

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

Plaintiff,

vs.

KIRSTIN BLAISE LOBATO,

Defendant.

CASE NO. C177394

DEPT. NO. II

Transcripts of
Proceedings

BEFORE THE HONORABLE VALORIE J. VEGA, DISTRICT COURT JUDGE

"ROUGH DRAFT"

JURY TRIAL - DAY 3
VOLUME III

WEDNESDAY, SEPTEMBER 13, 2006

COURT RECORDER:

LISA LIZOTTE
District Court

TRANSCRIPTION BY:

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1 motion by the State to be allowed to put forth voir dire
2 questions to the jury regarding the penalty phase.
3 So the State may be heard.
4 MR, KEPHART: Well, Your Honor, basically, the legal
5 analysis that applies here has to do with that what we have
6 briefed. This is, first -- first of all, let me start off. I had an
7 opportunity to read Holbrook v5. State that the defense had
8 submitted as well. That case is a 1974 case that deals with a -
9 punishment sentence by a judge. Since 1974, there's been
10 much litigation with regards to what 175.552 pertains to. And
11 back in 1974, I would venture to say that the -- that in cases
12 involving first degree murder that had -- that was not the
13 death sentence, the judges did the sentencing. And since then
14 there has been much litigation mainly proffered by the defense
15 bar that the jury should have the prerogative for the
16 sentencing. And since then --
17 THE COURT: Because we had the three-judge
18 panels.
19 MR, KEPHART: Yes.
20 THE COURT: Okay,
21 MR, KEPHART: Okay. And that has more to do with
22 the -- with the death sentence itself, but what I'm saying is
23 that at one point in time in the -- in the law in the State of
24 Nevada the judges did the sentencing for first degree murders

1 LAS VEGAS, NEVADA WEDNESDAY, SEPTEMBER 13, 2006
2 PROCEEDINGS

3 (THE PROCEEDINGS BEGAN AT 10:04:39)
4 (Prospective jurors are not present)

5 THE BAILIFF: All rise, please,
6 Department II is now in session, the Honorable
7 Valorie J. Vega presiding. Please be seated.

8 THE COURT: The record shall reflect that we're
9 convened outside the presence of the jury in State versus
10 Lobato under C177394. The defendant is present, together
11 with her three counsel, The two prosecuting attorneys are
12 present.

13 The Court over the evening hours had the
14 opportunity to review the case submitted yesterday by Mr.
15 Schieck, as well as the research memorandums submitted by
16 the State.

17 The Court, additionally, reviewed NRS 175.552. The
18 Court's made copies of those three things which I'm gonna
19 have made part of the record as Court's Number 3,
20 collectively.

21 THE CLERK: Yes, Your Honor.

22 THE COURT: Thank you,

23 I'm trying to think who has -- who has brought forth
24 the motion, essentially, that was briefed. It was really a

1 that were not the death sentence. And by much litigation by
2 the defense bar, now it is the prerogative of the jury to decide
3 unless, certainly, both parties had stipulated with regards to
4 waiving that and with the defense waiving it as well.

5 But the -- our position with the legal analysis here is
6 that -- is that you need to make a determination whether or
7 not the actual sentencing body in this particular case was the
8 judge or the jury. And we know that last time it was the jury
9 because of the -- because of the stipulated waiver of the -- of
10 the jury decision.

11 The situation that would come back from a -- on an
12 appeal if a jury made the decision is that the legal analysis is
13 whether or not the jury had actually determined and rejected
14 other type sentences. So to speak, if the jury would have
15 decided in this case and gave the defendant a 20 to 50 plus a
16 20 to 50, then you could arguably say that they had rejected
17 the other sentences because they made that determination.
18 Here, they did not have that opportunity.

19 I will also point out, Your Honor, that in the last trial
20 there was certain reasons why the State opted not to have the
21 defense, I mean, have the jury, as well as the defense, decide
22 the penalty and that had to do with the lateness of the time
23 they returned, as well as the note that was provided to the
24 Court and their concerns with the family of the defendant

1 themselves. So we feel that the jury has not had an
 2 opportunity to speak on this issue of penalty and we think that
 3 under the statute, under 175.552, that they should have that
 4 opportunity, Your Honor,
 5 Okay, Thank you.
 6 MS. ZALKIN: Good morning, Your Honor,
 7 THE COURT: Good morning, Ms. Zalkin.
 8 MS, ZALKIN: It's our position that there's a
 9 presumption of vindictiveness that arises by the prosecutor
 10 where nothing has changed between the appeal and the
 11 situation now. The case law that I've looked at, which includes
 12 Holbrook vs. State, which as of this morning had not been
 13 superseded by statute or otherwise overruled, is that there's a
 14 difference when there's been a plea of guilty and then a
 15 sentencing that subsequently is vacated and remanded for trial
 16 and then after hearing a trial, a court might say, well, I wasn't
 17 aware of all of these facts at the time I took the guilty plea; I
 18 believe a stiffer sentence is warranted,
 19 OtherweeTyou know, as another -- as another
 20 issue, I would point out that the statute, by its own terms,
 21 requires a written waiver. That did not happen last time. At
 22 least according to the State's research memorandum, they
 23 concede it was per an oral agreement with the defense. And
 24 I think that's relevant because our client wasn't on notice that

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1 should she exercise her constitutional right to appeal,
 2 especially where she's asserting factual and, I think more
 3 properly, actual innocence, that she would be subject to the
 4 possibility of life without parole in the event of a conviction.
 5 So I think that it's -- I think that the prosecution should be
 6 required to rebut. I believe we've raised a presumption of
 7 vindictiveness where the facts haven't changed. They agreed
 8 to this the first time around, The lateness of the hour of the
 9 verdict and concerns of the jurors, I don't think are really
 10 germane. And ^AI think that as a matter of equity and as a
 11 matter of detrimental reliance, assuming that this oral
 12 agreement was relied upon, and certainly it was a shock to
 13 counsel yesterday off the record when the State advised that
 14 they wanted to have the jury decide the sentencing. We were
 15 not previously aware that that was even going to be an issue.
 16 And we don't understand why they're taking this tact now after
 17 she's exercised her constitutional right to appeal.
 18 MR, KEPHART: Your Honor, with respect to the
 19 defense and their concern about our vindictiveness, we
 20 brought a motion for discovery putting them on notice that we
 21 wanted information that they intended to use in any penalty
 22 phase that we would be involved with. Two, we -- in doing
 23 these cases in the State of Nevada, we perceive certain times
 24 that there is possible appeal issues that may be involved after

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1 a conviction. And in this particular case, in light of the jury's
 2 note to the Court indicating that they were afraid of the
 3 defendant's family, they wanted escorted to the -- to the —
 4 THE COURT: Parking lot,
 5 MR, KEPHART: To the parking lot. We made a
 6 conscious decision to waive their decision to sit on the penalty
 7 in light of the fact that we felt that that may give rise to an
 8 appeal issue.
 9 Two, the jury since then has indicated that they
 10 would have liked to have been involved in the sentencing. I
 11 spoke to many of them personally. And when we've talked
 12 about it amongst our self and talked to it with our — with the
 13 district attorney, his position is that he felt that it was the
 14 decision of the jury to make the decision. And that -- and
 15 that's exactly what the statute is calling for and that's exactly
 16 what the defense has been asking for for many years, that
 17 they want the jury to decide these type of penalties.
 18 So that's the extent of what I can say, Judge. I
 19 can't go any further and say that we're -- that it's a surprise,
 20 that we're being vindictive, and they're surprised at why we're
 21 doing this. But it is the jury's decision. The defendant wants
 22 to exercise her right to a jury trial. And in these type of
 23 cases, the jury makes the decision on the penalty.
 24 THE COURT: There was a point of common ground

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1 between what was submitted by both sides, and that common
 2 ground was that a sentence should not be imposed that is
 3 purely vindictive, as vindictiveness should not play a role in
 4 any sentence, And I think that's really what the case that the
 5 defense has put forth stands for that proposition, that that was
 6 a situation where somebody came back before the same
 7 decision-maker. And the Supreme Court said, all things being
 8 equal, the sentence should not be modified in any way. And
 9 if there has been a change, then the trier of fact needs to
 10 make a record as to what that change was and why a
 11 modification from the prior sentence should be imposed.
 12 In this particular situation, the case came back from
 13 the Supreme Court. The Supreme Court did not make any
 14 ruling that the previously-issued waiver would remain in place.
 15 The decision gave no direction or guidance on that specifically
 16 but, rather, said it's remanded for retrial and the retrial is
 17 going to include various additional witnesses that the Court
 18 had precluded in the first trial. In this particular case now,
 19 we've had a number of years pass since the first trial and the
 20 first sentence, and the defendant is now out of custody. And
 21 some of the witnesses that were available at the first trial are
 22 not available for this trial. There will be some readings but, of
 23 course, the jury is not gonna have the benefit of seeing them
 24 live. And there's going to be additional witnesses called from

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1 the -- from the listing of witnesses that has been read to the
 2 jury, additional witnesses that were not called to testify the
 3 first time around.
 4 I don't see that there's any violation of law with
 5 having the jury do the sentencing phase. Rather, it appears
 6 that that would be in compliance with the state statute, NRS
 7 175552. So the Court grants the State's request to put forth
 8 voir dire questions to the jury advising them that they may be
 9 called upon to do a penalty phase if there is a conviction of
 10 first degree, to make sure that there isn't anyone who is
 11 philosophically or religiously unable to perform that function.
 12 MR. SCHIECK: Your Honor, given the Court's ruling,
 13 which we do understand, we just want to preserve the right
 14 that should there be a first degree murder conviction and
 15 should there be a harsher sentence imposed that we will be
 16 revisiting this issue at that time should that come to pass. I
 17 mean, right now we're sort of speculating that she's gonna get
 18 convicted or get a harsher sentence. If that does come to
 19 pass, that is a motion that we want leave to file at that time
 20 asking the Court not to impose a harsher sentence- Just so
 21 the Court's aware, we're preserving that right,
 22 THE COURT: Very well.
 23 MR. SCHIECK: Okay, And at that time we will
 24 address specifically areas that we feel vindictiveness show in

1 this case.
 2 THE COURT: Okay. Is there anything further that
 3 we need to make of record before the jury arrives?
 4 MR. KEPHART: No, not by the State.
 5 MR. SC-HECK: I think the only outstanding issue
 6 had to do with the Jeremy Davis reading, but we can address
 7 that after we've impaneled the jury and we can talk about
 8 that,
 9 MR. KEPHART: No, we can do that.
 10 MS_ biGIACOMO: Yeah.
 11 MR. KEPHART: We can do that now,
 12 MS, DIGIACOMO: Well, I forgot a transcript for the
 13 Court. I did look at it. Two of them I'm fine with but one of
 14 them I disagree with that they want redacted. And so I need
 15 to get the copy of the -- the Court a copy.
 16 THE COURT: Okay. And we had two photographs,
 17 69 and 70, that I had a question reply,
 18 MS, DiGIACOMO: Are those the ones with the skull?
 19 We still haven't talked to the coroner.
 20 THE COURT: Okay.
 21 MS. DiGIACOMO: We've been playing phone tag.
 22 THE COURT: So that's still pending, too.
 23 MS, DiGIACOMO: Yes,
 24 THE COURT: Okay,

1 MR. SCHIECK: Your Honor, one last thing, and we
 2 brought this up, I believe, at calendar call when we were
 3 provided with the report of Kristina Paulette on the DNA done
 4 on the combings.
 5 THE COURT: Yes.
 6 MR. SCHIECK: We were provided with a number for
 7 Ms. Paulette, and we have called and left a message. We have
 8 received no call back. So we can --
 9 MS. DiGIACOMO: She was gone.
 10 MR. SCHIECK: Okay,
 11 MS, DiGIACOMO: And so, you know --
 12 MR_ SCHIECK: I'm not -- I'm not saying --
 13 MS, DiGIACOMO: I talked to her this morning, so
 14 she's back.
 15 MR. SCHIECK: Okay.
 16 THE COURT: Okay. So you can place another call,
 17 MR. SCHIECK: We can call her then in the break
 18 and speak with her,
 19 THE COURT: And then if it become -- if it continues
 20 to be a problem, then let me know again.
 21 (Off-record colloquy)
 22 MR. SCHIECK: And we're ready, Your Honor, I'
 23 sorry.
 24 THE COURT: Okay. The record shall reflect that

1 defendant's counsel was conferring and I wasn't sure if they
 2 had anything else that we needed to make a record.
 3 I'm gonna take us off the record and then the jury
 4 will be arriving in ten minutes.
 5 (Court recessed at 10:21:00 until 10:53:25)
 6 (Prospective jurors are present)
 7 THE BAILIFF: All rise,
 8 Department II is now in session, the Honorable
 9 Valorie J. Vega presiding. Please be seated.
 10 THE COURT: The record shall reflect that we are
 11 now resuming trial in the presence of the proposed jury panel
 12 in the case of State versus Kirstin Lobato, C177394,
 13 The record shall further reflect that the defendant is
 14 present, together with her three counsel, the two prosecuting
 15 attorneys are present, and the ladies and gentlemen of the
 16 potential jury have been seated by the bailiff.
 17 We are resuming with the voir dire examination by
 18 the State,
 19 MR. KEPHART: Yes.
 20 THE COURT: Mr. Kephart, you may proceed.
 21 MR. KEPHART: Thank you, Your Honor.
 22 Last night we had a little opportunity to reflect on
 23 some of the answers that everyone made here yesterday, and
 24 I want to kind of go back and ask a few questions.

1 Mr, Cantor, you indicated that you felt with what
 2 was going on in your business, I guess, or in your -- in your
 3 personal life right now that you could not give us attention,
 4 your attention to this case. And you've heard how long we
 5 potentially believe it would be. Has that changed at all since
 6 you talked to us yesterday?
 7 PROSPECTIVE JUROR CANTOR: No.
 8 MR. KEPHART: Okay, With that in mind, do you
 9 believe that you could be — would you be — well, let me ask
 10 you this. With that in mind, do you think that somebody in
 11 your frame of mind, if you were seated in the defendant's seat
 12 or even in the prosecutor's seat, that you'd want somebody
 13 like you on a jury?
 14 PROSPECTIVE JUROR CANTOR: No, not if you don't
 15 have full attention or if you have other things on your mind.
 16 MR- KEPHART: Okay. Thank you, Mr, Cantor. I
 17 appreciate that.
 18 Mr, Snowden, I think you indicated that as well
 19 yesterday. Well, 056've had an opportunity to think about
 20 that, figure out what's going on in your life right now,
 21 PROSPECTIVE JUROR SNOWDEN: Right.
 22 MR, KEPHART: Do you still have that same belief?
 23 PROSPECTIVE JUROR SNOWDEN: Right.
 24 MR. KEPHART: So my question is then is do you

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1 physical job,
 2 MR. KEPHART: Mm-hmm.
 3 PROSPECTIVE JUROR REAL: So I would need rest.
 4 Plus, I have a five-month-old so —
 5 MR, KEPHART: Okay, Well, the followup question
 6 is, then my question is, is do you think that you would want
 7 individuals like you, with your frame of mind, seated in this
 8 jury if you were seated in the defendant's seat?
 9 PROSPECTIVE JUROR REAL: No, I would not.
 10 MR. KEPHART: Thank you, Ms. Real.
 11 That's Number 65.
 12 And, Ms, Glynn, Lori Glynn.
 13 PROSPECTIVE JUROR GLYNN: Glynn.
 14 MR, KEPHART: Your number is 74, the last two
 15 digits. The same question. You've had an opportunity to think
 16 about this, You've been here two days now. And you told us
 17 about some issues that you had at home and you said that you
 18 couldn't give us your full time and attention. You still have
 19 that, you still feel that way?
 20 PROSPECTIVE JUROR GLYNN: Yes, I do.
 21 MR., KEPHART: Do you feel that you could be —
 22 you'd feel if you were seated in one of these, one of the seats
 23 up here, it would be unfair to the defendant or even the State?
 24 PROSPECTIVE JUROR GLYNN: Yes, I do.,

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1 believe if you were seated in the defendant's table that you'd
 2 want somebody with your frame of mind sitting in a trial,
 3 judging what she's done?
 4 PROSPECTIVE JUROR SNOWDEN: No, I would not,
 5 MR, KEPHART: Ms. Real. Wendy.
 6 PROSPECTIVE JUROR REAL: Mm-hmm.
 7 MR. KEPHART: You also indicated that same thing.
 8 PROSPECTIVE JUROR REAL: Mm-hmm,
 9 MR, KEPHART: Since you've thought about it
 10 overnight, have you changed your opinion at all with that?
 11 PROSPECTIVE JUROR REAL: It just depends if I
 12 have to work Saturday or Sunday, work my shifts.
 13 MR, KEPHART: Excuse me?
 14 PROSPECTIVE JUROR REAL: It would just depend if
 15 I would have to work Saturday or Sunday. If I don't, then I
 16 probably would be able to give my full attention.
 17 MR, KEPHART: Well, we're not gonna be in session
 18 here on Saturday and Sunday. I don't anticipate that.
 19 PROSPECTIVE JUROR REAL: I know, but I would —
 20 MR. KEPHART: Okay,
 21 PROSPECTIVE JUROR REAL: I would be at work,
 22 you know, for my ten-hour shifts.
 23 MR, KEPHART: Okay.
 24 PROSPECTIVE JUROR REAL: If I'm -- it's a very

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1 MR, KEPHART: Okay, Ma'am, you also indicated,
 2 and I just want to know if I wrote this down right or not,
 3 initially when the Court spoke to you, you indicated that you
 4 had concerns with your — with your financial situation. You
 5 felt that you would lose your home.
 6 PROSPECTIVE JUROR GLYNN: Yes, I could,
 7 MR. KEPHART: And you said something about your
 8 four children and that —
 9 PROSPECTIVE JUROR GLYNN: There's a total of six.
 10 MR. KEPHART: Okay. Initially, did you tell the Court
 11 you had four or six?
 12 PROSPECTIVE JUROR GLYNN: I told them I had
 13 three small boys at home.
 14 MR, KEPHART: Okay.
 15 PROSPECTIVE JUROR GLYNN: I have six children.
 16 MR. KEPHART: Okay, Okay. Thank you.
 17 PROSPECTIVE JUROR GLYNN: Mm-hmm.
 18 MR. KEPHART: May we approach, Your Honor?
 19 THE COURT: Yes,
 20 (Off-record bench conference at 10:58:01 until 11:02:14)
 21 THE COURT: At this time the Court excuses for
 22 cause Juror Badge Number 231, Karl Cantor, and Juror Badge
 23 Number 259, Michael Snowden,
 24 Would you two gentlemen please report back to the

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1 Office of the Jury Commissioner and you may exit at this time.
 2 Okay. We're gonna have two additional jurors then
 3 relocate from group two and move up into group one. That
 4 would be Robert Osborn, 328, and Vickie Bishop, 340,
 5 Mr. Bailiff, would you put the easel --
 6 THE BAILIFF: Yes, Your Honor,
 7 THE COURT: Mr, Osborn, would you go through the
 8 exercise with the board that's on the easel?
 9 PROSPECTIVE JUROR OSBORN: Okay, Okay. My
 10 name is Robert Osborn. I'm retired. I was in construction.
 11 I'm married. My wife and I have five children between us.
 12 She's also retired. I've been in Clark County for twelve years.
 13 And I moved in from California, Los Angeles. And I have been
 14 -- I have a high school education. I was in the military, the
 15 Navy.
 16 THE COURT: How long were you in the Navy?
 17 PROSPECTIVE JUROR OSBORN: Two years.
 18 THE COURT: What did you do?
 19 PROSPECTIVE JUROR OSBORN: I was in damage
 20 control.
 21 THE COURT: And what did your wife retire from?
 22 PROSPECTIVE JUROR OSBORN: She retired from
 23 the Wells Fargo Bank.
 24 THE COURT: Okay. And what did you do in

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1 construction?
 2 PROSPECTIVE JUROR OSBORN: I was a project
 3 manager and an estimator.
 4 THE COURT: Thank you.
 5 Ms. Bishop.
 6 PROSPECTIVE JUROR BISHOP: My name is Vickie
 7 Bishop, 340, I work for Desert Valley Pediatrics
 8 [unintelligible]. I'm married and have two children. My
 9 husband is employed with Delta Airlines. I've been in Clark
 10 County for eight years, and I moved here from Georgia, And I
 11 have a high school diploma. I've never been in the military.
 12 THE COURT: Thank you,
 13 Mr. Osborn, did you listen to the Court's questions of
 14 the first group?
 15 PROSPECTIVE JUROR OSBORN: Yes.
 16 THE COURT: Were there any of my questions that
 17 you would have answered?
 18 PROSPECTIVE JUROR OSBORN: Not that I can
 19 recall.
 20 THE COURT: Okay,
 21 PROSPECTIVE JUROR OSBORN: No.
 22 THE COURT: Thank you,
 23 Ms. Osborn — or, Ms. Bishop, rather, did you listen
 24 to the Court's questions?

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1 PROSPECTIVE JUROR BISHOP: Yes, ma'am.
 2 THE COURT: Were there any of my questions that
 3 you would have answered?
 4 PROSPECTIVE JUROR BISHOP: No, ma'am,
 5 THE COURT: Okay. The State may proceed,
 6 MR, KEPHART: Thank you, Your Honor.
 7 Ms. Bishop, you — Mrs. Bishop?
 8 PROSPECTIVE JUROR BISHOP: Mm-hmm.
 9 MR. KEPHART: There -- okay. You had indicated
 10 that your daughter had been convicted of drug possession.
 11 PROSPECTIVE JUROR BISHOP: Yes.
 12 MR. KEPHART: And she's due to be sentenced in
 13 October here in Las Vegas?
 14 PROSPECTIVE JUROR BISHOP: Yes.
 15 MR. KEPHART: Do you remember what kind of drug
 16 that is
 17 PROSPECTIVE JUROR BISHOP: Methamphetamine.
 18 MR. KEPHART: Okay. And how old's your
 19 daughter?
 20 PROSPECTIVE JUROR BISHOP: Twenty.
 21 MR. KEPHART: She still live with you?
 22 PROSPECTIVE JUROR BISHOP: While she's waiting
 23 on sentencing she is.
 24 MR. KEPHART: Oh, okay. And how many other

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1 children do you have?
 2 PROSPECTIVE JUROR BISHOP: One,
 3 MR. KEPHART: Just her or one other one?
 4 PROSPECTIVE JUROR BISHOP: Another one.
 5 MR, KEPHART: Older or younger?
 6 PROSPECTIVE JUROR BISHOP: Younger. Sixteen-
 7 year-old.
 8 MR. KEPHART: Son or daughter?
 9 PROSPECTIVE JUROR BISHOP: A daughter,
 10 MR. KEPHART: If you know, how long had it been
 11 that your daughter's been using methamphetamine?
 12 PROSPECTIVE JUROR BISHOP: Well, she was --
 13 started when she was about sixteen years old.
 14 MR. KEPHART: Okay. When was it that you first
 15 found out about it?
 16 PROSPECTIVE JUROR BISHOP: When she started
 17 losing weight, being up all night. Then her behavior started
 18 becoming a little erratic, like she normally is.
 19 MR. KEPHART; Okay. What do you mean? What
 20 do you mean by that?
 21 PROSPECTIVE JUROR BISHOP: Just running around
 22 the house, talking 90 miles an hour. Basically, the staying up
 23 and losing weight.
 24 MR. KEPHART: Did you do anything about that or —

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1 PROSPECTIVE JUROR BISHOP: Oh, yes, We've
 2 been in and out of rehabs, counseling.
 3 MR. KEPHART: Okay, Has it — would you agree
 4 that it's basically taken the situation where when the law has
 5 gotten involved now it's kind of coming to an end?
 6 PROSPECTIVE JUROR BISHOP: Yes, She's got to
 7 pay the consequences for her actions.
 8 MR. KEPHART: Okay. Okay. Were you -- how did
 9 you find out that she had been arrested? Did you get that call
 10 in the middle of the night?
 11 PROSPECTIVE JUROR BISHOP: Yes, sir.
 12 MR. KEPHART: Okay. And was she by herself, was
 13 she with somebody else?
 14 PROSPECTIVE JUROR BISHOP: She was with
 15 someone else,
 16 MR. KEPHART: Okay, Somebody that you knew?
 17 PROSPECTIVE JUROR BISHOP: Met occasionally,
 18 MR. KEPHART: All right, And have you been with
 19 her, basically supervising her since she's been arrested?
 20 PROSPECTIVE JUROR BISHOP: Well, yeah.
 21 MR. KEPHART: Besides, I mean, supporting her
 22 otherwise but —
 23 PROSPECTIVE JUROR BISHOP: Yes,
 24 MR. KEPHART: Okay. All right, You heard some of

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1 the show CST. Have you ever watched that show?
 2 PROSPECTIVE JUROR OSBORN: Yes,
 3 MR. KEPHART: Okay, I kind of asked an open-
 4 ended question that I had to go away from, and it was
 5 basically would you accept that CSI is basically for
 6 entertainment?
 7 PROSPECTIVE JUROR OSBORN: Yes,
 8 MR. KEPHART: Okay. Now I'm not saying that
 9 there's things on CSI that don't happen, that aren't true. But
 10 have you ever seen anything on there that you thought was
 11 pretty sensational?
 12 PROSPECTIVE JUROR OSBORN: No. I don't —
 13 can't recall anything,
 14 MR. KEPHART: Okay. Do you realize that there's a
 15 big difference between what you see on TV and what happens
 16 in real life?
 17 PROSPECTIVE JUROR OSBORN: Yes,
 18 MR. KEPHART: Are you familiar with Panaca,
 19 Nevada?
 20 PROSPECTIVE JUROR OSBORN: Who?
 21 MR. KEPHART: Panaca, Nevada.
 22 PROSPECTIVE JUROR OSBORN: Panaca? No,
 23 MR. KEPHART: Panaca, Have you ever been
 24 through Panaca, Nevada?

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1 the questions that I asked yesterday of the panel. You guys
 2 were sitting over here, And I think I even alluded to Mr.
 3 Osborn's situation with his niece.
 4 PROSPECTIVE JUROR BISHOP: Mm-hmm,
 5 MR. KEPHART: And my questions are when you
 6 heard that this was a murder case and then you were given,
 7 basically, somewhat of a description of what was going on,
 8 what we're charging the defendant with here, what went
 9 through your head?
 10 PROSPECTIVE JUROR BISHOP: To be honest, I
 11 didn't really think anything 'cause I don't know anything that's
 12 going on right now.
 13 MR. KEPHART: What went through your head when
 14 I started asking people if they had -- know what
 15 methamphetamine was?
 16 PROSPECTIVE JUROR BISHOP: That it probably had
 17 something to do with this.
 18 MR. KEPHART: Did you have any concerns about
 19 what you heard we were charging with and the fact that your
 20 daughter has been involved with methamphetamine?
 21 PROSPECTIVE JUROR BISHOP: No.
 22 MR. KEPHART: Okay. Mr, Osborn, you heard me —
 23 thanks, ma'am.
 24 You heard me talking yesterday to the group about

111-23

1 PROSPECTIVE JUROR OSBORN: I might have but I
 2 blinked my eyes.
 3 MR. KEPHART: Okay. What brought you to Las
 4 Vegas?
 5 PROSPECTIVE JUROR OSBORN: My work.
 6 MR. KEPHART: So we were building a lot here and
 7 it helped you come here and work?
 8 PROSPECTIVE JUROR OSBORN: I was working for a
 9 company that had jobs here,
 10 MR. KEPHART: Okay.
 11 PROSPECTIVE JUROR OSBORN: So they moved me
 12 up here.
 13 MR. KEPHART: Ms. Bishop, what brought you to Las
 14 Vegas?
 15 PROSPECTIVE JUROR BISHOP: My husband was
 16 born and raised here, and then Delta transferred him back
 17 home,
 18 MR. KEPHART: Okay. He works for Delta Airlines,
 19 Is he a pilot?
 20 PROSPECTIVE JUROR BISHOP: No, he's a
 21 supervisor of the ticket counter,
 22 MR. KEPHART: Okay, Ladies and gentlemen, in this
 23 particular case because of the type of nature — type of crime
 24 we're involved with, unlike any other case, the jury makes a

111-25

1 decision on what she deserves as a — what shell get as a
 2 punishment in the event that you find her guilty of first degree
 3 murder. This is not a capital case, meaning that the death
 4 penalty is not an option in this particular case. However, there
 5 are -- there are three different types of punishment that would
 6 be available to the jury in the event that she's found guilty of
 7 first degree murder. And those involve a life without the
 8 possibility of parole, meaning in all intents and purposes that
 9 she would spend the rest of her life in the Nevada State
 10 Prison, life with the possibility of parole starting at twenty
 11 years, or a term of years of fifty years with the possibility of
 12 parole after twenty. Is there anyone here right now in this
 13 panel that feels that there's no way they could ever be
 14 involved in a sentencing situation where they would have to
 15 say that a person has to spend the rest of their life in prison?

16 And I'll go -- identify yourself and give us your
 17 number again,
 18 PROSPECTIVE JUROR ISOM: 237. I just don't
 19 believe in taking hie away totally from anybody.
 20 MR. KEPHART: Okay, So it's your opinion that if
 21 you give -- if a person receives a life sentence in the Nevada
 22 State Prison then there's no hope for them?
 23 PROPELLNE JUROR ISOM: If —
 24 MR. KEPHART: Or they don't have any hope or --

111-26

1 Okay.
 2 PROSPECTIVE JUROR ESTRADA: 254, Emigdio
 3 Estrada,
 4 MR. KEPHART: Okay. What's your position?
 5 PROSPECTIVE JUROR ESTRADA: I just don't think
 6 I'm somebody to be judging someone. I just take it upon
 7 religion, I guess.
 8 MR. KEPHART: And, Mr. Estrada, how old are you? -
 9 PROSPECTIVE JUROR ESTRADA: Twenty.
 10 MR, KEPHART: And you heard the three different
 11 types of punishment that would be available here?
 12 PROSPECLiVE JUROR ESTRADA: Mm-hmm.
 13
 14 PROSPEC,iNE JUROR ESTRADA: Yes.
 15 MR, KEPHART: I'm sorry.
 16 Yeah, she's typing everything. And you heard her,
 17 the Judge, tell us that we can't do the head shakes.
 18 PROSPECTIVE JUROR ESTRADA: Yes.
 19 MR. KEPHART: Okay. So what's your — what's your
 20 position on the three different sentences?
 21 PROSPECTIVE JUROR ESTRADA: I just don't really
 22 think a person should spend the rest of their life in jail.
 23 MR. KEPHART: Okay,
 24 PROSPECTIVE JUROR ESTRADA: Or, I mean, I can't

111-28

1 PROSPECTIVE JUROR ISOM: If its -- if they
 2 stipulate that there's no chance of parole, that's pretty much
 3 no hope.
 4 MR. KEPHART: Okay.
 5 PROSPECTIVE JUROR ISOM: I think somebody
 6 ought to have a shot somewhere down the line.
 7 MR. KEPHART: Okay, So my question then to you
 8 is that if you were chosen as a juror —
 9 PROSPEC_iVE JUROR ISOM: All right.
 10 MR. KEPHART: -- and then it came to the point
 11 where you made the decision —
 12 PROSPECTIVE JUROR ISOM: Right.
 13 MR. KEPHART: -- on what the punishment should
 14 be --
 15 PROPEL_iVE JUROR ISOM: Uh-huh.
 16 MR. KEPHART: — you do not believe that you could
 17 sentence somebody to a life sentence?
 18 PROSPECTIVE JUROR ISOM: I don't.
 19 MR. KEPHART: So you wouldn't consider it?
 20 PROSPECTIVE JUROR ISOM: I don't think so.
 21 MR. KEPHART: Okay, And you're Mr. Isom?
 22 PROSPECTIVE JUROR ISOM: Yes, sir.
 23 MR, KEPHART: Okay. Thank you, Mr. Isom.
 24 Is there -- is there anyone else that has the same?

111-27

1 really go either way, you know.
 2 MR. KEPHART: What do you mean by that?
 3 PROSPECTIVE JUROR ESTRADA: Like say yes or no.
 4 'Cause if you do a crime, you should pay for it, but I don't
 5 think it should be the rest of your life without the -- without
 6 parole.
 7 MR, KEPHART: Do you think that —
 8 PROSPECTIVE JUROR ESTRADA: But at the same
 9 time, I do think that they should do time.
 10 MR, KEPHART: Okay. Well, my question then to
 11 you would be do you think you could consider the sentence of
 12 life without the possibility of parole?
 13 PROSPEC.iVE JUROR ESTRADA: Probably not.
 14 MR, KEPHART: Okay. Is there anyone else that
 15 thinks or is there anyone else that has that same type of
 16 opinion? Okay. The reason I ask that is I --
 17 THE COURT: The record shall reflect no response.
 18 MR. KEPHART: Thanks, Judge.
 19 I want all of you to take a look at the defendant
 20 right here, how she sits.. She's a human being just like you
 21 and I. And there may come a point in time where you have to
 22 make a decision that she may never, ever get out of prison.
 23 And you heard two individuals here say that -- one said that he
 24 doesn't think there'd ever be any hope, Mr. Estrada, the

111-29

1 young man here that says that he doesn't think he could
 2 consider that as well. And my question with that is if there
 3 came a point in time where you were taken -- that you were
 4 given that decision to make and you went back in the jury
 5 room and you said, you know what, I know I talked to Mr.
 6 Kephart and I told him that I could consider this, but there's
 7 no way, there's no way I'm gonna consider that. My position
 8 is then you're not fair to the State because you told us one
 9 way and now you're back there and you're not even giving us
 10 that opportunity.

11 Is there anybody that has that feeling? I know that
 12 you haven't heard the case. I know that you haven't heard all
 13 the evidence in that. But is there anybody that has that
 14 feeling right now, saying, you know, in any -- under any
 15 circumstances I could not consider one of those three types?
 16 Maybe you couldn't consider a term of years with parole. Is
 17 there anybody that has that, has that —

18 THE COURT: The record shall reflect no response to
 19 the last question and no response to this question.

20 MR, KEPHART: Okay. Mr. Arieno,
 21 PROSPECTIVE JUROR ARIENO: Yes,
 22 MR, KEPHART: You indicated that you came from
 23 New York,
 24 PROSPECTIVE JUROR ARIENO: Yes.

111-30

1 PROSPECTIVE JUROR ARIENO: Not right now.
 2 We're renting.
 3 MR, KEPHART: A house?
 4 PROSPECTIVE JUROR ARIENO: A condo.
 5 MR. KEPHART: A condo. You feel like you have a
 6 stake in this community?
 7 PROSPECTIVE JUROR ARIENO: Stake meaning?
 8 MR. KEPHART: Do you care about what happens in -
 9 this community?
 10 PROSPECTIVE JUROR ARIENO: Oh, yeah, Yes, I
 11 do.
 12 MR, KEPHART: There's a lot of you that have
 13 moved here from out of state, unless one gentleman who's
 14 been here all his life. And I think any one of you that have
 15 been here for the last ten years have seen how Las Vegas has
 16 grown immensely. Is there anyone here that feels like they
 17 don't have a stake in this community, that they don't care
 18 what happens in the community but they like what's
 19 happening, what they're getting, but they don't really care
 20 what happens? You know, that the court system is none of
 21 their business, it's our business, we just [unintelligible] you
 22 would just as soon not have anything to do with us, not care
 23 about it. Is there anybody that has that feeling? And don't
 24 get me wrong. I might have — might have posed it to a point

111-32

1 MR. KEPHART: And you got a high school education
 2 and you've got a business going now,
 3 PROSPECTIVE JUROR ARIENO: Correct.
 4 MR, KEPHART: And you've got one daughter. What
 5 brought you to Las Vegas?
 6 PROSPECTIVE JUROR ARIENO: The health of my
 7 daughter. She's allergic to mold,
 8 MR. KEPHART: Okay.
 9 PROSPECTIVE JUROR ARIENO: And if you get 138
 10 inches of snow¹ a year, there's a lot of mold in Upstate New
 11 York, and we were in the hospital every other week with her.,
 12 And the doctor said go to the desert —
 13 MR. KEPHART: Okay.
 14 PROSPECTIVE JUROR ARIENO: -- where there's no
 15 moisture.
 16 MR. KEPHART: How did you choose Las Vegas?
 17 PROSPECTIVE JUROR ARIENO: I had a friend who
 18 lived here and my parents were gonna retire here.
 19 MR. KEPHART: Okay, How old's your daughter?
 20 PROSPECTIVE JUROR ARIENO: Nine years old.
 21 MR, KEPHART: Is she in our school district here?
 22 PROSPECTIVE JUROR ARIENO: She's in the
 23 Henderson School District.
 24 MR, KEPHART: Are you buying a house?

111-31

1 where you would look bad, but we don't feel that way. And
 2 there's some people that really don't care about what happens
 3 down here. Is there anybody that has that feeling?
 4 THE COURT: The record shall reflect no response.
 5 MR. KEPHART: Sorry to pick on you, Mr, Arieno.
 6 PROSPECTIVE JUROR ARIENO: No problem.
 7 MR, KEPHART: Paul La Chance,
 8 PROSPECTIVE JUROR LA CHANCE: Yes.
 9 MR. KEPHART: What brought you to Las Vegas?
 10 You've been here four years.
 11 PROSPECTIVE JUROR LA CHANCE: Affordable
 12 houses,
 13 MR. KEPHART: Okay. And —
 14 PROSPECTIVE JUROR LA CHANCE: Well, it was —
 15 UNIDENTIFIED SPEAKER: Four years ago, huh?
 16 PROSPECTIVE JUROR LA CHANCE: Four years ago.
 17 MR, KEPHART: You're from California?
 18 PROSPECTIVE JUROR LA CHANCE: Yes.
 19 MR, KEPHART: Okay. Mr. Wilcox.
 20 PROSPECTIVE JUROR WILCOX: Yes, sir,
 21 MR. KEPHART: You came here four years ago,
 22 PROSPECTIVE JUROR WILCOX: I came here three
 23 or four years ago while my mother-in-law was ill.
 24 MR. KEPHART: Okay.

111-33

1 PROSPECTIVE JUROR WILCOX: To either get her
2 back up on her feet or, in her case, she passed away to
3 cancer. And coming out of the military, was mostly to be
4 temporarily 'cause I was looking at employment for other two
5 places. And then my mother just passed away here a couple
6 weeks ago, so it's been kind of up and down, sir. But Nevada
7 is a good state,

8 MR. KEPHART: Okay.

9 PROSPECTIVE JUROR WILCOX: And I just prefer
10 my four seasons instead of the dry heat. So well just have to
11 see how it's gonna go from here, sir.

12 MR. KEPHART: Okay. All right. Thank you, Mr.
13 Wilcox,

14 Mr. Willson.

15 PROSPECTIVE JUROR WILLSON: Yes, sir.

16 MR. KEPHART: Yesterday we talked a lot about a
17 situation that occurred, that happened with you when you
18 were fifteen or sixteen years old. We talked about a situation
19 that happened with your vehicle in California. And both those
20 situations seem to have been, for lack of better words, bad
21 contacts with the — with the police department, in both
22 situations. I would say they did. Am I correct?

23 PROSPECTIVE JUROR WILLSON: Yes, sir,

24 MR. KEPHART: Okay. Obviously, Ms. DiGiacomo

111-34

1 Froschheuser.

2 MR. KEPHART: Did I say it right?

3 PROSPECTIVE JUROR FROSCHHEUSER: It's close,

4 PROSPECTIVE JUROR FROSCHHEUSER:

5 Froschheuser,

6 MR. KEPHART: Okay. You know where I'm going
7 with this, so you're —

8 PROSPECTIVE JUROR FROSCHHEUSER: Yes, sir.

9 MR. KEPHART: Okay. And I — you had indicated
10 yesterday that because of, basically, a silly situation that
11 happened with a traffic violation you got roughed up a little
12 bit. Is that correct?

13 PROSPECTIVE JUROR FROSCHHEUSER: A little bit.

14 PROSPECTIVE JUROR FROSCHHEUSER: That's what
15 occurred.

16 MR. KEPHART: When you were eighteen years old?

17 PROSPECTIVE JUROR FROSCHHEUSER: Tossed
18 against the wall,

19 MR. KEPHART: Okay,

20 PROSPECTIVE JUROR FROSCHHEUSER: Yeah, I was

21 MR. KEPHART: It was something that caused you

111-36

1 and I represent the county here and witnesses that we'll have
2 presenting evidence will be Las Vegas Metropolitan Police
3 officers. And they are actually — we've heard questions about
4 that. And you told us that you feel that you have lost trust in
5 them. You're a grown adult now. You have three children.
6 You're married. You sound like you have a pretty successful
7 life going on. You've moved here from out of state. And I
8 was just asking, is -- can you tell me if those -- that loss of
9 trust that you have in the police departments would be carried
10 over into this case here? Do you think that you would do that?

11 PROSPECTIVE JUROR WILLSON: It's a possibility.

12 MR. KEPHART: If you were seated in my seat and
13 prosecuting this case, would you want twelve individuals of
14 your same frame of mind, knowing what you know and what
15 happened to you in the past, to be seated on that jury?

16 PROSPECTIVE JUROR WILLSON: No.

17 MR. KEPHART: So you don't think you could be fair
18 or give a fair shake to the State in this case?

19 PROSPECTIVE JUROR WILLSON: I think there's a
20 good possibility there that I have some doubt.

21 MR. KEPHART: Okay. Thank you, Mr. Willson.

22 Okay. And, Mr. Froschheuser, How do you say
23 that?

24 PROSPECTIVE JUROR FROSCHHEUSER:

111-35

1 some concern and you told us about it, is that right?

2 PROSPECTIVE JUROR FROSCHHEUSER: Well, at the
3 time. I don't really talk about it —

4 MR. KEPHART: Okay,

5 PROSPECTIVE JUROR FROSCHHEUSER: -- since you
6 brought it up again. But --

7 MR. KEPHART: Well, then let me ask you the
8 followup question. Would you want twelve people with your
9 same frame of mind seated there if you were seated, seated
10 on the jury, if you were seated in this seat here as a
11 prosecutor?

12 PROSPECTIVE JUROR FROSCHHEUSER: Yes,

13 MR. KEPHART: Okay, You don't think it would play
14 any part in your decision-making in this case?

15 PROSPECTIVE JUROR FROSCHHEUSER: No,, It was

16 MR. KEPHART: Okay, All right. Thank you, sir.

17 Mr. Ciciliano,

18 PROSPECTIVE JUROR CICILIANO: Yes.

19 MR. KEPHART: You said that you have Elvin
20 training, is that right? Did I hear that right

21 PROSPECTIVE JUROR CICILIANO: Yes.

22 MR. KEPHART: What is that, EMTI?

23 PROSPECTIVE JUROR CICILIANO: It's intermediate.

111-37

1 It's just a step above the basic EMT.
 2 MR. KEPHART: Okay.
 3 PROSPECTIVE JUROR CICILIANO: Just a certain
 4 level of things you can do versus what a paramedic can do,
 5 you know.
 6 MR. KEPHART: Okay, You respond — you're a
 7 captain with the Clark County Fire Department?
 8 PROSPECTIVE JUROR CICILIANO: Yes, I am.
 9 MR, KEPHART: So you've been with them since
 10 1982. You've worked your way up to the position you're in
 11 now?
 12 PROSPECTIVE JUROR CICILIANO: Yes.
 13 MR_ KEPHART: Did you come from any other fire
 14 department?
 15 PROSPELWE JUROR CICILIANO: No,
 16 MR. KEPHART: Okay. And the fire department
 17 responds to a lot of _ a lot of calls involving injuries and
 18 deaths, and that, here in Las Vegas, don't you?
 19 PROSPENVE JUROR CICILIANO: Yes.
 20 MR. KEPHART: Okay. Have you responded
 21 personally with the fire department to any type of homicide?
 22 PROSPECTIVE JUROR CICILIANO: Yes, I have.
 23 MR, KEPHART: Okay_ And you have met police
 24 officers through that response, haven't you?

111-38

1 MR. KEPHART: Okay.
 2 PROSPECTIVE JUROR MOIR: While he was
 3 detained. And they dropped that charge if he admitted to the
 4 burglary.
 5 MR, KEPHART: Okay.
 6 PROSPELWE JUROR MOIR: So I wasn't called in
 7 specifically for the domestic violence. It was —
 8 MR. KEPHART: You did a report, though?
 9 PROSPECTIVE JUROR MOIR: Yes, I did,
 10 MR, KEPHART: Did you talk to any of the
 11 prosecutors that were involved in the case?
 12 PROSPECTIVE JUROR MOIR: For the domestic
 13 violence itself?
 14 MR. KEPHART: Yes, or even the burglary,
 15 PROSPECTIVE JUROR MOIR: You mean from the
 16 District Attorney's Office?
 17 MR. KEPHART: Yes.
 18 PROSPECTIVE JUROR MOIR: Yes.
 19 MR. KEPHART: You did?
 20 PROSPEC LIVE JUROR MOIR: Yes.
 21 MR. KEPHART: Who was it, do you remember?
 22 PROSPEC LIVE JUROR MOIR: I could tell you if I
 23 think about it.
 24 MR. KEPHART: Okay. Was there anything about

111-40

1 PROSPECTIVE JUROR CICILIANO: Yes.
 2 MR. KEPHART: Okay. Do you recall the two
 3 detectives, the two homicide detectives in this case, are Tom
 4 Thowsen and Jim LaRochelle? Have you ever heard those
 5 names before?
 6 PROSPECTIVE JUROR CICILIANO: No, I haven't.
 7 MR. KEPHART: Okay. When's the last time that you
 8 remember ever responding to a case involving a homicide?
 9 PROSPECTIVE JUROR CICILIANO: It's been
 10 probably about seven or eight years.
 11 MR, KEPHART: Oh, okay. Anything about your
 12 involvement in any one of those, in any one of -- in that
 13 homicide or any other one that would cause any concern with
 14 you being a juror on this case?
 15 PROSPECTIVE JUROR CICILIANO: No.
 16 MR. KEPHART: Okay. Thank you, Mr. Ciciliano.
 17 Ms, Moir,
 18 PROSPECTIVE JUROR MOIR: Moir. Right.
 19 MR. KEPHART: Okay. I had asked you before with
 20 regards to you gave us some basic information about your
 21 husband, that you were a victim of a domestic violence case.
 22 You actually testified in that, is that correct?
 23 PROSPECTIVE JUROR MOIR: He had a plea bargain
 24 with the, what is it, court-appointed attorney for him_

111-39

1 that experience with the District Attorney's Office that you
 2 think may affect your ability to be fair and impartial in this
 3 case?
 4 PROSPELWE JUROR MOIR: No.
 5 MR. KEPHART: Thank you, Ms. Moir.
 6 Your Honor, may we approach the bench again?
 7 THE COURT: Yes.
 8 MR. KEPHART: Okay,
 9 (Off-record bench conference at 11:26:41 until 11:29:09)
 10 MR. KEPHART: Judge, at this point then I'll pass for
 11 the defense to question.
 12 THE COURT: Very well.
 13 From the discussion at the bench, the defense will
 14 now initiate their voir dire.
 15 MR. SCHIECK: Mr. Willson, I have some followup
 16 questions specifically for you before I get into my general
 17 questions. The State had asked you a number of questions
 18 concerning the difficulty you had with the police in the past
 19 and that you might be a little bit distrustful of them. I'm sure
 20 you can agree with us that this case is totally different from
 21 your case. Is that —
 22 PROSPECTIVE JUROR WILLSON: Well, there's still
 23 police officers involved_
 24 MR. SCHIECK: And it's just the fact that there's

111-41

1 police officers involved?
 2 PROSPECTIVE JUROR WILLSON: Well, detectives.
 3 One of my cases was with detectives, on my car.
 4 MR., SCHIECK: And I'm sorry, I didn't make a note.
 5 Which jurisdiction was it that was involved?
 6 PROSPECTIVE JUROR WILLSON: It was in
 7 California. It was the City of Tustin and the [unintelligible].
 8 MR. SCHIECK: But it's a different police department
 9 than will be coming here to testify. Do you think you can —
 10 PROSPECTIVE JUROR WILLSON: Not here
 11 [unintelligible].
 12 MR. SCHIECK: Right. But the officers that come in
 13 here will be different than the officers that you dealt with,
 14 PROSPECTIVE JUROR WILLSON: Well — well, yes.
 15 MR. SCHIECK: Do you think that you could put
 16 aside any problems that you had with being wrongly accused
 17 and decide the case on the facts you actually hear here in
 18 court?
 19 PROSPECTIVE JUROR WILLSON: I can't answer that
 20 until I hear the facts.
 21 MR. SCHIECK: Okay. Certainly, I would assume it's
 22 your intention to be fair to everybody if you're selected as a
 23 juror.
 24 PROSPECTIVE JUROR WILLSON: Correct,

111-42

1 PROSPECTIVE JUROR WILLSON: Oh, I don't know
 2 how important it'd be if there was three or four of them that
 3 had the same opinion of the police., So, I mean, I don't know
 4 how you'd want to balance that out,
 5 MR. SCHIECK: But, certainly, if you were on a trial
 6 you'd want — you'd want that present in your jury panel?
 7 PROSPECTIVE JUROR WILLSON: Somebody that
 8 could lean both ways?
 9 MR. SCHIECK: Yes.
 10 PROSPECTIVE JUROR WILLSON: Is that -- it'd be
 11 helpful.
 12 MR. SCHIECK: And am I understanding that you
 13 lean both ways?
 14 PROSPECTIVE JUROR WILLSON: Yes.
 15 MR. SCHIECK: But if the State comes in and proves
 16 their case to you, you'd have no problem returning a verdict of
 17 guilty?
 18 THE COURT: I'm gonna -- I'm gonna impose an
 19 objection there because that's a hypothetical to commit to a
 20 verdict, That is my pet peeve.
 21 MR. SCHIECK: So I guess the bottom line question
 22 is are you the type of person that can be fair to both sides in
 23 this case, both the defense and the State?
 24 PROSPECTIVE JUROR WILLSON: Depending on the

111-44

1 MR. SCHIECK: And that if you were on trial, you
 2 would want people on your jury that wanted to hear the
 3 evidence and judge the evidence before making up your mind?
 4 PROSPECTIVE JUROR WILLSON: Yes.
 5 MR. SCHIECK: And you understand that our system
 6 involves twelve jurors of a collection of different backgrounds,
 7 different viewpoints that form that collective jury to make a
 8 decision on guilt or innocence?
 9 PROSPECTIVE JUROR WILLSON: Yes.
 10 MR. SCHIECK: And that part of that includes people
 11 that have different points of view, a point of view such as
 12 yours perhaps. You understand how that could be important
 13 to our system?
 14 PROSPECTIVE JUROR WILLSON: Yes.
 15 MR. SCHIECK: And that the point of view that you
 16 have, that you have a little distrust for the testimony of a
 17 police officer is a point of view that should be included in the
 18 jury. Would you agree with that?
 19 PROSPECTIVE JUROR WILLSON: Could you repeat
 20 that, please?
 21 MR. SCHIECK: Would you agree that it's important
 22 to have someone on the jury that has a little distrust for the
 23 police, who doesn't necessarily believe just everything they
 24 say?

111-43

1 circumstances. I just -- I can't answer that yes or no because
 2 of what -- of what's happened to me in the past. And it's not
 3 just happened once, it's happened twice. So that's as honest
 4 as I can answer.
 5 MR. SCHIECK: And then I had some specific
 6 questions for Mr. Estrada.
 7 PROSPECTIVE JUROR ESTRADA: Yes.
 8 MR. SCHIECK: You had talked about three forms of
 9 penalty. And at least from the defense standpoint it's a little
 10 premature to even talk about a sentencing when our position
 11 is our client is not guilty. But the law requires that we ask
 12 these questions of the jury in this type of a case. You
 13 understand that the legislature of Nevada sets forth possible
 14 punishments for the various crimes?
 15 PROSPECTIVE JUROR ESTRADA: Yes.
 16 MR. SCHIECK: And they select a range of
 17 punishments that are available for a given defendant. In this
 18 case there are three possible punishments.
 19 PROSPECTIVE JUROR ESTRADA: Yes,
 20 MR. SCHIECK: None of them is necessarily right and
 21 -- or wrong, except on the facts of that particular case. Do
 22 you agree with that?
 23 PROSPECTIVE JUROR ESTRADA: Yes.
 24 MR. SCHIECK: And that before you made a decision

111-45

1 on a sentence you'd want to hear all of the facts that were
 2 presented?
 3 PROSPECTIVE JUROR ESTRADA: Yeah,
 4 MR. SCHIECK: And if the legislature and the law of
 5 the State of Nevada says that there are three possible
 6 punishments, you should consider all three possible
 7 punishments?
 8 PROSPECTIVE JUROR ESTRADA: That is right, But
 9 I don't think I'm just capable of doing that 'cause I'm not the
 10 one who, how can I say this, gave the life to the person so I
 11 can't take it away, And I feel like I would be doing that if I
 12 sentenced someone to prison,
 13 MR. SCHIECK: All three sentences are going to
 14 prison.
 15 PROSPECTIVE JUROR ESTRADA: Yes.
 16 MR. SCHIECK: One is just without the chance of
 17 parole.
 18 PROSPECTIVE JUROR ESTRADA: Exactly.
 19 MR. SCHIECK: And the other two, after a long time,
 20 you get a chance for parole, Are you saying that under no set
 21 of circumstances would you be able to consider the last choice
 22 which would be life without parole?
 23 PROSPECTIVE JUROR ESTRADA: I would consider
 24 all three of them, but it's just my mind.

111-46

1 MR. SCHIECK: Depends on what the evidence was?
 2 PROSPECTIVE JUROR ESTRADA: Yeah,
 3 MR. SCHIECK: And, Mr, Snowden.
 4 MS, ZALKIN: Isom.
 5 MR, SCHIECK: Isom. I'm sorry. I'm sorry. We're —
 6 we had asked you some questions or the State had asked you
 7 some questions about punishment also,
 8 PROSPECTIVE JUROR ISOM: Yeah.
 9 MR. SCHIECK: And you have heard, obviously, the
 10 questions I asked Mr. Estrada,,
 11 PROSPECTIVE JUROR ISOM: Yes. I think people
 12 change over a period of time, possibly. I don't know whether
 13 they will or not. And for me to sentence somebody without a
 14 chance of parole, it would be like me saying you're never
 15 gonna change and I have the right to make that call, And I
 16 don't think I do, you see.
 17 MR, SCHIECK: So under —
 18 PROSPECTIVE JUROR ISOM: On the other hand,
 19 the victim is kind of without hope at this time —
 20 MR. SCHIECK: Right.
 21 PROSPECTIVE JUROR ISOM: -- too, so it's a hard
 22 call on that one. I believe that people do change over a period
 23 of time.
 24 MR, SCHIECK: But you'd want to hear all the

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1 evidence --
 2 PROSPECTIVE JUROR ISOM: Yeah.
 3 MR, SCHIECK: -- before you made that choice?
 4 PROSPECTIVE JUROR ISOM: Yeah, this is kind of
 5 like premature,
 6 MR. SCHIECK: Right, That's the point I was trying
 7 to make, is we're —
 8 PROSPECTIVE JUROR ISOM: Yeah.
 9 MR, SCHIECK: -- perhaps getting the cart in front of
 10 the horse.
 11 PROSPECTIVE JUROR ISOM: Well —
 12 MR. SCHIECK: From behind the horse,
 13 PROSPECTIVE JUROR ISOM: Well —
 14 MR. SCHIECK: Somewhere.
 15 PROSPECTIVE JUROR ISOM: Somewhere.
 16 MR. SCHIECK: Well, do -- I mean, could you
 17 consider all three possible punishments?
 18 PROSPECTIVE JUROR ISOM: I wouldn't want to. I
 19 wouldn't want to lay that heavy of a sentence on somebody.
 20 But I would have to -- I'd have to try to make some kind of call
 21 as to whether the person is remorseful —
 22 MR. SCHIECK: So —
 23 PROSPECTIVE JUROR ISOM: -- or not.
 24 MR. SCHIECK: I mean, there is factors you want to

111-48

1 take into account —
 2 PROSPECTIVE JUROR ISOM: Yeah.
 3 MR. SCHIECK: -- to make that call?
 4 PROSPECTIVE JUROR ISOM: And I don't have any
 5 of that information right now.
 6 MR, SCHIECK: You'd be better able to say after you
 7 had the information?
 8 PROSPECTIVE JUROR ISOM: Well, I guess so.
 9 MR, SCHIECK: Okay, Thank you,
 10 Your Honor, can we approach?
 11 THE COURT: Yes.
 12 MR. SCHIECK: Thank you,
 13 (Off-record bench conference at 11:37:33 until 11:39:44)
 14 MR, KEPHART: If I may, Your Honor, Thank you,
 15 You three kind of are on the hot seat,
 16 So, Mr. Willson, I don't mean to pick on you or
 17 anything, but do you remember when I was talking to the jury
 18 and I —
 19 THE COURT: Mr, Isom.
 20 PROSPECTIVE JUROR ISOM: Yes.
 21 MR. KEPHART: Mr. Isom, Okay.
 22 PROSPECTIVE JUROR ISOM: That's cool,
 23 MR. KEPHART: Mr. Isom, I was talking to the jury
 24 and I -- and I said in a situation where it comes to a point

111-49

1 where maybe you're called upon to actually make the decision
 2 as to what the sentence is —
 3 PROSPECTIVE JUROR ISOM: Right.
 4 MR, KEPHART: -- I asked, I said does anyone think
 5 it would be unfair --
 6 PROSPECTIVE JUROR ISOM: Mm-hmm,
 7 MR. KEPHART: -- if you tell us out here that you
 8 can do it and then you go back into chambers and you bring, I
 9 mean, you — when we first started talking to you —
 10 PROSPECTIVE JUROR ISOM: Right,
 11 MR. !KEPHART: — you indicated that —
 12 PROSPECTIVE JUROR ISOM: I really didn't want —
 13 well, then I wavered a little bit.
 14 MR. KEPHART: Okay, Right,
 15 PROSPECTIVE JUROR ISOM: Yeah.
 16 MR. KEPHART: Wanting to do it, we know that
 17 nobody -- I mean, I don't think anybody here doesn't believe
 18 that this is a very awesome responsibility that's put on you.
 19 PROSPECTIVE JUROR ISOM: Yeah, it is,
 20 MR, KEPHART: But the position is is that we're
 21 trying to get fair jurors for both sides and —
 22 PROSPECTIVE JUROR ISOM: Right,
 23 MR., KEPHART: And I see you as someone that has
 24 indicated that you could not consider life without because you

111-50

1 think that it takes all their hope away.
 2 PROSPECTIVE JUROR ISOM: True.
 3 MR, KEPHART: And then when Mr. Schieck was
 4 talking to you, you seemed to kind of waver with that,
 5 PROSPECTIVE JUROR ISOM: Well —
 6 MR. KEPHART: And right now, it's unfortunate, you
 7 don't get to know all the facts,
 8 PROSPECTIVE JUROR ISOM: True,
 9 MR. KEPHART: And —
 10 PROSPECTIVE JUROR ISOM: That's it,
 11 MR. KEPHART: And I would be the first one to tell
 12 you there's -- I mean, you know from reading the papers and
 13 stuff there's oftentimes where the State's asking for certain
 penalties and they don't get that.
 15 PROSPECTIVE JUROR ISOM: Right,
 16 MR, KEPHART: Because maybe the jury doesn't see
 17 that we -- it's warranted. And that's a possibility. But —
 18 PROSPECTIVE JUROR ISOM: Right.
 19 MR, KEPHART: But I want to -- I want to know for
 20 sure and the Court wants to *know* for sure that if you were
 21 called upon in that situation, could you, seriously, could you
 22 consider life without?
 23 PROSPECTIVE JUROR ISOM: Could I consider it?
 24 MR, KEPHART: Meaning --

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1 PROSPECTIVE JUROR ISOM: I wouldn't want to. I
 2 don't think so.
 3 MR. KEPHART: Okay.
 4 PROSPECTIVE JUROR ISOM: If I have —
 5 MR. KEPHART: That's —
 6 PROSPECTIVE JUROR ISOM: If I have to make a
 7 call right now —
 8 MR, KEPHART: Mm-hmm.
 9 PROSPECTIVE JUROR ISOM: -- that's it.
 10 MR, KEPHART: Okay, Well, unfortunately, you do.
 11 PROSPECTIVE JUROR ISOM: That's —
 12 MR, KEPHART: You have to make a call right now.
 13 PROSPECTIVE JUROR ISOM: Well, that's my answer
 14 then that I couldn't consider it.
 15 MR. KEPHART: Okay.
 16 PROSPECTIVE JUROR ISOM: Yeah,
 17 MR. KEPHART: And don't get me wrong, Mr, Isom.
 18 I think it's very fair that you're saying I want to know all the
 19 facts before I do that,
 20 PROSPECTIVE JUROR ISOM: Yeah.
 21 MR. KEPHART: But the thing is is the question is are
 22 you in such a state of mind with your feelings about the
 23 punishment that you do not want to, that you do not believe
 24 you could ever sentence somebody to life without knowing

111-52

1 that he would never, he or she, would never get out of prison?
 2 PROSPECTIVE JUROR ISOM: I couldn't do it. I
 3 don't think I could.
 4 MR, KEPHART: Okay. Would you like anything else,
 5 Judge? I mean, Mr. Schieck may want to ask him. I don't
 6 know.
 7 Any more, Dave?
 8 MR. SCHIECK: No, Your Honor,
 9 THE COURT: Very well.
 10 At this time, the Court is going to thank and excuse
 11 for cause Juror Badge Number 205, Gregory Willson, Badge
 12 Number 237, Gregory Isom, and Juror Badge Number 254,
 13 Emigdio Estrada.
 14 Would you three gentlemen please report back to
 15 the Office of the Jury Commissioner.
 16 We will then be moving three additional potential
 17 jurors from group two up into group one. 346, Anush
 18 Benham, 350, Lacey Valdez, and 355, Joan McCormick.
 19 The bailiff will put the list back on the easel.
 20 Anush Benham, would you please go through that
 21 exercise
 22 PROSPECTIVE JUROR BENHAM: My name is Anush
 23 Benham. I'm currently between jobs,, I'm married, no
 24 children. My husband is on disability. I've been in Clark

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1 County for ten years, and we moved here from Chicago. And
 2 I'm a high school graduate.
 3 THE COURT: The last job that you had, what was
 4 it?
 5 PROSPEC WE JUROR BENHAM: It was credit
 6 administration manager.
 7 THE COURT: For what kind of a business?
 8 PROSPECTIVE JUROR BENHAM: Lumber,
 9 THE COURT: Lumber. Okay, Thank you.
 10 350.
 11 PROSPECTIVE JUROR VALDEZ: My name is Lacey
 12 Valdez, I work part-time in a private school and also stay
 13 home and home school one of my four children half the day.
 14 My husband, he's a self-employed construction contractor.
 15 I've been in Clark County approximately thirty-seven years.
 16 High school education, no military.
 17 THE COURT: Where did you live before moving
 18 here?
 19 PROSPECTIVE JUROR VALDEZ: I was actually
 20 brought here the week I was born, but I stayed thirty-six years
 21 'cause as a teenager I moved to different states for a little
 22 while but came right back,
 23 THE COURT: So you came here as an infant?
 24 PROSPECTIVE JUROR VALDEZ: Yeah,

111-54

1 works part-time as a assistant manager of a store
 2 [unintelligible]. I've been in Clark County for nineteen years,
 3 moved from Chicago. I have a high school education, a couple
 4 of college courses. And I haven't been in the military,
 5 THE COURT: Thank you.
 6 Ms. Benham, did you listen to the Court's questions
 7 of the first group yesterday?
 8 PROSPECTIVE JUROR BENHAM: Yes.
 9 THE COURT: Were there any of my questions that
 10 you would have answered?
 11 PROSPECTIVE JUROR BENHAM: No.
 12 THE COURT: Ms, Valdez, did you listen to the
 13 Court's questions of the first group yesterday?
 14 PROSPECTIVE JUROR VALDEZ: Yes.
 15 THE COURT: Are there any of my questions that
 16 you would have answered?
 17 PROSPECTIVE JUROR VALDEZ: No,
 18 THE COURT: Ms. McCormick, did you listen to my
 19 questions of the first group yesterday?
 20 PROSPECTIVE JUROR MCCORMICK: Yes.
 21 THE COURT: Are there any of the Court's questions
 22 that you would have answered?
 23 PROSPECTIVE JUROR MCCORMICK: No.
 24 THE COURT: Okay. The State may question these

111-56

1 THE COURT: Okay. And you said that you work
 2 part-time at a private school?
 3 PROSPECTIVE JUROR VALDEZ: Yes.
 4 THE COURT: What do you do?
 5 PROSPECTIVE JUROR VALDEZ: I'm an aide, a
 6 student ai der
 7 THE COURT: With what age group?
 8 PROSPECTIVE JUROR VALDEZ: From kindergarten
 9 to twelfth grade.
 10 THE COURT: With both boys and girls?
 11 PROSPECTIVE JUROR VALDEZ: Yes,
 12 THE COURT: Okay, Thank you.
 13 355.
 14 PROSPECTIVE JUROR MCCORMICK: My name is
 15 Joan McCormick, I'm retired.
 16 THE COURT: From what?
 17 PROSPECTIVE JUROR MCCORMICK: Well, when the
 18 Desert Inn closed, I retired from there and I worked part-time
 19 after that.
 20 THE COURT: What did you do at the Desert Inn?
 21 PROSPECTIVE JUROR MCCORMICK: Change booth.
 22 THE COURT: Okay.
 23 PROSPECTIVE JUROR MCCORMICK: I'm married. I
 24 have three children. My husband is retired and he just -- he

111-55

1 three new potential --
 2 MR. KEPHART: Okay.
 3 THE COURT: jurors in --
 4 MR, KEPHART: Thanks.
 5 THE COURT: -- group one.
 6 MR. KEPHART: Thanks, Judge.
 7 You kind of had an opportunity to hear me talking
 8 today. Did you hear me asking questions and saw some -- all
 9 three of you, all three of you have children. I'm sorry, No.
 10 You aid you had no children.
 11 PROSPECTIVE JUROR BENHAM: I don't have any.
 12 MR. KEPHART: And the two that have children, Ms.
 13 Valdez and Ms. McCormick, have you ever had any situation
 14 with either one of your children, I mean, talked to them or
 15 witness anything that dealt with methamphetamine at all?
 16 PROSPECTIVE JUROR VALDEZ: No.
 17 MR. KEPHART: Okay.
 18 THE COURT: The record shall reflect that --
 19 MR. KEPHART: I'm sorry.
 20 THE COURT: -- Ms. Valdez said no and Ms.
 21 McCormick shook her head to the negative from side to side.
 22 MR. KEPHART: Thank you, Judge.
 23 And, Ms, Valdez, you said that you work as an aide
 24 for kindergarten to twelfth grade.

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1 PROSPECLIVE JUROR VALDEZ: Yes,
 2 MR. KEPHART: What about in your profession; have
 3 you had any dealings with individuals that you suspected or
 4 you knew was involved with methamphetamine in school?
 5 PROSPECTIVE JUROR VALDEZ: No, not in the
 6 school.
 7 MR. KEPHART: Okay, Someplace else?
 8 PROSPECTIVE JUROR VALDEZ: My best friend's
 9 sister-in-law had quite a long draw with it. I kind of went
 10 through with her. But she's the only -- the closest person to
 11 me I've ever really had, you know, acquaintance with that was
 12 into that,
 13 MR. KEPHART: You say a long draw. How long?
 14 PROPELLIVE JUROR VALDEZ: Probably about
 15 three years,
 16 MR. KEPHART: Okay. And what did you do
 17 personally to assist in helping that person?
 18 PROSPECTIVE JUROR VALDEZ: I didn't do anything.
 19 I just kind of cour led my friend who was her sister-in-law
 20 that was trying to deal with her. And she has since recovered
 21 so everything came to an end but —
 22 MR., KEPHART: Did you ever meet her personally?
 23 PROSPECTIVE JUROR VALDEZ: Yes.
 24 MR. KEPHART: Okay. Did you ever see her when

111-58

1 -- for the actions, specifically the death penalty that just went
 2 through my mind.
 3 MR. KEPHART: Okay. Well, since you've been here
 4 listening, you've heard what the position is of the State with
 5 regards to the punishments, at least -- at least as to the three
 6 punishments that she can face, that it's not a capital case and
 7 so death penalty is not an issue. And you heard us
 8 questioning individuals about those three punishments. Do
 9 you have any opinion as to whether or not if you were chose
 10 as a juror that you could sit in judgment and impose those
 11 type of sentences?
 12 PROSPEL.fIVE JUROR BENHAM: The only one I
 13 would have a problem with is with a death penalty and that's a
 14 non-issue so —
 15 MR. KEPHART: Okay. So you could consider all
 16 three of them?
 17 PROPEL.JIVE JUROR BENHAM : Yes.
 18 MR. KEPHART: Okay,, How about you, Ms, Valdez?
 19 Do you have any issues with the three punishments that I
 20 outlined are available here?
 21 PROSPECiIVE JUROR VALDEZ: No.
 22 MR. KEPHART: You could consider all three of
 23 them?
 24 PROSPECTIVE JUROR VALDEZ: Yes.

111-60

1 she was under the influence of methamphetamine?
 2 PROSPECTIVE JUROR VALDEZ: Probably,, She was
 3 pretty spunky anyway so it was hard to tell. That was her
 4 nature. But I can't say for sure that I saw her under it,
 5 MR. KEPHART: Okay.
 6 PROSPECTIVE JUROR VALDEZ: I just saw the big
 7 effects from it.
 8 MR. KEPHART: Well --
 9 PROSPECTIVE JUROR VALDEZ: Not necessarily
 10 when she's under it. Like the losing of the weight, you know,
 11 the body deterioration and the mind deterioration.
 12 MR. KEPHART: When you say mind, what do you
 13 mean?
 14 PROSPECTIVE JUROR VALDEZ: The lack of
 15 accountability for her actions.
 16 MR. KEPHART: Thank you.
 17 Now when you first heard that we were involved in a
 18 murder trial and the defense then, you know, introduced
 19 themselves and the defendant and you saw who was being
 20 charged with murder here, what'd you guys think of? What
 21 went through your head? Anything specific?
 22 I'm gonna pick on you, Ms, Benham.
 23 PROSPECTIVE JUROR BENHAM: That's fine, I
 24 thought of what the consequences may be, punishment for the

111-59

1 MR. KEPHART: Okay. Ms. McCormick. Mrs.
 2 McCormick.
 3 PROSPECTIVE JUROR McCORMICK: Yes, I could.
 4 MR. KEPHART: You could consider all three of
 5 them?
 6 PROSPEUIVE JUROR McCORMICK: Yes, I guess I
 7 could with the evidence, But such a young girl and which —
 8 MR. KEPHART: Okay. Well, you know, that leads
 9 me into this question. Yesterday I asked everybody as a
 10 group, I asked them about the fact that, you know, they heard
 11 basically some of the evidence of what — of what —
 12 MR. SCHIECK: I'm gonna object, Your Honor. We
 13 haven't heard any evidence yet.
 14 MR. KEPHART: I'm sorry. I've --
 15 THE COURT: Sustained.
 16 MR. KEPHART: That's fine, Judge. I'm sorry.
 17 THE COURT: Mr. Kephart will rephrase.
 18 MR. KEPHART: You heard basically what the State
 19 has indicated from what may be shown or what would be
 20 shown in trial with regards to the type of injury that Mr. Bailey
 21 had received and the fact that he's dead. And you also, in
 22 conjunction with the defendant here being a young age, you'll
 23 hear she's eighteen years old at the time.
 24 And you just said, Ms. McCormick, you just said,

111-61

1 well, you know, I consider that, but she's young and --
 2 PROSPELIVE JUROR McCORMICK: Yeah.
 3 MR. KEPHART: Do you have any particular opinion
 4 about that in light of the fact that we're charging a young lady
 5 here, a young girl, or whatever it may, for killing Mr. Bailey in
 6 the way that he did -- that she did?
 7 PROSPECTIVE JUROR McCORMICK: I don't have an
 8 opinion 'cause I don't know the facts yet.
 9 MR. KEPHART: Okay. Okay. You've --
 10 PROSPECTIVE JUROR McCORMICK: I consider it
 11 serious, very serious.
 12 MR. KEPHART: You don't have any opinion that it's
 13 impossible that somebody like the defendant here could
 14 commit that type of crime, do you, just because of her age?
 15 PROSPECTIVE JUROR McCORMICK: No, I think the
 16 circumstances can [unintelligible],
 17 MR. KEPHART: What's that, ma'am?
 18 PROSPELIVE JUROR McCORMICK: I think you'd
 19 have to know the ..cTrumstances,
 20 MR. KEPHART: Okay. But what I'm saying is you
 21 don't have a preconceived idea that somebody eighteen years
 22 old and female could not kill somebody?
 23 PROSPELIVE JUROR McCORMICK: No.
 24 MR. KEPHART: Okay. Either one of you three heard

111-62

1 PROSPECTIVE JUROR BENHAM: I'm sorry.
 2 THE COURT: I was having a hard time hearing her
 3 as well.
 4 PROSPELIVE JUROR BENHAM: I'm sorry. At the
 5 time, ten years ago, the town was really growing and it was
 6 just a move for us from Chicago, where prices were rising, to
 7 Las Vegas where at that time things were more affordable,
 8 THE COURT: Thank you.
 9 MR. KEPHART: And, Ms. Benham, you had indicated
 10 also that your brother was arrested for drug possession in
 11 Illinois.
 12 PROSPELIVE JUROR BENHAM: Yes.
 13 MR. KEPHART: What kind of drugs?
 14 PROSPECTIVE JUROR BENHAM: I believe it was
 15 meth [unintelligible], heroin, cocaine, marijuana. He has a
 16 history of that, which is resolved now, but he did have a
 17 history.
 18 MR. KEPHART: Okay. And that's all [unintelligible].
 19 PROSPECTIVE JUROR BENHAM: Yes.
 20 MR. KEPHART: Has he been convicted? Is he --
 21 PROSPECTIVE JUROR BENHAM: No,
 22 MR. KEPHART: Is he a convicted felon for the
 23 possession --
 24 PROSPECTIVE JUROR BENHAM: No, he isn't.

111-64

1 of the town Panaca?
 2 PROSPECTIVE JUROR VALDEZ: I've heard of it,
 3 never been there.
 4 MR. KEPHART: Never been there. Okay.
 5 THE COURT: That was Ms. Valdez.
 6 PROSPECTIVE JUROR McCORMICK: No.
 7 MR. KEPHART: Yeah, Ms. Valdez said she heard of
 8 it but never been there, Judge, Okay.
 9 THE COURT: The record shall so reflect.
 10 MR. KEPHART: And the other two said no.
 11 PROSPECTIVE JUROR BENHAM: No.
 12 THE COURT: The record shall so reflect.
 13 MR. KEPHART: Ms, Benham, I -- when we were
 14 going through this, what she puts up on the easel here, one of
 15 the questions is how long have you been in our -- as a resident
 16 here in our county. How long have you been here?
 17 PROSPECTIVE JUROR BENHAM: Ten years,
 18 MR. KEPHART: Ten years. And what brought you
 19 here? Was it work?
 20 PROSPECTIVE JUROR BENHAM: It was the -- at the
 21 time the town was growing in leaps an bounds and everything
 22 was just open, too. So it was pretty, you know --
 23 COURT RECORDER: I can't hear. I'm sorry.
 24 THE COURT: I --

111-63

1 MR- KEPHART: -- of drugs or anything? Okay. Is
 2 he an older brother or younger brother?
 3 PROSPECTIVE JUROR BENHAM: Older,
 4 MR. KEPHART: How much older?
 5 PROSPECTIVE JUROR BENHAM: Twelve years.
 6 MR. KEPHART: Do you associate with him still?
 7 PROSPECTIVE JUROR BENHAM: I'm sorry?
 8 MR. KEPHART: Do you still associate with him?
 9 PROSPECTIVE JUROR BENHAM: Yes. He actually
 10 lives with me,
 11 MR. KEPHART: Oh, okay. Here in Las Vegas now?
 12 PROSPECTIVE JUROR BENHAM: Yes.
 13 MR. KEPHART: Okay. All right, What does he do
 14 for work?
 15 PROSPELIVE JUROR BENHAM; He's ill, actually
 16 from using,
 17 MR. KEPHART: Disabled?
 18 PROSPECTIVE JUROR BENHAM: Yeah.
 19 MR. KEPHART: Okay. You said your husband's
 20 disabled as well.
 21 PROSPECTIVE JUROR BENHAM: Yes,
 22 MR. KEPHART: What --
 23 PROSPECTIVE JUROR BENHAM: He was a
 24 journeyman butcher when meat was still up on the hooks. So

111-65

1 his back deteriorated,
 2 MR. KEPHART: From picking meat up on the hooks
 3 you mean?
 4 PROSPECTIVE JUROR BENHAM: Yeah.
 5 MR. KEPHART: Okay,
 6 PROSPECTIVE JUROR BENHAM: In the cold, in and
 7 out of the freezer, And he has blood clots,
 8 MR. KEPHART: Okay. Had you ever — you said that
 9 the most recent one, I guess, you were talking about with your
 10 brother or the last time that he was in -- has he been arrested
 11 for possession of drugs?
 12 PROSPECTIVE JUROR BENHAM: Yes.
 13 MR. KEPHART: And did you know about it when he
 14 got arrested?
 15 PROSPECTIVE JUROR BENHAM: Yes,
 16 MR. KEPHART: Okay, Were you living in Illinois at
 17 that time?
 18 PROSPECTIVE JUROR BENHAM: Yes,
 19 MR. KEPHART: Okay. Did you have any kind of
 20 contact with the law enforcement agencies that arrested him?
 21 PROSPECTIVE JUROR BENHAM: No, except to bail
 22 him out,
 23 MR. KEPHART: Okay. And did he go through a --
 24 being charged and go to trial or anything like that or --

111-66

1 PROSPECTIVE JUROR VALDEZ: Yes,
 2 MR. KEPHART: Okay. And he was pretty upset
 3 about what happened?
 4 PROSPECTIVE JUROR VALDEZ: Yes.
 5 MR. KEPHART: It shook him up?
 6 PROSPECTIVE JUROR VALDEZ: Yes.
 7 MR. KEPHART: Oh. And you said that they weren't
 8 able to catch anybody. Do you know the extent of what the -
 9 police did to try to find somebody?
 10 PROSPECTIVE JUROR VALDEZ: I really don't know
 11 too much information other than he has a detective friend or
 12 somebody at his church that said that he, as a friend, would
 13 make sure it got pursued because usually cases like that are
 14 kind of washed away because of the bigger, worsen crimes out
 15 there, and but hadn't heard of any tracking of these men being
 16 done,
 17 MR. KEPHART: Okay. How long ago did it happen?
 18 PROSPECTIVE JUROR VALDEZ: I would say three to
 19 four weeks ago. About four weeks ago.
 20 MR. KEPHART: Oh, it's just recently?
 21 PROSPECTIVE JUROR VALDEZ: Yeah.
 22 MR. KEPHART: Oh, okay, Have you personally ever
 23 had any type of contact with the police that they needed to do
 24 some work for you or anything?

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1 PROSPECTIVE JUROR BENHAM: No.
 2 MR. KEPHART: He never even got charged?
 3 PROSPECTIVE JUROR BENHAM: Well, he did get
 4 charged, I — maybe I wasn't there in court.
 5 MR. KEPHART: Okay,
 6 PROSPECTIVE JUROR BENHAM: Yeah, he did get
 7 charged.
 8 MR. KEPHART: Is there anything about that
 9 situation and your contact with the law enforcement back in
 10 Chicago that would give you some concern about being here,
 11 being fair in this case?
 12 PROSPECTIVE JUROR BENHAM: No,
 13 MR. KEPHART: Okay. Thanks, Ms. Benham,
 14 Ms. Valdez, you indicated that your nephew was a
 15 victim of a robbery here in Las Vegas and that nobody was
 16 caught on.
 17 PROSPECTIVE JUROR VALDEZ: Correct.
 18 MR. KEPHART: So I'm to take it that he's never
 19 been to court or anything to testify about somebody or point
 20 somebody out and say that --
 21 PROSPECTIVE JUROR VALDEZ: Right,
 22 MR. KEPHART: -- person did this, Okay. After it
 23 occurred, did you have any contact with him, did you talk to
 24 him, did he talk to you about what occurred or anything?

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1 PROSPECTIVE JUROR VALDEZ: Yes. About two
 2 weeks ago my daughter --
 3 MR. KEPHART: Two weeks.
 4 PROSPECTIVE JUROR VALDEZ: Yeah. Maybe less,
 5 about a week and a half ago, my daughter who's thirteen was
 6 driving or riding in a friend's car.
 7 MR. KEPHART: Mm-hmm.
 8 PROSPECTIVE JUROR VALDEZ: And they were hit
 9 and run, and I had to be there to file a report.
 10 MR. KEPHART: Did they catch anybody in that?
 11 PROSPECTIVE JUROR VALDEZ: I actually knew the
 12 person because they got the information. My daughter wrote
 13 down the license plate and make and model of the vehicle.
 14 They happened to be one of my neighbors.
 15 MR. KEPHART: Okay. What did you do? Did you
 16 take -- did you go over and confront your neighbors yourself
 17 or did you call the police and have them come out and —
 18 PROSPECTIVE JUROR VALDEZ: I gave the
 19 information to my friend who was driving the vehicle, who
 20 gave the information to the policemen. And we're just letting
 21 the policemen take matters into their own hands.
 22 MR. KEPHART: Has the police, do you know, if you
 23 know, contacted them or done any followup or done anything
 24 with regards to the hit and run?

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1 PROSPECTIVE JUROR VALDEZ: I know for sure they
2 went by the house one time, but I don't know if they've made
3 their way back there. They advised my friend to go to the
4 insurance companyr

5 MR, KEPHART: Okay Is there anything with
6 regards to what happened to your nephew or what happened
7 to your daughter in the recent weeks that you think would
8 cause some concerns with you being able to be fair sitting here
9 as a juror?

10 PROSPECTIVE JUROR VALDEZ: Well, my opinion on
11 that is I understand that's what our society in Las Vegas is like,
12 you know, with different crimes, that we really can't expect the
13 police to take care of all these minor details anymore with
14 what they do have on their hands. So I just, you know, have
15 an understanding of that and that there are bigger and better
16 issues out there for them. So —

17 MR, KEPHART: Okay, Thank you, Ms, Valdez.
18 Judge, at this time, I will -- I will pass the panel for
19 cause,

20 THE COURT: Okay,
21 MR: KEPHART: Okay.

22 THE COURT: We're gonna be taking our lunch
23 recess and resuming at 1:15. And at that time, Mr. Schieck
24 will resume his questioning.

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1 have to be here, too. So that had to get referred to her dad,
2 and on we go.

3 We are proceeding forward with the voir dire by Mr.
4 Schieck at this time,

5 MR, SCHIECK: Thank you, Your Honor.

6 Good afternoon, ladies and gentlemen. I'm going to
7 be asking you some general questions of the entire group, to
8 which if you respond you can raise your hand and we'll follow -
9 up on those areas, After I have concluded on the general
10 areas of inquiry that I'm going to make, then Ms. Greenberger
11 and Ms. Zalkin will ask individual questions concerning items
12 that came up in previous questioning over the course of the
13 last two days on items that they've been noting as we went
14 through the process.

15 And let me start here, and that has to do with the
16 fact that in a first degree murder case the jury, by statute,
17 gets to select the sentence should the defendant be convicted
18 of the crime. And because of that, when we ask questions
19 during voir dire, we have to ask about potential penalties at
20 the beginning of the case before you've heard any evidence in
21 the case. That does not mean and can't be taken as any
22 evidence that the defendant is guilty of the crime.

23 Does anybody have a problem with that concept?
24 The fact that we ask those questions is not evidence of any

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1 During the lunch recess you're admonished not to
2 talk or converse amongst yourselves, nor with anyone else, on
3 any subject connected with this trial, you're not to read, watch
4 or listen to any report of or commentary on the trial or any
5 person connected with the trial, by any medium of information,
6 including, without limitation, newspaper, television, radio and
7 Internet, and you're not to form or express any opinion on any
8 subject connected with the trial until the case is finally
9 submitted to you,

10 CouA's in recess 'tit 1:15,
11 (Court recessed at 12:03:01 until 13:35:33)□
12 (Prospective jurors are present)

13 THE BAILIFF: Department II is back in session.
14 Please be seated.

15 THE COURT: The record shall reflect we're
16 resuming trial in State versus Lobato under Case Number
17 C177394, in the presence of Ms. Lobato, her three counsel, the
18 two prosecuting attorneys, and ladies and gentlemen of the
19 potential panel.

20 We received a note which will be marked as Court's
21 Number 4. Court and counsel have reviewed it in chambers. I
22 just got a phone call from my daughter from her school that
23 she's had a sore throat for a couple days, now her stomach is
24 hurting her and she's got a headache and, you know what, I

111-71

1 type of culpability in the case. It's just a fact that we have to
2 do by statute. Does anybody have a problem with that?

3 Does anybody have a problem with the presumption
4 of innocence that, as Ms. Lobato sits here today, that you all
5 must presume that she's innocent of the charges? Even
6 though we're asking about life without parole and life with
7 parole and a sentence of years, does anybody have a problem
8 with that concept? That it's extremely possible in any case
9 that the defendant is found not guilty, and in which case there
10 wouldn't be a penalty hearing and all these questions we've
11 asked would have been for nothing. Anybody have a problem
12 with the fact that we're taking a few minutes to discuss this?

13 Seeing no hands to any of those questions, I'll move
14 on.

15 THE COURT: The record shall so reflect,

16 MR. SCHIECK: Mr. Kephart had asked about the
17 three possible punishments this morning, and that's the first
18 time the entire panel had heard that that may be a possibility
19 for you to decide in this case. And now you've had over the
20 lunch hour to think about it. Has anyone changed their
21 position concerning their ability to sit and deliberate a penalty
22 in a case of first degree murder? Has anyone changed their —

23 THE COURT: The record shall reflect no response,
24 MR: SCHIECK: Thank you, Your Honor.

111-73

1 Has anyone changed their position that they could
 2 consider all three possible forms of punishment should that
 3 come to pass?
 4 Seeing no hands, I will move on,
 5 Is it okay if I note no hands, Your Honor, and then
 6 just move on without bothering you?
 7 THE COURT: That works.
 8 MR. SCHIECK: Thank you, Your Honor,
 9 THE COURT: You're welcome,
 10 MR, SCHIECK: As a component of any case that
 11 involves murder there, by necessity, is going to be a deceased
 12 person involved in the case, And part of the investigation of a
 13 death case is going to include the fact that there will be
 14 photographs of a deceased person that will be displayed for
 15 the jury in order for the State to be able to prove cause and
 16 manner of death, which are elements of every homicide case.
 17 That said, you're going to need to be able to look at some
 18 rather unpleasant photographs in this case of a deceased
 19 person,
 20 Is there anyone that thinks looking at those type of
 21 photographs is gonna cause them a concern or inhibit their
 22 ability to be fair and impartial in the case?
 23 Okay. And I'm gonna try the best I can on names
 24 and numbers,

111-74

1 what the facts are or what has been proven to you, even
 2 though it may be unpleasant?
 3 PROSPECTIVE JUROR ANDERSON: I can probably
 4 be a juror but need counseling afterwards probably.
 5 MR. SCHIECK: We don't want to force anyone into a
 6 position where they're gonna need counseling afterwards, And
 7 I can assure you, well, I'm fairly confident that I can assure
 8 you that no one is going to be trying to force you to look at --
 9 more than you need to look at in order to make the decision.
 10 And you will have the testimony of some doctors to help you in
 11 that regard, what their opinion is of what you're looking at.
 12 Do you think, though, that you'd be able to look at that and be
 13 fair to both sides in deciding the case?
 14 PROSPECTIVE JUROR ANDERSON: I could be fair to
 15
 16 MR, SCHIECK: And --
 17 PROSPECTIVE JUROR ANDERSON: I'm just
 18
 19 still be impartial. It's just it'd really be difficult to look at it.
 20 MR. SCHIECK: Okay. And a part of the case does
 21 involve a dismemberment, and so that's another factor that's
 22 perhaps unusual. Anything about that that takes it to even a
 23 higher level for you?
 24 PROSPECTIVE JUROR ANDERSON: Well, I mean, its

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1 PROSPECTIVE JUROR ANDERSON: That's okay, My
 2 name is
 3 MR, SCHIECK: But I would guess that you're Tai.
 4 PROSPECTIVE JUROR ANDERSON: Tai,
 5 MR, SCHIECK: Tai Anderson.
 6 PROSPECTIVE JUROR ANDERSON: Yes. I don't
 7 know being impartial, so I don't think I'd have a problem with
 8 being impartial, but I would have a hard time looking at the
 9 photographs, I can't watch scary movies. I don't deal well
 10 with the graphics,
 11 MR, SCHIECK: Okay, And it's likely that that's a
 12 very normal reaction that everyone has,
 13 PROSPECTIVE JUROR ANDERSON: I'm already
 14 having nightmares, as we speak, and I don't even know
 15 anything about the case and I'm already having some
 16 uncomfot -- I'm, you know, being uncomfotable with it.
 17 MR. SCHIECK: As part of this case, the jury's gonna
 18 have to decide the cause of death and the manner of death
 19 and the instrumentality used to cause that death, as well as
 20 some other factors that go into that. That's gonna require that
 21 you judge the testimony of some expert witnesses that are
 22 gonna display to you photographs of a deceased person with
 23 wounds to his body and quite a bit of blood. Are you gonna
 24 be able to look at those and do the job as a juror and decide

111-75

1 the same thing. I'm just uncomfortable with it.
 2 MR, SCHIECK: Okay. Anyone else that has the
 3 same concerns about looking at -- Courtney Delgado, Okay.
 4 And that's Badge Number 213. You've raised your hand.
 5 What are you feeling right now?
 6 PROSPECTIVE JUROR DELGADO: Just the same
 7 way. I have a weak stomach,
 8 MR. SCHIECK: Okay. I mean, so we -- could we
 9 have concerns that you may become ill or this is just --
 10 PROSPECTIVE JUROR DELGADO: No. It's just
 11 discomforting.
 12 MR. SCHIECK: Well, it's not nice for anybody to look
 13 at unpleasant photographs. I'm just --
 14 PROSPECTIVE JUROR DELGADO: Yeah.
 15 MR. SCHIECK: Do you think you'd be able to put
 16 that aside and decide the facts in the way that I've previously
 17 discussed?
 18 PROSPECTIVE JUROR DELGADO: Yes.
 19 MR. SCHIECK: Okay. It's just a concern you have in
 20 the case?
 21 PROSPECTIVE JUROR DELGADO: Yeah.
 22 MR. SCHIECK: But you think you can do the job for
 23 us?
 24 PROSPECTIVE JUROR DELGADO: I think so.

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1 MR. SCHIECK: Okay, And next to you would be
 2 Karen Giardina.
 3 PROSPEC.1 WE JUROR GIARDINA: Giardina,
 4 MR. Badge 215, What are you thinking
 5 right now?
 6 PROSPECTIVE JUROR GIARDINA: I also have a
 7 hard time with graphics. I don't watch anything where there is
 8 blood and gore. I stay away from those kind of things
 9 because they're too -- just the imaginary is just caught in my
 10 mind. It doesn't go away easily for me. And so I just have
 11 concerns about that part of it, just seeing things. The rest of
 12 it, I don't have a problem with. I do know that having to listen
 13 to descriptions of someone having a severe injury with a lot of
 14 blood, I got very faint one time. So that's my only concern.
 15 MR. SCHIECK: You get faint here or is this a
 16 previous occasion that —
 17 PROSPECTIVE JUROR GIARDINA: Just a mother
 18 telling me what happened to her child. It was very
 19 [unintelligible] for liis child and I-- and I got faint listening to
 20 it.
 21 MR. SCHIECK: Now when you see things in the
 22 movies or on TV that are graphic, you understand that those
 23 are actors and it's probably ketchup, or whatever, they use.
 24 PROPELLiVE JUROR GIARDINA: I don't watch

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1 which we all agree is a television show that's created for the
 2 purpose of selling advertising time but also has some
 3 component of reality to it. Anybody that is going to be
 4 thinking about what's on — what was shown on TV as opposed
 5 to what the witnesses come in here and tell you about, their
 6 science and their collection of evidence? In other words, no
 7 one is gonna be second guessing and say, well, on CSI the guy
 8 would have been able to do something even greater than can -
 9 be expected and hold the State to that burden. Anybody
 10 gonna have that problem?
 11 On the other hand, are you going to be able to
 12 accept the testimony of someone that has expertise in a
 13 certain area, let's say a fingerprint examiner, and accept his
 14 testimony as to what his findings are and accept that as
 15 evidence in the case? Anybody have a problem with that? For
 16 instance, if -- some people just don't believe in DNA, that
 17 there's -- it's impossible that you're going to be able to take a
 18 drop of blood or a hair follicle or other pieces of human
 19 anatomy and determine who it came from just by running it
 20 through this testing procedure. A lot of people at the very
 21 beginning were very skeptical about that and it's sort of
 22 become more accepted now. Anybody have a problem with
 23 DNA evidence and the fact that DNA evidence is gonna be
 24 presented in this case? And you'd be willing —

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1 those things at all, I do not choose to watch those things,
 2 MR. SCHIECK: But here what you're gonna be
 3 seeing is gonna be actual photographs.
 4 PROSPECTIVE JUROR GIARDINA: I realize that,
 5 MR. SCHIECK: You think you're gonna be able to
 6 put that aside and judge the case on the evidence that's
 7 presented to you?
 8 PROSPECTIVE JUROR GIARDINA: Yes, that doesn't
 9 -- I have no problem with the decision. I'm only worried about
 10 how much I c^ory with me in my mind after I've seen it and for
 11 how many days it stays in my mind.
 12 MR. SCHIECK: Do you think you'll be thinking about
 13 that as opposed to looking at the evidence that's presented in
 14 the case?
 15 PROSPECTIVE JUROR GIARDINA: No.
 16 MR. SCHIECK: You think you'll be able to do the job
 17 as a juror then?
 18 PROSPECTIVE JUROR GIARDINA: Absolutely.
 19 MR. SCHIECK: Anybody in the front row that has
 20 concerns other than have been expressed?
 21 How about out in the -- in the audience?
 22 No additional hands, Your Honor,
 23 Now we heard some questioning about the TV show
 24 CSI and some of the procedures that they depict on that show,

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1 THE COURT: The record shall reflect that no
 2 response was made to this question, nor to the prior question.
 3 MR_ SCHIECK: Thank you, Your Honor,
 4 Anybody have a problem with that? The answer
 5 was no.
 6 Then, likewise, if an expert comes in and says there
 7 was no DNA that could be tested, that's a factor you'd like to
 8 know in the case?
 9 Is there anyone here that doesn't want to see all of
 10 the physical evidence that exists in the case before making a
 11 decision or wants to base their decision on what the physical
 12 evidence is in the case? Is there anyone that doesn't agree
 13 with that concept?
 14 THE COURT: The record shall reflect no response.
 15 MR. SCHIECK: Thank you, Your Honor,
 16 Is there anyone that has a problem with individuals
 17 that testify as expert witnesses, that for some reason they're
 18 not to be trusted? Has anyone ever had a bad experience with
 19 an expert or an expert witness in a case or in your everyday
 20 lives?
 21 THE COURT: The record shall reflect no response to
 22 that last series of questions.
 23 MR, SCHIECK: Now, as we have previously told you
 24 in our introduction, you're gonna hear about towns such as

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1 Pioche, Nevada, Panaca, Nevada and Caliente, Nevada, which
 2 are in a fairly close proximity to each other in Lincoln County,
 3 up north here of Las Vegas, In addition to Panaca, is there
 4 anyone that's familiar with the towns of Pioche or Caliente?
 5 We're gonna start at the beginning. Mr, —
 6 PROSPECTIVE JUROR ARIENO: Arieno. 196, I've
 7 driven like up into Ely, but that's -- I took the 318. I didn't
 8 take the 93/95 up.
 9 MR. SCHIECK: So you took --
 10 PROSPECTIVE JUROR ARIENO: Well, I bypassed
 11 them.
 12 MR. SCHIECK: You took --
 13 PROSPECTIVE JUROR ARIENO: But I did see them
 14 on the map.
 15 MR. SCHIECK: You took the Sunnyside cutoff
 16 through Lund?
 17 PROSPECTIVE JUROR ARIENO: Correct.
 18 MR. SCHIECK: Not because you wanted to avoid
 19 those towns; just 'ause it's shorter?
 20 PROSPECTIVE JUROR ARIENO: It's faster,, Right.
 21 MR, SCHIECK: Okay. What were you going to Ely
 22 for?
 23 PROSPECTIVE JUROR ARIENO: Camping.
 24 MR. SCHIECK: Anyone else next? And you're Mr. —

size now as it was thirty-five years ago. It was pretty small
 then.
 PROSPECTIVE JUROR SHARPE: Yeah, it's still small.
 MR. SCHIECK: Anyone else with those three towns?
 PROSPECTIVE JUROR RACEL: 229, Suzanne Racel.
 It's the same thing as before, camping and fishing. And I've
 been to Eagle Valley,, I think it's in Caliente,
 MR, SCHIECK: Mm-hmm.
 PROSPECTIVE JUROR RACEL: And we've been up to
 Cave Lake and such up in Ely, And I've been to student
 council stuff years ago up in Ely. I have lived here so long.
 But it's mainly, you know, camping and recreational.
 MR. SCHIECK: Okay. When you'd go up there,
 you'd stay on the main road?
 PROSPECTIVE JUROR RACEL: Right,
 MR. SCHIECK: Any impression of any of those
 towns?
 PROSPECTIVE JUROR RACEL: Pretty. It's cooler
 than here,
 MR. SCHIECK: Okay, Every place is cooler than
 here.
 For the record, everybody nodded at that, Your
 Honor.
 Next is?

PROSPECTIVE JUROR SHARPE: Sharpe,
 MR. SCHIECK: Sharpe,
 PROSPECTIVE JUROR SHARPE: Yes. We used to
 take that way to go deer hunting.
 MR. SCHIECK: Okay. Up through Pioche and —
 PROSPECTIVE JUROR SHARPE: Yes.
 MR. SCHIECK: -- north of there, Did you ever stop
 in any of those three towns?
 PROSPECTIVE JUROR SHARPE: Yes.
 MR, SCHIECK: Any impressions of — well, which
 towns did you stop in?
 PROSPECTIVE JUROR SHARPE: Pioche.
 MR, SCHIECK: Pioche?
 PROSPECTIVE JUROR SHARPE: Mm-hmm.
 MR. SCHIECK: Any --
 PROSPECTIVE JUROR SHARPE: Just mostly to gas
 up and get a bite to eat and stuff like that,
 MR, SCHIECK: Really no other dealings with any of
 the residents there at Pioche?
 PROSPECTIVE JUROR SHARPE: No.
 MR. SCHIECK: Okay. How long ago was that?
 PROSPECTIVE JUROR SHARPE: Oh, God, You're
 gonna give away my age. About thirty-five years ago.
 MR. SCHIECK: Pioche is probably about the same

PROSPECTIVE JUROR BARES: 221, Pam Belles.
 MR, SCHIECK: Okay.
 PROSPECTIVE JUROR BARES: A friend of my
 husband and I has a small home in Pioche, and we stayed up
 there about four years ago for two nights. It's just a little one-
 horse town. I'd have no -- I don't want to go back,
 MR. SCHIECK: Any reason why you don't want to
 go back other than it's --
 PROSPECTIVE JUROR BAILES: It's just a little one-
 horse town, with a barn and a restaurant, and that's about all I
 saw.
 MR. SCHIECK: Not much to do there?
 PROSPECTIVE JUROR BAILES: Nothing there,
 They're like —
 MR. SCHIECK: Okay.
 PROSPECTIVE JUROR BAILES: And it was cold,
 very,
 MR. SCHIECK: Must be wintertime,
 PROSPECTIVE JUROR BAILES: Yeah.
 MR. SCHIECK: Anyone else?
 PROSPECTIVE JUROR CICILIANO: 220, Tom
 Ciciliano, I've been there numerous times. I do a lot of
 hunting. I've been through both -- all those little, you know,
 towns.

MR. SCHIECK: Well, just going through to go hunting?
 PROSPECTIVE JUROR CICILIANO: Right. Well, we used to have a family reunion in Caliente because I have a lot of family in Ely. And so they'd meet halfway,
 MR. SCHIECK: Okay,,
 PROSPECTIVE JUROR CICIUANO: When I was a kid.
 MR. SCHIECK: In fact you said you were originally from Ely?
 PROSPECTIVE JUROR CICILIANO: Yes. I was born there,
 MR. SCHIECK: Okay. How long did you live up in Ely?
 PROSPECTIVE JUROR CICILIANO: I was transported right here —
 MR. SCHIECK: Oh, okay. So —
 PROSPECTIVE JUROR CICILTANO: -- as an infant.
 And so —
 MR. SCHIECK: You still —
 PROSPECTIVE JUROR CICILIANO: -- I've been here.
 MR. SCHIECK: You still got family up in there?
 PROSPECTIVE JUROR CICILIANO: Yes.
 MR. SCHIECK: I mean, in some ways Ely's a pretty

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PROSPECTIVE JUROR CHRISTINE MILLER: From Tonopah.
 MR. SCHIECK: Tonopah. Okay. That's right. Okay. Tonopah these days is a pretty small town, too.
 PROSPECTIVE JUROR CHRIS I 1NE MILLER: It was small when I lived there and I heard it's getting smaller.
 MR. SCHIECK: In Tonopah everybody pretty much knew what everybody else was doing that lived there?
 PROSPECTIVE JUROR CHRISTINE MILLER: Exactly.
 MR. SCHIECK: Okay. You knew who came and who went and —
 PROSPECTIVE JUROR CHRISTINE MILLER: I'm sorry?
 MR. SCHIECK: You knew who was coming to town and who was leaving town, and things like that?
 PROSPECTIVE JUROR CHRISTINE MILLER: For the most part, yeah.
 MR. SCHIECK: Did you go to high school there?
 PROSPECTIVE JUROR CHRISTINE MILLER: I did not.
 MR. SCHIECK: How long did you live in Tonopah?
 PROSPECTIVE JUROR CHRISTINE MILLER: I lived there from 1981 through 1987.
 MR. SCHIECK: And your father was D.A. up there, is

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small town, too.
 PROSPEC11VE JUROR CICILIANO: It is.
 MR. SCHIECK: Although it's much bigger than the other three, it's still a small-town atmosphere.
 PROSPECTIVE JUROR CICIUANO: Yes.
 MR. SCHIECK: Everybody seems to know everybody else's business, what's going on in town?
 PROSPECTIVE JUROR CICILIANO: Probably so. I've -- I haven't lived there so I don't know. I don't really, you know, pay attehtion to that end of it.
 MR. SCHIECK: Anyone else?
 PROSPEL11VE JUROR CHRIS11NE MILLER: 244, Christine Miller,
 MR. SCHIECK: Mm-hmm.
 PROSPEINE JUROR CHRISTINE MILLER: Just basically when I was younger, I lived up in the northern part of the state, so just kind of traveling around in the car with my dad but nothing of significance. I've been through each of these towns, Ely, Panaca, but nothing of significance that I remembered.
 MR. SCHIECK: Were you the juror from Zephyr Cove?
 PROSPECTIVE JUROR CHRIS T INE MILLER: No.
 MR. SCHIECK: No.

that —
 PROSPECTIVE JUROR CHRISTINE MILLER: Yes, he is.
 MR. SCHIECK: Okay. What —
 PROSPECTIVE JUROR CHRISTINE MILLER: Yes, he was.
 MR. SCHIECK: What was his name, is his name?
 PROSPEL T IVE JUROR CHRIS1NE MILLER: Peter
 MR. SCHIECK: Peter Knight?
 PROSPECTIVE JUROR CHRISTINE MILLER: Yes.
 MR. SCHIECK: Okay. He's retired now?
 PROSPECTIVE JUROR CHRISTINE MILLER: Just retired.
 MR. SCHIECK: And was he based in Tonopah?
 PROSPECTIVE JUROR CHRISTINE MILLER: Tonopah. And then he just transferred to Pah rump the last couple years.
 MR. SCHIECK: Have you ever worked for an attorney that principally practiced criminal law?
 PROSPECTIVE JUROR CHRISTINE MILLER: Yes.
 MR. SCHIECK: And who was --
 PROSPEL11VE JUROR CHRIS1NE MILLER: Stew

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1 MR, SCHIECK: Stew Bell.
 2 PROSPECTIVE JUROR CHRIS LINE MILLER: When
 3 he was in private practice,
 4 MR, SCHIECK: Okay. Now Stew Bell became our
 5 district attorney and became the head prosecutor for Clark
 6 County.
 7 PROSPECTIVE JUROR CHRIS LINE MILLER: Mm-
 8 hmm.
 9 MR, SCHIECK: That's kind of a switch of hats,
 10 wouldn't you say?
 11 PROSPECTIVE JUROR CHRISTINE MILLER: Mm-
 12 hmm.
 13 MR, SCHIECK: How did that make you feel?
 14 THE COURT: The record shall reflect that both
 15 times that she said "Mm-hmm" —
 16 PROSPECTIVE JUROR CHRISTINE MILLER: Oh, I'm
 17 sorry. Yes.
 18 THE COURT: -- she nodded her head up and down.
 19 PROSPECTIVE JUROR CHRISTINE MILLER: I'm
 20 sorry, Your Honor.
 21 THE COURT: Thank you.
 22 PROSPECTIVE JUROR CHRISTINE MILLER: How did
 23 it make me feel to switch sides?
 24 MR, SCHIECK: Yes.

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1 PROSPECTIVE JUROR CHRISTINE MILLER: That's a
 2 biased question. I think he's a good judge,
 3 MR. SCHIECK: Anything about those experiences
 4 that would affect your ability to be fair to both sides in this
 5 case?
 6 PROSPECTIVE JUROR CHRISTINE MILLER: I think
 7 there could be. I think I could try to be fair and impartial. I
 8 honestly know how I think but —
 9 MR. SCHIECK: Okay, And you -- how you think is
 10 basically from the prosecution side?
 11 PROSPECTIVE JUROR CHRISTINE MILLER:
 12 Absolutely.
 13 MR, SCHIECK: And there's nothing wrong with that,
 14 I mean. Certainly, I mean, your father was a prosecutor for
 15 many years. If you were on trial, would you want someone in
 16 your frame of mind to sit on their jury?
 17 PROSPECTIVE JUROR CHRISTINE MILLER: I don't
 18 know. I'm torn about that. I would want, obviously, yes, I
 19 would want somebody fair and impartial. Do I necessarily
 20 think I would want me? I question that in the sense that with
 21 my knowledge of the law and my experience, I somewhat
 22 have preconceived interests.
 23 MR, SCHIECK: Preconceived notions as to the guilt
 24 of the defendant?

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1 PROSPECTIVE JUROR CHRISTINE MILLER: It made
 2 for a lot of argumentative dinner discussions sometimes. I
 3 don't know, I -- honestly, I prefer the prosecution side from
 4 my own experience,
 5 MR, SCHIECK: What were the argumentative
 6 discussions about?
 7 PROSPECTIVE JUROR CHRIS LINE MILLER: Oh,
 8 Mainly just I was learning, I should say, and so I would ask
 9 questions. More in a learning capacity and —
 10 MR. SCHIECK: Ask questions of your father who —
 11 PROSPECTIVE JUROR CHRISTINE MILLER: Yeah.
 12 MR. SCHIECK: — was a prosecutor?
 13 PROSPECTIVE JUROR CHRISTINE MILLER: Yeah.
 14 Exactly. So —
 15 MR. SCHIECK: And when you were working for
 16 Stew Bell when he was defending cases, what type of work did
 17 you do? Were you a paralegal then?
 18 PROSPECTIVE JUROR CHRISTINE MILLER: No, I
 19 was just actually starting in the business and I was just a
 20 secretary at that time, And I worked for him only for about six
 21 months. It was right before he ran for district attorney and
 22 became a judge. So it was —
 23 MR. SCHIECK: How do you feel about him
 24 becoming a judge?

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1 PROSPECTIVE JUROR CHRISTINE MILLER: Possibly,
 2 MR. SCHIECK: So you're really not coming in with a
 3 totally clean slate, so to speak?
 4 PROSPECTIVE JUROR CHRISTINE MILLER:
 5 Potentially,
 6 MR. SCHIECK: Which, I mean, it concerns you
 7 enough that you bring it up,
 8 PROSPECTIVE JUROR CHRISTINE MILLER:
 9 Absolutely. Absolutely.
 10 MR. SCHIECK: You think you can be fair and
 11 impartial is what I'm understanding,
 12 PROSPECTIVE JUROR CHRISTINE MILLER: I can
 13 try. Absolutely.
 14 MR. SCHIECK: But you can't assure us that the fact
 15 that you tend toward the prosecution isn't gonna put an undue
 16 burden on us?
 17 PROSPECTIVE JUROR CHRISTINE MILLER: All I can
 18
 19 MR. SCHIECK: Well, we need — we kind of need to
 20 know whether or not you're gonna be able to do it, though.
 21 PROSPECTIVE JUROR CHRISTINE MILLER: Yes.
 22 MR, SCHIECK: Anyone else?
 23 PROSPECTIVE JUROR ROBERT MILLER: Deer
 24 hunting twenty, thirty years ago.

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1 MR. SCHIECK: And that's it?
 2 PROSPECTIVE JUROR ROBERT MILLER: Yeah.
 3 COURT RECORDER: What's your number, sir?
 4 PROSPECTIVE JUROR ROBERT MILLER: 247,
 5 MR SCHIECK: I notice you've been up and down
 6 during the course of the proceedings. Is your back bothering
 7 you or —
 8 PROSPECTIVE JUROR ROBERT MILLER: No. I've
 9 got a bad knee and I asked to be moved to where I had more
 10 leg room, but they told me it's impossible to do that. So —
 11 MR. SCHIECK: Okay. The jury box actually has
 12 more room. Do you think if you were in the jury box where
 13 there is more leg room that would alleviate your knee
 14 problem?
 15 PROSPECTIVE JUROR ROBERT MILLER: I guess.
 16 MR. SCHIECK: We just don't want to --
 17 PROSPECTIVE JUROR ROBERT MILLER: It felt
 18 better during lunch when I could extend it. But here, this has
 19 got a wall in front of you and you can't put your leg out.
 20 MR. SCHIECK: Here in the jury box, let's see if
 21 we've got room for you to stretch out. That will be better for
 22 you.
 23 PROSPECTIVE JUROR ROBERT MILLER: Oh,
 24 good.

111-94

1 to do with it. I have never been there. I really don't even
 2 know where it is.
 3 MR, SCHIECK: Anything about the fact that your
 4 father might have worked there —
 5 PROSPECTIVE JUROR ROMNEY: In-law.
 6 MR. SCHIECK: Father-in-law might have worked
 7 there.
 8 PROSPECTIVE JUROR ROMNEY: Nothing. I don't -
 9 know this much about my father-in-law. That's why I'm not
 10 even sure if that's the place,
 11 MR. SCHIECK: Thank you for bringing that to our
 12 attention,
 13 PROSPECTIVE JUROR ROMNEY: Well, just in case.
 14 I don't —
 15 MR. SCHIECK: Okay, And you're?
 16 PROSPECTIVE JUROR GLYNN: I'm Lori Glynn, 274,
 17 MR. SCHIECK: Mm-hmm.
 18 PROSPECTIVE JUROR GLYNN: My grandmother was
 19
 20 twenty years ago. She lived in Pioche most of her life. When
 21 she passed, we buried her there. My mother grew up there.
 22 MR. SCHIECK: Did you spend much time up there?
 23 PROSPECTIVE JUROR GLYNN: Just going to visit
 24 grandma, you know, when I was little.

111-96

1 MR. SCHIECK: Okay.
 2 THE COURT: Counsel, approach.
 3 (Off-record bench conference at 13:59:45 until 14:00:28)
 4 MR, SCHIECK: There were some other hands with
 5 people familiar. Go ahead and say your name and your badge
 6 number,
 7 PROSPECTIVE JUROR ROMNEY: 268, Lesa Romney.
 8 MR. SCHIECK: Mm-hmm.
 9 PROSPECTIVE JUROR ROMNEY: Well, I'm not really
 10 for sure, but I think it's -- Pioche is a mining town,
 11 MR. SCHIECK: It was for --
 12 PROSPECTIVE JUROR ROMNEY: About sixty years
 13 ago. Okay. I think my father-in-law must have lived there or
 14 something,
 15 MR. SCHIECK: Pioche was a mining town back
 16 toward the turn of the century.
 17 PROSPECTIVE JUROR ROMNEY: Oh. Well --
 18 MR. SCHIECK: But it continued to mine for a while
 19 and then went downhill_
 20 PROSPECTIVE JUROR ROMNEY: Well, I don't know.
 21 Something about that rang bells when you said Pioche. I don't
 22 know enough about it to really -- but I think he must have --
 23 MR. SCHIECK: Did you ever —
 24 PROSPECTIVE JUROR ROMNEY: -- had something

111-95

1 MR. SCHIECK: Form any opinions about small-town
 2 Nevada?
 3 PROSPECTIVE JUROR GLYNN: Just a little town.
 4 Like she said, a one-horse town. There ain't much to do there
 5 when you're a kid.
 6 MR, SCHIECK: Anyone else?
 7 PROSPECTIVE JUROR OSBORN: 328.
 8 MR, SCHIECK: Mr. Osborn.
 9 PROSPECTIVE JUROR OSBORN: Correct. I spent
 10 one night in Caliente, and that was enough.
 11 MR. SCHIECK: Not much to do in Caliente either?
 12 PROSPECTIVE JUROR OSBORN: Not a whole lot,
 13 MR, SCHIECK: Anything about that experience that
 14 would affect you in this case?
 15 PROSPECTIVE JUROR OSBORN: No.
 16 MR. SCHIECK: Okay. There wasn't anything
 17 negative about the experience. It's just —
 18 PROSPECTIVE JUROR OSBORN: No.
 19 MR. SCHIECK: Let me just sort of broaden the
 20 question a little bit, without going too far. We've talked about
 21 small towns in Lincoln County, Nevada. Is there anybody that
 22 grew up and lived most of their lives or a good portion of their
 23 life in a small town in another state, a one-horse town in
 24 someplace else?

111-97

1 Okay. In the back.
 2 PROSPECTIVE JUROR TORGERSON: 239, Jane!
 3 Torgerson, I lived in a very small town in Minnesota.
 4 Everybody knew my business. From the time I left for college
 5 and until the time we still come back, they still say we won't
 6 make it Vegas and we'll come home. So I know exactly what
 7 small towns are like,
 8 MR, SCHIECK: You can't drive down the street
 9 without somebody knowing and —
 10 PROSPECTIVE JUROR TORGERSON: Which is nice,
 11 It's nice to be able to wave to somebody you know. But,
 12 yeah, everybody knows who you are,
 13 MR. SCHIECK: How big was that town in
 14 Minnesota?
 15 PROSPECTIVE JUROR TORGERSON: 3400. I have
 16 no idea how big Pioche is, though. I don't know how small it
 17 is. But —
 18 MR. SCHIECK: That may be the population of the
 19 entire county.
 20 PROSPECTIVE JUROR TORGERSON: Okay, Well,
 21 then no, it wouldn't be that small. But when they talk that
 22 way, I know that that's -- what it's like to live in a small town,
 23 MR, SCHIECK: Anyone else?
 24 Ms. Glynn.

1 and Mountain Pass and —
 2 PROSPECTIVE JUROR GLYNN: And Cima and Kelso
 3 and, you know —
 4 MR. SCHIECK: So you all got to know everybody. I
 5 mean, you knew pretty much everybody that lives in the -- in
 6 the area?
 7 PROSPECTIVE JUROR GLYNN: In that area.
 8 MR. SCHIECK: Okay, Anything about that
 9 experience you think would affect you in this case?
 10 PROSPECTIVE JUROR GLYNN: No.
 11 MR. SCHIECK: Anybody else?
 12 Okay. Go ahead,
 13 PROSPECTIVE JUROR BISHOP: 340, Vickie Bishop,
 14 A small town called Hyrum, Georgia, probably a population of
 15 2200, the whole time, my entire life 'til I moved here. The
 16 same thing, everybody knows everybody, one high school, one
 17 theater, one Wal-Mart.
 18 MR. SCHIECK: You had a Wal-Mart.
 19 PROSPECTIVE JUROR BISHOP: That's about it.
 20
 21 MR. SCHIECK: There's no Wal-Mart in —
 22 PROSPECTIVE JUROR BISHOP: So wherever you
 23 go, you run into somebody you know.
 24 MR. SCHIECK: Anybody else? No? Okay. Thank

III-100

1 PROSPECTIVE JUROR GLYNN: Yes, I've lived in a
 2 town called Mountain Pass, California.
 3 MR. SCHIECK: 145 on the way to California?
 4 PROSPECTIVE JUROR GLYNN: This side of Baker,
 5 about 35 miles. There was 350 people who lived there,
 6 MR. SCHIECK: Did you --
 7 PROSPECTIVE JUROR GLYNN: I lived there for
 8 twenty-one years, the first twenty-one years of my life.
 9 MR. SCHIECK: So you went to high school there or -
 10
 11 PROSPECTIVE JUROR GLYNN: I went to high school
 12 in Baker, California.
 13 MR. SCHIECK: So they bused you to high school?
 14 PROSPECTIVE JUROR GLYNN: Yes,
 15 MR, SCHIECK: So Baker was sort of a collecting
 16 point for all the outlying communities?
 17 PROSPECTIVE JUROR GLYNN: Yeah, for the high
 18 school. But we had a grade school in Mountain Pass and that
 19 was where you went to junior high, too. It was K through
 20 eighth.
 21 MR. SCHIECK: Is there just one high school there in
 22 Baker?
 23 PROSPECTIVE JUROR GLYNN: There was then.
 24 MR. SCHIECK: Yeah, So everybody from Yermo

1 you,
 2 MS. GREENBERGER: There's one in the front row.
 3 THE COURT: We have one more hand up in the
 4 back row.
 5 MR. SCHIECK: Oh, I'm —
 6 PROSPECTIVE JUROR GIARDINA: 215, Karen
 7 Giardina.
 8 MR. SCHIECK: I'm sorry I missed you.
 9 PROSPECTIVE JUROR GIARDINA: I didn't -- I mean,
 10 I lived in Zephyr Cove, I'm the one you were talking about.
 11 MR. SCHIECK: Okay.
 12 PROSPECTIVE JUROR GIARDINA: However, I
 13
 14 me watch what you do because everybody will know what
 15 you're doing, And I taught in -- I taught in that area for
 16 twelve years.
 17 MR. SCHIECK: So you'd come down from Zephyr
 18 Cove —
 19 PROSPECTIVE JUROR GIARDINA: Exactly,
 20 MR. SCHIECK: -- to teach every day?
 21 PROSPECTIVE JUROR GIARDINA: Yes.
 22 MR. SCHIECK: Every day that the road wasn't —
 23 PROSPECTIVE JUROR GIARDINA: At [unintelligible]
 24 which was primarily Genoa which is even smaller.

111-99

III-101

1 MR. SCHIECK: And did you find that to be true,
2 that everybody did know what you were up to when you were
3 in town?

4 PROSPECTIVE JUROR GIARDINA: Not myself so
5 much because I went back to where I lived and that was kind
6 of a comfort_ But, yes, I was always very careful when I was
7 teaching what I said and did, and such Being a teacher also,
8 you're always on the platform anyway.

9 MR_ SCHIECK: Did I miss anybody else? Okay,
10 great,

11 As you can probably tell from some of the questions
12 that have already been asked, you're gonna hear about the
13 use of methamphetamine in this case. Various individuals
14 involved in the case used methamphetamine, including the
15 defendant. Is there anything about that that's going to
16 prevent you from being fair and impartial in judging the
17 evidence that actually is presented here in court? Anybody
18 have a problem with that, acknowledging

19 THE COURT: The record shall reflect no response.

20 MR. SCHIECK: Thank you, Your Honor,
21 We're certainly not condoning the use but saying is
22 that gonna affect your ability to judge the case based on the
23 evidence?

24 THE COURT: Again, no response,

111-102

1 THE COURT: Very well.

2 MR. SCHIECK: Thank you very much, That's all the
3 general questions. And now Ms. Greenberger is gonna follow
4 up with some specific followup questions. Thank you very
5 much,

6 MS. GREENBERGER: Good afternoon.

7 Ms. Anderson, you raised your hand first, I guess,
8 when you responded to my co-counsel asking if anything
9 you've experienced has been taken out of context, Can you
10 give us an example?

11 PROSPECTIVE JUROR ANDERSON: I'm sure plenty.
12 I was a teacher for three years, so there is lots of times when
13 if I said something to a student, then they went to home and
14 I'd get a phone call. Things like, you know, I need you to
15 bring your permission brought back or, you know, some
16 consequence, you know, you might miss recess or something
17 of the sort until you get it brought back, And they go home
18 and say that they'll be kicked out of school or something,
19 something like that, or —

20 MS. GREENBERGER: So how did it make you feel
21 when those types of things happened?

22 PROSPEL JIVE JUROR ANDERSON: Well, obviously,
23
24 really coming from. You don't want anybody

111-104

1 MR, SCHIECK: You're also going to hear evidence
2 that Ms. Lobato was not leading a perfect lifestyle for a period
3 of time in her life., Is that going to affect your ability to judge
4 the case fairly, to judge the evidence that's presented to you
5 fairly?

6 And, again, no response.

7 Has anyone ever been wrongfully accused of doing
8 something they didn't do here on the panel?

9 THE COURT: We've had a couple of folks give us
10 some informatron along those lines, so this question should be
11 just as to what has not already been disclosed previously.

12 MR. SCHIECK: That's correct, Your Honor, Thank
13 you,

14 Anyone? Okay.

15 THE COURT: The record shall reflect no response.

16 MR. SCHIECK: Has anyone ever had something
17 they've said taken out of context?

18 UNIDENTIFIED SPEAKER: I think everybody has.

19 MR, SCHIECK: For the record, I --

20 THE COURT: The record shall reflect multiple hands
21 raised.

22 MR, SCHIECK: I would assume that's under a
23 variety of situations, more than one occasion. I think I have
24 pretty much unanimous nods to that, Your Honor,

111-103

1 misunderstanding what your intentions are. I'm sure there
2 was plenty, plenty of times when -- I tend to be very
3 outspoken and I talk a lot, so it's very easy for people who
4 aren't shy to be misinterpreted more often just by the number
5 of times you speak, And I guess that it feels -- it doesn't feel
6 good, obviously, when somebody assumes that you're different
7 than you really are or what you're intending on.

8 MS. GREENBERGER: What year do you teach?

9 PROSPECTIVE JUROR ANDERSON: I just resigned;
10 but I taught fourth grade for two years and I taught third
11 grade. So I'm in sales now.

12 MS. GREENBERGER: It almost sounds like a game
13 we all might have played in kindergarten, like the game
14 Operator or Telephone where you start on one side of the
15 room and tell someone something, and then by the time it
16 gets to the other side it's something else, Is that —

17 PROSPECTIVE JUROR ANDERSON: Sure,, I mean,
18 when you're talking to children they interpret things differently
19 than an adult would, anyhow, so yeah,

20 MS. GREENBERGER: We're gonna alternate so --

21 MS. DIGIACOMO: Your Honor, can we approach?

22 THE COURT: Yes-

23 (Off-record bench conference at 14:12:36 until 14:13:17)

24 MS. ZALKIN: I had a question for Mr. -- I'm gonna

111-105

1 mispronounce the last name, starts with a D-O-B.
 2 PROSPECTIVE JUROR DOBYNE: Dobyne.
 3 MS, ZALKIN: Yes, Mr Dobyne, What's your jury
 4 number, please?
 5 PROSPECTIVE JUROR DOBYNE: 252.
 6 MS, ZALKIN: And is that your book that's in front of
 7
 8 PROSPECTIVE JUROR DOBYNE: Yes, it is,
 9 MS. ZALKIN: I'm familiar with that author and I'm
 10 just wondering, well, first, are you an avid reader?
 11 PROSPECTIVE JUROR DOBYNE: I try to be.
 12 MS. ZALKIN: Okay, And those books are -- I guess
 13 you could kind of say they're mysteries, is that -- in a sense,
 14 legal thrillers?
 15 PROSPECTIVE JUROR DOBYNE: Yeah, in a sense.
 16 That's a gift from my mother, gotta read it,
 17 MS. ZALKIN: And are you the type of reader that
 18 likes to try to figure out the ending of a book as you're getting
 19 into it or do you Are just kind of let the story unfold?
 20 PROSPECTIVE JUROR DOBYNE: hike to live in the
 21 moment of a book,
 22 MS. ZALKIN: And so what does that mean?
 23 PROSPECTIVE JUROR DOBYNE: Go through the
 24 story and then, you know, see where their — where their

111-106

1 want to see a scrip in hand?
 2 PROSPECTIVE JUROR TORGERSON: I try to get the
 3 cops involved in that,
 4 MS, ZALKIN: Okay.
 5 MS, GREENBERGER: Mr. La Chance,
 6 PROSPECTIVE JUROR LA CHANCE: Yes.
 7 MS. GREENBERGER: You are Juror Number?
 8 PROSPECTIVE JUROR LA CHANCE: 199,
 9 MS. GREENBERGER: 199, Where were you born
 10 and raised?
 11 PROSPELJIVE JUROR LA CHANCE: Born in North
 12 Carolina and moved when I was a baby to Pennsylvania,
 13 Massachusetts, Connecticut and California,
 14 MS. GREENBERGER: So you've lived in many
 15 places?
 16 PROSPECJWE JUROR LA CHANCE: Yes.
 17 MS, GREENBERGER: Are you a CSI fan?
 18 PROSPECTIVE JUROR LA CHANCE: I like the show.
 19 I rarely get to [unintelligible].
 20 MS. GREENBERGER: The prosecution has alluded to
 21 the fact that it's entertainment. However, you realize we're in
 22 a court of law so what's presented here is not entertaining,
 23 obviously. And in terms of evaluating physical evidence, when
 24 you'll hear evidence about hair, fingerprints, saliva, DNA, are

III-10B

conclusion takes us,
 2 MS. ZALKIN: Thank you.
 3 There were a number of you who indicated living in
 4 small towns. We'll just throw the question out. Do you think
 5 it's -- do you think that gossip is as much -- is more rampant in
 6 small towns than among social circles in larger towns? Just
 7 give a show of hands for yes.
 8 So for the record, one, two, three, four, five, six
 9 yeses.
 10 Anydne who doesn't think that's true, will you please
 11 raise your hand?
 12 One, two, three, four, five for the record.
 13 And okay. I have a question for Ms. Torgerson,
 14 And you're Number 239, I think?
 15 PROSPECTIVE JUROR TORGERSON: Mm-hmm,
 16 MS. ZALKIN: You mentioned seeing some
 17 individuals that you believed under the influence in the course
 16 of your work as a pharmacist?
 19 PROSPECTIVE JUROR TORGERSON: Yes, ma'am.
 20 MS. ZALKIN: Has anyone ever tried to come in and
 21 try to convince you that a prescription had been renewed, for
 22 example?
 23 PROSPECTIVE JUROR TORGERSON: Many times.
 24 MS. ZALKIN: And did you believe them or did you

111-107

1 you going to analyze that and scrutinize that evidence as the —
 2 and the science behind it? Are you gonna have any problem
 3 with that?
 4 PROSPECiIVE JUROR LA CHANCE: No,
 5 MS. GREENBERGER: Have you heard of any recent
 6 cases in the media where statements have been made, recent
 7 media high-profile, and physical evidence has exonerated the
 8 crime?
 9 PROSPECTIVE JUROR LA CHANCE: Yes,
 10 MS, GREENBERGER: What case would that be?
 11 PROSPEC_IIVE JUROR LA CHANCE: The Jon Benet.
 12
 13 PROSPECTIVE JUROR LA CHANCE: Yeah.
 14 MS, GREENBERGER: And in that case, tell me what
 15 you learned about it.
 16 PROSPECTIVE JUROR LA CHANCE: Just the fact
 17 that they had the DNA evidence and because the person who
 18 was claiming to have been involved did not match, that he was
 19 cleared.
 20 MS. GREENBERGER: Did you feel like the right
 21 decision was made in that case?
 22 PROSPECJWE JUROR LA CHANCE: Yes.
 23 MS, GREENBERGER: Did you feel like the physical
 24 evidence spoke volumes?

111-109

2 PROSPECTIVE JUROR LA CHANCE: I think it was
 3 significant
 4 MS, GREENBERGER: Mr, Sharpe, good afternoon,
 5 PROSPECTIVE JUROR SHARPE: Good afternoon.
 6 MS, GREENBERGER: Just so we're dear, is it your
 7 son-in-law that's a homicide officer with Metro?
 8 PROSPECTIVE JUROR SHARPE: Yes,
 9 MS, GREENBERGER: And your brother-in-law is
 10 Richard Wright?
 11 PROSPECTIVE JUROR SHARPE: Correct,
 12 MS. GREENBERGER: So for those of the jury that
 13 don't know, Richard Wright is a criminal defense attorney in
 14 town,
 15 PROSPECTIVE JUROR SHARPE: Yes,
 16 MS, GREENBERGER: Do you have the opportunity
 17 to interact with your brother-in-law and son-in-law at the same
 18 time?
 19 PROSPECTIVE JUROR SHARPE: No,
 20 MS, GREENBERGER: Do you have a bias for either
 21 side in terms of prosecution versus criminal defense just based
 22 on the family that you have that are both in those fields?
 23 PROSPECTIVE JUROR SHARPE: No.
 24 MS, GREENBERGER: So you heard —
 THE COURT: I'm sorry, I didn't hear a response.

III-110

1 PROSPECTIVE JUROR SHARPE: No
 2 THE COURT: Thank you,
 3 PROSPECTIVE JUROR SHARPE: You're welcome,
 4 MS, GREENBERGER: You heard the Judge
 5 instructing that the charges against my client are mere
 6 allegations?
 7 PROSPECTIVE JUROR SHARPE: Correct,
 8 MS, GREENBERGER: And in this country, as we've
 9 been talking about, there's a presumption of innocence.
 10 PROSPECTIVE JUROR SHARPE: Correct
 11 MS, GREENBERGER: And if you heard all of the
 12 evidence in this case and you were convinced that the
 13 prosecution had not met their burden —
 14 THE COURT: I'm gonna impose an objection here,
 15 that's calling for him to predict a verdict based upon a
 16 hypothetical,
 17 MS. GREENBERGER: Would you have any hesitancy
 18 acquitting an individual if you found no evidence?
 19 THE COURT: That's the flip of the same question.
 20 Counsel, approach,
 21 (Off-record bench conference at 14:20:41 until 14:21:15)
 22 MS, GREENBERGER: Mr. Sharpe, you said in 1977
 23 your cousin was killed over a drug deal?
 24 PROSPECTIVE JUROR SHARPE: Yes,

1 MS. GREENBERGER: Do you know what kind of
 2 drugs that involved?
 3 PROSPECTIVE JUROR SHARPE: I believe it was
 4 heroin.
 5 MS, GREENBERGER: Was the perpetrator ever
 6 apprehended?
 7 PROSPECTIVE JUROR SHARPE: Yes,
 8 MS. GREENBERGER: Where was this occur?
 9 PROSPECTIVE JUROR SHARPE: It was here in Las
 10 Vegas,
 11 MS. GREENBERGER: Ms. Mies,
 12 PROSPECTIVE JUROR BAILES: Yes,
 13 MS. GREENBERGER: Good afternoon, You're Juror
 14 Number 221?
 15 PROSPECTIVE JUROR BAILES: Yes.
 16 MS, GREENBERGER: Regarding your personal
 17 experience with methamphetamine addiction through your
 18 family, can you tell us if you observed how methamphetamine
 19 affected, for example, your son's reliability?
 20 PROSPECTIVE JUROR BARES: He did not take
 21 responsibility for his actions, extreme weight loss,
 22 argumentative, many, many traffic tickets.
 23 MS. GREENBERGER: Did you find him to be more or
 24 less dependable during that time period?

111-112

2 PROSPECTIVE JUROR BAILES: More or less what,
 3 please?
 4 MS, GREENBERGER: Dependable.
 5 PROSPECTIVE JUROR BAILES: No, not dependable
 6 at all,
 7 MS. GREENBERGER: Not dependable?
 8 PROSPECTIVE JUROR BAILES: No. Not when he's
 9 under the influence,
 10 MS. GREENBERGER: What about reliable?
 11 PROSPECTIVE JUROR BARES: Well, no,
 12 MS,, GREENBERGER: Not reliable?
 13 PROSPECTIVE JUROR BAILES: No, Goes along with
 14 dependent,
 15 MS. GREENBERGER: Is it fair to say that if he told
 16 you something you might take his statements with a grain of
 17 salt?
 18 PROSPECTIVE JUROR BARES: Well, normally, yeah,
 19 MS. GREENBERGER: During that time period?
 20 PROSPECTIVE JUROR BAILES: Yeah, during that
 21 time period.
 22 MS, GREENBERGER: Why is that?
 23 PROSPECTIVE JUROR BARES: You wouldn't believe
 24 what he said, He was —
 MS. GREENBERGER: You couldn't believe him?

111-113

1 PROSPELNE JUROR BARES: No.
 2 MS, GREENBERGER: Prior to his meth addiction, did
 3 he have those attributes or was he different?
 4 PROSPECTIVE JUROR BAILES: He did quite well.
 As a matter of fact, he spent five years in the military and he
 6 excelled. Arid then when he came home, he ran into some old
 7 friends and then the problem began,
 8 MS, GREENBERGER: So a lot of the problem might
 9 have been with the people that he was hanging out with?
 10 PROSPECTIVE JUROR BAILES: It was. Yes, it was.
 11 MS. GREENBERGER: Ms. Torgerson,
 12 PROSPECLNE JUROR TORGERSON: Mm-hmm.
 13 MS. GREENBERGER: You're Juror Number?
 14 PROSPECLNE JUROR TORGERSON: 239.
 15 MS, GREENBERGER: And you have also had some
 16 experience with methamphetamine addiction.
 17 PROSPECTIVE JUROR TORGERSON: Yes.
 18 MS, GREENBERGER: With regard to my previous
 19 questions, what has your experience been with regard to those
 20 type areas?
 21 PROSPECTIVE JUROR TORGERSON: Of course, it
 22 was back in Minnesota and it was my brother, but it was very
 23 devastating to my parents with the same type of thing. He
 24 lost a lot of weight. He quit working. They didn't want to

111-114

1 want to get into any discussions with anybody. But just, you
 2 know, he would tell my parents things that his wife would say
 3 weren't true. But so as far as I know, not much that he said
 4 was true.
 5 MS. GREENBERGER: What about paranoia; have
 6 you seen that?
 7 PROSPECTIVE JUROR TORGERSON: I think it's
 8 strange that he'd stay in a barn for three days.
 9 MS,, GREENBERGER: A barn, not a bar?
 10 PROSPECTIVE JUROR TORGERSON: Yeah, He'd be
 11 in a barn.
 12 MS. GREENBERGER: B-A-R-N?
 13 PROSPECTIVE JUROR TORGERSON: Yeah. You
 14 know, when we were in pharmacy school, you know, they
 15 trained us a lot about illegal drug use. And he just did a lot of
 16 that kind of thing. I don't know if I'd call it paranoid but, you
 17 know, he'd sit and tear things apart because he'd be so wide
 18 awake that he would do that for two or three days in a row,
 19 and then he'd crash really hard and sleep for two days. I've
 20 seen that. I mean, I've seen him do that in the short time that
 21 I was home but —
 22 MS. GREENBERGER: And what is that called, if you
 23 know, based on your training, like a binge?
 24 PROSPECTIVE JUROR TORGERSON: Well, I don't

111-116

1 really believe, meaning they, my parents, didn't really want to
 2 believe that it was him that -- so they would, you know,
 3 excuse everything he did. But it just -- it completely changed
 4 his life. He turned into a different person,
 5 MS, GREENBERGER: And in terms of his
 6 dependability, reliability, how was that affected?
 7 PROSPECTIVE JUROR TORGERSON: Dependent on
 8 anybody else? Probably not, 'cause he would stay in his barn
 9 for days, very unreliable, you know, he quit working and --
 10 MS. GREENBERGER: And would you say during that
 11 time period information he told you, you might have to
 12 sometimes take with a grain of salt?
 13 PROSPEC:FIVE JUROR TORGERSON: You couldn't
 14 believe anything he said,
 15 MS. GREENBERGER: Why is that?
 16 PROSPECTIVE JUROR TORGERSON: Because he
 17 wouldn't tell the truth. Because every time I'd ask him if he
 18 was using, he would tell me no.
 19 MS, GREENBERGER: Did he often tell you
 20 inconsistent stories?
 21 PROSPECTIVE JUROR TORGERSON: Well, I would
 22 only go home for holidays so that would be the only time I
 23 could hit him up for it. But he would stay away from me. So
 24 but he just -- he just really put himself aside and didn't really

111-115

1 know, but all I know is they crash. You know, and he would
 2 crash. He would come over to our house. Like he wouldn't
 3 show up for Thanksgiving dinner and he'd show up on Friday
 4 and he'd sleep until Sunday, just right on the ground in my
 5 parents' house, And that's just not what people do on a
 6 normal —
 7 MS, GREENBERGER: Right,
 8 PROSPECTIVE JUROR TORGERSON: -- basis.
 9 MS. GREENBERGER: And you also -- I know that
 10 you mentioned that coming from a small town gossip ran
 11 rampant. Is that --
 12 PROSPECTIVE JUROR TORGERSON: Right,
 13 MS, GREENBERGER: Can you give us some
 14 examples or expand on that a little?
 15 PROSPELIVE JUROR TORGERSON: Well, people
 16 would tell me that Jed was using, you know, and I would tell
 17 my parents that. They wouldn't listen. I mean, that's
 18 probably the thing that was most prevalent,
 19 MS. GREENBERGER: And —
 20 PROSPECTIVE JUROR TORGERSON: But my brother
 21 was always somebody that was in trouble, so then I was
 22 always the little sister of the druggie, you know, and so I
 23 always had to live and make my own -- make my own person
 24 out of myself because I was always judged to be Jed's sister.

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1 MS. GREENBERGER: Did everyone in your town --
 2 was it so small that everyone was aware of what everyone else
 3 was doing? Is that --
 4 PROSPECTIVE JUROR TORGERSON: Always,
 5 MS. GREENBERGER: Always?
 6 PROSPECTIVE JUROR TORGERSON: Yeah, It made
 7 you behave,
 8 MS. GREENBERGER: Thank you for sharing with us.
 9 PROSPECTIVE JUROR TORGERSON: Yeah.
 10 MS, GREENBERGER: Ms. Valdez, Juror 350. Hi.
 11 PROSPECTIVE JUROR VALDEZ: Hi.
 12 MS. GREENBERGER: Good afternoon. So you are a
 13 student aide?
 14 PROSPEL, I WE JUROR VALDEZ: Yes.
 15 MS. GREENBERGER: And that's for K through 12?
 16 PROSPECTIVE JUROR VALDEZ: Yes.
 17 MS. GREENBERGER: Have you experienced the
 18 game Operator or Telephone?
 19 PROSPECTIVE JUROR VALDEZ: Yes.
 20 MS. GREENBERGER: Can you explain to us how you
 21 know that goes?
 22 PROSPECTIVE JUROR VALDEZ: Well, being that it's
 23 a private school, it's much, much smaller than a public school
 24 so that goes on, yeah, where a student will say something

111-118

1 using meth, then they're just not responsible anymore, they
 2 don't take care of -- they don't have a conviction anymore
 3 regarding the things that they do and --
 4 MS, GREENBERGER: Would you feel comfortable
 5 relying on something they told you that was perhaps critical?
 6 Would you weigh in their meth use and how would you weigh
 7 it?
 8 PROSPECTIVE JUROR VALDEZ: If I was given with -
 9 evidence, you know, if they said something critical and there
 10 was substantial evidence of what they were saying regarding -
 11 - you mean regarding a person or regarding --
 12 MS, GREENBERGER: give you --
 13 PROSPECTIVE JUROR VALDEZ: -- [unintelligible],
 14 MS. GREENBERGER: Ill give you an example.
 15 PROSPECTIVE JUROR VALDEZ: Okay.
 16 MS, GREENBERGER: You left your car in your
 17 friend's driveway,
 18 PROSPECTIVE JUROR VALDEZ: Mm-hmm.
 19 MS, GREENBERGER: You got -- went out to the
 20 movies with your friend, walked out of the theater, came back
 21 and the car had a dent in it.
 22 PROSPECTIVE JUROR VALDEZ: Mm-hmm,
 23 MS. GREENBERGER: Your best friend's sister was
 24 home. You had left the keys on the counter inadvertently.

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1 about another student, it will get carried back to the student it
 2 was spoken of and, you know, their heart's broken and it
 3 wasn't quite true. And it goes on all the time.
 4 MS, GREENBERGER: So is it fair to say that tales
 5 get exaggerated?
 6 PROSPEL IIVE JUROR VALDEZ: Yes,
 7 MS. GREENBERGER: Is that a common occurrence?
 8 PROSPECTIVE JUROR VALDEZ: Yes.
 9 MS. GREENBERGER: And you had an experience
 10 with meth use also, a friend of a friend.
 11 PROSPECTIVE JUROR VALDEZ: Mm-hmm.
 12 MS. GREENBERGER: Did you experience the same
 13 thing the other two jurors we've spoken to did in terms of your
 14 best friend's sister and her dependability, reliability'? Was that
 15 a similar occurrence?
 16 PROSPECTIVE JUROR VALDEZ: Yes.
 17 MS. GREENBERGER: Can you explain it a little bit,
 18 what you observed?
 19 PROSPECTIVE JUROR VALDEZ: Just knowing people
 20 before they got on that, they just, you know, level-headed,
 21 making right decisions, you know, going about daily
 22 responsibilities. And once I've noticed, 'cause I also forgot to
 23 mention that my nephew through marriage also is still a meth
 24 addict, basically, but once -- I've seen that once they start

111-119

1 She told you I didn't drive it, I've been here watching
 2 television. She had on a pink, fuzzy sweater. When you went
 3 home that night, pink, fuzzy sweater got on your clothes.
 4 That's my example. How would you weigh that in?
 5 PROSPECTIVE JUROR VALDEZ: I would lean
 6 towards being lied to [unintelligible].
 7 MS. GREENBERGER.: The pink, fuzzy hairs may
 8 speak louder to you than words, her words?
 9 PROPELLIVE JUROR VALDEZ: Yes, [unintelligible].
 10 MS, GREENBERGER: Just one more question for
 11 you, Ms, Valdez, You mentioned a question that -- or an
 12 answer that the police in this area are now overloaded. I don't
 13 know that much about Las Vegas. But do you have a sense
 14 because of that that sometimes the police have to take
 15 shortcuts or can't pursue full investigations because there is so
 16 much going on in Vegas?
 17 PROSPECTIVE JUROR VALDEZ: Well, my personal
 18 thought would be that not that they would take shortcuts but
 19 they would pick and choose what they're going to investigate.
 20 I feel like once they investigate it, they would be -- investigate
 21 to the fullest. But I think that there is kind of a -- well, that
 22 they know their limits on what they investigate now and due to
 23 the volume of crime in our city.
 24 MS. GREENBERGER: Thank you.

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1 PROSPECTIVE JUROR VALDEZ: You're welcome,
 2 MS. ZALKIN: Okay, Ms. McKeever or Mrs.
 3 McKeever, in the jury box. You're 238?
 4 PROSPECTIVE JUROR McKEEVER: Yes, ma'am.
 5 MS_ZALKIN: I don't think we've heard much from
 6 you so I just wanted to ask you, generally, on a scale of one to
 7 ten, do you feel that crime is a problem in Las Vegas, one
 8 being — well, rather, are you concerned with it, one being
 9 you're not concerned at all, ten being you're so concerned that
 10 you don't even want to leave the house? Where would you
 11 place yourself on that spectrum?
 12 PROSPECTIVE JUROR McKEEVER: I would guess
 13 maybe a five. I wouldn't be afraid to go out,
 14 MS. ZALKIN: Do you feel that there are parts of
 15 town that you'd be more likely to not be concerned about
 16 being in, you know, at night, or whatever, than other parts of
 17 town or does your — does your number five kind of reflect the
 18 whole picture of Las Vegas?
 19 PROSPECTIVE JUROR McKEEVER: Well, since I live
 20 in Boulder City, I'm pretty comfortable there.
 21 MS. ZALKIN: Okay.
 22 PROSPECTIVE JUROR McKEEVER: But there are
 23 probably parts of Las Vegas that I know are more dangerous
 24 in my opinion at night than other parts of Las Vegas,

111-122

1 testifying, were you concerned that the judge or, you know,
 2 the trier of fact would not believe you —
 3 PROSPECTIVE JUROR EVERAKES: No_
 4 MS. ZALKIN: — in a claim? You weren't. So were
 5 you nervous just by virtue of being up there and —
 6 PROSPECTIVE JUROR EVERAKES: Yes.
 7 MS. ZALKIN: You were, And would — do you think
 8 that that's a common feeling to have, being nervous when
 9 you're speaking in front of strangers, basically?
 10 PROSPECTIVE JUROR EVERAKES: Yes.
 11 MS, ZALKIN: Okay. Thank you.
 12 Then, Mr. — Number 322. Is it Vergot?
 13 PROSPECTIVE JUROR VERGOT: Yes.
 14 MS, ZALKIN: Okay. And it's the same question to
 15 you. You had testified in a small claims, is that correct?
 16 PROSPECTIVE JUROR VERGOT: No. It was for —
 17 between the Blue Man Group and the Local 720, And it's —
 18 and it was basically explaining what my job was,
 19 MS. ZALKIN: Okay,
 20 PROSPECTIVE JUROR VERGOT: So —
 21 MS. ZALKIN: So you weren't a contested witness
 22 then?
 23 PROSPECTIVE JUROR VERGOT: No.
 24 MS. ZALKIN: Okay, Well, I'd like to hear more

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1 MS, ZALKIN: And do you feel that in your opinion
 2 are there enough police officers on the streets to kind of
 3 handle the level of crime that the city faces or do you think
 4 that there are more, that there are too many and that we
 5 should focus on prevention more, or what are your thoughts
 6 on that?
 7 PROSPECTIVE JUROR McKEEVER: I guess I feel like
 8 it's adequate. I've heard talk of needing more police officers
 9 on the street, probably true in some areas. But not being in
 10 law enforcement, I'm not sure how that would work.
 11 MS, ZALKIN: Thank you.
 12 PROSPECTIVE JUROR McKEEVER: You're welcome,
 13 MS. ZALKIN: I had a question. There are two jurors
 14 in this audience section that happen to be next to each other.
 15 Mr_ Everakes, we can start with you first.
 16 PROSPECTIVE JUROR EVERAKES: Yes. 327.
 17 MS. ZALKIN: Yes, thank you. You previously — you
 18 gave testimony in, I think it was, a small claims case or maybe
 19 more than one. Is that correct?
 20 PROSPECTIVE JUROR EVERAKES: In a small claims
 21 case,
 22 MS, ZALKIN: In small claims?
 23 PROSPECTIVE JUROR EVERAKES: Yes.
 24 MS, ZALKIN: And were you, when you were

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1 about your traveling troop experience but I think I'll probably
 2 get in trouble if I get into that,
 3 PROSPECTIVE JUROR VERGOT: Sure,
 4 MS. ZALKIN: Let me see, And how about, Mrs.,
 5 Benham, I'll put the question to you that I asked about the
 6 level of crime in Las Vegas on a scale of one to ten, one, non-
 7 issue, ten, big concern of yours. Where would you place
 8 yourself?
 9 PROSPECTIVE JUROR BENHAM: I would probably
 10 say six just because from the time I got here ten years ago, if
 11 you watch the news, it was a small segment. Now it's a lot
 12 bigger than that.
 13 MS. ZALKIN: And do you feel that there are enough
 14 police officers or that we need more or that we should focus
 15 on, you know, other —
 16 PROSPECTIVE JUROR BENHAM: We could probably
 17 always use more police officers. Anytime I've had an issue
 18 where I've had to call, if I saw a car accident or something,
 19 they were pretty quick to [unintelligible] and so —
 20 MS. ZALKIN: Okay, Okay, Thank you.
 21 The Court's —
 22 THE COURT: She was 346?
 23 MS. ZALKIN: 346, Thank you, Your Honor_
 24 The Court's indulgence,

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1 THE COURT: Yes,
 2 (Pause in the proceedings)
 3 MS, GREENBERGER: Ms. Delgado.
 4 PROSPELWE JUROR DELGADO: Yes.
 5 MS. GREENBERGER: Good afternoon.
 6 MR, KEPHART: Judge, may we approach again?
 7 THE COURT: Yes,
 8 (Off-record bench conference at 14:39:08 until 14:40:14)
 9 MS. GREENBERGER: And where were you born and
 10 raised?
 11 PROSPECTIVE JUROR DELGADO: North Augusta,
 12 South Carolina.
 13 MS, GREENBERGER: Was that a small or a large
 14 town?
 15 PROSPECTIVE JUROR DELGADO: It's about
 16 medium.
 17 MS. GREENBERGER: Medium. If you heard
 18 evidence about someone's promiscuity, could that impact you
 19 one way or the other in terms of judging their character? How
 20 would that affect you if you heard evidence of promiscuity?
 21 Would you lean more toward their guilt or innocence?
 22 MR. KEPHART: Your Honor, I'm gonna object.
 23 She's asking them to possibly comment on what they may find
 24 with regards to what the evidence would be,

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2 PROSPECTIVE JUROR GIARDINA: Douglas County,
 3 MS, GREENBERGER: Douglas County, Where's that
 4 about?
 5 PROSPECTIVE JUROR GIARDINA: In Gardnerville.
 6 MS. GREENBERGER: What impressions did that case
 7 leave on your mind with regard to our criminal justice system?
 8 PROSPECTIVE JUROR GIARDINA: I felt being on
 9 the jury we did the job. We did a fair job of listening to all the
 10 evidence, and we discussed it very well. I feel that we came
 11 to the right decision.
 12 MS. GREENBERGER: Thank you,
 13 Ms. Racer.
 14 PROSPECTIVE JUROR RACEL: Yes.
 15 MS, GREENBERGER: You also served on a criminal
 16 jury?
 17 PROSPECTIVE JUROR RACEL: Right,
 18 MS, GREENBERGER: What kind of case was that?
 19 PROSPECTIVE JUROR RACEL: A burglary.
 20 MS. GREENBERGER: And where was that?
 21 PROSPECTIVE JUROR RACEL: Here in Las Vegas.
 22 MS. GREENBERGER: The same question that I
 23 posed to Ms. Giardina. What impressions did you have after
 24 that?
 PROSPECTIVE JUROR RACEL: Of?

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1 THE COURT: The Court sustains the objection. It's
 2 not a proper voir dire question.
 3 MS. GREENBERGER: You've heard some of my
 4 questions to the other jurors about physical evidence. Are you
 5 familiar with the Jon Benet Ramsey case?
 6 PROSPECTIVE JUROR DELGADO: A little bit.
 7 MS, GREENBERGER: How did you feel about Mr.
 8 Carr, the man accused of the crime, being freed when the
 9 physical evidence cleared him?
 10 PROSPECTIVE JUROR DELGADO: I felt it was right
 11 because of his physical evidence on that particular case.
 12 MS, GREENBERGER: Thank you.
 13 Ms. Giardina, good afternoon. You served on a
 14 criminal jury?
 15 PROSPECTIVE JUROR GIARDINA: Yes.
 16 MS. GREENBERGER: What type of case was that?
 17 PROSPECTIVE JUROR GIARDINA: Lewd and
 18 lascivious behavior of a minor under the age of fourteen.
 19 MS. GREENBERGER: All right. How long was that
 20 trial?
 21 PROSPECTIVE JUROR GIARDINA: Three and a half
 22 weeks.
 23 MS. GREENBERGER: And that was in Douglas City,
 24 Nevada?

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1 MS. GREENBERGER: Of our system.
 2 PROSPECTIVE JUROR RACEL: Of our system? It's
 3 fair and it does what it needs to do —
 4 MS. GREENBERGER: And —
 5 PROSPECTIVE JUROR RACEL: -- to bring about the
 6 right, you know, decisions as far as, you know, in that case, is
 7 to bring the evidence up and bring the person to the proper
 8 verdict as to what we all discussed and what happened,
 9 MS. GREENBERGER: In that case, were you able to
 10 keep an open mind until all of the evidence was presented?
 11 PROSPECTIVE JUROR RACEL: Right.
 12 MS. GREENBERGER: Thank you.
 13 Ms. Moir.
 14 PROSPECTIVE JUROR MOIR: Yes,
 15 MS, GREENBERGER: Good afternoon.
 16 PROSPECTIVE JUROR MOIR: Good afternoon.
 17 MS. GREENBERGER: Your ex-husband had
 18 methamphetamine issues. You've heard the questions I've
 19 posed to some of the other jurors with experience with
 20 methamphetamine. Did you experience the same phenomena
 21 in terms of his reliability, dependability?
 22 PROSPECTIVE JUROR MOIR: Not really 'cause I
 23 caught him using once and that was when I asked him to

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1 leave the home,
 2 MS, GREENBERGER: Thank you.
 3 Mr. Arieno,
 4 PROSPECTIVE JUROR ARIENO: Yes_
 5 MS, GREENBERGER: You had maybe talked about
 6 this a little bit, about a new business that you're starting,
 7 PROSPECTIVE JUROR ARIENO: Yes.
 8 MS, GREENBERGER: How is this trial gonna impact
 9 this business?
 10 PROSPECTIVE JUROR ARIENO: Oh, it's gonna crush
 11 my business. I -- everything's Monday through Friday, from
 12 9:00 to 5:00. I do what I have to do,
 13 MS, GREENBERGER: Thank you.
 14 PROSPECTIVE JUROR ARIENO: You're welcome,
 15 MS, GREENBERGER: Thank you,
 16 THE COURT: Will counsel approach?
 17 (Off-record bench conference at 14:46:12 until 14:51:08)
 18 THE COURT: Counsel wishes to make a record on
 19 challenges outside the presence of the jury, so we will be
 20 doing that at a future point in time. But other than that, the
 21 parties are passing the group and we will be moving into the
 22 peremptory challenge phase.
 23 There are some of you who we will not be getting to
 24 for the purposes of this trial which are the end of the second

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1 beneficial to be able to look at you and look at your number
 2 and your name in order to make their decision. So I was
 3 gonna let you go out of the room, but it's not gonna work.
 4 There's too many of you and we've gone through too many
 5 people in this particular trial. So when we get done with this,
 6 we will be taking an afternoon stretch break, though, Okay.
 7 PROSPECTIVE JUROR ANDERSON: That's fine,
 8 THE COURT: All right. You're okay for now?
 9 PROSPECTIVE JUROR ANDERSON: I'm -- I was a
 10 teacher. We don't always get to go for five hours.
 11 THE COURT: The record shall reflect that that was
 12 Tai Anderson, 198,
 13 Okay. I'm gonna take us off the record,
 14 (Off record at 14:54:50 until 15:32:00)
 15 COURT RECORDER: On the record.
 16 THE COURT: Okay, The peremptory challenge
 17 sheet will be marked as Court's Number 5.
 18 Ladies and gentlemen, there are a number of you
 19 who are gonna be thanked and excused at this time by way of
 20 the peremptory challenge process. We thank you so much for
 21 all your time and your efforts and your service to your
 22 community these last few days with regard to this jury
 23 selection process.
 24 As your badge number and name is read, after I

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1 group. The Court's going to read your badge numbers and
 2 names at this time. Then you may exit through the rear doors
 3 and report back to the Jury Services Offices. We thank you for
 4 your time and your effort and commitment to your community
 5 here these last few days.
 6 Those persons being thanked and excused at this
 7 time are as follows:
 8 Ellen Wall, 359, Thomas Dorsey, 388, Donelle Pope,
 9 392. David Smith, 404, Freddie Macklin, 405, Marcus Barber,
 10 408, Juanna Jordan, 411, Robert Wayerski, 418, Willie Craft,
 11 422, and Dayna Angelo, 424.
 12 Ladies and gentlemen, as we move into the
 13 peremptory challenge phase, it will take counsel a few minutes
 14 to confer with each other and review their notes and confer
 15 with their clients, And I am gonna take us off the record in a
 16 moment. If you've brought some reading material with you or
 17 something that you can do quietly in your seat, you may do so,
 18 but I'm gonna ask you please to not start talking because you
 19 start talking and then the noise level starts escalating, as more
 20 and more of you talk, and then they can't get their job done,
 21 So --
 22 PROSPECTIVE JUROR ANDERSON: Would this be an
 23 appropriate time to use the restroom if we needed to?
 24 THE COURT: Unfortunately, the attorneys find it

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1 read the list for the whole group, then you may exit through
 2 the rear door. You will need to report back to the Office of the
 3 Jury Services,
 4 Those of you being thanked and excused through
 5 the peremptory challenge process are as follows:
 6 209, Gary Wilcox, 213, Courtney Delgado, 215,
 7 Karen Giardina, 217, Joann Totaro, 221, Pamela Bailes, 229,
 8 Suzanne Racel, 238, Carol McKeever, 244, Christine Miller,
 9 247, Robert Miller, 265, Wendy Real, 268, Lesa Romney, 274,
 10 Lori Glynn, 275, Sara Skilbred, 277, Eva Eastburn, 278, Elisa
 11 Miguel, 327, Marshall Everakes, 328, Robert Osborn, and 340,
 12 Vickie Bishop.
 13 Thank you, You may all exit at this time.
 14 (Pause in the proceedings)
 15 THE COURT: Those of you who remain will
 16 constitute the jury for the purposes of this trial. I'm going to
 17 give you a ten-minute stretch break at this time. In ten
 18 minutes please be in the hallway. The bailiff will be reseating
 19 you when you return into the seats that you will occupy
 20 throughout the remainder of the trial.
 21 During this recess you're admonished not to talk or
 22 converse among yourselves, nor with anyone else, on any
 23 subject connected with the trial, and you're not to read, watch
 24 or listen to any report of or commentary on the trial or any

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1 person connected with the trial, by any medium of information,
2 including, without limitation, newspaper, television, radio and
3 Internet, and you're not to form or express any opinion on any
4 subject connected with the trial until the case is finally
5 submitted to you.

6 Court's in recess for ten minutes.

7 (Court recessed at 15:35:19 until 15:52:38)□

8 (Prospective Jurors are not present)

9 THE BAILIFF: All rise, please.

10 Department II is back in session, Please be seated.

11 THE COURT: The record shall reflect we're

12 convened outside the presence of the jury at the request of
13 counsel in State versus Lobato under Case Number C177394.

14 MR. KEPHART: Judge, I had asked for -- that we'd
15 have this. I had an opportunity during the break to view a
16 portion of -- I believe they're gonna present a PowerPoint for
17 their opening. We haven't been provided any portion of that
18 so we don't know what it is except for I did see a portion of it
19 up on the screen when they were testing the screen. And it's
20 my position that the PowerPoint is argument, and this is not
21 the time for argument, This is opening statements. And I
22 think it's improper. And I only saw one line, the very first line,
23 and with that one line I could feel comfortable in arguing to
24 the Court now that it is argument. And it's not appropriate.

111434

1 just supportive of the -- of the words that she's going to use as
2 she's making her argument, which is that the evidence in this
3 case would show that Kirstin Blaise Lobato was wrongfully
4 accused of murder when she was eighteen years oldr It's also
5 gonna talk about the fact that she's gonna be presenting an
6 alibi defense and what that alibi defense is It's also gonna
7 talk about the evidence that exist -- excludes her as the person
8 that committed this crime. All of those things are based solely -
9 on the evidence that we intend to introduce either during our
10 case in chief or during the cross-examination of the State's
11 witnesses. The fact that the word "wrongfully accused"
12 appears on the first line is only supportive of the argument and
13 statements Ms. Greenberger plans to make that indicate that
14 the evidence will show she was wrongfully accused, And that
15 is not argument. That is what we submit the evidence will
16 show. And it's never been my experience that we needed to
17 pre-show our PowerPoint presentation to the district attorney.

18 THE COURT: No. We didn't used to have
19 PowerPoint presentations,

20 MR. SCHIECK: That's true. But, you know, that's no
21 different from us asking to see Mr. Kephart's notes of what he
22 intends to say. I can assure this Court that Ms. Greenberger,
23 in discussing with me and in preparing her PowerPoint
24 presentation, is basing it on what the evidence will show and

111436

1 It's not proper for the opening statements, And I'm gonna
2 object, be objecting to it. I am objecting. And I'd hate to do it
3 when they're presenting it in front of the jury.

4 THE COURT: What was the line?

5 MR, KEPHART: Your Honor, it starts out, it says,
6 "Kirstin Blaise Lobato," and then the first line says -- I don't
7 have it in front of me but I seem to remember it saying, "18-
8 year-old female wrongfully accused of murder." And I didn't
9 see anything further from there, but I believe that that's
10 argument and rt's not appropriate.

11 MR SCHIECK: Actually, it's Ms, Greenberger's
12 PowerPoint presentation. But at the same time we're —

13 THE COURT: The defendant is present and —

14 MR. SCHIECK: That's fine. I can -- I can argue it,
15 Your Honor.

16 THE COURT: — two of her counsel are present. Ms.
17 Greenberger is absent,

18 MR. SCHIECK: I -- she's here.

19 THE COURT: Oh, she just --

20 MR. SCHIECK: I —

21 THE COURT: She just came in.

22 MS, GREENBERGER: Sorryr

23 MR. SCHIECK: I have -- I have seen her PowerPoint
24 presentation, and what is on the PowerPoint presentation is

111-135

1 those were the — will be the words that she will premise every
2 point in her PowerPoint argument. And I'm speaking for her
3 even though it's her argument because she didn't hear the
4 argument before, But I don't think she takes exception with
5 what I've said on the basis that I've seen the argument, as has
6 Ms. Zalkin,,

7 THE COURT: Mr. Kephart's raised an objection to
8 your PowerPoint presentation because he indicated that the
9 very first line up says, "Wrongfully accused," which he believes
10 is argument for summation or closing argument rather than for
11 opening statement purposes. So Mr. Schieck was explaining
12 the context in which you intend to use your PowerPoint
13 presentation.

14 MS. GREENBERGER: And I have -- I have ran it by
15 my local counsel multiple times and, you know, reviewed it
16 with him to make sure it comported with all of the
17 requirements,

18 MR. KEPHART: Your Honor, I appreciate Mr.
19 Schieck's words in saying that, premising this that we intend to
20 prove this or our evidence intends to prove that. That's not
21 what the PowerPoint says. It starts out with the very first
22 premise, which is argument. And with it up on the board and
23 sitting like that, and I didn't see any more, I don't know what
24 else is on there, and I'd venture to say if they're consistent

111-137

1 with that, then I'm gonna be asking the Court, during their
 2 PowerPoint, I'm gonna be objecting. And
 3 that's why I'm making my objection now, just because I did
 4 see that
 5 And Mr. Schieck talks about wanting to see my
 6 notes, I've never asked for their notes, but I certainly expect
 7 that if I argue in my opening statement that he'd be objecting
 8 to it. And they're well aware of what we intend to present
 9 evidence-wise because they've had an opportunity to see it
 10 from one trial before. And so I just think it's inappropriate and
 11 I felt comfortable making my objection now because I don't
 12 want to have to be doing it in front of the jury, As a matter of
 13 fact, they talk that he's never had to have this happen before.
 14 My very last trial, it happened with our expert and it happened
 15 with our PowerPoint presentation, The Court ordered ours to
 16 be presented to Mr. Wilson/Wolfson [unintelligible]. So I know
 17 it wasn't here. I'm just saying that that seems to be the trend
 18 now And I wasn't aware that a PowerPoint presentation was
 19 being made for their opening. I knew there was one for their
 20 expert because they provided me with the photographs that
 21 they intend to use with that PowerPoint, and but I wasn't
 22 aware of this one until I came in and saw them setting it up
 23 and then I saw the first word on there. And then she quickly
 24 took it off, like I wasn't supposed to see it,

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1 will,
 2 THE COURT: You're welcome.
 3 Counsel had at sidebar mentioned that they may
 4 wish to make a argument on the -- on the record about
 5 challenges for cause. Did you need to do that now?
 6 MR. KEPHART: Well, Your Honor, I think because
 7 there was none made that are on the record, I know the Court
 8 noted and it's part of the record that certain individuals were
 9 passed for cause or were excused for cause. I am **my**
 10 concern is is that the defense may have some concern later
 11 that they didn't have an opportunity to address that, And, I
 12 mean, certainly, this is their opportunity now. We made our
 13 claim as to certain ones when I was questioning, and I know
 14 that they've made a request on a couple of them. I think it's
 15 probably appropriate that we probably need to make a record
 16 as to it,
 17 THE COURT: I always take us -- I always take us
 18 off the record at sidebar because I've found that with this
 19 system, otherwise, the microphone projects and the jury and
 20 people in the audience can hear the discussion at the bench,
 21 So —
 22 MR, KEPHART: Okay,
 23 THE COURT: Counsel's aware that if they wish to
 24 put anything on the record later, they're free to do that,

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1 MS, GREENBERGER: I wanted —
 2 MR, KEPHART: And so —
 3 MS GREENBERGER: I wanted to —
 4 MR, KEPHART: So I'm —
 5 MS, GREENBERGER: -- see [unintelligible].
 6 THE COURT: And I'm talking, Ms, -- so I just think
 7 it's inappropriate I'm lodging my objection now. I — maybe
 8 the Court needs to view it to determine whether or not it is
 9 appropriate.
 10 THE COURT: I think that if it is presented along
 11 with the argument that or the statement that Mr. Schieck set
 12 forth, that that's the context in which it's going to be
 13 presented, then it would be appropriate for the opening
 14 statement. If the defense is going to say this is what the
 15 witnesses will be testifying and this is what the evidence will
 16 show, then it would be appropriate. So the Court will overrule
 17 the objection and caution Ms. Greenberger to not put it up
 18 until the proper context has been put forth before the jury.
 19 MS, GREENBERGER: Okay, I assure the Court I will
 20 comply,
 21 THE COURT: And of course, Mr. Kephart, if you feel
 22 that there is something objectionable, then you may raise your
 23 objection.
 24 MR. KEPHART: Okay. Thank you, Your Honor. I

1 MR, KEPHART: Okay. I'll do that then, Judge, just
 2 so we keep -- okay.
 3 THE COURT: Did --
 4 MR,, KEPHART: We challenged —
 5 THE COURT: Did Mr, —
 6 MR, KEPHART: Oh, I'm sorry.
 7 THE COURT: Oh, okay. Go ahead,
 8 MR,, KEPHART: We had challenged Juror Number,
 9 well, the last two numbers was 05, Gregory Willson.
 10 MR. SCHIECK: Your Honor, could -- I don't know if
 11 we're recording now, but we will not use the jurors' name if we
 12 are.
 13 MR. KEPHART: But --
 14 MR, SCHIECK: The Court TV was -- I don't know if
 15 we wanted to put the actual jurors' names on the record if it's
 16 being broadcast. But —
 17 MR, KEPHART: I can just go with the number if you
 18 prefer.
 19 THE COURT: Maybe we can, we can use number
 20 and first name,
 21 MR,, KEPHART: That's fine, Judge.
 22 THE COURT: All right.
 23 MR. KEPHART: Okay. Gregory, Number 205. The
 24 State had challenged him for cause because he had indicated

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1 that he didn't feel that he could be fair to the State in light of
 2 two incidents that occurred with him involving the police
 3 departments in different cities that he lived in. He indicated
 4 that he couldn't set it aside, that it would cause him to -- he
 5 felt that he'd have doubt about the State's case because of
 6 those two incidences.
 7 just move on to the next one
 8 THE COURT: He was excused for cause.
 9 MR, !KEPHART: Yes. Want me to just go through
 10 them all?
 11 MS, DiGIACOMO: Yeah,
 12 MR. KEPHART: Okay. Number 216, Wendell.
 13 MS, DiGIACOMO: Oh, no, that's -- that was
 14 yesterday.
 15 MR, KEPHART: Oh, I know. I know. We haven't
 16 put it on the record, though,
 17 That he was the individual that indicated that
 18 because of his background in law enforcement that he felt that
 19 he would be giving more weight to the -- a police officer's
 20 testimony than anyone else's testimony, felt that he couldn't
 21 do it otherwise and that he understood that he didn't think it'd
 22 be fair to the defense in that case, He was challenged for
 23 cause,
 24 THE COURT: And he was excused for cause.

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1 newspaper, She was aware of the facts of this case from
 2 reading it in the news,, She had formed an opinion. Based on
 3 her background and her employment, she felt that she had
 4 formed an opinion, would not be impartial and could not set
 5 aside what other information she had learned from the press.
 6 She was -- she was excused for cause.
 7 THE COURT: Okay,
 8 MR, KEPHART: Juror Number 231, first name of
 9 Karl. He had -- he had indicated that based on -- now this was
 10 a challenge by the State. He indicated that based on his
 11 current situation here in the community with regards to his —
 12 some financial issues, some issues involving his children and
 13 his wife, that he could not and he would not pay attention to
 14 what was occurring during the trial. He felt that based on his
 15 concerns and our concerns that he would not be able to pay
 16 attention to the trial, The State challenged him for cause. He
 17 was excused for cause,
 18 THE COURT: He also indicated he suspected that
 19 the defendant was involved —
 20 MR, KEPHART: Oh,
 21 THE COURT: -- in the commission of the offense,
 22 MR, KEPHART: Okay. Correct.
 23 Number 237, first name of Gregory. He indicated
 24 that he could not consider the forms of punishment that are

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1 MR, KEPHART: Okay. Let's see. Where's that list?
 2 I remember that Juror Number 218, Curtis is his first
 3 name, had been challenged for cause, I mean, had been
 4 excused for cause as well, but I -- some of these are cause
 5 that —
 6 THE COURT: He is the one who indicated that he
 7 had prior knowledge through newspapers,
 8 MR. KEPHART: Okay. That's right,
 9 THE COURT: And had read an R.J, article and his
 10 wife had surfed the Internet and found additional information
 11 about the case, and that he had formed an opinion on the case
 12 due to that prior knowledge.
 13 MR, KEPHART: Okay.
 14 THE COURT: So he was excused for cause.
 15 MR, KEPHART: Thanks, Judge.
 16 Number 219. His first name was Howard,, He is a
 17 current police officer with the Clark County School District. He
 18 indicated, as well, that he would be giving more weight to the
 19 testimony of an officer than any other. He felt that he could
 20 not be impartial in light of the fact that if an officer testified in
 21 his -- and he was excused for cause.
 22 THE COURT: Yes.
 23 MR. KEPHART: Number 223, first name was
 24 Rowena. She indicated that she worked for the local

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1 available, He said he would not impose a -- or consider life
 2 without the possibility of parole. And the State challenged him
 3 for cause, He was excused for cause,
 4 THE COURT: Okay.
 5 MR, KEPHART: Juror Number 252 -- or, I'm sorry,
 6 250. Yeah, 254. I'm sorry. His first name is Emigdio. He
 7 indicated that he -- he is a twenty-year-old man. He indicated
 8 that for religious reasons and for other reasons he felt that he
 9 could not or would not consider the punishments, all forms of
 10 punishment and life without the possibility of parole. The
 11 State challenged him for cause. He was released for cause,
 12 257, first name is Wayne. He indicated that because
 13 of his background that he would give -- be more likely to give
 14 more credibility to police officers. He said he would keep an
 15 open mind, The defense challenged him for cause, and he
 16 was released for cause,
 17 THE COURT: He indicated that the scales were not
 18 balanced,
 19 MR. KEPHART: Right.
 20 THE COURT: Okay.
 21 MR. KEPHART: Number 259, first name of Michael.
 22 He indicated that based on a current situation in his life that
 23 his attention to the case would be a -- thought that he
 24 wouldn't be able to give his attention to the trial, as well as he

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1 also said that he had formed an opinion based on our opening
2 in reference to the charges, that she may be guilty just based
3 on that. He was challenged for cause and he was released for
4 cause.

5 THE COURT: Right,

6 MR. KEPHART: 347. Number 347, first name of
7 Iredell. I -- the Court's indulgence, Your Honor. Oh. She had
8 indicated that she had formed an opinion based on what she
9 knew from the press, that she felt that the defendant had not -
10 - had done this but had not done it by herself. She believed
11 that she had help. She indicated that she could not put that
12 aside in her deliberation. So based on that, she was
13 challenged for cause and excused for cause,

14 THE COURT: I think that was a defense —

15 MR. KEPHART: Judge, quite honestly, I don't —

16 THE COURT: motion,

17 MR. KEPHART: I don't remember who challenged
18 her, That's our --

19 THE COURT: I don't remember there being much
20 argument about that. I think —

21 MR. KEPHART: Yeah.

22 THE COURT: -- that both sides —

23 MR. KEPHART: Judge, maybe I need to —

24 THE COURT: -- felt that she was appropriate to be

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1 his co-counsel can address the Court otherwise, But I thought
2 maybe with regards to them there was some consensus.

3 I think that there was one or two more that the
4 defense challenged and I think they probably need to make a
5 record if they want to.

6 MS. DiGIACOMO: We did, too. We also challenged
7 these two.

8 THE COURT: I think at the very end that it was Ms. -
9 Miller.

10 MR. KEPHART: Okay.

11 THE COURT: We should probably not use her first
12 name now that we -- now that I've said her last name.

13 There's a lot of Ms. Millers in the world, though. She was 244,

14 MR. SCHIECK: Your Honor, I believe that the only
15 challenge that we made that the Court denied that we would
16 wish to put on the record has to do with that last one we were
17 talking about, the individual that was -- tended to side with the
18 prosecution. I think that the overall answers that she gave
19 gave a pretty clear impression that the defense was starting
20 from a couple of steps behind because of the history with he-
21 father being a prosecuting attorney for years. I realize that
22 her last answer kind of shot a hole in some of our arguments
23 but I still believe, overall, her answers were such that the
24 Court should have granted her challenge,

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1 excused for cause with the information that she had provided,

2 MR. KEPHART: Certainly, if I've misspoken at all
3 there, I think there's one more and I'll finish it, and then I
4 need -- I want to make a record with regards to these
5 challenges.

6 The last one is Number 412, first name of Telly.

7 And --

8 THE COURT: Okay.

9 MR. KEPHART: I can't remember this one. I can't
10 remember why. The Court's indulgence, Your Honor.

11 THE COURT: He's the one that I had make the
12 phone call because his mom had lupus.

13 MR. KEPHART: Oh, that's right.

14 THE COURT: To see if she could —

15 MR. KEPHART: That's right.

16 THE COURT: — stay home alone. And for medical
17 reasons she could not, So I excused him for cause.

18 MR. KEPHART: Okay, So I think maybe for the
19 record that that will be read as an excused versus being
20 challenged for cause. 'Cause with regards to the ones that
21 have been challenged, I know that the Court had us approach
22 the bench and we spoke on all of them, I think that in regards
23 to the ones that had been left, at least there was some
24 consensus with most of them. And, certainly, Mr. Schieck or

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1 THE COURT: Okay,

2 MR. SCHIECK: The next one we really wanted to
3 address, the other issue we would like to just put on the
4 record is there were two jurors that were challenged --

5 THE COURT: Before we go there, I want to make .a
6 record on 244. She had in the initial questioning indicated that
7 she would try to be impartial, but then she was pushed to and
8 told that we need to know and we need to know now. And
9 she said, yes, I would impartial, I can be impartial, I would be
10 impartial. So that's why the Court overruled that,

11 MR. SCHIECK: The other item has to do with the
12 two challenges for cause that were made to the jurors that
13 would not consider life without the possibility of parole. That
14 relates back to the issue concerning the State being allowed to
15 take the sentencing to the jury to begin with, We feel that
16 both of those jurors were good jurors and we would have liked
17 to have kept but were unable to do so because they had to
18 decide the sentencing question and, therefore, disqualified
19 because they wouldn't consider life without the possibility of
20 parole. I believe that was Juror Number 237, I believe, and
21 Juror Number 254,

22 THE COURT: That's correct, Those were those two
23 jurors that did have that difficulty with life without the
24 possibility of parole. 254, though, had indicated that due to

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1 his religion he could not judge. And so I wasn't sure if he
 2 would even be able to make a determination on the guilt or
 3 innocence phase. But that was explored more in depth with
 4 regard to the penalty phase.
 5 MR, SCHIECK: Correct. That's all the record we
 6 needed to make, Your Honor.
 7 THE COURT: All right, Then I will step down and
 8 have the bailiff bring in the jury and seat them,, I have a few
 9 opening remarks to go through with them, and then we'll get
 10 to the openings.
 11 We'll go off the record,
 12 (Court recessed at 16:16:08 until 16:32:45)□
 13 (Jurors are present)
 14 THE BAILIFF: All rise.
 15 Department II is back in session. Please be seated,
 16 THE COURT: The record shall reflect that we are
 17 resumed now in the presence of the jury and proceeding
 18 forward in the trial of State versus Lobato under Case Number
 19 C177394. The defendant is present, together with her three
 20 counsel, the two prosecuting attorneys are present, and the
 21 ladies and gentlemen of the jury have been reseated by the
 22 bailiff into the seats that they will be occupying throughout the
 23 remainder of the trial,
 24 Ladies and gentlemen, now that the jury selection

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1 and turn it over to the bailiff, who will provide it to the Court
 2 What I'm gonna cover with you now is just kind of
 3 an introduction to the case, It's not a substitute for the
 4 instructions on the law. The Court will be providing you the
 5 instructions on the law at the close of all of the evidence and
 6 before you retire to consider your verdict.
 7 As you are aware, this is a criminal case, It was
 8 commenced by the State and brought against the defendant,
 9 Kirstin Blaise Lobato. The case is based on a charging
 0 document which the clerk will be reading to you shortly, and
 1 then she will be advising you as to the pleas to the charges
 2 that have been entered by the defendant.
 3 Would counsel please approach?
 4 (Off-record bench conference at 16:36:00 until 16:36:53)
 5 THE CLERK: "DISTRICT COURT, CLARK COUNTY,
 6 NEVADA.
 7 "THE STATE OF NEVADA, Plaintiff, versus KIRSTIN
 8 BLAISE LOBATO, Defendant
 9 "Case Number C177394.
 0 "INFORMATION.
 1 "STATE OF NEVADA, COUNTY OF CLARK,
 2 "District Attorney within and for the County of Clark,
 3 State of Nevada, in the name and by the authority of the
 4 State of Nevada, informs the Court:

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1 process has been completed, it's necessary that you be placed
 2 under the oath for jury service. Would you all please stand
 3 and raise your right hands to be sworn by the clerk?
 4 **JURORS ARE SWORN**
 5 THE CLERK: Thank you. Please be seated,
 6 THE COURT: Sometimes things just don't roll on
 7 quite as swiftly as one might have thought. I believed that we
 8 were going to be going into the opening statements today, but
 9 it appears that we will not be getting there, that we will be
 10 doing that tomorrow at 1:00 p.m.
 11 The Court has some opening remarks for the ladies
 12 and gentlemen of the jury at this time.
 13 In past trials, upon occasion, once we have gotten
 14 underway, something has come to light which was not
 15 disclosed during the jury voir dire process, which the juror did
 16 not realize was pertinent to the case. It may be that a witness
 17 comes into the courtroom and when you see that witness's
 18 face you recognize them as someone that you knew but you
 19 didn't know their last name perhaps. And so when the list of
 20 witnesses was given, you didn't realize that you were familiar
 21 with one of the witnesses and so that did not get previously
 22 disclosed. Should anything along those lines happen during
 23 the process of this trial, please do a written report of it, put
 24 your badge number and your name at the bottom of the report

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1 "That KIRS_IN BLASE LOBATO, the Defendant
 2 above named, having committed the crimes of MURDER
 3 WITH USE OF A DEADLY WEAPON (OPEN MURDER)
 4 and SEXUAL PENETRATION OF A DEAD HUMAN
 5 BODY, on or about the 8th day of July, 2001, within the
 6 County of Clark, State of Nevada, contrary to the form,
 7 force and effect of statutes in such cases made and
 8 provided, and against the peace and dignity of the State
 9 of Nevada, COUNT I -MURDER WITH USE OF A DEADLY
 10 WEAPON (OPEN MURDER) did then and there wilfully,
 11 feloniously, without authority of law, and with
 12 premeditation and deliberation, and with malice
 13 aforethought, kill DURAN BAILEY, a human being, by the
 14 said Defendant beating the said DURAN BAILEY with a
 15 blunt object and/or by stabbing and/or cutting the said
 16 DURAN BAILEY, with a deadly weapon, to-wit: a knife.
 17 COUNT II -SEXUAL PENETRATION OF A DEAD
 18 HUMAN BODY did then and there wilfully, feloniously, and
 19 without authority of law, sexually penetrate a dead
 20 human body, to-wit: DURAN BAILEY, in the following
 21 manner, by inserting a knife into and/or cutting the anal
 22 opening of the said DURAN BAILEY."
 23 District Attorney, signed by Eric G. Jorgenson, Chief
 24 Deputy District Attorney.

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1 To which the defendant has entered a plea of not
 2 guilty,
 3 THE COURT: Thank you, Ms. Clerk,
 4 Ladies and gentlemen, you should distinctly
 5 understand that this document or information just read by the
 6 clerk is simply a document that sets forth an accusation and it
 7 is not, in any sense, evidence of the mere allegations which it
 8 contains.
 9 As you have been advised by the clerk, the
 10 defendant has pled not guilty to the charges in that
 11 information. The State, therefore, has the burden of proving
 12 each of the essential elements of the charges in the
 13 information beyond a reasonable doubt As the defendant sits
 14 here now, she is not guilty.
 15 The purpose of this trial is to determine whether or
 16 not the State will meet its burden. It is your primary
 17 responsibility as jurors to find and to determine the facts. You
 18 are the sole judges of the facts. You are to determine the
 19 facts from the testimony that you will hear from the witness
 20 stand and from the other items of evidence, including the
 21 exhibits that will be introduced in court It will be up to you to
 22 determine what inferences you feel may be properly drawn
 23 from the evidence admitted at trial,
 24 During the trial, the parties may sometimes present

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1 will be produced at trial.
 2 After the opening statements, then the State will
 3 introduce their evidence in support of the State's information,
 4 and this is called the State's case in chief. After the State
 5 presents its evidence, it will rest its case in chief,
 6 At that time, the defendant may present evidence
 7 but is not obligated to do so. If the defendant elects to do so,
 8 that would constitute the defendant's case in chief.
 9 If the defendant elects to present evidence, after the
 10 defendant rests its case in chief, then the State may present
 11 rebuttal evidence.
 12 If the State presents rebuttal evidence, the
 13 defendant may present surrebuttal evidence but, again, is not
 14 obligated to do so.
 15 After the close of all of the evidence, the Court will
 16 be instructing you on the applicable law. You must not be
 17 concerned with the wisdom of any rule of law given to you by
 18 the Court for, regardless of any opinion that you may have as
 19 to what the law ought to be, it would be a violation of your
 20 oath to base a verdict upon any other view of the law than
 21 that given to you by the Court.
 22 After you have been given the instructions on the
 23 law, each side will have the opportunity to present to you a
 24 closing argument in support of their case. What the lawyers

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1 objections to some of the testimony or other evidence. It is
 2 the duty of a lawyer to object to any evidence which he or she
 3 believes may not be properly offered_ And you should not in
 4 any way be prejudiced against a lawyer who makes objections
 5 on behalf of the party that he or she represents.
 6 At time, the Court may sustain objections or direct
 7 that you disregard certain testimony or exhibits. You must not
 8 consider any evidence to which an objection has been
 9 sustained by the Court, nor any evidence which the Court
 10 orders to be sericken.
 11 Anything that you may see or hear outside the
 12 courtroom is not evidence and must also be disregarded by
 13 you.
 14 Please remember that the statements, arguments
 15 and opinions of the lawyers are not evidence in this case.
 16 However, if the lawyers stipulate to the existence of a fact,
 17 then you must accept their stipulation as evidence and regard
 18 that fact as proved.
 19 The trial will be proceeding in the following order:
 20 Both sides will be given the opportunity to make an
 21 opening statement to your What the lawyers will tell you in
 22 their opening statements is not evidence. The opening
 23 statements simply serve the purpose of giving an introduction
 24 to the evidence which the party making the statement believes

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1 will tell you during their closing arguments is not evidence, just
 2 as what they will tell you in their opening statements is not
 3 evidence.
 4 The closing arguments are designed to present to
 5 you the contentions of the parties as to what the evidence
 6 admitted at trial has shown, and what reasonable inferences
 7 may be drawn by you from that evidence.
 8 No statement, ruling, remark or comment which I
 9 make during the course of this trial would be intended to
 10 indicate to you my opinion as to how you should decide this
 11 case, nor intended to influence you in any way in your
 12 determination of the facts.
 13 At times, I may ask questions of witnesses and, if I
 14 do so, it's for the purpose of bringing out matters which I feel
 15 need to be brought out or done to clarify the tape-recording or
 16 the record and not done in any way to indicate my opinion
 17 about the facts, nor to indicate my opinion as to the weight
 18 that I feel you should give to the testimony of the witness.
 19 I may find it necessary to admonish the lawyers
 20 during the trial and, if I do so, you should not show any
 21 prejudice against that lawyer or the lawyer's client because the
 22 Court found it necessary to admonish the lawyer.
 23 Until the time that the case is submitted to you, you
 24 must not discuss it with anyone. You may not discuss it, not

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1 even with your fellow jurors. Once it has been submitted to
 2 you, then you must discuss it only in the jury deliberate room
 3 with your fellow jurors, It's important that you keep an open
 4 mind and that you not decide any issue in this case until the
 5 entire case has been submitted to you under the instructions
 6 on the law from the Court.

7 If during the trial you should find that you're having
 8 difficulty hearing a witness, please raise your hand to draw our
 9 attention to that so that we can adjust the microphone or
 10 adjust the position of the witness, whatever is necessary, for it
 11 is most important that you do fully hear all of the testimony.

12 Also, if during the trial you should have a need to
 13 utilize the restroom facilities or should you feel ill and need to
 14 take a break, please raise your hand so that we can
 15 accommodate those needs for you as well

16 During the trial you will notice that the Court will be
 17 taking notes of the various witnesses' testimony. You're not to
 18 draw any inference from that action. The Court is required to
 19 prepare for oral a iment of counsel and, for that reason, will
 20 be taking notes.

21 Please understand that at the close of the case the
 22 jury will not have a transcript to consult. However, the bailiff
 23 will furnish you with notepads and pencils. You may take
 24 notes throughout the trial if you find that helpful. Any notes

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1 that you take during the trial, you may take with you back into
 2 the jury deliberation room.

3 Again, let me remind you that until the case is
 4 submitted to you, please do not talk to each other about it and
 5 do not talk about anyone who has anything to do with it until
 6 the end of the case when you go into the jury deliberation
 7 room to decide on your verdict. Not talking with anyone else
 8 about it does include your family members, friends and your
 9 employers. You may tell them, however, that you have been
 10 selected and Au have been seated to serve as a juror in a
 11 criminal case, but you cannot tell them anything further about
 12 it until after you are discharged from your jury service.

13 Please do not let anyone walk up to you or try to
 14 talk to you about the case or try to talk to you about anyone
 15 who has anything to do with the case. And should that occur,
 16 please do a written report of it immediately with your name
 17 and badge number and turn it over to the bailiff.

18 Please do not read any news stories or articles or
 19 listen to any radio or television reports about the case or about
 20 anyone who has anything to do with it until after you are
 21 discharged from your jury service.

22 Ladies and gentlemen, as you are aware, a trial is a
 23 search for the truth using the rules of law. For this reason, the
 24 Nevada Supreme Court has provided the opportunity for jurors

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1 to ask written questions of any of the witnesses called to
 2 testify in trials in this state. You are not encouraged to ask
 3 large numbers of questions because that's the primary
 4 responsibility of the five lawyers that are here on this trial,

5 When a witness is called to the stand, the lawyer
 6 that calls that witness to the stand will conduct the initial
 7 questioning which is called the direct examination of the
 8 witness. After that direct examination is completed, the
 9 witness will be passed to the opposing side. The opposing
 10 counsel will then question that witness and that is called the
 11 cross-examination. After the cross-examination is completed,
 12 the witness will be passed back to the original lawyer that
 13 called that witness to the stand for followup questioning and
 14 that is called redirect examination, then passed back to
 15 opposing counsel for recross examination, and back and forth
 16 and back and forth until the lawyers have exhausted all of
 17 their questions.

18 Once the lawyers have exhausted all of their
 19 questions, if at that time there are additional questions that
 20 you would like to ask the witness, you may then seek
 21 permission to ask that witness a written question. Should you
 22 desire to ask a question, please raise your hand to draw our
 23 attention to that fact. Then you will need to write your
 24 question out on one of your notepad papers and put your

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1 badge number and your name at the bottom of the question.
 2 The question should be written as if you are asking the
 3 question directly to the witness on the stand. You cannot pose
 4 questions to the Court, nor can you pose questions to anybody
 5 at the plaintiff's table or at the defendant's table. You can only
 6 question a witness.

7 Once you have written down your question and put
 8 your badge number and signature below, then the bailiff will
 9 pick it up to you and bring it up here to the bench, to the
 10 Court, At that time, the Court will confer at sidebar with
 11 counsel to determine if the question would result in an unfair
 12 trial, or if it's legally improper or if it is a question that may
 13 properly be asked. No adverse inference should be drawn if
 14 the Court does not allow a particular question. If the Court
 15 determines that the question may properly be asked, then the
 16 Court will ask it, No emphasis should be based on the answer
 17 to the question merely because the question came from a
 18 juror. If the Court asks the question and then the witness
 19 gives their answer, after that, the attorneys for both sides will
 20 be given the opportunity to do any followup questioning that
 21 they feel would be appropriate.

22 That concludes the opening remarks by the Court.

23 We will be taking our evening recess, resuming
 24 tomorrow at 1:00 pm. At 1:00 p.m., please be in the hallway,

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1 The bailiff will meet you there to return you to your seats in
 2 the courtroom, and we will proceed forward with the openings
 3 at that time.

4 During the recess, you are admonished not to talk or
 5 converse among yourselves, nor with anyone else, on any
 6 subject connected with this trial, and you're not to read, watch
 7 or listen to any report of or commentary on the trial or any
 8 person connected with the trial, by any medium of information,
 9 including, without limitation, newspaper, television, radio and
 10 Internet, and you're not to form or express any opinion on any
 11 subject connected with the trial until the case is finally
 12 submitted to you.

13 You all have a good evening, and we'll see you at
 14 1:00 p.m. The jury may exit,

15 (Jurors recessed at 16:50:44)

16 THE COURT: We have the issue on the Davis —

17 MR. SCHIECK: Oh, yeah.

18 THE COURT: The Jeremy Davis transcript.

19 MS. DiGrAtOMO: And, also, if you have an idea of
 20 when we'll start on Friday. We're having some witness issues,
 21 so I'm trying to get an idea, if you had a morning calendar.

22 THE COURT: I do, I've got a 9:30 hearing and I
 23 was hoping we'd be done at 10:30.

24 MS. DiGIACOMO: Because we have a witness flying

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1 MR. KEPHART: I did Jeremy Davis, I —

2 MS. DiGIACOMO: No, I think I did, All right. I
 3 don't remember_

4 MR. SCHIECK: No. It was -- it was you.

5 MS. DiGIACOMO: It was me? Yeah_ Well, it's been
 6 a few years.

7 MR. KEPHART: Well, that was your witness, □

8 (Pause in the proceedings)

9 THE COURT: Okay, I just kind of wanted to read
 10 the context of the question, get a feel for the testimony. What
 11 is the objection by the defense?

12 MR. SCHIECK: I'm not sure which one the State
 13 agreed to and which ones they want redacted,

14 MS. DiGIACOMO: Well, it —

15 THE COURT: The only one that they're not agreeing
 16 to is page 135, line 14,

17 MS, DiGIACOMO: No, no, no, Page -- no, no.

18 That's that -- I'm sorry, Your Honor, That's the first one. And
 19 the answer was no so the State's not gonna argue with that
 20 one. And then the other one —

21 THE COURT: Well, I don't need to know about the
 22 ones —

23 MS. DiGIACOMO: Oh, the one that we're —

24 THE COURT: — you've agreed with.

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1 out at 2:55 [unintelligible] getting him on tomorrow but
 2 [unintelligible].

3 THE COURT: It sounded like from prior discussion
 4 that a -- that counsel was in agreement on a couple of
 5 revisions but there was one outstanding that the Court needed
 6 to rule on. Is that correct?

7 MS, DiGIACOMO: That's correct. Two of them,
 8 we're not gonna fight about But they wanted line -- or page
 9 135, a question on line 14, They want that redacted.

10 THE tOURT: Page 135, line 14,

11 MS. DiGIACOMO: It's a question and answer.

12 MR. SCHIECK: It's a question by the prosecutor, I
 13 believe it was Mr, Kephart.

14 MS. DiGIACOMO: I'm sorry?

15 MR. SCHIECK: This was, oh, you — Ms. DiGiacomo
 16 was asking questions, right? Is that --

17 MR. 'KEPHART: Yes, that was.

18 MS DiGIACOMO: No. It was Mr, —

19 MR. SCHIECK: Or that's a prosecution question.

20 MR. KEPHART: It's mine.

21 MS. DIGIACOMO: It's a prosecution question. I
 22 think it was Mr, Kephart.

23 MR. KEPHART: I did,

24 MS DiGIACOMO: I'm not sure

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1 MS. DiGIACOMO: I'm sorry, Page 136, line 20,
 2 (Pause in the proceedings)

3 MR. SCHIECK: Are you guys then agreeing to 137,
 4 to take that one out?

5 MS. DiGIACOMO: Was that another one where the
 6 answer was no by the witness?

7 MR, SCHIECK: Yes. Yes,

8 MS. DiGIACOMO: Then that's fine_

9 MR, SCHIECK: And, actually, there was a followup
 10 to that one on 137. There was two questions that he said no
 11 to,

12 MS. DiGIACOMO: Yeah, and that's fine.

13 MR. SCHIECK: Your Honor, given -- and the main
 14 objection that we had was the prosecutor referring to
 15 statements that were made outside of court to them. He
 16 admitted making that statement on 136, so we'll withdraw the
 17 objection as to the one on 136.

18 THE COURT: Okay.

19 MR. SCHIECK: And we'll agree to redact the ones
 20 on 135 and 137.

21 THE COURT: That he answered --

22 MS. DiGIACOMO: That's fine.

23 THE COURT: -- no to.

24 MR, KEPHART: That's fine

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1 THE COURT: And those will -- those will be
 2 redacted Okay,
 3 MS. DIGIACOMO: Okay, Thank you.
 4 THE COURT: Then there's no disagreement,
 5 MS. DIGIACOMO: No,
 6 THE COURT: That made it easy for me.
 7 Thank you.
 8 Anything else that we need to make of record?
 9 MS. DIGIACOMO: No. But other than Friday, you
 10 think 10:30?
 11 THE COURT: Right.
 12 MS, DIGIACOMO: Okay.
 13 MR. KEPHART: That's it, right?
 14 MS. DIGIACOMO: Yeah.
 15 MR. KEPHART: That's all.
 16 THE COURT: And then we'll see everybody at 1:00
 17 o'clock and go off the record 'til then,
 18 (COURT ADJOURNED AT 16:57:04 AND CONTINUED
 19 THE FOLLOWING DAY, SEPTEMBER 14, 2006)
 20 *****
 21
 22
 23

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A "ROUGH DRAFT" TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE ABOVE-EN TITLED MATTER.

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AFFIRMATION
Pursuant to NRS 239B4030

The undersigned does hereby affirm that the preceding Transcript filed in District Court, Case No. C177394 does not contain the social security number of any person,

Lin Dunbar
Transcriber

4/29/07
Date

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