

# IN THE SUPREME COURT OF THE STATE OF NEVADA

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WILBURT HICKMAN, JR., A/K/A  
WILLIAM HICKS,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: C-12-278699-1

Docket No: 86554

# RECORD ON APPEAL VOLUME 4

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1 things I'm looking for. I'm not looking for it would be difficult for you to be away from  
2 work because it's -- most everyone on the venire panel, except those lucky retirees  
3 who no longer have to go to work, have to work. And nonetheless, the legislature  
4 has said you still have to serve on jury duty.

5           Most major casino hotels -- I should say all major casino hotels pay  
6 their employees while they're on jury service their regular salary. Usually they  
7 require that you turn in your per diem amount to the company. Also lots of other  
8 major corporations do that as well because it's their way of being good corporate  
9 citizens. And so if you have some question about that you should check with your  
10 particular employer.

11           So all of that being said -- also the last thing is that if you're excused  
12 because you say you can't serve on such a jury for this amount of time you could  
13 get -- you're not going to get just excused forever. You're going to get called up  
14 very shortly and you could get called for a jury that may go much longer. Many of  
15 our civil cases, for instances, go for weeks. And there are criminal cases that also  
16 go weeks and sometimes months, that's also true of civil cases. And so -- although  
17 it sounds like a long time, a week is actually a shorter trial.

18           All right. All of that being said, now the show of hands of people who  
19 can't possibly serve. All right. And so now what we're going to do is I'm going to  
20 start at the top with -- and we're going to go in order. I'm going to hear all of your  
21 excuses. And I'm won't make any decisions. I'm just going to take notes and then  
22 I'll discuss it with the lawyers at the bench once I've heard from everyone. All right.  
23 Let's start.

24           PROSPECTIVE JUROR #065: 0065, Krystal Treadwell-Brass. I have a  
25 family member's memorial service to attend on September the 9<sup>th</sup>.

1 THE COURT: That's --  
2 PROSPECTIVE JUROR #065: Monday.  
3 THE COURT: Wednesday. No?  
4 PROSPECTIVE JUROR #065: It's Monday.  
5 THE COURT: What day?  
6 PROSPECTIVE JUROR #065: Next Monday.  
7 [Colloquy between the Court and clerk]  
8 THE COURT: What time is the service?  
9 PROSPECTIVE JUROR #065: At 11, I believe.  
10 THE COURT: Okay.  
11 All right. And next person.  
12 PROSPECTIVE JUROR #070: Yes. 0070, Phoebe Cooper.  
13 THE COURT: All right. Miss Cooper.  
14 PROSPECTIVE JUROR #070: My work requires me to be in San Francisco  
15 every other week, so I have non-refundable plane tickets to be there on Monday the  
16 9<sup>th</sup>.  
17 THE COURT: Okay. And what's your business? What --  
18 PROSPECTIVE JUROR #070: It's an online travel company, Expedia.  
19 THE COURT: Oh, okay. They can't get you better -- they can't get you good  
20 plane tickets, Expedia? That's who I use.  
21 PROSPECTIVE JUROR #070: I know. [Indiscernible] cancellation.  
22 THE COURT: All right. But they could send somebody else on this trip?  
23 PROSPECTIVE JUROR #070: I'm required to be there every other week.  
24 THE COURT: Well, I know, but you're required to be at work every day;  
25 right?

1 PROSPECTIVE JUROR #070: Yeah.

2 THE COURT: So it's -- to me it's no different.

3 PROSPECTIVE JUROR #070: Okay.

4 THE COURT: All right.

5 PROSPECTIVE JUROR #070: I don't make the decisions.

6 THE COURT: Okay. All right. But I made the note. Okay.

7 THE MARSHAL: Your Honor, we're going to go back to the second row.

8 THE COURT: Oh, okay.

9 PROSPECTIVE JUROR #062: 0062, Kathryn Schwendemann.

10 THE COURT: Yes.

11 PROSPECTIVE JUROR #062: And my question is, on the days that we don't

12 start maybe till afternoon, do we have to be here first thing in the morning?

13 THE COURT: Oh, just waiting around in the hall? No.

14 PROSPECTIVE JUROR #062: Okay. 'Cause my reason for that I have two --

15 my in-laws are living with us. One has dementia that I care for. She's also a bit

16 disabled, so I have to help get her ready in the morning. And then my father-in-law,

17 he's got breathing problems. So if she falls down he's -- you know, for him to try to

18 pick her up and so that was -- if I'm there in the morning then I can at least get her

19 dressed and stuff.

20 THE COURT: Okay. So --so in the mornings that we start earlier you may

21 need to go do that a little earlier, but --

22 PROSPECTIVE JUROR #062: Yeah, I would have to because she normally

23 sleeps till about 11 o'clock.

24 THE COURT: Well, you're going to have to wake her up.

25 PROSPECTIVE JUROR #062: Yes.

1 THE COURT: Yeah, if you're --  
2 PROSPECTIVE JUROR #062: Yes. And so that was --  
3 THE COURT: -- responsible for getting her --  
4 PROSPECTIVE JUROR #062: -- my only thing 'cause having to get her  
5 dressed --  
6 THE COURT: Yeah.  
7 PROSPECTIVE JUROR #062: -- and everything ready, so --  
8 THE COURT: You do that every day?  
9 PROSPECTIVE JUROR #062: Yes. And --  
10 THE COURT: Yes, that's a big job.  
11 PROSPECTIVE JUROR #062: -- it was only supposed to be for a short term,  
12 and it's been four months, and it's gonna go on maybe for another two months, so --  
13 THE COURT: Okay.  
14 PROSPECTIVE JUROR #062: All right.  
15 THE COURT: I'll make that note here.  
16 Okay. Who's next?  
17 PROSPECTIVE JUROR #072: 0072, Nelson Baggs.  
18 THE COURT: Okay. And, Mr. Baggs.  
19 PROSPECTIVE JUROR #072: I'm fine with Monday, Wednesday and Friday,  
20 but I'm an engineering student at UNLV.  
21 THE COURT: Okay.  
22 PROSPECTIVE JUROR #072: And from 2:30 to 5:15 on Tuesday I have  
23 class, and on Thursday I have lab starting at 8:30 till -- and class till 5:15.  
24 THE COURT: So you're in class -- you're at school all day on Thursday  
25 basically.

1 PROSPECTIVE JUROR #072: Yes.

2 THE COURT: Okay. All right. Thank you.

3 PROSPECTIVE JUROR #074: 0074, Melissa Hawkes.

4 THE COURT: Yes.

5 PROSPECTIVE JUROR #074: I'm available Monday through Friday from 9

6 a.m. till 1 p.m., but I am a stay-at-home and I need to take my kids to and from

7 school during the other hours and care for them after school.

8 THE COURT: Okay. So when do you need to take them to school?

9 PROSPECTIVE JUROR #074: They need to be at school by 8 o'clock, so I

10 could get here 9 o'clock, give or take, and then I need to pick them up by 2:10.

11 THE COURT: By 2:10? Well, that doesn't work.

12 PROSPECTIVE JUROR #074: No.

13 THE COURT: So who -- what are their ages?

14 PROSPECTIVE JUROR #074: They are ages 9, 6 and 5.

15 THE COURT: Okay. Do they go to a private school or --

16 PROSPECTIVE JUROR #074: No, Neil C. Twitchell Elementary.

17 THE COURT: And they get out when?

18 PROSPECTIVE JUROR #074: The school is from 7 -- I believe it's 7:55, is

19 when it starts till 2:10.

20 THE COURT: Really?

21 PROSPECTIVE JUROR #074: Well, 11 actually. It's weird.

22 THE COURT: Gosh. That's a new schedule. Usually the elementary schools

23 go from 9 till like 3.

24 PROSPECTIVE JUROR #074: They share property with Vanderburg

25 Elementary --

1 THE COURT: Aah.

2 PROSPECTIVE JUROR #074: -- so they have staggered start and delayed  
3 times for traffic reasons.

4 THE COURT: Oh, I see. That's early for the little kids. I have a --

5 PROSPECTIVE JUROR #074: It's nice in the afternoon --

6 THE COURT: -- high schooler that gets up at --

7 PROSPECTIVE JUROR #074: -- with all their activities.

8 THE COURT: Yeah. All right. Okay. And that's every day?

9 PROSPECTIVE JUROR #074: That's every day, yes.

10 THE COURT: Okay. All right. I've got that.

11 PROSPECTIVE JUROR #080: 0080, Yoahnnna Newell. I'm the same thing. I  
12 have one child and I have to pick him up at 1:15. I can be here from 9 to 12:45, but I  
13 have no friends or family here that can pick up my son. He's 14.

14 THE COURT: Okay. Do they not have the Safekey programs anymore?

15 PROSPECTIVE JUROR #080: Just I never put him in that, so I have no idea.  
16 I always pick him up, so --

17 THE COURT: Well, I know. I know, but you knew you had jury duty.

18 And what about also Ms. Hawkes. Is there Safekey --

19 PROSPECTIVE JUROR #074: I'm not comfortable --

20 THE COURT: -- available for your --

21 PROSPECTIVE JUROR #074: -- putting my kids in Safekey.

22 THE COURT: I know that.

23 PROSPECTIVE JUROR #074: I don't trust it. I won't do it. I'm sorry.

24 THE COURT: Well --

25 PROSPECTIVE JUROR #074: I don't -- I don't go out. I don't have date

1 nights. I don't leave my kids. It's hard enough at school.

2 THE COURT: Uh-huh.

3 PROSPECTIVE JUROR #074: And I'm active in the school. I'm there all the  
4 time. All the teachers know me.

5 THE COURT: Okay. All right. And do you have family?

6 PROSPECTIVE JUROR #074: Do I?

7 THE COURT: Uh-huh.

8 PROSPECTIVE JUROR #074: Yes.

9 THE COURT: And --

10 PROSPECTIVE JUROR #074: And no one that's available for that. My  
11 husband is a firefighter.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR #074: So he works 24 hour shift. So every other  
14 day I could probably do it, but it's not like every Wednesday or every --

15 THE COURT: Okay.

16 All right. Who else?

17 PROSPECTIVE JUROR #085: 0085.

18 THE MARSHAL: Can I get you to stand there. You got a very soft voice.

19 PROSPECTIVE JUROR #085: Sorry. 0085.

20 THE COURT: Yes.

21 PROSPECTIVE JUROR #085: I'm a nurse practitioner for --

22 THE COURT: Your name?

23 PROSPECTIVE JUROR #085: Cheryl Spollino.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR #085: And I'm a nurse practitioner for a small



1 hospice, which means we have one -- we have two providers. The physician's on  
2 call this this. If the trial goes over I begin call 24 hours, seven days starting on  
3 Monday. So if there's an emergency or something I have to go to the patient's  
4 home.

5 THE COURT: Okay. And so what happens like if you're ill --

6 PROSPECTIVE JUROR #085: Pardon?

7 THE COURT: -- with a contagious disease?

8 PROSPECTIVE JUROR #085: Either they would send -- if there's no provider  
9 they would either have to have an ambulance come or see if they could get an  
10 alternative provider. Usually me and the physician switch off. He put this schedule  
11 in because I'm in school, so we had designated next week for me.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR #085: I usually do every other week.

14 THE COURT: Okay. So there could be some scheduling --

15 PROSPECTIVE JUROR #085: Pardon me?

16 THE COURT: There could be some scheduling changes.

17 PROSPECTIVE JUROR #085: I would have to see if he's not -- if he's in  
18 town because he comes in from out of town. So he usually plans his trips around  
19 when I'm available or on call.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR #085: This week I'm off.

22 THE COURT: Okay. Thank you.

23 PROSPECTIVE JUROR #095: 0095, Cohn O'Donnell.

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR #095: I'm part of an out of state drilling project in

1 North Dakota that starts tomorrow. It goes seven days a week, 24 hours a day.

2 THE COURT: And did you say -- where was it?

3 PROSPECTIVE JUROR #095: North Dakota.

4 THE COURT: North Dakota. The boom area.

5 And who do you work for?

6 PROSPECTIVE JUROR #095: DHI Services. I'm a lead geologist.

7 THE COURT: Okay. Thank you.

8 PROSPECTIVE JUROR #099: 0099, John Brewer. I work for a corporation  
9 that has a lot of branches around the county and I travel around doing software  
10 training.

11 THE COURT: Mm-hmm.

12 PROSPECTIVE JUROR #099: And so the only time I'm usually home is  
13 during the holiday weeks, so I have postponed jury duty to this week hoping that I  
14 could, you know, serve through Friday, but Monday I have non-refundable tickets for  
15 out of the state.

16 THE COURT: What company do you work for?

17 PROSPECTIVE JUROR #099: ALSCO, Inc. [phonetic].

18 THE COURT: And so if you were ill what would they do?

19 PROSPECTIVE JUROR #099: I guess they'd have to postpone the whole  
20 branch training because I'm the only one that does it.

21 THE COURT: Okay. And when you say branch training, what kind of training  
22 is it?

23 PROSPECTIVE JUROR #099: It's a specialized account software training for  
24 the tablet program for our customer service department.

25 THE COURT: Okay. All right.

1 PROSPECTIVE JUROR #099: These are the kind of things that are  
2 scheduled months in advance.

3 THE COURT: Okay. And where is it that you're supposed to go on Monday?

4 PROSPECTIVE JUROR #099: I'll be going to Reno. Sorry, it's not out of  
5 state.

6 THE COURT: The garden -- the garden spot of Reno.

7 PROSPECTIVE JUROR #099: That's right.

8 THE COURT: All right.

9 Okay. Anybody else?

10 PROSPECTIVE JUROR #100: 0100, Austin McKenna. I am a microbiology  
11 student at UNLV and I have class every morning, and on Tuesday from 2:30 to 5:20,  
12 Thursday 2:30 to 5:20, and Friday morning 8 to 11:20 I have labs. And every lab I  
13 miss drops me a letter grade.

14 THE COURT: Okay. All right. Got it.

15 PROSPECTIVE JUROR #119: 0119, Shumin Yang.

16 THE COURT: Yes, sir.

17 PROSPECTIVE JUROR #119: My English is problem.

18 THE COURT: You're having problems with your English. All right.

19 How long have you lived here in Clark County?

20 PROSPECTIVE JUROR #119: Here?

21 THE COURT: Yes.

22 PROSPECTIVE JUROR #119: Seven years.

23 THE COURT: All right. And do you work?

24 PROSPECTIVE JUROR #119: I work in a -- casino dealer?

25 THE COURT: Casino dealer?

1 PROSPECTIVE JUROR #119: Yes.

2 THE COURT: Okay. Which property do you work for?

3 THE MARSHAL: Stand up, sir, please. Your voice raised and hold the  
4 microphone please as close as you can.

5 PROSPECTIVE JUROR #119: Okay.

6 THE COURT: What casino do you work for?

7 PROSPECTIVE JUROR #119: Golden Nugget.

8 THE COURT: Golden Nugget downtown. All right. And how long have you  
9 worked for them?

10 PROSPECTIVE JUROR #119: Six years.

11 THE COURT: What games do you deal?

12 PROSPECTIVE JUROR #119: I'm a poker dealer.

13 THE COURT: Okay. Are you married?

14 PROSPECTIVE JUROR #119: Yes.

15 THE COURT: And do you have children?

16 PROSPECTIVE JUROR #119: Yes --

17 THE COURT: Are they --

18 PROSPECTIVE JUROR #119: -- only one.

19 THE COURT: One. How old?

20 PROSPECTIVE JUROR #119: Thirty.

21 THE COURT: Thirty. Oh, okay.

22 Does he live here in Las Vegas too?

23 PROSPECTIVE JUROR #119: No.

24 THE COURT: No. Where does your child live?

25 PROSPECTIVE JUROR #119: My child live in Virginia.

1 THE COURT: Aah, Virginia. Okay.  
2 And is that a son or a daughter?  
3 PROSPECTIVE JUROR #119: Son.  
4 THE COURT: Son. And what does he do in Virginia? What does he do for a  
5 living?  
6 PROSPECTIVE JUROR #119: He's a casino worker in -- engineer.  
7 THE COURT: Oh, in the union, did you say?  
8 MR. HAMNER: I think he said engineer.  
9 PROSPECTIVE JUROR #119: Engineer.  
10 THE COURT: Oh, engineering. Oh, very good. You must be very proud.  
11 Are you proud of your son?  
12 PROSPECTIVE JUROR #119: I -- yes.  
13 THE COURT: All Right. Well, have you had trouble understanding what's  
14 been happening?  
15 PROSPECTIVE JUROR #119: Some -- someone say something I'm not  
16 clearly --  
17 THE COURT: All right.  
18 MS. JEFFERSON: -- understand.  
19 THE COURT: Okay. Because as I speak to you it seems that you  
20 understand. Your English seems pretty -- pretty good. You have to speak to your  
21 customers when you deal don't you?  
22 PROSPECTIVE JUROR #119: Yes.  
23 THE COURT: Like --  
24 PROSPECTIVE JUROR #119: We're [indiscernible]. Not speak too much.  
25 THE COURT: Okay. All right. Well, we'll see how it goes and as we get

1 further into the process -- you're kind of in the back there and so the chances of us  
2 getting to you are kind of low. So we'll check back with you and see how you're  
3 understanding things; all right? Sit down. Thank you very much.

4 PROSPECTIVE JUROR #119: Okay.

5 THE COURT: All right.

6 PROSPECTIVE JUROR #111: 0111, Robert Bronstein.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR #111: I have a religious obligation to appear in  
9 synagogue on Thursday and Friday for the Jewish High Holy Days of Rosh  
10 Hashanah.

11 THE COURT: Oh, yes. When is Rosh Hashanah this year?

12 PROSPECTIVE JUROR #111: It starts Wednesday night and goes through  
13 Friday night.

14 THE COURT: Okay. And what are your responsibilities? I know it doesn't  
15 start till sundown and we'll be out of here before then.

16 PROSPECTIVE JUROR #111: Right. Well, I'm a congregant at Midbar  
17 Kodesh.

18 THE COURT: Okay. And as a congregant do you have special duties that  
19 you'll have to --

20 PROSPECTIVE JUROR #111: Well, just religious obligations to worship at  
21 that time of year.

22 THE COURT: Okay. And are the services -- the services are during the day  
23 for one day, is that right?

24 PROSPECTIVE JUROR #111: Well, two days.

25 THE COURT: Two days. Okay.

1 All right. Do we have any other folks that -- okay. All right. Good. Let  
2 me just write your last name down here.

3 And was there anyone else -- thank you, sir. Anybody else back here?

4 PROSPECTIVE JUROR #124: 0124, Donald Roberts.

5 THE COURT: Okay. Mr. Roberts.

6 PROSPECTIVE JUROR #124: My wife and I are actually moving and we're  
7 flying to Oklahoma City this weekend to look for a home. And then I also work out of  
8 state, so I'm flying straight from there to Richmond, Virginia for the week and then  
9 from there to Alaska.

10 THE COURT: And then Alaska, did you say?

11 PROSPECTIVE JUROR #124: Yes, ma'am.

12 THE COURT: Oh, my goodness. You're all over the place.

13 PROSPECTIVE JUROR #124: Yes, ma'am.

14 THE COURT: All right. So when are you leaving?

15 PROSPECTIVE JUROR #124: Friday.

16 THE COURT: So you're moving to Virginia?

17 PROSPECTIVE JUROR #124: No, Oklahoma City.

18 THE COURT: Oklahoma City; okay.

19 All right. Thank you. I've got that.

20 PROSPECTIVE JUROR #125: Brenda Diaz, 1 -- it's 03 -- wait. Sorry. 125.

21 THE COURT: I cannot hear you at all.

22 THE MARSHAL: Brenda, can you do me a favor and stand up, please.

23 PROSPECTIVE JUROR #125: I'm Brenda Diaz, 0125.

24 THE COURT: Okay. Ms. Diaz, tell me what your issue is?

25 PROSPECTIVE JUROR #125: I just had someone that died yesterday.

1 THE COURT: Oh, I'm sorry.

2 PROSPECTIVE JUROR #125: Yeah. And we're actually doing a whole week  
3 of fundraisers for him and I'm in charge, so I really can't be here.

4 THE COURT: Okay. Thank you.

5 And there were some other folks here in the front.

6 THE COURT CLERK: Did you excuse her?

7 THE COURT: No, I did not -- didn't excuse her yet.

8 THE MARSHAL: No, Your Honor. I think she's stepping out --

9 THE COURT: Oh, okay.

10 THE MARSHAL: -- just to gather herself.

11 THE COURT: Just step out. Okay.

12 PROSPECTIVE JUROR #132: I'm also -- I'm 0132. And I planned on -- my  
13 name's Stanley and I planned on leaving for Salt Lake tomorrow for the Jewish  
14 holidays, but if I can't go, I can't go, you know, so --

15 THE COURT: All right. Okay. All right. Thank you.

16 Is that it then for the -- everyone? All right.

17 Just hang on to that microphone --

18 PROSPECTIVE JUROR #132: Okay.

19 THE COURT: -- until Mr. Crank gets back.

20 Did I get everybody?

21 Okay. Counsel, approach.

22 [Bench conference -- not recorded]

23 THE COURT: I'm going to read off the names of the persons who will be  
24 excused. These folks will have to go over to the jury commissioner and let them  
25 know that you'll have to serve another time. Of course, if you're leaving the state



1 permanently you won't get -- you won't be resident, you wouldn't be recall, but -- and  
2 the people whose names aren't call need to remain for now. Things may change,  
3 but for now you would need to remain.

4 So people that may go across and let the jury commissioner know that  
5 you're excused for today: Krystal Treadwell-Brass, Nelson Baggs --

6 THE COURT CLERK: Okay.

7 THE COURT: Okay. So Krystal Treadwell-Brass is 065; Nelson Baggs, 072;  
8 Melissa Hawkes, 074; Yoahna Newell, 080; Cohn O'Donnell, 095; Austin McKena,  
9 0100; Robert Bronstein, 0111; Donald Roberts, 0124; Brenda Diaz, 0125 and  
10 Stanley Weiner, 0132.

11 All right. If I called your name you should be standing up. All right.  
12 Thank you very much.

13 All right. And we'll call the next in order to fill in the box.

14 THE COURT CLERK: To fill seat number 7 is Jade Kulka, badge 73. And to  
15 fill seat number 12 will be Katarina Tadich.

16 THE COURT: All right. Thank you.

17 Now the next question I have is whether is anyone who feels that they  
18 cannot serve for reasons that they believe they can't be fair and impartial or for any  
19 other reason, like language problem. Unless you stood up and talked about a  
20 language problem in the last go around, I don't need to hear that again. But if you  
21 have concerns about language, you have -- something about this case makes you  
22 think that you could not be fair and impartial, for any reason whatever it is. Do we  
23 have anyone that feels that they can't serve? All right. The record will reflect a  
24 negative -- whoops.

25 THE MARSHAL: One response, Your Honor.

1 THE COURT: Oh, okay. One response.

2 THE MARSHAL: Ma'am, if you would please stand.

3 PROSPECTIVE JUROR #122: Yes.

4 THE MARSHAL: Last four digits of your badge please facing the podium.

5 PROSPECTIVE JUROR #122: Is there any possible way that I could speak  
6 to her privately?

7 THE MARSHAL: As far as what?

8 PROSPECTIVE JUROR #122: To tell her my [indiscernible] privately.

9 THE MARSHAL: Have a seat and let me approach the Judge.

10 Your Honor --

11 [Bench conference -- not recorded]

12 THE MARSHAL: Ma'am, please step forward.

13 THE COURT RECORDER: And which badge number?

14 PROSPECTIVE JUROR #122: 0122.

15 [Bench conference -- not recorded]

16 THE COURT: Counsel, approach.

17 [Bench conference -- not recorded]

18 THE COURT: Ms. Chanos, you're excused. Please go across and let the  
19 jury commissioner know that you need to be reassigned to a different type of case.

20 PROSPECTIVE JUROR #122: Okay.

21 THE COURT: Maybe a civil case. I'm sure we have some of those going.

22 Were there any other? All right.

23 Okay. All right. So now some of these next questions are going to be  
24 just directed at the folks that are seated in the box. And then as we fill in, if we lose  
25 people from the box, we'll be asking you these questions later, but these are just

1 directed to the people that are sitting in the jury box and again you respond by a  
2 show of hands, just the folks in the box.

3 Has anyone in the box ever served as a juror before?

4 All right. So on the top row we'll start. Your badge number and name.

5 PROSPECTIVE JUROR #058: 0058, Terrance Koepke.

6 THE COURT: All right. When you served as a juror was that here in Clark  
7 County?

8 PROSPECTIVE JUROR #058: No, ma'am.

9 THE COURT: Where was that?

10 PROSPECTIVE JUROR #058: San Diego County.

11 THE COURT: How long ago was that?

12 PROSPECTIVE JUROR #058: Eight years ago.

13 THE COURT: Was it a civil case or a criminal case?

14 PROSPECTIVE JUROR #058: Criminal.

15 THE COURT: And without telling us what the verdict was, did the jury reach a  
16 verdict?

17 PROSPECTIVE JUROR #058: Yes, ma'am.

18 THE COURT: Were you the foreperson of the jury?

19 PROSPECTIVE JUROR #058: No, ma'am.

20 THE COURT: All right. Thank you.

21 All right. Your badge number and name again.

22 PROSPECTIVE JUROR #070: 0070, Phoebe Cooper.

23 THE COURT: Ms. Cooper, your jury service was that here in Clark County?

24 PROSPECTIVE JUROR #070: No, it was in San Francisco.

25 THE COURT: And how long ago?

1 PROSPECTIVE JUROR #070: About three -- three years ago.  
2 THE COURT: Was that a criminal case or a civil case?  
3 PROSPECTIVE JUROR #070: Criminal.  
4 THE COURT: And without telling us what the verdict was did the jury reach a  
5 verdict?  
6 PROSPECTIVE JUROR #070: Yes.  
7 THE COURT: Were you the foreperson?  
8 PROSPECTIVE JUROR #070: No.  
9 THE COURT: Anything about that experience that would make you feel you  
10 could not be fair and impartial in this case?  
11 PROSPECTIVE JUROR #070: No.  
12 THE COURT: All right. Thank you. And I think your seatmate there --  
13 All right. Ma'am, would you give your name and your badge number.  
14 PROSPECTIVE JUROR #075: 0075, Katarina Tadich.  
15 THE COURT: Ms. Tadich, what -- did you serve here in Clark County?  
16 PROSPECTIVE JUROR #075: No, in New York County.  
17 THE COURT: In New York -- the state of New York?  
18 PROSPECTIVE JUROR #075: New York City --  
19 THE COURT: Okay.  
20 PROSPECTIVE JUROR #075: -- in 2011.  
21 THE COURT: All right. Was that a criminal case or civil?  
22 PROSPECTIVE JUROR #075: Civil.  
23 THE COURT: Without telling us what the verdict was did the jury reach a  
24 verdict?  
25 PROSPECTIVE JUROR #075: Yes.

1 THE COURT: And were you the foreperson?

2 PROSPECTIVE JUROR #075: No.

3 THE COURT: Now you understand that the burden of proof in a criminal case

4 is different than in a civil case?

5 PROSPECTIVE JUROR #075: Yes.

6 THE COURT: And so you'll be able to follow the law and disregard what you

7 heard about the burden of proof in your civil case and apply the law as I instruct you

8 in this case?

9 PROSPECTIVE JUROR #075: Yes, I understand.

10 THE COURT: All right. Anything about that experience that made you think I

11 never want to be on a jury again or --

12 PROSPECTIVE JUROR #075: No.

13 THE COURT: -- anything problematic? All right. Thank you.

14 Okay. All right. Is there anyone seated in the box whose ever been in

15 law enforcement? Anyone has a family member or a very close friend that's in law

16 enforcement? All right. We'll start at the top.

17 PROSPECTIVE JUROR #054: 0054, Ivis Kam-Pamintuan. My brother-in-law

18 is a Metro officer.

19 THE COURT: All right. What -- what's his job? What's he's assigned to, do

20 you know?

21 PROSPECTIVE JUROR #054: He's in the patrol car over in the northwest

22 area.

23 THE COURT: Okay. Do you speak to him about his work?

24 PROSPECTIVE JUROR #054: On and off. Not often, but we do.

25 THE COURT: All right. You're going to need to speak up a little bit. I think

1 my court recorder's having trouble.

2 PROSPECTIVE JUROR #054: I said on and off we do.

3 THE COURT: All right. So obviously there may be police officers who testify  
4 in this case. And would you tend to give the testimony of a police officer greater  
5 weight or credibility merely because that person was a police officer, for no other  
6 reason, and in disregard of their -- of what they were saying?

7 PROSPECTIVE JUROR #054: No.

8 THE COURT: Okay. So you have the ability then to weigh each witness'  
9 testimony with all of the evidence and give it the weight or credence it deserves?

10 PROSPECTIVE JUROR #054: Yes.

11 THE COURT: All right. Any reason you feel you could not be fair and  
12 impartial because of this relationship with your brother?

13 PROSPECTIVE JUROR #054: No.

14 THE COURT: All right. Thank you.

15 Who is -- anybody else on the top row law enforcement? No. Second  
16 row?

17 PROSPECTIVE JUROR #062: 0062, Kathryn Schwendemann. My very  
18 close, her son is a law enforcement officer, so --

19 THE COURT: Here in Clark County?

20 PROSPECTIVE JUROR #062: Yes.

21 THE COURT: All right. With what department?

22 PROSPECTIVE JUROR #062: You know, I don't know.

23 THE COURT: Okay. So you probably don't speak to him about his work?

24 PROSPECTIVE JUROR #062: Oh, no.

25 THE COURT: How about --

1 PROSPECTIVE JUROR #062: We just get fun.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR #062: That's it.

4 THE COURT: And how about her? Do you ever talk to him -- or her about  
5 her son's work?

6 PROSPECTIVE JUROR #062: Oh, no.

7 THE COURT: Okay. So any reason you could not be fair and impartial --

8 PROSPECTIVE JUROR #062: No.

9 THE COURT: -- due to that relationship?

10 PROSPECTIVE JUROR #062: No, reason.

11 THE COURT: All right. Thank you.

12 PROSPECTIVE JUROR #062: All right.

13 THE COURT: Want to hand it over?

14 PROSPECTIVE JUROR #073: 0073, Jade Kulka. It's just -- it's like -- not  
15 blood blood, but my stepfather's brother's kid --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR #073: -- with Metro.

18 THE COURT: Yeah. I have a stepfather's brother's -- it's like I'm my own  
19 grandpa. All right. I get the -- you know, with step relationships they can be very  
20 close. So do you ever speak to him about his work?

21 PROSPECTIVE JUROR #073: No.

22 THE COURT: So you don't really -- do you have a relationship with the law  
23 enforcement officer, his or herself -- that person?

24 PROSPECTIVE JUROR #073: We get together at Christmas. You know,  
25 holidays, stuff like that, but --

1 THE COURT: Okay. All right. Any reason you could not be fair and impartial  
2 as a result of that relationship?

3 PROSPECTIVE JUROR #073: No.

4 THE COURT: All right. Thank you.

5 PROSPECTIVE JUROR #067: 067, James Wood. Two of my best friends  
6 are retired law enforcement. One medically retired and my wife was -- is a retired  
7 corrections officer.

8 THE COURT: All right. And were these officers that are retired, were they  
9 here -- Metro or --

10 PROSPECTIVE JUROR #067: No.

11 THE COURT: -- one of the police departments?

12 PROSPECTIVE JUROR #067: No.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR #067: In California.

15 THE COURT: In California.

16 PROSPECTIVE JUROR #067: But they live here now.

17 THE COURT: Okay. How about your wife? Was she a corrections officer  
18 here or --

19 PROSPECTIVE JUROR #067: In California.

20 THE COURT: In California too. Oh, okay; so everybody in California. So  
21 you're -- you moved here after retirement?

22 PROSPECTIVE JUROR #067: Yeah, we -- I moved here about nine years  
23 ago after I retired.

24 THE COURT: All right. As a result of those relationships with some close  
25 friends, do you feel that you would give more weight or credibility to a police officer's



1 testimony merely because they were a police officer but for no other reason?

2 PROSPECTIVE JUROR #067: More likely to believe a police officer than not.

3 THE COURT: Would you be able though to listen to what they were saying,  
4 and if it didn't seem to be credible would you still say, well, I don't care what they  
5 say. Whatever they say it must be true?

6 PROSPECTIVE JUROR #067: [Indiscernible] as to whether it's actual truth or  
7 not.

8 THE COURT: Okay. Well, you would have to judge that by listening to all the  
9 testimony and looking at all the evidence?

10 PROSPECTIVE JUROR #067: Sure.

11 THE COURT: All right.

12 PROSPECTIVE JUROR #067: Because anybody could say something that  
13 they say is the truth and it's not.

14 THE COURT: All right. Exactly. So do you feel that you could be fair and  
15 impartial then in this case?

16 PROSPECTIVE JUROR #067: Sure.

17 THE COURT: All right. Thank you.

18 PROSPECTIVE JUROR #070: Hi. 0070, Phoebe Cooper. My parents are  
19 both retired juvenile probation officers.

20 THE COURT: Okay. Out of a different state?

21 PROSPECTIVE JUROR #070: Clark County.

22 THE COURT: Clark County. Oh, okay. And I suppose you heard them  
23 speak of their work over the years. Were they always juvenile?

24 PROSPECTIVE JUROR #070: Yes.

25 THE COURT: Okay. So they never dealt with adult offenders?

1 PROSPECTIVE JUROR #070: No.

2 THE COURT: Okay. And, of course, they dealt with people who'd already  
3 been placed on probation and therefore a finding made of guilt?

4 PROSPECTIVE JUROR #070: Yeah, my mom was kind of an investigator  
5 and she did other things in that realm.

6 THE COURT: Okay. So do you feel that you could be fair and impartial as a  
7 result of that relationship?

8 PROSPECTIVE JUROR #070: Yes.

9 THE COURT: So you wouldn't tend to give the weight of a police officer more  
10 -- or the testimony of a police officer more weight just because that person's a police  
11 officer without considering the other evidence?

12 PROSPECTIVE JUROR #070: No.

13 THE COURT: Okay. All right. Thank you.

14 Okay. Has anyone in the box ever been the victim of a crime? So only  
15 one person's ever had their car stolen, purse or wallet stolen -- anything stolen from  
16 them? So now -- let's see the show of hands now. Okay. Okay.

17 All right. But now -- before I go into it, is there any of you who raised  
18 your hands who feel -- because, you know, there are certain crimes that are  
19 considered violent crimes and certain crimes that are considered non-violent crimes.  
20 Those of you who raised your hand to say you were victims of crime, have any of  
21 you been the victims of a violent crimes? Okay.

22 Is there anyone of you who raised your hand who feels that because of  
23 this non-violent crime that they were a victim of that they could not be fair and  
24 impartial in this case? Okay. So, to those last two questions a negative response.

25 Is there anyone who raised their hand about being a victim of a crime

1 who feels that the police did not do a good enough job to solve that crime and has  
2 hard feelings about it? The record will reflect a negative response. All right. Thank  
3 you.

4 Is there anyone who has had a family member or close friend been the  
5 victim of a violent crime? All right. So juror -- spot number 2. Again, give me your  
6 name and badge number.

7 PROSPECTIVE JUROR #054: 0054, Ivis Kam-Pamintuan. Just recently, in  
8 May, we had a close family member, Shauna [phonetic], that was killed in her home.  
9 And I believe that that is -- was on trial in the beginning of late July, early August.

10 THE COURT: Okay. And that happened here? This is --

11 PROSPECTIVE JUROR #054: That happened here in Vegas.

12 THE COURT: In Vegas. All right. And this was a close friend of yours?

13 PROSPECTIVE JUROR #054: It was a family friend.

14 THE COURT: Family friend. Okay. As a result of that do you feel that you  
15 could not be fair and impartial in this case?

16 PROSPECTIVE JUROR #054: No.

17 THE COURT: You feel that you could be fair and impartial. All right. So you  
18 could set aside your feelings about what happened and compartmentalize that and  
19 not bring it to this case?

20 PROSPECTIVE JUROR #054: Yes.

21 THE COURT: All right. Thank you.

22 Did we have anybody else in the top row? No. Next row. Second row,  
23 family member or close friend --

24 PROSPECTIVE JUROR #073: 0073 --

25 THE COURT: Yes.

1 PROSPECTIVE JUROR #073: -- Jade Kulka. My brother was killed. A guy  
2 chased him down and ran him over on the highway. And I had a problem with the  
3 judicial system because the guy that ran him over claimed he was crazy or  
4 something and went to a hospital for two years instead of getting jail time, so --

5 THE COURT: Okay. And did that happen here in our --

6 PROSPECTIVE JUROR #073: No, in California. But --

7 THE COURT: In California.

8 PROSPECTIVE JUROR #073: -- his parents were very wealthy so I have a  
9 problem with that because I think, you know, money has a lot to do with it.

10 THE COURT: Okay. Do you feel that you could set your feelings aside for  
11 this case and look at the evidence in this case and be fair and impartial?

12 PROSPECTIVE JUROR #073: Well, yeah.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR #073: I guess. Yeah.

15 THE COURT: All right. Thank you.

16 PROSPECTIVE JUROR #066: 0066, Robert Soncini. A girl I'm in a  
17 relationship with now, she was a victim of domestic violence. And when she left that  
18 relationship she moved in with me as a shelter [indiscernible].

19 THE COURT: All right. Anything about that experience that makes you feel  
20 that you could not be fair and impartial in this case?

21 PROSPECTIVE JUROR #066: No, Your Honor.

22 THE COURT: All right. Thank you.

23 And did we have -- Ms. Cooper.

24 PROSPECTIVE JUROR #070: 0070, Phoebe Cooper. I had a close friend  
25 that I'm not no longer in close contact with. About five years ago who was --

1 someone broke into her home and raped her.

2 THE COURT: Was that here in Clark County?

3 PROSPECTIVE JUROR #070: No, it was in Sacramento.

4 THE COURT: Sacramento; okay. Any reason from that experience and in  
5 speaking with her about that that you could not be fair and impartial in this case?

6 PROSPECTIVE JUROR #070: No.

7 THE COURT: All right. Thank you.

8 All right. So is there is anyone sitting in the box who has been accused  
9 of a crime? The record will reflect a negative -- oh, top row. Okay.

10 PROSPECTIVE JUROR #056: 0056 --

11 THE COURT: All right. And --

12 PROSPECTIVE JUROR #056: -- Alberto Estremera.

13 THE COURT: I'm sorry?

14 PROSPECTIVE JUROR #056: Alberto Estremera.

15 THE COURT: Oh. Thank you.

16 And, sir, you said you've accused of a crime. What was that?

17 PROSPECTIVE JUROR #056: Bank robbery.

18 THE COURT: Okay. Was that -- when was that?

19 PROSPECTIVE JUROR #056: I was -- about 22 years ago.

20 THE COURT: All right. And --

21 PROSPECTIVE JUROR #056: Well, more than that. I'm sorry.

22 THE COURT: I'm sorry?

23 PROSPECTIVE JUROR #056: More than 20 -- over 20 years ago.

24 THE COURT: Over 20 years. All right. And what was the result of that?

25 Were you tried or --

1 PROSPECTIVE JUROR #056: I wasn't indicted.

2 THE COURT: You were not indicated; okay.

3 PROSPECTIVE JUROR #056: No.

4 THE COURT: So there was a possibility at some point and then they decided  
5 that they would not indict you. Is that correct?

6 PROSPECTIVE JUROR #056: Right.

7 THE COURT: Okay. Do you have hard feelings against law enforcement  
8 because of that experience?

9 PROSPECTIVE JUROR #056: Oh, yeah. That and more.

10 THE COURT: Okay. What more?

11 PROSPECTIVE JUROR #056: Excuse me?

12 THE COURT: You said that and more.

13 PROSPECTIVE JUROR #056: Yes.

14 THE COURT: What by -- what do you mean by that?

15 PROSPECTIVE JUROR #056: Well, the treatment that I went through with  
16 the FBI.

17 THE COURT: Okay. So you felt that they -- did you feel that they didn't  
18 investigate the matter properly?

19 PROSPECTIVE JUROR #056: No. I just think they treated me wrong.

20 THE COURT: Okay. And why was that?

21 PROSPECTIVE JUROR #056: Well, they used to go to my sister-in-law's  
22 house when they -- when they were looking for my brother because he was also  
23 charged.

24 THE COURT: I see.

25 PROSPECTIVE JUROR #056: And they would -- they would basically break

1 into her house and disrupt the whole house. Throw -- take -- take food from the  
2 kitchen throw it all over the place and stuff like that.

3 THE COURT: Where did this happen? What city?

4 PROSPECTIVE JUROR #056: New York City.

5 THE COURT: Okay. And they didn't have a warrant to come and search the  
6 house?

7 PROSPECTIVE JUROR #056: No.

8 THE COURT: Okay. Well, that would be very disturbing indeed.

9 PROSPECTIVE JUROR #056: Mm-hmm.

10 THE COURT: Do you feel that that would affect your ability to be fair and  
11 impartial in this case?

12 PROSPECTIVE JUROR #056: Oh, well of course.

13 THE COURT: Okay. So you -- before though -- in answer to the question,  
14 was there any reason you felt any -- for any reason you couldn't serve, you didn't  
15 say yes. So you feel that -- I mean, we need fair and impartial jurors.

16 PROSPECTIVE JUROR #056: Exactly.

17 THE COURT: If you don't feel that you could be fair and impartial to both  
18 sides then that would be a problem.

19 PROSPECTIVE JUROR #056: Correct.

20 THE COURT: So you don't feel that you could be fair to both sides?

21 PROSPECTIVE JUROR #056: Well, I could try.

22 THE COURT: Okay. Well, you're the only one who can really search your  
23 mind and tell us whether you think that you could successful at that. So do you feel  
24 that you would be -- you would not be able to be to the State because of your bad  
25 experience with law enforcement?

1 PROSPECTIVE JUROR #056: Probably.

2 THE COURT: All right.

3 PROSPECTIVE JUROR #056: Just trying to be fair.

4 THE COURT: Okay.

5 Does -- would the State and defense like to inquire further on this -- his  
6 issue at this time?

7 MR. SCOW: If I may, Judge.

8 THE COURT: Yes.

9 MR. SCOW: You said the FBI was involved, but I was just curious about how  
10 it was that you were one of the ones that was accused. You were never indicted,  
11 but did -- did a witness point you out? Were you arrested at the bank or how did  
12 that come about?

13 PROSPECTIVE JUROR #056: No. Supposedly my brother was involved and  
14 they used my vehicle in the robbery.

15 MR. SCOW: So the license plate --

16 PROSPECTIVE JUROR #056: So they thought I was the driver.

17 MR. SCOW: Okay. So the car was tied back to you. And the house that was  
18 tossed, were you and your brother living together when the police came in and was  
19 throwing food around?

20 PROSPECTIVE JUROR #056: No.

21 MR. SCOW: Was that his house or yours?

22 PROSPECTIVE JUROR #056: His house.

23 MR. SCOW: His house. And you said you would try to be fair, but you also  
24 said that you probably wouldn't be fair and you're just trying to be honest, which we  
25 appreciate. If we call witnesses that happen to be police officers is what happened



1 to you something that you would hold against them and -- before you even hear a  
2 word out of their mouth or do you think, you know, they did me wrong 22 years ago  
3 and so I'm going to listen to you with some skepticism?

4 PROSPECTIVE JUROR #056: No. I'm gonna listen, but I -- I don't know if  
5 I'm gonna believe it all.

6 MR. SCOW: Okay. So you don't think you would be fair?

7 PROSPECTIVE JUROR #056: I'll try to be as fair as I can --

8 MR. SCOW: Because that's what we're asking.

9 PROSPECTIVE JUROR #056: -- based on my experience.

10 MR. SCOW: Right. And that's why we have this process so that -- you know,  
11 voir dire translated loosely means to tell the truth. So we don't mean to pry into  
12 these incidents and bring up negative feelings. We just want to make sure that we  
13 get jurors that are fair to the State, fair to the defense, and so that's why I'm asking  
14 these follow-up questions.

15 PROSPECTIVE JUROR #056: Right.

16 MR. SCOW: Court's indulgence.

17 Judge, we'll motion for cause at this time.

18 THE COURT: Traverse?

19 MR. POSIN: Thank you, Your Honor.

20 Mr. Estremera, you said you'll try to be fair; right?

21 PROSPECTIVE JUROR #056: Yes.

22 MR. POSIN: And we all have experiences that inform our analysis of anything  
23 that we see; right?

24 PROSPECTIVE JUROR #056: Right.

25 MR. POSIN: And every one of us in this room has some sort of biases, don't

1 -- at least I think we probably do; right? And part of the job of a jury is to set aside  
2 those biases and look at the facts that are presented; would you agree with that?

3 PROSPECTIVE JUROR #056: Yes.

4 MR. POSIN: So, based on that, do you think that even though you might  
5 have some biases that you could set aside those biases and view the evidence  
6 that's presented and the arguments that are made by both sides and come to a fair  
7 conclusion?

8 PROSPECTIVE JUROR #056: Yes, I could try.

9 MR. POSIN: Okay. Thank you.

10 THE COURT: All right. Thank you.

11 Now, sir, have you ever had any positive experience with law  
12 enforcement in the intervening 20 some years?

13 PROSPECTIVE JUROR #056: Oh, yes.

14 THE COURT: Okay. And so -- how about have you had positive experience  
15 with law enforcement here in Clark County?

16 PROSPECTIVE JUROR #056: Yes.

17 THE COURT: All right. So, basically, there are some good apples and some  
18 bad apples?

19 PROSPECTIVE JUROR #056: Correct.

20 THE COURT: All right. So like anything else -- and would you be able to then  
21 listen to the testimony of each witness, including police officers or law enforcement  
22 officers, as well as other people, and look at all -- the totality of the evidence in trying  
23 to determine whether you should believe that witness?

24 PROSPECTIVE JUROR #056: Yes.

25 THE COURT: All right. All right. The challenge for cause is denied.

1 All right. Anyone else who was accused of a crime? All right.

2 PROSPECTIVE JUROR #066: 0066, Robert Soncini. December '99, assault  
3 and assault with a dangerous weapon.

4 THE COURT: Okay. And was that here?

5 PROSPECTIVE JUROR #066: No, Berkshire County, Massachusetts.

6 THE COURT: What was the result of that?

7 PROSPECTIVE JUROR #066: I pleaded no contest, probation and  
8 dismissed.

9 THE COURT: Okay. Did you feel that you were treated fairly by the system?

10 PROSPECTIVE JUROR #066: Yes, Your Honor.

11 THE COURT: And did you plead guilty because in fact you were guilty and  
12 that's the reason --

13 PROSPECTIVE JUROR #066: Yes, Your Honor.

14 THE COURT: -- or no contest?

15 PROSPECTIVE JUROR #066: Yes, Your Honor.

16 THE COURT: Okay. And anything about that experience where you feel like  
17 I just could not be fair and impartial in this case?

18 PROSPECTIVE JUROR #066: No, Your Honor.

19 THE COURT: Okay. All right. Thank you.

20 Anyone sitting in the box that has someone -- a close friend or family  
21 member who was accused of a criminal -- and not to repeat your brother's incident,  
22 but anyone else? All right.

23 PROSPECTIVE JUROR #053: Five or six years ago a coworker was  
24 accused of a crime and actually convicted.

25 THE COURT: Convicted of the crime?

1 PROSPECTIVE JUROR #053: Yes.

2 THE COURT: All right. What kind of crime was it?

3 PROSPECTIVE JUROR #053: Statutory rape of his stepdaughter.

4 THE COURT: Oh, okay. Did you know this person well or was this just a  
5 coworker?

6 PROSPECTIVE JUROR #053: I knew him fairly well.

7 THE COURT: Did you socialize with him outside of work?

8 PROSPECTIVE JUROR #053: Occasionally.

9 THE COURT: Did you feel that he was treated fairly by the system?

10 PROSPECTIVE JUROR #053: Yes.

11 THE COURT: Okay. Anything about that experience that would cause you to  
12 think you could not be fair and impartial in this case?

13 PROSPECTIVE JUROR #053: No.

14 THE COURT: All right. Thank you.

15 And right in front of you. Yes.

16 PROSPECTIVE JUROR #062: Yes. I've got a brother-in-law --

17 THE COURT: Your name and badge number again --

18 PROSPECTIVE JUROR #062: Oh, okay.

19 THE COURT: -- just for the record.

20 PROSPECTIVE JUROR #062: 0062, Kathryn Schwendemann.

21 THE COURT: Thank you.

22 PROSPECTIVE JUROR #062: Brother-in-law who -- I guess you would say  
23 he's a little mental -- or a lot. His divorced wife, he went to the house and bible in  
24 one hand and gun in the other and they scuffled, the gun went off. Nobody was  
25 killed, but he was put in a mental home and so that's pretty much --

1 THE COURT: His story --

2 PROSPECTIVE JUROR #062: -- with him -- that -- in fact, that's why we went  
3 back to get the in-laws.

4 THE COURT: Okay. All right. Do you -- anything about that that makes you  
5 think you could not be fair and impartial in this case?

6 PROSPECTIVE JUROR #062: No.

7 THE COURT: All right. Thank you.

8 And -- okay. All right. It's almost 11 o'clock. How's everybody doing?  
9 Anybody need a break -- a restroom break? All right. So -- and don't be shy about  
10 that. If you need a break and I've lost track of time -- because sometimes I've been  
11 accused of being a camel and so just let the marshal know. I try and care for you,  
12 but sometimes I go later than I should.

13 So we're going to take a brief recess. Now I'm going to read to you an  
14 admonishment that I have to read every time we take a break. Also, I want to tell  
15 you, since this will be the first occasion that you may be out in the halls and  
16 encounter counsel, is that the ethical rules preclude the lawyers or court staff,  
17 except for our marshal, from speaking to you until after the case is fully over. So  
18 please don't try and engage them in conversation because they'll have to ignore  
19 you. And then they'll feel really bad because they'll think you think that they're rude  
20 and obnoxious when really they're not. They're very delightful gentlemen and my  
21 court staff are wonderful, but they're just not allowed to do that. So please don't  
22 make them feel bad by trying to engage them in conversation or, you know,  
23 greetings. After the case is over you could speak with them.

24 And this admonishment is again -- you'll learn to love to hear it. Ladies  
25 and gentlemen, we're going to take a ten minute recess. During this recess it is

1 your duty not to converse among yourselves or with anyone on any subject  
2 connected with the trial, or to read, watch or listen to any report of or commentary on  
3 the trial by any person connected with the trial or by any medium of information,  
4 including without limitation, newspaper, television, radio or internet, and you are not  
5 to form or express an opinion on any subject connected with this case until it is  
6 finally submitted to you.

7 We'll be in recess for ten minutes.

8 THE MARSHAL: All rise. This court is in recess. Ladies and gentlemen in  
9 the box first, please.

10 [Outside the presence of the prospective jury panel]

11 THE COURT: All right. The record will reflect the venire panel has left the  
12 courtroom.

13 Are there any matters outside the presence?

14 MR. HAMNER: No, Your Honor.

15 MR. SCOW: No, Judge.

16 MR. POSIN: Your Honor, just one thing I was thinking of. I have a law clerk  
17 -- an intern who's starting his second year at UNLV law school. And he, you know,  
18 hopefully will be available for part of the trial. I'm hoping the Court will allow him to  
19 sit here at counsel table?

20 THE COURT: I don't let people that aren't admitted to the bar sit at counsel  
21 table --

22 MR. POSIN: Okay.

23 THE COURT: -- but he can certainly sit behind you.

24 MR. POSIN: All right.

25 THE COURT: And also, do we know, did this matter get any media

1 coverage?

2 MR. POSIN: Not that I'm aware of.

3 MR. HAMNER: Not that I'm aware of.

4 MR. SCOW: I don't think so.

5 MR. HAMNER: No, Your Honor.

6 THE COURT: Okay. So I usually don't ask if I don't think there was any  
7 media coverage because then they start like inventing --

8 MR. POSIN: Right.

9 THE COURT: -- things. But I can still ask them, I suppose, just in case. I  
10 wouldn't want them to confuse it with another incident if there was one.

11 All right. Thank you.

12 MR. POSIN: Thank you, Your Honor.

13 MR. HAMNER: Thank you, Your Honor.

14 MR. SCOW: Thank you.

15 [Recess taken at 11:00 a.m.]

16 [Proceedings resumed at 11:13 a.m.]

17 [In the presence of the prospective jury panel]

18 THE MARSHAL: Your Honor.

19 THE COURT: Thank you. Please be seated.

20 Okay. The record will reflect that we are back again in the presence of  
21 the venire panel. The Defendant is present with his counsel, as are the deputy  
22 district attorneys prosecuting the case, and all officers of the court. Will counsel so  
23 stipulate?

24 MR. POSIN: Yes, Your Honor.

25 MR. SCOW: Yes, Judge.

1 MR. HAMNER: Yes, Your Honor.

2 THE COURT: Okay. Ladies and gentlemen, as you know, our system of  
3 justice has a very important -- you know, right to trial by jury, obviously, but also an  
4 important component is the presumption of innocence. And, of course, that means  
5 that unless and until the State proves beyond a reasonable doubt otherwise that a  
6 defendant accused of a crime is presumed to be innocent. Is there anyone who  
7 disagrees with that concept of our law sitting in the box? The record will reflect a  
8 negative response.

9 Is there anyone who feels that a defendant should be required to tell his  
10 or her side of the story in a criminal case? The record will reflect a negative  
11 response. Of course, a defendant is not compelled to call any witness or testify on  
12 his or her own behalf. That is also protected by our constitution -- the Fifth  
13 Amendment. And is there anyone who disagrees with the precepts or the concept  
14 of that you don't have to, as a criminal defendant, prove that you are not guilty? All  
15 right. The record will reflect a negative response.

16 Now at the end of all of the evidence that will be submitted the Court  
17 will instruct you on the law, and this is done with written instructions. Sometimes the  
18 law is something other than what a person thinks it should be. Is there anyone who  
19 feels that they would be unable to follow the instructions of the Court, even if they  
20 felt that the law should be something other than what it is? All right. The record will  
21 reflect a negative response.

22 Let's see. Is there anyone sitting on the jury panel who feels either by  
23 religious -- has religious reasons or other moral reasons or personal belief reasons  
24 that makes them feel that they cannot sit in judgment on another person? All right.  
25 The record will reflect a negative response.



1           Okay. Is there anyone that's sitting in the box right now for any other  
2 reason I haven't already asked you about feels that -- could not be fair and impartial  
3 in this case? The record will reflect a negative response.

4           All right. Here's my next part of the voir dire. This is my favorite part  
5 because I get to ask you about yourselves and I get to find out kind of about you.  
6 And it's my favorite part because people have really fascinating lives and they've  
7 done really exciting things in their careers and -- or they have kids that do fabulous  
8 things, and I'm in awe of it, and so I always enjoy this. So I'm going to ask you a  
9 really open-ended question. By this I do not want your life story starting from high  
10 school, but I want you to cover these topics. So when I say to you, tell me about  
11 yourself, what I'd like you tell me is how long you lived in Clark County, are you  
12 married, single, divorced, significant other, partner, what you do for a living or if  
13 you're retired or you're currently unemployed what you did for a living in the past. If  
14 you're -- if you haven't lived a, you know, lengthy time in -- here in Clark County  
15 where you lived before. And if you have adult children what they do for a living. If  
16 you have wife, significant other, husband, partner, et cetera, then what that person  
17 does for a living. And don't worry that if you think you can't remember all of this  
18 because I'll prompt you and I'll ask follow-up questions as we go through this. And  
19 then when I finish asking you the individual questions then the lawyers will ask you  
20 questions too. Now they know not to repeat the same questions that I've asked, but  
21 they have their own questions. And all of this is just geared for us to kind of get to  
22 know who you are as people so in choosing who we want to be on the jury, who can  
23 be fair and impartial and what type of life experience the jurors are bringing to the  
24 table.

25           All right. So we'll start as always at the top there in seat number 1 and

1 again you'll give me your name and your badge number for the record because we  
2 record everything that's said and then I'd ask you to tell me about yourself.

3 PROSPECTIVE JUROR #053: My badge number is 053. My name is  
4 William Alford and I lived in Las Vegas coming up on two years now. I'm a retired  
5 military officer. I was a pilot in the Air Force for 31 years in the Air National Guard. I  
6 have two adult sons. One is a dental student at UNLV and one is an actor in New  
7 York City. My wife, her job was taking care of me and the boys and she was also a  
8 travel agent for a period of time. And I think that covers about everything.

9 THE COURT: Okay. No. No, because --

10 PROSPECTIVE JUROR #053: No? I'm sorry.

11 THE COURT: -- I want to know --

12 PROSPECTIVE JUROR #053: I grew up in Columbus, Ohio.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR #053: I went to school at Ohio State University.  
15 While I was in the Air Force I traveled around and was stationed at Okinawa and  
16 various places throughout the country.

17 THE COURT: Okay. And what did you fly?

18 PROSPECTIVE JUROR #053: I started off flying F4s and F15s. Then I went  
19 to the International Guard in Ohio and flew KC-135s.

20 THE COURT: Okay. Now I'm not familiar with that aircraft. What does that --  
21 what's the mission of that one?

22 PROSPECTIVE JUROR #053: It refuels the other planes.

23 THE COURT: Oh, okay. In air refueling. My son is a Naval flight officer.

24 PROSPECTIVE JUROR #053: Good for him.

25 THE COURT: And so -- yes. And he flies the Growler.

1 PROSPECTIVE JUROR #053: Wow.

2 THE COURT: But I'm a pilot too, so I always have to ask what you fly. But  
3 that's very -- very interesting. And your son is actor and where is he doing this at?

4 PROSPECTIVE JUROR #053: In New York City.

5 THE COURT: In New York City. Has he gotten any jobs?

6 PROSPECTIVE JUROR #053: Yeah, nothing noteworthy.

7 THE COURT: And how does he support himself as a starving actor?

8 PROSPECTIVE JUROR #053: He works at a furniture store.

9 THE COURT: Okay.

10 PROSPECTIVE JUROR #053: Restoration Warehouse, that's what it's  
11 called --

12 THE COURT: Okay.

13 PROSPECTIVE JUROR #053: -- in New York City.

14 THE COURT: All right. Very good.

15 All right. Would the State like to inquire further?

16 MR. SCOW: Yes, if I may, Judge.

17 Now, I'll just ask a few question, but as I do just everyone -- I'll be  
18 following up with you as we get to each of you individually. Don't want to use too  
19 much time asking the same questions of every person then you get bored and think  
20 this guy just must like to talk and I don't. Trust me, ask my wife; she'll tell you I don't  
21 like to talk, but --

22 THE COURT: Oh, I just realized, counsel. I didn't do what I told you I was  
23 going to do beforehand. And so this is the time actually before we get into the  
24 individual questioning. Lawyers are going to ask you general questions as a group.  
25 Then we'll come back and we'll do my favorite part.

1 MR. SCOW: So I will be asking questions of the group. Now this is good.  
2 First, I want to know, because you've heard that this case the setting was at a  
3 church, is there any here that attends church regularly, semi-regularly, I guess, or  
4 even once a year? Just raise the hands. And I won't follow up right now, but I'll just  
5 make note because we will, as we go through each person -- is your hand up too?  
6 And as we're going through this and if you think to yourself, until we get to you  
7 individually -- the reason I ask is because this did happen at a church. I just want to  
8 know if anybody -- you know, if they happen to be a church goer if they would hold  
9 that against the Defendant like automatic strike one. I'm more likely to find you  
10 guilty because this happened at a church. I'm not going to ask for those answers  
11 now, but that's what I want you to think about as we go through the questions and  
12 then as the Judge starts asking questions again.

13 Does anybody here watch the TV shows that deal with crime scenes:  
14 CSI Miami, CSI Las Vegas, Law and Order, those type of shows? Seeing most of  
15 the hands, maybe I'll just write down the ones that didn't raise their hands. Not  
16 raised are five in the back and nine.

17 Did everybody -- those that did raise their hand, does everybody kind of  
18 distinguish what happens in the TV shows versus what happens in real life. They  
19 may use some things that happen in real life, but usually a crime isn't solved within  
20 30 minutes or an hour. You're looking at me kind of strange.

21 PROSPECTIVE JUROR #073: I'm kidding.

22 MR. SCOW: I know.

23 And -- but some of the techniques that they used, for example, one  
24 show there was a dead person and they took the eye and did a slice of the eye to try  
25 to see the last imagine that that eye saw for it died. But that can't happen. Anybody

1 want to see that happen in the courtroom? No. And then think about the purposes  
2 of some of the techniques they use: DNA, fingerprint. What are the purposes of  
3 using those sciences? When I come back and ask you questions I'll follow up on  
4 those.

5 And the Judge had asked if anybody had been arrested or accused of a  
6 crime. And I'll ask a more general question. Has anybody had a really positive  
7 experience with the police? Maybe like they happened to save a relatives' life or a  
8 cat from a tree, or maybe not that extreme, but had a really positive experience with  
9 the police. No? [Indiscernible] police officers out there.

10 How about the opposite? Anybody had like a really -- and I've already  
11 spoke with you in the back in seat 3. Anybody else had a really negative experience  
12 with a police officer? Okay.

13 PROSPECTIVE JUROR #073: Sort of.

14 THE COURT: Just a show of hands right now. We'll follow up --

15 MR. SCOW: Yeah, we'll follow up later.

16 And that could be along the lines of you got pulled over for a speeding  
17 ticket, whether rightly or wrongly, and they were just rude. And that happened to me  
18 once and that can be a frustrating experience. So we have the one hand. Is there  
19 anybody else that had a really negative experience with law enforcement officer?

20 Now either members of the panel, you or a friend or relative had any  
21 experience with alcohol -- drinking alcohol, whether at a party setting or social  
22 setting. Yourself or friends anybody drink alcohol? Okay. So I'll just write down the  
23 ones that haven't raised their hands. So not raised are in the back --

24 THE COURT: Teetotalers.

25 MR. SCOW: Okay. Ones that didn't raise their hand that don't --

1 THE COURT: The teetotalers raise their hands.

2 MR. SCOW: -- that haven't drank or don't drink alcohol. So in the back  
3 there --

4 THE COURT: Okay. There we go.

5 MR. SCOW: Okay. My last general question right now would be the Judge  
6 asks if somebody had served on a jury before and there was a comment of, you  
7 know, it wasn't terribly exciting. But has anybody, when they got their subpoena in  
8 the mail, did anybody think excellent. I've always been waiting for one of these and  
9 I finally got it. Anybody like that? No. Well, that's okay. A little excited just to get  
10 the learning experience or -- no? Okay. You've seen enough of it on TV I'll take it.

11 Okay. That's the last of my general questions then, Judge.

12 THE COURT: Thank you.

13 Mr. Posin.

14 MR. POSIN: Thank you, Your Honor.

15 I haven't been called to a jury for many -- several decades either. And  
16 I'm probably the only one, or maybe other lawyers, who actually would like to serve  
17 on a jury. But every time I've gotten picked and booted off pretty much immediately.

18 The Judge asked you the question about whether you understand and  
19 agree with, or at least don't have a problem with the proof -- burden of proof that we  
20 have in our system, and that's proof beyond a reasonable doubt. Now when this  
21 trial is over the Judge is going to be asking -- is going to be giving you some  
22 instructions. And she also asked you about that, about whether you could follow  
23 those instructions. One of those instructions is going to have to do with each  
24 element of each crime charged being proven beyond a reasonable doubt. Now  
25 does anybody here have a problem with the idea that every crime that's actually

1 charged has to be proven beyond a reasonable doubt? Okay. That's -- I'm going to  
2 come back to that in my individual questioning and throughout this trial, but, Your  
3 Honor, that's really all I have in my general questions.

4 THE COURT: All right. Thank you.

5 And let's see. There was another general question I wanted to ask. Is  
6 there anyone that thinks that they may have heard about this trial or read about this  
7 trial somewhere else -- or the case, I should say, the facts. All right. Where's our  
8 microphone. There it is.

9 PROSPECTIVE JUROR #066: Robert Soncini, 0066. I follow the media and  
10 local reports intensely. So I'll always have something up on the browser, so I -- this  
11 does ring a bell in memory, but nothing recent.

12 THE COURT: Okay. We don't there was any media coverage actually on this  
13 case, but I always ask because --

14 PROSPECTIVE JUROR #066: Something about it is resonating --

15 THE COURT: Okay.

16 PROSPECTIVE JUROR #066: -- of something being involved.

17 THE COURT: All right.

18 PROSPECTIVE JUROR #066: Can't be a hundred percent of everything,  
19 but --

20 THE COURT: Okay. And so the fact that you -- you don't -- it just kind of  
21 rings a bell, so you don't remember any details if -- if even this is the same --

22 PROSPECTIVE JUROR #066: Correct.

23 THE COURT: -- matter. And so would that impact your ability to be fair and  
24 impartial?

25 PROSPECTIVE JUROR #066: No.

1 THE COURT: All right. Thank you.

2 And is there anyone who believes that, yeah, the CSI stuff is real or that  
3 any most -- any court TV unless it's just like they're recording what happens in the  
4 courtroom, which is pretty dual as you can already tell. Is there anyone that kinds  
5 any of those shows are real? That that's really what happens? All right. The record  
6 will reflect a negative response. I ask that because I had a juror who said yes it was  
7 all real and she believed that. And Judge Judy, in fact, was here favorite and she  
8 believed all that was real.

9 Okay. So we -- we've asked our juror seat -- number one juror to tell us  
10 about himself and he did that. And so I'm going to allow the lawyers now to ask  
11 individualized questions beginning with seat number 1.

12 MR. SCOW: Thank you, Your Honor.

13 You raised your hand as a church goer either regularly or once in a  
14 while.

15 PROSPECTIVE JUROR #053: Not very regularly.

16 MR. SCOW: Okay. And that's okay. I just want to know, based on any  
17 church attendance, if you're going to hear evidence in this case -- like my co-  
18 counsel already said, the location of this crime was a church. And you heard an  
19 introduction -- and we're not going to ask you to think about anything other than this  
20 happened at a church. If any church attendance that you -- that you do does that  
21 put you in a position where you're thinking, you know, this just happened at a church  
22 and I am really offended by that and that's already something that you're going to  
23 hold against the Defendant?

24 PROSPECTIVE JUROR #053: No.

25 MR. SCOW: Okay. And like we've said, the purpose of this is to try to get fair



1 and impartial jurors, fair to the Defendant, fair to the State, so that we have people  
2 that can come in and listen to the evidence and make decisions based on what they  
3 hear from the witness stand. So that's the purpose of that question and as I get to  
4 the others who raised their hands to make sure we have fair jurors.

5 Anything that you've heard thus far from the questions by the Judge, by  
6 the defense attorney or myself that would cause you to think, you know, I'd rather  
7 serve on a civil jury or do something else or do you feel that you can be a fair and  
8 impartial juror in this case?

9 PROSPECTIVE JUROR #053: I think I could be fair and impartial.

10 MR. SCOW: Okay. And that's -- that's all that I have for this juror. Thank  
11 you.

12 THE COURT: Thank you.

13 Mr. Posin.

14 MR. POSIN: Mr. Alford, have you ever heard the phrase where there's smoke  
15 there must be fire?

16 PROSPECTIVE JUROR #053: Yes.

17 MR. POSIN: Do you think that there's some application of that phrase to a  
18 criminal case that where somebody's accused, somebody's sitting here in court that  
19 that means that something must of happened, that they must be guilty of  
20 something?

21 PROSPECTIVE JUROR #053: No, that's what we're here to do.

22 MR. POSIN: Okay. Thank you.

23 Nothing further, Your Honor.

24 THE COURT: Thank you.

25 All right. If you'd pass the microphone over. Thank you. And, again,

1 your badge number and your name.

2 PROSPECTIVE JUROR #054: 054, Ivis Kam-Pamintuan.

3 THE COURT: All right. And would you tell us about yourself.

4 PROSPECTIVE JUROR #054: I grew up in the Los Angeles area; a little  
5 suburb right out of LA. Moved out here in '93, so I went to high school here. And  
6 I'm now married. I've been married for 15 years; 2 kids. I am currently a debt  
7 collector. My husband actually works down the street at a wedding chapel, and he's  
8 been doing that for over 20 years. What else [indiscernible] answer.

9 THE COURT: Okay. And does he perform the weddings or does he just run  
10 the chapel?

11 PROSPECTIVE JUROR #054: No, he's a consultant.

12 THE COURT: A consultant.

13 PROSPECTIVE JUROR #054: Yeah.

14 THE COURT: And you said you were from a suburb in LA, so which one?

15 PROSPECTIVE JUROR #054: Monterey Park.

16 THE COURT: Okay. Any reason you feel that you could not be fair and  
17 impartial juror in this case?

18 PROSPECTIVE JUROR #054: No.

19 THE COURT: All right. Thank you.

20 Would the State like to inquire further?

21 MR. SCOW: Yes, just briefly.

22 Now you also raised your hand as a church goer. Anything about your  
23 religious beliefs or going to church that you think that -- that it will be tough to hear of  
24 the charges that we've alleged in this case happening at a church that you would  
25 hold against either side actually, the Defendant or the State?

1 PROSPECTIVE JUROR #054: No. I mean, I'm very involved in church  
2 activities. My kids are very involved in church and my sister is a pastor -- she's an  
3 ordained pastor, but overall no.

4 MR. SCOW: Okay. And the Judge will have an instruction at the end that we  
5 are people with our own experiences and we can bring our common sense to court.  
6 So it's okay that, you know, you do things with the church, that your kids are  
7 involved, and you don't have to completely ignore everything and just come in here  
8 as a robot and listen to the evidence, push a button that says compute, and that  
9 says guilty or not guilty. You can bring in your life experiences, but as long as you  
10 can be fair that's what we're interested to know.

11 PROSPECTIVE JUROR #054: Okay.

12 MR. SCOW: All right. You didn't raise your hands as being one terribly  
13 excited to have received your jury summons. Did you have the opposite reaction  
14 when you got it? Did you think, oh, great, there's a waste of that day or week or  
15 anything like that?

16 PROSPECTIVE JUROR #054: No. It's been a while. Well, the first two times  
17 I think I was called I just gave birth to each kid and it was just by chance that I  
18 wasn't able to come, so I think it's just about time that I got here.

19 MR. SCOW: Okay. I had received a summons earlier this year and I actually  
20 served on a jury. I know Mr. Posin said he'd received a summons, but I served on a  
21 jury and so I can understand the pain or, I guess, excitement of receiving a  
22 summons. You're okay coming in sitting as a potential juror in this case hearing the  
23 facts and rendering a judgment as to those facts and another person?

24 PROSPECTIVE JUROR #054: Yeah. I mean, my work is -- you know, it's  
25 incentive based, so that would be difficult, but yeah.

1 MR. SCOW: You said your work is what?  
2 PROSPECTIVE JUROR #054: Incentive based. I work on commission.  
3 MR. SCOW: Well, so it'd be difficult.  
4 PROSPECTIVE JUROR #054: To take --  
5 MR. SCOW: Workwise you wouldn't be earning those monies?  
6 PROSPECTIVE JUROR #054: Right.  
7 MR. SCOW: But otherwise you could be fair and impartial?  
8 PROSPECTIVE JUROR #054: Yes.  
9 MR. SCOW: Okay.  
10 No more questions. Thank you.  
11 THE COURT: Thank you.  
12 Mr. Posin.  
13 MR. POSIN: I don't think I have any questions, Your Honor.  
14 THE COURT: All right. Thank you. If you'd hand the microphone over.  
15 Mr. Estremera, tell us about yourself. And you're badge number 56.  
16 PROSPECTIVE JUROR #056: Fifty-six, correct.  
17 THE COURT: Okay.  
18 PROSPECTIVE JUROR #056: Born in Puerto Rico, raised in New York City.  
19 Went to California; from California I came to Nevada. I was married for about 35  
20 years. My wife passed away four years ago. When we came to Nev -- to Vegas we  
21 did foster care for about 22 years. I'm retired.  
22 THE COURT: What did you do before you retired, besides the foster care?  
23 PROSPECTIVE JUROR #056: I used to be a loan officer?  
24 THE COURT: For a bank or a --  
25 PROSPECTIVE JUROR #056: No, for mortgage.

1 THE COURT: Mortgage; okay.

2 PROSPECTIVE JUROR #056: Yes.

3 THE COURT: So you basically mortgage brokerage place and you would

4 screen the loans?

5 PROSPECTIVE JUROR #056: Yes.

6 THE COURT: Take applications?

7 PROSPECTIVE JUROR #056: Yes.

8 THE COURT: Okay. How about your wife? What did she do?

9 PROSPECTIVE JUROR #056: My wife was a homemaker. She would stay

10 with the foster kids. We used to have teen -- teen females only.

11 THE COURT: Okay. That's a big job.

12 PROSPECTIVE JUROR #056: Oh, yes.

13 THE COURT: Having any teenager is a big job.

14 PROSPECTIVE JUROR #056: Correct.

15 THE COURT: Okay. And so some of these teens that you fostered came

16 from troubled homes and backgrounds?

17 PROSPECTIVE JUROR #056: Yes, always.

18 THE COURT: And so when you -- would you have more than one at a time?

19 PROSPECTIVE JUROR #056: I would anywhere between four to six.

20 THE COURT: Okay. So were there times when there would be conflict in the

21 house with -- did you have your own kids living there at the same time as you would

22 foster?

23 PROSPECTIVE JUROR #056: Yes, my daughter -- one of my daughters.

24 THE COURT: Okay. So any conflicts between the kids ever?

25 PROSPECTIVE JUROR #056: Not between my kids, but --

1 THE COURT: Okay. So --

2 PROSPECTIVE JUROR #056: -- the other kids yes.

3 THE COURT: Yes.

4 PROSPECTIVE JUROR #056: The other -- yes.

5 THE COURT: And ever times when you would have to decide, you know, if  
6 there was a conflict who was telling the truth about the conflict?

7 PROSPECTIVE JUROR #056: Well, we would find out from the other girls.  
8 You know, usually one of them will tell you what is happening.

9 THE COURT: Okay. So you'd kind of interview everybody and investigate  
10 and then make the decision based on that?

11 PROSPECTIVE JUROR #056: Exactly.

12 THE COURT: All right. Okay. And your daughter's grown now?

13 PROSPECTIVE JUROR #056: Yes, she is.

14 THE COURT: What does she do?

15 PROSPECTIVE JUROR #056: She's an administrative assistant to the VP of  
16 credit over in Venetian and Palazzo.

17 THE COURT: Okay. All right. So kind of in the same family business, sort  
18 of, you know, finance like you were?

19 PROSPECTIVE JUROR #056: Sort of. Yes.

20 THE COURT: Sort of.

21 PROSPECTIVE JUROR #056: Exactly. Yes.

22 THE COURT: Okay. All right. Very good. Thank you.

23 Mr. Scow.

24 MR. SCOW: I don't have any additional follow up. Thank you, Judge.

25 THE COURT: Thank you.

1 Mr. Posin.

2 MR. POSIN: Thank you, Your Honor.

3 Mr. Estremera, I want to follow up a little bit on your experience that you  
4 had where you were, at least initially, thought to be part of some sort of criminal  
5 involvement. And you mentioned that you felt that your brother was mistreated, but  
6 did you feel you were also mistreated as well?

7 PROSPECTIVE JUROR #056: Yes.

8 MR. POSIN: And what way did you feel that you were mistreated?

9 PROSPECTIVE JUROR #056: I was stopped almost everywhere I went. I  
10 was -- I was charged with a -- I was stopped one time and charged for something  
11 that wasn't even true.

12 MR. POSIN: What was that?

13 PROSPECTIVE JUROR #056: Like a VIN number -- altered VIN number.  
14 You ever heard of that?

15 MR. POSIN: So you essentially felt that they were kind of out for you at that  
16 point?

17 PROSPECTIVE JUROR #056: Well, they were looking for my brother, so  
18 they were just harassing -- harassing me every day just about.

19 MR. POSIN: Harassing you in order to get evidence --

20 PROSPECTIVE JUROR #056: Right.

21 MR. POSIN: -- to lead to your brother?

22 PROSPECTIVE JUROR #056: Correct.

23 MR. POSIN: And at that point did you feel that they were just assuming that  
24 your brother was guilty even though they didn't have the evidence or why were they  
25 harassing you to get to your brother?

1 PROSPECTIVE JUROR #056: Because they thought that I knew where he  
2 was.

3 MR. POSIN: Okay. And -- but you didn't actually know where he was?

4 PROSPECTIVE JUROR #056: No.

5 MR. POSIN: So they just kind of thought that you must know. They were  
6 kind of making some assumptions that you knew?

7 PROSPECTIVE JUROR #056: Yes.

8 MR. POSIN: Did they ever threaten to bring any charges against you?

9 PROSPECTIVE JUROR #056: Well, they did. I was charged with bank  
10 robbery.

11 MR. POSIN: Oh. You were actually charged --

12 PROSPECTIVE JUROR #056: Yes.

13 MR. POSIN: -- with the bank robbery as well. So you were charged with  
14 being an accessory to the bank robbery because they thought that you were actually  
15 driving the car?

16 PROSPECTIVE JUROR #056: Yes.

17 MR. POSIN: But then those charges were ultimately dismissed? What  
18 happened to them?

19 PROSPECTIVE JUROR #056: Right. I wasn't -- I wasn't able to get indicted.  
20 I wasn't indicted --

21 MR. POSIN: Okay. So --

22 PROSPECTIVE JUROR #056: -- after three months in jail.

23 MR. POSIN: Okay. And then they decided that they didn't really have the  
24 evidence?

25 PROSPECTIVE JUROR #056: That they couldn't indict me, yeah.



1 MR. POSIN: But at that point you were afraid they could have gone forward  
2 against you; right?

3 PROSPECTIVE JUROR #056: Yes.

4 MR. POSIN: And fortunately they never did. Did that experience give you  
5 any feeling about the -- about the legal system?

6 PROSPECTIVE JUROR #056: Oh, yes.

7 MR. POSIN: What kind -- what kind of thoughts did you have about the legal  
8 system while you were sitting in jails for three months?

9 PROSPECTIVE JUROR #056: It stinks. It's not fair.

10 MR. POSIN: What parts did you think were unfair?

11 PROSPECTIVE JUROR #056: Well, not while I was in jail, but when I was  
12 out.

13 MR. POSIN: Okay. What parts did you think that were unfair once you got  
14 out?

15 PROSPECTIVE JUROR #056: Well, I was always stopped. This is every  
16 day. I mean, sometimes twice a day. I mean, I can get stopped, personal property  
17 on the street and there's nothing. They all know I have a driver's license.

18 MR. POSIN: So did you end up feeling sort of powerless?

19 PROSPECTIVE JUROR #056: Yes.

20 MR. POSIN: Like people had the -- if not the right, the ability to make your life  
21 difficult because of their position?

22 PROSPECTIVE JUROR #056: Correct.

23 MR. POSIN: And those people had choices that they could make, that they  
24 could either leave you alone or harass you, and they chose to harass you; right?

25 PROSPECTIVE JUROR #056: That's what I feel.

1 MR. POSIN: So they had a lot of responsibility and you don't think that they  
2 exercised that responsibility well?

3 PROSPECTIVE JUROR #056: Correct.

4 MR. POSIN: Do you think it's possible that that kind of thing could happen  
5 again. That there could be somebody charged with something that maybe they  
6 really shouldn't be charged with because somebody didn't exercise their  
7 responsibility well?

8 PROSPECTIVE JUROR #056: Yeah, I believe so. Just because I don't -- I  
9 don't know doesn't mean it doesn't happen.

10 MR. POSIN: Okay. Thank you.

11 That's all I have, Your Honor.

12 THE COURT: Thank you.

13 Will you pass the microphone over?

14 All right. And Mr. Koepke, is that correct?

15 PROSPECTIVE JUROR #058: 0058, Terrance Koepke.

16 THE COURT: Koepke.

17 PROSPECTIVE JUROR #058: Been married 47 ½ years. Two children, one  
18 deceased. Three grandchildren, one deceased. Joined the Air Force when I was  
19 17; spent 28 ½ years in the Air Force. Retired from the Air Force; joined an  
20 insurance company as an insurance auditor. I worked for them for 20 years and  
21 now I'm self-employed as an insurance auditor.

22 THE COURT: Just can't keep a job, huh.

23 PROSPECTIVE JUROR #058: No, ma'am.

24 THE COURT: Twenty-eight years -- jumping around. All right. What did you  
25 do in the Air Force?

1 PROSPECTIVE JUROR #058: The last 20 years as an Air Force recruiter.  
2 THE COURT: Oh, okay. That's a long time to be a recruiter --  
3 PROSPECTIVE JUROR #058: Yes, ma'am.  
4 THE COURT: -- so you must have been very good at it because they  
5 wouldn't have kept you in that job if you weren't; right?  
6 PROSPECTIVE JUROR #058: Yes, ma'am.  
7 THE COURT: Okay. And your kids, some are grown?  
8 PROSPECTIVE JUROR #058: Have a daughter.  
9 THE COURT: A daughter.  
10 PROSPECTIVE JUROR #058: Yes, ma'am.  
11 THE COURT: And what does she do?  
12 PROSPECTIVE JUROR #058: Stay-at-home mom.  
13 THE COURT: Stay at home. Do you have any grown grandchildren?  
14 PROSPECTIVE JUROR #058: Two grandchildren. I had a third one that  
15 passed away when he was five.  
16 THE COURT: Oh, I'm sorry. Are the grandchildren that you have that are  
17 living are they adults now or are they still young and not working?  
18 PROSPECTIVE JUROR #058: They're still young.  
19 THE COURT: Okay. And your -- you said you've been married 47 years, did  
20 I hear?  
21 PROSPECTIVE JUROR #058: Forty-seven and a half.  
22 THE COURT: Congratulations. And what does your wife do or is she retired?  
23 PROSPECTIVE JUROR #058: She just helps me now that I'm independent --  
24 THE COURT: Okay. So that can be --  
25 PROSPECTIVE JUROR #058: -- or self-employed.

1 THE COURT: -- a big -- big help. Did she ever work outside the home?

2 PROSPECTIVE JUROR #058: He cared for our son. She used to be an  
3 executive secretary and then our son had a terminal brain disease and she cared for  
4 him at home for the last 13 years of his life.

5 THE COURT: Oh, my goodness. So that -- that was a terrible thing to  
6 happen to your child and your family.

7 So did you have to travel around a lot during your career as a -- with the  
8 Air Force or because you were a recruiter did you get to --

9 PROSPECTIVE JUROR #058: At first in the Air Force, and then once as a  
10 recruiter pretty much stabilized between a number of places that we could go.

11 THE COURT: Okay. All right. So how long have you lived here in Clark  
12 County now?

13 PROSPECTIVE JUROR #058: Since 1966. And I may have --

14 THE COURT: Oh.

15 PROSPECTIVE JUROR #058: -- said that I served on jury duty eight years  
16 ago, but it was really 18 years ago. Time just --

17 THE COURT: I know. I know. Isn't that strange the older I get the faster time  
18 goes by and it seems if I say, oh, that was just a couple of years ago it turns out it  
19 was ten. And I -- last week when we were picking a jury I asked a gentleman after  
20 he told me he had moved from California in 1980, which doesn't sound like that long  
21 ago to me, I said to him, so what did you do there in California, and he said I was a  
22 child, so that made me feel very old. And I know '80 was a long time ago, but it  
23 doesn't seem that long ago, but it was. That was a long time ago.

24 All right. Is there any reason you feel that you could not be fair and  
25 impartial in this case?

1 PROSPECTIVE JUROR #058: No, ma'am.

2 THE COURT: All right. Thank you very much.

3 Mr. Scow, are you handling this?

4 MR. SCOW: Yes, Judge.

5 THE COURT: Okay.

6 MR. SCOW: You also had raised your hand as someone who attends church  
7 either regularly or sometimes.

8 PROSPECTIVE JUROR #058: Yes, sir.

9 MR. SCOW: Is that something that would factor into your decision making  
10 process in this case at all?

11 PROSPECTIVE JUROR #058: I don't believe so.

12 MR. SCOW: Okay. And you were one of the ones that had raised your hand  
13 for the crime scene shows that you've either seen or watched them regularly?

14 PROSPECTIVE JUROR #058: Just flipping the channels, I mean.

15 MR. SCOW: It's not something you tune in every Thursday night at --

16 PROSPECTIVE JUROR #058: No.

17 MR. SCOW: -- 5:30 or record them on your DBR? In your mind -- and then  
18 think about the show Crime Scene Investigations where they look for things like  
19 DNA, fingerprints, things like that. What do you think the purposes are of collecting  
20 swabs for possible DNA or fingerprints -- lifting those from a scene what would be  
21 the purposes of that?

22 PROSPECTIVE JUROR #058: To try to identify a particular person.

23 THE COURT RECORDER: Could you hold that a little closer.

24 PROSPECTIVE JUROR #058: To try to identify a particular person or  
25 individual.

1 MR. SCOW: To try to identify a person. If that's kind of one of the focuses of  
2 those shows is to try to identify a few of those different means -- scientific means. If  
3 in this case there wasn't anybody who testified about DNA or fingerprints, is that  
4 something that you would hold against the State?

5 PROSPECTIVE JUROR #058: I don't believe so.

6 MR. SCOW: You would have to hear all the evidence first to be able to make  
7 any decision like that?

8 PROSPECTIVE JUROR #058: Yes.

9 MR. SCOW: I'm sorry?

10 PROSPECTIVE JUROR #058: Yes.

11 MR. SCOW: All right. I don't have any more questions. Thank you, Judge.

12 THE COURT: Thank you.

13 Mr. Posin.

14 MR. POSIN: Thank you, Your Honor.

15 Mr. Scow's been asking you about DNA evidence and other evidence  
16 that has to do with identification. And in many TV shows anyway the issue is  
17 identification. Who is it? Who was there? And if somebody wasn't there, if they  
18 weren't actually involved that's potentially a defense. But do you think that's the  
19 only defense to a crime?

20 PROSPECTIVE JUROR #058: I don't really know.

21 MR. POSIN: If we have a case, like this case for instance, where there's not  
22 really a whole lot of question about who was there, but there are other issues about  
23 whether a crime should've been charged, are you able to keep an open mind as to  
24 whether the crimes charged for this offense have to do with what happened or are  
25 appropriate for what happened or whether they do not, even if we accept that the

1 people that are -- that were there were definitely there. Is that something --

2 PROSPECTIVE JUROR #058: Oh, I think so.

3 MR. POSIN: -- you're open to?

4 PROSPECTIVE JUROR #058: Yeah.

5 MR. POSIN: Okay. Thank you.

6 Nothing further, Your Honor.

7 THE COURT: Thank you.

8 All right. And just to let the jury know, you'll be instructed on the law as  
9 to all crimes that are alleged and charged. And so you'll be fully instructed on that  
10 and make your decision based on law. All right. And the facts, of course, as you  
11 decide because you're the fact finders. That's your job.

12 All right. So we have now our next -- Heather Lawson.

13 PROSPECTIVE JUROR #059: Yes, [indiscernible].

14 THE COURT: And you're badge number 59?

15 PROSPECTIVE JUROR #059: Yes, ma'am.

16 THE COURT: All right. Tell us about yourself.

17 PROSPECTIVE JUROR #059: Okay. I'm a teacher here in Clark County.  
18 I've lived here for 12. I'm originally from the Atlanta area. My husband also works  
19 for the school district. He works IT at one of the junior highs. We have three  
20 children. They're all school aged -- younger. I think that was everything.

21 THE COURT: All right. Have you always been a teacher?

22 PROSPECTIVE JUROR #059: I have. I taught to two years in the Atlanta  
23 area and then here in Clark County.

24 THE COURT: And so how does the school district in Atlanta compare to  
25 here; what do you think?

1 PROSPECTIVE JUROR #059: Well, first of all, it's been so long since I've  
2 was there. And that was my first two years teaching, so I've learned a lot since  
3 there. I enjoyed both.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR #059: You know, I taught less classes there, which  
6 was nice, but my classes were actually larger than what they are now. I work in  
7 Boulder City so they're a little smaller than in Vegas.

8 THE COURT: Yes. What's the average class size that you have?

9 PROSPECTIVE JUROR #059: This year they're a little larger, but usually  
10 they're about 25. My largest class this year is 33 and I know some in town are way  
11 over 40, 50, so it's a little different.

12 THE COURT: Okay. And what grade level do you teach?

13 PROSPECTIVE JUROR #059: Junior high. I have sixth and seventh grade.  
14 I teach computers and math.

15 THE COURT: Okay. That's -- those sixth graders are so little and --

16 PROSPECTIVE JUROR #059: Well, I love them.

17 THE COURT: -- really the seventh graders too. It's the eighth graders that  
18 start --

19 PROSPECTIVE JUROR #059: That's my least favorite. I taught them as  
20 well.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR #059: That's my least favorite age though.

23 THE COURT: All right. Do you ever disputes between students you have to  
24 negotiate or deal with?

25 PROSPECTIVE JUROR #059: Very rarely, you know. There was a fight that



1 happened in front of me my very first year of teaching, but I didn't do a whole lot  
2 other than yell, stop, stop, stop.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR #059: I didn't break it up.

5 THE COURT: All right. And if there are problems are there others --  
6 counselors or -- that's their primary job to deal with --

7 PROSPECTIVE JUROR #059: Yes, ma'am.

8 THE COURT: -- problem students or --

9 PROSPECTIVE JUROR #059: Students have come to me before, but usually  
10 I just direct them to the counselor.

11 THE COURT: Okay. All right. Thank you.

12 Mr. Scow.

13 MR. SCOW: I don't have any follow up. Thank you, Your Honor.

14 THE COURT: Mr. Posin.

15 MR. POSIN: Ms. Lawson, they give us these printouts which have a very  
16 minimal amount of information about the jurors. One of the things it says is years of  
17 education and for you it says seven. I'm sure that you have a lot more education  
18 than that.

19 PROSPECTIVE JUROR #059: Yeah. No -- 'cause I -- well, I don't know if it's  
20 talking about college past that maybe --

21 MR. POSIN: I don't know where they up with --

22 PROSPECTIVE JUROR #059: -- because I have my bachelor's and then I  
23 have my master's and then I've taken 32 credits above my master's as well.

24 MR. POSIN: Okay. I just wanted to follow up with what the Judge just said at  
25 the end of the juror that we were talking to. And she said that when this is all over

1 she's going to be giving you instructions and those instructions are going to have  
2 elements of each crime that's charged. And are you going to be able to look at each  
3 of those elements and determine not only was my client there at the time, but did the  
4 prosecution prove each and every one of the elements that she's going to tell have  
5 to be proved?

6 PROSPECTIVE JUROR #059: Yes, sir, I feel I can.

7 MR. POSIN: Thank you.

8 That's all. Thanks.

9 THE COURT: Thank you.

10 All right. I you could pass the microphone all the way back down to Ms.  
11 Schwendemann.

12 PROSPECTIVE JUROR #062: Schwendemann.

13 THE COURT: Schwendemann.

14 PROSPECTIVE JUROR #062: Number 62 and I'm Kathryn Schwendemann.

15 THE COURT: Thank you.

16 PROSPECTIVE JUROR #062: And I grew up in the Midwest. Got married  
17 there; been married 42 years. And have a son and a daughter. Son served in the  
18 Marines; daughter served in the Coast Guard. My daughter got our two grandkids, a  
19 boy and a girl, 10 and 8. I got a degree in -- an AAS in drafting and design. And  
20 then we moved and then I got a degree in teaching K through 8. Then we moved  
21 and we opened our own business up here in '95. We do hearing aids. And -- so  
22 that's what we've been doing. So I do the bookkeeping, insurance billing, calling  
23 and everything else.

24 THE COURT: And your husband does what?

25 PROSPECTIVE JUROR #062: He's the hearing specialist, so --

1 THE COURT: Oh, okay. So does he give hearing tests?

2 PROSPECTIVE JUROR #062: Yes. He does the hearing test and then fits  
3 the devices.

4 THE COURT: All right. And does he travel like to the elder care facilities and  
5 things to do that or --

6 PROSPECTIVE JUROR #062: We did that at the beginning --

7 THE COURT: Oh.

8 PROSPECTIVE JUROR #062: -- and now we just -- he does make special  
9 trips to hospital and stuff if the patient can't make it in.

10 THE COURT: Okay. All right.

11 And now your children that are grown what do they do? Are they --  
12 your daughter is not in the service anymore; right?

13 PROSPECTIVE JUROR #062: Right. She's a -- she went to college after  
14 she got out and she's an ER nurse in California.

15 THE COURT: All right.

16 PROSPECTIVE JUROR #062: So she loves that and we'll real proud of her.  
17 My son's in Kingman, Arizona and he's a hearing specialist down there.

18 THE COURT: Oh, okay. So did he go into that after as a result of your  
19 business here?

20 PROSPECTIVE JUROR #062: Yes.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR #062: Yes. When he got out of the service then he  
23 decided to go into that.

24 THE COURT: And how does he like Kingman?

25 PROSPECTIVE JUROR #062: He likes it. It's a small town, as you know.

1 THE COURT: Yes. Yes.

2 PROSPECTIVE JUROR #062: And -- but he likes it. He -- we grew -- he  
3 grew up in small towns along the way here, so --

4 THE COURT: Okay.

5 PROSPECTIVE JUROR #062: -- he's comfortable there.

6 THE COURT: So you lived here since '95?

7 PROSPECTIVE JUROR #062: Since '95, yes.

8 THE COURT: Okay. Then -- and where were you living when you did your  
9 teaching?

10 PROSPECTIVE JUROR #062: Well, first we were in Mississippi when I got  
11 my drafting. And then we moved because of my daughter's health. She had  
12 asthma --

13 THE COURT: Aah.

14 PROSPECTIVE JUROR #062: -- so we moved west and went down to  
15 southern Arizona and I got my teaching degree down there. And then my husband  
16 got offered a job up here with the hearing and so -- then we came up here. But both  
17 kids -- by the time we came up here they had both gotten out of school and --

18 THE COURT: Okay. So you never did any of the drafting? You never used  
19 that?

20 PROSPECTIVE JUROR #062: No, other than for own -- other than for our  
21 own use when we had a health club and I did the layout -- the plans for the health  
22 club.

23 THE COURT: Well, that came in handy, but --

24 PROSPECTIVE JUROR #062: Yes. No money in it, but --

25 THE COURT: Right. How about the teaching? Did you ever get to actually

1 teach?

2 PROSPECTIVE JUROR #062: Yes. I finally -- how many years ago was that,  
3 six? Time flies. I don't remember how many years ago, but I taught kindergarten at  
4 a private school --

5 THE COURT: Okay. Did you --

6 PROSPECTIVE JUROR #062: -- here in town, Challenger.

7 THE COURT: Oh, you did. Okay. So how many years did you teach  
8 altogether?

9 PROSPECTIVE JUROR #062: Just two.

10 THE COURT: And it was just kindergartner?

11 PROSPECTIVE JUROR #062: Just kindergartner, yes.

12 THE COURT: That's --

13 PROSPECTIVE JUROR #062: It was awesome.

14 THE COURT: Yeah. Well, it's -- what's that --

15 PROSPECTIVE JUROR #062: And then we went -- we opened our business  
16 again, which is why I left teaching because --

17 THE COURT: Well, there's that book, Everything -- what is it called?  
18 Everything I Ever Needed to Know I Learned in Kindergarten.

19 PROSPECTIVE JUROR #062: Yes.

20 THE COURT: About the important things, if you think about it. Yeah.

21 All right. Thank you very much.

22 Mr. Scow.

23 MR. SCOW: Mr. Hamner's going to --

24 THE COURT: Oh. Mr. Hamner.

25 MR. HAMNER: Thank you, Your Honor.

1 Good morning, Ms. Schwendemann.

2 PROSPECTIVE JUROR #062: Good morning.

3 MR. HAMNER: So I just had a couple questions that I wanted to follow up on.  
4 Now, Mr. Posin had been speaking with a couple other individuals earlier. I think  
5 Mr. Estremera and I know there was another individual. There was some discussion  
6 about is it possible someone could charge somebody with a crime that may be  
7 incorrect. Maybe they weren't doing their job. Do you remember hearing something  
8 like that a little bit earlier?

9 PROSPECTIVE JUROR #062: Yeah.

10 MR. HAMNER: Okay. Well, there was another question Mr. Posin asked  
11 about, this notion of would you be able to focus on the elements in order to  
12 determine whether or not the right crimes were charged. Do you remember hearing  
13 something to that effect?

14 PROSPECTIVE JUROR #062: Yes.

15 MR. HAMNER: Okay. Let's touch on that for a second. As far as looking at  
16 that, you'd be willing, if you were selected as a juror, to try to make sure that the  
17 State has met their burden by proving every single element; is that right?

18 PROSPECTIVE JUROR #062: Right.

19 MR. HAMNER: Now, Ms. Schwendemann, I have a question for you. Do you  
20 think that in order to make that determination about whether each element was  
21 proven it might be important to not only look at the actions that actually constituted  
22 the crime the moment it's happening, but maybe you look at maybe some actions or  
23 some evidence that may have happened beforehand. Do you think that might be  
24 helpful in maybe proving an element of a crime?

25 PROSPECTIVE JUROR #062: Oh, yes.

1 MR. HAMNER: And why do you say that?

2 PROSPECTIVE JUROR #062: It kinda gives you an idea of where the person  
3 was coming from mentally.

4 MR. HAMNER: Okay. Now let's kinda reverse it. What about if you were to  
5 look at maybe some evidence that maybe happened after the crime that's being  
6 charged occurred? Do you think that might be also helpful in determining if the  
7 State meets their burden in proving each of these elements of a crime?

8 PROSPECTIVE JUROR #062: It's possible.

9 MR. HAMNER: And why do you say it's possible? Why could it possibly be  
10 helpful --

11 PROSPECTIVE JUROR #062: Well, that's why I --

12 MR. HAMNER: -- if you're looking at some action afterwards.

13 PROSPECTIVE JUROR #062: Until I know what it is because each -- I don't  
14 think anything's like textbook. This is -- this -- everything is so different. So just  
15 depending on what it was, whether it was relevant.

16 MR. HAMNER: But you can envision a scenario where maybe somebody's  
17 actions after a crime might be helpful in determining whether or not somebody may  
18 have done or did not do something; is that right?

19 PROSPECTIVE JUROR #062: Yes.

20 MR. HAMNER: And why do you think that it might be helpful in that respect?

21 PROSPECTIVE JUROR #062: Well, because after something happens  
22 people's behavior changes and it might indicate something that --

23 MR. HAMNER: But absolutely no --

24 PROSPECTIVE JUROR #062: It's hard to explain.

25 MR. HAMNER: I get you.

1 PROSPECTIVE JUROR #062: But somebody may behave differently  
2 afterwards that they wouldn't behavior that way earlier on.

3 MR. HAMNER: So if you were selected as a jury -- as a juror would you be  
4 willing to kind of look at all of the actions before, during and after when evaluating if  
5 the State has met their burden in proving each one of their elements?

6 PROSPECTIVE JUROR #062: Sure.

7 MR. HAMNER: Okay. And I'd like everybody to kind of keep that  
8 conversation in mind because I am going to touch on it when I speak to a couple of  
9 other individuals individually.

10 Now, Mr. Scow had asked some questions about CSI, so we won't  
11 touch on that. I don't know, did you raise your hand on the church going question?  
12 I don't remember every -- there were so many hands that kind of went up and I  
13 couldn't tell from the back. Do you go to church at all?

14 PROSPECTIVE JUROR #062: No.

15 MR. HAMNER: Okay. All right. So you're not necessarily going to hold it  
16 against him just automatically just because it's involved with a church are you?

17 PROSPECTIVE JUROR #062: No.

18 MR. HAMNER: Okay. So you're willing to kind of listen to the evidence as it's  
19 presented and you'll just judge it based on that?

20 PROSPECTIVE JUROR #062: Yes.

21 MR. HAMNER: Okay. Now you also mentioned that you had a friend with a  
22 son who had been, I think, accused of a crime. Given that experience, was that --  
23 did I get that correct or was that not --

24 PROSPECTIVE JUROR #062: I have a friend with --

25 MR. HAMNER: Whose --



1 PROSPECTIVE JUROR #062: -- a son who's a police officer.

2 MR. HAMNER: Okay. And was this with respect to he may have had a

3 mental issue and assaulted somebody with a gun?

4 PROSPECTIVE JUROR #062: Oh, no. That's my brother-in-law.

5 MR. HAMNER: Your brother-in-law.

6 PROSPECTIVE JUROR #062: Yes.

7 MR. HAMNER: Let's talk about that for a second. Do you think that

8 experience or that connection and that scenario may affect your ability to kind of sit

9 as a juror and partially listen to the evidence?

10 PROSPECTIVE JUROR #062: No, that's not going to affect it all.

11 MR. HAMNER: Okay. So you'll be able to leave all that at the door.

12 PROSPECTIVE JUROR #062: Oh, yeah.

13 MR. HAMNER: And even in reference to the stuff that you had mentioned

14 with your friend's son. You'll be able to leave all that at the door; is that right?

15 PROSPECTIVE JUROR #062: Oh, yes.

16 MR. HAMNER: Okay. Thank you, Ms. Schwendemann.

17 THE COURT: Thank you.

18 Mr. Posin.

19 MR. POSIN: Thank you, Your Honor.

20 Ms. Schwendemann, I also wanted to ask you a little bit about the

21 incident with your brother-in-law.

22 PROSPECTIVE JUROR #062: Mm-hmm.

23 MR. POSIN: You said something about that he ended up firing a gun, I

24 believe?

25 PROSPECTIVE JUROR #062: Yes, he went to --

1 MR. POSIN: What happened?

2 PROSPECTIVE JUROR #062: -- he went to his ex-wife's house and --

3 MR. POSIN: And can I just stop you there?

4 PROSPECTIVE JUROR #062: Sure.

5 MR. POSIN: And his ex-wife, that's not his your sister or --

6 PROSPECTIVE JUROR #062: No.

7 MR. POSIN: He's your brother-in-law how exactly?

8 PROSPECTIVE JUROR #062: He's my husband's brother.

9 MR. POSIN: Your husband's brother; okay.

10 PROSPECTIVE JUROR #062: Yes.

11 MR. POSIN: So he went to his ex-wife's house and --

12 PROSPECTIVE JUROR #062: Yes, with a bible and a gun. He thought her --

13 because she had a boyfriend, but the kids weren't there, but he just thought that

14 getting divorced was not something you do religious wise. So he went there and

15 they had a scuffle with the gun and it went off and so he did end up -- because

16 evidentially I think that their -- several months earlier lawyer had been killed by

17 somebody in a similar situation of domestic dispute and the person who lost shot

18 the --

19 MR. POSIN: Okay. And was he charged with a crime over that?

20 PROSPECTIVE JUROR #062: Yes.

21 MR. POSIN: What crime was he charged with?

22 PROSPECTIVE JUROR #062: I don't know the specifics, but I know he was

23 put in a -- at the time -- and I don't think it's there in Alton, Illinois they have a -- they

24 had a mental home, and so he was in there for quite a while.

25 MR. POSIN: Okay. But you don't know exactly what crime --

1 PROSPECTIVE JUROR #062: No.

2 MR. POSIN: -- he was charged with?

3 PROSPECTIVE JUROR #062: No.

4 MR. POSIN: Now why do you think he was put in a mental home instead of  
5 either being found not guilty, put him in prison if convicted. Why did that happen?

6 PROSPECTIVE JUROR #062: Because I think he had -- he had -- he wasn't  
7 thinking logically and he did have serious issues.

8 MR. POSIN: So he wasn't thinking logically and that played a part in the  
9 ultimate result. Do you think that's appropriate?

10 PROSPECTIVE JUROR #062: He needed mental help, which he never got, I  
11 don't think, when he was in there.

12 MR. POSIN: Okay. Do you think it's appropriate to take into consideration in  
13 the criminal justice system what somebody's mental state is?

14 PROSPECTIVE JUROR #062: Yes, in that I feel -- to get them the correct  
15 help I think they do -- you do need to take in their mental state, but I also feel that it  
16 doesn't take them off the hook for what they did.

17 MR. POSIN: And if the Judge gives you an instruction about -- that will  
18 involve a mental element to each crime are you prepared to follow each of those  
19 instructions?

20 PROSPECTIVE JUROR #062: Oh, sure.

21 MR. POSIN: Because -- you know, every -- every crime involves both  
22 something physical and something mental.

23 PROSPECTIVE JUROR #062: Mm-hmm.

24 MR. POSIN: There's -- we have Latin terms for that.

25 PROSPECTIVE JUROR #062: Yeah, the degree of mental.

1 MR. POSIN: But there always -- for it to be a crime you have to --  
2 PROSPECTIVE JUROR #062: Right.  
3 MR. POSIN: -- not only do something, but you have to have a mental state.  
4 PROSPECTIVE JUROR #062: Mm-hmm.  
5 MR. POSIN: So if your brother, for instance, had -- instead of -- well, even in  
6 this case, when he pulled the trigger you sound -- sound like maybe he didn't even  
7 intend to pull the trigger at that moment.  
8 PROSPECTIVE JUROR #062: Yes. I don't think he really did. I think was  
9 doing it as to make his point. But I do -- I do agree with you that -- I think any crime  
10 -- I mean, you're not thinking correctly if you're committing a crime. I think if you  
11 know -- the point -- the point that I think is that if you hide what you're doing you  
12 know it's wrong.  
13 MR. POSIN: Okay. But at that moment where your brother-in-law pulled the  
14 trigger --  
15 PROSPECTIVE JUROR #062: Mm-hmm.  
16 MR. POSIN: -- you think that he didn't even have the intent necessarily to  
17 even pull the trigger it sounds like?  
18 PROSPECTIVE JUROR #062: Yeah, I don't think he did. I think they  
19 might've both had their hands on it and it might've gone off.  
20 MR. POSIN: So --  
21 PROSPECTIVE JUROR #062: I don't know the specifics.  
22 MR. POSIN: So sometimes somebody can actually perform an action, like  
23 pulling a trigger --  
24 PROSPECTIVE JUROR #062: Uh-huh.  
25 MR. POSIN: -- but if they don't have an intent to do that, even though they

1 have the action, without the intent it's not the same as if they did have the intent?

2 PROSPECTIVE JUROR #062: Correct. Yes.

3 MR. POSIN: Okay.

4 THE COURT: All right. So, I'm going to rein you back here.

5 MR. POSIN: All right.

6 THE COURT: This is not a lecture. This is a question, so please let's -- for  
7 both counsel you're kind of walking the line on this. Ask questions. You're get to  
8 argue your case later.

9 MR. POSIN: You'll find lawyers that kind of push the envelopes as far as --

10 THE COURT: Yes, they do.

11 MR. POSIN: -- the Judge lets us and I guess I've gone as far as can. But the  
12 Judge will be not lecturing you but giving you the instructions later that have those  
13 elements and can you follow those elements --

14 PROSPECTIVE JUROR #062: Yes.

15 MR. POSIN: -- that are laid out, including the mental element?

16 PROSPECTIVE JUROR #062: Yes.

17 MR. POSIN: Okay. Thank you.

18 THE COURT: Thank you.

19 All right. Ladies and gentlemen, it's ten minutes after 12 and I imagine  
20 your stomachs are starting to rumble since you've been here since early this  
21 morning, so we're going to take our noon recess. And we're going to take an hour  
22 for lunch, so you don't have to be back until ten minutes after one. We have some  
23 facilities in the courthouse that -- I believe there's a Capriotti's and sandwich -- and  
24 what else is down there?

25 [Colloquy between the Court, clerk and court recorder]

1 THE COURT: Okay. So -- and there are some things that are close. Just  
2 don't go very far because obviously you have to get back in the building and you  
3 know what that process was this morning. Sort of like airport security, so you don't  
4 want to be caught in line and not give yourself enough time. But there are some things  
5 that are very close to the courthouse that you can get to on foot. Just don't try and  
6 drive anywhere because you're not going to have time.

7 And as I say, it's ten after 12 by my watch. Is that what you have?

8 THE MARSHAL: 12:11, Your Honor.

9 THE COURT: Okay. So we'll synchronize.

10 And, ladies and gentlemen, during this 60 minute recess it is your duty not  
11 to converse among yourselves or with anyone else on any subject connected with  
12 the trial, or to read, watch or listen to any report of or commentary on the trial by any  
13 person connected with the trial or by any medium of information, including without  
14 limitation, newspaper, television or internet. That includes smartphones. And you  
15 are not to form or express an opinion on any subject connected with this case until it  
16 is finally submitted to you.

17 We'll be in recess until 11 minutes after one.

18 THE MARSHAL: All rise.

19 [Outside the presence of the prospective jury panel]

20 THE COURT: All right. The record will reflect the venire panel has departed  
21 the courtroom. Are there any matters outside the presence?

22 MR. HAMNER: No, Your Honor.

23 MR. POSIN: No, Your Honor.

24 THE COURT: All right. Thank you.

25 MR. SCOW: Thank you.

1 THE COURT: I'll see you at ten after one.

2 MR. POSIN: Okay. Thank you, Your Honor.

3 THE COURT: Okay.

4 [Recess taken at 12:13 p.m.]

5 [Proceedings resumed at 1:14 p.m.]

6 [In the presence of the prospective jury panel]

7 THE MARSHAL: Your Honor.

8 THE COURT: Thank you. Please be seated.

9 All right. This is the continuation of State of Nevada versus Wilburt  
10 Hickman. The record will reflect the presence of the venire panel. The Defendant is  
11 present with his counsel. The deputy district attorneys prosecuting the case are  
12 present and all officers of the court. Will counsel so stipulate?

13 MR. POSIN: Yes, Your Honor.

14 MR. SCOW: Yes, Judge.

15 MR. HAMNER: Yes, Your Honor.

16 THE COURT: Thank you.

17 All right. So we left off and we are at Jade, right? Kulka.

18 PROSPECTIVE JUROR #073: 0073, Jade Kulka. I grew up in Malibu.

19 Moved here I think '87. Got divorced. Lived with my --

20 THE COURT: When you were a child.

21 PROSPECTIVE JUROR #073: Pardon?

22 THE COURT: When you were a child, '87.

23 PROSPECTIVE JUROR #073: Yeah, right. I wish. Got divorced. Married a  
24 one-man band here. And my child lives in California; she's a beautician. I work at a  
25 hippotherapy place. It's horse therapy for autistic kids and stuff like that.

1 THE COURT: Oh, that's interesting.

2 PROSPECTIVE JUROR #073: And I also do a lot of painting and airbrush T-

3 shirts and stuff.

4 THE COURT: Okay. So you married a one-man band; is that what you said?

5 PROSPECTIVE JUROR #073: Well, technically, I'm not married, I guess.

6 We've been together like 18 years, so --

7 THE COURT: Oh, okay. All right. So significant other.

8 PROSPECTIVE JUROR #073: Yes.

9 THE COURT: And what does your significant other do?

10 PROSPECTIVE JUROR #073: One-man band.

11 THE COURT: He really -- literally he's a one --

12 PROSPECTIVE JUROR #073: Not a oom-pah-pah, you know. Not with the

13 drum and the banjo. He plays electric guitar.

14 THE COURT: Oh, okay.

15 PROSPECTIVE JUROR #073: And he has music files that go -- have

16 everything else on it.

17 THE COURT: Okay. And does he play around town or does he record?

18 PROSPECTIVE JUROR #073: Yeah, he's been playing here longer than I've

19 known him, so --

20 THE COURT: Okay. All right. Let's see -- and, gosh, you've had a very

21 varied career as well. Any reason you feel that you could not be fair and impartial in

22 this case?

23 PROSPECTIVE JUROR #073: No.

24 THE COURT: Okay. And you said your child lives in California?

25 PROSPECTIVE JUROR #073: Yes.



1 THE COURT: And what does your child do?

2 PROSPECTIVE JUROR #073: She -- beautician. Hair. Hair.

3 THE COURT: Beautician; okay. All right. Thank you.

4 Mr. Hamner.

5 MR. HAMNER: Thank you, Your Honor.

6 Good morning, Ms. Kulka. I just had a couple quick questions. I think  
7 when Richard had asked a general question earlier before lunch, it was something  
8 along the lines of has anyone had any negative experience with law enforcement, I  
9 think maybe you had raised your hand. Could you tell us a little bit about what that  
10 was?

11 PROSPECTIVE JUROR #073: I rather not go into details if that's okay. It's  
12 just that the police on the report lied about something they -- they said that they  
13 gave me a, you know, a DUI test and they didn't, and they said I refused it twice, so  
14 I think that's a little negative. But that's it. Everything else I've always had --

15 MR. HAMNER: Okay.

16 PROSPECTIVE JUROR #073: -- really good relations with them.

17 MR. HAMNER: Did anything come of that -- the report where they said that  
18 you refused a DUI test --

19 PROSPECTIVE JUROR #073: No.

20 MR. HAMNER: -- or anything like that?

21 PROSPECTIVE JUROR #073: No, but it made me mad.

22 MR. HAMNER: Sure.

23 PROSPECTIVE JUROR #073: Now you heard a list of officers that were read  
24 before. You didn't recognize --

25 PROSPECTIVE JUROR #073: No.

1 MR. HAMNER: -- any of the names? Now was there -- and I don't mean to  
2 pry, but it's kind of important for us to kind of understand this. Did law enforcement  
3 believe maybe suspicion that you were under the influence of alcohol maybe or a  
4 controlled substance maybe when driving a car or something like that?

5 PROSPECTIVE JUROR #073: I -- I was seen left -- I was seen leaving a  
6 house --

7 MR. HAMNER: Okay.

8 PROSPECTIVE JUROR #073: -- that was under surveillance, I guess.

9 MR. HAMNER: Okay.

10 PROSPECTIVE JUROR #073: I had done -- airbrushed a helmet for  
11 somebody --

12 MR. HAMNER: Okay.

13 PROSPECTIVE JUROR #073: -- so I was dropping it off and they followed  
14 me.

15 MR. HAMNER: Okay. If this case potentially involves the issue with alcohol  
16 or using a motor vehicle under an influence, or something along those lines, do you  
17 think -- whatever experiences you had with the police in your own experience do you  
18 think you're going to be able to kind of put those experiences behind and listen to  
19 the evidence as it's kind of presented today?

20 PROSPECTIVE JUROR #073: Yes.

21 MR. HAMNER: Do you think if you were asked to stand in judgment of  
22 somebody where maybe that possibly was a factor in this, maybe potentially the use  
23 of alcohol, do you think that you would still be able, if selected as juror, to stand in  
24 judgment and make a call if the facts [indiscernible] --

25 PROSPECTIVE JUROR #073: Yeah, I'm very --

1 MR. HAMNER: -- beyond a reasonable doubt?

2 PROSPECTIVE JUROR #073: -- fact piece person, so I would rather hear  
3 both sides and hear the facts and --

4 MR. HAMNER: Okay. Now kind of dovetails it. I think Richard also asked a  
5 general question about not using alcohol and maybe even you had raised your  
6 hand. Did I catch that or that was not correct?

7 PROSPECTIVE JUROR #073: I don't know.

8 MR. HAMNER: You don't --

9 PROSPECTIVE JUROR #073: I don't drink.

10 MR. HAMNER: You don't drink. Have you ever drank before?

11 PROSPECTIVE JUROR #073: When I was a teenager --

12 MR. HAMNER: Okay.

13 PROSPECTIVE JUROR #073: -- but I'm like almost 50, so --

14 MR. HAMNER: Okay. Okay. All right. I have no further questions. Thanks.

15 THE COURT: Thank you.

16 Mr. Posin.

17 MR. POSIN: Thank you, Your Honor.

18 MR. POSIN: Ms. Kulka, you just said something that you would rather hear  
19 both sides. Now you also, I think, heard the Judge earlier this morning mention the  
20 fact that the burden is purely on the prosecution here. Did you hear -- do you  
21 remember that?

22 PROSPECTIVE JUROR #073: Okay. I don't specifically remember it, but --

23 MR. POSIN: Well, she'll be instructing you and has already mentioned that  
24 they have the burden to prove beyond a reasonable doubt that this man committed  
25 each and every one of the crimes charged. So we don't have a -- any duty to

1 present a side. They have a duty to prove their case beyond a reasonable doubt.  
2 And the Judge asked do you have any problem with that. Do you have any problem  
3 with holding them to their burden to prove their case beyond a reasonable doubt  
4 without necessarily hearing another side to it?

5 PROSPECTIVE JUROR #073: [Inaudible response.]

6 MR. POSIN: What if you only hear one side? What if you hear their side and  
7 you have some doubts. You're not sure what's going on here.

8 PROSPECTIVE JUROR #073: I don't know. I don't know. That's an honest  
9 answer. I don't -- I don't know.

10 MR. POSIN: Well, that's --

11 PROSPECTIVE JUROR #073: I've never been --

12 MR. POSIN: Yeah, that's -- yeah, that's all we want is --

13 PROSPECTIVE JUROR #073: I've never faced anything like that. I don't  
14 know.

15 MR. POSIN: That's what we want is your honest answer. So let's -- let's just  
16 say that this trial that you're selected as a juror, the trial goes forward, they present  
17 a case, they have witnesses testify, and let's say we don't. Let's say we don't have  
18 any witnesses. And -- so you haven't heard our side. You haven't heard from this  
19 gentleman here. You won't hear him testify. Let's say that's the case. Are you able  
20 to follow the Judge's instruction and hold them to prove their case even if you  
21 haven't heard the other side?

22 THE COURT: Let me clarify this a little bit. Now, the defense does not have  
23 any requirement to either have the Defendant testify. He doesn't have to testify,  
24 doesn't have to present any witnesses. In fact, his lawyer could sit over there and  
25 not say anything. Now that's unlikely. It's more likely that Mr. Posin will cross-

1 examine the witnesses for the State, but it is entirely the State's burden to prove the  
2 case beyond a reasonable doubt, which means that at the end of their case if they  
3 rest and the jury doesn't feel that the State's proved their case, even if defense  
4 doesn't do anything, they get up and immediately rest, that's it. It's still the State's  
5 burden. So if the jury felt that the State hadn't met the burden then you would have  
6 to acquit. Does everybody understand that? Anyone not understand it? All right.  
7 The record will reflect a negative response. And so that's what we're talking about  
8 here. All right.

9 MR. POSIN: Thank you, Your Honor.

10 So -- you know, one of the other jurors was being questioned earlier  
11 and some questions came about if you have kids. And two kids, you know, maybe  
12 they've gotten into a fight and two of them come and we hear both sides to that  
13 story. So you understand that in this case this is not that situation. This is a one  
14 sided burden. They have a burden; we don't. You understand that; right?

15 PROSPECTIVE JUROR #073: Yes.

16 MR. POSIN: Okay. Thank you.

17 That's all, Your Honor.

18 THE COURT: All right. Thank you.

19 All right. And this is -- I can't read my writing here.

20 PROSPECTIVE JUROR #066: Robert Soncini, 0066. Moved to Las Vegas  
21 about 11 years ago. Initially started working as an EMT intermediate with  
22 MedicWest Ambulance. Learned to scuba dive; feel in love with diving. Now I'm the  
23 master instructor and dive safety officer for Cirque du Soleil O at the Bellagio.  
24 Divorced; two kids, ages 5 and 8. Have a girlfriend of five years this month and she  
25 was a student of mine and now she's also a diving instructor.

1 THE COURT: Okay. It's hard -- kind of hard to dive in the desert.

2 PROSPECTIVE JUROR #066: Which is why I get that 88 degree pool at the  
3 Bellagio every night.

4 THE COURT: Very good. All right. And no children you said?

5 PROSPECTIVE JUROR #066: Two children --

6 THE COURT: Two.

7 PROSPECTIVE JUROR #066: -- 5 and 8.

8 THE COURT: Five and 8; okay. Anything that you heard -- other questions  
9 where you thought, oh, I would answer differently or I would need to bring that to the  
10 Court's attention?

11 PROSPECTIVE JUROR #066: No, Your Honor.

12 THE COURT: All right. Thank you.

13 Mr. Hamner.

14 MR. HAMNER: Thank you, Your Honor.

15 So I got to ask. I'm a diver too. So, do you dive in the fountain area or  
16 do you train people -- you take them out on dives nearby or --

17 PROSPECTIVE JUROR #066: I'm the dive safety officer for Cirque du Soleil  
18 O.

19 MR. HAMNER: Okay.

20 PROSPECTIVE JUROR #066: It's an aquatic team production, so I oversee  
21 the safety and training of the artists and technicians. Everybody who works in the  
22 theater is scuba certified to perform their duties.

23 MR. HAMNER: That's pretty sweet. Okay. Sorry.

24 Now, there was -- I think you had told the Judge earlier, and I don't  
25 mean to pry, but something along the lines that you were accused of like an assault

1 or domestic violence. Something along the lines where I think maybe you pled no  
2 contest and it resulted in a dismissal. Is that --

3 PROSPECTIVE JUROR #066: Correct. It was assault and battery,  
4 December '99 and battery with a dangerous weapon.

5 MR. HAMNER: All right.

6 PROSPECTIVE JUROR #066: Yes, I pleaded no contest, probation and  
7 dismissed.

8 MR. HAMNER: Okay. So given that you have that experience, if you were  
9 selected as a juror do you think you would have a difficult time kind of sitting in  
10 judgment of another individual?

11 PROSPECTIVE JUROR #066: No, because I --

12 MR. HAMNER: Okay. And why do you say that?

13 PROSPECTIVE JUROR #066: Because I knew I did wrong and that's why I  
14 pled no contest and took what they were offering.

15 MR. HAMNER: So you wouldn't have any issues if selected as a juror to kind  
16 of see if we meet our burden by proving all the elements. And if the facts show  
17 beyond a reasonable doubt you wouldn't have an issue with making a determination  
18 of guilt on -- or not guilty --

19 PROSPECTIVE JUROR #066: Correct.

20 MR. HAMNER: -- is that correct? Okay.

21 Churchgoer or not churchgoer? There were a lot of hands. I don't  
22 really know --

23 PROSPECTIVE JUROR #066: Irregular.

24 MR. HAMNER: Irregular churchgoer.

25 PROSPECTIVE JUROR #066: When my daughters are performing.

1 MR. HAMNER: Okay.

2 PROSPECTIVE JUROR #066: They go with their mom weekly.

3 MR. HAMNER: Do you think if you -- whether you go or not go, that's not  
4 necessarily going to be an automatic strike against just because the fact that this  
5 may have taken place at a church. Would that be fair to say?

6 PROSPECTIVE JUROR #066: Yes, it would not.

7 MR. HAMNER: Okay. So you'll be willing to kind of -- even if that's the  
8 locale, you're willing to kind of keep an open mind, weigh the testimony and weigh  
9 his actions and the evidence that's presented before making a determination. That  
10 fair?

11 PROSPECTIVE JUROR #066: Yes.

12 MR. HAMNER: Lastly, had a question, I think, for Ms. Schwendemann about  
13 the notion of whether or not maybe evidence presented before the fact -- before a  
14 crime happens or after, do you think that those things might be helpful in your  
15 decision making process; maybe thing that happened before or after?

16 PROSPECTIVE JUROR #066: Yes.

17 MR. HAMNER: And why do you think that?

18 PROSPECTIVE JUROR #066: It just goes to show a state of mind. You  
19 know, what were they thinking before, during and then after the fact. You know, do I  
20 know I'm doing wrong; did I do wrong and what I'm doing to cover that up.

21 MR. HAMNER: Okay. And those are things that you'll probably keep in mind  
22 as you listen to the evidence?

23 PROSPECTIVE JUROR #066: Yes.

24 MR. HAMNER: All right. Thank you.

25 THE COURT: Mr. Posin.



1 MR. POSIN: Thank you, Your Honor.

2 I almost didn't ask any questions, but then something caught my  
3 attention when you said did I do wrong; what am I doing wrong and what am I doing  
4 to cover that up. Do you -- are you assuming that anybody accused of a crime has  
5 actually committed a crime?

6 PROSPECTIVE JUROR #066: No.

7 MR. POSIN: Okay. Are there cases that you can think of where maybe  
8 somebody's charged with something and maybe they're really not guilty of  
9 something?

10 PROSPECTIVE JUROR #066: Absolutely.

11 MR. POSIN: Okay. And would one of those cases potentially be where they  
12 didn't actually have the intent to do something, so there's nothing to cover up  
13 because they didn't have the intent to commit a crime. Could that be a reason for  
14 you?

15 PROSPECTIVE JUROR #066: They would have to -- it would -- weigh on the  
16 fact of do they have a question before they do what they did, so am I doing wrong or  
17 could what I'm doing potentially be deemed as doing wrong. So it's a judgment from  
18 way back -- even before the actual event.

19 MR. POSIN: Are they actually intending to do something?

20 PROSPECTIVE JUROR #066: Yes.

21 MR. POSIN: Okay.

22 All right. That's all I have, Your Honor.

23 THE COURT: Thank you.

24 Pass the microphone over. And, Mr. Wood, tell us about yourself.

25 PROSPECTIVE JUROR #067: I retired from the Navy, 26 years, in '96.

1 Moved here nine years ago. I've been married for 16 years to my third wife and  
2 final.

3 THE COURT: Are you sure.

4 PROSPECTIVE JUROR #067: Yes.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR #067: Got three kids, all grown, by my -- two by my  
7 first wife; one by my second. Presently I'm employed by a company that provides  
8 maritime security specialists to commercial ships off the coast of Somalia -- armed  
9 security against pirates and that's what I do.

10 THE COURT: Okay. Well, that's exciting. Gosh, fighting pirates. I mean, it's  
11 sort of a --

12 PROSPECTIVE JUROR #067: It's not as glorified as it sounds.

13 THE COURT: Well, it sounds pretty good. I'd go with fighting pirates if I was  
14 going to --

15 PROSPECTIVE JUROR #067: But there are -- a lot of people end up dying. I  
16 do what I can to help them out.

17 THE COURT: Yes, it's a very serious problem over there I know --

18 PROSPECTIVE JUROR #067: Yes.

19 THE COURT: -- and has been for a long time. So did you do something  
20 similar when you were in the Navy?

21 PROSPECTIVE JUROR #067: I was a Navy SEAL.

22 THE COURT: Oh.

23 PROSPECTIVE JUROR #067: And an EOD technician.

24 THE COURT: Okay. That's also -- see -- see why I love this part. I mean,  
25 gosh, what's not to -- this is fascinating.

1                   And your three kids that are grown, what do they do?

2                   PROSPECTIVE JUROR #067: My oldest son was in SEAL Team 7. He got  
3 out after a tour in Iraq with PTSD.

4                   THE COURT: Oh.

5                   PROSPECTIVE JUROR #067: And now he works at a computer company in  
6 Tucson. His younger brother, by my -- both my first wife, is a -- he works in a rehab  
7 center in Tucson as Human Resources. And my third son, don't know what he  
8 does. Haven't talked to him in about six years. He don't want anything to do with  
9 me, so -- okay.

10                  THE COURT: Oh. Well, that's -- that's too bad. Well, hopefully you can  
11 remedy that sometime in the future.

12                  PROSPECTIVE JUROR #067: Probably not.

13                  THE COURT: No?

14                  PROSPECTIVE JUROR #067: His mother.

15                  THE COURT: Okay.

16                  PROSPECTIVE JUROR #067: Anyway.

17                  THE COURT: All right. Any questions that you heard us ask of the other  
18 jurors where you thought, you know, I need to let them know because I have  
19 feelings about this that are important that bear on my ability to be fair and impartial?

20                  PROSPECTIVE JUROR #067: No. I mean, I try to be fair and impartial with  
21 everything I do, even riding -- when I'm out on ships. And I have to make a lot of  
22 judgment calls out there with what I see and what I hear on a regular basis. And --  
23 but, you know, the question was from you, I believe, to everybody was how many  
24 people thought it was great when they got their summons to come.

25                  THE COURT: Mm-hmm.

1 PROSPECTIVE JUROR #067: But you didn't ask just the opposite question.  
2 How many people were going, oh, crap, I got my summons.

3 THE COURT: And your --

4 PROSPECTIVE JUROR #067: And I would have raised my hand.

5 THE COURT: Well, that --

6 PROSPECTIVE JUROR #067: Like I'm sure a lot of people would have.

7 THE COURT: Yeah, that's what we figure when they don't all jump up and  
8 down and say, yeah, they were excited. But it is an honor to serve on a jury and do  
9 community -- what amounts to your civic duty and service to the community and I  
10 expect you're probably in that category as, you know -- I mean, yes --

11 PROSPECTIVE JUROR #067: Sure.

12 THE COURT: -- you would have other things you could be doing that would --

13 PROSPECTIVE JUROR #067: Well, yes --

14 THE COURT: -- be important.

15 PROSPECTIVE JUROR #067: -- there's a lot of other things I'd rather be  
16 doing.

17 THE COURT: All right. That sounds good.

18 Would the State like to inquire further?

19 MR. HAMNER: No, Your Honor.

20 THE COURT: Thank you.

21 Defense?

22 MR. POSIN: I don't think I have anything either, Your Honor.

23 THE COURT: All right. You stumped them.

24 Okay. Now we have Mr. Capron.

25 PROSPECTIVE JUROR #069: Yeah, Capron.

1 THE COURT: Capron.

2 PROSPECTIVE JUROR #069: William Capron --

3 THE COURT: Oh, it's --

4 PROSPECTIVE JUROR #069: -- 0069.

5 THE COURT: It's a C-A; right?

6 PROSPECTIVE JUROR #069: Yeah. C-A-P-R-O-N.

7 THE COURT: Tell us about yourself.

8 PROSPECTIVE JUROR #069: I lived in Las Vegas for like 27 years. I work

9 as a heavy equipment operator. Have a significant other that I've been with for 25

10 years. I have a son from a previous marriage that's 29 years old but lives in Texas.

11 He works as bartender and goes to school and that's about it.

12 THE COURT: Okay. Heavy equipment operator, so what kind of equipment?

13 Anything big and --

14 PROSPECTIVE JUROR #069: Yeah, just pretty much everything. I've

15 always been more of a -- just a grade checker or foreman type, so I'm like the

16 shepherd to the heavy equipment pretty much.

17 THE COURT: Okay. So is there a lot of work starting up now?

18 PROSPECTIVE JUROR #069: Actually, yes, it's actually starting to get busy.

19 I've been working -- actually in Summerlin is booming pretty well and everything's

20 starting to look up finally.

21 THE COURT: Well, that's good -- that's good news.

22 Anything that we should know about you that may be you were thinking

23 as you heard the other questions I need to bring this up to the Judge?

24 PROSPECTIVE JUROR #069: No, I think I'm good.

25 THE COURT: All right. You think you could be fair and impartial?

1 PROSPECTIVE JUROR #069: Yes, I can.

2 THE COURT: All right. Thank you.

3 PROSPECTIVE JUROR #069: Thank you.

4 THE COURT: Would the State like to inquire further?

5 MR. HAMNER: Just real briefly.

6 So, Mr. Capron, if you had to be selected as a jury -- a juror how would  
7 you kind of handle the responsibility? Do you think you could handle the  
8 responsibility as kind of sitting in judgment of another person given the nature of the  
9 charges?

10 PROSPECTIVE JUROR #069: Yeah, absolutely.

11 MR. HAMNER: And why -- why do you think you'd be able to handle that  
12 responsibility?

13 PROSPECTIVE JUROR #069: You know, it's just -- it's your civic duty.  
14 Everybody's got to do it one time or another. You enjoy the benefits of this country,  
15 you gotta -- gotta put in your time.

16 MR. HAMNER: Okay. And -- now I've asked this question for a couple of  
17 other individuals before this. Do you see any benefit, or at least in terms of making  
18 this determination, whether the facts kind of -- we've met our burden whether there  
19 is some benefits to maybe looking at actions before maybe the alleged crime  
20 happened, after the alleged crime happened. Do you think there's any advantage to  
21 looking into those things?

22 PROSPECTIVE JUROR #069: Depending on the instructions of the Judge,  
23 yeah.

24 MR. HAMNER: Okay. And why do you think it potentially could be helpful for  
25 your decision making process?

1 PROSPECTIVE JUROR #069: It could just tell you state of mind, which I  
2 think is important and things like that.

3 MR. HAMNER: Okay. All right. Thank you.

4 THE COURT: Mr. Posin.

5 MR. POSIN: Well, of course, I have to follow up on that. What -- what is it  
6 about somebody's state of mind that you think might be important?

7 PROSPECTIVE JUROR #069: That's their general state of mind in a certain  
8 period of time could determine, you know, the extremity of their actions, things like  
9 that.

10 MR. POSIN: Okay. And what is it about their actions that their state of mind  
11 do you think would inform or determine?

12 PROSPECTIVE JUROR #069: I mean, if somebody was, you know,  
13 generally agitated all the time or something and for a certain period of time they're  
14 probably more likely to do things that a person that was agitated would do, you  
15 know.

16 MR. POSIN: Well, suppose we had an issue of whether somebody had  
17 actually formulated an intent -- an intent that the Judge will give you as one of the  
18 elements to some of these crimes. Do you think that might be something that could  
19 also be determined that way as well?

20 PROSPECTIVE JUROR #069: I guess it depends on the situation, yeah.

21 MR. POSIN: Okay. Thanks.

22 THE COURT: All right. I feel like we -- coming back to the same thing so I'm  
23 going to kind of clarify again. At the end of the trial I'll give you instructions on the  
24 elements of every crime that's charged. Some crimes have different requirements  
25 for -- than other crimes for the intent element. So, without going into all of that now,

1 I kind of feel like this is -- this is not a trick question, but I kind of feel like maybe  
2 we're going down that rabbit hole so -- because you're trying to answer this in a  
3 vacuum. What we expect you to do is listen to the facts, the evidence. At the end  
4 apply all of that to the law as you'll be instructed. So to ask you to guess as to what  
5 might be relevant to you now when you don't know anything about this case really,  
6 other than that very little brief synopsis, we're not asking you to do that. That  
7 wouldn't even be a proper question on voir dire. So we're not asking you to  
8 prejudge the case, so let's kind of rein that in, gentlemen, when we ask these  
9 questions that -- okay.

10 All right. Pass the microphone down. Ms. Cooper.

11 PROSPECTIVE JUROR #070: Hi. 0070, Phoebe Cooper. I was raised in  
12 Las Vegas. I moved away for about 14 years in Northern California area,  
13 Sacramento and San Francisco. I've been back for about two years. I'm a project  
14 manager for a software developer at an online travel company. I'm married. I have  
15 three stepchildren ages 18, 14 and 12. My husband works for the Bureau of  
16 Reclamation as a training manager. What else?

17 THE COURT: Three -- you got three teenage --

18 PROSPECTIVE JUROR #070: All boys.

19 THE COURT: -- stepchildren. Woo.

20 PROSPECTIVE JUROR #070: Woo.

21 THE COURT: Yeah. That -- I'll bet that's been a challenge hasn't it?

22 PROSPECTIVE JUROR #070: There's a lot of games around -- a lot of  
23 electronic games.

24 THE COURT: Aah. Uh-huh. And -- but it's going well?

25 PROSPECTIVE JUROR #070: Yes.



1 THE COURT: You know, teenage boys are -- are always -- could be  
2 challenging and stepmom -- do they live with you, all of them?

3 PROSPECTIVE JUROR #070: One of them does.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR #070: The oldest.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR #070: The other two are with us about three nights a  
8 week.

9 THE COURT: Okay. So still spending a lot of time. How about any conflicts  
10 between the boys that you ever have to referee or --

11 PROSPECTIVE JUROR #070: Not really. No.

12 THE COURT: Okay.

13 PROSPECTIVE JUROR #070: A little bickering, but they're pretty good.

14 THE COURT: Good. All right.

15 Anything that you've heard -- we've spoken with you about several  
16 things and done follow-up questions. Anything else you want to add that would bear  
17 on your ability to be fair and impartial in this case?

18 PROSPECTIVE JUROR #070: Nothing I can think of.

19 THE COURT: All right. Thank you very much.

20 State.

21 MR. SCOW: Just want to ask one question, one topic. Hopefully it's short.  
22 Heard a few things about the burden of proof and the State holds that burden of  
23 proof we would ask you to hold to that and follow the instructions with regard to the  
24 burden of proof. When the charges were read by Mr. Hamner, attempt murder,  
25 assault with a deadly weapon, burglary, when you heard any of those charges,

1 specifically attempt murder, did you think, well -- you know, I better hold the State to  
2 that -- a higher burden or -- would you hold the State to a higher burden just based  
3 on the nature of the charges?

4 PROSPECTIVE JUROR #070: No.

5 MR. SCOW: Same standard for any charge, whether it's a trespass or a  
6 murder -- attempt murder and you'd hold us to that burden?

7 PROSPECTIVE JUROR #070: Yeah. I think I -- I don't really know the  
8 nuisances of all the different attempted murder or third degree or all of that, so I  
9 would go with the instructions from the Judge.

10 MR. SCOW: Okay. That's all I wanted to ask. Thank you, Judge.

11 THE COURT: Thank you.

12 Mr. Posin.

13 MR. POSIN: I have nothing for Ms. Cooper, Your Honor.

14 THE COURT: All right. Thank you.

15 If you'd hand the microphone over. And Ms. Tadich.

16 PROSPECTIVE JUROR #075: Badge number 0075, Katarina Tadich.

17 THE COURT: Tell us about yourself.

18 PROSPECTIVE JUROR #075: So I've lived in Las Vegas now for a year and  
19 three months. I'm originally from Rochester, New York. And then I went to school in  
20 New York and lived out there for about six years doing graphic designs, and that's  
21 what I do out here in Las Vegas.

22 THE COURT: Who do you do that for?

23 PROSPECTIVE JUROR #075: I work for myself so I have a couple -- I work  
24 with one restaurant and I'm going to start working with a yoga studio.

25 THE COURT: Okay. So you have to go out and find your clients then.

1 PROSPECTIVE JUROR #075: Right. I mean, usually it's through connection  
2 of people I know.

3 THE COURT: Word of mouth.

4 PROSPECTIVE JUROR #075: Right.

5 THE COURT: Okay. And do you do any advertising of yourself to try and get  
6 new clients or --

7 PROSPECTIVE JUROR #075: No.

8 THE COURT: -- go out and network or anything like that?

9 PROSPECTIVE JUROR #075: Not -- I mean, I meet people when I'm out at  
10 different events, but not specifically networking events.

11 THE COURT: Okay. Anything about the questions you've heard us ask of  
12 the other jurors where you thought, oh, I need to let the Judge know about that when  
13 it's my turn?

14 PROSPECTIVE JUROR #075: No.

15 THE COURT: No. And I can't remember. Did you say significant other?

16 PROSPECTIVE JUROR #075: No significant other.

17 THE COURT: No significant other; okay.

18 And you've been here you said a year and a half. Do you have any  
19 family here?

20 PROSPECTIVE JUROR #075: I have -- my parents are here and I have an  
21 aunt.

22 THE COURT: Okay. What do your parents do?

23 PROSPECTIVE JUROR #075: My father is an Italian wine specialist.

24 THE COURT: Uh-huh.

25 PROSPECTIVE JUROR #075: And my mom is a real estate agent.

1 THE COURT: Okay. And is business picking back up with -- does she do  
2 residential or commercial?

3 PROSPECTIVE JUROR #075: Residential.

4 THE COURT: Residential.

5 PROSPECTIVE JUROR #075: It's still -- there's just not that many homes --

6 THE COURT: Mm-hmm.

7 PROSPECTIVE JUROR #075: -- available on the market. So she has  
8 buyers, not as many sellers.

9 THE COURT: Aah; okay. All right. Very good.

10 Would the State like to inquire further?

11 MR. SCOW: No questions from the State. Thank you.

12 THE COURT: Defense?

13 MR. POSIN: None from the defense, Your Honor.

14 THE COURT: All right. Thank you.

15 All right. Ladies and gentlemen, now we're at a part of the trial where  
16 the lawyers get to exercise what are known as peremptory challenges. That means  
17 that they can excuse a juror without cause. In other words, they just may think  
18 because of whatever answers or your background that, you know, they would prefer  
19 not to have you for whatever reason, but they don't have to explain their reason.  
20 And this is something that happens in every trial and each side gets -- in this trial  
21 four peremptory challenges. So if you are thanked and excused, what you need to  
22 do is go over to the jury commissioner and let them know that you were excused.

23 All right. State's first peremptory challenge.

24 MR. SCOW: The State would like to thank and excuse juror badge number  
25 0056, Alberto Estremera.

1 THE COURT: Thank you, sir.  
2 Call the next in order.  
3 THE COURT CLERK: Badge 76, Dorinda James.  
4 THE COURT: Hello, Ms. James. Have you ever served as a juror before?  
5 PROSPECTIVE JUROR #076: Yes.  
6 THE COURT: And was that here in Clark County?  
7 PROSPECTIVE JUROR #076: Yes.  
8 THE COURT: Was that a criminal case or a civil case?  
9 PROSPECTIVE JUROR #076: Civil.  
10 THE COURT: And without telling us what the verdict was did the jury reach a  
11 verdict?  
12 PROSPECTIVE JUROR #076: Yes.  
13 THE COURT: Were you the foreperson?  
14 PROSPECTIVE JUROR #076: No.  
15 THE COURT: Was that a rewarding experience for you?  
16 PROSPECTIVE JUROR #076: Yes.  
17 THE COURT: And nothing where you would say, oh, I don't ever want to  
18 serve on a jury again as a result of that experience?  
19 PROSPECTIVE JUROR #076: No.  
20 THE COURT: Okay. Have you ever been the victim of a crime?  
21 PROSPECTIVE JUROR #076: No.  
22 THE COURT: How about a family member or someone closely associated  
23 with you ever been the victim of a violent crime?  
24 PROSPECTIVE JUROR #076: No.  
25 THE COURT: Have you ever been accused of a crime?

1 PROSPECTIVE JUROR #076: No.

2 THE COURT: Anyone in your family or closely associated with you been  
3 accused of a crime?

4 PROSPECTIVE JUROR #076: None that I can remember.

5 THE COURT: Okay.

6 PROSPECTIVE JUROR #076: I don't think so.

7 THE COURT: All right. Do you have any moral or religious beliefs that would  
8 cause you to be unable to sit in judgment on another person?

9 PROSPECTIVE JUROR #076: No.

10 THE COURT: Do you have any quarrel with the notion that there is a  
11 presumption of innocence for all criminal defendants?

12 PROSPECTIVE JUROR #076: And --

13 THE COURT: Do you have -- do you have a quarrel with that --

14 PROSPECTIVE JUROR #076: No.

15 THE COURT: -- or do you think that's fine?

16 PROSPECTIVE JUROR #076: That -- no, that's good.

17 THE COURT: Okay. And you understand that it is the State's burden to  
18 prove the case beyond a reasonable doubt?

19 PROSPECTIVE JUROR #076: Yes.

20 THE COURT: Okay. Would you -- would you expect the Defendant to have  
21 to take the stand to explain himself?

22 PROSPECTIVE JUROR #076: No.

23 THE COURT: Okay. Have you ever been in law enforcement?

24 PROSPECTIVE JUROR #076: No.

25 THE COURT: Anyone in your family or closely associated with you ever been

1 in law enforcement?

2 PROSPECTIVE JUROR #076: My husband is former law enforcement.

3 THE COURT: Okay. Was that here?

4 PROSPECTIVE JUROR #076: Yes.

5 THE COURT: And so was he -- with what department?

6 PROSPECTIVE JUROR #076: Corrections in I believe -- it was before I knew  
7 him. I think it was Indian Springs.

8 THE COURT: It was where?

9 PROSPECTIVE JUROR #076: At Indian Springs, I think.

10 THE COURT: Indian Springs. Okay. So at the prison facility --

11 PROSPECTIVE JUROR #076: Yes.

12 THE COURT: -- not the jail.

13 PROSPECTIVE JUROR #076: Correct.

14 THE COURT: Okay. And how long ago was that?

15 PROSPECTIVE JUROR #076: It was before I knew him. I don't know.

16 THE COURT: Okay.

17 All right. You need to hold the microphone a little closer because the  
18 recorder -- we can hear you but it's not picking up on the record.

19 All right. So obviously then you really didn't talk to him a lot about --

20 PROSPECTIVE JUROR #076: No.

21 THE COURT: -- that job. And do you feel that would have any influence on  
22 you and your ability to be fair and impartial in this case?

23 PROSPECTIVE JUROR #076: No.

24 THE COURT: Is there any reason that we should know about anything that --  
25 where you feel that you could not be fair and impartial in this case --

1 PROSPECTIVE JUROR #076: No.

2 THE COURT: -- as a juror?

3 Tell us about yourself.

4 PROSPECTIVE JUROR #076: I have -- let's see. We've been married three  
5 years. And I've been here since 1971 from New York. I went to Kansas City for  
6 about three years in '94 and everybody comes back here. My family's here. I have  
7 two sons, 34 and 36, and a 12-year-old daughter that I adopted.

8 THE COURT: Very good. So do your --

9 PROSPECTIVE JUROR #076: That's about it in a nutshell.

10 THE COURT: -- grown children do?

11 PROSPECTIVE JUROR #076: One is an electrician and the other works on  
12 -- at the base in the tool shed. That's all I know.

13 THE COURT: Okay. All right.

14 PROSPECTIVE JUROR #076: Hands out tools to the crew that fixes planes.

15 THE COURT: Okay. Well, that's an important job because --

16 PROSPECTIVE JUROR #076: Yes. Yes.

17 THE COURT: -- they have a lot of different tools and they have to be kept in  
18 proper working order and -- all right.

19 Would the State like to inquire further?

20 MR. SCOW: We don't have any questions. Thank you.

21 THE COURT: Defense?

22 MR. POSIN: Nothing from the defense, Your Honor.

23 THE COURT: All right. Thank you.

24 It will be the defense first peremptory challenge.

25 MR. POSIN: Thank you, Your Honor.



1 Defense will thank and excuse badge number 73, Ms. Kulka.

2 THE COURT: Thank you, Ms. Kulka.

3 And call the next in order.

4 THE COURT CLERK: Debra Power, badge 78.

5 Do you have the microphone there.

6 PROSPECTIVE JUROR #078: Oh, thank you.

7 THE COURT: All right. Welcome.

8 So, before we get to the fun part, let's find out -- have you served as a  
9 juror before?

10 PROSPECTIVE JUROR #078: No.

11 THE COURT: And have you ever served in law enforcement?

12 PROSPECTIVE JUROR #078: No.

13 THE COURT: Anyone in your family or closely associated with you in law  
14 enforcement?

15 PROSPECTIVE JUROR #078: No.

16 THE COURT: Ever been the victim of a crime?

17 PROSPECTIVE JUROR #078: We had some belongings stolen from our  
18 garage about six months ago.

19 THE COURT: All right.

20 PROSPECTIVE JUROR #078: No violent crimes.

21 THE COURT: Okay. Anything about that -- did you feel that the police -- did  
22 they respond to that?

23 PROSPECTIVE JUROR #078: Yes.

24 THE COURT: And did you feel that they did a good job in trying to  
25 investigate?

1 PROSPECTIVE JUROR #078: Yes.

2 THE COURT: Were they able to find out who did it?

3 PROSPECTIVE JUROR #078: No.

4 THE COURT: All right. Any hard feelings because they couldn't find who did  
5 it?

6 PROSPECTIVE JUROR #078: No.

7 THE COURT: Okay. Have you ever been accused of a crime?

8 PROSPECTIVE JUROR #078: No.

9 THE COURT: Anyone in your family or closely associated with you been  
10 accused of a crime?

11 PROSPECTIVE JUROR #078: When my husband was 16 he was accused of  
12 sexually assaulting a woman. Later it was dropped and he was never charged.

13 THE COURT: Okay. Has he spoken to you about that and his feelings about  
14 that?

15 PROSPECTIVE JUROR #078: Yes. He was 16 so it was long before I met  
16 him, but we spoke about it and he feels though everything was handled very fairly.  
17 When there was no evidence against him everything was dropped so -- it happened  
18 in Canada, not here, but he was happy with the system.

19 THE COURT: Okay. Good.

20 So, do you have any religious or moral beliefs that would cause you to  
21 be unable to sit in judgment on another person?

22 PROSPECTIVE JUROR #078: No.

23 THE COURT: Okay. Tell us about yourself.

24 PROSPECTIVE JUROR #078: I am 30 years old. I moved to Las Vegas  
25 eight years ago. I am a mom of a little 18 months old girl. I'm also 12 weeks

1 pregnant so --

2 THE COURT: Oh.

3 PROSPECTIVE JUROR #078: -- I will have two -- as soon as my daughter  
4 turns two six days later I'll have another one, which will be exciting. I've been  
5 married for three years to my husband. I met him in Las Vegas. He was playing ice  
6 hockey for the Wranglers here in town. He is now a firefighter and working -- he's a  
7 wild land firefighter working to get a City firefighting job.

8 THE COURT: Okay. So is he out on a fire now?

9 PROSPECTIVE JUROR #078: No. He actually just got back from Elko. So  
10 he was gone a week for the fires in Northern Nevada.

11 THE COURT: Okay. So like that -- gosh, there was one that was up -- he  
12 didn't fight on the rim fire in Yosemite then?

13 PROSPECTIVE JUROR #078: No. He hasn't been called yet. I mean, it's  
14 still going on so I'm not sure if he'll get a call.

15 THE COURT: Okay. Were there any fires in the east, you know, up in the  
16 Ruby Mountains that he fought?

17 PROSPECTIVE JUROR #078: No, but he was on the Carpenter fire here in  
18 Mount Charleston. He was gone for two weeks --

19 THE COURT: Uh-huh.

20 PROSPECTIVE JUROR #078: -- dealing with that.

21 THE COURT: Right. Okay. Thank you.

22 Would the State like to inquire further?

23 MR. SCOW: No questions, Judge.

24 THE COURT: Defense?

25 MR. POSIN: None from the defense, Your Honor.

1 THE COURT: Thank you.

2 It is the State's second peremptory challenge.

3 MR. SCOW: We'll waive our second, Judge.

4 THE COURT: All right.

5 Defense, your second.

6 MR. POSIN: Thank you, Your Honor.

7 The defense will thank and excuse Mr. Wood.

8 THE COURT: All right.

9 Thank you, Mr. Wood. If you'll go across and check in with the jury

10 commissioner.

11 Call the next in order.

12 THE COURT CLERK: Roberto -- I'm sorry. Robert Romero, badge 83.

13 THE COURT: Welcome.

14 PROSPECTIVE JUROR #083: How you doing?

15 THE COURT: Mr. Romero, have you ever served as a juror before?

16 PROSPECTIVE JUROR #083: Yes.

17 THE COURT: Was that here in Clark County?

18 PROSPECTIVE JUROR #083: In New York.

19 THE COURT: How long ago?

20 PROSPECTIVE JUROR #083: About five years ago.

21 THE COURT: Was it in a criminal case or a civil case?

22 PROSPECTIVE JUROR #083: Criminal case.

23 THE COURT: And without telling us what the verdict was, did the jury reach a

24 verdict?

25 PROSPECTIVE JUROR #083: Yes.

1 THE COURT: Were you the foreperson?

2 PROSPECTIVE JUROR #083: Yes.

3 THE COURT: Okay. Was that a rewarding experience?

4 PROSPECTIVE JUROR #083: Yes.

5 THE COURT: Any reason that you would feel I just don't want to do this

6 again. It was too difficult or traumatic or --

7 PROSPECTIVE JUROR #083: No.

8 THE COURT: Okay. All in all, did you feel that -- as you saw it from the

9 outside sitting as a juror did you feel the system seemed to work well and -- even if it

10 wasn't exactly like television that it --

11 PROSPECTIVE JUROR #083: Yeah, I --

12 THE COURT: -- it worked well.

13 PROSPECTIVE JUROR #083: -- I'm former law enforcement.

14 THE COURT: Okay. So that was my next question.

15 PROSPECTIVE JUROR #083: Yes.

16 THE COURT: So tell us about that.

17 PROSPECTIVE JUROR #083: I was a detective in Fairfax County, Virginia

18 for 13 years.

19 THE COURT: Okay. And then -- were you always a detective or did you

20 work patrol before you became a detective?

21 PROSPECTIVE JUROR #083: Patrol for two years, then I went into

22 narcotics, then I did burglary, robbery and homicide.

23 THE COURT: Okay. So all the different -- and that was the total of your --

24 your law enforcement was 13 years?

25 PROSPECTIVE JUROR #083: That was it.

1 THE COURT: Did you retire or did you just want to get out of that business?

2 PROSPECTIVE JUROR #083: I divorced and my wife moved out of state so I  
3 moved to be near the kids. That's how I ended up in New York.

4 THE COURT: I see. All right.

5 And -- now, as a result of being in law enforcement did you ever have to  
6 testify in a trial?

7 PROSPECTIVE JUROR #083: Hundreds of times.

8 THE COURT: Okay. So would you, as a former law enforcement officer who  
9 did testify, would you tend to give more credence to the testimony of a police officer  
10 merely because the person was a police officer but for no other reason?

11 PROSPECTIVE JUROR #083: To be honest I'd have to say yes.

12 THE COURT: Okay. And tell us why that would be.

13 PROSPECTIVE JUROR #083: Well, my experience is that to get a case like  
14 this to this point there's been a lot of time and investigation and so -- it's always  
15 been my belief that although a person is innocent until proven guilty the investigation  
16 is the proof and the prosecutors are the presenters of that proof, so --

17 THE COURT: Okay. But would you not listen to the testimony of a police  
18 officer -- wouldn't you have to listen to the testimony and make an evaluation based  
19 on the totality of the evidence that you'd heard before you just make a judgment call  
20 as to whether that testimony seemed accurate or truthful or --

21 PROSPECTIVE JUROR #083: Sure.

22 THE COURT: Okay. So it's not like before the person even takes the stand it  
23 doesn't matter what they say I'm going with that? That's what I'm --

24 PROSPECTIVE JUROR #083: Well -- but some -- I would -- they would have  
25 to impeach his testimony --

1 THE COURT: Okay.

2 PROSPECTIVE JUROR #083: -- in order for me to disregard it.

3 THE COURT: Okay. And, of course, by that you mean come up with

4 evidence that he had --

5 PROSPECTIVE JUROR #083: It is not true.

6 THE COURT: -- testified differently before or it was not true --

7 PROSPECTIVE JUROR #083: Right.

8 THE COURT: -- in some fashion.

9 PROSPECTIVE JUROR #083: Yes, ma'am.

10 THE COURT: Okay. Would you agree that police officers are human beings

11 and therefore able to make mistakes just like every other human being?

12 PROSPECTIVE JUROR #083: Yes.

13 THE COURT: Oh. And so it's possible that a police officer could make such

14 an error --

15 PROSPECTIVE JUROR #083: Yes.

16 THE COURT: -- in observing something or --

17 PROSPECTIVE JUROR #083: Yes.

18 THE COURT: All right.

19 Do you feel that you could be fair and impartial with your law

20 enforcement background?

21 PROSPECTIVE JUROR #083: Yes.

22 THE COURT: If you were sitting in the Defendant's seat would you want 12

23 people on the -- same frame of mind that you are now to sit in judgment on you?

24 PROSPECTIVE JUROR #083: I don't think so.

25 THE COURT: Okay. Tell me why.

1 PROSPECTIVE JUROR #083: Well, I -- like I said -- I mean, it's my  
2 experience -- my life experience. And that was a long time that -- to get to this point  
3 in the system there has to be not just one police officer that believes it, but many,  
4 and they have to convince the prosecutors that they have evidence that would  
5 convict a person.

6 THE COURT: Okay. So to me that says you've -- you are not impartial, that  
7 you're biased. That you've already made a decision based upon that knowledge  
8 and you haven't heard anything about the case but you've somewhat prejudged. Is  
9 that an accurate statement?

10 PROSPECTIVE JUROR #083: I don't want to say I'm biased. That's just my  
11 experience.

12 THE COURT: I know. But when I -- we're looking for not -- not people as a  
13 blank slate, because everybody brings their experience and their common sense to  
14 the jury room, but what we're looking for are people who can say I'm going to wait  
15 and hear all the evidence before I make up my mind. Are you that person?

16 PROSPECTIVE JUROR #083: Yeah. I can -- I'll wait.

17 THE COURT: Okay. Well -- all right. So that gets back to my other question  
18 because I said, well, would you want 12 jurors if you were the Defendant who had  
19 the same state of mind that you do now that -- to sit in judgment on you and you  
20 said no. So that's --

21 PROSPECTIVE JUROR #083: Well --

22 THE COURT: -- why I wasn't certain --

23 PROSPECTIVE JUROR #083: -- I -- I probably wouldn't because, you know,  
24 I know the technicalities that go on behind the scene and investigating these kinds  
25 of crimes and I might apply my old investigation techniques to things that I hear



1 here.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR #083: Not that I'd be biased about it, but --

4 THE COURT: Okay. But you can't do that. You can't do your own  
5 investigation or your own inquiry into this case. You just have to listen to what has  
6 been done and you can't speculate or guess about what hasn't been done. You  
7 need to rely on the evidence that's presented. So are you going to be doing that or  
8 are you going to be sitting there doing, you know, well, I know probably what they  
9 really did and -- that's what I'm asking.

10 PROSPECTIVE JUROR #083: I'd do my best to listen to both sides and then  
11 make a determination, but I can't say that some of that won't creep into my mind  
12 what you just mentioned -- you know, my past.

13 THE COURT: Okay. Tell us about yourself otherwise.

14 PROSPECTIVE JUROR #083: I moved here about three years ago from New  
15 York. I'm now an insurance agent. I have two boys; one's 24, the other one's 21.  
16 I've been married for 28 years. I went to school at University of Maryland.

17 THE COURT: And your boys, what do they do?

18 PROSPECTIVE JUROR #083: The eldest one's in Charlotte and working for  
19 a company doing human resources and the youngest one's in University of  
20 Tennessee playing soccer.

21 THE COURT: Thank you.

22 Would the State like to inquire?

23 MR. HAMNER: I would. Thank you.

24 Mr. Romero, I got to ask you. I went to school back east. Are you a  
25 Skins fan?

1 PROSPECTIVE JUROR #083: Yes.

2 MR. HAMNER: Oh, good. Me too.

3 All right. Aside from that, a lot of questions about your background  
4 being an officer so I want to pose something to you. Let's say you were selected as  
5 a juror, officer walks in, uniform, badge, the belt, the whole nine, the nice hat, sits  
6 down and the first question that's asked was, officer, what was the color of the sky  
7 that day? The officer gets up there and says it was purple with pink polka dots and  
8 little gumdrops were falling. And the lawyer says, officer, what color was the sky?  
9 Pink with purple polka dots and gumdrops. Are you going to tell me that that officer  
10 with the uniform and the badge and whole background and he gets up and he says  
11 that and you're going to tell me that you're going to buy that if he tells you that the  
12 sky is pink with gumdrops just because he's an officer?

13 PROSPECTIVE JUROR #083: No.

14 MR. HAMNER: Okay. Why wouldn't you believe an officer if he comes up  
15 with that sort of testimony?

16 PROSPECTIVE JUROR #083: Because I've never seen a sky that was pink  
17 with polka dots.

18 MR. HAMNER: Okay. So your common sense may tell you at that point, you  
19 know what, maybe I shouldn't just trust the badge. Maybe I can actually evaluate  
20 what they're actually saying on the stand before I reach a conclusion?

21 PROSPECTIVE JUROR #083: Correct.

22 MR. HAMNER: And I think maybe some of the questions that the Judge was  
23 asking you it kind of dovetails into that. I understand that you got experience with  
24 law enforcement and you understand the work these guys go through. But what we  
25 need are people who are going to keep an open mind and wait till the words come

1 out of their mouth before you make a determination that, you know what, this guy's  
2 telling the truth or you know what, he's full of it. Are you going to be able to do that?

3 PROSPECTIVE JUROR #083: Yes.

4 MR. HAMNER: Could you leave those experiences behind and actually just  
5 listen, not just to the officers but every other witness that gets up, before you make a  
6 call as to their telling the truth or I don't think that makes a lot of sense?

7 PROSPECTIVE JUROR #083: Yes.

8 MR. HAMNER: Okay. So you could do that?

9 PROSPECTIVE JUROR #083: I can.

10 MR. HAMNER: Whether it's an officer or a regular person?

11 PROSPECTIVE JUROR #083: Yes.

12 MR. HAMNER: All right. Thanks.

13 THE COURT: Mr. Posin.

14 MR. POSIN: Your Honor, I'm not going to ask any question but I am going to  
15 ask that he be removed for cause.

16 THE COURT: All right. Well, I don't think that there's grounds for cause so  
17 that request is denied.

18 The State's first -- or third, excuse me, peremptory challenge.

19 MR. HAMNER: We'll waive, Your Honor.

20 THE COURT: Waived.

21 Mr. Posin.

22 MR. POSIN: Thank you, Your Honor.

23 We'll thank and excuse Mr. Romero. Thank you.

24 THE COURT: Thank you, Mr. Romero.

25 Call the next in order.

1 THE COURT CLERK: Matthew Gouviea, badge 84.

2 THE COURT: Welcome to seat number 9, which is the hot seat today.

3 PROSPECTIVE JUROR #084: Yes, ma'am.

4 THE COURT: All right. Have you ever served as a juror before?

5 PROSPECTIVE JUROR #084: No, ma'am.

6 THE COURT: Have you ever been in law enforcement?

7 PROSPECTIVE JUROR #084: No, ma'am.

8 THE COURT: Anyone in your family or closely associated with you in law  
9 enforcement?

10 PROSPECTIVE JUROR #084: I got a couple cousins who are.

11 THE COURT: Do they live here?

12 PROSPECTIVE JUROR #084: No, ma'am, in Massachusetts.

13 THE COURT: Do you speak to them about their work?

14 PROSPECTIVE JUROR #084: Not much. We don't -- I just went out there on  
15 leave about a couple weeks ago and spoke to them a little bit but not much.

16 THE COURT: Okay. Would you tend to -- as a result of your cousins being  
17 law enforcement would you tend to give the testimony of a law enforcement officer  
18 more weight or credibility than you would any other witness merely because the  
19 person was a law enforcement officer and for no other reason?

20 PROSPECTIVE JUROR #084: No, not necessarily.

21 THE COURT: Okay. Have you ever been accused of a crime?

22 PROSPECTIVE JUROR #084: No.

23 THE COURT: Anyone in your family or closely associated with you accused  
24 of a crime?

25 PROSPECTIVE JUROR #084: Not that I know of.

1 THE COURT: How about have you ever been the victim of a crime?

2 PROSPECTIVE JUROR #084: No.

3 THE COURT: Anyone in your family been the victim of a violent crime or any  
4 close family member or friend?

5 PROSPECTIVE JUROR #084: No.

6 THE COURT: Okay. Do you have any religious or moral beliefs that would  
7 keep you from being able to pass judgment on another person?

8 PROSPECTIVE JUROR #084: No, ma'am.

9 THE COURT: Anything that you could think of that you would want to  
10 disclose to the Court about your ability to be -- to serve as a fair and impartial juror  
11 in this case?

12 PROSPECTIVE JUROR #084: No, ma'am.

13 THE COURT: Tell us about yourself?

14 PROSPECTIVE JUROR #084: I'm 34 years old. Been married for -- going on  
15 nine years now. I have a eight-year-old daughter. I'm currently in the Air Force  
16 stationed out here at Nellis. I've been here for about six years. My wife does  
17 security out at Nellis speedway and then she's also a beautician -- does hair also so  
18 I get free haircuts all time, which are awesome. That's about it.

19 THE COURT: Where did you come from before you were stationed here?

20 PROSPECTIVE JUROR #084: Before I was stationed here I did a year over  
21 in Korea. And then, of course, I was a remote so she couldn't -- or I couldn't bring  
22 the family with me. And before that I was out at Whiteman Air Force Base in  
23 Missouri for about nine years.

24 THE COURT: Okay. Oh, so are you coming up on retirement then pretty  
25 soon?

1 PROSPECTIVE JUROR #084: I got about four years left, so -- and then we'll  
2 see what happens. You get to stay up till 30, so we'll see.

3 THE COURT: Okay. What do -- what's your job in the Air Force?

4 PROSPECTIVE JUROR #084: I'm a [indiscernible].

5 THE COURT: And what --

6 PROSPECTIVE JUROR #084: I basically deal with morale and discipline  
7 issues for the unit and recommend on those things to the commander.

8 THE COURT: Okay. So you try to keep the people in -- are you assigned -- I  
9 don't know what -- do they call them squadrons?

10 PROSPECTIVE JUROR #084: Squadrons. Yes, ma'am.

11 THE COURT: Okay. Are you assigned a squadron that you're the morale  
12 officer for?

13 PROSPECTIVE JUROR #084: Right. The way it works in the Air Force is we  
14 have squadrons groups and then wings --

15 THE COURT: Right.

16 PROSPECTIVE JUROR #084: -- and then it goes up and up and up. But  
17 right now I'm at like a group level.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR #084: I'm scheduled to move here in a couple  
20 weeks to a squadron level, which I'll be in charge of about 250 people, so --

21 THE COURT: And then when the squadron gets deployed with the air wing  
22 do you travel with them?

23 PROSPECTIVE JUROR #084: It's a possibility. Yes, ma'am.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR #084: I've been deployed three times now, so --

1 THE COURT: Okay. So deployed Afghanistan, Iraq?

2 PROSPECTIVE JUROR #084: I just got back last February -- February 12<sup>th</sup>

3 from Iraq. And we pulled out of Iraq to Kuwait. And then my prior two deploys were

4 Djibouti, Africa.

5 THE COURT: Okay. All right. That's very interesting.

6 State, would you like to inquire further?

7 MR. HAMNER: No, Your Honor.

8 THE COURT: Defense?

9 MR. POSIN: No, Your Honor.

10 THE COURT: All right. Thank you.

11 So State's final peremptory challenge.

12 MR. HAMNER: We'll waive, Your Honor.

13 THE COURT: All right.

14 Defense?

15 MR. POSIN: Court's indulgence for a moment.

16 Your Honor, I think we'll keep seat 9 as the hot seat.

17 THE COURT: All right.

18 MR. POSIN: Thank and excuse Mr. Gouviea. Hopefully I pronounced it right.

19 THE COURT: Thank you.

20 We always have a hot seat every time.

21 PROSPECTIVE JUROR #084: [Indiscernible.]

22 THE COURT: Thank you.

23 Call the next in order.

24 THE COURT CLERK: Badge 86, Ingrid Fitzgerald.

25 THE COURT: Ms. Fitzgerald, welcome.

1                   So, have you ever served as a juror before?

2           PROSPECTIVE JUROR #086: Yes, I have.

3           THE COURT: Was that here in Clark County?

4           PROSPECTIVE JUROR #086: No, it was up in Seattle, Washington.

5           THE COURT: All right. And was it a civil case or a criminal case?

6           PROSPECTIVE JUROR #086: Criminal.

7           THE COURT: How long ago was that?

8           PROSPECTIVE JUROR #086: From what I recall, at least 16 years.

9           THE COURT: Without telling us what the verdict was did the jury reach a

10 verdict?

11          PROSPECTIVE JUROR #086: Yes.

12          THE COURT: Were you the foreperson?

13          PROSPECTIVE JUROR #086: Yes.

14          THE COURT: Okay. Was that a rewarding experience?

15          PROSPECTIVE JUROR #086: I'm sorry.

16          THE COURT: Was that a rewarding experience?

17          PROSPECTIVE JUROR #086: Yes, it was.

18          THE COURT: Okay. So nothing about where you would say I never want to

19 see jury service again?

20          PROSPECTIVE JUROR #086: No.

21          THE COURT: Did you feel like it was a good reflection of how our justice

22 system works?

23          PROSPECTIVE JUROR #086: Oh, definitely.

24          THE COURT: Okay. Have you ever been in law enforcement?

25          PROSPECTIVE JUROR #086: No.



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

2 PROSPECTIVE JUROR #086: No.

3 THE COURT: Anyone closely associated with you ever been in law  
4 enforcement?

5 PROSPECTIVE JUROR #086: No.

6 THE COURT: How about anyone closely associated with you ever been the  
7 victim of a violent crime?

8 PROSPECTIVE JUROR #086: No.

9 THE COURT: Have -- do you have any religious or moral beliefs that would  
10 make it difficult for you to sit in judgment upon another person?

11 PROSPECTIVE JUROR #086: No.

12 THE COURT: Okay. I know you've done it before, but that was 16 years ago.  
13 Tell us about yourself?

14 PROSPECTIVE JUROR #086: Well, I moved to Clark County about 13 years  
15 ago when I retired. I was married for 30 years; got a divorce. I used to -- I actually  
16 retired from a software company -- a major software company. I have one daughter,  
17 she's married. I have two grandkids; they live in San Diego. My daughter, she's the  
18 administrator of the anesthesiology department at UCSD Hospital. And I guess that  
19 pretty much explains it.

20 THE COURT: All right. So when you -- when you were working -- now you're  
21 retired?

22 PROSPECTIVE JUROR #086: Yes.

23 THE COURT: When you were working for the software company what did  
24 you do for them?

25 PROSPECTIVE JUROR #086: I was what was called an external localization

1 manager. I handled language localized station and adapting the software to -- to the  
2 culture of the specific country of various languages.

3 THE COURT: Okay. So are you fluent in several languages?

4 PROSPECTIVE JUROR #086: No. I do speak German fluently and I do  
5 speak some French. But I -- actually, I managed the coordination between the  
6 different countries.

7 THE COURT: Well, that's very interesting.

8 And your daughter is she an anesthesiologist?

9 PROSPECTIVE JUROR #086: No, she is an administrator.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR #086: She's like a hospital administrator.

12 THE COURT: I see. All right. Thank you very much.

13 Would the State like to inquire further?

14 MR. HAMNER: No, Your Honor.

15 THE COURT: Defense?

16 MR. POSIN: Nothing from the defense, Your Honor.

17 THE COURT: All right. Thank you.

18 All right. We have our jury. We are now going to select two alternates  
19 since potentially the case could go into next week, although we think it may not, but  
20 it could, so it's always good to alternates. And the thing about alternates, in my  
21 experience, has been that almost every trial we have needed to call upon an  
22 alternate. And it doesn't seem like it would be the case, but things happen in life  
23 and people get sick, they have things happen in their families and we never know  
24 when an alternate may be called. And so alternates sometime think, oh, I'm just  
25 going to sit here the whole time and I'm never going to be called upon to deliberate

1 and so I don't really have to pay attention. Well, nothing could be further from the  
2 truth. May times alternates are called upon and -- so it's a really important job  
3 because you could be called upon at any time to have to take over and deliberate  
4 the case to its conclusion. So I'm going to have the clerk call two names next in  
5 order.

6 THE COURT CLERK: Badge 87, Brittany Hayes.

7 PROSPECTIVE JUROR #087: Do I go today?

8 THE COURT: Yes.

9 THE COURT CLERK: Yes.

10 PROSPECTIVE JUROR #087: Okay.

11 THE COURT CLERK: Badge 89, Ebert Mitchell.

12 THE COURT: And I'd like you to leave a spot between the last two in the  
13 front row because there's microphones right in front of you, so right there.

14 [Colloquy between the Court and clerk]

15 THE COURT: So, let's see. We've got the handheld mic. And our first  
16 alternate -- I'm sorry. Your name again and your badge number.

17 PROSPECTIVE JUROR #087: Brittany Hayes, 0087.

18 THE COURT: And that's Hayes, H-A-Y-S?

19 PROSPECTIVE JUROR #087: E-S.

20 THE COURT: E-S. Got the E. My family, no E.

21 PROSPECTIVE JUROR #087: I'm sorry?

22 THE COURT: My family -- I've got Hays in my family. No E, though.

23 PROSPECTIVE JUROR #087: Oh.

24 THE COURT: I think -- I think it was originally with the E and it got dropped.

25 PROSPECTIVE JUROR #087: Oh.

1 THE COURT: You know how that goes.

2 All right. So have you ever been a juror before?

3 PROSPECTIVE JUROR #087: No.

4 THE COURT: Have you ever served in law enforcement?

5 PROSPECTIVE JUROR #087: No.

6 THE COURT: Anyone in your family or closely associated with you in law  
7 enforcement?

8 PROSPECTIVE JUROR #087: No.

9 THE COURT: Ever been the victim of a crime?

10 PROSPECTIVE JUROR #087: No.

11 THE COURT: Anyone in your family or closely associated with you been the  
12 victim of a violent crime?

13 PROSPECTIVE JUROR #087: My sister had to go to trial for domestic  
14 violence.

15 THE COURT: Okay. And she was the victim --

16 PROSPECTIVE JUROR #087: Yeah.

17 THE COURT: -- in that situation? And was that recently?

18 PROSPECTIVE JUROR #087: It was a few months ago.

19 THE COURT: Okay. Was that here in Clark County?

20 PROSPECTIVE JUROR #087: Yeah.

21 THE COURT: Did you observe the trial?

22 PROSPECTIVE JUROR #087: No.

23 THE COURT: Did you talk to her about it?

24 PROSPECTIVE JUROR #087: Kind of, but not really in depth about it.

25 THE COURT: Did you -- from everything you -- that you did know, did you

1 feel that it was handled appropriately?

2 PROSPECTIVE JUROR #087: Yeah.

3 THE COURT: Okay. Have you ever been accused of a crime?

4 PROSPECTIVE JUROR #087: No.

5 THE COURT: Anyone closely associated with you ever been accused of a  
6 crime?

7 PROSPECTIVE JUROR #087: No.

8 THE COURT: Okay. And your -- your sister, was she the victim of domestic  
9 violence by the spouse or --

10 PROSPECTIVE JUROR #087: Yeah.

11 THE COURT: Okay. And so how long had she been married?

12 PROSPECTIVE JUROR #087: They weren't married.

13 THE COURT: Oh, they weren't.

14 PROSPECTIVE JUROR #087: It was her children's father.

15 THE COURT: I see. Okay. So this was not somebody related to you. Did  
16 you know him?

17 PROSPECTIVE JUROR #087: Yeah. They've been together for about six  
18 years, so --

19 THE COURT: Okay. All right.

20 Do you have any -- you've heard all the questions we've asked of the  
21 other jurors. So when you were listening to those questions did you think, well, if I  
22 get called I need to bring this -- this out because it would be something important  
23 that bears upon my ability to serve?

24 PROSPECTIVE JUROR #087: No.

25 THE COURT: Tell us about yourself?

1 PROSPECTIVE JUROR #087: I work at a hotel down on the Strip. I was  
2 born and raised here. No spouse. I'm going to school for pre-nursing right now.

3 THE COURT: What do you do at the hotel you said you worked at?

4 PROSPECTIVE JUROR #087: Like a cashier slash -- like -- like associate. I  
5 don't know. Like I help people find stuff and --

6 THE COURT: Okay.

7 PROSPECTIVE JUROR #087: -- ring them up, I guess.

8 THE COURT: And is that full-time or part-time?

9 PROSPECTIVE JUROR #087: Full-time.

10 THE COURT: So then you go to school part-time?

11 PROSPECTIVE JUROR #087: Yeah.

12 THE COURT: Okay. All right.

13 And how long have you lived here? All your life?

14 PROSPECTIVE JUROR #087: Yeah.

15 THE COURT: Do your parents live here?

16 PROSPECTIVE JUROR #087: Yeah. Well, my mom does.

17 THE COURT: Okay. What does she do?

18 PROSPECTIVE JUROR #087: She works at UNLV.

19 THE COURT: And what does she do there?

20 PROSPECTIVE JUROR #087: Something with the MBA program. Like a  
21 assistant director or -- I'm not really sure about her title, but --

22 THE COURT: All right.

23 PROSPECTIVE JUROR #087: -- it's with the MBA program.

24 THE COURT: Has she always been in academics?

25 PROSPECTIVE JUROR #087: I think for the past 15 years maybe. Yeah.

1 THE COURT: All right. Thank you.  
2 Would the State like to inquire further?  
3 MR. SCOW: Nothing from the State, Your Honor.  
4 THE COURT: Defense?  
5 MR. POSIN: Nothing from the defense, Your Honor.  
6 THE COURT: All right. Thank you.  
7 Hand the microphone over. And, sir, your name and badge number.  
8 PROSPECTIVE JUROR #089: Mitchell Ebert, 0089.  
9 THE COURT: Okay. And have you ever been in law enforcement?  
10 PROSPECTIVE JUROR #089: Never.  
11 THE COURT: Have you ever served as a juror?  
12 PROSPECTIVE JUROR #089: No.  
13 THE COURT: Have you ever been the victim of a crime?  
14 PROSPECTIVE JUROR #089: Car stolen twice.  
15 THE COURT: That was here in Clark County?  
16 PROSPECTIVE JUROR #089: Yes, it was.  
17 THE COURT: Did you feel that the police did whatever they could to try and  
18 solve it?  
19 PROSPECTIVE JUROR #089: Yeah, for the most part. It was -- one was  
20 found on the side of the road; the other was parked in a neighborhood a few blocks  
21 away.  
22 THE COURT: Okay. And so both cases the car was recovered. So that  
23 was --  
24 PROSPECTIVE JUROR #089: Correct.  
25 THE COURT: -- that was a good thing. And no one was ever found --

1 PROSPECTIVE JUROR #089: No.

2 THE COURT: -- to be the perpetrator?

3 PROSPECTIVE JUROR #089: I was -- I was cited though, yeah. A parking  
4 ticket for one of them though.

5 THE COURT: So -- but did you -- did you go and explain the situation?

6 PROSPECTIVE JUROR #089: It was \$25 so it was -- I had already had a  
7 new -- I purchased another vehicle. Got that one sold to a friend of mine so it  
8 worked out okay.

9 THE COURT: Okay. So it was easier just to pay the parking ticket then?

10 PROSPECTIVE JUROR #089: It was.

11 THE COURT: Talk about grinding salt into the wound.

12 Okay. So have you ever been accused of a crime?

13 PROSPECTIVE JUROR #089: I guess I was charged with a DUI in 2009.

14 THE COURT: And what was the result of that charge?

15 PROSPECTIVE JUROR #089: I was -- it was like no contest, so --

16 THE COURT: Okay. Did you feel that you were treated fairly?

17 PROSPECTIVE JUROR #089: Yeah, it was accurate.

18 THE COURT: Okay. And so you learned something from that experience?

19 PROSPECTIVE JUROR #089: I very much so.

20 THE COURT: Okay. I asked you if you'd ever been the victim of a crime, but  
21 I didn't you if anyone in your family or closely associated with you had ever been the  
22 victim of a violent crime?

23 PROSPECTIVE JUROR #089: No, Your Honor.

24 THE COURT: Okay. Any reason you feel that you could not be fair and  
25 impartial if you were called upon to serve as a juror?



1 PROSPECTIVE JUROR #089: No.

2 THE COURT: Tell us about yourself?

3 PROSPECTIVE JUROR #089: Well, I do freelance lighting for film and TV.

4 So that was kind of a little bit of a worry with getting picked to be on jury because

5 that's my livelihood. So when I'm not working I'm not making money. But I know it's

6 my civil duty to -- to be on a jury, so --

7 THE COURT: Okay.

8 PROSPECTIVE JUROR #089: -- I understand that. Lived in Nevada for 12

9 years now. My mom works in the school district; my dad works in insurance. I love

10 making movies for a living.

11 THE COURT: So do you have aspirations to move to Hollywood or --

12 PROSPECTIVE JUROR #089: I do.

13 THE COURT: You do. Okay.

14 PROSPECTIVE JUROR #089: That's -- I worked there -- I did two films just

15 recently that will hopefully get me into the electricians union in LA and potentially

16 have residency there soon.

17 THE COURT: Okay. So there's a lot -- lot more work there for that type of --

18 PROSPECTIVE JUROR #089: [Indiscernible.]

19 THE COURT: Okay. All right.

20 Would the State like to inquire further?

21 MR. HAMNER: Just real briefly.

22 Mr. Ebert, you mentioned that you were -- pled no contest to a DUI

23 charge. Was that --

24 PROSPECTIVE JUROR #089: I guess I was -- I would've been charged

25 guilty. I apologize for the mistermiology. I was charged. I -- you know, have the

1 record.

2 MR. HAMNER: But it was probably a misdemeanor. I'm --

3 PROSPECTIVE JUROR #089: Yes, it was.

4 MR. HAMNER: Right.

5 PROSPECTIVE JUROR #089: It was a misdemeanor.

6 MR. HAMNER: And I think you probably could have pled no contest to it. I  
7 think it's quite possible. I don't think --

8 PROSPECTIVE JUROR #089: Okay. I --

9 MR. HAMNER: That sounds about right something along those lines?

10 PROSPECTIVE JUROR #089: Yes, it does.

11 MR. HAMNER: Okay. Kind of given that experience, given maybe some of  
12 these facts of this -- of this case, do you think if you were selected -- I know you're  
13 an alternate, but things happened. If you are selected as a juror do you think that  
14 you'd be able to sit in judgment kind of in a case like this?

15 PROSPECTIVE JUROR #089: I believe I can. This -- my situation has to be  
16 different. I cannot associate my life to someone else's.

17 MR. HAMNER: Okay.

18 PROSPECTIVE JUROR #089: So I'd have to understand and --

19 MR. HAMNER: So you think you could --

20 PROSPECTIVE JUROR #089: -- be impartial.

21 MR. HAMNER: So if you were ultimately -- if hypothetically you were a juror  
22 in this case you believe you'd be able to sit with an open mind, kind of weigh all the  
23 testimony of everybody you've heard before making a decision as to whether or not  
24 we met our burden?

25 PROSPECTIVE JUROR #089: Yes.

1 MR. HAMNER: Okay. Do you harbor any kind of ill will towards law  
2 enforcement in light of the situation that happened to you?

3 PROSPECTIVE JUROR #089: I do not. It was my own doing and I kinda had  
4 to come to terms with that myself. It wasn't -- there's no resentment.

5 MR. HAMNER: Okay.

6 All right. Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. POSIN: Nothing from the defense, Your Honor.

9 THE COURT: All right. Thank you.

10 All right. Each side has one peremptory challenge of the alternates.  
11 State?

12 MR. HAMNER: We'll waive, Your Honor.

13 MR. POSIN: We'll waive as well, Your Honor.

14 THE COURT: All right. Thank you.

15 All right. We have our jury. And before we swear in the jury and the  
16 alternates I'm going to excuse the rest of the venire panel. If you'll go

17 THE COURT: All right. If the clerk will swear in the members of the jury and  
18 the alternate.

19 [The clerk swore in the jury panel and alternate jurors]

20 [The clerk read the Information aloud]

21 THE COURT: So, ladies and gentlemen, the State is entitled to prevent --  
22 present the first opening statement.

23 MR. HAMNER: Thank you, Your Honor.

24 THE COURT: Mr. Hamner.

25 ///

1                                   **OPENING STATEMENT BY THE STATE**

2   BY MR. HAMNER:

3                   Sunday morning, December 18, 2011, should have been a normal day  
4   for the people and members of the New Antioch Christian Fellowship Church. But  
5   everything changed when this man right over here, the Defendant, walked into their  
6   church. Now when the 8 a.m. Sunday morning session started everything was  
7   normal. Church went as it usually went. And the evidence will show that many  
8   people attested to that fact. And then near the end of the service the evidence will  
9   show that the Defendant came to that service near the end.

10                The witnesses will tell you that the only thing that really stood out about  
11   the Defendant when they first saw him during the 8 a.m. service when he came in  
12   near the end, it's not about how he walked, not about how he talked; it was simply  
13   the fact that he wanted to sit up all the way up at the front, like the front pew. That's  
14   what stood out to them.

15                And the witnesses are going to tell you that at the end of every church  
16   service their church what's called an alter call. That's where they ask if anybody  
17   would like to join and become a new member of the church. And the Defendant  
18   stood up and said I want to become a member. And this church community  
19   embraced him and he became a member by the conclusion of that church. They  
20   took him in.

21                Now the evidence will also show that the standard kind of practice is is  
22   when you become a new member of the church you go back with a church staff  
23   member at the conclusion of a service, you walk back, you give your name and your  
24   information, and that's exactly what the Defendant did. And you're going to hear  
25   witnesses testify remember seeing him walk back with staff to go in the back.

1 But when the 8 a.m. service concluded and the 10 a.m. service was  
2 about to kind of get underway you're going to learn that's when things change. The  
3 evidence will show it becomes clear why the Defendant came to that church and  
4 what he wanted to do. Because the witnesses will tell you that the Defendant starts  
5 saying I want to see my daughter to anybody who was going to listen. And you're  
6 going to learn that the Defendant's daughter was a member of this church, and her  
7 name is Samira Grove. And you're going to hear that while Samira may have been  
8 at the early part of the 8 a.m. service she was gone by the time this man over here  
9 was asking for her. And church staff will get on this stand and testify and tell you  
10 they tried to explain to the Defendant she's not here right now. We can't help you,  
11 she's not here.

12 But the evidence will show that the Defendant wasn't going to take no  
13 for an answer. You will learn he becomes increasingly angry and agitated because  
14 he wants to see his daughter. And that's what the witnesses are going to testify it  
15 became so much of an issue. Ladies and gentlemen, you will hear from members of  
16 the church they ultimately decided -- they were so concerned they asked him to  
17 leave. They said church is over; you gotta go. The Defendant, you will learn, still  
18 even more agitated. And they basically ask him you need to leave.

19 So that's the church. This is Las Vegas Boulevard. You'll learn that  
20 this church is on 3950 Las Vegas Boulevard. It's kind of near Nellis. Well, that's the  
21 front entrance of the church that you walk through. It's kind of blocked by this  
22 bubble. Well, when they tell him he needs to leave they actually walk him out  
23 through the back way. And you're going to hear from witnesses who were there  
24 when they said you need to go for the first time. And you are going to hear that the  
25 Defendant, walking without any physical escorts, no one needing to help him, he

1 walked under his own power all the way over to this general area, and that's where  
2 he originally parked his car. The evidence will show the Defendant under his own  
3 power got into his own vehicle, turned on his own car and began to drive out.

4 Ladies and gentlemen, you can see there is a straight line leading out  
5 to Las Vegas Boulevard here. There is a -- you'll learn there's a road that runs  
6 along the back, and there's another road that leads straight out to Las Vegas  
7 Boulevard. Now after being told repeatedly that his daughter's not there and asked  
8 to leave the Defendant had a choice. He could have left. The evidence the answer  
9 -- his decision was not to leave because he didn't want to take no for answer.

10 So what will you learn that the Defendant did? Instead -- and this is a  
11 rotation of the church. The Defendant actually drives down this back road and parks  
12 here for a second time. And you're going to hear eyewitnesses who are in that  
13 parking lot seeing him get out his car. And they will testify that when he got out of  
14 his car and he walked back towards the double door front entrance to this church he  
15 was heard saying I'm not ready to leave yet.

16 The evidence will show that he goes right back into that church. And  
17 you're going to hear from the assistant pastor, Kevin Madden. He's going to tell you  
18 he was there. He's going to tell you that he actually even encountered Samira who  
19 was in an absolute panic about the situation initially. And when he made the  
20 decision to ask him to leave he was shocked to find the Defendant back inside their  
21 sanctuary just a couple minutes later. And when Mr. Madden approached the  
22 Defendant again and said, sir, you need to leave, the Defendant not only became  
23 even more agitated, now he started hurling obscenities at the assistant pastor, all  
24 because they wouldn't allow him to see his daughter who you will learn was not  
25 there.

1 Mr. Madden will testify -- the assistant pastor will tell you at that point he  
2 was concerned for his community because there were men, women and children in  
3 that church. And he told his security team this guy has to leave. You have to get  
4 him out. And he will testify he took the Defendant by the arm, passed him over to a  
5 member of his security team, a man by the name of Allen Burse, and says get this  
6 guy to his car; he needs to go. And that's what Mr. Burse did. You're going to hear  
7 from Mr. Burse as well. Allen walked the Defendant by the arm to his car, told him  
8 he needed to leave.

9 And what happens at that point, ladies and gentlemen, is he's escorted  
10 back to his car. You're going to hear about the manner in which walked. He didn't  
11 have any trouble walking. These witnesses are going to tell you he didn't have any  
12 trouble talking when he was making his demands to see his daughter. And under  
13 his own power he gets into his car, puts his own key in the ignition, turns on that car,  
14 backs out of a stall. And at that point, Mr. Burse is going to tell you that he was so  
15 concerned; his gut instinct was not turn his back on the Defendant. And Mr. Burse  
16 will tell you as he walked back toward the front entrance of this church he actually  
17 back-pedals. He back-pedals away from the Defendant's vehicle because he was  
18 afraid something might happen.

19 And the evidence will show that Allen Burse's intuition was dead on  
20 right because, ladies and gentlemen, you're going to get a chance to see this road.  
21 That is the view of that road from Las Vegas Boulevard. That's how much space  
22 was there for the Defendant to simply drive out onto Las Vegas Boulevard. And as  
23 Allen Burse backed away, backing towards the double entrance of the church where  
24 there was a crowd of people with men, women and children standing around as the  
25 10 a.m. session was starting people are leaving and entering the church, this man

1 over here doesn't drive down that road. What witness, after witness, after witness  
2 will testify to is that that man over there cut his wheels all the way over to the left  
3 directly at Allen Burse. And witnesses will tell you at that point they heard the  
4 Defendant's car accelerate, so much so, ladies and gentlemen, that they heard the  
5 tire wheels screeching.

6 The Defendant, you will learn, drove directly at Allen Burse. Allen  
7 Burse will tell you that he had to jump out of the way to avoid being run over. But  
8 you're also going to learn, ladies and gentlemen, that the Defendant doesn't stop  
9 there. Once he misses Allen Burse the witnesses will tell you the Defendant actually  
10 continued to accelerate the car into the crowd of people, into those double doors  
11 where they were all standing out. There were people on the inside and the outside  
12 of that area.

13 Listen to the testimony because you will learn that the Defendant made  
14 no efforts to break, no efforts to slow down, no efforts to avoid them, no efforts to  
15 honk the horn. Instead, the Defendant drove straight through that crowd of people  
16 and through the double doors of this church. That is what the Defendant did with his  
17 Cadillac.

18 You will learn that fortunately the evidence will show that no one died  
19 because of what he did. But you will also learn that the Defendant not only hit a  
20 young mother with his car sending her airborne. You will learn the Defendant hit a  
21 nine-year-old girl with his vehicle. You're going to hear from the witnesses who  
22 were outside of that church when the car came, just on the inside when that car  
23 came through, and they are going to describe to you the scene. In fact, ladies and  
24 gentlemen, they're going to tell you that this was such a panic situation they believe  
25 the girl was trapped under the car. Why? The evidence will show he hit her so hard



1 he knocked her out of her shoes.

2 But not only was the Defendant's behavior -- scratch that, ladies and  
3 gentlemen. What we do learn even after that, once the Defendant is actually kind of  
4 blocked into that entrance and can't go any further, what you will learn is the  
5 Defendant's actions afterward continued to indicate what his intentions were. The  
6 evidence will show that the Defendant didn't cut his engine. The Defendant didn't  
7 apologize. He didn't just kind of, oops, my bad. Instead, ladies and gentlemen, the  
8 evidence will show that the Defendant continued to slam on the gas. And they  
9 testified hearing the wheels spin and they became afraid because they thought the  
10 Defendant was trying to free that car to go further into the church, so much so that  
11 security personnel, such as Allen Burse, went through that door to physically pry the  
12 Defendant from the wheels of the car and take the keys out of the ignition so he  
13 couldn't do any further damage.

14 You will hear that he made a number of statements during that whole  
15 process, which included threatening to kill people in that church, after he went  
16 through it as he's being restrained. Ultimately, ladies and gentlemen, this is one of  
17 the people who was hit. This is Anyla. That's her foot in the cast that's taken  
18 sometime after this accident.

19 But, ladies and gentlemen, sometimes we have cases that are pretty  
20 complex, a lot of issues, a lot of questions. But what's going to be clear, this is not  
21 an identity case. It's going to be clear who it is. It's going to be clear what  
22 happened. The ultimate question will be what his intentions were. And I want you  
23 to keep an open mind because I'm confident, and the State is confident, that when  
24 you listen to all the evidence, when you hear from the people who were there, the  
25 law enforcement personnel who showed up and examined the scene, it will be clear

1 why he was there, why he did it and what his intentions were because the State is  
2 confident when you've listened to all the testimony it will be clear beyond a  
3 reasonable doubt this wasn't an accident, this wasn't a situation that was beyond his  
4 control. In fact, it was something that he intended to do. And at the conclusion of  
5 today's trial my co-counsel, Richard Scow, will ask you to hold him responsible for  
6 the unnecessary pain and fear that he put his church group through. We'd ask you  
7 at the conclusion of today's trial to find him guilty on all counts. Thank you.

8 THE COURT: Mr. Posin, would you like to make an opening statement?

9 MR. POSIN: Thank you, Your Honor.

10 **OPENING STATEMENT BY THE DEFENSE**

11 BY MR. POSIN:

12 Ladies and gentlemen, there's one thing that I think the State and I  
13 agree on, which is that there's a central issue here, which is, what were his  
14 intentions? This is not a complex case; we agree. This gentleman was the man  
15 behind the wheel of this car. He was the man in the church that morning. The  
16 question is what were his intentions?

17 Now you're going to hear the State's witnesses and you're going to  
18 hear what they say. And you're going to hear them say things like -- that he was  
19 drunk. You're going to hear other witnesses say he was incoherent. Other  
20 witnesses say he was mumbling. This was while he was in the church before he  
21 went out. Other witnesses saying he didn't seem to understand what we were  
22 talking about. Drunk, incoherent, mumbling, didn't understand what we were talking  
23 about. That's the picture that their witnesses are going to paint.

24 Now how is it that a man who was so drunk, so incoherent, and so  
25 mumbling and so unable to even understand what they were talking about, and it's

1 about the issue that the State has raised, was his daughter even there. That man,  
2 who couldn't even understand that, moments later formed the intent to kill somebody  
3 and was able to do it in what you saw on that picture was a very short space.

4 Now counsel has made a point of how even after the car went in that he  
5 was supposedly attempting to accelerate. Well, look, you saw the space from the  
6 point where he was parked to the entrance to that church. It was a short space.  
7 That was not somewhere -- not the length that he would need in order to change his  
8 intentions, to make his intentions.

9 This is a gentleman who came to this church, was drunk, was  
10 incoherent, was mumbling and did not understand what the people in the church  
11 were talking about. This is a man who did not form the intention to kill them. He did  
12 not attempt to murder anybody. He did not assault them with a deadly weapon and  
13 he did not commit burglary.

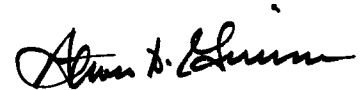
14 When all the evidence is in, and when the Judge gives her instructions,  
15 I'll be going through the elements of each of these crimes and you'll see why  
16 whatever he did it was not these crimes. Thank you.

17 [Proceedings resumed -- previously transcribed from 3:25 p.m. to 4:48 p.m.]

18 \* \* \* \* \*

19  
20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio/video proceedings in the above-entitled case to the best of my ability.

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24   
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Court Transcriber



CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8  
9 WILBURT HICKMAN aka  
10 WILLIAM HICKS,

11 Defendant.  
12

CASE NO. C12-278699-1

DEPT. VII

13 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE  
14 FRIDAY, SEPTEMBER 6, 2013

15 **RECORDER'S PARTIAL ROUGH DRAFT TRANSCRIPT**  
16 **JURY TRIAL - DAY 4**  
17 **CLOSING ARGUMENTS**

18 APPEARANCES:

19 For the State:

RICHARD H. SCOW, ESQ.  
Chief Deputy District Attorney  
CHRISTOPHER S. HAMNER, ESQ.  
Deputy District Attorney

22  
23 For the Defendant:

MITCHELL L. POSIN, ESQ.

24 RECORDED BY: LARA CORCORAN, COURT RECORDER  
25

1 Friday, September 6, 2013 -- 11:15:15 a.m.

2  
3 **STATE'S CLOSING ARGUMENT**

4 MR. SCOW: While this boots up, it would've been fine if I could've  
5 plugged it into this side, but because we came to a different courtroom, we know  
6 that the plugs over here don't work, of course. So I plugged it in over there, no  
7 power to the plug, and so now it's shut down, and it's going to start up.

8 That's -- when we started this case, State of Nevada versus Wilburt  
9 Hickman, Mr. Hendron told you this is a pretty straightforward case. There won't  
10 be much dispute about what actually happened that day. The only discussion that  
11 we're really going to have is what the Defendant's mindset was, what his state of  
12 mind -- and the Defendant's --

13 In the opening we heard -- their arguments are that the Defendant  
14 could not formulate any intent to kill; that he wasn't capable or so drunk that he  
15 wasn't able to do that.

16 MR. POSIN: Your Honor, I'm going to object. That's not exactly what  
17 we're saying, and so --

18 MR. SCOW: I'm paraphrasing. I'm not quoting him.

19 THE COURT: All right. Well, let's confine your closing to the evidence  
20 and let him just --

21 MR. SCOW: That is the evidence. It's going to be, what was this  
22 Defendant's state of mind? I'm coming up, it looks like.

23 MR. HAMNER: Is it the user?

24 MR. SCOW: Yes.

25 MR. HAMNER: You just gave them our password.

1 MR. SCOW: That was on the record, too, by the way.

2 BY MR. SCOW

3 So the charges that we have in this case that were read to you in  
4 the beginning, you have those in your instructions. There are 17. The first eight  
5 are attempt murder. The next ones are battery with use of a deadly weapon and  
6 then battery with a deadly weapon resulting in substantial bodily harm. I'll go  
7 through these instructions. We'll talk about them fairly briefly because there's not  
8 really a dispute about the actions that occurred; it's the Defendant's state of mind.

9 And the assault, the attempt murder and burglary, those are crimes  
10 of intent or state of mind. Battery is not. Battery is, if I'm walking along and I bump  
11 you like this or I don't mean to be mean, but you take that wrong, that's a battery  
12 because it's unwanted physical touching, if I give you a little nudge like that. The  
13 instructions tell you no matter how slight.

14 It looks like we're up and running.

15 So this is the case. This is the end position of the Defendant's  
16 vehicle. And we're going to talk about -- a lot about what happened before, what  
17 happened during and what happened after because as the instructions tell you,  
18 we're going to talk about intent. It's Instruction Number 20, if you want to make a  
19 note to refer to that later. The intent with which an act is done is shown by the  
20 facts and circumstances surrounding the case. We don't look at just an action  
21 isolated in one single moment, and I'm going to talk about that again in just a  
22 minute.

23 (State Counsel confer)

24 BY MR. SCOW:

25 There we go. There's the charges that we just went through. And

1 as burglary comes up, you might be sitting there scratching your heads thinking,  
2 isn't burglary like when somebody goes into somebody's house to steal their  
3 computer or their money or whatever thing, property might be in there? That is  
4 true, that is a form of burglary, but in the State of Nevada, there are multiple ways  
5 that you can commit a burglary, even in a commercial building, a church, any  
6 building, and I'll get to that in just a minute. But I wanted to point that out because  
7 you might be thinking this isn't somebody's home that was broken into.

8               So we'll start first with battery. It's the intentional and unwanted  
9 exertion of force upon another, however slight. So even a nudge with my elbow, if  
10 that's unwanted, you don't know me, that's a battery. Battery with use of a deadly  
11 weapon is that same force, but applied with a deadly weapon. So like if I have a  
12 gun and I shoot at you instead of nudge you and the bullet grazes you, that's still a  
13 battery with a deadly weapon, no matter how slight that -- that exertion or force on  
14 another person might be. But now it's just with a deadly weapon, a gun. In this  
15 case it's a car.

16               We look at Count 9, the battery with use of a deadly weapon, the  
17 victim is Anneesah Franklin, the mother of Anyla. The Defendant drove his car at  
18 the church into a group of people in front of the church, and as she told you as she  
19 was standing at the doors talking to her friend, Marquette, as the car came up, she  
20 tried to get out of the way, and the car actually hit her, and it threw her in the air  
21 some, and she landed face first on the ground, ended up with some problems in  
22 her neck. But the car that hit Anneesah knocked her over. A vehicle is a deadly  
23 weapon, and I'll talk about the deadly weapon now.

24               It's any weapon whose construction is designed to inflict death or  
25 bodily harm like a gun. That's a weapon that's designed to do that. That's the first

1 way that you can have a deadly weapon, but there's another. And in the  
2 instruction there's an A and a B, and Subpart B is what we have here, "It's an  
3 instrument or material or a substance which under the circumstances in which it is  
4 used."

5               So if I have some powder and I try to smother somebody with it, that  
6 can be a deadly weapon. It's the way in which it's used, and a car is something  
7 that kills people every day sadly, in accidents or hits pedestrians. So a vehicle, in  
8 the manner which it's used here, driving at a group of people, is readily capable of  
9 causing death or seriously bodily injury. That's why a car in this case is a deadly  
10 weapon, and that will apply --

11           MR. POSIN: Your Honor, I don't want to interrupt, but (indiscernible). For  
12 the record, there are statements or sentences on here that are not exactly what  
13 has been argued in court. I don't know how we make that part of the record. I ask  
14 that --

15           MR. SCOW: I'll have a printout of this.

16           THE COURT: We're going to mark this as a Court's exhibit.

17           MR. POSIN: I feel that, you know, this last -- the second part, a car is  
18 clearly capable of causing death, it happens almost every day and incorrect  
19 statement of the law there. It's not exactly what Counsel's arguing, but there on  
20 the --

21           MR. SCOW: That's exactly what I'm arguing, and I'm not quoting the law  
22 right there. These are my arguments. The portion above is the instruction, and the  
23 instructions stand for themselves. I can argue that a car is a deadly weapon  
24 because that's -- that's our argument.

25           THE COURT: The objection's overruled.



1 MR. SCOW: Thank you, Your Honor.

2 BY MR. SCOW

3 Clearly, a car is a deadly weapon. The instructions don't tell you a  
4 car is a deadly weapon, but what you read there, that something's that used in a  
5 manner that can cause death or seriously bodily injury, like driving into a group of  
6 people, that's a deadly weapon. And it applies for all the crimes we're looking at  
7 here, assault, battery, attempt murder, they're all charged with a deadly weapon.  
8 So it's the manner in which it's used, and, again, there's where it's end up.

9 But before it ended up there, there was a group of people standing  
10 there in the front, and Allen Burse a little bit further out that the Defendant was  
11 driving at. That's the manner in which this vehicle was used in this case.

12 So we turn next to the substantial bodily harm portion of the  
13 instructions. "Bodily injury which creates substantial risk of death or which causes  
14 serious, permanent disfigurement or protracted loss or impairment of the function  
15 of a bodily organ or a member." So for in this case, that first part of the instruction,  
16 Anyla, she had a broken toe, and for several days she was on crutches, so she  
17 had a protracted loss of the function of any bodily member, her foot, because she  
18 couldn't walk right. Or you look at the second, it could be either one, prolonged  
19 physical pain. And she may not have remembered the time as well as her mother  
20 did, who said she complained of pain for about a week, even a little bit more, and  
21 had to use pain medication to help her, especially at night when she was going to  
22 bed.

23 So Anyla had prolonged physical pain. She also had protracted or  
24 impaired use of a bodily member, her foot. So we have substantial bodily harm  
25 here. And this is Count 10 for Anyla. The car actually ran over her foot. She said

1 she was run over by the car, knocked her over, and she had the broken toe. And  
2 the Defense doesn't dispute that the Defendant driving that vehicle when it  
3 happened. So we have Anyla and her injured foot.

4 The instructions tell you that voluntary intoxication, which is part of  
5 the focus on the Defendant's mental state in this case, that intoxication is not a  
6 defense to general intent crimes. In this case, battery and any of the forms with  
7 use of a weapon and substantial bodily harm, it's a general intent crime, and so the  
8 intoxication is no defense to hitting somebody with the car.

9 So for Counts 9 and 10, the intoxication instruction, you just throw  
10 those out for those two and you look at whether the State has proven with the  
11 evidence presented that Anyla and Anneesah were hit by a car and whether the  
12 Defendant did it and whether Anyla had a substantial bodily injury that resulted. So  
13 for those two, the evidence presented has proven that the Defendant is guilty of  
14 Counts 9 and 10, the battery with use of a weapon, battery with a weapon and  
15 substantial bodily harm.

16 So now we'll turn to the next three set of charges. I know it's 15 total,  
17 but that makes three. So this is when we get into the intoxication, "that no act  
18 committed by a person in the state of voluntary intoxication shall be deemed less  
19 criminal by reason of that condition." Okay. The law still says this is criminal  
20 activity, but on these three charges here -- and this is important -- when intent is an  
21 element of those crimes, then you can consider the intoxication to see whether the  
22 Defendant could formulate the intent for that particular crime.

23 So that's why as each witness got up, we would ask them, could  
24 you smell anything? What were your observations? How was the Defendant  
25 acting? Because that's the evidence in this case of his intoxication.

1                   So we turn to burglary. Burglary is "the entering of any building or  
2 structure with the intent to commit an assault, a battery or any felony therein."  
3 When a person does that, they're guilty of burglary. If you go into a store, you're  
4 going in to steal food or money from a register, that's burglary. If you go into  
5 somebody's house intending to punish them or commit a battery, that's also  
6 burglary.

7                   What we have here, the Defendant driving into a church intending to  
8 commit an assault or a battery or an intent to kill, attempt murder. That's the way  
9 that they're pled, each of the charges, they say, assault and/or battery or intent to  
10 kill. That's what establishes the intent for the burglary, and it could be either -- if  
11 you find any one of those intents, he's guilty of burglary.

12                  Intent may be inferred from the Defendant's conduct and all the other  
13 circumstances of the case, like what I had just read to you on intent.  
14 And this will be the same with the intent murder and the fault, what was his intent  
15 when he did this. What was the Defendant's intent when he drove his vehicle at  
16 that group of people and straight through into those doors of that church?

17                  You can see the car gets wedged in there really well, breaks part of  
18 the wall on the left side of the door, tosses things around inside. They had moved  
19 the table where Tiffany Trass had been standing or sitting. She had scooted to the  
20 left as soon as she heard the chaos and get out of the way. She was lucky she  
21 wasn't hit. The same with Sharon Powell was behind the door and then the group  
22 in front of them. And then the ending state of the Defendant's vehicle.

23                  As I talk about assault now and then the attempt murder next, I've  
24 already spoke about burglary, the main focus is going to be the Defendant's intent.

25                  So the victims of assault with a deadly weapon are Allen Burse,

1 Washington Thompson, Marquetta Jenkins, Rahmeka Adams, Sharon Powell, and  
2 I have her in stars next to her because her being inside the building and not  
3 hearing the car, she didn't know beforehand that something was coming. So hers  
4 is charged a little bit differently, and I'll explain that in the next slide. And Tiffany  
5 Trass.

6 And you'll notice that Anneesah and Anyla aren't on that list of assault  
7 with a deadly weapon because they got hit. Once you get hit, the assault is gone  
8 because then it's a completed battery, so it's no more an assault on that person, it  
9 becomes then a battery. So for the other people that were aware of things and  
10 almost got hit or dodging the car, it's an assault. It's also attempt murder, which I'll  
11 get to that.

12 But assault is an unlawful attempt and a use of force against  
13 another person, so like an attempt battery, and that's how Sharon Powell comes  
14 into play. She's sitting behind the door, doesn't know what's coming, but the  
15 Defendant, by driving into a group of people and at the doors, there's instructions  
16 on transferred intent. If you attack the group intending to hit somebody in the  
17 group, no matter where the person is in the group, you have that intent, the intent  
18 of one is the intent of all. So that's why she's included in this assault charge; that it  
19 was an attempt battery on her, even though she was sitting behind the door.

20 The other way to complete an assault is, "Intentionally placing  
21 another person in reasonable apprehension of immediate bodily harm, place them  
22 in fear." In this case a very good example of that, before the Defendant even starts  
23 driving towards everybody, is Allen Burse, as he's watching and getting into his  
24 car, his intuition is telling him or his reasonable apprehension, something is about  
25 to happen, doing his little football backpedal.

1           So that's -- we have both of these charged for all of the victims  
2 except for Ms. Powell. Hers is just the first one. So make sure you make that  
3 distinction as you're looking through these charges. And the transferred intent,  
4 which I have already mentioned, the attack on the group is the attack on all, as  
5 long as you have the intent to hit at least once, whether it's Allen in front,  
6 Washington in the back or whoever else or Kevin inside.

7           Attempt murder, our Counts 1 through 8, and most of the discussion  
8 now for the Defendant's mental state will relate to attempt murder because the  
9 voluntary intoxication instruction specifically mention attempt murder. These are  
10 Allen Burse, Anneesah Franklin, Anyla Hoye, because even though they're hit,  
11 they can still be charged -- he can still be charged with their attempt murder, even  
12 though there are also charges to battery. Same with the others, assault and  
13 attempt murder, he can be charged with both. You can find him guilty of both.

14           Washington Thompson, who was standing at the door greeting  
15 people, Marquetta Jenkins, who was speaking with Anneesah, Rahmeka Adams,  
16 who just testified, Ms. Powell and Ms. Trass. You saw the victims listed for attempt  
17 murder. There we go.

18           So an attempt murder, what is it? "Performing an act or acts which  
19 tend but fail to kill a human being, when such acts are done with express malice,  
20 which is defined as the deliberate intention to kill," which makes sense. Attempt  
21 murder, you've got to be trying to kill somebody if you can be convicted of attempt  
22 murder. So express malice is the intentional attempt to kill another human being  
23 without legal cause, without there being a defense of "I was trying to defend  
24 myself." Then it's not attempt murder or with what the law considers adequate  
25 provocation.

1                   So when you consider the intent here, the Instruction Number 20 on  
2 intent also talks about motive. It says, "Don't confuse motive with intent." The  
3 intent here is the specific intent to kill another human being. The motive is  
4 something that, obviously, motivates somebody to do something. When you  
5 consider motive here, that may arise from anger, hatred, revenge, ill will, spite,  
6 grudge toward the person who was attempted to be killed. And in that case -- I  
7 highlight those in yellow for my benefit so I remember what to say when I see  
8 them. But we have those in this case.

9                   When you're looking at the car driving at these people into the  
10 church, was this act which tended but failed to kill? Yes. If somebody had a hurt  
11 leg and they couldn't get out of the way fast enough, they would've been run over.  
12 They, in all likelihood, unless they were lucky, would have been killed.

13                  Now we have to look at what was the Defendant's intent. It's a  
14 straightforward case. It's not a whodunit. It's not even a question really of what  
15 was done. People were almost killed. That's attempt murder as long as he has  
16 that intent. People were in reasonable apprehension of immediately bodily harm,  
17 assault, and the car and the Defendant entered the building, burglary. As long as  
18 he had that intent.

19                  Oh, there was -- a lot of the questions we asked people was a  
20 moment incoherent drunk, (indiscernible) people, getting into the Defendant's  
21 state, or lack thereof, of intoxication. So when you consider the voluntary  
22 intoxication instructions, the real question whether this Defendant formulated the  
23 intent to kill; for assault, whether he wanted to place these people in fear of being  
24 harmed, and for the burglary, either one.

25                  So the first thing to consider was, was he even intoxicated? And

1 what's the only evidence that alcohol was involved? He smelled of alcohol. We  
2 asked every witness, and I think almost everyone said, he smelled of alcohol. But  
3 when we asked them to describe whether there was something else about his  
4 actions or their observations that tipped them off that alcohol could've been  
5 involved, they said, if it weren't for the smell -- I think about three of the witnesses  
6 said, if it weren't for the smell, I would've never have known because I didn't see it.

7           On intoxication, if the Defendant had the capacity to form the intent  
8 to kill and conceived it and acts upon it, it is not a defense of the crime of attempt  
9 murder that he was intoxicated, that people could smell alcohol.

10           Now we're going to look at whether he could formulate this intent.  
11 Kevin Madden, Allen Burse, Washington Thompson -- I'm falling  
12 behind -- Marquetta Jenkins, Anneesah Franklin, Craig Hutton, Tiffany Trass, they  
13 all testified the Defendant could express himself. When he spoke, they could  
14 understand his words, and they made sense together. The time that Tiffany said  
15 he seemed a bit -- or said -- and the testimony was read into the record. She didn't  
16 say he was incoherent. She said some of things he said were incoherent. I  
17 couldn't hear very well what he was saying.

18           That was the testimony that was read in from the prior hearing. And  
19 when she testified, she said, no, he wasn't incoherent walking by mumbling to  
20 himself about the Easter bunny. He could walk under his own power. He had no  
21 difficulty driving. They could smell alcohol, but the Defendant was coherent. He  
22 was just upset.

23           Allen felt that at first, when he came upon the scene, the Defendant  
24 didn't seem to understand what we were saying because we're asking him to  
25 leave, and he's not leaving. He's talking about wanting to see his daughter,

1 wanting his daughter pray for him. So for him, that was like, this guy's just not  
2 getting it, because he didn't know any of the back story, that that man's daughter --  
3 this man's daughter -- had gone up to Assistant Pastor Kevin and said, you gotta  
4 get him outta here. I'm terrified. Get him to leave. So that's why they start to, you  
5 know, make efforts to say, okay, sir, you need to leave.

6 Allen said in the prior testimony that he was mumbling, wasn't  
7 asked to explain that. He was asked to explain it here. Said he was talking softly  
8 to himself as I was walking him to his car in the Arm Bar, but I could hear him  
9 because I was close to him. And then Tiffany, which I already explained, it was  
10 incoherent to her because she couldn't hear what he was saying.

11 So what is this not? When we're talking about intoxication, this is  
12 not somebody driving Las Vegas Boulevard, sloppy drunk, passing out or just not  
13 having control of their faculties. The wheel turns, they veer off the road, almost hit  
14 a group of people waiting at a bus stop and then smashing into a building behind it.  
15 That one wouldn't be charged with assault with a deadly weapon because that  
16 person hadn't -- didn't have any voluntary action of driving off the road and saying,  
17 oh, I hate this group of people. Let me try to get them.

18 That's not what we have here, the option to the point where they have  
19 no idea of how they even got there. That person wouldn't be charged with assault  
20 with a deadly weapon, who not and did not form the intent to leave the roadway, to  
21 hit a person who's standing on the side of the road.

22 So if we were to look at this case in a little vacuum, think of it is like  
23 the center of a bull's-eye because that car actually, you know, hit a bull's-eye.  
24 Look just at that middle circle and you think, gosh, this car hit this building like Ms.  
25 Powell who hit her knees right after and praying for the guy in that car, how could



1 somebody run into our church? Please help him. Your first thought is, that guy  
2 was trying to hit people. It was just at that moment right there knowing nothing  
3 else.

4               Let's take some steps back and see what we know about what was  
5 going on in that moment right there. First of all -- let us blow that up -- the tire  
6 marks; that the officer said on that curve, it's accelerating, and even Rahmeka on  
7 the stand here, she explained it the same way, even though she hasn't gone to any  
8 traffic investigations. As it's making the turn, she could hear the tires like going  
9 (audible noise) because it's accelerating on the curve. And even after he hits the  
10 building, the tires are still spinning, leaving the dust on the ground, trying to get in  
11 that building. He really wanted to get in, and he's not sitting there unconscious for  
12 -- just down on the pedal because she said she saw him looking and turning,  
13 Rahmeka Adams. Allen Burse saw him looking at them. And I'll get back to this in  
14 a minute.

15              But when they go to get him off the wheel, he's still fighting to put it  
16 in gear. Tire marks, right in, just a straight path. My lines aren't perfectly straight  
17 in, but there's no like weaving or smashing other cars in the way in like he's not in  
18 control of the car.

19              Let's take another step back, learn more of the story of what's going  
20 on here. The Defendant is first asked to leave after his daughter had frantically  
21 gone to Pastor -- Assistant Pastor Kevin, just get him to leave, please. She's  
22 afraid. He was asked to leave once, which takes some coaxing, but he goes to get  
23 in his car. He drives around the other side and parks, goes back in the church.

24              This time Kevin's like, no, we're not going to have it this time. We  
25 asked you to leave once. So he puts his hands on him and walks him out, where

1 Allen takes over and he's physically escorted to his car a second time. And with  
2 each encounter with the Defendant, the witnesses describe him as getting more  
3 and more agitated, getting a little bit louder, demanding to see his daughter.

4 When you look at where he hit, he could've hit anywhere on that  
5 building, but it happens to hit those double doors, and the location where he had  
6 just been brought out, knowing that there's 10 to 15 people standing even inside  
7 and the whole group of people standing outside, he just walked through those  
8 people. It's not like he didn't know what was in there.

9 Allen Burse, he gets in his car, and my intent -- and my intuition told  
10 me not to take my eyes off that car. I just felt like something was going to happen.  
11 And when I had asked him -- he testified something similar to that at the prior  
12 hearing, right? He said yes. Did the Defendant blurt something out right after you  
13 said this? It wasn't just a blurt. He yelled it out from what Allen testified to. He  
14 yelled out in the courtroom. He almost broke my damn arm. That's why -- that's  
15 why something was about to just happen. He shouted it out at the prior hearing.  
16 He was still angry about what happened a month ago. When he's sitting in the  
17 courtroom hearing about it happening again, he was still angry. So do you think he  
18 didn't remember what was going on? Do you think he wasn't thinking about being  
19 upset with these people, where a month later he's still -- because he almost broke  
20 my arm, that's why. That's why I wanted to hit you, Allen.

21 And the key player here, as we take another step back, is the  
22 Defendant's daughter, Samira Grove, the Defendant -- Defendant demanding over  
23 and over, I need to see my daughter. He's terrified, trying to get out of there.  
24 They're trying to escort him out, which is why he's even there in the first place.  
25 He's getting increasingly agitated as he's denied. How does she react to his being

1 there? Hysterical, very afraid and the reason he's told to leave in the first place.

2 And she left the property after even being told, hey, I -- by Craig,  
3 hey, I just told your dad to leave. He went around the building, so I think he's  
4 gone. You can go back in and enjoy things. She's like, No way, Jose, I'm out. Got  
5 in her car and drove away.

6 MR. POSIN: Your Honor, I don't think the evidence showed that.

7 MR. SCOW: He didn't say "I'm out." I was paraphrasing.

8 MR. POSIN: I don't think that it showed that she drove away  
9 (indiscernible) she drove away.

10 THE COURT: Well --

11 MR. SCOW: Craig testified --

12 THE COURT: The jury will rely on their own recollection.

13 BY MR. SCOW:

14 If you'll recall, what we say is in evidence. There's an instruction  
15 that says that. We kind of just recite the evidence to bring it back to your memory  
16 as we go through these laws and instructions. You'll remember that Craig Hutton  
17 testified as he was on that back side of the church after the Defendant just drove  
18 around the corner, she came running out, still pretty upset. He's like, hey, he's  
19 gone. He just drove -- I told him to leave. And she said, I'm still leaving. Got in  
20 her car, and he said she exited on Las Vegas Boulevard, and the path that he took  
21 was basically the same one that she went. She went to the street, walked over  
22 after she had left, and he ended up back at the other side of the building and saw  
23 the car, plowed into the church.

24 So maybe the most revealing evidence is we take a final step back  
25 and get the whole bull's-eye here, the whole story. What was the Defendant

1 saying immediately after driving at all the people and smashing his car into the  
2 church? And it gives us some insight into the state of the mind of the Defendant,  
3 whether he could formulate an intent to kill, if he could formulate an intent to scare  
4 people, place them in reasonable apprehensive of harm.

5 As Washington Thompson is standing there next to the door, trying  
6 to keep it shut so the Defendant wouldn't get out, as Allen is wrestling with him  
7 inside, the Defendant looks at him and says, You're next, and Washington's like,  
8 what's that all about? I didn't even -- I haven't done anything to you today. Well,  
9 you're next. And what else could he mean by that after just ramming his car into  
10 the church?

11 Kevin, the Defendant was yelling, I'm going to kill all you  
12 motherf'ers. And Craig, the Defendant was threatening to kill everyone or anyone  
13 who was making threats to kill. And that's in the few seconds after he'd just drove  
14 through a group of people and plowed his car into the church. Still talking about,  
15 I'm going to kill you guys.

16 What do you think was going through his mind just before? Was it a  
17 blank zombie mind from alcohol because people could smell it? Because  
18 somebody said at one time he mumbled or sounded incoherent to me? Because  
19 he didn't seem to understand that we just wanted him to leave.

20 It's a burglary. It's an intent to commit a battery or an assault or to  
21 kill someone. Assault, intentionally placing another in reasonable apprehension of  
22 immediate bodily harm. Attempt murder, intent to kill another person.

23 Statements immediately after, his reaction to Allen Burse testifying  
24 at that prior hearing all show that the Defendant had this intent. He was angry.  
25 Maybe the alcohol just gave him a little extra courage to do something that

1 somebody otherwise wouldn't normally do; broke down his barriers of, you know,  
2 society, societal norms. Breaks those down and makes them more likely to lash  
3 out in his angry, which is what happened.

4 In this case the evidence establishes that the Defendant is guilty  
5 also of burglary, a thief intent crime, burglary, assault with a deadly weapon,  
6 attempt murder with a deadly weapon. And based on the Defendant's action that  
7 he formulated in his own mind and acted upon, I'm going to ask that you find him  
8 guilty of all the charges because he needs to be held accountable for what he did,  
9 the terror that he put these people through.

10 He didn't -- he didn't break anybody's neck. Thank goodness. Or  
11 anybody's back. Everybody can walk and move about after this, but that doesn't  
12 make it any less that he was trying to kill those people, assault them and inflict as  
13 much damage as he could because they wouldn't let him in that church. Do justice  
14 here, find him guilty. Thank you.

15 THE COURT: Thank you.

16 MR. POSIN: It goes against the grain as a defense attorney to agree with  
17 anything the prosecution would've said. I think Mr. Scow was actually -- summed  
18 up pretty well what the issues are, and I think we actually do agree on the point  
19 that we're dealing with here, that is, we're not disputing who was there. Mr.  
20 Hickman was there. He was driving that car that day. There's no dispute about  
21 that. The issue is, what was his intent -- intent.

22 His intent -- again, we -- as Mr. Scow has said, intent is a different  
23 thing for different crimes that are charged here. We have a different intent that  
24 we're looking at for the battery, the burglary, the attempt murder, and the Judge's  
25 read you these instructions. It talks about general intent crimes, specific intent

1 crimes, and I thought I was going to have to explain that a little more than I  
2 probably will because I think he's actually told you a little bit about the different  
3 between what those things are.

4 And when you first heard the Judge talking about that, I'm sure a lot  
5 of that was just sounding like -- you know, just what does all of this stuff mean?  
6 Because we as lawyers, we hear all that legal jargon all the time, and we're used to  
7 it, and you guys aren't.

8 Remember when we first started and I was giving my opening  
9 statement or even before that when we were talking to you guys as potential jurors  
10 still, I was asking, you know, can you really listen and listen to the Judge's  
11 instructions about what the law is and follow those instructions. There was a  
12 potential juror who is no longer an actual juror, who -- you know, his attitude-- he  
13 was an ex-police officer. His attitude was, well, once -- once the case is presented  
14 to the D.A., well, you know, the work is done. I just -- cops brought it to the D.A.;  
15 then the work is done.

16 I think the prosecutors and I probably agree, no, that's just the  
17 beginning of the interesting part. This is the interesting part. The part that you're  
18 involved in is really the interesting part, seeing how those facts apply to the law  
19 that the Judge is giving you and coming to a reasonable analysis as to each and  
20 every one -- not just of the crimes charged, but each of the elements of the crimes  
21 that are charged, each and every element of each of the crimes charged.

22 And we've got a complicated morass of -- of crimes where several  
23 of the crimes, as you'll see -- you're going to see a verdict where there are  
24 alternate versions you can give. You can find the Defendant guilty of one part, two  
25 parts, part one and part two, part one and part three, part one -- only -- none of

1 them, all of them. You're going to have to go through that, and it is important that  
2 you go through each and every one of those counts and analyze what was Mr.  
3 Hickman's intent.

4 Now, there are options other than the ones that have been  
5 presented to you by the State as to what that intent was. They're trying to say that  
6 his intent was either, I have the specific intent to actually cause the death of these  
7 individuals. Now that's -- that is what you have to find for the attempt murder. Or  
8 he was so drunk, he -- that's why I objected. He was so drunk that he couldn't  
9 even formulate such an intent.

10 Now, I'm not going to argue that he was so drunk that he couldn't  
11 formulate that intent. I'm arguing that he didn't, and his intoxication is one element  
12 for you to look at in deciding what his intent -- what his true intent was. And I think  
13 his true intent can be seen by the course of events that led up to this.

14 He went in. He asked for his daughter. They weren't going to let  
15 him see his daughter. He was insistent. He asked over and over and over for his  
16 daughter. He wanted to see his daughter. He started out jolly; he was asking for  
17 his daughter. Then he became angrier and angrier. He wanted to see his  
18 daughter. He was escorted out of the place once. He wanted to see his daughter.  
19 He came back in. Gets escorted out again, this time with a little more force. It's  
20 clear to him that he's not going to go in voluntarily again just on foot. So what was  
21 his intent when he drove that car into -- into the building? And counsel used an  
22 interesting word, bull's-eye.

23 Now, in their eye, the fact that there was a direct line from that car  
24 into the church, that's somehow shows his intent to kill. I think far from it. I think  
25 what that shows, his intent at that point looks to me like whatever way it was going

1 to take, he was going to go back into that church to see his daughter. Now, was  
2 that a smart thing -- smart way to do it? A safe way to do it? No. Was that a  
3 reckless way to do it? Yeah, that was pretty reckless. And if we were sitting here  
4 dealing with a crime of reckless driving, there would be other issues. Maybe you'd  
5 have different considerations, a different analysis of what intent you are looking at  
6 or lack of intent.

7               If we were sitting here dealing with what was initially charged by the  
8 officer, driving under the influence, then we would have -- would've had different  
9 intent issues. But you're dealing with his intent as charged in these instructions,  
10 and specifically, let's talk about the attempt murder, his intent to kill.

11              Was it his intent to kill or was it his intent to just get into that  
12 building? We knew that there were three big, strong men at least that we're going  
13 to escort him out, keep him out if he went in on foot, and he was just going to go in  
14 in his car. Reckless? Maybe. That's not the crime that you're dealing with. DUI?  
15 Again, maybe. That's not the crime you're dealing with. Was it the kind of reckless  
16 act that would give rise to some civil liability if somebody was suing him? Maybe.  
17 But that's not the issue here. The issue here is was he planning; did he formulate  
18 the intent to kill people? Saying, I'm going to do this in order to kill people. I want  
19 to kill people. If that's what you find, then find him guilty, but that's not what the  
20 evidence shows. The evidence shows that the intent he had was to get to his  
21 daughter.

22              So where does the intoxication come in? Does it come in that he  
23 was so drunk, he didn't know where he was driving? No, that's not what I'm  
24 arguing. Does it come in that he was so drunk, that he couldn't even begin to  
25 formulate that intent? That he was unable to decide, I want to kill somebody?



1 That's not what I'm arguing either. Did it come in on the basis that he wasn't  
2 making sound decisions; that when he did come up with an intent, and that intent  
3 was, I'm going after my daughter, and I'm driving my car in that building if that's  
4 what it's going to take? But he didn't think, oh, there are people in the way, I'm  
5 going to hurt them. Well, you know, if that's what he was thinking, that was pretty  
6 reckless, but that wasn't an intent to kill. That was not the intent to kill.

7           The facts that have been shown here -- you know, as counsel has  
8 said, there's not really too much dispute about what the facts were. What you have  
9 to do is look into this man's mind. And how do you do that? You have to take the  
10 facts that have been presented by the prosecution, and then you have to look at  
11 the instructions, and you have to look specifically at what every defense attorney in  
12 every case talks about, which is the reasonable doubt instruction. You have to  
13 think, well, why -- maybe, you know -- I don't know. Maybe he had this intent.  
14 Maybe he had that intent.

15           If you think that maybe he had the intent to kill people -- I'm arguing  
16 that you couldn't even begin to think that he even maybe had the intent to kill  
17 people. I'm arguing that the intent that was shown here was to go get his  
18 daughter. Then let's say you disagree with that. You think, yeah, I can see -- I can  
19 see the State's argument. I can see where, maybe he was, maybe he was so  
20 mad, so irritated with these people, that he actually decided, I want to kill them.  
21 I've forgotten about my daughter now. Who cares about her? I just -- my new plan  
22 is I'm going to kill some people, and this is how I'm going to do it. Let's say that's --  
23 you think that the evidence gives that as one possibility. And let's say you look at  
24 what I'm saying, arguing here, that I want to go get my daughter, and you say, well,  
25 that's another possibility, and you say, I don't know, those both seem like

1 possibilities. Then what do you do? This is not a situation where you just kind of  
2 look, well, I don't know, I'll just pick the one way, it could go the other way, we'll go  
3 here.

4               Again, you go back to the Judge's instructions and some of the  
5 basic principles of law that we have. It's not just any old instruction. I mean, none  
6 of these are just any old instructions. These are all very important, and we  
7 discussed them and agreed on them, and the Judge gave them careful  
8 consideration, and they are the law.

9               But the proof beyond a reasonable doubt and the fact that -- who  
10 has the burden of proof, the State? What that means is that if you're looking at two  
11 possibilities and you're weighing them, with any kind of trial you find a defendant  
12 not guilty -- now, not guilty, you're not saying, I'm deciding guilty or innocent. You  
13 notice the word is not innocent, it's not guilty. Not guilty means not proved beyond  
14 a reasonable doubt by the State.

15              They've presented their case. They see it one way. They're  
16 arguing it one way. I'm arguing it another way. If you, when you go back and  
17 deliberate, think that my argument even is a matter that you think could be  
18 possible, then you think, is -- okay, if it could be possible, is that -- do I then have a  
19 doubt based on that analysis as to whether their argument is right? You may even  
20 think, well, more likely than not their argument is right. I kind of like their argument  
21 better than Mr. Posin's argument, I don't know, it just seems more likely he really  
22 did forget about his daughter and was trying to kill them, you still have to find this  
23 man not guilty if you have a reasonable doubt, a reasonable doubt as to whether  
24 what I might feel is the case.

25              Many of these witnesses had testified once before, as you heard,

1 and they were going over what some of their testimony was. And I kind of focused  
2 on the word that one of them used, which was backpedaling. Now that they  
3 understand a little better where the Defense is going, it's -- they're kind of  
4 downplaying the drunk think.

5 But every one of them admitted that they said it. Washington  
6 Thompson said -- used the word drunk, and counsel then went back and actually  
7 did something that -- to my mind helped us, our side, more than his, which is, his  
8 actual testimony went from starting to say -- his initial statement in the prior  
9 testimony was a little tipsy. Then he further clarified that to say, well, he was wet  
10 and then finally said drunk.

11 Tiffany Trass used the word incoherent, and, you know, again, kind  
12 of maybe backpedaled a little bit on that. Allen Burse said, he was mumbling and  
13 wasn't understanding what we were saying. Again, I'm not going to argue it that he  
14 wasn't capable of understanding the English language and didn't understand in  
15 that sense. The party wasn't under exam. He wasn't taking no for an answer  
16 about, no, you're not going to see your daughter.

17 Marquetta Jenkins -- Jenkins said, you could smell the alcohol as he  
18 walked past, and then she threw another phrase even in this trial that -- that some  
19 of you may have caught, which was, he wasn't all there. Kevin Madden said, I  
20 smelled liquor. Craig Hutton said that the usher had told him she smelled alcohol.  
21 He smelled alcohol. And Darren Green, who was the officer -- second officer to  
22 testify said, he was non-responsive.

23 Now, again, this is not to say that he was so drunk, he couldn't even  
24 (indiscernible), so drunk that he couldn't walk under his power. There was a lot of  
25 testimony about that. Could he -- did he seem to be stumbling? Did he have to

1 use assistance to walk?

2 But (indiscernible) can do, you heard the instruction about your  
3 common sense comes in and can cause you to disregard the dangers of actions  
4 that we take. People can assess that they didn't plan out when they're drunk.  
5 They can drive when they really shouldn't because they made a bad decision,  
6 because they were drunk. They can do all kinds of things because the risks -- the  
7 risks that most of us when we're sober of doing a particular course of action that  
8 seems so obvious when we're sober somehow recede in the background when  
9 people have too much alcohol.

10 Here, there was not only a risk, but an actuality of people getting  
11 scared and injured because of what Mr. Hickman did. But was -- was that his  
12 intent? Was that his intent? Again, there's the battery --

13 Again, I'm going to read what is stated here. The battery has a  
14 different form of intent. It would be a lot of easier, actually, for you to find him guilty  
15 of the battery, but was it his intent to hurt or kill people or was that just one of those  
16 things that -- one of those risks that because of his intoxication, he didn't look at  
17 the way he would have that any normal or sober person normally would look and  
18 say, I can't drive my car into the church because somebody's going to get hurt.  
19 Well, was that something was just kind of not a central focus of his mind.

20 If that's the case, then you've got to look at these intent instructions.  
21 And, again, I'll agree with the State that may not be enough to get us past the  
22 battery because that's a general intent, but it sure is enough for you to find a not  
23 guilty verdict on all of the other counts.

24 Then there's the burglary, of course. Let me talk about the burglary  
25 again. Burglary, he has to have the intent -- it comes down to the intent again, but

1 he has to have the intent when entering the building, structure, whatever it is, to  
2 commit one of the crimes involved. So, again, you have to find at the time he was  
3 entering -- I'm not even sure he had quite actually ever entered, but if you give the  
4 State the benefit of the doubt that his body had actually entered the building at the  
5 time, did he have that intent at the time? So we're still back to that issue of the  
6 intent.

7           There are enhancements that you're going to have to look at as  
8 well. If you agree with what I'm saying now -- of course, you never get to those  
9 enhancements. If there was no assault, then it couldn't have been with a deadly  
10 weapon and it couldn't have been with substantially bodily harm. I don't think you  
11 ever need to get there I'm going to talk about it a little bit anyway because even if  
12 the State could say that they had proved it to the extent their argument is that he  
13 committed the physical acts he did, they have not proven the enhancements.

14           First of all, the use of a deadly weapon, again, I credit the State with  
15 having gone through at length with you on the PowerPoint, the elements of the  
16 crime, the instructions that the Judge has read to you and that you're going to  
17 have, and I'm going to want you to go back and look at those instructions.

18           But it's not just -- you heard me object. It's not just the object you're  
19 using could be used as a deadly weapon. You can't just take that it could because  
20 anything ultimately could be used. Somebody's fist, a chair, boots, anything could  
21 be deadly. It has to be used in a way that it potentially will.

22           And as much as the State has tried to inflate what has happened  
23 here -- I'm not trying to minimize it. Certainly, driving a car into a building and pass  
24 into people is not a good idea. Nonetheless, you've got to remember, this was  
25 across a parking lot. And as much, again, as the State has tried to say, oh, well, it

1 was a really wide parking lot, you've seen the pictures; it was a parking lot. It was  
2 a parking lot with spaces on one side and spaces on another side, and we could  
3 see pretty clearly from those tires tracks and many of the witnesses, just how far  
4 that car had come.

5 It wasn't going that fast. It wasn't going that fast. It wasn't going fast  
6 enough to kill. It was going fast enough to scare people. That's not enough. It  
7 was going fast enough to injure people, to hit people. That's not enough. It was  
8 not going fast enough to kill.

9 And, you know, the proof of the pudding there -- and this actually  
10 goes to the other element, the bodily injury element. There was not substantial  
11 bodily injury. Again, that was -- you know, we heard about the hurt foot, the broken  
12 foot. When the kid came, the kid who was injured, was a nice little girl. Again, I'm  
13 not trying to minimize what she went through. She didn't have any basis to try to  
14 sell you on anything, to spin it anyway. She told it like it was. And you know what  
15 she said, she said, yeah, it was my little baby pinky toe, and it hurt that day and the  
16 next day. I'm sorry, that is just not substantial bodily harm. So we don't have  
17 substantial bodily harm, we don't have use of a deadly weapon, and we don't have  
18 battery, the assault, the attempt murder. I'm sorry, the -- we don't -- potentially, I'm  
19 going to grant you, you may get to a battery. You don't have the assault, you don't  
20 have the attempt murder. You don't have the burglary.

21 So when you go back -- again, and I -- before I heard counsel, I was  
22 going to go through some of these instructions one by one, but I think you see how  
23 important it is, and he's gone through with you and focused on what we do agree is  
24 the issue, is what was his intent. His intent was not to kill.

25 This is not a reckless driving case, this is not a DUI case, and you

1 cannot find him guilty of crimes that are not charged here. You're looking at the  
2 crimes that are charged, and of those crimes, I think you will find that he is not  
3 guilty. Thank you.

4 THE COURT: Mr. Hamner.

5 MR. HAMNER: Thank you.

6 **STATE REBUTTAL ARGUMENT**

7 **BY MR. HAMNER:**

8 I made some notes of what I heard Opposing Counsel said. I want  
9 to touch on some of those and then touch on a couple of things that I want to bring  
10 up.

11 Now, the Defense concedes that we're pretty much in agreement,  
12 it's him. He's the one who did it. There's no dispute as to what he did. So let's  
13 just check all that stuff off because that's the truth. All the -- everything the  
14 witnesses said is on point. The question becomes, what's his intent?

15 He said, what we need to do is look into that man's mind on that day  
16 to figure what he was thinking. From the very beginning of this trial, during voir  
17 dire, we talked about, hey, might it be important to look at the before, the during  
18 and the after? And I think some people said, you know, it is, because it gives you,  
19 just what he said, a window into that man's mind.

20 So let's think about what he did, think about what he said. Now,  
21 what they basically said was, the only thing that was going through his mind, the  
22 very clever and unique reason why he drove halfway into a church was because he  
23 wanted to see his daughter? That's their theory, but is that supported by the  
24 evidence. Well, let's look at all the circumstances.

25 What did he say after he's halfway through a church where he flew

1 the doors off the hinges? Did he say, where's Samira? Did he say, I'd like to see  
2 my daughter now? Can I see her now? I'm so sorry, but I just want to see my  
3 daughter? Is that what this man said? No. He said, I'm going to kill all you  
4 motherfuckers. You don't know who you're messing with.

5 Mr. Craig Hutton said, He was threatening to kill everyone.  
6 Washington Thompson, who never even seen this guy, he looks at him dead in the  
7 eye and he goes, You are next. That's funny, I don't think Mr. Thompson looks like  
8 his daughter. You saw him. Is that someone that you could get confused with his  
9 daughter? Probably not. A window into his mind.

10 He drove through the church to see his daughter, is that -- my  
11 favorite instruction of all the instructions is the common sense instruction. It's in  
12 there. I don't know the exact one is, but the law basically says, when you're  
13 selected as a juror, you don't get to leave your common sense at the door. You've  
14 got to bring it in.

15 So when you listen to all of the evidence and you heard all of his  
16 statements, the thing you should be asking yourself is, does that make sense?  
17 Was this a man who was expressing his desire to see his daughter after he plowed  
18 halfway through this church? The answer's no, absolutely not. Beyond a  
19 reasonable doubt, the answer is no.

20 It's never about Samira at that point. It was at the beginning, but  
21 not at the end and not while he was getting in that car for the second time. It never  
22 was about his daughter at that point. It was about anger. It was about revenge. It  
23 was about spite. It was about payback. That's what motivated, to try to run over  
24 Allen Burse, run over the people at church and put that car halfway through that  
25 church. That's what he was thinking about that second time he was in the car.



1                   And then there was some talk about backpedaling. It seems to be  
2 one of the words of this trial. There's a difference between backpedaling and  
3 giving context. Now, I appreciate Opposing Counsel wasn't there at the previous  
4 proceeding to ask the questions of these witnesses as to what they meant, but  
5 when you heard them testify, all those witnesses mumble incoherent, not sure what  
6 he said. When they were asked, they very clearly explained at trial what they  
7 meant.

8                   You remember what they said. I don't need to remind that to you.  
9 But just remember, they also said they were never asked to explain exactly what  
10 those words meant at a prior proceeding. That's not backpedaling. That's not  
11 being given an opportunity to explain. And that's what we did. So when you think  
12 about their credibility and whether they're really trying to backpedal or if they're just  
13 simply asking now to explain further on what they said before, I'll let you be the  
14 judge of that.

15                   Another interesting thing about this notion about intoxication, let's  
16 be clear about something as to what the law says. Instruction 16 says, "No act  
17 committed by a person while in a state of intoxication shall be deemed less criminal  
18 by reason of his condition, but whenever the actual existence of any particular  
19 intent is necessary," that's when you can kind of think about it. So as a general  
20 rule, it's no excuse to be drinking and then commit a criminal act.

21                   So what this law actually says is, if you drink so much that you  
22 cannot mentally form the idea to do something intentional, then you can't be found  
23 guilty of a particular crime, whether it's burglary or assault or attempt murder.  
24 Okay? But here's the funny thing about the Defense's argument.  
25 He told us the reason why he wanted to go in there was to see his daughter, if

1 that's to believe. Well, then that's funny. You must not have been that intoxicated  
2 if you formed the specific intent to go in the church to see your daughter. It doesn't  
3 work that way.

4           He's either totally zonked out of his mind, drunk out of his mind that  
5 he doesn't know what he's doing or you don't get the defense of intoxication. It  
6 doesn't work that way. You'll see the instructions. You're either totally wasted and  
7 you have no control or maybe when you had a few drinks -- we like to sometimes  
8 call it liquid courage -- it fuels some of your feelings. Maybe you get the courage to  
9 walk up to a girl and ask her out on a date at a bar. Maybe you get in a fight when  
10 you shouldn't have. Opposing counsel mentioned, maybe you slept with  
11 somebody that you probably shouldn't have. But the bottom line is, that notion, if  
12 the alcohol helps you do something a little bit more that you wouldn't have normally  
13 done if you drank, that doesn't qualify. It's not forming specific intent. That's not  
14 the way the defense works. You literally have to consume so much alcohol, that  
15 you don't know what you're doing.

16           So under either theory, our theory or theirs, he hadn't drank enough  
17 alcohol.

18           And think about the evidence that you heard. He admitted to the  
19 officer that he had one beer. You had multiple witnesses saying, you know what, if  
20 I didn't smell it, his behavior didn't look like a guy who was drunk, and you saw his  
21 actions, that they're conceding he did. Seemed like a pretty deliberate path into  
22 that church. Is this really a guy who didn't know how to drive a car? I mean, he did  
23 a bang up job getting to the church, parking the first time, walking under his own  
24 power, walking back, driving all around, parking a second time. Never bumping  
25 into a thing. That's amazing. In that one split second in time, oh, no, forget it,

1 lights went out, I don't really remember what happened.

2 Common sense, is that really supported by the evidence? The  
3 answer is no, absolutely not. He knew what he was doing. He was pissed, and he  
4 lashed out.

5 MR. HAMNER: Excuse my language, Your Honor.

6 BY MR. HAMNER:

7 The Defense concedes the battery. That's a general intent crime.  
8 So he's on the hook for those. Those are just lesser crimes. We've charged  
9 battery with a deadly weapon, battery with a deadly weapon resulting in substantial  
10 bodily harm. Here's the actual instruction -- you'll have the instruction on the  
11 deadly weapon. The deadly weapon instruction says, "Any instrument or device  
12 which under the circumstances in which it is used is readily capable of causing  
13 substantial bodily harm or death."

14 Do you think driving at a person who is unarmed, on foot, alone in  
15 the middle of the street could possibly cause substantially bodily harm or death if  
16 you gun the gas like Mr. Burse was? Yes. Deadly weapon. Do you think driving  
17 into a crowd of unarmed people on foot while you're gunning the gas might cause  
18 someone to die, to succeed at hitting or hurting them really bad? Of course.  
19 Deadly weapon. Same thing with driving through the church.

20 So the enhancement has been proven beyond a reasonable doubt  
21 because there's no dispute that he is the one who did all of those actions. He  
22 physically did it. He's on the hook for that enhancement. So you check off battery  
23 with a deadly weapon. Let's get to substantial bodily harm.

24 That law states that anybody who has prolonged impairment for one  
25 of their bodily members. So you have to ask yourself, did this nine-year-old girl

1 have some prolonged time when she wasn't able to use her foot in the right way?  
2 We concede, we contend, we've submitted, yes, absolutely. You put a little girl in a  
3 soft cast or a walking boot for a period of time where she has to take pain  
4 medication, she's having a hard time sleeping, she's complaining to her mother,  
5 yeah, guess what -- she's not able to run and play like they used to. That's  
6 prolonged impairment. She also had prolonged pain. And you can consider the  
7 testimony of her mother as well as her. Don't just take it from her mouth. Take it  
8 from the people who watch and care for her on a daily basis. We've met that  
9 beyond a reasonable doubt.

10               She's not in a coma. She doesn't have a limb lobbed off, but that's  
11 not what the law says. And you'll have a chance to read that. So we've made  
12 those enhancements. So you can check off those two crimes as they were initially  
13 charged. He's guilty of them beyond a reasonable doubt.

14               There's also a comment, well, it's not really going that fast. Did you  
15 see the pictures of that door? You can judge that for yourself. How fast do you got  
16 to go to blow a closed door up into the air? How fast do you have to be driving?  
17 How fast must he be going to put a Cadillac halfway into a church?

18               And you also had the eyewitness testimony. You can judge it for  
19 yourself. Did all those people think it was going pretty fast? The State would  
20 submit absolutely.

21               There was a lot of focus -- a little bit on the type of injury, that it was  
22 only just a pinky toe. But we have charges like attempt murder, the law doesn't  
23 say you have to put somebody on life support to be guilty of attempt murder. You  
24 have to permanently cut off one of their limbs to be guilty of attempt murder. That's  
25 not how it works. Because if that's how it works, someone could walk into a

1 crowded theatre with a gun, rattle off 150 bullets at people, and if he didn't hit a  
2 single soul, well, guess what, you're not guilty of attempt murder. Does that make  
3 sense? No.

4           You could push a nine-year-old girl off the top of a building and if  
5 she miraculously ended up unharmed, well, apparently it's not attempt murder.  
6 Really? Pushing a nine-year-old girl off of a very high building, that isn't something  
7 that could cause death or substantially bodily -- absolutely. It's the act that  
8 matters.

9           So the question you have to ask yourself, is the act of driving at an  
10 unarmed man first and then speeding into a crowd of unarmed people next and  
11 then driving half through -- halfway into a crowded church, are these acts that  
12 could substantially cause death? The answer is beyond a reasonable doubt yes.

13           Now, ladies and gentlemen, there was also -- getting to this issue of  
14 specific intent. I think a really interesting thing, if you're believed -- forget -- forget  
15 the Samira -- "I'm coming to find Samira" theory. Let's just assume what the law  
16 really says to get this intoxication defense, that you basically cannot form the  
17 mental intent at the time that you're doing it. Think about that because that's what  
18 the law says.

19           Here's the problem for the Defendant based on the evidence that  
20 was presented. Let's just assume for a second he is so intoxicated, he had no idea  
21 what he was doing. He did not know how to back that car out, cut those wheels, et  
22 cetera. Let's just assume because the drinking was just so much for him. He  
23 basically blacked out, right? Here's the problem with that theory.

24           Take yourself to the testimony of Allen Burse. When he sat on the  
25 stand and talked about testifying at a prior proceeding, when he said, I've been a

1 cop, or whatever, but my gut was telling me not to take my eyes off this guy  
2 because I thought something bad was going to happen. What did he tell you this  
3 man did? He shouted out and said, you almost broke my arm, my damn arm,  
4 that's why. How in the world --

5 MR. POSIN: That misstates the testimony. He stated -- that was alleged to  
6 have been stated at the prior proceeding, not at --

7 MR. HAMNER: I got it --

8 THE COURT: Overruled.

9 BY MR. HAMNER:

10 Ladies and gentlemen, if he is so intoxicated that he was blacked  
11 out during this senseless attack on these people, how did he remember? Why was  
12 he trying to explain to Allen Burse, you know what, Mr. Burse, you're right, you had  
13 a good reason to suspect something bad was going to happen. He told us. We  
14 called his bluff at this point. He showed his tell. The hands he was showing, he  
15 was trying to say, I don't remember anything, but when you shot out at a witness  
16 and explain to them, you know what, sir, you're intuition's right. Something bad  
17 was going to happen because I didn't like the way you treated me. I didn't like how  
18 you put me in that arm bar, you put me in that car.

19 He told us two months later that he was fully cognizant of what he  
20 was doing, and there's no dispute about that fact. That's what he said. But if he's  
21 so intoxicated that he doesn't form that intent, he doesn't say that. He sits there  
22 silently just saying, I don't remember what happened because I was so wasted.  
23 And that is why we know beyond a reasonable doubt this is what he wanted to do.  
24 He repeatedly said over and over again he wanted to kill these people.

25 And that's another question. Why do you think he said all those

1 things once lodged in that church? The answer is, when you look at the very  
2 definition of attempted murder, it's the "performance of an act which tends but fails  
3 to kill a human being." The reason why he's saying to these people after he failed  
4 to kill them, "I'm going to kill you," is he recognized and realized he failed. He  
5 failed at first. And so he made a communication to all of them, "I'm going to kill all  
6 you people. You don't know who you're messing with." He's still trying to get that  
7 car free to finish the job.

8 Do not let the Defendant backpedal. Do not let him off the hook.  
9 Hold him responsible for this absolutely senseless act that terrified countless  
10 people, broke a little girl's foot and injured her mother. Do justice for all of these  
11 victims. Find him guilty on all counts. Thank you.

12 THE COURT: Will the marshal please take charge of the jury now.

13 (Pause)

14 THE COURT: Is he out there?

15 MR. SCOW: No, ma'am. I checked chambers behind us. He's not there.  
16 I'm assuming that possibly he may be in the restroom, Your Honor.

17 THE COURT: Well, I will swear you in, and then we'll swear him in.

18 (The Marshal enters the courtroom)

19 (Clerk swears the Marshal and Recorder)

20 (Court and Marshal confer)

21 THE COURT: Thank you.

22 THE MARSHAL: Okay. Ladies and gentlemen of the jury, please grab  
23 your notebooks, all your personal effects. Please follow me.

24 (Jury exits courtroom to deliberate)

25 (Out of the presence of the jury panel)

1 THE COURT: The record will reflect the jury has departed the courtroom.  
2 Are there any matters outside the presence?

3 MR. SCOW: No, Your Honor.

4 MR. POSIN: No, Your Honor. I just am curious, assuming they're still  
5 deliberating this afternoon, would you come back tomorrow or come back Monday  
6 or --

7 THE COURT: Well, we're not coming back Saturday, I know, because that  
8 would require lots of overtime, which we can't afford here. So we would bring them  
9 back Monday, but it's only 12:30. I did ask --

10 MR. POSIN: Yeah, not expecting --

11 THE COURT: Let's ask them for lunch.

12 (Court and Clerk confer)

13 THE COURT: So when we call you, come back to the third floor courtroom  
14 instead of here.

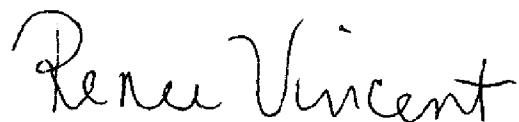
15 MR. POSIN: I like that courtroom better. It's (indiscernible).

16 THE COURT: This was never intended to be a courtroom. All right. Thank  
17 you. We're off the record.

18 MR. HAMNER: Thank you.

19 [Proceeding concluded at 12:32 p.m.]

20  
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-visual recording of the proceeding in the above entitled case to the  
23 best of my ability.

24 

25 \_\_\_\_\_  
Renee Vincent, Court Recorder/Transcriber



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

WILBURT HICKMAN, JR. A/K/A WILLIAM  
HICKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 64776**  
District Court Case No. C278699

**FILED**

**OCT 16 2015**

*Tracie Lindeman*  
**CLERK OF COURT**

**CLERK'S CERTIFICATE**

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

**JUDGMENT**

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of conviction AFFIRMED."

Judgment, as quoted above, entered this 16<sup>th</sup> day of September, 2015.

IN WITNESS WHEREOF, I have subscribed  
my name and affixed the seal of the Supreme  
Court at my Office in Carson City, Nevada this  
October 12, 2015.

Tracie Lindeman, Supreme Court Clerk

By: Sally Williams  
Deputy Clerk

C-12-278699-1  
CCJA  
NV Supreme Court Clerks Certificate/Judge  
4496192



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILBURT HICKMAN, JR. A/K/A  
WILLIAM HICKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 64776

**FILED**

SEP 16 2015

TRACIE K. LINDERMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a judgment of conviction entered pursuant to a jury verdict of one count of battery with the use of a deadly weapon, one count of battery with the use of a deadly weapon causing substantial bodily harm, five counts of assault with the use of a deadly weapon, and one count of burglary. Eighth Judicial District Court, Clark County; Carolyn Ellsworth, Judge.

First, appellant Wilburt Hickman claims a witness provided improper lay testimony when that witness testified regarding whether alcohol was involved in the crash. Hickman failed to object to this testimony at trial.

We review a district court's decision to admit or exclude evidence for an abuse of discretion. *Thomas v. State*, 122 Nev. 1361, 1370, 148 P.3d 727, 734 (2006). Because Hickman did not object, we review for plain error. *Sterling v. State*, 108 Nev. 391, 394, 834 P.2d 400, 402 (1992). Under the plain error standard, we determine "whether there was an

error, whether the error was plain or clear, and whether the error affected the defendant's substantial rights." *Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) (internal quotation marks and citation omitted).

The witness at trial was asked, "So based on your observations from beginning to end, could you tell that alcohol was involved." The witness answered, "Other than odor, no." The witness was then asked about the behavior of Hickman before and after the crash. The witness was not asked to offer a final opinion as to whether Hickman intended to commit the crimes. Instead, he was asked about his observations of Hickman as they related to whether Hickman appeared intoxicated. This was proper under NRS 50.265 because a lay witness may testify in the form of opinions or inferences as long as that testimony is "[r]ationally based on the perception of the witness; and . . . [h]elpful to a clear understanding of the testimony of the witness or determination of a fact in issue." Therefore, there was no error, plain or otherwise, in allowing this testimony.

Second, Hickman claims the district court violated his due process rights by refusing to give two instructions regarding intoxication affecting the intent to kill. It may have been error for the district court to refuse to give these instructions, *see Guitron v. State*, 131 Nev. \_\_\_, \_\_\_, 350 P.3d 93, 102 (2015), however, even assuming it was error, we conclude the error was harmless. Hickman was not convicted of attempted murder. Further, an instruction was given to the jury regarding intoxication and its effect on intent. Therefore, we conclude Hickman is not entitled to relief on this claim.

Third, Hickman claims the State committed prosecutorial misconduct during closing argument by stating “a car is something that kills people every day sadly, in accidents or hits pedestrians.” Hickman claims this was error because the State was able to improperly argue that a car is a “per se” deadly weapon.

We analyze claims of prosecutorial misconduct in two steps: first, we determine whether the prosecutor’s conduct was improper, and second, if the conduct was improper, we determine whether it warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008).

We conclude this claim lacks merit. In the context of the State’s closing argument, this statement was not an argument that a car is a per se deadly weapon. Instead, the State properly argued that a car can be a deadly weapon. See NRS 193.165(6)(b) (“Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death”). Therefore, we conclude there was no misconduct by the prosecutor.

Fourth, Hickman argues there was insufficient evidence presented to convict him of battery with the use of a deadly weapon resulting in substantial bodily harm. Specifically, he argues the State failed to prove the element of substantial bodily harm because the pain complained of by the victim was not within the meaning of NRS 0.060.

Under a challenge to the sufficiency of the evidence, this court reviews the evidence in the light most favorable to the prosecution and determines whether “any rational trier of fact could have found the

essential elements of the crimes beyond a reasonable doubt.” *Mitchell v. State*, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008) (emphasis and internal quotation marks omitted). NRS 0.060 defines substantial bodily harm as, “[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function any bodily member or organ; or . . . [p]rolonged physical pain.”

The record demonstrates the child victim suffered a broken pinky toe. She was medicated for the pain, the pain persisted for at least a week after the medication ran out, and her foot felt broken. Further, after being on crutches for a week, she then had to be in a walking boot. We conclude, based on these facts, there was sufficient evidence that the victim suffered prolonged physical pain and Hickman committed battery with the use of a deadly weapon causing substantial bodily harm.

Fifth, Hickman claims there was insufficient evidence to convict him of assault with the use of a deadly weapon as to all of the victims. Specifically, he claims, under *Powell v. State*, 113 Nev. 258, 934 P.2d 224 (1997) a defendant may not be convicted of multiple counts of assault with the use of a deadly weapon in which the circumstances are one action against a group or more than one person.

We conclude *Powell* is factually different than the instant case. To prove intent for assault with the use of a deadly weapon, the State must demonstrate the defendant had the specific intent to commit a violent injury on each of the victims. *Id.* at 263, 934 P.2d at 228; *see also* NRS 200.417; NRS 193.330. In *Powell*, the Nevada Supreme Court noted “Powell only shot the rifle once, at a group of people, and not at any one

specific person, let alone three specific people.” *Powell*, at 263, 934 P.2d at 227. In the instant case, Hickman drove a car toward a group of people. Unlike a bullet, a car possesses the ability to harm multiple people, and therefore, Hickman could intend to commit a violent injury on each of his victims. In this case, Hickman knew there was a group of people outside the church and there were people inside the church because he had just been escorted out. Hickman intentionally turned his steering wheel towards one parishioner, then towards the group outside and directly inside the church. Therefore, there was sufficient evidence to demonstrate Hickman’s intent to commit assault with the use of a deadly weapon on all of the victims.

Sixth, Hickman claimed there was insufficient evidence to convict him of assault with the use of a deadly weapon with respect to one victim who was inside the church. Specifically, Hickman claimed she was not aware of the car approaching, and therefore, could not have been placed in reasonable apprehension of harm. See NRS 200.471(a)(2). This claim lacks merit, because as stated above, there was sufficient evidence to convict Hickman on this count based on an “attempted battery” theory of assault. See NRS 200.471(a)(1).

Seventh, Hickman claims the district court abused its discretion at sentencing because it relied on impalpable or highly suspect evidence. Specifically, he claims the district court relied on argument from the State that Hickman had the intent to kill, despite the fact that the jury hung on the attempted murder counts, and relied on the State’s argument regarding uncharged conduct relating to Hickman’s daughter.

Hickman failed to demonstrate the district court relied on impalpable or highly suspect evidence when sentencing Hickman. See *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976) (We will not interfere with the sentence imposed by the district court “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.”). Hickman’s conduct in this case was egregious and the sentence imposed in this case is within the parameters provided by the relevant statutes, see NRS 207.010(1)(a); NRS 200.471(2)(b); NRS 205.060(2). Therefore, Hickman is not entitled to relief on this claim.

Seventh, Hickman claims the district court abused its discretion at sentencing by sentencing him as a habitual criminal.<sup>1</sup> Specifically, Hickman claims his convictions were old and stale and the district court failed to consider the fact that Hickman was an alcoholic. The record reveals the district court considered the parties’ arguments, the nature of the crime, the staleness of Hickman’s prior convictions, and the district court declined to dismiss the habitual criminal count. See NRS 207.016(5); *O’Neill v. State*, 123 Nev. 9, 15, 153 P.3d 38, 42 (2007); *Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (“NRS 207.010 makes no special allowance for non-violent crimes or for the

---


<sup>1</sup>To the extent Hickman argues he received ineffective assistance of counsel in regard to his habitual criminal adjudication, this claim is not properly raised in a direct appeal from a judgment of conviction. *Feazell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).


remoteness of convictions; instead, these are considerations within the discretion of the district court."). We conclude that the district court did not abuse its discretion in this regard.

Finally, Hickman claims the cumulative errors at trial warrant reversal of his convictions. We conclude Hickman is not entitled to relief on this claim. *See United States v. Sager*, 227 F.3d 1138, 1149 (9th Cir. 2000) ("One error is not cumulative error.").

Having considered Hickman's contentions and concluded he is not entitled to relief, we

ORDER the judgment of the conviction AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Silver

cc: Hon. Carolyn Ellsworth, District Judge  
Law Office of Kristina Wildeveld  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk



**CERTIFIED COPY**

This document is a full, true and correct copy of  
the original on file and of record in my office.

DATE: October 12<sup>th</sup> 2015

Supreme Court Clerk, State of Nevada

By Darryl Newman Deputy

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

WILBURT HICKMAN, JR. A/K/A WILLIAM  
HICKS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 64776**  
District Court Case No. C278699

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: October 12, 2015

Tracie Lindeman, Clerk of Court

By: Sally Williams  
Deputy Clerk

cc (without enclosures):  
Hon. Carolyn Ellsworth, District Judge  
Clark County District Attorney  
Attorney General/Carson City  
Law Office of Kristina Wildeveld

**RECEIPT FOR REMITTITUR**

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on OCT 16 2015.

**HEATHER UNGERMANN**

**Deputy** District Court Clerk

**RECEIVED**

**OCT 16 2015**

CLERK OF THE COURT

Wilburt Hickman, 62150

Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

*Allen D. Lamm*

CLERK OF THE COURT

MC  
PP  
DA  
AOR

IN THE EIGHTH JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

~~THE~~ STATE OF NEVADA,  
Plaintiff,

vs.

~~WILBERT~~ HICKMAN,  
Defendant,

Case No. C278699

Dept. No. \_\_\_\_\_

Docket \_\_\_\_\_

MOTION TO WITHDRAW COUNSEL

Date of Hearing: 2-1-16

Time of Hearing: 9:00AM

'ORAL ARGUMENT REQUESTED, Yes \_\_\_\_\_ No \_\_\_\_\_'

COMES NOW, Defendant, Wilbert Hickman, proceeding in proper  
person, moves this Honorable Court for an ORDER Granting him permission to withdraw his  
present counsel of record in the proceeding action, namely,

Kristina Wilderfeld

This Motion is made and based on all papers and pleadings on file with the Clerk of the Court  
which are hereby incorporated by this reference, the Points and Authorities herein, and attached  
Affidavit of Defendant.

DATED: this 30<sup>th</sup> day of December, 2015.

BY: Wilburt Hickman  
WILBERT HICKMAN = 62150  
Defendant In Propria Personam

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CLERK OF THE COURT

JAN 07 2016

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CLERK OF THE COURT

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JAN 15 2016

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1 While not the intention of the Defendant in this case to have the attorney disbarred, these cases do  
2 show a pattern in the court in considering the refusal to deliver to a former client all his documents  
3 and property after being requested to do so, a serious infraction of the law and of professional ethics.  
4 See, In Re Sullivan, 212 Kan. 233, 510 P.2d 1199 (1973).

5 In summary, this court has jurisdiction through NRS 7.055 to Order the attorney(s) to produce and  
6 deliver to the Defendant all documents and personal property in his/their possession belonging to him  
7 or prepared for him. The Defendant has fulfilled his obligations in trying to obtain the papers. The  
8 attorney(s) is in discord with Cannon 2 of the Code of Professional responsibility and the Nevada  
9 Supreme Court Rules 173, 176 and 203.

10  
11 DATED: this 30<sup>th</sup> day of December, 2015.

12  
13 BY: X Wilbert Hickman  
14 WILBERT HICKMAN # 62150  
15 Defendant/In Propria Personam  
16  
17  
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**CERTIFICATE OF SERVICE BY MAILING**

I, Wilbert Hickman, hereby certify, pursuant to NRCP 5(b), that on this 30<sup>th</sup>  
day of December, 2015, I mailed a true and correct copy of the foregoing, "Motion To  
Withdraw Counsel"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

District Attorney  
Clark County Nevada  
200 Lewis Ave.  
PO BOX 552212  
Las Vegas NV 89155-2212

Kristina Wilderfeld  
The Law Offices of  
615 S. 6th St.  
Las Vegas NV 89101

Cathlyn McAmbis  
The Law Offices of  
Kristina Wilderfeld  
615 S. 6th St.  
Las Vegas NV 89101

CC:FILE

DATED: this 30<sup>th</sup> day of December, 2015.

Wilbert Hickman  
WILBERT HICKMAN #62150  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion To

Withdraw Counsel  
(Title of Document)

filed in District Court Case number C278699

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Wilbert Hickman  
Signature

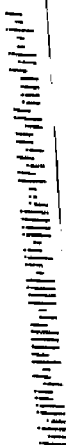
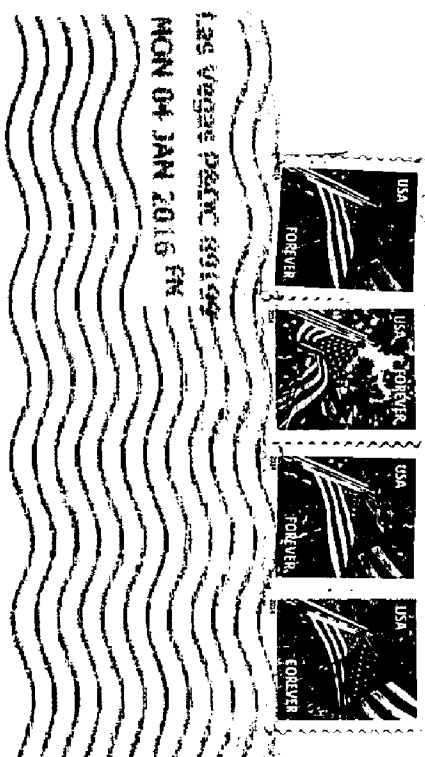
12/30/15  
Date

WILBERT HICKMAN  
Print Name

Defendant Pro Se  
Title

Wilbur Hickman #62150  
Southern Desert Correctional Center  
P.O. Box 208  
Indian Springs, NV. 89070 341215

CLERK OF THE COURT  
CLARK COUNTY  
200 LEWIS AVE.  
P.O. Box 552212  
Las Vegas, NV. 89155-2212





MISSOURI BOARD  
CORRECTIONAL CENTER

JAN 04 1970

OUTGOING  
MAIL

MC  
PP  
DA  
AOR

*Alvin D. Lanning*  
CLERK OF THE COURT

Wilbert Hickman  
Defendant/ In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018

IN THE EIGHTH JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

THE STATE OF NEVADA,  
Plaintiff,

vs.

WILBERT HICKMAN,  
Defendant.

Case No. C278699

Dept No. 5

Docket \_\_\_\_\_

**MOTION FOR PRODUCTION OF DOCUMENTS,  
PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT**

Date of Hearing: 2-1-16

Time of Hearing: 9:00 AM

"ORAL ARGUMENT REQUESTED, Yes \_\_\_ No \_\_\_"

COMES NOW, Defendant, Wilbert Hickman, proceeding in proper person,

hereby moves this Honorable Court for its ORDER for the production of all documents, papers,  
pleadings and tangible property in the possession of: Kristina Wildeneld/Caitlyn

McAmis 615 S. 6th St. Las Vegas NV 89101

This Motion is made and based upon all papers and pleadings on file with the Clerk of the Court

which are hereby incorporated by this reference, the Points and Authorities herein, and attached

Affidavit of Defendant.

DATED: this 30<sup>th</sup> day of December, 20 15

By: Wilbert Hickman  
WILBERT HICKMAN # 62150  
Defendant/In Propria Personam

CLERK OF THE COURT

RECEIVED  
JAN 20 5 2016

RECEIVED

JAN 07 2016

CLERK OF THE COURT

## POINTS AND AUTHORITIES

1  
2 The Nevada Revised Statute 7.055(1), which deals with the duty of a discharged attorney, states:

3 "An attorney who has been discharged by his client shall, upon demand and payment of the fee due from  
4 the client, immediately deliver to the client all papers, documents, pleadings and items of tangible property  
which belong to or were prepared for that client."

5 As can be seen in this case, the defendant does not owe any fees, in fact, they, meaning counsel(s)  
6 of record, were appointed by the Court to represent the defendant, who was an indigent, in Case

7 Number, 0278699, in Department No. 5.

8 N.R.S. 7.055(2) gives this Court the power to Order the Attorney(s) of record to produce and  
9 deliver to the defendant in his/her possession, which states:

10 "A client who, after demand therefore and payment of the fee due from him, does not receive from his  
11 discharged attorney all papers, documents, pleadings and items of tangible personal property may, by  
12 a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his papers,  
Documents, pleadings and other property."

13 In numerous cases throughout this great land, the courts have held attorneys to a high degree of  
14 professional responsibility and integrity. This carried from the time of hiring to and through the  
15 attorney's termination of employment.

16 Supreme Court Rule 173 states quite clear that a withdrawn attorney owes his former client a  
17 prompt accounting of all his client's . . . property in his possession." This is echoed in Canon 2 of  
18 the Code of Professional Responsibility of the American Bar Association, which states in pertinent  
19 part EC 2-32: "A lawyer should protect the welfare of his client by . . . delivering to the client all  
20 papers and property to which the client is entitled." Again in Disciplinary Rule 2-110(A)(2) of the  
21 ABA, this is brought out that a withdrawn attorney must deliver to the client all papers and comply with  
22 applicable laws on the subject.

23 In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963) and State v. Alvey, 215 Kan. 460,  
24 324 P.2d 747 (1974), both of which dealt with a factual situation involving a withdrawn attorney  
25 refusing to deliver to a former client his documents after being requested to do so by the client. The  
26 court in Yount, supra, ordered the attorney disbarred while in Alvey, supra, the court had the attorney  
27 censured.

1 While not the intention of the Defendant in this case to have the attorney disbarred, these cases do  
2 show a pattern in the court in considering the refusal to deliver to a former client all his documents  
3 and property after being requested to do so, a serious infraction of the law and of professional ethics.  
4 See, In Re Sullivan, 212 Kan. 233, 510 P.2d 1199 (1973).

5 In summary, this court has jurisdiction through NRS 7.055 to Order the attorney(s) to produce and  
6 deliver to the Defendant all documents and personal property in his/their possession belonging to him  
7 or prepared for him. The Defendant has fulfilled his obligations in trying to obtain the papers. The  
8 attorney(s) is in discord with Cannon 2 of the Code of Professional responsibility and the Nevada  
9 Supreme Court Rules 173, 176 and 203.

10  
11 DATED: this 30<sup>th</sup> day of December, 2015.

12  
13 BY: \* Wilburt Hickman  
14 WILBURT HICKMAN #162155  
15 Defendant/In Propria Personam  
16  
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**CERTIFICATE OF SERVICE BY MAILING**

1  
2 Wilburt Hickman, hereby certify, pursuant to NRCP 5(b), that on this 30<sup>th</sup>  
3 day of December, 2015, I mailed a true and correct copy of the foregoing, "Motion For Pro-  
4 duction of Documents, Papers, Pleadings And Tangible Property..."  
5 by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
6 United State Mail addressed to the following:

7  
8 District Attorney  
9 Clark County, Nevada  
10 200 Lewis Ave.  
11 P.O. Box 552212  
12 Las Vegas NV 89155-2212

Kristina Wildenfeld  
The Law Offices of  
615 S. 6th St.  
Las Vegas NV 89101

Caithlyn McAmis  
The Law Offices of  
Kristina Wildenfeld  
615 S. 6th St.  
Las Vegas NV 89101

13  
14  
15  
16  
17 CC:FILE

18  
19 DATED: this 30<sup>th</sup> day of December, 2015.

20  
21  
22 Wilburt Hickman  
23 WILBURT HICKMAN #61250  
24 /In Propria Personam  
25 Post Office Box 208, S.D.C.C.  
26 Indian Springs, Nevada 89018  
27 IN FORMA PAUPERIS:  
28

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion For  
Production of Documents, Papers, Pleadings And Tangible rrr  
(Title of Document)

filed in District Court Case number 0278699

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

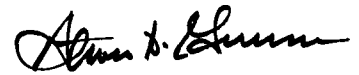
B. For the administration of a public program or for an application  
for a federal or state grant.

Wilburt Hickman  
Signature

12/30/15  
Date

WILBURT HICKMAN  
Print Name

Defendant Pro Se  
Title



CLERK OF THE COURT

1 **ORDR**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 GENEVIEVE CRAGGS  
6 Deputy District Attorney  
7 Nevada Bar #013469  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

CASE NO: C-12-278699-1

13 WILBURT HICKMAN, aka  
14 William Hicks,  
15 #0905481

DEPT NO: V

15 Defendant.

16 ORDER GRANTING DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL

17 AND

18 ORDER DENYING DEFENDANT'S PRO PER MOTION FOR PRODUCTION OF  
19 DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF  
20 DEFENDANT

21 DATE OF HEARING: FEBRUARY 1, 2016

22 TIME OF HEARING: 9:00 A.M.

23 THIS MATTER having come on for hearing before the above entitled Court on the 1st  
24 day of February, 2016, the Defendant not being present, IN PROPER PERSON, the Plaintiff  
25 being represented by STEVEN B. WOLFSON, District Attorney, through GENEVIEVE  
26 CRAGGS, Deputy District Attorney, without argument, and good cause appearing therefor,

26 ///

27 ///

1 COURT finds both motions have identical points and authorities, <sup>and</sup> an attached affidavit  
2 is mentioned, however, there is not an affidavit attached. FURTHER, there is nothing in the  
3 motion indicating he has tried to obtain his file and counsel refused to send it to him.


4 COURT ORDERED, Motion to withdraw counsel is GRANTED and ~~Motion for Pro Per~~  
5 Motion for Production is DENIED WITHOUT PREJUDICE, unless or until he can show  
6 Court that he has/had requested said documents <sup>from counsel</sup> and counsel refused <sup>or failed to produce</sup>  
7 ~~them~~

8 DATED this 11<sup>th</sup> day of February, 2016.

9   
DISTRICT JUDGE  


10 STEVEN B. WOLFSON  
11 Clark County District Attorney  
Nevada Bar #001565

12  
13 BY

  
14 GENEVIEVE ORAGGS  
Deputy District Attorney  
15 Nevada Bar #013469  
16  
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CERTIFICATE OF SERVICE

I certify that on the 18<sup>th</sup> day of February, 2016, I mailed a copy of the foregoing Order to:

WILBURT HICKMAN, aka  
William Hicks #62150  
SOUTHERN DESERT CORRECTIONAL CENTER  
P.O. BOX 208  
INDIAN SPRINGS, NEVADA 89018

BY

  
J. ROBERTSON

Secretary for the District Attorney's Office

11F21695X/jr/L-1

Please  
SEND  
BACK  
COPY

MC WILBURT HICKMAN # 62150  
PP S.D.C.C.  
DA P.O. BOX 208  
INDIAN SPRINGS, NV 89018  
PETITIONER - IN PROPER PERSON

*Allen D. Quinn*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

CASE # C-12-278699-1

WILBURT HICKMAN

Petitioner  
v.

Hearing Date: 3-14-16

Time of Hearing: 9:00am

DEPT.#

V (5)

STATE OF NEVADA  
Respondent

MOTION TO COMPEL

COMES NOW, Petitioner WILBURT HICKMAN, in and through

his proper person hereby moves this Honorable Court for an Order compelling:

DEFENSE COUNSEL TO HAND OVER ALL DOCUMENTS IN THIS CASE.

This motion is made and based upon all papers and pleadings on file with the Clerk of the Court, which are hereby incorporated by this reference, the Points and Authorities herein, and attached Affidavit of Petitioner.

Dated: this 16 day of February, 2016.

Submitted by: Wilburt Hickman  
WILBURT HICKMAN # 62150  
Petitioner / In Proper Person

RECEIVED

FEB 22 2016

CLERK OF THE COURT

RECEIVED

FEB 19 2016

CLERK OF THE COURT

### POINTS AND AUTHORITIES

On the 1<sup>st</sup> day of FEBRUARY, 2016, the Court had granted the Petitioner's, "MOTION TO DISMISS COUNSEL".  
However, THE COURT has failed to comply with the Order from this Honorable Court. This Court has the power and duty to enforce its lawful judgment pursuant to N.R.S. 1.210 which states in pertinent part ;

*"Every court shall have power :*

- 1. To preserve and enforce order in its immediate presence.*
- 2. To enforce order in the proceedings before a person or persons empowered to conduct a judicial investigation under its authority.*
- 3. To compel obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein.*
- 4. To control ,in furtherance of justice, the conduct of its ministerial offers." (emphasis added)*

Failure to comply with a court's order constitutes contempt under N.R.S. 199.340 which states in pertinent part that:

*" **Every** person who shall commit a contempt of court of any one of the following kind shall be guilty of a misdemeanor:*

*...4. Willful disobedience to the lawful process or mandate of the court:..."  
(emphasis added)*

In closing, by THE COURT not adhering to the order of this court GRANTING IN PART has displayed contempt. Petitioner cites three cases,

In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963), State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974) and In Re Sullivan, 212 Kan. 233 510 P.2d 1199 (1973) that all deal with attorneys that refused to abide by the rulings of their respective courts and were either disbarred or censored. Petitioner prays this honorable Court compel

DEFENSE COUNSEL to comply with the order and find DISCOVERY DOCUMENTS guilty of contempt for not obeying the lawful order of this Court.

DATED: this 16 day of February, 2016

Submitted by: Wilbert Hickman  
WILBERT HICKMAN #62150  
Petitioner / In Proper Person

///

///

///

ADDITIONAL FACTS OF THE CASE:

IN COMPLIANCE WITH AND IN REGARDS  
TO DISTRICT COURT CLERK MINUTE ORDER DATED  
2-1-16, CONCERNING DISMISSAL OF DEFENSE COUNSEL  
OF RECORD # C-12-278699-T AND FOR SAID COUNSEL  
TO RELEASE ALL DOCUMENTS GATHERED AND FILED PER-  
TAINING TO THIS CASE HEREIN.

THIS DEFENDANT SUBMITS THIS  
MOTION TO COMPEL, BUT SIMPLY SEEKING TO  
ACQUIRE OUTSTANDING FILES OF THE RECORD  
IN THIS INSTANT CASE OBTAINED BY BELATED DE-  
FENSE COUNSEL. ACCORDINGLY TO NRS. 7.055 (1),  
WHICH DEALS WITH THE DUTY OF A DISCHARGED ATTORNEY,  
AND ALSO, NRS. 7.055 (2) AUTHORIZES THIS DISTRICT  
COURT DEPARTMENT V (5), TO ORDER THE PREVIOUS  
ATTORNEYS OF RECORD TO PRODUCE AND DELIVER AND  
TRANSFER TO THIS DEFENDANT ANY TANGIBLE PRO-  
PERTY, DOCUMENTS, TRANSCRIPTS OF MOTIONS THAT WERE  
FILED IF ANY, AND ALL PLEADINGS AND PAPERS THAT  
WAS PREPARED FOR THIS CASE TO THIS COURT.

SUPREME COURT RULE # 173 MANDATES  
QUITE CLEARLY THAT A WITHDRAWN ATTORNEY OWES  
HIS FORMER CLIENT PROMPT ACCOUNTING OF ALL HIS  
CLIENTS PROPERTY FILED ON THE CASE THAT IS IN HIS  
POSSESSION. THIS PARTICULAR RULE IS ALSO ECHOED  
IN CANON (2) OF THE CODE OF PROFESSIONAL RESPONSIBILITY  
OF THE AMERICAN BAR ASSOCIATION... WHICH STATES IN  
PERTINENT PART OF SECTION EC-232... THAT A LAWYER

1 MUST PROTECT THE WELFARE OF HIS CLIENT AS WELL AS  
2 ALL PAPERS AND PROPERTY TO WHICH HIS CLIENT IS  
3 ENTITLED. ALSO, AGAIN, IN DISCIPLINARY Rule 2-110(A)  
4 (2) OF THE ABA STATES... THAT A WITHDRAWN ATTORNEY  
5 "MUST" TRANSFER ALL DOCUMENTS TO HIS CLIENT AND  
6 COMPLY WITH ALL APPLICABLE LAWS OF THE SUBJECTIVE  
7 CASE! THE FACTUAL SITUATION INTERPOSED BY

8 A RULING OF THIS HONORABLE COURT TO NOT ORDER SAID  
9 COUNSELS OF RECORD TO PRODUCE THE CASE FILE IN ITS  
10 ENTIRETY TO HIS CLIENT, IS A SERIOUS VIOLATION OF  
11 U.S. CONST. AND NEVADA CONST. LAWS 175, 176 AND 203.

12 THIS DEFENDANT HAS FULFILLED THE DE-  
13 SIRED OBLIGATIONS BY DISMISSING COUNSELS OF RECORD  
14 AND BY WRITING DEFENSE COUNSELS OF RECORD AND  
15 ALSO BY FILING MOTIONS TO RETRIEVE ALL DOCUMENTS THAT  
16 WAS PREPARED BY DEFENSE COUNSELS OF RECORD THAT  
17 BELONGED TO THIS DEFENDANT.

18 THIS DISTRICT COURT HAS JURISDICTION  
19 TO MANDATE INSTRUCTIONS TO BOTH DEFENSE COUNSELS  
20 OF RECORD IN THIS INSTANT CASE, THROUGH NRS. 70.25  
21 (1) (2) TO PRODUCE THE MATERIALS OF THE RECORDS SO  
22 THAT THIS DEFENDANT CAN ADEQUATELY PREPARE AND  
23 PROCEED ON A POST-CONVICTION WRIT OF HABEAS COR-  
24 PUS.

25 TIME IS OF THE ESSENCE (SIMPLY BE-  
26 CAUSE THIS DEFENDANT CANNOT AFFORD TO CONTINUE  
27 TO HAVE UNNECESSARY DELAYS THAT WILL CAUSE A  
PROCEDURAL TIME BAR.

1 THIS DEFENDANT CANNOT MOVE FOR-  
2 WARD TO OBTAIN ANY KIND OF RELIEF TO RESOLVE  
3 THIS CASE UNTIL THE RECORDS ON FILE OF THIS INSTANT  
4 CASE ARE IN HIS SOLE POSSESSION.

5 THIS DEFENDANT ASK THIS HONORABLE  
6 COURT TO PREPARE AN ORDER AND DIRECT BOTH  
7 DEFENSE COUNSELS OF RECORD IN THIS CASE TO ACT  
8 UNDER PENALTY OF SANCTIONS AND IN CONTEMPT OF  
9 COURT, TO MAKE AND DELIVER ALL REGISTERED  
10 DOCUMENTS OF THIS CASE # C-12-278699-1 TO THIS  
11 DEFENDANT.  
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1 AFFIDAVIT OF:

WILBURT HICKMAN

2 STATE OF NEVADA )

3 COUNTY OF CLARK )

ss: # 62150

- C-12-278699-1 -

4 TO WHOM IT MAY CONCERN:

5 I, WILBURT HICKMAN, the undersigned, do hereby swear that  
6 all statements, facts and events within my foregoing Affidavit are  
7 true and correct of my own knowledge, information and belief, and  
8 as to those, I believe them to be True and Correct. Signed under the  
9 penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state

10 the following:

ON 2-1-16 HONORABLE DISTRICT  
11 COURT JUDGE CAROLYN ELLSWORTH DEPARTMENT #5 V  
12 PREPARED A MINUTE ORDER DISMISSING DEFENSE  
13 COUNSEL'S IN MY CASE # C-12-278699-1 BUT DID  
14 NOT ORDER DEFENSE COUNSEL'S TO HAND OVER ALL  
15 PERTINENT DOCUMENTS OF THE CASE TO HIS/HER CLIENT.

16 WHEREBY, THIS DEFENDANT HAS FILED  
17 THIS MOTION TO COMPEL IN PRO SE AS THIS  
18 COURT TO EXERCISE ITS AUTHORITY AND ORDER  
19 WITH INSTRUCTIONS TO DEFENSE COUNSEL'S IN THIS  
20 INSTANT CASE TO TURN OVER ALL THE FILES OF  
21 THE RECORD IN THIS CASE, IN ITS ENTIRETY TO  
22 THIS DEFENDANT

23 THIS MOTION CONTAINED THE ACTUAL  
24 TRUTH OF THE MATTERS THIS DEFENDANT FEELS.

25 FURTHER YOUR AFFIANT SAYETH NAUGHT.

26 EXECUTED At: Indian Springs, Nevada, this 16 Day OF February 29 16

27 20\_\_.

28 BY: Wilburt Hickman  
WILBURT HICKMAN #62150  
Post Office Box-208 (SDCC)  
Indian Springs, Nevada. 89070./  
Affiant, In Propria Personam:



**CERTIFICATE OF SERVICE BY MAILING**

I, WILBURT HICKMAN, hereby certify, pursuant to NRCP 5(b), that on this  
day of 16 Feb, 2016, I mailed a true and correct copy of the foregoing, "MOTION  
TO COMPEL FOR DISCOVERY DOCUMENTS"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

STEVE WOLFSON  
DISTRICT ATTORNEY  
200 LEWIS AVENUE  
LAS VEGAS, NEVADA  
89155-1106

The Law Offices of  
KRISTINA WILDEVELD  
1255 S. 6<sup>th</sup> St.  
Las Vegas, NV. 89101  
Associate Attorney  
CAITLYN McAMIS

CC:FILE

DATED: this 16 day of February, 2016.

Wilburt Hickman  
Wilburt Hickman # 62150  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION

TO COMPEL FOR DISCOVERY DOCUMENTS  
(Title of Document)

filed in District Court Case number C-12-278699-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Wilbert Hickman  
Signature

2/16/16  
Date

WILBERT HICKMAN  
Print Name

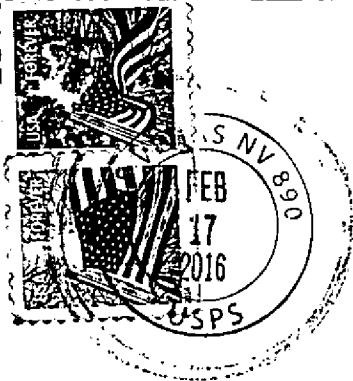
PRO SE  
Title

Wilburt Hickman # 62456

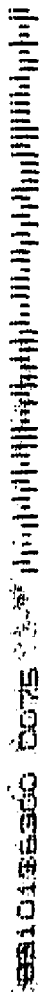
S.D.C.C

P.O. Box. 208

Indian Springs, NV 89070



Clerk of the Court  
STEVEN D. GRIERSON  
200 LEWIS AVE. 3<sup>RD</sup> Floor  
LAS VEGAS NV. 89155-1160



918

Outgoing Mail

Southern District  
Correctional Center  
FEB 17 2013

**THIS SEALED  
DOCUMENT,  
NUMBERED PAGE(S)  
919 - 923  
WILL FOLLOW VIA  
U.S. MAIL**

Wilburt Hickman #62150

Petitioner/In Propria Persona  
Post Office Box 208, SDCC  
Indian Springs, Nevada 89070

Alvin D. Shuman

CLERK OF THE COURT

PPOW  
MC  
DA  
PP

IN THE EIGHTH JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

Wilburt Hickman

Petitioner,

vs.

Brian E. Williams  
Warden

Respondent(s).

Case No. C-12-278699-1

Dept. No. IV

Docket \_\_\_\_\_

\* EVIDENTIARY HEARING \*  
REQUESTED

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

CLERK OF THE COURT

MAR 25 2016

RECEIVED

CLERK OF THE COURT

MAR 24 2016

RECEIVED

1 Failure to raise all grounds in this petition may preclude you from filing future petitions  
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief  
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may  
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of  
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which  
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one  
9 copy must be filed with the clerk of the district court for the county in which the conviction  
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the  
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the  
12 attorney general's office, and one copy to the district attorney of the county in which you were  
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.  
14 Copies must conform in all particulars to the original submitted for filing.

### 15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you  
17 are presently restrained of your liberty: Southern Desert Correctional Center  
18 Clark County Nevada

19 2. Name the location of court which entered the judgment of conviction under attack: Eighth  
20 Judicial District Court, 200 Lewis Ave Las Vegas NV 89155

21 3. Date of judgment of conviction: January 2, 2014

22 4. Case number: C-13-278699-1

23 5. (a) Length of sentence: 60 to 215 months plus additional sentences

24 (b) If sentence is death, state any date upon which execution is scheduled: N/A

25 6. Are you presently serving a sentence for a conviction other than the conviction under attack in  
26 this motion: No

27 Yes N/A No ✓ If "Yes", list crime, case number and sentence being served at this time: N/A

28 7. Nature of offense involved in conviction being challenged: ASSAULT

With A Deadly Weapon; Battery With Deadly Weapon, With  
Substantial Bodily Harm; Malicious Destruction of Private  
Property.

- 1 8. What was your plea? (Check one)
- 2 (a) Not guilty XX
- 3 (b) Guilty N/A
- 4 (c) Nolo contendere N/A
- 5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
- 6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: N/A
- 7
- 8
- 9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)
- 10 (a) Jury XXX
- 11 (b) Judge without a jury N/A
- 12 11. Did you testify at trial? Yes N/A No XX
- 13 12. Did you appeal from the judgment of conviction?
- 14 Yes X No N/A
- 15 13. If you did appeal, answer the following:
- 16 (a) Name of court: Supreme Court of Nevada
- 17 (b) Case number or citation: 64776
- 18 (c) Result: Affirmed
- 19 (d) Date of appeal: January 6th, 2014
- 20 (Attach copy of order or decision, if available).
- 21 14.) If you did not appeal, explain briefly why you did not: N/A
- 22
- 23
- 24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
- 25 filed any petitions, applications or motions with respect to this judgment in any court, state or
- 26 federal? Yes N/A No XXX
- 27
- 28

1 16. If your answer to No 15 was "Yes", give the following information:

2 (a) (1) Name of court: \_\_\_\_\_

3 (2) Nature of proceedings: \_\_\_\_\_

4 (3) Grounds raised: \_\_\_\_\_

5 (4) Did you receive an evidentiary hearing on your petition, application or motion?

6 Yes \_\_\_\_\_ No \_\_\_\_\_

7 (5) Result: \_\_\_\_\_

8 (6) Date of result: \_\_\_\_\_

9 (7) If known, citations of any written opinion or date of orders entered pursuant to each  
10 result: \_\_\_\_\_

11 (b) As to any second petition, application or motion, give the same information:

12 (1) Name of Court: \_\_\_\_\_

13 (2) Nature of proceeding: \_\_\_\_\_

14 (3) Grounds raised: \_\_\_\_\_

15 (4) Did you receive an evidentiary hearing on your petition, application or motion?

16 Yes \_\_\_\_\_ No \_\_\_\_\_

17 (5) Result: \_\_\_\_\_

18 (6) Date of result: \_\_\_\_\_

19 (7) If known, citations or any written opinion or date of orders entered pursuant to each  
20 result: \_\_\_\_\_

21 (c) As to any third or subsequent additional application or motions, give the same  
22 information as above, list them on a separate sheet and attach.  
23  
24  
25  
26  
27  
28



1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action  
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes \_\_\_\_\_ No \_\_\_\_\_

5 Citation or date of decision: \_\_\_\_\_

6 (2) Second petition, application or motion?

7 Yes \_\_\_\_\_ No \_\_\_\_\_

8 Citation or date of decision: \_\_\_\_\_

9 (e) If you did not appeal from the adverse action on any petition, application or motion,  
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your  
11 response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response  
12 may not exceed five handwritten or typewritten pages in length).

13 \_\_\_\_\_

14  
15 17. Has any ground being raised in this petition been previously presented to this or any other  
16 court by way of petition for habeas corpus, motion or application or any other post-conviction  
17 proceeding? If so, identify:

18 (a) Which of the grounds is the same: \_\_\_\_\_

19  
20 (b) The proceedings in which these grounds were raised: \_\_\_\_\_

21  
22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts  
23 in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches  
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
25 length). \_\_\_\_\_

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages  
2 you have attached, were not previously presented in any other court, state or federal, list briefly what  
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate  
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x  
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten  
6 pages in length). N/A

7  
8 19. Are you filing this petition more than one (1) year following the filing of the judgment of  
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.  
10 (You must relate specific facts in response to this question. Your response may be included on  
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five  
12 handwritten or typewritten pages in length). No, this petition is timely

13  
14  
15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the  
16 judgment under attack?

17 Yes N/A No XXX

18 If "Yes", state what court and the case number: N/A  
19

20 21. Give the name of each attorney who represented you in the proceeding resulting in your  
21 conviction and on direct appeal: Mitchell L. Posin (Retained), Kristina  
22 Wilderveld (Appointed by the District Court, and also  
23 the Clark County Public Defender's Office.

24 22. Do you have any future sentences to serve after you complete the sentence imposed by the  
25 judgment under attack?

26 Yes N/A No XXX If "Yes", specify where and when it is to be served, if you know: \_\_\_\_\_  
27 N/A  
28

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) **GROUND ONE:** Counsel for Petitioner was ineffective and violated Petitioner's Fifth (5th); Sixth (6th); and Fourteenth (14th); United States Constitutional Amendment rights, the right to Due Process, the effective assistance of counsel; and Due Process and Equal Protection of law when counsel failed to be knowledgeable of the laws pertaining to the Constitution of the State of Nevada Article 3, §1, and Article 6, §11, and/or to challenge that the Nevada Revised Statutes to which Petitioner has been subjected to for purpose of prosecution are unconstitutional, etc., as more fully set forth in the Supporting Facts below.

23. (a) **SUPPORTING FACTS** (Tell your story briefly without citing cases or law): Petitioner alleges that the separation of Departments, separation of power as to Article (Art.) 3, §1, of the Constitution of the State of Nevada (Const. of Nev.), was violated, whereby, Petitioner does present the foregoing constitutional question, issue, also for the determination as to an ineffective assistance of counsel claim: Whether The Duties, Functions, The Work Performed By The Three Justices of the Supreme Court of Nevada, Mandated To Be On The Statute Revision Commission (commission), Can Logically and Legitimately Trace Their Duties, Efforts, Functions, Powers, Back To, Showing Its Derived From Their Basic Source of Power, i.e. Art. 6, §4, of the Constitution of the State of Nevada? Section 1 of Senate Bill No. 182 - Committee on Finance CHAPTER 304 reads as follows: There is hereby created a commission of the State of Nevada, to be known as the "commission for revision and compilation of Nevada laws," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

1 (Emphasis added to original) (See attached Exhibit "1" Senate  
2 Bill (S.B.), No. 182-Committee on Finance CHAPTER 304 [App-  
3 roved March 22, 1951]).

4 Petitioner contends, states that, the duties, functions, powers,  
5 work performed by the three justices of the Supreme Court of  
6 Nevada, as mandated by S.B. 182-Committee on Finance CHAP-  
7 TER 304 of March 22, 1951, openly violated the plain and un-  
8 ambiguous language of the Const. of Nev. Art. 3, § 1, as well as  
9 Art. 6, § 11. That, the violation of Art. 3, § 1; and Art. 6, § 11; of the  
10 Const. of Nev. mandates that the provisions of Chapter 304,  
11 Statutes of 1951 see Exhibit "1", is, were unconstitutional  
12 from their "inception!!" Thus, the Active S.B. No. 182-Com-  
13 mittee on Finance CHAPTER 304 of March 22, 1951, its self which  
14 mandated via Section 1 "There is hereby created a commission  
15 of the State of Nevada, to be known as the "commission for re-  
16 vision and compilation of Nevada laws," hereinafter referred to as  
17 the commission. Such commission shall be composed of three mem-  
18 bers, and said members shall be the three justices of the sup-  
19 reme court. The members of such commission shall have the  
20 powers and duties prescribed by this act, ...." is unconstitu-  
21 tional and therefore void, as this Act S.B. No. 182-Committee on  
22 Finance CHAPTER 304 of March 22, 1951, specifically contravenes  
23 the clear, plain, and unambiguous language of Art. 3, § 1, and Art.  
24 6, § 11; of the Const. of Nev., rendering any and/or all authority  
25 of the commission null and void; as this Act S.B. No. 182-  
26 Committee on Finance CHAPTER 304 of March 22, 1951, has no  
27 severable constitutional provision in the Act its self, rend

1 ering the Act S.B. No. 182-Committee on Finance CHAPTER 304 of  
2 March 22, 1951, as a whole unconstitutional, and again null  
3 and void. That, Petitioner has been subjected to arrest, prosecu-  
4 tion, and conviction via provisions of S.B. No. 182-Committee  
5 on Finance CHAPTER 304 of March 22, 1951. That, said Act S.B.  
6 No. 182-Committee on Finance CHAPTER 304 of March 22, 1951, be-  
7 ing unconstitutional, null and void, for the reasons set forth  
8 herein this Ground, Petitioner has been subjected to an uncon-  
9 stitutional arrest, prosecution, and conviction. Thus, Petitioner's  
10 Counsel's representation fell below an objective standard of  
11 reasonableness, when Petitioner's counsel failed to be know-  
12 ledgeable to the discoverable facts as to the unconstitution-  
13 ality of S.B. No. 182-Committee on Finance CHAPTER 304 of March  
14 22, 1951. The same violating the clear, plain, and unambiguous  
15 language of the Const. of Nev. Art. 3, §1, and Art. 6, §11. That, counsel's  
16 deficient performance falls well below an objective standard of  
17 reasonableness, and Petitioner has been extremely prejudiced  
18 by counsel's deficient performance. That, except for counsel's  
19 deficient performance the outcome of the proceedings would  
20 have been different, in that Petitioner could have challenged the  
21 arrest, prosecution to which Petitioner was subject to as being un-  
22 constitutional as the unconstitutionality of S.B. No. 182-Com-  
23 mittee on Finance CHAPTER 304 of March 22, 1951, and the imp-  
24 act the provisions of S.B. No. 182-Committee on Finance CHAP-  
25 TER 304 of March 22, 1951, has on whether Petitioner's arrest,  
26 prosecution, and or conviction is constitutionally lawful?  
27 In addition, should the district court have sustained, up-

1 held the arrest, prosecution, etc., as lawful etc., Petitioner  
2 could have challenged the decision, ruling of the district  
3 court on Direct Appeal to the Sup Ct. of Nev., raising a sub-  
4 stantial Constitutional question, question of law.

5 That, as to the specific constitutional articles of the Const. of Nev.  
6 in question, Art. 3, §1, reads as follows: Section 1. Three separate  
7 departments; separation of powers. "The powers of the Govern-  
8 ment of the State of Nevada shall be divided into three separate  
9 departments, - the legislative, - the Executive and the Judicial;  
10 and no persons charged with the exercise of powers properly  
11 belonging to one of these departments shall exercise any func-  
12 tions, appertaining to the others, except in the cases herein  
13 expressly directed or permitted."

14 That, Art. 6, §11, reads as follows: Justices and judges ineligible  
15 for other offices. "The justices of the supreme court and the  
16 district judges shall be ineligible to any office, other than a  
17 judicial office, during the term for which they shall have been  
18 elected or appointed; and all elections or appointments of any  
19 such judges by the people, legislature, or otherwise during  
20 said period, to any office other than judicial, shall be void."

21 Wherefore, based upon the above and foregoing, Petitioner does re-  
22 spectfully request that this court will grant Petitioner relief, from  
23 the unconstitutional, unlawful conviction.

24 That, should this Court not grant Petitioner relief, Petitioner does  
25 respectfully request that this Court will conduct an evidentiary  
26 hearing, that a fact record can be made developing Petitioner's  
27 factual claim(s) in support of this Ground.

23. (b) GROUND TWO: Counsel for Petitioner was ineffective, and said representation fell below an objectionable standard of reasonableness. Violation of the Fifth (5th) Amendment Due Process, the Sixth (6th) Amendment right to the effective assistance of counsel, the Fourteenth (14th) Amendment right to Due Process and Equal Protection of law, as more fully set forth in the Supporting Facts below.

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): That, Petitioner needs the assistance of counsel to raise additional Grounds of ineffective assistance of counsel. That, Petitioner seeks to challenge that the Habitual Criminal enhancement penalty violates the Due Process Clause, in that sentencing under the habitual criminal enhancement penalty is a specific sentencing procedure subject to the Due Process Clause of the Fourteenth (14th) Amendment of the United States Constitution; as well as additional Grounds for relief.

That, Petitioner does have the ability to prepare and submit a meaningful petition for writ of Habeas corpus (post-conviction).

That, Petitioner has been hindered in obtaining the assistance from another inmate sufficiently knowledgeable in the law, to submit a meaningful petition for writ of habeas corpus.

1 WHEREFORE, Petitioner, prays that the court grant Petitioner  
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at Southern Desert Correctional Center  
4 on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

6 Willert Hickman  
7 Signature of Petitioner

8 VERIFICATION

9 Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is  
10 the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is  
11 true and correct of his own personal knowledge, except as to those matters based on information and  
12 belief, and to those matters, he believes them to be true.

14 Willert Hickman  
15 Signature of Petitioner

17 N/A  
18 Attorney for Petitioner



CERTIFICATE OF SERVICE BY MAILING

I, Wilburt Hickman, hereby certify, pursuant to NRCP 5(b), that on this 20<sup>th</sup> day of March, 2016, I mailed a true and correct copy of the foregoing, "Habeas Corpus  
Petition"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

District Attorney  
Clark County, Nevada  
200 Lewis Ave  
PO Box 552212  
Las Vegas NV 89155-2212

CC:FILE

DATED: this 21 day of March, 2016.

Wilburt Hickman  
WILBURT HICKMAN #62150  
Petitioner /In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

Sec. 8. **Qualifications of voters on adoption or rejection of constitution.** All persons qualified by law to vote for representatives to the General Assembly of the Territory of Nevada, on the twenty first day of March A.D. Eighteen hundred and sixty four and all other persons who may be lawful voters in said Territory on the first Wednesday of September next following, shall be entitled to vote directly upon the question of adopting or rejecting this Constitution.

Sec. 9. **Recall of public officers: Procedure and limitations.** Every public officer in the State of Nevada is subject, as herein provided, to recall from office by the registered voters of the state, or of the county, district, or municipality which he represents. For this purpose, not less than twenty-five percent (25%) of the number who actually voted in the state or in the county, district, or municipality which he represents, at the election in which he was elected, shall file their petition, in the manner herein provided, demanding his recall by the people. They shall set forth in said petition, in not exceeding two hundred (200) words, the reasons why said recall is demanded. If he shall offer his resignation, it shall be accepted and take effect on the day it is offered, and the vacancy thereby caused shall be filled in the manner provided by law. If he shall not resign within five (5) days after the petition is filed, a special election shall be ordered to be held within thirty (30) days after the issuance of the call therefor, in the state, or county, district, or municipality electing said officer, to determine whether the people will recall said officer. On the ballot at said election shall be printed verbatim as set forth in the recall petition, the reasons for demanding the recall of said officer, and in not more than two hundred (200) words, the officer's justification of his course in office. He shall continue to perform the duties of his office until the result of said election shall be finally declared. Other candidates for the office may be nominated to be voted for at said special election. The candidate who shall receive highest number of votes at said special election shall be deemed elected for the remainder of the term, whether it be the person against whom the recall petition was filed, or another. The recall petition shall be filed with the officer with whom the petition for nomination to such office shall be filed, and the same officer shall order the special election when it is required. No such petition shall be circulated or filed against any officer until he has actually held his office six (6) months, save and except that it may be filed against a senator or assemblyman in the legislature at any time after ten (10) days from the beginning of the first session after his election. After one such petition and special election, no further recall petition shall be filed against the same officer during the term for which he was elected, unless such further petitioners shall pay into the public treasury from which the expenses of said special election have been paid, the whole amount paid out of said public treasury as expenses for the preceding special election. Such additional legislation as may aid the operation of this section shall be provided by law.

[Added in 1912, amended in 1970 and 1996. The addition was proposed and passed by the 1909 legislature; agreed to and passed by the 1911 legislature; and approved and ratified by the people at the 1912 general election. See: Statutes of Nevada 1909, p. 345; Statutes of Nevada 1911, p. 448. The first amendment was proposed and passed by the 1967 legislature; agreed to and passed by the 1969 legislature; and approved and ratified by the people at the 1970 general election. See: Statutes of Nevada 1967, p. 1782; Statutes of Nevada 1969, p. 1663. The second amendment was proposed and passed by the 1993 legislature; agreed to and passed by the 1995 legislature; and approved and ratified by the people at the 1996 general election. See: Statutes of Nevada 1993, p. 3135; Statutes of Nevada 1995, p. 2837.]

#### Sec. 10. **Limitation on contributions to campaign.**

1. As used in this Section, "contribution" includes the value of services provided in kind for which money would otherwise be paid, such as paid polling and resulting data, paid direct mail, paid solicitation by telephone, any paid campaign paraphernalia printed or, otherwise produced, and the use of paid personnel to assist in a campaign.

2. The Legislature shall provide by law for the limitation of the total contribution by any natural or artificial person to the campaign of any person for election to any office, except a federal office, to \$5,000 for the primary and \$5,000 for the general election, and to the approval or rejection of any question by the registered voters to \$5,000, whether the office sought or the question submitted is local or for the State as a whole. The Legislature shall further provide for the punishment of the contributor, the candidate, and any other knowing party to a violation of the limit, as a felony.

[Added in 1996. Proposed by initiative petition and approved and ratified by the people at the 1994 and 1996 General Elections.]

### ARTICLE 3. - Distribution of Powers.

SEC. 1. Three separate departments; separation of powers; legislative review of administrative regulations.

#### Section 1. **Three separate departments; separation of powers; legislative review of administrative regulations.**

1. The powers of the Government of the State of Nevada shall be divided into three separate departments,—the Legislative,—the Executive and the Judicial; and no persons charged with the exercise of powers properly belonging to one of these departments shall exercise any functions, appertaining to either of the others, except in the cases expressly directed or permitted in this constitution.

2. If the legislature authorizes the adoption of regulations by an executive agency which bind persons outside the agency, the legislature may provide by law for:

(a) The review of these regulations by a legislative agency before their effective date to determine initially whether each is within the statutory authority for its adoption;

(b) The suspension by a legislative agency of any such regulation which appears to exceed that authority, until it is reviewed by a legislative body composed of members of the Senate and Assembly which is authorized to act on behalf of both houses of the legislature; and

(c) The nullification of any such regulation by a majority vote of that legislative body, whether or not the regulation was suspended.

[Amended in 1996. Proposed and passed by the 1993 legislature; agreed to and passed by the 1995 legislature; and approved and ratified by the people at the 1996 general election. See: Statutes of Nevada 1993, p. 3082; Statutes of Nevada 1995, p. 2972.]

### ARTICLE 4. - Legislative Department

- SEC. 1. Legislative power vested in senate and assembly.
2. Biennial sessions of Legislature: Commencement; limitation on duration; void actions; submission of proposed executive budget. [Effective through November 26, 2012, and after that date unless the proposed amendment is agreed to and passed by the 2011 Legislature and approved and ratified by the voters at the 2012 General Election.]
2. Biennial sessions of Legislature: Commencement; limitation on duration; void actions; submission of proposed executive budget. [Effective November 27, 2012, if the proposed amendment is agreed to and passed by the 2011 Legislature and approved and ratified by the voters at the 2012 General Election.]
- 2A. Special sessions of Legislature: Procedure for convening; precedence; limitations on business and duration; void actions. [Effective November 27, 2012, if the proposed addition is agreed to and passed by the 2011 Legislature and approved and ratified by the voters at the 2012 General Election.]

respective counties unless the Legislature otherwise provides by law.

[Amended twice in 1976 and in 1998. The first and second amendments were proposed and passed by the 1973 Legislature; agreed to and passed by the 1975 Legislature; and approved and ratified by the people at the 1976 General Election. See: Statutes of Nevada 1973, pp. 1940 and 1953; Statutes of Nevada 1975, pp. 1870 and 1981. The first and second amendments were combined pursuant to Nev. Art. 16, § 1. The third amendment was proposed and passed by the 1995 Legislature; agreed to and passed by the 1997 Legislature; and approved and ratified by the people at the 1998 General Election. See: Statutes of Nevada 1995, p. 2964; Statutes of Nevada 1997, p. 3598.]

**Sec. 7. Terms of courts.** [Effective November 23, 2010, if the proposed amendment is approved and ratified by the voters at the 2010 General Election.] The times of holding the Supreme Court, the court of appeals, if established by the Legislature, and the district courts must be as fixed by law. The terms of the Supreme Court must be held at the seat of government unless the Legislature otherwise provides by law, except that the Supreme Court may hear oral argument at other places in the State. The terms of the court of appeals, if established by the Legislature, must be held at the place provided by law. The terms of the district courts must be held at the county seats of their respective counties unless the Legislature otherwise provides by law.

[Amended twice in 1976 and in 1998. The first and second amendments were proposed and passed by the 1973 Legislature; agreed to and passed by the 1975 Legislature; and approved and ratified by the people at the 1976 General Election. See: Statutes of Nevada 1973, pp. 1940 and 1953; Statutes of Nevada 1975, pp. 1870 and 1981. The first and second amendments were combined pursuant to Nev. Art. 16, § 1. The third amendment was proposed and passed by the 1995 Legislature; agreed to and passed by the 1997 Legislature; and approved and ratified by the people at the 1998 General Election. See: Statutes of Nevada 1995, p. 2964; Statutes of Nevada 1997, p. 3598.]—(Proposed amendment passed by the 2007 Legislature; agreed to and passed by the 2009 Legislature; effective November 23, 2010, if approved and ratified by the voters at the 2010 General Election. See Statutes of Nevada 2007, p. 3556; Statutes of Nevada 2009, p. 3225.)

**Sec. 8. Number, qualifications, terms of office and jurisdiction of justices of the peace; appeals; courts of record.** [Effective through November 22, 2010, and after that date unless the proposed amendment is approved and ratified by the voters at the 2010 General Election.] The Legislature shall determine the number of justices of the peace to be elected in each city and township of the State, and shall fix by law their qualifications, their terms of office and the limits of their civil and criminal jurisdiction, according to the amount in controversy, the nature of the case, the penalty provided, or any combination of these.

The provisions of this section affecting the number, qualifications, terms of office and jurisdiction of justices of the peace become effective on the first Monday of January, 1979.

The Legislature shall also prescribe by law the manner, and determine the cases in which appeals may be taken from justices and other courts. The Supreme Court, the district courts, and such other courts, as the Legislature shall designate, shall be courts of record.

[Amended in 1978. Proposed and passed by the 1975 Legislature; agreed to and passed by the 1977 Legislature; and approved and ratified by the people at the 1978 General Election. See: Statutes of Nevada 1975, p. 1952; Statutes of Nevada 1977, p. 1691.]

**Sec. 8. Number, qualifications, terms of office and jurisdiction of justices of the peace; appeals; courts of record.** [Effective November 23, 2010, if the proposed amendment is approved and ratified by the voters at the 2010 General Election.]

1. The Legislature shall determine the number of justices of the peace to be elected in each city and township of the State and shall fix by law their qualifications, their terms of office and the limits of their civil and criminal jurisdiction, according to the amount in controversy, the nature of the case, the penalty provided or any combination of these.

2. The provisions of this section affecting the number, qualifications, terms of office and jurisdiction of justices of the peace become effective on the first Monday of January, 1979.

3. The Legislature shall also prescribe by law the manner, and determine the cases, in which appeals may be taken from justices and other courts. The Supreme Court, the court of appeals, if established by the Legislature, the district courts and such other courts as the Legislature shall designate are courts of record.

[Amended in 1978. Proposed and passed by the 1975 Legislature; agreed to and passed by the 1977 Legislature; and approved and ratified by the people at the 1978 General Election. See: Statutes of Nevada 1975, p. 1952; Statutes of Nevada 1977, p. 1691.]—(Proposed amendment passed by the 2007 Legislature; agreed to and passed by the 2009 Legislature; effective November 23, 2010, if approved and ratified by the voters at the 2010 General Election. See Statutes of Nevada 2007, p. 3556; Statutes of Nevada 2009, p. 3225.)

**Sec. 9. Municipal courts.** Provision shall be made by law prescribing the powers[,] duties and responsibilities of any Municipal Court that may be established in pursuance of Section One, of this Article; and also fixing by law the jurisdiction of said Court so as not to conflict with that of the several courts of Record.

**Sec. 10. Fees or perquisites of judicial officers.** No Judicial Officer, except Justices of the Peace and City Recorders shall receive to his own use any fees or perquisites of Office[.]

**Sec. 11. Justices and judges ineligible for other offices.** [Effective through November 22, 2010, and after that date unless the proposed amendment is approved and ratified by the voters at the 2010 General Election.] The justices of the Supreme Court and the district judges shall be ineligible to any office, other than a judicial office, during the term for which they shall have been elected or appointed; and all elections or appointments of any such judges by the people, Legislature, or otherwise, during said period, to any office other than judicial, shall be void.

[Amended in 1950. Proposed and passed by the 1947 Legislature; agreed to and passed by the 1949 Legislature; and approved and ratified by the people at the 1950 General Election. See: Statutes of Nevada 1947, p. 878; Statutes of Nevada 1949, p. 684.]

**Sec. 11. Justices and judges ineligible for other offices.** [Effective November 23, 2010, if the proposed amendment is approved and ratified by the voters at the 2010 General Election.] The justices of the Supreme Court, the judges of the court of appeals, if established by the Legislature, and the district judges are ineligible to any office, other than a judicial office, during the term for which they have been elected or appointed. All elections or appointments of any such judges by the people, Legislature or otherwise during said period to any office other than judicial are void.

[Amended in 1950. Proposed and passed by the 1947 Legislature; agreed to and passed by the 1949 Legislature; and approved and ratified by the people at the 1950 General Election. See: Statutes of Nevada 1947, p. 878; Statutes of Nevada 1949, p. 684.]—(Proposed amendment passed by the 2007 Legislature; agreed to and passed by the 2009 Legislature; effective November 23, 2010, if approved and ratified by the voters at the 2010 General Election. See Statutes of Nevada 2007, p. 3557; Statutes of Nevada 2009, p. 26.)

**Sec. 12. Judge not to charge jury respecting matters of fact; statement of testimony and declaration of law.** Judges shall not charge juries in respect to matters of fact, but may state the testimony and declare the law.

other than carrying out the legitimate functions of the Nevada Children's Foundation, Inc., the same shall be taxed.

*Eleventh—Notwithstanding any other provisions of this act or any section or subsection thereof, all claims for tax exemptions on real property shall be filed on or before the second Monday of July of the year for which the exemption is claimed.*

SEC. 2. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

SEC. 3. This act shall be in effect immediately upon its passage and approval.

Senate Bill No. 132—Committee on Finance

#### CHAPTER 304

AN ACT establishing a permanent commission for the revision, compilation, annotation, and publishing of the laws of the State of Nevada and certain laws of the United States; prescribing certain duties of a temporary nature; prescribing certain duties of a permanent nature; making an appropriation therefor, and other matters properly connected therewith.

[Approved March 22, 1951]

*The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:*

SECTION 1. There is hereby created a commission of the State of Nevada, to be known as the "commission for revision and compilation of Nevada laws," hereinafter referred to as the commission. Such commission shall be composed of three members, and said members shall be the three justices of the supreme court. The members of such commission shall have the powers and duties prescribed by this act, and shall each receive such salary for their services as shall be prescribed by this act, and subsequent enactments.

SEC. 2. As soon as practicable after the effective date hereof the commission shall commence the preparation of a complete revision and compilation of the constitution and the laws of the State of Nevada of general application, together with brief annotations and marginal notes to sections thereof. Such compilation when completed shall be known as "Revised Laws of Nevada," and the year of first publication shall be filled in the blank space of such title, for brevity such title may be cited as "Rev. Laws."

SEC. 3. In preparing such compilation the commission is hereby authorized to adopt such system of numbering as it deems practical, to cause said compilation to be published in such number of volumes, but such volumes shall not exceed 750 pages, as shall be deemed convenient, and to cause such volumes to be bound in loose-leaf binders of good, and so far as possible, permanent quality. The pages of such compilation shall conform in size and printing style to the pages of the Statutes of Nevada, except that if necessary for marginal notes, the same may be of greater width, and roman style type only, shall

be used. In general, it is re compilation should follow the compilation heretofore made and 1912," as authorized by chap

SEC. 4. Upon completion the commission is authorized at the state printing office printing the separate volume and forwarded to the secretary as set forth hereinafter. Suff so that there shall be bound "Revised Laws." A master ..... shall be kept in the copy shall not be removed if a member of the commission

SEC. 5. In complying with the limitation of available ap ized to employ such clerical compensated at the same rate position, and such assistants i sary, and shall be familiar w of laws. The terms of the assistants shall be fixed by 1

SEC. 6. The commission sh appropriation hereby made required by this act.

SEC. 7. From and after the ..... and the delivery of said secretary of state shall of each elected or appointed s said officer therefor, thirty s exclusive use of the legislat county of the state for the us ney of that county, one set s state maintained by public fr necessary, not to exceed 50 s librarian for reciprocal tradin federal territories. The rem of state at a price of \$10 pe shall be deposited in the gen

SEC. 8. The compilation l accompanied by as complete pare, which index shall be and style as the "Revised L

SEC. 9. The secretary of s sion all records of his office w sion, and any books or statu shall likewise be made availa

SEC. 10. Upon request of

EXHIBIT "1" pg 1

be used. In general, it is recommended, but not required, that such compilation should follow the plan of organization used in the compilation heretofore made and known as the "Revised Laws of Nevada, 1912," as authorized by chapter CCXXXVI, Statutes of 1909.

Sec. 4. Upon completion of each portion of said "Revised Laws," the commission is authorized and directed to have the same printed at the state printing office, and upon completion of the final printing the separate volumes shall be bound as heretofore required and forwarded to the secretary of state for safekeeping and disposition as set forth hereinafter. Sufficient copies of each page shall be printed so that there shall be bound 2,500 copies of each volume of said "Revised Laws." A master copy of said "Revised Laws of Nevada, ....." shall be kept in the office of the commission, and such master copy shall not be removed from said office except in the custody of a member of the commission.

Sec. 5. In complying with the provisions of this act, and within the limitation of available appropriations, the commission is authorized to employ such clerical assistance as it deems necessary, to be compensated at the same rate as other state employees of comparable position, and such assistants in drafting and research as may be necessary, and shall be familiar with methods of compilation and drafting of laws. The terms of the employment and compensation of such assistants shall be fixed by the commission.

Sec. 6. The commission shall reimburse the state printer from the appropriation hereby made for the cost of printing and binding required by this act.

Sec. 7. From and after the completion of "Revised Laws of Nevada, ....." and the delivery of the same to the secretary of state, the said secretary of state shall forward one set of the same to the office of each elected or appointed state officer, and take the official receipt of said officer therefor, thirty sets shall be reserved at all times for the exclusive use of the legislature, one set shall be furnished to each county of the state for the use of the district judge and district attorney of that county, one set shall be furnished to each library in the state maintained by public funds, and such number of sets as may be necessary, not to exceed 50 sets, shall be made available to the state librarian for reciprocal trading with state libraries of sister states and federal territories. The remaining sets shall be sold by the secretary of state at a price of \$10 per volume, and all proceeds of such sales shall be deposited in the general fund.

Sec. 8. The compilation herein authorized to be made, shall be accompanied by as complete an index as it shall be practical to prepare, which index shall be printed and bound in the same manner and style as the "Revised Laws."

Sec. 9. The secretary of state shall make available to the commission all records of his office which are or may be of use to the commission, and any books or statutes in the custody of the said secretary shall likewise be made available to said commission.

Sec. 10. Upon request of the commission, the superintendent of

EXHIBIT "1" pg. 2

buildings and grounds shall assign and make available to the commission suitable and convenient rooms or space for the use of the commission and its employees.

Sec. 11. The commission is authorized to purchase or otherwise secure, necessary supplies and equipment.

Sec. 12. Upon the completion of "Revised Laws of Nevada, ....." the commission is authorized and directed to prepare and have printed such replacement and supplementary pages for such laws, as may from time to time be necessary. In any event, said commission shall prepare the replacement and supplementary pages made necessary by the sessions of the legislature, as soon as possible after each such session. The intent of this section is that such "Revised Laws" shall be kept current insofar as may be possible. Distribution of the same is to be made as for the original volumes, and prices shall be set by the commission as near as possible to the cost of preparing and printing, provided, that where distribution of the original volumes was without charge, no charge shall be made for replacement.

Sec. 13. Upon completion, "Revised Laws of Nevada, ....." may be cited as prima-facie evidence of the law in all of the courts of this state. Such evidence may be rebutted by proof that the same differ from the official Statutes of Nevada.

Sec. 14. The commission shall, from time to time, make recommendations for clarification of specific statutes, for elimination of obsolete statutes, and calling the attention of the legislature to conflicting statutes, and such other matter as it deems necessary.

Sec. 15. The members of the commission shall each receive a salary of one hundred twenty-five dollars (\$125) per month, paid as are the salaries of other state officers, and out of the appropriation hereby made, for the period commencing on the effective date hereof, and expiring June 30, 1953.

Sec. 16. There is hereby appropriated from the general fund, for the purposes of this act, the sum of seventy-five thousand dollars (\$75,000). Claims against this appropriation shall be allowed and paid in the same manner as are other claims against the state.

Sec. 17. This act shall be effective from and after May 1, 1951.

AN ACT to amend an act entitled for acquisition, construction, municipalities and counties or without the state, and (ing eminent domain process airports and income there services in airport operating extra territorial jurisdiction municipal ordinances and ing of taxes, issuance of b validating prior acquisition action by municipalities aid between municipalities to public municipal airport

[Ap]

*The People of the State of N.  
do*

SECTION 1. Section 24 of Statutes of Nevada 1947, p. 1949 Supp., is hereby amended.

Section 24. The acquisition to this act, the plan ment, construction, improve regulation, protection, and facilities, including the acquisition and the exercise of any other and other public agencies, hereby declared to be public for a public purpose, and in case of any county, are deemed as well as public and municipality other than a corporation and purposes as well as other property and privileges of any municipality or other the purposes enumerated in to be acquired and used for as a matter of public necessity, for county or municipality, or its officers, agents, from tort occurring in or about, port, at such times as such otherwise under the control of corporation operating or provided, that nothing in this section shall create a liability of liability for such damages by the county or municipality.

EXHIBIT "1" pg. 3

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition For

Writ of Habeas Corpus (Post-Conviction)  
(Title of Document)

filed in District Court Case number C-12-278699-1

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Wilbur Hickman  
Signature

3/21/2016  
Date

Wilbur Hickman  
Print Name

PETITIONER PRO SE  
Title

Wilburt Hickman #62150  
S.D.C.  
P.O. Box  
Indian Spring, NV. 89070

Clerk of The Court

STEVEN D. GRIERSON  
200 LEWIS AVE. 3<sup>RD</sup> FLOOR  
LAS VEGAS, NV. 89155-1160



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Wilburt Hickman

SDCC  
#62150

PO BOX 208  
Indian Springs NV 89070-0208

Petitioner Pro Se

*Alvin L. Blum*

CLERK OF THE COURT

ppow  
MC  
DA  
PP

DISTRICT COURT  
CLARK COUNTY, NEVADA

Wilbert Hickman,  
Petitioner,

-VS-

BRIAN E. WILLIAMS, Warden,  
Respondent.

Case No. C-13-278699-1

Dept. No. V

DATE OF HEARING:

TIME OF HEARING:

MOTION FOR THE APPOINTMENT OF COUNSEL

COMES NOW, Petitioner, Wilburt Hickman (Petitioner), by and through his proper person, and hereby submits the foregoing Motion for The Appointment of Counsel (Motion), for this Court's review and consideration as to the granting of same.

This Motion is made and based upon all documents, papers, pleadings, and exhibits, on file herein as to the above captioned case number, as well as the attached Points and Authorities; argument of Petitioner made in support of the foregoing Motion.

RECEIVED  
MAR 25 2016  
CLERK OF THE COURT  
RECEIVED  
MAR 24 2016  
CLERK OF THE COURT

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**