 four or five?

22 PROSPECTIVE JUROR NO. 189: We have kids up to the
23 age ten for the after-school program.

24 THE COURT: Oh, I see.

25 PROSPECTIVE JUROR NO. 189: Yes.

1 THE COURT: But you don't have the grades
2 kindergarten through fifth grade?

3 PROSPECTIVE JUROR NO. 189: No. I do, but they're
4 not in our school. They go to their school and I drive them
5 to their school.

6 THE COURT: And they ride over -- so you do some
7 after-school care for children?

8 PROSPECTIVE JUROR NO. 189: Yes.

9 THE COURT: All right. Your husband is a dispatcher,
10 and I didn't understand what he was a dispatcher for.

11 PROSPECTIVE JUROR NO. 189: He's a dispatcher for
12 some of the night clubs downtown. So he sends out limos to
13 people who call in and asks for rides to strip clubs.

14 THE COURT: They call in?

15 PROSPECTIVE JUROR NO. 189: Yeah, they -- it's hard
16 to explain. They call and ask for rides to get to the strip
17 clubs and he sends limos, like limousines to --

18 THE COURT: Like a taxi dispatcher or --

19 PROSPECTIVE JUROR NO. 189: Sort of, but with
20 limousines or -- yeah, limousines.

21 THE COURT: Oh, okay. I didn't even know they had
22 such a --

23 PROSPECTIVE JUROR NO. 189: He works out of a garage.
24 It's not that prestigious.

25 THE COURT: Okay. All right. And in your

1 questionnaire, you said at one point you -- you have a sister
2 who apparently attacked you; is that right?

3 PROSPECTIVE JUROR NO. 189: That's true.

4 THE COURT: Where did that happen? Here in Las
5 Vegas?

6 PROSPECTIVE JUROR NO. 189: Yes, that happened here
7 in Las Vegas.

8 THE COURT: Is -- are you and your sister estranged?
9 Are you friends again or --

10 PROSPECTIVE JUROR NO. 189: No. We're -- we're
11 estranged.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR NO. 189: Yeah.

14 THE COURT: Is -- has she had a problem in life with
15 various things?

16 PROSPECTIVE JUROR NO. 189: Yeah, she's -- she's a --

17 THE COURT: Drugs?

18 PROSPECTIVE JUROR NO. 189: Yeah, she's battling an
19 addiction right now.

20 THE COURT: What -- what drugs has she been on, do
21 you know?

22 PROSPECTIVE JUROR NO. 189: I don't speak to her, but
23 from what my mother tells me, I have come to the conclusion
24 that it's heroin, though I don't think that she's actually
25 said it outright.

1 THE COURT: Has she been arrested for any of these
2 offenses?

3 PROSPECTIVE JUROR NO. 189: She has a warrant out for
4 her arrest, but I don't think she's actually been arrested for
5 it yet.

6 THE COURT: Is one a warrant now?

7 PROSPECTIVE JUROR NO. 189: Yes.

8 THE COURT: Okay. How do you feel about that?

9 PROSPECTIVE JUROR NO. 189: About her warrant?

10 THE COURT: Yeah.

11 PROSPECTIVE JUROR NO. 189: I believe that she needs
12 to be arrested.

13 THE COURT: So she's really been a bad person for a
14 number of reasons?

15 PROSPECTIVE JUROR NO. 189: Yes. I think spending
16 some time in jail will do her good; much better than the life
17 she's living right now.

18 THE COURT: You're not going to hold that against
19 anybody involved in this case?

20 PROSPECTIVE JUROR NO. 189: No, sir.

21 THE COURT: Has nothing to do with this case, right?

22 PROSPECTIVE JUROR NO. 189: No, it doesn't.

23 THE COURT: You heard the questions that I asked
24 before about my job and the job of the jury working as a team?

25 PROSPECTIVE JUROR NO. 189: Yes.

1 THE COURT: You're going to decide the facts and I'm
2 going to decide the law. Any quarrel with that procedure?

3 PROSPECTIVE JUROR NO. 189: No, sir.

4 THE COURT: Any quarrel with the proposition that the
5 defendants are presumed to be innocent --

6 PROSPECTIVE JUROR NO. 189: No, sir.

7 THE COURT: -- until proven guilty beyond a
8 reasonable doubt? Do you have any quarrel with that process?

9 PROSPECTIVE JUROR NO. 189: No, sir.

10 THE COURT: And you understand the State's burden
11 really to prove their guilt beyond a reasonable doubt, and if
12 they fail to do that, they're entitled to a verdict of not
13 guilty; have any quarrel with that?

14 PROSPECTIVE JUROR NO. 189: No, sir.

15 THE COURT: Any reason that you couldn't be fair to
16 the prosecution or the defense in a case like this?

17 PROSPECTIVE JUROR NO. 189: No, sir.

18 THE COURT: All right. Mr. DiGiacomo?

19 MR. DiGIACOMO: Thank you, Judge. Good morning.

20 PROSPECTIVE JUROR NO. 189: Good morning.

21 MR. DiGIACOMO: Still morning for a little while
22 longer anyway.

23 PROSPECTIVE JUROR NO. 189: Little bit.

24 MR. DiGIACOMO: I'm going to start at the very back
25 because I have a question. You said that you're not only a

1 teacher, you have an associate's degree, but you're also -- if
2 I read this right -- you have to complete a practicum for
3 school. What is that?

4 PROSPECTIVE JUROR NO. 189: A practicum is an unpaid
5 internship. I have to have 240 hours this semester working in
6 an agency that works with social workers or that utilizes
7 social workers.

8 MR. DiGIACOMO: Do you currently have an assignment
9 for that?

10 PROSPECTIVE JUROR NO. 189: I do.

11 MR. DiGIACOMO: Where are you doing it at?

12 PROSPECTIVE JUROR NO. 189: It's at Red Rock
13 Psychological Services. It's -- it's a service that works
14 with sexual predators recently released from prison and
15 sexually traumatized victims.

16 MR. DiGIACOMO: And is that physically out by Red
17 Rock?

18 PROSPECTIVE JUROR NO. 189: No, it's the opposite
19 direction.

20 MR. DiGIACOMO: The opposite direction?

21 PROSPECTIVE JUROR NO. 189: Yeah, kind of weird name.

22 MR. DiGIACOMO: [Inaudible] perhaps?

23 PROSPECTIVE JUROR NO. 189: Yeah.

24 MR. DiGIACOMO: And what is it that you -- have you
25 started it yet?

1 PROSPECTIVE JUROR NO. 189: I have not. I was
2 supposed to start today; but as you can see, that didn't
3 happen.

4 MR. DiGIACOMO: Right.

5 PROSPECTIVE JUROR NO. 189: Start next week.

6 MR. DiGIACOMO: You start next week, unless you're
7 sitting here for five weeks?

8 PROSPECTIVE JUROR NO. 189: Unless I'm sitting here
9 for five weeks.

10 MR. DiGIACOMO: Okay. So that's what I want to ask
11 you questions about. Is -- are you currently enrolled in
12 school?

13 PROSPECTIVE JUROR NO. 189: I am.

14 MR. DiGIACOMO: What school are you enrolled in?

15 PROSPECTIVE JUROR NO. 189: UNLV.

16 MR. DiGIACOMO: And have you paid your tuition this
17 semester?

18 PROSPECTIVE JUROR NO. 189: I have, yes.

19 MR. DiGIACOMO: Okay. And if you're here for five
20 weeks, does that mean you will not be able to get your 240
21 hours or does that mean you have to cram your 240 hours into a
22 very short time period?

23 PROSPECTIVE JUROR NO. 189: I'd have to do the math.
24 I might be able to do it if I don't sleep anymore, but, yeah.

25 MR. DiGIACOMO: And, look, you know, neither us or

1 the defense, they didn't decide on hardship, but what we need
2 to know -- I mean, ultimately, if the Judge makes you sit
3 there, your responsibility is going to be to listen to the
4 evidence from the stand, look at the physical evidence, and go
5 in the back room and talk to your fellow jurors.

6 Some people who have hardships can't focus on what's
7 at hand because they have so much other stuff going on in
8 their lives. And some people can say, Look, I understand it's
9 my civic duty, I can set aside everything else if I'm ordered
10 to be here by a court and do the job.

11 And so that's kind of -- you're the only one who can
12 answer that question. Do you think that it's a situation
13 where you can perform your functions despite the other issues
14 going on in your life?

15 PROSPECTIVE JUROR NO. 189: If I'm here, I will be
16 fully here; but I will be ridiculously stressed outside of the
17 courtroom.

18 MR. DiGIACOMO: And that's probably what you're going
19 to hear quite often today. You would agree with me that this
20 is a very serious proceeding?

21 PROSPECTIVE JUROR NO. 189: Yes.

22 MR. DiGIACOMO: I mean, I guess any case where
23 someone's charged with pretty much any crime they probably
24 think it's really serious; but in the State of Nevada, this is
25 about as serious as it gets.

1 PROSPECTIVE JUROR NO. 189: Right.

2 MR. DiGIACOMO: And obviously, both sides want jurors
3 who are willing to pay attention, and you think you can do so?

4 PROSPECTIVE JUROR NO. 189: Yes, sir.

5 MR. DiGIACOMO: So let me jump back to the front of
6 your questionnaire. I don't want to pry too much; but are you
7 currently taking medication?

8 PROSPECTIVE JUROR NO. 189: For -- for back pain?

9 MR. DiGIACOMO: It says ADD and medication control.
10 I wasn't sure what that meant.

11 PROSPECTIVE JUROR NO. 189: That's -- that's an odd
12 way of phrasing it. I haven't taken any medication for ADD in
13 a number of years.

14 MR. DiGIACOMO: For a long time. That's something
15 that affected you as a child?

16 PROSPECTIVE JUROR NO. 189: Yeah.

17 MR. DiGIACOMO: And that you grew out of, I'm
18 assuming?

19 PROSPECTIVE JUROR NO. 189: Yeah. I've tried to find
20 other ways around it.

21 MR. DiGIACOMO: Is there any other medication that
22 you're on as you sit here? Just the way you answered that
23 question.

24 PROSPECTIVE JUROR NO. 189: Pain killers. I have
25 pain killers for my back problems --

1 MR. DiGIACOMO: Okay.

2 PROSPECTIVE JUROR NO. 189: -- but I take those at
3 night, and it's very rare.

4 MR. DiGIACOMO: And you noted that, like, if you have
5 to stand for a long period of time that's going to be a
6 problem?

7 PROSPECTIVE JUROR NO. 189: Yes.

8 MR. DiGIACOMO: What about sitting for long periods
9 of time?

10 PROSPECTIVE JUROR NO. 189: If I can get up and move
11 around every once in a while I should be okay.

12 MR. DiGIACOMO: And if -- if you get picked on here,
13 I'm sure the Judge is going to let you stand up, stretch if
14 you need to, something like that.

15 PROSPECTIVE JUROR NO. 189: Yes.

16 MR. DiGIACOMO: And he does take breaks every once in
17 a while, so -- and I'm sure we're coming close to one at some
18 point here. You indicated that your husband -- and apparently
19 neither me nor the Judge used his Las Vegas Party nights -- he
20 was a dispatcher for limousines. Is it solely for strip clubs
21 or is it for the night clubs as well or --

22 PROSPECTIVE JUROR NO. 189: Just the strip clubs.

23 MR. DiGIACOMO: So they've set up this system where
24 you could call in and get routed to the right places?

25 PROSPECTIVE JUROR NO. 189: Yeah.

1 MR. DiGIACOMO: You said he's done that for about a
2 year. What did he do before that?

3 PROSPECTIVE JUROR NO. 189: Before he worked with
4 Cricket Mobile and before that he was with Terrible's gas
5 stations.

6 MR. DiGIACOMO: What did he do for Cricket?

7 PROSPECTIVE JUROR NO. 189: He sold phones, plans,
8 helped with fixing phones, that kind of stuff.

9 MR. DiGIACOMO: If you heard Mr. Sgro the first --
10 well, two of the three jurors. One didn't get that far. He's
11 been talking about cell phones. I'm assuming you own a cell
12 phone --

13 PROSPECTIVE JUROR NO. 189: Yes, sir.

14 MR. DiGIACOMO: -- because there's not very many
15 people in this world who don't anymore. And I'm assuming that
16 there are times when there's been technological problems with
17 everybody's phone, right?

18 PROSPECTIVE JUROR NO. 189: Yes.

19 MR. DiGIACOMO: You know, Apple puts out a new OIS
20 system and takes you three days to figure out how to use your
21 phone again, right?

22 PROSPECTIVE JUROR NO. 189: Yes.

23 MR. DiGIACOMO: But generally, when you make a phone
24 call, generally it connects the person you're dialing; would
25 that be fair?

1 PROSPECTIVE JUROR NO. 189: Yes, sir.

2 MR. DiGIACOMO: You indicated that your father spent
3 15 years as a prison guard, I'm assuming?

4 PROSPECTIVE JUROR NO. 189: Oh, no, not a guard. He
5 was the head chef at the prison.

6 MR. DiGIACOMO: Head chef at the prison?

7 PROSPECTIVE JUROR NO. 189: Yes.

8 MR. DiGIACOMO: I'm assuming that's a civil position
9 that he was employed for?

10 PROSPECTIVE JUROR NO. 189: Yes.

11 MR. DiGIACOMO: I know that there are some inmates
12 that work in the kitchen; but this is not that he was sent
13 there, it's that he had this as his job?

14 PROSPECTIVE JUROR NO. 189: Yeah, it was his job.

15 MR. DiGIACOMO: Did he ever talk to you about prison
16 life?

17 PROSPECTIVE JUROR NO. 189: Yes.

18 MR. DiGIACOMO: And I'm going to guess he would
19 explain to you it's not that fun?

20 PROSPECTIVE JUROR NO. 189: Yeah.

21 MR. DiGIACOMO: But I think you mentioned it later
22 on. Is that where your ideas about the way prison works when
23 you talked about the death penalty and, you know, it's not
24 nearly as bad as some people think it is?

25 PROSPECTIVE JUROR NO. 189: Yes. Yes, sir.

1 MR. DiGIACOMO: You mentioned on your feelings about
2 the criminal justice system, you said, "I feel it's flawed,
3 but it's the best of what we have."

4 PROSPECTIVE JUROR NO. 189: Yes.

5 MR. DiGIACOMO: Okay. What about -- what allowed you
6 to form an opinion about the flaws in the system?

7 PROSPECTIVE JUROR NO. 189: That's a difficult
8 question. I think it's just -- it's going to be naturally
9 flawed no matter what we do because human beings are flawed.
10 And no matter how many random people we can get up into a
11 jury, I think there's always going to be some sort of bias and
12 sort of a fact that isn't fully explained, something that's
13 always going to be missing; and I don't think every verdict is
14 always going to be the right one.

15 MR. DiGIACOMO: Sure. You know, in any system made
16 up of human beings, there's no way for it to be perfect; would
17 you agree with that?

18 PROSPECTIVE JUROR NO. 189: Yes.

19 MR. DiGIACOMO: But would you also agree there's
20 probably no better way to do this than the way we're currently
21 doing it?

22 PROSPECTIVE JUROR NO. 189: I do agree with that.

23 MR. DiGIACOMO: Do you generally think that the
24 criminal justice system -- what limited knowledge you have of
25 it -- is a fair system?

1 PROSPECTIVE JUROR NO. 189: I believe so.

2 MR. DiGIACOMO: You -- you mentioned that your sister
3 currently has an active warrant.

4 PROSPECTIVE JUROR NO. 189: Yes.

5 MR. DiGIACOMO: Had she ever been arrested before for
6 anything?

7 PROSPECTIVE JUROR NO. 189: Not that I'm aware of.
8 She might have been.

9 MR. DiGIACOMO: So the incident that involved you,
10 were the police called?

11 PROSPECTIVE JUROR NO. 189: Yes, they were. I'm
12 sorry. I forgot about that. Yes, she was arrested at that
13 point in time; but she was a minor and I don't know -- I'm not
14 sure if that's still on her record.

15 MR. DiGIACOMO: I'm assuming she went to juvy then?

16 PROSPECTIVE JUROR NO. 189: Yeah.

17 MR. DiGIACOMO: And the juvenile justice system,
18 that's significantly different goals than the criminal -- the
19 adult criminal justice system?

20 PROSPECTIVE JUROR NO. 189: Yes.

21 MR. DiGIACOMO: I guess I'll finally get to the last
22 question, which is penalty. Not unlike a lot of jurors, you
23 kind of quick checked off both yes and no on the death
24 penalty. So let me back up. Had you ever thought of the
25 death penalty before?

1 PROSPECTIVE JUROR NO. 189: Yes.

2 MR. DiGIACOMO: When you came here and you were asked
3 the question: Do you believe in the death penalty? You sort
4 of equivocated. What do you think? If you were -- I don't
5 know -- the queen of Nevada and you got to make the rules,
6 would you have the death penalty as a potential punishment
7 should it be needed in certain murder cases?

8 PROSPECTIVE JUROR NO. 189: I don't believe so.

9 MR. DiGIACOMO: Why not?

10 PROSPECTIVE JUROR NO. 189: I don't think that death
11 is necessarily the right answer for almost anything. I think
12 there are other ways to handle problems. And I don't think
13 that someone who is capable of committing murder is totally --
14 I don't want to use the word "sane," but yes, I don't -- I
15 don't think they're completely there if they are capable of
16 committing murder. I don't think murder is a natural instinct
17 to human beings and, therefore, there's something wrong,
18 something that can be fixed.

19 MR. DiGIACOMO: Yeah. Would you agree with the idea
20 that, you know, it's never logical to commit first degree
21 murder?

22 PROSPECTIVE JUROR NO. 189: I agree.

23 MR. DiGIACOMO: All right. And so there are some
24 people who think to themselves, Well, obviously the mind of an
25 individual who commits first degree murder is broken and,

1 therefore, you can't necessarily be held completely
2 accountable for his actions?

3 PROSPECTIVE JUROR NO. 189: I don't believe that they
4 shouldn't be held accountable. I definitely believe they
5 should be held accountable, but I think that there are other
6 ways. I don't think death is the right way to handle that.

7 MR. DiGIACOMO: You also indicated that you thought
8 substance abuse might be something that might affect
9 somebody's decision-making process?

10 PROSPECTIVE JUROR NO. 189: Yes.

11 MR. DiGIACOMO: Would you agree that they still be
12 held accountable?

13 PROSPECTIVE JUROR NO. 189: Of course.

14 MR. DiGIACOMO: On the flip side of that, victims
15 oftentimes make choices that wind up putting them in
16 situations where it's risky behavior and maybe through drug
17 use. Would you agree that even though some victims may do
18 things that probably wasn't a choice that the average human
19 being should make, that they still deserve the protections of
20 the criminal justice system?

21 PROSPECTIVE JUROR NO. 189: I believe so, yes.

22 MR. DiGIACOMO: As you sit here today, can you
23 envision yourself ever voting for the death penalty in a
24 particular circumstance?

25 PROSPECTIVE JUROR NO. 189: It would have to be a

1 very heinous crime; but most likely, no.

2 MR. DiGIACOMO: Okay. Well, I mean, you kind of
3 heard Mr. Sgro ask these questions of -- of other jurors. I
4 mean, we only get to talk to you right now. We want twelve
5 jurors who can consider all four forms of punishment and
6 obviously be otherwise qualified, and we don't have another
7 chance to ask.

8 You know, can you sit there, in your mind -- and I'm
9 not going to give you the factual scenario you should be
10 utilizing -- but can you think to yourself, I don't know, if
11 they establish that, well then, I can't find myself not voting
12 for the death penalty; that I would, in fact, vote for the
13 death penalty?

14 MR. ORAM: Judge, I'd object. It's consider the
15 death penalty. That's the standard, consider.

16 THE COURT: Consider it is the proper term, I think.

17 MR. DiGIACOMO: Well, consider -- and when I use the
18 term "consider," ultimately consider means there's a
19 possibility that at some point you would vote for it?

20 PROSPECTIVE JUROR NO. 189: I don't believe that I
21 could vote for the death penalty, no.

22 MR. DiGIACOMO: Okay. And is -- you've already kind
23 of said it. This is something you've thought about before?

24 PROSPECTIVE JUROR NO. 189: Yes.

25 MR. DiGIACOMO: Okay. And have you thought about it

1 since you filled out this questionnaire?

2 PROSPECTIVE JUROR NO. 189: Yes.

3 MR. DiGIACOMO: Is there anything that -- I'm
4 assuming it's a pretty hard and firm position you have?

5 PROSPECTIVE JUROR NO. 189: Yes.

6 MR. DiGIACOMO: And I imagine no one is going to be
7 able to talk you out of it?

8 PROSPECTIVE JUROR NO. 189: No, sir.

9 MR. DiGIACOMO: Judge, we challenge.

10 MR. ORAM: Traverse, Your Honor. Good morning.

11 PROSPECTIVE JUROR NO. 189: Good morning.

12 MR. ORAM: Okay. I -- I have to go right directly to
13 the questions that were just left off.

14 PROSPECTIVE JUROR NO. 189: Yes.

15 MR. ORAM: All right. You indicated on your
16 questionnaire that, Number 25, "although I do not personally
17 favor the death penalty, as long as the law may require me to
18 consider it, I could follow my oath and the law and consider
19 it." Do you remember checking that box?

20 PROSPECTIVE JUROR NO. 189: I don't remember that. I
21 don't remember the wording exactly.

22 MR. ORAM: Okay. Does that sound about accurate?

23 PROSPECTIVE JUROR NO. 189: I -- I believe so.

24 MR. ORAM: And on the death penalty, you could tell
25 you were struggling with it. You saw this as pretty serious?

1 PROSPECTIVE JUROR NO. 189: Yes.

2 MR. ORAM: And it is really serious, isn't it?

3 PROSPECTIVE JUROR NO. 189: It is.

4 MR. ORAM: I mean, obviously if we hear people come
5 in here and they say, you know, I -- I think people who are
6 convicted of murder should be on the street immediately, it's
7 a little odd, okay?

8 PROSPECTIVE JUROR NO. 189: Yes.

9 MR. ORAM: Okay. There are some people who also
10 believe that: I don't think a person should be eligible for
11 parole if they've been convicted of murder; do you understand?

12 PROSPECTIVE JUROR NO. 189: Yes.

13 MR. ORAM: And that's their right. As Americans we
14 have rights to our belief about the criminal justice system,
15 fair enough?

16 PROSPECTIVE JUROR NO. 189: Yes.

17 MR. ORAM: And -- and, you know, when Judge Thompson
18 says we're in voir dire, that means in translation to tell the
19 truth. And so we appreciate people coming in and saying,
20 Well, these are my views. And so that's what you're trying to
21 tell us, right --

22 PROSPECTIVE JUROR NO. 189: Yes.

23 MR. ORAM: -- what's your views? Okay. With the
24 death penalty you said, "I'm divided, part of me believes that
25 those who commit violent or heinous crimes against children

1 should be put to death." That was one sentence --

2 PROSPECTIVE JUROR NO. 189: Yes.

3 MR. ORAM: Okay. And so it seems to me that you can
4 envision at least that there are cases, let's say ones that
5 you're not involved in, you're just watching the TV and you're
6 sitting there and somebody has hurt some children, maybe
7 killed some children, raped some children.

8 PROSPECTIVE JUROR NO. 189: Yes.

9 MR. ORAM: You think, you know, jury sentence that
10 person to death, he or she probably deserved it. Okay. Is
11 that pretty much what you're saying there?

12 PROSPECTIVE JUROR NO. 189: That, in my opinion,
13 would be the only acceptable time to consider the death
14 penalty.

15 MR. ORAM: Okay. And that -- that is fine because
16 that's your personal belief, right?

17 PROSPECTIVE JUROR NO. 189: Yes.

18 MR. ORAM: Okay. And you're saying there are murder
19 cases that I've heard about -- that's what it sounds like
20 you're saying -- where, you know, people should be considering
21 the death penalty?

22 PROSPECTIVE JUROR NO. 189: Yes.

23 MR. ORAM: And -- and so if the law said -- like if
24 you sat as a juror in this case, okay? If you sat as a juror
25 and you -- you'd follow your oath, wouldn't you?

1 PROSPECTIVE JUROR NO. 189: Yes.

2 MR. ORAM: And it sounds to me like you're saying
3 that if my oath is and commands me to consider the death
4 penalty, I could do so?

5 PROSPECTIVE JUROR NO. 189: I would have to. I
6 wouldn't like it.

7 MR. ORAM: You know what? I also recognize
8 something, okay? That there may be people -- you know,
9 imagine if you were listening and we had 150 jurors, okay? We
10 hear a lot of jurors. And somebody came in here and said, I'm
11 just dying to give somebody the death penalty. I mean, a lot
12 of people probably would be pretty -- pretty appalled at that.
13 You know, you're just waiting and shaking, can't wait to give
14 somebody the death penalty, okay? You see it as very serious,
15 right?

16 PROSPECTIVE JUROR NO. 189: Yes.

17 MR. ORAM: And -- and you're a conscientious person?

18 PROSPECTIVE JUROR NO. 189: Yes.

19 MR. ORAM: And so what you're really saying is that
20 you -- you don't have any -- you don't think of it as a fun
21 thing to be walking through that back door and saying, Yeah, I
22 vote for death, that's great. You don't see it that way, do
23 you?

24 PROSPECTIVE JUROR NO. 189: No, sir.

25 MR. ORAM: If you had to do that, that would be very

1 difficult for you?

2 PROSPECTIVE JUROR NO. 189: Yes.

3 MR. ORAM: And it would take the right kind of case;
4 and if that's not the right kind of case, then you don't want
5 to give it, you're not going to give it, right?

6 PROSPECTIVE JUROR NO. 189: Exactly.

7 MR. ORAM: Okay. You're -- juries are made up of
8 twelve jurors and you would be one of them --

9 PROSPECTIVE JUROR NO. 189: Yes.

10 MR. ORAM: -- you understand that? And you have the
11 right to look at everybody and say, Let's execute, or, I don't
12 want to execute, this isn't the right case, right?

13 PROSPECTIVE JUROR NO. 189: Right.

14 MR. ORAM: I'm going to tell you something else about
15 Nevada law. We have -- you've heard about these burdens of
16 proof with regard to whether somebody's guilty or not, okay?
17 In Nevada law, the burden of proof, it's different if there's
18 a penalty phase. In other words, the State can't prove three
19 plus three is six, plus another three is nine, therefore, once
20 we've proven nine, you have to execute. It's not -- it's
21 never like that. In other words, no matter what the State
22 proves, okay -- [inaudible].

23 State proves a hundred murders against one person.
24 They can't say, Oh, once it goes past four you got to execute.
25 A jury can say, We don't care what you've proven because we

1 feel sorry for the defendant's mother, we're going to save his
2 life. You're allowed to do that in this state, okay? That
3 make sense?

4 PROSPECTIVE JUROR NO. 189: Yes.

5 MR. ORAM: Our law's real easy on that. It just says
6 a jury never has to sentence somebody to death, okay?

7 PROSPECTIVE JUROR NO. 189: Right.

8 MR. ORAM: So why -- why I'm telling you that is
9 because that makes it so that you have a say. You, as a
10 person, as a juror with eleven other people, would have a say
11 as to whether you thought the death penalty was appropriate.

12 PROSPECTIVE JUROR NO. 189: Right.

13 MR. ORAM: Okay. Now, I imagine you read that back
14 portion of this case where they talk about a 12-year-old being
15 chased down and shot?

16 PROSPECTIVE JUROR NO. 189: What was that? Can you
17 repeat that, please?

18 MR. ORAM: They're saying that a 12-year-old was shot
19 in this case.

20 PROSPECTIVE JUROR NO. 189: Yes, I did read that.

21 MR. ORAM: Chased down a hallway and shot.

22 PROSPECTIVE JUROR NO. 189: Yes.

23 MR. ORAM: Okay. But that's a crime against a -- a
24 young child.

25 PROSPECTIVE JUROR NO. 189: Yes.

1 MR. ORAM: Okay. So it sounds to me as though -- and
2 again, I understand, you don't know any other facts. You
3 don't know anything about Mr. Burns. You don't know anything
4 as you're sitting here. But it sounds to me that if you took
5 an oath, you sat there and the State was able to put on the
6 right kind of case, in your mind, you would consider the death
7 penalty; is that true?

8 PROSPECTIVE JUROR NO. 189: Yes.

9 MR. ORAM: And you're not saying it would be easy.
10 You're saying it would be hard as heck, but you could give the
11 State a fair trial and consider it?

12 PROSPECTIVE JUROR NO. 189: Yes.

13 MR. ORAM: And you could give Mr. Burns a fair trial
14 as well?

15 PROSPECTIVE JUROR NO. 189: Yes, sir.

16 MR. ORAM: And I -- because of the challenge that
17 just happened, I'm not -- I may be given an opportunity to
18 question you about other things, but right now that's all I
19 have for you right now. I don't think she met the challenge.

20 THE COURT: I'm going to deny the challenge.
21 Anything further by either of you of questioning the juror?

22 MR. DiGIACOMO: I have no more questions for the
23 juror. [Inaudible] submitted.

24 THE COURT: You have any further questions?

25 MR. ORAM: No. Pass for cause, Judge.

1 THE COURT: All right. Ladies and gentlemen --

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

3 THE COURT: Excuse me. Sorry. I apologize.

4 MR. LANGFORD: No, I -- I do pass for cause, Your
5 Honor.

6 THE COURT: All right. We're going to start passing
7 a lot of you for cause, I hope. It's about a quarter to
8 12:00. I have a bunch of civil lawyers that are going to come
9 in for other unrelated matters to this in a few minutes and so
10 I'm going to spend about an hour with them and have you come
11 back after lunch at one o'clock.

12 When you come back, I'd like you to kind of remember
13 where you're seated here so you -- we keep track of you. You
14 can kind of count your seats and see where you are, who is
15 next to you, and then you can figure out where you belong when
16 you come back. We'll see you about one o'clock this afternoon
17 and the marshal will tell you where to go.

18 THE MARSHAL: All rise for the exiting jury panel.

19 (Prospective jury panel recessed at 11:49 a.m.)

20 THE COURT: All right. The record reflect that the
21 prospective jurors have exited -- exited the courtroom. We're
22 going to return at one o'clock. If you come back just a few
23 minutes before that so we can start on time.

24 Anything further on the record this morning?

25 MR. DiGIACOMO: Just two things. One, can we leave

1 this here? I know you have civil lawyers coming in.

2 THE COURT: Yes. These civil lawyers, I'll -- I'll
3 tell them not to touch it.

4 MR. DiGIACOMO: Perfect. The second thing is that
5 this second panel has now come in, that was 19 people that
6 came in with them. I believe from a review, juror in Seat No.
7 2 and juror in Seat No. 16 would be African American, which
8 brings our total of five out of 39 -- sorry. Five out of 29.

9 MS. WECKERLY: There are also three Hispanics on this
10 panel. Juror No. 225 didn't show up. But Badge No. 265 and
11 285 are both Hispanic, and it appears that 147 and 232, one is
12 Asian and the other one is [inaudible].

13 THE COURT: Anything further on the record?

14 MR. LANGFORD: No, Your Honor.

15 THE COURT: Few minutes before 1:00, please. Be in
16 recess for ten minutes.

17 (Court recessed at 11:50 a.m. until 12:59 p.m.)

18 (Outside the presence of the prospective jury panel.)

19 THE COURT: Okay. We're on the record. Mason and
20 Burns counsel are all present with the defendants being
21 present. As I understand it the parties have stipulated to
22 dismiss Juror No. 201, Mr. Nagrabski.

23 MR. DiGIACOMO: Yes, Your Honor.

24 MR. SGRO: Yes, sir. That's correct. Sorry.

25 MR. LANGFORD: Yes, Your Honor. I apologize, Your

1 Honor.

2 THE COURT: All right. You can ask Mr. Nagrabski --
3 you can tell him he's excused and thank him very much and
4 bring in -- can we excuse anybody else?

5 MR. DiGIACOMO: Not at this time.

6 THE COURT: All right. Bring in the rest of them.

7 THE MARSHAL: Thank you, sir.

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

9 THE COURT: All right. The record will reflect the
10 presence of the prospective jurors that are remaining. We're
11 up to Ms. -- is it Schulte?

12 PROSPECTIVE JUROR NO. 218: Schulte.

13 THE MARSHAL: Here you go, ma'am. And just
14 remember, folks, you need to speak directly into the top of
15 that microphone.

16 PROSPECTIVE JUROR NO. 218: Yes, it's Schulte.

17 THE COURT: Shultze?

18 PROSPECTIVE JUROR NO. 218: Schulte.

19 THE COURT: Schulte. All right. First of all, are
20 you acquainted with any of the witnesses or attorneys involved
21 in this case?

22 PROSPECTIVE JUROR NO. 218: No, sir.

23 THE COURT: You indicated that you've lived in
24 Nevada for about 11 years now; is that right?

25 PROSPECTIVE JUROR NO. 218: Yeah. It's more than

1 that, probably. I just don't remember. I was too young.

2 THE COURT: You were young.

3 PROSPECTIVE JUROR NO. 218: Yeah.

4 THE COURT: Okay. Where did you come from?

5 PROSPECTIVE JUROR NO. 218: Oregon.

6 THE COURT: And I assume you came with your parents?

7 PROSPECTIVE JUROR NO. 218: Yes.

8 THE COURT: And what -- are your parents here in
9 town still?

10 PROSPECTIVE JUROR NO. 218: No, they moved back to
11 Oregon.

12 THE COURT: Back to Oregon.

13 PROSPECTIVE JUROR NO. 218: My mom --

14 THE COURT: So you stayed.

15 PROSPECTIVE JUROR NO. 218: Yeah.

16 THE COURT: You like Las Vegas?

17 PROSPECTIVE JUROR NO. 218: Yeah. No. No, no.

18 THE COURT: It depends upon whether you have to be a
19 juror or not, huh?

20 PROSPECTIVE JUROR NO. 218: Yeah.

21 THE COURT: Okay. You're working for Boyd Gaming
22 now?

23 PROSPECTIVE JUROR NO. 218: I made a career
24 transfer. Well, I made a different change in my career, so,
25 yeah. No, I'm no longer any -- with Boyd now.

1 THE COURT: You're not with Boyd now?
2 PROSPECTIVE JUROR NO. 218: Huh-uh.
3 THE COURT: Who are you with now?
4 PROSPECTIVE JUROR NO. 218: Check City.
5 THE COURT: Speak up.
6 PROSPECTIVE JUROR NO. 218: Check City. Sorry.
7 THE COURT: And who is that?
8 PROSPECTIVE JUROR NO. 218: They are a loaning
9 company. So they do small loans and so I'm a teller for them
10 now.
11 THE COURT: And what do you do for them?
12 PROSPECTIVE JUROR NO. 218: I'm a teller.
13 THE COURT: All right. And did you go to high
14 school here?
15 PROSPECTIVE JUROR NO. 218: Yes.
16 THE COURT: Which high school?
17 PROSPECTIVE JUROR NO. 218: Palo Verde.
18 THE COURT: Okay. You've heard all the questions
19 we've been asking the jurors about the burden of proof,
20 presumption of innocence, and so on. Do you agree with that
21 procedure?
22 PROSPECTIVE JUROR NO. 218: Yes, sir.
23 THE COURT: Do you have any quarrel with -- with
24 serving as a juror in a case like this?
25 PROSPECTIVE JUROR NO. 218: Not at all.

1 THE COURT: Okay. Is there any reason you couldn't
2 be fair to both sides in the case?

3 PROSPECTIVE JUROR NO. 218: No, I think I should --
4 I will be fine.

5 THE COURT: All right. Ms. Weckerly.

6 MS. WECKERLY: Yes. Hi.

7 PROSPECTIVE JUROR NO. 218: Hello.

8 MS. WECKERLY: How are you?

9 PROSPECTIVE JUROR NO. 218: Good. How are you?

10 MS. WECKERLY: Good, thank you. Was it that you
11 didn't like your other job? Is that what caused you to --

12 PROSPECTIVE JUROR NO. 218: Yeah. It was just -- I
13 felt like I kind of stuck it out and I wasn't being able to
14 grow with the company, so I wanted to make a career change.

15 MS. WECKERLY: Okay.

16 PROSPECTIVE JUROR NO. 218: So nothing serious.

17 MS. WECKERLY: Good. How long have you worked at
18 your new job?

19 PROSPECTIVE JUROR NO. 218: It's been my second
20 week.

21 MS. WECKERLY: Oh, okay.

22 PROSPECTIVE JUROR NO. 218: So it's fairly new.

23 MS. WECKERLY: And are they pretty understanding
24 with the --

25 PROSPECTIVE JUROR NO. 218: Yeah.

1 MS. WECKERLY: -- fact that you might be here with
2 us? PROSPECTIVE JUROR NO. 218: Yeah, they're okay
3 with it.

4 MS. WECKERLY: They probably knew that, I guess --
5 PROSPECTIVE JUROR NO. 218: Yeah.

6 MS. WECKERLY: -- coming in?

7 PROSPECTIVE JUROR NO. 218: Yes.

8 MS. WECKERLY: Okay. I would like to ask you a
9 couple questions, first about your feelings about the death
10 penalty. And I read from your questionnaire, and you also
11 look very young, is that something that you've thought about
12 before?

13 PROSPECTIVE JUROR NO. 218: After seeing the
14 questionnaire, yes, I thought about it.

15 MS. WECKERLY: Okay.

16 PROSPECTIVE JUROR NO. 218: But -- yeah.

17 MS. WECKERLY: And is it like anything that you
18 would have discussed in school in like a high school civics
19 class, nothing like that?

20 PROSPECTIVE JUROR NO. 218: We've talked about it
21 because you go over that in high school, but that's been like
22 five years now since I've been out of high school, so --

23 MS. WECKERLY: Okay.

24 PROSPECTIVE JUROR NO. 218: Yeah.

25 MS. WECKERLY: Your -- your questionnaire suggests

1 that you haven't had a lot of contact with the criminal
2 justice system. You really didn't have much of an opinion
3 about judges, prosecutors, that whole thing?

4 PROSPECTIVE JUROR NO. 218: Not really. I don't
5 really focus on that stuff.

6 MS. WECKERLY: Okay. More important and more
7 interesting things probably.

8 PROSPECTIVE JUROR NO. 218: Yeah.

9 MS. WECKERLY: Do you believe that the death penalty
10 serves a purpose?

11 PROSPECTIVE JUROR NO. 218: I do believe that, yeah.
12 I think it's obviously there for certain issues that come
13 about, I guess.

14 MS. WECKERLY: Okay.

15 PROSPECTIVE JUROR NO. 218: Yeah.

16 MS. WECKERLY: And you've heard us discuss with some
17 of the other prospective jurors about how this is sort of a
18 two-step process.

19 PROSPECTIVE JUROR NO. 218: Yes.

20 MS. WECKERLY: Are you comfortable with that?

21 PROSPECTIVE JUROR NO. 218: Yes, I am.

22 MS. WECKERLY: Okay. And if we get into a penalty
23 phase, at least with regard to Mr. Burns, is the death penalty
24 something that you can consider given certain circumstances?
25 And you don't have to tell me what they are.

1 PROSPECTIVE JUROR NO. 218: Yes, I can obviously go
2 whatever way we decide, I guess.

3 MS. WECKERLY: Yeah, and it's -- it is true that
4 it's a collective decision, but it's also a personal decision.

5 PROSPECTIVE JUROR NO. 218: Personal. Yeah, my
6 opinion, definitely what I believe or what I see. Yeah.

7 MS. WECKERLY: Okay. And if we do get into that
8 penalty phase, you'll be hearing additional information and
9 like I discussed before, you'll hear additional actual
10 instructions on the law. But it will kind of be up to you
11 individually and your fellow jurors between the four choices
12 of punishment. And as you sit here now, I assume all four are
13 possibilities.

14 PROSPECTIVE JUROR NO. 218: Correct. Yes.

15 MS. WECKERLY: Okay. And you'll wait until you hear
16 whatever is presented before selecting which one you think is
17 appropriate?

18 PROSPECTIVE JUROR NO. 218: Definitely.

19 MS. WECKERLY: Because you're -- you're so young,
20 are you someone that we can count on to participate in the
21 deliberation process?

22 PROSPECTIVE JUROR NO. 218: Yes.

23 MS. WECKERLY: Okay. You can speak up and you're
24 not going to be intimidated by that?

25 PROSPECTIVE JUROR NO. 218: No, I have a strong

1 opinion on certain things.

2 MS. WECKERLY: Okay. In -- in terms of the criminal
3 justice system, you were asked a question sort of about how
4 drugs might interact with crime. Do you remember that on the
5 questionnaire?

6 PROSPECTIVE JUROR NO. 218: Yeah, it's been awhile
7 since I've seen that, so it's kind of hard to remember those
8 questions, but yes.

9 MS. WECKERLY: Okay. Well, I'm not going to test
10 you on your answer, but --

11 PROSPECTIVE JUROR NO. 218: Okay.

12 MS. WECKERLY: -- can you tell me what you're
13 thoughts are about that, how -- how drugs may interact with
14 crime or may have an effect on it or --

15 PROSPECTIVE JUROR NO. 218: I believe that it --
16 depending on if they have a certain addiction maybe they're
17 not in their right frame of mind I guess you could say, so I
18 guess it could lead to different things, you know, criminal
19 acts, I guess. But it's -- I don't feel like sometimes when
20 you're on drugs that you per se are there. I think sometimes
21 it kind of takes over you and you kind of lose control of your
22 own life.

23 MS. WECKERLY: Okay. And do you believe that people
24 who might be doing something illegal themselves can also be
25 victims of a crime?

1 PROSPECTIVE JUROR NO. 218: Definitely.

2 MS. WECKERLY: And you still get the protection of
3 the law even if you're maybe not following it.

4 PROSPECTIVE JUROR NO. 218: Correct.

5 MS. WECKERLY: Do you think that people who choose
6 to do drugs and maybe commit a crime, should they be held
7 accountable for their conduct?

8 PROSPECTIVE JUROR NO. 218: Depending on the
9 circumstances, yes.

10 MS. WECKERLY: Okay. I think you might have touched
11 on this just a minute ago. Are you talking -- are you talking
12 about like in terms of sanity or not sanity or --

13 PROSPECTIVE JUROR NO. 218: I guess, but I'd just
14 say like when the drug takes affect over you and you're
15 consuming it or however, I think sometimes it just kind of --
16 it doesn't put -- it's not -- you're not there sometimes, and
17 I think it just -- when you're addicted to something you --
18 you want to keep doing it and you don't know where to go. I
19 don't know how to explain it otherwise than that, so that's
20 what I'm trying to explain.

21 MS. WECKERLY: Okay. Do you -- or is there someone
22 close to you, a friend or someone you know that has had either
23 issues with drugs or alcohol?

24 PROSPECTIVE JUROR NO. 218: No.

25 MS. WECKERLY: How about do you know anyone who

1 maybe had a lot to drink and behaved differently than they
2 normally would --

3 PROSPECTIVE JUROR NO. 218: Yes.

4 MS. WECKERLY: -- in a particular setting?

5 PROSPECTIVE JUROR NO. 218: Uh-huh.

6 MS. WECKERLY: And, I mean, what were you thoughts?
7 Was it that the person, oh, I have no memory of that or they
8 probably were like less inhibited than they would have been?

9 PROSPECTIVE JUROR NO. 218: Yes, I've seen it. Yes.

10 MS. WECKERLY: Okay. And in terms of that type of
11 behavior, did you think that they were responsible for their
12 conduct or that, man, that person was just kind of out of
13 their mind or --

14 PROSPECTIVE JUROR NO. 218: I don't think they're
15 crazy, I just think that obviously they can't control the
16 situation, I guess.

17 MS. WECKERLY: How about do you think that they're
18 making decisions they wouldn't make sober?

19 PROSPECTIVE JUROR NO. 218: Pretty much, yeah.

20 MS. WECKERLY: Okay. In that situation were you
21 able to communicate with the person or, you know, was the
22 person oriented at all?

23 PROSPECTIVE JUROR NO. 218: Yes.

24 MS. WECKERLY: So there's, I guess, levels of it?

25 PROSPECTIVE JUROR NO. 218: There's different

1 levels, so it's like -- it varies depending on a certain
2 situation. So it's like it's not all the same. There's
3 depending on what you're doing, I guess.

4 MS. WECKERLY: And there's probably levels of
5 impairment.

6 PROSPECTIVE JUROR NO. 218: Exactly.

7 MS. WECKERLY: If were you are selected to be a
8 juror, would it cause you concern to have to come in and find
9 someone guilty?

10 PROSPECTIVE JUROR NO. 218: No.

11 MS. WECKERLY: Some people don't like judging other
12 people. Is that something you're comfortable doing?

13 PROSPECTIVE JUROR NO. 218: I'm comfortable with it,
14 yes.

15 MS. WECKERLY: Okay. And as we discussed before, if
16 you thought it was the appropriate punishment, would you be
17 able to come in and announce a punishment of death?

18 PROSPECTIVE JUROR NO. 218: Yes.

19 MS. WECKERLY: And with regard to Mr. Mason, the
20 choices of punishment are -- are three choices, which is life
21 without the possibility of parole, meaning he never gets out
22 of prison, life with the possibility of parole after a certain
23 amount of time and what we call a term of years, but that's
24 not too different. Could you consider those three punish --
25 three, not four, three punishments with regard to Mr. Mason?

1 PROSPECTIVE JUROR NO. 218: Yes, ma'am.

2 MS. WECKERLY: Okay. Do you have any other concerns
3 about your ability to sit with us?

4 PROSPECTIVE JUROR NO. 218: No, ma'am.

5 MS. WECKERLY: Thank you very much.

6 We'll pass for cause, Your Honor.

7 THE COURT: Mr. Sgro.

8 MR. SGRO: Thank you, Your Honor.

9 Good afternoon.

10 PROSPECTIVE JUROR NO. 218: Hello.

11 MR. SGRO: So let's -- let's start with a couple
12 things that Ms. Weckerly just asked you. You're going to be
13 one of the younger folks, obviously, on the jury. And so --
14 well, let me ask you this. Did you play sports at Palo?

15 PROSPECTIVE JUROR NO. 218: Yes, sir.

16 MR. SGRO: What did you play?

17 PROSPECTIVE JUROR NO. 218: Soccer, cross-country,
18 track.

19 MR. SGRO: Okay. So there was -- you were not only
20 an athlete, but I imagine a fan in support of your school;
21 right?

22 PROSPECTIVE JUROR NO. 218: Yes, sir.

23 MR. SGRO: Okay. And when you play other teams,
24 they support their school, they're fans of their school.
25 People have their opinions; right?

1 PROSPECTIVE JUROR NO. 218: Right.

2 MR. SGRO: And in a sports setting, people can argue
3 about who is the better team, Ohio State or Oregon, or Green
4 Valley or Palo, whatever it is; right?

5 PROSPECTIVE JUROR NO. 218: Right.

6 MR. SGRO: I'm going to tell you that in jury
7 deliberations people can form opinions and they can hold
8 pretty tight to them.

9 PROSPECTIVE JUROR NO. 218: Right.

10 MR. SGRO: Can you imagine how that could occur?

11 PROSPECTIVE JUROR NO. 218: Yes, definitely.

12 MR. SGRO: And especially in a case like this that's
13 serious; right?

14 PROSPECTIVE JUROR NO. 218: Right.

15 MR. SGRO: So if you have a group of -- of
16 individuals, there can be, and I'm not saying that there would
17 be, but there can be a tendency for people that are older to
18 sort of chastise, criticize, tell you you really don't know,
19 listen to me, I'm older, I've been down this road, I have life
20 experience you don't have. You know what I mean? Pick
21 however -- whatever mechanism. What we're all looking for is
22 the benefit of a commitment that we've got your opinion. Can
23 we have -- and you seem like we have that; is that right?

24 PROSPECTIVE JUROR NO. 218: Definitely.

25 MR. SGRO: Okay. So do you remember the question I

1 asked if it's 11 one thing and one wants the other? How do
2 you think you'd respond in that situation?

3 PROSPECTIVE JUROR NO. 218: I think I have a strong
4 voice, even though I'm still pretty young.

5 MR. SGRO: Okay. So given that you can change your
6 mind like if you see that you missed something or someone else
7 has a point that you didn't consider, you understand how
8 important it is that you not change only because everyone else
9 sees it a different way.

10 PROSPECTIVE JUROR NO. 218: Correct.

11 MR. SGRO: Okay. So you would not assume you've
12 missed something; right?

13 PROSPECTIVE JUROR NO. 218: Right.

14 MR. SGRO: And you wouldn't assume you've got it
15 wrong?

16 PROSPECTIVE JUROR NO. 218: Right.

17 MR. SGRO: Okay. You're going to be called upon in
18 this case to recognize a couple rights that Mr. Burns has.
19 We've talked about some of them. Any problem with the
20 presumption of innocence?

21 PROSPECTIVE JUROR NO. 218: No.

22 MR. SGRO: Had you ever heard that term before
23 coming in here?

24 PROSPECTIVE JUROR NO. 218: No.

25 MR. SGRO: So you know that saying where there's

1 smoke there's fire?

2 PROSPECTIVE JUROR NO. 218: Yes.

3 MR. SGRO: You get that in a courtroom as we begin
4 this, that saying has no application here. Are you okay with
5 that?

6 PROSPECTIVE JUROR NO. 218: Yes.

7 MR. SGRO: Okay. So do you think that because the
8 state read, you know, a bunch of charges, there was an arrest
9 made in this case, here we are at trial, do you think Mr.
10 Burns must have done something?

11 PROSPECTIVE JUROR NO. 218: I think, obviously,
12 something happened, but we just have to see, you know, what --
13 you know, we need to see facts.

14 MR. SGRO: Okay. So we have your commitment that
15 while something might have happened, whether or not Mr. Burns
16 had anything to do with it, that's still in play; right?

17 PROSPECTIVE JUROR NO. 218: Right.

18 MR. SGRO: He doesn't automatically have something
19 to do with it just because he's here?

20 PROSPECTIVE JUROR NO. 218: Right.

21 MR. SGRO: Okay. No troubles there?

22 PROSPECTIVE JUROR NO. 218: Right.

23 MR. SGRO: Can you tell me a reason why someone that
24 is not guilty of a crime would choose to not testify?

25 PROSPECTIVE JUROR NO. 218: Maybe their safety? I

1 really don't know. I guess it's just their opinion if they
2 choose not to or --

3 MR. SGRO: Okay. Do you think you'd hold it against
4 him if he didn't testify?

5 PROSPECTIVE JUROR NO. 218: Not at all.

6 MR. SGRO: Do you think you'd be more critical of
7 his testimony if he did choose to testify?

8 PROSPECTIVE JUROR NO. 218: No, I don't think I
9 would be critical.

10 MR. SGRO: And when I -- not -- not critical like
11 you're going to criticize me. That's a bad word choice. If a
12 police officer testifies, would you look at that person more
13 with an eye towards, well, this guy is probably going to be
14 honest, or this woman is probably going to be honest. And if
15 someone's accused going to testify, they've probably got a
16 motive to lie?

17 PROSPECTIVE JUROR NO. 218: No.

18 MR. SGRO: Okay. So everyone gets to come in and be
19 even with you?

20 PROSPECTIVE JUROR NO. 218: Yes.

21 MR. SGRO: All right. Have you ever had a situation
22 where you've had to decide between two people's versions of
23 what's happening?

24 PROSPECTIVE JUROR NO. 218: Yes, definitely.

25 MR. SGRO: And you feel comfortable doing that?

1 PROSPECTIVE JUROR NO. 218: Yeah.

2 MR. SGRO: In this case you will have people that
3 say different things, conflicts and testimony. Will you be
4 able to weight those and determine motivations for people to
5 lie?

6 PROSPECTIVE JUROR NO. 218: Yes.

7 MR. SGRO: Have you ever heard this term plea
8 bargain?

9 PROSPECTIVE JUROR NO. 218: Yes.

10 MR. SGRO: And in this case, as I've said, you're
11 going to hear about someone who has cut a deal, made a deal
12 with the State. Do you think you'll be able to evaluate plea
13 bargain and whether or not that gives someone a motive to lie?

14 PROSPECTIVE JUROR NO. 218: Yes.

15 MR. SGRO: No trouble with that at all?

16 PROSPECTIVE JUROR NO. 218: Not at all.

17 MR. SGRO: Okay. You heard Ms. Weckerly talk to you
18 for a minute about drug use, right, and abuse?

19 PROSPECTIVE JUROR NO. 218: Correct.

20 MR. SGRO: If -- if people come and testify and they
21 see things like, you know, I've been on drugs -- or scratch
22 that. I was on drugs the whole time during these events.
23 You'll be able to evaluate that and see whether or not that
24 hurts or helps someone's credibility; right

25 PROSPECTIVE JUROR NO. 218: Right.

1 MR. SGRO: Okay. Do you have any problem with the
2 fact that Mr. Burns doesn't have to prove anything?

3 PROSPECTIVE JUROR NO. 218: No.

4 MR. SGRO: Do you remember that -- that hypothetical
5 I set up as extreme. You know, they call 100 witnesses, we're
6 here for five weeks, they come to you and they argue here's
7 why, you know, X, Y, and Z was proven. If it's not there, do
8 you feel any hesitation in coming back and saying, you know,
9 it just wasn't there, he's not guilty?

10 PROSPECTIVE JUROR NO. 218: No, I think I would be
11 able to speak up.

12 MR. SGRO: Okay. And do you have any -- any quarrel
13 with the fact that your only job is to determine whether or
14 not the State meets a burden of proof? Does that make sense?

15 PROSPECTIVE JUROR NO. 218: Yes.

16 MR. SGRO: Okay. Do you watch any of those crime
17 shows?

18 PROSPECTIVE JUROR NO. 218: Not very often, no.

19 MR. SGRO: How about the science shows like Forensic
20 Files, things like that?

21 PROSPECTIVE JUROR NO. 218: Not at all.

22 MR. SGRO: Do you have any problem with the fact
23 that you may not come away with a nice storybook, you know,
24 beginning, middle, and end?

25 PROSPECTIVE JUROR NO. 218: Yes.

1 MR. SGRO: Is that okay with you?

2 PROSPECTIVE JUROR NO. 218: Yes, sorry.

3 MR. SGRO: That's okay. Let's talk about the
4 penalty. And I know you've heard me say it, but you
5 understand Mr. Burns doesn't think he's getting to a penalty.
6 You understand that; right?

7 PROSPECTIVE JUROR NO. 218: Yes.

8 MR. SGRO: And we're not allowed to speak to you
9 again. In fact, when we see you in the hallway, we can't even
10 say hi or good morning. You know, we can't speak to you at
11 all after this.

12 PROSPECTIVE JUROR NO. 218: Right.

13 MR. SGRO: Okay. Can you -- well, let me ask it
14 this way. What's the best argument for someone who is
15 convicted of first degree murder to be able to return back
16 into society, be put back on the street?

17 PROSPECTIVE JUROR NO. 218: I guess you just have to
18 base it on the facts. I can't really make a decision unless
19 like I see that stuff in front of me and being presented in
20 front of me.

21 MR. SGRO: Okay.

22 PROSPECTIVE JUROR NO. 218: Like it's not fair to
23 make a -- you know, a decision until you see those things.

24 MR. SGRO: Okay. Then -- then let me ask it from
25 the other direction.

1 PROSPECTIVE JUROR NO. 218: Uh-huh.

2 MR. SGRO: If there has been a conviction for first
3 degree murder -- and you read that factual predicate in the
4 jury questionnaire; right?

5 PROSPECTIVE JUROR NO. 218: Right.

6 MR. SGRO: And you've heard us say numerous times a
7 woman was shot and killed?

8 PROSPECTIVE JUROR NO. 218: Right.

9 MR. SGRO: And a little girl was shot and survived?

10 PROSPECTIVE JUROR NO. 218: Right.

11 MR. SGRO: Okay. Can you imagine if you had found
12 someone guilty of first degree murder that you will then,
13 after the case has been proven to you, okay, that you could
14 then imagine a scenario to let that person back out on the
15 street?

16 PROSPECTIVE JUROR NO. 218: Yes.

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

18 PROSPECTIVE JUROR NO. 218: Not at all.

19 MR. SGRO: Given your age I'm going to assume you
20 have at least one cell phone. You may have more.

21 PROSPECTIVE JUROR NO. 218: Yes.

22 MR. SGRO: Have you ever had those conversations
23 that we've talked about, you know, did you get my text, no I
24 didn't, that sort of thing?

25 PROSPECTIVE JUROR NO. 218: Yes.

1 MR. SGRO: That's happened to you? Voicemails that
2 supposedly were left are not left?

3 PROSPECTIVE JUROR NO. 218: Yes.

4 MR. SGRO: Will you commit to scrutinize the
5 technology as it comes presented to you, as well?

6 PROSPECTIVE JUROR NO. 218: Yes.

7 MR. SGRO: And I know you said you don't watch those
8 -- those science type shows. Do you think it's important to
9 have science in a case like this?

10 PROSPECTIVE JUROR NO. 218: Definitely.

11 MR. SGRO: And, you know, I'm talking about the DNA
12 and the fingerprints and that sort of thing. Would you agree
13 that science doesn't have a motive to lie or an agenda, it
14 just is what it is?

15 PROSPECTIVE JUROR NO. 218: Yes.

16 MR. SGRO: The questions I asked about the
17 eyewitness identification, remember those?

18 PROSPECTIVE JUROR NO. 218: Yes.

19 MR. SGRO: So first let me ask you this. Have you
20 ever been accused of something you didn't do?

21 PROSPECTIVE JUROR NO. 218: Yes.

22 MR. SGRO: Have you ever been mistaken for someone?
23 You know, someone comes up to you and then realizes you're not
24 the person they thought that you were?

25 PROSPECTIVE JUROR NO. 218: Yes.

1 MR. SGRO: Okay. And have you ever done that to
2 someone else?

3 PROSPECTIVE JUROR NO. 218: Yes.

4 MR. SGRO: Okay. In -- in this case can you commit
5 to evaluating testimony about what people saw, heard, and that
6 sort of thing? Can you -- can you consider that evidence in
7 conjunction with everything else in the case?

8 PROSPECTIVE JUROR NO. 218: Yes.

9 MR. SGRO: In other words, I think I asked another
10 juror, someone says, oh, I saw this, you're not instinctively
11 going to say, oh, okay, well that's how it happened?

12 PROSPECTIVE JUROR NO. 218: No.

13 MR. SGRO: Okay. And would you agree -- as I've
14 said before, we hope when people come into a courtroom they
15 swear to tell the truth. We all hope they're going to be
16 honest; right?

17 PROSPECTIVE JUROR NO. 218: Right.

18 MR. SGRO: Do you think it's possible for someone to
19 swear to tell the truth and be mistaken?

20 PROSPECTIVE JUROR NO. 218: Yes.

21 MR. SGRO: Do you think it's possible for someone to
22 swear to tell the truth and just flat out lie?

23 PROSPECTIVE JUROR NO. 218: Definitely.

24 MR. SGRO: All right. Can a police officer make a
25 mistake?

1 PROSPECTIVE JUROR NO. 218: Yes.

2 MR. SGRO: Can a police officer say something from
3 the witness stand that's just not true?

4 PROSPECTIVE JUROR NO. 218: Yes.

5 MR. SGRO: Possible?

6 PROSPECTIVE JUROR NO. 218: Yes, it is.

7 MR. SGRO: Okay. Do you want to be on this jury?

8 PROSPECTIVE JUROR NO. 218: No, not really.

9 MR. SGRO: Are you willing to serve on a jury?

10 PROSPECTIVE JUROR NO. 218: Yes.

11 MR. SGRO: Okay. Is there anything that's come up
12 either from the State's questioning or from the defense's
13 questions that causes you any pause about any of this?

14 PROSPECTIVE JUROR NO. 218: Not at all.

15 MR. SGRO: And you feel like you have a full
16 appreciation for how serious it is, how attentive we need you
17 to be, all sorts of things?

18 PROSPECTIVE JUROR NO. 218: Definitely.

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

20 THE COURT: Mr. Langford.

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

22 THE COURT: All right. If you'd had the microphone
23 to Mr. -- is it Garni?

24 PROSPECTIVE JUROR NO. 230: Yes. Yes.

25 THE COURT: Mr. Garni, you're a P.E. teacher as I

1 understand it.

2 PROSPECTIVE JUROR NO. 230: Yes, I am.

3 THE COURT: What school are you with?

4 PROSPECTIVE JUROR NO. 230: J. Marlan Walker
5 International.

6 THE COURT: Okay. And what -- what P.E.?

7 PROSPECTIVE JUROR NO. 230: Kindergarten through
8 5th.

9 THE COURT: And so that's the little kids.

10 PROSPECTIVE JUROR NO. 230: Yes, it is.

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

13 PROSPECTIVE JUROR NO. 230: It's 14 years now.

14 THE COURT: Okay. Where did you go to school?

15 PROSPECTIVE JUROR NO. 230: SUNY Cortland in New
16 York.

17 THE COURT: What brings you to Las Vegas?

18 PROSPECTIVE JUROR NO. 230: Jobs.

19 THE COURT: Okay. And your wife is a school
20 principal?

21 PROSPECTIVE JUROR NO. 230: She is an assistant
22 principal, yes.

23 THE COURT: Assistant principal. What school is she
24 with?

25 PROSPECTIVE JUROR NO. 230: She is with Pittman,

1 Vail Pittman.

2 THE COURT: Okay. Vail Pittman.

3 PROSPECTIVE JUROR NO. 230: Uh-huh.

4 THE COURT: And so the two of you are in education
5 primarily?

6 PROSPECTIVE JUROR NO. 230: Yes.

7 THE COURT: You indicated in your questionnaire that
8 you have some relatives that are employed in law enforcement;
9 is that right?

10 PROSPECTIVE JUROR NO. 230: Yes, I do.

11 THE COURT: Which relatives are they and where are
12 they employed?

13 PROSPECTIVE JUROR NO. 230: I have a cousin that is
14 trying to become a police officer. He's back and forth taking
15 the tests.

16 THE COURT: Here?

17 PROSPECTIVE JUROR NO. 230: No, in New York.

18 THE COURT: Oh, in New York?

19 PROSPECTIVE JUROR NO. 230: Yes. And then I have --
20 I forgot to put it on there, but I do -- my best friend is
21 also in law enforcement in Reno.

22 THE COURT: In Reno?

23 PROSPECTIVE JUROR NO. 230: Uh-huh.

24 THE COURT: Okay. How -- how is it you have a good
25 friend in Reno?

1 PROSPECTIVE JUROR NO. 230: He moved out here with
2 us two years ago, and he just moved up to Reno, I think. He
3 moved out with us when we first got here, and then two years
4 ago he moved up to Reno to take a position as a park ranger.

5 THE COURT: And he's a park ranger?

6 PROSPECTIVE JUROR NO. 230: Yes.

7 THE COURT: Okay. Do you think that your
8 relationship with individuals and law enforcement is going to
9 have any bearing upon your ability to serve as a fair juror in
10 this case?

11 PROSPECTIVE JUROR NO. 230: I think -- I think it
12 will.

13 THE COURT: Why?

14 PROSPECTIVE JUROR NO. 230: I tend to believe
15 policemen more.

16 THE COURT: Do you think you'd have a tendency to
17 favor the testimony of the police officers that testify more
18 than you would the other witnesses?

19 PROSPECTIVE JUROR NO. 230: Yes, I do.

20 THE COURT: Is that because you think that they are
21 trained to observe things and report to the Court?

22 PROSPECTIVE JUROR NO. 230: Yes.

23 THE COURT: Okay. The -- you -- you heard the
24 questions that I've asked about the evidence, that the juror's
25 job is to decide what the facts are and my job is to decide

1 what the law is?

2 PROSPECTIVE JUROR NO. 230: Yes.

3 THE COURT: Think you can decide the facts and apply
4 them to the law and be fair to both sides?

5 PROSPECTIVE JUROR NO. 230: I do not.

6 THE COURT: Why is that?

7 PROSPECTIVE JUROR NO. 230: Just the idea that there
8 was a -- involved a school aged child involved in this, it
9 kind of sways my opinion in it. I've been involved with kids
10 for I don't know how long.

11 THE COURT: You think you have a tendency to favor
12 the State without knowing any of the facts?

13 PROSPECTIVE JUROR NO. 230: Yes.

14 THE COURT: All right. I'd entertain a challenge
15 for cause.

16 MR. ORAM: Challenge for cause.

17 THE COURT: Traverse?

18 MS. WECKERLY: No, Your Honor. We'll submit it.

19 THE COURT: All right. I'll excuse you. Thank you
20 for being a prospective juror. You'll be excused. If you'd
21 hand the microphone to Mr. -- is it Ramos?

22 PROSPECTIVE JUROR NO. 232: Yes, Your Honor.

23 THE COURT: Okay.

24 You can leave at this time, sir.

25 THE COURT: Mr. Ramos, do you know any of the

1 witnesses or attorneys involved in this case?

2 PROSPECTIVE JUROR NO. 232: No, Your Honor.

3 THE COURT: Okay. You -- you've been in Las Vegas
4 about ten years?

5 PROSPECTIVE JUROR NO. 232: Yes, Your Honor.

6 THE COURT: Where did you come from?

7 PROSPECTIVE JUROR NO. 232: The Philippines.
8 Philippines.

9 THE COURT: Oh, the Philippines. Okay. And what
10 brings you to the United States?

11 PROSPECTIVE JUROR NO. 232: [Inaudible]. It's my
12 wife.

13 THE COURT: Your wife?

14 PROSPECTIVE JUROR NO. 232: She works here.

15 THE COURT: Okay. What does your wife do?

16 PROSPECTIVE JUROR NO. 232: She's a nurse.

17 THE COURT: And she's a nurse at Spring Valley
18 Hospital?

19 PROSPECTIVE JUROR NO. 232: Yes, Your Honor.

20 THE COURT: Okay. You're unemployed now?

21 PROSPECTIVE JUROR NO. 232: Yes, Your Honor.

22 THE COURT: Were -- have you been employed in
23 Nevada?

24 PROSPECTIVE JUROR NO. 232: Yes.

25 THE COURT: What kind of work did you used to do?

1 PROSPECTIVE JUROR NO. 232: I used to work in -- in
2 Lexus before.

3 THE COURT: In what?

4 PROSPECTIVE JUROR NO. 232: In Lexus.

5 THE COURT: Lexus?

6 PROSPECTIVE JUROR NO. 232: Yes.

7 THE COURT: And what did you do for Lexus?

8 PROSPECTIVE JUROR NO. 232: I was in valet parking.

9 THE COURT: Parking? Okay.

10 PROSPECTIVE JUROR NO. 232: And the last job that I
11 have is --

12 THE COURT: How long has it been since you had a
13 job?

14 PROSPECTIVE JUROR NO. 232: Excuse me, Your Honor?

15 THE COURT: How long?

16 PROSPECTIVE JUROR NO. 232: Which one?

17 THE COURT: How long has it been since you worked
18 for Lexus?

19 PROSPECTIVE JUROR NO. 232: Approximately, Your
20 Honor, maybe two to three years.

21 THE COURT: Two, three years? Okay. Do you plan on
22 getting a job in the future?

23 PROSPECTIVE JUROR NO. 232: Yes.

24 THE COURT: What kind of work are you going to do?

25 PROSPECTIVE JUROR NO. 232: The last job that I

1 have, Your Honor, is I work in construction.

2 THE COURT: Okay. You're looking for a job in
3 construction?

4 PROSPECTIVE JUROR NO. 232: Yes.

5 THE COURT: Laborer?

6 PROSPECTIVE JUROR NO. 232: Yes.

7 THE COURT: Okay. Did you -- do you understand the
8 process here of where if you're a juror your job is to decide
9 what the facts are, the evidence is in the case?

10 PROSPECTIVE JUROR NO. 232: Well, it depends, Your
11 Honor, because I haven't seen yet what's going on.

12 THE COURT: You don't know what the evidence is yet.

13 PROSPECTIVE JUROR NO. 232: Right.

14 THE COURT: But if after you hear the evidence and
15 the instructions on the law, are you willing to be fair to
16 both sides and reach a fair verdict?

17 PROSPECTIVE JUROR NO. 232: We have to be --

18 THE COURT: Okay.

19 PROSPECTIVE JUROR NO. 232: -- fair, yeah.

20 THE COURT: Will you be a good juror?

21 PROSPECTIVE JUROR NO. 232: I cannot say yes, I
22 can't say no.

23 THE COURT: You'd do the best job you can?

24 PROSPECTIVE JUROR NO. 232: The best thing we can
25 do.

1 THE COURT: All right.
2 Mr. DiGiacomo.
3 MR. DiGIACOMO: Ms. Weckerly.
4 THE COURT: Ms. Weckerly.
5 MS. WECKERLY: How are you?
6 PROSPECTIVE JUROR NO. 232: Yes, ma'am.
7 MS. WECKERLY: Sir --
8 THE MARSHAL: Ms. Weckerly, there's not a microphone
9 over there.
10 MS. WECKERLY: This isn't one?
11 THE MARSHAL: No, ma'am, that one --
12 THE COURT: No, that doesn't work, I don't think.
13 THE MARSHAL: That one doesn't work. Sorry.
14 THE COURT: I don't know why that doesn't work.
15 THE MARSHAL: Because we --
16 MS. WECKERLY: It looks like it works.
17 THE MARSHAL: -- plugged into that one on the
18 podium.
19 THE COURT: You can only have so many plug-ins, I
20 guess.
21 MS. WECKERLY: Sir, I'm going to ask you some
22 questions about the death penalty.
23 PROSPECTIVE JUROR NO. 232: Yeah.
24 MS. WECKERLY: Do you remember writing that on your
25 questionnaire?

1 PROSPECTIVE JUROR NO. 232: I think so.

2 MS. WECKERLY: Okay.

3 PROSPECTIVE JUROR NO. 232: I can't remember.

4 MS. WECKERLY: That's all right.

5 PROSPECTIVE JUROR NO. 232: It's been a long time
6 ago.

7 MS. WECKERLY: What -- what are your opinions about
8 it? Is that a punishment that you think is appropriate?

9 PROSPECTIVE JUROR NO. 232: For me it depends
10 because to be honest with you I haven't know what's going on
11 yet.

12 MS. WECKERLY: Right.

13 PROSPECTIVE JUROR NO. 232: That's why I cannot tell
14 you about, let's say, death penalty. How can you tell that
15 this person has to have a death penalty?

16 MS. WECKERLY: Right. Because you haven't heard any
17 facts yet?

18 PROSPECTIVE JUROR NO. 232: No.

19 MS. WECKERLY: Okay. If you -- if you were selected
20 to be a juror, is that a penalty that you could consider?

21 PROSPECTIVE JUROR NO. 232: I mean, ma'am, let's
22 make it 50/50. I'm not sure yet.

23 MS. WECKERLY: Okay.

24 PROSPECTIVE JUROR NO. 232: Because I have to be
25 honest with you. I don't know what's going on, and I haven't

1 seen what's going on with that case.

2 MS. WECKERLY: Right.

3 PROSPECTIVE JUROR NO. 232: We haven't heard what's
4 going on, you know. I'm sorry. My English is not real good,
5 but --

6 MS. WECKERLY: That's okay. If -- in order to be --
7 in order to be qualified to be a juror you have to be able to
8 assure us and the Court that you could consider that as a
9 punishment. Are you able to -- to assure us that you can
10 consider it?

11 PROSPECTIVE JUROR NO. 232: I mean, ma'am, it
12 depends on the judge.

13 MS. WECKERLY: On the judge?

14 PROSPECTIVE JUROR NO. 232: Yeah.

15 MS. WECKERLY: Okay. Why is that?

16 PROSPECTIVE JUROR NO. 232: Because my reason is the
17 judge is the one who is going to put the sentence. It's not
18 the jury [inaudible].

19 THE MARSHAL: Sir, microphone, please. We need you
20 to speak into the microphone.

21 PROSPECTIVE JUROR NO. 232: Yes, sir.

22 MS. WECKERLY: And, you know, sir, you're right.
23 Normally the judge does sentence except in cases of first
24 degree murder. In those cases in Nevada, under certain
25 circumstances it's the jury that decides the sentence.

1 PROSPECTIVE JUROR NO. 232: Let us say it's the
2 jury. You know, you're just asking, you know.

3 MS. WECKERLY: Right.

4 PROSPECTIVE JUROR NO. 232: I'm just telling you my
5 opinion.

6 MS. WECKERLY: Okay.

7 PROSPECTIVE JUROR NO. 232: Let us say it's the
8 jury.

9 MS. WECKERLY: Okay. And if you were selected to be
10 on the jury, is that a sentence that you would -- that you
11 could think about imposing?

12 PROSPECTIVE JUROR NO. 232: If I will be one of the
13 jury, I want to know first what's going on.

14 MS. WECKERLY: Right.

15 PROSPECTIVE JUROR NO. 232: I want to hear. I want
16 to see what's going on before I decide.

17 MS. WECKERLY: Okay.

18 PROSPECTIVE JUROR NO. 232: Because it's not easy
19 for me to say death penalty right away. No.

20 MS. WECKERLY: Is it a punishment that you believe
21 in in some situations?

22 PROSPECTIVE JUROR NO. 232: There's many kinds of
23 punishment. Let's say they put you for life without parole.

24 MS. WECKERLY: Uh-huh.

25 PROSPECTIVE JUROR NO. 232: If you think it's worth

1 it, do it. But putting the death penalty right away? Come
2 on.

3 MS. WECKERLY: No, not right away. But I just --

4 PROSPECTIVE JUROR NO. 232: Let us say that's the
5 case --

6 MS. WECKERLY: Okay.

7 PROSPECTIVE JUROR NO. 232: -- death penalty. A
8 person, they can change.

9 MS. WECKERLY: Right.

10 PROSPECTIVE JUROR NO. 232: It's not always bad, you
11 know what I mean.

12 THE MARSHAL: Sir, microphone.

13 THE COURT: You have to speak right into --

14 PROSPECTIVE JUROR NO. 232: Oh, sorry.

15 THE COURT: -- that microphone, sir.

16 MS. WECKERLY: And I guess what I'm asking you is if
17 the -- if Mr. Burns is convicted of first degree murder, you
18 as a juror, along with your fellow jurors --

19 PROSPECTIVE JUROR NO. 232: Yes.

20 MS. WECKERLY: -- will be able to decide the
21 punishment.

22 PROSPECTIVE JUROR NO. 232: I have a question,
23 ma'am.

24 MS. WECKERLY: Sure.

25 PROSPECTIVE JUROR NO. 232: We, as a juror --

1 MS. WECKERLY: Right.

2 PROSPECTIVE JUROR NO. 232: -- do we have the right
3 that we can talk each other first before --

4 MS. WECKERLY: Oh, yes.

5 PROSPECTIVE JUROR NO. 232: -- we decide?

6 MS. WECKERLY: Yes.

7 PROSPECTIVE JUROR NO. 232: Well, I have to ask my
8 -- the -- the people that surround me.

9 MS. WECKERLY: Okay.

10 THE COURT: Speak into the microphone, sir.

11 PROSPECTIVE JUROR NO. 232: [Inaudible].

12 THE MARSHAL: Sir. Sir.

13 THE COURT: Speak into the microphone, please.

14 PROSPECTIVE JUROR NO. 232: Oh, I'm sorry.

15 THE MARSHAL: You need to speak into the microphone.
16 You -- you talk with your hands, but she's recording
17 everything.

18 MS. WECKERLY: Before -- before you would be on a
19 jury, though, you have to be able to assure us that you're not
20 ruling out any of the four possible punishments.

21 PROSPECTIVE JUROR NO. 232: The only thing I can
22 say, ma'am, is I want to be fair.

23 MS. WECKERLY: Okay. Are you ruling out any of the
24 four punishments?

25 PROSPECTIVE JUROR NO. 232: Maybe.

1 MS. WECKERLY: Which one?

2 PROSPECTIVE JUROR NO. 232: Well, if you're going to
3 ask me, I don't like death sentence.

4 MS. WECKERLY: You don't like the death sentence.
5 Why is that?

6 PROSPECTIVE JUROR NO. 232: They have live. They're
7 humans.

8 MS. WECKERLY: And so is that a punishment that you
9 just can't consider?

10 PROSPECTIVE JUROR NO. 232: For me, I don't like it.
11 I don't want that sentence.

12 MS. WECKERLY: Is that a sentence -- or is your
13 opinion about that one that -- that is like part of your
14 personal beliefs?

15 PROSPECTIVE JUROR NO. 232: Yes.

16 MS. WECKERLY: And have you held those beliefs for a
17 long time?

18 PROSPECTIVE JUROR NO. 232: Excuse me, ma'am?

19 MS. WECKERLY: Have you had that opinion for a long
20 time?

21 PROSPECTIVE JUROR NO. 232: It's like 50/50.

22 MS. WECKERLY: Is it like a religious opinion?

23 PROSPECTIVE JUROR NO. 232: NO.

24 MS. WECKERLY: No? Just your personal opinion?

25 PROSPECTIVE JUROR NO. 232: Just my reasons, yes.

1 Every person can change.

2 MS. WECKERLY: Sure. And so because you believe
3 that, would you ever be able to vote for the death penalty?

4 PROSPECTIVE JUROR NO. 232: No.

5 MS. WECKERLY: Not under any circumstance?

6 PROSPECTIVE JUROR NO. 232: It depends because if
7 you think that -- if you see that the person is really guilty
8 and he did the case and he's the one who killed the person,
9 well, why not? If he's the one.

10 MS. WECKERLY: Okay. And so if -- if --

11 PROSPECTIVE JUROR NO. 232: But let's say you get
12 the wrong person, you put the death penalty and he's not the
13 right person [indecipherable]. They'll put in death penalty
14 and he's not the one who did that?

15 MS. WECKERLY: Right.

16 PROSPECTIVE JUROR NO. 232: No.

17 MS. WECKERLY: What if you're sure he is the right
18 person?

19 PROSPECTIVE JUROR NO. 232: How can I tell you,
20 ma'am, if he is the one?

21 MS. WECKERLY: If you hear evidence -- let's just
22 say you hear evidence, though, and that evidence convinces you
23 of his guilt, and then you move into deciding what the penalty
24 should be, okay. You've already decided that he's the one,
25 that he's guilty, because that's how this trial will work.

1 The first part of it you decide whether or not the person is
2 guilty, okay. If you find him guilty, then you have to decide
3 what the punishment will be.

4 PROSPECTIVE JUROR NO. 232: That's the time I have
5 to decide.

6 MS. WECKERLY: Okay. Once you get to that second
7 part, are you able to consider a sentence of death?

8 PROSPECTIVE JUROR NO. 232: No.

9 MS. WECKERLY: Not under any circumstance?
10 I'll challenge for cause.

11 THE COURT: Traverse?

12 MR. ORAM: Just traverse briefly.

13 Good afternoon.

14 PROSPECTIVE JUROR NO. 232: Yes, sir.

15 MR. ORAM: Okay. It seemed to me that you were
16 giving answers that I'm not sure if maybe we're not
17 communicating well with you, but it seemed like they were
18 different, okay. What -- what we're really asking you today,
19 okay, let's say you -- you wanted to know if you get to talk
20 to all the other jurors if you sit; right? There's a room
21 back through that door. You see that door?

22 PROSPECTIVE JUROR NO. 232: Yes.

23 MR. ORAM: There's a room. And all the other
24 jurors, you and 11 other jurors, you go back and you talk.

25 PROSPECTIVE JUROR NO. 232: Right.

1 MR. ORAM: You can talk for ten minutes, you can
2 talk for days, okay, so that you make a decision.

3 PROSPECTIVE JUROR NO. 232: Right. Oh, sorry. Yes.

4 MR. ORAM: So if you make -- you and all of the
5 other 11 jurors, so a total of 12 of you are out there, and
6 you say guilty, this man is guilty, do you know what I mean by
7 that?

8 PROSPECTIVE JUROR NO. 232: Yes.

9 MR. ORAM: Okay. He did it. The State proved it.
10 These two proved the case. You believe the man is guilty,
11 okay. Do you understand what I am saying?

12 PROSPECTIVE JUROR NO. 232: Yes.

13 MR. ORAM: If you believed the man was guilty of a
14 bad murder, okay --

15 PROSPECTIVE JUROR NO. 232: Say -- say it again,
16 sir.

17 MR. ORAM: Okay. Sure. If you and all of the other
18 jurors said he did it, the man did it, he's the murderer,
19 okay, could you consider the death penalty?

20 PROSPECTIVE JUROR NO. 232: No.

21 MR. ORAM: Why?

22 PROSPECTIVE JUROR NO. 232: It's not easy, sir, to
23 judge a person to put in death penalty. For me it's not
24 right.

25 MR. ORAM: And -- and do you feel you could never,

1 never consider it, not for anybody?

2 PROSPECTIVE JUROR NO. 232: Well, it depends.

3 MR. ORAM: Okay. And that -- see that's the
4 confusion, okay.

5 PROSPECTIVE JUROR NO. 232: That's right.

6 MR. ORAM: Because -- because you say never, and
7 then you say it depends. What does it depend on?

8 PROSPECTIVE JUROR NO. 232: Well, for me, because
9 you're asking me, you got the right person and you know that
10 you can give me 100 percent that he's the one who commit the
11 murder, maybe I can say guilty.

12 MR. ORAM: Okay. If the State has to prove beyond a
13 reasonable doubt that somebody is guilty, do you understand
14 that?

15 PROSPECTIVE JUROR NO. 232: Okay.

16 MR. ORAM: And so if you believe guilty, you know,
17 you think the man is guilty.

18 PROSPECTIVE JUROR NO. 232: Okay.

19 MR. ORAM: Then, only then -- let me step back for a
20 second, okay. The State is not going to stand up, let's say,
21 next Monday and say could you please execute Mr. Burns.

22 PROSPECTIVE JUROR NO. 232: No.

23 MR. ORAM: They're not going to do that, okay. The
24 jury hasn't found whether Mr. Burns is guilty or not guilty.
25 If Mr. Burns is not guilty, he's leaving, yeah, and that's the

1 end of the case.

2 PROSPECTIVE JUROR NO. 232: Right.

3 MR. ORAM: But if at the end you think, yeah, he did
4 it, he's guilty and everybody agrees, okay, you all vote
5 guilty, you understand?

6 PROSPECTIVE JUROR NO. 232: Yes, sir.

7 MR. ORAM: Could you then consider the death
8 penalty?

9 PROSPECTIVE JUROR NO. 232: It's a dark question.

10 MR. ORAM: And I -- I don't have that answer, only
11 you do. And that's what we need to know. Because the State
12 has a right to a fair trial, do you see that? Okay. And Mr.
13 Burns, Mr. Mason, they have a right to a fair trial; right?
14 And so only -- only you as prospective jurors know what the
15 right answer is. So could you consider it or could you never
16 consider it and the State would not get a fair trial?

17 PROSPECTIVE JUROR NO. 232: Is that the only
18 solution, sir, death penalty?

19 MR. ORAM: I'm sorry?

20 PROSPECTIVE JUROR NO. 232: Is that the only
21 solution --

22 MR. ORAM: No.

23 PROSPECTIVE JUROR NO. 232: -- death penalty?

24 MR. ORAM: No. No, there are other solutions. Go
25 to prison never come out, okay.

1 PROSPECTIVE JUROR NO. 232: Uh-huh.

2 MR. ORAM: That's one solution. Go to prison for a
3 long time, maybe -- maybe come out, okay. And the other one
4 is we execute him.

5 PROSPECTIVE JUROR NO. 232: Okay.

6 MR. ORAM: Can you consider all of those if you
7 think the man did it?

8 PROSPECTIVE JUROR NO. 232: Yes, especially if we
9 found that he's guilty.

10 MR. ORAM: Okay.

11 PROSPECTIVE JUROR NO. 232: Which is where -- what
12 I'm telling, sir, is if we are on the right track. You know
13 what I'm talking about; right?

14 MR. ORAM: Yes, I think so. But I just want to make
15 sure we get the same answer twice, okay? And I don't mean to
16 be rude. I just want to make sure because the State is going
17 to get up now that I've done this and ask questions. So let
18 me just sort of stand back. There's two parts to this case,
19 okay.

20 PROSPECTIVE JUROR NO. 232: Yeah.

21 MR. ORAM: The first part is you have to decide
22 whether the man did it, right, whether he - he killed; right?

23 PROSPECTIVE JUROR NO. 232: Uh-huh.

24 MR. ORAM: And you're saying you can do that; right?

25 PROSPECTIVE JUROR NO. 232: Uh-huh.

1 MR. ORAM: And if you do find that the man did it,
2 he killed, he murdered, he's a murderer in the first degree, a
3 bad murderer, could you consider what to do with him including
4 the death penalty, including life without parole?

5 PROSPECTIVE JUROR NO. 232: I'm not sure yet, sir.
6 I want to be honest with you.

7 MR. ORAM: And I appreciate that. So, sir, I'm not
8 sure I can -- you have to tell me the answer. If you say you
9 can't consider the death penalty, if you can just say that.
10 In other words, if you could say to us I'm not giving the
11 death penalty no matter what, okay. Yesterday -- well, I
12 mean, could you ever vote for death? Could you ever say that
13 man is so bad --

14 PROSPECTIVE JUROR NO. 232: If it is necessary to do
15 it, do it.

16 MR. ORAM: Could you do that if it was necessary,
17 could you do it?

18 PROSPECTIVE JUROR NO. 232: Why not?

19 MR. ORAM: Pass for cause.

20 THE COURT: All right. I'm going to deny the
21 challenge.

22 Any additional questions by anybody?

23 MR. ORAM: No, Your Honor.

24 MS. WECKERLY: No, Your Honor.

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

1 THE COURT: All right. Mr. Ramos. Okay.

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

3 THE COURT: Yes.

4 (Bench conference.)

5 MR. SGRO: Your Honor, the parties have reached
6 agreements as to four of the jurors to let them go. They --

7 THE COURT: Numbers?

8 MR. SGRO: 295.

9 THE COURT: Do you want a break and then do it
10 during a break or --

11 MR. ORAM: Let's take a quick break.

12 MR. SGRO: Yeah, whatever you want to do, Judge.

13 THE COURT: Okay.

14 MR. SGRO: We have four that we're going to --

15 (End of bench conference.)

16 THE COURT: Ladies and gentlemen, we're going to
17 take a quick recess for a few minutes. During the recess --
18 just about ten minutes and then we'll invite you back in.
19 Parties have agreed to excuse a couple of the jurors, and then
20 we'll invite the rest of you back in and we'll finish
21 questioning. The Court will be at ease while the jury leaves
22 for about ten minutes. You can use the restrooms that way.

23 (Prospective jurors recessed at 1:46 p.m.)

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

1 All right, counsel. You have a stipulation?

2 MR. SGRO: We do, Your Honor. The parties have
3 agreed to excuse the following four jurors. They are Badge
4 Numbers 280 Maranda Olguin, I believe, Badge No. 315 Michael
5 Daly, Badge No. 289 Alberto Garcia, Badge No. 295 Brandi
6 Brown.

7 MR. DiGIACOMO: That is correct, Yes.

8 THE COURT: Mr. Langford?

9 MR. LANGFORD: That's -- that's correct, Your Honor.
10 I apologize.

11 THE COURT: All right.

12 THE MARSHAL: I'm sorry, Mr. DiGiacomo. You said
13 280, 295, and 315?

14 MR. DiGIACOMO: And 289.

15 MR. SGRO: Yes, and 289.

16 THE MARSHAL: And 289.

17 THE COURT: All right. Mr. Hawks, if you want to
18 excuse those jurors and tell them to go back to the jury
19 commissioner's office. And then when the rest of them have
20 had a chance to use the restroom we will resume.

21 MS. WECKERLY: Your Honor, could we be heard on this
22 last juror. I understand that you denied the challenge for
23 cause, but his last answer was simply if it's necessarily I
24 can do it. But necessary implies confusion about whether or
25 not it's actually a reasonable option. Under Leonard, the

1 question is whether his ability is substantially impaired. He
2 could not give a consistent answer consecutively.

3 THE COURT: I understand that. I think there's a
4 language issue, first of all.

5 MS. WECKERLY: At least.

6 THE COURT: And I -- I don't think he understands
7 what we're doing here. However, in an abundance of caution
8 because he has on his questionnaire indicated the possibility
9 of imposing the death penalty depending upon the
10 circumstances, and because of inconsistent answers and an
11 abundance of caution, because I don't want the Supreme Court
12 to say that I shouldn't have excused him, I'm going to -- or I
13 should have excused him, I'm not going to excuse him. If I do
14 excuse him, the Supreme Court might say I shouldn't have, so
15 we'll let you use a perempt.

16 MS. WECKERLY: Okay. If I -- well, his
17 questionnaire will be part of the record because it's --

18 THE COURT: Oh, yeah, his questionnaire is --

19 MS. WECKERLY: -- it's nearly blank and he doesn't
20 indicate --

21 THE COURT: We're keeping the questionnaires. I'm
22 not too sure where we're going to keep them. I've never done
23 this before, but --

24 THE CLERK: They go with the evidence.

25 THE COURT: Do they?

1 THE CLERK: Uh-huh.

2 MR. SGRO: Yes. They just get marked as a Court
3 exhibit.

4 MR. DiGIACOMO: Right.

5 MR. SGRO: And they get sent off with the --

6 MR. LANGFORD: As a Court exhibit, not a party
7 exhibit.

8 THE COURT: 25 years ago we didn't keep them.

9 MR. DiGIACOMO: I know.

10 MS. WECKERLY: Yeah, we know.

11 MR. DiGIACOMO: For those of us that have retried
12 the cases from 25 years ago, we know.

13 THE COURT: 35 years ago I didn't use them.

14 MR. DiGIACOMO: I prefer not to use them.

15 THE COURT: We were better off not using them, I'm
16 tell you.

17 MR. DiGIACOMO: I agree 100 percent with the Court.

18 THE COURT: Anything further on the record?

19 Everybody gets five minutes to use the restroom, then we're
20 going to resume.

21 MR. ORAM: Thank you, Judge.

22 THE COURT: See if we can get these done this
23 afternoon.

24 (Court recessed at 1:50 p.m. until 1:57 p.m.)

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

1 THE COURT: All right. The record will reflect the
2 prospective jurors are in the box.

3 Does Mr. Hart have -- Good afternoon, Mr. Hart.

4 PROSPECTIVE JUROR NO. 236: Good afternoon.

5 THE COURT: Do know any of the witnesses or the
6 attorneys involved in this case?

7 PROSPECTIVE JUROR NO. 236: No, I do not.

8 THE COURT: You're in gaming?

9 PROSPECTIVE JUROR NO. 236: Yes.

10 THE COURT: And who are you working for now?

11 PROSPECTIVE JUROR NO. 236: The Venetian.

12 THE COURT: And your spouse is in gaming, too?

13 PROSPECTIVE JUROR NO. 236: Yes, she's at Harrah's.

14 THE COURT: And who is she working for?

15 PROSPECTIVE JUROR NO. 236: Harrah's.

16 THE COURT: And how long have you been in gaming?

17 PROSPECTIVE JUROR NO. 236: Over 20 years.

18 THE COURT: Okay. You've worked for different
19 properties?

20 PROSPECTIVE JUROR NO. 236: Yeah.

21 THE COURT: You have a brother that's a corrections
22 officer in New York?

23 PROSPECTIVE JUROR NO. 236: Yes.

24 THE COURT: What kind of a facility is he a
25 corrections officer in?

1 PROSPECTIVE JUROR NO. 236: He's --

2 THE COURT: Or do you know?

3 PROSPECTIVE JUROR NO. 236: He's in a medium-security
4 prison.

5 THE COURT: It's in a prison?

6 PROSPECTIVE JUROR NO. 236: Yes.

7 THE COURT: Okay. And at one time you were attacked
8 by some teenagers?

9 PROSPECTIVE JUROR NO. 236: Yes, last year. I think
10 it was last year. I walk my dog every day in my neighborhood.
11 Some teenagers in the morning drove by yelling something and
12 throwing rocks out of the car. I don't know what it was all
13 about, but they did that.

14 THE COURT: Throwing rocks at you or your dog or
15 both?

16 PROSPECTIVE JUROR NO. 236: Both I assume. They
17 drove by one way yelling something, and then they drove back
18 by throwing rocks out of the car. I don't know what it was
19 about.

20 THE COURT: And did you report that to law
21 enforcement?

22 PROSPECTIVE JUROR NO. 236: I did. I called 9-1-1,
23 but I don't know if anything came out of it.

24 THE COURT: You don't know that -- did the -- did a
25 police officer eventually show up?

1 PROSPECTIVE JUROR NO. 236: I never saw one, no.

2 THE COURT: Okay. Again, you're not going to hold
3 that against --

4 PROSPECTIVE JUROR NO. 236: No.

5 THE COURT: -- anybody involved in this case?

6 PROSPECTIVE JUROR NO. 236: No.

7 THE COURT: Okay. Under our system of criminal
8 justice, you and I are a team, and you've heard me express
9 this before?

10 PROSPECTIVE JUROR NO. 236: Yes.

11 THE COURT: Do you have any quarrel with the
12 principle that you decide the facts, I decide the law, and you
13 reach a fair verdict?

14 PROSPECTIVE JUROR NO. 236: No problem.

15 THE COURT: Do you think you can do that?

16 PROSPECTIVE JUROR NO. 236: Yes.

17 THE COURT: Do you understand the presumption of
18 innocence and the burden on the prosecution to prove the
19 defendant's guilt by evidence beyond a reasonable doubt?

20 PROSPECTIVE JUROR NO. 236: Yes.

21 THE COURT: Do you have any quarrel with that
22 process?

23 PROSPECTIVE JUROR NO. 236: No.

24 THE COURT: If you are one side or the other in this
25 case, would you want 12 citizens of your frame of mind sitting

1 in judgment of the case?

2 PROSPECTIVE JUROR NO. 236: Yes.

3 THE COURT: Ms. Weckerly.

4 MS. WECKERLY: Hi.

5 PROSPECTIVE JUROR NO. 236: Hi.

6 MS. WECKERLY: How are you?

7 PROSPECTIVE JUROR NO. 236: Good. And you?

8 MS. WECKERLY: Good. Thank you. You're a supervisor
9 where you work?

10 PROSPECTIVE JUROR NO. 236: Yes.

11 MS. WECKERLY: How many employees do you supervise?

12 PROSPECTIVE JUROR NO. 236: On a given night,
13 anywhere from eight to 10.

14 MS. WECKERLY: Eight to 10. Have you ever had to
15 discipline an employee?

16 PROSPECTIVE JUROR NO. 236: Yes.

17 MS. WECKERLY: Have you ever had to fire someone?

18 PROSPECTIVE JUROR NO. 236: No.

19 MS. WECKERLY: When you're in charge of the
20 discipline, is that -- you know, I'm sure it's not your
21 favorite part of your job, but is that part of the job that
22 kind of goes along with being the supervisor, and so you can
23 get through that?

24 PROSPECTIVE JUROR NO. 236: It's part of the job,
25 yeah.

1 MS. WECKERLY: Okay. Because you were the victim of
2 a crime, is there anything about that that you would hold
3 against the defendants?

4 PROSPECTIVE JUROR NO. 236: No.

5 MS. WECKERLY: It's a separate incident?

6 PROSPECTIVE JUROR NO. 236: Right.

7 MS. WECKERLY: And you had sort of an interesting
8 answer about whether or not you thought there was prejudice in
9 this country, and you said you think probably everybody has a
10 little bit.

11 PROSPECTIVE JUROR NO. 236: I think so.

12 MS. WECKERLY: Why is that?

13 PROSPECTIVE JUROR NO. 236: I just -- it's what I've
14 seen in my lifetime.

15 MS. WECKERLY: Okay.

16 PROSPECTIVE JUROR NO. 236: You know, where I've
17 been, what I've seen.

18 MS. WECKERLY: And everybody kind of comes into the
19 courtroom with different experiences and, you know, different
20 backgrounds and different beliefs, but can you assure us that
21 what you will decide this case upon if you're selected to be a
22 juror is what you hear from the witness stand and the law the
23 Judge gives you?

24 PROSPECTIVE JUROR NO. 236: Yes.

25 MS. WECKERLY: Put whatever -- I don't know --

1 thoughts or feelings or prejudices that you may have outside
2 the door and decide it based on the law and the facts that you
3 hear?

4 PROSPECTIVE JUROR NO. 236: Yes.

5 MS. WECKERLY: Your feelings about the death penalty
6 are what?

7 PROSPECTIVE JUROR NO. 236: If it's appropriate, I
8 believe it's a punishment that is -- is okay.

9 MS. WECKERLY: Is -- I mean, is it something that
10 you've thought about before, like if that type of punishment
11 serves a purpose?

12 PROSPECTIVE JUROR NO. 236: Yes.

13 MS. WECKERLY: Can you conceive of a situation where,
14 you know, that would be a just punishment given the gravity of
15 the crime that was committed?

16 PROSPECTIVE JUROR NO. 236: Yes.

17 MS. WECKERLY: The flip side of that, are there cases
18 of first-degree murder where you think, you know what, this is
19 not the worst-of-the-worst-type situation; I think someone
20 like that should be entitled to have a look at the parole
21 board?

22 PROSPECTIVE JUROR NO. 236: Yes.

23 MS. WECKERLY: You've heard us talk about how this is
24 a two-step process, and if we get to the second phase, you'll
25 be presented with different information and different law.

1 Can you reserve making a decision about what you think the
2 punishment should be until you hear all that information?

3 PROSPECTIVE JUROR NO. 236: Yes.

4 MS. WECKERLY: As you sit here now, you're not
5 predisposed to one of the four?

6 PROSPECTIVE JUROR NO. 236: No.

7 MS. WECKERLY: And as to Mr. Mason, obviously it's
8 one of the three choices --

9 PROSPECTIVE JUROR NO. 236: Right.

10 MS. WECKERLY: -- excluding the death penalty. What
11 are your feelings about how drugs interact or play a role in
12 criminal activity? Do you have thoughts about that?

13 PROSPECTIVE JUROR NO. 236: You know, I think each
14 case is individual. I believe that drugs probably go along
15 with crime, but, you know, I'm not saying the two are always
16 together.

17 MS. WECKERLY: Yes. I mean, they're intermixed
18 certainly quite a bit in criminal activity.

19 PROSPECTIVE JUROR NO. 236: Yes.

20 MS. WECKERLY: And certainly some possession of drugs
21 themselves is criminal. What about accountability for people
22 that choose to ingest drugs and maybe commit crimes after
23 that, is that, I guess, an excuse, or does that mitigate the
24 crime, or what do you think about that?

25 PROSPECTIVE JUROR NO. 236: I think they need to be

1 held accountable.

2 MS. WECKERLY: Okay. What about people who are
3 actually committing a crime themselves, and then become a
4 victim of a crime, are they entitled to protection of the law
5 as well?

6 PROSPECTIVE JUROR NO. 236: Yes.

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

9 PROSPECTIVE JUROR NO. 236: No.

10 MS. WECKERLY: Would you like to serve as a juror, or
11 do you pretty much have the same sentiment --

12 PROSPECTIVE JUROR NO. 236: I'm pretty much the same
13 sentiment as everyone else.

14 MS. WECKERLY: Okay. You probably have more pressing
15 needs in your own life. If we do impose upon you, can we
16 count on you to give us your full attention throughout the
17 weeks that we're in trial?

18 PROSPECTIVE JUROR NO. 236: Absolutely.

19 MS. WECKERLY: Thank you very much, sir. We'll pass
20 for cause.

21 MR. SGRO: Good afternoon, sir.

22 PROSPECTIVE JUROR NO. 236: Good afternoon.

23 MR. SGRO: So you've heard many of the questions and
24 answers, and as you can see, because of that, the questioning
25 is going a lot smoother, a lot quicker. I have a couple

1 things to go over with you based on the questionnaire that you
2 filled out.

3 So relative to the questions about prejudice, et
4 cetera, you had an incident after the Trayvon Martin case
5 concluded. Can you tell me about that.

6 PROSPECTIVE JUROR NO. 236: Yeah, it was the morning
7 after the judgment came out, and there was a car full of young
8 men driving by, and, like I said, I was walking my dog. It
9 was barely sunrise, and they drove by. I did hear the name
10 Trayvon Martin when they were screaming. They yelled
11 something else out of the car. I couldn't really understand
12 what they were saying, but then they drove by once, and I
13 dismissed it, and then they drove by again and threw rocks.

14 MR. SGRO: Okay. And so you put in your
15 questionnaire that was a situation where you had been a victim
16 of racial prejudice because you are white, right?

17 PROSPECTIVE JUROR NO. 236: Right.

18 MR. SGRO: And so you put that together based on
19 what, the utterance of Trayvon Martin as they drove past?

20 PROSPECTIVE JUROR NO. 236: Right.

21 MR. SGRO: Got it. And it was a group of
22 African-American teens in the car?

23 PROSPECTIVE JUROR NO. 236: It was.

24 MR. SGRO: Okay. And how long ago was that?

25 PROSPECTIVE JUROR NO. 236: Whenever the -- when the

1 Trayvon Martin case ended. I don't remember.

2 MR. SGRO: Maybe within a year or something?

3 PROSPECTIVE JUROR NO. 236: Yeah.

4 MR. SGRO: Okay. And obviously you understand from
5 our perspective -- clearly Mr. Burns is African American. He
6 was 18 at the time these events are alleged to have occurred.
7 So he's an African-American teen, right?

8 PROSPECTIVE JUROR NO. 236: Right.

9 MR. SGRO: Okay. So we want to make sure that you're
10 able to leave that at the door as you walk in.

11 PROSPECTIVE JUROR NO. 236: Absolutely.

12 MR. SGRO: Okay. No quarrel with that at all?

13 PROSPECTIVE JUROR NO. 236: No.

14 MR. SGRO: Okay. Now, the -- and, again, you
15 understand the predicates of everything I'm going to tell you
16 about why we have to talk about penalty. We don't think we're
17 going to get there and all of that stuff.

18 PROSPECTIVE JUROR NO. 236: Right.

19 MR. SGRO: Do you understand that?

20 PROSPECTIVE JUROR NO. 236: I understand.

21 MR. SGRO: And I had a prior discussion with another
22 juror about what they had on their questionnaire that gave us
23 a little pause, and so I have a similar -- similar question
24 for you. It's clear to you by now that the State and the
25 defense both are entitled to a fair trial?

1 PROSPECTIVE JUROR NO. 236: Yes.

2 MR. SGRO: And now you have seen in this courtroom
3 people leave because they could not consider the death
4 penalty, right?

5 PROSPECTIVE JUROR NO. 236: Right.

6 MR. SGRO: And you have seen people leave just very
7 recently because he was biased towards police and couldn't be
8 fair to the defense, right?

9 PROSPECTIVE JUROR NO. 236: Right.

10 MR. SGRO: Okay. It doesn't make them bad people,
11 just that they're bad jurors for this case, but they can go to
12 a car accident case or a breach of contract or something else,
13 and they'll be just fine, right?

14 PROSPECTIVE JUROR NO. 236: Understood.

15 MR. SGRO: Okay. So given that, one of the things
16 that again we are forced to talk about is this notion of the
17 death penalty and what your personal feelings are on it, and
18 in your questionnaire, you reflected that if you take a life
19 you basically forfeit yours, and those are my words, not
20 yours, but that's essentially what you said. Would that be
21 about right?

22 PROSPECTIVE JUROR NO. 236: Depending on
23 circumstances, yes.

24 MR. SGRO: Okay. So the depending on the
25 circumstances part is what I want to talk to you about because

1 some people -- and you've heard some of it today.
2 Self-defense, for example, you're not guilty of anything if
3 you act in self-defense. That's the law in our state. So you
4 have to take away self-defense and things like that. When you
5 say depending on the circumstances, the circumstances really
6 are a first-degree murder conviction, right?

7 PROSPECTIVE JUROR NO. 236: Uh-huh.

8 MR. SGRO: Yes?

9 PROSPECTIVE JUROR NO. 236: Yes.

10 MR. SGRO: Okay. So we have to put ourselves
11 mentally in a place where -- you read that factual predicate,
12 right? A 12-year-old little girl got shot; a 28-year-old
13 woman was shot and killed, right?

14 PROSPECTIVE JUROR NO. 236: Right.

15 MR. SGRO: Okay. Now, there is a first-degree murder
16 conviction, right? So this isn't some crazy accident or
17 someone who used a car, you know, out of control,
18 self-defense. Those things really -- that's not what we're
19 dealing with here. We're talking about first-degree murder
20 conviction. In that circumstance, okay, are you of the
21 mindset that can say, you know what, I recognize there was a
22 shooting; I recognize it's first-degree murder; that person
23 deserves to be back on the street someday?

24 PROSPECTIVE JUROR NO. 236: Yes.

25 MR. SGRO: Okay. Can you give me your best argument

1 for life with the possibility of parole or life for a term of
2 years? In other words, give me your best argument why someone
3 who's convicted of first-degree murder should be able to walk
4 the streets again.

5 PROSPECTIVE JUROR NO. 236: Well, it depends on how
6 the murder took place. You know, where they -- is it somebody
7 that can be rehabilitated? Or is it somebody that they're
8 going to do that again? You know, I take each case
9 individual.

10 MR. SGRO: Okay. And again, I apologize for pressing
11 you, but you understand when I'm reading that --

12 PROSPECTIVE JUROR NO. 236: Yes.

13 MR. SGRO: Okay. You also made some comments about
14 the unfairness in terms of why you would lean towards death
15 penalty and fairness of someone accused of a crime getting to
16 see their family or friends someday down in the future, and
17 the person that was shot and killed, they don't have that
18 luxury?

19 PROSPECTIVE JUROR NO. 236: Right.

20 MR. SGRO: And again, I'm trying to get a feel for
21 where you're at, you know, based on your beliefs. Is that
22 something that you wrote just -- should I take that as a
23 commentary as opposed to this is why I could never let
24 somebody back out? Do you follow what I'm saying?

25 PROSPECTIVE JUROR NO. 236: I do understand what

1 you're saying. No, I -- in certain cases, I believe that
2 that's -- would be my reason for, you know, executing someone,
3 you know, but that doesn't necessarily mean that crime fits
4 that punishment. Like I said, if the person is going to do
5 that again, absolutely, I think execution would be the right
6 thing, but if it's somebody who could be rehabilitated, you
7 know, maybe there were mitigating circumstances in the case, I
8 could see rehabilitation.

9 MR. SGRO: Okay. And you understand it would be
10 probably not a pleasant society if people came in here
11 chomping at the bit to execute somebody?

12 PROSPECTIVE JUROR NO. 236: Oh, I don't think it's a
13 good thing, no.

14 MR. SGRO: Right. And you understand, too, that it
15 would probably an odd society if people were chomping at the
16 bit to let people free as well, right? You have to weigh
17 these things individually, fair?

18 PROSPECTIVE JUROR NO. 236: Absolutely.

19 MR. SGRO: Okay. So any trouble you have considering
20 each of those four forms of punishment relative to Mr. Burns?

21 PROSPECTIVE JUROR NO. 236: No.

22 MR. SGRO: Okay. Ms. Weckerly asked you about you
23 being a supervisor and discipline. You may have guessed I'm
24 going to ask you about resolving conflicts. Okay. Have you
25 -- you've had to discipline before, right?

1 PROSPECTIVE JUROR NO. 236: Yes.

2 MR. SGRO: Have you ever had a situation where you
3 had to investigate -- and I'm not talking with, you know, a
4 magnifying glass and sketch pads -- but investigate in the
5 sense that you're asking different people what happened?

6 PROSPECTIVE JUROR NO. 236: Yes.

7 MR. SGRO: Okay. Have you been put in a position
8 where you had to resolve a conflict where people said
9 different things to you?

10 PROSPECTIVE JUROR NO. 236: Yes.

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

12 PROSPECTIVE JUROR NO. 236: Yes.

13 MR. SGRO: In the situations you've had where you had
14 to resolve conflicts, did you look to things outside of what
15 they told you?

16 PROSPECTIVE JUROR NO. 236: Yes.

17 MR. SGRO: So, for example, you are going to be put
18 in a position here where I'm going to predict for you things
19 that come from the witness stand are going to be different.
20 All right. And we're going to come to you at the end of this
21 case and tell you, someone came in, swore tell the truth --
22 and you know the conversation we've had, right? We all -- and
23 I'm sure you do, too. When someone swears to tell the truth
24 in the courtroom, we're hoping that they're going to be
25 honest, right?

1 PROSPECTIVE JUROR NO. 236: Right.

2 MR. SGRO: And we're going to come to you at the end
3 and say, you know what, some people in this case swore to tell
4 the truth and flat out lied to you. Do you feel comfortable
5 making those decisions?

6 PROSPECTIVE JUROR NO. 236: Yes.

7 MR. SGRO: And is it possible for someone to take the
8 integrity of the oath but still flat out lie?

9 PROSPECTIVE JUROR NO. 236: Yes.

10 MR. SGRO: Can a police officer lie under oath? Is
11 that possible?

12 PROSPECTIVE JUROR NO. 236: I believe so.

13 MR. SGRO: Can they be mistaken?

14 PROSPECTIVE JUROR NO. 236: Yes.

15 MR. SGRO: You've heard the adage I've thrown out
16 there, where there's smoke there's fire. Do you understand
17 that that's not a reconcilable kind of thing here because Mr.
18 Burns is presumed innocent? Do you recognize that?

19 PROSPECTIVE JUROR NO. 236: Yes.

20 MR. SGRO: Okay. And do you have any quarrel with
21 that?

22 PROSPECTIVE JUROR NO. 236: No.

23 MR. SGRO: When it comes to the question of the
24 11-to-one situation -- now, you're a supervisor. So you have
25 leadership skills. I'm going to guess that if 11 people saw

1 it one way and you saw it another, you're probably going to be
2 able to stand firm on your position?

3 PROSPECTIVE JUROR NO. 236: Absolutely.

4 MR. SGRO: All right. So we have the benefit from
5 you that you're going to commit to give Mr. Burns your
6 individual opinion?

7 PROSPECTIVE JUROR NO. 236: Yes.

8 MR. SGRO: Given the caveat as I've discussed with
9 others, you can always realize you missed something, or
10 something is brought to your attention; you understand that?

11 PROSPECTIVE JUROR NO. 236: Yes.

12 MR. SGRO: Okay. But you're not going to change for
13 the sake of being in the majority?

14 PROSPECTIVE JUROR NO. 236: No.

15 MR. SGRO: Do you watch any of these TV shows, these
16 science shows?

17 PROSPECTIVE JUROR NO. 236: I've seen it.

18 MR. SGRO: You know where I'm going. Do you think
19 that there is a place for science in the courtroom?

20 PROSPECTIVE JUROR NO. 236: Yes.

21 MR. SGRO: And would you agree with me that science
22 typically does not have an agenda or a motive to lie?

23 PROSPECTIVE JUROR NO. 236: I would agree.

24 MR. SGRO: In other words, it is what it is?

25 PROSPECTIVE JUROR NO. 236: Right.

1 MR. SGRO: Have you ever heard this term plea
2 bargain? plea agreement?

3 PROSPECTIVE JUROR NO. 236: I've heard it.

4 MR. SGRO: Would you agree that that may provide a
5 motive for fabrication?

6 PROSPECTIVE JUROR NO. 236: Yes.

7 MR. SGRO: And would you be prepared to evaluate
8 someone under the -- under the rubric of, well, this person
9 has agreed to work with the State? Would that be something
10 you would consider?

11 PROSPECTIVE JUROR NO. 236: Yes.

12 MR. SGRO: Do you understand the theoretical
13 situation where the State could call a hundred witnesses, and
14 we don't ask any questions, and they don't meet their burden
15 of proof?

16 PROSPECTIVE JUROR NO. 236: Yes.

17 MR. SGRO: And do you have any trouble with coming
18 back with a not guilty verdict?

19 PROSPECTIVE JUROR NO. 236: No.

20 MR. SGRO: And I'll ask you -- and, again, because of
21 your position, you are called upon to solve problems, figure
22 it out, right?

23 PROSPECTIVE JUROR NO. 236: Yes.

24 MR. SGRO: In this particular case, your only job
25 will be to decide whether or not the State has met their

1 burden of proof, okay?

2 PROSPECTIVE JUROR NO. 236: Yes.

3 MR. SGRO: And you understand the difference between
4 deciding that and being given the responsibility of figuring
5 out what actually happened?

6 PROSPECTIVE JUROR NO. 236: Yes, I understand.

7 MR. SGRO: Can you leave that other at the door?

8 PROSPECTIVE JUROR NO. 236: Yes.

9 MR. SGRO: And just focus on this and can you
10 appreciate from my perspective how that might be frustrating
11 for you, that you might be tempted to go solve it, right?

12 PROSPECTIVE JUROR NO. 236: I wouldn't be tempted,
13 no.

14 MR. SGRO: You would not, okay.

15 PROSPECTIVE JUROR NO. 236: No.

16 MR. SGRO: I just wanted that assurance. That's all.
17 Do you own a cell phone?

18 PROSPECTIVE JUROR NO. 236: Yes.

19 MR. SGRO: You've heard all the questions about the
20 cell phone?

21 PROSPECTIVE JUROR NO. 236: Yes.

22 MR. SGRO: Have you ever gone through your bill
23 carefully?

24 PROSPECTIVE JUROR NO. 236: Yes.

25 MR. SGRO: Okay. And have you ever noticed any

1 mistakes?

2 PROSPECTIVE JUROR NO. 236: No, not really.

3 MR. SGRO: Have you ever -- you know the conversation
4 with people I've had about, hey, you never responded to my
5 voice mail, all those things?

6 PROSPECTIVE JUROR NO. 236: Yeah.

7 MR. SGRO: Has that happened to you?

8 PROSPECTIVE JUROR NO. 236: Yes, that has happened.

9 MR. SGRO: Okay. The questions about eyewitness
10 identification, have you ever been mistaken for somebody?

11 PROSPECTIVE JUROR NO. 236: Yes, I have.

12 MR. SGRO: And have you ever in turn mistaken someone
13 else?

14 PROSPECTIVE JUROR NO. 236: Yes.

15 MR. SGRO: Will you be able to understand that people
16 come in with everyday life experiences, for example, the car
17 accident? You know, you're sitting with your buddy; there's
18 something that happens, whether it's a car accident, or you
19 were watching a basketball game or whatever it is; people see
20 things different. Can you agree with that?

21 PROSPECTIVE JUROR NO. 236: I agree.

22 MR. SGRO: Okay. And will you be able to take what
23 you hear from the witness stand and understand that they too
24 may have life experiences which may render their version maybe
25 not so accurate?

1 PROSPECTIVE JUROR NO. 236: Yes.

2 MR. SGRO: Have you ever been accused of something
3 you didn't do?

4 PROSPECTIVE JUROR NO. 236: Yes.

5 MR. SGRO: When was the last time?

6 PROSPECTIVE JUROR NO. 236: When I was a kid.

7 MR. SGRO: When you were a kid?

8 PROSPECTIVE JUROR NO. 236: Yeah.

9 MR. SGRO: Okay. Not -- fortunately not as an adult?

10 PROSPECTIVE JUROR NO. 236: No.

11 MR. SGRO: Do you think you'd hold it against Mr.
12 Burns if he made an election to not testify?

13 PROSPECTIVE JUROR NO. 236: No.

14 MR. SGRO: Why not?

15 PROSPECTIVE JUROR NO. 236: That's his choice.

16 MR. SGRO: Can you think of a reason why someone
17 who's not guilty would elect to not testify?

18 PROSPECTIVE JUROR NO. 236: Like other people said,
19 maybe he's nervous. Maybe how, you know, he might say the
20 wrong thing, make himself look guilty when he's not. I don't
21 know.

22 MR. SGRO: Okay. Would the fact that he was 18 at
23 the time of these events, could that be a possible reason?

24 PROSPECTIVE JUROR NO. 236: That could be a possible
25 reason.

1 MR. SGRO: Thank you, sir.

2 PROSPECTIVE JUROR NO. 236: Thank you.

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

4 THE COURT: All right. Mr. Langford.

5 MR. LANGFORD: It's a new row. So I might as well
6 say something this time. You've heard before though, I talked
7 about two trials, one set of witnesses, one set of exhibits,
8 one set of facts, right?

9 PROSPECTIVE JUROR NO. 236: Yes.

10 MR. LANGFORD: Okay. Do you have a problem with
11 that?

12 PROSPECTIVE JUROR NO. 236: No.

13 MR. LANGFORD: Pretty sure you understand the concept
14 that you've got to evaluate each person individually?

15 PROSPECTIVE JUROR NO. 236: Yes.

16 MR. LANGFORD: And weigh the evidence, whatever the
17 evidence is, against that person only?

18 PROSPECTIVE JUROR NO. 236: Right.

19 MR. LANGFORD: Okay. And just because you find one
20 person guilty in this trial doesn't mean you have to find the
21 other?

22 PROSPECTIVE JUROR NO. 236: Right.

23 MR. LANGFORD: Possibly you could find them both not
24 guilty?

25 PROSPECTIVE JUROR NO. 236: Possibly.

1 MR. LANGFORD: Any problem?

2 PROSPECTIVE JUROR NO. 236: No.

3 MR. LANGFORD: Likewise, you know, the State is
4 seeking to execute Mr. Burns but not Mr. Mason, my client.
5 The maximum penalty is life without. Do you feel that you'll
6 give him as much consideration as he would give -- because
7 we've been talking about the death penalty here, you know, but
8 -- so I'm just sitting there twiddling my thumbs because that
9 has nothing to do with my client. Do you understand?

10 PROSPECTIVE JUROR NO. 236: Yes.

11 MR. LANGFORD: Okay. I need you to be able to say,
12 but I'm going to give your client the same consideration that
13 I would give Mr. Burns, just a different penalty is possible.

14 PROSPECTIVE JUROR NO. 236: Yes.

15 MR. LANGFORD: You're okay with that?

16 PROSPECTIVE JUROR NO. 236: Yes.

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

18 THE COURT: Thank you, Mr. Langford. And thank you,
19 Mr. Hart. If you'd hand that microphone to Mrs. -- is it
20 Coburn?

21 PROSPECTIVE JUROR NO. 237: Kobrin.

22 THE COURT: Tell me about yourself, Ms. Kobrin. Do
23 you -- well, first of all, are you acquainted with any of the
24 attorneys or witnesses involved in the case?

25 PROSPECTIVE JUROR NO. 237: I'm not.

1 THE COURT: And it says you either are or were a
2 teacher. Are you retired?

3 PROSPECTIVE JUROR NO. 237: It was a short career, 15
4 years. So I've been retired a long time.

5 THE COURT: 15 years?

6 PROSPECTIVE JUROR NO. 237: Uh-huh.

7 THE COURT: Okay. But you're retired now?

8 PROSPECTIVE JUROR NO. 237: Yes.

9 THE COURT: What were you teaching?

10 PROSPECTIVE JUROR NO. 237: I taught reading, and I
11 worked in adult education in the community college system.

12 THE COURT: Junior colleges?

13 PROSPECTIVE JUROR NO. 237: Uh-huh.

14 THE COURT: How about your husband?

15 PROSPECTIVE JUROR NO. 237: He was an executive with
16 the Wirtz Beverage, which is a beverage distributor here in
17 town.

18 THE COURT: All right. And you're both retired now?

19 PROSPECTIVE JUROR NO. 237: Yes, he just retired.

20 THE COURT: What you do now that you're retired?

21 PROSPECTIVE JUROR NO. 237: New puppy.

22 THE COURT: Is that right?

23 PROSPECTIVE JUROR NO. 237: Yes.

24 THE COURT: What kind of puppies?

25 PROSPECTIVE JUROR NO. 237: A Belgian Malinois and we

1 have a lab, a yellow lab.

2 THE COURT: Those are big dogs?

3 PROSPECTIVE JUROR NO. 237: Both. My house is a
4 kennel.

5 THE COURT: Okay. You indicated that you have a son
6 who is in the DUI program here?

7 PROSPECTIVE JUROR NO. 237: That's correct. He's a
8 year and a half into the program.

9 THE COURT: That's a third-offense program, and if
10 they behave themselves for three years, they reduce it down to
11 a second offense and put them on probation?

12 PROSPECTIVE JUROR NO. 237: No, it's the felony DUI
13 program, and if he completes the three years, then it's
14 reduced to a misdemeanor, and he's completed the program.

15 THE COURT: Okay. I haven't -- I did that years ago.
16 It has been years since I have been asked to do that program.

17 PROSPECTIVE JUROR NO. 237: No. He was fortunate.

18 THE COURT: I think they've changed it a little bit
19 in the last few years, but how's your son doing?

20 PROSPECTIVE JUROR NO. 237: He's doing well. Thank
21 you.

22 THE COURT: How long has he been in the program?

23 PROSPECTIVE JUROR NO. 237: A year and a half.

24 THE COURT: Okay. Well, I wish him well. I hope he
25 succeeds. Do you like the program? Do you think it's a good

1 one?

2 PROSPECTIVE JUROR NO. 237: I think he was extremely
3 fortunate, and we were very grateful for it. He is bipolar,
4 which has nothing to do with the drinking -- well, it has
5 something to do with the drinking, but I'm aware that he had
6 an opportunity that many people don't get.

7 THE COURT: Okay. Do you understand that this is a
8 totally different kind of case than the cases that your son
9 was involved in?

10 PROSPECTIVE JUROR NO. 237: I do.

11 THE COURT: And do you think you could be a fair
12 juror in the case?

13 PROSPECTIVE JUROR NO. 237: Actually, I don't. Upon
14 reflection, I may have misled the Court on my response because
15 I indicated I believe in capital punishment, but when it comes
16 to belling the cat, I don't think I can vote for it. I read
17 the description of the crime and thought that might be
18 appropriate if the things -- you know, depending on the facts
19 of the case.

20 THE COURT: You're telling me that under no
21 circumstances would you consider the death penalty?

22 PROSPECTIVE JUROR NO. 237: That's correct.

23 THE COURT: You checked here that, well, you agree
24 with it. You might be able to vote for it in a proper case,
25 and you're telling me that if you found the defendant Burns,

1 who's only one charged with not only murder but they've sought
2 the death penalty, if you found him guilty of murder in the
3 first degree, the only punishment you would consider would be
4 the death penalty?

5 PROSPECTIVE JUROR NO. 237: That's not correct. I
6 don't believe I could actually vote for the death penalty.

7 THE COURT: Tell me about that.

8 PROSPECTIVE JUROR NO. 237: Maybe I misunderstood
9 your question. I don't believe I personally could vote for
10 the death penalty.

11 THE COURT: You don't think you could vote for it?

12 PROSPECTIVE JUROR NO. 237: No, I do not.

13 THE COURT: No matter what?

14 PROSPECTIVE JUROR NO. 237: No matter what. I feel
15 like I am not very courageous morally because maybe it should
16 be happening in some cases.

17 THE COURT: Are there some circumstances --

18 PROSPECTIVE JUROR NO. 237: No, I can't.

19 THE COURT: -- in this world where you think --

20 PROSPECTIVE JUROR NO. 237: No.

21 THE COURT: -- the death penalty would be an
22 appropriate punishment?

23 PROSPECTIVE JUROR NO. 237: Well, in extreme -- I'm
24 thinking of Hitler and --

25 THE COURT: Okay. There are some circumstances then?

1 PROSPECTIVE JUROR NO. 237: Yes.

2 THE COURT: Okay. Do you wish to examine?

3 MR. DiGIACOMO: Well, we would challenge. Would
4 would you like me to -- I'll ask her a few questions.

5 Ma'am, I imagine when you came down and filled out
6 the questionnaire you were filling out the questionnaire kind
7 of in the abstract; would that be fair?

8 PROSPECTIVE JUROR NO. 237: That's very correct.

9 MR. DiGIACOMO: Okay. Now that you've been in a
10 courtroom for the better part of five or six hours now, this
11 is a very real situation, correct?

12 PROSPECTIVE JUROR NO. 237: Yes.

13 MR. DiGIACOMO: This is not: In the abstract, do I
14 believe that the penalty might be appropriate? This is: Can
15 I actually envision myself in some circumstances voting for
16 the death penalty?

17 PROSPECTIVE JUROR NO. 237: That's correct. And it's
18 also a lifelong value that I've held. I just thought -- as
19 we've seen an increase in crime -- on that day it was an
20 egregious description, and I think it was rather a knee-jerk,
21 but when I take a moral inventory, I don't think I can
22 actually vote for it. I know I can't vote for it.

23 MR. DiGIACOMO: And, I mean, you know, there's no
24 wrong answer, and we appreciate that, and ultimately 12 jurors
25 have to be willing to vote for any one of the four

1 possibilities, and if you think back into your mind, hey,
2 look, I had a knee-jerk reaction when I filled out this form,
3 but as I sit say here today, to be honest with the Court and
4 everybody else, I do not envision myself having the ability to
5 do it; would that be a fair characterization of where you're
6 at right now?

7 PROSPECTIVE JUROR NO. 237: Yes, that's correct.

8 MR. DiGIACOMO: Under no circumstances are you going
9 to consider the death penalty?

10 PROSPECTIVE JUROR NO. 237: No.

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

12 MR. SGRO: Very briefly, Your Honor.

13 THE COURT: All right.

14 MR. SGRO: Good afternoon.

15 PROSPECTIVE JUROR NO. 237: Good afternoon.

16 MR. SGRO: So obviously, as we've just discussed with
17 the prior juror, I'm looking at the questionnaire, and I
18 understand what you just said, but it says in the
19 questionnaire in severe or extreme cases that you could
20 consider it, okay. Do you remember when you wrote that?

21 PROSPECTIVE JUROR NO. 237: Yes, I do.

22 MR. SGRO: Okay. So again, using a phrase I just
23 used, it wouldn't be a very great society we had if people
24 were chomping at the bit to impose the death penalty; you
25 would agree with that, right?

1 PROSPECTIVE JUROR NO. 237: Yes.

2 MR. SGRO: Okay. And so it is with I imagine a heavy
3 heart that it's considered by anyone because of the gravity of
4 that penalty, and when the Judge asked you the question, you
5 responded, If someone, you know -- I think you said, Well,
6 Hitler comes to mind, and I know you said that somewhat
7 flippantly, but when I look at your questionnaire and it says,
8 extreme cases, I want to make sure we're clear.

9 We're not calling upon you to tell us that, you know,
10 you've assessed this questionnaire. You've heard us talk, and
11 you're out for this case. You understand that's not what
12 we're asking. We are asking whether or not you as a juror
13 have the ability to consider in the right case -- now, the
14 right case is how you define it, right? And I would imagine
15 everybody is going to say that the right case when it comes to
16 the death penalty, the right case has to be egregious. Ms.
17 Weckerly used the phrase worst of the worst. Do you remember
18 when she said that a few minutes ago?

19 PROSPECTIVE JUROR NO. 237: I do.

20 MR. SGRO: Okay. So what we ask jurors to do is to
21 be able to consider whether or not the death penalty is an
22 option in, like you said, an extreme case. So you have seen
23 people leave because they just can't consider it at all. You
24 have seen people leave because they have said, I could never
25 do a life with parole, right?

1 And so what we've really got to get to the heart of
2 is -- take this case out. Are you of a mindset where you can
3 contemplate a situation where the death penalty would be
4 appropriate?

5 PROSPECTIVE JUROR NO. 237: I can't contemplate a
6 situation where I personally could vote for it. I don't have
7 the --

8 MR. SGRO: Okay. And you understand that that's all
9 that's required of you is your ability to honestly answer, I
10 could consider it, right, in the right set of circumstances?
11 And you understand that quote, unquote, right set of
12 circumstances has got to be as personal -- that's a very
13 personal way of how you define it, right?

14 PROSPECTIVE JUROR NO. 237: Yes, I understand the
15 question, and I personally could not vote for it.

16 MR. SGRO: Okay. Under -- so -- just for clarity --
17 and I apologize, but I just want the record to be clear. Is
18 there a scenario that you can envision where the death penalty
19 would be an appropriate punishment?

20 PROSPECTIVE JUROR NO. 237: There's not one that I
21 could vote for, no.

22 MR. SGRO: Okay. So would the clarity be, yes, I
23 think there are people in the world that deserve the death
24 penalty, right?

25 PROSPECTIVE JUROR NO. 237: Yes.

1 MR. SGRO: But I -- no matter who that person was or
2 what the set of circumstances was, I personally could never
3 cast a vote in favor?

4 PROSPECTIVE JUROR NO. 237: That's an accurate
5 description of what I'm trying to say.

6 MR. SGRO: Okay.

7 MR. LANGFORD: Your Honor, may I approach? May we
8 approach?

9 THE COURT: Yes.

10 (Bench conference.)

11 MR. LANGFORD: I apologize, Judge. I'll make it
12 quick. It occurs to me that I should be making a record
13 because this is a person that would be fine for my client, and
14 I just want to make it on the record that I don't have an
15 objection, and I haven't challenged for cause for my client.
16 This person is constitutionally permissible. I understand the
17 Court has to for -- (inaudible) -- because of the other, but,
18 I mean, I'm worried if the Supreme Court says I was asleep at
19 the wheel and I should've been doing it contemporaneous as
20 they were being dismissed.

21 THE COURT: Maybe you're making your record. I don't
22 know.

23 MR. LANGFORD: I am. That's it. It's just -- that's
24 all I'm doing, Your Honor.

25 THE COURT: I've got to excuse them.

1 MR. SGRO: Yes, he just needs to make that record.

2 THE COURT: All right.

3 (Bench conference ends.)

4 THE COURT: All right. I'm going to excuse you,
5 ma'am. Thank you for being a prospective juror.

6 All right. Is it Mrs. Rhodes?

7 PROSPECTIVE JUROR NO. 247: Yes.

8 THE COURT: Mrs. Rhodes, do you know any of the
9 witnesses or attorneys that are involved in this case?

10 PROSPECTIVE JUROR NO. 247: No, sir.

11 THE COURT: I looked at your questionnaire, and I was
12 uncertain as to who you were working for. You wrote B-O-R,
13 and I don't know what that means.

14 PROSPECTIVE JUROR NO. 247: I apologize. I work for
15 the Department of Interior which is a subagency of Bureau of
16 Reclamation in Boulder city.

17 THE COURT: Okay. What do you do?

18 PROSPECTIVE JUROR NO. 247: I'm a human resource
19 specialist.

20 THE COURT: And what is that?

21 PROSPECTIVE JUROR NO. 247: It depends on what hat
22 I'm wearing. I can deal with discipline, labor relations,
23 hiring, recruiting. It just depends.

24 THE COURT: Okay. And what does the Bureau of
25 Reclamation do in Boulder City. Does it do the dam?

1 PROSPECTIVE JUROR NO. 247: Absolutely. It's Hoover
2 Dam.

3 THE COURT: Okay. How long have you been there?

4 PROSPECTIVE JUROR NO. 247: I've been with Hoover Dam
5 since -- oh, gosh, I lost track of time -- almost two years
6 and then a total of 11 years in federal service.

7 THE COURT: Do you supervise anybody?

8 PROSPECTIVE JUROR NO. 247: No.

9 THE COURT: Okay. What does your husband do?

10 PROSPECTIVE JUROR NO. 247: My husband works with
11 children in the After-School All-Star program.

12 THE COURT: Okay. Is that a particular school he
13 works in?

14 PROSPECTIVE JUROR NO. 247: No, it's a nonprofit
15 organization.

16 THE COURT: All right. And you have four children?

17 PROSPECTIVE JUROR NO. 247: Yes.

18 THE COURT: You indicated in your questionnaire that
19 you were robbed at home a couple of years ago. Was that what
20 you said?

21 PROSPECTIVE JUROR NO. 247: Yes, sir.

22 THE COURT: Tell me about that.

23 PROSPECTIVE JUROR NO. 247: I was driving home from
24 getting some food for one of my kids, and I didn't notice a
25 car was following me home, and when I pulled into my garage, I

1 was robbed at my home, and they caught the guys a few hours
2 later.

3 THE COURT: Tell me what happened.

4 PROSPECTIVE JUROR NO. 247: I was pulling into my
5 garage, and I guess this gentleman -- young man came out of
6 the car.

7 THE COURT: He parked behind you?

8 PROSPECTIVE JUROR NO. 247: No, he parked -- my house
9 is -- I don't know how to explain it. It was, like, 5 o'clock
10 in the afternoon. They parked down -- like, a couple houses
11 down or maybe one house over, and I didn't see them walk into
12 my garage, and he robbed me.

13 THE COURT: Did he have a weapon?

14 PROSPECTIVE JUROR NO. 247: He had -- it looked like
15 a fake gun, but I didn't question it, you know. I've been
16 taught and trained not to do that stuff. You don't ever --

17 THE COURT: Did he ask for money or property?

18 PROSPECTIVE JUROR NO. 247: He just asked for my
19 property. So he grabbed what he could grab and then took off.

20 THE COURT: Did he take anything from your person?

21 PROSPECTIVE JUROR NO. 247: No.

22 THE COURT: He took it from the garage?

23 PROSPECTIVE JUROR NO. 247: He took it out of my car.

24 THE COURT: Out of your car?

25 PROSPECTIVE JUROR NO. 247: Uh-huh.

1 THE COURT: What did you have in your car of value?

2 PROSPECTIVE JUROR NO. 247: My car keys.

3 THE COURT: Okay. Did he take your car?

4 PROSPECTIVE JUROR NO. 247: He couldn't drive a
5 stick. So he couldn't go nowhere. He just jumped back in the
6 other car and left.

7 THE COURT: Okay. Was he a member of the black race?

8 PROSPECTIVE JUROR NO. 247: Yes, he was African
9 American.

10 THE COURT: Do you think that because of that
11 incident you might have a tendency to favor the prosecution in
12 this case?

13 PROSPECTIVE JUROR NO. 247: No, sir, I do not. My
14 husband is African American. No, I do not have a problem.

15 THE COURT: And that's the only time you've been the
16 victim of a crime?

17 PROSPECTIVE JUROR NO. 247: Absolutely.

18 THE COURT: Under our system of criminal justice, I'm
19 the judge of the law, but you are the judge of the facts. I'm
20 not going to tell you how to decide the case. It's up to you
21 to decide what the facts are and apply those to the law and
22 reach a fair verdict. Do you think you can do that?

23 PROSPECTIVE JUROR NO. 247: Yes, sir.

24 THE COURT: All right. Does the State wish to
25 examine?

1 MR. DiGIACOMO: Yes, Your Honor. I'm guessing from
2 the age of your oldest I know what he does, but does he work
3 for the NFL, or is he a player?

4 PROSPECTIVE JUROR NO. 247: He's actually an NFL
5 player. He's on a practice squad.

6 MR. DiGIACOMO: Okay. Is one of his teams still
7 playing?

8 PROSPECTIVE JUROR NO. 247: No.

9 MR. DiGIACOMO: Darn it.

10 PROSPECTIVE JUROR NO. 247: Sore, sore spot.

11 MR. DiGIACOMO: What position does he play?

12 PROSPECTIVE JUROR NO. 247: He's a wide receiver.

13 MR. DiGIACOMO: Okay. You indicated that the
14 criminal justice system generally works, and your only really
15 response as it relates to the criminal justice system is the
16 one time you were a victim. Did he get caught?

17 PROSPECTIVE JUROR NO. 247: Yes. Yes, he got caught
18 a few hours later.

19 MR. DiGIACOMO: Did you have to come to court, or did
20 the case get negotiated?

21 PROSPECTIVE JUROR NO. 247: It's still -- well, I'm
22 not even too sure. I'm not even following up to be frankly
23 honest. I'm just going to let it take its path.

24 MR. DiGIACOMO: It was about two years ago that it
25 happened?

1 PROSPECTIVE JUROR NO. 247: Yes, sir.

2 MR. DiGIACOMO: Did he get caught right away?

3 PROSPECTIVE JUROR NO. 247: A few hours later, my
4 iPhone.

5 MR. DiGIACOMO: Oh, yeah. We can talk about phones.
6 They're very helpful for law enforcement at times.

7 I'm going to jump kind of to the -- to kind of the
8 big questions of the day and see how your answers are.
9 Correct me if I'm wrong, but it seemed like perhaps you were a
10 little emotional after the questioning of the last juror; am I
11 wrong about that?

12 PROSPECTIVE JUROR NO. 247: No, I just wanted to
13 reach out and make sure she was okay because she looked like
14 she was about to cry. So I just -- it's that HR side that
15 wants to comfort for a minute, and then I pull back. That's
16 just who I am.

17 MR. DiGIACOMO: And since you brought up the HR, let
18 me ask you this question. I mean, you probably deal with
19 something not that unusual from a trial situation in the sense
20 that when disciplinary actions come in you have to ferret out
21 what actually happened; people report things that may or may
22 not be true, and ultimately someone has to decide whether or
23 not -- where it goes from there; is that something you're
24 involved in?

25 PROSPECTIVE JUROR NO. 247: Yes, that was something I

1 was involved in. I would look at things, just depending on
2 what the facts were. Sometimes it was in favor for the
3 agency, and then other times it was in favor of the employee.

4 MR. DiGIACOMO: What about employee-to-employee
5 disputes, did you have to get involved in those as well?

6 PROSPECTIVE JUROR NO. 247: Yes, I did.

7 MR. DiGIACOMO: And they would have a tendency to
8 have two different versions of the same story, right?

9 PROSPECTIVE JUROR NO. 247: Yes.

10 MR. DiGIACOMO: You'd have to figure out what the
11 truth was?

12 PROSPECTIVE JUROR NO. 247: Right. And the deal is
13 is if you still can't find the truth, you just -- you can't
14 penalize anybody. You can't hold someone accountable for
15 something that you have no clear-cut dry answer to.

16 MR. DiGIACOMO: Exactly like a courtroom.

17 PROSPECTIVE JUROR NO. 247: Unfortunately, yes.

18 MR. DiGIACOMO: Would that be fair?

19 PROSPECTIVE JUROR NO. 247: Very fair.

20 MR. DiGIACOMO: All right. And at the end of the
21 day, if Ms. Weckerly and I cannot prove that these two
22 individuals committed the crime we accused them of, they get
23 to go home.

24 PROSPECTIVE JUROR NO. 247: Yes, sir.

25 MR. DiGIACOMO: That's the way our system works, and

1 I would assume you believe in that?

2 PROSPECTIVE JUROR NO. 247: Yes, I do.

3 MR. DiGIACOMO: So now I'm going to get to the felony
4 questions. You had some -- I wouldn't say inconsistent but
5 some trepidation with the idea of whether or not the death
6 penalty is a good idea; would you agree with that?

7 PROSPECTIVE JUROR NO. 247: Do I believe in death
8 penalty? Yes. Do I believe it's fair for every case?
9 Absolutely not. It depends. I would be looking at -- at the
10 end, first, is the person guilty or not guilty? If the person
11 was guilty, if he or she was guilty, the question is: What
12 was -- there's a bunch of things I would base it off. I just
13 can't ration out or give you a direct answer, but do I believe
14 in death penalty? Absolutely. Is it the first thing I'd run
15 to? Absolutely not.

16 MR. DiGIACOMO: And you'd agree that perhaps it
17 shouldn't be the first thing you're running to? I mean, some
18 jurors will think maybe in every situation the death penalty
19 applies, but in Nevada, the legislature says, in a
20 first-degree murder case, there's four possible punishments
21 because there are so many different circumstances. Would you
22 agree with that?

23 PROSPECTIVE JUROR NO. 247: I do agree.

24 MR. DiGIACOMO: And are you the type of person who
25 wants to know everything, not only about the crime but maybe

1 the individuals who committed it? their history? their
2 background? other factors that may be relevant?

3 PROSPECTIVE JUROR NO. 247: Yes, all factors.

4 MR. DiGIACOMO: Do you envision a situation where --
5 well, for any one of the four punishments, but would you be
6 willing to consider all four of those punishments?

7 PROSPECTIVE JUROR NO. 247: Yes.

8 MR. DiGIACOMO: And can you envision in your mind any
9 situation, whatever those facts are, in which you could see
10 yourself personally voting for the death penalty?

11 PROSPECTIVE JUROR NO. 247: Yes.

12 MR. DiGIACOMO: And like Mr. Sgro has said or Mr.
13 Oram, we don't expect -- this is a grave, serious endeavor,
14 and we don't expect it to be easy for anybody, either phase to
15 be honest with you because it's important to the State, the
16 victims, obviously the defendants because of the consequences
17 of what could happen. You'd take that seriously; would that
18 be fair?

19 PROSPECTIVE JUROR NO. 247: Yes.

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

21 PROSPECTIVE JUROR NO. 247: Absolutely.

22 MR. DiGIACOMO: If you are sitting either where we
23 were sitting or the defendants were sitting, would you want 12
24 people like yourself?

25 PROSPECTIVE JUROR NO. 247: Yes.

1 MR. DiGIACOMO: Do you think you'd be a good juror?

2 PROSPECTIVE JUROR NO. 247: Absolutely.

3 MR. DiGIACOMO: Thank you very much, ma'am. Judge,
4 we pass for cause.

5 MR. ORAM: Good afternoon.

6 PROSPECTIVE JUROR NO. 247: Good afternoon.

7 MR. ORAM: One question I haven't had an opportunity
8 to ask anyone, in a case like this, you know, we talk in
9 hypotheticals about murder and you're hearing that you're
10 going to hear some horrible facts in the case, okay, but one
11 thing I have thought over the years is somewhat shocking to
12 people, people like yourselves, is that at some point in this
13 trial, maybe even as early as opening argument -- you see
14 these TV screens around here -- we're going to put up
15 photographs, okay, and these photographs are gruesome, okay.

16 And you're going to -- you know, I think people think
17 they've seen Hollywood films. There's death. Oh, that's bad,
18 but I often think when you actually see murder on a picture
19 that it can be very graphic and hurtful. It's upsetting.
20 Although everybody who sits on a jury, on a homicide jury has
21 to look at those, I want to make sure that that's something
22 you would be prepared for, is it?

23 PROSPECTIVE JUROR NO. 247: Yes, sir.

24 MR. ORAM: And now that I've said it, I just wanted
25 to alert people to that fact, and another concern I would have

1 is that when you see pictures like that, there's an injustice.
2 Do you see, there is a natural injustice? If you see somebody
3 who's laying there and they've been murdered -- okay, let's
4 say a gunshot wound. We'll say a gunshot wound to the head --
5 I would think that the average human being thinks, God, look
6 at that. Somebody did that, and, I think naturally it'd make
7 people angry. Does that make sense?

8 PROSPECTIVE JUROR NO. 247: Yes, it makes sense.

9 MR. ORAM: And so the reason I ask you that question
10 is that jurors are supposed to wait until the entire end of
11 the case, hear the law, hear the arguments and go and decide
12 the case and not to prejudge it, not to look at a picture and
13 think, God, that makes me angry, look over at Mr. Burns and
14 say, I think you've done this. You know, that's -- I think
15 can be a gut instinct, but I would want jurors -- and they're
16 supposed to avoid that. Do you think you could hear the whole
17 case and decide the case only on the facts and with the other
18 jurors?

19 PROSPECTIVE JUROR NO. 247: Yes.

20 MR. ORAM: Do you see what my concern is though?

21 PROSPECTIVE JUROR NO. 247: Yes, sir.

22 MR. ORAM: Okay. And that's not specific to you at
23 all. I guess it's to everybody. I just haven't had a chance
24 to say that, and so I want to make sure that, you know, you
25 recognize when you see those pictures that, okay, that murder

1 has happened, and now it's our job to determine whether Mr.
2 Burns and Mr. Mason are guilty of that charge or those charges
3 beyond a reasonable doubt. Do you have any problem with that
4 at all?

5 PROSPECTIVE JUROR NO. 247: No, sir.

6 MR. ORAM: Science, it sounds like you deal with a
7 little bit of science in your job; is that fair?

8 PROSPECTIVE JUROR NO. 247: Just drug testing and
9 fingerprints.

10 MR. ORAM: Okay. Well, that's a science. That is a
11 science, right?

12 PROSPECTIVE JUROR NO. 247: Yes, sir.

13 MR. ORAM: Fingerprints really don't lie.

14 PROSPECTIVE JUROR NO. 247: No.

15 MR. ORAM: And so you think science can be --
16 obviously it's a good tool for law enforcement; would you
17 agree?

18 PROSPECTIVE JUROR NO. 247: Yes.

19 MR. ORAM: But it also can be a really good tool for
20 somebody accused of crime, too, couldn't it?

21 PROSPECTIVE JUROR NO. 247: Yes, sir.

22 MR. ORAM: I'm sure you've heard of cases where
23 somebody was exonerated after years in prison because let's
24 say DNA showed that they weren't guilty?

25 PROSPECTIVE JUROR NO. 247: Yes.

1 MR. ORAM: So in that case science was helpful to
2 both parties because then it made maybe a state or the federal
3 government realize we need to go hunt somebody else?

4 PROSPECTIVE JUROR NO. 247: That's correct.

5 MR. ORAM: And I have heard Mr. Sgro ask this
6 question. I think it's a good question. We as humans can
7 lie, right? We can have motives to lie. We can tell the
8 truth, but we can have motives to lie?

9 PROSPECTIVE JUROR NO. 247: That's correct.

10 MR. ORAM: Not so much with science?

11 PROSPECTIVE JUROR NO. 247: No.

12 MR. ORAM: Like a drug test?

13 PROSPECTIVE JUROR NO. 247: That's correct.

14 MR. ORAM: A drug test, somebody could've done
15 something wrong to falsify the drug test. I don't mean it
16 that way, but if the drug test is done correctly, and the drug
17 test comes back negative, there's nothing about the test that
18 has any motive?

19 PROSPECTIVE JUROR NO. 247: That's correct.

20 MR. ORAM: A fingerprint or DNA may establish that I
21 was at this podium, right? Do you see that?

22 PROSPECTIVE JUROR NO. 247: Yes.

23 MR. ORAM: Maybe my DNA and fingerprints, there's a
24 good chance it could be on this podium, but it doesn't tell
25 you when, does it?

1 PROSPECTIVE JUROR NO. 247: Absolutely not.

2 MR. ORAM: My fingerprint could be here from a week
3 ago?

4 PROSPECTIVE JUROR NO. 247: That's correct.

5 MR. ORAM: So although science doesn't lie, it's
6 something that you'd have to look at very carefully?

7 PROSPECTIVE JUROR NO. 247: That's correct.

8 MR. ORAM: Have you ever been in a situation where
9 you've had to decide whether someone was telling you the
10 truth? And I notice you have quite a few kids, okay.

11 PROSPECTIVE JUROR NO. 247: Yes, that's correct.

12 MR. ORAM: I have some, too, okay, and occasionally
13 you've got this going on, right?

14 PROSPECTIVE JUROR NO. 247: That's right.

15 MR. ORAM: Just for the record, when I say that, kids
16 are pointing the finger at each other, right?

17 PROSPECTIVE JUROR NO. 247: That's correct.

18 MR. ORAM: And in your job have you had situations
19 where you had to determine whether someone was being truthful,
20 or is that not part of the job description?

21 PROSPECTIVE JUROR NO. 247: That's so part of the
22 job.

23 MR. ORAM: It is?

24 PROSPECTIVE JUROR NO. 247: Yes, it is.

25 MR. ORAM: Could you -- rather than me asking any

1 more questions, could you explain that to me.

2 PROSPECTIVE JUROR NO. 247: Well, I mean, for
3 instance there's an allegation. Who's actually telling the
4 truth in the allegation? You have to decipher and pull
5 statements and go through that, and at my job I was
6 responsible for, you know, understanding who is actually
7 really telling the truth or not, and I think it leads back to
8 what I was saying earlier which is, you know, if you can't
9 figure out who's really telling the truth, then you really
10 can't punish anybody. So that's where I was alluding to,
11 yeah.

12 MR. ORAM: I heard you say that. That was an
13 interesting point. That was something that I really heard you
14 say is that basically if you can't figure something out -- if
15 you've got four children and all four are saying, I didn't
16 steal those cookies and maybe three of them are all pointing
17 in different directions, at some point, without anything more,
18 you may not be able to do anything with any of them?

19 PROSPECTIVE JUROR NO. 247: That's correct.

20 MR. ORAM: Well, maybe with kids you just do
21 something to all of them, but it's different here, isn't it?

22 PROSPECTIVE JUROR NO. 247: Yes, sir, it's very
23 different.

24 MR. ORAM: So it sounds like you -- have you ever sat
25 -- you haven't sat as a juror before, have you?

1 PROSPECTIVE JUROR NO. 247: I sat as a jury when I
2 was in Alaska, but I was asked to recuse myself due to the
3 fact that I thought I knew the person.

4 MR. ORAM: Okay. You know, there's going to be
5 people that get up on that witness stand, and, you know, I can
6 get up there and swear to tell the truth, right?

7 PROSPECTIVE JUROR NO. 247: Right.

8 MR. ORAM: And maybe that's what I'm doing. I'm
9 telling the truth, and when you hear the case, you think,
10 yeah, he said it was sunny in Las Vegas. That sounds about
11 right. Okay. You could think I'm telling the truth, right?

12 PROSPECTIVE JUROR NO. 247: Right.

13 MR. ORAM: But I could also get up there, and I could
14 lie through my teeth, couldn't I?

15 PROSPECTIVE JUROR NO. 247: Yes, sir.

16 MR. ORAM: Okay. And there's no lie detector up
17 there; you all become the lie detectors, don't you?

18 PROSPECTIVE JUROR NO. 247: In layman's terms, yes.

19 MR. ORAM: Yes, I guess that's layman's terms. The
20 finders of fact, as the Judge said, you work in concert, and
21 you guys become the finders of fact, okay, and you'd have no
22 difficulty with that whatsoever?

23 PROSPECTIVE JUROR NO. 247: No, sir.

24 MR. ORAM: How about that 11 to one, do you remember
25 Mr. Sgro asked about an 11-to-one situation?

1 PROSPECTIVE JUROR NO. 247: Yes, I do remember.

2 MR. ORAM: Okay. You're a pretty strong-willed
3 person?

4 PROSPECTIVE JUROR NO. 247: I am very strong-willed.
5 What I'd do is when I get to that 11 to one or in a normal
6 debate and any time, I look at my perspective first, lay out
7 everything that I've reviewed and why I came to that
8 conclusion, taking consideration of other peoples'
9 perspective, figure out and make sure I didn't skip over a
10 bump, and if I need to stand fast on my perspective, that's
11 how I stand.

12 MR. ORAM: And that sounds like what we hope jurors
13 will do. You go back there in a room, and you say your
14 opinions but then listen to others. It's not like you just
15 sort of close your ears. I'm not listening, you know, guilty
16 or not guilty. You'd open up to what the other 11 jurors were
17 saying?

18 PROSPECTIVE JUROR NO. 247: That's correct.

19 MR. ORAM: Have you ever heard the term guilt by
20 association?

21 PROSPECTIVE JUROR NO. 247: Lead by association, yes,
22 I have.

23 MR. ORAM: Did I say -- I'm not sure I conveyed that.
24 Guilt by association?

25 PROSPECTIVE JUROR NO. 247: Oh, guilt by association.

1 I thought lead by association.

2 MR. ORAM: No, guilt.

3 PROSPECTIVE JUROR NO. 247: I'm sorry. Guilt by
4 association.

5 MR. ORAM: No. No.

6 PROSPECTIVE JUROR NO. 247: I apply it to my kids.

7 MR. ORAM: How so?

8 PROSPECTIVE JUROR NO. 247: Well, if one gets in
9 trouble and the other one is with them, then you're in
10 trouble, you know. That's just for my kids, but as far as my
11 workwise, I don't do that. Just because you know that person
12 doesn't mean that you're guilty, or if you were with that
13 person, it doesn't mean that you're totally guilty of whatever
14 you did.

15 MR. ORAM: Let me tell you something. In the end,
16 when the closing argument comes, the State is going to ask
17 that you convict Mr. Burns and Mr. Mason. They're going to
18 say that Mr. Burns is the shooter; he's the person that pulled
19 the trigger, okay? And at the end, if you have a doubt that's
20 reasonable and the State -- and you just think, no, I have a
21 doubt that's reasonable that that man is not guilty, can you
22 come in here even knowing how horrible this is and announce a
23 verdict of not guilty?

24 PROSPECTIVE JUROR NO. 247: Yes, sir.

25 MR. ORAM: Okay. You act as though -- and correctly

1 so -- that that's not a big deal. Do you see how -- from my
2 point of view, I always think that must be so hard for an
3 average person to think they would come back in here and
4 somehow there would be a sense of -- that it had not been
5 solved?

6 PROSPECTIVE JUROR NO. 247: No, because I've been
7 just -- since I've been working for the government for 11 plus
8 -- 13 -- actually almost 12, 13 years now, I've just been --
9 you just look at what it is and then don't go any further than
10 what it is. If it's what it -- if it's black-and-white, leave
11 it black-and-white. Don't start looking for the gray. Don't
12 start searching for the purple. It is what it is, and this is
13 what you have to look at, and this is all you can look at.
14 You can't keep digging.

15 MR. ORAM: Now, again, it's that strange concept that
16 we have that, you know -- like I said, there's going to come a
17 point in time where I'll stand up, look every one of you in
18 the eyes and say, they didn't prove this case, okay. You come
19 back in here and you've said, oh, they did. Okay. You come
20 back in here. You look over there -- you don't have to -- but
21 if they did, they proved it, okay. Now, we're in a fight for
22 Mr. Burns's life. Do you see that?

23 PROSPECTIVE JUROR NO. 247: Yes.

24 MR. ORAM: Okay. And so I've got to ask you those
25 questions even though I really -- sometimes my instinct says

1 don't ask the questions because it almost implies that
2 somehow, you know, that we'll lose. Does that make sense?

3 PROSPECTIVE JUROR NO. 247: I understand.

4 MR. ORAM: Okay. It's I suppose like with your son
5 on the practice team. He wanted to make the real team, and
6 he's doing very well, right?

7 PROSPECTIVE JUROR NO. 247: Yes, sir.

8 MR. ORAM: But he would never tell the coach, if I
9 don't make it, could I, you know -- you don't want to talk
10 that way. You're, like, I'm going to make it, right?

11 PROSPECTIVE JUROR NO. 247: Right.

12 MR. ORAM: Okay. If there is a penalty phase in this
13 case, then, as I've explained to some of the jurors, you
14 understand there's no mathematical formula here. It's not
15 like he ran at this speed; the State proved X, Y and Z; you
16 take all these four factors, and therefore we must sentence a
17 person to death; do you understand that?

18 PROSPECTIVE JUROR NO. 247: I understand.

19 MR. ORAM: It's not mathematical at all. It's just
20 your moral feelings of what you think, okay? Does that make
21 sense?

22 PROSPECTIVE JUROR NO. 247: Yes, it makes sense.

23 MR. ORAM: There are rules that the Judge will go
24 over if that happens, but, in the end -- what I'm trying to
25 say is it's not like people -- 12 people would ever come into

1 a court in the State of Nevada and think, we didn't want to
2 kill him; we didn't want to kill him; it said we had to;
3 never, do you see that?

4 PROSPECTIVE JUROR NO. 247: Oh, I understand that.

5 MR. ORAM: Okay. And there are mitigating
6 circumstances and aggravating circumstances that happen in
7 every penalty phase, okay. That means that the jury weighs
8 bad things about the defendant, like the crime, you know, like
9 look at what he did. Look at those photographs. Look at how
10 sorry and sad the victim's family is, okay.

11 And they also -- jurors also have a right to look at
12 anything else. In fact, jurors are instructed to look for
13 anything in mitigation. Do you know what I mean by
14 mitigation?

15 PROSPECTIVE JUROR NO. 247: Yes.

16 MR. ORAM: And so would you be open to hearing all of
17 those different things?

18 PROSPECTIVE JUROR NO. 247: Yes, sir.

19 MR. ORAM: You made it clear that the victimization
20 by whoever did that to you, that has no bearing here?

21 PROSPECTIVE JUROR NO. 247: Oh, absolutely not.

22 MR. ORAM: And I'm going to do it so I don't have to
23 hear Mr. Langford do it with you.

24 There's two different people on trial, okay. You
25 know what I'm going to say. Separate but equal consideration,

1 I think that's the way we say it. Mr. Langford is absolutely
2 right. They're going to have a whole bunch of witnesses, and
3 then the State is going to stand up and say, those witnesses
4 prove Mr. Mason is guilty, and those same set of witnesses
5 prove that Mr. Burns is guilty, and you're just deciding two
6 separate cases, make sense?

7 PROSPECTIVE JUROR NO. 247: Yes, it does.

8 MR. ORAM: And no problem at all?

9 PROSPECTIVE JUROR NO. 247: No, problem.

10 MR. ORAM: Is there anything -- I know we've asked a
11 lot of questions. Is there anything either we didn't ask you
12 or you think you need to tell us about yourself?

13 PROSPECTIVE JUROR NO. 247: No, sir.

14 MR. ORAM: You can look at Mr. Burns and promise him
15 a fair trial?

16 PROSPECTIVE JUROR NO. 247: Absolutely. I can
17 promise both of these gentlemen a fair trial.

18 MR. ORAM: Thank you so much. Pass for cause.

19 THE COURT: All right. Mr. Langford.

20 MR. LANGFORD: Your Honor, I would have said it in a
21 much more charming fashion, but he did ask the same question I
22 would ask. So I'll pass for cause.

23 THE COURT: Okay. All right. Ms. Hart, would you
24 hand the microphone to --

25 Mr. Najera?

1 PROSPECTIVE JUROR NO. 265: Najera, yes.

2 THE COURT: Najera?

3 PROSPECTIVE JUROR NO. 265: Najera.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 265: Najera. It's all right,
6 sir. It is good.

7 THE COURT: It's good? Where are you from, sir?

8 PROSPECTIVE JUROR NO. 265: From Zacatecas, Mexico.

9 THE COURT: And when did you come to the United
10 States?

11 PROSPECTIVE JUROR NO. 265: 1985.

12 THE COURT: And what brings you to Nevada?

13 PROSPECTIVE JUROR NO. 265: I came to California
14 first, and bring me to Nevada is looking for -- I want to buy
15 my house, and I used to live in California. Well, California
16 is very nice, but there's no way you can afford it there.

17 THE COURT: It's expensive living in California, huh?

18 PROSPECTIVE JUROR NO. 265: Yes, so it's the reason
19 bring me here.

20 THE COURT: You are not the only one. Okay. And
21 you're a driver for Acura?

22 PROSPECTIVE JUROR NO. 265: Yes.

23 THE COURT: Okay. And you've been doing that for a
24 lot of years.

25 PROSPECTIVE JUROR NO. 265: I start in 1996 with the

1 company.

2 THE COURT: Okay. You have -- as I wrote it down
3 here, you have five children?

4 PROSPECTIVE JUROR NO. 265: Yes.

5 THE COURT: That's a lot of children.

6 PROSPECTIVE JUROR NO. 265: Yes, nowadays it's a lot.

7 THE COURT: All between the ages of 12 and 37, that's
8 quite a spread?

9 PROSPECTIVE JUROR NO. 265: Yes. Second marriage I
10 have two other ones.

11 THE COURT: I see. One of your children is a police
12 officer?

13 PROSPECTIVE JUROR NO. 265: A probation officer.

14 THE COURT: Oh, he's a probation officer?

15 PROSPECTIVE JUROR NO. 265: Yes.

16 THE COURT: Okay. Does he work for the Department of
17 Parole and Probation here?

18 PROSPECTIVE JUROR NO. 265: Yes.

19 THE COURT: Okay. What does he do? Does he write
20 reports, or does he supervise probationers, or do you know?

21 PROSPECTIVE JUROR NO. 265: He is looking for the --
22 it's the inspection, all the bad people. You know, all the
23 bad people, he's -- sometimes it's 1 o'clock in the morning
24 and he have to catch them at that hours.

25 THE COURT: Okay. So he's actually supervising

1 individuals?

2 PROSPECTIVE JUROR NO. 265: Yes, supervisor.

3 THE COURT: Some of the department probation officers
4 write reports. That's all they do.

5 PROSPECTIVE JUROR NO. 265: Okay. No, he supervises.

6 THE COURT: He's out there supervising the
7 individuals, okay. Do you think that because you have a son
8 that's a probation officer that that would have a bearing upon
9 your ability to be fair in a case like this?

10 PROSPECTIVE JUROR NO. 265: No.

11 THE COURT: All right. You also indicated you had a
12 background in law enforcement yourself?

13 PROSPECTIVE JUROR NO. 265: Not myself.

14 THE COURT: Not yourself?

15 PROSPECTIVE JUROR NO. 265: My -- my daughter.

16 THE COURT: Maybe I misunderstood.

17 PROSPECTIVE JUROR NO. 265: Yes.

18 THE COURT: Just your son, is that right?

19 PROSPECTIVE JUROR NO. 265: Yes, and my daughter, she
20 work for the prison.

21 THE COURT: Oh, your daughter works for the prison?

22 PROSPECTIVE JUROR NO. 265: Yes.

23 THE COURT: Oh, I didn't have that down here. You
24 have one son in the army?

25 PROSPECTIVE JUROR NO. 265: Yeah.

1 THE COURT: And then you've got -- is that the 37
2 year old that's in the -- works in the --

3 PROSPECTIVE JUROR NO. 265: Yes.

4 THE COURT: She works for the prison?

5 PROSPECTIVE JUROR NO. 265: Yes.

6 THE COURT: What does she do for the prison?

7 PROSPECTIVE JUROR NO. 265: Supervise a lot of
8 prisons right here in Nevada.

9 THE COURT: So she supervises prisons?

10 PROSPECTIVE JUROR NO. 265: Yes. Yes.

11 THE COURT: She's a --

12 PROSPECTIVE JUROR NO. 265: Go check, like, security
13 and all that kind of stuff.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NO. 265: And she check the record
16 of being made, and sometimes here's a person who will say --
17 he can be, like, out. You know what I mean? Like a home --
18 home at prison or whatever?

19 THE COURT: So a trustee?

20 PROSPECTIVE JUROR NO. 265: Yes.

21 THE COURT: Okay. And so maybe go to a camp?

22 PROSPECTIVE JUROR NO. 265: Yes.

23 THE COURT: And she decides whether certain prisoners
24 can leave and go to a camp, and they're still in prison, but
25 they're doing things for the community, too?

1 PROSPECTIVE JUROR NO. 265: Yes.

2 THE COURT: She's kind of in charge of programs?

3 PROSPECTIVE JUROR NO. 265: Yes.

4 THE COURT: All right. Again, that isn't going to
5 have any bearing upon your ability to be a fair juror?

6 PROSPECTIVE JUROR NO. 265: No, not at all.

7 THE COURT: Okay. Do you understand the job of the
8 jurors is to listen to the evidence and decide what the facts
9 are?

10 PROSPECTIVE JUROR NO. 265: Yes.

11 THE COURT: Do you think you can do that?

12 PROSPECTIVE JUROR NO. 265: Yes.

13 THE COURT: Do you understand that the defendants are
14 presumed to be not guilty, that right now as they sit here
15 today they are innocent of the offenses that they're accused
16 of? Do you understand that?

17 PROSPECTIVE JUROR NO. 265: Yes, I do.

18 THE COURT: It's the burden of the State to prove
19 their guilt by evidence beyond a reasonable doubt, and if the
20 State fails to do that, they're entitled to a verdict of not
21 guilty. Do you understand that?

22 PROSPECTIVE JUROR NO. 265: Yes.

23 THE COURT: Do you have any quarrel with that
24 procedure?

25 PROSPECTIVE JUROR NO. 265: No.

1 THE COURT: If you were one side or the other in a
2 case like this, would you want 12 jurors, citizens like
3 yourself, sitting in judgment of the case?

4 PROSPECTIVE JUROR NO. 265: Yes.

5 THE COURT: You could be fair to both sides then?

6 PROSPECTIVE JUROR NO. 265: Yes.

7 THE COURT: Okay. Mr. DiGiacomo.

8 MR. DiGIACOMO: Thank you, Judge. Good afternoon,
9 sir.

10 PROSPECTIVE JUROR NO. 265: Good afternoon.

11 MR. DiGIACOMO: We're getting there, only four more
12 to go.

13 I would assume that English is your second language;
14 is that fair?

15 PROSPECTIVE JUROR NO. 265: Yes, that's fair.

16 MR. DiGIACOMO: Okay. And from your questionnaire,
17 there's a couple of blanks. I make an assumption that you're
18 better at the speaking because you seem like you fully
19 understand everything we're saying here, right?

20 PROSPECTIVE JUROR NO. 265: Yes. Yes, I do.

21 MR. DiGIACOMO: And maybe writing is -- is a little
22 less fluent in written word as you are --

23 PROSPECTIVE JUROR NO. 265: It's correct.

24 MR. DiGIACOMO: That's correct, okay. So let me ask
25 you a couple of questions just because they were -- there

1 wasn't a lot of information. So let me ask you just a couple
2 of things. There is a question about whether or not anyone
3 you know, either yourself or anyone else, had ever been a
4 victim of a crime. Do you know anybody who has been a victim
5 of a crime?

6 PROSPECTIVE JUROR NO. 265: No.

7 MR. DiGIACOMO: Okay. What about the flip side, do
8 you know anybody who has ever been arrested before?

9 PROSPECTIVE JUROR NO. 265: No.

10 MR. DiGIACOMO: You indicated -- and I think this is
11 probably true for a lot of people -- that drugs aren't a good
12 thing; would that be fair?

13 PROSPECTIVE JUROR NO. 265: Yes.

14 MR. DiGIACOMO: Do you think ultimately that somebody
15 who is on drugs though is responsible for their behavior?

16 PROSPECTIVE JUROR NO. 265: Yes.

17 MR. DiGIACOMO: On the flip side, do you think people
18 that choose to do things like use drugs can still be victims
19 and should have the protection of our criminal justice system?

20 PROSPECTIVE JUROR NO. 265: Yes.

21 MR. DiGIACOMO: Let's talk a little bit about the
22 death penalty. Had you ever thought of the death penalty
23 before you came down here?

24 PROSPECTIVE JUROR NO. 265: I heard about that. I'm
25 not agree with that, yes.

1 MR. DiGIACOMO: And that's kind of what I was going
2 to ask you. There's some different versions of what you said
3 here, and I don't know if it was because of the written-word
4 issue, or whether or not it's what your opinions are. So let
5 me just ask you: Do you personally believe in the death
6 penalty?

7 PROSPECTIVE JUROR NO. 265: Yes, I do.

8 MR. DiGIACOMO: Can you envision a situation where
9 you would vote for the death penalty?

10 PROSPECTIVE JUROR NO. 265: No.

11 MR. DiGIACOMO: Okay. And you sort of said that.
12 You checked off, I could never under any circumstances return
13 a verdict which imposed a death penalty. Do you remember
14 checking that off?

15 PROSPECTIVE JUROR NO. 265: Yes.

16 MR. DiGIACOMO: And you also checked off, I could
17 never under any circumstances return a verdict which imposed
18 either the death penalty or a life without the possibility of
19 parole? And then you also --

20 THE COURT: Is that a yes, sir?

21 MR. DiGIACOMO: Is that a yes? Did you say yes?

22 PROSPECTIVE JUROR NO. 265: Yes, sir.

23 MR. DiGIACOMO: And then you checked off the last
24 one, too, that starts off with, Although I could never impose
25 the death penalty?

1 PROSPECTIVE JUROR NO. 265: That's correct, yes.

2 MR. DiGIACOMO: So under no circumstances are you
3 ever going to vote for the death penalty?

4 PROSPECTIVE JUROR NO. 265: No, circumstances.

5 MR. DiGIACOMO: Okay. Is that fair? Is that a fair
6 characterization?

7 PROSPECTIVE JUROR NO. 265: Yes. For me, yes.

8 MR. DiGIACOMO: Okay. And I imagine this is a firm
9 belief that you have; is that fair?

10 PROSPECTIVE JUROR NO. 265: Yes.

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

12 PROSPECTIVE JUROR NO. 265: You're welcome.

13 MR. DiGIACOMO: Judge, we challenge.

14 MR. SGRO: Very briefly, Your Honor. Good afternoon,
15 sir.

16 PROSPECTIVE JUROR NO. 265: Good afternoon, sir.

17 MR. SGRO: You could probably ask me the questions
18 I'm about to ask you by now.

19 Okay. So you understand everything that we've talked
20 about so far. Both sides are -- they have the right to a fair
21 trial, right?

22 PROSPECTIVE JUROR NO. 265: Right.

23 MR. SGRO: Okay. And just to be clear, when it comes
24 to the death penalty, do you understand that what we ask you
25 is if you can imagine a situation, any situation, not this

1 case, any case where the death penalty would be appropriate?
2 Do you remember us talking about that?

3 PROSPECTIVE JUROR NO. 265: Yes.

4 MR. SGRO: Okay. So there was a woman a little bit
5 they go that said Hitler; do you remember that?

6 PROSPECTIVE JUROR NO. 265: Yes.

7 MR. SGRO: So what I'm asking is: Can you imagine
8 someone who deserves the death penalty?

9 PROSPECTIVE JUROR NO. 265: No.

10 MR. SGRO: No one. There would be no situation? no
11 circumstance? Even if it's extreme, you can't consider it?

12 PROSPECTIVE JUROR NO. 265: When extreme, can be.

13 MR. SGRO: Okay. So when we say extreme, extreme to
14 me is going to be different than extreme to you, right?

15 PROSPECTIVE JUROR NO. 265: That's correct, yes.

16 MR. SGRO: And it's going to be different than this
17 gentleman here and the women in the back, right?

18 PROSPECTIVE JUROR NO. 265: Right.

19 MR. SGRO: And that's okay. The point of it is is if
20 it's extreme -- however you think extreme is -- if it's
21 extreme in your mind, can you imagine that the death penalty
22 would be fair? appropriate?

23 PROSPECTIVE JUROR NO. 265: Well, not really. I
24 think everybody have to have a second chance when they deserve
25 it, you know.

1 MR. SGRO: Okay. So even if it's extreme, still you
2 would never think that it's appropriate for the death penalty?

3 PROSPECTIVE JUROR NO. 265: Never.

4 MR. SGRO: Okay. All right.

5 PROSPECTIVE JUROR NO. 265: Yeah.

6 MR. SGRO: Submit it, Your Honor.

7 THE COURT: All right. I'll grant the challenge.
8 Thank you for being here, sir. You're going to be excused.

9 PROSPECTIVE JUROR NO. 265: Thank you.

10 THE COURT: Mrs. Morales?

11 PROSPECTIVE JUROR NO. 285: Yes.

12 THE COURT: Okay. Is it Ms. Morales?

13 PROSPECTIVE JUROR NO. 285: Yeah.

14 THE COURT: And do you know any of the attorneys --

15 PROSPECTIVE JUROR NO. 285: No, I don't.

16 THE COURT: -- or witnesses that are involved in this
17 case?

18 PROSPECTIVE JUROR NO. 285: No.

19 THE COURT: You don't know anybody?

20 PROSPECTIVE JUROR NO. 285: No.

21 THE COURT: All right. And I was unclear as to who
22 you were working for. You said you were an operator, but I
23 didn't understand what CPI is.

24 PROSPECTIVE JUROR NO. 285: CPI Card Group. CPI Card
25 Group.

1 THE COURT: What is that?

2 PROSPECTIVE JUROR NO. 285: We manufacture gift
3 cards.

4 THE COURT: You manufacture --

5 PROSPECTIVE JUROR NO. 285: Gift cards.

6 THE COURT: Gift cards.

7 PROSPECTIVE JUROR NO. 285: Yes, all kind of gift
8 cards.

9 THE COURT: Do you mean like Hallmark cards or --

10 PROSPECTIVE JUROR NO. 285: Starbucks, Disney,
11 anything.

12 THE COURT: Starbucks have cards?

13 PROSPECTIVE JUROR NO. 285: Gift cards.

14 THE COURT: Oh, I see. Cards that you buy one and
15 give to somebody.

16 PROSPECTIVE JUROR NO. 285: Yes. Yes.

17 THE COURT: And they -- okay. You get like a credit
18 card?

19 PROSPECTIVE JUROR NO. 285: Yes, prepaid, anything.

20 THE COURT: All right. And you do it for various
21 organizations?

22 PROSPECTIVE JUROR NO. 285: Yes.

23 THE COURT: Okay. I didn't know we had a company
24 here in town that did that.

25 PROSPECTIVE JUROR NO. 285: Yes.

1 THE COURT: How long have you been working there?

2 PROSPECTIVE JUROR NO. 285: Three years now.

3 THE COURT: And what do you do?

4 PROSPECTIVE JUROR NO. 285: I do production. So
5 anything with the product.

6 THE COURT: And you help manufacture the cards?

7 PROSPECTIVE JUROR NO. 285: From printing to
8 lamination to getting it out the door, shipping it out, I do
9 it all.

10 THE COURT: Okay. What did you do before that?

11 PROSPECTIVE JUROR NO. 285: High school.

12 THE COURT: High school, huh?

13 PROSPECTIVE JUROR NO. 285: Yeah.

14 THE COURT: Did you go to high school here?

15 PROSPECTIVE JUROR NO. 285: Yes.

16 THE COURT: Do you have parents here?

17 PROSPECTIVE JUROR NO. 285: Yes.

18 THE COURT: What do your parents do?

19 PROSPECTIVE JUROR NO. 285: My mom stays at home. My
20 dad's a supervisor at a --

21 THE COURT: Supervisor for --

22 PROSPECTIVE JUROR NO. 285: -- pallet company.

23 THE COURT: For what kind of company?

24 PROSPECTIVE JUROR NO. 285: A pallet company.

25 THE COURT: All right. Do you have brothers and

1 sisters here, too?

2 PROSPECTIVE JUROR NO. 285: Yes, four.

3 THE COURT: Four?

4 PROSPECTIVE JUROR NO. 285: Yeah, three brothers and
5 a sister.

6 THE COURT: What do they do? You know, just off the
7 top of your head, what do they do?

8 PROSPECTIVE JUROR NO. 285: My brother is in gaming,
9 my older brother; and the smallest one -- well, the two small
10 ones are still in high school.

11 THE COURT: Okay. Do you think you could be a fair
12 juror in this case?

13 PROSPECTIVE JUROR NO. 285: Yes.

14 THE COURT: If you were one side or the other, would
15 you want citizens like yourself deciding the case?

16 PROSPECTIVE JUROR NO. 285: Probably not.

17 THE COURT: Why not?

18 PROSPECTIVE JUROR NO. 285: I'm not too sure about
19 all of this.

20 THE COURT: What aren't you sure about?

21 PROSPECTIVE JUROR NO. 285: Just the whole death
22 penalty sentencing.

23 THE COURT: Is the possibility that you might have to
24 decide the death penalty the problem?

25 PROSPECTIVE JUROR NO. 285: Yes.

1 THE COURT: Have you thought about the death penalty
2 before coming in here today?

3 PROSPECTIVE JUROR NO. 285: No.

4 THE COURT: Not really thought about it, huh?

5 PROSPECTIVE JUROR NO. 285: No.

6 THE COURT: It didn't come up in your life, did it?

7 PROSPECTIVE JUROR NO. 285: No.

8 THE COURT: Okay. Do understand that there are some
9 circumstances when the death penalty is appropriate?

10 PROSPECTIVE JUROR NO. 285: Yes.

11 THE COURT: Do you think -- forgetting this case for
12 a moment -- there might be some circumstances where you could
13 vote for the death penalty depending upon what somebody did?

14 PROSPECTIVE JUROR NO. 285: No.

15 THE COURT: You could never vote for the death
16 penalty?

17 PROSPECTIVE JUROR NO. 285: No.

18 THE COURT: Under any circumstances?

19 PROSPECTIVE JUROR NO. 285: No.

20 THE COURT: All right.

21 MR. DiGIACOMO: We challenge, Judge.

22 THE COURT: Traverse?

23 MR. ORAM: Very briefly. Good afternoon.

24 PROSPECTIVE JUROR NO. 285: Good afternoon.

25 MR. ORAM: Hey, on the death penalty questions, you

1 checked quite a few boxes that give some rise to confusion,
2 okay, and so we'll just figure it out right now, okay?

3 PROSPECTIVE JUROR NO. 285: Okay.

4 MR. ORAM: What everybody is asking you is not
5 whether this is a hard thing. It's going to be hard, okay.
6 Jurors hearing murder cases -- remember me talking about those
7 photographs? That's hard.

8 PROSPECTIVE JUROR NO. 285: Yeah.

9 MR. ORAM: I'm sure you have better things to do.

10 PROSPECTIVE JUROR NO. 285: Yeah, I do.

11 MR. ORAM: And so do all the other 11 people sitting
12 around, but, you know, I heard a Judge once say, There's only
13 a few things that are required of a US citizen, and one of
14 them is to sit on a jury, okay?

15 PROSPECTIVE JUROR NO. 285: Yes.

16 MR. ORAM: And that's really a privilege that our
17 system gives us. Do you see that, right?

18 PROSPECTIVE JUROR NO. 285: Yeah.

19 MR. ORAM: Because if your loved one is where Mr.
20 Burns is, then you would want 12 people to be fair and
21 reasonable?

22 PROSPECTIVE JUROR NO. 285: Yes.

23 MR. ORAM: And you understand that those 12 people
24 may have better things to do?

25 PROSPECTIVE JUROR NO. 285: Yeah.

1 MR. ORAM: Okay. And some people are just not
2 qualified, okay. You've heard it today.

3 PROSPECTIVE JUROR NO. 285: Yeah.

4 MR. ORAM: And if they're not, they're not, okay. So
5 there's no right or wrong answer, and I'm not trying to put
6 you on the spot, okay?

7 PROSPECTIVE JUROR NO. 285: Uh-huh.

8 MR. ORAM: But -- is that a yes?

9 PROSPECTIVE JUROR NO. 285: Yes.

10 MR. ORAM: You checked the box that you believe the
11 death penalty is appropriate in some murder cases?

12 PROSPECTIVE JUROR NO. 285: Yes.

13 MR. ORAM: And so you believe in some murder cases
14 the death penalty is appropriate?

15 PROSPECTIVE JUROR NO. 285: Yes.

16 MR. ORAM: Okay. You could consider parole?

17 PROSPECTIVE JUROR NO. 285: Yes.

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

19 PROSPECTIVE JUROR NO. 285: Yes.

20 MR. ORAM: And is there some case that you could
21 imagine -- just thinking -- that you could imagine where you
22 thought, yeah, I could consider the death penalty?

23 PROSPECTIVE JUROR NO. 285: No.

24 MR. ORAM: You're pretty adamant about that, aren't
25 you?

1 PROSPECTIVE JUROR NO. 285: Yes.

2 MR. ORAM: Submit it, Your Honor.

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

4 Thank you for being a prospective juror. You'll be excused,
5 ma'am.

6 PROSPECTIVE JUROR NO. 285: Thank you.

7 THE COURT: You can leave. Mr. Ghaed?

8 PROSPECTIVE JUROR NO. 288: Ghaed.

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

11 PROSPECTIVE JUROR NO. 288: No, sir.

12 THE COURT: All right. It indicates here that you
13 are a driver; is that right?

14 PROSPECTIVE JUROR NO. 288: Yes, sir.

15 THE COURT: What do you drive?

16 PROSPECTIVE JUROR NO. 288: I work for the city
17 transportation, Las Vegas public transportation bus company.

18 THE COURT: The bus company?

19 PROSPECTIVE JUROR NO. 288: Yes, sir.

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

21 PROSPECTIVE JUROR NO. 288: 12 years.

22 THE COURT: And do you have a particular route that
23 you --

24 PROSPECTIVE JUROR NO. 288: It change every few
25 months. We have to bet in different routes and different

1 schedule is the policy that we have to go through.

2 THE COURT: Okay. You came from Iran?

3 PROSPECTIVE JUROR NO. 288: I'm, yeah, from Iran.

4 THE COURT: You were born in Iran?

5 PROSPECTIVE JUROR NO. 288: I born there, yeah.

6 THE COURT: Okay. And when did you come from Iran?

7 PROSPECTIVE JUROR NO. 288: I came from south of
8 Iran.

9 THE COURT: When?

10 PROSPECTIVE JUROR NO. 288: When is 19 -- actually I
11 left Iran at 1981.

12 THE COURT: Where did you go, to the United States?

13 PROSPECTIVE JUROR NO. 288: Yeah, I went to Europe,
14 and I was in Europe for a few years in Germany and Belgium,
15 and I came to U.S. in 1989.

16 THE COURT: What kind of work have you done before
17 being a driver?

18 PROSPECTIVE JUROR NO. 288: I used to own my own
19 restaurant -- it's fast food -- back in California, pizza and
20 then those kind of stuff, and then I used to work for Guitar
21 Center Incorporation, which is they have a store all over, and
22 then I used to work in the California and transfer here, and I
23 came to Las Vegas 12 years ago, 12, 13 years ago.

24 THE COURT: What brings you to Las Vegas?

25 PROSPECTIVE JUROR NO. 288: For work opportunity and

1 then actually housing market was really reasonable to purchase
2 the house. We bought a house here with my ex-wife, and then
3 we moved here.

4 THE COURT: Okay. It's less expensive here than it
5 was in California?

6 PROSPECTIVE JUROR NO. 288: Oh, yeah. I used to live
7 in Orange County. It was very expensive.

8 THE COURT: Oh, Orange County is really expensive,
9 isn't it?

10 PROSPECTIVE JUROR NO. 288: Yeah.

11 THE COURT: Okay. You were in the army?

12 PROSPECTIVE JUROR NO. 288: I serve in army during
13 the Persian Gulf War. First war, first Persian-Gulf War, 1981
14 to 1989, I don't remember that, the first Persian Gulf between
15 Iran and Iraq war, Nine Years War.

16 THE COURT: And who -- which side were you fighting
17 on?

18 PROSPECTIVE JUROR NO. 288: Iran.

19 THE COURT: Did you see action?

20 PROSPECTIVE JUROR NO. 288: Actually I was in front
21 line for almost a year and a half. That's why I got injured.

22 THE COURT: You got injured?

23 PROSPECTIVE JUROR NO. 288: Yes, sir.

24 THE COURT: What kind of injuries did you receive?

25 PROSPECTIVE JUROR NO. 288: I lost my left leg in

1 action and then injured my right one badly.

2 THE COURT: Okay. Are you able to sit as a juror?

3 PROSPECTIVE JUROR NO. 288: I have -- I have a
4 trouble. I was talking to the marshal before. Because of my
5 prosthetic I have to once in a while get up and stretch. It's
6 a little bit hard on my physical.

7 THE COURT: We'll let you get up and stretch
8 occasionally, okay?

9 PROSPECTIVE JUROR NO. 288: Yeah, sure.

10 THE COURT: Do you understand that our system of
11 justice, that you are the judge of the facts, and I'm the
12 judge of the law? Do you understand that?

13 PROSPECTIVE JUROR NO. 288: Completely.

14 THE COURT: And the defendants are presumed to be
15 innocent until the contrary is proven; do you have any quarrel
16 with that?

17 PROSPECTIVE JUROR NO. 288: No, sir.

18 THE COURT: Okay. Do you think you could be a fair
19 juror in the case?

20 PROSPECTIVE JUROR NO. 288: I thinks and based off
21 the facts, yeah, why not?

22 THE COURT: You think yes?

23 PROSPECTIVE JUROR NO. 288: Yes, sir.

24 THE COURT: All right. Do you wish to examine?

25 MS. WECKERLY: Just briefly. How are you, sir?

1 PROSPECTIVE JUROR NO. 288: Good. Thank you.

2 MS. WECKERLY: On your questionnaire, you indicated
3 that you thought the criminal justice system in this country
4 was unfair?

5 PROSPECTIVE JUROR NO. 288: In some -- you know, some
6 way that you look at it, it is not fair to me.

7 MS. WECKERLY: Like -- can you give us an example.

8 PROSPECTIVE JUROR NO. 288: I'm not exactly. I don't
9 -- I never had any problem with the justice or any kind of
10 that problem with the law which is that I have to face that
11 things, but from the things I've seen during while I'm here
12 for past 25 years, I don't want to say it has a problem with
13 it, but it's not perfect.

14 MS. WECKERLY: True.

15 PROSPECTIVE JUROR NO. 288: Everything has it, you
16 know, bad side and the, you know, good side which is that you
17 cannot say everything is perfect. For me, I'm not.

18 MS. WECKERLY: Right. And it certainly has a human
19 element to it. So it won't -- I mean, there are always going
20 to be some imperfections.

21 PROSPECTIVE JUROR NO. 288: Yeah, that's the --
22 that's the problem. Yeah.

23 MS. WECKERLY: Overall, do you think it works well,
24 or reaches the right --

25 PROSPECTIVE JUROR NO. 288: Actually, it works better

1 than the other -- you know, other places I've been. My
2 country is basically is very messed up. Sorry. My language
3 is -- you know, justice, you know, it's as you are sitting
4 here, both gentlemen here are not guilty.

5 MS. WECKERLY: Right.

6 PROSPECTIVE JUROR NO. 288: You have to prove them
7 guilty. In my country, which is at 30 something years ago I
8 left, when they're sitting there, they are guilty.

9 MS. WECKERLY: Right.

10 PROSPECTIVE JUROR NO. 288: They have to not prove
11 they're not guilty. That's why I am just seeing that's --
12 there's one plus. With what I see here, you guys, you know,
13 running as a system, that the just system you have here, which
14 is awesome for me.

15 MS. WECKERLY: And so, I mean, you have such an
16 interesting background. You have first-hand experience with
17 another system, and so you --

18 PROSPECTIVE JUROR NO. 288: Not experience but
19 because --

20 MS. WECKERLY: Know of.

21 PROSPECTIVE JUROR NO. 288: Yeah, I never really been
22 in that system, but I had some information about the system
23 because I used to live there, and when I left, I was only 19
24 years old. I'm now 52. You know, I am way, you know, away
25 from that system, and then when I was there, basically it was

1 different government.

2 MS. WECKERLY: Right.

3 PROSPECTIVE JUROR NO. 288: And then now is different
4 government, which is completely -- I have no clue what's going
5 on there for the justice.

6 MS. WECKERLY: But you at least have something to
7 compare this to?

8 PROSPECTIVE JUROR NO. 288: Yeah. Yeah.

9 MS. WECKERLY: You wrote on your questionnaire that
10 you are concerned about your ability to be fair to people
11 based on race?

12 PROSPECTIVE JUROR NO. 288: Yeah.

13 MS. WECKERLY: Can you talk about that a little bit.

14 PROSPECTIVE JUROR NO. 288: You know, for line of job
15 I'm doing and then I have a lot of -- lot of actually
16 encounter with a different kind of the people which is riding
17 a bus system in this city, and it is very diverse, black,
18 white, Asian, red, blue, green, every kind of the color. You
19 know, they coming and then riding it, and then on my
20 experience -- and I have 12 years in this type of job -- I see
21 more conflict and problem with the colored people than white
22 people.

23 I'm sorry I'm saying that, but this is what I see and
24 then what I've experienced for past 12 years. Nothing against
25 it, color. Maybe it's about the culture or about the attitude

1 or something else. I'm actually -- in my country, two of my
2 best friend, which is they are considered as a brother to me,
3 they are colored people, which is Iranian African, which is
4 very rare.

5 MS. WECKERLY: Right.

6 PROSPECTIVE JUROR NO. 288: They are considered as my
7 best friend, but because they been raised in different country
8 they have very different attitude toward these things, but of
9 my experience and I do have, I have more problem in the line
10 of my job I'm doing than a different kind of the, you know,
11 race that I get.

12 MS. WECKERLY: Okay. Because you've had that
13 experience -- well, let me ask you this. Would you agree with
14 me that you're seeing your own -- like kind of what you
15 encounter on --

16 PROSPECTIVE JUROR NO. 288: Job, yeah.

17 MS. WECKERLY: -- on your job, which really isn't
18 someone's -- or a particular group's culture --

19 PROSPECTIVE JUROR NO. 288: No.

20 MS. WECKERLY: -- it's just who you're seeing on a
21 job, right?

22 PROSPECTIVE JUROR NO. 288: No. No. No. Because a
23 lot of my coworker, they are colored people, too. I can say
24 it is 50 to 60 percent of my coworker, they are colored
25 people. They are very good friend.

1 MS. WECKERLY: I mean, and because of what you're
2 seeing in this really narrow subsection --

3 PROSPECTIVE JUROR NO. 288: The higher percentage,
4 I'm saying that's --

5 MS. WECKERLY: I'm sorry?

6 PROSPECTIVE JUROR NO. 288: Higher percentage that a
7 problem, and I do have a job that's the known certain race
8 that I get.

9 MS. WECKERLY: And with -- I guess what our question
10 is though for you to sit as a juror, are you able to put those
11 experiences aside and assure us that you can be fair --

12 PROSPECTIVE JUROR NO. 288: Yeah. Yeah.

13 MS. WECKERLY: -- to people in this courtroom --

14 PROSPECTIVE JUROR NO. 288: Yes, I can.

15 MS. WECKERLY: -- regardless of race?

16 PROSPECTIVE JUROR NO. 288: Yeah. Yeah. I know, but
17 it was asking for my opinion, I just put my opinion. I just
18 put my opinion over there, but it doesn't have no affect on my
19 judgment on them, you know.

20 MS. WECKERLY: Okay. And the fact that these
21 defendants are African American, would it make you --

22 PROSPECTIVE JUROR NO. 288: Not at all.

23 MS. WECKERLY: -- wait a minute, the people on the
24 bus are --

25 PROSPECTIVE JUROR NO. 288: No.

1 MS. WECKERLY: -- or anything like that?

2 PROSPECTIVE JUROR NO. 288: No, it has no --

3 MS. WECKERLY: Okay. And, I mean, I'm not sure who
4 else is problematic on the buses, but all of that -- I guess
5 the question is: Can you leave that outside the courtroom?

6 PROSPECTIVE JUROR NO. 288: Yes, I can. Yeah.

7 MS. WECKERLY: Okay. Now, you also were asked about
8 your opinion of the police, and you said, They're not truly in
9 service for the people?

10 PROSPECTIVE JUROR NO. 288: Yeah, the things that I
11 think is that when it comes to the power, some of us really,
12 you know, misabuse our power. We are human.

13 MS. WECKERLY: Oh, sure.

14 PROSPECTIVE JUROR NO. 288: And we like power, and
15 then if we have any authority and I can abuse it and get away
16 with it, you know, we do. I think some of the, you know
17 actually appreciate their job. I know they're doing a very
18 hard job because I'm doing basically same things. We all
19 dealing with the public, you know, and then the public that we
20 dealing with, it is not the regular people, mostly, you
21 know --

22 MS. WECKERLY: Right.

23 PROSPECTIVE JUROR NO. 288: -- who is riding a bus.
24 A lot of people coming, they're homeless. They're drunk.
25 They are using it, medication. They cannot drive their car,

1 and then they causing a problem. You know, 80 percent up to
2 85 percent of the people which is causing a problem, they are
3 somehow involved with some sort of the alcohol or drug use,
4 which is they're not allowed to drive, and then the first
5 thing they take, the public transportation.

6 MS. WECKERLY: Right.

7 PROSPECTIVE JUROR NO. 288: And then we have to deal
8 with this, and then basically, you know, I appreciate the
9 police helps, which is sometimes we have to call security.
10 Security has to call Metro to come and help us, you know, to
11 get rid of that person, and then it's -- I think sometimes
12 people using, you know, their power to just misabuse it.
13 Abuse I think is the word. That's it.

14 MS. WECKERLY: Some police officers abuse their
15 position?

16 PROSPECTIVE JUROR NO. 288: Not only police officer,
17 anybody who has some sort of power might use it -- you know,
18 misuse that power.

19 MS. WECKERLY: Do you think some police officers do a
20 good job?

21 PROSPECTIVE JUROR NO. 288: Oh, yeah. Oh, yeah, most
22 of them.

23 MS. WECKERLY: Okay.

24 PROSPECTIVE JUROR NO. 288: I mean, it's a bad apple.
25 You know, you can find it anywhere.

1 MS. WECKERLY: Right.

2 PROSPECTIVE JUROR NO. 288: I'll put it this way.

3 MS. WECKERLY: Sir, what are your feelings about the
4 death penalty?

5 PROSPECTIVE JUROR NO. 288: You know, I think -- I
6 put that, you know, it has to be really consider that things
7 because it's depends the cases, but when talking about the
8 death -- I saw a lot to death, to be honest with you, during
9 my service --

10 MS. WECKERLY: Oh, yes.

11 PROSPECTIVE JUROR NO. 288: -- which is I was in a
12 war, and then I saw a lot of dead people. I have lot of
13 things on my conscience. I would not be able to do it.

14 MS. WECKERLY: Okay. And I'm -- I don't mean to put
15 you on the spot, and I'm not trying to argue with you or
16 change your mind. Can you just tell us if that's a punishment
17 you can consider, or because of your experience and what
18 you've been through that, you know, that's just not something
19 I can look at as a punishment?

20 PROSPECTIVE JUROR NO. 288: When I put that things,
21 it was different situation when I'm here, and I seeing people
22 life. I cannot really do it. I cannot really have it on my
23 conscience to vote for life -- somebody's life. I have too
24 much with war.

25 MS. WECKERLY: And that's based on obviously what

1 you've been through and what you --

2 PROSPECTIVE JUROR NO. 288: Based off the -- based
3 off the fact that I've been through for year and a half, and
4 then it's 20 -- 30 years, but still I carry it with me.

5 MS. WECKERLY: Right.

6 PROSPECTIVE JUROR NO. 288: And it will be hard for
7 me to go through some other peoples' -- you know, make a
8 decision of their life. Maybe life and death -- maybe prison,
9 that will be more easier for me, you know.

10 MS. WECKERLY: But when we're talking about the death
11 penalty --

12 PROSPECTIVE JUROR NO. 288: When it comes to death
13 penalty, I thought maybe I can do it, but I cannot. I cannot
14 do it anymore.

15 MS. WECKERLY: Okay. Can't do it. Thank you.
16 Challenge for cause, Your Honor.

17 MR. ORAM: Good afternoon.

18 PROSPECTIVE JUROR NO. 288: Good afternoon, sir.

19 MR. ORAM: You know exactly where I'm going to go.

20 PROSPECTIVE JUROR NO. 288: Yeah.

21 MR. ORAM: Okay. You know, it sounds to me like you
22 have a whole bunch of life experiences?

23 PROSPECTIVE JUROR NO. 288: Yes, I do.

24 MR. ORAM: You've come to the United States. You've
25 seen a pretty cruel war. You were involved in the war, Iran

1 and Iraq?

2 PROSPECTIVE JUROR NO. 288: Iraq, yes, sir.

3 MR. ORAM: A lot of dead people on both sides?

4 PROSPECTIVE JUROR NO. 288: It was close to 2 million
5 people died from both side.

6 MR. ORAM: Okay. And so from what I heard, you're
7 saying, I have a lot on my conscience. I have a lot of
8 probably memories I don't even like thinking about?

9 PROSPECTIVE JUROR NO. 288: Uh-huh. Because, you
10 know, I don't know you guys been in the war or something, but
11 it is not easy things to forget about, you know. You're
12 living with the people. You're living with the person which
13 is that they your comrade or whatever you call it but next
14 thing when he's not there.

15 MR. ORAM: I just want to -- I'm going to go to one
16 quick subject. I just want to ask you one question before I
17 get back to the death penalty. You made a comment about
18 defense attorneys; do you remember that?

19 PROSPECTIVE JUROR NO. 288: I think I remember.
20 Yeah, I thinks that they doing it -- it's their day job.

21 MR. ORAM: For money?

22 PROSPECTIVE JUROR NO. 288: Money, yeah, it is. You
23 know, you're not doing it for free. I'm not -- nobody is
24 doing it for free, and then basically that's their job,
25 understanding.

1 MR. ORAM: Could you believe that people do my job
2 because they actually care about what they're doing?

3 PROSPECTIVE JUROR NO. 288: They do, yeah. They do
4 care and, you know, financial part of it.

5 MR. ORAM: Most people work for money?

6 PROSPECTIVE JUROR NO. 288: Yeah.

7 MR. ORAM: You work for money?

8 PROSPECTIVE JUROR NO. 288: Yes, sir. We need money.

9 MR. ORAM: If you sat as a juror, you wouldn't hold
10 that against that side of the table, would you?

11 PROSPECTIVE JUROR NO. 288: No. No. No. No, you're
12 doing your job.

13 MR. ORAM: With regard to the death penalty, you did
14 indicate in your questionnaire that you could consider it?

15 PROSPECTIVE JUROR NO. 288: Yeah, I can consider it.

16 I mean, when -- I mean that that -- you ask a good question

17 before, one of the juror, you know. You said, If you see

18 those pictures over there with somebody shot in the head, it

19 might affect you, you know. My time, when I see that

20 pictures, yeah, and then if it's come to that point that

21 they're just proving that, you know, defendant is guilty and I

22 saw that pictures, yeah, maybe I consider it hundred percent.

23 MR. ORAM: Okay. And you know what -- and that's the

24 thing. I mean, look, as you sit there and see Mr. Burns,

25 right, and somebody starts talking about, Should we kill Mr.

1 Burns? I mean, as a fellow human being, don't you think
2 naturally we should think about this? It's almost hard to
3 think about.

4 PROSPECTIVE JUROR NO. 288: Oh, it is.

5 MR. ORAM: Like, I'm just going about my business.
6 I've done nothing wrong. So why are we talking about
7 executing a man, right?

8 PROSPECTIVE JUROR NO. 288: Correct.

9 MR. ORAM: Pretty upsetting. Okay. If I shoot a
10 man --

11 PROSPECTIVE JUROR NO. 288: Yeah, sure. We're human.
12 We're just human emotion. You know, emotion usually --
13 emotion always most of the time is just to go and overtake
14 the, you know, how you say -- I forgot the word -- the --

15 MR. ORAM: Rational mind?

16 PROSPECTIVE JUROR NO. 288 -- the rational mind and
17 the evidence, you know.

18 MR. ORAM: Okay. And it would -- it's not like if
19 you sat on the jury you would make that decision. You'd leave
20 and we'd all be sitting there waiting to decide what you
21 believed, right? Do you see that?

22 PROSPECTIVE JUROR NO. 288: Yeah.

23 MR. ORAM: It's 12 of you, okay?

24 PROSPECTIVE JUROR NO. 288: Correct.

25 MR. ORAM: And so it's more powerful. 12 of you have

1 come to a decision. Do you see how that speaks louder?

2 PROSPECTIVE JUROR NO. 288: Uh-huh.

3 MR. ORAM: Does that make sense?

4 PROSPECTIVE JUROR NO. 288: Yes.

5 MR. ORAM: And so what we need to know is that you
6 would be able to consider the death penalty, just consider it.
7 That's it. If you could, in a case that you could think of --
8 forget this case -- say, you know what, if it's proven, I
9 believe it. The other jurors believe it. This -- look at
10 that. Look at what he did. I'd consider it. Can you do
11 that?

12 PROSPECTIVE JUROR NO. 288: I mean, if my vote
13 costing that person life, no, even if he'd done that things.
14 If it's proven he's done that things, I don't want to be part
15 of it.

16 MR. ORAM: I understand you don't want to. I
17 understand what you're saying. I'm starting to understand
18 you're saying, I don't want -- I don't want to make the
19 decision, okay, and some people don't want to be here because
20 they've got better things to do, fair?

21 PROSPECTIVE JUROR NO. 288: Yeah, sure.

22 MR. ORAM: Okay. But the State has a right to a fair
23 trial, okay?

24 PROSPECTIVE JUROR NO. 288: Yeah.

25 MR. ORAM: So what we're really asking -- here's

1 another way to look at it. 11 people say, yeah, let's give
2 them death, and you're, like, I believe we should give him
3 death, but I would never vote for that. So I'm not doing it.
4 Would you do that?

5 PROSPECTIVE JUROR NO. 288: Yeah, I would do that.
6 Yeah, and I would say no.

7 MR. ORAM: Submit it.

8 THE COURT: All right. I guess I have no
9 alternative. All right. I'll have to grant the challenge for
10 cause.

11 Thank you for being a witness -- a prospective juror,
12 sir. You'll be excused.

13 Mr. -- is it Pushkin?

14 PROSPECTIVE JUROR NO. 318: Yes, it is.

15 THE COURT: Do you know any of the witnesses or
16 attorneys involved in the case, Mr. Pushkin?

17 PROSPECTIVE JUROR NO. 318: No, I don't.

18 THE COURT: You're from California?

19 PROSPECTIVE JUROR NO. 318: Yes, I am.

20 THE COURT: How long have you been here?

21 PROSPECTIVE JUROR NO. 318: Since 2000.

22 THE COURT: And what did you do in California before
23 you came here?

24 PROSPECTIVE JUROR NO. 318: I was one of the founders
25 of a fiber-optic lighting company.

1 THE COURT: What do they do?

2 PROSPECTIVE JUROR NO. 318: Light up swimming pools,
3 top of the Stratosphere uses our lights.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR NO. 318: I moved here originally
6 to retire.

7 THE COURT: You came here to retire?

8 PROSPECTIVE JUROR NO. 318: Yeah. Anyway.

9 THE COURT: You're not retired?

10 PROSPECTIVE JUROR NO. 318: No.

11 THE COURT: You're working in a clothing store?

12 PROSPECTIVE JUROR NO. 318: My dad owned a men's
13 clothing store in California for 50 years, and I was doing
14 that until I started the fiber-optic company, and then I'm
15 working for a clothing store out here now.

16 THE COURT: Did you sell the fiber-optic company when
17 you came here?

18 PROSPECTIVE JUROR NO. 318: No, the company went
19 public.

20 THE COURT: Oh, it went public, okay. So you got the
21 opportunity to move to Las Vegas?

22 PROSPECTIVE JUROR NO. 318: Yes.

23 THE COURT: Do you like living here?

24 PROSPECTIVE JUROR NO. 318: No.

25 THE COURT: Do you want to go back to California?

1 PROSPECTIVE JUROR NO. 318: I would like to, but it's
2 tough to go back.

3 THE COURT: Well, it's more expensive back in
4 California.

5 PROSPECTIVE JUROR NO. 318: Yes.

6 THE COURT: Okay. Are you going to stay here do you
7 think?

8 PROSPECTIVE JUROR NO. 318: For now.

9 THE COURT: And you're working for a clothing store?

10 PROSPECTIVE JUROR NO. 318: Mastroianni Fashions.

11 THE COURT: And that's men's clothing?

12 PROSPECTIVE JUROR NO. 318: Yes.

13 THE COURT: All right. And how long have you been
14 with them?

15 PROSPECTIVE JUROR NO. 318: Four years.

16 THE COURT: You have children. Are they here in Las
17 Vegas? Are they --

18 PROSPECTIVE JUROR NO. 318: No.

19 THE COURT: They're all gone someplace else?

20 PROSPECTIVE JUROR NO. 318: My daughter is in Long
21 Beach. She's an aerospace engineer, and my son is in Seattle.
22 He's an industrial engineer.

23 THE COURT: Very good. You mentioned that you have a
24 brother-in-law that's with the FBI?

25 PROSPECTIVE JUROR NO. 318: He was. Retired.

1 THE COURT: Oh, he's retired now?

2 PROSPECTIVE JUROR NO. 318: My sister's husband.

3 THE COURT: What did he do with the FBI?

4 PROSPECTIVE JUROR NO. 318: He was the head of the
5 FBI.

6 THE COURT: Do you know what he did?

7 PROSPECTIVE JUROR NO. 318: He caught Patty Hearst.

8 THE COURT: Did he?

9 PROSPECTIVE JUROR NO. 318: Yeah.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NO. 318: Charles Bates.

12 THE COURT: So he was in law enforcement. Do you
13 think that that's going to have a tendency to make you favor
14 somebody in this case?

15 PROSPECTIVE JUROR NO. 318: You know, I don't know
16 that answer. My dad used to uniform all the police officers
17 in California, in our city as well as the fire and also the
18 security guards. So I was friends with all of them.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR NO. 318: So it was hard for me to
21 hear about a police officer that might be lying because I
22 believe that if a police officer is lying he should be fired.

23 THE COURT: And I don't -- I can't really quarrel
24 with that, and I don't know that that will be the case here.
25 I really don't know anything about the facts of the case

1 because I just -- I got this case not long before you got
2 here, believe me, but I am sure there will be police officers
3 testifying, and it may be that the defense will at some point
4 challenge their testimony.

5 PROSPECTIVE JUROR NO. 318: Right.

6 THE COURT: And they may not necessarily be lying,
7 but they may have -- they may have forgotten the truth.

8 PROSPECTIVE JUROR NO. 318: I understand.

9 THE COURT: It's possible. We all make mistakes,
10 don't we?

11 PROSPECTIVE JUROR NO. 318: Uh-huh.

12 THE COURT: Even police officers can make mistakes,
13 right?

14 PROSPECTIVE JUROR NO. 318: Yeah.

15 THE COURT: Okay. I don't know what the facts are
16 going to be. That's going to come out in the testimony. I'm
17 going to learn it just like you are. Are you willing to
18 listen to the -- listen to the testimony and decide what the
19 facts are and reach a fair verdict?

20 PROSPECTIVE JUROR NO. 318: I'll try to the best of
21 my ability.

22 THE COURT: And that's all we can ask of anybody.
23 All right. Counsel, you can inquire.

24 MS. WECKERLY: How are you?

25 PROSPECTIVE JUROR NO. 318: Sick.

1 MS. WECKERLY: You're sick. Oh, so this has been a
2 really good day to sit here.

3 PROSPECTIVE JUROR NO. 318: Not good at all.

4 MS. WECKERLY: Not good. I'm going to just get to
5 the questions about punishment.

6 PROSPECTIVE JUROR NO. 318: Right.

7 MS. WECKERLY: When you were asked about your opinion
8 about the death penalty, you said, I believe the crime of
9 murder with intent, it should be imposed. Is that an
10 absolute, or do you allow for situations where it wouldn't be
11 the --

12 PROSPECTIVE JUROR NO. 318: Well, let me ask you
13 this. First-degree murder is going with the intent to shoot?

14 MS. WECKERLY: That's one form of first-degree
15 murder. There are other forms of first-degree murder.

16 PROSPECTIVE JUROR NO. 318: See, that's where I guess
17 I'm confused because in California, growing up, first-degree
18 murder was you went with the intent to kill.

19 MS. WECKERLY: In Nevada they're different -- you
20 know, each State writes their laws differently. In Nevada,
21 there are different forms of first-degree murder, and while
22 that is one, what you're describing, there are other forms of
23 it, and the states define even what you are talking about,
24 elements of murder, like intent. What intent may mean in
25 California may be a different definition in Nevada. The Judge

1 will be telling you what that means in Nevada, like what is
2 intent, what is premeditation, that sort of thing.

3 So it -- not quite knowing I guess what the law is in
4 Nevada, in a case of first-degree murder, are you open to
5 listening to evidence before deciding what a punishment should
6 be?

7 PROSPECTIVE JUROR NO. 318: I guess what I need to
8 understand is really what are all the things as far as first
9 degree because of my upbringing. First degree, you know,
10 intent, first-degree murder is one thing and one thing only.
11 The other things you're talking about in California are
12 second-degree and third-degree and so on and so forth, and so
13 when you keep -- this whole time when you kept saying
14 first-degree murder, my mind was, like, they went with the
15 intent to kill somebody, and if that was the case, there's --
16 they should have the death penalty.

17 MS. WECKERLY: Okay. So if I were to tell you -- I
18 can't tell you what the law is. The Judge does that at the
19 end of the case. So assuming that you may not know all the
20 forms of first-degree murder in Nevada -- yes?

21 PROSPECTIVE JUROR NO. 318: I'm listening.

22 MS. WECKERLY: Are you following me?

23 PROSPECTIVE JUROR NO. 318: Yeah, I'm listening.

24 MS. WECKERLY: Are there situations where you would
25 be open to a punishment other than the death penalty?

1 PROSPECTIVE JUROR NO. 318: I don't know that until I
2 understand what that is. I'm not going to say yes to
3 something that I am not fully aware of.

4 THE COURT: You're willing to listen to the
5 instructions on the law?

6 PROSPECTIVE JUROR NO. 318: Yes.

7 THE COURT: And if there are alternatives, you're
8 willing to listen to those alternatives and decide which one
9 applies?

10 PROSPECTIVE JUROR NO. 318: Yes.

11 MS. WECKERLY: And, I mean, as you sit here now, you
12 don't know -- you haven't heard a single witness testify, and
13 you haven't seen a single piece of evidence?

14 PROSPECTIVE JUROR NO. 318: Right.

15 MS. WECKERLY: And I assume you would want to wait
16 obviously until you hear all that and get instructed on the
17 law before you decide whether or not these two individuals
18 have been proven guilty beyond a reasonable doubt?

19 PROSPECTIVE JUROR NO. 318: Hopefully.

20 MS. WECKERLY: If they are, as to Mr. Burns, you
21 would be as a prospective juror given additional information
22 and additional instructions on the law.

23 PROSPECTIVE JUROR NO. 318: Uh-huh.

24 MS. WECKERLY: Can you wait and consider all of that
25 before deciding on a proper punishment?

1 PROSPECTIVE JUROR NO. 318: Hopefully I will.

2 MS. WECKERLY: Okay. Why wouldn't you be able to
3 wait and listen to that?

4 PROSPECTIVE JUROR NO. 318: Well, we're all going to
5 have our own ideas as to what exactly happened regardless of
6 what anybody says.

7 MS. WECKERLY: Sure.

8 PROSPECTIVE JUROR NO. 318: And my belief is that if
9 somebody went with the intent to kill somebody and then does
10 it, there's no reason for that person to live.

11 MS. WECKERLY: And in that situation that you're
12 describing, do you allow for the possibility that there may be
13 circumstances that change the nature of that type of killing,
14 like, you know, maybe there was something that happened
15 before, or maybe there was a prior history between the people,
16 or maybe there was something else involved?

17 PROSPECTIVE JUROR NO. 318: There is no excuse for
18 killing.

19 MS. WECKERLY: Okay. And if it was another form of
20 what's first-degree murder in Nevada, would you want to hear
21 more before you made a decision?

22 PROSPECTIVE JUROR NO. 318: I am -- like I said, I
23 hope that I would be able to, but it would be hard for me to
24 not give the death penalty.

25 MS. WECKERLY: Okay. Well, you don't have to --

1 MR. SGRO: I challenge at this point, Your Honor.

2 MS. WECKERLY: I don't think that he's met the
3 standard.

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

5 THE COURT: Sure.

6 (Bench conference.)

7 THE COURT: Okay.

8 MR. SGRO: At the end of the day, Your Honor -- we
9 haven't objected yet, but they're -- the State is flirting
10 with this, quote, unquote, other forms of murder. We all know
11 they're talking about the felony murder rule.

12 ATTORNEY: There's felony murder in California.

13 MR. SGRO: Right. It's all first-degree. My point
14 is this. The State would have us go through this exercise
15 knowing full well that as to Mr. Burns who is the candidate
16 for the capital -- the imposition of capital punishment, they
17 know it's not -- they're not going to argue felony murder.
18 They're going to argue that he broke through a door, shot a
19 woman in the face -- (inaudible). This is a fiction, and we
20 have the right -- I've actually done it in a couple of cases
21 where judges have given instructions to the jurors in advance
22 to avoid this very problem.

23 The bottom line is is that they're arguing a fiction.
24 He's already said it's death. The questionnaire, by the way,
25 also says, If it's first-degree murder, it's death. The fact

1 that he has a misconception of what felony murder is in
2 California is of no -- (inaudible).

3 So I'm happy to question him, Your Honor --

4 MS. WECKERLY: A similar fiction that we hear in this
5 courtroom is that if you can consider the death penalty in a
6 case of Hitler or some mass killer then that somehow makes you
7 eligible to sit. I'm fine to let people go if we're going to
8 get it down to in a simple case of first-degree murder, but
9 when they throw out examples when they're questioning jurors
10 that are like, well, I really can't consider death. Of
11 course, if you get someone who tried to eliminate an entire
12 race, you know, then I'm in. I mean, which fiction counts?

13 MR. SGRO: I didn't bring it up, Your Honor. The
14 juror brought it up.

15 MS. WECKERLY: Well, you try to keep --

16 THE COURT: That's true.

17 MS. WECKERLY: -- a juror based on that.

18 THE COURT: Well, I hate to do it, but I probably
19 have to excuse him.

20 MS. WECKERLY: And I would just like to note for the
21 record, the juror that we challenged earlier who was sitting
22 behind the man who was the veteran from the -- Mr. Tomas who
23 was sitting behind the veteran, he's been nodding the whole
24 time any time that other juror was talking about an inability
25 to impose the death penalty.

1 THE COURT: Mr. Ramos.

2 MS. WECKERLY: Mr. -- yes, Ramos. He nodded every
3 single time the other juror said he couldn't do it.

4 THE COURT: I noticed that, too.

5 MS. WECKERLY: And I would renew my challenge for
6 cause based on that.

7 MR. SGRO: To be fair, Your Honor, I look over there
8 from time to time to see what the jurors are doing. I have
9 found Mr. Ramos to be nodding at all kinds of different
10 things.

11 MR. LANGFORD: He's nodding right now.

12 MR. SGRO: He's nodding right now as he's speaking to
13 a police officer. So I'm not sure that his nodding comes at
14 any particular time.

15 THE COURT: I've already made the ruling on him.

16 MR. SGRO: Yes, sir. Thank you.

17 THE COURT: Right or wrong, you guys can appeal it,
18 but I've got to --

19 MS. WECKERLY: Actually, we can't.

20 (Bench conference ends.)

21 THE COURT: All right. Mr. --

22 THE COURT RECORDER: Judge, press your button.

23 THE COURT: All right. Mr. Pushkin, I'm going to
24 excuse you. Thank you for being a prospective juror. You can
25 leave.

1 All right. Ladies and gentlemen, we have completed
2 the voir dire of the jurors that were summoned to appear here
3 today. We actually started voir dire on jurors yesterday --
4 yesterday afternoon. Some of the attorneys had other
5 commitments in the morning, and so we had to start in the
6 afternoon, and then we spent most of the day today. We're
7 going to spend all day tomorrow. We're going to spend much of
8 Friday.

9 Hopefully by Friday afternoon we will have completed
10 all the voir dires and we will have enough jurors pass for
11 cause to select a final -- to make a final selection. Some of
12 you, maybe all of you, will be selected. I don't know that
13 yet. We won't know until at least Friday afternoon.

14 I'm going to have you -- you're excused now. You'll
15 be coming back Friday afternoon at 3:30 in the afternoon.
16 Hopefully, we will be deciding and telling you then which of
17 you will be serving as jurors.

18 Again, I ask that you not talk to anybody about the
19 case until you come on back.

20 We'll see you at 3:30 on Friday afternoon. The court
21 will be at ease while the prospective jurors leave.

22 (Panel of prospective jurors recessed 3:43 p.m.)

23 THE COURT: All right the record will reflect that
24 the prospective jurors have exited the courtroom. My notes
25 indicate that we have now passed 13 for cause.

1 MR. SGRO: That's what we have, too, Your Honor.

2 MR. DiGIACOMO: That's correct.

3 THE COURT: Our original decision -- or my agreement
4 that I explained to you was we needed to pass 35 for cause in
5 order to get -- for you to each exercise eight perempts toward
6 the regular jurors and two for the alternates. We're not
7 going to make it by Friday.

8 MR. DiGIACOMO: And we have to get 25 more jurors --
9 or 24 more jurors out of 40 potential jurors, and at the rate
10 we're heading, we're at about a third. So I think we need
11 some more jurors.

12 THE COURT: Well, we'll see how we do tomorrow. I
13 have a rather brief criminal calendar at 8:30. If you would
14 be here about 9:15. The jurors are summoned to be here at 9
15 o'clock. We'll have them up here by 9:30, and between 9:15
16 and 9:30, if you would go through the questionnaires. I will
17 read them tonight. I'd like you to read them tonight. Maybe
18 you can agree upon some, as you did eventually today, and we
19 can narrow it down, and we can get an idea of what we're going
20 to need to do.

21 MR. SGRO: Do we have 20 --

22 THE COURT: There will not be time to do jury
23 questionnaires on a new panel. So if we get -- if we finish
24 with what we have coming in Friday afternoon, we will probably
25 end up with just a plain-old panel of jurors on Monday

1 morning.

2 THE MARSHAL: Judge, I'm sorry. They have it set for
3 10 o'clock tomorrow.

4 THE CLERK: Your calendar says 10. So --

5 THE COURT: It does?

6 THE MARSHAL: It says 10. So jury services will have
7 them --

8 THE COURT: Oh, jury services told them to come when?

9 THE MARSHAL: 10 o'clock.

10 THE COURT: 10 o'clock. I didn't know that.

11 THE MARSHAL: Well, they'll have them downstairs and
12 ready to go at 10 o'clock. They'll tell them to be here
13 probably between 9:30 and 10.

14 MR. SGRO: We can come at 10 then, Your Honor.

15 THE COURT: Come at 9:30 and let's see what we can
16 find out downstairs.

17 MR. SGRO: Okay. Your Honor, do you have 20 coming
18 tomorrow?

19 THE COURT: I do. I thought.

20 MR. SGRO: Okay. So I have -- and I can't remember
21 if I had -- if it was Mr. DiGiacomo's case or not -- but I've
22 had situations like this before where we have run out, and
23 they have jurors come in fairly regularly downstairs, and we
24 have had them actually execute a questionnaire so that we can
25 look at it and flip through it before they ever hit the stand.

1 And here's my -- here's -- my concern is that there's
2 a pretrial order on a motion that we filed that was granted
3 relative to the use of a questionnaire, and I understand it
4 was granted. I understand it was used, and I understand we're
5 now running out of jurors. I get all of that. My request
6 would be that it's 3:45. It gives me an hour left of the
7 business day. I'd like to take a shot with jury services, see
8 what they let me know about getting some questionnaires filled
9 out, what the logistics of that would be.

10 I know I've done it before. I just don't know how
11 much time --

12 THE MARSHAL: It says, To be determined on the time.
13 What time would you like me to have her call the jurors in for
14 tomorrow?

15 THE COURT: Oh, for tomorrow?

16 THE MARSHAL: Yes.

17 THE COURT: If you could have them come in in time
18 for 9:30, I would appreciate it.

19 MR. SGRO: And Ms. Weckerly points out something that
20 I agree with. It's not that we get them in advance. It's as
21 they come in we get copies of the questionnaire, and we can --
22 I mean, we're versed enough now with them we can flip to the
23 relevant questions, and that way the record is preserved. We
24 get the questionnaire. We just don't get them 30 days in
25 advance of trial. We get them a few minutes before they --

1 before their voir dire. So --

2 THE COURT: I don't know whether they have jurors
3 that'll be there. Do you want to wait and --

4 MR. SGRO: I'd like to --

5 THE COURT: If jurors show up on Monday morning, do
6 you want to hand them questionnaires?

7 MR. SGRO: Exactly.

8 THE COURT: And have them fill them in?

9 MR. SGRO: Fill them out, yes.

10 THE COURT: Well, they'll be down there all morning.

11 MR. SGRO: Exactly. Exactly. That's kind of my
12 point.

13 THE COURT: And then we're going to have to copy
14 them.

15 MR. SGRO: Well, we can have them come in Friday or
16 or tomorrow. In other words, there will be people --

17 THE COURT: I don't know. They may not have jurors
18 coming in tomorrow or Friday.

19 MR. SGRO: I think they do every day, Your Honor.

20 THE MARSHAL: No, we don't.

21 MR. SGRO: Oh, they don't?

22 MR. DiGIACOMO: No. No. Once the juries are done
23 for the week --

24 THE COURT: They do them Monday, Tuesday and
25 Wednesday. I don't know that they have them on Thursdays and

1 Fridays.

2 MR. SGRO: Oh, I didn't know that.

3 MR. DiGIACOMO: Yes, we may not --

4 THE COURT: They may have a few coming in, but they
5 use them for short trials.

6 MR. DiGIACOMO: They might have a -- but we don't
7 have a panel.

8 MR. SGRO: But that may be where my confusion --

9 MR. DiGIACOMO: We can't get a panel before Monday,
10 and if you have them fill out the questionnaire, and let's say
11 we need 50 of them, by the time you copy them, it'll be 2
12 o'clock in the afternoon.

13 THE COURT: I think that we'll probably just have
14 them bring a panel in and select them like we used to do.

15 MR. DiGIACOMO: We go old school, Tony, back in the
16 days of your hair.

17 THE COURT: It's my old school, too.

18 MR. SGRO: Listen, Your Honor, I've tried many more
19 without than with. I mean, you know that. The dilemma is, we
20 have --

21 THE COURT: I don't know. Did you ever try a capital
22 murder in front of me before?

23 MR. SGRO: I don't think I ever got to trial with
24 you.

25 THE COURT: I don't think you ever -- I can't

1 remember. I don't know.

2 MR. SGRO: I think you covered an overflow for me one
3 time, but I guess --

4 THE COURT: But not a murder?

5 MR. SGRO: No. No, sir.

6 THE COURT: Okay. I don't think --

7 MR. ORAM: Judge, can I make a recommendation?

8 MR. LANGFORD: Yes.

9 MR. ORAM: What I --

10 MR. LANGFORD: He was pointing at me. And, yes, we
11 had an attempt murder together.

12 THE COURT: I've had a lot of stuff with you.

13 (Pause in the proceedings.)

14 MR. ORAM: Judge, one thing I've noticed is, if you
15 saw yesterday, we brought up 12. We got a lot of them right
16 at first. Then today I was looking back there, and most of
17 the ones we got today are in the back. What I notice is that
18 they realize, I see what I have to say. So I wonder -- just a
19 suggestion -- if you're going to bring in 20 tomorrow, why
20 don't we bring in -- tell 10 to sit downstairs so you can't
21 hear how to get off. Bring up 10 and then bring up the 10 in
22 the afternoon.

23 MR. DiGIACOMO: Chris, you could've looked at those
24 questionnaires and known which people were staying and which
25 people were leaving.

1 MR. ORAM: No. It's just a suggestion. If they
2 don't want to do it, I don't care. I just think they learned.

3 THE COURT: There may have been a couple that figured
4 out what to say in order to get off, but by and large, I don't
5 think it would've made any difference. You're right. There
6 might've been a couple -- we're still not going to get --

7 MR. ORAM: Yes, I was just trying to --

8 THE COURT: We're still not going to get 35 by Friday
9 afternoon.

10 MR. SGRO: I would like to -- I'll call as soon as I
11 get back to the office. I'll report to the Court tomorrow.
12 We're going to be here a few minutes early anyway.

13 THE COURT: I'll see you here at 9:15 tomorrow.
14 We've just had the jurors come in a little earlier now.

15 THE MARSHAL: She'll have them ready for me to pick
16 up at 9:15 to be up by 9:30.

17 THE COURT: Good.

18 MR. LANGFORD: Your Honor, I need --

19 THE COURT: We'll see you here at 9:15 in the
20 morning.

21 MR. LANGFORD: I need to make a record, Your Honor.

22 THE COURT: Oh, yes.

23 MR. LANGFORD: And I already started the record at
24 the bench with regards to a challenge for cause on the issue
25 of the death penalty. My objection is that all of the people

1 who have been successfully challenged for cause by either the
2 State or Mr. Burns -- the attorneys for Mr. Burns would have
3 been suitable jurors for my client Mr. Mason, and it is one of
4 the problems with having a joint trial where one defendant is
5 facing the death penalty and the other defendant is not.

6 And so my objection is that those people should not
7 have been dismissed. It is a due process violation as to Mr.
8 Burns having a jury of his peers that could consider just his
9 type of penalty. That's my objection, Your Honor. I
10 understand the Court's ruling.

11 THE COURT: I have to overrule the objection, for the
12 record.

13 MR. SGRO: Your Honor, this doesn't have to be on the
14 record.

15 THE COURT: Do you want to go off the record?

16 MR. SGRO: Off the record, yes, sir.

17 THE COURT: Off the record.

18 (Court recessed for the evening at 3:51 p.m.)
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

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

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Aurora, Colorado**


KIMBERLY LAWSON

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