

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 83796

DONTE JOHNSON,
Petitioner,

Electronically Filed
May 27 2022 07:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

STATE OF NEVADA, *et al.*,
Respondent.

Appeal From Clark County District Court
Eighth Judicial District, Clark County
The Honorable Jacqueline M. Bluth, District Judge
(Dist. Ct. No. A-19-789336-W)

APPELLANT'S APPENDIX

Volume 15 of 50

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DOCUMENT	DATE	VOLUME	PAGE(S)
Amended Verification, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	05/17/2019	47	11613-11615
Amended Verification – Index of Exhibit and Exhibit in Support, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	05/17/2019	47	11616-11620
Court Minutes, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	02/13/2019	49	12248
Court Minutes, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	10/28/2021	50	12365
Defendant's (Pro Se) Request for Petition to be Stricken as it is Not Properly Before the Court, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	04/11/2019	46	11606-11608
Defendant's (Pro Se) Request to Strike Petition, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	04/04/2019	46	11603-11605

DOCUMENT	DATE	VOLUME	PAGE(S)
Exhibits and Exhibit List in Support of Petition for Writ of Habeas Corpus	02/13/2019	25	6130–6146
6. Judgment of Conviction, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Oct. 3, 2000)	02/13/2019	25	6147–6152
7. Judgment of Conviction (Amended), <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Oct. 9, 2000)	02/13/2019	25	6153–6158
8. Appellant’s Opening Brief, <i>Johnson v. State</i> , Case No. 36991, In the Supreme Court of the State of Nevada (July 18, 2001)	02/13/2019	25	6159–6247
10. Appellant’s Reply Brief, <i>Johnson v. State</i> , Case No. 36991, In the Supreme Court of the State of Nevada (Jan. 15, 2002)	02/13/2019	25–26	6248–6283
15. Motion to Amend Judgment of Conviction, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Apr. 8, 2004)	02/13/2019	26	6284–6295
16. Amended Judgment of Conviction, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Apr. 20, 2004)	02/13/2019	26	6296–6298
17. Judgment of Conviction, <i>State v. Johnson</i> , Case No. 153154, District Court,	02/13/2019	26	6299–6303

	DOCUMENT	DATE	VOLUME	PAGE(S)
	Clark County (June 6, 2005)			
21.	Judgment Affirming Death Sentence (45456), <i>Johnson v. State</i> , Case No. 45456, In Supreme Court of the State of Nevada (Dec. 28, 2006)	02/13/2019	26	6304–6330
22.	Notice of filing of writ of certiorari, <i>Johnson v. State</i> , Case No. 45456, In Supreme Court of the State of Nevada (Apr. 5, 2007)	02/13/2019	26	6331–6332
24.	Petition for Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Feb. 11, 2008)	02/13/2019	26	6333–6343
25.	Pro Per Petition, <i>Johnson v. State</i> , Case No. 51306, In the Supreme Court of the State of Nevada (Mar. 24, 2008)	02/13/2019	26	6344–6364
26.	Response to Petition Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Apr. 29, 2008)	02/13/2019	26	6365–6369
27.	Order denying Pro Per Petition, <i>Johnson v. State</i> , Case No. 51306, In the Supreme Court of the State of Nevada (May 6, 2008)	02/13/2019	26	6370–6372
28.	Supplemental Brief in Support of Petition for Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No.	02/13/2019	26	6373–6441

	DOCUMENT	DATE	VOLUME	PAGE(S)
	153154, District Court, Clark County (Oct. 12, 2009)			
29.	Second Supplemental Brief in Support of Petition for Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (July 14, 2010)	02/13/2019	26	6442–6495
30.	Response to Petition Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Jan. 28, 2011)	02/13/2019	26–27	6496–6591
31.	Reply to Response to Petition Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (June 1, 2011)	02/13/2019	27	6592–6627
32.	Reply Brief on Initial Trial Issues, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Aug. 22, 2011)	02/13/2019	27–28	6628–6785
33.	Findings of Fact and Conclusions of Law, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Mar. 17, 2014)	02/13/2019	28	6786–6793
34.	Petition for Writ of Habeas Corpus, <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Oct. 8, 2014)	02/13/2019	28	6794–6808

DOCUMENT	DATE	VOLUME	PAGE(S)
35. Response to Second Petition for Writ of Habeas Corpus (Post-Conviction), <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Dec. 15, 2014)	02/13/2019	28	6809–6814
36. Reply to Response to Second Petition for Habeas Corpus (Post-Conviction), <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Jan. 2, 2015)	02/13/2019	28	6815–6821
37. Appellant’s Opening Brief, No. 65168, Nev. Sup. Ct., Jan. 9, 2015	02/13/2019	28	6822–6973
38. Findings of Fact and Conclusions of Law), <i>State v. Johnson</i> , Case No. 153154, District Court, Clark County (Feb. 4, 2015)	02/13/2019	28	6974–6979
40. Appellant’s Reply Brief, No. 65168, Nev. Sup. Ct., Nov. 18, 2015	02/13/2019	28–29	6980–7078
45. Autopsy Report for Peter Talamantez (Aug. 15, 1998)	02/13/2019	29	7079–7091
46. Las Vegas Metropolitan Police Dept. Voluntary Statement of Ace Rayburn Hart_Redacted (Aug. 17, 1998)	02/13/2019	29	7092–7121
47. Las Vegas Metropolitan Police Dept., Voluntary Statement of Brian	02/13/2019	29	7122–7138

	DOCUMENT	DATE	VOLUME	PAGE(S)
	Johnson_Redacted (Aug. 17, 1998)			
48.	Indictment, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Sep. 2, 1998)	02/13/2019	29	7139–7149
49.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Terrell Young_Redacted (Sep. 2, 1998)	02/13/2019	29	7150–7205
50.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Charla Severs_Redacted (Sep. 3, 1998)	02/13/2019	29	7206–7239
51.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Sikia Smith_Redacted (Sep. 8, 1998)	02/13/2019	29–30	7240–7269
52.	Superseding Indictment, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Sep. 15, 1998)	02/13/2019	30	7270–7284
53.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Todd Armstrong_Redacted (Sep. 17, 1998)	02/13/2019	30	7285–7338
54.	Las Vegas Metropolitan Police Dept., Voluntary Statement of Ace Hart_Redacted (Sep. 22, 1998)	02/13/2019	30	7339–7358

DOCUMENT	DATE	VOLUME	PAGE(S)
55. Testimony of Todd Armstrong, <i>State of Nevada v. Celis</i> , Justice Court, Clark County, Nevada Case No. 1699-98FM (Jan. 21, 1999)	02/13/2019	30–31	7359–7544
56. Trial Transcript (Volume VIII), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 17, 1999)	02/13/2019	31	7545–7675
57. Trial Transcript (Volume XVI-AM), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. 153624 (June 24, 1999)	02/13/2019	31–32	7676–7824
58. Motion to Permit DNA Testing of Cigarette Butt (Aug. 17, 1998)	02/13/2019	32	7825–7835
59. Trial Transcript (Volume VI), <i>State v. Young</i> , District Court, Clark County, Nevada, Case No. C153154 (Sep. 7, 1999)	02/13/2019	32	7836–7958
60. Interview of Charla Severs (Sep. 27, 1999)	02/13/2019	32	7959–7980
61. Motion to Videotape Deposition of Charla Severs, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Sep. 29, 1999)	02/13/2019	32–33	7981–8004
62. Opposition to Videotape Deposition of Charla Severs, <i>State v. Johnson</i> , District Court, Clark	02/13/2019	33	8005–8050

	DOCUMENT	DATE	VOLUME	PAGE(S)
	County, Nevada Case No. C153154 (Oct. 6, 1999)			
63.	Transcript of Video Deposition of Charla Severs (Filed Under Seal), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Oct. 6, 1999)	02/13/2019 SEALED	33	8051–8160
64.	Cellmark Report of Laboratory Examination (Nov. 17, 1999)	02/13/2019	33	8161–8165
65.	Motion for Change of Venue, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Nov. 29, 1999)	02/13/2019	33	8166–8291
66.	Records from the California Youth Authority_Redacted	02/13/2019	33–34	8292–8429
67.	Jury Instructions (Guilt Phase), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (June 8, 2000)	02/13/2019	34	8430–8496
68.	Verdict Forms (Guilt Phase), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (June 9, 2000)	02/13/2019	34	8497–8503
69.	Special Verdict, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (June 15, 2000)	02/13/2019	34	8504–8506
70.	Affidavit of Kristina Wildeveld (June 23, 2000)	02/13/2019	34	8507–8509

DOCUMENT	DATE	VOLUME	PAGE(S)
71. Amended Notice of Evidence Supporting Aggravating Circumstances, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Mar. 17, 2004)	02/13/2019	34	8510–8518
72. Second Amended Notice of Evidence Supporting Aggravating Circumstances, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 6, 2004)	02/13/2019	34	8519–8527
73. Opposition to Second Amended Notice of Evidence Supporting Aggravating Circumstances, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 20, 2004)	02/13/2019	34	8528–8592
74. Reply to Opposition to Notice of Evidence Supporting Aggravating Circumstances, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 26, 2004)	02/13/2019	34–35	8593–8621
75. Jury Instructions (Penalty Phase 3), <i>State v. Johnson</i> , District Court, Clark	02/13/2019	35	8622–8639

	DOCUMENT	DATE	VOLUME	PAGE(S)
	County, Nevada Case No. C153154 (Apr. 28, 2005)			
76.	Petition for rehearing, Johnson v. <i>State</i> , Nevada Supreme Court, Case No. 45456 (Mar. 27, 2007)	02/13/2019	35	8640–8652
77.	John L. Smith, <i>Mabey takes heat for attending his patients instead of the inauguration</i> , Las Vegas Review-Journal (Jan. 5, 2007)	02/13/2019	35	8653–8656
78.	Sam Skolnik, <i>Judge out of order, ethics claims say</i> , Las Vegas Sun (Apr. 27, 2007)	02/13/2019	35	8657–8660
79.	EM 110 - Execution Procedure_Redacted (Nov. 7, 2017)	02/13/2019	35	8661–8667
80.	<i>Nevada v. Baldonado</i> , Justice Court, Clark County, Nevada Case No. 04FH2573X (Mar. 30, 2004)	02/13/2019	35	8668–8698
81.	Birth Certificate John White Jr_Redacted	02/13/2019	35	8699–8700
82.	Declaration of Eloise Kline (Nov. 19, 2016)	02/13/2019	35	8701–8704
83.	Jury Questionnaire 2000_Barbara Fuller_Redacted (May 24, 2000)	02/13/2019	35	8705–8727
84.	Media Jury Questionnaire 2000	02/13/2019	35–36	8728–8900
85.	Media Jury Questionnaire 2005	02/13/2019	36	8901–9025
86.	News Articles	02/13/2019	36–37	9026–9296

DOCUMENT	DATE	VOLUME	PAGE(S)
87. State's Exhibit 63 – Photo	02/13/2019	37	9297–9299
88. State's Exhibit 64 – Photo	02/13/2019	37	9300–9302
89. State's Exhibit 65 – Photo	02/13/2019	37	9303–9305
90. State's Exhibit 66 – Photo	02/13/2019	37	9306–9308
91. State's Exhibit 67 – Photo	02/13/2019	37	9309–9311
92. State's Exhibit 69 – Photo	02/13/2019	37	9312–9314
93. State's Exhibit 70 – Photo	02/13/2019	37	9315–9317
94. State's Exhibit 74 – Photo	02/13/2019	37	9318–9320
95. State's Exhibit 75 – Photo	02/13/2019	37	9321–9323
96. State's Exhibit 76 – Photo	02/13/2019	37	9324–9326
97. State's Exhibit 79 – Photo	02/13/2019	37	9327–9329
98. State's Exhibit 80 – Photo	02/13/2019	37	9330–9332
99. State's Exhibit 81 – Photo	02/13/2019	37	9333–9335
100. State's Exhibit 82 – Photo	02/13/2019	37	9336–9338
101. State's Exhibit 86 – Photo	02/13/2019	37	9339–9341
102. State's Exhibit 89 – Photo	02/13/2019	37	9342–9344
103. State's Exhibit 92 – Photo	02/13/2019	37	9345–9347
104. State's Exhibit 113 – Photo	02/13/2019	37	9348–9350
105. State's Exhibit 116 – Photo	02/13/2019	37	9351–9353
106. State's Exhibit 120 – Photo	02/13/2019	37	9354–9356
107. State's Exhibit 125 – Photo	02/13/2019	37	9357–9359
108. State's Exhibit 130 – Photo	02/13/2019	38	9360–9362
109. State's Exhibit 134 – Photo	02/13/2019	38	9363–9365
110. State's Exhibit 137 – Photo	02/13/2019	38	9366–9368
111. State's Exhibit 145 – Photo	02/13/2019	38	9369–9371
112. State's Exhibit 146 – Photo	02/13/2019	38	9372–9374
113. State's Exhibit 148 – Photo	02/13/2019	38	9375–9377
114. State's Exhibit 151 – Photo	02/13/2019	38	9378–9380
115. State's Exhibit 180 – Photo	02/13/2019	38	9381–9384
116. State's Exhibit 181 – Photo	02/13/2019	38	9385–9388
117. State's Exhibit 216 - Probation Officer's Report - Juvenile_Redacted	02/13/2019	38	9389–9403
118. State's Exhibit 217 - Probation Officer's Report_Redacted	02/13/2019	38	9404–9420

DOCUMENT	DATE	VOLUME	PAGE(S)
119. State's Exhibit 221 – Photo	02/13/2019	38	9421–9423
120. State's Exhibit 222 – Photo	02/13/2019	38	9424–9426
121. State's Exhibit 256	02/13/2019	38	9427–9490
122. Las Vegas Metropolitan Police Dept. Crime Scene Report (Aug. 14, 1998)	02/13/2019	38	9491–9499
123. VCR at Terra Linda	02/13/2019	38	9500–9501
124. VCR Remote Control Buying Guide	02/13/2019	38	9502–9505
125. Jury Instructions (Penalty Phase 3), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (May 4, 2005)	02/13/2019	38	9506–9519
126. Motion to Bifurcate Penalty Phase, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 27, 2004)	02/13/2019	38	9520–9525
127. Motion to Reconsider Request to Bifurcate Penalty Phase, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 11, 2005)	02/13/2019	38	9526–9532
128. Special Verdicts (Penalty Phase 3), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Apr. 28, 2005)	02/13/2019	38	9533–9544
129. Verdict (Penalty Phase 3), <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (May 5, 2005)	02/13/2019	38	9545–9549

DOCUMENT	DATE	VOLUME	PAGE(S)
130. Declaration of Arthur Cain (Oct. 29, 2018)	02/13/2019	38	9550–9552
131. Declaration of Deborah White (Oct. 27, 2018)	02/13/2019	38	9553–9555
132. Declaration of Douglas McGhee (Oct. 28, 2018)	02/13/2019	38	9556–9558
133. Declaration of Elizabeth Blanding (Oct. 29, 2018)	02/13/2019	38	9559–9560
134. Declaration of Jesse Drumgole (Oct. 27, 2018)	02/13/2019	38	9561–9562
135. Declaration of Johnnisha Zamora (Oct. 28, 2018)	02/13/2019	38	9563–9566
136. Declaration of Johnny White (Oct. 26, 2018)	02/13/2019	38	9567–9570
137. Declaration of Keonna Bryant (Oct. 30, 2018)	02/13/2019	38	9571–9573
138. Declaration of Lolita Edwards (Oct. 30, 2018)	02/13/2019	38	9574–9576
139. Declaration of Loma White (Oct. 31, 2018)	02/13/2019	38	9577–9579
140. Declaration of Moises Zamora (Oct. 28, 2018)	02/13/2019	38	9580–9582
141. Declaration of Vonjelique Johnson (Oct. 28, 2018)	02/13/2019	38	9583–9585
142. Los Angeles Dept. of Child & Family Services_Redacted	02/13/2019	38–39	9586–9831
143. Psychological Evaluation of Donte Johnson by Myla H. Young, Ph.D. (June 6, 2000)	02/13/2019	39	9832–9841
144. Psychological Evaluation of Eunice Cain (Apr. 25, 1988)	02/13/2019	39	9842–9845

DOCUMENT	DATE	VOLUME	PAGE(S)
145. Psychological Evaluation of John White by Harold Kates (Dec. 28, 1993)	02/13/2019	39–40	9846–9862
146. Student Report for John White	02/13/2019	40	9863–9867
147. School Records for Eunnisha White_Redated	02/13/2019	40	9868–9872
148. High School Transcript for John White_Redacted	02/13/2019	40	9873–9874
149. School Record for John White_Redacted	02/13/2019	40	9875–9878
150. Certified Copy SSA Records_Eunice Cain_Redacted	02/13/2019	40	9879–9957
151. Declaration of Robin Pierce (Dec. 16, 2018)	02/13/2019	40	9958–9961
152. California Department of Corrections Records_Redacted (Apr. 25, 2000)	02/13/2019	40	9962–10060
153. Letter from Maxine Miller to Lisa Calandro re forensic lab report (Apr. 13, 1999)	02/13/2019	40	10061–10077
154. Letter from Lisa Calandro Forensic Analytical to Maxine Miller (Apr. 20, 1994)	02/13/2019	40	10078–10080
155. Memorandum re call with Richard Good (Apr. 29, 1999)	02/13/2019	40	10081–10082
156. Letter from Maxine Miller to Berch Henry at Metro DNA Lab (May 7, 1999)	02/13/2019	40	10083–10086
157. Letter from Maxine Miller to Richard Good (May 10, 1999)	02/13/2019	40	10087–10092

DOCUMENT	DATE	VOLUME	PAGE(S)
158. Letter from Maxine Miller to Tom Wahl (May 26, 1999)	02/13/2019	40	10093–10098
159. Stipulation and Order, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (June 8, 1999)	02/13/2019	40	10099–10101
160. Stipulation and Order, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, (June 14, 1999)	02/13/2019	40	10102–10105
161. Letter from Maxine Miller to Larry Simms (July 12, 1999)	02/13/2019	40–41	10106–10110
162. Stipulation and Order, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Dec. 22, 1999)	02/13/2019	41	10111–10113
163. Letter from Maxine Miller to Nadine LNU re bullet fragments (Mar. 20, 2000)	02/13/2019	41	10114–10118
164. Memorandum (Dec. 10, 1999)	02/13/2019	41	10119–10121
165. Forensic Analytical Bloodstain Pattern Interpretation (June 1, 2000)	02/13/2019	41	10122–10136
166. Trial Transcript (Volume III), <i>State v. Young</i> , District Court, Clark County, Nevada, Case No. C153461 (Sep. 7, 1999)	02/13/2019	41	10137–10215
167. Trial Transcript (Volume VII), <i>State v. Young</i> ,	02/13/2019	41	10216–10332

DOCUMENT	DATE	VOLUME	PAGE(S)
District Court, Clark County, Nevada, Case No. C153461 (Sep. 13, 1999)			
168. National Research Council, <i>Strengthening Forensic Science in the United States: A Path Forward</i> , Washington, D.C.: The National Academies Press (2009)	02/13/2019	41	10333–10340
169. Las Vegas Metropolitan Police Dept. Forensic Lab Report of Examination (Sep. 26, 1998)	02/13/2019	41	10341–10343
170. Todd Armstrong juvenile records_Redacted	02/13/2019	41–42	10344–10366
171. Handwritten notes on Pants	02/13/2019	42	10367–10368
172. Declaration of Cassondrus Ragsdale (Dec. 16, 2018)	02/13/2019	42	10369–10371
173. Report of Dr. Kate Glywasky (Dec. 19, 2018)	02/13/2019	42	10372–10375
174. Curriculum Vitae of Dr. Kate Glywasky	02/13/2019	42	10376–10384
175. Report of Deborah Davis, Ph.D. (Dec. 18, 2018)	02/13/2019	42	10385–10435
176. Curriculum Vitae of Deborah Davis, Ph.D.	02/13/2019	42	10436–10462
177. Report of T. Paulette Sutton, Associate Professor, Clinical Laboratory Sciences (Dec. 18, 2018)	02/13/2019	42	10463–10472
178. Curriculum Vitae of T. Paulette Sutton	02/13/2019	42	10473–10486

DOCUMENT	DATE	VOLUME	PAGE(S)
179. Report of Matthew Marvin, Certified Latent Print Examiner (Dec. 18, 2018)	02/13/2019	42	10487–10494
180. Curriculum Vitae of Matthew Marvin	02/13/2019	42	10495–10501
181. Trial Transcript (Volume V), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 16, 1999)	02/13/2019	42–43	10502–10614
182. Trial Transcript (Volume VI), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 16, 1999)	02/13/2019	43	10615–10785
183. Las Vegas Metropolitan Police Dept. Interview of Tod Armstrong_Redacted (Aug. 17, 1998)	02/13/2019	43	10786–10820
184. Las Vegas Metropolitan Police Dept. Interview of Tod Armstrong_Redacted (Aug. 18, 1998)	02/13/2019	43	10821–10839
185. Las Vegas Metropolitan Police Dept. Interview of Charla Severs_Redacted (Aug. 18, 1998)	02/13/2019	43–44	10840–10863
186. Las Vegas Metropolitan Police Dept. Interview of Sikia Smith_Redacted (Aug. 17, 1998)	02/13/2019	44	10864–10882
187. Las Vegas Metropolitan Police Dept. Interview of Terrell Young_Redacted (Sep. 2, 1998)	02/13/2019	44	10883–10911
188. Declaration of Ashley Warren (Dec. 17, 2018)	02/13/2019	44	10912–10915

DOCUMENT	DATE	VOLUME	PAGE(S)
189. Declaration of John Young (Dec. 10, 2018)	02/13/2019	44	10916–10918
190. Brief of Plaintiffs-Appellants, <i>Abdur'rahman v. Parker</i> , Tennessee Supreme Court, Nashville Division, Case No. M2018-10385-SC-RDO-CV	02/13/2019	44–45	10919–11321
191. Sandoz' Inc.'s Motion for Leave Pursuant to NRAP 29 to Participate as Amicus Curiae in Support of Real Parties in Interest, <i>Nevada v. The Eighth Judicial District Court of the State of Nevada</i> , Nevada Supreme Court, Case No. 76485	02/13/2019	45	11322–11329
192. Notice of Entry of Order, <i>Dozier v. State of Nevada</i> , District Court, Clark County, Nevada, Case No. 05C215039	02/13/2019	45	11330–11350
193. Declaration of Cassondrus Ragsdale (2018.12.18)	02/13/2019	45	11351–11353
194. Affidavit of David B. Waisel, <i>State of Nevada</i> , District Court, Clark County, Case No. 05C215039 (Oct. 4, 2018)	02/13/2019	45–46	11354–11371
195. Declaration of Hans Weding (Dec. 18, 2018)	02/13/2019	46	11372–11375
196. Trial Transcript (Volume IX), <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624 (June 18, 1999)	02/13/2019	46	11376–11505

DOCUMENT	DATE	VOLUME	PAGE(S)
197. Voluntary Statement of Luis Cabrera (August 14, 1998)	02/13/2019	46	11506–11507
198. Voluntary Statement of Jeff Bates (handwritten)_Redacted (Aug. 14, 1998)	02/13/2019	46	11508–11510
199. Voluntary Statement of Jeff Bates_Redacted (Aug. 14, 1998)	02/13/2019	46	11511–11517
200. Presentence Investigation Report, State’s Exhibit 236, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461_Redacted (Sep. 15, 1999)	02/13/2019	46	11518–11531
201. Presentence Investigation Report, State’s Exhibit 184, <i>State v. Smith</i> , District Court, Clark County, Nevada Case No. C153624_Redacted (Sep. 18, 1998)	02/13/2019	46	11532–11540
202. School Record of Sikia Smith, Defendant’s Exhibit J, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11541–11542
203. School Record of Sikia Smith, Defendant’s Exhibit K, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11543–11544

DOCUMENT	DATE	VOLUME	PAGE(S)
204. School Record of Sikia Smith, Defendant's Exhibit L, <i>State v. Smith</i> , District Court, Clark County, Nevada (Case No. C153624)	02/13/2019	46	11545–11546
205. Competency Evaluation of Terrell Young by Greg Harder, Psy.D., Court's Exhibit 2, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11547–11550
206. Competency Evaluation of Terrell Young by C. Philip Colosimo, Ph.D., Court's Exhibit 3, <i>State v. Young</i> , District Court, Clark County, Nevada Case No. C153461 (May 3, 2006)	02/13/2019	46	11551–11555
207. Motion and Notice of Motion in Limine to Preclude Evidence of Other Guns Weapons and Ammunition Not Used in the Crime, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154 (Oct. 19, 1999)	02/13/2019	46	11556–11570
208. Declaration of Cassondrus Ragsdale (Dec. 19, 2018)	02/13/2019	46	11571–11575
209. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit A: Affidavit of Theresa Knight, <i>State v. Johnson</i> ,	02/13/2019	46	11576–11577

DOCUMENT	DATE	VOLUME	PAGE(S)
District Court, Clark County, Nevada Case No. C153154, June 5, 2005			
210. Post –Evidentiary Hearing Supplemental Points and Authorities, Exhibit B: Affidavit of Wilfredo Mercado, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154, June 22, 2005	02/13/2019	46	11578–11579
211. Genogram of Johnson Family Tree	02/13/2019	46	11580–11581
212. Motion in Limine Regarding Referring to Victims as “Boys”, <i>State v. Johnson</i> , District Court, Clark County, Nevada Case No. C153154	02/13/2019	46	11582–11585
213. Declaration of Schaumetta Minor, (Dec. 18, 2018)	02/13/2019	46	11586–11589
214. Declaration of Alzora Jackson (Feb. 11, 2019)	02/13/2019	46	11590–11593
Exhibits in Support of Petitioner’s Motion for Leave to Conduct Discovery	12/13/2019	49	12197–12199
1. <i>Holloway v. Baldonado</i> , No. A498609, Plaintiff’s Opposition to Motion for Summary Judgment, District Court of Clark County, Nevada, filed Aug. 1, 2007	12/13/2019	49	12200–12227
2. Handwritten letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12228–12229

DOCUMENT	DATE	VOLUME	PAGE(S)
Exhibits in Support of Reply to State's Response to Petition for Writ of Habeas Corpus	12/13/2019	47	11837–11839
215. <i>Holloway v. Baldonado</i> , No. A498609, Plaintiff's Opposition to Motion for Summary Judgment, District Court of Clark County, Aug. 1, 2007	12/13/2019	47–48	11840–11867
216. <i>Holloway v. Baldonado</i> , No. A498609, Opposition to Motion for Summary Judgment Filed by Defendants Stewart Bell, David Roger, and Clark County, District Court of Clark County, filed Jan. 16, 2008	12/13/2019	48–49	11868–12111
217. Letter from Charla Severs, dated Sep. 27, 1998	12/13/2019	49	12112–12113
218. Decision and Order, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 18, 2000	12/13/2019	49	12114–12120
219. State's Motion to Disqualify the Honorable Lee Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed Apr. 4, 2005	12/13/2019	49	12121–12135
220. Affidavit of the Honorable Lee A. Gates, <i>State of Nevada v. Johnson</i> , Case No. C153154, District	12/13/2019	49	12136–12138

DOCUMENT	DATE	VOLUME	PAGE(S)
Court of Clark County, filed Apr. 5, 2005			
221. Motion for a New Trial (Request for Evidentiary Hearing), <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, filed June 23, 2000	12/13/2019	49	12139–12163
222. Juror Questionnaire of John Young, <i>State of Nevada v. Johnson</i> , Case No. C153154, District Court of Clark County, dated May 24, 2000	12/13/2019	49	16124–12186
Findings of Fact, Conclusions of Law and Order, <i>Johnson v. Gittere, et al.</i> , Case No. A–19– 789336–W, Clark County District Court, Nevada	10/08/2021	49	12352–12357
Minute Order (denying Petitioner’s Post–Conviction Writ of Habeas Corpus, Motion for Discovery and Evidentiary Hearing), <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	05/15/2019	49	12264–12266
Minutes of Motion to Vacate Briefing Schedule and Strike Habeas Petition	07/09/2019	47	11710
Motion and Notice of Motion for Evidentiary Hearing, <i>Johnson v.</i>	12/13/2019	49	12231–12241

DOCUMENT	DATE	VOLUME	PAGE(S)
<i>Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada			
Motion and Notice to Conduct Discovery, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	12/13/2019	49	12187-12196
Motion for Leave to File Under Seal and Notice of Motion	02/15/2019		11600-11602
Motion in Limine to Prohibit Any References to the First Phase as the “Guilt Phase”	11/29/1999	2	302-304
Motion to Vacate Briefing Schedule and Strike Habeas Petition, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	05/16/2019	46-47	11609-11612
Motion to Vacate Briefing Schedule and Strike Habeas Petition, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	05/23/2019	47	11621-11624
Motion to Withdraw Request to Strike Petition and to Withdraw Request for Petition to be Stricken as Not Properly Before the Court), <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-	06/26/2019	47	11708-11709

DOCUMENT	DATE	VOLUME	PAGE(S)
W, Clark County District Court, Nevada			
Notice of Appeal, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	11/10/2021	50	12366-12368
Notice of Entry of Findings of Fact, Conclusions of Law and Order, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	10/11/2021	49-50	12358-12364
Notice of Hearing (on Discovery Motion), <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	12/13/2019	49	12330
Notice of Objections to Proposed Order, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	02/02/2021	49	12267-12351
Notice of Supplemental Exhibit 223, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada	02/11/2019	49	11242-12244
223. Declaration of Dayvid J. Figler, dated Feb. 10, 2020	02/11/2019	49	12245-12247
Opposition to Defendants' Motion in Limine to Prohibit	12/02/1999	2	305-306

DOCUMENT	DATE	VOLUME	PAGE(S)
Any References to the First Phase as the “Guilt Phase”			
Opposition to Motion in Limine to Preclude Evidence of Other Guns, Weapons and Ammunition Not Used in the Crime	11/04/1999	2	283–292
Opposition to Motion to Vacate Briefing Schedule and Strike Habeas Petition, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	05/28/2019	47	11625–11628
Petition for Writ of Habeas Corpus, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	02/13/2019	24–25	5752–6129
Post–Evidentiary Hearing Supplemental Points and Authorities	06/22/2005	22	5472–5491
Reply to Opposition to Motion to Vacate Briefing Schedule and Strike Habeas Petition	06/20/2019	47	11705–11707
Reply to State’s Response to Petition for Writ of Habeas Corpus	12/13/2019	47	11718–11836
State’s Response to Defendant’s Petition for Writ of Habeas Corpus (Post–Conviction),	05/29/2019	47	11629–11704

DOCUMENT	DATE	VOLUME	PAGE(S)
<i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada			
Stipulation and Order to Modify Briefing Schedule, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	09/30/2019	47	11711–11714
Stipulation and Order to Modify Briefing Schedule, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	11/22/2019	47	11715–11717
Transcript of All Defendant’s Pending Motions	03/02/2000	2	416–430
Transcript of Argument to Admit Evidence of Aggravating Circumstances	05/03/2004	12	2904–2958
Transcript of Argument: Petition for Writ of Habeas Corpus (All Issues Raised in the Petition and Supplement)	12/01/2011	22–23	5498–5569
Transcript of Arguments	04/28/2004	12	2870–2903
Transcript of Decision: Procedural Bar and Argument: Petition for Writ of Habeas Corpus	07/20/2011	22	5492–5497
Transcript of Defendant’s Motion for Leave to File Under	02/25/2019	46	11594–11599

DOCUMENT	DATE	VOLUME	PAGE(S)
Seal, <i>Johnson v. Gittere, et al.</i> , Case No. A-19-789336-W, Clark County District Court, Nevada			
Transcript of Defendant's Motion to Reveal the Identity of Informants and Reveal Any Benefits, Deals, Promises or Inducements; Defendant's Motion to Compel Disclosure of Existence and Substance of Expectations, or Actual Receipt of Benefits or Preferential Treatment for Cooperation with Prosecution; Defendant's Motion to Compel the Production of Any and All Statements of Defendant; Defendant's Reply to Opposition to Motion in Limine to Preclude Evidence of Other Guns, Weapons, Ammunition; Defendant's Motion in Limine to Preclude Evidence of Witness Intimidation	11/18/1999	2	293-301
Transcript of Evidentiary Hearing	05/17/2004	12	2959-2989
Transcript of Evidentiary Hearing	06/14/2005	22	5396-5471
Transcript of Evidentiary Hearing	04/04/2013	23	5570-5673
Transcript of Evidentiary Hearing	04/11/2013	23	5674-5677

DOCUMENT	DATE	VOLUME	PAGE(S)
Transcript of Evidentiary Hearing	06/21/2013	23	5678–5748
Transcript of Evidentiary Hearing	09/18/2013	23–24	5749–5751
Transcript of Excerpted Testimony of Termaine Anthony Lytle	05/17/2004	12	2990–2992
Transcript of Jury Trial – Day 1 (Volume I)	06/05/2000	2–4	431–809
Transcript of Jury Trial – Day 2 (Volume II)	06/06/2000	4–5	810–1116
Transcript of Jury Trial – Day 3 (Volume III)	06/07/2000	5–7	1117–1513
Transcript of Jury Trial – Day 4 (Volume IV)	06/08/2000	7–8	1514–1770
Transcript of Jury Trial – Day 5 (Volume V)	06/09/2000	8	1771–1179
Transcript of Jury Trial – Penalty – Day 1 (Volume I) AM	04/19/2005	12–13	2993–3018
Transcript of Jury Trial – Penalty – Day 1 (Volume I) PM	4/19/2005 ¹	13	3019–3176
Transcript of Jury Trial – Penalty – Day 10 (Volume X)	05/02/2005	20–21	4791–5065

¹ This transcript was not filed with the District Court nor is it under seal.

DOCUMENT	DATE	VOLUME	PAGE(S)
Transcript of Jury Trial – Penalty – Day 10 (Volume X) – Exhibits	05/02/2005	21	5066–5069
Transcript of Jury Trial – Penalty – Day 11 (Volume XI)	05/03/2005	21–22	5070–5266
Transcript of Jury Trial – Penalty – Day 12 (Volume XII)	05/04/2005	22	5267–5379
Transcript of Jury Trial – Penalty – Day 12 (Volume XII) – Deliberations	05/04/2005	22	5380–5383
Transcript of Jury Trial – Penalty – Day 13 (Volume XIII)	05/05/2005	22	5384–5395
Transcript of Jury Trial – Penalty – Day 2 (Volume I) AM	04/20/2005	13	3177–3201
Transcript of Jury Trial – Penalty – Day 2 (Volume II) PM	04/20/2005	13–14	3202–3281
Transcript of Jury Trial – Penalty – Day 3 (Volume III) PM	04/21/2005	14–15	3349–3673
Transcript of Jury Trial – Penalty – Day 3 (Volume III–A) AM	04/21/2005	14	3282–3348
Transcript of Jury Trial – Penalty – Day 4 (Volume IV) AM – Amended Cover Page	04/22/2005	16	3790–3791
Transcript of Jury Trial – Penalty – Day 4 (Volume IV) PM	04/22/2005	15–16	3674–3789

DOCUMENT	DATE	VOLUME	PAGE(S)
Transcript of Jury Trial – Penalty – Day 4 (Volume IV–B)	04/22/2005	16	3792–3818
Transcript of Jury Trial – Penalty – Day 5 (Volume V) PM	04/25/2005	16	3859–3981
Transcript of Jury Trial – Penalty – Day 5 (Volume V–A)	04/25/2005	16	3819–3858
Transcript of Jury Trial – Penalty – Day 6 (Volume VI) PM	04/26/2005	17–18	4103–4304
Transcript of Jury Trial – Penalty – Day 6 (Volume VI–A) PM	04/26/2005	16–17	3982–4102
Transcript of Jury Trial – Penalty – Day 7 (Volume VII– PM)	04/27/2005	18	4382–4477
Transcript of Jury Trial – Penalty – Day 7 (Volume VII–A)	04/27/2005	18	4305–4381
Transcript of Jury Trial – Penalty – Day 8 (Volume VIII– C)	04/28/2005	18–19	4478–4543
Transcript of Jury Trial – Penalty – Day 9 (Volume IX)	04/29/2005	19–20	4544–4790
Transcript of Jury Trial – Penalty Phase – Day 1 (Volume I) AM	06/13/2000	8	1780–1908
Transcript of Jury Trial – Penalty Phase – Day 1 (Volume II) PM	06/13/2000	8–9	1909–2068

DOCUMENT	DATE	VOLUME	PAGE(S)
Transcript of Jury Trial – Penalty Phase – Day 2 (Volume III)	06/14/2000	9–10	2069-2379
Transcript of Jury Trial – Penalty Phase – Day 3 (Volume IV)	06/16/2000	10	2380–2470
Transcript of Material Witness Charla Severs’ Motion for Own Recognizance Release	01/18/2000	2	414–415
Transcript of Motion for a New Trial	07/13/2000	10	2471–2475
Transcript of Petition for Writ of Habeas Corpus and Setting of 1. Motion for Leave and 2. Motion for Evidentiary Hearing, <i>Johnson v. Gittere, et al.</i> , Case No. A–19–789336–W, Clark County District Court, Nevada	02/13/2020	49	12249–12263
Transcript of Preliminary Hearing	10/12/1999	2	260–273
Transcript of State’s Motion to Permit DNA Testing	09/02/1999	2	252 – 254
Transcript of State’s Motion to Videotape the Deposition of Charla Severs	10/11/1999	2	255–259
Transcript of Status Check: Filing of All Motions (Defendant’s Motion to Reveal	10/21/1999	2	274–282

DOCUMENT	DATE	VOLUME	PAGE(S)
the Identity of Informants and Reveal Any Benefits, Deals, Promises or Inducements; Defendant's Motion to Compel Disclosure of Existence and Substance of Expectations, or Actual Receipt of Benefits or Preferential Treatment for Cooperation with Prosecution; Defendant's Motion to Compel the Production of Any and All Statements of Defendant; State's Motion to Videotape the Deposition of Charla Severs; Defendant's Motion in Limine to Preclude Evidence of Other Crimes; Defendant's Motion to Reveal the Identity of Informants and Reveal any Benefits, Deals' Defendant's Motion to Compel the Production of any and all Statements of the Defendant			
Transcript of the Grand Jury, <i>State v. Johnson</i> , Case No. 98C153154, Clark County District Court, Nevada	09/01/1998	1–2	001–251
Transcript of Three Judge Panel – Penalty Phase – Day 1 (Volume I)	07/24/2000	10–11	2476–2713
Transcript of Three Judge Panel – Penalty Phase – Day 2 and Verdict (Volume II)	07/26/2000	11–12	2714–2853

DOCUMENT	DATE	VOLUME	PAGE(S)
Transcript Re: Defendant's Motions	01/06/2000	2	307–413
Verdict Forms – Three Judge Panel	7/26/2000	12	2854–2869

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2022, I electronically filed the foregoing Appendix with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

Alexander G. Chen
Chief Deputy District Attorney
Clark County District Attorney's Office

/s/ Celina Moore

Celina Moore
An employee of the Federal
Public Defender's Office

1 them.

2 **THE COURT:** You're not going to be --
3 dislike lawyers so much until you don't want to hear
4 or listen to anything they have to say, are you?

5 **PROSPECTIVE JUROR:** No.

6 **THE COURT:** Now, here, No. 30 in reference
7 to Mr. Johnson being an African-American male, you
8 said, "There seems to be a lot of African-American
9 males getting involved in criminal activity. It
10 would be difficult for me to be fair and impartial.
11 I tend to group these people as oppressed,
12 uneducated, and turn to crime as their only way to
13 live." And of course, then you say -- it talks
14 about in 31 when they talk about the victims being
15 white, you said, "But as a woman," I am -- "I feel
16 compassion for the families of these four victims."

17 **PROSPECTIVE JUROR:** Um-hmm.

18 **THE COURT:** While you're listening to this
19 case, are you going to be thinking about the race of
20 these people and all of that stuff and make your
21 decision based on that?

22 **PROSPECTIVE JUROR:** That was my initial
23 response about race as the question came up, but I
24 guess I would be open, you know, to hearing about
25 the case.

1 **THE COURT:** Can you listen to the facts
2 and the law and make a decision solely on the facts
3 and the law?

4 **PROSPECTIVE JUROR:** I'll try to.

5 **THE COURT:** Well, what do you think
6 about -- you work at a church, your husband is a
7 pastor of a church.

8 **PROSPECTIVE JUROR:** Um-hmm.

9 **THE COURT:** What do you think about the
10 death penalty?

11 **PROSPECTIVE JUROR:** I've been thinking
12 about that a lot. I think it depends on a
13 case-by-case situation.

14 **THE COURT:** So, your religion is not
15 opposed to the imposition of the death penalty?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** Back on the narrative portion,
18 you say, "I would like to be excused from this case
19 because of three factors: One, I would not be a
20 fair and impartial juror because of my stance on the
21 death penalty."

22 What does that mean?

23 **PROSPECTIVE JUROR:** I feel strongly for
24 the death penalty, especially in light of -- if
25 someone has been already tried for murder, so I feel

1 like that's what I'll come in with that -- with that
2 opinion.

3 **THE COURT:** You say, "I have a
4 two-year-old child at home that I have to take care
5 of, and that I have no other means of child care
6 available."

7 **PROSPECTIVE JUROR:** I don't have any
8 family here, so it's pretty much myself and my
9 husband.

10 **THE COURT:** Counsel?

11 **MR. DASKAS:** May I ask some questions,
12 Judge?

13 **THE COURT:** Yes.

14

15 EXAMINATION BY THE STATE

16 **BY MR. DASKAS:**

17 Q Let me address, first, your child care
18 issue.

19 You obviously work during the day
20 normally?

21 A And he's with me.

22 Q You take him to work?

23 A Yeah. He's at the office with me.

24 Q Your husband works, as you said, at the
25 same church. He's a pastor there?

1 A Yes.

2 Q Is it possible for your husband to take
3 your son to work if you're selected as a juror in
4 this case just for the next week or so?

5 A It's difficult, because he meets with
6 people outside of the office. He has counseling
7 sessions, and it's hard to bring a two-year-old with
8 him.

9 Q I understand. Believe me, I understand.

10 A Yes.

11 Q Is it impossible or is it just difficult
12 for you to come up with some child care solutions?

13 A Very difficult. Right now, we're just --
14 he's not working, really, just kind of watching him.
15 It's hard on him.

16 Q Let me just move on for a moment to
17 another issue, and that is the issue of punishment
18 in this case.

19 Without putting words in your mouth, what
20 I hear you saying is now knowing that this man has
21 been convicted of four murders, you would lean
22 toward imposition of the death penalty?

23 A Yes.

24 Q Wouldn't you want to know everything about
25 the case first?

1 A I weighed that in my mind, and I
2 thought -- I guess in the questionnaire there are
3 other options, and one of them said life with the
4 possibility of parole.

5 **THE COURT:** Mr. Daskas, I'm just going to
6 stop here. I'm looking at this questionnaire, and
7 it appears -- not to mention the kid that she has
8 that's only two years old, but in Question No. 37,
9 it says, "Are you open to considering all four forms
10 of punishment in a capital case depending on the
11 evidence presented at the trial?" and she said, "No.
12 I would not consider any possibility of parole if
13 someone is guilty of first-degree murder. The death
14 penalty should be imposed." And then it says, "In
15 reaching a verdict in the penalty phase, you must
16 consider the defendant's background, that is
17 mitigating circumstances," and she goes, "Not at
18 all."

19 It appears to me she has her mind made up
20 and that she can't follow the law, so the Court is
21 going to excuse her.

22 You're excused, ma'am.

23 **MR. STANTON:** Your Honor, we had a juror
24 0165, a Carlos Villareal --

25 **THE COURT:** We issued an order to show

1 cause for him.

2 **MR. STANTON:** He's just absent with no
3 explanations?

4 **THE COURT:** Right. I thought you heard
5 me. I'm sorry.

6 **THE CLERK:** He had faxed in a note from
7 the doctor's office that just said he's off work.

8 **THE COURT:** He didn't say anything else.
9 Who is next, Miss Kirk?

10

11 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 199

12 **THE COURT:** Miss Kirk, have you heard
13 anything about this case?

14 **PROSPECTIVE JUROR 199:** No. I didn't move
15 here until 1998, so I'm not very familiar with it.

16 **THE COURT:** Where did you move from?

17 **PROSPECTIVE JUROR:** Des Moines, Iowa.

18 **THE COURT:** And you have -- what about --
19 you have a four-month-old?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** And a four-year-old?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** And a seven-year-old and a
24 12-year-old?

25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** You don't work, do you?
2 **PROSPECTIVE JUROR:** Yes, I do.
3 **THE COURT:** Who keeps these kids?
4 **PROSPECTIVE JUROR:** The schools and the
5 preschool and then a daycare center out of the home.
6 **THE COURT:** So, a daycare center where?
7 **PROSPECTIVE JUROR:** I have a licensed lady
8 that does it out of her home that lives close to
9 where I live.
10 **THE COURT:** All right.
11 Do you go to church?
12 **PROSPECTIVE JUROR:** Yes.
13 **THE COURT:** What church do you go to?
14 **PROSPECTIVE JUROR:** Mormon, Latter Day
15 Saint.
16 **THE COURT:** You're from Des Moines, Iowa?
17 **PROSPECTIVE JUROR:** Yes.
18 **THE COURT:** What kind of work does your
19 husband do?
20 **PROSPECTIVE JUROR:** He works for the City.
21 **THE COURT:** Do you know what he does for
22 the City?
23 **PROSPECTIVE JUROR:** Yeah. He's in the
24 Public Works department, inspector.
25 **THE COURT:** You served on a jury before;

1 is that right?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** When was that?

4 **PROSPECTIVE JUROR:** I believe it was 2003.

5 **THE COURT:** That was here in Las Vegas?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** And was it an illegal alien
8 case where the person came into the country after
9 having been deported?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** Were you the foreman of that
12 jury?

13 **PROSPECTIVE JUROR:** No.

14 **THE COURT:** Now, back to No. 30 here --
15 I'm trying to skip over stuff. You said, "I was
16 brought up in an all white town in the Midwest." It
17 seems like we had three people from Iowa, and they
18 all said that -- "and I have formed many opinions
19 about blacks, especially males. These opinions tend
20 to be negative."

21 What are these opinions?

22 **PROSPECTIVE JUROR:** Well, growing up in
23 the Midwest, there was none in my town, and it
24 seemed like what I saw was either on the television
25 or on the news at night. It seemed in Des Moines

1 that it seemed they were the ones that were
2 committing the violent crimes and the rapes and the
3 murders, and I formed a stereotype which, being out
4 here, I've, of course, had to adapt, and I know a
5 lot of nice people that are colored, obviously, but
6 it seems like what I was brought up around there, it
7 was a negative.

8 **THE COURT:** And you think that would
9 affect your ability to be fair in this case? I
10 guess it does, because in 31, you said, "If the
11 victims were white, I would be pushing for the death
12 penalty."

13 **PROSPECTIVE JUROR:** Honestly, though, I
14 would be pushing for it any color.

15 **THE COURT:** I know, but I'm sure these
16 lawyers are not going to want you on that jury with
17 that kind of attitude. They're going to think you
18 can't put it out of your mind.

19 Also, you said, "I believe in an eye for
20 an eye. If you kill someone, you deserve to die."
21 Of course, that's not our law.

22 I'm going to excuse you, ma'am.

23 **PROSPECTIVE JUROR:** Okay.

24 **THE COURT:** Thank you.

25 Gee, I thought Iowa was a nice state. I'm

1 not going there.

2

3 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 203

4 **THE COURT:** Mr. Summers, you're 20 years
5 old?

6 **PROSPECTIVE JUROR 203:** Yes, sir.

7 **THE COURT:** What do you do?

8 **PROSPECTIVE JUROR:** I'm a truck driver.

9 **THE COURT:** Who do you drive for?

10 **PROSPECTIVE JUROR:** RJB equipment.

11 **THE COURT:** Do you have a roommate?

12 **PROSPECTIVE JUROR:** Yeah.

13 **THE COURT:** Is that a roommate or is it
14 more than just a roommate?

15 **PROSPECTIVE JUROR:** It's my
16 brother-in-law. It's a former brother-in-law or
17 former roommate.

18 **THE COURT:** And he's in college?

19 **PROSPECTIVE JUROR:** No.

20 **THE COURT:** I thought you said he was
21 going to school to be a teacher.

22 **PROSPECTIVE JUROR:** What's that? No,
23 that's another roommate. That's my girlfriend.

24 **THE COURT:** How many roommates do you
25 have?

1 **PROSPECTIVE JUROR:** Right now, I have two.
2 **THE COURT:** You have your girlfriend and
3 then another friend?
4 **PROSPECTIVE JUROR:** Yes.
5 **THE COURT:** Your girlfriend, is she going
6 to UNLV?
7 **PROSPECTIVE JUROR:** Yes.
8 **THE COURT:** And you've never been on a
9 jury before.
10 Have you or anyone in your family ever
11 been charged with a crime?
12 **PROSPECTIVE JUROR:** My brother-in-law,
13 that's it.
14 **THE COURT:** What was he charged with?
15 **PROSPECTIVE JUROR:** I'm not quite sure. I
16 think, like, stealing cars, grand theft auto or
17 something like that.
18 **THE COURT:** Now, you've been in your own
19 place for about a year?
20 **PROSPECTIVE JUROR:** A year and a half.
21 **THE COURT:** What kind of work does your
22 mom do?
23 **PROSPECTIVE JUROR:** She does slot audit.
24 She works for a casino.
25 **THE COURT:** What about your dad?

1 **PROSPECTIVE JUROR:** Truck driver.
2 **THE COURT:** Okay.
3 He got you into the business?
4 **PROSPECTIVE JUROR:** No.
5 **THE COURT:** You just decided to do it?
6 **PROSPECTIVE JUROR:** I got into it by bad
7 luck or something.
8 **THE COURT:** Okay.
9 Now, you understand that if you're picked
10 to serve on this jury, you will have to decide the
11 punishment for the defendant.
12 Do you understand that?
13 **PROSPECTIVE JUROR:** Yes, sir.
14 **THE COURT:** He's already been convicted of
15 four counts of first-degree murder, so your job,
16 along with your fellow jurors, would be to decide
17 the punishment.
18 Now, you will have four possible
19 punishments to choose from. One is the death
20 penalty, one is life in prison without the
21 possibility of parole, one is life in prison with
22 the possibility of parole and one is a definite term
23 of 50 years with the possibility of parole after 20
24 years, and that's doubled to a hundred years because
25 a deadly weapon was used.

1 Do you understand that?

2 **PROSPECTIVE JUROR:** I understand that.

3 **THE COURT:** Would you be able to consider
4 all four forms of punishment?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** And what that means is you
7 would be able to look at them, look at the facts of
8 the case, the background of the people involved,
9 listen to the law and pick the appropriate one to
10 impose.

11 Do you think you can do that?

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** You're not opposed to the
14 death penalty, are you?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** You could give someone a
17 hundred years in prison or life in prison with the
18 possibility of parole or life in prison without the
19 possibility of parole if the facts and circumstances
20 warranted?

21 **PROSPECTIVE JUROR:** Definitely.

22 **THE COURT:** Is there one of these that you
23 can't give?

24 **PROSPECTIVE JUROR:** What's that?

25 **THE COURT:** Is there one of these

1 sentences that you would not be in a position to
2 give or don't feel that you can impose?

3 **PROSPECTIVE JUROR:** No.

4 **THE COURT:** So, you're open to all of
5 them?

6 **PROSPECTIVE JUROR:** I'm open to all of
7 them.

8 **THE COURT:** What high school did you go
9 to?

10 **PROSPECTIVE JUROR:** Western High School.

11 **THE COURT:** Western.

12 You graduated when?

13 **PROSPECTIVE JUROR:** '02.

14 **THE COURT:** Now, that high school --
15 that's the high school I went to -- Warriors.

16 Now, that high school now is like
17 75 percent minorities?

18 **PROSPECTIVE JUROR:** I believe so.

19 **THE COURT:** Do you have any problems with
20 the Hispanics or the black students over there?

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** State.

23 **MR. STANTON:** Thank you, your Honor.

24 /////

25 /////

1 EXAMINATION BY THE STATE

2 **BY MR. STANTON:**

3 Q Good afternoon, Mr. Summers.

4 A Good morning or afternoon.

5 Q I appreciate your patience today. I have
6 a couple of questions regarding the questionnaire
7 that you filled out approximately a week ago.

8 As you understand here, this jury service
9 involves selecting the punishment, not guilt or
10 innocence; that a prior jury has already found the
11 defendant, as the Judge said, guilty of four counts
12 of first-degree murder.

13 Knowing that you would have to come in
14 here selected as a juror in this case and decide the
15 punishment and not guilt or innocence, is that
16 something that you're comfortable with, that you
17 think you can do?

18 A I believe so.

19 Q You understand, obviously, that the death
20 penalty is an appropriate punishment in the
21 first-degree murder under certain circumstances.

22 You're 20 years of age.

23 Is that something that you think you can
24 do based upon your life experiences?

25 A I believe so, yes.

1 Q In this case, there will be evidence that
2 is presented or rather graphic, very violent images
3 dealing with the underlying quadruple homicide.

4 Is that something about your character
5 that you think you can look at and not react
6 necessarily emotionally but understand its
7 evidentiary value for purposes of your deliberation
8 in this case?

9 Do you think you can do that?

10 A I watch Forensic Files.

11 Q Do you think you're comfortable with that?

12 A Yes.

13 Q The family member that was -- I think it
14 was grand theft auto is what you said they were
15 charged with, was that here in Las Vegas?

16 A I'm actually not quite sure. I don't know
17 much about it.

18 Q Would it be fair to say, then, that you're
19 not close to that relative?

20 A It's my brother-in-law -- I guess as close
21 as brother-in-law's be.

22 Q Do you believe that the person was treated
23 fairly?

24 A He told me that he doesn't want to go
25 back, but he thinks that he deserved what he got and

1 he learned his lesson.

2 Q There is nothing that the State or the
3 defense would have to worry about your perspective
4 based upon that incident in this case, is there?

5 A No.

6 Q You indicated relative to the death
7 penalty that you would consider it under certain
8 circumstances.

9 Is that a fair statement?

10 A Yes.

11 Q And the facts that you would want to hear
12 deal with the underlying murder and some things
13 about the defendant. Would that be fair too?

14 A Yes.

15 Q Do you always feel that the death penalty
16 is appropriate if someone committed first-degree
17 murder?

18 A No.

19 Q How about if they committed more than one
20 first-degree murder?

21 A It completely depends on the person, how
22 they were raised, if they were under the influence
23 of drugs. There's lots of things -- if they're
24 crazy, you know.

25 Q In this case, four people approximately

1 your age were killed, and your job as a juror in
2 this case is to determine the just punishment as it
3 relates to each one of those victims. Now, that
4 verdict about what's just may differ as it relates
5 to each different victim in this case.

6 Do you understand that concept and are you
7 comfortable?

8 A Yes.

9 MR. STANTON: No further questions, your
10 Honor.

11 Pass the prospective juror for cause.

12 THE COURT: Defense.

13 MR. WHIPPLE: Thank you, your Honor.

14

15 EXAMINATION BY THE DEFENSE

16 BY MR. WHIPPLE:

17 Q Mr. Summers, for the time of the evening,
18 thank you for being here. I want to ask you some
19 questions about high school. It wasn't long ago you
20 were in high school.

21 Was there a certain group that you hung
22 out with in your high school?

23 A Motor heads, just the auto shop kids,
24 mainly.

25 Q If you were to grab -- how many of those

1 motor heads would you consider being close friends,
2 two, three, four?

3 A Yeah, something around there -- ten --
4 something around there.

5 Q Can you think of, like, a handful of your
6 closest friends?

7 A Yeah.

8 Q Can you kind of envision them?

9 Were any of those individuals, say, four
10 or five -- were any of them African-American by
11 chance?

12 A No, they were not.

13 Q Were any of them other mixed race?

14 A I had lots of friends that were Mexicans
15 or -- I didn't have many black friends. I have
16 nothing against them. I was acquaintances with
17 them, but outside of school, we did not hang out or
18 anything.

19 Q I understand.

20 It's been a while since I've been in high
21 school, but there's kind of little cliques in high
22 school, so you're kind of the group that you hung
23 out with were the people that were kind of
24 interested in motor cars and trucks and things like
25 that?

1 A Yeah.

2 Q Were there any African-Americans in that
3 group?

4 A There's not many that take auto class, you
5 know. It's mainly a bunch of white kids, mainly,
6 you know. Every once in a while Hispanics, but I
7 went to Western High School, and that's mainly
8 Mexicans and blacks, so, you know -- but that's not
9 a class that they normally took.

10 Q Okay. I understand that.

11 Did you have any friends or individuals
12 that are African-American that you considered
13 friends?

14 A Yes. Not in high school but elementary,
15 junior high. I work with some now.

16 Q It's a non-issue?

17 A Yes.

18 Q Those are not easy questions, but I
19 appreciate your honesty. They're questions that I
20 need to ask.

21 When you got this jury questionnaire, what
22 kind of thoughts did you have? What kind of came to
23 mind as you read through this and realized, oh, my
24 gosh, I may be in a position where I have to
25 determine the life and death and the future of

1 another human being? What are the thoughts that
2 came to your mind?

3 A Really the day that I filled this out, I
4 was just, like, "I just want to go home. I'll fill
5 it out, get it over with." To think that you would
6 pick me -- I just - I don't know, I guess not much
7 going through my mind.

8 Q What about now? Here we all are talking
9 about this, you could literally be asked whether a
10 person is going to live or die.

11 A That's something pretty major, but I don't
12 know; I guess it just depends on the case itself,
13 you know, and I don't have anything against either
14 of them. It's part of our jury system.

15 Q You're absolutely right.

16 Do you have any nervousness or
17 trepidation?

18 A I think if someone wasn't nervous on that
19 question, I think they shouldn't be locked up
20 anyway, you know. You should definitely be nervous
21 about that. That's someone's life.

22 Q You're nervous about that?

23 A Oh, yes, definitely. I think anyone
24 should be.

25 Q But why do you think anybody should be?

1 A Because you're playing God or -- I guess
2 not that, that's not the word, but you're deciding
3 someone's fate.

4 Q Serious stuff?

5 A Yes, definitely. It's not something that
6 should go lightly. There's got to be a lot of
7 thought in that.

8 Q Do you think you're a person that can do
9 that?

10 A Yes.

11 Q Why?

12 A I'm not sure why. I guess I analyze a
13 lot.

14 Q Why not? If everybody can do it, do you
15 feel like you can do it?

16 A I guess not everyone can do it, but you
17 know, I believe that I can.

18 Q Okay. I appreciate that.

19 I want to ask you your views on the death
20 penalty.

21 Do you have an opinion with regard to the
22 death penalty?

23 A Once again, I got to say it goes with the
24 case. I know the jail systems are overcrowded with
25 a lot of them that should have had the death

1 penalty, but sitting here, it's kind of hard to say,
2 "Hey, you should have had the death penalty."

3 Q Do you think in general, then, the death
4 penalty should have been used more often?

5 A You know what, I thought that before, but
6 now sitting here and, you know, judging this man's
7 fate, it just really depends on the case itself.

8 Q Do you think, "Hey, we should clean out
9 the jails and get rid of some people"?

10 A That was my thought before last Wednesday.
11 Definitely like -- my views changed a lot since I've
12 been here seeing, you know, because there was a
13 jury, and if the jury says, you know, they should
14 die, they obviously -- they didn't come in and say,
15 "Hey, he should live or die," you know; they put
16 thought into it just as anyone else would.

17 Q I want to go back. There's two questions
18 that I want to ask about your statement there.

19 You said you changed from a week ago. Did
20 you just change since you've come in here and
21 recognize the seriousness of it or did you just
22 change over the last few days when you thought about
23 it?

24 A Wednesday, you know, writing the
25 questionnaire I thought and was thinking this is in

1 my hands. It's a big deal. When you're sitting at
2 home watching TV and you say, "Hey, that guy should
3 die, they're going to throw them in the jail and
4 it's going to be overcrowded," but now you're
5 sitting here and you got to look at the case, and
6 it's easier when you're sitting at home saying,
7 "Hey" --

8 Q Monday morning quarterback is always a lot
9 easier, isn't it?

10 A Definitely.

11 Q The other thing you commented on is hey
12 this jury they have to make this decision. This is
13 a unique situation. You're not going to see any
14 movies that are similar to this. This is not CSI;
15 this is not -- in my era, it's L.A. Law. It's not
16 about a trial.

17 A Yeah.

18 Q Mr. Johnson is about your age, and when he
19 was younger than you, he committed -- he's a
20 cold-blooded killer. He killed four people,
21 premeditated -- go ahead and turn it off. He killed
22 four people about your age, premeditated,
23 deliberate, bound them by hands and feet, face down
24 on the carpet, and one by one shot them in the back
25 of the head. Four people died.

1 Can you consider a life sentence knowing
2 that information?

3 A I could.

4 Q Why?

5 A Like I said before, you have to --
6 depending on what had happened before -- was he on
7 drugs? Like I said, it really does depend on the
8 trial itself.

9 Q I appreciate it.

10 Do you think your youth would be an
11 advantage or disadvantage or a non-issue in a
12 situation like this?

13 A I think for my age, I'm very mature, but I
14 don't think there's any disadvantage or advantage;
15 it's just depending pretty much on the person
16 itself.

17 Q How about the fact that all of the victims
18 and Mr. Johnson himself, they're all about your age?

19 A In my opinion, that doesn't matter. It's
20 still a person. It's a human being no matter what
21 age. If they're 65 or five years old, that's still
22 a person, you know. It don't matter what age.

23 Q What if you learned that drugs are
24 involved, would that change your opinion as to
25 evaluate things?

1 A It's all depending on the trial, but in
2 some circumstances, yes.

3 Q In what way?

4 A Let's say someone went and smoked some
5 crack, they were completely out of it, no control
6 over their body, and they went and killed someone
7 there. They weren't mentally stable.

8 Q Do you think that's a reason to choose
9 life or is that a reason to choose death?

10 A In something like that, I would probably
11 do life, you know, but it depends with the rest of
12 everything else also.

13 Q In high school, I'm sure there's groups of
14 individuals that were known to be drug users; would
15 that be fair to say?

16 A Yes.

17 Q I would say that your group is probably
18 not in that category.

19 A Actually, a lot of the mechanics and stuff
20 are pot heads or tweakers.

21 Q So, it does exist in your group?

22 A It does exist. I think it exists in every
23 group.

24 **THE COURT:** What's a "tweaker"?

25 **PROSPECTIVE JUROR:** Just someone who does

1 speed.

2 **THE COURT:** Oh, okay.

3 **BY MR. WHIPPLE:**

4 Q You didn't have any prejudgments towards
5 those individuals?

6 A No. I hung out with them. I stayed -- a
7 lot of my friends were pot heads, but tweakers I
8 tried to stay clear of. It's a bad thing.

9 Q You'll hear at some point if you're chosen
10 to be on this jury that the death penalty is never
11 required, and in fact, there are reasons to choose
12 life over death, and those are what you'll hear
13 us -- myself, Miss Jackson talk a lot about
14 mitigation or mitigators, and those are any reason
15 why one would choose life over death.

16 You were asked specific questions about
17 that, and one of them was -- this is Nevada law.
18 Nevada law insist that individuals who are chosen to
19 do this type of work can consider what we refer to
20 as to "mitigation." In this question, it says, "You
21 must consider the defendant's background, such as
22 his health, mental status, age, childhood,
23 education," and then it asks, "Do you feel you would
24 consider those types of factors?" and you struck
25 "Somewhat." There was four different choices.

1 There was "Very much," "Not at all," "Somewhat,"

2 "Not sure."

3 Has that change over the last week as
4 well?

5 A No. You've got to consider everything.

6 It's, like I said, someone's life.

7 Q Why didn't you strike "Very much"?

8 A Why did I not put "Very much"?

9 Q Yes.

10 A Because -- I don't know, it's -- you still
11 did it. If you were out there, you still did it,
12 you know.

13 Q I do. I appreciate it. That's well
14 answered, actually.

15 Miss Jackson and I will be offering
16 information that we consider to be mitigating type
17 information. There's out there what's known as an
18 "abuse excuse."

19 Have you ever heard that, the "abuse
20 excuse," where you try to blame your problems --

21 A Your problems on what you did?

22 Q -- on your bad parents or something like
23 that?

24 A Yeah.

25 Q Have you ever heard that?

1 A I've heard it many times.

2 Q What do you think about that?

3 A Once again, it depends on the trial, but a
4 lot of times you're just, like, how can you blame
5 that? I came from not the greatest upbringing,
6 single parent, you know, and I turned out all right,
7 you know. I'm probably not the greatest person in
8 the world, but I did turn out good.

9 Q Now, Miss Jackson and I, we are not
10 here -- there's no excuse, there's no justification.
11 It was a heinous, terrible act. We would never say
12 anything other than that, but we believe that there
13 is some of this information that you could use in
14 order to make a determination as to the future of
15 Mr. Johnson.

16 Would you be willing to listen to that
17 type of information?

18 A Yes, definitely.

19 Q Why?

20 A I think that sitting on a jury would be
21 very interesting and a good experience.

22 Q There will be 12 individuals on a jury.
23 If you had a lot of them that disagreed with you if
24 you tended to be in the minority or maybe in the
25 majority with regard to your beliefs as to what's a

1 mitigator or what's not, how would you handle that?

2 A I guess it depends on what it was, but I'm
3 pretty strong at putting people on my side, I guess.
4 I'm kind of a leader of my group.

5 Q I can see.

6 A I just push my side a lot of the time.

7 Q You'll hear information at some point that
8 the death penalty is never required, and in fact,
9 some of those things that Miss Jackson and I refer
10 to as mitigating circumstances or mitigating
11 information sometimes can't be verbalized, sometimes
12 it's just mercy, sometimes it's just a gut feeling.

13 Could you respect other people if they had
14 a different opinion?

15 A They would have to definitely put me to
16 their side, explain it, you know -- yeah. Either
17 way, you're working with 12 other people, that's why
18 they don't just say one person, because one person
19 might have a completely different opinion. When you
20 hear their opinion, then your opinion might change.

21 Q Can you accept people's opinion that's
22 different than your own?

23 A Yes.

24 Q Why?

25 A Because there's 12 of us, you know. I'm

1 sure you guys pick the best of the best, whatever,
2 and trust other people's judgment, not just go on
3 yourself. You're kind of like a team.

4 **MR. WHIPPLE:** Mr. Summers, thank you for
5 your time.

6 I pass for cause, your Honor.

7 **THE COURT:** All right.

8 Mr. Summers, we'll have you come back
9 tomorrow at 10:00 o'clock. Okay?

10 **PROSPECTIVE JUROR 203:** Okay.

11 **THE COURT:** We'll let you know tomorrow.

12 **PROSPECTIVE JUROR 203:** Thank you.

13 **THE COURT:** It's the State's seventh
14 peremptory challenge.

15 **MR. DASKAS:** One moment, please, Judge.

16 **THE COURT:** All right.

17 **MR. DASKAS:** Your Honor, the State would
18 exercise, I believe it's our seventh peremptory
19 challenge on Prospective Juror No. 0132, Mr. Gray.

20 **THE COURT:** All right.

21 Bring in the next one.

22

23 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 205

24 **THE COURT:** How do you pronounce your last
25 name, sir?

1 **PROSPECTIVE JUROR 205:** Shir-brin
2 (phonetic.)
3 **THE COURT:** You're originally born in --
4 not Grand Rapids -- what's the name of that town you
5 were born in?
6 **PROSPECTIVE JUROR:** Coon Rapids.
7 **THE COURT:** Coon Rapids, Iowa.
8 What kind of work do you do, sir?
9 **PROSPECTIVE JUROR:** I'm an engineer at the
10 Ritz Carlton Hotel.
11 **MR. WHIPPLE:** Can we approach, your Honor?
12 **THE COURT:** Yes.
13 (Sidebar conference outside the presence
14 of the court reporter.)
15 **THE COURT:** So, Mr. Shirbroun, you're a
16 member of the NRA, that's the National Rifle
17 Association?
18 **PROSPECTIVE JUROR:** Correct.
19 **THE COURT:** What do you think about
20 serving on this jury here?
21 **PROSPECTIVE JUROR:** I'm afraid of where I
22 got my mind made up.
23 **THE COURT:** You already have it made up.
24 I heard you were out there talking about the case
25 earlier; is that true?

1 **PROSPECTIVE JUROR:** Pardon me?

2 **THE COURT:** Were you outside talking about

3 the case with some more jurors?

4 **PROSPECTIVE JUROR:** I didn't recall saying

5 much about it other than what we already knew.

6 **THE COURT:** What is it that you already

7 knew?

8 **PROSPECTIVE JUROR:** That he had been tried

9 and convicted.

10 **THE COURT:** Okay.

11 What else?

12 **PROSPECTIVE JUROR:** That there was four

13 possibilities, I believe, and we were to do a

14 judgment.

15 **THE COURT:** So, you already have your mind

16 made up?

17 What would you sentence him to?

18 **PROSPECTIVE JUROR:** Death.

19 **THE COURT:** Is there anything that would,

20 could change your mind on that?

21 **PROSPECTIVE JUROR:** Very little, unless it

22 was self-defense.

23 **MR. WHIPPLE:** Judge, may we approach

24 again?

25 **THE COURT:** Yes.

1 (Sidebar conference outside the presence
2 of the court reporter.)

3 **THE COURT:** So, you don't think that you
4 can be fair in this case and listen to the evidence
5 and consider life in prison? Could you consider
6 life in prison with the possibility of parole?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Tell me this here: Who else
9 were you talking to? You were talking to juror
10 No. 262, 207 and Mr. Stam?

11 **PROSPECTIVE JUROR:** Mr. Stam?

12 **THE COURT:** Stam, Aaron Stam, No. 164.

13 **PROSPECTIVE JUROR:** I couldn't tell you.

14 **THE COURT:** You don't remember the people
15 who you were talking to?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** All right.

18 Motion?

19 **MS. JACKSON:** Your Honor, we would
20 challenge him for cause.

21 **THE COURT:** Counsel?

22 **MR. STANTON:** Submitted.

23 **THE COURT:** The Court will grant the
24 motion.

25 You're excused, sir.

1 **PROSPECTIVE JUROR:** Thank you.
2 **MR. WHIPPLE:** Your Honor, before juror
3 No. 207 arrives --
4 **THE COURT:** What about 206?
5 **THE BAILIFF:** We excused him.
6 **MS. JACKSON:** He was excused for heart
7 problems.
8 **MR. WHIPPLE:** 207 is the other individual
9 that spoke, your Honor.
10 **THE COURT:** Bring in 207.
11
12 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 207
13 **THE COURT:** Miss Vu?
14 **PROSPECTIVE JUROR:** Vu.
15 **THE COURT:** Miss Vu, where are you from,
16 originally?
17 **PROSPECTIVE JUROR:** Vietnam.
18 **THE COURT:** Vietnam. Okay.
19 How long have you been in the United
20 States? How long have you been in the states?
21 **PROSPECTIVE JUROR:** Thirty years.
22 **THE COURT:** And you have a bachelor's of
23 business administration from UT Austin?
24 **PROSPECTIVE JUROR:** That's correct.
25 **THE COURT:** Did you grow up in Texas?

1 **PROSPECTIVE JUROR:** I would say so.
2 **THE COURT:** You went to high school in
3 Texas?
4 **PROSPECTIVE JUROR:** High school in Texas.
5 **THE COURT:** And you have -- what part of
6 Texas?
7 **PROSPECTIVE JUROR:** Austin.
8 **THE COURT:** So, you lived in Austin before
9 you went to UT?
10 **PROSPECTIVE JUROR:** I lived in Austin and
11 went to UT Austin.
12 **THE COURT:** Okay.
13 And you lived in California also?
14 **PROSPECTIVE JUROR:** Correct.
15 **THE COURT:** And you were on a civil jury
16 in California?
17 **PROSPECTIVE JUROR:** That's correct.
18 **THE COURT:** And it was an automobile --
19 were you the foreman of the jury?
20 **PROSPECTIVE JUROR:** Was I?
21 **THE COURT:** The foreman.
22 **PROSPECTIVE JUROR:** No.
23 **THE COURT:** But you did reach a verdict;
24 is that right?
25 **PROSPECTIVE JUROR:** That's correct.

1 **THE COURT:** What do you think about black
2 people?

3 **PROSPECTIVE JUROR:** Same as any kind of
4 people.

5 **THE COURT:** Now, were you discussing this
6 case with some other people, some other jurors?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** You didn't hear anything about
9 this case?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** So, you didn't hear one of the
12 other ladies out there talking about what she had
13 read in the newspaper or heard on the radio or
14 anything?

15 **PROSPECTIVE JUROR:** No. There was no
16 discussion like that.

17 **THE COURT:** We got a report that you and
18 Juror No. 262 and 205 were talking about what had
19 happened in the previous case.

20 **PROSPECTIVE JUROR:** In the previous
21 sentencing?

22 **THE COURT:** Right, right.

23 **PROSPECTIVE JUROR:** Okay.

24 **THE COURT:** Did you discuss that?

25 **PROSPECTIVE JUROR:** Yes.

1 **THE COURT:** All right.
2 What was said?
3 **PROSPECTIVE JUROR:** It was said that the
4 verdict was reached.
5 **THE COURT:** What verdict was that?
6 **PROSPECTIVE JUROR:** That the defendant was
7 found guilty.
8 **THE COURT:** All right.
9 We know he was found guilty, but what was
10 the punishment?
11 **PROSPECTIVE JUROR:** The punishment was
12 death penalty.
13 **THE COURT:** And what happened?
14 **PROSPECTIVE JUROR:** It was decided by the
15 Supreme Court Judges in Nevada, however, it should
16 have been decided by a jury.
17 **THE COURT:** All right.
18 So, that was discussed out there.
19 Who else was in this conversation with
20 you? How many people were talking about this?
21 **PROSPECTIVE JUROR:** I believe two or
22 three, including myself.
23 **THE COURT:** Two or three. Okay.
24 Did you go and tell anybody else about it?
25 **PROSPECTIVE JUROR:** No.

1 **THE COURT:** So, how does that make you
2 feel?

3 **PROSPECTIVE JUROR:** Regarding --

4 **THE COURT:** Well, that he had already been
5 sentenced to death, what effect is that going to
6 have on you? You already know he's been sentenced
7 to death.

8 You can't get that out of your mind, can
9 you?

10 **PROSPECTIVE JUROR:** Maybe I don't
11 understand why. We don't make the decision in
12 regards to finding him guilty or not. That's my
13 understanding.

14 **THE COURT:** Right, right. You decide on
15 the punishment.

16 **PROSPECTIVE JUROR:** That's correct.
17 That's my understanding.

18 **THE COURT:** So, my point is -- we know
19 this. My point is that you heard that he had
20 already been sentenced to death by judges, and that
21 it had been reversed, so now you have to sentence
22 him, right?

23 **PROSPECTIVE JUROR:** Um-hmm.

24 **THE COURT:** What do you think is the
25 appropriate sentence? He killed four people, been

1 convicted of four counts of first-degree murder.

2 What do you think the penalty should be?

3 **PROSPECTIVE JUROR:** I really don't know
4 what would be in the trial.

5 **THE COURT:** We're not talking about a
6 trial. We're not going to have a trial. The trial
7 is already over with. He's been convicted.

8 Do you understand that?

9 **PROSPECTIVE JUROR:** Right.

10 **THE COURT:** First-degree murder just like
11 was said outside, he's been convicted of
12 first-degree murder. What you have to do is
13 sentence him.

14 **PROSPECTIVE JUROR:** Right.

15 **THE COURT:** You can sentence him to death,
16 to life in prison without parole, life in prison
17 with the possibility of parole or to a term of 50
18 years and parole after 20 years, and that's doubled
19 because a deadly weapon was used.

20 As you sit there now, what sentence would
21 you sentence him to?

22 **PROSPECTIVE JUROR:** I haven't given it any
23 thought.

24 **THE COURT:** You haven't given it any
25 thought. All right.

1 Do you feel like you would have to
2 sentence him to death? You already heard this
3 happened before, didn't you?

4 What do you think of the death penalty?

5 **PROSPECTIVE JUROR:** I think the death
6 penalty, if it is something that is decided should
7 be immediately delivered and not prolong someone by
8 making this person sit in jail until the system is
9 good and ready.

10 **THE COURT:** So, what do you think of life
11 in prison without parole? Do you agree with that?
12 Do you think that's a good sentence or we should
13 have it or we should not have it?

14 **PROSPECTIVE JUROR:** I don't think that's a
15 good sentence.

16 **THE COURT:** Because you don't think -- why
17 not?

18 **PROSPECTIVE JUROR:** That's always a -- I
19 don't know what they call that -- a hearing of some
20 kind, a presidential pardon, something will happen.

21 **THE COURT:** So, they won't stay in prison.
22 So, you don't believe even though the law
23 says they can get prison without parole, you believe
24 they will get paroled by a pardon or something else?

25 **PROSPECTIVE JUROR:** It's not to me in my

1 own opinion, it's not a sealed sentence, no.

2 **THE COURT:** So, you think people can
3 change it later on. All right.

4 Even if I told you that that's not the
5 law, that it couldn't be changed, you still think it
6 could be changed?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** In a case like this where a
9 person has killed four people, first-degree,
10 premeditated, deliberate and without provocation,
11 could you consider sentencing him to 50 years in
12 prison and a consecutive 50 years with parole after
13 40 years?

14 **PROSPECTIVE JUROR:** No.

15 **THE COURT:** Counsel?

16 **MR. WHIPPLE:** Challenge for cause, your
17 Honor.

18 **MR. STANTON:** No objection, your Honor.

19 **THE COURT:** All right. You're excused,
20 ma'am.

21

22 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 230

23 **THE COURT:** Mr. Heichel.

24 **PROSPECTIVE JUROR 230:** Yeah, that's
25 right.

1 **THE COURT:** Mr. Heichel, you're from
2 California, originally?
3 **PROSPECTIVE JUROR:** Yes.
4 **THE COURT:** And you've been in Las Vegas
5 how long?
6 **PROSPECTIVE JUROR:** Let's see, we bought
7 our house in Las Vegas in June.
8 **THE COURT:** Of what year?
9 **PROSPECTIVE JUROR:** Two years ago.
10 **THE COURT:** So, you've been here for two
11 years.
12 What kind of work do you do?
13 **PROSPECTIVE JUROR:** Actually, I didn't
14 retire until November, so it was -- we held the
15 house here for a while.
16 **THE COURT:** Where did you retire from?
17 **PROSPECTIVE JUROR:** I retired as an
18 engineer -- electrical engineer.
19 **THE COURT:** Who did you work for?
20 **PROSPECTIVE JUROR:** I worked for a company
21 called "Remmick" who had bought a company called
22 "Magnum Microwave" that I worked for originally.
23 Remmick is in San Diego.
24 **THE COURT:** Now, you have a son who is an
25 ophthalmologist?

1 **PROSPECTIVE JUROR:** I do.

2 **THE COURT:** And you have two children that
3 are students; is that correct?

4 **PROSPECTIVE JUROR:** I have two daughters
5 that are in college, right.

6 **THE COURT:** They're going to college in
7 California?

8 **PROSPECTIVE JUROR:** Yeah.

9 **THE COURT:** And you have a son who is a
10 manager -- is that right, at a hotel?

11 **PROSPECTIVE JUROR:** He's in a training
12 program now and will probably be in management.

13 **THE COURT:** He's a management trainee?

14 **PROSPECTIVE JUROR:** Either restaurant or
15 resort.

16 **THE COURT:** You haven't heard anything
17 about this case; is that correct?

18 **PROSPECTIVE JUROR:** I haven't heard
19 anything about it, no, other than what was presented
20 in the questionnaire and at the jury meeting.

21 **THE COURT:** Now, you haven't heard anybody
22 talk about this case outside among the jurors, have
23 you?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Now, you said your son was

1 assaulted once but no prosecution or trial?

2 **PROSPECTIVE JUROR:** Yeah.

3 **THE COURT:** He didn't call the police or
4 file a complaint with the police?

5 **PROSPECTIVE JUROR:** No; he just got
6 punched in the nose, kind of blind-sided by some kid
7 at a party.

8 **THE COURT:** How long ago was this?

9 **PROSPECTIVE JUROR:** Oh, it was back
10 when -- that's the guy who is a doctor now, so it
11 was like ten years ago when he was an undergraduate.

12 **THE COURT:** It was a party in college?

13 **PROSPECTIVE JUROR:** Yeah, it was a college
14 party, young people.

15 **THE COURT:** What was the race of the
16 person that punched him?

17 **PROSPECTIVE JUROR:** It was a white guy,
18 just a hot head, I guess.

19 **THE COURT:** Okay.

20 Tell me this here: Now, you understand
21 that this jury will decide the punishment for the
22 defendant who has been convicted of four counts of
23 first-degree murder.

24 Do you understand that?

25 **PROSPECTIVE JUROR:** I understand that from

1 the questionnaire, right.

2 **THE COURT:** Right.

3 Now, under our law in the State of Nevada,
4 the jury has to be able to consider all four forms
5 of punishment that the law provides for.

6 Do you understand that? The law states --

7 **PROSPECTIVE JUROR:** I could sort of pick
8 that up.

9 **THE COURT:** So, the law states that the
10 jury, after hearing the evidence, listening to the
11 witnesses and being instructed on the law, will have
12 to decide the appropriate punishment, and it has to
13 be either the death penalty, life imprisonment
14 without the possibility of parole, life imprisonment
15 with the possibility of parole or a definite term of
16 50 years with the possibility of parole after 20
17 years, and that's doubled because a deadly weapon
18 was used.

19 Do you understand that?

20 **PROSPECTIVE JUROR:** Yeah.

21 **THE COURT:** You don't understand it?

22 **PROSPECTIVE JUROR:** Yeah, I understand
23 there's four choices.

24 **THE COURT:** And you have to pick the one.
25 It's your choice based upon the evidence and the

1 law. You have to pick the one that you think is
2 most appropriate.

3 **PROSPECTIVE JUROR:** And that would be
4 expanded upon, I suppose, by the counsels in the
5 trial.

6 **THE COURT:** What do you mean "expanded
7 upon"?

8 **PROSPECTIVE JUROR:** Well, I mean, they
9 would say, you know -- I guess the law just says
10 that you have to pick one of the four but doesn't
11 give any guidelines.

12 **THE COURT:** The Court will give you the
13 guidelines, so to speak, which is the law and the
14 instructions. That's what the legal instructions
15 will be -- will instruct you on how to judge the
16 evidence and look at the evidence and how you have
17 to analyze it. We'll give you all of that later,
18 and the lawyers will present evidence and facts
19 about the case, about the parties, their background,
20 all kinds of things to give you this information so
21 you can make your decision with it. What I need to
22 know is with your mindset, are you religiously --
23 strike that.

24 Do you have any religious or moral
25 opposition to the death penalty?

1 **PROSPECTIVE JUROR:** No, I don't. I don't
2 like it in general. I don't think anybody wants to
3 send somebody to death, but I presume that -- you
4 know, that the law has it as one of the alternatives
5 for a reason, because they may want -- that isn't
6 the case.

7 **THE COURT:** That is one of the punishments
8 for this type of crime, and what we're required to
9 do is to see if, in fact, you could follow the law
10 which is considered the death penalty. See, some
11 people are absolutely opposed to the death penalty
12 and could, under no circumstances, impose it. If
13 that's the case, then they wouldn't be able to
14 follow the law. So, what I'm asking you is are you
15 unalterably opposed to the death penalty?

16 **PROSPECTIVE JUROR:** I'm not unalterably
17 opposed to it.

18 **THE COURT:** You just find it difficult and
19 it's something serious?

20 **PROSPECTIVE JUROR:** Yes. It's certainly a
21 drastic -- yeah.

22 **THE COURT:** The ultimate punishment, so to
23 speak?

24 **PROSPECTIVE JUROR:** Yeah.

25 **THE COURT:** But tell me this here: Under

1 the right circumstances and facts, could you impose
2 the death penalty?

3 **PROSPECTIVE JUROR:** Yeah.

4 **THE COURT:** In a case like this, there's
5 three other possibilities also, like life in prison
6 with the possibility of parole or for a definite
7 term of 50 years with the possibility of parole
8 after 20 years, and of course, that's doubled
9 because a deadly weapon was used, so you're really
10 looking at a hundred years with the possibility of
11 parole after 40 years.

12 Would you be able to consider all those
13 forms of punishment?

14 **PROSPECTIVE JUROR:** Sure.

15 **THE COURT:** And you could consider life in
16 prison without the possibility of parole if it was
17 appropriate?

18 **PROSPECTIVE JUROR:** Yeah.

19 **THE COURT:** State.

20 **MR. DASKAS:** Thank you, Judge.

21

22 EXAMINATION BY THE STATE

23 **BY MR. DASKAS:**

24 Q Mr. Hi-kel (phonetic) it's pronounced?

25 A Right.

1 Q Thank you for your patience this evening.
2 Let me ask you a few questions, if you don't mind.

3 Your role in this case, if you were a
4 juror, is to impose punishment. Part of that is
5 you're required to accept what another jury has
6 already done, because another jury has already
7 convicted the defendant of four counts of murder.

8 My question is, are you comfortable
9 accepting that other jury's verdict?

10 A I think so, because they have to have a
11 unanimous decision on that.

12 Q Absolutely.

13 A The case was apparently fairly clear-cut,
14 but I don't know.

15 Q Let me ask you this --

16 A Not knowing anything about the case, you
17 know, you would have to assume that was the fact.

18 Q Let me ask you this in a slightly
19 different way. If the Judge was to instruct you
20 that you were required to accept that other verdict,
21 could you follow that instruction?

22 A Yes.

23 Q And understand, as I mentioned a couple
24 days ago, we will provide you with some of the
25 highlights, if you will, of the homicide themselves.

1 Would that make you feel more comfortable in relying
2 on that other jury's verdict, that is --

3 A Yes.

4 Q What I heard you say a moment ago was that
5 the death penalty is, I guess, a drastic -- did I
6 say that right? What word did you use?

7 A It's distasteful to have to send anybody
8 to death. Obviously, four other people apparently
9 met death here somewhere too.

10 Q Understand that none of us take this
11 lightly.

12 You appreciate that?

13 A I appreciate that.

14 Q Even those of us who stand up and ask for
15 someone to impose the ultimate punishment, we don't
16 take that lightly. You appreciate that?

17 A I presume it's your job.

18 Q But as you said, the legislature has
19 determined that that is the appropriate punishment
20 in a first-degree murder case.

21 You realize that?

22 A Right.

23 Q If you're selected as a juror and you hear
24 all the evidence of the underlying homicide
25 themselves and you hear all the information about

1 the defendant and you deliberate and you take that
2 into consideration, if at that point you believe the
3 ultimate punishment is warranted, the death penalty
4 is warranted, do you actually feel like you can
5 impose that punishment?

6 A Yes.

7 Q You see the distinction I'm making? We're
8 talking about just considering it but then having to
9 oppose it on the other hand.

10 A Right.

11 Q And you may be faced with that decision.

12 A Yeah; it's not something I would want to
13 do. I would prefer to be let off the jury myself.

14 Q I understand.

15 A It's not something I want in my lifetime
16 to have to sit in judgment on.

17 Q Are your beliefs such that you couldn't do
18 it or you just prefer not to do it?

19 A I would prefer to avoid the whole thing,
20 but I could do it.

21 Q You understand how important that is for
22 us and for --

23 A I understand, yeah.

24 Q -- the victims and their family members?

25 A Right.

1 Q You asked a question of the Judge. What I
2 heard you say was something about whether any of the
3 options, four possible punishments were required.

4 You understand that none of those are
5 required; it would be your decision to select the
6 appropriate punishment?

7 A Yeah. I wasn't sure whether in the law
8 there was a guideline in there saying general, for
9 this kind of offense, this would be the punishment
10 or not; so, I'm totally unknowledgeable about the
11 law and how it's written.

12 Q You're not alone in that belief.

13 The other thing I'd like you to
14 understand, and perhaps you already do, is that
15 because there are four convictions in this case,
16 four first-degree murder convictions, you will
17 assign punishment for each of those four
18 convictions.

19 Do you understand that?

20 A I see. It's sort of redundant, isn't it?
21 The most egregious one is probably going to outweigh
22 the other three.

23 Q What I want you to understand is this:
24 Probably you as a juror can actually impose
25 different punishments for those four murder victims.

1 In other words, maybe you and the other members of
2 the jury agree, "Let's impose life in prison for one
3 of the murders," but perhaps you might decide when
4 you get to murder number four that the death penalty
5 is appropriate.

6 Do you understand that that is an option?

7 A I see.

8 Q Does that make sense to you?

9 A I understand.

10 Q Let me ask you one final question, and I'm
11 going to really put you on the spot here. As a
12 juror, you will be required to select a foreperson,
13 and that foreperson has the same role as every other
14 juror, with one exception. The foreperson signs the
15 verdict form. Let's imagine that the other jurors
16 select you, Mr. Heichel, as the foreperson, and
17 you're the one who has to sign that verdict form
18 that sentences this defendant to death. I'm putting
19 the cart before the horse, but I want to make sure
20 we appreciate the magnitude of this.

21 Let's assume that you believe in your
22 heart of hearts, based on this case and based on his
23 background and everything else, that he deserves the
24 death penalty, could you be the one to sign that
25 verdict form?

1 A I would rather somebody else be the
2 foreman.

3 Q And you may not be the foreperson. We'll
4 leave it at that. I appreciate it.

5 **MR. DASKAS:** Judge, we'll pass for cause.

6 **THE COURT:** Counsel.
7

8 EXAMINATION BY THE DEFENSE

9 **BY MR. WHIPPLE:**

10 Q Good afternoon, Mr. Heichel. My name is
11 Bret Whipple, and I represent Mr. Donte Johnson.
12 I'm going to follow up on some of the comments that
13 have been made. This is an unusual situation.
14 We're not here to ask for -- to say there was any
15 justifications or excuses. I represent an
16 individual who has killed, murdered four innocent,
17 young adults. I make no bones about it. I
18 appreciate your honesty. There's no right answers,
19 there's no wrong answers, but I want you to be aware
20 that you had said that you would like to learn all
21 the facts and circumstances surrounding this matter,
22 and at some point you'll get information that death
23 penalty is never required. In fact, you'll receive
24 information that you'll be asked to consider all of
25 this information, that you'll be asked and required

1 to listen to this information, and Miss Jackson and
2 I will refer to this as "mitigation," "mitigators."
3 That's a reason to give a life sentence over a death
4 sentence.

5 So, I want to ask you, first of all, can
6 you consider a life sentence with a first-degree,
7 premeditated, deliberate murder?

8 A A life sentence -- oh, sure, I can
9 consider that, yeah.

10 Q Now, in this case you're also going to
11 hear that four young adults were bound, hands behind
12 them with duct tape, their legs were bound, they
13 were laid in a room face down on the floor and
14 summarily shot in the back of the head one after
15 another, essentially.

16 Knowing nothing more, could you consider a
17 life sentence in a situation like this?

18 A I don't know any reason why the four were
19 there. Were they involved in conflict -- you know,
20 I have no idea of what the trial said, why they were
21 bound. Were they threatening the defendant
22 originally? I'm not sure. So, "yes" is the answer
23 to your question.

24 Q Now, that mitigation that I mentioned
25 earlier -- we'll be providing you information about

1 that. In fact, there was a question in this jury
2 questionnaire. It says, "In reaching a verdict in a
3 penalty phase, you must consider the defendant's
4 background, that is, mitigating circumstances such
5 as the defendant's health, mental status, age,
6 childhood, education," et cetera, and then it asks,
7 "Do you feel you would consider those types of
8 factors?" You struck the response, "Somewhat."

9 Nevada law requires any juror that can sit
10 on this type of hearing, that they can consider
11 those factors. When you struck the question
12 "Somewhat," what were you thinking?

13 A Would you read the question?

14 Q I will. It says, "In reaching a verdict
15 in this penalty phase, you must consider the
16 defendant's background, that is, mitigating
17 circumstances such as the defendant's health, mental
18 status, age, childhood experiences, education, et
19 cetera. Do you feel you would consider those types
20 of factors?" And there are four responses -- "Very
21 much," "Not at all," "Somewhat" and "Not sure," and
22 you put "Somewhat."

23 A Well, the two extremes, "Not at all" and
24 totally -- what was the extreme?

25 Q "Very much" and "Not at all."

1 A "Somewhat" just means yeah, I would
2 consider them. I think defense people can be very
3 clever and say, "Oh, my aunt struck me when I was
4 three." You would consider some things that would
5 be raised by the defense, and you would throw out
6 other things raised by the defense just depending on
7 how they seemed.

8 Q Absolutely. And that's your prerogative.

9 A That's why I said "Somewhat."

10 Q But you would be willing to, at least,
11 consider this information that we provided to you?

12 A Yeah.

13 Q Now, Miss Jackson and I -- this
14 information that we're providing to you is by no
15 means an excuse or justification or to suggest
16 anything this is anything other than a heinous act,
17 but it's what we feel might be appropriate to
18 determine the future of Mr. Johnson. Some of the
19 instructions or information that you will get is
20 some of the mitigation might not be necessarily
21 articulated. Sometimes mercy or even a gut feeling
22 is a valid choice for giving life over death.

23 If other individuals disagreed with your
24 position -- if you had a gut feeling to choose life
25 over death, how would you handle it if other

1 individuals differed from you?

2 A You mean if other people were adamant
3 about death?

4 Q Yes.

5 A I would want to hear their reasons, you
6 know, and make them -- hear that argument, and I
7 would want to hear countervailing arguments, and I
8 presume we're going to hear that in a trial --
9 penalty trial. I guess you're going to have 12
10 people who are going to come out of that with their
11 own reactions and concepts. I think it's probably
12 tough for the prosecution to get, you know -- it's
13 got to be a unanimous decision, so I would think
14 that the probability of 12 people coming back in and
15 saying, you know, "Death is small" -- I think the
16 prosecution probably has a huge barrier to overcome
17 to get 12 people to be of one mind and do that. You
18 know, it's just going to be, I would presume, a lot
19 of back and forth in the jury room talking about it.

20 Q Would you be able to accept the people if
21 they had a different opinion from your own?

22 A Well, sure. I'm not infallible.

23 Q There was one question I noticed on here
24 that I have to follow up on. It's asking about the
25 legal system in general, and you said, "It's messy

1 and inefficient."

2 I'm just curious, what causes you to have
3 that opinion?

4 A That the legal system and messy and
5 inefficient --

6 Q Yeah, but --

7 A -- but it's the best system we have.
8 There's a famous quotation or something like that.
9 It is. I've been through a divorce once. That
10 never went to trial but, you know, being deposed and
11 all of that going on, you know, is just really
12 messy, something to be avoided if you want a nice
13 life.

14 A company I worked for was sued by a
15 previous company I worked for, and I had to go be
16 deposed on that, and then I had an issue with State
17 Farm Insurance once where my home was damaged by an
18 earthquake and there were depositions and all that.
19 I started to get a lawyer to represent me and, you
20 know, the lawyers just love charging by the hour, so
21 it seem like, man, this is going to be dragged on
22 forever, so I went out and got a negotiator type
23 instead of a lawyer. You know what I mean, messy
24 and inefficient is what it is.

25 **MR. WHIPPLE:** We make a living on it

1 sometimes, so I appreciate your time.

2 Pass for cause, your Honor.

3 **THE COURT:** You want to have a seat
4 outside, sir?

5 We'll take a recess.

6 (Recess taken.)

7 **THE COURT:** I think it's the defense's
8 seventh peremptory challenge.

9 **MS. JACKSON:** Your Honor, that's going to
10 be Barbara Grant, 0059.

11 **THE COURT:** 059?

12 **MS. JACKSON:** Um-hmm.

13 **THE CLERK:** Seat eight.

14 **THE BAILIFF:** Kyle Dormanen didn't answer.

15 **THE COURT:** Order to show cause.

16

17 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 234

18 **THE COURT:** Mr. Clarke, how long have you
19 been on the mainland?

20 **PROSPECTIVE JUROR 234:** Fourteen years.

21 **THE COURT:** Fourteen years.

22 And you went to high school in St. Croix?

23 **PROSPECTIVE JUROR:** One year.

24 **THE COURT:** Where did you go the rest of
25 the time?

1 **PROSPECTIVE JUROR:** Two years in Florida
2 and my senior year here in Vegas.
3 **THE COURT:** Are you working now?
4 **PROSPECTIVE JUROR:** Yes.
5 **THE COURT:** What kind of work are you
6 doing?
7 **PROSPECTIVE JUROR:** I'm a press operator
8 for the RJ.
9 **THE COURT:** Review Journal?
10 **PROSPECTIVE JUROR:** Yes.
11 **THE COURT:** How long have you been doing
12 that?
13 **PROSPECTIVE JUROR:** At the RJ or just
14 printing in general?
15 **THE COURT:** RJ.
16 **PROSPECTIVE JUROR:** Three months.
17 **THE COURT:** Three months?
18 **PROSPECTIVE JUROR:** Um-hmm.
19 **THE COURT:** Have you heard anything about
20 this case?
21 **PROSPECTIVE JUROR:** No, I haven't.
22 **THE COURT:** And you've never been on a
23 jury before?
24 **PROSPECTIVE JUROR:** No, I haven't.
25 **THE COURT:** Have you or anyone in your

1 family ever been charged with a crime?

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** Have you or anyone in your
4 family ever been the victim of a crime?

5 **PROSPECTIVE JUROR:** No.

6 **THE COURT:** Now, you understand that the
7 defendant has been convicted of four counts of
8 first-degree murder. The trial we're having now is
9 to determine the punishment.

10 Do you understand that?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** And you'll have four
13 punishments to choose from. One of them is the
14 death penalty, and I want to know, do you have any
15 religious or moral opposition to the death penalty?

16 **PROSPECTIVE JUROR:** No.

17 **THE COURT:** You can consider that?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** The other ones are life
20 imprisonment without the possibility of parole --
21 could you consider that?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** And the final two are life
24 imprisonment with the possibility of parole or for a
25 definite term of 50 years with the possibility of

1 parole after 20 years, and those are doubled because
2 a deadly weapon was used, so you're looking at a
3 hundred years and parole after 40 years.

4 Do you understand that?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** That's the definite term for
7 the one that calls for a definite term.

8 Could you consider all four forms of
9 punishment?

10 **PROSPECTIVE JUROR:** Yeah.

11 **THE COURT:** Now, have you already made up
12 your mind about what the punishment should be?

13 **PROSPECTIVE JUROR:** No.

14 **THE COURT:** You will listen to all the
15 evidence, the facts, the history, the people
16 involved, the facts of the case and you can listen
17 to the Court's instructions on the law?

18 **PROSPECTIVE JUROR:** Yes.

19 **THE COURT:** And after listening to all of
20 that, do you think you can pick the appropriate
21 verdict?

22 **PROSPECTIVE JUROR:** I think so, yes.

23 **THE COURT:** Do you have any bias or
24 prejudice against either side for any reason?

25 **PROSPECTIVE JUROR:** No.

1 **THE COURT:** Can you be fair and impartial?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** State.

4 **MR. DASKAS:** Thanks, Judge.

5

6 EXAMINATION BY THE STATE

7 **BY MR. DASKAS:**

8 Q Good evening, and thank you for your
9 patience waiting for the past couple of days. We
10 appreciate it.

11 One of the questions asked about whether
12 you're open to consider all four forms of
13 punishment, and you wrote an answer, "Yes, depending
14 on the crime and the brutality of the crime."

15 A Yes.

16 Q I take it based on that, it would be
17 important for you to learn about the underlying
18 facts of the quadruple homicide itself.

19 A Yes.

20 Q The more brutal the crime, perhaps the
21 more severe punishment is warranted?

22 A It should be.

23 Q Generally speaking?

24 A Yes.

25 Q You would also want to hear some things

1 about the defendant himself?

2 A Yeah, I want to hear both sides.

3 Q Any problem, as the Judge alluded to,
4 accepting the fact that another jury has already
5 heard the evidence in this case, listened to the
6 questions and the cross-examination and convicted
7 the defendant of all four crimes -- all four
8 murders?

9 A Yes.

10 Q You have no problem accepting that that
11 occurred?

12 A No.

13 Q And if the Judge instructs you that you
14 have to accept that verdict as being the proper
15 verdict, you're okay with that?

16 A Yes.

17 Q You know it's one thing to read that
18 questionnaire and think in general terms about the
19 death penalty, but I think it's something all
20 together different to be in the position of having
21 to impose the death penalty which is the position
22 you could find yourself in in the very near future,
23 and we don't expect you to take that lightly.
24 That's a huge decision, and even as representatives
25 of the State and the victims in this case, we know

1 it's a big decision.

2 If you're a juror and if you believe,
3 after hearing everything, that death is the
4 appropriate punishment, can you impose that
5 sentence?

6 A Yes.

7 **MR. DASKAS:** Thank you, sir.

8 Judge, we'll pass the juror for cause.

9

10 EXAMINATION BY THE DEFENSE

11 **BY MS. JACKSON:**

12 Q Good evening, sir. How are you this
13 evening?

14 A Tired.

15 Q Tired of sitting around here. We're
16 almost there, and we appreciate you hanging in there
17 with us.

18 These questions are a wee bit confusing.
19 Number 33 asked you "To what extent should the
20 mental status of the defendant be considered?" and
21 you put, "I don't know," which is actually a good
22 answer. We asked again in 38, "In reaching a
23 verdict in this penalty phase, you must consider the
24 defendant's background, that is, mitigating
25 circumstances such as the defendant's health, mental

1 status, age, childhood experience, education, et
2 cetera," and we asked, "Do you feel you would
3 consider those types of things?"

4 Well, we didn't tell you that under Nevada
5 law, the law states that you must consider those
6 types of factors along with everything else that
7 you'll be presented with. For example, if the
8 defendant, as an infant -- as a child was not given
9 enough food to eat or suffered other types of abuse,
10 are those types of things that you would like to
11 know?

12 A Perhaps.

13 Q You said "perhaps."

14 A If it was childhood, depending on how
15 young he was or how old he was at that time.

16 Q Okay.

17 What are some types of things --
18 "mitigation" is any reason that you, as a juror, can
19 find to give life. As a matter of fact, you will
20 find -- when the appropriate time comes, the Court
21 will instruct you in mitigation. We're going to
22 give you a list of things, but it can be anything
23 you say it is. For example, you can hear from the
24 defendant's mother, and you may decide that her
25 testimony is compelling and you will decide that you

1 want to spare his life for her sake. That's
2 considered mitigation.

3 Give me some idea of what types of items
4 you would find to be mitigators?

5 A Like you said, his mom or grandparents or
6 maybe childhood friends.

7 Q So, you are open to listening and fairly
8 considering that type of information?

9 A Yes.

10 Q With life or death being such a very
11 serious position, and of course, everything that I
12 say you have to bear in mind that the State will get
13 a chance to present their side, but you understand,
14 Mr. Johnson is my client, so if I leave that part
15 out, please forgive me. It's a wee bit late in the
16 day, but the fact of the matter is we've got four
17 homicides here that my client stands convicted of.
18 Okay? You indicated in your questionnaire that
19 depending upon the crime and the brutality, there
20 isn't -- I'm going to just be frank with you. Four
21 people were duct taped, bound at the feet, hands,
22 shot in the back of the head for basically no real
23 reason, no justifiable reason and no excuse, and
24 we're going to talk to you about a number of things
25 that went into making Donte Johnson who he is.

1 Are you open to listening to those things?

2 A I guess, yeah.

3 Q There was a long, hesitant pause. What
4 was running through your mind?

5 A Yeah, because --

6 Q Four people were killed.

7 A Like you said, it was the type of crime
8 and the brutality and the type of crime, it would
9 have no -- what do you call those -- what's the word
10 I'm looking for -- just like militant-type
11 executions. That's what that was, so....

12 Q It was very extreme, no argument there.

13 And knowing that, and knowing that we're
14 going to give you some things on Mr. Donte Johnson's
15 behalf, we're going to tell you some things that are
16 mitigating. You'll hear from both sides. What I'm
17 trying to find out is just the mere fact that there
18 are four victims here, will that fact alone cause
19 you to automatically think that, "Well, this has got
20 to be -- "If this is not a death penalty case, then
21 my God, what is?" you know what I'm saying?

22 Where are you in regards to that type of
23 thinking?

24 A Death penalty?

25 Q The example I just gave you -- trying to

1 find out if you can keep an open mind, listen to
2 what they have to say about the case, about the
3 victims, about the crime and then weigh that against
4 what we have to put on -- Mr. Donte Johnson's
5 family, some other things about his background and
6 things of that nature, that we consider to be
7 mitigation. All we're trying to find out -- is it
8 Mr. Clarke --

9 A Yes.

10 Q -- if you could fairly consider those
11 things. I'm not asking you to tell me how you're
12 going to vote.

13 A You can consider it, but I mean, like I
14 said, that's execution style. I mean, there's no
15 real explanation for it. That's straight up
16 execution.

17 Q Right.

18 Are you saying that because we've got four
19 people execution style, in your mind that
20 automatically has to equal death, a death penalty
21 vote?

22 A I would hear both sides, but that's just
23 where I'm leaning toward right now.

24 Q You know, that's okay. I think that would
25 be a normal human reaction to hear that.

1 A Yeah.

2 Q What type of -- is there anything, in your
3 mind, that could mitigate this type of crime to
4 where you can't consider a life verdict?

5 A Maybe.

6 Q Can you consider -- go ahead, sir.

7 A Maybe it was some kind of -- the four
8 people maybe did something to his family, maybe.

9 Q Okay.
10 That's something you would want to know
11 about?

12 A Not the word "revenge," but --

13 Q I understand.

14 Do you think that life in prison is a
15 severe punishment?

16 A Yeah, depending on the crime.

17 Q The crime is first-degree murder times
18 four.

19 A Yeah.

20 Q Do you think that's a severe punishment?

21 A Just life -- not really.

22 Q I'm not trying to trick you. I just want
23 to know are you telling me that you cannot consider
24 life in prison, period?

25 A Again, from just what you explained as the

1 type of murder it was, four times, it's kind of hard
2 to lean anywhere else.

3 Q I'm not asking you to lean one way or
4 another, Mr. Clarke.

5 A Just how you described the crimes of
6 murder, to me, it's just --

7 Q To you it equals death, sir?

8 **MR. DASKAS:** Judge, I apologize to
9 Miss Jackson, and I apologize to Mr. Clarke. That's
10 been asked and answered five times now, and I'm
11 going to object based on Rule 7.7, asked and
12 answered.

13 **THE COURT:** You have asked it a number of
14 times, Miss Jackson.

15 **MS. JACKSON:** Your Honor, I can't get a
16 straight answer, Judge, with all due respect.

17 **THE COURT:** He said he would consider it.
18 He said he wouldn't automatically --

19 **MS. JACKSON:** No.

20 **THE COURT:** Ask it one more time. That is
21 the last time.

22 **BY MS. JACKSON:**

23 Q Four people -- can you consider life
24 imprisonment, sir?

25 A I can consider it, yes.

1 Q With four dead people?

2 A Yes.

3 Q But you will also give fair consideration
4 to mitigation?

5 A Yes.

6 **MS. JACKSON:** I would pass Mr. Clarke for
7 cause, your Honor.

8 **THE COURT:** All right.

9 Mr. Clarke, have a seat outside, sir.

10 The State may exercise their eighth and
11 final peremptory challenge.

12 **MR. DASKAS:** One moment, Judge.

13 **THE COURT:** Go on.

14 **MR. DASKAS:** Judge, the State would
15 exercise its eighth peremptory challenge on Badge
16 No. 0230, Mr. Heichel seated in seat No. 11, Judge.

17 **THE COURT:** Tell Mr. Heichel he can go and
18 bring in the next juror. I believe that's Bray.

19

20 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 238

21 **THE COURT:** Mr. Bray, you've been in
22 Las Vegas for 35 years?

23 **PROSPECTIVE JUROR 238:** Yes, sir.

24 **THE COURT:** Originally from Washington?

25 **PROSPECTIVE JUROR:** Yes, sir.

1 **THE COURT:** What kind of work do you do?

2 **PROSPECTIVE JUROR:** I'm retired truck
3 driver. My wife and I own a small business.

4 **THE COURT:** What kind of business?

5 **PROSPECTIVE JUROR:** She does balloon
6 decorating for parties and conventions and things.

7 **THE COURT:** I see.

8 **PROSPECTIVE JUROR:** Right now, it's pretty
9 tough on us.

10 **THE COURT:** Now, you state that you listen
11 to talk shows and radio, and they talk about the
12 outcome of cases that seem to be unfair.

13 Who do you listen to on the radio?

14 **PROSPECTIVE JUROR:** Well, you know, your
15 typical Judge Judy and that kind of thing. Some of
16 the radio stations kind of carry it out to an
17 extent. They talk about cases where people have
18 gotten their thumbs caught in a door and sued
19 somebody for large amounts of money.

20 **THE COURT:** Okay. I see. That sort of
21 thing.

22 **PROSPECTIVE JUROR:** Yeah.

23 **THE COURT:** What about a criminal case?
24 Have you ever listened to Rush Limbaugh and those
25 guys?

1 **PROSPECTIVE JUROR:** No, I don't.

2 **THE COURT:** You said that one of your

3 daughters is dating a black man?

4 **PROSPECTIVE JUROR:** That's correct.

5 **THE COURT:** Is that causing you any kind

6 of problems, or are you going to hold that against

7 the defendant?

8 **PROSPECTIVE JUROR:** Well, I don't know

9 about that, but right now, they are in a nasty

10 argument, so it's not real pleasant around the

11 house.

12 **THE COURT:** Your daughter lives with you?

13 **PROSPECTIVE JUROR:** Yes, sir.

14 **THE COURT:** Which daughter is it?

15 **PROSPECTIVE JUROR:** It's my youngest one,

16 Laura.

17 **THE COURT:** She's the accountant?

18 **PROSPECTIVE JUROR:** Yes. She works for

19 Integrity Chrysler.

20 **THE COURT:** How long have they been

21 together?

22 **PROSPECTIVE JUROR:** They've been on and

23 off for a year and a half or so.

24 **THE COURT:** Now, have you ever served on a

25 jury before?

1 **PROSPECTIVE JUROR:** No, sir.

2 **THE COURT:** Now, you understand that this
3 trial is going to be about whether or not -- what
4 the sentence -- let me rephrase that.

5 In this trial, the jury will have to
6 decide on the punishment for the defendant.

7 Do you understand that?

8 **PROSPECTIVE JUROR:** Correct.

9 **THE COURT:** You understand that he's been
10 convicted of four counts of first-degree murder?

11 **PROSPECTIVE JUROR:** Yes, sir.

12 **THE COURT:** And going over there to the
13 questionnaire, especially No. 34, to Question
14 No. 34, you said in favor of the death penalty, so
15 you're pretty pro death penalty?

16 **PROSPECTIVE JUROR:** I believe that a
17 person committed those crimes and was convicted,
18 yes, sir.

19 **THE COURT:** You couldn't consider life in
20 prison with parole or life without the probability
21 of parole?

22 **PROSPECTIVE JUROR:** I don't believe the
23 people that died had a chance of parole.

24 **THE COURT:** I don't disagree with you
25 there, but the law states that you have to be able

1 to consider life in prison with parole or a definite
2 term of 50 years. You have to answer out loud, sir.

3 You don't think you can do that?

4 **PROSPECTIVE JUROR:** No, sir.

5 **THE COURT:** State?

6

7 EXAMINATION BY THE STATE

8 **BY MR. STANTON:**

9 Q If the law instructed you you have to
10 consider all sentencing options, would you keep your
11 mind open until you hear all the facts of the case
12 before you make your decision?

13 A Yes.

14 Q And you're a law abiding citizen?

15 A I try. Sometimes I'm not great, but I
16 try.

17 Q The defendant and his two attorneys over
18 there will be presenting arguments on his behalf.
19 Understanding that four murders -- that's a severe
20 conduct that somebody performed and that he's
21 convicted of that. One might feel just by the
22 numbers alone a more severe punishment is in order,
23 and that's not necessarily wrong or improper, but
24 the question is, can you keep an open mind until
25 you've heard all the facts in evidence and then you

1 actually begin to deliberate?

2 Do you think you can do that?

3 A I will try, yes, sir.

4 Q You know yourself better than anybody
5 else. Trying -- does that mean that you can do that
6 and that you would do that or is it your mind-set,
7 look, if he killed four people --

8 A That's what I have a hard time with, yes.

9 Q That's not necessarily out of human nature
10 that you would have a hard time with it or it would
11 be difficult to appreciate that punishment might be
12 more harsher than just killing one person, but
13 really, the question that we're looking for of each
14 juror in this case is whether or not they can be
15 fair and impartial and not make up their mind, to
16 keep their minds open until the case is formally
17 submitted to them for their pronouncement of
18 sentence at deliberation.

19 Could you do that?

20 A Yeah, I think I can do that.

21 **MR. STANTON:** Thank you, your Honor.

22 **THE COURT:** Defense.

23 **MR. WHIPPLE:** Thank you, your Honor.

24 /////

25 /////

EXAMINATION BY THE DEFENSE

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

231

AA03579

1 **BY MR. WHIPPLE:**

2 Q Mr. Bray, my name is Bret Whipple. I
3 represent Mr. Johnson. He's the person that will be
4 sentenced in this matter by this group of
5 individuals we choose.

6 There's no right and there's no wrong
7 answers; we're just trying to get -- we're trying to
8 find as fair a group of people as possible.

9 The Court will ask -- we want to put
10 people in there who can consider those four options.
11 You've already said that when you have an
12 individual -- I won't go into the details of this
13 crime -- you already said that you pretty much
14 believe that a person killed four individuals,
15 premeditated, deliberate, cold-blooded murder, that
16 the appropriate punishment would be the death
17 penalty.

18 A Yes, sir.

19 Q So, if you have that conviction, if you
20 have that belief, I appreciate you telling us,
21 because we need individuals who don't have that
22 conviction. We need individuals who are ready --
23 who don't believe that or who are not that set on a
24 sentence. We just need to be fair on both sides.

25 A Right.

1 Q I understand if you're chosen, you'll
2 follow the law, but we're not going to choose people
3 that already have preconceived notions, and that's
4 why we're asking you this. Okay?

5 A Okay.

6 Q In this case, my client bound four
7 innocent, young adults by the wrists and by the
8 feet. They were laid out in a room, face on the
9 carpet, and each one of them was summarily executed
10 with a bullet to the back of the head.

11 Is there anything in that that would
12 change your mind?

13 A I really have a hard time with that. You
14 know, there's too much of that going on. I can't --

15 Q Let me ask you this: Could you be fair to
16 us?

17 A I don't think I could.

18 **MR. WHIPPLE:** And I appreciate your
19 honesty. Thank you.

20 Challenge for cause, your Honor.

21 **MR. STANTON:** Your Honor, I believe that
22 the questions that Counsel is asking are loaded
23 questions, and they're not an appropriate statement
24 of what the process is.

25 **THE COURT:** Counsel, so were you, but the

1 problem is that he's already stated, you know, he
2 doesn't believe in life in prison without parole or
3 life with parole. He thinks that a person should
4 receive the death penalty, especially after they
5 killed four people, and I don't think he can really
6 consider it. He's made up his mind, which is fine,
7 which is what a lot of people think, and I think
8 he's stated clearly. I know you did a good job on
9 traversing, but it's clear to the Court that I don't
10 think he can consider life in prison with or without
11 parole or even 50 years or a hundred years.

12 Am I correct, sir?

13 **PROSPECTIVE JUROR 238:** Yes, sir.

14 **THE COURT:** All right. You're excused,
15 sir.

16
17 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 240

18 **THE COURT:** Sir -- I don't know, sir. A
19 lot of these questions you didn't answer, but I note
20 No. 31 they asked, "If the victims in the case are
21 of a different race or background than Donte
22 Johnson, would that affect your ability to be fair
23 and impartial," and you said, "I don't like people."

24 **PROSPECTIVE JUROR 240:** I don't.

25 **THE COURT:** "I try and stay out of

1 people's business."

2 What does that mean? What did it have to
3 do with the question?

4 **PROSPECTIVE JUROR:** I don't judge people.
5 I ain't got nothing to do with it.

6 **THE COURT:** Have you ever been arrested
7 before?

8 **PROSPECTIVE JUROR:** No.

9 **THE COURT:** Never?

10 **PROSPECTIVE JUROR:** That's why I don't do
11 nothing.

12 **THE COURT:** Can you be fair and impartial
13 in this case?

14 **PROSPECTIVE JUROR:** I don't know.

15 **THE COURT:** How come you don't know?

16 **PROSPECTIVE JUROR:** I just don't know. I
17 don't deal in situations like this. I mean, I have
18 no patience. It don't interest me.

19 **THE COURT:** All right. Tell me this here,
20 then: If you're picked as a juror in this case, you
21 have to decide the punishment for the defendant
22 there.

23 What do you think about the death penalty?

24 **PROSPECTIVE JUROR:** I can't decide nobody
25 else's life or nothing if they live or if they die.

1 **THE COURT:** So, you just don't want to
2 participate at all?
3 **PROSPECTIVE JUROR:** I mean, I'm telling
4 you the truth about myself.
5 **THE COURT:** I know; I'm just asking you.
6 I have to have it on the record here, sir. That's
7 what we're trying to find out.
8 **PROSPECTIVE JUROR:** I'm participating. I
9 mean, this guy, he's on trial for four counts of
10 murder. I don't want to have nothing to do with
11 that.
12 **THE COURT:** He's already been convicted of
13 four counts of murder. We were trying to pick a
14 jury to decide the punishment.
15 **PROSPECTIVE JUROR:** Well, I think that's
16 for you guys to decide instead of me.
17 **THE COURT:** That's not the law. The law
18 is --
19 **PROSPECTIVE JUROR:** I know.
20 **THE COURT:** -- for the citizens to decide.
21 **PROSPECTIVE JUROR:** I'm giving you my
22 opinion on this.
23 **THE COURT:** All right. You're excused,
24 sir.
25 **PROSPECTIVE JUROR 240:** Thank you.

1
2 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 242

3 **THE COURT:** Mr. Taylor?

4 **PROSPECTIVE JUROR 242:** Yes.

5 **THE COURT:** How long have you been in
6 Las Vegas?

7 **PROSPECTIVE JUROR:** Eight years.

8 **THE COURT:** What kind of work do you do?

9 **PROSPECTIVE JUROR:** I work in a casino.

10 **THE COURT:** What do you do in the casino?

11 **PROSPECTIVE JUROR:** I'm a table game
12 supervisor.

13 **THE COURT:** Your wife is in physical
14 therapy?

15 **PROSPECTIVE JUROR:** Yes.

16 **THE COURT:** Have you ever served on a jury
17 before?

18 **PROSPECTIVE JUROR:** No.

19 **THE COURT:** Have you or anyone in your
20 family ever been charged with a crime before?

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** Have you or anyone in your
23 family ever been the victim of a crime?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Do you believe that you can be

1 fair and impartial in this case?

2 **PROSPECTIVE JUROR:** Yes.

3 **THE COURT:** Can you follow the Court's
4 instructions on the law?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** All right.

7 Now, you understand we're picking a jury
8 to decide the penalty for the defendant in this
9 case?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** And you understand he's been
12 convicted of four counts of first-degree murder?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** What we want to know is if you
15 can follow the law as written in Nevada, and one of
16 them is that for first-degree murder, the jury will
17 have to decide the punishment, and the four choices
18 they will have is the death penalty -- the four
19 choices are the death penalty, life imprisonment
20 without the possibility of parole, life imprisonment
21 with the possibility of parole or for a definite
22 term of 50 years, parole -- possibility of parole
23 after 20 years, and those sentences are doubled
24 because a deadly weapon is used.

25 Do you understand that?

1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** Now, can you consider all four
3 forms of punishment?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** And what that means is that
6 after listening to the facts of the case, the
7 evidence from the State and from the defendant and
8 looking at the background of the people involved and
9 listening to the instructions on the law that the
10 Court gives, do you feel that you can pick out the
11 appropriate punishment?

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** Do you have any religious or
14 moral opposition to the death penalty?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Do you have any problems or do
17 you have any opposition or is there anything in your
18 background where you could not consider life in
19 prison with or without parole or for a definite term
20 if the facts and the law warranted?

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** Do you have any bias or
23 prejudice towards the State?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Do you have any bias or

1 prejudice towards the defendant?

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** Have you heard anything about
4 this case?

5 **PROSPECTIVE JUROR:** If I did read it in
6 the paper years ago, I'd forgotten about it.

7 **THE COURT:** Did you hear any of the other
8 jurors discussing this case while you've been here?

9 **PROSPECTIVE JUROR:** No.

10 **THE COURT:** State.

11 **MR. DASKAS:** Thank you, Judge.

12

13 EXAMINATION BY THE STATE

14 **BY MR. DASKAS:**

15 Q Mr. Taylor, thank you for your patience,
16 and we appreciate you waiting out there for the last
17 couple of days.

18 Real briefly, you understand the defendant
19 has already been convicted of four counts of
20 first-degree murder?

21 A Yes.

22 Q I'm sure you've heard in our criminal
23 justice system about the presumption of innocence
24 and how it's our burden to prove someone's guilt
25 beyond a reasonable doubt.

1 You're familiar with that?

2 A Yes.

3 Q In this case, that presumption is gone.

4 Do you understand that?

5 A Yes.

6 Q Your role as a juror would simply be to

7 decide the appropriate penalty. Now, I say it's a

8 simple role, but it's obviously a very important one

9 and a very serious one because we're seeking the

10 death penalty.

11 Do you understand that?

12 A Yes.

13 Q You realize we don't take that lightly?

14 A Yes.

15 Q Let's assume you're selected as a juror in

16 this case and we present you with the underlying

17 facts of the homicides. We and the defense will

18 present information about the defendant's

19 background. Let's assume you heard all that

20 information, absorbed it and considered it, and you

21 believe that this is one of those unique cases where

22 death is warranted.

23 Can you actually impose that punishment?

24 A I could.

25 Q Understanding again that it's not an easy

1 responsibility -- I'm not suggesting that it is --
2 let me ask you one slightly different question, and
3 that is this: You and the other 11 jurors will have
4 to select a foreperson, and you will -- if you're
5 the foreperson, will have the same vote as everyone
6 else, the only additional responsibility would be
7 that you would have to sign the verdict form. In
8 this case, that means you would have to sign the
9 verdict form that sentences this defendant to the
10 death penalty. If you and the other jurors agree
11 that's the appropriate punishment and if you were
12 selected as the foreperson, would you sign that
13 document?

14 **PROSPECTIVE JUROR:** Yes.

15 **MR. DASKAS:** Thank you, sir.

16 Judge, we'll pass this juror for cause.

17 **THE COURT:** Defense Counsel.

18 **MR. WHIPPLE:** Thank you, your Honor.

19

20 EXAMINATION BY THE DEFENSE

21 **BY MR. WHIPPLE:**

22 Q Good evening, Mr. Taylor. My name is Bret
23 Whipple, and Mr. Taylor, I represent Donte Johnson.
24 He is the convicted killer in this case, and I just
25 wanted to ask you a few questions to follow up.

1 I know you mentioned you're a table game
2 supervisor.

3 What was your original training when you
4 came out of college?

5 A I never graduated from college.

6 Q I notice you took some classes or some
7 advanced classes.

8 A I took architecture classes for a year.
9 That was it.

10 Q Where did you work prior to coming to
11 Vegas?

12 A In Atlantic City in casinos.

13 Q So, you've been involved in entertainment
14 or gaming most of your life?

15 A Eight years in a chemical plant before
16 that. That was it.

17 Q What do you do as a table game supervisor?

18 A I watch the dealers, interact with the
19 customers, make sure the games are run fairly.

20 Q Now, this is an unusual situation.

21 I guess you've never been on a jury
22 before?

23 A No, I haven't.

24 Q In a jury, my client is presumed innocent,
25 protected by a cloak of innocence. The State has

1 the burden to prove the defendant guilty beyond a
2 reasonable doubt. Here is a lot simpler -- you're
3 just going to get a lot of information, and then you
4 have to make a decision as to Mr. Johnson's future.
5 Now, I might have been a bit presumptuous when I
6 said it's simply there's not going to be a lot of
7 challenging information, but the decision you're
8 going to have to make is extraordinarily
9 challenging.

10 When you received this jury questionnaire,
11 what were some of the things that ran through your
12 head?

13 A Such as -- I don't know what you're trying
14 to get at.

15 Q Are you concerned about potential sitting
16 in judgment of another person?

17 A Yes, but I understand somebody has to do
18 it.

19 Q And your thoughts are basically "I can do
20 it. If it has to be done, I can do it as well as
21 anybody else?"

22 A Pretty much so, yes.

23 Q The death penalty -- what's your opinion
24 with regard to the death penalty?

25 A I've never had any direct contact with it.

1 I haven't formed really a strong opinion about it.

2 Q It's not something you really discuss with
3 other individuals?

4 A No. Nobody I've ever known has ever been
5 in that situation.

6 Q Sure.

7 Miss Jackson and I represent Mr. Johnson.
8 We're here not to, by any means, give any suggestion
9 as to any type of excuse or justification; there is
10 not. It was a terrible, heinous crime, but we will
11 be providing lots of information to you that we
12 believe is a reason to give a life sentence to
13 Mr. Johnson.

14 Would you be willing to listen to that
15 type of information?

16 A Yes, certainly.

17 Q Why?

18 A There's got to be circumstances
19 surrounding it, whether good or bad.

20 Q Now, in this particular case, as you know,
21 there were four young adults who had their lives
22 taken from them. They were bound with duct tape
23 around their feet and their arms, they were laid on
24 a floor and eventually, after a period of time, they
25 were shot in the back of the head?

1 A I did not know that before this minute.
2 Q Knowing that, could you still consider a
3 life sentence?
4 A It would be more difficult.
5 Q Why is that?
6 A The nature of the crime.
7 Q I understand.
8 At some point, this Court will give you
9 instructions, and some of those instructions include
10 the fact that the death penalty is never required,
11 and, in fact, we're going to tell you that there are
12 a lot of reasons to give life, and those are what
13 Miss Jackson and I will refer to as "mitigation."
14 There was a question that touched on that
15 in the jury questionnaire, and I note that you're
16 one of the individuals who said you were very much
17 interested in that type of information.
18 A Yes.
19 Q Do you recall signing that or marking
20 that?
21 A Well, I would think that I would need as
22 much information as possible --
23 Q Why is that?
24 A -- to make a just decision.
25 Q Now, you will also hear information or

1 I'll even suggest to you at some point that some of
2 those mitigating circumstances could be an issue as
3 simple as mercy or maybe a gut feeling that you
4 prefer to give life over death, that you prefer to
5 find life. That's not so easy to verbalize, those
6 gut feelings.

7 If other people had different opinions and
8 you had a gut feeling that you wanted to give life,
9 how would you handle that situation?

10 A I would voice my opinion, whatever it was.

11 Q Sometimes people in my business, we hear
12 this issue of abuse excuse. Have you ever heard
13 that term, "abuse excuse"?

14 A No, I don't recall.

15 Q "Abuse excuse" is -- sometimes used in the
16 fact that people suggest we're trying to justify or
17 explain our client's action because of his prior
18 history or because of family problems or something.
19 We're not ever going to try to justify or explain,
20 but we are going to give you information.

21 Do you think a person's background and
22 family and the way they were brought up is the
23 information that you would like to hear about?

24 A Yes.

25 Q I'm going to ask you why. Why is that

1 important to you?

2 A Well, what a person is going through
3 before this act is obviously important.

4 Q Relative -- it will dictate what happens
5 to a person such as yourself that makes a decision
6 on the rest of his life?

7 A Yes.

8 Q Life in prison -- do you believe that's a
9 severe punishment?

10 A Yes.

11 Q Why?

12 A If it's without parole, there's no
13 opportunity to ever rejoin society.

14 Q You enjoy your freedom?

15 A Yes.

16 Q And to take one's freedom away is a severe
17 punishment?

18 A Yes.

19 Q Do you consider yourself -- I note that
20 you're kind of in a leadership position, obviously
21 as a supervisor.

22 Do you consider yourself as a follower or
23 a leader?

24 A That's not really that much of a
25 leadership position. I haven't really thought of

1 myself as either, really. I do both, actually, in
2 my job.

3 Q So, if there are individuals who had a
4 feeling that was different than yourself and, yet,
5 maybe you had just a gut feeling that you wanted to
6 choose life over death, how would you handle that if
7 you had pressure to try to formulate that decision,
8 yet, you felt contrary; how would you handle that?

9 A It would have to be with discussion.

10 Q Could you stand your own ground if you
11 felt confident in a particular decision?

12 A If I honestly felt confident in it, yes.

13 **MR. WHIPPLE:** Mr. Taylor, I thank you for
14 your time.

15 Pass for cause, your Honor.

16 **THE COURT:** All right.

17 Sir, have a seat outside there.

18 **PROSPECTIVE JUROR 242:** Okay.

19 **THE COURT:** The defense may exercise their
20 eighth and final peremptory challenge.

21 **MS. JACKSON:** That would be 0113, Janet
22 Miller who is in the No. 4 spot, your Honor.

23 **THE COURT:** What's her number again?

24 **MS. JACKSON:** Her number is 0113, Judge.

25 **THE COURT:** All right.

1 Bring the next one in.

2

3 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 249

4 **THE COURT:** Miss Summers, what kind of
5 work do you do, ma'am?

6 **PROSPECTIVE JUROR 249:** I'm an office
7 manager for CBS. It's a trucking company. We haul
8 dirt.

9 **THE COURT:** And your husband -- what does
10 he do?

11 **PROSPECTIVE JUROR:** He is a slot
12 operations manager at Four Queens.

13 **THE COURT:** You never served on a jury
14 before?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Now, here in Question No. 24,
17 you state, "At times I feel the system was a big
18 letdown and are too lenient."

19 What times are those? Any examples or
20 something that bring something to mind that causes
21 you to say that?

22 **PROSPECTIVE JUROR:** Well, the first time
23 that -- well, it was the last time that I was here,
24 we just sat downstairs. I never made it to jury or
25 nothing, but we just sat downstairs, and it's like

1 they don't let you anything. It's just like
2 nothing. They don't tell you anything except after
3 5:00 o'clock, go home.

4 **THE COURT:** Like they don't tell you
5 what's happening?

6 **PROSPECTIVE JUROR:** No.

7 **THE COURT:** Now, here it says, "Do you
8 have any relatives or close friends of a different
9 racial background?" and you say, "My best friend's
10 husband. My husband and I were maid of honor and
11 best man."

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** What's the racial background?

14 **PROSPECTIVE JUROR:** She's white, he's
15 black.

16 **THE COURT:** Okay.

17 Now, you understand what kind of case this
18 is and what we're picking a jury for; is that
19 correct?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** The defendant has already been
22 convicted of four counts of first-degree murder,
23 therefore, this jury will have to decide on the
24 punishment, and according to the laws of the State
25 of Nevada, the jury will have four choices -- the

1 death penalty, life in prison without the
2 possibility of parole, life in prison with the
3 possibility of parole or for a definite term of 50
4 years with the possibility of parole after 20 years,
5 and those punishments are doubled because a deadly
6 weapon was used, so it would be -- the definite term
7 would be a hundred years with parole eligibility or
8 possibility of parole after 40 years, and this would
9 be for each of the counts.

10 Do you understand that?

11 **PROSPECTIVE JUROR:** Okay.

12 **THE COURT:** Could you consider all four
13 forms of punishments and look at them -- first of
14 all, could you consider all four forms of
15 punishment?

16 **PROSPECTIVE JUROR:** Yes.

17 **THE COURT:** And you could listen to the
18 evidence, the witnesses, the instructions on the
19 law, the arguments of counsel and then pick the one
20 that you feel is most appropriate?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** Do you have any moral or
23 religious opposition to the death penalty?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Would you be able to return a

1 verdict of life in prison if you thought it was
2 appropriate given the facts and circumstances?

3 **PROSPECTIVE JUROR:** I'm sorry. I was --

4 **THE COURT:** Would you be able to return a
5 verdict of life in prison if you thought the facts
6 in evidence warranted?

7 **PROSPECTIVE JUROR:** That's tough. It's
8 like you said, I would have to know more detail to
9 even go into that direction. That would be --
10 you're talking about putting him in prison for the
11 rest of his life?

12 **THE COURT:** That's one choice you have.
13 You can put him in prison for the rest of his life
14 and he would remain there until he dies or life in
15 prison with the possibility of parole and that would
16 be after 40 years or for a definite term of a
17 hundred years and the parole possibility after 40
18 years.

19 So, the question is could you consider all
20 of them? Are you opposed -- I'm trying to find out,
21 are you opposed to sentencing someone to life in
22 prison with the possibility of parole?

23 **PROSPECTIVE JUROR:** No, I'm not opposed to
24 it.

25 **THE COURT:** Are you opposed to sentencing

1 someone to prison for a term of life without the
2 possibility of parole?

3 **PROSPECTIVE JUROR:** No.

4 **THE COURT:** You can look at all of them?

5 **PROSPECTIVE JUROR:** Right.

6 **THE COURT:** And you can pick the one --
7 after hearing the evidence, you would pick the one
8 that's most appropriate?

9 **PROSPECTIVE JUROR:** Right.

10 **THE COURT:** That's what I want to know.

11 **PROSPECTIVE JUROR:** Okay. Sorry. I've
12 been up since 3:30. I'm tired.

13 **THE COURT:** We all are, but we're trying
14 to get the jury picked so we don't have to have
15 folks waiting around all day tomorrow; that's why
16 we're staying late.

17 **PROSPECTIVE JUROR:** Can I say something?
18 I want to be honest too. Okay?

19 **THE COURT:** That's what we want.

20 **PROSPECTIVE JUROR:** My nephew was 203.

21 **THE COURT:** Was 203?

22 **PROSPECTIVE JUROR:** Jeremy Summers.

23 **THE COURT:** He's still on here.
24 That's your nephew?

25 **PROSPECTIVE JUROR:** That's my nephew.

1 **THE COURT:** How did that happen?

2 **PROSPECTIVE JUROR:** I was surprised, but I

3 was glad he was here. He was good company.

4 **THE COURT:** How do you think that's going

5 to affect you guys on this jury?

6 **PROSPECTIVE JUROR:** Me and my nephew?

7 **THE COURT:** Yeah.

8 **PROSPECTIVE JUROR:** Us together?

9 **THE COURT:** Right.

10 **PROSPECTIVE JUROR:** I didn't think it was

11 legal; that's why I'm telling you. I never heard of

12 it before.

13 **THE COURT:** I've never had it happen since

14 I've been here, of course; I did have a husband and

15 wife on a jury.

16 **PROSPECTIVE JUROR:** Okay. I was just

17 being honest.

18 **THE COURT:** If you're allowed to serve on

19 this jury -- how old is Jeremy?

20 **PROSPECTIVE JUROR:** He's 20.

21 **THE COURT:** So, do you think you would be

22 telling him what to do?

23 **PROSPECTIVE JUROR:** Oh, no. No, you can't

24 tell him what to do. He's 20.

25 **THE COURT:** Approach the bench, guys.

1 (Sidebar conference outside the presence
2 of the court reporter.)
3 **THE COURT:** So, you can be fair and
4 impartial?
5 **PROSPECTIVE JUROR:** Yes.
6 **THE COURT:** And you're not going to go
7 along with Jeremy just because he's your nephew, are
8 you?
9 **PROSPECTIVE JUROR:** No.
10 **THE COURT:** You're going to make your own
11 independent assessment of the facts and the
12 evidence?
13 **PROSPECTIVE JUROR:** Oh, yeah.
14 **THE COURT:** And make your own decision?
15 **PROSPECTIVE JUROR:** Oh, yeah.
16 **THE COURT:** You don't have any bias or
17 prejudice towards either side for any reason?
18 **PROSPECTIVE JUROR:** No.
19 **THE COURT:** Can you follow my instructions
20 on the law?
21 **PROSPECTIVE JUROR:** Yes.
22 **THE COURT:** State.
23 **MR. STANTON:** Thank you, your Honor.
24 /////
25 EXAMINATION BY THE STATE

1 **BY MR. STANTON:**

2 Q Good evening.

3 A Hi.

4 Q Thank you very much for your patience for
5 the last couple of days.

6 Miss Summers, I want to ask you a couple
7 of questions. If you're selected on this jury and
8 you're back in the deliberation process and you and
9 Jeremy come down on your decision on some facts in
10 the ultimate decision in this case, do you think,
11 based upon your relationship with him, that you can
12 have a healthy and legal interaction in the jury
13 confines?

14 A Oh, God yes.

15 Q There's nothing about your relationship
16 that would -- if you disagreed with one another,
17 that you would -- one of you would say, "I'm going
18 to vote with the other person just so we don't have
19 a problem within our family"?

20 A No. We're family. You go through that.
21 Everyone goes through that, but you still love each
22 other.

23 Q I understand.

24 In this case, there is going to be
25 evidence presented in the State's presentation about

1 the underlying quadruple murders. That evidence is
2 going to involve rather dramatic and very violent
3 photographs that show the actual murder scene where
4 these four young men were killed.

5 Is there anything about seeing that kind
6 of evidence that causes you a problem to sit as a
7 juror in this case?

8 A No.

9 Q So, you're able to look at that, put aside
10 the emotional aspect of it and look for it for its
11 evidentiary value?

12 A Yes.

13 Q Is there anything about the fact that a
14 prior jury has returned the verdicts of guilt in
15 this case that causes you concern about your role in
16 the penalty phase?

17 A No. You have to be open.

18 Q The Judge would instruct you that you have
19 to accept that verdict of guilt and that this entire
20 proceeding is not to determine innocence or guilt.
21 And you're comfortable with that?

22 A Yeah.

23 Q You indicated your feelings about the
24 death penalty, that you would consider it under
25 certain circumstances.

1 You would weigh all the circumstances and
2 facts that's presented both by the State and the
3 defense?

4 A Definitely.

5 Q You wouldn't make up your mind until all
6 that evidence is in, the Judge instructed you by
7 law, and then it was formally submitted to you; is
8 that fair?

9 A Definitely, yes.

10 Q Even though there are four murders and
11 four separate victims in this case, you would keep
12 an open mind to all sentencing options?

13 A Yeah. It would be tough, I'm not going to
14 lie. It's going to be tough. It's going to be
15 hard, but yeah, you have to keep it open.

16 Q I understand that's entirely proper that
17 more than one person is killed and that's an
18 aggravator recognized by Nevada law. What we're
19 looking for is a group of jurors that will wait
20 until all the evidence is in until they're
21 instructed by law to consider all four sentencing
22 options and make a decision from that as opposed to
23 someone that says, "I can't consider one of these
24 based upon what I know about the case today," that
25 will keep an open mind --

1 A Open mind.

2 Q -- about everything.

3 Do you feel that's the type of person you
4 are and how you feel about it today?

5 A Yes, definitely.

6 Q There's a process of which the jury
7 controls, and that is the selection of a foreperson.
8 They have the same vote as every other person on the
9 jury. They have one different function than any
10 other juror, and that is they have to sign the
11 verdict forms.

12 If, after your careful deliberation in
13 listening to the facts and the evidence of this
14 case, you along with the rest of the jury believes
15 that the death penalty is appropriate, ma'am, could
16 you affix your signature to the verdict form that
17 puts Donte Johnson to death?

18 A Well, that's a tough question. That's
19 tough.

20 Q I appreciate that, and I understand the
21 severity of the question as it's posed.

22 A I don't know how to answer that. That's
23 so tough, I don't know. I can't put myself in that
24 situation until you're there, and I'm going to be
25 honest, I can't answer that. I don't know. That's

1 tough.

2 Q I understand it's tough.

3 A That's tough. If everyone is doing --

4 Q It would certainly be -- any verdict by
5 the jury in this case would have to be unanimous, so
6 it would not be your decision alone when you signed
7 your name, it would be a unanimous verdict of you
8 and the rest of your jurors, but if you were
9 selected as the foreperson, you would have to affix
10 your signature to that document.

11 **MR. WHIPPLE:** Mr. Stanton -- and I
12 apologize for interrupting, but I believe she's
13 answered the question. She does not have to say
14 "yes" or "no," and she said it's difficult and it's
15 tough, and I think that's an appropriate answer.

16 **THE COURT:** Overruled.

17 **PROSPECTIVE JUROR:** I'm sorry.

18 **THE COURT:** If she can answer it -- I
19 don't know. That's not saying anything.

20 **PROSPECTIVE JUROR:** Could I sign it --
21 yeah.

22 **THE COURT:** You know what, you might not
23 even want to be the foreman.

24 **PROSPECTIVE JUROR:** Yeah.

25 **THE COURT:** I guess the question is could

1 you vote -- if you thought the death penalty was the
2 appropriate one, would you be able to vote for it?

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** But you just don't know if you
5 could sign the paper?

6 **PROSPECTIVE JUROR:** I could -- I could
7 sign a paper. I think just something -- you know,
8 you're really looking at a person that you're
9 really -- you're putting their life in your hands,
10 and that's a tough situation. I mean, I've never
11 gone through this before, and that would be tough,
12 but yes, you would have to have an open mind. Would
13 I sign it -- yes, if I felt that it was
14 appropriate -- yes.

15 **THE COURT:** That's what we wanted to know.
16 Okay.

17 **MR. STANTON:** Thank you.

18 I would pass the prospective juror.

19 **MS. JACKSON:** May I, your Honor?

20 **THE COURT:** Go on.

21

22 EXAMINATION BY THE DEFENSE

23 **BY MS. JACKSON:**

24 Q Hi, Miss Summers.

25 A Hi.

1 Q Did you ever get called Donna Sommers back
2 in the 80s?

3 A Yes.

4 Q Just going to go really quickly, I know
5 it's late, and I thank you for being so candid with
6 us about your nephew and being so patient with us.

7 Other than the fact that there's too much
8 sitting around, is there anything else to cause
9 you -- you said -- in 24, you said, "At times, the
10 system was a big letdown" because you said "too
11 lenient."

12 A This happens, and I think everyone knows
13 about it -- you take so many cases out there, and
14 look how many years it goes until it gets resolved.
15 I'm not trying to be mean, but it's, like, what are
16 you doing to that family, to the person? It drags
17 on is what I'm saying, and I just feel like it's
18 very -- it's like you don't care.

19 Q It's an imperfect system?

20 A Very much. They need some improvement on
21 it, I guess is the right way to say it.

22 Q Even so, you're not going to hold that
23 against either the State or the defense in this
24 case?

25 A No.

1 Q Actually, just to let you know, you're
2 going to hear that this crime occurred in August of
3 19 --

4 A -Eight.

5 Q -- ninety-eight and here we are in 2005,
6 and this is a prime example of what you're talking
7 about, but be that as it may, can we move past that
8 and listen to the evidence?

9 A I'm talking about so many other cases.
10 Look at Murphy. I'm just saying, look how long --
11 you take a case, and it just --

12 Q I know.

13 A Okay.

14 Q Moving on.

15 A Shoot me.

16 Q It's okay.

17 You're actually a breath of fresh air this
18 time of evening. We appreciate your candor and your
19 attitude. I know when I sit in the doctor's office,
20 the longer I sit, the madder I get, and you come in
21 here and you have such a lovely attitude, and we
22 appreciate that.

23 A I've been up since 3:30, and I'm dead.

24 Q We're going to talk a little bit about the
25 death penalty and reasons to give life. We all know

1 Mr. Donte Johnson sits here convicted of four
2 first-degree murders. You know nothing about him;
3 you know very little about the case. However, we
4 will tell you a little bit more about the case to
5 help you in your determination.

6 One other thing that we're going to tell
7 you about is quite a bit about my client. That's
8 what we do. We're going to present what we call
9 "mitigation" -- "mitigating circumstances." That's
10 any reason that you find to give life.

11 Now, toward that end, on Question 33, you
12 indicate, "If the defendant is totally incompetent
13 and doesn't realize his or her actions towards the
14 crime that they committed" -- okay. Now, that
15 situation, if that were the case, we wouldn't be
16 here with four convictions, so just put that out of
17 your mind right now.

18 Can you do that?

19 A Yeah.

20 Q You're with me? He's competent, he's been
21 found guilty, and that's not an issue.

22 A Right.

23 Q Now, knowing that, let's move to the next
24 one where it talks about that you must consider some
25 mitigation the defendant's background -- let me read

1 the question as it's written.

2 "In reaching a verdict in this penalty
3 phase, you must consider the defendant's background
4 and that's the law in Nevada, and that is mitigating
5 circumstances such as the defendant's age, health,
6 mental status, childhood experience" and things of
7 that nature.

8 For example -- you put down that you could
9 think of those things somewhat.

10 Now, what did you mean by "Somewhat,"
11 Miss Summers?

12 A Yeah, you do consider it, but I also look
13 at a lot of people who I know that have gone through
14 some hardships from their upbringing and where their
15 mind is at. They don't use it as an excuse and keep
16 being bad, they better themselves; so, that's why I
17 put "Somewhat" on that.

18 Q Sure. We all know people who pull
19 themselves up by their bootstraps.

20 A Exactly.

21 Q And unfortunately, for our society, not
22 many people, period, are convicted of quadruple
23 homicide, so that's kind of a unique category in
24 itself.

25 A Oh, yeah.

1 Q Knowing about the number of people in this
2 case that are killed and knowing that we're not
3 going to try to justify anything or tell you that
4 Mr. Johnson is insane or incompetent -- we're not
5 going to tell you that.

6 Can you still listen to mitigation with an
7 open mind and consider that along with everything
8 else that you're going to hear?

9 A Yeah.

10 Q If this defendant, for example, wasn't
11 fed, he didn't have enough to eat as a child,
12 wouldn't you want to know that about someone that
13 you're going to decide whether they're going to live
14 or die?

15 A You get more of a background. It's like
16 he said, you have to have an open mind.

17 Q Sure.

18 Do you think that life imprisonment is a
19 serious punishment, is a severe punishment?

20 A Yes.

21 Q What if you were back in the jury room and
22 you were back there -- say, for example, you were on
23 the jury, and in addition to your nephew, you've got
24 ten other people, and they decide that they see it a
25 particular way, whatever way that may be and that's

1 not the way that you see it. You deliberated to the
2 best of your ability, you discussed it and you've
3 really looked in your heart and you've done the best
4 job your -- in good conscious you feel that you do,
5 what if you're the only one who feels the way that
6 you do; would you be able to hold to the courage of
7 your own convictions?

8 A No. I'm going to be honest, no.

9 Q You're not going --

10 A Not to a breaking point where I'm the only
11 one and no one agrees with me, forget it. I'm going
12 with them. I'm sorry. Just to get it over. I'm
13 going to be honest. Okay?

14 Q So, you wouldn't vote a certain way just
15 to reach a unanimous verdict?

16 A Yes, if it got to where it was being drug
17 out, yes, and I'm holding them up, yes. I'm going
18 to be honest, yeah.

19 **MS. JACKSON:** Well, your Honor, I would
20 challenge for cause on that basis that the verdict
21 would not be the considered opinion of 12 jurors.
22 She's indicated she would go with the majority just
23 for the sake of reaching a verdict, and that, I
24 think, the law forbids. He's entitled to the
25 considered opinion of 12 jurors.

1 **THE COURT:** State?

2 **MR. STANTON:** I submit the matter, your
3 Honor.

4 **THE COURT:** All right. You're excused.

5 **MR. STANTON:** Your Honor, this would be
6 for Seat No. 4, correct?

7 **THE COURT:** The one that replaced juror
8 113.

9

10 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR 253

11 **THE COURT:** Mr. Tobiason, do you believe
12 that you can be fair and impartial in this case?

13 **PROSPECTIVE JUROR 253:** I think so.

14 **THE COURT:** Now, of course, I'm looking
15 here -- you know this is a case where we have to
16 decide the punishment for a person who has been
17 found guilty of four counts of first-degree murder?

18 **PROSPECTIVE JUROR:** Correct.

19 **THE COURT:** I'm looking at some of your
20 answers here. Number 34 specifically, what would
21 you say your general -- you said you're in favor of
22 the death penalty, and then you said, "Murder
23 convictions should be punished by death, no appeal,
24 no sitting on death row for years wasting tax
25 dollars."

1 You don't even think a person should get
2 an appeal?

3 **PROSPECTIVE JUROR:** No.

4 **THE COURT:** The State of Nevada law
5 requires that a person who is convicted of
6 first-degree murder, that the jury be in a position
7 and the mind-set where they can consider the four
8 forms of punishment that's authorized by statute,
9 that is, not only the death penalty but life in
10 prison with the possibility of parole, life in
11 prison without the possibility of parole or for a
12 definite term of 50 years with parole eligibility of
13 20 years.

14 The way I'm reading your questionnaire
15 here, I'm of the opinion that you believe that a
16 person who has been convicted of first-degree murder
17 would -- you would not be in a position to sentence
18 him to life or even consider life in prison with the
19 possibility of parole or life in prison without the
20 possibility of parole; is that correct?

21 **PROSPECTIVE JUROR:** Correct.

22 **THE COURT:** And you don't think anything
23 could change that?

24 **PROSPECTIVE JUROR:** It shouldn't -- no, I
25 don't think so.

1 **MR. WHIPPLE:** Challenge.
2 **MS. JACKSON:** Challenge for cause.
3 **THE COURT:** State?
4 **MR. STANTON:** Submit it, your Honor.
5 **THE COURT:** All right. You're excused,
6 sir.
7
8 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 255
9 **THE COURT:** Is this Mr. Robison?
10 **PROSPECTIVE JUROR 255:** Yeah.
11 **THE COURT:** Now, you said someone in your
12 family had been arrested or charged with a crime.
13 Who was that, sir?
14 **PROSPECTIVE JUROR:** What's that?
15 **THE COURT:** I think in your questionnaire
16 you stated that someone in your family had been
17 charged with a crime.
18 Has someone in your family ever been
19 charged with a crime?
20 **PROSPECTIVE JUROR:** No.
21 **THE COURT:** You don't remember that?
22 Okay.
23 Has anyone in your family or have you or
24 anyone in your family ever been a victim of a crime?
25 **PROSPECTIVE JUROR:** Yeah.

1 **THE COURT:** Who was that?
2 **PROSPECTIVE JUROR:** My house has been
3 burglarized.
4 **THE COURT:** Have you ever been on a jury
5 before?
6 **PROSPECTIVE JUROR:** No.
7 **THE COURT:** What kind of work do you do
8 again?
9 **PROSPECTIVE JUROR:** I'm retired.
10 **THE COURT:** From what?
11 **PROSPECTIVE JUROR:** I worked for the City.
12 **THE COURT:** What did you do for the City?
13 **PROSPECTIVE JUROR:** I was a construction
14 inspector.
15 **THE COURT:** Was this for Boulder City or
16 Las Vegas?
17 **PROSPECTIVE JUROR:** Las Vegas.
18 **THE COURT:** You live up in Boulder City
19 now?
20 **PROSPECTIVE JUROR:** No; I live in Vegas.
21 **THE COURT:** Pardon me?
22 **PROSPECTIVE JUROR:** I live in Las Vegas.
23 **THE COURT:** Oh, okay. I thought it was
24 Boulder City.
25 Have you ever been on a jury before?

1 **PROSPECTIVE JUROR:** No, I haven't.

2 **THE COURT:** Have you heard anything about
3 this case?

4 **PROSPECTIVE JUROR:** Yeah, over the years.

5 **THE COURT:** What now?

6 **PROSPECTIVE JUROR:** Over the years, yeah.

7 **THE COURT:** What exactly have you heard?

8 **PROSPECTIVE JUROR:** I don't know. It's
9 been so long ago, I don't really remember -- bits
10 and pieces here and there.

11 **THE COURT:** Was what you heard, would that
12 affect your ability to be fair and impartial in this
13 case?

14 **PROSPECTIVE JUROR:** Probably not.

15 **THE COURT:** Now, you understand that we're
16 picking a jury to decide the punishment for the
17 defendant.

18 Do you understand that?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** And you understand he's
21 already been convicted of four counts of
22 first-degree murder with a deadly weapon.

23 What I want to know is according to the
24 laws of the State of Nevada, the jury is required to
25 consider four possible punishments and to pick the

1 one that's most appropriate depending on the facts
2 and the law and the evidence.

3 Do you understand that?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Now, the four possible
6 punishments are the death penalty, life in prison
7 without parole, life in prison with the possibility
8 of parole or for a definite term of 50 years with
9 the possibility of parole after the 20 years, and
10 those sentences are doubled because a deadly weapon
11 was used.

12 Do you understand that?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** So, it would be the death
15 penalty, life in prison without the possibility of
16 parole plus a consecutive life without the
17 possibility of parole, life imprisonment with the
18 possibility of parole with a consecutive one for the
19 use of a deadly weapon and a definite term of 50
20 years with the possibility of parole after 20 years
21 plus a consecutive 50 years with the possibility of
22 parole after 20 years for a total of a hundred
23 years, and he would be eligible for parole after 40
24 years, and this would apply to each count.

25 Do you understand that?

1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** Would you be able to consider
3 those four forms of punishment?

4 **PROSPECTIVE JUROR:** Yes.

5 **THE COURT:** Are you opposed to the death
6 penalty?

7 **PROSPECTIVE JUROR:** No.

8 **THE COURT:** Are you opposed to life in
9 prison without the possibility of parole?

10 **PROSPECTIVE JUROR:** No.

11 **THE COURT:** Are you opposed to life in
12 prison with the possibility of parole?

13 **PROSPECTIVE JUROR:** No.

14 **THE COURT:** Are you opposed to, say, a
15 hundred years in prison with the possibility of
16 parole after 40 years?

17 **PROSPECTIVE JUROR:** No.

18 **THE COURT:** And you would make your
19 decision after listening to the evidence from the
20 defense and from the State and after hearing the
21 arguments of counsel and listening to the Court's
22 instructions on the law?

23 **PROSPECTIVE JUROR:** Yeah.

24 **THE COURT:** You don't have your mind made
25 up now, do you?

1 **PROSPECTIVE JUROR:** It seems a pretty open
2 and shut case.

3 **THE COURT:** He was already guilty, but
4 have you made up your mind on the sentence yet?

5 **PROSPECTIVE JUROR:** Pretty much so.

6 **THE COURT:** What have you decided his
7 punishment should be?

8 **PROSPECTIVE JUROR:** Death penalty.

9 **THE COURT:** And you made this up without
10 hearing any evidence or even hearing what the law
11 is?

12 **PROSPECTIVE JUROR:** Four counts, I figure
13 that's --

14 **THE COURT:** You don't care what the law is
15 or what the evidence is after four counts; is that
16 right?

17 **PROSPECTIVE JUROR:** I'd listen to it.

18 **THE COURT:** Huh?

19 **PROSPECTIVE JUROR:** I'd listen to it.

20 **THE COURT:** Is it going to make a
21 difference?

22 **PROSPECTIVE JUROR:** I don't know.

23 **THE COURT:** We need to know now, because
24 we want people who have open minds and want to
25 listen to the evidence. We don't want somebody --

1 if you already have your mind made up before we even
2 start the trial, then you're denying him a right to
3 a fair hearing. It's not right or wrong, that's the
4 way some people are. Some people just have certain
5 beliefs, but if that's the case, sometimes there's
6 different juries you should sit on.

7 This is what I want to know: Would you
8 really be able to consider life in prison with the
9 possibility of parole?

10 **PROSPECTIVE JUROR:** Probably not.

11 **MS. JACKSON:** Your Honor, we challenge for
12 cause.

13 **THE COURT:** State?

14 **MR. STANTON:** I'll submit it, your Honor.

15 **THE COURT:** All right. You're excused.

16 Is Mr. Summers still out there?

17 **THE BAILIFF:** Yes.

18 **THE COURT:** Tell him to come back tomorrow
19 at 10:00, Jeremy Summers, No. 203.

20

21 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 251

22 **THE COURT:** Miss Butcher, you're
23 originally from Cameron, Missouri, right?

24 **PROSPECTIVE JUROR 251:** Uh-huh.

25 **THE COURT:** How long have you been in

1 Las Vegas?

2 **PROSPECTIVE JUROR:** Five years.

3 **THE COURT:** You have two kids, and they're

4 adults?

5 **PROSPECTIVE JUROR:** One is adult, one is

6 15.

7 **THE COURT:** Okay.

8 In school?

9 **PROSPECTIVE JUROR:** Uh-huh.

10 **THE COURT:** Both girls?

11 **PROSPECTIVE JUROR:** Uh-huh.

12 **THE COURT:** What kind of work do you do,

13 ma'am?

14 **PROSPECTIVE JUROR:** Excuse me?

15 **THE COURT:** What kind of work do you do,

16 ma'am?

17 **PROSPECTIVE JUROR:** I work for an armored

18 transport.

19 **THE COURT:** Are you married?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** What kind of work does your

22 husband do?

23 **PROSPECTIVE JUROR:** He's an immigration

24 inspector.

25 **THE COURT:** He works for -- does he work

1 for the INS?

2 **PROSPECTIVE JUROR:** He was INS; now it's
3 Department of Homeland Security.

4 **THE COURT:** You said your brother was
5 killed by a drunk driver?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** The guy who did it only got
8 six months?

9 **PROSPECTIVE JUROR:** Six months.

10 **THE COURT:** Where did this happen?

11 **PROSPECTIVE JUROR:** In El Paso. That's
12 where we lived at the time.

13 **THE COURT:** In El Paso, Texas?

14 **PROSPECTIVE JUROR:** Um-hmm.

15 **THE COURT:** How long ago was this?

16 **PROSPECTIVE JUROR:** It was in '89.

17 **THE COURT:** In Texas the jury sentences
18 you; is that right?

19 **PROSPECTIVE JUROR:** Uh-huh.

20 **THE COURT:** They only gave him six months.
21 What was that reason, do you know?

22 **PROSPECTIVE JUROR:** I have no idea. I
23 know the judge then called him up and took his
24 driver's license, because they didn't take his
25 driver's license either.

1 **THE COURT:** Was he working for the INS?

2 **PROSPECTIVE JUROR:** No. He was a
3 supervisor for El Paso Ambulance. There had been
4 three DUIs and one wreck, and he had gone out for
5 that.

6 **THE COURT:** I guess there's a lot of
7 drinking going on.

8 **PROSPECTIVE JUROR:** They had been over in
9 Mexico.

10 **THE COURT:** Have you ever served on a
11 jury?

12 **PROSPECTIVE JUROR:** No.

13 **THE COURT:** Now, this case, as you know
14 the defendant has been to a trial before and already
15 convicted of first-degree murder, four counts.

16 Now, this jury that we're picking now
17 would decide the punishment.

18 Do you understand that?

19 **PROSPECTIVE JUROR:** Yes.

20 **THE COURT:** And you will have four
21 choices -- the death penalty, life in prison without
22 parole, life imprisonment with the possibility of
23 parole or for a definite term of 50 years with the
24 possibility of parole after 20 years plus an
25 additional consecutive 50 years with parole after 20

1 years for the use of a deadly weapon, and this will
2 apply to each count.

3 Now, have you thought about these
4 sentences?

5 **PROSPECTIVE JUROR:** Uh-huh, yes.

6 **THE COURT:** Now, do you have any religious
7 or moral opposition to the death penalty?

8 **PROSPECTIVE JUROR:** No, I don't.

9 **THE COURT:** Now, the question is can you
10 also consider life in prison with or without parole
11 or say a definite term of a hundred years with
12 parole after 40 years as viable? Can you consider
13 those?

14 **PROSPECTIVE JUROR:** I could consider
15 those.

16 **THE COURT:** Do you already have your mind
17 made up, ma'am?

18 **PROSPECTIVE JUROR:** I don't think so.

19 **THE COURT:** What do you mean? So, you
20 haven't decided that --

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** -- you were going to impose
23 death already?

24 **PROSPECTIVE JUROR:** No.

25 **THE COURT:** Okay.

1 Some people have. They just hear the
2 charges and they already make up their mind without
3 hearing any of the evidence or the facts or the
4 circumstances.

5 **PROSPECTIVE JUROR:** It's hard to hear
6 "killed four people" without thinking they shouldn't
7 be put to death.

8 **THE COURT:** If you're a juror, you're
9 supposed to have an open mind and wait until you
10 hear the evidence.

11 Don't you agree?

12 **PROSPECTIVE JUROR:** I agree with that.

13 **THE COURT:** Now, would you be willing to
14 listen to all the evidence before you make up your
15 mind? They're going to put on -- the State and the
16 defense will put on what we call "aggravators" and
17 "mitigators," but what we want to know is will you
18 listen to the mitigators, and that is, things that
19 might lessen the punishment, and there's all
20 different kinds -- will you be able to listen to
21 that and make a decision after hearing the
22 mitigators?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** Now, I notice on one of these
25 questions, you said, "I think a person is crazy when

1 they commit murder, so their mental status should
2 not be the only thing."

3 You will look at it, but it wouldn't be
4 the controlling thing, is that what you're saying?

5 **PROSPECTIVE JUROR:** I don't think an
6 insanity plea is a reason to say "I killed someone."

7 **THE COURT:** It is if the jury finds them
8 insane, but that's not the issue here. There is no
9 insanity plea, what you're hearing, because he's
10 already been convicted. If he had been insane and
11 the jury found him insane, he would have been found
12 not guilty and we wouldn't be here, but they can
13 present evidence of emotional and other mental
14 problems in mitigation. It's not a defense, but it
15 helps you understand the people involved and how
16 this matter happened and lessen the severity of the
17 punishment.

18 Do you understand that?

19 **PROSPECTIVE JUROR:** Uh-huh, yes.

20 **THE COURT:** You'll listen to that?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** Now, you know when I was in
23 Texas -- how long did you live in Texas?

24 **PROSPECTIVE JUROR:** How long did I live in
25 Texas?

1 **THE COURT:** Yes.

2 **PROSPECTIVE JUROR:** Actually, I went back
3 and forth. My dad was in the Air Force.

4 **THE COURT:** How long.

5 **PROSPECTIVE JUROR:** He was a lifer. He
6 was in for approximately 22 years.

7 **THE COURT:** How long.

8 **PROSPECTIVE JUROR:** We were in El Paso for
9 maybe four or five years and we moved away, and I
10 went back after I got married; so, we went back
11 after I got married. He was actually born in
12 Missouri and we met in El Paso.

13 **THE COURT:** Have you lived anywhere else
14 in Texas?

15 **PROSPECTIVE JUROR:** Springstown.

16 **THE COURT:** Where is that?

17 **PROSPECTIVE JUROR:** It's a little bitty
18 town outside of Aledo, which is another little bitty
19 town.

20 **THE COURT:** Where is Aledo, South Texas,
21 North Texas, more central?

22 **PROSPECTIVE JUROR:** More central.

23 **THE COURT:** What big city is it close to?

24 **PROSPECTIVE JUROR:** I was, like, nine.

25 **THE COURT:** You were a child then. Okay.

1 I thought it was more recent.

2 **PROSPECTIVE JUROR:** No.

3 **THE COURT:** Now --

4 **PROSPECTIVE JUROR:** We actually moved up
5 here from New Mexico is where I moved from to Vegas.

6 **THE COURT:** Did you live in Texas while
7 you were an adult?

8 **PROSPECTIVE JUROR:** Uh-huh.

9 **THE COURT:** The reason I bring that up is
10 I practiced law in Texas for a while and lived down
11 there, and when it comes to crime, the people down
12 there -- everybody is automatic death penalty.

13 **PROSPECTIVE JUROR:** Um-hmm.

14 **THE COURT:** Especially if you were
15 Hispanic or black or even poor, if you were a poor
16 white, you almost always got the death penalty.
17 Now, if you were, like, a guy like that guy in
18 Fort -- what's his name, Davis, Cullen Davis --
19 there was eye witnesses when he shot his wife and
20 daughter, they found him not guilty.

21 My point is -- why I'm talking about all
22 of that is do you have those kind of attitudes?

23 **PROSPECTIVE JUROR:** The little mentality,
24 hang him quick?

25 **THE COURT:** Yeah, that kind.

1 **PROSPECTIVE JUROR:** You bet.

2 **THE COURT:** So, you're saying "you bet."
3 Is he going to get a fair trial? They have a lot of
4 people in Texas on death row who are not even guilty
5 because they're charged, they find them guilty.

6 **PROSPECTIVE JUROR:** I don't know if
7 they're guilty or not.

8 **THE COURT:** That's not my point. My point
9 is, is he going to be able to get a fair trial, or
10 do you already have your mind made up? That's what
11 I'm trying to find out.

12 **PROSPECTIVE JUROR:** Umm --

13 **THE COURT:** The only people that know this
14 is you.

15 **PROSPECTIVE JUROR:** Maybe a little bit.
16 Maybe my mind is made up a little bit.

17 **THE COURT:** What do you mean it's made up
18 a little bit? Which way?

19 **PROSPECTIVE JUROR:** Mine would be more
20 toward the death penalty.

21 **THE COURT:** Now, tell me this here: If
22 they presented evidence of mitigation, would it
23 really affect or change of mind or would you
24 really --

25 **PROSPECTIVE JUROR:** Probably not that

1 much.

2 **THE COURT:** You wouldn't give it -- really
3 actually consider it?

4 **PROSPECTIVE JUROR:** Well, I would listen
5 to it, but that does not mean that it would sway me.

6 **THE COURT:** I understand that. Some
7 people say, "Yeah, yeah, yeah, I can listen to it,"
8 but they have no intention of really listening to
9 it. "I think this person deserves death and I'll go
10 through the motions, but I'm not really going to
11 listen to this."

12 Is that the way you really feel, ma'am?

13 **PROSPECTIVE JUROR:** I think so.

14 **THE COURT:** All right.

15 **MS. JACKSON:** Challenge for cause.

16 **THE COURT:** State?

17

18 EXAMINATION BY THE STATE

19 **BY MR. STANTON:**

20 Q Ms. Butcher, the obligation of a juror --
21 and I'm sure you appreciate it in a case like
22 this -- the death penalty is a very serious thing.

23 You would agree with me on that?

24 A Yes, I would.

25 Q You would also agree with me the law in

1 the State of Nevada as Judge Gates just mentioned to
2 you is that you're required as an oath and as a
3 juror to consider all the evidence and not to come
4 in with a preconceived notion.

5 Do you understand that?

6 A I understand that.

7 Q With that being said, do you think you
8 could abide by your oath and keep an open mind, not
9 that it would change your mind or whatever, but you
10 would just listen to it and keep an open mind?

11 A I don't know. I would listen to it, but I
12 mean -- I don't know.

13 Q The question we're not asking you now is
14 would it change your mind in committing to a
15 particular vote but merely whether or not you would
16 keep an open mind until the case was finally
17 submitted to you?

18 A I would try to keep an open mind.

19 **MS. JACKSON:** Your Honor, the answer was
20 "I don't know," and then he's just going to keep
21 asking it until he gets the answer that he wants.

22 **THE COURT:** I'm going to grant the motion.
23 You're excused, ma'am.

24 **MS. JACKSON:** Your Honor, this is the lady
25 who allegedly heard the information.

1
2 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 262

3 **THE COURT:** Miss Carpenter, where do you
4 work?

5 **PROSPECTIVE JUROR 262:** Basic High School.

6 **THE COURT:** Are you a teacher?

7 **PROSPECTIVE JUROR:** I'm a counselor.

8 **THE COURT:** A counselor. I heard that --
9 are you married?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** How is your husband employed?

12 **PROSPECTIVE JUROR:** He's a school district
13 administrator.

14 **THE COURT:** I understand, ma'am, that you
15 had quite a recall here about all the facts
16 surrounding this case.

17 **PROSPECTIVE JUROR:** Absolutely not.

18 **THE COURT:** I heard you were out there
19 telling the other jurors about how this case had
20 been tried, the defendant had been convicted of four
21 counts, he went up to the Supreme Court, it was
22 reversed because of a three-judge panel and it was
23 supposed to have been done by a jury, and that's why
24 he's here. He already had gotten the death penalty
25 before.

1 Are those the statements you made, ma'am?

2 **PROSPECTIVE JUROR:** The statements about
3 being convicted was already in the papers that we
4 read, and someone had said that they were wondering
5 why there was another jury -- why it wasn't heard by
6 the other jury, and I said that I had heard that --
7 yes, that it had been heard by a three-panel judge,
8 but I don't have any other information.

9 **THE COURT:** Did you say also that he had
10 been sentenced to death?

11 **PROSPECTIVE JUROR:** No, I did not.

12 **THE COURT:** And that it had been reversed?

13 **PROSPECTIVE JUROR:** No, I did not.

14 **THE COURT:** So, you didn't know that
15 information?

16 **PROSPECTIVE JUROR:** I knew that there had
17 been a jury -- a judge -- a three-panel judge. I
18 happened to hear that on the news when I was waiting
19 for the weather.

20 **THE COURT:** But you did not know what the
21 sentence was?

22 **PROSPECTIVE JUROR:** No, I did not. I had
23 to go to work. I didn't hear the end.

24 What high school do you work at?

25 **PROSPECTIVE JUROR:** Basic High School out

1 in Henderson.

2 **THE COURT:** How long have you been out
3 there?

4 **PROSPECTIVE JUROR:** This is my third year,
5 but I was there also for two years in the '90s, and
6 then I left to do another job and came back.

7 **THE COURT:** Now, you state here that
8 you're not necessarily in favor of the death
9 penalty; is that right -- but you said you would
10 consider it?

11 **PROSPECTIVE JUROR:** Yeah.

12 **THE COURT:** Is that right?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** Now, tell me this here: All
15 the stuff that you heard about this case, could you
16 put that out of your mind and put it aside and make
17 your decision on the law as I give it to you?

18 **PROSPECTIVE JUROR:** Absolutely.

19 **THE COURT:** And the facts and the evidence
20 that's adduced in court?

21 **PROSPECTIVE JUROR:** Absolutely.

22 **THE COURT:** Now, you understand that --
23 another question I have for you:

24 As you sit there now, have you made up
25 your mind as to what the punishment should be?

1 **PROSPECTIVE JUROR:** No, I have not.

2 **THE COURT:** Now, the law in the State of
3 Nevada states that when a person is found guilty of
4 first-degree murder, that the jury will have to
5 decide the punishment, and they'll have four choices
6 to choose from, and they must consider the four
7 choices and select the one that's most appropriate
8 based on the evidence and the facts of the case.

9 Do you understand that?

10 **PROSPECTIVE JUROR:** Yes. In fact, I
11 recall the four choices were listed in that.

12 **THE COURT:** Exactly. One of them is the
13 death penalty, life imprisonment without the
14 possibility of parole, life imprisonment with the
15 possibility of parole or for a definite term of 50
16 years with the possibility of parole after 20 years,
17 and those sentences are doubled because a deadly
18 weapon was used. So, for a definite term, you would
19 be looking at a hundred years and parole after 40
20 years, and the same with the life imprisonment with
21 the possibility of parole.

22 Would you be able to consider all four of
23 those punishments?

24 **PROSPECTIVE JUROR:** Absolutely based on
25 whatever evidence is before me.

1 **THE COURT:** And if you thought the
2 evidence warranted it and the facts of the case, you
3 could give life imprisonment with the possibility of
4 parole?

5 **PROSPECTIVE JUROR:** Yes, I could.

6 **THE COURT:** If you thought life
7 imprisonment without the possibility of parole
8 warranted it, you could do that also?

9 **PROSPECTIVE JUROR:** Absolutely.

10 **THE COURT:** Also, after hearing all the
11 evidence and the witnesses and the law, if you
12 thought the death penalty was applicable and
13 appropriate for this case, could you render that?

14 **PROSPECTIVE JUROR:** Yes, I could.

15 **THE COURT:** The bottom line is you could
16 look at all of them and pick the one that's most
17 appropriate according to the facts and the law
18 that's given to you?

19 **PROSPECTIVE JUROR:** Yes, I think I could.

20 **THE COURT:** You don't have any
21 predisposition or you haven't made up your mind as
22 to any one?

23 **PROSPECTIVE JUROR:** I have not.

24 **THE COURT:** You can be fair to both sides?

25 **PROSPECTIVE JUROR:** I think with my

1 experience and training, yes, I could.

2 **THE COURT:** State.

3 **MR. DASKAS:** Thank you, Judge.

4

5 EXAMINATION BY THE STATE

6 **BY MR. DASKAS:**

7 Q Thank you for your patience at this late
8 hour. If I don't make any sense, it's because I'm
9 tired.

10 You mentioned in your answers that you
11 work at Basic High School. It's very ethnically
12 diverse. I actually went there years ago.

13 You didn't work there back in the late
14 '80s, correct?

15 A No.

16 Q You now know that this man is already a
17 four-time convicted killer -- yes?

18 A Yes.

19 Q Do you have any problem accepting the fact
20 that another jury convicted him?

21 A Do I have a problem?

22 Q That's a terrible question. What I'm
23 asking is can you accept the fact that another jury
24 convicted him? You wouldn't question their verdict,
25 in other words?

1 A No.

2 Q In fact, the Judge would instruct you and
3 require you to accept that verdict.

4 A Yes.

5 Q The decision you're called upon to make
6 has to do with punishment --

7 A Absolutely.

8 Q -- and it is a huge decision.

9 A Yes.

10 Q I'm sure you appreciate that. Understand,
11 we don't take this decision lightly.

12 Although we're advocating for the death
13 penalty, you don't think we take it lightly?

14 A No, I don't think so.

15 Q Let's assume now that you're on this jury,
16 that you've heard evidence from both sides and that
17 you've deliberated and you have concluded in your
18 mind this is the appropriate case for the ultimate
19 punishment for the death penalty.

20 Can you impose that punishment?

21 A Yes.

22 Q Slight variation on that same question.
23 Let's assume you're selected foreperson, 11 jurors
24 decide they want you to be the foreperson, you all
25 have the same vote, you all agree collectively he

1 should get the death penalty. As the foreperson,
2 the additional responsibility you would have would
3 be to sign the verdict form that sentences this man
4 to death. If the jurors decide they want you as the
5 foreperson and if you collectively agree death is
6 warranted, could you sign that verdict form?

7 A If it was unanimous and we all agreed,
8 yes.

9 MR. DASKAS: Thank you.

10 Judge, we pass this juror for cause.

11

12 EXAMINATION BY THE DEFENSE

13 BY MS. JACKSON:

14 Q Miss Carpenter, good evening.

15 When you were catching the tail end of the
16 news report, was it this morning?

17 A No.

18 Q When did you catch that?

19 A It was -- I've been here so many days -- I
20 know it was not this morning.

21 Q It was one day this week?

22 A It was this week.

23 Q And you recognize this was the very case
24 that you had been summoned to jury duty on?

25 A Yes.

1 Q Would you just think for a minute -- and
2 we know it's late and we know it's hard, and no one
3 is accusing you of anything, because there are no
4 right or wrong answers --

5 A Right.

6 Q -- but it is a really important process.

7 A Absolutely.

8 Q When you heard that, did you think in your
9 mind, "Oh, well, if he had judges" -- did that
10 influence you one way or the other in terms of what
11 might be the appropriate penalty?

12 A I'm not understanding the question. The
13 fact that judges had given the penalty that I should
14 give it more weight?

15 Q Um-hmm, yes, and that obviously it was
16 tossed out for whatever reason because we're all
17 here?

18 A Right.

19 Q And you're obviously a very bright person
20 and you could figure that out.

21 A Right.

22 Q But it was stayed for whatever reason.

23 A Right.

24 Q Can you think of any reason?

25 A As to why it would be tossed out?

1 Q To lead you to not do further research?

2 A I did not do further research because I
3 was very careful. I would have liked to, because I
4 like to do research. I did not go to the Internet,
5 I did not read the paper; I took it for a fact and I
6 figured whenever I got here, I would find out or
7 would not find out -- whatever I was allowed to be
8 told.

9 Q Today or whenever it was that you or
10 someone asked a question outside and you just felt
11 it was appropriate to share the information that you
12 had?

13 A I shared the information that we already
14 had had on our paper.

15 Q Although you'll agree with me, though,
16 ma'am, there's nothing on the paper about a
17 three-judge panel. You got to agree with me on
18 that.

19 A Right, and you're right. It was about the
20 conviction, and there was another gentleman there,
21 and I -- I don't recall if I said it or if he said
22 it, and I concurred that I had also heard it on the
23 news, but I did not hear the reasons for it, and
24 I -- obviously, as you said, I know that there is --
25 that we are here, so I knew that obviously something

1 had to be done, but I did not take it one way or the
2 other as questioning.

3 Q Then you indicated when Mr. Daskas was
4 questioning you that you felt that with your
5 experience and your training that you really felt
6 that you were probably better equipped, more
7 equipped than the average juror, you would say, to
8 perform this task?

9 A I can't say more equipped. I would say I
10 would be equipped.

11 Q Do you want to be on this jury?

12 A That's a question I've been asking myself,
13 and I'll be honest -- I'm sure you want me to be
14 honest anyway -- I thought that I would do a good
15 job and I would be fair and I would be -- in my
16 training, I'm supposed to be ethical and I'm
17 supposed to be moral and I'm supposed to do all
18 those things, and I thought -- really and truly I
19 thought, "Well, what if for some reason someone I
20 knew was in a situation, I would want someone like
21 me on the jury?" That's what I thought.

22 Q Okay. By that answer, that actually is a
23 very thorough, complete answer.

24 My next question I probably don't need to
25 ask it but I'm going to just to be on the safe side.

1 This is a very serious matter for my client, life
2 and death.

3 If you find yourself, after due
4 deliberation, after everything the State has to
5 present, you've listened very carefully to what we
6 present on behalf of Mr. Johnson in mitigation and
7 you've weighed all of that and you find yourself a
8 vote of one, the other 11 jurors have come down
9 firmly on the side of death, you deliberated with
10 them, you reasoned with them, you followed your duty
11 and you still find that based upon everything you've
12 heard in this courtroom that your decision is the
13 right one, what are you going to do at that point?

14 A Well, I guess if I stick with my decision,
15 then that makes me think that I'm smarter or better
16 than everybody else, and that's a tough one. I
17 would say if I really believed that I was right and
18 I had weighed all the evidence, I would just work as
19 hard as I could to make the other 11 see what I saw
20 and believe what I saw.

21 Q You mention something that by sticking to
22 your guns that you may deliver a message that you're
23 smarter or brighter than everybody else.

24 A I don't want to deliver that message, but
25 I'm saying --

1 Q That's not what this process is about.
2 The law says that Mr. Johnson is entitled to the
3 considered opinion of 12 people.

4 Do you believe that your opinion is less
5 valid than the doctor, lawyer, Indian chief sitting
6 next to you?

7 A Less valid, no.

8 Q Is it more valid?

9 A No.

10 Q Okay.

11 One of the things that you're going to be
12 told at some point is that you are to bring common
13 sense.

14 A Right.

15 Q And your common sense is just as valuable
16 as anyone else's, right?

17 A Right.

18 Q Your sum total of your experiences?

19 A Right.

20 Q We're just trying to find out if you're
21 going to feel constrained to go with the flow simply
22 to reach a verdict?

23 A I believe that if I -- I truly believe
24 that if I have weighed all the evidence and I have
25 what I believe is the right decision, unfortunately

1 if there were 11 other people who felt differently,
2 I wouldn't change it, if I really felt that way.

3 **MS. JACKSON:** Fair enough.

4 Your Honor, we would pass Miss Carpenter
5 for cause.

6 **THE COURT:** I have a couple of questions
7 for you.

8 You said your brother-in-law and
9 sister-in-law are of different ethnic backgrounds.
10 What are they?

11 **PROSPECTIVE JUROR:** My brother-in-law is
12 African-American, and my sister-in-law is Thai.

13 **THE COURT:** Anything else?

14 **MR. DASKAS:** Can we approach before she's
15 excused?

16 **THE COURT:** Yes.

17 (Sidebar conference outside the presence
18 of the court reporter.)

19 **THE COURT:** Ma'am, we don't want you
20 discussing the case with anybody else. Okay?

21 **PROSPECTIVE JUROR:** Okay.

22 **THE COURT:** In fact, I am going to
23 instruct the whole jury of that tomorrow that
24 they're not to discuss the case with anyone else or
25 make any comments with anything that has to do with

1 the case until you go back to the jury room to
2 decide the case. All right?

3 **PROSPECTIVE JUROR:** All right.

4 **THE COURT:** Do you think you can do that?

5 **PROSPECTIVE JUROR:** Yes, I can.

6 **THE COURT:** We'll see you tomorrow at
7 10:00 o'clock.

8 Okay?

9 **PROSPECTIVE JUROR 262:** Okay.

10 **THE COURT:** Bring both of them in. You
11 guys exhausted your peremptories. Each side will
12 get one peremptory challenge.

13 Who is first, Burwell? Who is Burwell?
14 Sit right there (indicating).

15

16 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR 268

17 **THE COURT:** Miss Burwell, how long have
18 you been in Las Vegas -- born here?

19 **PROSPECTIVE JUROR:** Born here.

20 **THE COURT:** What do you do?

21 **PROSPECTIVE JUROR:** I'm a college student.

22 **THE COURT:** What are you studying?

23 **PROSPECTIVE JUROR:** Web design.

24 **THE COURT:** Web design.

25 At Community College?

1 **PROSPECTIVE JUROR:** Yes.
2 **THE COURT:** Are you working too?
3 **PROSPECTIVE JUROR:** No.
4 **THE COURT:** Are you married?
5 **PROSPECTIVE JUROR:** No.
6 **THE COURT:** Now, you said -- have you
7 heard anything about this case?
8 **PROSPECTIVE JUROR:** Just the name, just
9 his name.
10 **THE COURT:** Just his name.
11 Do you know anything about the facts?
12 **PROSPECTIVE JUROR:** No, sir.
13 **THE COURT:** Now, you said you belong to
14 the Rape Crisis Center?
15 **PROSPECTIVE JUROR:** Yes.
16 **THE COURT:** You go out and counsel people?
17 **PROSPECTIVE JUROR:** I've been counseled
18 there one time.
19 **THE COURT:** Why? Have you ever been the
20 victim of a sexual assault?
21 **PROSPECTIVE JUROR:** Yes.
22 **THE COURT:** How long ago was this?
23 **PROSPECTIVE JUROR:** Three years ago.
24 **THE COURT:** Did they catch the person who
25 did it?

1 **PROSPECTIVE JUROR:** No.

2 **THE COURT:** Did you know the person?

3 **PROSPECTIVE JUROR:** Yes.

4 **THE COURT:** Was it someone that you had
5 been dating or just somebody that you knew?

6 **PROSPECTIVE JUROR:** Just someone I knew.

7 **THE COURT:** Why wasn't he prosecuted?

8 **PROSPECTIVE JUROR:** I think because I
9 reported the crime too late, maybe a month late.

10 **THE COURT:** A month later?

11 **PROSPECTIVE JUROR:** Um-hmm.

12 **THE COURT:** Now, you're not going to hold
13 it against the defendant here because of what
14 happened to you, are you?

15 **PROSPECTIVE JUROR:** No, sir.

16 **THE COURT:** Now, you understand that
17 Mr. Johnson has been convicted of four counts of
18 first-degree murder?

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **THE COURT:** We're now picking a jury to
21 hear the punishment and decide the punishment.
22 Do you understand that?

23 **PROSPECTIVE JUROR:** Yes, sir.

24 **THE COURT:** According to our law, the
25 punishment is -- you will have four choices

1 according to the law of the State of Nevada -- the
2 death penalty, life in prison without parole, life
3 in prison with the possibility of parole or 50 years
4 with parole eligibility -- 50 years in the state
5 prison and parole eligibility after 20 years, and of
6 course, these are doubled because a deadly weapon
7 was used, so it would be a definite term would be a
8 hundred years with parole after 40 years.

9 Could you consider all four forms of
10 punishment?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** Are you opposed to the death
13 penalty?

14 **PROSPECTIVE JUROR:** No.

15 **THE COURT:** Now, here on Question No. 21,
16 you said you have friends and relatives -- your
17 mother works for Metro?

18 **PROSPECTIVE JUROR:** Right.

19 **THE COURT:** What does she do for Metro?

20 **PROSPECTIVE JUROR:** Records.

21 **THE COURT:** She works in the records
22 department?

23 **PROSPECTIVE JUROR:** Yes.

24 **THE COURT:** And your aunt works at City
25 Hall?

1 **PROSPECTIVE JUROR:** Yes, sir.
2 **THE COURT:** What does she do?
3 **PROSPECTIVE JUROR:** I'm not sure.
4 **THE COURT:** What's her name?
5 **PROSPECTIVE JUROR:** Gloria Evans.
6 **THE COURT:** Gloria is your aunt?
7 **PROSPECTIVE JUROR:** Um-hmm.
8 **THE COURT:** So, what's your mom's name?
9 **PROSPECTIVE JUROR:** Pearl Burwell.
10 **THE COURT:** And your father?
11 **PROSPECTIVE JUROR:** Jessie Burwell.
12 **THE COURT:** Can you listen to all the
13 evidence before you make up your mind?
14 **PROSPECTIVE JUROR:** Yes, sir.
15 **THE COURT:** Do you have any preconceived
16 notion of what the penalty should be?
17 **PROSPECTIVE JUROR:** No, sir.
18 **THE COURT:** Now, in this Question No. 24,
19 you said if someone general asked you about the
20 death penalty or whatever -- you didn't circle one,
21 but you said, "If a life was taken intentionally,
22 that person should either rot in prison or die."
23 Would you want to listen to the evidence
24 before you decided on the sentence?
25 **PROSPECTIVE JUROR:** Yes, sir.

1 **THE COURT:** So, right now, do you have
2 your mind made up as to what sentence the defendant
3 should receive?

4 **PROSPECTIVE JUROR:** No, sir.

5 **THE COURT:** You will listen to all the
6 evidence and the facts in the case before you make
7 up your mind?

8 **PROSPECTIVE JUROR:** Yes, sir.

9 **THE COURT:** State.

10 **MR. DASKAS:** Thank you, Judge.

11

12 EXAMINATION BY THE STATE

13 **BY MR. DASKAS:**

14 Q Miss Burwell, thank you for your patience.
15 We appreciate it.

16 **THE COURT:** I have one other question.
17 What day do you go to school and what
18 time?

19 **PROSPECTIVE JUROR:** Tuesday and Thursday
20 4:30 to 5:30, and I have two online classes.

21 **THE COURT:** You can do the online classes
22 any time.

23 **PROSPECTIVE JUROR:** And I'm a single
24 mother.

25 **THE COURT:** And so, you just have to be in

1 school on Tuesdays and Thursdays?

2 **PROSPECTIVE JUROR:** Tuesday and Thursday.

3 **THE COURT:** Could you get there from here
4 at 4:00 o'clock?

5 **PROSPECTIVE JUROR:** Probably not. I'm not
6 sure, because my dad, he's a minister, and, like,
7 that's my only way of transportation.

8 **THE COURT:** Oh, is that right? So, you
9 would rather not serve because of school? I don't
10 want you to miss school.

11 **PROSPECTIVE JUROR:** Yeah, probably,
12 because I'm already doing bad enough.

13 **THE COURT:** Huh?

14 **PROSPECTIVE JUROR:** I'm already doing bad
15 enough right now.

16 **THE COURT:** Counsel, approach the bench.
17 (Sidebar conference outside the presence
18 of the court reporter.)

19 **THE COURT:** We're going to excuse you,
20 ma'am, so you can go to school.

21 **PROSPECTIVE JUROR:** Thank you.

22 **THE COURT:** We don't want you to miss a
23 couple of weeks out of class and flunk.

24 Tell Gloria I said hi.

25 **PROSPECTIVE JUROR:** Okay.

1
2 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR 278

3 **THE COURT:** And you are?

4 **PROSPECTIVE JUROR 278:** Brenda Fladger.

5 **THE COURT:** Miss Fladger. You were born
6 in San Diego?

7 **PROSPECTIVE JUROR:** Yes, sir.

8 **THE COURT:** Your folks were in the
9 military?

10 **PROSPECTIVE JUROR:** No, your Honor, they
11 lived there, and that's where I was born.

12 **THE COURT:** So, when did you leave
13 California?

14 **PROSPECTIVE JUROR:** I came to Vegas in
15 1995.

16 **THE COURT:** You were living in San Diego?

17 **PROSPECTIVE JUROR:** No. We moved after I
18 graduated from high school, we moved to Banning,
19 California, and I got married and had children
20 there, and then we moved.

21 **THE COURT:** What county is that?

22 **PROSPECTIVE JUROR:** That's in Riverside
23 County.

24 **THE COURT:** What kind of work do you do,
25 ma'am?

1 **PROSPECTIVE JUROR:** I work at Sunrise
2 Hospital in the Radiology Department.
3 **THE COURT:** What do you do there?
4 **PROSPECTIVE JUROR:** I'm a tech aid.
5 **THE COURT:** Are you married?
6 **PROSPECTIVE JUROR:** No, sir.
7 **THE COURT:** And have you ever been
8 married?
9 **PROSPECTIVE JUROR:** Yes.
10 **THE COURT:** You're divorced now?
11 **PROSPECTIVE JUROR:** Yes.
12 **THE COURT:** What kind of work did your
13 ex-husband do?
14 **PROSPECTIVE JUROR:** He was a steel worker,
15 did copper.
16 **THE COURT:** You have two kids?
17 **PROSPECTIVE JUROR:** Yes. They're adult
18 children.
19 **THE COURT:** One is in college?
20 **PROSPECTIVE JUROR:** Yes.
21 **THE COURT:** Where?
22 **PROSPECTIVE JUROR:** At UNLV.
23 **THE COURT:** Have you or anyone in your
24 family ever been charged with a crime?
25 **PROSPECTIVE JUROR:** No, your Honor.

1 **THE COURT:** Have you or anyone in your
2 family ever been the victim of a crime?
3 **PROSPECTIVE JUROR:** No, your Honor. Oh,
4 I'm sorry, I take that back. Yes.
5 **THE COURT:** Who was that?
6 **PROSPECTIVE JUROR:** My daughter.
7 **THE COURT:** What was she convicted of?
8 **PROSPECTIVE JUROR:** Convicted -- not
9 convicted; she was a victim of a crime.
10 **THE COURT:** Oh, a victim. It's late. I'm
11 sorry.
12 What happened to her?
13 **PROSPECTIVE JUROR:** She was molested.
14 **THE COURT:** As an adult or child?
15 **PROSPECTIVE JUROR:** A child.
16 **THE COURT:** Was the person prosecuted that
17 did that?
18 **PROSPECTIVE JUROR:** No.
19 **THE COURT:** This was in California?
20 **PROSPECTIVE JUROR:** Yes.
21 **THE COURT:** So, you have two
22 sister-in-laws that's of different race? What are
23 they?
24 **PROSPECTIVE JUROR:** They're Caucasian.
25 **THE COURT:** Now, you understand that

1 you're going to be deciding the punishment in this
2 trial?

3 **PROSPECTIVE JUROR:** Yes, your Honor.

4 **THE COURT:** And there are four possible
5 punishments -- the death penalty, life in prison
6 without parole, life in prison with the possibility
7 of parole or 50 years with the possibility of parole
8 after 20 years, and those sentences are doubled
9 because a deadly weapon was used --

10 Do you understand that?

11 **PROSPECTIVE JUROR:** Yes, your Honor.

12 **THE COURT:** Could you consider all four
13 forms of punishment?

14 **PROSPECTIVE JUROR:** Yes, your Honor.

15 **THE COURT:** Do you have any opposition to
16 the death penalty?

17 **PROSPECTIVE JUROR:** No, your Honor.

18 **THE COURT:** Would you be able to consider
19 life in prison --

20 **PROSPECTIVE JUROR:** Yes, your Honor.

21 **THE COURT:** -- if appropriate?

22 You want to listen to all the facts and
23 evidence before you make up your mind?

24 **PROSPECTIVE JUROR:** Yes, your Honor.

25 **THE COURT:** State.

1 **MR. STANTON:** Thank you, your Honor.

2

3 EXAMINATION BY THE STATE

4 **BY MR. STANTON:**

5 Q Good evening, Miss Fladger.

6 A Good evening.

7 Q Am I pronouncing your name correctly?

8 A Flad-jer (phonetic).

9 Q Miss Fladger, you made some comments in
10 your jury questionnaire that you filled out about a
11 week or so ago. The first one was that -- the
12 situation involving your family member that justice
13 was not served.

14 A Yes.

15 Q Can you give me an explanation of why you
16 think justice wasn't served in that case?

17 A Well, he -- nothing happened to him. He
18 was held at the jail, but they only held him for 24
19 hours and they let him go.

20 Q And they never pursued the charges?

21 A No.

22 Q As a result of that situation and the
23 failure of justice in your daughter's case, do you
24 hold any resentment about the judicial system
25 because of that?

1 A No, not at all.

2 Q Nothing that would affect your ability to
3 sit as a fair and impartial juror in this case?

4 A No.

5 Q You made a statement about your feelings
6 about the justice system, and you said that as long
7 as the facts and information is clear on both
8 sides -- do you remember that statement?

9 A Yes, sir.

10 Q In this case as you undoubtedly know at
11 this juncture, a prior jury has found the issue of
12 guilt and innocence of this man, Donte Johnson, and
13 that is, he's been found guilty by that jury of four
14 counts of first-degree murder.

15 Do you understand that?

16 A Yes, sir.

17 Q Now, would someone else making that
18 crucial decision other than you potentially sitting
19 on this jury, does that cause you a problem, maybe
20 "Hey, I may not have decided the same way, and
21 therefore, it's going to affect my decision here"?

22 A Well, I think if I have all the facts that
23 I need to be able to make a clear-minded decision, I
24 can make a clear-minded decision with the facts.

25 Q Okay.

1 Understanding that your decision here
2 cannot be his guilt or innocence?

3 A Right.

4 Q It's only as far as the punishment goes?

5 A Correct.

6 Q And the facts and evidence that would be
7 presented addressed that portion, strictly the
8 punishment, not guilt or innocence?

9 A Okay.

10 Q Are you comfortable with that?

11 A Yes, sir.

12 Q In fact, the Judge would give you an
13 instruction of law that you're required to accept
14 the other jury's verdicts, and I'm sure you would
15 abide by that?

16 A Yes, sir.

17 Q You indicated about the death penalty that
18 you've never thought about it.

19 A Right.

20 Q It's never come up, never saw something on
21 television about another case or the Oklahoma City
22 Bombing anniversary that just occurred a couple days
23 ago -- nothing has ever occurred in your mind as far
24 as potential juror for seeing yourself in that
25 situation where you might have to make such a

1 decision?

2 A Well, no, not really, no.

3 Q How do you feel about the death penalty?

4 A Well, I think that -- in my mind, I think
5 it depends on the crime and what was committed and
6 the person who committed the crime.

7 Q Okay.

8 A So, it could be a lot of factors that go
9 into that. I can't just say yes you get the death
10 penalty, because that's what we're going to give
11 him, but I think a lot of factors go into that
12 before you can decide someone deserves to get the
13 death penalty.

14 Q Okay.

15 Would you agree with me that there are
16 some circumstances, some cases, totality of the
17 circumstances that justify the death penalty?

18 A Yes, I agree with that.

19 Q In this case, if you were selected as the
20 foreperson and you, as a collective jury, were to,
21 after listening to the entirety of the evidence and
22 arguments and the instruction of law were to
23 conclude that the death penalty was appropriate in
24 this case, could you sign your name to a verdict
25 form that puts that man, Donte Johnson, to death?

1 A If I felt it was appropriate?

2 Q Absolutely. Could you do that?

3 A If I felt it was appropriate, yes.

4 **MR. STANTON:** Thank you. I would pass the
5 prospective juror for cause.

6 **THE COURT:** Defense Counsel.

7 **MS. JACKSON:** Thank you, your Honor.

8

9 EXAMINATION BY THE DEFENSE

10 **BY MS. JACKSON:**

11 Q Miss Fladger, excuse me, ma'am. I'm going
12 to keep my seat.

13 A No problem.

14 Q Are you okay with that?

15 A Yeah, I'm okay with that, as long as you
16 can hear me.

17 Q When you were a juror before, you said
18 that you had former jury service?

19 A Yes.

20 Q Was that before or after -- I'm sorry.
21 I'm sure you said and I probably just didn't hear
22 it, I'm so tired. I don't want to get into this too
23 much, because it's probably not something you like
24 talking about, but you have indicated here there was
25 a situation involving your daughter?

1 A Yes.

2 Q And it appears that she was somehow
3 molested?

4 A Yes.

5 Q And justice was not served even though the
6 person was identified and held in jail for a 24-hour
7 period?

8 A Correct.

9 Q Was it a relative?

10 A Yes.

11 Q I see.

12 Now, did that situation occur before or
13 after you were on jury duty before?

14 A Before.

15 Q So, you were able to get through your
16 prior jury service?

17 A Yes, ma'am.

18 Q And that situation didn't interfere with
19 your ability to be fair and impartial?

20 A No, not at all.

21 Q It didn't cause you any problems in terms
22 of your own well-being?

23 A No.

24 Q This case, of course, is a lot more
25 serious. This is the most serious case that our

1 society has, a capital murder, of course. The last
2 case was a criminal case, so you have some idea how
3 it works, except that in this case you're going to
4 be imposing a sentence?

5 A Yes.

6 Q I imagine the last time you didn't have to
7 do that.

8 A No, we did not.

9 Q Are you comfortable with that?

10 A Yes, I am.

11 Q Because this is a case where a death
12 penalty is involved, the legislature has mandated
13 that before you can make that decision to decide
14 which four punishments are appropriate, that you
15 have to consider mitigation, background information,
16 the defendant's age, mental status, education,
17 background -- things of that nature.

18 Are those things or any of those things
19 items that you would want to know about before you
20 decide if someone had to live or die?

21 A Yes.

22 Q Would you like to know more or less?

23 A Well, I think as much as necessary for me
24 to make my decision.

25 Q For a decision of that magnitude, it

1 probably would be a good idea to get as much as you
2 can?

3 A Correct.

4 Q From both sides, of course?

5 A Um-hmm.

6 Q And, of course -- now, you did not think
7 about -- your answer was last week, "I never thought
8 about it."

9 I'm sure since you filled this out you
10 probably gave it some thought, the death penalty?

11 A A little, yes.

12 Q Okay.

13 Do you agree with me that life in prison,
14 that, itself, is a severe punishment?

15 A Yes, it's a severe punishment.

16 Q Do you agree that it protects society --
17 yes?

18 A Yes, um-hmm.

19 Q How good are you about sticking to your
20 guns? I don't know if you found yourself after you
21 deliberated with your fellow jurors, you considered
22 everything you heard in this courtroom and you found
23 that everyone else was voting for death and you,
24 after considered deliberation, felt that you wanted
25 to give life for whatever reason, would you go with

1 the majority just for the sake of reaching a
2 verdict, ma'am?

3 A No, I wouldn't. I wouldn't. I wouldn't.

4 **MS. JACKSON:** That's good enough for me.
5 Thank you, Miss Fladger.

6 Your Honor, we would pass Miss Fladger for
7 cause.

8 **THE COURT:** Miss Fladger, we're going to
9 have you come back tomorrow morning at
10 10:00 o'clock.

11 **PROSPECTIVE JUROR 278:** Okay.

12 **THE COURT:** We'll see you tomorrow morning
13 downstairs.

14 **PROSPECTIVE JUROR 278:** Okay. Thank you.

15 **MR. DASKAS:** Judge, is she now considered
16 Alternate No. 1?

17 **THE COURT:** Right. We'll pick another one
18 tomorrow, and then you guys -- each side will have
19 one peremptory challenge. All right?

20 They all come back tomorrow morning at
21 10:00.

22 **THE BAILIFF:** Yeah, they all come back
23 tomorrow morning at 10:00.

24 **THE COURT:** How many do we have left, 15?

25 **THE BAILIFF:** Yes.

1 You mean left to choose from?

2 **THE COURT:** Yes.

3 **THE BAILIFF:** We probably have more than
4 that.

5 **MR. DASKAS:** I know we're all tired, but
6 in terms of tomorrow and scheduling, there are a
7 couple of, I think, fairly big issues in terms of
8 the parameter of the initial case that might affect
9 the defense opening and my opening which need to be
10 addressed before we give opening statements.

11 **THE COURT:** We haven't picked the jury
12 yet, Mr. Daskas.

13 **MR. DASKAS:** That's my point. What time
14 are we going to give opening statements?

15 **THE COURT:** I don't know. It depends on
16 how long it takes for you guys to pick a jury. I'll
17 give you some time. I'll work with you.

18 **MR. DASKAS:** That's all I need to know.

19 **THE COURT:** I'm not going to be rushing
20 you through if you haven't had a chance to get ready
21 and set up and do what you need to do. I just want
22 to get a jury picked.

23 **MR. DASKAS:** We got one.

24 **MS. JACKSON:** For the record, I'm with
25 Robert on this one, Judge. Give us a wee bit of

1 time.

2 (Proceedings were adjourned at 8:12 p.m.)

3

4 (WHEREUPON, THE PROCEEDINGS WERE

5 CONCLUDED.)

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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
:SS
COUNTY OF CLARK)

I, SONIA L. RILEY, CERTIFIED COURT
REPORTER, DO HEREBY CERTIFY THAT I TOOK DOWN IN
STENOTYPE ALL OF THE PROCEEDINGS HAD IN THE
BEFORE-ENTITLED MATTER AT THE TIME AND PLACE
INDICATED, AND THAT THEREAFTER SAID STENOTYPE NOTES
WERE TRANSCRIBED INTO TYPEWRITING AT AND UNDER MY
DIRECTION AND SUPERVISION AND THE FOREGOING
TRANSCRIPT CONSTITUTES A FULL, TRUE AND ACCURATE
RECORD TO THE BEST OF MY ABILITY OF THE PROCEEDINGS
HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO
SUBSCRIBED MY NAME IN MY OFFICE IN THE COUNTY OF
CLARK, STATE OF NEVADA.


SONIA L. RILEY, CCR 727

DISTRICT COURT

FILED

CLARK COUNTY, NEVADA 2005 APR 25 A 9:06

ORIGINAL

*Angel
Clerk*

THE STATE OF NEVADA,

PLAINTIFF,

VS.

CASE NO.: C153154

DONTE JOHNSON,

DEFENDANT.

REPORTER'S TRANSCRIPT

OF

TRIAL BY JURY

(VOLUME IV - P.M.)

BEFORE THE HONORABLE JUDGE LEE A. GATES
DISTRICT COURT JUDGE
DEPARTMENT VIII

DATED FRIDAY, APRIL 22, 2005

FOR THE PLAINTIFF: ROBERT J. DASKAS, ESQ.
DAVID STANTON, ESQ.FOR THE DEFENDANT: ALZORA B. JACKSON, ESQ.
BRET WHIPPLE, ESQ.

REPORTED BY: SONIA L. RILEY, CCR NO. 727

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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

COUNTY CLERK

RECEIVED

APR 22 2005

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SONIA L. RILEY, CCR NO. 727 (702) 455-3610

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I N D E X

PAGE

VOIR DIRE (RESUMED)

4

SONIA L. RILEY, CCR NO. 727 (702) 455-3610

1 VOIR DIRE EXAMINATION (RESUMED)

2
3 **THE BAILIFF:** All rise. Department VIII
4 is now in session, Judge Lee Gates presiding.

5 Please be seated and come to order.

6 **THE CLERK:** Will you please stand and
7 raise your right hand to be sworn?

8 (Prospective jurors sworn.)

9 **THE CLERK:** Thank you.

10 **THE COURT:** Folks, you guys weren't here
11 the other day, and we're still picking a jury. We
12 have a couple more to go. What we're going to do is
13 we're going to be asking you some questions to try
14 to find out whether or not you can be fair and
15 impartial in this case. There are no right answers,
16 there are no wrong answers; we just want to see what
17 kind of attitude you have and whether or not this is
18 the right kind of case for you to sit on.

19 If you don't understand a question or you
20 need more information, don't hesitate to ask us to
21 repeat it or clarify or explain it.

22 All of the questioning is done under oath.
23 It's very important that you be completely open and
24 honest in your answers, and the reason for that is
25 if you withhold information from us or make

1 misrepresentations, then the verdict will have to be
2 thrown out, and we'll have to start all over with a
3 new trial. That's very time-consuming and costly,
4 so for that reason, we ask that you be honest and
5 truthful in your answers.

6 I suspect this case might be two weeks, so
7 I just want you to be aware of that. Of course, it
8 might not be, because a lot of it has to do with us
9 picking a jury. We've been here all week picking a
10 jury.

11 You received the questionnaire. We're
12 going to be asking you questions about that, but if
13 there's something that you feel we should know --
14 whether or not we ask a question -- that may have an
15 impact on your ability to be fair and impartial, you
16 let us know. If you know any of the people
17 involved, any of the witnesses or the lawyers or the
18 defendant or the victim, we want you to let us know.

19 In a minute, I'm going to have the lawyers
20 tell you who the people are involved in this case,
21 and I want you to let me know if you know anything
22 about them. Also, I want to know what you heard
23 about the case, also, if you heard anything in the
24 newspapers or talked to neighbors or any other
25 people that told you any information about the case,

1 we want to know that also.

2 State, do you want to tell them where this
3 occurred and who the people are involved --

4 **MR. DASKAS:** I will, Judge. Thank you.

5 **THE COURT:** -- the witnesses.

6 **MR. DASKAS:** Good morning. This is David
7 Stanton (indicating), and my name is Robert Daskas.
8 We are Deputy District Attorneys with the Clark
9 County D.A.'s Office, and we are assigned the
10 prosecution of this case against the defendant Donte
11 Johnson. As the Judge mentioned, as the
12 questionnaire mentioned, this is a little different
13 situation. You're not called upon to determine
14 guilt or innocence. Donte Johnson has been
15 convicted by a jury of four counts of First-degree
16 Murder with Use of a Deadly Weapon, and you'll be
17 called upon to determine the appropriate punishment
18 if you're selected as jurors.

19 I want to mention just briefly about the
20 facts of the case. If you've heard of the case or
21 you've read about it, let the Judge know, and he'll
22 have some additional questions. The case was a
23 quadruple homicide that occurred on August 14th,
24 1998 in a home off Tropicana Avenue on a street
25 called Terra Linda Avenue in East Las Vegas. There

1 were four young men who lost their lives: Tracey
2 Gorringer, Jeff Biddle, Peter Talamentez and Matthew
3 Mowen. In addition to Donte Johnson being charged,
4 there were two others charged, Terrell Young and
5 Sikia Smith.

6 What we're going to do in this hearing is
7 we're going to call a detective to summarize the
8 evidence presented at the previous trial, and there
9 will be a number of witness names mentioned. I'm
10 going to read some of those names, and as the Judge
11 said, if you recognize those names or if you know
12 anybody, let the Judge know, and he will have some
13 other questions.

14 The detective who would summarize the
15 testimony is Detective Thowsen from the Las Vegas
16 Police Department. The witnesses would include
17 Justin Perkins, Charla Severs, Bryan Johnson, Ace
18 Hart, Todd Armstrong, Sergeant Robert Honea from the
19 Nevada Highway Patrol will be mentioned. Ed
20 Guenther is a fingerprint examiner with Metro; Tom
21 Wahl is a DNA scientist with Metro; Dr. Robert
22 Bucklin performed the autopsies in this case, but we
23 will have someone named Dr. Gary Telgenhoff describe
24 the findings of autopsy. Shawn Fletcher is a crime
25 scene analyst. You will hear her name mentioned if

1 you're selected. She's employed by Metro as well.
2 There will be potentially a number of witnesses from
3 out of state -- Grace Garcia and Steve Burciaga from
4 the Los Angeles Police Department will testify. A
5 couple of people from probation in Los Angeles
6 County, Robert Hoffman and Craig Clark, a retired
7 lieutenant from LAPD is Lieutenant Grayson. We'll
8 here from him as well. As I said, not all of those
9 people will testify, but you'll hear their names
10 mentioned, so if you recognize the case or the
11 witnesses, let Judge Gates know.

12 Thank you so much.

13 **THE COURT:** Counsel for the defense.

14 **MS. JACKSON:** Thank you, your Honor.

15 Good morning, ladies and gentlemen. My
16 name is Alzora Jackson, and I'm a Deputy Public
17 Defender here in Clark County. Bret Whipple is my
18 co-counsel. He's an attorney here in town.

19 **MR. WHIPPLE:** Good morning.

20 **MS. JACKSON:** Together, we represent
21 Mr. Donte Johnson, also known as John White. Thank
22 you.

23 We too will have a chance to present
24 witnesses in this penalty phase. I hope I can
25 remember them all. I didn't remember to bring my

1 sheet. We have some local witnesses. I can start
2 with one local attorney, Gloria Navarro who used to
3 work in our office, and she now works with the civil
4 division in the District Attorney's office. We also
5 will call a couple of correctional officers from the
6 Detention Center, Officer Johnson and Officer Perez.
7 We may also call a lady named Nancy Hunterton, and
8 she runs the Life Skills program over at the Clark
9 County Detention Center. The bulk of our witnesses
10 will come from Southern California which is where
11 Mr. Johnson is from -- the L.A. area, South Central
12 L.A., and they are mostly his family members -- his
13 mother Eunice King, grandmother Jane Edwards, sister
14 Johnnisha Zamura, Eunisha White, an aunt Wanda Faye
15 Johnson, Moises Zamura. There are two minor
16 children you will hear from, those are Donte's
17 children, Allen and Anijah White, minor children.
18 Who have I omitted from Los Angeles?

19 Can you think of any of the witnesses?

20 **THE DEFENDANT:** That's about it.

21 **MS. JACKSON:** That's about it.

22 Thank you, Donte.

23 You may hear from Craig Clark who is also
24 from the Los Angeles area. We have individuals that
25 you may hear from that are actually serving time

1 here in Nevada, and that list begins with Mr. Jose
2 Vigoa, Termaine Lytle, George Cotton, Reginald
3 Johnson, Sikia Smith who is a co-defendant in this
4 case.

5 Thank you very much for your attention.

6 **THE COURT:** Thank you.

7 **MS. JACKSON:** You're welcome.

8 **THE COURT:** Now, do any of you know either
9 of the Deputy District Attorneys, Mr. Daskas or
10 Mr. Stanton? If so, let me know by raising your
11 hands.

12 I see no hands, so I assume none of you
13 know them.

14 Do any of you have any friends or
15 relatives who work for the District Attorney's
16 office? If so, raise your hands.

17 I see no hands, so I assume the answer for
18 each of you is no to that.

19 Do any of you know the defendant's
20 lawyers, Mr. Whipple or Miss Jackson?

21 I see no hands, so I assume you don't know
22 them.

23 Do any of you know the defendant?

24 I see no hands, so I assume none of you
25 know the defendant.

1 Do any of you know any of the victims in
2 this case?

3 Yes, ma'am. What's your badge number?

4 **PROSPECTIVE JUROR 309:** One one zero three
5 zero nine. It's an extension of the victim.

6 **THE COURT:** Zero three nine nine?

7 **PROSPECTIVE JUROR:** Three zero nine.

8 **THE COURT:** Three zero nine. All right.

9 **PROSPECTIVE JUROR:** I lived at 5344
10 Hillsborough. It was about a half a mile away from
11 the house, and I remember my son's friend not coming
12 to school that day. It happened in that friend's
13 house.

14 **THE COURT:** Anyone else?

15 Yes, ma'am. Badge number?

16 **PROSPECTIVE JUROR:** One one zero three
17 zero five.

18 **THE COURT:** Three zero five -- last three
19 digits?

20 **PROSPECTIVE JUROR 305:** Yes.

21 **THE COURT:** Yes, ma'am.

22 **PROSPECTIVE JUROR:** I believe, and I'm
23 almost positive, my husband, through business, knew
24 one of the victim's fathers. For some reason, it
25 sounds very familiar.

1 **THE COURT:** Anyone else?

2 Did any of you recognize the names of any
3 of the other people which the State or the defendant
4 said they were calling?

5 I see no hands, so I assume the answer for
6 each of you is no to that question.

7 How many of you have heard about this case
8 other than the two people who already answered?
9 Just about all of you, huh? Okay. We'll explore
10 that later.

11 This is what we're going to do. We're
12 going to start off with Mr. -- is it Van Dine
13 (phonetic)?

14 **PROSPECTIVE JUROR 286:** Yes.

15 **THE COURT:** Okay. The rest of you remain
16 outside and we'll call you.

17 (Outside the presence of the prospective
18 jurors.)

19
20 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 286

21 **THE COURT:** Mr. Van Dine, I read over your
22 questionnaire here. A couple of things.

23 Now, you stated that if a lengthy trial is
24 expected, that your fairness would be compromised
25 because you want to get out of here rather than lose

1 money by being here for a length of time.

2 What's a lengthy time for you?

3 **PROSPECTIVE JUROR 286:** The job that I
4 work in is mostly based on a commission basis, so as
5 long as the trial goes, it finally would be --
6 possibly may compromise my fairness.

7 **THE COURT:** So, what you're saying is you
8 make money by commissions.

9 How long have you been off of work now?

10 **PROSPECTIVE JUROR:** I missed one day.

11 **THE COURT:** You missed one day?

12 **PROSPECTIVE JUROR:** Um-hmm.

13 **THE COURT:** So, a week or two you feel
14 would be too long for you to stay here; is that
15 correct?

16 **PROSPECTIVE JUROR:** That is possible, yes.

17 **THE COURT:** What now?

18 **PROSPECTIVE JUROR:** That is possible, yes.

19 **THE COURT:** Possible -- we can't deal with
20 possible; we have to know. I can understand, but
21 it's a financial sacrifice for everybody to come
22 down here.

23 **PROSPECTIVE JUROR:** I understand that, and
24 I will try to be fair.

25 **THE COURT:** I understand that, but I did

1 understand you too, if you work on commission and
2 can't get paid and you're worried about that and
3 can't concentrate on the trial, that wouldn't be
4 fair to the defendant, so if that's your posture and
5 how it would really be, that's what I want to know.

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** Do you want to question him?

8 **MR. DASKAS:** No, sir.

9 **MS. JACKSON:** No, sir.

10 **THE COURT:** Submit it?

11 **MR. DASKAS:** Yes.

12 **MS. JACKSON:** Yes.

13 **THE COURT:** All right. We'll excuse you,
14 sir.

15

16 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 292

17 **THE COURT:** Rita Decelles. Miss Decelles?

18 **PROSPECTIVE JUROR 292:** Yes.

19 **THE COURT:** Miss Decelles, you've been in
20 Las Vegas four years?

21 **PROSPECTIVE JUROR:** Yes.

22 **THE COURT:** Did you come from Connecticut
23 or some other place?

24 **PROSPECTIVE JUROR:** San Pedro, California.

25 **THE COURT:** California.

1 How long did you live in California?
2 **PROSPECTIVE JUROR:** Four years -- three or
3 four years. My husband is in the military.
4 **THE COURT:** What branch?
5 **PROSPECTIVE JUROR:** Air Force.
6 **THE COURT:** Air Force. Okay.
7 What does he do in the Air Force?
8 **PROSPECTIVE JUROR:** No idea.
9 **THE COURT:** You don't know what he does?
10 **PROSPECTIVE JUROR:** It's classified.
11 **THE COURT:** Oh, okay.
12 **PROSPECTIVE JUROR:** He's retired now. He
13 retired here about a year and a half ago.
14 **THE COURT:** So, he retired about a year
15 and a half ago here?
16 **PROSPECTIVE JUROR:** Yeah, he retired about
17 a year and a half ago here.
18 **THE COURT:** And you have two sons?
19 **PROSPECTIVE JUROR:** Yes.
20 **THE COURT:** Are they living here or are
21 they out of state?
22 **PROSPECTIVE JUROR:** My oldest one lives
23 here, and my youngest one lives in Hawthorne,
24 California.
25 **THE COURT:** Which one, the guy who works

1 for Fed Ex?

2 **PROSPECTIVE JUROR:** The oldest one lives
3 here.

4 **THE COURT:** Timothy?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** Is here?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** And the other son is in
9 Hawthorne.

10 What does he do in Hawthorne?

11 **PROSPECTIVE JUROR:** He just got a new job.
12 He works at the airport.

13 **THE COURT:** Oh, okay.

14 Now, you've never been on a jury before?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Have you or anyone in your
17 family ever been charged with a crime?

18 **PROSPECTIVE JUROR:** No.

19 **THE COURT:** Have you or anyone in your
20 family ever been the victim of a crime?

21 **PROSPECTIVE JUROR:** No.

22 **THE COURT:** Which one of your sons is
23 married to a Mexican lady?

24 **PROSPECTIVE JUROR:** That was my oldest
25 son, Timothy. She passed away.

1 **THE COURT:** Did she die of natural causes?
2 **PROSPECTIVE JUROR:** She was taking that
3 Fen Phen --
4 **THE COURT:** And had a heart attack?
5 **PROSPECTIVE JUROR:** -- and she died.
6 Yeah.
7 **THE COURT:** Do you believe that you can be
8 fair and impartial in this case?
9 **PROSPECTIVE JUROR:** Yes.
10 **THE COURT:** You can follow the Court's
11 instructions on the law?
12 **PROSPECTIVE JUROR:** I didn't hear you.
13 **THE COURT:** Could you follow the Court's
14 instructions on the law?
15 **PROSPECTIVE JUROR:** Yes.
16 **THE COURT:** Can you wait until you've
17 heard all the evidence before you make up your mind?
18 **PROSPECTIVE JUROR:** Yes.
19 **THE COURT:** Now, you understand that --
20 tell me this here: Have you ever had any close
21 friends or relatives who have been the victim of a
22 violent crime?
23 **PROSPECTIVE JUROR:** The only thing that I
24 can say is my sister used to -- what do you call
25 that -- her husband used to beat her up all the

1 time.

2 **THE COURT:** Okay.

3 Domestic violence?

4 **PROSPECTIVE JUROR:** Yeah.

5 **THE COURT:** Where do they live?

6 **PROSPECTIVE JUROR:** Connecticut.

7 **THE COURT:** Connecticut.

8 Was the husband Caucasian?

9 **PROSPECTIVE JUROR:** White, yes.

10 **THE COURT:** Are they still married?

11 **PROSPECTIVE JUROR:** Yes.

12 **THE COURT:** Now, you understand that

13 you're going to be deciding the penalty for the

14 defendant in this case.

15 Do you understand that?

16 **PROSPECTIVE JUROR:** That's meaning --

17 **THE COURT:** Punishment.

18 **PROSPECTIVE JUROR:** Right.

19 **THE COURT:** He's already been convicted of

20 four counts of first-degree murder.

21 Do you understand that?

22 **PROSPECTIVE JUROR:** Um-hmm.

23 **THE COURT:** Is that a "yes"?

24 **PROSPECTIVE JUROR:** Yes. Sorry.

25 **THE COURT:** Now, the State law allows the

1 jury to sentence a person who has been convicted of
2 first-degree murder to one, the death penalty or
3 life imprisonment without parole, life imprisonment
4 with the possibility of parole or for a definite
5 term of 50 years with the possibility of parole
6 after 20 years, and those sentences are doubled
7 because a deadly weapon was used.

8 **PROSPECTIVE JUROR:** Okay.

9 **THE COURT:** So, the definite term would
10 be -- in actuality would be 100 years with parole
11 after 40 years.

12 Now, would you be able to consider all
13 four forms of punishment?

14 **PROSPECTIVE JUROR:** Yes.

15 **THE COURT:** Could you wait until you heard
16 all the evidence about the background of the people,
17 the facts of the case, the circumstances of what
18 happened and listen to the arguments of counsel and
19 the law and pick the appropriate sentence?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** You haven't made your mind up
22 already, have you?

23 **PROSPECTIVE JUROR:** Not really. You know,
24 when I went through the thing, I read a few things.
25 I don't think I -- I think I could.

1 **THE COURT:** You think you could what?
2 **PROSPECTIVE JUROR:** I think I could be
3 fair on the judgment, and I was also told that I
4 needed to tell you that I won't be here next week.
5 **THE COURT:** Well, if you won't be here
6 next week, how are you going to serve on a jury?
7 **PROSPECTIVE JUROR:** I didn't know when to
8 tell you. This is my first time. I've ever done
9 this.
10 **THE COURT:** Where are you supposed to be?
11 **PROSPECTIVE JUROR:** My daughter-in-law is
12 having trouble with her pregnancy. She needs
13 someone to help her. She lives in California.
14 **THE COURT:** Where is her mom?
15 **PROSPECTIVE JUROR:** Excuse me?
16 **THE COURT:** Where is your
17 daughter-in-law's mother?
18 **PROSPECTIVE JUROR:** She's going on
19 vacation that week. She's been taking care of her
20 the whole other time. Sorry.
21 **MS. JACKSON:** We will submit it, your
22 Honor.
23 **MR. DASKAS:** Submit it, Judge.
24 **THE COURT:** All right. You're excused.
25 **PROSPECTIVE JUROR:** Thank you.

1 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 296

2 **THE COURT:** Mr. -- is it Branton?

3 **PROSPECTIVE JUROR 296:** Branton, yes.

4 **THE COURT:** Mr. Branton, two things about
5 your questionnaire caught my eye right off the bat
6 there -- more than two things. There's a couple of
7 things. One of them is when they asked you the
8 question about would the victim's race and the
9 defendant's race being different make a difference,
10 and you said, "Yes, it would."

11 What do you mean by that? How would it
12 alter your judgment?

13 **PROSPECTIVE JUROR:** I expanded on that a
14 little bit. I said if it was an entire -- what I'm
15 talking about is if it was a hate crime. I wasn't
16 sure about the case itself until sitting in here
17 when I remember parts of it. If it was a hate crime
18 was what I was thinking of, so more along those
19 lines where one of the defendant's race was one and
20 all the victims were another race.

21 **THE COURT:** Because they were different
22 races, you think that's a hate crime?

23 **PROSPECTIVE JUROR:** In some instances it
24 is, not across the board.

25 **THE COURT:** In some instances.

1 **PROSPECTIVE JUROR:** We were told not to
2 speculate on the case. I was just going by what was
3 written.

4 **THE COURT:** Well, you know what, over here
5 you said, "I am not 100 percent sure that the system
6 works. I would not believe that I'm not prejudiced
7 against anybody, but I'm not sure of that," which is
8 fine. Everybody is entitled to their own beliefs,
9 but you can understand that the defendant and his
10 lawyer don't want someone who is going to be biased
11 against him because of his race?

12 **PROSPECTIVE JUROR:** I understand that.

13 **THE COURT:** And it appears that you might
14 have some of that.

15 **PROSPECTIVE JUROR:** No, I don't think so,
16 not from my perspective I don't feel that way. I
17 was mainly thinking about hate crimes, not anything
18 in particular about this particular case.

19 **THE COURT:** I understand that though, but
20 you said, "I'm not prejudiced against anybody, but
21 I'm not sure of that." I don't know you, but that's
22 what you said, so you told us that.

23 **PROSPECTIVE JUROR:** I mean, I'd like to
24 think I'm not.

25 **THE COURT:** But you said you're not sure;

1 so, what makes you think you're not sure? There's
2 nothing to be embarrassed about or anything.

3 **PROSPECTIVE JUROR:** No; I --

4 **THE COURT:** We've had I don't know how
5 many people come in here and say hey, look, I don't
6 like certain people. I'm prejudiced against this
7 group or that group which happens all the time.
8 That's human nature; we just want to know about it.
9 There's nothing to be embarrassed about or ashamed
10 about it.

11 **PROSPECTIVE JUROR:** No, I don't feel I'm
12 prejudiced against anybody in particular about race
13 or gender or actual preference. Maybe deep down
14 inside there's something, but on the surface, to the
15 best of my knowledge, I treat everybody the same.

16 **THE COURT:** Oh, okay. That's all we want
17 to know. I just saw that statement, so I had a
18 question about that.

19 And of course, you know, like the
20 statement said, I think the race of the victim and
21 the defendants, that's different, but what I want to
22 know is that's not going to be your determinative --
23 you're not going to base your decision on that?

24 **PROSPECTIVE JUROR:** No, of course not.

25 **THE COURT:** We want people who are going

1 to be unbiased, impartial and listen to the facts
2 and make their decision based on the facts and the
3 law.

4 Can you do that?

5 **PROSPECTIVE JUROR:** I can.

6 **THE COURT:** Now, you state here -- the
7 punishment. If you're picked to serve on this jury,
8 you're going to have to decide the punishment, and
9 there are certain laws regarding that that tells you
10 how you're supposed to analyze the evidence, and any
11 kind of laws, which is my job to instruct you on.
12 But the law is that if you're going to serve on a
13 jury where a person has been convicted of
14 first-degree murder, there are four possible
15 sentences that the jury can impose. One is the
16 death penalty, life in prison without the
17 possibility of parole, life in prison with the
18 possibility of parole or for a definite term of 50
19 years with the possibility of parole after 20 years,
20 and those terms are doubled because a deadly weapon
21 was used. The 50 years in actuality would be
22 doubled to a hundred years with parole after 40
23 years, and the same would be true for the life
24 imprisonment with the possibility of parole.

25 Do you understand that?

1 **PROSPECTIVE JUROR:** Yes.

2 **THE COURT:** So, the law requires that you
3 be able to consider all four forms of punishment,
4 and you understand that this is -- the defendant has
5 already been convicted of four counts of
6 first-degree murder.

7 **PROSPECTIVE JUROR:** I understand that.

8 **THE COURT:** And these sentences would
9 apply to each count. He has to be sentenced on each
10 count.

11 Do you understand that?

12 **PROSPECTIVE JUROR:** Would they be
13 consecutive terms or are they all at the same time?

14 **THE COURT:** The Court would decide that.

15 **PROSPECTIVE JUROR:** Okay.

16 **THE COURT:** All right.

17 What I want to know is could you consider
18 all four forms of punishment? Are you open to all
19 four forms? What I mean by "open to them" or "can
20 consider them" -- some people come in and say,
21 "Under no circumstances if somebody kills somebody,
22 the only punishment that I can impose is the death
23 penalty." All right? Some people come in and say,
24 "I don't believe in life in prison without the
25 possibility of parole, because it cost taxpayers too

1 much money, so the only thing I can impose is either
2 death or life in prison with the possibility of
3 parole."

4 What I want to know is do you have any
5 feelings like that or are you open to all four and
6 can choose either one of the four if you thought the
7 facts, the evidence and the circumstances warranted?

8 **PROSPECTIVE JUROR:** Yes.

9 **THE COURT:** Okay.

10 You don't think you would have any
11 problems following the Court's instructions on the
12 law?

13 **PROSPECTIVE JUROR:** No.

14 **THE COURT:** Of course, the attorneys are
15 going to be kind of wondering about this, because in
16 this one thing you said you're in favor of the death
17 penalty, but you said, "If it come this far, the
18 death penalty should be the only option."

19 You know that's not the only option
20 according to the law.

21 **PROSPECTIVE JUROR:** I understand that.

22 **THE COURT:** Okay.

23 **PROSPECTIVE JUROR:** I understand that.

24 **THE COURT:** State.

25 **MR. DASKAS:** Thank you, Judge.

1
2 EXAMINATION BY THE STATE

3 **BY MR. DASKAS:**

4 Q Mr. Branton, good morning, and thank you
5 for your patience. I will represent to you this was
6 not a hate crime.

7 A Okay.

8 Q We can dispense with that?

9 A Yes.

10 Q You'll accept that representation?

11 A Yes.

12 Q I appreciate that.

13 It's a little different situation in that
14 you, if selected, have to accept the fact that
15 another jury has convicted this defendant.

16 Can you accept those verdicts even though
17 you didn't sit through the evidence?

18 A To judge somebody for life or death, I
19 don't know. Now that it's come to this and I'm in
20 here taking somebody else's word, that, I'm not sure
21 of now that I sit here.

22 Q Let me add two additional factors to that.

23 Number one, the Judge would instruct you
24 that you're required to accept those verdicts.

25 Can you follow that instruction?

1 A Yes.

2 Q Number two, we will present to the jury
3 highlights, if you will, of the murders themselves
4 and the evidence that implicated, if you will, the
5 defendant.

6 Would that make you feel more comfortable?

7 A Yes.

8 Q In that situation, you would rely on those
9 verdicts?

10 A Yes.

11 Q Let's get to the second part, punishment.
12 You realize now your job would be to
13 impose punishment?

14 A Yes.

15 Q It's a bit unfair in the questionnaire,
16 because we only tell people this man is a four-time
17 convicted murderer, can you consider parole, and you
18 haven't heard all the evidence in the case.

19 A Right.

20 Q You haven't heard what we might present or
21 the defense might present in this man's background
22 in what we call "mitigation."

23 Would you consider those things?

24 A Based on other mitigating circumstances,
25 yes.

1 Q That would be important to you in deciding
2 this man's fate?

3 A Yes.

4 Q Can you assure us you will consider all
5 the evidence we present?

6 A Yes.

7 Q Let me kind of forecast for you a scenario
8 of possibility in this case which is the following:
9 You're selected as a juror, you've heard all the
10 evidence presented, you've considered what the
11 defense presents about this man's background and you
12 are convinced that the death penalty is appropriate,
13 can you impose that punishment?

14 A Yes.

15 Q One other question.

16 As a juror, you're required to select a
17 foreperson. You decide amongst yourselves who
18 should be the foreperson, and as the foreperson, you
19 have the same vote as everybody else, but you have
20 one additional responsibility, and that is, you have
21 to sign the verdict form that sentences the
22 defendant to death. If you, as a jury, collectively
23 agree that death is appropriate, and if the jurors
24 think you should be the foreperson, could you sign
25 that verdict?

1 A I don't know.

2 Q It's a big responsibility. You would
3 agree with that?

4 A Yes. Without hearing everything and
5 knowing everything, I don't know.

6 Q Right. Again, my question sort of
7 requires us to assume a whole bunch of things, so
8 we're assuming in my question that you've heard all
9 the evidence, that you're convinced death is the
10 appropriate punishment and that the jury has
11 collectively agreed that should be the sentence.

12 Assuming all those things to be true, do
13 you think in that situation you could sign the
14 verdict form?

15 A Yes.

16 Q And it may be that you're not selected
17 foreperson, maybe you don't have the responsibility.
18 Do you understand that?

19 A Yes.

20 Q One final area. There are four victims in
21 this case, and what that means is as a juror and as
22 a jury, you have to assign punishment for each of
23 those four murders.

24 You recognize that because you asked the
25 Judge about consecutive time; is that correct?

1 A Yes.

2 Q Could you consider punishment for each of
3 those murders, and could you consider at least the
4 possibility of assigning different punishments for
5 the different murders?

6 A Based on knowing all the circumstances?

7 Q Exactly.

8 A Yes.

9 **MR. DASKAS:** Thank you. I appreciate it.
10 We'll pass for cause, Judge.

11 **THE COURT:** Defense Counsel.

12 **MS. JACKSON:** Thank you, your Honor.

13

14 EXAMINATION BY THE DEFENSE

15 **BY MS. JACKSON:**

16 Q Good morning, Mr. Branton. How are you
17 today?

18 A Good, thank you.

19 Q I was a little bit concerned when the
20 Judge was talking to you about race. Clearly, my
21 client is African-American. You're going to find
22 that the victims in this case look more like you
23 than they do like him. Three of them are very young
24 Caucasian men, the other one is Hispanic, very
25 young, 19. I think the oldest one was 21. When the

1 Judge was talking to you, you said, "Well, I don't
2 have any prejudice on the surface but deep down
3 inside."

4 Wouldn't you agree that's usually where
5 prejudice is?

6 A Well, of course, that's not necessarily
7 true, because there are plenty of prejudiced people
8 that it's really on the surface as well.

9 Q We're worried about the kind that comes
10 from deep down inside.

11 A I understand.

12 Q Where do you stand on that, sir,
13 especially when you look at -- you're going to see
14 photographs of these young men. You're going to see
15 photographs of them as they appeared in life and
16 you're going to see photographs after what my client
17 did to them. They were duct taped back, feet.

18 A I remember parts of the case.

19 Q You're going to see photographs. They
20 look a heck of a lot more like you than they do my
21 client.

22 Is that fact going to interfere with your
23 ability to give Mr. Donte Johnson the fair penalty
24 hearing, sir?

25 A No.

1 Q You're sure?

2 A Yes.

3 Q All right.

4 You indicate on your questionnaire that

5 you were concerned about -- you work two jobs,

6 financial position.

7 Where are you with that issue? You've

8 been here a week now?

9 A That is a very large concern of mine

10 still.

11 Q Tell me a little bit about that. What

12 type of work do you do?

13 A I'm an engineer, and I work for -- do I

14 need to get specific what companies I work for?

15 Q Whatever you're comfortable with. We just

16 want to make sure -- my only concern is can you pay

17 attention in here or are you going to be so worried

18 about "My God, I'm running behind in my bills. I'm

19 going to lose my house"?

20 A That is a very large concern. Neither one

21 of my jobs would pay me to be here. I would be

22 losing considerable income to be here.

23 Q Everybody loses income.

24 A I understand that.

25 Q As a citizen, we have a duty.

1 A I understand that.

2 Q If you're going to be worried about losing
3 your home, then we want to know about that.

4 A It would be very hard for me to be here.
5 It would be a financial difficulty for me to be
6 here. Would that weigh in my mind, of course it
7 would. Would it affect my judgment, no.

8 Q Unfortunately, it's the way our system
9 works. We all have hardships.

10 Okay, we're cleared those two hurdles
11 also.

12 You indicate that your father is a lawyer,
13 I think?

14 A That's correct.

15 Q Does he live here in town, sir?

16 A Yes, he does.

17 Q What's his name?

18 A Gary Branton.

19 Q What type of law does he practice?

20 A Corporate stuff.

21 Q Have you ever talked criminal procedure or
22 criminal law with your dad?

23 A No.

24 Q If you were selected as a juror in this
25 case, would you feel compelled to go and discuss

1 that with your father, because you would be
2 admonished that you can't do that until, of course,
3 the case is over.

4 A No.

5 Q Was your father an attorney when you were
6 growing up?

7 A No.

8 Q The Judge has touched on this, but you can
9 see how I -- before I leave this page, it asked you
10 did you remember anything about this case, and you
11 didn't circle -- you did not answer that question.
12 You've had a chance now, a whole week almost, to
13 think about the case.

14 Do you remember this case when it occurred
15 or anything?

16 A I do remember parts of it, yes.

17 Q All right.

18 When you reflect back on those thoughts
19 that you had, had you made up your mind in terms of
20 what punishment would be appropriate for my client?

21 A No. I don't remember anything that
22 clearly, I know.

23 Q It just kind of flashes vaguely?

24 A Yes.

25 Q All right.

1 Getting down to the real issue at hand
2 here, your attitude towards the death penalty in
3 that section of the questionnaire -- it was really
4 of concern to me, because as the Court has pointed
5 out, you took the time to write in, "If it has come
6 this far, the death penalty is the only option."

7 By "this far," I'm assuming you meant that
8 if he's been convicted of killing four people. Yes?

9 A I would say that I would lean towards
10 that, but like I told the Judge, I would be open,
11 based on mitigating circumstances and hearing all
12 the information, to the four options.

13 Q Okay.

14 You did write that that you're leaning
15 heavily towards the death penalty, and that's fine,
16 except that right above that, the question was, "Are
17 your beliefs such that" -- about the -- "about the
18 death penalty such that you would automatically vote
19 for the death penalty regardless of the facts and
20 circumstances?" And again, you checked, "Yes."
21 When I see that in conjunction with "if it has come
22 this far, death is the only option," I'm concerned
23 that you did this questionnaire about a week ago.

24 Are you indicating to me now that your
25 opinions have changed in that week?

1 A I'm not saying they've changed, but based
2 on reflecting on the past week of actually being
3 here and having time to think rather than just
4 writing it down last week, I can say truthfully that
5 my initial impression -- my initial thought would be
6 that if it has come this far and without knowing any
7 other circumstances, the death penalty would be my
8 first option, but there are mitigating circumstances
9 that I would listen to.

10 Q Such as -- give me an example of the types
11 of things you would want to know about this man
12 before you decide if he lived or died. What would
13 you like to know?

14 A Maybe not just about him, but the
15 entire -- how everything happened.

16 Q They're going to tell you how everything
17 happened -- Mr. Daskas.

18 A That would be beyond the fact of your
19 client's background and how he is now. The
20 mitigating circumstances would be the entire events
21 surrounding what happened.

22 Q Right.

23 A That would be what I would be looking for.

24 Q All right. Thank you for being so candid.

25 However, Question 38 says that the law

1 here in the State of Nevada indicates that in
2 addition to finding out about what happened
3 surrounding the crime -- and the State will make
4 sure you know that, I promise you -- the law says
5 that you must consider mitigating evidence as it
6 relates to Mr. Johnson, and it gave you some
7 examples on your questionnaire. It talked about
8 mental status, age, things of that nature. The law
9 says that you have to listen to those as well.

10 What do you think about that? Do you
11 think those are the kind of factors that are
12 important in a case like this?

13 A Without knowing anything more, I would say
14 no.

15 Q So, you're saying that you cannot consider
16 mitigating factors, period?

17 A Not those two you brought up, age and
18 mental status, no.

19 Q Give me some example of what mitigation
20 you would consider, Mr. Branton.

21 A Background.

22 Q What about his background that you would
23 feel was important?

24 A His family, his family history, his
25 relationship with his family.

1 Q Okay.

2 A His relationship with the victims, his
3 relationship with the other people that were
4 convicted.

5 Q Those could be aggravators. We're talking
6 about mitigators. Mitigators -- a good definition
7 of mitigation is any reason that you could have to
8 give life. It could even be mercy. It could be
9 because the defendant's mother takes the stand and
10 you listen to what she has to say and you can
11 decide -- after due deliberation, after considering
12 everything in here, you could decide as an
13 individual juror that, you know what, I'm not going
14 to kill that man, because his mother's plea to spare
15 her son was sufficient for mine -- that's sufficient
16 mitigation for me.

17 Do you understand that concept?

18 A Yes.

19 Q Mitigation in the law says it's whatever
20 you think it is.

21 A Okay.

22 Q You will be willing to consider mitigation
23 in this case, sir --

24 A Yes.

25 Q -- as a reason to give life?

1 A Yes.

2 Q Do you think life imprisonment is a severe
3 punishment?

4 A Yes.

5 Q Do you think there are any benefits to
6 giving a penalty of life imprisonment in this
7 country? Are there any benefits to that in your
8 mind, in your estimation?

9 A Benefits?

10 Q Benefits.

11 A No.

12 Q No benefits.

13 Do you see any benefits in the death
14 penalty to us as a society?

15 A Yes.

16 Q What are those benefits?

17 A That the defendant is no longer a burden
18 on society. If it's come to that and there's 12
19 people that agree that's the ultimate benefit, that
20 they've been convicted and they were found guilty by
21 12 people and they were sentenced to death by 12
22 people, that it's gone through 24 people, the
23 justice system -- that's a benefit in and of itself.
24 It shows that the system works.

25 Q Okay.

1 As he sits here right now, don't you
2 really feel in your heart that death penalty is the
3 way to go? Be honest.

4 **MR. DASKAS:** Judge -- I apologize. This
5 has been asked and answered. He said countless
6 times he can consider all the options. I think
7 we're getting a bit cumulative at this point.

8 **MS. JACKSON:** Your Honor, his
9 questionnaire says "automatically I will vote for
10 death."

11 **THE COURT:** You grilled him on it over the
12 last -- I don't know how many minutes. Sustained.
13 You asked him that repeatedly.

14 **BY MS. JACKSON:**

15 Q You're not going to automatically vote for
16 death?

17 A No.

18 **MS. JACKSON:** Thank you, sir.
19 Your Honor, we would pass for cause.

20 **THE COURT:** All right.

21 Sir, remain outside.

22 State, you guys decide who you're going to
23 excuse, and I'll be right back.

24 **MR. DASKAS:** Thank you, Judge.

25 (Brief pause.)

1 **THE COURT:** The State may exercise their
2 one and only peremptory challenge of the alternate.

3 **MR. DASKAS:** Your Honor, we would exercise
4 our only peremptory on Badge No. 278, I believe it's
5 pronounced Fladgler (phonetic) -- Fladger.

6 **THE COURT:** All right.
7

8 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 300

9 **THE COURT:** What is your name, sir?

10 **PROSPECTIVE JUROR 300:** Floyd Scotton.

11 **THE COURT:** So, you're originally from
12 Philly?

13 **PROSPECTIVE JUROR:** Yes, sir.

14 **THE COURT:** You've been in Las Vegas about
15 16 years?

16 **PROSPECTIVE JUROR:** That's correct.

17 **THE COURT:** What kind of work do you do?

18 **PROSPECTIVE JUROR:** I am a mortgage broker
19 and foreclosure consultant.

20 **THE COURT:** And you went to college in
21 Michigan?

22 **PROSPECTIVE JUROR:** Correct.

23 **THE COURT:** Did you get -- you got a BS
24 degree?

25 **PROSPECTIVE JUROR:** Yes, sir, Bachelor of

1 Science.

2 **THE COURT:** In what?

3 **PROSPECTIVE JUROR:** Agriculture, with a

4 major in ornamental horticulture.

5 **THE COURT:** Did you ever work in that

6 area?

7 **PROSPECTIVE JUROR:** Actually, I did for 22

8 years.

9 **THE COURT:** Who did you work for?

10 **PROSPECTIVE JUROR:** I worked for a private

11 company, Environmental Care, and I was transferred

12 out here, and then I went to work for the casinos --

13 Lady Luck, Sam's Town and Stratosphere.

14 **THE COURT:** You went to National

15 University. What did you get there?

16 **PROSPECTIVE JUROR:** I didn't finish,

17 because I was transferred out here. I was working

18 on my master's.

19 **THE COURT:** What were you working on?

20 **PROSPECTIVE JUROR:** Master's in business.

21 **THE COURT:** Master's in business?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** Are you married?

24 **PROSPECTIVE JUROR:** Divorced.

25 **THE COURT:** What kind of work did your

1 ex-wife do?

2 **PROSPECTIVE JUROR:** She used to be an
3 operator for an escort service.

4 **THE COURT:** Okay.

5 I'm looking at your questionnaire here,
6 and Question No. 16 asked if you had already formed
7 an opinion about this case, and it says, "I believe
8 the maximum penalty for" -- I can't read that --
9 "taking these lives are justified."

10 So, what opinion have you formed as to
11 what the punishment should be?

12 **PROSPECTIVE JUROR:** If he was convicted of
13 the four deaths, unfortunately, there must have been
14 enough evidence presented.

15 **THE COURT:** He's already convicted. He's
16 convicted of four counts of first-degree murder.
17 That's a given. We're here for you to decide the
18 punishment, and that's what this jury will have to
19 do is decide the punishment and what it should be,
20 and that's why we're going to have a trial. The
21 State is going to present evidence, the defense is
22 going to present evidence, and the jury has to make
23 a decision as to the appropriate punishment.

24 Now, I'm trying to find out if you already
25 have a preconceived idea of what the punishment

1 should be or what it is already.

2 **PROSPECTIVE JUROR:** Yes, I did.

3 **THE COURT:** And what's that?

4 **PROSPECTIVE JUROR:** I feel like he should
5 be -- his penalty should be death as well.

6 **THE COURT:** What now?

7 **PROSPECTIVE JUROR:** His penalty should be
8 death as well.

9 **THE COURT:** Death. Okay.

10 You've already decided death before you
11 heard any evidence of mitigation.

12 Would that change your mind?

13 **PROSPECTIVE JUROR:** I don't think so, sir.

14 **THE COURT:** So, that's the only thing you
15 can consider is death?

16 **PROSPECTIVE JUROR:** Four lives taken,
17 unfortunately, that's all I can think of.

18 **THE COURT:** Well, the law in the State of
19 Nevada is that life imprisonment without parole,
20 life imprisonment with the possibility of parole or
21 for a definite term of 50 years with the possibility
22 of parole, and those are doubled, so in actuality,
23 it's a hundred years for the definite term with
24 parole after 40 years, and that would apply to each
25 count, but you could only consider death, is that

1 what you're telling me?

2 **PROSPECTIVE JUROR:** Yeah, but I don't see
3 why somebody needs to sit around and think about
4 that. Unfortunately, those penalties are -- that's
5 just a waste right there. That's a waste.

6 **THE COURT:** Counsel?

7 **MS. JACKSON:** Challenge for cause, your
8 Honor.

9 **MR. DASKAS:** We'll submit it, Judge.

10 **THE COURT:** All right.
11 You're excused.

12 **MS. JACKSON:** Your Honor, may I inquire if
13 Miss Quillen is not here?

14 **THE COURT:** I don't know.

15 **MS. JACKSON:** We seem to have skipped her.

16 **MR. STANTON:** She's Juror 298.

17 **THE COURT:** Is there a Jean Quillen out
18 there?

19 **THE BAILIFF:** She's not there.

20 **THE COURT:** Where is she?

21 **THE BAILIFF:** She didn't show up.

22 **THE COURT:** All right.
23 Order to show cause.

24 **THE BAILIFF:** She hadn't answered when I
25 came down.

1
2 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 304

3 **THE COURT:** Ma'am, on your questionnaire,
4 you were saying you were having some medical tests
5 done?

6 **PROSPECTIVE JUROR 304:** Yes, I did.

7 **THE COURT:** You have to have surgery?

8 **PROSPECTIVE JUROR:** I have to get a biopsy
9 done next week. I'm scheduled for Wednesday.

10 **THE COURT:** For Wednesday at what time?

11 **PROSPECTIVE JUROR:** At 2:45.

12 **THE COURT:** All right. We'll excuse you
13 then. All right?

14 **PROSPECTIVE JUROR:** Thank you.

15
16 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 305

17 **THE COURT:** Miss Knight (sic)?

18 **MR. STANTON:** Your Honor, I believe this
19 is Juror 0305, Miss Nissen-Stephens.

20 **THE COURT:** What now?

21 **MR. STANTON:** 0305, Michelle --

22 **THE COURT:** This is Miss Nissen-Stephens?

23 **MS. JACKSON:** Yes.

24 **PROSPECTIVE JUROR 305:** Yes, sir.

25 **THE COURT:** Now, you're the one who said

1 your husband knew or may have known one of the
2 victim's father?

3 **PROSPECTIVE JUROR:** Correct.

4 **THE COURT:** You don't remember any name?

5 **PROSPECTIVE JUROR:** I heard you say it
6 before. I think it's Mowen.

7 **THE COURT:** Who is it now? What name?

8 **PROSPECTIVE JUROR:** Mowen, something like
9 that.

10 **THE COURT:** State?

11 **MR. DASKAS:** It's Matthew Mowen is the
12 victim, and his father is David Mowen, M-O-W-E-N.

13 **PROSPECTIVE JUROR:** It just sounds vaguely
14 familiar that my husband discussed it.

15 **THE COURT:** You don't remember any
16 details?

17 **PROSPECTIVE JUROR:** Not at all, sir.

18 **THE COURT:** Where does your husband know
19 him from?

20 **PROSPECTIVE JUROR:** My husband works -- I
21 think he was a salesman that my husband dealt with.
22 For some reason that sounds familiar. I could be
23 totally wrong.

24 **THE COURT:** What kind of work does your
25 husband do?

1 **PROSPECTIVE JUROR:** He works for a car
2 rental agency.
3 **THE COURT:** Is he still there?
4 **PROSPECTIVE JUROR:** My husband -- yes.
5 **THE COURT:** What's the name of the rental
6 agency?
7 **PROSPECTIVE JUROR:** Avis Rent-A-Car.
8 **THE COURT:** What's your husband's name?
9 **PROSPECTIVE JUROR:** Scott Stephens.
10 **THE COURT:** Come here, State.
11 (Sidebar conference outside the presence
12 of the court reporter.)
13 **THE COURT:** You said your husband had
14 talked about this.
15 When did your husband start talking about
16 this?
17 **PROSPECTIVE JUROR:** When we read it in the
18 newspaper. If I'm right, we read it in the paper,
19 and he mention that he had knew that name, that it
20 was somebody he dealt with.
21 **THE COURT:** How many times did you guys
22 discuss it?
23 **PROSPECTIVE JUROR:** Probably about once or
24 twice.
25 **THE COURT:** How does it make you feel that

1 your husband knew the father of one of the victims?
2 **PROSPECTIVE JUROR:** If I am correct, I've
3 got no feeling on it, you know, because it's not
4 somebody that I knew.
5 **THE COURT:** Okay.
6 Let's say, for instance, the father of the
7 victim came in here and testified, do you think you
8 would feel like some obligation or something to
9 accept the father's request or do something to try
10 to render a verdict to try to please him?
11 **PROSPECTIVE JUROR:** No, sir.
12 **THE COURT:** Do you understand if you're
13 picked as a juror, you couldn't discuss this case
14 with your husband or ask him for his advice or
15 opinion or even discuss the facts with him?
16 Do you understand that?
17 **PROSPECTIVE JUROR:** Yes, sir.
18 **THE COURT:** You would be able to refrain
19 from doing that?
20 **PROSPECTIVE JUROR:** I'd have no choice.
21 **THE COURT:** All right.
22 You're from New York, originally?
23 **PROSPECTIVE JUROR:** Yes, sir.
24 **THE COURT:** And you've been in Las Vegas
25 about 15 years?

1 **PROSPECTIVE JUROR:** Yes, sir.

2 **THE COURT:** And you're married? That's

3 right, because your husband works at a car rental

4 place, right?

5 **PROSPECTIVE JUROR:** Yes.

6 **THE COURT:** And you have one child?

7 **PROSPECTIVE JUROR:** Yes.

8 **THE COURT:** And you have a close friend

9 who works for John Peter Lee?

10 **PROSPECTIVE JUROR:** Yes.

11 **THE COURT:** She's a legal assistant?

12 **PROSPECTIVE JUROR:** Yes.

13 **THE COURT:** Now, the only beef that I see

14 that you have about the criminal justice system is

15 that you don't think it's strict enough.

16 **PROSPECTIVE JUROR:** Yes.

17 **THE COURT:** You think -- in which ways is

18 it that you don't think it's strict? Where should

19 it be stricter?

20 **PROSPECTIVE JUROR:** Sometimes in

21 sentencing.

22 **THE COURT:** I understand, but what kind of

23 cases don't you think people receive -- something

24 must have made you say it.

25 **PROSPECTIVE JUROR:** Offhand, I can't give

1 you an example; I just read articles in the paper.
2 Usually it's got something to do, I would say --
3 something to do with children, usually a child
4 abuse.

5 **THE COURT:** Sexual predators?

6 **PROSPECTIVE JUROR:** Yes.

7 **THE COURT:** And then they get out and do
8 it again?

9 **PROSPECTIVE JUROR:** That I feel we're not
10 strict enough on.

11 **THE COURT:** Right. I see what you're
12 saying.

13 You said someone in your family or a
14 friend has been the victim of a crime and no one was
15 arrested. Who was that?

16 **PROSPECTIVE JUROR:** I was robbed and
17 attacked in my car many years ago, but they did not
18 find anybody.

19 **THE COURT:** Was this in New York?

20 **PROSPECTIVE JUROR:** Yes, sir.

21 **THE COURT:** So, you were -- did you live
22 in New York City itself?

23 **PROSPECTIVE JUROR:** I lived in one of the
24 boroughs, Queens.

25 **THE COURT:** You were in your car, and

1 someone came up to you.

2 Did they have a knife or a gun or what
3 happened?

4 **PROSPECTIVE JUROR:** Three people came up
5 to me --

6 **THE COURT:** Okay.

7 **PROSPECTIVE JUROR:** -- and one had a gun;
8 I don't know what the other two had. When I
9 realized what was going on, I put -- they took my
10 bag, I threw my hand on the horn, they took off. I
11 lived two blocks from the precinct. I just drove
12 myself to the precinct.

13 **THE COURT:** They never did catch the
14 people who did it?

15 **PROSPECTIVE JUROR:** No.

16 **THE COURT:** Did you ever recover your
17 purse or ID?

18 **PROSPECTIVE JUROR:** Nothing.

19 **THE COURT:** Tell me this here: What was
20 the race of the people that robbed you?

21 **PROSPECTIVE JUROR:** I believe they were
22 Hispanic.

23 **THE COURT:** Okay.

24 **PROSPECTIVE JUROR:** I can't tell you for
25 sure, but that's what I believe.

1 **THE COURT:** All right.

2 That's the only time that you or anyone in
3 your family have ever been the victim of a crime?

4 **PROSPECTIVE JUROR:** I was robbed at work
5 also in New York. Just my luck. Living in New
6 York, these things happen -- living anywhere.

7 **THE COURT:** What kind of work were you
8 doing?

9 **PROSPECTIVE JUROR:** I worked for a car
10 rental agency.

11 **THE COURT:** They came in and robbed for
12 money or took a car or what?

13 **PROSPECTIVE JUROR:** No; they took the
14 money out of the cash drawer and did not show a
15 weapon, just handed us a note and said he had a
16 weapon.

17 **THE COURT:** What was the race of this guy?

18 **PROSPECTIVE JUROR:** Honestly, I couldn't
19 tell you. I was in such shock that day that I
20 just --

21 **THE COURT:** All right. I can understand
22 that.

23 Now, you understand from reading the
24 questionnaire that we're picking this jury for the
25 purpose of deciding the punishment for the

1 defendant.

2 Do you understand that?

3 **PROSPECTIVE JUROR:** Yes, sir.

4 **THE COURT:** The defendant has already been
5 convicted of four counts of first-degree murder,
6 therefore, the jury will have to sentence him, and
7 they will have four choices according to the laws of
8 the State of Nevada -- death penalty, life in prison
9 without the possibility of parole, life in prison
10 with the possibility of parole or for a definite
11 term of a hundred years with parole after 40 years,
12 and the reason it's a hundred years -- it's really
13 50 years with the possibility of parole after 20
14 years, but since a deadly weapon was used, that
15 crime is doubled.

16 Do you understand that?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** What I want to know is could
19 you consider all four forms of punishment?

20 **PROSPECTIVE JUROR:** Yes.

21 **THE COURT:** Now, the reason I ask that is
22 because some people come in here and they say,
23 "Well, you know, for murder, I believe in an eye for
24 an eye, and the only thing I can consider or give is
25 the death penalty." Some people say, "I can give

1 life with the possibility of parole, but I can never
2 give life without, because that will cost the
3 taxpayers too much money." Some people say, "I
4 don't believe in the death penalty, so I could never
5 sentence anyone to death."

6 Well, what I want to know is if you have
7 any of those kind of views?

8 **PROSPECTIVE JUROR:** No.

9 **THE COURT:** That's what we want, because
10 the law requires that you be able to consider all
11 four forms of punishment and that you listen to the
12 evidence, the witnesses, listen to the background
13 information and all the circumstances surrounding
14 the case and then you pick an appropriate
15 punishment.

16 Can you do that?

17 **PROSPECTIVE JUROR:** Yes.

18 **THE COURT:** Can you be fair to both sides?

19 **PROSPECTIVE JUROR:** I think so.

20 **THE COURT:** Can you follow the Court's
21 instructions on the law?

22 **PROSPECTIVE JUROR:** Yes.

23 **THE COURT:** Of course, in Question No. 38,
24 the question is, "Could you consider the defendant's
25 background as mitigating circumstances such as

1 health, mental status, age, childhood experience,
2 education, et cetera," and you said, "Not at all."

3 Now, why did you write that?

4 **PROSPECTIVE JUROR:** I don't remember
5 the -- or I took that question wrong.

6 **THE COURT:** Okay.

7 **PROSPECTIVE JUROR:** Mental I can see
8 taking. I think how I took it -- and I do apologize
9 if it was wrong -- was that when you read these
10 articles, they came from a bad family or they did
11 not have, you know, both parents at home, I still
12 think that that doesn't -- that's not a reason to go
13 out and rob a store or do something because your
14 childhood wasn't perfect.

15 **THE COURT:** Right. They can present
16 evidence of that. According to the law, they can
17 present mitigating evidence. It's not an excuse or
18 rationale for the crime because he's already been
19 convicted, but you should consider that when you
20 make your decision in terms of the appropriate
21 sentence.

22 So, would you be able to consider all that
23 information before you make your decision or are you
24 just going to say, "I don't want to hear anything"?

25 **PROSPECTIVE JUROR:** Oh, no, I can consider

1 it -- yes.

2 **THE COURT:** Okay.

3 State.

4 **MR. STANTON:** Thank you, your Honor.

5

6 EXAMINATION BY THE STATE

7 **BY MR. STANTON:**

8 Q Good morning.

9 A Good morning.

10 Q A couple of questions I have regarding the
11 questionnaire that you filled out.

12 As a result of the victims or being a
13 victim of crimes in New York, is there anything
14 about how the police handled the case that would
15 cause you to be anything but fair and impartial in
16 this case?

17 A No.

18 Q As the Judge indicated, there has been
19 already a jury that has found, pursuant to trial
20 testimony, facts and evidence, the defendant guilty
21 beyond a reasonable doubt of four counts of
22 first-degree murder. Your function would be to
23 determine the punishment, not guilt or innocence.

24 Are you comfortable doing that?

25 A Yes.

1 Q And you can accept that jury's verdict and
2 not question the integrity of that verdict?

3 A Yes.

4 Q Now, John Peter Lee -- do you know what
5 type of law --

6 A I think it's more business.

7 Q Do you discuss with your close friend
8 legal issues, work, the cases that they handle?

9 A No, not at all.

10 Q Regarding the death penalty, ma'am, what
11 we are looking for here is prospective jurors that
12 would keep an open mind until all the facts and
13 evidence and instructions of law by Judge Gates is
14 given to the jury until they formally deliberate.
15 There is clearly evidence before you now that four
16 people were murdered, terrible set of facts and an
17 aggravated situation. In fact, that's part of the
18 aggravators recognized by Nevada law is that more
19 than one death is a basis to death-qualify somebody,
20 and also for the death penalty. But beyond that,
21 it's the issue of whether or not you can consider
22 all options until the matter is formally submitted
23 to you.

24 Do you feel comfortable with keeping your
25 mind open until everything is presented?

1 A Yes.

2 Q You have not formed an opinion that one of
3 the four options is what should occur in this case?
4 Would that be a fair statement?

5 A Yes.

6 Q Now, in that regard, you will -- part of
7 the State's presentation -- we will go back and give
8 highlights of the actual quadruple murder. Part of
9 that include some very graphic photographs of the
10 crime scene.

11 Can you, based on your personality and
12 character, look at those type of photographs
13 specifically as what they represent as evidence in
14 the case as opposed to being emotionally overwhelmed
15 by that?

16 A Good question. I would have to say yes.

17 Q In this case, there were four victims, and
18 the law recognizes that your function and duty in
19 this particular case is to render a just verdict as
20 it relates to each victim.

21 Do you think you can do that?

22 A Yes.

23 Q Your verdict may be different for reasons
24 based upon the facts or your assessment of the facts
25 and your feelings about the case after hearing the

1 defense presentation of mitigation evidence that the
2 verdicts may be different for each victim.

3 Are you comfortable with that process or
4 that concept?

5 A Can you repeat that, please?

6 Q Certainly, and it was poorly worded.
7 There are four victims in this case.

8 A Right.

9 Q The jury's legal obligation is to impose a
10 just verdict as you unanimously decide that to be
11 for each victim and that your decision may not or it
12 may be that the verdict or the punishment be
13 different for each victim based upon the presented
14 facts.

15 Are you comfortable with that concept?

16 A Yes.

17 Q And we talked about, philosophically, your
18 feelings about the death penalty, and what you've
19 stated here today is that you would keep an open
20 mind as to all punishments. My question to you now
21 is kind of a realistic instead of a theoretical
22 discussion of the death penalty.

23 If you were on this jury and you were
24 selected and through a process that the jurors
25 themselves do, you're selected as the foreperson,

1 you deliberate after hearing the entire presentation
2 to you with your fellow jurors and come to the
3 conclusion unanimously and collectively that the
4 death penalty is the appropriate punishment, ma'am,
5 could you affix your signature to the jury verdict
6 form, which is what the foreperson does, to put that
7 man, Donte Johnson, to death?

8 A Yes.

9 MR. STANTON: Thank you.

10 Pass the prospective juror.

11 THE COURT: Defense Counsel.

12 MR. WHIPPLE: Thank you, your Honor.

13

14 EXAMINATION BY THE DEFENSE

15 BY MR. WHIPPLE:

16 Q Is it Miss Stephens or Mrs. Stephens?

17 A Mrs. Stephens.

18 Q Mrs. Stephens, my name is Bret Whipple,
19 and I represent Mr. Johnson. I have some follow-up
20 questions.

21 You were in Queens where you spent the
22 majority of your life?

23 A I was born and raised there, yes.

24 Q Where in Queens?

25 A Forest Hills and in Flushing.

1 Q Now, I'm not sure if you were told this.
2 We're searching for some individuals -- this is not
3 a job for everybody, you can imagine.

4 A Yes.

5 Q We need individuals who are pretty much in
6 the middle of the pack as possible and as unbiased
7 as possible. So, this is an opportunity for you to
8 speak to us, and all we're asking is for you to
9 speak your heart which you clearly have. There's no
10 right answers, there's no wrong answers; it's just
11 an opportunity for us to speak back and forth and
12 see if you would be appropriate for this type of
13 situation.

14 The first thing that causes concern is
15 your potential connection with the victim's family.

16 Do you think it would be appropriate for
17 the victim's family to be on the jury? In other
18 words, somebody's young adults were killed. Would
19 it be appropriate for parents and their siblings to
20 be on the jury? Do you think that would be
21 appropriate?

22 A A victim's parent, no.

23 Q Why not?

24 A Because then there would be a biased
25 opinion.

1 Q And why that?

2 A They cannot come up with an honest answer.

3 Q Because...?

4 A Because they've already made a decision.

5 Q Because they're so closely tied?

6 A Exactly. Also, I think if it was my

7 child, it's "Don't you ever do anything to my child.

8 My child is my life."

9 Q Sure.

10 A So yes, I can see why I wouldn't -- yes,

11 that would be a terrible thing for a parent to be on

12 a jury that their child was the victim.

13 Q You could imagine if a person -- if you

14 have the opportunity to sit on this jury, you'll

15 hear testimony -- at some point you potentially

16 could hear testimony from some of the victims'

17 families, and you could imagine how difficult it

18 would be to re-live and hear that type of

19 information.

20 Would you agree with that?

21 A Oh, absolutely.

22 Q My concern is -- I know you want to be

23 fair.

24 A Right.

25 Q But if you have a connection with an

1 individual who is actually a family member of the
2 victim and you hear them speak, how could you
3 continue to be fair?

4 A Because I really don't have a connection.
5 First of all, I could be totally wrong, and it's not
6 a connection I have. If I'm correct, it's somebody
7 that I've never met. If they were in the room right
8 now, I couldn't even tell you, so I can be fair when
9 it comes to -- it's nobody I know.

10 Q Okay.

11 A I can keep that separated, because I could
12 be wrong, and since I can't ask my husband, I don't
13 know if I'm right or wrong.

14 Q Sure. What happens if all of a sudden
15 this person is in front of you and they testify and
16 you recognize -- "Oh, my goodness, I was right.
17 This is somebody I know through my husband."

18 Do you see why I would be concerned about
19 that?

20 **MR. STANTON:** Your Honor, I'm going to
21 object. That's not what the witness has stated and
22 I don't think that situation can occur. She's
23 already stated that she doesn't know the person.

24 **THE COURT:** She doesn't even know him
25 through her husband.

1 **PROSPECTIVE JUROR:** That's what I was
2 going to say. I wouldn't even know if they were in
3 here.

4 **THE COURT:** You need to rephrase the
5 question. She doesn't know him through her husband.

6 **BY MR. WHIPPLE:**

7 Q Sure. If the witness said something on
8 the stand that makes you realize, "Oh, my goodness.
9 This is the same person that I realize or I thought
10 it would be" --

11 A Again, I have no connection to this
12 person. If my husband bought milk from somebody
13 once at a grocery store, where is my connection to
14 that person because he bought milk from somebody?
15 And it could be the same thing about this situation,
16 but when the Judge stated, "Do you have any
17 connection at all" with everything he was saying, I
18 had to be honest to tell him that I believe my
19 husband knows this person, because if I did not say
20 that and he did afterwards, well then, I was wrong,
21 and that can cause a problem.

22 Q And --

23 A That's why I figured I should open up, I
24 hope not a can of worms, but to be honest so I don't
25 cause a problem later.

1 Q I very much appreciate it, and that's all
2 we're asking is for you to be honest.

3 The key, I think, is when you said your
4 husband knows him.

5 A "I believe," I said.

6 Q You believe he knows him.

7 When you say you believe he knows him, is
8 it somebody that he bought milk from or is it
9 somebody that he knows in the sense they do
10 business?

11 A See, that's it. Since I totally don't
12 recall -- I think it was a salesperson that he dealt
13 with. I don't even know if he still does, and
14 that's all I remember about it.

15 Q So, you're just doing it out of an
16 abundance of caution? There's no connection there
17 that I should be worried about?

18 A No.

19 Q I want to ask you your opinion with regard
20 to the death penalty.

21 Do you have an opinion with regard to the
22 death penalty?

23 A I think beyond a reasonable doubt that all
24 the evidence and everything shows, I do believe in
25 the death penalty in some cases, yes.

1 Q So, if an individual was convicted of
2 first-degree, premeditated, deliberate, cold-blooded
3 murder without any excuse or justification, could
4 you consider a life sentence in this situation?

5 A Well, honestly, if the option of the death
6 sentence was available, I would have to say I do
7 believe in the death sentence.

8 Q Now, that's with one person. If there
9 were four individuals and a person killed them,
10 premeditated, deliberate, cold-blooded, and killed
11 four innocent individuals, young adults, could you
12 consider a life sentence?

13 A Again, if the death sentence was
14 available, I would have to believe the death
15 sentence.

16 Q And if you learned that four individuals
17 were duct taped with their hands behind their back,
18 their feet together, placed on the ground with their
19 face in the carpet and an individual took a gun and
20 shot each one of them in the back of the head one by
21 one, could you consider a life sentence in that
22 situation?

23 **MR. STANTON:** Your Honor, once again, I'm
24 going to object to the pattern of the question. It
25 doesn't properly present what the juror will be

1 hearing as it doesn't indicate that mitigation
2 evidence is going to be part of the juror's
3 deliberation and consideration of the case. Counsel
4 is presenting unilateral presentation of facts.

5 **THE COURT:** Counsel, you'll have your
6 chance to talk to her and traverse her if you want
7 to.

8 Go on.

9 **MR. WHIPPLE:** Thank you, your Honor.

10 **BY MR. WHIPPLE:**

11 Q Do you want me to repeat the question?

12 A No, I remember the question. In all
13 honesty, I don't think the circumstances is how the
14 murder occurred, it's just that the murder occurred.

15 Q That's all we're asking.

16 A So, I don't think either handcuffed or
17 taped or anything makes a difference. I think it's
18 taking the four lives.

19 Q Could you consider a life sentence in that
20 situation?

21 A I would have to say if the death sentence
22 was available, I would go with that.

23 Q And why is that?

24 A Why should we, for the rest of their life,
25 pay for them in jail when we know -- if there's no

1 reason beyond a reasonable doubt that they
2 definitely did it, that there's no evidence is going
3 to turn up years from now, then I honestly do think
4 of the death sentence.

5 Q Why?

6 A I think in that situation you know he's
7 guilty, and to me, life in prison -- if it was the
8 inkling that DNA was going to come back years later,
9 then that person should have a chance of living the
10 rest of their life, because hopefully they're going
11 to realize something, but when there is no
12 reasonable doubt, I really feel don't waste the
13 taxpayers' money for the next 50 years or five years
14 or whatever the case may be.

15 Q This is just a heart-of-hearts type
16 feeling that you've had?

17 A Yes.

18 Q How long have you had this feeling or this
19 belief?

20 A I would say most of my adult life.

21 Q Has anybody ever tried to convince you
22 otherwise?

23 A No.

24 Q How would you handle it if someone tried
25 to convince you that the death penalty is not what

1 should be given in a situation like that?

2 A Well, I mean -- "somebody," meaning I'm
3 having a conversation with a friend?

4 Q Sure.

5 A If I'm having a conversation with a
6 friend, that's my opinion. Honestly, you're not
7 going to change -- if it's a conversation between
8 two friends, you know, you're not going to change.
9 That's my opinion. You're going to give me your
10 beliefs and I'm going to give you my beliefs. I
11 don't think you can change -- I mean, you would have
12 to have some great evidence or a good reason for me
13 to change my mind on that.

14 **MR. WHIPPLE:** I think that -- your Honor,
15 I think Miss Nissen-Stephens it's probably -- I'm
16 concerned about you being fair, so I'm going to
17 challenge for cause with regard to your background.

18 I'm just concerned about the death
19 penalty, your Honor.

20 **MR. STANTON:** I would definitely traverse,
21 your Honor.

22 **THE COURT:** All right.

23 /////

24 /////

25 EXAMINATION BY THE STATE

1 **BY MR. STANTON:**

2 Q What Counsel is not including in his
3 scenario to you is the fact in this case, it's not
4 just going to be the evidence of the four people
5 that were murdered in the fashion that you said, and
6 you said the fashion didn't make any difference to
7 you.

8 **MR. WHIPPLE:** I'm sorry. I'm going to
9 sneak up here, Mr. Stanton.

10 **BY MR. STANTON:**

11 Q But there's going to be mitigation
12 evidence, evidence presented by the defense in this
13 case to you as jurors for you to consider in this
14 case.

15 Now, you said earlier that the punishment
16 in this case, even the least severe punishment is a
17 very severe punishment. I think any reasonable
18 person would assess that, but in your selection of
19 each of the four, that you would wait until you've
20 heard all the evidence in this case, and you
21 indicated that you could.

22 A Yes.

23 Q Is that correct?

24 A That's correct.

25 Q Counsel has told you, and I guess you knew

1 a week ago that there were four people that had been
2 murdered in this case, so that's not any new
3 evidence to you here today.

4 A No.

5 Q Now, the question here is the fact that
6 more than one person is killed is, as I stated
7 before, an aggravation. It can be used by you and
8 other jurors as a basis to impose the death penalty;
9 it cannot be the basis. So, the question I have for
10 you is would you keep an open mind as to all four
11 potential punishments even knowing that four people
12 have already been murdered and that the defendant
13 was convicted of that?

14 A Yes.

15 Q Now, in the statement that Mr. Whipple was
16 asking you was would you automatically be leaning
17 toward the death penalty, and you said, "Well, if
18 the death penalty was an option." If I interjected
19 the mitigation portion of this and the instructions
20 by law that you're required as a juror to consider
21 mitigating evidence, would you then keep your mind
22 open until all that evidence was presented to you?

23 A Exactly. I'd have to hear the evidence
24 and everything.

25 Q Would that be important to you to know

1 about the defendant, who he is, where he came from,
2 what happened in this case, what he's all about?
3 Would that be important to you?

4 A I think what would be important is what
5 led up to this situation that caused the murders.

6 Q Okay.

7 Would you like to know a little bit about
8 the defendant, maybe a lot about him, who he is, his
9 family, stuff like that?

10 A Well, after the Judge stated what he did
11 before, what he said before about regarding the
12 questionnaire, yes, I do need to know some
13 information.

14 Q So, that's an instruction of law that
15 indeed in the State of Nevada you have to be open
16 and consider that.

17 What you do with that is obviously up to
18 you, but would you consider it?

19 **PROSPECTIVE JUROR:** Yes, sir.

20 **MR. STANTON:** Your Honor, I believe that
21 she qualifies.

22 **MR. WHIPPLE:** Your Honor, may we approach?

23 **THE COURT:** No.

24 I'm going to grant the challenge.

25 You're excused, ma'am.

1 **PROSPECTIVE JUROR:** Thank you.
2 **THE COURT:** Who is next?
3 **THE CLERK:** Theresa Knight.
4
5 VOIR DIRE EXAMINATION OF PROSPECTIVE JUROR NO. 309
6 **THE COURT:** Miss Knight, in your
7 questionnaire, you stated that you were worried
8 about just starting a new job and your boss.
9 Did you get that taken care of?
10 **PROSPECTIVE JUROR 309:** Yes.
11 **THE COURT:** Huh?
12 **PROSPECTIVE JUROR:** Yes.
13 **THE COURT:** You talked to your boss?
14 **PROSPECTIVE JUROR:** Yes.
15 **THE COURT:** You're not going to get
16 harassed?
17 **PROSPECTIVE JUROR:** No.
18 **THE COURT:** What kind of work do you do?
19 **PROSPECTIVE JUROR:** I am a superintendent
20 on a construction site.
21 **THE COURT:** You have five kids?
22 **PROSPECTIVE JUROR:** Yes, sir.
23 **THE COURT:** You're a busy lady.
24 They're all in school too?
25 **PROSPECTIVE JUROR:** Yes, sir.

1 **THE COURT:** Your husband -- what kind of
2 work does your husband do?

3 **PROSPECTIVE JUROR:** He works for the Gold
4 Coast properties. He's the Sports Book supervisor.
5 We're separated.

6 **THE COURT:** Separated?

7 **PROSPECTIVE JUROR:** Um-hmm.

8 **THE COURT:** Who keeps all those kids for
9 you?

10 **PROSPECTIVE JUROR:** Well, they're in
11 school right now.

12 **THE COURT:** So, they're all in school?

13 **PROSPECTIVE JUROR:** Yeah.

14 **THE COURT:** Now, your son you said was
15 charged with taking a vehicle without owner's
16 consent, something like that.

17 **PROSPECTIVE JUROR:** Yes. He took my
18 vehicle.

19 **THE COURT:** How long ago was that? Is
20 that the one in high school?

21 **PROSPECTIVE JUROR:** Yeah. He actually is
22 out of high school. He took his GED.

23 **THE COURT:** Okay.

24 **PROSPECTIVE JUROR:** It was in March.

25 **THE COURT:** You thought he was treated

1 fairly?

2 **PROSPECTIVE JUROR:** Yes. He's

3 incarcerated right now.

4 **THE COURT:** What now?

5 **PROSPECTIVE JUROR:** He's incarcerated

6 right now.

7 **THE COURT:** For what, for the car?

8 **PROSPECTIVE JUROR:** Yes.

9 **THE COURT:** In the county jail?

10 **PROSPECTIVE JUROR:** Yes, sir. He's on a

11 list to go up to Harris Springs.

12 **THE COURT:** Harris Springs?

13 **PROSPECTIVE JUROR:** Yes.

14 **THE COURT:** Who was the judge?

15 **PROSPECTIVE JUROR:** I don't know. I

16 wasn't able to make court because I had just started

17 that job.

18 **THE COURT:** Okay.

19 Now, this case here, we're trying to pick

20 a jury to decide the punishment for the defendant,

21 and from the questionnaire, you know that the

22 defendant has already been convicted of four counts

23 of first-degree murder; is that correct?

24 **PROSPECTIVE JUROR:** Correct.

25 **THE COURT:** So, the law requires that you