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IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

RECORD ON APPEAL FROM THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

GERHARD HOJAN	**02-5900 CF10 B**
APPELLANT	**CASE NO.**
vs	
STATE OF FLORIDA	**SC 18-2149**
APELLEE	**APPEAL NO.**

TRIAL TRANSCRIPTS

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MASTER INDEX ON APPEAL
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IN THE CIRCUIT COURT OF THE 17TH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION
JUDGE PAUL L. BACKMAN

CASE NO: 02-005900CF10B

STATE OF FLORIDA,

Plaintiff,

ORIGINAL

Vs.

GERHARD HOJAN,

Defendant.

_____/

Broward County Courthouse
201 Southeast Sixth Street
Ft. Lauderdale, Florida
September 25, 2018
9:30 o'clock a.m.

TRIAL PROCEEDINGS
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The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Room 5780, Ft. Lauderdale, Florida, on September 25, 2018, commencing at 9:30 a.m.

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APPEARANCES:

MICHAEL J. SATZ
Carolyn McCann, Esq. and
Jeff Marcus, Esq.
Assistant State Attorneys
on behalf of the Plaintiff.

OFFICE OF THE PUBLIC DEFENDER
H. Dohn Williams, Jr., Esq. and
Mitch Polay, Esq.
Special Public Defenders
on behalf of the Defendant

*Rule 1.31(g) Florida Rules of Civil Procedure requires copies to be obtained from the court reporter, unless the Court rules otherwise.

I N D E X

WITNESS:

VOIR DIRE

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Thereupon, the following proceedings were had:

THE COURT: And we have Mr. Hojan.

MR. POLAY: I have spoken to Miss McCann last night about this issue, it pertained to the transcript.

THE COURT: On Carl Hammerly?

MR. POLAY: Correct, Judge.

THE COURT: We discussed that without you. Let's put that off.

MS. McCANN: Carolyn McCann, Assistant State Attorney, regarding the prior testimony of Carl Hammerly, his report, page 2 regarding Christina Milarosa talks about the neck shot that the muzzle greater than 6 inches less than 18 inches, and the face shot muzzle greater than 6 inches less than 18 inches, arm muzzle 12 to 18 inches.

His testimony as it was transcribed appears to have a scriveners error and I would refer the Court to page 2090 of the prior transcript and 2091 wherein at line 20 of page 2090 it says, on the neck of the young lady I gave a muzzle to target distance of greater than six foot, less than 18 inches. That doesn't make sense.

THE COURT: It's the other way around,

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isn't it?

MS. McCANN: His report correctly states what the distances are. On page 2091 on line nine the transcript says, I shot patterns to determine the muzzle to target distance determination of the particular gunshot entrance would be greater than six foot, less than 18 inches.

The reason I am bringing it to the Court's attention and the defense attorneys' attention is that there is obviously an error and his prior testimony is going to be read into the record because he is deceased. So we would like to be able to correct that and in advance of his testimony that it comport with his written report.

MR. WILLIAMS: I don't see how we can object because it doesn't make sense how it's transcribed.

MR. POLAY: Sounds like a scrivener's error. It is illogical how it was actually transcribed. I am aware of the report, Judge.

MS. McCANN: Thank you, Your Honor.

THE COURT: Want to talk real quick what we're doing? Seems we have 75 this morning. We're going to do them in three groups of 25 and we are going to then just go through the reasons,

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tell them that this is a trial that we anticipate will go anywhere from six to eight weeks; is that fair?

MS. McCANN: I think we said last time we were in court, Mr. Williams put in the preliminaries that it would go to Friday.

MR. WILLIAMS: October 8 through November 16.

MS. McCANN: Which is the Friday before Thanksgiving week.

THE COURT: Well, if we are going with the fact that the trial is going to start on the 8th of October, that's 6 weeks, so I'll go anywhere from four to seven weeks but before -- definitely before Thanksgiving.

MR. WILLIAMS: Okay, they may be thinking I got a trip on this date and --

THE COURT: Well, we went through that last time with them. What did we do: Full time student, primary caregiver, unemployed, looking for work, full-time student, no work/no pay, prepaid vacation. I know we had a list that went beyond that.

MR. POLAY: Child care issue.

MR. WILLIAMS: Stay-at-home mom.

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MR. POLAY: Elderly parent.

THE COURT: That's why I have primary care.

MS. McCANN: Could you read the list again?

THE COURT: I can't find what I did the last time. Full-time student, primary caregiver, unemployed, actively looking for work, no work/no pay, prepaid vacation, childcare, and I know there were more than that.

MS. McCANN: People who are gravely ill.

MR. POLAY: Upcoming surgery, remember, any doctors.

MR. WILLIAMS: Plan on moving.

THE COURT: I think I used medical issues.

MR. POLAY: Yes, you did, better way to put it.

MR. POLAY: Why don't you have a catchall, any other reason.

MS. McCANN: We had people who were doing job training that were like moving to the next level, job things.

MR. POLAY: Judge, Mr. Hojan is cuffed.

THE COURT: We will take care of that in just a minute.

MR. POLAY: The question is do you want us to rise when the jury is coming or not? We'll

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keep him seated if you don't mind because they are going to keep the leg shackle on.

THE COURT: Okay.

(Thereupon, the panel enters the courtroom at 10:10 a.m. and the following proceedings were had)

THE COURT: Good morning, ladies and gentlemen. After lunch, I am used to a group being as blah as you guys are. Good morning. See that's not so hard, is it? My name is Paul Backman. I am one of your judges here in the 17th Judicial Circuit, at least for the next three months and one week, maybe a little less. Well, I have spent half my life on the bench so I guess it's time. As the Florida constitution tells me, I am not allowed to work anymore after the end of the year.

We are looking -- just so you are aware, you will not be in here very long this morning. You may or may not be back next week. That is going to really depend on what we do today. We are going through what we call a paring process, finding individuals that have the opportunity and time to sit with us during the course of this trial. It is anticipated, and first off, we

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anticipate on Tuesday -- what's the date, no, it would be the 9th, wouldn't it? Yeah, starting actual trial on October 9th.

What we are going to do the next two weeks is pick our jury and you will understand why it will take us two weeks to do. It is anticipated from the very beginning of the trial, once we start testimony, that this case will go and finish before Thanksgiving. So we are looking at anywhere from four to seven weeks, I think, is the way it works out. But I assure you, after discussions with all the attorneys, that we will finish before Thanksgiving.

Now I know that people have conflicts and we are going to go through those in just a second and if you have something other than what I am going to ask, I am going to ask that you please let us know. So let me tell you who we are not looking for. If you are a full-time student and this would interfere with your studies, we don't want you, unless you want to be with us. None of us want to interfere with anybody's educational advancement. If you are a primary caregiver to a parent, grandparent, a child where it would interfere with your ability to be with us, we

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don't want to take you away from them. If you are unemployed and actively looking for employment, that is a matter that we would be able to discuss.

If you don't work and don't get paid, we are not interested because again, none of us want to be responsible for the loss of income or for any assets that you may lose as a result of not having the money. If you work on a base salary and commissions and those commissions make a significant difference in your income and ability to live, we are not looking for you.

If you have childcare issues that can't otherwise be arranged, again, we need to know that. If you have medical issues that would interfere with your ability to be with us, again we need to know. And if there are any other reasons that I might have omitted, we need to know.

Now before I go through each name individually, I want you to know what our basic work schedule would be because my belief is we want individuals to serve and for those that serve and make that sacrifice of time, which is really what we ask of you, I try to get you in here and out of here as quickly as possible.

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So our schedule would basically be Tuesday, Wednesday, Thursday and Friday. Of course, those days will go from probably 10 o'clock until 5-ish depending where we are with witnesses. It is possible a day we may run out of witnesses at 2:00 in the afternoon so we would be leaving immediately afterwards.

There may be some Fridays that we don't work. Obviously, if Monday is a holiday and that goes into November, because I don't think there are any holidays between now and Veterans Day, but if it's a Monday holiday, we would not be working on Tuesday, we would do Wednesday, Thursday, Friday because Mondays I do my other work. So the idea is to get you in, get you out. That's my pledge to you, not a promise.

I will tell you that individuals seated in this room, with the exception of the defendant, we just came out of a 22 month and 3 day trial, so you are going to look at this one and say this is a short one. So let's go through the list and see where we are.

Miss Knight, tell me, any problems?

JUROR ONE: You are saying this would start October 9th?

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THE COURT: Yes.

JUROR ONE: Prior to that I do but that's fine. And my only other concern is possibly October 18th I am supposed to be going out of the country so that may not work for Thursday and Friday.

THE COURT: And you know the reason we ask these is because in a lot of instances we can work around those because we do have some flexibility built in.

Did I mention prepaid vacations? No, no, no, I mean that sincerely. It's on my list. I don't remember whether I actually said it. And again, with prepaid vacations, if you have one we are not going to interfere with it but we may be able to work around it.

So you're good for all the time with the exception of those two dates that you just mentioned, correct?

JUROR ONE: Correct.

THE COURT: That's the 18th and 19th of October.

Mr. Shain?

JUROR TWO: Yes.

THE COURT: And if I pronounce your names

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incorrectly, please correct me.

JUROR TWO: My son is actually being born on October 24th.

THE COURT: That's terrific. One of the lawyers had a wedding and two grandchildren during the course of the last trial. You said the 24th?

JUROR TWO: Yes.

THE COURT: Which is a Wednesday?

JUROR TWO: Correct.

THE COURT: And, of course, it could come any time during that.

JUROR TWO: Beforehand, I also do work full-time as a sole systems administrator for a retailer.

THE COURT: Who is the retailer?

JUROR TWO: Pet Supermarket.

THE COURT: Do you know what their jury payments situation is?

JUROR TWO: I'm not sure.

THE COURT: Do we have that one, Dohn?

MR. WILLIAMS: No, sir, haven't had them before.

THE COURT: Hang on a second, we're having some technical issues up here.

Okay, what I am going to ask, for those of

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you that do not know what the policy of your employers are, that after we go through some initials, like right now, Mr. Shain, if those are your only two, I'll tell you you are not going to miss the birth of your child. If you could just step outside, make a phone call and see what it is and then when you come back we'll just ask you what the story is. So if you would go make that phone call for us.

JUROR ONE: Judge, I didn't mention that I also work full time as an IT product manager.

THE COURT: For?

JUROR ONE: J.M. Family Enterprises.

THE COURT: We've had J.M. I think J.M. pays.

MR. POLAY: Yes.

THE COURT: We have experience from the last time.

JUROR TWO: So I can go now?

THE COURT: Yes. But during a break, Miss Knight, it never hurts to double-check because you'd hate to be on this and then find out that you're stuck.

JUROR ONE: Thank you.

THE COURT: Miss Lawford.

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JUROR THREE: Yes, my ten year old child.

THE COURT: Goes to school?

JUROR THREE: Yes.

THE COURT: What time does your child go to school?

JUROR THREE: 8:00 to 230.

THE COURT: Well, I can tell you I am not awake at 8 o'clock in the morning. Are there alternative arrangements that you can make for your child to be picked up?

JUROR THREE: Well, no. I get her from Tuesday to Friday and her dad gets her from Saturday to Monday.

THE COURT: No aftercare that she's already in?

JUROR THREE: I will have to put her in aftercare because I leave work and go get her and I'd have to make arrangements to drop her off at school.

THE COURT: With regard to aftercare, is it a monetary expense that you would incur?

JUROR THREE: Yes.

THE COURT: Would that interfere with your income?

JUROR THREE: Yes.

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THE COURT: See how easy that was.

Miss Stelzer, did I get that right?

JUROR FOUR: I'm retired. No problem, I'm free.

THE COURT: Mr. Black.

JUROR FIVE: I have a full-time job in IT, Conveyed Health Solutions and I'm not sure that they know the policy. I gave them the paper to be here today and they took a photocopy of it and said we don't know, if it's five days leave of absence, that's PTO, you better just take PTO.

THE COURT: We don't want anybody to take vacation days or personal days to be with us. It is either your company pays the whole time or they don't.

JUROR FIVE: I very much doubt it. They don't seem to know, the HR people I talked to.

THE COURT: Trust me, we have all been through this.

MR. WILLIAMS: Yeah, that's the loop.

THE COURT: Want to make a phone call and see if they have figured that out? No reason not to try but outside.

JUROR FIVE: Okay.

THE COURT: Miss Williams.

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JUROR SIX: Yes, I am a part-time worker at Lowe's and full-time student.

THE COURT: Where do you go to school?

JUROR SIX: B.C, Broward College.

THE COURT: What are you studying? I know what B.C. is.

JUROR SIX: Criminal justice.

THE COURT: Your class is during the day?

JUROR SIX: I have one class at night on Mondays and then I have a Friday class that starts at 11:00 and then October I have another class starting on Tuesdays.

THE COURT: And your part-time job is during the day?

JUROR SIX: During mornings/afternoon like 3:30, it varies.

THE COURT: Okay, no problem.

Miss Cring.

JUROR SEVEN: Yes, you got it right.

THE COURT: I studied all last night.

JUROR SEVEN: I work part-time Thursdays, Fridays, Saturdays and Sundays, so that is not going to work for me.

THE COURT: And you work during the day those times?

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JUROR SEVEN: Yes, I do.

THE COURT: And that income is important to your bottom line?

JUROR SEVEN: Yes, it is.

THE COURT: Mr. Merrick.

JUROR EIGHT: My wife travels for work so when she's out of town I am the primary caregiver. I also work full-time.

THE COURT: What do you do?

JUROR EIGHT: Marketing for Divers Direct.

THE COURT: I have no clue.

JUROR EIGHT: It's the scuba industry.

MR. WILLIAMS: I don't know what their policy is.

THE COURT: Do you know what your wife's schedule is traveling?

JUROR EIGHT: I don't. I think she might be out of town October 12th for a few days but I am not positive.

THE COURT: That is a Friday, October 12th.

JUROR EIGHT: Okay, it wouldn't be that day then. I can check her schedule, I just don't know it off the top of my head.

THE COURT: Two things, would you make a phone call, two phone calls. See if you can find

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out what your wife's schedule is and find out what the policy of your employer might be?

JUROR EIGHT: Okay.

THE COURT: Thanks.

Mr. Mendoza.

JUROR NINE: I work full-time but I will be able to come, the company pays for it.

THE COURT: Who do you work for?

JUROR NINE: Marine Max.

THE COURT: So that would be your only conflict and they pay?

JUROR NINE: Yes.

THE COURT: They pay for the entire trial?

JUROR NINE: I believe so. I could give a call and find out.

THE COURT: I would because I believe so could get you stuck in a trial.

JUROR NINE: All right.

THE COURT: Thank you.

Miss Caffarena.

JUROR TEN: Single mom of three boys. Their dad gets them every other weekend, he's in New York Monday through Friday. I work full time with base and commission.

THE COURT: So that would interfere with

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your ability to be with us?

JUROR TEN: Yes.

THE COURT: Miss Ulrich.

JUROR ELEVEN: Yes. I do work full-time but I have a vacation planned November 5th, that week.

THE COURT: Where you going?

JUROR ELEVEN: Buffalo. That's where I grew up.

THE COURT: In the wintertime?

JUROR ELEVEN: Fall is my favorite time and I miss it down here.

THE COURT: Who do you work for?

JUROR ELEVEN: Kaluz Restaurant.

THE COURT: Do you know what their policy is?

JUROR ELEVEN: I'm not completely sure. They are obviously paying me for today.

THE COURT: That I know. Could you find out?

JUROR ELEVEN: Of course, I would be happy to.

THE COURT: Mr. Perez.

JUROR TWELVE: I am a full-time mental health therapist so six weeks might put a strain

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on my clients as well as the facility I work for. We are a small facility.

THE COURT: Who do you work for?

JUROR TWELVE: Safe Haven Recovery. As far as their pay, a week might not be a problem, I don't know about six weeks.

THE COURT: Could you call, please?

JUROR TWELVE: Sure.

THE COURT: Miss Cooper.

JUROR THIRTEEN: Yes, I work part-time in season, it is for a small grocery store, it starts November 3rd. And also my brother-in-law was hospitalized for a few months in Connecticut. He almost died so I might have to go back at some point. He is out of the hospital right now but also has an infection and sometimes I would take care of him while I was in Connecticut.

THE COURT: The part-time job, is that critical to your financial bottom line?

JUROR THIRTEEN: Yes.

THE COURT: Miss Branscum.

JUROR FOURTEEN: Yes, I am employed full-time. I do believe my hours can be flexible, that I can work in the evening instead of during the day.

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THE COURT: Who do you work for?

JUROR FOURTEEN: It's a small company, it's called AH Jewel Logistics.

THE COURT: Here's the thing, and I know if you got through this stage, the next stage you would be hit with this question anyway, but if you had flexible hours and you were working at night, would that interfere with your ability to kind of really stay awake and concentrate on the case during the daytime?

JUROR FOURTEEN: Being the age I am, I don't sleep a lot at night.

THE COURT: But would you be --

JUROR FOURTEEN: So I do pretty well.

THE COURT: But would you be bright eyed and bushy tailed in the morning?

JUROR FOURTEEN: Always.

THE COURT: I want some of what you have then. You think you're okay then?

JUROR FOURTEEN: I think so.

THE COURT: You will have to check on that?

JUROR FOURTEEN: I'm confident.

THE COURT: Okay.

Mr. Renaker.

JUROR FIFTEEN: Yes, sir, I am a primary

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instructor for 90 full-time students and also a C.L. at an animal care facility which requires me being on-site five days a week.

THE COURT: Who do you work for?

JUROR FIFTEEN: City College Hollywood.

THE COURT: Do they pay?

JUROR FIFTEEN: It's not the pay, it's they can't have animals on-site and the program can't run without animals on-site.

THE COURT: Mr. Hall.

JUROR SIXTEEN: Yes, sir, I am V.P. of operations for a company that sells Christmas products. This time of year I am on a plane every few days going to fix a problem. My company will pay me for five days.

THE COURT: That's it?

JUROR SIXTEEN: That's it.

THE COURT: Mr. Silcox.

JUROR SEVENTEEN: Good morning.

THE COURT: Still is.

JUROR SEVENTEEN: I am scheduled to be out of the country starting at November 1st through the 7th. My wife's cousin is getting married and she is part of the wedding party. And I am the sole web administrator and do all the media for

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Children's Services Counsel of Broward County.

THE COURT: Oh, I know they pay.

JUROR SEVENTEEN: Yes.

THE COURT: And it's a week? Where is the wedding taking place?

JUROR SEVENTEEN: Jamaica, my wife's ancestry.

THE COURT: We could always take the trial down there. So that would be your only issue?

JUROR SEVENTEEN: Other than at CSE, like I said, I am the only one that does the web and video and photography for all the events that they do.

THE COURT: We had somebody else with the first week of November. You all looked at me kind of strange when I said about 22 months and three days for a trial. We were accommodating everybody's vacation schedules, including the lawyers, mine especially, I had to cancel a trip to China three times because of the trial. They didn't like the idea of me going away for four months. Kidding.

Let's see, is that Miss Resto-Funari, you go by both names?

JUROR EIGHTEEN: In Puerto Rico, we do.

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It's common that they bring along the mother's last name. It stays like that on record.

I have multiple issues in November.

THE COURT: Start with the first.

JUROR EIGHTEEN: First of all, I am a part-time employee. I work Mondays, half a day Tuesday, but I work Friday, Saturdays and Sunday. I train people on Fridays, Mondays I have to do calls in the morning, I am field event manager for a whole demo program in South Florida for Whole Foods Market, Fresh Market and Publix stores so they are dependent on me, the company. Also, if I were not able to make any of those days, because I am only part-time and I am only working those few days, it would be devastating to my income. I am a single mother with two children and I am also supporting my 80-year-old mother financially. Also my two sons birthdays.

THE COURT: I think you have gone far enough. We understand, you've got problems.

JUROR EIGHTEEN: Yeah.

THE COURT: Let me rephrase that, you've got conflicts.

Mr. Marin.

JUROR NINETEEN: I am a full-time employee.

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I don't think my company would pay.

THE COURT: Who do you work for?

JUROR NINETEEN: MSL Property Management, I do maintenance. Also I run my company through my phone, it's a towing company, so I have to be on the phone constantly. And if I couldn't make those phone calls or receive those phone calls, I would not be making any income.

THE COURT: So you basically have two jobs?

JUROR NINETEEN: Pretty much, and I run them both at the same time. I do them both at the same time.

THE COURT: Miss Rigaud.

JUROR TWENTY: Yes.

THE COURT: Did I pronounce that even close?

JUROR TWENTY: It's Rigaud but everyone says the same thing. But I am a part-time employee at Mc Donald's and the schedule is flexible. I am not really doing anything else other than that.

THE COURT: And if you are not working, you are not getting paid?

JUROR TWENTY: It wouldn't really affect me.

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THE COURT: It would or would not?

JUROR TWENTY: It would not.

THE COURT: So you could be with us?

JUROR TWENTY: Yes.

THE COURT: How are we going to eat if you are not working?

JUROR TWENTY: I still live with my parents.

THE COURT: No, I'm not talking about you eating, I'm talking about you bringing it for all of us.

Mr. Detotto.

JUROR TWENTY-ONE: Networks. I work for a hotel in Dade County, it is managed by a company out of New Jersey. I am in group sales. I am the only one that does what I do and my livelihood depends on my production levels, so if I am not there to produce, I am in jeopardy of losing my job. Also I have diverticulitis and IBS and I might have to leave in the middle of a testimony. And also I now work with police officers.

THE COURT: Thanks.

Miss Johnson.

JUROR TWENTY-TWO: I am full-time employee at Barry University in the biomedical sciences

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department. My biggest concern would be I am solely responsible for hosting professional school visits with medical and dental schools and I already have a number scheduled in that timeframe. I do also have a high school student who I could probably figure out, he is 15, how I could get him home many days but my biggest concern would be my employment.

THE COURT: Do you know what the policy is of Barry?

JUROR TWENTY-TWO: I do not.

THE COURT: Could you check for us, please? Miss Ferreira.

JUROR TWENTY-TWO: I am looking for a job. I used to take care of an elderly person. He is going through hospice so right now I am looking for a job and I don't have any other income.

THE COURT: Thank you.

Miss Mosiello.

JUROR TWENTY-FOUR: Yes, I work full time and I am also a full-time student.

THE COURT: Where do you work?

JUROR TWENTY-FOUR: Purdue University Global, Kaplan University. I don't think it is an issue with my work but as a full-time student I am

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repeating a class that I didn't pass the prior term so I am kind of nervous about that conflicting with my time here.

THE COURT: When do you go to school?

JUROR TWENTY-FOUR: They are on-line courses and the seminars are at nighttime but the time periods that I do my work is throughout the day.

THE COURT: Would you be able to do it in the evenings and on the weekends?

JUROR TWENTY-FOUR: I would be but I'm just concerned about not passing the class again and being dropped out of school.

THE COURT: We don't want that. Where do you go to school?

JUROR TWENTY-FOUR: I go to school at Purdue University Global.

THE COURT: You work for them --

JUROR TWENTY-FOUR: Yeah, I work for them.

THE COURT: And you go to school for them?

JUROR TWENTY-FOUR: Yes.

THE COURT: And you have to repeat a course?

JUROR TWENTY-FOUR: I do.

THE COURT: What's wrong with that picture?

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JUROR TWENTY-FOUR: I know.

THE COURT: What course are you repeating?

JUROR TWENTY-FOUR: It's an ethics course, psychology.

THE COURT: Way above my pay grade.

Last but not least, Mr. Levine.

JUROR TWENTY-FIVE: I am unemployed looking for a job.

THE COURT: Any prospects?

JUROR TWENTY-FIVE: No.

THE COURT: All right, let's see. Mr. Shain, what was the outcome?

JUROR TWO: They only pay for the first five days and I would like to just add we do have a lot of projects coming up.

THE COURT: You just said the magic words.

JUROR TWO: Okay.

THE COURT: Mr. Merrick.

JUROR EIGHT: The company pays two weeks. My wife is traveling from October 10th to the 14th.

MR. POLAY: What were those dates?

JUROR EIGHT: The 10th to the 14th.

THE COURT: Mr. Mendoza.

JUROR NINE: Up to two weeks pay.

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THE COURT: Miss Ulrich.

JUROR ELEVEN: They won't pay for it.

THE COURT: Mr. Perez?

JUROR TWELVE: Same, they will pay for a week but nothing else.

THE COURT: Miss Johnson, not back? Did I miss anyone?

MR. WILLIAMS: Miss Knight, I thought she was going to double-check with J.M. Enterprises.

JUROR ONE: At the break he said to go check on it.

THE COURT: That's coming real fast. So we have Miss Johnson?

DEPUTY OFFICER: She has no signal here, Judge.

THE COURT: Okay, tell you what, here's what I am going to ask each of you to do. I am going to ask that you excuse us for a little bit. In other words, we are going to send you outside. There is another group outside. Please do not discuss anything with them and we will have you back in just a little bit.

(Thereupon, the panel exits the courtroom at 10:40 a.m.)

THE COURT: I saw three that said they were

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okay. Do you guys have any more? I am going to go through these individually so we can --

MR. WILLIAMS: Why don't we do that.

THE COURT: Knight.

MR. WILLIAMS: Knight we don't know.

THE COURT: Knight is finding out now, isn't she?

MR. WILLIAMS: Yes.

MS. McCANN: She works for J.M.

THE COURT: And then we have to -- I thought J.M. paid but I don't remember off the top of my head. You are the one that always remembers everything.

MR. WILLIAMS: Well, when we represented them 30 years ago, I know they did. Since Mr. Moran died, I don't know whether things have changed.

THE COURT: And of course, if she made it through the process, we'd have to deal with her couple of days off.

MR. WILLIAMS: Correct.

THE COURT: Which I think we do have some time built in.

Shain is no. Lawford, number three, has child care. Number four, Stelzer said okay.

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Black, he was calling, right. Six, Williams.

MR. POLAY: Full-time student.

THE COURT: Seven, Cring had work issues?

MR. WILLIAMS: Yes, she works Thursdays and Fridays.

THE COURT: Right. Merrick, basically no work/no pay.

MR. WILLIAMS: Two weeks.

THE COURT: Mendoza is in the same situation, two weeks. He checked and said two weeks.

Number 10, Caffarena.

MS. McCANN: She is full-time/commission.

MR. WILLIAMS: And single mom.

THE COURT: Number 11, Ulrich, basically no work/no pay.

MR. WILLIAMS: Right.

THE COURT: Which is the same for Mr. Perez, number 12.

MR. POLAY: Same for Cooper.

THE COURT: 13 is Cooper.

14 Branscum said okay.

What is the story with Renaker, number 15?

MS. McCANN: He had the animal thing, he's in charge of animals and the program doesn't run

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if --

THE COURT: Yay or nay?

MR. WILLIAMS: Apparently, City College has a veterinary tech program, apparently he is the --

THE COURT: Yay or nay?

MR. POLAY: Nay, he can go.

MR. WILLIAMS: He can go.

THE COURT: Mike? Carolyn?

MR. POLAY: He was checking to see if he gets paid.

THE COURT: Was he? No.

MR. POLAY: Okay. I'll take that as he's gone.

16 Hall, that was no work/no pay.

MR. WILLIAMS: He gets five days.

THE COURT: Well, yeah, but it's the same thing, we are not going to finish this trial in five days. We are not going to finish jury selection in five days.

Silcox was the first week of November and we've got two others so we may want to consider if they are otherwise good what we want to do with that week if you want to keep them and see where we go.

MR. POLAY: Silcox had other issues, work

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issues and things of that nature.

THE COURT: Listen, I told you last time we picked a jury, it's your pleasure. I am not making these decisions.

MS. McCANN: I think we should keep them and see how far we go with people that are available.

MR. WILLIAMS: Because he does work for Broward County.

THE COURT: Okay, so he stays with us, at least for the time being.

18 Resto, she had problems, right?

MR. POLAY: No work/no pay.

THE COURT: Yeah, I wouldn't even know where to start with her.

Marin, two jobs.

MS. McCANN: No money. No pay.

MR. POLAY: Yeah, no work/no pay.

THE COURT: 20, Miss Rigaud, she was okay.

MR. POLAY: Correct.

THE COURT: 21 Detotto.

MR. POLAY: No work/no pay.

THE COURT: Johnson, we're still waiting for an answer.

MR. POLAY: She may be okay.

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THE COURT: Well, once she gets a hold of somebody. If worse comes to worse and she doesn't, we'll give her a questionnaire and when she comes back we will find out just like we did with others.

Twenty-three.

MR. WILLIAMS: Looking for work.

MR. POLAY: Looking for work, yeah, and I think there was a language issue, as well.

THE COURT: I forgot to put that at the top of my list as far as language but I have added it. Yay or nay?

MR. POLAY: Nay.

MR. WILLIAMS: Nay.

THE COURT: 24, Mosiello, I had a question mark, I don't know why.

MR. WILLIAMS: She works for the school and she is taking on-line courses.

MR. POLAY: And a full-time student.

THE COURT: No, she's not a full-time student, she's only taking the one course.

MS. McCANN: She said she's full-time.

THE COURT: All right, we keeping her or not?

MR. WILLIAMS: I say get rid of her.

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MR. POLAY: I say nay.

THE COURT: Mike? Carolyn?

MR. MARCUS: I agree with Carolyn, maybe we ought to keep some of these people and see how we get going.

THE COURT: No problem with me.

Levine, looking.

MR. POLAY: Looking for a job.

THE COURT: If I remember the last time, people that were looking for work we kept them around until they told us they had a new job. We had that experience the very first day of trial and we lost somebody.

MR. POLAY: I have no problem with that, Judge, although I don't remember that.

THE COURT: That's how we lost somebody the very first day, they got a job, but that's neither here nor there. I keep or I let go, depending on you guys. If you are in a one/one tie, we keep.

MR. POLAY: I don't like people looking for jobs.

THE COURT: Okay, then everybody agreed. So I need to find out from Johnson and --

MR. WILLIAMS: Knight. Black.

THE COURT: Knight and Black. So here is

what I presently have. We are waiting on a call for Knight, so for the moment she gets a questionnaire. Number four, Stelzer gets a questionnaire. Black, until we hear otherwise gets a questionnaire. That's the end of that page. Number 14, Branscum gets a questionnaire. 17 Silcox gets a questionnaire. Number 20, Rigaud gets a questionnaire. Johnson, 22, until we hear otherwise gets a questionnaire and 24 Mosiello, correct?

MS. McCANN: Yes.

THE COURT: So let's bring those in.

DEPUTY OFFICER: That's 8, Judge?

THE COURT: I don't know.

MR. POLAY: Yes, very good.

THE COURT: Let's bring them in and we will give them a questionnaire and they can fill it out in the jury room and then you can show them -- Once these guys go here, we can bring in the next group.

MR. POLAY: Judge, what do we do about telling them?

THE COURT: Next Tuesday.

MR. POLAY: Okay, thank you.

THE COURT: Going to have them back at

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9:45, we will start at 10:00, because next week will be a whole different process. We'll have a lot less -- what I mean by that is I don't think we'll have to run four days just to get through that structure of who we are going to voir dire on.

(Thereupon, the panel enters the courtroom and the following proceedings were had).

THE COURT: Miss Knight is still calling.

Mr. Black.

JUROR FIVE: I haven't reached anybody that could make a commitment. I'm getting passed around.

THE COURT: Not a problem, we will deal with that.

Miss Johnson.

JUROR TWENTY-TWO: Seems they will pay my full base pay.

THE COURT: Yeah, but you also get commission?

JUROR TWENTY-TWO: No, I'm an hourly employee so they read me the entire paragraph that doesn't really say if that applies to me. It goes to great lengths if it were a grand jury trial what the requirements would be so.

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THE COURT: Well, grand jury, at least here, is what, two days a week?

MR. POLAY: At the most.

THE COURT: For six months.

JUROR TWENTY-TWO: I don't have anything more definitive.

THE COURT: You're waiting for an answer?

JUROR ONE: Yes, they believe so but they are just confirming for me.

THE COURT: Okay, here's what I am going to ask of each of you. Now, I understand that some of you are still waiting for information and I will tell you what we are going to do with respect to that. But for the moment, we are going to give you a questionnaire to fill out. We are going to let you go into our luxurious jury accommodations. When you are finished filling it out, all of you, you will be shown the way out and I'll need you back at 9:45 next Tuesday, which is the something or other. It's the 2nd of October and then we will finish.

If during that period of time, between now and then, you get an answer, Mr. Black, Miss Knight, unless you are getting that now, if they are not going to pay you -- do we have cards for

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-- Pam? Oh, it has my office number, right, mine?

DEPUTY OFFICER: Yes, Judge.

MS. KNIGHT: She is still confirming.

THE COURT: Not a problem. If you find out there is going to be difficulty in terms of your pay during that period of time of the trial, you are going to get a card, it's going to tell you how to reach my office. You have already met Pam. So when -- she is the one that brought you up.

And also, Steve, you have the sheets for the individual's names?

DEPUTY OFFICER: Contacts, yes, it's back there.

THE COURT: We're also going to ask you to print your name, give us an e-mail address, give us a phone number that you can actually be reached at. I will tell you the only person that is going to have that information is me and that's so that we can contact you in the event of emergency or a change. It is not going to be a public record or document, so I always like you to be careful.

What I am going to do, you know absolutely nothing about this trial. I have said nothing about this trial, other than who I am and the length of the trial. Please, if you read the

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Sun-Sentinel or the Herald, stop reading, until we get to a point of knowing whether or not they are going to publish anything. The only way you would know if it's this trial is if they put my name in it and they always do.

So with that, you got a problem, just call. And you are going to show them where they need to be when they come back.

DEPUTY OFFICER: Yes, sir.

(Thereupon, the first panel exits the courtroom).

(Thereupon, the second panel enters the courtroom at 10:56 and the following proceedings were had).

THE COURT: Good morning, everyone. You are much more lively than the group that was just here. They were an after-lunch group. Welcome. My name is Paul Backman. I am one of your judges here in the 17th Judicial Circuit. You will be in here -- you saw the first group, they were really in and out kind of quickly, as will you.

What we are going through right now is what we call a paring down process. We are looking for jurors that are basically conflict free and I am going to go through conflicts in just a moment

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with each and every one of you.

And the trial, we anticipate, will be starting with opening statements/testimony on October 9th. We anticipate that jury selection will last two weeks. But once you are out of here today, that will be the one week for you. We're just going through this paring down process all week and then next Tuesday you will be back, for those of you that get through this process, and we'll have our jury hopefully by the end of the week.

The trial itself is anticipated to go anywhere from four to seven, maybe eight weeks. It will be done before Thanksgiving. It may be done a lot quicker than that but I'd rather give you a far off date than a too soon date and then all the sudden we've got a problem.

Now here's what I'm going to ask of each of you. First of all, does anybody have a problem speaking and understanding the English language?

JUROR THIRTY-FIVE: Yes.

THE COURT: First row first. You are Miss --

JUROR THIRTY-FIVE: Sthilaire.

THE COURT: Thank you, I wasn't sure how to

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pronounce that. Your native language is?

JUROR THIRTY-FIVE: Creole.

THE COURT: Do you understand English?

JUROR THIRTY-FIVE: Not too much.

THE COURT: Well, you speak it real well.

JUROR THIRTY-FIVE: Little.

THE COURT: Anybody else in the first row? Second row? I saw two hands in the third row. You are Miss Davis?

JUROR FORTY-SIX: I'm Miss Davis.

THE COURT: As I was saying, Miss Hernandez.

JUROR FORTY-FIVE: Yes.

THE COURT: I don't know where I put my lines.

JUROR FORTY-FIVE: I speak Spanish. I understand a little English but not a lot. Some words I don't understand.

THE COURT: How long have you lived here?

JUROR FORTY-FIVE: Eight years.

THE COURT: You work?

JUROR FORTY-FIVE: Yes.

THE COURT: Where do you work?

JUROR FORTY-FIVE: I am a waitress in a restaurant.

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THE COURT: What restaurant?

JUROR FORTY-FIVE: It's a Salvadorian restaurant.

THE COURT: Go back to the second row, I think somebody raised their hands. And you are Mr. Delnegri?

JUROR FORTY-ONE: Cabrera.

THE COURT: Oh, Mr. Cabrera, number 41, talk to me. Habla Engles? Un poquito? Now you have heard my Spanish.

I thought I saw another hand in the back row? Did I miss anybody?

Okay, let me tell you who we are not looking for. If you are a full-time student and the timeframe of this trial would interfere with your studies, we don't want to interfere with your studies. If you are a primary caregiver to a parent, a grandparent, a different adult, a child, please let us know.

If you are unemployed looking for a job, please let us know. If you don't work, you don't get paid and we will discuss that as we go along. If you have a prepaid vacation, please let us know. There are many times that we can work around those.

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As I told the other group, everyone except the defendant sitting here in this trial, we just came out of a 22 month and 3 day trial. And the reason it was so long is we accommodated vacations for everybody because we had the time to do it. So let us know and if it's a cruise, definitely you get to go, anything else we talk about.

If you have child care issues where arrangements can't otherwise be made we need to know. If you have any medical issues that would interfere with your ability to sit with us, again, we need to know. If you have any other reasons that you think you wouldn't be able to serve with us at this stage, we need to know.

The one thing you need to know is what our work schedule would look like. I am a believer that potential jurors and jurors effectively do one thing, they make a sacrifice of their time to be with us. It is a constitutional right that is as precious as they come and it is individuals from the community that make it happen. It's not me, it's not the lawyers or anyone else.

So I always ask people to think about what it is you think your citizenship in this country means and how you can participate actively because

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I don't think, with the exception of voting, there is anything higher than this.

We are going to work Tuesdays, Wednesdays, Thursdays, Fridays, unless there is a reason that we are going to be off on a Friday. There may be medical issues where somebody has an appointment where we take that time and do it. If you have something, diabetes is a perfect example, where if your blood sugar runs low, you may need to take some insulin, you may need to eat something, I am telling you that will never be a problem because we'd always make those arrangements.

So the only change to the Tuesday through Friday would be if we are still in trial on Veteran's Day, because that is a Monday, Tuesday I would be doing my docket so it would only be Wednesday, Thursday, Friday on a week like that.

Any time we think there is an issue, you are going to be able to reach us in an emergency and we are going to be able to reach you so there will be open lines of communication the whole time. So as I said, I am going to go one by one which means I am going to start with Miss Tasch.

JUROR TWENTY-SIX: Yes.

THE COURT: Did I get it right?

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JUROR TWENTY-SIX: Yes.

THE COURT: If I screw up your name, let me know, I don't like doing that. Problems?

JUROR TWENTY-SIX: I am a type-one diabetic. I just started the pump and my Dexcom so there could be a lot of noise from me, like buzzers, because I can't tell anymore when my blood sugar drops.

THE COURT: How do you find out?

JUROR TWENTY-SIX: That I was diabetic?

THE COURT: No. No. You are telling me -- you said something about noise from the pump. How do you find out?

JUROR TWENTY-SIX: My phone and my pump device will --

THE COURT: That tells you?

JUROR TWENTY-SIX: It will start screaming at all of us.

THE COURT: Other than that, you are good?

JUROR TWENTY-SIX: Yes, I believe so.

THE COURT: We will play that one by ear, how's that?

Mr. Cook.

JUROR TWENTY-SEVEN: Yes, sir. The length of that trial could be a conflict for me because I

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am the executive chef of two operations where because of staffing issues I primarily run the whole show and my job skills are so unique, cooking without salt, oil or sugar and medically altering for clients, that I couldn't be easily replaced. So in theory, I could -- it wouldn't happen, I'm sure they'd find someone, but I could shut down one of the companies by me not being available, if it is four weeks or so, in that length.

THE COURT: I can definitely tell you, it should definitely go four weeks. Where do you do your specialized chef-ing?

JUROR TWENTY-SEVEN: It's called Healthy Living out of the Wyndham on A1A in Deerfield Beach and people come there with gastrointestinal diseases, high blood pressure, and I'm able to actually dramatically treat them with diet alone.

THE COURT: Yeah, but if you're with us, you can cook for us.

JUROR TWENTY-SEVEN: Yeah, I mean --

THE COURT: I agree, yeah.

Miss Wassel.

JUROR TWENTY-EIGHT: Judge, I am a full-time student.

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THE COURT: Where do you go to school?

JUROR TWENTY-EIGHT: Broward College.

THE COURT: What are you studying?

JUROR TWENTY-EIGHT: Nursing.

THE COURT: During the day?

JUROR TWENTY-EIGHT: Yes.

THE COURT: Thank you.

Mr. Beno.

JUROR TWENTY-NINE: Your Honor, I started a new job five months ago. To be away from a new job for eight weeks, my new boss -- it's a privately held company in West Palm Beach County.

THE COURT: What do you do?

JUROR TWENTY-NINE: I'm the chief financial officer for a privately held company. I have kids in college and I live paycheck to paycheck. Two months out would put me out.

THE COURT: Well, would they pay you?

JUROR TWENTY-NINE: They are not going to pay me what I can pay my bills. I don't think they are going to cover it. The only other option would be for me to work -- I work ten hour days.

THE COURT: I don't want you working ten hours at night.

JUROR TWENTY-NINE: I would have to because

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that is the only way I could preserve my job.

THE COURT: Well, the last person that got fired for being on jury service, and I only remember this case from a while ago, got an award of like two-and-a-half million dollars. Sometimes it's --

JUROR TWENTY-NINE: I just, my wife does not work outside the home. I --

THE COURT: You have to pick up my warped sense of humor. Do you know if they have a policy of paying while you are on jury service?

JUROR TWENTY-NINE: We don't. It's a privately held company.

THE COURT: I'm just asking.

Miss Cole.

JUROR THIRTY: My boss has been texting me all morning, are you done yet.

THE COURT: Who is your boss? Maybe I'll give him a call and say you're not.

JUROR THIRTY: Please do. It's Dr. Aldman, he is a dermatologist.

THE COURT: So you do --

JUROR THIRTY: Medical billing.

THE COURT: And you are not going to get -- they are not going to pay you for being on a jury

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that long, are they?

JUROR THIRTY: I'm on salary but I'm sure he will find a way to not.

THE COURT: Well, it depends whether or not they have a policy. Not every company has a policy. Surprisingly -- what was American Express, three days?

MR. POLAY: No.

MR. WILLIAMS: They were good.

MR. POLAY: They were good.

THE COURT: American Express?

MR. POLAY: Yes.

THE COURT: I don't remember that. As I said, we just -- we picked that jury over two years ago so.

So you don't know what the policy would be?

JUROR THIRTY: I don't know but I know his policy. It would be to not pay.

THE COURT: Being that he is looking for you, could you make a phone call and at least ask? And if you are getting paid, are there any other conflicts?

JUROR THIRTY: I think -- well, I can, yeah.

THE COURT: That's all we can ask.

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JUROR THIRTY: I can surely ask him, then he is going to end it with and are you on your way back to work.

THE COURT: Well, that would give you a clear answer, wouldn't it? But if you'd just step outside, and anybody that doesn't know the policy and that is the only conflict, I'm going to just ask you to step outside and make a phone call and then come back.

JUROR THIRTY: Now?

THE COURT: Now. Thanks.

Mr. Dannwolf.

JUROR THIRTY-ONE: I own a small architecture office, Your Honor. Basically, I sign and seal all the drawings so by the letter of the law I am supposed to review everything before it goes out. I haven't missed a day of work in at least four years. If I was to be out of work to be here for weeks, the office would simply close, that would be the end of it.

THE COURT: Thanks.

Miss Bryan.

JUROR THIRTY-TWO: So I have three reasons why I possibly would not be able --

THE COURT: Why don't you start with the

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first one and see if that takes care of it.

JUROR THIRTY-TWO: The first one, I am a Broward public school employee.

THE COURT: You get paid.

JUROR THIRTY-TWO: I get paid, yes, I know that. I am in charge of the special education students for -- we have FTE and the FTE count is in October so I have to make sure the IEPS are in compliance for the school to get funding. If they're not in compliance, the school doesn't get funding --

THE COURT: And --

JUROR THIRTY-TWO: -- and I have a medical procedure scheduled.

THE COURT: When?

JUROR THIRTY-TWO: It is scheduled for early December.

THE COURT: We will not be here. I will be on the high seas. See what I didn't tell you is I am finished in three months and one week, but who's counting.

Miss Nelson.

JUROR THIRTY-THREE: Yes, I have multiple sclerosis, fatigue, cognitive problems. I don't know I could be able to stick with the trial as it

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went on if it's that long. A short trial maybe but one that long might be a challenge for me.

THE COURT: See, I think it is a short trial but I understand we are coming from different perspectives right now.

Mr. Alvarez.

JUROR THIRTY-FOUR: My fiancee is a month from being due on October 25th with my first daughter.

THE COURT: I promise you you would not miss that.

JUROR THIRTY-FOUR: And the timeframe is right there.

THE COURT: Do you work?

JUROR THIRTY-FOUR: Yeah. I am full-time employed at Hertz, manager trainee, and she is not employed at all.

THE COURT: But would they pay you?

JUROR THIRTY-FOUR: Yes.

THE COURT: Full trial?

JUROR THIRTY-FOUR: I believe so, yes.

THE COURT: Suffice it to say, during the last trial, one lawyer, one wedding, two grandchildren, he didn't miss a thing. I would never ask a parent to miss the birth of a child.

And you talked to Hertz?

JUROR THIRTY-FOUR: Yeah, I talked to my manager and we have a policy and I believe they pay you while you are here no matter what.

THE COURT: You know, when you start to say I believe and then you get stuck on the trial and your belief turns out to be incorrect, so I am going to ask if you would make a phone call just to make sure, please.

JUROR THIRTY-FOUR: No problem.

THE COURT: Did we have Hertz before?

MR. WILLIAMS: No. Enterprise.

THE COURT: Miss Wareham, did I pronounce that correctly?

JUROR THIRTY-SIX: Yes.

THE COURT: I know you are going on a trip.

JUROR THIRTY-SIX: Yes.

THE COURT: When?

JUROR THIRTY-SIX: It's not a -- it's a bachelorette party and I am in a wedding. On November 19th I am in the wedding and my bachelorette party is November 2nd through the 4th.

THE COURT: Must be a destination one.

JUROR THIRTY-SIX: Key West.

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THE COURT: Well, I seriously doubt November 19th is an issue.

JUROR THIRTY-SIX: I'm sorry, October 19th is the wedding. November 2nd through the 4th is my bachelorette party.

THE COURT: Oh, it is your wedding?

JUROR THIRTY-SIX: I am in a wedding --

THE COURT: Oh, there are two different ones.

JUROR THIRTY-SIX: -- on October 19th and I am getting married in February but my bachelorette party is November -- the weekend of November 2nd, we are leaving, so just that Friday, technically.

THE COURT: That is the only issue you would have?

JUROR THIRTY-SIX: Yeah, that Friday and the Friday of the wedding.

THE COURT: We don't work on Mondays and Fridays are easy to adapt to.

And the magic answer is?

JUROR THIRTY: He is not available to give me that answer.

THE COURT: Okay, then we will deal with that.

Mr. Jean-Paul.

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JUROR THIRTY-SEVEN: Well, I just got this job at Dillard's. Well not just, like two months ago, and I am not too sure if they pay or not.

THE COURT: Are you on probation? I don't know how they go but a lot of companies put you on probation.

JUROR THIRTY-SEVEN: Yeah, for three months, and I just got it. And as of school, I take Penn Foster, so it's on-line, so I guess I could work with it or I'm not too sure.

THE COURT: The on-line is during the day or at night?

JUROR THIRTY-SEVEN: I usually do it like anywhere, like after -- like between work hours but I usually do it during the day, like in the morning and at night.

THE COURT: Now I am going to try -- you go by Vaughan-Groshans?

JUROR THIRTY-EIGHT: Very good, yes, sir, thank you.

THE COURT: Pretty good means I missed it.

JUROR THIRTY-EIGHT: No, you actually did very good. I do have a couple of potential conflicts. I'm a corporate training manager and I have scheduled training classes two, three days a

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week.

THE COURT: Who do you work for?

JUROR THIRTY-EIGHT: Cross Country Healthcare, Palm Beach County, Boca Raton.

THE COURT: Do you know what their policy is?

JUROR THIRTY-EIGHT: Three days.

THE COURT: Say no more.

Mr. Reardon.

JUROR THIRTY-NINE: Hi. I work part-time at Publix. I don't think I have conflicts. Well, one thing I should mention, I don't know that it would excuse me or anything, but I receive social security disability for clinical depression.

THE COURT: Do you take medication for it?

JUROR THIRTY-NINE: Yeah.

THE COURT: When you take your medication, does that interfere with your ability to participate?

JUROR THIRTY-NINE: No, it doesn't. I take it at night.

THE COURT: You said you work part-time?

JUROR THIRTY-NINE: Yeah.

THE COURT: When, weekdays --

JUROR THIRTY-NINE: Well, it fluctuates,

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different days of each week. Usually two or three days, sometimes four days.

THE COURT: And is that your -- besides social security, disability I take it, do you rely on that for your bottom line?

JUROR THIRTY-NINE: Partially, along with the disability.

THE COURT: Well, the disability you get.

JUROR THIRTY-NINE: Yeah.

THE COURT: I know Publix pays full-time.

MR. POLAY: Full-time, yes.

THE COURT: Okay, thank you, Mr. Reardon.

Miss Selby.

JUROR FORTY: I am traveling for work. I am going to Europe from October 9th through the 25th.

THE COURT: We can move the trial over with you.

JUROR FORTY: And I am going to have to be in the office the weeks leading up. It's a privately owned company, BPX Sports. I already talked to them about their policy, it's up to three days.

THE COURT: That says it all.

Mr. Delnegri.

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JUROR FORTY-TWO: Yes, sir, I am Mr. Delnegri.

THE COURT: Oh, right, that's who I'm looking for.

JUROR FORTY-TWO: Okay, I am certain I will get paid the entire time. I work for the FAA. Other than a mountain full of work when I get back, I don't see any excuse.

THE COURT: Do you bring planes in, out?

JUROR FORTY-TWO: Airspace manager for Miami District so the procedure airspace for South Florida.

THE COURT: Sounds like a cool job.

Mr. Sanchez.

JUROR FORTY-THREE: Other than the time, because I don't know the policy, so I will have to confirm.

THE COURT: Who do you work for?

JUROR FORTY-THREE: Sentrix.

THE COURT: We had Sentrix.

MR. WILLIAMS: We had them but I don't remember.

THE COURT: Could you do us a favor and make a phone call and find out what their pay policy is?

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JUROR FORTY-THREE: Will do.

THE COURT: Mr. Dilts, did I say it right?

JUROR FORTY-FOUR: Yes, you did, very good. I am a fire fighter, Davie Fire Rescue. My only -- I know there are certain exclusions for fire fighters with certain types of trials so I don't know exactly. I believe I would be paid. I am not 100 percent sure.

THE COURT: What did you say you are?

JUROR FORTY-FOUR: A fire fighter.

THE COURT: For?

JUROR FORTY-FOUR: Davie Fire Rescue.

THE COURT: I'm pretty sure you are correct as far as the pay. Who pays your check?

JUROR FORTY-FOUR: The Town of Davie.

THE COURT: I don't know what their -- trying to find out if it was a state --

MR. WILLIAMS: It's the Town of Davie.

THE COURT: I know, he just informed me. Thank you. I don't know what I would do if I didn't have lawyers to educate me all the time.

MR. WILLIAMS: We can approach.

THE COURT: No, I don't think you have to. I'm sure that's a talk.

Miss Davis.

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JUROR FORTY-SIX: Yes. I am a stay-at-home mom. I have a ten-year-old daughter I take to school every morning and pick her up every day at 3:15 so that's really my only conflict. My son is a senior and he's on his own, he drives himself.

THE COURT: What time do you drop your daughter off?

JUROR FORTY-SIX: She is 7:45.

THE COURT: I'm not awake. We don't start that early. And you said three --

JUROR FORTY-SIX: 3:15.

THE COURT: Are alternative options available to you, like your son picking her up?

JUROR FORTY-SIX: My husband works. Once in a while he can pick her up but not everyday.

THE COURT: What about your son?

JUROR FORTY-SIX: He has after school stuff. My mom is 78, sometimes she could pick her up but --

THE COURT: Mr. McCray. Miss McCray.

JUROR FORTY-SEVEN: I am a Broward school educator. I teach fifth grade reading and to be away from them for that period of time I think will be a disservice to my students.

THE COURT: But the school board does pay.

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JUROR FORTY-SEVEN: They do pay.

THE COURT: Mr. Ritter.

JUROR FORTY-EIGHT: Yes, good morning, sir. I am in the same boat as this young lady here; Broward County Public School teacher.

THE COURT: What do you teach?

JUROR FORTY-EIGHT: I teach at Bair Middle School. I will be honest, to interrupt the ebb and flow rhythm and flow of the kids, one day is okay but I think it is doing them a disservice as well and that's the conflict.

THE COURT: Thank you.

JUROR FORTY-EIGHT: Thank you, sir.

THE COURT: I am going to give this a shot. Miss Mahecha, I don't think it came close. How do I pronounce it?

JUROR FORTY-EIGHT: Mahecha. I am a full-time student and contractor so if I don't work, I don't get paid.

THE COURT: Where do you go to school?

JUROR FORTY-EIGHT: FAU.

THE COURT: What are you studying?

JUROR FORTY-EIGHT: Communications, minor in digital marketing.

THE COURT: Okay.

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Mr. Horevitz.

JUROR FIFTY: Yeah, I got nothing, totally available. I work at night. That's about it.

THE COURT: What kind of hours do you work at night?

JUROR FIFTY: Depends. We close at 12:00 but I am usually out, like weekends I am out at 1:00, 12:30, 12:40.

THE COURT: Weekends I don't care.

JUROR FIFTY: I worked until 12:45 last night or, I guess, this morning.

THE COURT: If you are working hours like that, and I am not talking about the weekends, I am talking about the week in trial.

JUROR FIFTY: Three days a week during the week.

THE COURT: Would you be able to get enough rest to come in here and be bright eyed and bushy tailed.

JUROR FIFTY: I don't think I am ever bright eyed and bushy tailed.

THE COURT: Let me rephrase that. Would you be able to concentrate during the course of the trial?

JUROR FIFTY: Theoretically, I think I'd

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probably have good days and bad days. I don't know, you know, tough call.

THE COURT: How are you doing right now being that you raised it?

JUROR FIFTY: I'm exhausted. I already yawned like six times. That's a good barometer for where we're at.

THE COURT: Miss Cole.

JUROR THIRTY: Yeah, he was unavailable to give me the answer at the time.

THE COURT: So you are still waiting for that?

JUROR THIRTY: Uh-huh.

THE COURT: Who else had to make a call?

JUROR THIRTY-FOUR: As long as I'm here, I am getting paid.

THE COURT: All right, here's what I need you to do for me. As I said, you will be out of here, some of you will be out of here in ten minutes, some of you will be out of here by noon. What I need you to do is to please follow Steve, he is going to take you outside just for a few moments and we will have some of you back. The rest of you will have the great opportunity to go back to the jury room and I can't guarantee that

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they are going to send you home but if they are not looking for anybody in the afternoon you are good, so no promises. Steve, take them out.

(Thereupon, the panel exits the courtroom at 11:28 a.m. and the following proceedings were had).

MR. POLAY: We never asked Mr. Cook, who is the cook, whether he was going to get paid.

THE COURT: Mr. Cook said one of his businesses is closed. Besides which, that's too healthy for me.

DEPUTY OFFICER: Sanchez is still waiting. He says up to 10 days.

THE COURT: Thank you.

Starting with number 26, Miss Tasch, she's okay.

MR. POLAY: Yup.

THE COURT: 27 Cook, he is a chef, gone. 28, Wassel, student.

MR. POLAY: Right.

THE COURT: Mr. Beno, 29, I don't know how a CFO doesn't get paid but new job. Yay? Nay?

MR. POLAY: Nay. He said no work/no pay, Judge.

THE COURT: I know what he said.

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Miss Cole is still waiting for an answer on.

MR. WILLIAMS: That doctor is cheap, he is not going to pay her.

THE COURT: No kidding.

MR. WILLIAMS: He's a dermatologist.

THE COURT: I'll bet only today.

Miss Dannwolf, 31, work, right?

MR. WILLIAMS: Uh-huh.

THE COURT: 32, Bryan said she is available. 33, Nelson, she is our diabetic, right?

MR. WILLIAMS: No, multiple sclerosis.

THE COURT: Letting her go?

MR. WILLIAMS: Yes. Stress can --

THE COURT: Yes.

34, Alvarez, he was checking on --

MR. POLAY: He's okay.

MR. WILLIAMS: He came back in.

MR. POLAY: He said yes, paid.

MS. McCANN: Yes.

MR. WILLIAMS: Okay.

THE COURT: 35, language. 36, Wareham said she's okay.

MR. WILLIAMS: She is the wedding and

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bachelorette party.

THE COURT: That is a Friday and weekend. And because we are off on Mondays, hopefully she will be recovered.

MR. WILLIAMS: We never asked her what she did for a living.

THE COURT: When she comes back in, we will ask. I thought that was her only conflict.

MS. McCANN: That was.

MR. WILLIAMS: That was her preoccupation.

THE COURT: Well, she's excited. Remind me, I'll ask her.

37, Jean-Paul, school.

MR. POLAY: And new job at Dillard's.

THE COURT: 38, Vaughn, no work/no pay. 39, Reardon, no work/no pay. 40, Selby, no work/no pay. 41, Cabrera, language.

MR. POLAY: Right.

THE COURT: 42, Delnegri is okay. Sanchez we just found out is no work/no pay. 44, I think you wanted to talk about Dilts because he works for Davie Fire and Rescue.

MR. WILLIAMS: And they are going to be testifying in this case. Besides, he gets paid but --

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THE COURT: We know that.

MR. WILLIAMS: Right. But I think --

THE COURT: He is a possible danger.

MR. WILLIAMS: Yes.

THE COURT: Mike? Carolyn?

MR. WILLIAMS: Small department.

THE COURT: You know as soon as we ask him when we identify what this trial is --

MR. POLAY: Okay. It is still in Davie, Waffle House.

THE COURT: It hasn't moved.

Hernandez, 45, language. 46, Davis, child care?

MS. McCANN: Uh-huh.

MR. WILLIAMS: Uh-huh.

THE COURT: 47, 48, our two teachers.

MR. POLAY: I say any teacher can say that.

THE COURT: I know, they all did.

MR. POLAY: They're fine.

THE COURT: I understand that. For the record, that is Ritter and --

MS. McCANN: McCray.

THE COURT: And McCray, yes. And 49, Mahecha.

MR. WILLIAMS: Full-time student, FAU.

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THE COURT: 50, Horevitz said he was okay.

MR. POLAY: Correct.

THE COURT: Let's make sure. We have Tasch; we still have Cole for the time being; we have Bryan, number 32; Alvarez, 34; 36 Wareham; 42, Delnegri; 47 and 48 McCray and Ritter, our teachers; and Horevitz.

(Thereupon, the panel enters the courtroom at 11:36 a.m. and the following proceedings were had)

THE COURT: Miss Cole.

JUROR THIRTY: Yes.

THE COURT: Any answer?

JUROR THIRTY: (Nods head)

THE COURT: Miss Wareham.

JUROR THIRTY-SIX: Yes.

THE COURT: I think we forgot to ask you, what do you do for a living?

JUROR THIRTY-SIX: I am a teacher. I already knew you had an answer for that so I didn't bother.

THE COURT: But because you didn't answer, we didn't know. Okay, now here's what I am going to ask of you. First of all, like Miss Cole, you are still waiting for an answer. When you get the

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answer, we are going to give all of you a card with my office number. You already met Pam. All you have to do is call her if there's any type of problem that arises between now and next Tuesday when I need you a back.

We are going to give you a questionnaire, we're going to ask that you fill out the questionnaire. Once you have filled it out, Mike is going to show you the way out and where you need to be.

What's the matter?

JUROR THIRTY-TWO: Do you really want to know?

THE COURT: Tell you what, when everybody goes back in there, yes.

JUROR THIRTY-TWO: Okay, thank you.

THE COURT: Once you fill it out -- yes, sir.

JUROR FORTY-EIGHT: I mean, you are asking us to fill something out but I would like to talk to I assume you as well.

THE COURT: Okay, we'll talk.

All right, I'll try it again. When you fill them out, you will be able to go. I do need you back next Tuesday, 9:45, right where Mike

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shows you you need to be. You don't have to go to the jury room, you don't pass go and certainly you don't get $200.

As I said, this is a two-phased situation where we are just trying to get through the conflicts now and we will actually go into jury selection next week. You will find out about the trial and everything else. I do need you to please just stay away from the local sections of the Sun-Sentinel and the Herald, if you do even read them.

And with the exception of the two I need to talk to, if you will follow Mike, please.

(Thereupon, the panel exits the courtroom and the following proceedings were had).

JUROR THIRTY-TWO: I am in the same boat.

THE COURT: Miss Bryan, right?

JUROR THIRTY-TWO: Yes.

THE COURT: What's up?

JUROR THIRTY-TWO: I was in the hospital on Sunday. I have anxiety. I was just released Sunday so I don't know if that's just -- I honestly don't know how I am going to be able to handle it.

THE COURT: Do you take any type of

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medication for the anxiety?

JUROR THIRTY-TWO: I used to. I don't anymore. So that is a conversation I have to have with my doctor tomorrow as to whether that is going to be something I need to do. I don't know what the trial is about but I don't know if that is something I'd be able to.

THE COURT: Why don't we play the wait-and-see game; fair enough?

JUROR THIRTY-TWO: And then my other concern is, and I am not sure if you may or may not be aware, my position at my school, I'm the ESE specialist so I am responsible for all of the 200 individualized educational programs for my entire school for the school year. If I am not there to ensure the IEPs are done when we have FTE, when the school collects the money, my school will not get the money and that is my responsibility.

THE COURT: I heard that the first time and as I said, we'll play that by ear as well. Now you get to follow Steve.

JUROR THIRTY-TWO: Thank you.

THE COURT: And Mr. Ritter.

JUROR FORTY-EIGHT: I am Howard Ritter.

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The other two ladies that were also Broward County public school teachers, I don't know if you are aware of this but being away from school for any length of time impacts -- may impact, could impact future salary, future employment, and it's not an easy thing to stay away and get anybody to come in to do -- I don't want to use the word but like subbing. Subbing is not going to cut it. So me being away for four, five weeks could impact future salary and future employment in that regard.

As a go off on a tangent, I have a doctor's appointment on October 3rd, which is, I think, a Wednesday and you want us to come back on October 2nd for the week?

THE COURT: Very possibly.

JUROR FORTY-EIGHT: I will not be able to change that appointment. That appointment has been on for a while. I want to be up front.

THE COURT: No, no, I hear you.

JUROR FORTY-EIGHT: But the thing with the teaching though, while as a Broward school educator, I understand, I think the impact of the kids, more than me, more than myself, per se, is going to be an issue.

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And so again, missing today, I mean, I looked at my watch at 10:30 and felt bad for the person covering the class in second period. So as we go through a day here and as we go through, it is not going to be fair. The marking period and FSA testing for the students is an ongoing process.

THE COURT: Yes, we are aware of that. And what I want you to know is just because you are filling out a questionnaire and coming back on Tuesday is not indicative that you will be a juror in the case. And remember I told you about the case we just came out of, the 22 months, we had a significant number of teachers on that that were all in critical care so we understand that.

Lawyers don't go out of their way to create those type of conflicts. You will be one of I'm not sure how many that we will be talking to next week. You may be out of here on Tuesday, for all I know. But right now we just need you to come back next Tuesday at 9:45.

JUROR FORTY-EIGHT: Okay, so I just want to make sure. I am not trying to be off or anything but I need to put in for a sub for next Tuesday right off the bat when I go back to school

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tomorrow and we need to be here 9:45?

THE COURT: Correct.

JUROR FORTY-EIGHT: I just wanted to be up front. But I am not going to change my doctors appointment for the 3rd.

THE COURT: Did I ask you to? What time is your doctors appointment?

JUROR FORTY-EIGHT: I have a 9 o'clock primary care and a 1:30 dentist appointment.

THE COURT: Primary care is not so bad. Dentist, yuk. Okay, I mean, we appreciate that.

JUROR FORTY-EIGHT: All right, thank you.

(Thereupon, the panel member exits the courtroom at 11:45.)

THE COURT: All right, see you at 1:30.

(Thereupon, the proceedings were concluded at 11:30 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, Michele Simone, Court Reporter and Notary Public, do hereby certify that I bwas authorized to and did transcribe in Machine Shorthand, the proceedings had and taken before the Honorable Paul L. Backman, Judge of the above-styled Court, at the time and place stated in the caption thereof.

I further certify that I am not of counsel, I am not employed by nor related to an attorney to this case, and I am not financially interested in the outcome thereof.

Dated this 11th day of February, 2019.



MICHELE SIMONE
Notary Public
State of Florida at Large

**** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 7/10/2019 9:49:04 AM.****

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL BACKMAN
CASE NO: 02-005900CF10B

STATE OF FLORIDA,

Plaintiff,

vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

Fort Lauderdale, Florida
Septeber 25, 2018
1:40 p.m.

TRIAL PROCEEDINGS
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The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on September 25, 2018, commencing at 1:40 p.m.

**** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 7/10/2019 9:49:04 AM.****

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

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(Afternoon session begins.)

THEREUPON, the following proceedings were had:

THE COURT: Let's go.

(Enter venire.)

(Denise Lehr through Barry Denson.)

THE COURT: Good afternoon, ladies and gentlemen.

It is after lunch.

I understand that.

Good afternoon.

I want to get you in the flow of it.

Obviously, you saw there were a lot of you that came up. Most of you will be out of here in a relatively short period of time.

We're looking for individuals who can serve on a trial which will begin on October 9th, which is two weeks from yesterday. The trial is expected to take anywhere from four weeks to about seven weeks, with a guarantee that we'll be finished before Thanksgiving.

Now, it may take a lot less time. But I would rather tell you more time than less time and then have to address you, that with you at a later date, after you have made all of your

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plans.

THE COURT: First things first. Anyone that does not speak or understand the English language?

My name is Paul Backman.

I'm one of your judges here in the 17th Judicial Circuit.

I understand that, I do understand that we all understand that people have conflicts that they need to deal with. I want to go through a list of what we have as conflicts and then deal individually with each person.

In other words, if I read the first one that says full-time student, I don't want all of the full-time students to raise their hand. I'll get to every single person.

This is what we're looking for. Excuse me. This is what we're not looking for. Okay?

First of all, if you are a full-time student and this trial would interfere with your educational studies, we don't want you. Understand it is not that we don't want you. We don't want to take anybody away from their education.

If you want to volunteer, that's fine.

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If you are a primary care giver to an adult, such as a parent, grandparents, any other type of responsibility for that, including children, again, we don't want to take you away from there.

If you are unemployed and actively looking for a job, we need to talk about that.

If you don't work and you don't get paid, then we don't want you because, again, we don't want to interfere with somebody's financial aspects.

If you have a pre-paid vacation, let us know. With the exception of our, the accused in this case, all of us sitting in this courtroom just came out of a 22-month, three-day trial.

We were able to make a lot of accommodations. Depending upon what you have, we may be able to put that in for you.

As far as how we're doing this -- and then I'll go back to my list -- after today, for those of you that make it through this process, you won't be back again until next Tuesday. It is a process by which we eliminate before we even start figuring out who our jury will be.

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Just getting through this phase does not get you on the jury.

Child care? If you can make arrangements, that's great.

Any medical issues that you believe would interfere with your ability to be with us either by concentration or physical and any other reasons that you may come up with.

Also, if you work and you get a base pay and you work on commissions or you just work on commissions, again, if it will impact your financial bottom line, we don't want to do that.

So those are the basics that we have.

And Ms. Lehr, talk to me.

DENISE LEHR: I was really excited to get on a jury. I don't think it will work because my mom is going into hospice soon. And I -- that's a medical condition that doesn't pertain to me. But I'll have to be -- but I'll have to be with her frequently.

Sorry.

THE COURT: Don't apologize. While I believe that sitting on a jury is one of our fundamental rights we have, family does come

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into it. When you're facing what you're facing, as much as we might like to have you, it is more important to you.

When you serve on a jury, you're actually living our Constitution. This is how you find out, how you participate, other than voting.

Mr. Hensel?

JOSHUA HENSEL: Jury, I would love.

Sir I would love to do this. I have a pre-paid vacation at the end of October. Other than that, I'm free and clear.

THE COURT: Do you know the dates?

JOSHUA HENSEL: I believe the 26th through the 28th, 29th. Friday through Monday.

THE COURT: That won't be a problem.

JOSHUA HENSEL: Okay. Thank you, sir.

THE COURT: Other than that, you're good?

JOSHUA HENSEL: Yes, sir.

THE COURT: Let me tell you what our schedule will look like, which I think helps.

It is anticipated that we'll work Tuesday, Wednesday, Thursday; and depending upon various things, Friday. I like to work a full day. So the jury usually comes back at 9:45. We work.

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Of course, you get lunch. Ten minutes. Teasing.

Then after that, we work until about 5:00, 5:30, depending on our witnesses and where we are.

I really don't like hanging up a witness and bringing them back the next day.

Those decisions generally we will talk about and talk about with you guys.

Mondays, we will not be in session.

When you get into November, if we even go that long, Veteran's Day is on a Monday.

What I would normally do on a Monday, I would have to do on a Tuesday, which means that would be Wednesday, Thursday, Friday. Hopefully, we won't be here on Veteran's Day.

Again, in trials, things can happen that just cause delays. I'm one that if I can tell you what the delay was caused by, I'll always do that. Because you're entitled to known why.

Mr. Hensel, do you work jurors?

JOSHUA HENSEL: Yes, sir. I work for the government.

THE COURT: What aspect?

JOSHUA HENSEL: I work for the Army.

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THE COURT: Commissioned?

JOSHUA HENSEL: Civilian.

THE COURT: Ms. Martin?

ELYSSE MARTIN: I will be on vacation this weekend. And then the other only thing is having a wedding in November. But you mentioned we hope to be not that far in.

THE COURT: When in November?

ELYSSE MARTIN: I believe the 11th of November.

THE COURT: That's not a problem.

What about work?

ELYSSE MARTIN: I work full time in Miami for an air craft company.

THE COURT: Do you know if they will pay you for being here.

ELYSSE MARTIN: I know they are paying me for today. I don't know --

THE COURT: I don't think you want to get caught on a jury and find out nobody is paying you.

ELYSSE MARTIN: Right.

THE COURT: What I'll ask you to do is if you would step out, make a phone call. See if

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you can find out what their policy is. Then we can discuss it. Okay?

And this applies to anybody in a similar situation.

ELYSSE MARTIN: Sure.

THE COURT: Ms. Mortilla?

LISA MARIE MORTILLA: I'm self-employed.

I work from home. I am a graphic designer. My main concern, I'm a caretaker for two very sick animals that need medication three times a day.

THE COURT: Animals are important.

LISA MARIE MORTILLA: They are my children.

I have a cat that needs high blood pressure medication three times a day.

I have a 14-year-old American Bulldog so arthritic, she can't be on her own.

I will be going away on a business trip October 18, 19 and 20. 21. Four days.

THE COURT: Basically a weekend.

LISA MARIE MORTILLA: Right. It is already -- I have somebody to cover for me to take care of the animals.

THE COURT: You're self-employed.

LISA MARIE MORTILLA: Yes, I am.

THE COURT: If you're not home, during the day, working --

LISA MARIE MORTILLA: I don't make money.

THE COURT: That's the easiest.

LISA MARIE MORTILLA: My animals are a little more important.

THE COURT: That's important too. Thank you.

Ms. Del Cid?

BLANCA DEL CID: I'm a single mother of two children.

I am the one who, I am the only one that is transporting them.

I have two jobs.

One full time and one part time. The one full time, I don't have a problem.

If the day unfolds, part time, I won't get paid.

THE COURT: With your children, because I may be able to short circuit all of it for you, the part-time job and the income you receive from that, is that critical to your financial bottom line?

BLANCA DEL CID: Yes.

THE COURT: See?

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Ms. Stone?

JUNE STONE: Yes. I'm retired.

THE COURT: No conflicts?

JUNE STONE: No.

ALEX SANTOS: I work nights.

I take care of the kids during the day. My wife, she works.

11 and 13. They go to school. I take them in the morning, and I pick them up every day at 3 o'clock.

I work from 3:30 p.m. till 12 at the Coconut Creek Casino.

Work tables.

Work on tips.

ELYSSE MARTIN: They said they would be willing to cover a week, five days.

THE COURT: That won't work.

ELYSSE MARTIN: I know.

THE COURT: That's why I ask people to make phone calls.

THE COURT: Ms. Rosa?

WANDA ROSA ALVERIO: I'm a school teacher. Kindergarten.

I'll get paid. I wouldn't like to be out so many days. The children are starting a

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routine now. It is important for me to be there. That's one reason.

Second reason, the middle of November is my wedding anniversary.

We have a trip planned for a whole week.

THE COURT: Where are you going?

WANDA ROSA ALVERIO: Paris. I don't want to miss that.

THE COURT: Been to Paris?

WANDA ROSA ALVERIO: Yes. This will be my second time.

THE COURT: Paris is lovely.

Do you know when in November you're going.

WANDA ROSA ALVERIO: It goes between the week of November 19th --

THE COURT: The week of Thanksgiving.

WANDA ROSA ALVERIO: November 19th. It is a couple days after that.

THE COURT: Okay.

Other than that, you're good?

THE COURT: And the teaching part.

THE COURT: I understand that.

Mr. Haywood?

MICHAEL HAYWOOD: I'm retired. My wife had a hip replacement a few years ago. Got

infected. Had to remove everything. Put everything back. She is in pain occasionally, quite a bit. I don't mind serving. Hate to be away too long.

THE COURT: Obviously, if there is an emergency, you know, that is totally understandable. Medical takes a lot of priority.

THE COURT: Ms. Coombs?

DEBORAH COOMBS: I don't qualify for any of those reasons.

However, I work for a cruise line.

I travel extensively internationally.

I have several trips already booked for the whole of October, including October 15th. Canada on October 29th. I have engagements in schools all over the world.

We source from them.

I may have other trips that I don't even know about yet.

Those two are booked.

THE COURT: Here is the magic question that will impact how I feel about it. What cruise line?

DEBORAH COOMBS: Royal Caribbean.

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THE COURT: You're good.

My priority is usually Celebrity.

DEBORAH COOMBS: We own Celebrity.

THE COURT: I love cruising. Work would interfere?

I can call Mr. Payne.

DEBORAH COOMBS: Go on.

THE COURT: My son dated his daughter a long time ago.

We know each other.

Mr. Lydon?

THOMAS LYDON: My earnings are a hundred percent commission.

THE COURT: Say no more .

NICHOLAS DECAPUA: I'm an attorney.

I'm a civil trial attorney.

I work in Adventura. I have a bunch of cases coming up for trial. One special set November 23rd. I am the sole bread-winner of the house.

They won't pay me. I couldn't get away for seven weeks. I wouldn't be able to pay the bills.

THE COURT: How many lawyers?

NICHOLAS DECAPUA: Six lawyers.

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THE COURT: I'll ask you the question anyway.

Would the firm pay you while you're here?

NICHOLAS DECAPUA: No.

THE COURT: It is amazing how law firms don't do that.

Okay.

Ms. Campos?

KARLA CAMPOS: I have to call and see.

I work for Wells Fargo. I am not sure.

THE COURT: Do we know?

MR. WILLIAMS: It came up. 30 days or something.

THE COURT: Other than that, any issue?

KARLA CAMPOS: No.

THE COURT: If you make a phone call for us. We know they give some time. I just don't remember how much.

Ms. Santana?

EMMYS SANTANA: I have to make a phone call and see the policy. It is a small company. One beat CPR.

THE COURT: Would you do that for us?

EMMYS SANTANA: I will.

THE COURT: Other than that, any conflicts?

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EMMYS SANTANA: No.

THE COURT: Thank you.

LOIS WEBER: I'm a hangman during the day. Don't get paid if I'm not there. I take care of my 99-year old mother.

THE COURT: You had me the first time.

Ms. Williams?

LONI WILLIAMS: I don't have anything. I work at Linstrom Air Conditioning.

THE COURT: They pay?

LONI WILLIAMS: Yes.

THE COURT: Do you need to check?

LONI WILLIAMS: I have. Plumbing supervisor.

THE COURT: Ms. Neubert?

VICKI NEUBERT: I have a few things on my plate. I served on a jury last year. Since then, my husband, who just turned 77 on the 18th, has osteomyelitis. That is a problem with his feet. Ongoing.

To top it off, we got into an automobile accident Thursday.

Down to one car.

Taking my daughter to pre-trial. We work two part-time jobs.

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She lives with us.

I think it would be quite a hardship for me to be here.

I worked in the service industry my entire life. I appreciate what you're trying to do here.

I normally don't make excuses. I do have a hardship.

THE COURT: Thank you. Ms. Hoyos?

ANDRIANA HOYOS-MARINUCCI: Yes. I work for Holy Cross Hospital. They won't --

THE COURT: We're just checking.

We went through this two years ago.

ANDRIANA HOYOS-MARINUCCI: I think they do.

THE COURT: Is that your only potential conflict?

ANDRIANA HOYOS-MARINUCCI: I am a single mom of two teenage girls that don't drive yet.

THE COURT: Drop them off at school?

ANDRIANA HOYOS-MARINUCCI: Yes.

Pick them up.

Take them to work.

THE COURT: What time do they get off?

ANDRIANA HOYOS-MARINUCCI: They start at 4:00. It's the weekends, though. Mostly the weekends.

THE COURT: Could you do me a favor. Call Holy Cross. See what their policy is.

ANDRIANA HOYOS-MARINUCCI: Yes.

ASHLEY ROWE: Hi. I would like to make a call to verify payment of my job. Permit ad agency in Ft. Lauderdale.

THE COURT: is that the only potential conflict?

ASHLEY ROWE: I have two vacations scheduled. Haven't been paid for. October 12th, which is a Friday. Then November 2nd, which is a Friday. 3rd, 4th and 5th, which is a Monday.

THE COURT: Those aren't any problems.

ASHLEY ROWE: Okay.

Should I make the call?

THE COURT: Please.

Mr. Furman?

JASON FURMAN: I am an adjunct professor at Miami Dade College. I have classes that start around that time.

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I know they will give me three days.

THE COURT: That's all you need to tell me.

Mr. Gordon?

DAVID GORDON: I'm retired. Don't really have a conflict.

THE COURT: Mr. Cody?

MOSES CODY: Right now I'm seeing a surgeon for my left eye. I'm on prescriptions for two weeks.

If it doesn't work, I'll have to have surgery. I don't know if I will be available.

THE COURT: Is that something we can play by ear for a moment?

MOSES CODY: We can. I don't know myself.

I wants to know what the provision is.

My job will only pay me up to five days.

THE COURT: Doesn't even matter.

MOSES CODY: No?

THE COURT: Whatever it is with your eye, I hope it works out.

Mr. Pontes?

DAVID PONTES: I have a pre-paid trip from the 29th of October up until the, the 29th of September until the 15th of October. I may have to extend that.

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THE COURT: Already long enough.

Going anywhere good?

DAVID PONTES: California.

THE COURT: Ms. Bennett?

KAYLA BENNETT: I'm a full-time student at Broward College.

THE COURT: Studying?

KAYLA BENNETT: Dental hygiene.

THE COURT: last but not least, Mr. Denson.

BARRY DENSON: Yes, other than vacation towards the end of November, I don't have any other conflicts.

THE COURT: Other than that, you're okay?

BARRY DENSON: I'm okay. I work for Progressive Insurance.

I'm pretty sure they should pay me. I am not a hundred percent sure.

THE COURT: Let's be sure.

If you can make a phone call, to let us know, that will be appreciated.

Who is --

KARLA CAMPOS: They will let me know in the next few minutes.

Pretty sure they can.

DEBORAH COOMBS: I can make a phone call,

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see if I can switch the dates, if you want.

THE COURT: What do you want?

I'm putting you on the spot.

DEBORAH COOMBS: I can make a call. It is out of control, my answer.

THE COURT: If it was in your control, I would have the answer now.

DEBORAH COOMBS: Exactly.

THE COURT: Thank you.

ASHLEY ROWE: My HR director is out to lunch. They will call me back or text me and let me know.

THE COURT: Anyone else that made a phone call?

Here is what we will do for the moment.

Steve, you take them out. They are going out first.

Follow Steve.

We're going to have you back here in just a little bit.

(Exit venire.)

THE COURT: Ms. Lehr?

MR. WILLIAMS: Mother.

MR. SATZ: Yes.

THE COURT: Number one.

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2, no problem.
Martin, 3. No work, no pay.
Number 4, no work, no pay.
5, Del Cid, no work, no pay.
6, Stone is okay.
7, Santos has child care and work.
8, Rosa has no problem.
9, Haywood, no problem.
10, Coombs, work issues.
MR. WILLIAMS: Waiting to hear from her.
THE COURT: Right. Cruise line person.
11, commission worker.
Gone.
12, Decapua, no work, no pay.
MR. WILLIAMS: Civil attorney.
Lots of trials planned.
THE COURT: 13, Campos, waiting for an attorney call.
Santana, 14, is calling.
15, Weber, no work, no pay.
DEPUTY: Number 14 has an answer for you.
THE COURT. Have her come in.
(Enter Emmys Santana.)
THE COURT: You can answer?
EMMYS SANTANA: They told me the payment

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the court would pay and they would pay me the difference according to what I make.

THE COURT: Wonderful.

Thank you. Join the rest out there.

(Exit Emmys Santana.)

THE COURT: That was 14.

Did 15.

16, Williams was okay.

17, she is gone.

MR. POLAY: Right.

THE COURT: 18, waiting for an attorney call.

19, waiting for an answer.

20, Furman, no work, no pay.

21, Gordon said okay.

22, Cody, no work, no pay.

Pontes, 23, that's the trip.

24, Bennett, full-time student.

25, Denson, is making a phone call.

MR. POLAY: Correct.

MR. SATZ: How many jurors do you think we need before we start getting to questions.

THE COURT: Let's see how our numbers go each day.

I don't know the answer yet. I know we

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have a bunch of people that we went through there is no way on God's green earth they will make the jury.

Wait until we see the questionnaires, which we're getting.

Here is who is staying, 2, 6, 8, 9, 13, 16, for the moment. Then, 13, 14, 16, 18, 19, 21, 25.

DEPUTY: Coombs is outside. 13.

10 and 13.

(Enter Deborah Coombs and Karla Campos.

THE COURT: Ms. Campos, what's the story?

KARLA CAMPOS: Yes, they will pay.

THE COURT: If you will rejoin the others.

(Exit Karla Campos.)

THE COURT: Ms. Coombs, what are you doing?

DEBORAH COOMBS: I can manage my -- if I can shift it, I'm okay.

THE COURT: Are you sure?

DEBORAH COOMBS: If needed, I would do it. If I can.

THE COURT: Play it by ear.

DEBORAH COOMBS: If you have enough people --

THE COURT: I have no idea yet.

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DEBORAH COOMBS: Okay.

(Exit Deborah Coombs.)

(Enter Barry Denson.)

THE COURT: Yes, sir?

BARRY DENSON: They will pay me.

THE COURT: Let's take five.

(Recess had.)

(Enter venire.)

THE COURT: Here is what we'll do.

Goods things. May we won't have to see you the rest of the week.

I'm sure you will be happy about that.

Mike is going to take you into our jury room.

We have a questionnaire that we're asking that you fill out. When you're all finished with the questionnaire, Mike will show you where you need to be when you come back next Tuesday.

I'll need you back at 9:45.

Just because you're coming back Tuesday is not indicative you will be on our jury.

Next week is when we do our final pairing and actually pick our.

DEBORAH COOMBS: October 2nd, we have to be

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here?

THE COURT: Cruising?

DEBORAH COOMBS: No, I will be in Norway as of this weekend for school there. That one I can't get out of.

THE COURT: When do you come back.

DEBORAH COOMBS: On the 8th.

THE COURT: Well, as much as we --

DEBORAH COOMBS: I can start here on the 9th.

THE COURT: Only if you are on the jury. You won't be here for that part. Quite honestly, all of us were thrilled you really went to find out and tried to stay with us.

Because you had the easiest way out.

We do appreciate it. But I do think you're out the door.

DEBORAH COOMBS: Well, thank you.

THE COURT: Okay.

For the rest of you, after you fill it out, Mike will tell you, show you where to go.

I'll ask you please, there is a form in there. I ask you each print your name, telephone number you can be reached and E-mail address. That's so my office can get in touch

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with you in the event of an emergency.

You will be given a card so you can get in touch with my office in the event of an emergency.

Those of you waiting for phone calls, once you get an answer, call Pam. That information will be kept by me, for me and is not going to be made public.

I want you to be very secure about that.

Also, do me a favor.

Please stay away from the local sections of the Herald and Sun Sentinel until further notice.

With that, Mike, take them away.

(Exit venire.)

THE COURT: Okay. The next group is coming in.

(Enter venire.)

(Leslie Collins through Victoria Gretsky.)

THE COURT: Good afternoon, ladies and gentlemen.

So lively. Welcome.

I'm Paul Backman.

I'm one of your judges here in the 17th Judicial Circuit.

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The reason you're here -- and you saw the first group was out of here quickly.

You guys will be out of here relatively quickly.

You may or may not be joining us after today.

Here's what we'll do.

We're looking for individuals who are conflict free.

I'll go through conflicts in a little bit, who can be with us -- you will be gone the rest of this week, after today. You may need to come back a few days next week, when we actual little pick our jury, that can serve on a trial starting on October 9th and going anywhere from four weeks to Thanksgiving.

Now, we realize that individuals have conflicts. And I'll go one by one.

I have a whole list of conflicts that you may or may not have.

Of course, if there are any additional ones, we will deal with those.

First things first.

Is there anyone that does not speak and understand the English language?

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Let me tell you who we're not looking for.

I know how that sounds. But these are the individuals that, if you have these conflicts, we don't want to interfere with them.

First of all, if you are a full-time student and being with us for that length of time would interfere with your scholastic activities, we don't want to interfere. But you have to tell us that.

If you are a primary care giver to an adult, to a child, it is part of your job, where you're a care-taker, that is something we need to know so we can discuss it.

If you are presently unemployed and actively looking for employment, we need to know that.

If you have a pre-paid vacation, depending upon when it is, we may be able to accommodate that.

So please let me know.

If you have child care issues, where arrangements can't be made for pick up of children, we need to know.

I guess, on that note, I should tell you what our anticipated work schedule is.

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First of all, I believe when you make the sacrifice of your time to be with us, I want to utilize that time.

Get you in here and back to your every-day activities as quickly as I can.

I anticipate we'll be working Tuesday, Wednesday, Thursday, Friday.

I start at 9:45. When I would need my jury back.

And we generally work until we bring out our witnesses, which could actually be on certain days at 2 o'clock in the afternoon. Generally, we work between 5:00 and 5:30.

Again, if you have issues, we'll deal with those.

If you have medical issues that you believe would interfere with your ability to participate with us, let me know. And of course, any other reason that you think we need to know about that.

Now, last thing before I go to Ms. Collins, if you have a full-time job and you don't know what the policy of your company is, as far as jury pay, what I'll ask you to do, after you tell me that, is to just go outside, call HR.

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See if you can get an answer.

A lot of places will pay you for three days. Some for seven days. Is all over the board. But a lot of companies do pay.

I'll tell you that we have a fairly good idea, being that all of us, with the exception of the accused, we just came out of a 22-month, three-day trial.

So this, to me, is very fast.

But a lot of companies will surprise you. And they do pay.

Oh, if you are a base pay, commissioned employee, or just a commission based, and that money is critical to your bottom financial line, please let us know.

We're not taking away anybody's income.

With that, Ms. Collins, talk to me.

LESLIE COLLINS: The only conflict I would have is from the 14th of October to the 17th, where I committed to baby-sitting for my grand children while my son and daughter-in-law go on a business trip.

THE COURT: The 14th.

LESLIE COLLINS: Through the 17th.

THE COURT: That's a Sunday, Monday,

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Tuesday, Wednesday.

LESLIE COLLINS: Yes.

THE COURT: Grandchildren are more important than children.

How many do you have?

Two that I will be baby-sitting for.

THE COURT: Total?

LESLIE COLLINS: Grand children.

I have four.

THE COURT: I have eight.

THE COURT: Wow.

THE COURT: I am a lot older than you.

THE COURT: Mr. Rosendorf?

BRADLEY ROSENDORF: I just started a new job.

I have can't be a part of this process.

It is absolutely impossible for me. I work for an environmental, non-profit. I don't know if they will pay me for today or not.

THE COURT: They have to.

BRADLEY ROSENDORF: I am not comfortable at all with being a part of this process.

THE COURT: Really?

BRADLEY ROSENDORF: Not at all.

I am not comfortable deciding someone's

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fate, feeling that pressure.

I'm nauseous.

I'm not comfortable being a part of something like this.

This is not for me at all.

THE COURT: Thank you.

Ms. Ansari?

ASMA ANSARI: I have a ten-year-old child. Drop off at 3:30. Middle school.

Pick up at 3:30.

THE COURT: 8:30 isn't an issue because we're not starting until about 9:45.

Is there any arrangement that can be made so you could pick up your ten-year-old later in the afternoon, if necessary?

ASMA ANSARI: I'll talk to the school. Maybe have extra time.

THE COURT: But are you paying for that?

ASMA ANSARI: Yes.

THE COURT: You have to pay for extra care?

ASMA ANSARI: Yes.

THE COURT: Would that interfere with your financial bottom line?

ASMA ANSARI: Sort of.

THE COURT: I can't answer the question for

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you. All we want you to do, if it does, just --

ASMA ANSARI: Yes.

THE COURT: Okay.

Ms. Schrock?

KATHRYN SCHROCK: Yes. Only thing I have is some medical issues.

THE COURT: I don't want to inquire.

Are they the type that would physically interfere with your ability to participate?

KATHRYN SCHROCK: Yes.

THE COURT: Because, you know, if it is one of the situations where you need to stand up, stretch, things of that nature, that's never an issue.

KATHRYN SCHROCK: Yes.

No. It is not.

THE COURT: It is beyond that?

KATHRYN SCHROCK: Yes.

THE COURT: Trying to be as careful as I can.

KATHRYN SCHROCK: Thank you.

THE COURT: Ms. Bradley?

DEBRA BRADLEY: I have health issues too. My husband runs a business. I am the only

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person there that answers the phone. Run it out of our home.

He's a welder. Has been for 20 something years.

THE COURT: Is he still going to pay you.

DEBRA BRADLEY: I don't get paid. No. He's the only --

THE COURT: I got you.

DEBRA BRADLEY: He owns it.

Same situation as her. I have some health issues. Anxiety is one of them.

THE COURT: Ms. Weinstein?

ELISA WEINSTEIN: I have two small children. Drop off is not an issue.

I'm a first grade teacher.

THE COURT: We know you get paid.

ELISA WEINSTEIN: I do.

I don't know how beneficial that would be for my students for me to be gone that long a period of time.

NICHOLE JEAN-PAUL: My son will be two soon.

I pick him up from day care at 4:30 every day. Later days will be a problem.

I'm a school psychologist. I have two

schools I'm responsible for.

THE COURT: Broward County?

NICHOLE JEAN-PAUL: Yes.

THE COURT: We know you get paid. Is there any arrangements you can make as far as the pick up on child care?

NICHOLE JEAN-PAUL: Today, I have somebody that helped me out in a pinch. Regularly, I have no one that usually picks him up.

PATTI JEAN HILLEBERT: I have also, well, I have two daughters, both in elementary school.

My biggest problem is the time of picking them up. They ride the bus home. They are home for ten minutes.

I get home from my school right away.

I wouldn't have anybody there for them.

My husband, also a teacher, leaves and goes and teaches community school every night too.

THE COURT: How old are the kids?

PATTI JEAN HILLEBERT: Eight and ten.

I wouldn't feel comfortable leaving them alone that long.

The 15 minutes before I get home from school, in a pinch, my mom is around.

She's going on a big family reunion coming

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up in the next week.

I don't have her. That's, you know, my only help.

THE COURT: As I said, after today, you won't be back until next Tuesday.

PATTI JEAN HILLEBERT: She's gone next Tuesday.

THE COURT: Mr. Stafford?

KEVIN STAFFORD: Only conflict is my job requires me to travel. It could create conflict if they have me travelling on the days we are not in court. I work for Jet Access Aviation. I am a pilot for them.

I have not sure of their policy as far as pay.

THE COURT: That's important for us to know. If you can make a phone call?

KEVIN STAFFORD: Yes.

THE COURT: Mr. Kasper?

HARRY KASPER: Yes, sir? What do you need, sir.

THE COURT: Do you have any conflicts?

HARRY KASPER: I'm a three-time convicted felon.

THE COURT: Never mind.

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Civil right been restored?

Ever had your rights restored?

HARRY KASPER: Not that I know of. No one has ever told me.

THE COURT: Did you tell them that downstairs?

HARRY KASPER: Yes, sir, I sure did.

They told me they can only check Broward County. I got other arrests.

THE COURT: Thank you.

Mr. Joseph?

JOBIN JOSEPH: I'm a full-time medical student at Nova Southeastern. I am slammed with exams the next couple weeks. Mid terms in October.

THE COURT: You will be in school anyway.

JOBIN JOSEPH: Yes. In my second year.

THE COURT: Mr. Casseus?

WEBSTER CASSEUS: Only two conflicts I can think of. I go to school currently at Broward College.

This is my last semester there. I have my daughter I take to school.

Both my kids.

Older daughter to school in the morning,

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pick her your in the afternoon.

My baby I take to the grandmother every morning.

THE COURT: What time in the afternoon?

WEBSTER CASSEUS: 4:30.

THE COURT: What are you studying?

WEBSTER CASSEUS: Rights now, in between. Marketing is probably what I'll stay at before I transfer to FIU. New semester starts in two weeks. Ends in December.

THE COURT: Mr. Rolle?

WHITING ROLLE: Good afternoon. I don't have a major conflict. My partner and I run a cleaning business, which is mostly nighttime that we're out.

THE COURT: How late do you work?

WHITING ROLLE: It can go into, depending upon the property, until 2 o'clock in the morning. We usually go from 6 o'clock in the afternoon until maybe 9 o'clock.

THE COURT: The later hours would be the exception?

WHITING ROLLE: Yes.

THE COURT: Mr. Sutton?

BREON SUTTON: No conflict.

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I work at McDonald's.
THE COURT: They pay you?
BREON SUTTON: Not sure of that.
THE COURT: That could be a major conflict.
Would you call your boss, see if he or she knows what the policy is?
BREON SUTTON: Oh, yes. I get paid there.
THE COURT: For the entire trial?
BREON SUTTON: I don't know about the trial. I have to call and see.
THE COURT: Today, I know you are getting paid.
This is a matter if you're paid while you're here in trial.
MR. WILLIAMS: Can he adjust his hours?
THE COURT: Are your hours flexible?
BREON SUTTON: Yes.
THE COURT: What hours do you generally work now?
BREON SUTTON: 3 until 11.
THE COURT: Could you call, see what their policy is?
BREON SUTTON: Okay.
THE COURT: Mr. Pierre?
NIGEL PIERRE: I don't have any conflicts,

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sir.

I work for American Airlines.

THE COURT: Are you a pilot?

NIGEL PIERRE: No. Supervisor.

THE COURT: They pay?

NIGEL PIERRE: Yes, sir.

THE COURT: Mr. Pesantes?

EMILIO PESANTES: I'm a full-time student. Go to Broward County. Studying traffic design.

KEITH HUGGINS: I have two. I have a brother that is dying. I need time out to go. I need to go, help him.

THE COURT. Second one?

KEITH HUGGINS: I work at a cement company.

THE COURT: Big company.

KEITH HUGGINS: Yes.

THE COURT: Do you know their policy on jury service?

KEITH HUGGINS: I have in a union.

But I work for them .

MR. WILLIAMS: That's governed by the union contract.

THE COURT: Which of course, none of us know.

THE COURT: Can you make a phone call for

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us? Call the union?

KEITH HUGGINS: Yes.

MOLLY SPENCER: I am a pre-school teacher.

I get salary 9 to 12. I'm hourly after that. I can call and ask.

Faith Child Center. A private pre-school.

We do aftercare, before care.

THE COURT: If you are not there?

MOLLY SPENCER: They will have to find someone.

THE COURT: You don't get paid?

MOLLY SPENCER: I don't think so. It's hourly.

THE COURT: Do you need that for your financial well being?

MOLLY SPENCER: Yes.

THE COURT: See?

That's a conflict.

Mr. Kunes?

SCOTT KUNES: I have two.

One, I'm going to court. I am a plaintiff. From the 10th until the 18th. I'm a business owner.

I have a shop of four. No office manager.

I take the calls and do the work.

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THE COURT: Why are you going to court?

SCOTT KUNES: Grand theft from my previous office manager.

THE COURT: Is that in this courthouse?

SCOTT KUNES: Yes, sir.

THE COURT: Ms. Shulan?

ILENE SHULAN: I have two issues.

First is I am unemployed and looking for work.

I have pending medical issues.

THE COURT: Are those the type that would interfere with your ability to participate and concentrate?

ILENE SHULAN: I'm having tests in the upcoming weeks.

THE COURT: Hopefully nothing too serious.

PAULINE LEE: I am a business owner.

I have surgery scheduled within two weeks.

My work is myself and one other employee.

THE COURT: You get paid if you don't work? Do you pay yourself.

PAULINE LEE: No.

THE COURT: Ms. James?

SHAQUIRRA JAMES: I have three conflicts.

My job. I pretty much am self-employed. I

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have a contract with a major dealership.

THE COURT: If you don't work, you don't get paid?

SHAQUIRRA JAMES: Yes.

My assistant is incapable without me.

I have a close relative, grand parents in hospice.

I got bad news while I was here today. Not looking good.

THE COURT: Got you.

SHAQUIRRA JAMES: Thanks.

LUCREZIA BURKE: I have two or three.

I was involved in an accident.

One guy ran a stop sign. I have two, the disks, dislocated disk. Two of my disks are torn.

I am on medications.

THE COURT: Pain meds?

LUCREZIA BURKE: Yes, pain meds. The pain med, once it wears off, I won't be able to do anything but take the medication.

Also, I have an 11-year-old son I have to take to school, pick up every day. He goes from 7:30 until 2:30.

THE COURT: No aftercare arrangements?

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LUCREZIA BURKE: No.

THE COURT: The opportunity to make alternative arrangements? In other words, somebody to help after school?

LUCREZIA BURKE: I don't have anyone at the moment or that I can think of. I would have to speak with people about that.

THE COURT: Thanks.

Mr. Yeung?

DICK YEUNG: I am a business owner.

I expect to have a business trip in the middle of October.

THE COURT: Going anyplace good?

DICK YEUNG: China.

Regarding machinery. Quality issue.

Went last month.

I have to go back.

THE COURT: This is your business?

DICK YEUNG: Yes.

On top of that, this business, I'm the service manager, marketing manager.

I am just the everything.

On top of that, I have another business.

Restaurant business. Same thing.

Carry orders, owner, title.

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THE COURT: Ms. Gretsky?

VICTORIA GRETSKY: I'm unemployed.

Waiting for a call for an interview.

THE COURT: What kind of work do you do.

VICTORIA GRETSKY: Used to be money management. This industry is going down.

Hard to find anything.

THE COURT: Market is up today.

THE COURT: Without me.

THE COURT: Presently, you're not making any money?

VICTORIA GRETSKY: No.

Who came back from their phone call?

KEVIN STAFFORD: I called the company.

They don't have a policy in place for long-term trials, like this. I have flight training three, four weeks from now. Takes about a three-week period to do it. We have to go every year.

THE COURT: I know.

We had a couple of pilots with the last group.

I'm more concerned with whether or not they will pay you.

KEVIN STAFFORD: I'm concerned with that as

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well.

THE COURT: Tell you what.

Let's play that by ear for the moment.

KEVIN STAFFORD: Sounds good.

THE COURT: Mr. Sutton?

BREON SUTTON: I talked to my boss. Said my company doesn't pay.

THE COURT: There you go.

THE COURT: Mr. Huggins is not back yet.

All right. What I'll ask you to do at the present time is go with Steve.

We will have you guys back in here in about ten minutes.

(Exit venire.)

THE COURT: All right, 26, Collins, child care.

MR. SATZ: Right.

MR. WILLIAMS: Right.

THE COURT: 27, Rosendorf, new job.

MR. WILLIAMS: I doubt they are paying.

MR. SATZ: I doubt.

THE COURT: And his anxiety. When he finds out what kind of case it is, his anxiety will go through the roof.

Ansari, child care.

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29, Schrock, medical issues.

MR. WILLIAMS: Correct.

THE COURT: 30, Bradley, work.

And medical.

31, Weinstein, was okay.

MR. WILLIAMS: The only issue with her is two young children. I thought she said may be issues. Leave her on for now. See what happens.

MR. SATZ: I have a "good" checkmark.

THE COURT: We will find out.

Number 32, Jean-Paul; 33, Hillebert, child care.

MR. WILLIAMS: Correct.

THE COURT: 34, Stafford said okay. He's here. He's good.

Also checking.

American Airlines.

MR. SATZ: The one you said play it by ear.

THE COURT: Right. He will find out.

Kasper, three-time felon.

36, Joseph is a student.

37, Casseus, student.

38, Rolle, good.

39, no work no pay.

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Pierre, number 40 is good.

41, Pesantes is a full-time student.

Huggins, waiting for an answer.

MR. SATZ: No. His brother is dying.

THE COURT: Letting him go.

Spencer, no work, no pay.

43.

44, Kunes, no work, no pay.

MR. SATZ: He didn't say that.

MR. WILLIAMS: He said it is a one-man shop.

THE COURT: He's everything. And he will be here for trial?

MR. WILLIAMS: And he has a trial. Grand theft.

MR. SATZ: He's the victim.

THE COURT: 45 is medical.

46, no work, no pay.

Pauline Lee.

47, James, no work, no pay.

48, Burke. Full-time student .

MR. WILLIAMS: No.

THE COURT: Oh, she is gone anyway. Back problem. Medication.

49, Yeung, going to China.

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MR. POLAY: No work, no pay.
THE COURT: 50, Gretsky, no work, no pay.
THE COURT: So we have 31, 34, 38, 39.
Pierre is 40.
9 is gone.
Stafford is right out there.
DEPUTY: Doesn't have an answer.
THE COURT: We have four.
All right.
Let's bring them in and deal with them.
(Enter said four venire.)
THE COURT: Okay, Mr. Stafford, you're still waiting for an answer.
If anybody else is, I'll explain that process to you.
As I said earlier, after you leave here today, we won't need you until Tuesday morning at 9:45. You're welcome to do whatever you need to do during the rest of this wonderful week.
What we will do is Mike will take you into our jury room.
He will give you a questionnaire to fill out. Once you have filled it out, he will take you out and show you where we need you to be

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when you return on Tuesday morning.

Now, just because you're here and coming back Tuesday morning, I don't want to you think that's indicative of actually being on the jury.

We still have two more stages we have to go through.

There is also a piece of paper in the back, where I'll ask each of you to please print your name, an Email an address and a phone number you can always be reached at.

I'll tell you that is only going to be with me. It is not for publication. It is so we can get ahold of you in the event of an emergency. We will give you information so you can get ahold of my office.

Mr. Stafford, if you find out what your status is, just call back. We will deal with it from there.

Other than that, Tuesday morning.

Bye-bye.

(Exit said venire.)

(Short recess had.)

THE COURT: Ready?

Let's go.

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(Enter venire.)

THE COURT: Good afternoon, ladies and gentlemen.

VENIRE: Good afternoon.

THE COURT: Boy, you're so eager.

Should I ask if you are having a good time? No, that's not a good question for me to ask?

I'm Paul Backman.

I am one of your judges here in the 17th Judicial Circuit.

What we're looking for today -- and you will notice you came up in a group of 75...50 are already gone.

You guys are left.

Most of you will be out of here in a relatively short period of time. That doesn't mean you're not coming back. Just means you will be out of here.

We're looking for individuals who are available to serve on our jury after today effectively from next Tuesday, when we're going to start, actually, I think questioning the jurors.

We will have a jury by the end of the week for those of you still participating.

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We anticipate starting with the actual trial itself on October 9th, which is a Tuesday. It can last anywhere from three weeks to Thanksgiving. I can tell you Thanksgiving is definitely a date that it will be finished by.

It can be finished in three weeks, four weeks, five weeks. I would rather be on the safe side and tell you that you can go home a lot earlier than give you a time frame that I then have to beg you all to stay after that time frame.

Now, we understand all of you have conflicts. We'll go through the conflicts in just a moment. And I'll do it individually. So when I am finished with conflicts that we are aware of, to raise with you, that is when I'll go to Ms. Gardner.

We'll start going down the rows for any problems you may have with serving with us.

Okay. Now, let me tell you what our work schedule is.

From there, for those of you have that don't know what your work policies are for getting paid for jury service, you will be able

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to give them an idea so you also know for your own personal reasons.

It is anticipated we'll be in trial Tuesdays, Wednesdays, Thursdays and in all likelihood Fridays, whether half a day or full day. I don't know. That would be each and every week.

If we are still in trial the week of Veteran's Day, because Veteran's Day is on a Monday, Tuesday, I have to do what I do on Monday. So that would be Wednesday, Thursday, Friday.

I don't know we will still be in trial from that time. I try to work, for you guys that ultimately make the jury, back at 9:45. Start at 10:00. I usually work until 5:00, 5:30.

If we run out of witnesses earlier, well, we would be out of witnesses.

You would get to go home.

Now, does anybody have any issue understanding and speaking the English language?

Okay.

One thing at a time.

You are?

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HILDA GALLEGO: Hilda Gallego.
THE COURT: What is your native language?
HILDA GALLEGO: Spanish.
THE COURT: Speak English?
HILDA GALLEGO: A little bit.
THE COURT: A little bit?
HILDA GALLEGO: A little bit.
THE COURT: Mr. Polidor?
JOSE POLIDOR: Yes.
THE COURT: I don't know what language you speak.
JOSE POLIDOR: Spanish.
THE COURT: Understand English?
JOSE POLIDOR: Some. Little bit.
THE COURT: What is a little bit? More than a little bit?
JOSE POLIDOR: Yes.
THE COURT: Grande?
What kind of work do you do?
JOSE POLIDOR: I am a handyman.
THE COURT: I'm sorry?
JOSE POLIDOR: Handyman.
THE COURT: Thanks.
Okay, that having been done, let me tell you who we are not looking for, unless, of

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course, you want to volunteer.

If you are a full-time student and your studies would be effected by being on this panel, we don't want you.

Understand it is not that we really don't want you.

We don't want to interfere with anybody's education.

If you are a primary care giver of an adult, of a child, part of your professional responsibilities, let us know.

If you are unemployed, looking actively for work, let us know.

If you have a job, full-time job, and you don't work, that your company will not pay you, let us know.

Now, in situations like that, unless you know what the policy of the company is, as far as what they will pay for jury service, I'll ask those individuals to please step outside, make a phone call.

See if you can get as answer. You would be surprised. Many firms pay for every single day you're here. And unless you ask them -- and please, if you do make that call, don't say do

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you pay for jury service. They may say yes, meaning we'll pay you for today.

Then you end up on a trial and find out they are not paying you.

Please let them know the parameters of the trial.

If you have a pre-paid vacation, let us know.

And depending upon how it works out, we might be able to accommodate that.

If you have child care issues, where you cannot make alternative arrangements for after care, again, let us know.

If you're a part-time worker, obviously, we don't believe you will be getting paid.

If you are a commissioned worker, either with a base pay or totally on commissions, and that would interfere with your financial bottom line, again, we don't want to interfere with anybody's finances.

And if you have any medical reasons, reasons that would interfere with your ability to be with us, and of course any other reasons you might be able to come up with.

And some people are very creative.

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Ms. Gardner, why don't I start with you.

Can I see one representative or all?

(Sidebar had.)

THE COURT: Mr. Stafford, who was the pilot, did he tell us that he had training starting October 15th?

MR. WILLIAMS: Isn't day one?

THE COURT: October 15th. Two weeks. We'll let him go.

MR. POLAY: I have no problem.

MR. SATZ: Ask him if he can reset that.

THE COURT: I don't remember if he said that. He said he has to do it twice a year, once a year.

MR. POLAY: My secretary, her husband flies for Delta.

MR. SATZ: I thought he could possibly get it reset.

THE COURT: She just talked to the boss.

MR. SATZ: Why don't you ask him to get it reset?

THE COURT: If he says it can't be, can she tell him to leave.

MR. POLAY: Yes.

MR. SATZ: Yes.

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(Sidebar concludes.)

THE COURT: I believe, Ms. Gardner, you were getting ready to talk to me.

CHERYL GARDNER: Yes.

What would you like to know?

THE COURT: Do you have issues that would interfere?

CHERYL GARDNER: Yes. I work part time. I am pretty much a full-time care giver for my neighbor.

She's 89.

Has breast cancer. It would probably be an issue for me.

THE COURT: As far as your part-time employment, is that critical to your bottom line?

CHERYL GARDNER: Yes, it is.

THE COURT: Thank you.

Mr. Hrabousky?

GEORGE HRABOUSKY: I have a part-time job also. It would create a problem for me, missing that much.

THE COURT: What do you do?

GEORGE HRABOUSKY: Retail.

THE COURT: Mr. Ventriere?

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JORDON VENTRIERE: Close.
THE COURT: Talk to me.
JORDON VENTRIERE: I'm in the process of getting my GED.
THE COURT: Where are you going to school?
JORDON VENTRIERE: McFadden.
THE COURT: During the day?
JORDON VENTRIERE: Yes.
THE COURT: This would interfere with that?
JORDON VENTRIERE: Yes.
THE COURT: Ms. Urszewski?
ELLEN URSZEWSKI: My husband and I are supposed to go on a little three-day trip on a ship in the middle of November. I could look it up on my phone.
THE COURT: Is that a weekend?
ELLEN URSZEWSKI: No, the middle of the week.
THE COURT: Do you know when?
ELLEN URSZEWSKI: I can look it up on my phone.
THE COURT: Would that be your only conflict?
ELLEN URSZEWSKI: That you would accept!
THE COURT: In the mean time --

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NANCY LINNETT-RAVELO: I don't have any concerns. I'm retired. Only thing I have is that I do have lymphoma. It is dormant. I go to the cancer institute.

THE COURT: How often?

NANCY LINNETT-RAVELO: Three times a week. But it is in the evenings.

THE COURT: Are you on any type of medications?

NANCY LINNETT-RAVELO: No.

THE COURT: So they just go to check your progress?

NANCY LINNETT-RAVELO: Yes.

THE COURT: You would be okay as far as that is concerned?

NANCY LINNETT-RAVELO: Yes. I'm just being up front. Honest.

THE COURT: It is appreciated.

If you don't want to tell us any type of medical condition, I am not inquiring.

NANCY LINNETT-RAVELO: I have nothing to hide.

THE COURT: I appreciate that.

ELLEN URSZEWSKI: 14th, the 13 this, 14th, 15th.

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MR. WILLIAMS: November?

ELLEN URSZEWSKI: November.

MR. WILLIAMS: That's the tail end.

THE COURT: It is already paid for?

ELLEN URSZEWSKI: We're not paying for it. Somebody else. We're, we put down we'll be there.

THE COURT: Let's play it by ear for the time being. We won't stop you from going.

How's that?

ELLEN URSZEWSKI: Okay.

THE COURT: We'll have a bunch of alternates.

If we're still in trial, we'll have to make alternative arrangements. In other words, I won't tell you, unless you're in deliberations -- we'll deal with all of that.

ELLEN URSZEWSKI: Okay.

THE COURT: All right.

Mr. Howard?

TIMOTHY HOWARD: Other than full-time, I don't know. I work full time. Travel the state for Furguson Enterprises.

THE COURT: Do you know their policy?

TIMOTHY HOWARD: I have to call and check.

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THE COURT: Can you do that for us?

TIMOTHY HOWARD: Can I step out?

THE COURT: Yes.

Mr. Peguero?

RICARDO PEGUERO: I work for Miami Beach Police Department. IT.

THE COURT: You're not sworn law enforcement?

RICARDO PEGUERO: No.

THE COURT: Do you know what their policy is?

RICARDO PEGUERO: Yes.

THE COURT: They will pay?

RICARDO PEGUERO: Yes.

THE COURT: Any other potential issues?

RICARDO PEGUERO: October 22nd through the 25th. No, October 22nd to the 29th, I'll be out of the country.

THE COURT: Where are you going?

RICARDO PEGUERO: Overseas.

THE COURT: Already paid for, all of that good stuff?

RICARDO PEGUERO: Europe. Yes.

THE COURT: Okay.

Mr. Nava?

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JORGE NAVA: I'm full-time working.

I have classes at FAU. Accounting.

THE COURT: Ms. Winters?

ALEXANDRA WINTERS: I have a paid trip October 12th through the 14th.

Friday through the 19th.

THE COURT: Not a conflict. This is still a work in progress.

ALEXANDRA WINTERS: I have to find out as well.

I technically work for myself.

I get paid for performance.

I go physically to offices to handle bookkeeping and bills.

THE COURT: How much will you get paid?

ALEXANDRA WINTERS: I don't know if when I leave here I can go to offices at night. I have to find out as well, with regard to that.

THE COURT: All of our concerns we would have -- and this deals with anyone that may work at night or after trial, we don't want you so tired that the following morning, you would come in and fall asleep and can't pay attention. That is really --

ALEXANDRA WINTERS: That could potentially

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happen.

I work for myself. Paid for performance.

If my work isn't getting done, I'm not getting paid.

THE COURT: Understood.

VINCENT MOYE: Full-time work.

I'm a care giver, too.

I care for my oldest daughter. I drive trucks at nighttime.

THE COURT: What are those normal hours?

VINCENT MOYE: Midnight until about nine, ten in the morning.

THE COURT: You would be wide awake and ready to go at 10 o'clock?

VINCENT MOYE: No.

I wish. But I have another job.

THE COURT: I hear you. I hear you.

Mr. Kovach?

MARK KOVACH: I actually have a vacation paid for, starting the 28th through the 9th.

THE COURT: Going anyplace good?

MARK KOVACH: California.

THE COURT: 28th of September?

MARK KOVACH: Yes.

THE COURT: You would be unavailable next

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week?

MARK KOVACH: Yes.

THE COURT: Mr. Graham?

DAVID GRAHAM: I have a paid vacation on October 29th through November 4th. I have an autistic son.

Does much better when I am around home. Also I don't know if I would get paid.

THE COURT: Who do you work for?

DAVID GRAHAM: I have a pilot for American Airlines.

THE COURT: We had a pilot on the last one. Last group. Same airline.

DAVID GRAHAM: Get paid.

THE COURT: Do you have training coming up.

DAVID GRAHAM: Possibly in November. Yes. Scheduled month to month.

CIANI NIHAL: I am a teacher. Three weeks will be a big problem. I am the only bread winner for my family.

THE COURT: You work for the school board?

CIANI NIHAL: Yes.

THE COURT: They pay.

CIANI NIHAL: They may replace me after three weeks.

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They have to get another teacher.

THE COURT: You would make so much money if they tried that. They can't fire you if you're on a jury.

CIANI NIHAL: No.

They can put me somewhere else.

THE COURT: Got you.

Mr. Neher?

LOUIS NEHER: I have PSD. I have medical issues.

THE COURT: Think they would interfere --

LOUIS NEHER: Yes. Interfering now. 30 percent deaf in the right. 20 in the left. I have a hard time hearing you if I'm not looking at you.

THE COURT: If you have a problem hearing me, then you have a problem hearing.

Mr. Fisher?

DANIEL FISHER: Yes.

I don't know if I'll be here.

My house is up for sale on the market now. I bought a home in Tennessee.

I have to go up on the 22nd of October and close.

THE COURT: That's a Monday.

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We won't be in trial.

DANIEL FISHER: THE COURT. Closing would be on Monday.

If everything goes right. I have somebody looking at my home now.

I don't know if I can sell it.

THE COURT: Let's play it by ear.

DANIEL FISHER: Yes.

Yes, sir.

Plus I have a medical condition. I have congestive heart failure.

THE COURT: We don't want to have it give out while you're here.

DANIEL FISHER: Just got diagnosed two weeks ago with it. My cardiologist made me retire my job.

36 years. Told me I can't work no more.

That's not good for me.

THE COURT: Got you.

Maybe we won't play it by ear.

DANIEL FISHER: No.

ADRIENNE CARTER: I'm a full-time employee. I am a care taker of my disabled son.

But I made plans to care for him. Has no one else there for him. Only thing is October

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1st, has a procedure at the hospital he's overnight until October 2nd.

THE COURT: You would have to be back the morning of the 2nd.

Staying over night. Won't be discharged until that morning?

ADRIENNE CARTER: I believe so.

I can have someone there for him. I have to make that plan. I have to know ahead of time.

THE COURT: What is the work situation?

ADRIENNE CARTER: I work for the government. I don't care.

THE COURT: What do you do for the government.

ADRIENNE CARTER: I'm an IRS agent for the IRS Service.

THE COURT: My name is Jones.

We know they pay.

Ms. Julius?

SHERRI JULIUS: I am a full-time employee. Problem I have is I know some people over there. Do I have to -- that will be a problem, isn't it?

THE COURT: How do you know? Me?

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MR. SATZ: She knows me.

SHERRI JULIUS: I definitely know Michael.

THE COURT: How do you know me.

SHERRI JULIUS: Do I say?

MR. SATZ: Yes. You can do it sidebar.

THE COURT: I'll wait.

SHERRI JULIUS: Thanks.

THE COURT: Mr. Belsky?

RICHARD BELSKY: Unemployed.

Actively seeking employment.

THE COURT: What do you do when you work?

RICHARD BELSKY: Usually fitness or restaurant work.

THE COURT: Do you have any irons in the fire, as the saying might go?

RICHARD BELSKY: Pretty much need employment. Recently relocated from New York, and I need a job.

THE COURT: Thank you.

Mr. Piazzese?

ANTHONY PIAZZESE: I work full time. I am a manager for Bank of America. My biggest concern is child care. My daughter, I'm the primary for picking up my daughter after school, making sure she's home.

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Wife works full time. Travels mostly for her work. I am the primary for that.

THE COURT: What time do you have to pick her up?

THE COURT: By six.

THE COURT: If we are out of here before six, you're okay?

ANTHONY PIAZZESE: Yes, live in Pembroke Pines.

THE COURT: Been there. Understand that.

Do you know what the policy of Bank of America towards paying?

ANTHONY PIAZZESE: I'm not sure. I am sure they pay for while you're out. It would be, it was trouble getting here today of having a replacement for me while I'm not there. I am sure they pay for any time of jury service.

THE COURT: I believe in being better be safe than sorry.

Can you make a phone call?

ANTHONY PIAZZESE: Sure.

THE COURT: Mr. Cheng?

ALEXANDER CHENG: I am unemployed. Building an artist portfolio. My parents gave me an ultimatum to find a job by the end of the

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year. So --

THE COURT: Looking yet?

ALEXANDER CHENG: I'm in the process of looking.

Haven't found anything yet.

THE COURT: What are you looking for, besides a job?

ALEXANDER CHENG: Right now, at least something to get me going, like a bag boy at Publix or something, just to get me started.

THE COURT: Thank you.

Ms. Loffler?

NAHI LOFFLER: Well, I'm hosting my sister-in-law.

Coming to VISIT me from Canada. She was planning for that about a year.

THE COURT: When is she coming?

NAHI LOFFLER: Coming on October 2nd.

THE COURT: Staying with you for how long?

NAHI LOFFLER: Two weeks.

THE COURT: Where in Canada?

NAHI LOFFLER: Calgary.

THE COURT: That's cold.

NAHI LOFFLER: Yes.

Very cold.

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THE COURT: Mr. Cosme?

DAVID COSME: I'm a full-time employee. I'm director of security for Allied Security.

THE COURT: Do you know their policy?

DAVID COSME: As of now, up to five days.

I guess one of the other situations, I am the sole provider for my home. If I had to stay that long, I would have to -- I'm the manager. I would have to get other work.

THE COURT: Ms. Ojeda?

GINA OJEDA: Child care is an issue.

I don't have my son in after care.

I work for myself. I'm a dog walker.

THE COURT: You have to be there to walk the dogs.

GINA OJEDA: Yes.

THE COURT: Okay.

Mr. Howard?

TIMOTHY HOWARD: They will give me two weeks.

THE COURT: And we are waiting for another. Okay.

Yes?

ELLEN URSZEWSKI: I, we're closing on a house on October 23rd. And we have a meeting

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the 16th of October, to do a walk-through.

THE COURT: The walk-through is on a Tuesday.

ELLEN URSZEWSKI: We can right after that, we close.

THE COURT: You said on the 30th.

ELLEN URSZEWSKI: The 23rd of October.

THE COURT: Are those -- are those possible to move to the 15th and 22nd?

ELLEN URSZEWSKI: I don't think so.

They scheduled this a long time ago.

THE COURT: You're back. What is the story?

ANTHONY PIAZZESE: The bank would comply with all applicable laws.

MR. WILLIAMS: That's five days.

MR. POLAY: Five.

THE COURT: Yes.

Okay.

Here is what I need to you do for me, please.

Steve will lead you guys outside.

I'm sure you saw that parade twice already today. We talk a little. And we're going to have some of you back. The rest of you will

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then, certainly with my regards and thanks for your being here, will be sent back to the jury room.

I understand they have a four-year trial waiting for you guys.

No. They will excuse you.

Please, just follow Steve.

(Exit venire.)

THE COURT: What about the lady in the back?

MR. SATZ: I think she is a political activist.

THE COURT: I don't recognize the name.

All right. Let's see if we can get through this group.

Let's start with Gardner, 51, care giver.

52, part-time employment.

53, full-time student.

54 --

MR. WILLIAMS: closing and three-day trip.

MR. POLAY: Don't need that many. Too many.

THE COURT: Gone?

MR. SATZ: Yes.

THE COURT: I thought we had 55. I think

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she just secured that.

MR. WILLIAMS: Goes at night for a week up.

MR. SATZ: Has cancer. Goes three nights a week.

MR. WILLIAMS: Said it was in remission.

THE COURT: Doesn't get medication.

MR. POLAY: Leave it up to her.

She is fine for now.

THE COURT: 56, Howard?

MR. WILLIAMS: Two weeks.

THE COURT: Don't get it.

57, traveling.

MR. SATZ: 22nd to the 29th.

THE COURT: Of October.

MR. WILLIAMS: gone.

THE COURT: Yes.

58, full-time student.

59, Winters --

MR. POLAY: No work, no pay.

THE COURT: 60 --

MR. POLAY: Child issues.

THE COURT: And work.

61, traveling.

62, Graham?

MR. WILLIAMS: American Airlines.

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MR. POLAY: Autistic son.

MR. SATZ: Why don't we leave him on, see how it goes.

MR. WILLIAMS: I'm sure his trip can be rearranged.

MR. POLAY: Let's see how it goes with him because of his child.

THE COURT: 63, teacher.

MR. WILLIAMS: That's fine.

THE COURT: 64, medical.

MR. SATZ: Right.

MR. POLAY: Training.

THE COURT: 65, language.

MR. POLAY: Correct.

THE COURT: 66, Fisher.

MR. POLAY: Health issues, moving to Tennessee.

Obviously, if he had to stop working that fast, seems he's pretty ill.

MR. WILLIAMS: Closes on the 22nd.

I assume he wants to stay up there, if at all possible.

MR. POLAY: Judge agrees.

THE COURT: 67, Carter.

MR. SATZ: She was all right.

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MR. POLAY: Disagree. Her son, she has a disabled son.

THE CLERK: Going to be in the hospital.

THE COURT: That's the one whose child is not getting out of the hospital until the 2nd.

MR. SATZ: I say let's play it out.

THE COURT: She has to come back next Tuesday.

MR. POLAY: She is spending the night with her kid in the hospital.

THE COURT: Right.

MR. POLAY: In addition, before she mentioned that, indicated she takes care of her disabled son.

THE COURT: Right.

MR. SATZ: All right.

THE COURT: All right.

68, gone.

THE COURT: 69, language.

70 is looking --

MR. POLAY: No.

MR. WILLIAMS: Just moved here from New York.

THE COURT: 71, gets paid for --

MR. POLAY: Five days.

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MR. SATZ: All he said is what they are legally responsible for. Does that mean the length of the trial?

MR. WILLIAMS: No. All statutes, rules and regulations.

MR. SATZ: We don't know what that means.

THE COURT: I'll tell you what. We will keep him for the moment. Between now and next Tuesday, maybe he can clarify that.

MR. POLAY: The statute says five days.

Mr. Satz may be right. That's fine.

THE COURT: Number 71, no work, no pay.

MR. POLAY: Poor kid. I think his parents have had enough.

MR. WILLIAMS: Has to get out of the basement at the end of the year.

THE COURT: Talking about Belsky?

MR. SATZ: No, this guy, his parents.

THE COURT: Belsky we kept for the time being.

MR. SATZ: No. Letting him go.

MR. WILLIAMS: He's unemployed.

THE COURT: Oh, 72, Cheng is the one we keep for the time being.

MR. WILLIAMS: No. Piazzese.

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THE COURT: He's the one we keep around.

All right. Got it.

Cheng is gone.

MR. POLAY: Check.

THE COURT: Loffler?

MR. SATZ: Let her go. Waiting for a relative.

THE COURT: She's gone.

74 and 75 are both gone.

MR. WILLIAMS: Yes.

MR. POLAY: Yes.

MR. SATZ: Irizarry?

THE COURT: No work. No pay.

Same thing with Ojeda.

Four.

MS. MCCANN: Yes, sir.

THE COURT: Let's bring them in.

(Enter said four venire.)

THE COURT: Welcome back.

Mr. Piazzese, did you tell -- I just need to ask, because when you said that they will abide by all rules, regulations, laws of statute, did you tell them this would be a six-, seven-week trial?

ANTHONY PIAZZESE: No.

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THE COURT: I think you will need to do that. Law says, basically, five days.

I hate to get you stuck here and find out they are not paying you for the whole trial. Between now and Tuesday, if you can find that information out for us.

ANTHONY PIAZZESE: Yes.

THE COURT: Okay.

Let me tell you what is happening from here.

In a minute, you will go with Mike. He will take you into our jury room and give you a questionnaire to fill out. Once you have filled it out, Mike will take you out and show you where you need to be when you come back Tuesday morning at 9:45. Also, there is a sheet in there.

We're asking you please, I'm asking if you would kindly, please print your name on it. An Email address and a phone number that you can be reached at. This is in the event there is an emergency and my office needs to contact you. And Mike is going to give you information so you can contact my office in the event of an emergency or if you find out, Mr. Piazzese, and

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you can call.

You can just tell us so we at least will be on notice. And the only person that will have that list is me.

It is not something for publication.

I want you to be aware it is not being spread around.

Please stay away from the local sections of the Sun Sentinel and Herald if you even read those.

Other than that, see you Tuesday morning.

DAVID GRAHAM: I had a pre-paid vacation. October 29th.

THE COURT: That may not be a problem.

We will play that by ear for the time being.

We had a few others today that had the same week they needed off. I think you said but for that you were okay.

DAVID GRAHAM: I don't know if I'll get paid, for sure.

MR. WILLIAMS: He's with American Airlines; is that correct?

MR. WILLIAMS: Remember. Union rep said they get paid.

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THE COURT: From our last inquiry, the union rep said you will get paid for every day you're out. If you can find out when your training is due, that would be helpful between now and then.

DAVID GRAHAM: No, December or January.

I have can't confirm when they will assign that to me. They do it a month at a time.

THE COURT: Got you.

MR. SATZ: If he can tell them he's on jury duty, they can put it off.

THE COURT: Yes. That you can try.

Yes?

NIHAL CIANI: Yes, I teach the hardest subject. Physics. Algebra.

I have a hundred students.

They need to pass. Otherwise, they won't graduate. I heard six to seven weeks.

THE COURT: We all understand that. Being here at this moment is not indicative 1of anything in terms of jury service.

We understand. Lawyers don't go out of their way to create that type of conflict if it can be helped. Right now, we are just on the, trying to see where the conflicts are.

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The questionnaires will go into it.

Of course, next week, a lot of people will get talked to.

Don't panic yet.

Follow Mike.

(Exit venire.)

(Proceedings conclude.)

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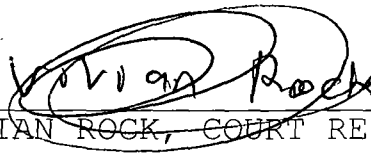
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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true and complete record.

Dated this 1st day of July, 2019.



VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA CRIMINAL DIVISION

STATE OF FLORIDA, Plaintiff, vs. GERHARD HOJAN, Defendant.	CASE: NO. 02-005900CF10B JUDGE PAUL L. BACKMAN

ORIGINAL

Fort Lauderdale, Florida

September 26th, 2018

9:30 o'clock A.M.

VOLUME III

TRANSCRIPT OF PROCEEDINGS

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The above-styled case came on for Trial before the Honorable Paul L. Backman, Presiding at the Broward County Courthouse, 201 Southeast 6th Street, Room 5780, Fort Lauderdale, Florida, on the 26th day of September, 2018, commencing at 9:30 o'clock a.m.

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APPEARANCES:

MICHAEL SATZ, STATE ATTORNEY,
BY: MICHAEL SATZ, STATE ATTORNEY, and
CAROLYN McCANN, ASSISTANT STATE ATTORNEY,
201 SOUTHEAST 6TH STREET, 6TH FLOOR
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appearing on behalf of The State.

LAW OFFICE OF MITCHELL POLAY
BY: MITCHELL POLAY, ESQUIRE,
3690 Davie Blvd.
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BOCA RATON, FL 33486
appearing on behalf of The Defendant.

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Thereupon, the following proceedings were held:

(Whereupon, the prospective jury panel was brought into the courtroom.)

THE COURT: By the way, it is kind of warm in here and I don't know if it's going to get any cooler, so if you have jackets and want to remove them, be comfortable, please.

Good morning, ladies and gentlemen.

PROSPECTIVE JURORS: Good morning. (Collectively).

THE COURT: Yesterday when I did this, the first group that came in here was sound asleep. It's like that after lunch lull. Let me introduce myself. My name is Paul Backman. I'm one of your judges here in the 17th Judicial Circuit. And what we're doing here this morning, as you obviously saw, there is another -- there are another fifty of your good friends that are standing outside who will be in right after you guys. And I will have you out of here relatively shortly, and some of you will get the great pleasure of going back to the jury room, and others of you will get the opportunity to stay with us for a little bit and I'll explain everything from there.

We are looking for individuals who can sit on a trial that is scheduled to go anywhere from three to six

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to seven weeks. Now, that sounds like a very long time, but I will tell you that everyone in this courtroom, with the exception of the accused, I just came out of a twenty-two month three-day trial, so this is a very short trial in comparison.

Now, we all recognize that individuals have conflicts and I got an entire list of conflicts that I'm going to go through with you. And once I do that, I'm going to start with Ms. Castano and ask whether or not any of them apply to you, and if so, we might have some questions from there. But the first question I have to ask is: Does anybody have any difficulty understanding and speaking the English language?

Anybody that has a language issue?

(Whereupon, there was no response.)

THE COURT: ,Now this is the list that I have. It is not all encompassing, but I think I pretty much pick up everything. And let me tell you who we are not looking for, and I want you to understand it's not that we don't want you to be with us, but these conflicts could have a detrimental impact on your lives and we don't want that.

So if you are a full-time student and being with us would interfere with your studies, we need to know because we do not want to interfere with your education.

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If you are a primary caregiver to a parent, grandparent, a child, or it's part of your professional responsibilities, you need to let me know.

If you are unemployed and actively looking for employment, please let us know. If you work full-time for a company and you do not know what their policy is on jury service, some of them are three days, some five days, some ten days. There are an awful lot of companies that will pay you for every single day that you are here your full salary. And I'll also give you the schedule that we're working so it makes it easier for you. So if you work full-time and if you do not know what the policy is, I'm going to ask you to then step out of the courtroom, make a phone call, and see if you can determine what that policy is.

If you are a commission employee, either with a base pay and commission or just pure commission, again, if it's going impact your financial bottom line, we need to know. We don't want to put anybody out on the street because they're not bringing in any income. If you have a prepaid vacation between now -- and I assure you, this case will be over before Thanksgiving, probably a lot sooner. But you know what Murphy's law is, yeah, anything that can go wrong will go wrong, please let us know. We are all in a position that many of those we

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might be able to accommodate.

For instance, yesterday in the various groups that came in, a lot of people had those plans but they ran Friday, Saturday, Sunday and some went to Monday. Those aren't problematic for us. Some have -- we had one particular -- we had three people who had the same week that they were going to be out. That we haven't made a decision on. But it's very possible that we can accommodate those type of plans.

If you have child care issues where you cannot make alternative arrangements in the afternoon, please let me know. If you have medical issues that you believe would interfere with your ability to sit with us and participate, please again let us know. If there are any other reasons that you can think of, and we reward creativity, please again let us know.

Now, you'll notice that I am not introducing anybody other than myself because I'm the only one that's important, and the reality is we're not even going to tell you what this case is about, other than the fact that it's criminal in nature. That's about all I'm going to tell you until we get past this.

Now, the schedule that we anticipate working is all day Tuesday, Wednesday, Thursday, and I haven't yet decided on -- some Fridays, we may work some Fridays, we

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may not. Some we may just work half a day. But again, it really depends on where we are with particular witnesses. I like to work until 5:00, 5:30 if that's possible.

Can we make arrangements for those that need to be out earlier? Certainly. If you want to go home, collectively, at 2:00 o'clock every afternoon, that's fine, but now we're talking about going to the end of the year. So, you know, for every hour we lose someplace, it's an hour we have to make up. So I would suggest we don't want to do that.

I believe my responsibility in cases of this nature, or any nature for the cases I try, we ask of our citizens to make a sacrifice of their time and to participate. So my job, my responsibility is, as I see it, is to get you in here and out of here as quickly as is humanly possible, understanding that what we're doing, no matter what kind of a criminal case it might be, is very important. So that's a commitment I make to you.

When there are delays, I will always tell you what it is, providing that I can, because delays come up. So my start time for this case would generally be having you back about 9:45, hopefully everybody would be back by 10:00, and we would then get started.

I got to tell you that in this last trial that I

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just told you about, we had nineteen jurors every single day they were all back on the dot. I can't get a six person jury to return on the dot. So I guess they wanted to get out of here as quickly as they can.

So Ms. Castano, and if I mispronounce your name, please correct me, because I don't want to get your names too wrong. So Castano is an easy name, and please don't tell me I just screwed that up. So talk to me, Ms. Castano.

MS. CASTANO: No to all of them, except technically, I have a vacation, but I'm more than happy to get out of it.

THE COURT: Must be a family vacation.

MS. CASTANO: It's a family wedding and this is a family I don't speak to.

THE COURT: When is it?

MS. CASTANO: It's next Friday.

THE COURT: Next Friday, being this Friday or the week after that?

MS. CASTANO: No, the following.

THE COURT: Just over the weekend?

MS. CASTANO: Yes.

THE COURT: But everything else is okay?

MS. CASTANO: Yep.

THE COURT: Are you employed?

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MS. CASTANO: Yes.

THE COURT: Who do you work for?

MS. CASTANO: University of Miami Hospital.

THE COURT: Do they pay?

MS. CASTANO: Yes.

THE COURT: Are you sure?

MS. CASTANO: Yes.

THE COURT: For every day that you're here?

MS. CASTANO: Yes.

THE COURT: We'll see if we can help you out if you make the jury. By the way, as I said, this is only a paring down. If you get through this process, that is not indicative that you will actually be on the jury. Those that do will be back next Tuesday and I anticipate that we would have our jury hopefully, yeah, probably on the date of the wedding, so you would be good.

Let's see, Mr. Antenor?

MR. ANTENOR: Antenor.

THE COURT: Antenor.

MR. ANTENOR: Yes.

THE COURT: I got any syllables wrong.

MR. ANTENOR: That's okay. I have two potential hinderances. I'm a father of three kids under three and I'm their primary transportation to preschool, and I don't know my company's policy.

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THE COURT: Who do you work for?

MR. ANTENOR: Track Phone Wireless.

THE COURT: That I don't know. What time do they have to be picked up in the afternoon, or are you only responsible for the morning?

THE WITNESS: For the morning.

THE COURT: I take it they're dropped off before, what, 8:00 o'clock?

MR. ANTENOR: Yes.

THE COURT: I'm not even out of bed at 8:00 o'clock, so that wouldn't be a problem. But I'm going to ask if you can make a call to your employer to find out what their policy is, and when you do make these phone calls, if you have to, please tell them that this trial could go up until the week of Thanksgiving, even though I do not anticipate that.

You know, a lot of people will go, they'll make a phone call, do you pay for jury service, they say yes, but they could mean three days, five days, ten days, and suddenly you get stuck on a trial and you're not getting paid. We don't want that. We don't want our jurors to be using personal time or vacation time to be with us. So if you'll do me that favor and make a phone call, it would be appreciated.

MR. ANTENOR: All right.

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THE COURT: Ms. Gonzalez?

MS. GONZALEZ: I have two potential conflicts. One, I do have vacation the week of Thanksgiving.

THE COURT: I'm not here either, so don't worry about it.

MS. GONZALEZ: And I have a training coming up in three weeks in Oklahoma for work. Additionally, I know you said it was a criminal case, and if it's anything related to child abuse or physical abuse, I will be biased.

THE COURT: Well, we haven't gotten to that.

MS. GONZALEZ: I'm just saying.

THE COURT: But depending on how one defines things, I don't think it falls in there.

MS. GONZALEZ: Okay.

THE COURT: Who do you work for?

MS. GONZALEZ: Federal Aviation Administration.

THE COURT: Oh, we know they pay. That's the government. Would your Oklahoma matter -- when does that fall? You said three weeks.

MS. GONZALEZ: The thing is I recently got a promotion and we are short staffed.

THE COURT: Congratulations.

MS. GONZALEZ: Thank you. So I'm pulling double duties. I'm still doing my old job, plus my new job, and

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all the inspectors rely on me.

THE COURT: Well, when is that supposed to be in October; do you know?

MS. GONZALEZ: I can tell you right now. I think it's the week of the 16th.

THE COURT: Well, Monday is the 15th.

THE CLERK: The 16th is a Tuesday.

MS. GONZALEZ: I'm sorry, I'm nobody without this book.

THE COURT: Somebody who uses a real book.

MS. GONZALEZ: I know. The week of the 15th.

THE COURT: The whole week?

MS. GONZALEZ: The entire week.

THE COURT: Is that something that could be rescheduled, if you made the jury?

MS. GONZALEZ: It's just depending on the courses. Next course wouldn't be until next year, but at the end of the year.

THE COURT: And that impacts your position?

MS. GONZALEZ: My training, because the courses have to be in chronological order.

THE COURT: But other than that, you're okay?

MS. GONZALEZ: And I have another one coming up, four weeks in November and December I'll be gone as well continuing the classes.

THE COURT: Got you. Thank you.

Ms. Ru?

MS. RU: Yes, sir. Unfortunately, I have vacation as well and here is the voucher company, I pay for vacation.

THE COURT: Well, I'm not questioning that you paid for it. When is it?

MS. RU: It's okay, but here is the flight.

THE COURT: I believe you. But when is it?

MS. RU: I'm going October 23rd until November 10th.

THE COURT: When do you leave, next week?

MS. RU: October 23.

THE COURT: Oh, the 23rd?

MS. RU: Yeah.

THE COURT: To November 10th?

MS. RU: Yes.

THE COURT: Wow. Are you going anywhere good?

MS. RU: Yes. Vietnam --

THE REPORTER: I'm sorry, what?

MS. RU: Vietnam, Cambodia, Laos.

THE COURT: Maybe we'll all go with you. So you're traveling?

MS. RU: Yeah.

THE COURT: I appreciate your bringing the

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documentation, but I believe you. It's not good to lie to a Judge, you know.

MS. RU: Of course.

THE COURT: Lawyers maybe, but not you.

MS. RU: I brought it to you.

THE COURT: You're fine.

Mr. Bradford?

MR. BRADFORD: Yes. I only have one problem. I'm diabetic and I have arthritis in my left leg. I'm hurting sitting here right now. I can't sit too long. My job, I stand up all day, I don't sit, so that's the only problem I have.

THE COURT: First of all, if you're a diabetic, there are times when your blood sugar runs low, you need to take insulin or you need to eat something --

MR. BRADFORD: Yes.

THE COURT: -- that would never be a problem. As far as your arthritis, if you have to stand from time-to-time, does that help?

MR. BRADFORD: Yeah. It's hurting a little bit now. It's been hurting me all week.

THE COURT: And what about employment?

MR. BRADFORD: I work at Baer's Furniture, so you know.

THE COURT: Do you know Ira?

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MR. BRADFORD: Yeah, I know Ira. I know all of the Baers.

THE COURT: He was with us for a long time on that other case.

MR. BRADFORD: Yeah.

THE COURT: Don't mention my name. He may not like this. Do they pay?

MR. BRADFORD: They pay, yeah. I just have to bring a slip if I'm chosen.

THE COURT: You'll find a real subtle irony in this.

Ms. Fernandez?

MS. FERNANDEZ: The only thing probably would be child care.

THE COURT: Talk to me about it.

MR. BRADFORD: My two sons after school.

THE COURT: What time do they get out?

MS. FERNANDEZ: One at 2:00 and the other one at 2:30.

THE COURT: How old are they?

MS. FERNANDEZ: Five and seven.

THE COURT: Are alternative arrangements possible?

MS. FERNANDEZ: Not sure every single day, just because of my husband's work schedule, so.

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THE COURT: Family, aftercare that's not going to cost you money?

MS. FERNANDEZ: Aftercare, but aftercare is maximum until 6:00 o'clock.

THE COURT: We're out of here by then. How far do you need to go?

MS. FERNANDEZ: Miramar.

THE COURT: We would certainly make those arrangements on days when you couldn't. Can you check it out for us? You don't have to tell me today. You can check it out between now and next Tuesday. What about employment?

MS. FERNANDEZ: I'm a teacher.

THE COURT: Oh, so we know you get paid.

MR. DON WILLIAMS: Is it the county school system?

THE WITNESS: Charter School.

THE COURT: You're right, Charter Schools don't always do it.

MR. DON WILLIAMS: Right.

THE COURT: Mr. Williams?

MR. WILLIAMS: Yes. I do like a split child care with my wife, so Tuesdays and Thursdays when they're out of school at like 2:00, that would be the only issue.

THE COURT: What time are they out of school?

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MR. WILLIAMS: It's 2:00 and 2:30. I'm sorry, 2:00 o'clock.

THE COURT: You pick them up?

MR. WILLIAMS: My wife picks them up and then I come home because I work every day from 6:30 to 3:00 and then she works so that's why we're on a split schedule. So Tuesdays and Thursdays, those two days, she's in the office at like 3:30. So I come home at 3:00 and I'm doing the child care, basically.

THE COURT: No aftercare?

MR. WILLIAMS: There's no aftercare. I do have relatives in the area that are about a half an hour away so I definitely could make some arrangements. It's definitely possible.

THE COURT: Would you be able to check that out for us?

MR. WILLIAMS: Certainly, yeah.

THE COURT: Thanks. Ms. Brown?

MS. BROWN: No issues at all.

THE COURT: Are you employed?

MS. BROWN: Yes, full time.

THE COURT: For?

MS. BROWN: AmeriHealth Caritas Medicaid.

THE COURT: Full time?

MS. BROWN: The whole time.

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THE COURT: Mr. -- is it Ducar-Hughes?

MR. DUCAR-HUGHES: Perfect. I'm a full-time student at a massage school in Miami, and this would push back my graduation by about six months. I would have to basically enroll in the program over again.

THE COURT: Well, we don't want that, but, obviously, if you were on the panel, all the stress and anxiety of the jurors, you could relieve them with your massages. To those of you that do make this panel, you'll find out I have a very perverse sense of humor. Very dry too.

Mr. Pollard?

MR. POLLARD: Just lost my job.

THE COURT: Sorry to hear that.

MR. POLLARD: Last week, and I'm supposed to be going on vacation next week Friday, two weeks in Japan.

THE COURT: I take it to go there, you had to have already made your reservations?

MR. POLLARD: It cost a lot, too.

THE COURT: Yeah, I understand that.

Ms. Gordon?

MS. GORDON: I am a full-time registered nurse and I am the primary caregiver for my mother, even though we have a home health aide that assists her. As far as my job, I'm not sure how many days or how long.

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THE COURT: Who do you work for?

MS. GORDON: DaVita. It's a dialysis company.

THE COURT: Talk to me about the primary care.

MS. GORDON: My mother has dementia, and I'm responsible for her, but I do have a home health aide that assists her.

THE COURT: What are your normal work hours?

MS. GORDON: I work actually in the afternoon from 3:00 until it could be 5:00, 6:00 o'clock in the morning. We have contracts with all the hospitals in Broward County, and we provide the dialysis to the inpatients.

THE COURT: Thank you.

Mr. Milling?

MR. MILLING: I'm not sure what my employer's policy is on --

THE COURT: Who do you work for?

MR. MILLING: I work for Recovery Unplugged. It's an addiction treatment center. I would have to call to know what the policy is.

THE COURT: Is that your only potential conflict?

MR. MILLING: The only other one I can think of is I'm really the only person there that does the job that I do.

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THE COURT: So that's still job related?

MR. MILLING: Yeah.

THE COURT: Could you make a call and find out, please?

MR. MILLING: Yes.

THE COURT: Mr. Williams, who do you work for?

MR. WILLIAMS: Westside Regional. So they should pay.

THE COURT: You know what should -- it's like making the assumption and what it means.

MR. WILLIAMS: I can double check.

THE COURT: Can you do that now, please?

MR. WILLIAMS: Sure.

THE COURT: Ms. Gibson?

MS. GIBSON: Yes, sir. Full-time employed, and I'm not too sure if they would pay for the whole time.

THE COURT: Who do you work for?

MS. GIBSON: Cleveland Clinic.

THE COURT: Did we have her?

MR. DON WILLIAMS: I think we did, but I'm not sure.

MR. POLAY: I don't remember if it was 30 days or --

THE COURT: Ms. Gibson, would that be your only issue?

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MS. GIBSON: Yes, sir.
THE COURT: Could you do me a favor and please make a phone call?
MS. GIBSON: All right.
THE COURT: Ms. Guise?
MS. GUISE: Yeah.
THE COURT: I got that?
MS. GUISE: Yeah.
THE COURT: Lucky guess.
MS. GUISE: I'm a hundred percent commissioned sales rep. Outside sales rep.
THE COURT: What do you sell?
MS. GUISE: I sell maintenance supplies. Basically my company was just bought by Home Depot. So everything you find in a Home Depot store, to apartment complexes.
THE COURT: I'm just curious, that's all. You had me with the commissions.
Mr. North?
MR. NORTH: I'm retired so I have no problem with it.
THE COURT: Thank you.
Mr. Enslen?
MR. ENSLEN: I'm a truck driver for Publix, and me not being there for like a month or two would put a

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hardship on our dispatching and our workload.

THE COURT: You are full time for them?

MR. ENSLEN: Yes, sir.

THE COURT: Well, we know they pay. We've got a lot of experience from the last trial we just did.

Ms. Moon?

MS. MOON: Hello.

THE COURT: Hi.

MS. MOON: The only thing I can think of is I work with someone, Yvonne Gibson. We've worked together for a long time.

THE COURT: Explain.

MR. POLAY: She's another juror.

MS. MOON: We both -- I'm a nurse, and she works on the medical surgical floor so we worked in the same unit for probably over seven years, seven or eight years.

THE COURT: Wow. Is that the only potential conflict?

MS. MOON: Yes.

THE COURT: Could you check out what their policy is?

MS. MOON: She's going to tell me.

(Laughing.)

THE COURT: Good thinking. No. 18 is purposely left blank.

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MR. POLAY: Okay.

THE COURT: If you don't know why, I'll be happy to explain it later.

MR. POLAY: Okay.

THE COURT: It's very similar to the issue we had yesterday with one of our jurors.

MR. POLAY: Oh.

MR. DON WILLIAMS: They let them go?

THE COURT: This time they let them go. That's 18.

Ms. Graham?

MS. GRAHAM: I'm self-employed, and if I don't work, I don't bring anything in.

THE COURT: What do you do?

MS. GRAHAM: I'm a CNA. I take care of sick, elderly patients.

THE COURT: Thank you.

And Ms. Goldsholle?

MS. GOLDSHOLLE: I do the same. I'm self-employed, and I work for a company part-time where if I don't work, I don't get paid.

THE COURT: What do you do?

MS. GOLDSHOLLE: I coach classes at Orange Theory Fitness.

THE COURT: So you're a student?

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MS. GOLDSHOLLE: Huh?

THE COURT: You're a student?

MS. GOLDSHOLLE: No, no. I coach classes, a fitness class.

THE COURT: Oh, coach classes?

MS. GOLDSHOLLE: Yeah, I'm a personal trainer.

THE COURT: Ms. Legons.

MS. LEGONS: Yes, I don't think I have any conflicts. I work for -- I'm a registered nurse at the VA. I don't know their policy.

THE COURT: VA is a governmental agency. I'm pretty sure they pay.

MR. POLAY: I would call.

THE COURT: That's the one thing about working for the government.

MR. DON WILLIAMS: Is she full-time?

THE COURT: You're full-time?

MS. LEGONS: I'm full-time.

THE COURT: Mr. Kavanaugh?

MR. KAVANAUGH: I'm a full-time salaried employee.

THE COURT: Who do you work for?

MR. KAVANAUGH: U.S. Farmland.

THE COURT: Do you know what their policy is?

MR. KAVANAUGH: I'm a salaried employee. I get

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paid.

THE COURT: That's an assumption you may not want to make so let's -- better to be safe than sorry. Would you make a phone call for me?

MR. KAVANAUGH: Sure.

THE COURT: Mr. Walker?

MR. WALKER: Unemployed.

THE COURT: Speak up.

MR. WALKER: I'm unemployed.

THE COURT: Are you looking for work?

MR. WALKER: Yes.

THE COURT: What do you do when you work?

MR. WALKER: Security. I actually have an interview on Friday and on Tuesday.

THE COURT: Let's see, Mr. Faulknor?

MR. FAULKNOR: Yes, sir. Yeah, I work a whole different job for about six months so I just started a job two days ago. I'm training.

THE COURT: And Ms. Reyes in our special seat.

MS. REYES: Yes, sir.

THE COURT: Are you okay?

MS. REYES: Yeah, I need to just wake up. I have a little cold, but I'm fine, sir. I probably have to -- possible conflict. I have three girls. I'm their main transportation for their activities and their

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schools, drop off and pick up. I also am a part-time student, and my classes are on Tuesdays and Thursdays. I'm about to start another class on Mondays and Tuesdays.

THE COURT: You got me already. Okay. Let's see. Mr. Antenor?

MR. ANTENOR: Yes, all clear. They pay.

THE COURT: Mr. Williams?

MR. WILLIAMS: It looks like they'll cover, yeah.

THE COURT: That's, of course, subject to you being able to make arrangements for child care?

MR. WILLIAMS: Correct.

THE COURT: Mr. Milling? Oh, he's still out. Ms. Gibson?

MS. GIBSON: Yes, sir.

THE COURT: And the magic answer is?

MS. GIBSON: They will but only eight hours.

THE COURT: Meaning eight hours a day or they're just paying for today?

MS. GIBSON: Just for eight hours for the time I'm coming. Per day.

THE COURT: Oh, per day?

MS. GIBSON: Yeah, but I work 12 hours. And we're pretty short.

THE COURT: I would say that the pay that they

give you for jury service could supplement that, but that's still going to leave you way below.

All right. Mr. Milling?

MR. MILLING: Yeah. So I talked to one of the HR people at my work. The policy there is to use our own PTO days for jury service.

THE COURT: Not happening, no.

MR. MILLING: And as it stands, I have six to use.

THE COURT: I told you, we don't want anybody to use personal time. We don't want anybody to use vacation time.

MR. DON WILLIAMS: Judge, you may want to inform them that by law, they're obligated to pay them for today.

THE COURT: Yeah, you have to get paid for today.

MR. MILLING: They are paying me for today.

THE COURT: Mr. Kavanaugh, he's still out. Ms. Moon, I guess we know your answer too.

MS. MOON: So the trial days would be Tuesday, Wednesday and Thursday?

THE COURT: And sometimes on Friday. They'll be hours on Friday probably.

MS. MOON: So those would be eight-hour days?

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THE COURT: Or less, yeah.

MS. MOON: That would be -- I could do it without using any personal time.

THE COURT: What's your normal shift?

MS. MOON: Seven p.m. to 7:30 a.m. three days a week.

THE COURT: That's 12 hours.

MS. MOON: Yeah, but it would work out. Thirty-six, yeah.

THE COURT: Okay. The only one that can tell me the answer to that, of course, is you. All right. So the only one I'm waiting to hear back from at this point is Mr. Kavanaugh.

Okay. This is what I'm going to ask of you. Steve -- just follow Steve. That's Steve as opposed to Maribel, who is up here, who you'll deal with in a little bit. Please go outside, stay away from the other group, and we'll have some of you back here very shortly. The others you'll find will be excused back to the jury room. And, again, just because you get through today is not indicative that you'll get any further, at least today. So just follow Steve.

(Whereupon, the prospective jury panel left the courtroom.)

THE BAILIFF: Judge, Mr. Kavanaugh has an

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answer.

THE COURT: Mr. Kavanaugh, what's the answer?

MR. KAVANAUGH: Yes. I just talked to my HR. They said the money being paid is not an issue.

THE COURT: Good.

MR. KAVANAUGH: He did ask that I get a waiver, though.

THE COURT: What do you mean? You mean that you're actually here?

MR. KAVANAUGH: He said that the business cannot stand me not being there for seven weeks.

THE COURT: Maybe he wants to talk to me.

MR. KAVANAUGH: Maybe. He said any forms or whatever I can --

THE COURT: Well, we would -- absolutely you would be able to get a form saying that you are here for the days that you're here, but I hear what you're saying. We all do. Thank you for imparting that information.

MR. KAVANAUGH: Thanks.

THE COURT: Follow Steve.

(Whereupon, the prospective juror left the courtroom.)

THE COURT: No. 1, Ms. Castano, is okay. No. 2, Antenor, is okay.

MR. POLAY: Yes.

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THE COURT: No. 3, Gonzalez, is no good.

MR. POLAY: Correct.

THE COURT: No. 4, Ru, is traveling.

MR. POLAY: Correct.

THE COURT: Five, Bradford, is okay. Six, Fernandez, is okay.

MR. DON WILLIAMS: Well, she works for a charter school. She doesn't know whether she's going to get paid.

THE CLERK: Yeah, so we don't know.

THE COURT: Charter school? I thought she said Broward.

MR. DON WILLIAMS: No, she said Broward but she said it was a charter school.

THE CLERK: No.

MR. SATZ: She was checking. She was going to check.

THE COURT: Steve, would you see if Ms. Fernandez checked? She's No. 6.

MR. POLAY: Didn't she have some aftercare issues as well, Judge?

MR. DON WILLIAMS: She had that too.

MR. POLAY: She said that too.

THE CLERK: Her kids are out at 2:00 and 2:30.

THE COURT: All right. For the moment, 7,

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Mr. Williams, kind of indicated if he can make arrangements, he's good.

MR. POLAY: Yes.

THE BAILIFF: She's checking, Judge. She's making a phone call.

THE COURT: Okay. Eight, Brown, is good. Nine, Ducar, is a full-time student. Ten, Pollard, is traveling. Gordon.

MR. SATZ: She takes care of her mother who's sick.

THE COURT: Right. Oh, she's the nurse.

THE CLERK: She's the dialysis nurse and her mother has dementia.

THE COURT: Twelve, Milling. Thirteen, Gibson.

THE CLERK: Out.

THE COURT: They're out. No work, no pay basically. Fourteen, Guise, is commission. She's out. 15, North, is okay. Sixteen, Enslen, is okay. Not happy but okay. Seventeen, Ms. Moon, is okay. Eighteen, Richardson, he told them downstairs he was a convicted felon. They evidently just let him go.

MR. POLAY: Fine.

THE COURT: Nineteen, Graham, basically no work, no pay. Twenty, Goldsholle, no work, no pay.

MR. POLAY: Correct.

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THE COURT: Twenty-one, Legons, is okay. Kavanaugh, what do you want to do with him? I know he said he's getting paid. I'm questioning this waiver, whatever that means.

MS. McCANN: I think we should keep him and see how this all fleshes out.

THE COURT: And see what happens? Works for me.

MR. POLAY: Maybe he's related to another Kavanaugh in the news.

THE COURT: I kept my mouth shut. You'll notice. Twenty-three, Walker, is unemployed.

MR. POLAY: Correct.

THE COURT: I'm letting him go. Twenty-four, Faulknor, is he the one that just started a new job?

MR. POLAY: Yes.

MR. DON WILLIAMS: Yes.

MS. McCANN: Yes.

THE COURT: Gone. And Andrea Reyes, 25, is a full-time student.

MR. POLAY: Correct, Judge. Part-time student.

MR. SATZ: Full-time, part-time student.

MR. POLAY: Full-time, part-time. That's good.

THE COURT: Nevertheless, going bye-bye. So we have No. 1, No. 2, No. 5, No. 6, No. 7, No. 8, No. 15, 16, 17, 21, 22. Right?

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THE CLERK: Yeah.

THE COURT: That's the best job we've done.

MS. McCANN: That's 11.

THE CLERK: Six is an unknown. She's calling.

THE COURT: Six is an unknown. That's all.

Are you ready; are you ready for the next twenty-five?

JA COE: No, not yet.

THE COURT: Hang on. Don't you need the cards to let the others go?

THE BAILIFF: Six is staying, Judge?

THE COURT: For the moment.

(Whereupon, the prospective jury panel returned to the courtroom.)

THE COURT: Ms. Fernandez, did you find anything out?

MS. FERNANDEZ: Yes. They told me up to thirty days.

THE COURT: Let's give her a card and back to the jury room you go because the case is going to take more than thirty days.

MS. FERNANDEZ: Okay.

THE CLERK: Although, will it? We don't know.

MR. DON WILLIAMS: We will next week.

THE COURT: Yeah, it's better to be safe than

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sorry.

THE CLERK: What number was that, Judge?

THE COURT: No. 6. Okay. Here's what we're going to do at this point. In just a couple of minutes, Maribel is going to take you back into our luxurious accommodations also known as the jury room, and there's a questionnaire that we are going to ask that you fill out. Once you have finished the questionnaire, Maribel will take you out and show you where you need to be when you come back next Tuesday at 9:45. Maribel, instead of in reception, outside reception.

THE BAILIFF: Right.

THE COURT: Because we're just going to have too many. On the questionnaire, it does call for your email and your phone number. Please do not fill that out.

MR. DON WILLIAMS: No, the questionnaire doesn't but somebody mistakenly put it.

THE COURT: Oh, please do not put that on the questionnaire. However, there is a jury information sheet where I would appreciate it if you would print your name, your email and a number that you can be reached at. That is so in the event of an emergency, my office can communicate with you and we're also going to give you information so that you can contact my office in the event of an emergency as well. This will not be a public

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document. It will not be distributed. So the only ones that will ever see it are myself and Pam, if she has to get in touch with you. I just like to make sure.

Also, if any of you is still checking on information with regard to your employer, also with respect to Mr. Williams, figuring out the child care, please, if you get information like that, let Pam know and we'll address it Tuesday morning.

MR. WILLIAMS: Okay.

THE COURT: Now, Tuesday morning will probably be another weeding out process. I hope to start actual voir dire or jury questioning by the lawyers and myself on Wednesday. So that's what I'm anticipating, but things change. So with that, please follow Maribel.

Yes, ma'am.

MS. CASTANO: Can I have a paper or something?

THE COURT: Yeah, they'll give that to you down in the jury room.

MS. CASTANO: So that I can cancel my trip.

THE COURT: You can get that in the jury room on your way out when you get your parking tickets secured.

MS. CASTANO: Okay.

PROSPECTIVE JUROR: What time do you want us here?

THE COURT: 9:45. But if you would like, you

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may come at quarter to ten.

PROSPECTIVE JUROR: Works for me.

(Whereupon, the prospective jury panel left the courtroom).

JA COE: We have one tiny issue, and Steve, if you can stick around. We just need to add an extra chair. We have a juror on this panel that has seizures. We will be letting her go, but her mother wants to sit next to her, if that's okay.

THE COURT: Why don't I just bring her in now. If she has seizures -- unless you just want me to let her go based on that.

MR. SATZ: If she has to bring her mom and has seizures, why are we --

THE COURT: I'm with you. Who is it, Pam?

JA COE: It would be Natasha Rodriguez on Page 4, the fourth from the top.

MR. POLAY: We have no objection to excusing her.

THE COURT: You want to take that card and send her back. Thanks, Pam. And after that, you can bring the next group in.

MR. SATZ: So leave that seat vacant?

THE COURT: Yes, otherwise it screws up everything.

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JA COE: Please leave that seat vacant.

THE BAILIFF: It's the same seat. The seat is jinxed today.

THE COURT: Is it the same seat?

THE BAILIFF: Same seat, 18.

THE CLERK: That's weird.

JA COE: That's a jinxy number today. Should I bring the rest in?

THE COURT: Yes. For the record, Rodriguez is 43, not that anybody ever listens to me.

THE REPORTER: I listen to you, Judge.

(Whereupon, the next prospective jury panel was brought into the courtroom).

THE BAILIFF: We're missing Mr. Wayne Walker Davis.

(Whereupon, Mr. Walker Davis joined the panel.)

THE BAILIFF: Right this way, sir.

THE COURT: Mr. Walker Davis, you get any seat you want in the front row. We saved it for you. Good morning, Ladies and Gentlemen.

PROSPECTIVE JURORS: Morning. (Collectively).

THE COURT: Usually it's the other way around. The first group is sedated. Good morning.

PROSPECTIVE JURORS: Good morning.

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(Collectively).

THE COURT: Good. Get you in the mood. My name is Paul Backman. I'm one of your judges here in the 17th Judicial Circuit. What we are looking for today are individuals that can serve on a trial that will last anywhere from three to six, seven weeks with the promise that we'll be finished before Thanksgiving. Now, the reason I give you a range is so that I don't tell you it's three weeks and suddenly three weeks, I have to say to you, oh, by the way, cancel any plans you have. So I would rather go outside and be the good guy by finishing early.

Now, we all recognize that individuals have conflicts in their lives, and we're very in tune to that, and I have a full list of what I believe are conflicts that most people might encounter and, of course, if you fall within those categories, you just need to let me know.

Also, if you are a full-time employee and you do not know what your employer's jury service policy is and that's your only conflict, I'm going to ask you to please step outside, make a phone call, and see if you can get that information because we're not looking to put anybody in a financial crisis. And I will be starting with Ms. Diaz when we get to this, but here's the list that we

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basically have gone by.

First and foremost, is there anybody that has difficulty speaking and understanding the English language? Everybody understands and speaks --

(Hands up.)

THE COURT: Okay. I'm going to get to each one of you individually. Ms. --

MR. NUNEZ: Yes, sir.

THE COURT: Mr. Nunez?

MR. NUNEZ: Yes, sir.

THE COURT: All right. I'm on the wrong page. No wonder. Mr. Nunez, talk to me.

MR. NUNEZ: My first time here, but I'm speaking but not very well.

THE COURT: Native language is Spanish?

MR. NUNEZ: Spanish, yes.

THE COURT: All right. Your knowledge of English is un piquito?

MR. NUNEZ: Yeah, just a little.

THE COURT: Ms. Exume?

MS. EXUME: No speak English.

THE COURT: Creole?

MS. EXUME: Yes.

THE COURT: Anyone else? Yes, sir. Mr. --

MR. PABEY: Luis.

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THE COURT: Pabey?

MR. PABEY: My main language is Spanish. I speak little English.

THE COURT: How long have you lived here?

MR. PABEY: Three years.

THE COURT: And do you work?

MR. PABEY: Yeah, I do Uber.

THE COURT: You haven't picked me up, have you?

All right. Let me go through our list. Now, understand, we would love every one of you to serve so when I say we're not looking for you, it's not indicative of the fact that we don't want you. But if you are a full-time student and serving with us would interfere with your studies, please let us know. If you are a primary caregiver to a parent, a grandparent, a child or it's part of your professional responsibilities, again, let us know.

If you are unemployed and actively seeking employment, again, let us know. If you are a full-time employee and you don't know what the policy is, I'm going to ask that you please step outside, make a phone call and, please, when you ask what the policy is, don't tell them do you pay for jury service because you could find out that after you end up on a jury, that their idea of paying for jury service is three days, five days, 14

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days, 15 days. There are an awful lot of companies that do pay you for every single day you're here, and we have found in the past that when an individual forgets to tell an employee what the schedule is, it becomes problematic for the employee.

Now, I will also tell you so you understand what our work schedule will be. We would be working Tuesdays, Wednesday, Thursday, Friday. Fridays I can't tell you whether we'll actually be in trial or we'll work a half day or a full day. A lot of it depends on where we are and where we are with witnesses. I like to start -- I have my jury back at 9:45. I like to start as close to ten as possible and I like to go -- of course, you get lunch. I like to go between five, 5:30 in the afternoon, depending on people's schedules. As I tell every group, if a jury wants to work until 2:00 every day and go home, none of us have any issue with that. Just remember for every hour we don't work, that's an hour we have to pick up so we could be working until the new year, which I don't want to do, nor do the lawyers. All of us with the exception of the accused in this case just came out of a 22-month, three day trial. So this is very fast, at least in our opinion.

If you have a prepaid vacation, please let us know. A lot of times we can accommodate that. So,

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again, let us know. It has to be prepaid. If you have child care issues where you cannot make alternative arrangements in the afternoons, please let me know. We'll discuss it. If you are a commissioned employee or you get a base pay and commissions and that would interfere with your financial bottom line, again, you need to let us know, as we do not want anybody to suffer any financial consequences by serving with us.

And if you have medical issues that you believe would interfere with your ability to be with us, please, again, let me know. And if you have any other creative reasons that you might be able to think of that we haven't, again, please let me know.

So Ms. Diaz, you get to lead us off.

MS. DIAZ: I can go?

THE COURT: Yeah, you go. No, not leaving.

MS. DIAZ: Oh, okay.

THE COURT: Very good try. Do you have any issues, any conflict?

MS. DIAZ: No. I don't know the policy of my employer.

THE COURT: Who do you work for?

MS. DIAZ: Mercy Hospital.

THE COURT: Okay. Neither do we, I don't think.

MR. DON WILLIAMS: It's a private hospital who

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owns HCA.

MS. DIAZ: HCA.

THE COURT: Is that the only conflict you would have?

MS. DIAZ: Yes.

THE COURT: What do you do?

MS. DIAZ: I'm a nurse.

THE COURT: Could you do me a favor? Just step outside, make a phone call, see if you can find out what the policy is.

MS. DIAZ: Yes.

THE COURT: Okay. You can even take your phone.

Mr. Engelhardt?

MR. ENGELHARDT: I am a full-time employee that does receive base salary and commissions.

THE COURT: Who do you work for?

MR. ENGELHARDT: I work for Suburban Pools.

THE COURT: What are the commissions? Listen, I just become an inquired mind after a while.

MR. ENGELHARDT: The commissions are per sale that we collect on, we get.

THE COURT: Gotcha.

MR. ENGELHARDT: A service fee for that, on top of that.

THE COURT: And you need that for purposes of

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your bottom line?

MR. ENGELHARDT: Yeah. And its purpose -- he's told me yesterday on the phone, when I called him that I had to be here --

THE COURT: You already got me. You're fine. I mean, it's a financial hardship.

MR. ENGELHARDT: Yeah, it would be. Plus, he only pays for two days.

THE COURT: Even that.

MR. ENGELHARDT: Two days of service.

THE COURT: Even worse.

MR. ENGELHARDT: Yeah, it's even worse.

THE COURT: Mr. Walker Davis?

MR. WALKER DAVIS: Yeah, I'm self-employed. Business that is closed right now.

THE COURT: What do you do?

MR. WALKER DAVIS: I'm a used car dealer.

THE COURT: Looking for work?

THE CLERK: He said self-employed.

THE COURT: Oh, self-employed. And you're not going to get paid if you're not there?

MR. WALKER DAVIS: My bills aren't going to be paid.

THE COURT: Mr. Martinez?

MR. MARTINEZ: Besides not knowing the policy of

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my employer, I have a series of medical appointments and possibly we have an injection, you know, on the spine.

THE COURT: Well, let's back up for a second. Who do you work for?

MR. MARTINEZ: Telmax USA.

THE COURT: The medical appointment, you have them all during the week?

MR. MARTINEZ: During the week, but...

THE COURT: You wouldn't want to cancel those, I take it. Mondays we're not in trial, by the way.

MR. MARTINEZ: I'm sorry?

THE COURT: We're not in trial on Mondays.

MR. MARTINEZ: Okay.

THE COURT: But if it's a medical condition that you think is going to interfere, I don't want to put you in jeopardy. But only you can answer that question, not me.

MR. MARTINEZ: The only thing is, after the injection, I think I need to, you know.

THE COURT: Be on your back?

MR. MARTINEZ: Yeah.

THE COURT: So what do you want to do, be safe than sorry?

MR. MARTINEZ: I would say yes.

THE COURT: Mind you, I'm not trying to talk you

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out of this.

Mr. Stiles?

MR. STILES: Yes, sir. I need to check my work. I work for Center State Bank. I need to check.

THE COURT: The one over here?

MR. STILES: Yes.

THE COURT: Do you want me to call Debbie Block?

MR. STILES: I'll have to call my HR, but I think I'll be okay, but I need to check.

THE COURT: Would that be your only --

MR. STILES: No. I'm building a house right now in Winter Haven, Florida. I'm scheduled to close next month. I don't know if that becomes a conflict or not.

THE COURT: Well, that depends on when you're closing.

MR. STILES: They're moving the date as we speak. It was supposed to be August 6th, and they're doing an addendum right now for the third week of October.

THE COURT: Do you think they'd do it on the 29th?

MR. STILES: Possibly. I would have to ask.

THE COURT: The reason I'm asking is, we're not in trial on the 29th.

MR. STILES: I can ask.

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THE COURT: After you close, are you moving?

MR. STILES: Yes.

THE COURT: Immediately?

MR. STILES: We would prefer to. We have a condo here we can stay in longer, but I would prefer to move with my wife.

THE COURT: What does your wife want you to do?

MR. STILES: It depends on the day. She likes me right now.

THE COURT: Mr. Ebanks?

MR. EBANKS: Full-time employee for FedEx Express so I have to check. I don't know the policy.

MR. DON WILLIAMS: We had the station manager. She said they paid.

THE COURT: I remember our FedEx person. Yeah. Is that your only potential conflict?

MR. EBANKS: Yes, that's it.

THE COURT: While I think they pay, would you do me a favor and just call?

MR. STILES: Your Honor, did you want me to call my employer?

THE COURT: If you're moving and you're not going to be here, that's really enough.

Mr. Lawson?

MR. LAWSON: I'm a full-time employee. I work

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for Select Rehab, Rehabilitation. I can check the policy.

THE COURT: Is that your only potential conflict?

MR. LAWSON: Yeah, that's my only.

THE COURT: Could you do me a favor and give them a call?

MR. LAWSON: Yes.

THE COURT: Thank you.

Mr. Cole?

MR. COLE: Yes. Just a cruise December 2nd.

THE COURT: We won't be here.

MR. COLE: Okay.

THE COURT: I'll be on my cruise. Other than that, you're good?

MR. COLE: Yeah.

THE COURT: Are you employed?

MR. COLE: No, retired.

THE COURT: That's me in three months and four days.

MR. COLE: But then who's counting, right?

THE COURT: Well, if you want, I can tell you to the second. I have an app for that.

Let's see. Ms. Falet Alghaithy?

MS. FALET ALGHAITHY: Alghaithy.

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THE COURT: Close.

MS. FALET ALGHAITHY: Yeah.

THE COURT: Talk to me.

MS. FALET ALGHAITHY: I'm not working, but I have -- it would be a family conflict for me. My mom is pretty old and --

THE COURT: You take care of her?

MS. FALET ALGHAITHY: I take care of her. It's mainly my brother and myself. My brother is now working, going out of town very often, so that would be an issue.

THE COURT: Ms. Molina?

MS. MOLINA: I'm a self-employed hairdresser with two kids, five and seven.

THE COURT: You're not working, you're not getting paid.

Mr. Quintano -- Quintero, excuse me.

MR. QUINTERO: Yes. I don't know what the company that I work for --

THE COURT: Who do you work for?

MR. QUINTERO: It's a company that subcontracts for television station, government television station.

THE COURT: Would that be your only conflict?

MR. QUINTERO: Yes.

THE COURT: Could you do me a favor and give them a call?

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MR. QUINTERO: Yes.

THE COURT: Thank you.

Mr. Chinda?

MR. CHINDA: Yes. I work for a union full time, for 33 years. No problem, no nothing.

THE COURT: Do you know what their policy is?

MR. CHINDA: No.

THE COURT: Can you find out?

MR. CHINDA: Yes.

THE COURT: Is that your only potential conflict?

MR. CHINDA: No.

THE COURT: What's your other conflict?

MR. CHINDA: I don't have conflict, nothing. Everything is okay.

THE COURT: So they're going to pay you?

MR. CHINDA: Yeah, they pay.

THE COURT: You're sure?

MR. CHINDA: Yeah.

THE COURT: You don't want to check?

MR. CHINDA: No.

THE COURT: Mr. Ortiz?

MR. ORTIZ: How are you doing? I'm a full-time employee. I work for Florida Sidewalk Solutions. We cut trip hazards on sidewalks and stuff like that.

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THE COURT: A lot of lawsuits come from that.

MR. ORTIZ: Exactly. So that, I have to check the policy.

THE COURT: Is that your only potential conflict?

MR. ORTIZ: That's it.

THE COURT: If you would be so kind.

Ms. Davis?

MS. DAVIS: I work full time, and I --

THE COURT: The air conditioning here above Andrea is a little noisy, so we just need you to speak up a little bit.

MS. DAVIS: I'm a full-time employee. I would get paid, but I oversee a residential servicing portfolio. I manage that.

THE COURT: Who do you work for?

MS. DAVIS: First Federal Bank.

THE COURT: They do pay for every day?

MS. DAVIS: Uh-huh.

THE COURT: You're absolutely, positively sure?

MS. DAVIS: Yeah.

THE COURT: You don't want to check?

MS. DAVIS: I already did.

THE COURT: Mr. Clark?

MR. CLARK: Yes, sir. I'm a full-time employee

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over at Bethany Christian School in Rio Vista Church. I don't know the policy, but I am one of two maintenance and really like it's me. My boss tells me what to do and I do the work, so I'm really the only --

THE COURT: It sounds like being home.

MR. CLARK: Yes, sir.

THE COURT: Is that your only potential conflict?

MR. CLARK: Yes, sir.

THE COURT: Could you do me a favor and give them a call and find out?

MR. CLARK: Yes, sir.

THE COURT: I think I know what it is.

Mr. Dumas?

MR. DUMAS: My only conflict will -- I'm a full-time employee with FPL, Florida Power & Light. I'm not sure of the policy.

THE COURT: Do we know FP&L?

MR. DON WILLIAMS: Maybe he should check.

THE COURT: Could you do me a favor, call and see what it is? It's either 30 days or they pay.

MR. DON WILLIAMS: Is he a member of the union?

THE COURT: Are you a member of the union?

MR. DUMAS: No, I'm not union.

THE REPORTER: I can't hear you, Don. Can you

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talk up?

THE COURT: He speaks very quietly.

Mr. Frederique?

MR. FREDERIQUE: Yes, sir. I take early retirement. I still have my own business. My only conflict is my mom is 81 years old and running into trouble getting to take care of her.

THE COURT: Ms. Gross?

MS. GROSS: Yes. Currently, I'm a full-time freelancer.

THE COURT: What are you freelancing?

MS. GROSS: Freelance of video editing, and I do have some jobs already lined up for the next few weeks.

THE COURT: But if you're not videoing -- you're not freelancing, you're not getting paid, correct?

MS. GROSS: Yes.

THE COURT: Ms. Martinez?

MS. MARTINEZ: I'm a full-time employee. I work for a dental practice. My kids are my main concern, but also my employer, they wouldn't pay me.

THE COURT: That's a concern also.

MS. MARTINEZ: Yeah.

THE COURT: Mr. Ragan?

MR. RAGAN: Yes. Self-employed fishing guide and fashion model. If I don't show up, I don't work. I

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don't make money.

THE COURT: What kind of fishing?

MR. RAGAN: Fresh water bass fishing.

THE COURT: Out in the Everglades?

MR. RAGAN: The Glades, Okeechobee. I travel around doing tournaments as well. Need a trip?

THE COURT: I love to go fishing. How's that?

Mr. -- is it Aliaga Rios?

ALIAGA RIOS: Aliaga Rios. I'm a full-time employee.

THE COURT: For who?

ALIAGA RIOS: Conduent.

THE REPORTER: I'm sorry, who?

ALIAGA RIOS: Conduent.

THE COURT: Do they pay, do you know?

ALIAGA RIOS: I have no idea. I have to check their policy.

THE COURT: Would that be your only potential --

ALIAGA RIOS: So far, yes.

THE COURT: Could you do me a favor and make a phone call?

ALIAGA RIOS: I'm going to try.

THE COURT: That's all we can ask.

Ms. Diaz, answer.

MS. DIAZ: Yes. She said that it's no problem,

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that I can serve.

THE COURT: Mr. Ebanks, he's not back yet.

Mr. Lawson?

MR. LAWSON: He said that I just have to receive a paper from you and so I could send to my employer and let them know that I was here.

THE COURT: That's not a problem. And they'll pay you for every day that you verify?

MR. LAWSON: Yes, yes.

THE COURT: Mr. Lawson? Oh, that's you. Never mind. Let's see.

Mr. Quintero, he's not back. Mr. Ortiz is not back. Mr. Clark?

MR. CLARK: Sir, they said that they would pay me for a couple days but anything after that, no.

THE COURT: Gotcha. Mr. Dumas is still out. Okay. We have Mr. Quintero.

MR. QUINTERO: Yeah, they said they pay for three days max.

THE COURT: Well, that takes care of that. That's number 36. Anybody else that made a phone call? And Mr. Ebanks?

MR. EBANKS: They said they gotta pay us so I'm here.

THE COURT: I guess I don't have to make a phone

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call. Okay.

All right. Here's what I'm going to ask of each of you at this point. I'm going to ask you to please go with Steve. He's going to take you out. We're going to have many of you back in just a couple of minutes, and I'll tell you what's going on from there. The rest of you will have the great opportunity to return to the jury room. They've got a five-year trial coming up so they'll be all ready for you. But for those of you that are going back to the jury room, I want to thank you on behalf of all of us for being here. We all appreciate it. So just follow Steve.

(Whereupon, the prospective jury panel left the courtroom.

THE BAILIFF: Mr. Ortiz, thirty-eight, they can't get ahold of his CEO so he's in limbo.

THE COURT: Okay. No problem. We're still going to bring him in. Okay. Am I waiting for Carolyn?

MR. SATZ: No.

THE COURT: Twenty-six, Diaz, was okay.

MR. SATZ: Yes.

MR. POLAY: Yes.

THE COURT: Twenty-seven, Engelhardt, is commission, gone.

MR. POLAY: Yes.

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THE COURT: Twenty-eight, Walker Davis, no work.
MR. SATZ: Okay.
THE COURT: Martinez, medical.
MR. SATZ: Right.
MR. DON WILLIAMS: It sounds like he's going to --
THE REPORTER: I'm sorry, I can't hear you, Don.
MR. DON WILLIAMS: Sounds like he's going to have an epidural.
THE COURT: He said the top of his neck.
MR. DON WILLIAMS: Epidural.
THE COURT: Let's just say he's got medical issues. Thirty, Stiles, is moving.
MR. DON WILLIAMS: Yes.
THE COURT: Thirty-one, Ebanks, is okay.
MR. POLAY: Yes.
THE COURT: Thirty-two, Lawson, is okay. Thirty-three, Cole, is okay. Thirty-four has --
MR. SATZ: Mother.
THE COURT: Caretaker issues, gone. Thirty-five, Molina, is self-employed.
MR. SATZ: No work, no pay.
THE COURT: Thirty-six, Quintero, not going to get paid. Thirty-seven, Chinda, is okay.
MR. POLAY: Judge, can I just ask --

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THE COURT: Yeah, I know, you want to talk about him.

MR. POLAY: Yes.

THE COURT: Did you understand anything he said?

MR. POLAY: No.

MR. SATZ: No.

MR. DON WILLIAMS: I didn't either.

THE COURT: Gone?

MR. SATZ: Yes. He said he had an issue.

THE COURT: Yeah, we know he has an issue.

Thirty-eight, Ortiz, for the moment is okay. Still waiting to hear, and we'll just play that by ear. Thirty-nine, Davis, is okay. Forty is not going to get paid. Dumas, 41, I think we're still waiting to hear.

MR. POLAY: Yes.

THE COURT: So for the moment, okay. Forty-two, Frederique, is sick mother.

MR. SATZ: Yes.

THE COURT: Forty-three, Rodriguez, he's our felon. He's gone.

MR. DON WILLIAMS: No.

THE CLERK: No, no. His mother is sick.

THE COURT: Oh, he's got a mother sick. Right.

MR. DON WILLIAMS: She's got seizures.

THE COURT: Right, right, right, right.

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Forty-four, 45, 46 are all language.

MR. SATZ: Right.

MR. POLAY: Correct.

THE COURT: Forty-seven, Gross, isn't going to get paid. Forty-eight, Martinez, isn't going to get paid. Ragan, 49, is self-employed. And we're still waiting to hear from No. 50, so for the moment, he's okay.

So what does that give us?

MR. POLAY: This is off the record.

(Whereupon, a brief discussion was held off the record.)

THE COURT: So let's just make sure we're all on the same page. We have No. 26.

JA COE: Can you say names, Judge? I didn't number mine. I'm sorry.

THE COURT: We have Diaz. Now we're on the bottom of Page 2. Then we have Ebanks, who is in the middle of 3. Lawson, right under. Cole, right under. That's 31, 32, 33. We have 38, Ortiz.

MR. DON WILLIAMS: I thought you said Chinda?

MR. SATZ: No, we excused him.

THE COURT: We just got rid of him. Thirty-nine, Davis, which is at the bottom of that page, Pam.

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JA COE: Thank you.

THE COURT: Dumas is No. 2 on the next page. He's okay. And then we have No. 50, Mr. Aliaga, whatever it is. Three from the bottom.

(Informal discussion off the record, after which a brief recess was taken.)

THE COURT: Okay. We're ready.

THE BAILIFF: Jurors entering.

(Whereupon, the prospective jury panel returned to the courtroom.)

JA COE: Judge, if you can give me a minute on Mr. Dumas. He's checking with his job.

THE COURT: All right. Let me tell you what's going on. We'll fill in Mr. Dumas when he shows up.

In a minute, Maribel is going to take you back into our jury room. In the jury room we have a questionnaire for you that we would appreciate you filling out. When you're all finished with the questionnaire, Maribel will take you out, show you where you need to be when you return Tuesday morning at 9:45 or for some of you, quarter to ten.

Please, on your questionnaires, do not put your email or your phone number. There is a separate sheet on jury information where I would appreciate your printing your name, providing your email and a number that you can

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be reached at. Now, that is solely for my purpose of being able to communicate with you guys in the event of an emergency, and Maribel is going to give you information on how to reach my office in the event of an emergency.

Now, Mr. Dumas.

MR. DUMAS: Policy is two weeks.

THE COURT: That's 41. Have a wonderful day.

MR. DUMAS: Okay.

PROSPECTIVE JUROR: And, Your Honor, I'm still waiting for mine.

THE COURT: No, no, no. We understand that you're waiting. That was what I was about to start saying. For those of you that are still waiting for information, when you get that information, just call my office, so that we know and we can handle it Tuesday morning. So other than that, go with Maribel.

(Whereupon, the prospective jury panel went into the jury room.)

THE COURT: Tell Pam when she's ready, we're ready.

THE BAILIFF: Jurors are entering.

(Whereupon, the next prospective jury panel was brought into the courtroom.)

THE COURT: Morning, Ladies and Gentlemen.

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PROSPECTIVE JURORS: Good morning. (Collectively).

THE COURT: That's a little weak. Good morning.

PROSPECTIVE JURORS: Good morning. (Collectively).

THE COURT: Good. Should I ask how you are all doing or is that a dangerous question that I have to go under my bench?

MS. GOLDER: Dangerous.

THE COURT: My name is Paul Backman. I'm one of your judges here in the 17th Judicial Circuit, and what we are doing, you can already figure out being that you're the last group in, we've already had 50 individuals in before you. You're our last group for the morning. I have 75 in the afternoon, and we did 125 yesterday. So, again, we are -- this is what we would call a paring down process where we're attempting to find individuals who can serve with us on this case from anywhere from the beginning of next week until a far outside date of before Thanksgiving.

Now, it could take three weeks, it could take four weeks, it could take up until then. I don't know, but I would rather give you a far out date than a date that's too soon and then discover that, oops, gotta tell you, all your plans need to be changed.

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Now, we all recognize that people have conflicts in their daily lives. I have an entire list that I'm going to go down in just a few moments. After that, I'm going to go individually starting with Mr. Wilford. Right?

MR. WILFORD: Yes.

THE COURT: I just wanted to make sure I was on the right page. And then I'm just going to go individually. So no matter what I say as far as these potential conflicts, please, just don't raise your hand. I'm going to get to absolutely every single one.

First of all, is there anybody that has difficulty understanding and speaking the English language?

(Hands up.)

THE COURT: All right. We'll start with Mr. Jacsaint.

MR. JACSAINT: Yes.

THE COURT: Talk to me. Native language is Creole?

MR. JACSAINT: Yes.

THE COURT: Do you understand and speak English?

MR. JACSAINT: Little bit.

THE COURT: Little bit. How little bit?

MR. JACSAINT: I can understand just a little

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bit. I can talk.

THE COURT: Anyone else in the front row? Let's see, Ms. Ferreira?

MS. FERREIRA: Ferreira, yes.

THE COURT: I apologize.

MS. FERREIRA: It's okay.

THE COURT: Spanish?

MS. FERREIRA: Yes.

THE COURT: Understand English?

MS. FERREIRA: No, not really. I try to speak but no understand all.

THE COURT: Un piquito?

MS. FERREIRA: Muy piquito.

THE COURT: Now you've heard my repertoire of Spanish.

MS. FERREIRA: I didn't understand.

THE COURT: Anyone else in the second row? Third row did I see a hand go up?

(No hands.)

THE COURT: So this is where we're going to start. Understand we would love all of you to be with us so when I say we don't want you, it's not because we don't want you. If you understand that crazy logic. If you are a full-time student and -- see, you raised your hand. You don't have to. And being with us would

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interfere with your education, we're not looking for you. That's a better way to phrase it, I guess. if you are a primary caregiver to a parent, grandparent, child or it's part of your professional responsibilities, please let us know. If you are unemployed and actively -- why are you raising your hand? I'll get to you. This is the list that we're going to go through.

If you are unemployed and actively looking for employment, please let us know. If you are a full-time employee and that is your only potential conflict, if you know what your company's jury payment policy is, please let us know. If you do not know what it is, I'm going to ask you to step out of the courtroom, make a phone call and see if you can find out what that policy is.

Now, do me a favor because people sometimes do this and then they find themselves stuck. Don't ask if they pay for jury service because many companies have three days, five days, ten days. You don't know what it is. So if you come back after making a phone call saying, oh, they're going to pay me and then you get stuck on the jury and you find out, oh, after ten days they're not paying me, that becomes a problem so give them the parameters of the trial anticipated.

And so that you know what our schedule would look like, we would be working Tuesday, Wednesday,

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Thursday, Friday, and on Fridays -- Thursday afternoon I guess before we leave, we'll determine what we're doing as far as Friday, whether we'll work half a day, a full day or no day. That depends on the circumstances that we haven't dealt with yet. Mondays we would not be in trial at all. I have to do real work sometimes. So you can always count on that.

I like to start -- I like my jury to be back by 9:45 in the morning and I like to work up until 5:00, 5:30 each day. Again, that depends on where we are on witnesses, where we are as far as time conflicts. I will tell you if The Jury collectively said we only want to work until 2:00 every afternoon, that's fine. Just be prepared to be here until February because for every hour you miss is an hour we have to pick up, and I really believe that when you're making the sacrifice of your time, as you are, when you serve on a jury, my responsibility is to get you in here and out of here, back to your everyday lives as quickly as possible. And anytime there's a delay and I can tell you why, I will tell you why so that you understand.

Let's see, we did that. If you have a prepaid vacation, please let me know. I can tell you if it's from Thanksgiving on, you don't have to worry about it. I'll be on my cruise, and everybody else won't be here

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either. Also, there are accommodations that we might be in a position to accommodate with some vacations so you just need to let me know.

If you have medical issues that you believe will interfere with your ability to be with us here every day and be able to concentrate, please let me know. I know many people have diabetes and they have issues as far as the need to take insulin or eat something. That's never a problem. That's the type of situation where we'll break and make sure that that gets taken care of.

If you are a commissioned employee or you get a base salary plus commission and that would interfere with your financial bottom line, again, it's not that we don't want you to serve, we do not want to impact anybody's financial situation.

So hearing all of that, Mr. Wilford, you get to start us off.

MR. WILFORD: The only conflict is prepaid vacation at the end of this month and beginning of October.

THE COURT: Well, the end of this month is coming in just a few days.

MR. WILFORD: Yeah, I know.

THE COURT: Today is the only day this week that you're going to be here. Do you know when next week

you're going to be gone?

MR. WILFORD: I have it in my calendar. Off-hand, I don't know.

THE COURT: Take a look. If you're going to be gone next week, if it starts -- if you're not here on Tuesday.

MR. WILFORD: It's from the 30th until the 5th.

THE COURT: Okay. Thank you.

Mr. Weber?

MR. WEBER: Yes. I'm a music director for Broadway Bound, and our classes start at four, and I also have a job out of town the last two weeks of November.

THE COURT: I'm hoping the last two weeks of September we're not here. November.

MR. WEBER: We're talking about November.

THE COURT: I leave right after Thanksgiving.

MR. WEBER: I would be away that whole week.

THE COURT: That's usually when I bake and I cook for Thanksgiving.

MR. WEBER: Me too. So they would have to find another replacement for me for the school.

THE COURT: You work for Broward?

MR. WEBER: It's an after-school program called Broadway Bound in Coral Springs.

THE COURT: Oh, okay. Do you know what their

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policy is?

MR. WEBER: No.

THE COURT: Could you do me a favor and make a phone call and find out?

MR. WEBER: Well, I know her personally so she would have to find someone else.

THE COURT: My question isn't whether or not they could find someone else. It's whether or not you would get paid.

MR. WEBER: I won't get paid, no.

THE COURT: Okay. That's better.

My Beeler?

MR. BEELER: Yeah, I have training on the 14th through the 19th of October, but that can be moved.

THE COURT: Would that be your only conflict?

MR. BEELER: That would be my only conflict.

THE COURT: Who do you work for?

MR. BEELER: I work for Privaira. It's an air charter company out of Boca Raton, Florida.

THE COURT: Are they going to pay for every day you're here?

MR. BEELER: Oh, yes.

THE COURT: You're sure?

MR. BEELER: Absolutely.

THE COURT: I like that confidence.

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Ms. Golder?

MS. GOLDER: Yes. I'm in school but it's part-time. I mostly do -- it's a video where I can log on even after the class is finished so that wouldn't be a conflict. I am full time at Spirit Airlines. I've been there for ten years.

THE COURT: Do we remember what that policy is?

THE CLERK: No.

THE COURT: Do you know if they pay?

MS. GOLDER: They do, but I don't know the extent. I could definitely find out.

THE COURT: Please. The extent is kind of important.

MS. GOLDER: Okay. Would you like for me to go now?

THE COURT: Please. Ms. Starkes?

MS. STARKES: Hi. I have a prepaid vacation starting Friday. Friday, October the 6th.

THE COURT: This Friday?

MS. STARKES: Next Friday, October 6th.

THE COURT: Until?

MS. STARKES: Until the 9th.

THE CLERK: That's a Tuesday.

THE COURT: You would be back on Tuesday?

MS. STARKES: Yes. And the other part is, I

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hold the only position at my office and that length of time would --

THE COURT: Who do you work for?

MS. STARKES: University of Miami.

THE COURT: Well, we know they pay.

MS. STARKES: Yeah, they do pay.

THE COURT: So just so I understand the travel, you're leaving the 28th?

MS. STARKES: The 6th.

THE COURT: Oh, you're leaving the 6th. Oh, nevermind. You're leaving on Saturday the 6th?

MS. STARKES: Actually, I'm leaving the 5th, that Friday.

THE COURT: That's why I asked.

MS. STARKES: I'm sorry.

THE COURT: And you're coming back actually on Monday, but you would be available in court on Tuesday if that's where it ended up?

MS. STARKES: Correct.

THE COURT: Ms. Armstrong?

MS. ARMSTRONG: Hi. I'm a full-time college professor.

THE COURT: Where do you profess?

MS. ARMSTRONG: Broward College.

THE COURT: Do you know if they paid?

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MS. ARMSTRONG: I'm pretty sure, but I would like to call.

THE COURT: Do you want me to call Greg Haile and find out?

MS. ARMSTRONG: Oh, yeah. Our brand new president.

THE COURT: Yes, I know. He's been a good friend for a long time. Is that your only potential conflict?

MS. ARMSTRONG: Yes.

THE COURT: What do you profess?

MS. ARMSTRONG: Accounting and finance. Is that what you're asking me? Yes.

THE COURT: If you make the jury, you'll understand, I have a very dry, perverse sense of humor.

MS. ARMSTRONG: Okay.

THE COURT: If you would, make a phone call. Thanks.

Mr. Ortiz?

MR. ORTIZ: How are you doing? I'm a full-time inventory control specialist, and I guess that would be my only conflict. I do have a partner that I work with so I would just let him know what days I would need if I get selected for the jury.

THE COURT: Are you going to get paid?

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MR. ORTIZ: I can make a phone call, but I'm sure, but I'll just --

THE COURT: Don't make an assumption. I would rather you make a phone call.

MR. ORTIZ: Okay, I will.

THE COURT: Thanks.

Mr. Rosenblatt?

MR. ROSENBLATT: I would be impacted. I have a commission job.

THE COURT: What do you do?

MR. ROSENBLATT: I'm the manager/director for Keller Williams. That's the 1099.

THE COURT: No, I understand what commission is. That's okay.

Mr. Rivera?

MR. PEREZ: Yeah, Mr. Perez.

THE COURT: As I was saying --

MR. PEREZ: Perez Rivera.

MR. DON WILLIAMS: Did we skip somebody?

THE COURT: Oh, time out. I missed Ms. Wiener, and she was hoping that no one would point that out to me. Now you can't hide anymore.

MS. WIENER: I know. I wish I made those reservations. I was waiting until today.

THE COURT: Where are you thinking of going?

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MS. WIENER: Las Vegas and San Francisco.

THE COURT: Two nice towns. When were you thinking of going?

MS. WIENER: Beginning of November and also back to Boston in the middle of October.

THE COURT: You know they're cold.

MS. WIENER: Well, that's why I was going in October.

THE COURT: It's still cold. Is that your only potential conflict?

MS. WIENER: Yes. I know I have family up there. I've got two aunts.

THE COURT: But is that your only potential conflict?

MS. WIENER: Yeah.

THE COURT: Remember, just because you get through today, it is not indicative that you will actually make the jury. That's a process that we go through next week.

MS. WIENER: Okay.

THE COURT: And just so you know. All right. How about now I go to Mr. Perez. Is it Perez Rivera?

MR. PEREZ RIVERA: Yeah, Perez Rivera. The only conflict I have is with my children. I'm the primary custodian of my children, so.

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THE COURT: How old are they?

MR. PEREZ RIVERA: Fifteen, seventeen.

THE COURT: So they get themselves to school?

MR. PEREZ RIVERA: No, I take them to school and I pick them up from school.

THE COURT: What time do you pick them up?

MR. PEREZ RIVERA: Three, 3:00 o'clock basically.

THE COURT: Are there alternative arrangements that you might be able to make?

MR. PEREZ RIVERA: I don't have other family here so...

THE COURT: Okay. Ms. Weinstein?

MS. WEINSTEIN: Hi. Unfortunately, I have some medical issues, and I also have a daughter that I have to take to school to Coconut Grove every day and pick up.

THE COURT: And I'm not going to ask you what your medical issues are.

MS. WEINSTEIN: Yeah, I don't want to say them, but I can go over there and let you know.

THE COURT: I'm not even going to ask you. Are they the type of issues that would interfere with your ability to be with us?

MS. WEINSTEIN: Yes. Unfortunately.

THE COURT: I hear you.

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Mr. Quach?

MR. QUACH: Yes.

THE COURT: How do you pronounce that?

MR. QUACH: I can't.

THE COURT: It's your name.

MR. QUACH: Quach.

THE COURT: Okay.

MR. QUACH: I can't translate much. I don't know exactly --

THE COURT: No English really?

MR. QUACH: Huh?

THE COURT: English?

MR. QUACH: Vietnamese.

THE COURT: I know that.

MR. QUACH: I'm sorry.

THE COURT: But do you speak and understand English?

MR. QUACH: Not much.

THE COURT: Thank you. That's what I needed to know.

Ms. Smith?

THE CLERK: Yeah, we're on Smith.

THE COURT: Yeah, we're on Smith.

MS. SMITH: Oh. I work for the Broward School Board, but I don't get paid if I don't work so I can't

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afford not to work.

THE COURT: What do you do for them, because everybody else gets paid?

MS. SMITH: I'm a substitute teacher.

THE COURT: That's about the only school board thing that people can get out on. Thank you.

Mr. Petit?

MR. PETIT: Yes. I don't speak English very well.

THE COURT: I'm sorry?

THE CLERK: No English.

MR. PETIT: I not speak English very well.

THE COURT: Creole?

MR. PETIT: Yes.

THE COURT: Ms. -- I'm going to get this -- Archelus.

MS. ARCHELUS: Yes.

THE COURT: Did I get that close?

MS. ARCHELUS: Yes, you did.

THE COURT: Talk to me.

MS. ARCHELUS: I believe in God so...

THE COURT: I'm sorry?

MS. ARCHELUS: I believe in God. I don't want to judge.

THE COURT: Well, that's a whole different

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issue.

MS. ARCHELUS: And I'm working now 24 hours like every other week.

THE COURT: Do you get paid when you don't work?

MS. ARCHELUS: No. I'm still looking, and I'm the one that bring my daughter to school, and I'm the one that pick them up so...

THE COURT: Okay. Mr. Ross?

MR. ROSS: Right here.

THE COURT: That's you.

MR. ROSS: My conflict is that I work at night. I don't have a car. I ride a bike and I take a bus to work. That makes a conflict with me.

THE COURT: Let me ask you this: What time do you work until?

MR. ROSS: I work either from three to twelve, four to twelve, six to twelve. So if I come here --

THE COURT: You have a transportation issue?

MR. ROSS: Yeah. So if I leave here at 5:30 at night, I get to work at 8:00 o'clock, so I work 8:00 to 12:00, right back home, get back 2:00 o'clock in the morning, get up at 3:00, get up, come to court, go back. It would be a big conflict for me.

THE COURT: Sounds like you'd be exhausted most of the time.

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MR. ROSS: I am right now. I'm awake 24 hours.

THE COURT: I hear ya.

Mr. Alvarez?

MR. ALVAREZ: Yeah, I'm working accounting. My only conflict is the first week of November because I need to close the books. I'm the only accountant in the company.

THE COURT: Is that the only conflict that you have?

MR. ALVAREZ: Yeah.

THE COURT: That's possible to work out. Thank you.

Ms. Rizzi?

MS. RIZZI: Hello. I'm a full-time employee, and I'm in school. I'm not sure if it's considered full time or not. It's twelve credit hours in graduate school.

THE COURT: I always thought that was considered matriculating. Who do you work for?

MS. RIZZI: Citrix.

THE COURT: We had Citrix yesterday. I don't think they pay.

MR. DON WILLIAMS: No.

MR. POLAY: I think it was five days.

THE COURT: Yeah. Ms. Lovett?

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MS. LOVETT: I'm a full-time college professor.
THE COURT: Where do you profess?
MS. LOVETT: St. Thomas University of Miami.
THE COURT: What do you teach?
MS. LOVETT: Criminal justice. I'm also an attorney.
THE COURT: Do they pay?
MS. LOVETT: Yes, they do.
THE COURT: Would that be your only conflict?
MS. LOVETT: Yes, sir, it would be.
THE COURT: Ms. Hitchins?
MS. HITCHINS: Yes. I work part-time for a cruise line industry.
THE COURT: Which one?
MS. HITCHINS: Holland America Line. Our season starts, preparation starts next week.
THE COURT: But if you're not working as part-time, you're not going to get paid?
MS. HITCHINS: No.
THE COURT: Easier to lead with that.
Mr. Newman?
MR. NEWMAN: I'm a full-time pain to my wife. That's it.
THE COURT: So your wife sent you down here and said find a very long trial?

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MR. NEWMAN: Can we get a condo across the street and I'll just stay? No, I'm retired.

THE COURT: I am not touching that line at all.

Mr. Pierre?

MR. PIERRE: Yeah, I have a prepaid trip to Orlando on November 14th, and I'll be back November 19th, and also I work for CSS Transportation which is the railroad. I'm a conductor, and I'm not really sure what their policy is as far as pay.

THE COURT: Can you make a call and see if you can find out?

MR. PIERRE: Yes.

THE COURT: Please.

And last but not least, Mr. Kopperl.

MR. KOPPERL: Yes. I have a prepaid trip to Orlando October 12th through the 14th.

THE COURT: You're going over a weekend?

MR. KOPPERL: Yes. Friday to Sunday, and I have a doctor's appointment I have to go to Thursday, October 18th. I'm not sure about my employer's policy on jury compensation if I were to miss more than a couple days.

THE COURT: Can you make a call and find out?

MR. KOPPERL: Yes.

THE COURT: Thanks. Let's see. Who's making calls for me?

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MS. WIENER: I need to make a call as well. I believe they pay. I work for AT&T.

THE COURT: I don't want you -- AT&T pays, but I would rather you make a phone call and confirm that.

THE REPORTER: Which juror was that, Judge?

THE COURT: That is Ms. Wiener.

MR. POLAY: Are you a member of the union, ma'am?

MS. WIENER: No.

MR. WILFORD: I'll need to make a call too. Full-time employee, Jeremy Wilford.

THE COURT: But aren't you traveling?

MR. WILFORD: I am traveling but I'm also employed so...

THE COURT: Well, I think your traveling is going to create your conflict, not the other.

MR. ALVAREZ: Can I make a call, because I don't know if it's five days or more days that the company pays.

THE COURT: Sure, Mr. Alvarez.

All right. For the rest of you right now -- who made a call and came back? Okay. Ms. Golder?

MS. GOLDER: Yes. I was looking at our company handbook. It doesn't have any days specific unless it's voluntary. So if -- I guess it's saying if I voluntarily

request for a jury duty service where the team member is not required to appear.

THE COURT: But are they going to pay you?

MS. GOLDER: Well, if it's voluntary, I'm only paid up to five days. But if it's involuntary --

THE COURT: So never mind.

MR. SATZ: It's not voluntary. She's not volunteering. It's a subpoena.

THE COURT: Right. No, no. She gets paid for five days.

MR. DON WILLIAMS: No, if it's voluntary.

MS. GOLDER: Correct. It's here in our handbook. It says if I have verification, notice, summons or subpoena confirming my service, then it doesn't have a time limit, but if it's voluntary, it's up to five days.

THE COURT: Well, I don't think you're here voluntarily.

MS. GOLDER: No.

THE COURT: And you can get verification for when you're here.

MS. GOLDER: That's fine.

THE COURT: But do me a favor -- well, I'll talk to you about it in a minute. If you guys would just go with Steve, we'll have some of you back in just a little

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bit, and for those of you that aren't, I'll send you back to the jury room with our thanks and appreciation for your participation. But just hang out outside for a couple of minutes.

(Whereupon, the prospective jury panel left the courtroom.)

THE BAILIFF: Judge, Juror No. 10.

THE COURT: Ms. Wiener.

MS. WIENER: Yes. I spoke with my boss. She thought that they did pay, that you needed a note of some sort.

THE COURT: Not a problem. Okay. Thanks.

MS. WIENER: Do you think it would be done before Thanksgiving?

THE COURT: Oh, absolutely.

MS. WIENER: All right. I have all my vacation at the end of the year.

THE COURT: So do I. I'm not giving mine up.

MS. WIENER: I might have to give up some of mine.

THE COURT: No. It's from Thanksgiving on, no.

MS. WIENER: Because I have five weeks or more. Actually, 33 days.

THE COURT: Sounds like my job.

MS. WIENER: I haven't taken any all year. I

have 30 days.

THE COURT: I hear you. Okay. Thanks.

MS. WIENER: Thank you.

THE COURT: Okay. Fifty-one, Mr. Wilford, is traveling, right?

MS. McCANN: Right.

MR. SATZ: Yes.

THE COURT: Fifty-two, Jacsaint, language.

MR. SATZ: Right.

THE COURT: Fifty-three, Weber, is not going to get paid. Fifty-four, Beeler, is okay.

MR. SATZ: Right.

THE COURT: Fifty-five, Golder.

MR. DON WILLIAMS: We're waiting to hear.

THE COURT: Still waiting on that so for the time being, she's with us.

MR. POLAY: No, she just said that they'll pay.

THE COURT: Oh, she just came in?

MR. SATZ: No, she's checking.

MR. DON WILLIAMS: That's Spirit Airlines.

THE COURT: Yeah, she's checking, Mitch. Now you're confusing me.

MR. POLAY: I thought she -- she wasn't the one with the handbook?

THE COURT: Yeah, and she's double checking.

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MR. DON WILLIAMS: The one with the handbook is --

THE COURT: Quiet.

MR. DON WILLIAMS: Sorry.

THE COURT: According to the handbook, it seems that she gets paid.

MR. DON WILLIAMS: Oh, that was her? Oh, I'm sorry.

THE COURT: Fifty-six, Starkes, is okay. We're waiting on information from Armstrong and Ortiz, which is 57 and 58, correct?

MR. DON WILLIAMS: Right.

THE COURT: Fifty-nine, Rosenblatt, is commissioned.

MS. McCANN: Yes.

MR. SATZ: Right.

THE COURT: Wiener is --

MR. DON WILLIAMS: Okay.

THE COURT: -- okay. Sixty-one, Perez, has child care. Sixty-two, Weinstein, medical. Sixty-three and 64, language. Sixty-five, Smith is --

MR. DON WILLIAMS: No work.

THE COURT: -- no work. Fifty-six, Petit, is language. Sixty-seven, Archelus, is no work, no pay. Sixty-eight is --

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MR. DON WILLIAMS: That's the guy that rides the bus.

THE COURT: Oh, yeah, transportation. Sorry, I can't read my own writing. Alvarez, you know, depending on what we do, this would make the fourth or fifth person that we've dealt with that has the same identical week, first week of November.

MR. DON WILLIAMS: Yes, he's checking to see what the pay is.

THE COURT: Right. So the reality is, I think we keep him hanging for the time being until we get further in the process.

MS. McCANN: Agreed.

THE COURT: Seventy, Rizzi.

MR. SATZ: No work, no pay.

THE COURT: Seventy-one, Lovett, is okay. Seventy-two, Hitchins, won't get paid. Seventy-three, Newman, his wife wants him to be here. Seventy-four and 75, we're waiting for phone calls from Pierre and Kopperl, correct?

MR. POLAY: Correct, sir.

THE COURT: Steve, you got them?

THE BAILIFF: I do not, Judge. I was outside for the first part of that.

THE COURT: That's what happens when Pam leaves.

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All right. You have No. 54. You have them by numbers?

THE BAILIFF: Yes.

THE COURT: Fifty-four, 55, 56, 57, 58, 69 --

THE BAILIFF: Sixty?

THE COURT: So I missed 60. I thought I said 60, but obviously, I didn't. Sixty-nine, 71, 73, 74 and 75.

THE BAILIFF: Got them.

MR. POLAY: Judge, I don't have numbers. Did you have Ms. Wiener included in that?

THE COURT: Yes. That's No. 60.

THE BAILIFF: I have two that have responses. Do you just want me to bring them all back in or just the two?

THE COURT: Yeah. Do it the easy way.

(Whereupon, a brief discussion was held off the record.)

THE BAILIFF: Jurors are entering.

(Whereupon, the prospective jury panel was brought back into the courtroom.)

THE COURT: Ms. Golder?

MS. GOLDER: Yes. I spoke with the VP and the director. They said no matter what, I'll get paid.

THE COURT: Mr. Armstrong?

MS. ARMSTRONG: Right here.

THE COURT: Oh, Ms. Armstrong. I apologize.

MS. ARMSTRONG: That's okay. I'm waiting on a call from payroll. They don't know how long they'll cover.

THE COURT: Okay. Mr. Ortiz?

MR. ORTIZ: I'm waiting on a call back from my boss.

THE COURT: Mr. Pierre?

MR. PIERRE: Yeah, they said I will get paid. I just need to turn in some receipts or whatever.

THE COURT: That's never a problem.

Mr. Kopperl?

MR. KOPPERL: My boss thinks they can only cover three days maximum.

THE COURT: That's why we have you guys check. All right. Steve, we're going to give Mr. Kopperl his card back, and you can go back to the jury room, okay? Now, for the rest of you, let me tell you what we're going to do at the present time. In a couple of minutes, you're going to follow Maribel. She's going to take you to our jury room. We have a questionnaire that we would like you to fill out. On that questionnaire, please do not put your email address or your phone number.

Once you've all finished that, Maribel will take

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you out. She'll show you where you need to be when you return next Tuesday morning at 9:45. She'll show you where you need to be.

Also, there is a -- it's not a jury questionnaire. It's a jury information sheet that I would appreciate your printing your name, providing an email address and a phone number that you can be reached at. That is for my purposes, my purposes only, so that in the event of an emergency and we need to contact you, we have the ability to do it. It is not going to be published, it is not going to be distributed.

Also, for those of you that are waiting for information from your employers, if you hear from them, please call my office. Maribel is going to give you information so that you can get a hold of my office. You've already met Pam. And let us know so that we can deal with it on Tuesday or before Tuesday. Yes, sir.

MR. ALVAREZ: I already talked with my Human Resources manager, and she told me that we have five days.

THE COURT: And you are again?

MR. ALVAREZ: William Alvarez. And the company policy is five days.

THE COURT: All right. No. 69. Okay. Give him his card back. Thank you.

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And the rest of you, I leave you in the good care, custody and control of Maribel.

(Whereupon, the prospective jury panel went into the jury room.)

(Whereupon, the remainder of the proceedings can be found in Volume II.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, Andrea Denise West, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings, Pages 1 through 91, and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am neither attorney or party, nor am I related to or employed by any attorney or party connected with the action, nor am I financially interested in the action.

Dated this 9th day of February, 2019 .



ANDREA DENISE WEST, R.P.R.
Notary Public - State of Florida
My Commission No. FF 221415
Expires: JUNE 3, 2019

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

GERHARD HOJAN,

Defendant.

CASE: NO. 02-005900CF 10B
JUDGE PAUL L. BACKMAN

ORIGINAL

Fort Lauderdale, Florida

September 26th, 2018

1:30 o'clock P.M.

VOLUME IV

TRANSCRIPT OF PROCEEDINGS

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The above-styled case came on for hearing before the Honorable Paul L. Backman, Presiding at the Broward County Courthouse, 201 Southeast 6th Street, Room 5780, Fort Lauderdale, Florida, on the 26th day of September, 2018, commencing at 1:30 o'clock p.m.

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APPEARANCES:

MICHAEL SATZ, STATE ATTORNEY,
BY: MICHAEL SATZ, STATE ATTORNEY, and
CAROLYN McCANN, ASSISTANT STATE ATTORNEY,
201 SOUTHEAST 6TH STREET, 6TH FLOOR
Fort Lauderdale, FL 33301
appearing on behalf of The State.

LAW OFFICE OF MITCHELL POLAY
BY: MITCHELL POLAY, ESQUIRE,
3690 Davie Blvd.
FORT LAUDERDALE, FL 33312
appearing on behalf of The Defendant.

LAW OFFICE OF H. DOHN WILLIAMS
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990 NW 5TH STREET
BOCA RATON, FL 33486
appearing on behalf of The Defendant.

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(Thereupon, the proceedings continued from Volume III).

THE COURT: Do you guys have your list from yesterday?

MS. McCANN: I do.

MR. WILLIAMS: Yes, sir.

MR. SATZ: Yes.

THE COURT: There was a guy, I don't know if it was the morning or the afternoon, his name is James Gordon Black. He only gets paid five days.

MR. WILLIAMS: I had a question about him. I was researching him last night. I typed in James Gordon Black.

THE CLERK: He was Tuesday morning, and he was No. 5.

THE COURT: We're going to let him go? Pam can call him and say thanks but no thanks?

THE CLERK: He doesn't get paid.

THE COURT: Right. He only gets five days.

MR. POLAY: That's fine. I have no problem, Judge.

MR. WILLIAMS: That's an unusual name, James Gordon Black. When I typed his name in the clerk's computer last night, James Gordon Black is James Gordon Blackman. So I wonder if he changed his name.

(Whereupon, the prospective jury panel was

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brought into the courtroom.)

THE COURT: Good afternoon, Ladies and Gentlemen.

PROSPECTIVE JURORS: Good afternoon. Collectively).

THE COURT: Wow, let's try it again. Good afternoon, Ladies and Gentlemen.

PROSPECTIVE JURORS: Good afternoon. (Collectively).

THE COURT: Much better. Let me see, before we even start, I want you to understand that the 75 of you that just came up, you were ordered months ago for the afternoon, not for the morning, so I apologize if you've been sitting around. Hopefully you've been entertaining yourselves in some way. I don't know what movies they show down there anymore. I haven't been to the jury room in a long time. But I will have most of you out of here very, very shortly. And then for the others that aren't so lucky to go bye-bye, I'll explain everything from there.

But first let me start by introducing myself. If you're mad at everybody, I will give you one name. If you're not mad, I'll give you my name, which is Paul Backman. I'm one of your judges here in the 17th Judicial Circuit. We are looking for jurors that can

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serve with us starting next Tuesday, which is the 9th of October -- no, it's the 2nd of October. I was just checking to make sure you knew. Starting the 2nd and possibly going to Thanksgiving. It may be a lot less, but it will not be more. So I would rather give you outside dates than be short on my timeframe and then have to listen to you really complain about, well, you told us this.

Now, we all understand that people have conflicts in their day-to-day life, and I have a full list of pretty much all of the different conflicts that you may have, and then I'm going to start with Ms. Mobley after that, and I'm going to talk to each one of you and let you discuss what any problems would be.

Now, one of the big things, and I just want to start with this, if you're a full-time employee and you do not know what the policy of your company or office is as far as paying for jury service, I will be asking if you would kindly step outside, call your employer and find out what that policy is.

Now, we've been through this now -- yesterday, we had 125, this morning we had 75. So, again, we do recognize that these type of conflicts come about. So I don't want anybody to raise their hands except after this particular question: Is there anyone that has difficulty

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understanding and speaking the English language? Anybody in the front row?

(No hands.)

THE COURT: Second row?

(No hands.)

THE COURT: Third row?

(No hands.)

THE COURT: Okay, good. Now, understand when I say we don't want you, it's not that we wouldn't love you to serve, but these are conflicts that we know create real hardships. First of all, if you are a full-time student and serving on this jury would interfere with your education, we don't want you.

If you are a primary caregiver to a parent, grandparent, child or it's part of your responsibilities as far as your employment, please let us know. If you are presently unemployed and actively looking for employment, let us know. As far as your work, if you don't know what that policy is and you're a full-time employee, please just make that call and let us know.

If you have a prepaid vacation, let us know. There are many times that we can accommodate those dates depending on what they are. So if we don't know about it, then that becomes problematic. If you have child care issues where arrangements for pick up in the

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afternoon cannot be made, we need to know. If you have any medical reasons that would interfere with your ability to be with us and concentrate during the whole trial, let us know. I'm not going to ask what that situation is. So I rely on you to let me know if there will be a problem.

If you work part-time or if you work on commission basis and it's going to impact your bottom line financially, again, we don't want you. Now, what I do want to stress is if you don't know the policy and you call your office, do not ask do you pay for jury service. The question you have to ask them is give them the parameters of the trial and ask whether or not they will pay you for every day that you are here. We know that many employers just pay three days, five days, ten. Most are within that period of time, but many of them, believe it or not, do pay. So I need for you to let me know that. Excuse me.

(Brief interruption.)

THE COURT: All right. So Ms. Mobley?

MS. MOBLEY: Yes. I have an issue. My son is graduating from the military, the Army branch on October 4th in Fort Jackson, South Carolina so I've taken off from Wednesday through Friday of my job.

THE COURT: Well, first of all, congratulations.

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MS. MOBLEY: Thank you.

THE COURT: That's terrific. That's your only issue?

MS. MOBLEY: Yes.

THE COURT: Ms. Jackson-Nesmith, do you go by both?

MS. JACKSON: Lesia Jackson.

THE COURT: Okay.

MS. JACKSON: I'm just the office manager at a doctor's office.

THE COURT: So you are employed?

MS. JACKSON: I'm employed.

THE COURT: But are you going to get paid to be here?

MS. JACKSON: No.

THE COURT: Mr. Lopez?

MR. LOPEZ: Well, Your Honor, so my situation, I graduated from pharmacy school last May.

THE COURT: Congratulations.

MR. LOPEZ: So basically, I'm an employee. The reason why is because I have one board to take, my board exam, which I'm taking on October 15 so basically I'm studying day and night, and after I pass, hopefully then I'll start working so I'm basically unemployed. My wife is also starting at Nova Southeastern law school so we're

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basically living off student loans so it's not --

THE COURT: Oh, I think most of us understand student loans.

Ms. Merrill?

MS. MERRILL: I --

THE COURT: Relax. I don't bite.

MS. MERRILL: That I know of, I think my job only pays for three days.

THE COURT: Who do you work for?

MS. MERRILL: I work for Garda. It's kind of like Brinks but it's Garda.

THE COURT: Oh, okay. Can you call and just verify?

MS. MERRILL: I can double check that.

THE COURT: Please.

MS. MERRILL: Right now?

THE COURT: Yeah.

Mr. Diaz De Arce?

MR. DIAZ DE ARCE: Yes, Diaz De Arce. I'm unemployed. I'm in the process of starting my own business.

THE COURT: What are you going to do?

MR. DIAZ DE ARCE: I do -- I'm an artist so I do like business promotional material, logos, websites, things like that.

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THE COURT: Okay. Mr. Francis?

MR. FRANCIS: Going to a funeral in Jamaica. I leave on Thursday. I'm taking a week off so I come back the following Wednesday.

THE COURT: That's the 3rd?

MR. FRANCIS: Yes, sir. Plus, I'm going to class to paint cars. I took over my dad's business, and I think I'm doing morning shift -- I mean afternoon shift. I have to check.

THE COURT: Gotcha.

MR. FRANCIS: That starts on that Thursday I come back.

THE COURT: Mr. Seberg?

MR. SEBERG: Yes. I just last month finished radiation therapy for prostate cancer and bladder cancer, and I have two doctor visits before Christmas -- before Thanksgiving.

THE COURT: Doctor visits I can generally work around, but --

MR. SEBERG: Well, then also I have a urinary frequency so like every hour, I need to go to the bathroom.

THE COURT: That also wouldn't be a problem. But do you feel -- with the therapy -- are you getting chemo or something?

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MR. SEBERG: No, I had radiation.

THE COURT: That's all done?

MR. SEBERG: Yes. It was done last week.

THE COURT: Understand something, that if you get through this afternoon, that isn't indicative that you will actually be a juror in the case. We have a full process next week that we go through. Hopefully we'll have our jury.

Ms. Balentine?

MS. BALENTINE: Balentine, yes. My husband and I own our own business, so I run all of our crews. We do commercial maintenance, underwater maintenance. I do the scheduling, which I'm sort of priceless, but I'm sure my husband would say I can be used for the service of the court if I need to be.

THE COURT: Is he going to pay you?

MS. BALENTINE: Well, yeah. You know, it's all joint so he doesn't really have a choice. And I could do a lot of my job online at night with setting up schedules and certain jobs that we have so I would be available.

THE COURT: Thanks.

MS. BALENTINE: Thank you.

THE COURT: Ms. Lynch?

MS. LYNCH: I have a preplanned trip that gets me back at 9:30 in the morning on the 8th so I think we

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could work around that probably.

THE COURT: Not if you're coming back on the 8th.

MS. LYNCH: Yeah.

THE COURT: Well, we would need you here next week.

MS. LYNCH: Right. So it's just -- no, no, it's the weekend. So it would just be like late morning on the 8th and the week of Thanksgiving I have a prepaid --

THE COURT: I don't anticipate we're going to be here.

MS. LYNCH: Okay. So I'm available.

THE COURT: Mondays we won't be in trial. Did I tell you the schedule?

MS. LYNCH: No.

THE COURT: You're my fourth group today, so I don't remember. Schedule will be Tuesdays, Wednesdays, Thursdays, sometimes Fridays depending on the circumstances. We may work half a day. We may work a full day. We may not work the day at all. I like to work a full day so we start with the jury coming back at about 9:45, and I generally like to work until 5:00, 5:30, depends on where we are with a witness. There are times we will run out of a witness at 3:00 o'clock in the afternoon. That can't be predicted at this point, but

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that's generally the schedule. Mondays, we will not be in trial. I have to do other work occasionally. So that's our schedule.

And Ms. Merrill, you just returned.

MS. MERRILL: Yes, I did. I just spoke with them, and actually, I only get paid for one day of jury duty.

MR. WILLIAMS: That's against the law.

THE COURT: That's besides the point.

MS. MERRILL: At first I thought that it was three, and then I just talked to them and they had said even in the handbook, we can show you the handbook. I'm like, oh, my God.

THE COURT: They better be careful.

Ms. Robles?

MS. ROBLES: My limitations are I have small ones. I am the PTA president of their school. I have an insurance business, and I also work for an aviation company. So I don't know. I guess I have a full book, but if you need me, you need me.

THE COURT: Well, you started off with two children?

MS. ROBLES: I have small children.

THE COURT: How small?

MS. ROBLES: Five and six.

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THE COURT: That's small. Well, who would be taking care of them?

MS. ROBLES: Grandma.

THE COURT: Your insurance business, if you're not selling, you're not making?

MS. ROBLES: No, there's girls there.

THE COURT: If we need you, you're here?

MS. ROBLES: If you need me, I'm here. It's just one more thing to add to my list, I guess.

THE COURT: The way it works is, you always ask the busiest person to do something because they'll always figure out how to get it done.

Ms. -- where are you? There you are. Ms. Duclos?

MS. DUCLOS: Yeah. I'm a full-time student, and I have a part-time job.

THE COURT: Where do you go to school?

MS. DUCLOS: FAU.

THE COURT: What are you studying?

MS. DUCLOS: Criminal justice.

THE COURT: I'm just nosey. That's why I ask those questions.

Mr. Valea?

MR. VALEA: Yes. I work at a law firm. I just have to verify with my employer that they would be

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paying, but that's it.

THE COURT: What law firm?

MR. VALEA: Florida Professional Law Group.

THE COURT: What do you do for them?

MR. VALEA: Plaintiff property insurance.

THE COURT: I haven't found a law firm yet that'll pay, but why don't you do me a favor and give them a call. All they can do is verify.

Mr. Roles?

MR. ROLES: I think I have a little bit of an issue serving right now. I'm the sole income for my family, my wife and my two-and-a-half-year old. I work for a staffing agency. I'm on assignment, but I'm technically just a contractor for the staffing agency. I don't think I'm getting paid for today, and I doubt that they would want to pay for a long period of time. I haven't been there 90 days yet.

THE COURT: We don't want you to lose --

MR. ROLES: Any interruption in my cash flow would cause a problem.

THE COURT: We don't want you to lose your job.

Ms. Francis?

MS. FRANCIS: Yes. I'm a primary caregiver of my parents. They currently reside with me at the moment, and I do have some medical work comp issues that I have

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to attend.

THE COURT: Mr. Seagel? Oh, it's not Seagel. Sorry. Seage?

MR. SEAGE: Seage. That's correct, Your Honor. I work for electronics company out of California, Silicon Valley. I'm the only person here that's running the repair center in Sunrise, Florida. I'm expected to receive and process equipment more or less on a daily basis.

THE COURT: So what happens if you're off? They don't pay you for that time?

MR. SEAGE: I don't know that they would pay me until November. One or two days I can arrange for somebody else to pick up my shipments. I got to process it. I got a prepaid vacation with them.

THE COURT: When's that?

MR. SEAGE: November 10th.

THE COURT: For how long?

MR. SEAGE: Six days. Carnival cruise.

THE COURT: You going anyplace good?

MR. SEAGE: It's a Carnival cruise around the islands.

THE COURT: Well, I won't comment on the -- I'll just tell you cruises are always a good thing in my world.

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Mr. Mackliff?

MR. MACKLIFF: Yes. I'm available. I'm retired so I'll be available.

THE COURT: I retire in three months and four days. That's why I know that this case has to be finished.

Ms. De La Paz?

MS. DE LA PAZ: Yes. I'm a full-time student, and I also have a part-time job.

THE COURT: Where did you go to school?

MS. DE LA PAZ: Broward College.

THE COURT: What are you studying?

MS. DE LA PAZ: Nursing.

THE COURT: Ms. -- oh, back row. I'm sorry, I'm really getting off the track. Mr. Virgin?

MR. VIRGIN: Virgin. Like a virgin.

THE COURT: I was really trying. You don't look like Madonna, though. Talk to me.

MR. VIRGIN: Okay. First, I would love to serve, sir; however, Your Honor, I'm employed by Broward County Schools.

THE COURT: They pay.

MR. VIRGIN: I am responsible for getting students jobs. So during this time of the year is my push time so it would be difficult to do that.

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THE COURT: But not impossible?

MR. VIRGIN: Not impossible. But think of the students.

THE COURT: You know, that's funny. That's what every single teacher tells me.

Ms. Bohler?

MS. BOHLER: Yes. Hi. I'll be unavailable. I'm a full-time -- I work and I'm a part-time student and I'm a single mom, so...

THE COURT: Uh-uh. You're a part-time student?

MS. BOHLER: Yeah.

THE COURT: What are you studying?

MS. BOHLER: Social work.

THE COURT: During the day?

MS. BOHLER: Yeah. I balance them both because I make my own schedule at work so I just make it work. I just balance it.

THE COURT: Now you've piqued my curiosity. What do you do?

MS. BOHLER: I'm a manager at a check cashing store.

THE COURT: They're not going to pay you. Thank you.

I'm going to get this right, I hope. Ms. Krefft?

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MS. KREFFT: Krefft. I'm available.
THE COURT: Do you work?
MS. KREFFT: Yeah.
THE COURT: Who do you work for?
MS. KREFFT: I am semi-retired. I'm a realtor, and I'm home all the time.
THE COURT: So you could sit with us, not going to lose income?
MS. KREFFT: (Shakes head.)
THE COURT: Thank you.
Mr. Baptiste?
MR. BAPTISTE: Yes, Your Honor, a few conflicts.
THE COURT: Start with one.
MR. BAPTISTE: The first one, I work at night at a hospital.
THE COURT: You work at night?
MR. BAPTISTE: Yeah, graveyard.
THE COURT: What shift? I know you said graveyard but what hours?
MR. BAPTISTE: 9:00 p.m. until 7:30 in the morning.
THE COURT: What hospital?
MR. BAPTISTE: Baptist Hospital.
THE COURT: So you would be really bright-eyed in the morning to come in and work.

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MR. BAPTISTE: I'm falling asleep.

MR. WILLIAMS: Especially Baptist Hospital. That's along the way.

THE COURT: Well, you can come in with Carolyn.

MS. McCANN: Yes. I could give him a ride.

MR. WILLIAMS: That's true.

THE COURT: Thank you.

Mr. Fulmore?

MR. FULMORE: Yes. I'm a full-time -- I have a full-time job with McKesson Surgical. They're short two people so they already fussing about people being out. And on top of that, my wife has chemo every Monday so FMLA, I take her every Monday to get chemo.

THE COURT: Well, Monday is the least of your problems because we don't work Mondays. Do you know if your employer pays for jury service?

MR. FULMORE: From my understanding, they said it was like three to five days.

THE COURT: Okay. That's not unusual.

Ms. Young?

MS. YOUNG: Hi. Yeah, I'm a scheduler and a staffing coordinator for Kindred Hospital in Hollywood so they depend on me, the nurses and the clinical staff, night and day shift, to make sure that we have the hospital staffed.

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THE COURT: Do you know if they pay?

MS. YOUNG: I would have to verify. I think it's three days. I'm not sure. I will have to call HR.

THE COURT: Could you do me a favor and make a phone call?

MS. YOUNG: Okay. Yes.

THE COURT: Mr. Martinez?

MR. MARTINEZ: I'm a support engineer for Healthcare Automation. I have scheduled some training next week from the 1st to the 3rd, and then the third week of October, I gotta support a goal line.

THE COURT: You got to what?

MR. MARTINEZ: Support a goal line. That's when they start the system up and run it.

THE REPORTER: You said support a goal life?

MR. MARTINEZ: Goal line.

THE COURT: All right. That was Mr. Martinez. And Mr. Shear?

MR. SHEAR: I work at Publix.

THE COURT: Full time?

MR. SHEAR: Full time.

THE COURT: They pay.

MR. SHEAR: They pay. And then my dad is ill so I have to take care of him too. He almost passed away the other day.

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THE COURT: Well, that, we're sorry to hear.

MR. SHEAR: And I found him almost dead.

THE COURT: What are your normal hours at Publix?

MR. SHEAR: Forty hours. Oh, hours?

THE COURT: Yeah. Daytime, nighttime?

MR. SHEAR: Oh, nighttime, like five to two.

THE COURT: Then you're home and you take care of your father?

MR. SHEAR: Yeah. Then I get a call -- if I call my dad and see what he's doing or anything else, I have to take care of him.

THE COURT: Who just came back that had a phone call? Mr. Valea.

MR. VALEA: I wasn't able to reach the payroll person, unfortunately.

THE COURT: Okay. You could keep trying. Anyone else that just came back from a phone call?

Ms. Robles?

MS. ROBLES: I just contacted HR, Marco Collins, and they only pay ten days.

THE COURT: Thank you. Anyone else?

What I'm going to ask of you at the present time is if you would go with Steve. He's just going to congregate you outside. We'll have some of you back in

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just a little bit with further instructions. For those of you that aren't coming back in, I want to thank you on behalf of all of us for your coming down and participating. We don't have a system without you so we all appreciate it very much. So just follow Steve, please.

(Whereupon, the prospective jury panel left the courtroom).

THE COURT: Just out of curiosity, Carolyn, you said you have 62, which would now be down to 61?

MS. McCANN: Yes.

THE COURT: What do you guys have?

MR. POLAY: Yes.

THE COURT: That's interesting because Pam told me she has 70. We'll see when the whole list comes out, I guess. All right. Ready? No. 1, Mobley, traveling.

MR. POLAY: Correct.

MR. WILLIAMS: The week of October 4th, next week, right?

THE COURT: Yeah. No. 2, Jackson-Nesmith, basically no pay. Three, Lopez Coto is a full-time student. I should go through the ones that we're keeping on this page. Four, Merrill, no work, no pay. Five, Diaz De Arce is unemployed.

MR. POLAY: Correct.

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THE CLERK: He's trying to start his own business.

THE COURT: They're gone, right?

MR. POLAY: Correct.

MR. SATZ: Right.

THE COURT: Six, Francis, is not only traveling but a student. What are we doing with John Seberg?

MR. SATZ: Sounds like he has some pretty significant health issues.

MR. WILLIAMS: Right.

THE COURT: Eight, Balentine, said he was all right.

MR. WILLIAMS: She, she.

THE COURT: She. And Ms. Lynch, No. 9, said okay. Robles, we just dealt with, is gone. Duclos, No. 11, is full-time student. Twelve, Valea, still waiting to hear so we're just going to play him by ear as we go along.

MR. WILLIAMS: It's the joke of the day.

THE COURT: Roles, 13, no work, no pay. Francis, 14, is primary caregiver.

MR. SATZ: Right.

MR. POLAY: Correct.

THE COURT: What was the story with Seage?

MR. POLAY: No work, no pay.

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MR. WILLIAMS: Right.

MR. SATZ: Yeah.

THE COURT: But he's going on Carnival.

MR. POLAY: He had a work issue, I think.

THE COURT: Yeah, I know. I know. I'm only kidding. Sixteen, Mackliff, okay.

MR. POLAY: He was okay, yeah.

MR. SATZ: Yeah, he's okay.

THE COURT: De La Paz, 17, is a student. I have Virgin, No. 18, who is okay. Nineteen, Bohler, no work, no pay. Krefft, she's okay, No. 20. Twenty-one, Baptiste, no work, no pay. Twenty-two, Fulmore, no work, no pay. Twenty-three, Young, we're still waiting to hear.

MR. POLAY: Correct.

THE COURT: So for the moment, he's with us. Martinez, 24, what's his story?

MR. SATZ: Training.

THE COURT: Right.

MR. WILLIAMS: Training next week.

THE COURT: Who is it?

MS. YOUNG: I'm June, June Young.

THE COURT: And the magic answer is?

MS. YOUNG: There are no restrictions right now. The only restriction for me would be my duties as a

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scheduler and a staffing coordinator because I'm the primary person that does the scheduling for the hospital.

THE COURT: How are you going to do that and be here at the same time?

MS. YOUNG: I would have to speak to my boss and see what kind of arrangements. They would have to make special arrangements.

THE COURT: Okay. Thanks. If you can just wait outside.

MS. YOUNG: Okay.

THE COURT: Where is she?

THE BAILIFF: Twenty-three, Judge.

THE COURT: I'm thinking we keep her, bring her back on Tuesday and see what arrangements, if any, can be made.

MR. POLAY: That's fine, Judge.

MR. SATZ: Right.

THE COURT: Martinez is gone and Shear is a caretaker.

MR. SATZ: Right.

MR. POLAY: Yes.

THE COURT: So I have -- we have eight.

MR. SATZ: Seven.

THE COURT: No, that was Seberg 7. Eight is Balentine.

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MR. WILLIAMS: We have Balentine, Lynch, Valea.
THE COURT: So we have 8, 9, 12 --
MR. SATZ: Huh? Wait. Where are you going?
MR. POLAY: Oh, never mind. Never mind.
THE CLERK: He's just going by the numbers.
THE COURT: I renumber each --
MR. POLAY: Mr. Satz and I had the same reaction.
THE COURT: No, in the morning it's 1 through 75, and in the afternoon, it's 1 through 75.
MR. POLAY: I have you now.
MR. SATZ: How about names?
THE COURT: All right. How about if we do names? Balentine?
MR. SATZ: Yes.
THE COURT: Lynch?
MR. SATZ: Yes.
THE COURT: Valea?
MR. SATZ: Yes.
THE COURT: All right. We're on a roll. Mackliff?
MR. SATZ: Yes.
MR. POLAY: Yes.
THE COURT: Virgin?
MR. SATZ: Yes.

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MR. POLAY: Yes.
THE COURT: Krefft?
MR. SATZ: Yes.
MR. POLAY: Yes.
THE COURT: And Young?
MR. POLAY: Correct.
MR. SATZ: Seven.
MR. POLAY: Like I said, seven. That's what threw me off when you said eight. I know you were reading the numbers and I'm like, what?
MR. WILLIAMS: We'll be down to six when Valea comes back in.
THE BAILIFF: Bring those back in, Judge?
THE COURT: Do you have the cards for the rest?
THE BAILIFF: No. Jurors are entering.
(Whereupon, the prospective jury panel was brought back into the courtroom.)
THE COURT: Okay. I know a couple of you are still waiting for information from your employers, right?
MS. YOUNG: I think I was the last one, No. 4.
MR. VALEA: I was waiting, but I got the information.
THE COURT: You got the information?
MR. VALEA: Yes. Five days.
THE REPORTER: And your name is?

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MR. VALEA: Valea, Alejandro.

THE CLERK: No. 12.

THE COURT: We're going to give you your card back. You get to go back to the jury room. I know it breaks your heart.

MR. VALEA: Tears it apart.

MS. YOUNG: Judge, I'm sorry, how long will I need to serve? Because my job said they pay up to fifteen days in a calendar year.

THE COURT: That's not going to happen.

MS. YOUNG: Okay.

THE COURT: And you're Ms. Young?

MS. YOUNG: Right, Ms. Young.

THE COURT: And you also get to go back to the jury room. Thank you.

MS. YOUNG: Do I go now?

THE COURT: Okay. Now, here's what we're going to do. In just a moment, Maribel is going to take you into our jury room. We have a questionnaire for you that we're going to ask that you fill out. When you're finished with that, she will show you where you need to be, and you guys need to be back on Tuesday the 2nd at 9:45.

Also, on the questionnaires, it does not call for it, does not ask for it, but please do not put your

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email address and your telephone number. There is a separate sheet where I'm going to ask you to please print your name, give me an email address, and a phone number that you can be reached at.

Now, this is not going to be a document that's passed around. It is strictly for my office use to contact you in the event of an emergency. And Maribel is going to give you information so that you can contact my office in the event of an emergency. As I said, I will not be sharing your emails or anything else with anybody.

So with that, Maribel.

THE BAILIFF: Follow me. Please take all of your belongings.

(Whereupon, the prospective jury panel went into the jury room.)

THE BAILIFF: I have the next 25 lined up, Judge.

THE COURT: We're ready.

THE BAILIFF: No. 5 or No. 30, depending on how you have them numbered, was no response. I don't know where they went to.

THE CLERK: Which one?

THE BAILIFF: Alago Ramos.

THE CLERK: Ramos?

THE BAILIFF: Page 3, fourth one down. Another

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no answer, no response is Page 4, the very top, Voltaire Bazurto.

THE COURT: You can start bringing them in.

THE BAILIFF: All right, Judge.

(Whereupon, the next prospective jury panel was brought into the courtroom.)

THE COURT: Good afternoon.

PROSPECTIVE JURORS: Good afternoon. (Collectively).

THE COURT: I didn't think my voice was that soft. Good afternoon, Ladies and Gentlemen.

PROSPECTIVE JURORS: Good afternoon, Your Honor. (Collectively.)

THE COURT: Good. Wake you up a little bit. First of all, I know that you guys have been waiting around, but I had 75 this morning, 75 this afternoon, and I didn't ask them to call you at 9:30 in the morning. I just needed you for the afternoon. Hopefully you were entertained and not thoroughly bored.

All right. Well, if they come in, we'll put them in. If you're upset because of that, I will give you one name. If you're not upset, I'll introduce myself. My name is Paul Backman. I'm one of your judges here in the 17th Judicial Circuit. What we're looking for -- and I will have most of you out of here very

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shortly. You saw the first group was out relatively quickly.

We are looking for jurors who can serve with us on this case starting next Tuesday which is the 2nd of October, where we'll finish up during the jury process and then start testimony the following week, hopefully. This is what we're calling a weeding out process or a paring down.

The trial we anticipate will go no later than Thanksgiving. So it may be a three-week trial, it may be a four-week trial, but I can tell you the outside date would be before Thanksgiving. And the reason I'm giving you that type of a spread is I would hate to say this is going to be a three-week trial and then all of a sudden, we get to that period of time and we are not finished. It doesn't mean it's going that far, but you need to know what the timeframes are.

Now, every single one of us realize that individuals have conflicts in their lives that they face on a daily basis. I have what I think is a fairly comprehensive list of the type of conflicts that we all recognize and we all deal with.

First of all, is there anybody here who has any difficulty understanding and speaking the English language?

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MS. TAYLOR: Me.

THE COURT: And you are?

MS. TAYLOR: Niurka.

THE COURT: Ms. Taylor?

MS. TAYLOR: Yes.

THE COURT: What's your native language?

MS. TAYLOR: It's Spanish. I don't understand too much.

THE COURT: You do or you don't?

MS. TAYLOR: No, I don't.

THE COURT: Un piquito?

MS. TAYLOR: Un piquito.

THE COURT: That's the extent of my Spanish. Anybody else? Okay.

Now, I don't want anybody to raise their hands as I go through this. I will be calling on each of you individually to discuss any conflicts that you may have. Now, if you are a full-time student and being with us would interfere with your studies, we don't want you. Of course, if you want to volunteer, that's fine.

If you are a primary caregiver, in other words, you are the primary caregiver for a parent, grandparent, child or if it's part of your professional responsibilities, please let us know. If you are presently unemployed and actively looking for employment

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please let us know. If you have a prepaid vacation between now and the timeframe of this trial, please let us know. It is very possible that we'll coincide with some of our dates and we might be able to accommodate it. If you have child care issues and cannot make arrangements in the afternoon to have a child picked up and watched without it costing and impacting your financial position, let us know.

If you have medical issues that you think will interfere with your ability to be with us, please let me know. I will not ask what that medical condition is, but I'm going to leave it to each of you who do have that kind of a problem to make the determination whether it would truly interfere with your being here.

If you work on commission or are part-time and you will not get paid, please let me know. Again, we do not want to impact anybody's financial bottom line.

Last but not least, if you are full-time employed and you do not know what the policy of your company is on serving on a jury, I'm going to ask that you kindly step outside, make a phone call and see if you can get an answer.

Now, please, if you make that phone call, don't ask do you pay for jury service, because many companies have policies of three days, five days, ten days, and the

last thing you want to do is come in here, say, yes, they're going to pay me and not realize that you're not going to get paid for an awful lot of time during this trial. So please give them the parameters of time and make sure they're going to pay you. If not, we need to know.

So with that, we will start with Mr. Marin. Talk to me.

MR. MARIN: Well, no, I mean, I think it would be a great opportunity, but I have a restaurant. I literally am there day in, day out.

THE COURT: What restaurant?

MR. MARIN: It's a Colombian place, fast food over in North Lauderdale.

THE COURT: You know, we do give you the opportunity, you're here, to advertise.

MR. MARIN: Yeah. We are only open a year-and-a-half.

THE COURT: Well, if you're not there, nothing is happening basically?

MR. MARIN: It is a headache. I'm literally wired in almost every day.

THE COURT: I hear you.

Mr. Bludau?

MR. BLUDAU: My wife has a medical condition so

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I'm kind of the primary caregiver for her and my son, my sixteen-year-old son.

THE COURT: Do you work?

MR. BLUDAU: Yes, I do. Full time.

THE COURT: What do you do?

MR. BLUDAU: I'm a technical engineer for entertainment systems, primarily on cruise ships.

THE COURT: Nobody likes cruise ships better than me.

MR. BLUDAU: Really? Excellent.

THE COURT: What hours do you normally work?

MR. BLUDAU: 8:30 to five typically.

THE COURT: Do you know if they would pay you?

MR. BLUDAU: I believe they would.

THE COURT: Well, that's making an assumption, and we all know what that means, because we would be basically working the same hours that you presently work. In fact, I think I neglected to tell you what our work hours would be.

We would be here Tuesday, Wednesday, Thursday and in all likelihood, some part of Friday from 9:45 in the morning until -- I like to work until five, 5:30 depending upon witnesses, where we are in the trial. There are times that we might be finished at 3:00 o'clock in the afternoon. In fact, as I tell every group, if a

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jury collectively says I want to go home at 2:00 o'clock every day, that's great, but now I'm going to tell you that you need to be here through February, because every hour you don't work, we have to make up. And besides which, in three months and four days, I'm gone. So we have to finish before I retire. So can you check?

MR. BLUDAU: Yes. Certainly.

THE COURT: Just make a phone call for us?

MR. BLUDAU: Absolutely.

THE COURT: Now.

MR. BLUDAU: Yes, sir.

THE COURT: Please.

MR. BLUDAU: Yes, sir.

THE COURT: Ms. Dorival?

MS. DORIVAL: Hi, Your Honor. I just move to Port St. Lucie. I just move last week, and I am a social worker for the school board.

THE COURT: Which school board? Broward?

MS. DORIVAL: No, Port St. Lucie.

THE COURT: Well, they have their own school board?

MS. DORIVAL: The district. I work for the district of Port St. Lucie.

THE COURT: Oh, okay. So you've moved?

MS. DORIVAL: Yes, Your Honor.

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THE COURT: Why are you here?

MS. DORIVAL: I don't know. Because I don't change my driver license yet. I just moved last Sunday.

THE COURT: Well, congratulations.

MS. DORIVAL: Thank you.

THE COURT: Let's see. Mr. Cheech.

MR. CREECH: Creech.

THE COURT: Creech. I missed the R.

MR. CREECH: That's all right. I'm Julian. I work part-time, and I'm in school full-time, and I also take care of my son.

THE COURT: Where do you go to school?

MR. CREECH: Kaiser University.

THE COURT: What are you studying?

MR. CREECH: Physical therapy.

THE COURT: Ms. Knight?

MS. KNIGHT: I work in private practice. I'm a sole practitioner Tuesday, Wednesday, Thursday.

THE COURT: What do you do?

MS. KNIGHT: Psychologist. And I have two in-laws currently in hospice, so I'm partially in charge of that.

THE COURT: Sorry about the last part.

MS. KNIGHT: I know, right. At the same time.

THE COURT: Ms. Sou?

MS. SOU: Hi.

THE COURT: Hi.

MS. SOU: I work in the pharmacy in the hospital, Memorial, and I work seven days on, seven days off overnight shift so...

THE COURT: Do you know what their --

MS. SOU: I don't know. That's --

MR. WILLIAMS: They're part of Broward.

MS. SOU: I don't know the policy.

THE COURT: No, I realize that, but do you remember whether they pay?

MR. WILLIAMS: If she works full-time.

THE COURT: You're full-time, right? Well, seven days on, seven days off, I think that's full-time. Could you just double check what their policy is?

MS. SOU: I could.

THE COURT: Thank you.

Mr. Oldfield?

MR. OLDFIELD: I'm an office services clerk for a large law firm.

THE COURT: Which large law firm?

MR. OLDFIELD: Gunster.

THE COURT: That's a large law firm.

MR. OLDFIELD: Uh-huh.

THE COURT: And while we've all had our

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experiences with law firms, especially lawyers, do you know whether or not they pay for jury service?

MR. OLDFIELD: Yes, they do.

THE COURT: The whole time?

MR. OLDFIELD: Yes.

THE COURT: Are you sure?

MR. OLDFIELD: I'm reasonably certain, Your Honor.

THE COURT: Why don't we be certain-certain. Make a phone call, please.

MR. OLDFIELD: Yes, sir.

THE COURT: Ms. Fritschi?

MS. FRITSCHI: Fritschi. I'm leaving on a cruise on Saturday, and I brought the documentation. It's a week-long cruise.

THE COURT: I believe you. What line?

MS. FRITSCHI: Royal. The President's cruise.

THE COURT: That's okay. Going east or west?

MS. FRITSCHI: I'll tell you, I don't even know. We just love to cruise. Wherever it goes, we're happy.

THE COURT: That sounds like me. I don't care where it goes.

Let's see, Ms. Tsohn?

MS. TSOHN: Yes, Your Honor.

THE COURT: The T is silent?

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MS. TSOHN: Yes. I work full-time, Sundays through Thursdays. I'm a licensed clinical social worker at a drug treatment center. Just full disclosure, I used to the work for the State Attorney's Office for three years as a victim advocate.

THE COURT: Here?

MS. TSOHN: In sex crimes and child abuse, and I was assigned to your courtroom at one point.

THE COURT: Oh. I have a great memory.

MS. TSOHN: It was towards the end of my stay.

THE COURT: Mr. Davis?

MR. DAVIS: I work part-time and go to school full-time in Broward College.

THE COURT: What are you studying?

MR. DAVIS: Nursing.

THE COURT: I just want you to know, I ask those last questions because I'm nosey. That's all. Just curious.

Mr. Cheng?

MS. CHENG: I work in regulatory affairs in a pharmaceutical company. I work full-time.

THE COURT: Do you know what their policy on jury service is?

MS. CHENG: No.

THE COURT: Would you be kind enough to make a

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phone call and see, please?

MS. CHENG: Yes.

THE COURT: Ms. Backus?

MS. BACKUS: Hi. I work full-time for a healthcare staffing company. I don't have any conflicts other than a sorority reunion the weekend before Thanksgiving in Colorado for the University of Utah football game.

THE COURT: I don't think that's going to be an issue. So work is the only issue?

MS. BACKUS: They will pay me.

THE COURT: For all the time that you're here?

MS. BACKUS: Yes.

THE COURT: Still didn't find them, Steve, those two?

THE BAILIFF: I just inquired about two minutes ago, Judge.

THE COURT: Mr. Dibella?

MR. DIBELLA: Yes, Your Honor. I work full-time for Baer's Furniture.

MR. POLAY: No way.

MR. DIBELLA: I know they will pay me. I'm not sure if it's for the whole duration. Also, my wife is disabled. She recently had a colostomy surgery. She's in the process of going through the test and all for

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reversal. I do have to take her to the tests because it's difficult for her to drive herself.

THE COURT: What did Mr. Baer say when he was with us?

MR. WILLIAMS: He said to go to a meeting.

THE COURT: Yeah, I know, he said that for, what, four weeks?

MR. WILLIAMS: He said he was going to pay himself.

THE COURT: You are the second Baer's employee that's here today.

MR. DIBELLA: Oh, okay.

MR. POLAY: Then we had the boss.

THE COURT: Oh, he was here on our last trial. That went 22 months and three days. He was with us, what, for about six, seven weeks until we finally picked a jury.

MR. POLAY: Different case.

THE COURT: That was five months.

MR. WILLIAMS: Until he could find another meeting to go to.

THE COURT: Yeah, always a meeting.

Mr. Joseph?

MR. JOSEPH: I'm working as an accountant, like a billing specialist, and I'm the only billing specialist

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in my department.

THE COURT: Who do you work for?

MR. JOSEPH: South Florida Behavioral Health Network.

THE COURT: Do you know what their jury policy is?

MR. JOSEPH: I don't know.

THE COURT: Could you check for me?

MR. JOSEPH: Yes.

MR. POLAY: Judge, could you just tell The Jury that this is a different case, nothing --

THE COURT: Oh, yeah, it has nothing to do with this. See, the lawyers and all of my staff, we were all together for that 22 months and three days, which only ended a month ago.

MR. WILLIAMS: July 16.

MR. POLAY: July 16.

THE COURT: It was in July. We don't want you to think any of our bantering has anything to do with this particular trial.

All right. Where am I? Mr. Roberts?

MR. ROBERTS: I work full-time, Monday through Friday. Unfortunately, I am a primary caregiver of my parents. My mother having extreme dementia. My company will only cover three days.

THE COURT: Say no more.

I want to pronounce it Presume.

MS. PRESUME: Presume, Presume, that's fine.

THE COURT: No, what is it? You pronounce it for me.

MS. PRESUME: It's Presume.

THE COURT: Presume?

MS. PRESUME: Yes.

THE COURT: French, I think. Talk to me.

MS. PRESUME: Yes, Your Honor. I work full-time. I actually just started a position on Monday so I will have to verify as far as the time that they will allow because the position was filled based on need. So I will have to verify, you know, the time that they'll pay and allow me to -- just being that I'm still in training at this point, you know.

THE COURT: Today would be your third day?

MS. PRESUME: Right.

THE COURT: Where do you work?

MS. PRESUME: I work for MacNeill Group. It's a homeowners insurance company.

THE COURT: Thank you.

Ms. Inglis?

MS. INGLIS: Yes.

THE COURT: Ingles? Inglis?

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MS. INGLIS: Inglis.

THE COURT: I got it right the first time.

MS. INGLIS: Yeah, I don't have a full-time job. I volunteer three days a week, but I have medical issues.

THE COURT: Do you think they'd interfere with your being with us?

MS. INGLIS: Well, I can't see you very well, and sometimes I don't hear all the sharpness I should. They're working on my eyes, but that involves a lot of visits to the retina specialists and the ophthalmologist.

THE COURT: Sounds like so much fun.

MS. INGLIS: Yeah. Injections in your eyes.

THE COURT: Yeah, I hear you.

Mr. Kramer?

MR. KRAMER: Congratulations on your retirement a little early. And on November 20, 21, 22, 23, 24 to the beginning of December, we're going on vacation.

THE COURT: Oh, so am I.

MR. KRAMER: Where are you going?

THE COURT: On a cruise. Where else?

MR. KRAMER: We're going to go skiing.

THE COURT: If you want to see a sight, you have to see me on skis. It could be one of those funniest home videos, that is if I haven't broken my leg or something. That would be your only conflict?

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MR. KRAMER: Yes, sir.

THE COURT: What about work?

MR. KRAMER: I'm semi-retired.

THE COURT: Thanks.

Ms. Thrasher?

MS. THRASHER: Hi, Your Honor. I would love to do it, but I do have a daughter. I'm the mom, the dad, the grandmother, the grandfather, and I only work part-time at the moment.

THE COURT: If you're not working part-time, you're not earning any money?

MS. THRASHER: Exactly. Thank you.

THE COURT: Ms. Aschkar?

MS. ASCHKAR: Perfect. I work full-time in financials at a medical billing company in the corporate office for dermatology, and I'm a full-time mom so...

THE COURT: Do you know what the policy is as far as jury service?

MS. ASCHKAR: No, I don't. I started there about five months ago.

THE COURT: Tell me about your child care issues.

MS. ASCHKAR: I mean, not -- she's eleven so she gets picked up in the afternoon by a bus and goes home, so as long as like within working hours.

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THE COURT: Gotcha. Could you do me a favor and make a phone call, please?

MS. ASCHKAR: Okay.

THE COURT: Mr. Plancher?

MR. PLANCHER: Yes, Your Honor. I am a full-time nursing student at Florida International University, and I work per diem for care.

THE COURT: Thank you. And last but not least, Ms. Mull.

MS. MULL: Hi. I work full-time at a foreclosure law firm, and I'm not sure if they allow payment.

THE COURT: What firm?

MS. MULL: SHD Legal Group.

THE REPORTER: I'm sorry, what?

MS. MULL: SHD Legal Group.

THE COURT: SHD.

MS. MULL: And the second week in October, I have a vacation planned.

THE COURT: Planned or paid?

MS. MULL: Well, it's paid.

THE COURT: Going anyplace good?

MS. MULL: Orlando.

THE COURT: So one of my phone calls came back. Who made a phone call and just came back? Well, let's

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start with you, Mr. Bludau.

MR. BLUDAU: Very good. Because I'm the only one in my department, it really doesn't allow me to do it because I'm the technical engineer and the CAD draftsman, and our busy season is just about ready to ramp up.

THE COURT: But what's their policy? Because they don't want to talk to me about this.

MR. BLUDAU: I mentioned that it would probably entail three and a half days per week and might go to Thanksgiving and he goes, absolutely not. We can't afford to not have you here. That's what he said.

THE COURT: Who else in the front row? Ms. Creech, right?

MS. SOU: Sou.

THE COURT: Ms. Sou. There you are.

MS. SOU: I'm okay.

THE COURT: Well, then okay.

Mr. Oldfield?

MR. OLDFIELD: I'm glad I called, Your Honor, and their policy is three to five days.

THE COURT: Now, you know why I ask people to call.

MR. OLDFIELD: Yes, sir. Thank you, sir.

THE COURT: Ms. Cheng is still outside.

Mr. Joseph?

MR. JOSEPH: Actually, my supervisor is not clear about the policy. He needs to talk to his supervisor. But the main problem is that I am the only billing specialist in my department. And every day I need to process almost 40 invoices. It's around $6 million. So in my absence, nobody is there to handle the billing. That's a problem I'm facing.

THE COURT: So is Ms. Aschkar back? Okay. Here's what I need you guys to do. Please go with Steve. He's going to take you outside while we kind of talk about you. And many of you, some of you will be back for further instructions. The rest of you will be sent back to the jury room. And for those of you that do get sent back to the jury room, I just want you to know how much we all appreciate your participation with us here today. It's one of the foremost fundamental rights that we have in terms of our system so we all appreciate that. So please just follow Steve.

(Whereupon, the prospective jury panel left the courtroom, after which a brief recess was taken.)

THE COURT: All right. Let's start on the bottom of Page, I guess, 2. Ms. Taylor, my 26, language. Twenty-seven, Marin, no work, no pay. Twenty-eight, Bludau --

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MR. POLAY: We didn't get an answer, Judge, from him.

THE COURT: No, he just came back in here.

MR. SATZ: He did. He did.

MR. POLAY: He never gave an answer.

THE COURT: Yes, he did. What was it, three days, five days?

THE CLERK: Yes.

THE COURT: You guys pay attention.

MR. POLAY: Okay.

THE COURT: I don't pay attention to you so I understand why you don't pay attention to me. But, yes, he did.

MR. POLAY: Okay.

THE COURT: Plus, his wife is sick. Twenty-nine, Dorival, moved. I don't know why she just didn't tell them downstairs she doesn't live in Broward County.

THE CLERK: She probably did.

THE COURT: Thirty --

THE CLERK: No-show.

THE COURT: Still never showed. Thirty-one, Creech, is a student. Thirty-two, Knight Rosenberg is self-employed. Thirty-three, Sou, she was okay. Thirty-four, Oldfield, what was it, three days, five

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days?

MR. SATZ: Three to five.

THE CLERK: Three to five.

THE COURT: So he's gone. Ms. Fritschi, traveling. What's the story with Ms. Tsohn, Mike?

MR. POLAY: I know who she is, Judge.

MR. SATZ: I don't remember.

MS. McCANN: I don't remember.

MR. POLAY: Judge, she was a victim advocate. She worked for Mr. Satz's office.

THE COURT: Well, it goes beyond that. If she was in here, she knows what I do.

MR. POLAY: Exactly.

MS. McCANN: She says she was in here so...

THE COURT: Thirty-seven, Davis, is a student. Thirty-eight, Cheng, we're still waiting to hear, correct?

MS. McCANN: Correct.

THE COURT: For the time being, she's good. Thirty-nine, Backus, is good. Forty --

THE CLERK: No-show.

THE COURT: -- was a no-show. Forty-one, Dibella, issues with his wife.

MR. POLAY: Correct.

THE COURT: Forty-two, Mr. Joseph.

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THE CLERK: He's calling his job.
THE COURT: He's calling, right?
MR. SATZ: Right.
THE COURT: Inglis --
MR. SATZ: Medical issues.
THE COURT: -- medical. Forty-six, Kramer, was okay. Forty-seven, Thrasher, no work. Forty-eight, Aschkar, we're waiting to hear. Plancher is a student. That's 49. Fifty, Mull, is traveling, right?
MR. SATZ: Right.
MR. POLAY: Right.
THE BAILIFF: Thirty-eight, Judge, Cheng, says three days, three days' pay.
THE COURT: Well, that takes care of Ms. Cheng, No. 38. So that we're all on the same page, coming back we have Sou and Backus.
MR. POLAY: Kramer.
THE COURT: But Kramer is on the next page. Kramer and Aschkar.
MR. SATZ: Right.
MS. McCANN: We're still waiting on Joseph.
MR. SATZ: And Aschkar.
THE CLERK: And 42 and 48 we're still waiting on.
THE COURT: Oh, right, Joseph.

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THE BAILIFF: Number 48, Judge, Aschkar, they don't pay for jury duty.

THE COURT: Forty-eight goes the way of the wind. Steve, this is who we have coming in. Sou is 33, at least on mine. Thirty-nine, Backus.

THE BAILIFF: Got it.

THE COURT: Forty-two, Joseph. Forty-six, Kramer.

THE BAILIFF: Got it.

THE COURT: That's it.

THE BAILIFF: Just four?

THE COURT: Yeah.

THE BAILIFF: Imagine that. Jurors are entering.

(Whereupon, the four prospective jurors were brought back into the courtroom.)

THE COURT: Mr. Joseph, did you get an answer?

MR. JOSEPH: No.

THE COURT: You're making a call. You're good on time, right?

MR. JOSEPH: Yeah.

THE COURT: All right. In a moment I'm going to turn you over to Maribel who's going to take you into our jury room, and we're going to give you a questionnaire that we would appreciate you filling out. The

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questionnaire does not call for your email address or phone number so, please, do not put it on there unless you want everybody to have it. There's also a jury information sheet where I'm asking that you please print your name, put your email address and a phone number that you can be readily reached at. I will tell you this is not for publication. It is strictly for my purposes in the event that we need to contact you in the event of an emergency. It's also going to give you information so that you can contact my office in the event of an emergency as well.

She's then going to take you out, show you where you need to be. I need you back on next Tuesday, the 2nd, at 1:30 in the afternoon. So you don't have to come in in the morning. You don't have to go to the jury room. You don't have to pass go, collect $200, because they're not going to give it to you anyway. So just follow Maribel, and we'll see you next week.

THE BAILIFF: Judge, you know the last group, we said 9:45.

THE COURT: I know. Now I'm going to the afternoon. We have enough for the morning.

(Whereupon, the prospective jurors went into the jury room.)

THE COURT: Steve, ready?

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THE BAILIFF: I'm ready, Judge.

Jurors are entering.

(Whereupon, the prospective jury panel entered the courtroom.)

THE COURT: Good afternoon, Ladies and Gentlemen.

PROSPECTIVE JURORS: Good afternoon, Your Honor. (Collectively).

THE COURT: Boy, it gets quieter and quieter as the day goes. Good afternoon.

PROSPECTIVE JURORS: Good afternoon. (Collectively).

THE COURT: Much better. I know they called you guys out in the morning. They weren't supposed to call you out until this afternoon. So don't blame me. If you're going to blame me, I'm going to give you a different name when I introduce myself. Speaking of which, let me introduce myself. My name is Paul Backman. I'm one of your judges here in the 17th Judicial Circuit. And what we are doing here today is looking for individuals who can sit on this case starting next Tuesday, and you guys after this session would be gone until next Tuesday afternoon at 1:30. They might be here for a little while.

We anticipate -- I'm going to give you an

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outside date and tell you in all likelihood it's going to be sooner than that, but I would rather be over the time than under the time. We anticipate this matter will be concluded before Thanksgiving. So that could be anywhere from three weeks, four weeks, five weeks. I don't know. We're not going to know until we get into it.

Now, we all recognize that in all of our daily lives, there are conflicts and a lot of those conflicts would interfere with your ability to participate. And I have a whole list of what those conflicts in all likelihood would be. I will read them out to you in a few moments. Then I'll start with Ms. Kiles and go down each row and see what information you have to impart.

First off, does anybody have any difficulty understanding and speaking the English language?

(One hand.)

THE COURT: Hold that thought. No, no, hold on. Ms. Pineda?

MS. PINEDA: Pineda, yeah.

THE COURT: Talk to me. I know your native language is Spanish?

MS. PINEDA: Yes, that's correct. My English is very poor. I cannot speak very well English.

THE COURT: I think you're speaking beautifully.

MS. PINEDA: Thank you.

THE COURT: What about understanding?

MS. PINEDA: Understanding, that's the problem with me.

THE COURT: Understanding or speaking?

MS. PINEDA: Yeah, understanding.

THE COURT: Okay. Anyone else? And don't tell me. Ms. Alvarez?

MS. GUILLAUME: Olga Guillaume.

THE COURT: Hold it. I missed -- oh, I see where you are. So last page top. Let me see. Creole?

MS. GUILLAUME: Yes.

THE COURT: Do you understand English?

MS. GUILLAUME: I'm try a little bit. Not much.

THE COURT: Okay. Now, as soon as I can find my list. Understand when I say we don't want you, it's not that we don't want you, but we don't want to interfere with certain things within a person's life that will have a dramatic impact. For instance, if you are a full-time student and being with us would interfere with your education, we don't want you. If you are a primary caregiver to a parent, grandparent, child or it's part of your professional responsibilities, we need to know. If you are unemployed and actively seeking employment, please, again, let us know.

If you have a prepaid vacation between now and

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Thanksgiving, please let us know. You raised your hand. I'm going to get to you. And there are a lot of dates that we can accommodate. Just depends on when they are. If you have child care issues where you cannot make arrangements in the afternoon for your child --

(Phone interruption.)

THE COURT: If it's for me, I'm busy. You know, my colleague directly below me would take the phone.

PROSPECTIVE JUROR: It never rings. It's the first time it rang. It's always on silent.

THE COURT: Yeah, I hear you. I say the same thing.

If you can't make alternative arrangements, we need to know. And so that you're aware and can answer intelligently, let me tell you what the anticipated schedule of the trial is. We work Tuesday, Wednesday, Thursday and depending on where we are, Friday, part of Friday, maybe all of Friday. We will not be in trial at any time on a Monday. That's when I do the rest of my work when I'm not in a proceeding of this nature. I like to have my jury back at 9:45, and I generally like to work until five, 5:30. Of course, there are times and days where we can make accommodations as far as afternoon times. As I say to every group, if the jury collectively tells me that they want to quit at 2:00 o'clock every

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afternoon, well, then you can look forward to being here until Valentine's Day. So every hour we miss is an hour that has to be made up. My philosophy over my 35 years on the bench has always been you're sacrificing your time to be with us, so my job is to get you in here and back to your everyday lives as quickly as I can, and I will work to do that.

If you have medical issues that you think would interfere with your ability to participate, I am not going to ask you what that medical condition might be. You have to make the determination yourself as to whether or not you think it would interfere.

If you work on commission or you work part-time or a combination of those two and you're not going to get paid and it affects you financially, again, we don't want you. If you have a full-time job and you know what your company's policy on paying for jury service is, just let me know. If you do not know what that policy is, I am going to ask you to please step outside of the courtroom, take your phone, call your employer and find out what that policy might be. Now, if you do that, please don't ask do you pay for jury service, because you might get an answer that says, yes, only to find out that they're only going to pay you for three days, five days, ten days and you're going to be here for weeks on end where you are

not getting paid. So please, if you make those phone calls, tell them the parameters of the trial. And tell them it could go that far but it may not. So, of course, any other creative reasons that you might be able to think of. So far nobody has been able to do that.

So why don't we start with you, Ms. Kiles. Tell me if you have any conflicts I need to deal with.

MS. KILES: Not that I -- I volunteer with the VFW, Veterans of Foreign War. I'm there four days a week, Tuesday through Friday and between one to nine. I mean, I don't know how else --

THE COURT: Well, you volunteer there, correct?

MS. KILES: Yes.

THE COURT: Do you work other than your volunteering?

MS. KILES: Yes.

THE COURT: You do?

MS. KILES: Yes.

THE COURT: What do you do?

MS. KILES: I bartend.

THE COURT: And what are your hours for that, at night?

MS. KILES: From one to nine. One in the afternoon to nine.

THE COURT: I thought you were at the VA? I

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mean --

MS. KILES: Veterans of Foreign War. It's a --

THE COURT: Oh, that's where you bartend?

MS. KILES: Yes. Yes, sir.

THE COURT: Is that the one in Dania?

MS. KILES: No, that's the one in Pompano Beach.

THE COURT: I was close. They're both in Broward County.

MS. KILES: Well, I live all the way west. Very far.

THE COURT: The bartending, I take it, you get paid for?

MS. KILES: Not really.

THE COURT: You volunteer to do that?

MS. KILES: Yeah, volunteer.

THE COURT: So that would be your only issue?

MS. KILES: Yes.

THE COURT: Thank you. Mr. Andrade?

MR. ANDRADE: Yeah.

THE COURT: Did I say that close?

MR. ANDRADE: Pretty close, yeah. Andrade.

THE COURT: What is it?

MR. ANDRADE: I am a full-time student and a part-time employee.

THE COURT: Where do you go to school?

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MR. ANDRADE: Broward College.
THE COURT: What are you studying?
MR. ANDRADE: Civil engineering.
THE COURT: Somebody's phone is buzzing. It's mine. How do you like that? It's mine.
MS. KILES: Good hearing.
THE COURT: They'll tell you, I can hear anything within the context of this courtroom. Hearing is not a problem.
MS. KILES: That's excellent.
THE COURT: I'm sorry, did you say something?
MS. KILES: (Laughing.)
THE COURT: Mr. Dean?
MR. DEAN: I have no conflicts.
THE COURT: You're good?
MR. DEAN: I am good.
THE COURT: Do you work?
MR. DEAN: I do work, and I also go to school full-time online.
THE COURT: So you don't have a conflict?
MR. DEAN: No.
THE COURT: Who do you work for?
MR. DEAN: Seminole Hard Rock Sport Services so I can rearrange my hours and pick up hours when I need. And as for UF, I do that online at my casual leisure.

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THE COURT: So you're okay being with us?
MR. DEAN: Very good. Studying criminology.
THE COURT: Mr. Molina?
MR. MOLINA: I have one trip booked.
THE COURT: When?
MR. MOLINA: From November 9th to the 12th. The 9th is a Friday. The 12th is a holiday so I guess just Friday would be the conflict.
THE COURT: That wouldn't be an issue. Going anyplace good?
MR. MOLINA: Just Nashville.
THE COURT: Do you work?
MR. MOLINA: Yes.
THE COURT: Where do you work?
MR. MOLINA: Securities and Exchange Commission.
THE COURT: I don't do any insider trading.
MR. MOLINA: Okay.
THE COURT: I don't do any trading. Are they going to pay you?
MR. MOLINA: Yes.
THE COURT: Are you sure?
MR. MOLINA: I'm sure.
MR. POLAY: It's federal, Judge.
THE COURT: Oh, right, yeah. Government.
Mr. Iglesias?

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MR. IGLESIAS: Yeah.

THE COURT: Did I pronounce it?

MR. IGLESIAS: That's good. I actually am a commissions salesperson so...

THE COURT: What do you do?

MR. IGLESIAS: I sell cruises at Carnival.

THE COURT: How about Royal or Celebrity?

MR. IGLESIAS: No, I work for Carnival so...

THE COURT: That's why you are sales for them.

MR. IGLESIAS: Right.

THE COURT: We've had a run on Carnival today.

MR. IGLESIAS: Oh, really?

MR. POLAY: We had Mr. Aaronoff.

MR. IGLESIAS: What was the name?

THE COURT: It's not Aaronoff, it's Aaronson. Get your people right.

Let's see, Mr. -- I'm not even going to try and butcher your name. How do you pronounce that?

MR. VALDIVIESO: Valdivieso.

THE COURT: All right. Talk to me.

MR. VALDIVIESO: So I have a paid vacation from October 5th until October 22nd. I'll be flying international. I work a full-time job too, and I'm a full-time student as well.

THE COURT: Good enough.

Ms. Hicks?

MS. HICKS: Hi. I'm a primary caregiver. I still have a daughter in high school at home that I care for, and I have my own business.

THE COURT: So if you're not working, you're not getting paid?

MS. HICKS: Right.

THE COURT: Ms. Schroder?

MS. SCHRODER: Hi. I'm a high school teacher so they'll pay me, but there won't be a sub for my students, which is an issue. I also work part-time in the afternoons.

THE COURT: You work for the Broward School Board?

MS. SCHRODER: Miami.

THE COURT: Miami. Okay. And your part-time job in the afternoon because I know teachers don't make a living wage --

MS. SCHRODER: Yeah.

THE COURT: -- is that income from that part-time job important to your bottom line?

MS. SCHRODER: Yes.

THE COURT: Ms. Alvarez?

MS. ALVAREZ: I work full-time, nine to five, and I also go to school in the afternoon, and I have two

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daughters that I care for.

THE COURT: Other than that --

MS. ALVAREZ: And -- no, I'm just kidding.

THE COURT: Where do you go to school?

MS. ALVAREZ: Broward College.

THE COURT: What are you studying?

MS. ALVAREZ: For sonography. And I work full-time at a pharmacy. It's an independent pharmacy so I'm not sure if they would pay me for the duration.

THE COURT: Which one do you work at?

MS. ALVAREZ: It's in Miami. It's Miami Shores Pharmacy.

THE COURT: Thanks. Mr. Stanley?

MR. STANLEY: Medical issue with my wife. I've been getting off from work every day early to assist with it.

THE COURT: Thank you. I hope whatever it is gets resolved in a good way.

Ms. McClain?

MS. MCCLAIN: I have three conflicts.

THE COURT: Only three?

MS. MCCLAIN: Only three.

THE COURT: Let's start with No. 1.

MS. MCCLAIN: No. 1, I currently work in the dependency court system so I'm kind of biased. No. 2, I

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have two children that have medical issues. I'm currently a foster parent as well, and I also have a child care issue. That's No. 3. So...

THE COURT: Well, you may have scored on all three of them. When you say you work in the dependency, you work in the courthouse?

MS. MCCLAIN: Well, no. I work for DCF so I'm here like three or four times a week.

THE COURT: On the other side or on this side too?

MS. MCCLAIN: On the other side. Not on this side.

THE COURT: Thanks. Mr. Arias?

MR. ARIAS: I'm a full-time student at Broward College, and I'm unemployed.

THE COURT: What are you studying?

MR. ARIAS: Creative writing.

THE COURT: What do you want to do, be a journalist?

MR. ARIAS: (Witness nods.)

THE COURT: Good. Ms. Davenport?

MS. DAVENPORT: I actually watch my nephew Monday through Friday, and I also pick my niece up from school.

THE COURT: Mr. Guadron?

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MR. GUADRON: Two things. I have a part-time job. It's 32 hours a week or so, and I don't have reliable transportation. I don't have a license.

THE COURT: So you have transportation also?

MR. GUADRON: Yeah.

THE COURT: Mr. Banghart?

MR. BANGHART: I work a full-time job. I'm the only one that works in my household, and my wife stays home with my brother who has Cerebral Palsy.

THE COURT: I'm sorry about your brother. Who do you work for?

MR. BANGHART: Trend Skins. It's a production company. It's for skin.

THE COURT: Do you know what their policy is?

MR. BANGHART: It's only three days. And I just literally started there too so...

THE COURT: Thanks. Mr. Hayles?

MS. GUILLAUME: Guillaume.

THE COURT: Mr. Hayles?

MR. HAYLES: I'm not sure what the policy of my job about paying for so many weeks.

THE COURT: Who do you work for?

MR. HAYLES: Broward County Waste Water.

THE COURT: If it's a -- if you work for Broward County, they pay. Is that the only possible conflict?

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MR. HAYLES: And just being on standby. You know, being on call. I usually go on call every third week.

THE COURT: Gotcha. Ms. Wimbley?

MS. WIMBLEY: I have a paid vacation.

THE COURT: When are you going?

MS. WIMBLEY: October 4th through the 9th.

THE COURT: Are you going anyplace good?

MS. WIMBLEY: Vegas. And I'm not sure about my job either.

THE COURT: Somebody earlier was also going to Vegas. Thank you.

Mr. Walker?

MR. WALKER: Yes, I work in sales, a hundred percent commission based.

THE COURT: Mr. Donoghue or Donogho?

MR. DONOGHUE: Donoghue. I have two vacations. One in October, 11th through 16th, and the week of Thanksgiving.

THE COURT: Week of Thanksgiving isn't a problem. I'll be on mine too.

MR. DONOGHUE: And I believe my company would pay for jury duty, but I have to verify.

THE COURT: Yeah, but you're going to be away for a whole week?

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MR. DONOGHUE: Yes.

THE COURT: Going anyplace good?

MR. DONOGHUE: Knoxville.

THE COURT: Mr. Ali?

MR. ALI: I have a vacation plan for October 11th to the 14th. Also, my primary responsibility at my work is to take three kids to school every morning and pick them up in the afternoon.

THE COURT: What time do you pick them up?

MR. ALI: I pick them up at -- one is at 2:30 and one is at 3:30.

THE COURT: Ms. Randazzo?

MS. RANDAZZO: Yes. I work nine to five for a mortgage company. I believe they pay three days, and I also have a wedding booked for next weekend.

THE COURT: Weekends are never a problem. I quit working weekends a lot of years ago.

MS. RANDAZZO: And I'm traveling out of the country.

THE COURT: Going anyplace good?

MS. RANDAZZO: First time Colombia.

THE COURT: Ms. Schuster-Paredes?

MS. SCHUSTER-PAREDES: Paredes. I'm a teacher as well and a single mom with two kids, a four-year-old and a seven-year-old. And I'm presenting in October --

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no, November 3rd to 7th in Orlando and then again on the 15th in Tallahassee.

THE COURT: What kind of presentations?

MS. SCHUSTER-PAREDES: I teach computer science.

THE COURT: Can you teach me how to turn mine on?

MS. SCHUSTER-PAREDES: Absolutely. Private classes, though.

THE COURT: Who takes care of the children?

MS. SCHUSTER-PAREDES: My kids are in extended day until five, 5:30, if I have to.

THE COURT: And you work for Broward County?

MS. SCHUSTER-PAREDES: Yes.

THE COURT: And the last but not least, Mr. Palmieri?

MR. PALMIERI: I have three conflicts. First, I'm a commissioned salesman.

THE COURT: You don't have to go beyond that.

MR. PALMIERI: Okay.

THE COURT: I mean, if you want to. You know, I'm nosey.

MR. PALMIERI: I also got an eighty-four-year-old mother that just had knee replacement. I got a ten-year-old that I take care of.

THE COURT: You got the trifecta.

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MR. PALMIERI: That's the first time ever.

THE COURT: Yeah, but you don't win anything.

MR. PALMIERI: Well, I don't lose anything either.

THE COURT: Okay. If you guys can do me a favor, just follow Steve for a minute. We'll have a few of you back for further instructions. And for those of you that aren't with us again, thank you for being with us today.

(Whereupon, the prospective jury panel left the courtroom.)

MR. WILLIAMS: Judge, the VFW, I think their liquor license provides they can't have paid employees. They do volunteer work on tips. That's why she was dancing around that she worked there.

MR. POLAY: We didn't have an IRS agent on there today.

MS. McCANN: I just said that to you and you blew me off.

THE COURT: I'm ignoring him, too.

All right. Let's see where it takes us. Fifty-one, Kiles, is good. Or I should say on the bottom of Page 4, second from the bottom, Kiles, she's good.

MR. SATZ: Unless you want to find out if she needs money if she's volunteering.

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THE COURT: Is she our tipper?

MR. WILLIAMS: Yeah, she works for tips.

THE COURT: I'll tell you what, I'll bring her back in with the rest and I'll ask her that question and then see whether or not it impacts her, unless you want me to just do it privately.

MR. POLAY: Sure, Judge. That's fine.

THE COURT: No. 52, Andrade, is a full-time student, gone. Fifty-three and 54, Dean and Molina, they're good, at least for the moment. Fifty-five, Iglesias, is gone. Valdivieso is traveling, 56. Fifty-seven, Hicks, self-employed.

THE CLERK: So far 51, 53 and 54 are the only ones we're keeping.

THE COURT: What are we doing with our teacher, 58, Schroder?

MR. WILLIAMS: She said she works part-time after school and needs the money.

THE COURT: Okay. Thank you. Fifty-nine, Alvarez, is a student. Sixty is based on medical. Yes?

MR. SATZ: Right.

THE COURT: Sixty-one, McClain, I think she falls into a lot of different categories.

MR. WILLIAMS: Exactly.

MR. POLAY: Yes.

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THE COURT: Sixty-two, Arias, is a full-time student. Sixty-three, Davenport, is a caregiver. Sixty-four, Guadron, works part-time and he has no transportation anyway. Sixty-five, Banghart, no work, no pay. Sixty-six is language.

MR. SATZ: Right.

THE COURT: Sixty-seven, Hayles, is okay. Sixty-eight, Wimbley, is traveling. Sixty-nine, Walker, is on commission. Seventy, Pineda, is language. Seventy-one, Donoghue, is travel. Seventy-two, Ali, I don't remember why he's no good, but he's --

THE CLERK: He's got a trip.

MR. POLAY: Children, children.

THE COURT: All I knew is he wasn't any good.

MR. POLAY: That's fine with us.

THE COURT: Seventy-three, Randazzo, no work, no pay. And what about Ms. Schuster-Paredes, 74?

MR. POLAY: Judge, the only thing with her, she indicated she had aftercare until 5:30. Just ask her where she lives just so -- because if she -- she's in Pembroke Pines, and I know it's an hour --

THE COURT: Well, what are we doing about her two trips?

MR. SATZ: It's November 3rd and 7th.

THE COURT: We're going to be in trial, I think.

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Aren't we?

MR. WILLIAMS: I thought she said --

THE COURT: I thought one was in October.

MR. POLAY: I thought it was November.

THE COURT: She's got two of them.

MR. POLAY: Never mind. We don't need the aggravation.

THE COURT: So we did exceedingly well.

THE CLERK: We didn't cover 75.

THE COURT: Oh, 75 is commission. So did we even get three? We have Kiles, 51. Dean, 53. Molina, 54.

THE CLERK: And 67.

THE COURT: And 67, Hayles. And I have to talk to 51, Ms. Kiles. Steve, I need the cards.

THE BAILIFF: All right. All right.

THE COURT: And just bring the three or four, whatever we have.

THE BAILIFF: Jurors are entering.

(Whereupon, the prospective jurors were brought into the courtroom.)

THE COURT: Ms. Kiles, I just want to ask a question. I know that you volunteer with VFW, but you get paid tips?

MS. KILES: Yes.

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THE COURT: Are those critical to your financial bottom line?

MS. KILES: Yes, sir. But my vehicle is not reliable either to drive that much really.

THE COURT: Okay. Let's give her her card.

All right. Steve is going to give you your card. You can go back to the jury room.

MS. KILES: Thank you, sir.

THE COURT: For the three lucky ones that are still with us for the moment. In a minute my deputy is going to take you into the jury room. We have a questionnaire that we're going to ask you to please fill out. It does not ask for your phone number. It does not ask for your email address so please don't put them. There's also a separate sheet that I'm asking that you please print your name, your email address, and a phone number that you can readily be reached at. I will tell you that it is for my purpose and my purpose only so that my office in the event of an emergency can get ahold of you, and you're also going to get information so that you know how to contact my office in the event of an emergency. Also, I need you to be back at 1:30 Tuesday, which is the 2nd, and you'll be shown where you need to be. You got all that, right?

THE BAILIFF: Yes, sir.

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THE COURT: So have a good afternoon and we'll see you Tuesday.

THE BAILIFF: Everyone follow me, please.

(Whereupon, the prospective jurors went into the jury room.)

JA COE: So the jury issues start.

THE COURT: All right. I guess we have some juror issues already. They don't even leave here.

JA COE: Well, I'll try to --

MR. WILLIAMS: Is it from yesterday or today?

JA COE: I'll try to jog your memory, yeah.

MR. WILLIAMS: Yesterday?

JA COE: Yeah.

MR. WILLIAMS: I just want to pull the right sheet up.

JA COE: I'll tell you. So Anthony Piazi (ph).

THE CLERK: Wasn't that yesterday?

JA COE: He was from September 25th, yesterday, the afternoon group in the third group. Let me know when you all got it.

MS. McCANN: He's on Page 6, fifth from the bottom or sixth from the bottom.

THE CLERK: He was No. 71.

JA COE: So he called. I just spoke to him. He just spoke to human resources. He is employed by Bank of

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America. Bank of America pays their employees for 26 weeks, but that wasn't his issue. His issue was he is on salary and bonuses so 30 percent of his pay is from bonuses, 70 percent is salaried, and he gets quarterly incentives. So it's going be a hardship for him if he misses out on those.

He also wanted me to let you know that he knows Jeffrey. He didn't know if that -- Judge Backman's son. He didn't know if that mattered or anything but he said he's best friends with the brother-in-law at Jeffrey's wedding. His brother-in-law, Jared Thatcher.

THE COURT: Oh, I know Jared, yeah.

JA COE: So that was Mr. Piazi. Are we excusing him?

MR. WILLIAMS: He's got that much invested.

MR. POLAY: Yeah, Judge, that's a lot of money. I have no problem with excusing him.

THE COURT: All right. So he's gone.

MR. SATZ: Well, if he's going to lose money, that's what we've been doing with everybody.

MR. POLAY: And if he knows Jeff.

THE COURT: Well, that's the best part.

JA COE: Okay. The other one -- I'm waiting on call-backs from the other three, but I just wanted to bring to your attention that one of them, his name is

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Donovan Emarte (ph). He's not one of the jurors. He is the employer of a juror who happens to be a principal scientist. This Donovan gentleman is the director for US Farmer. Does that ring a bell?

MR. SATZ: Yeah. It was -- is that Kavanaugh?

JA COE: I'm not sure because he didn't leave the name of the juror. He just kind of went on about who he was.

THE COURT: It's kind of important to know.

JA COE: I know. So I left him a message to call back and let me know which juror, but if you guys already know.

MR. WILLIAMS: I remember the US Farmer.

JA COE: He just wants to excuse him. He wants to waive him at least until the end of the year because his job is --

MR. SATZ: That's the guy who said waiver? That's Kavanaugh.

JA COE: Okay. You put two and two together. That's what Mr. Donovan Emarte said as well. He says he doesn't mind if you put him back in the pool. Just don't want to give him up.

THE COURT: He doesn't want him to swim right now.

JA COE: Yeah. So I'm going to get more

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information from him, and I can let you know. And the other one, Ashley Marie Cole, she has an employer. She wants to let me know about her employer. She didn't leave any specific message. I have a message back to her.

MR. WILLIAMS: Which day was she on?

JA COE: She was from the 25th in the morning group, the second group.

THE COURT: Well, I guess we have to get more information on both.

JA COE: I'm definitely going to give you the information when I get the call back. And the other one was John Cilcox (ph). He is on the very first 25th morning group from yesterday. He was going to call us back because remember, his wife told him some days, but he wasn't sure of the dates. He wasn't going to be here so he had to check with his wife. So he was a little bit more specific on the dates that he's out and they are October 19 and 26th, which are two Fridays, the 30th, which I believe is a Tuesday, of October, and the 9th of November and the 23rd of November, which is the day after Thanksgiving.

THE COURT: And the 9th is also a Friday.

JA COE: Yeah.

MR. WILLIAMS: Judge, going back to Ashley Marie

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Cole, this is the one that she's a medical biller for a dermatologist. There's no way this guy is going to pay her.

THE COURT: I agree.

MR. WILLIAMS: For six weeks.

JA COE: Well, do you want to wait until I hear back from her?

THE COURT: Yeah, let's not do anything until we actually get --

JA COE: More specifics?

THE COURT: Yeah.

JA COE: That's it.

MR. POLAY: So with Cilcox, it's not interfering. It's a Friday.

MR. SATZ: No, it's not.

JA COE: Are we not working Fridays?

THE COURT: That depends. I mean, we can make some Fridays available for people.

MS. McCANN: The 19th is a Friday that I had told everyone that I was going to be out.

THE COURT: Right.

MR. POLAY: Right. Exactly.

MS. McCANN: So that leaves the 26th and November 9th is a Friday.

THE COURT: And the 30th is a Tuesday.

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MS. McCANN: Tuesday.

MR. SATZ: Why don't we leave him and let's see where we are going. We don't have many jurors.

JA COE: I'm going to leave him. He just wanted to let you know the more specifics.

THE COURT: Once we know the more specifics, we'll deal with it in more detail.

JA COE: With Ms. Cole and is it Kavanaugh?

MR. SATZ: Yeah.

THE COURT: All right.

JA COE: I'll write that down. All right.

MR. POLAY: Thank you.

THE COURT: 9:30 tomorrow, please. Thank you.

(Whereupon, the proceedings were adjourned.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

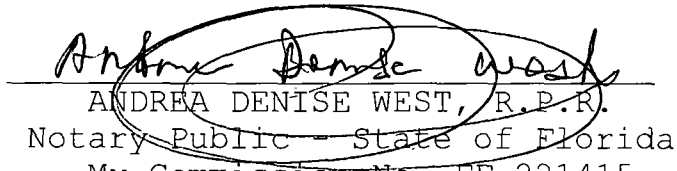
SS:

COUNTY OF BROWARD)

I, Andrea Denise West, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings, Pages 1 through 173, and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am neither attorney or party, nor am I related to or employed by any attorney or party connected with the action, nor am I financially interested in the action.

Dated this 8th day of February, 2019.



ANDREA DENISE WEST, R.P.R.
Notary Public - State of Florida
My Commission No. FF 221415
Expires: JUNE 3, 2019

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA CRIMINAL DIVISION

STATE OF FLORIDA,	)	
	)	
Plaintiff,	)	
	)	CASE:
vs.	)	NO. 02-005900CF10B
	)	JUDGE PAUL L. BACKMAN
GERHARD HOJAN,	)	
	)	
Defendant.	)	
	X	

ORIGINAL

Fort Lauderdale, Florida
September 27th, 2018
9:45 o'clock A.M.

VOLUME V
TRANSCRIPT OF PROCEEDINGS
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The above-styled case came on for hearing before the Honorable Paul L. Backman, Presiding at the Broward County Courthouse, 201 Southeast 6th Street, Room 5780, Fort Lauderdale, Florida, on the 27th day of September, 2018, commencing at 9:45 o'clock a.m.

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APPEARANCES:

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BY: MICHAEL SATZ, STATE ATTORNEY, and
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Fort Lauderdale, FL 33301
appearing on behalf of The State.

LAW OFFICE OF MITCHELL POLAY
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LAW OFFICE OF H. DOHN WILLIAMS
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990 NW 5TH STREET
BOCA RATON, FL 33486
appearing on behalf of The Defendant.

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Thereupon, the following proceedings were had.

THE COURT: Are we ready?

MR. POLAY: Yes.

MR. WILLIAMS: Yes, sir.

THE BAILIFF: Jurors entering.

(Whereupon, the prospective jury panel was brought into the courtroom.)

THE COURT: Good morning, Ladies and Gentlemen.

PROSPECTIVE JURORS: Good morning. (Collectively).

THE COURT: Enthusiastic. You should have seen the groups yesterday and the day before. They were much less enthusiastic at this hour.

Let me introduce myself. My name is Paul Backman. I'm one of your judges here in the 17th Judicial Circuit. Mr. Runge, you can have any open seat in the front row.

MR. RUNGE: I appreciate it.

THE COURT: What we are doing here today, we are looking for individuals who can sit during this proceeding starting next Tuesday, and I will give you an outside date that it will be completed before Thanksgiving. It could be three weeks from next week; it could be four; it could be five; it could be six. I learned a long time ago in my career that it's better to

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give you a far-out date than a date that's too soon and then discover that everybody has to rearrange all of their schedules.

Now, I recognize, and we all recognize, that every single one of us have conflicts in our daily lives that do affect our timing. And I do have a comprehensive list of, I'm not going to say excuses, but conflicts that arise that we all believe would have an impact on you. And I don't want you to think that if I make the comment that we don't want you, it's not that we don't want you. It's that we're not going to interfere with your everyday lives.

First and foremost, is there anybody here that does not speak and understand the English language?

Ms. Leon?

MS. LEON: Yes.

THE COURT: Spanish?

MS. LEON: Spanish.

THE COURT: Habla Inglés?

MS. LEON: Un piquito.

THE COURT: Un piquito. Now you've heard my Spanish.

Anyone else have a language issue? Okay.

Now, I don't want anybody to raise their hands as I go through this. Once I've gone through the list,

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I'm going to start with Ms. Corcino or -- is that the way you pronounce it?

MS. CORCINO: Yes.

THE COURT: And I'm going to go down the front row, I'm going to go to the second row, and I'm going to go to the third row and even our special seat all the way at the end.

So here's what we're looking for. If you are a full-time student and being with us would interfere with your education, we are not going to interfere with that education but you certainly need to tell us. If you are a primary caregiver, that is you care for a parent, a grandparent, a child or it's part of your professional responsibilities, please let us know. If you are unemployed at the present time and you are actively seeking employment, please let us know. If you have a prepaid vacation between now and Thanksgiving, please let us know. Many of the prepaid vacations or the time that you are going to be away might very well match with what our schedule is. And again, if you don't tell me, I don't know.

If you have child care issues where you cannot make alternative arrangements in the afternoon to pick up your children, no alternatives at all, please, again, let us know. If you have any medical issues, which you

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believe will interfere with your ability to be with us to concentrate or in any other manner, please let me know. I can tell you one of the most common ones I get are individuals that, you know, their lower back hurts and they have to stand up from time-to-time. That's never an issue. We get individuals that constantly need to utilize a restroom. That's never a problem. If you are a diabetic and your blood sugar runs low and you either need to take some insulin or you need to eat something, again, those are very easy to accommodate. I will not ask you what kind of medical condition you have, only whether or not you believe it would interfere with your being here.

If anyone works on commission or you work part-time plus commission and the loss of that income would interfere with your bottom financial line, again, you need to let us know. We have no intention of interfering with anybody's financial well-being. I don't want anybody to blame me for getting thrown out of a house. It's not going to happen.

Last but not least. If you are a full-time employee and you do not know what the policy of your employer is in regard to paying for jury service, I'm going to ask that you immediately leave the courtroom, make a phone call and see if you can find out what that

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policy is. Now, if you do have to make that call, please, don't ask them, do you pay for jury service, because many of them will say yes and then you find out that they will only pay you for three days, five days, ten days. You need to tell them what the parameters of the trial are and whether or not they will pay you for every day that you are present, and getting verification that you're actually here is no issue whatsoever. If you know what the policy is, let us know.

Now, the last thing I think you need to know before I start going through each of you individually is what our trial schedule would look like. We will be in trial Tuesday, Wednesday, Thursday and Friday will always be a determination that gets made Thursday night. Depends on where we are with the availability of witnesses. We may not work, we may work half a day, we may have to work a full day, but you should consider that you might need to be here four days a week.

My philosophy is that as potential jurors and as jurors, what we ask of you is a sacrifice of your time to be with us, to actually participate and live our Constitution because this is one of the fundamental rights we all choose.

We will not be in trial on Mondays. That day I do the rest of my work other than when I'm in trial. So

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those are our days. And my belief is to get you in here and out of here back to your everyday lives as quickly as I can. If there are delays during the course of the trial, I will always tell you what they are providing that I'm at liberty to do so.

So with that in mind, Ms. Corcino -- and by the way, if I screw up your name, please let me know. I tried to study all of them last night, but I don't always study very well. I never learn that.

Ms. Corcino, talk to me.

MS. CORCINO: I have two prepaid vacations between now and Thanksgiving.

THE COURT: When?

MS. CORCINO: I have one for Columbus Day weekend, which is domestic, and I have an international prepaid vacation from November 9th through the 18th.

THE COURT: Going anyplace good?

MS. CORCINO: Spain.

THE COURT: That's good. We can always move the trial to Spain with you. Take away from your sightseeing abilities.

Okay. By the way, if you need to use the restroom while we are here, just feel free, pick yourself up. You don't have to raise your hand, you don't have to ask for permission. They're outside on either side of

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the, what do you call it? Oh, the elevators. That's what they're called.

The dates of your Columbus Day, Columbus Day --

MS. CORCINO: I leave on Friday and I come back on Monday night.

THE COURT: Okay. So if we didn't work that Friday and as I said, we don't work on Monday, you would be okay?

MS. CORCINO: Yes.

THE COURT: And, obviously, if we finish the trial before you left for Spain, you would be okay?

MS. CORCINO: Yes.

THE COURT: Do you work?

MS. CORCINO: Yes.

THE COURT: Who do you work for?

MS. CORCINO: I work for an investment management company.

THE COURT: Do they pay?

MS. CORCINO: I don't know their policy on jury duty. I think I'd be the first. It's a small office so I would have to ask.

THE COURT: Could you do me a favor and at least make a phone call?

MS. CORCINO: Yes.

THE COURT: Mr. Mazza?

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MR. MAZZA: Yes, sir. No prepaid vacations.

THE COURT: Do you have any other conflicts? Do you work?

MR. MAZZA: I work full-time.

THE COURT: Who do you work for?

MR. MAZZA: Wine and spirits distributor.

THE COURT: Do you know what their policy is?

MR. MAZZA: No.

THE COURT: Would that be your only other conflict?

MR. MAZZA: Well, I have family and kids.

THE COURT: Tell me how that will interfere. Oh, I forgot to tell you, the schedule in terms of timeframe is I like to have my jury back at 9:45, and I like to work until 5, 5:30. And, again, that depends on time commitments, people. I will tell you if you make the jury and the jury collectively says they want to only work until 2:00 o'clock in the afternoon, that's fine with everybody, but plan on being here until February. So, again, every hour you don't work, we have to pick up. So would any of that interfere?

MR. MAZZA: I don't think so.

THE COURT: Could you make a phone call for me, please?

MR. MAZZA: Yes, sir.

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THE COURT: Mr. Applegate?

MR. APPLEGATE: Self-employed, commission.

THE COURT: What do you do, sir?

MR. APPLEGATE: Hurricane shutters.

THE COURT: Oh, you're almost getting out of season.

MR. APPLEGATE: Yeah, just about.

THE COURT: Almost. But I would imagine you still work during that period of time after hurricane season?

MR. APPLEGATE: It's slows down quite a bit.

THE COURT: But you still work --

MR. APPLEGATE: Yeah.

THE COURT: Ms. Beard?

MS. BEARD: Yes. Only inconveniences I have is I have to take my daughter to school, and then on that Thursday, I have to pick her up and Fridays, so her schools close at 6:00 and she's in Miramar so --

THE COURT: Not a problem.

MS. BEARD: Yeah, that's the only inconvenience there would be. And I work full-time at Vita's (ph). I know they pay. I just don't know the length of it.

THE COURT: I think we ought to find that out.

MS. BEARD: Okay.

THE COURT: Please.

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Mr. Runge?

MR. RUNGE: I have a prepaid vacation, but it's the 12th, so as long as we are -- if we usually end around 5:30, that should be fine.

THE COURT: When do you come back?

MR. RUNGE: I was going to come back that Sunday so...

THE COURT: Okay. So that's not an issue?

MR. RUNGE: It's a non-issue.

THE COURT: What about work?

MR. RUNGE: I'm not sure. I'll have to make a call to see.

THE COURT: Who do you work for?

MR. RUNGE: Teleperformance.

THE COURT: I don't think we've had them before.

THE CLERK: We haven't.

MR. WILLIAMS: No, sir.

THE COURT: If you would, please.

MR. RUNGE: Thank you.

THE COURT: Ms. De Lima-Santiago?

MS. DE LIMA-SANTIAGO: I'm good. I work for Memorial Hospital, and I do believe they pay.

THE COURT: They sure do.

Ms. Sara?

MS. SARA: Hi. I have a prepaid vacation, but

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it's from the 9th to the 12th.

THE COURT: Of?

MS. SARA: Of November.

THE COURT: That's a Friday to Monday.

MS. SARA: So I should be good.

THE COURT: Do you work?

MS. SARA: Yes.

THE COURT: For?

MS. SARA: SunKidz Pediatric Dental assistant.

THE COURT: Do you have any clue whether they pay?

MS. SARA: No.

THE COURT: So you might want to check that out.

MS. SARA: I'm going to check. Okay.

THE COURT: Tell me. I can't pronounce that name. I'll just put juror.

MR. THAMARASSERIL: Korulla Thamarasseril.

THE COURT: I was almost going to say it like that. Do you have any issues?

MR. THAMARASSERIL: I work for Memorial Healthcare System. I work nights and their schedule is flexible. That's all.

THE COURT: Well, when you work nights, what are the hours?

MR. THAMARASSERIL: They start at 6:30 until

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7:15 in the morning.

THE COURT: Well, I don't know that I would want you coming in here at quarter to ten after getting off from work at 7:30.

THE CLERK: When does he sleep?

THE COURT: When do you sleep?

MR. THAMARASSERIL: This is the time to sleep, daytime.

THE COURT: So we're interfering with your sleep right now?

MR. THAMARASSERIL: I might fall asleep.

THE COURT: So might I, but that's a whole different issue. In 35 years, I've learned how to actually pretend like I'm awake with my eyes open and sleep. Can you call and find out how flexible those hours are?

MR. THAMARASSERIL: I got a schedule like every month, like Sunday, Monday, Tuesday. And the next month I work Wednesday, Thursday, Friday. That's my schedule. Three nights in a row.

MR. WILLIAMS: He works 36 hours.

THE COURT: Yeah, I realize it's 36 hours, but some of it might interfere with us.

MR. THAMARASSERIL: I was supposed to work last night and tonight, but I'm going to take off.

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THE COURT: Well, Mondays, of course, is not an issue. We do not want any of you using your vacation time or your personal time, if your employer provides it. Can you ask them what their policy would be as far as whether or not they would pay you?

MR. THAMARASSERIL: They will pay.

THE COURT: No, no, no. That's an assumption, and you can find yourself on the jury and discover you're not getting paid.

MR. THAMARASSERIL: I think they pay.

THE COURT: Mr. Burman?

MR. BURMAN: Full-time student.

THE COURT: Where do you go to school?

MR. BURMAN: Florida Atlantic University.

THE COURT: What are you studying?

MR. BURMAN: Business.

THE COURT: I just ask those because I'm an inquiring mind and I'm nosey.

Let's see. Ms. Beard just came back.

MS. BEARD: Yes. They said how many days it is, they pay. As long as I get the letter, no problem.

THE COURT: Oh, that's absolutely no issue.

MS. BEARD: Right.

THE COURT: Oh, Ms. Corcino is back.

MS. CORCINO: They pay five days.

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THE COURT: That takes care of that. You don't have to worry about your trips at all.

Mr. Reyes?

MR. REYES: Full-time student.

THE COURT: Where do you go to school?

MR. REYES: Broward Community College.

THE COURT: What are you taking?

MR. REYES: Education.

THE COURT: You want to be a teacher?

MR. REYES: Yes.

THE COURT: Ms. Archer?

MS. ACHER: Acher.

THE COURT: Acher. I apologize.

MS. ACHER: That's okay. I don't have any conflicts, but I'm a full-time teacher for Broward schools.

THE COURT: They pay.

MS. ACHER: Yes, they do.

THE COURT: What do you teach?

MS. ACHER: What do I teach or where?

THE COURT: No. What?

MS. ACHER: Oh, language arts.

THE COURT: Okay. Mr. Leblanc?

MR. LEBLANC: Full-time college professor at Lynn University.

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THE COURT: What do you profess?

MR. LEBLANC: Advertising and design. I've got one vacation for my son's birthday, two small kids that I pick up from school three days a week. And we leave on Friday, October 19th, I believe. We're going up to Universal Studios.

THE COURT: Fridays are generally easier to accommodate. How long are you going, just the weekend?

MR. LEBLANC: Just the weekend.

THE COURT: When are your classes?

MR. LEBLANC: Five days a week starting at 8:00 o'clock in the morning and two days a week I get out at 8:00 o'clock at night.

THE COURT: You indicated that you picked up your children?

MR. LEBLANC: Three days a week. Monday, Wednesday, and Friday I get out at two and I go and run and pick them up, and on Tuesdays and Thursdays, I work late. I have late classes.

THE COURT: If you were to be with us on the -- you said Wednesday and Friday you pick up the children --

MR. LEBLANC: Monday, Wednesday, Friday.

THE COURT: Yeah, but we're not in trial on Mondays.

MR. LEBLANC: Right. Okay.

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THE COURT: Would you be able to make alternative arrangements if you were on our jury?

MR. LEBLANC: I would try. I'm not sure if I could, but I would try.

THE COURT: Well, nobody can do anything beyond that. The other question is, if you're on the jury, what's the university going to do in terms of your pay?

MR. LEBLANC: I'm not sure because I just started full-time at that university this year, and I'm not sure. I kind of teach a specialty field, and I'm not too sure what they would do. I would have to call and find out what the policy is.

THE COURT: Could you do that for me, please?

MR. LEBLANC: Yes.

THE COURT: Ms. Adams?

MS. ADAMS: Good morning. I am a full-time employee. I just don't know the policy.

THE COURT: Who do you work for?

MS. ADAMS: ChemUSA. They sell industrial maintenance products to other companies.

THE COURT: Would that be your only conflict?

MS. ADAMS: Yes, sir.

THE COURT: Could you do me a favor and make a call?

MS. ADAMS: Yes, sir.

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THE COURT: Thank you.

Ms. Arias?

MS. ARIAS: Yes, good morning. I'm also full-time employed.

THE COURT: Who do you work for?

MS. ARIAS: Health First Infusion. It's a home infusion company.

THE COURT: You don't know their policy either?

MS. ARIAS: (Shakes head.)

THE COURT: Is that your only potential conflict?

MS. ARIAS: Yes.

THE COURT: If you would be so kind just to make a phone call.

MS. ARIAS: Sure.

THE COURT: Mr. Edwards?

MR. EDWARDS: Yeah, my full-time employer, they do pay, the School Board.

THE COURT: Oh, absolutely, they do.

MR. EDWARDS: My part-time employee, no, they don't pay. Lowe's.

THE COURT: How often do you work part-time?

MR. EDWARDS: Part-time, 20 hours a week.

THE COURT: But is that on the weekends, is that after work?

MR. EDWARDS: They have me Wednesday through Sunday.

THE COURT: After work?

MR. EDWARDS: Yeah. So I go from four to ten.

THE COURT: Is that part-time income necessary for your financial well-being?

MR. EDWARDS: Yeah.

THE COURT: What do you do for the School Board?

MR. EDWARDS: Custodial.

THE COURT: Full-time?

MR. EDWARDS: Yeah.

THE COURT: Thank you.

Ms. Williams?

MS. WILLIAMS: Full-time employment. I'm not sure about their policy.

THE COURT: Who do you work for?

MS. WILLIAMS: Frozen Treat.

THE COURT: Oh, we need you so you can bring the treats for us.

MS. WILLIAMS: Yes, sir.

THE COURT: Would that be your only potential conflict?

MS. WILLIAMS: Yes.

THE COURT: You know the routine.

MS. WILLIAMS: Yes, sir.

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THE COURT: Mr. Black?

MR. BLACK: Yes, I work full-time for a small physicians group, Anesthesia Pain Care.

THE COURT: Are you a physician?

MR. BLACK: No, I'm not. I'm the administrator for the practice. I do all sorts of stuff every week. I haven't missed more than a week of work in 20 years.

THE COURT: I have.

MR. BLACK: What's our policy, I do not know.

THE COURT: Would that be your only potential conflict?

MR. BLACK: Yes.

THE COURT: Could you check for me, please?

THE BAILIFF: You have to go outside and check.

THE COURT: Ms. McLune?

MS. MCLUNE: Good morning.

THE COURT: Hi. So far it is a good morning.

MS. MCLUNE: Not for me. Well, I'm a full-time employee with the Broward County School Board, and yes, they will pay.

THE COURT: We know that.

MS. MCLUNE: But my mother, she's in Jamaica. She's up and down. We had to fly out last week, Wednesday, spent six days down there. She's weak and I don't know how she's doing. Plus, I was in a car

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accident last night.

THE COURT: Are you okay?

MS. MCLUNE: Yeah, I just feel a bruise on my arm and thank God, everybody came out okay.

THE COURT: That will go away probably never.

MS. MCLUNE: Tomorrow.

THE COURT: Let me ask you this: If I told you if you were on this panel and you had to go to Jamaica because of your mother's situation, because we're going to have lots of alternates as well, would that work out for you?

MS. MCLUNE: Yes.

THE COURT: From the accident, does that create an issue with your ability to sit? I mean, we do take breaks from time to time.

MS. MCLUNE: No. I just have to have a car. Right now my sister is in Jamaica so I'm driving her car.

THE COURT: What happens when your sister is here?

MS. MCLUNE: I just have to get a rental car, I guess.

THE COURT: Insurance company is not providing a rental for you?

MS. MCLUNE: Yeah, but it costs you a little bit out of your pocket.

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THE COURT: Mr. Donofrio?

MR. LOISEAU: Wilfrand. Yeah, I work for Motorola Solutions. I know they pay.

THE CLERK: Judge, you skipped someone.

THE COURT: Oh, who did I skip?

THE CLERK: You transposed the names.

THE COURT: Oh, you're right. Well, I'll deal with Mr. Donofrio and then I'll go back. You're Mr. --

MR. LOISEAU: Loiseau.

THE COURT: Right. Okay. So now I have to go with Mr. Donofrio.

THE CLERK: No, stick with this guy. Call him the right name.

THE COURT: Oh. Loiseau? Is that close to your right name?

MR. LOISEAU: Loiseau. I know they pay, but I have a conflict with my daughter. I have to drop my daughter off to school. She's in middle school.

THE COURT: What time?

MR. LOISEAU: The earliest I can drop her off is 8:45.

THE COURT: I'm not even awake. But where do you drop her off in terms of?

MR. LOISEAU: Coral Springs Middle School.

THE COURT: Okay. So you could probably be here

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by 9:45.

MR. LOISEAU: Yeah.

THE COURT: Do you pick her up?

MR. LOISEAU: No, my wife picks her up.

THE COURT: And you're sure they pay you for every single day you're here?

MR. LOISEAU: I believe so, yes.

MR. WILLIAMS: I didn't hear the name of his employer.

MR. LOISEAU: Motorola Solutions.

THE COURT: Wasn't Motorola 30 days?

MR. WILLIAMS: I don't remember on that.

THE COURT: Could you call them and find out, please?

MR. LOISEAU: Okay.

THE COURT: I don't want you to make an assumption that they pay and then you find out that you're on the jury and they don't.

Now let's go to Mr. Donofrio.

MR. DONOFRIO: I think they only pay for three to five days.

THE COURT: Okay. Thank you.

Mr. Sillah?

MR. SILLAH: Sillah.

THE COURT: Sirrah?

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MR. SILLAH: Sillah.
THE COURT: Sillah?
MR. SILLAH: Yes.
THE COURT: Third time is a charm.
MR. SILLAH: I work full-time. I'm a senior project manager for Fisk Electric, a subsidiary of --
THE REPORTER: I'm sorry, a subsidiary of what?
MR. SILLAH: Fisk, F-I-S-K, Electric.
THE COURT: Do you know what their policy is?
MR. SILLAH: I will confirm. I think they do, but I will confirm.
THE COURT: Is that your only potential conflict?
MR. SILLAH: That's my only potential conflict, yes.
THE COURT: Could you please make a call?
MR. SILLAH: Okay.
THE COURT: Ms. Grace? Mr. Grace. I'm really getting bad on this.
MR. GRACE: I'm self-employed.
THE COURT: What do you do?
MR. GRACE: I'm a photographer and I do like content creation on social media.
THE COURT: So if you're not working, you're not making any money?

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MR. GRACE: And business is slow right now, and I just bought a house. Wife's not too happy.

THE COURT: I'm not touching that.

Mr. Fine?

MR. FINE: I have a prepaid vacation October 11th to the 15th, and then my wife has a prepaid vacation on November 7th, but I only bring that up because that makes me primary caregiver for our three kids, and I run a small business.

THE COURT: What kind of a business?

MR. FINE: We make awards, crystal and glass awards.

THE COURT: Oh. Mr. Jacknow.

MR. JACKNOW: I just moved here from New York about two months ago, and I start a new job on Monday, a private security company.

THE COURT: Boy, did they get you fast.

MR. JACKNOW: I don't know how it's possible. I have a driver's license eight weeks. And I just served federal grand jury in New York in August of last year for two weeks.

THE COURT: Boy, they must have you tagged.

MR. JACKNOW: Is that a record?

THE COURT: Understood.

Mr. Runge still isn't back. Ms. Sara, still not

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back. Where's my professor? He's not back. Ms. Adams?

MS. ADAMS: Three days, sir.

THE COURT: Okay. Ms. Arias?

MS. ARIAS: Three days.

THE COURT: Mr. Williams? Not back. Mr. Black?

MR. BLACK: I'm not eligible for pay.

THE COURT: Really?

MR. BLACK: Yes.

THE COURT: Why is that?

MR. BLACK: I spoke to the owner. He said can't do it.

THE COURT: You work for a small company, don't you?

MR. BLACK: Yes.

THE COURT: Let's see. Mr. Loiseau, he's not back. Mr. Sillah, he's not back. Okay. Here's what I'm going to ask of you at the present time. If you would kindly follow Steve. He's going to take you outside. Some of you, we will have back in just a little bit, and I will give those individuals further instructions. For those of you that aren't going to be coming back in, I want to thank you on behalf of all of us for your participation. We all appreciate it. And, of course, then we're going to have to send you back to the jury room and they've got a five-year trial they're looking

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for people for. Just follow Steve. Don't worry about the five-year trial.

(Whereupon, the prospective jury panel left the courtroom.)

THE COURT: Just so you know, I had Steve tell the other 50 out there, if they're full-time employees to call their employers to find out so maybe we can short circuit some of that.

MS. McCANN: Good.

MR. POLAY: That's a good idea.

THE COURT: Occasionally, I get there. It's only the last day.

MR. POLAY: Why didn't I think of that?

THE COURT: Maybe. All right. Start from the beginning. No. 1, Corcino, not going to get paid. Mr. Mazza, we're waiting for a phone call. For the moment, he's okay. We'll keep Mr. Mazza for the time being. Three, Applegate, works on commission. I have No. 4, Beard, is okay. We're waiting for a phone call on No. 5, Mr. Runge. So we'll keep him. De Lima-Santiago, No. 6, is okay. Waiting on a phone call from No. 7, Sara. For the moment, she's with us. No. 8, I'm not even going to try the name -- Thamarasseril, whatever, he's okay.

MR. POLAY: How is he okay if he's working --

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THE COURT: No, wasn't he going to make a phone call to find out?

MR. POLAY: Yeah, but he --

MS. McCANN: I don't think we told him to make a phone call.

MR. SATZ: I think we did tell him to make a phone call, but even if he makes a phone call, if he's working at nights.

THE COURT: Whatever you want to do. You know that.

MR. POLAY: I'm with Mr. Satz on this one. I mean, we don't need a sleeping juror.

THE COURT: Okay. No problem. Scratch that. No. 8 is gone. No. 9 is language. No. 10, Burman, is a student. No. 11, Reyes, is a student. I show that 12, Acher, is okay.

MR. SATZ: Right.

THE COURT: We're waiting for a call from our professor, No. 13. I don't know what they're going to tell him. Fourteen is no work, no pay. Fifteen, no work, no pay. Sixteen, even though Mr. Edwards works for the School Board, his part-time job will interfere.

MR. WILLIAMS: Right.

THE COURT: So he's okay. Seventeen, Williams --

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MR. SATZ: What do you mean he's okay? You said okay, he's okay.

MR. WILLIAMS: He works four to ten.

THE COURT: Hold it, hold it. Who are we talking about?

MR. SATZ: Edwards.

THE COURT: Oh, right. That's why I said part-time and he's gone.

MR. SATZ: Then you said okay.

THE COURT: Oh, he did?

MR. SATZ: No, you did.

THE COURT: No, I said he was part-time.

MR. WILLIAMS: Yeah, but then you said he was okay.

THE COURT: Never mind. Forget it. No. 16 is gone.

MR. SATZ: All right. Good.

THE COURT: Thank you. Seventeen, we're waiting on a phone call. Eighteen is no work, no pay. Nineteen, Ms. McClune, if her mother is going to have issues down in Jamaica, she -- I don't know what you want to do with her.

MR. SATZ: I say let her go.

MS. McCANN: She also has transportation problems.

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THE COURT: Until her car is fixed. All right. Gone?

MR. SATZ: Yeah.

THE COURT: No. 20, Loiseau, we're waiting for a phone call, but was there another issue?

MR. WILLIAMS: Well, he's going to check with Motorola, and the only -- it wasn't really an issue. He just drops his daughter off at 8:45.

THE COURT: Right, which is not an issue. I just kind of think that Motorola was 30 days. I don't know why that sticks in my mind.

MR. SATZ: We'll find out.

THE COURT: Yep. Twenty-one, Donofrio, no work, no pay. We're waiting on Sillah, 22, for an update. Twenty-three, Grace, no work, no pay. Twenty-four, Fine, traveling. And 25 has a new job?

MR. WILLIAMS: Yes, starts Monday.

MR. SATZ: Judge, on Mr. Fine, he was October 11th to the 15th. Isn't that a weekend?

THE COURT: Yeah, but he also owns his own business.

MR. WILLIAMS: Yeah. He says he makes crystal awards and stuff.

THE COURT: Right.

MR. SATZ: Did he say that that's going to be a

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financial hardship?

MR. WILLIAMS: We can bring him back in and ask him.

MR. SATZ: Yeah, why don't we ask him that.

THE CLERK: He also said in November his wife has a prepaid vacation and he's going to be the primary caregiver for the child, for the kids.

MR. SATZ: Well, let's ask him about those two.

THE COURT: So we'll bring Mr. Fine back also. So these are the ones that we're at least initially bringing in.

MR. SATZ: How about Jacknow? New job?

THE COURT: Yeah, he's starting a brand new job. He's our lucky one, right? Two months with a license.

MR. WILLIAMS: Yeah.

THE COURT: How many people do we all know that have been here forever and have never been called?

MR. POLAY: So many.

MR. WILLIAMS: Forty-five years, I've been called once.

THE COURT: All right.

(Informal discussion off the record.)

THE COURT: All right. So we're bringing in No. 2, Mazza; 4, Beard; 5, Runge; 6, De Lima-Santiago; 7, Sara. Got rid of him, him, her. No. 12, Acher. No. 13,

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our professor, Lasano, whatever his name is.

MR. WILLIAMS: LeBlanc.

THE COURT: Next one is 17, Williams. Next one is 20, Loiseau. Twenty-two is Sillah. That's what everybody has?

MR. WILLIAMS: Yes, sir.

THE CLERK: And Fine.

THE COURT: And Fine. He's 24. I forgot we were bringing him back in.

THE BAILIFF: So that's 11, Judge?

THE COURT: Would you tell Viv she's going to have to set up in a minute?

THE BAILIFF: Are you ready for the 11?

THE COURT: Sure enough.

THE BAILIFF: Jurors entering.

(Whereupon, the prospective jury panel was brought back into the courtroom.)

THE COURT: Mr. Mazza, did you get an answer?

MR. MAZZA: I'm still trying to get an answer.

THE COURT: Okay. Do you work on commission at all?

MR. MAZZA: No, sir.

THE COURT: So it's straight salary?

MR. MAZZA: Yeah.

THE COURT: Professor? Oh, wait a minute.

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Yeah, where's my professor?

MR. LEBLANC: So I talked to my dean. He was walking over to HR to talk to them. They're in a meeting. But I'll tell you what he told me was that he said the college would probably try to send a request that I serve at another time because this would take us through the -- possibly close to the end of the term. They're not sure they could get somebody to teach the class.

THE COURT: We're still waiting to really hear?

MR. LEBLANC: I'm waiting to hear from HR.

THE COURT: Not a problem.

Ms. Williams?

MS. WILLIAMS: I contacted my employer. It's a family-owned business. She said she would have to contact her husband.

THE COURT: So they're still -- you're still waiting?

MS. WILLIAMS: Uh-huh.

THE COURT: Mr. Loiseau.

MR. LOISEAU: Yes, they do pay.

THE COURT: That's what you thought, right?

MR. LOISEAU: Yes.

THE COURT: Mr. Runge?

MR. RUNGE: Yes. I wanted to confirm, but I

talked to my manager a week before when I handed in my notice and I'm 99 percent positive that it's the first three days.

THE COURT: Not unusual.

MR. RUNGE: Yeah, that wouldn't surprise me.

THE COURT: Are they going to give you final confirmation on that?

MR. RUNGE: I'm not going to be able to get confirmation until I go in. All the phone lines that --

THE COURT: No, no. That's okay.

MR. RUNGE: Okay.

THE COURT: So we'll hang on to that.

Mr. Sillah?

MR. SILLAH: Yes. My manager is on a conference call. He said he would call me back.

THE COURT: Okay. Mr. Fine?

MR. FINE: Yes, sir.

THE COURT: Your business --

MR. FINE: Yeah.

THE COURT: -- you get paid?

MR. FINE: I do. I would be happy to serve for a week. It would be tough for the business to run without me for two, three, four weeks. That's it.

THE COURT: That's why we asked, you know, the sacrifices. But you also have the issue of your wife's

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vacation?

MR. FINE: Correct.

THE COURT: So obviously, if we were finished in November by that time, that would not be an issue?

MR. FINE: Correct. November 7.

MS. WILLIAMS: Judge, she's calling me now. Can I step out?

(Ms. Williams left the courtroom.)

THE COURT: Ms. Sara?

MS. SARA: I'm waiting for an answer.

THE COURT: Right. That's what you said.

And the magic answer is?

MS. WILLIAMS: She's not sure because I work in Dade County and I live in Broward. She said she would call me back.

THE COURT: So they're still checking. All right. And I'm going to tell you how we're going to handle that in just a second.

In a moment, Maribel is going to take you into our jury room. There's a questionnaire that we are going to ask you to fill out for us. When you're finished with that, Maribel will take you guys out, show you where you need to return next Tuesday, which is the 2nd, at 1:30 in the afternoon.

Now the questionnaire does not ask for your

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email address or your phone number. So, please, if you don't want it spread all over the world, leave it. However, there's a sheet in there that asks for jury information which I'm requesting that you please print your name, an email address that actually works, and a phone number where we can readily contact you. Now, that is not a list for distribution. That is strictly so that in the event of an emergency, my office can communicate directly with you.

Maribel is also going to give you information so that you can communicate with my office. Now this becomes especially important for those of you that are still waiting to hear from your employers what their policy is going to be. And when you do get that information, if you would please call Pam who you have already met. She'll provide that and I'll discuss that with the lawyers and worse comes to worse, we'll deal with that immediately when you come back on Tuesday.

So with that, please follow Maribel.

THE BAILIFF: Make sure you get all your belongings, please.

(Whereupon, the prospective jury panel left the courtroom.)

THE COURT: What are we doing with Mr. Fine?

MR. SATZ: He's not getting paid, right?

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MR. POLAY: I think he's gone, Judge.

MR. SATZ: Isn't that right?

MS. McCANN: Yes.

MR. POLAY: Yeah.

THE COURT: Is that what he said? I'll take your word for it.

MR. WILLIAMS: He works for himself.

MR. POLAY: He said he would sacrifice a week.

THE COURT: How lovely. I need somebody to go grab him.

MR. POLAY: Well, I know I can't.

MS. ROCK: You want me to get him out here?

THE COURT: Let one of the deputies do it, Viv, please. Just ask him to come back out here.

(Whereupon, Mr. Fine was brought back into the courtroom.)

THE COURT: Hi. I neglected to tell you, you're getting your card. You get to go back to the jury room.

MR. FINE: Okay.

THE COURT: Thank you very much for being with us.

MR. FINE: I appreciate it. Thank you.

THE COURT: Hang on. You need your card.

(Whereupon, a brief recess was taken.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, Andrea Denise West, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings, Pages 342 through 381, and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am neither attorney or party, nor am I related to or employed by any attorney or party connected with the action, nor am I financially interested in the action.

Dated this 9th day of February, 2019

.

ANDREA DENISE WEST, R.P.R.
Notary Public - State of Florida
My Commission No. FF 221415
Expires: JUNE 3, 2019

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

ORIGINAL

Defendants.

TRIAL PROCEEDINGS
VOLUME VI
PAGES 382 - 474

Fort Lauderdale, Florida
September 27th, 2018
10:40 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on September 27th, 2018, commencing at 10:40 a.m.

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(Morning session for State vs. Hojan continues.)

THEREUPON, the following proceedings were had:

(Second group of venire enter.)

(Lucas Royer through Edwin Santiago.)

THE COURT: Morning, ladies and gentlemen.

VENIRE: Morning.

THE COURT: Well, you're almost enthusiastic.

Let me introduce myself. I am Paul Backman. I'm one of your judges here, in the 17th Judicial Circuit. And what we're doing here today -- and you already saw one group of 25 come in and leave, and you know there is another group of 25 that is waiting for you guys right after.

I'll tell you this is the third day that we're doing this.

We're looking for individuals who, starting next Tuesday, which is October 2nd, can sit on this proceeding, which is criminal in nature, from the 2nd, with an outside finish date of before Thanksgiving.

Now, it may be three, four weeks from now.

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I learned I would rather give a far-out dates and finish earlier, look like a hero to you guys or knowing if I give a short date and we're not finished, that creates all kinds of difficulties with your schedules.

First and foremost, is there anybody that has any difficulty understanding and speaking the English language?

Anyone.

Ms. Hernandez?

MARTHA HERNANDEZ: Yes.

THE COURT: Talk to me.

Speak English?

MARTHA HERNANDEZ: Little bit.

THE COURT: Little?

MARTHA HERNANDEZ: Yes. I can understand. Not everything. There are some words that I cannot understand.

THE COURT: Join the rest of us.

I can't understand simple words.

I see another hand.

Ms. Thornton?

VERA THORNTON: Yes.

THE COURT: What do you speak?

VERA THORNTON: Russian.

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THE COURT: Do you speak and understand English?

VERA THORNTON: Not all of it. I understand and speak a little bit. I am not very good.

THE COURT: Anyone else.

JULIA AURRECOECHEA: Yes.

THE COURT: Do you speak and understand English?

JULIA AURRECOECHEA: I do. I do. I think I do. I have been here for like 30 years now. But it is not my first language.

THE COURT: You're certainly communicating with me well.

JULIA AURRECOECHEA: Well.

Well, that's good .

THE COURT: Anybody else I missed?

I have a list. I don't want everybody raising their hand.

I'll get everybody.

I have a list of most conflicts which we need to know about which would and could impact your ability to be with us.

If you are a full-time student and being with us would interfere with your education, we

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don't want you.

Understand when I say we don't want you, we really do. But we won't interfere with anyone's education.

If you are a primary care giver to a parent, grandparent, child or it is part of your professional responsibilities, please let us know so we can discuss it.

If you are unemployed, and actively seeking employment, again, please let us know.

If you have a pre-paid vacation between now and the end of the trial, please let us know.

Many are easy for us to accommodate.

We won't ask anybody that paid for their trip to cancel it. Sometimes it works out well within our schedule.

If you have child care issues and you cannot make arrangements in the afternoon to pick up your children, please, again, let us know.

If you have medical issues which you believe would interfere with your ability to sit with us, either physically, mentally, anything -- and I won't ask whatever your

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problem is -- I will leave that determination to you. But I can assure you if you have a bad back and you need to stand and stretch from time to time, that's not an issue.

If you are a diabetic and you need insulin or you need to eat something because your blood sugar has gone down, that's never an issue either.

Additionally, if you work on commission, or you work on a base salary plus commission, and that income is critical to your bottom financial line, please let us know. We don't want anybody to suffer financially.

Last but not least, if you are a full-time employee, I know that Pam was out before and asked to you make phone calls to your employers. If you know what your policy is, what the boss's policy is, please let me know.

If you are still waiting on a call back and you still haven't made the call, then I'll ask you, in the event you haven't called, to please step outside and make that call.

Of course, any other creative ideas that you can come up with that might get you out of here.

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I haven't found one yet. But understand that I know this is a, in your mind, a relatively long trial.

But I'll tell you that the lawyers and myself, my staff just came out of a 22-month, three-day trial.

This, to all of us, seems like a walk in the park.

But it is our individuals within our community --

MR. POLAY: Can we say one thing. Had nothing to do with --

THE COURT: I understand.

I said the lawyers.

The accused in this case didn't participate in that trial at all.

Just the lawyers and my staff.

Jury service is really one of the highest forms of public service you can give. It gives an individual an actual opportunity to live our Constitution.

What we ask is the sacrifice of time. That's all we can ask.

Mr. Royer, you're up.

LUCAS ROYER: Okay.

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Do I get up.

THE COURT: No. Stay and be comfortable.

LUCAS ROYER: Okay.

What do you wants me to tell you?

THE COURT: Do you have any conflicts?

LUCAS ROYER: Yes. I have two young school-age kids I take care of full file. My wife travels internationally out of the state frequently. I have no other means for child care.

THE COURT: You drop them off.

LUCAS ROYER: Drop them off. Pick them up. Feed them.

THE COURT: I realize that. You won't starve them to death.

What time do you have to pick them up?

2 o'clock and 3:30.

Q. Any aftercare that wouldn't financially impact you?

A. Not that I know of, no.

THE COURT: Thank you.

Ms. Laura?

MYRA LORA: I have vacation October 12th. Week of October 12th. Going to North Carolina.

THE COURT: The whole week.

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MYRA LORA: Yes.

THE COURT: You wouldn't be back until the 19th, the 20TH.

MYRA LORA: We usually get back Sunday to go back to work on Monday.

THE COURT: You would be gone almost ten days, give or take.

MYRA LORA: Yes.

THE COURT: Thank you.

Ms. Dixon?

JUANITA DIXON: My two days off is Thursday, Friday.

I called my job.

They told me you all will pay me for Thursday, Friday.

They will pay me for the other days.

THE COURT: The Monday you get from us, for those days, isn't going to --

JUANITA DIXON: I know.

I am just telling you. Tell me one thing and I hear something else.

THE COURT: They will pay you for every day you're here other than today and tomorrow?

JUANITA DIXON: That's my two days off. Thursday and Friday.

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THE COURT: You don't get paid anyway for those days.

JUANITA DIXON: Yes.

THE COURT: Your Thursday and Friday are like Saturday and Sunday?

JUANITA DIXON: Yes, sir.

THE COURT: Who do you work for.

JUANITA DIXON: Miami Dade Transit.

THE COURT: Had I asked you that before, I would have known the answer. Is that your only potential conflict?

JUANITA DIXON: Yes. That's it.

YULI CASTRO: I have a 9-year-old son I pick up and drop off.

THE COURT: I'll tell you our schedule.

We would be working Tuesday, Wednesday, Thursday, Friday.

The amount of time on Friday would be based upon where we are on Thursday, when we leave. Might not work on a Friday. Might work half a day on a Friday. May work an entire Friday.

There are a lot of individuals that have plans on Fridays to go places.

They seem to be similar in nature as far as the time frame.

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Those aren't too difficult for to us accommodate, which is why we need to know.

Ten days during the course of the trial would be difficult.

Our hours would be, I like my jury back at 9:45. I like to work until 5:00, 5:30, depending upon where wear with a witness. Sometimes we run out of witnesses at 3 o'clock in the afternoon. You would be kept well abreast of that.

So you're okay?

YULI CASTRO: My son gets out at 2:30.

THE COURT: No alternative arrangements?

YULI CASTRO: No, sir. My husband works for Broward County.

THE COURT: Mr. Valdes?

RIGOBERTO VALDES: No restrictions.

THE COURT: Do you work?

RIGOBERTO VALDES: For a fleet management company.

THE COURT: Do they pay you for every single day?

RIGOBERTO VALDES: They would pay me.

THE COURT: You checked with them?

RIGOBERTO VALDES: Yes.

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LEE ANNE FULLER: I have NO conflicts.

I'm retired.

JULIA AURRECOECHEA: I'm self-employed. And my daughter goes, I have 12-year-old. I have to drop off at 9:30. I could arrange days so she stays long.

THE COURT: Let's start with the first one.

What do you do?

JULIA AURRECOECHEA: I'm an office manager for a dental office. I have my management company.

THE COURT: Are they going to pay you for being here?

JULIA AURRECOECHEA: I have to be there like to serve on Tuesday for sure the whole day. And on Fridays and Saturdays.

THE COURT: Let me rephrase my question.

Do you know if they will pay you while you're here as a juror?

Did you make a phone call?

JULIA AURRECOECHEA: Well, they will pay me. I think so.

THE COURT: Can you call and find out for me, please.

JULIA AURRECOECHEA: Yes.

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MARISSA PIERRE-LOUIS: Well, I work for Hertz Car Center at the airport. Position I work for, we just got a new person.

Basically, we're kind of short right now with people. Supposed to be four people. The people in that department is three. We already are set with the vacations. I have no particular set travel plans, nothing bought. I have vacations, four for October. Then November, I have a week.

THE COURT: Do you know whether or not Hertz will pay you.

MARISSA PIERRE-LOUIS: I called them and everything.

No answer yet.

Waiting for a call back.

THE COURT: Your vacation days, are those reschedulable?

MARISSA PIERRE-LOUIS: No.

THE COURT: Do they have to be by the end of the year?

MARISSA PIERRE-LOUIS: Has to being used before December.

MR. WILLIAMS: We had Hertz Monday.

(Shaking head.)

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THE COURT: They don't pay?

MR. WILLIAMS: No.

THE COURT: Makes that easier.

Saves you a phone call.

MARISSA PIERRE-LOUIS: What does that mean?

THE COURT: If you won't get paid, as much as we would like to have you, we won't interfere with your finances.

MARISSA PIERRE-LOUIS: Okay.

THE COURT: Unless you want to stay.

MARISSA PIERRE-LOUIS: No.

THE COURT: Mr. Delacruz?

JAVIER DELACRUZ: No issues.

Currently looking for employment. Nothing too serious.

THE COURT: Right now, you're unemployed.

JAVIER DELACRUZ: Yes.

THE COURT: Do you need employment to pay bills.

JAVIER DELACRUZ: No. I live with my parents.

THE COURT: You're not actively looking for a job now?

JAVIER DELACRUZ: Little bit.

Making the effort. Not tempted. Working

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on it.

THE COURT: If you were a member of our jury, would you have the excuse to put off that look?

JAVIER DELACRUZ: Yes, I prefer not to. Yes. That two be the case. Sure.

THE COURT: Mr. Blaise?

MARVIN BLAISE: I just received an appointment.

THE COURT: What are you doing.

MARVIN BLAISE: United Discount.

THE COURT: When do you start?

MARVIN BLAISE: Probably around next week.

THE COURT: Mr. Singer?

STEVEN SINGER: I'm a solo medical practitioner.

THE COURT: Doctor?

STEVEN SINGER: Yes.

Pediatric.

THE COURT: You're not working, nobody is getting paid.

STEVEN SINGER: Correct.

THE COURT: Thank you.

Ms. Vitelli?

JANET LEIGH VITELLI: I'm reading my

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policy. I'm full-time employed. Salary plus commission.

My employer will pay me one week.

THE COURT: That says it all.

Thank you.

BERNARD CLACEMA: I work for Brandsmart. No, they will not pay. I work for the warehouse, the one by the airport here in Fort Lauderdale.

I also have two court dates for my divorce next week, starting Tuesday and Friday.

BRADLEY BERKE: I have a vacation tomorrow. But I will be back next week.

THE COURT: Tomorrow isn't a problem. Today is the only day this week you will be here.

BRADLEY BERKE: Other than that, no. I'm a school teacher for Broward County.

THE COURT: Mr. Piper.

SHANE PIPER: Aviation quality control.

Five days.

THE COURT: Governmental?

SHANE PIPER: No, sir.

JAYSON ESCALONA: Only page three days.

THE COURT: Say no more.

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Mr. Gruen?

MICHAEL GRUEN: I have a conflict. I have to pick up my grandson from middle school Tuesdays and Wednesdays at 2:30. Nobody else can pick them up. Son is at work. Daughter-in-law --

THE COURT: Mr. Campbell?

RICHARD CAMPBELL: Self-employed. Independent business owner for Sneiders Lance.

THE COURT: No work, no pay.

RICHARD CAMPBELL: No work, no pay.

LUIS DEROSA: I'm a nurse manager in a trauma unit in Jackson Memorial. County employee.

Only give me three days.

I have also as clinical --

THE COURT: You got it. You won't get paid. That's the bottom line.

Mr. Bloom?

PETER BLOOM: I'm retired. No conflicts.

REENA THOMAS: I'm self-employed. I have a daughter I have to pick up and drop her, too.

THE COURT: What do you do?

REENA THOMAS: Respiratory therapist.

THE COURT: If you are not working, you're

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not making money?

REENA THOMAS: No.

REGINALD HOPKINS: I sell cars. I have a vacation October 17th through the 24th.

THE COURT: Going anyplace good?

REGINALD HOPKINS: Is Vegas good?

THE COURT: As far as your employment is concerned, you work a lot on commission.

REGINALD HOPKINS: Yes.

THE COURT: Mr. Santiago?

EDWIN SANTIAGO: I'm a retired law enforcement officer. I used to work for the New York County District Attorney and US Custom Service. Special agent.

THE COURT: Still certified?

EDWIN SANTIAGO: No, sir.

I work for American Airlines corporate security.

THE COURT: What was their policy?

Do you work for the union?

EDWIN SANTIAGO: No, sir.

I am not a member of the union.

MR. WILLIAMS: We would have to call.

THE COURT: Could you make a phone call for us, please?

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EDWIN SANTIAGO: I only work three days a week.

THE COURT: I don't want you to be off -- is that income you need?

EDWIN SANTIAGO: No. It is okay.

THE COURT: You sure?

EDWIN SANTIAGO: I get two pensions.

One from New York and one from customs.

THE COURT: I got you.

THE COURT: Who just came back from making a phone call?

JULIA AURRECOECHEA: They will pay.

THE COURT: If you all would kindly go with Steve? He will take you outside a few moments.

Some of you will be back.

I'll give you further instructions from there.

For those of you that won't be coming back in, I thank you for your time and participation.

You will be given your cards.

You get to go back to the jury room.

Have a wonderful day.

All of you follow Steve, please.

(Exit venire.)

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THE COURT: Royer, child care, 26.

27, language.

28, travel.

29, Dixon is good.

30, Castro, child care.

31, Valdes, was good.

32, Fuller, is good.

What am I doing with 33? I have issues with potential language.

MR. POLAY: Exactly.

MS. MCCANN: I don't know she understood everything you were telling her.

THE COURT: I understood that.

MR. WILLIAMS: We have a problem with language.

THE COURT: Gone?

MR. SATZ: Yes.

MR. WILLIAMS: Yes.

THE COURT: 34, won't get paid.

Three days.

MR. SATZ: Right.

THE COURT: 35, Delacruz, said okay.

MR. SATZ: I have a possible with somebody unemployed. We have been excusing them.

THE COURT: But he's not looking for a job.

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MR. SATZ: Who knows.

MR. WILLIAMS: No, he's not looking for a job. Not causing him a financial hardship.

THE COURT: Let's wait until we get into next week. See what happens.

Blaise, 36, starting a new job.

37, Singer, gone.

MS. WILLIAMS: Yes.

MR. SATZ: Yes.

THE COURT: 38, Thornton, our Russian speaker.

39, Vitelli, won't get paid.

40, Clacema, won't get paid.

41, Berke is okay.

42, Piper, won't get paid.

43, Escalona, three days. Gone.

44, Gruen, child care.

45, Campbell, won't get paid.

46, Delarosa, won't get paid.

47, Bloom, is okay.

48, Thomas, is not going to get paid.

49, Hopkins, is traveling.

And Santiago, 50, is okay.

MR. SATZ: For the moment.

MR. WILLIAMS: For the moment.

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THE COURT: Hey, you want the unemployed guy. I'm sure Mike wants the other guy.

MR. SATZ: Yes. What's wrong with him?

THE COURT: Nothing.

Whether he makes it is different issue.

MR. POLAY: Worked for the DA in New York. This is a death case.

THE COURT: We will find out.

MR. POLAY: I'm sure he will be fair and impartial.

THE COURT: We'll find out.

MR. WILLIAMS: Two law enforcement pensions.

MR. POLAY: Working on his third.

THE COURT: Steve, cards.

(Enter venire.)

THE COURT: Okay. Here is what will happen.

In a moment, you will follow Maribel. She will take you into our lovely jury accommodations.

We have a questionnaire that we're going to ask you to fill out. The questionnaire does not ask for your Email address.

Doesn't ask for your phone number.

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If you put them down, then, of course, it will be public.

There is a sheet in there that calls for jury information. I am going to ask you to please print your name, to give us a good Email address and your phone number where you can be readily reached.

That is strictly for my purposes, in the event my office has to communicate with you in the event of an emergency. And Maribel will give you information so you can reach my office in the event of an emergency.

If anybody is still waiting to hear back from their employers, when you find out, get ahold of my office.

And I will be able to discuss it with the lawyers.

Worse comes to worse, we will deal with it Tuesday afternoon on October 2nd at 1:30 in the afternoon.

Maribel will show you where you need to be when you return Monday afternoon.

With that, follow her.

After you're finished, have a good weekend.

(Exit venire.)

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THE COURT: We're ready.

(Enter venire.)

(Jeffrey Medina through Priscilla Castillo enter.)

THE COURT: Good morning, ladies and gentlemen.

VENIRE: Good morning.

THE COURT: You are the most cheerful group so far.

And you are the ones that have been standing outside the most.

Should I ask how everybody is doing?

VENIRE: Good.

THE COURT: Good so far? At least for the moment.

First of all, let me introduce myself. I am Paul Backman, one of your judges here in the 17th Judicial Circuit.

Before I go further, anyone that does not speak or understand the English language?

Everybody understands and speaks English?

Good.

We are, we have you here. We're looking for individuals that can sit as jurors on this matter effectively starting next Tuesday, which

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is October 2nd, and lasting, at the far outside extreme, until Thanksgiving.

Don't worry.

You think that's a long trial. All of us, with the exception of the accused, just came out of a 22-month three-day trial.

That's a long trial.

Now, it may be shorter than that. I seriously doubt it would be longer than that. After that, I am on vacation and then I'm retiring.

We all recognize that all of us have conflicts that arise in our every-day lives that interfere with the opportunity, potentially, to sit with us as jurors.

I have what we think is a pretty comprehensive list of conflicts that individuals might have that would have an impact on whether or not you would be able to serve.

So I'm asking, please don't raise any of your hands. Because when I am finished with the list, I'll start with Mr. Medina and go down the front row. Then the second row and third row so you can fill me in if you do, in

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fact, have conflicts; and we can discuss them.

First of all, if you are a full-time student and being with us would interfere with your education, we don't want you.

Understand when I say we don't want you, certainly we would love to have you. But we won't interfere with anyone's education.

If you are a primary care giver, care for a parent, grandparent, child or it is part of your professional responsibilities, again, please let us know.

If you are unemployed, and actively seeking employment, again, please let us know.

If you have a pre-paid vacation between now and the Thanksgiving, please let us know.

Many fall within our schedule and may be in a position us to accommodate.

We won't ask anybody that paid for their trip to cancel it. Sometimes it works out well within our schedule.

If you have child care issues and you cannot make arrangements in the afternoon to pick up your children, please, again, let us know.

So you know our time frames and our trial

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schedule, I anticipate we would be working Tuesday, Wednesday, Thursday, Friday.

I like to start at 9:45. Have my jury back.

And I like to work until 5:00, 5:30 or until we run out of, depending upon where we are with a witness. Many days, we may run out of witnesses at 3 o'clock in the afternoon.

On Friday's, we will make that determination on Thursday, at the end of the day, whether we will work Friday, work part-time Friday or work all day Friday.

If you have medical issues you believe would interfere with your ability to be with us, I won't ask you the medical issues. I leave it to you to let me know whether or not it would be problematic.

I can tell you if you have a bad back, need to stand stretch, that is never a problem.

We have had a lot of diabetics that have come through.

When your blood sugar runs low, there is never an issue as far as taking insulin or having something to eat to bring your blood sugar up. That's never an issue.

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If you have issues you need to constantly use a restroom, again, not a problem.

Now if you are a commissioned worker or part-time or part-time plus commission and being with us would create a detrimental impact on your financial bottom line, we don't want to interfere with putting anybody out on the street.

If you are a full-time employee, and I know Steve or Maribel asked to you call your employers to find out what their payment is, if any, please let me know. And we can discuss all aspects of that at that point.

So, Mr. Medina, as I said, you're up.

Talk to me.

Do you have any conflicts?

He is searching hard.

JEFFREY MEDINA: My wife just got out of spinal surgery.

Right now, my mother-in-law takes care of her. Usually, after I have get off of work, I take the night shift.

THE COURT: What time do you normally get off.

JEFFREY MEDINA: 3:30, 4:00.

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THE COURT: Who do you work for?

JEFFREY MEDINA: A small electrical company.

THE COURT: Will they pay you?

JEFFREY MEDINA: Who knows.

He says one thing.

Then he will go back on his word.

He's not a real honest person.

THE COURT: What did he tell you.

JEFFREY MEDINA: He said we will figure it out.

That may mean yeah, sure.

But, you know.

THE COURT: That's not in your best interests to hear those words.

JEFFREY MEDINA: I know.

THE COURT: We will figure that one out, too.

Mr. Matos?

JULIAN MATOS: I work on commissions. The amount of rate they pay me will have a substantial financial impact.

THE COURT: You need that money.

JULIAN MATOS: Yes.

BRITTANI TRUSS: I am a full-time student.

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THE COURT: Where do you go to school?

BRITTANI TRUSS: I go to Broward, north campus.

THE COURT: What are you studying?

BRITTANI TRUSS: Education major. Studying to be a teacher.

THE COURT: Mr. Schick?

JOEL SCHICK: No conflicts with the items listed.

THE COURT: Do you work?

JOEL SCHICK: Yes. City of Plantation.

THE COURT: No conflict. They pay.

OLIVER TOUPIN: Self-employed. Property manager.

THE COURT: What happens if you are not working?

OLIVER TOUPIN: Well, I'm always working.

THE COURT: Let me rephrase it. What happens if you're here with us?

OLIVER TOUPIN: I don't get paid.

JUAN CARLOS NUILA: How are you doing.

THE COURT: Good.

JUAN CARLOS NUILA: Only problem is I don't get paid for being here.

THE COURT: Who do you work for?

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JUAN CARLOS NUILA: Munez.

THE COURT: They don't pay?

JUAN CARLOS NUILA: No.

SHRIKA BROWN: They won't pay me. I work for McDonald's.

THE COURT: Ms. Simmons?

VILLA SIMMONS: I have a conflict.

I have two twin grand boys. Me and my husband take care of them. School is out at 2:00.

I don't have anyone to pick them up from school.

THE COURT: Parents both work?

VILLA SIMMONS: Parents signed the kids over to us.

THE COURT: You're their primary care giver.

VILLA SIMMONS: Right.

LUIS RODAS: I'm Rodas.

THE COURT: I forgot Mr. Chambers.

MICHAEL CHAMBERS: Company pays me for five days.

LUIS RODAS: I have another conflict. I own a small business.

It is just me.

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Technically, I have two other employees. Part time.

Retired dad and soon-to-be retired mom. Couple hours a week. IT services and programming.

THE COURT: Ms. Glanville?

YOLANDA GLANVILLE: Pay ten days.

SHARONDA SHEFFIELD: They pay as long as I have the proof. Don't specify how many days.

THE COURT: We need to let her know the parameters of the trial.

They say yes, they pay.

Some only three days, five days.

All have different policies.

Step outside, call them back and see if you can get something more definitive.

SHARONDA SHEFFIELD: Is it a certain time frame? Until Thanksgiving?

THE COURT: That's the longest.

Mr. Robinson?

KEITH ROBINSON: I start vacation next week. Going to Sidney for a week. I have friends there.

THE COURT:

JAINARINE MCNAMEE: If I don't work, I

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don't get paid.

BAOYAN WU JONES: I have a 15-year-old, high school. I need to take care of him.

THE COURT: What time does he get home?

BAOYAN WU JONES: The school dismiss at 2:40.

THE COURT: That's when you pick him up.

BAOYAN WU JONES: Need to pick up and send him to school in the morning.

THE COURT: No one, no alternative arrangements can be made?

BAOYAN WU JONES: No.

ALEGRIA BENSIMON: Only get paid for five days.

SIMONE GARCIA: Part time. Commission.

THE COURT: I take it you need that money?

SIMONE GARCIA: Yes.

And I have travel plan for vacation.

THE COURT: If you only work on commission and need that money -- traveling anyplace good?

SIMONE GARCIA: November 1st. Paris.

NICHOLAS WISZKOWSKI: Hi.

THE COURT: Talk to me.

NICHOLAS WISZKOWSKI: I'm unemployed. I'M seeking employment.

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THE COURT: What do you do when you're working.

NICHOLAS WISZKOWSKI: Computer technician.

THE COURT: Any prospects?

NICHOLAS WISZKOWSKI: I don't know yet.

LILLENE ROBERTSON: Good morning. I'm a health care provider. If I don't work, I don't get paid.

THE COURT: Nor do your patients get care.

LILLENE ROBERTSON: That's right.

Thank you, Your Honor.

LEONEL GIRON: I get paid for three days, I was told. But I baby sit --

THE COURT: If you're only getting paid three days, I can assure you this is going longer than three days.

Ms. Johnson?

REBECCA JOHNSON: They don't PAY.

It would be taken out of my PTO.

THE COURT: Don't want anybody losing their vacation or personal time.

AUDREY CHAMPAGNIE: I have child care issues. Three children I need to pick up from school at 3 o'clock.

THE COURT: No alternative arrangements can

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be made that don't cost you anything?

AUDREY CHAMPAGNIE: No.

DANIEL FERREIRA: I work a hundred percent commission.

JOSE SOSA: I'm self employed. Commission. Primary care for my family.

THE COURT: What do you do.

JOSE SOSA: I sell cars in the automotive industry and do independent consulting.

THE COURT: Ms. Castillo?

PRICILLA CASTILLO: I work temporary now for a company. Walmart. I'm taking a pre-paid trip. I may be changing employers, depending if they hire me.

THE COURT: As a part-time employee of Walmart, would they be paying you?

PRICILLA CASTILLO: They approved just today because I gave them heads-up notice. It is only a seasonal job.

They won't keep me the rest of the year.

THE COURT: Pre-paid, where are you going?

PRICILLA CASTILLO: New York. Seeking some more, looking for a good, good job. Something better.

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THE COURT: What I will ask you to do now is follow Steve. Many of you will have, will be back here in a bit.

I'll give you further instructions.

For those of you that aren't coming back in, you get to go back to the jury room.

They will send you to lunch. I don't know if they need you for after lunch or not.

Those of you that won't be back, I thank you for your time and participation.

We all appreciate it.

Just follow Steve.

(Exit venire.)

THE COURT: Sheffield, 62, making a phone call, didn't get that far towards the employer. She just let Steve know she is in a PTI program.

We're looking her up now to find out the story.

CLERK: I looked it up.

Grand theft.

THE COURT: Don't you have to plead guilty to go into PTI?

MR. SATZ: Admit guilt.

CLERK: She was accepted into PTI.

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THE COURT: Let's run through this real quick.

My 51, Medina, bottom of page 4, was good.

MR. SATZ: I didn't understand if he was good or not.

MR. WILLIAMS: No. Didn't trust his employer.

THE COURT: No. What I think I asked him to do, when he comes in, is to nail it down so we can deal with it once he has more information. I know he takes care of his wife at night. He said his mother-in-law --

MS. MCCANN: He gets done with work at 3:30 in the afternoon.

THE COURT: Whatever you want to do.

MR. WILLIAMS: The guy said he can't trust his employer for a straight answer.

MR. POLAY: I think we're wasting our time. Nay.

MR. SATZ: No.

THE COURT: 52, commission, Matos.

53, student.

I show 54 is okay.

55, Toupin, won't get paid.

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56, won't get paid.

57, Brown, won't get paid.

58, Simmons, child care.

58, Chambers, won't get paid.

60, Rodas, won't get paid.

61, Glanville, won't be paid.

62, Sheffield --

MR. SATZ: Was going to check. If she is in PTI --

MR. POLAY: She is not a convicted felon.

THE COURT: Has a pending felony.

Gone?

MR. SATZ: Yes.

MR. WILLIAMS: I guess she has a pending case.

THE COURT: 63, Robinson, is traveling.

64, McNamee, not getting paid.

65, child care. Plus language.

66 won't get paid.

67, Garcia, commission.

68, Wiszkowski, unemployed. Doesn't seem to know if he is looking for employment or not.

MR. WILLIAMS: He's different from the other gentleman.

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MS. MCCANN: Said looking.

Any prospects, said I don't know.

THE COURT: Robertson, 69, not getting paid.

Actually, the rest of the group, 70, no pay; 71, Johnson, no pay; 72, Champagnie, child care.

73, 74, 75, not getting paid.

We have one whole -- one person. 54.

(Enter Joel Schick.)

THE COURT: Out of 25, you're the winner.

Let me tell you what we're doing.

In a minute, Mirabel will take you into our jury room. We have a questionnaire for you.

When you're finished with it, she will show you where you need to be Tuesday afternoon, 1:30, when you come back.

The questionnaires don't call for your Email address or phone number.

If you decide to voluntarily disclose it, everyone will know.

There is a sheet.

I need you to print your name for me, Email address and phone number we can reach you.

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That's not for public. So only my office can communicate with you in the event of an emergency.

Meribel will give you information so you can communicate with my office in the event of an emergency.

See you Tuesday, October 2nd, at 1:30.

JOEL SCHICK: Thank you.

THE COURT: Thank you.

(Exit Joel Schick.)

THE COURT: Let's see where we are after this afternoon.

(Discussions held off the record.)

THE COURT: We're at 91.

MS. MCCANN: We'll lose a lot.

MR. SATZ: How will you do the death penalty portion?

THE COURT: I want to talk about pre-trial publicity.

Whether or not they remember anything.

Rafael wrote about Mr. Hojan, Mr. Mikel and all of the other death row cases coming back.

We need to inquire about that.

Depending who is left, then we can start voir dire. I can clear all of that up in the

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morning with whomever is coming back.

MS. MCCANN: It was our understanding Mr. Williams was putting together the preliminary statement that --

THE COURT: No problem.

MR. SATZ: Do we have the jury instructions?

THE COURT: Prelims, unless you changed them. We did them last week.

THE COURT: See you after lunch.

(Exit venire.)

(Recess had.)

(Afternoon session begins.)

(Enter Laura Rebollo.)

THE COURT: Hi, Laura.

We decided to bring you in to at least say hello.

I don't think you would be, while we would love to have you and Carlos is hoping we would have you, no.

LAURA REBOLLO: I appreciate it. We're leaving for a trip to Europe on Saturday anyway.

I would have had to have said no anyway. I know. It's tough. It's tough. I love being a

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jury member. I wouldn't have had an objection.

THE COURT: Thank you.

(Exit Laura Rebollo.)

(Enter venire.)

((George Luiz through Marie Godard.)

THE COURT: Good afternoon, ladies and gentlemen.

VENIRE: Good afternoon.

THE COURT: Pretty good for after lunch. Dare I ask how everybody is doing today?

VENIRE: Good.

THE COURT: Better to be in here, rather than out in the rain right now.

I was told it is rainy.

I don't have windows in here.

I'm Paul Backman.

I'm one of your judges here in the 17th Judicial Circuit.

Before I explain why we're all here, let me ask you this.

Is there anyone that does not understand and speak the English language? Everybody understands and speaks English?

QUING QUAN LI: A little bit.

THE COURT: I'll get to you.

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Understand it well and speaks it well.

So you are?

QUING QUAN LI: Understand --

THE COURT: Name?

QUING QUAN LI: Quing Quan Li.

THE COURT: Talk to me.

QUING QUAN LI: My name is Quin Li. I am from China. I have been here for over ten years.

THE COURT: You have difficulty at times?

QUING QUAN LI: Yes, because I work in the kitchen. Not too much English.

THE COURT: I got you. Okay.

Thank you.

Ms. Acosta?

CARMEN ACOSTA: I'm from Puerto Rico.

I understand.

Like I speak a little. But I'm, I'm --

THE COURT: A little.

CARMEN ACOSTA: Yes. I can handle. There are some words that I can't understand very well.

THE COURT: Anyone else?

MARIE GODARD: I am from Haiti.

I come. After sixty-seven. I work for

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security for 15 years.

THE COURT: You have problems with English?

MARIE GODARD: Yes.

THE COURT: Your native language is Creole?

MARIE GODARD: Yes.

THE COURT: Did I miss anybody?

Okay.

Let me tell you why you're all here.

I'll tell you there were 75 of you this morning. 150 of you yesterday and 125 the day before.

Obviously, you know we're going through a pairing down process to find individuals who can sit on this matter, starting next Tuesday, October 2nd.

After you're finished with me, which won't take long this afternoon, you will be done, at least with me.

For those of you that do get through, you will be back next Tuesday. Our trial is anticipated, as I said, to start next Tuesday. And the outside date of finishing is before Thanksgiving.

Now, it may be three weeks, four weeks, five weeks. We can't predict that right this

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second.

Things change during the course of these proceedings.

Now, I know and we all know that everyone of us has conflicts in every day life that occupy us that might prevent you from being able to serve with us. Now, I don't want anybody to start raising their hands.

When I am finished with my list of conflicts that I'm pretty sure is very comprehensive, I'll start with Mr. Luiz, go down the first, second and third row so everybody will have an opportunity to speak.

When I go through these and I say we don't want you, please understand it is in the sense we don't want to -- we actually would love every single one of you. But there are circumstances we won't interfere with.

For instance, if you are a full-time student and being with us would interfere with your studies, we don't want you because we don't want to interfere with your education.

If you are a primary care giver to a parent, grandparent, a child or it is part of your professional responsibilities, you need to

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let us know.

If you are unemployed, actively looking for employment, please let us know.

If you have a pre-paid vacation between now and Thanksgiving, please let us know.

Many times, those pre-paid vacations can be worked into our schedule.

So you need to let me know that, too.

If you have child care issues, where you cannot make arrangements in the afternoon, for the pick up and care of your children or child, please let me know.

If you have any medical issues that you believe would interfere with your ability to be with us and concentrate through this proceedings, please let me know.

Now, I tell you a lot of individuals have some back problems, where they need to stand and stretch during the day, that's not a problem ever.

A number of people that have come through are diabetic.

When your blood sugar runs low and you have a need to take insulin or you need to eat something, that has never been a problem.

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Also, if you work on commission, or you work part time, not getting paid, or a combination of the two, again, we don't want to interfere with your financial well being.

While we would like to have you, we don't want you.

Last but not least, if you are a full-time employee, I know Steve asked that you already contact your employers, to find out what their policy is. But again, unless they are going to pay you for every day of jury service and otherwise it is going to create a financial hardship for you, again, we don't want to interfere with that.

Mr. Luiz, you start.

GEORGE LUIZ: I currently just restarted back at a company I worked for years ago. I'm currently at temporary status.

THE COURT: If you are not working, you are not getting paid?

GEORGE LUIZ: Correct.

THE COURT: Mr. Ramos?

NICHOLAS RAMOS: Full-time employee. I worked for the company nine years. They are able to go to three days.

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THE COURT: What happens a lot of time, people will call, say do you pay for jury service.

Your employer will say yes.

Then you find out three days, five days, ten days.

Unless you tell them the full parameter of how long you might be gone, you are stuck on a jury.

It has a significant impact because I'll tell you the jury pay will not support you.

Ms. Concepcion?

SUSAN CONCEPCION: I am a school teacher.

THE COURT: We know you get paid.

SUSAN CONCEPCION: My students need me.

THE COURT: I know.

We hear it from every teacher.

And I'll tell you --

SUSAN CONCEPCION: They are taking a test.

THE COURT: -- because you may get through today is not indicative that you will make the jury.

It is important to know that.

What grade do you teach?

SUSAN CONCEPCION: 10th and 11th.

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THE COURT: Brutal.

SUSAN CONCEPCION: Better than middle school. It is a vacation.

THE COURT: Any other issues.

SUSAN CONCEPCION: No.

THE COURT: Mr. Ferrer?

RICHARD FERRER: I am a full-time employee. My job, what I do, I drive a big truck.

I am the only one licensed to do so.

THE COURT: Their policy?

RICHARD FERRER: I called the company's owner.

He's out of town.

Tested his son. Haven't heard from him.

THE COURT: Any other conflicts?

RICHARD FERRER: I'm going out of town on Thanksgiving.

THE COURT: Don't worry about it.

RICHARD FERRER: Okay.

THE COURT: I am telling you I won't be here either.

DANIELLE DEVORE: Full-time employee. Get paid up to three days.

I am going to the Bahamas for my --

THE COURT: You don't need to go past the

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work issue.

JEANETTE ALVAREZ: I wouldn't get paid. IN addition, I'm having surgery on Wednesday I'm scheduled.

THE COURT: That I only wish works out well for you.

Not getting paid is all we need.

RUBY ULETT VARGAS: I get paid the whole time if you give me papers.

My vacation time to Paris. Supposed to leave October 16th to October 23rd.

It is my birthday.

THE COURT: Happy birthday.

Where do you work?

RUBY ULETT VARGAS: Costco whole sale.

Great company to work with.

JOHN DISALVO: Employed full time.

My employer will pay three days.

THE COURT: Who do you work for?

JOHN DISALVO: Child care company. Children of America.

NADEIGE CHERY: I am working full time. I am working with the elderly and studying for my board tests. Just graduated from nursing. They won't pay me. It is under contract.

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CARLOS FOJO: I'm self-employed.

THE COURT: What do you do?

CARLOS FOJO: I own an escort company from over-sized vehicles.

If I don't do it, I'm not getting paid.

MONIKA ESPINOZA: I'm full time. Company pays up to two weeks.

ANGELA MCCUE-CARRERAS: Full-time. My company will pay eight hours a day, regardless of time. But I have a son I have to take to orientation to college at the end of October.

Supposed to get the information by the 22nd.

THE COURT: Where is he going to school?

ANGELA MCCUE-CARRERAS: USF.

THE COURT: Will that be over a weekend?

ANGELA MCCUE-CARRERAS: It is three days.

THE COURT: Let's play it by ear for the moment. That's your only -- I take it --

ANGELA MCCUE-CARRERAS: I work ten-hour days.

I'll loose ten hours a week.

THE COURT: They only pay you for eight.

ANGELA MCCUE-CARRERAS: Eight.

THE COURT: Would that create a financial

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hardship?

ANGELA MCCUE-CARRERAS: Kids going to college, I'll go with, yes.

JAMES GAVIRIA: Self-employed. I'm a contractor.

Commercial and residential.

ANA ALVAREZ: Full time. Company pays three days. School board as a contractor. I work for Fielding. I am not working for the school board.

ANA MORRA: Self-employed. Own my own landscaping company. I'm a teacher. Primary care giver to two little girls. Smallest one is only three.

THE COURT: Where do you teach?

ANA MORRA: Broward County. She just texted me here. Said I can't guarantee your employment rate of pay.

THE COURT: You are part-time with them?

ANA MORRA: No.

I am a kindergarten teacher.

I work full time.

THE COURT: If you work fork the school board, you gets paid. That I know.

ANA MORRA: That's what she wrote to me.

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THE COURT: We have been through this a long time.

ANA MORRA: I believe you.

My company brings in three times of what I get paid as a teacher.

THE COURT: That would create a financial hardship?

ANA MORRA: Absolutely.

LENORA FRAZIER: I work at Miami Grill.

Working three days now.

Put me part time. Getting ready to move.

THE COURT: Not only won't you be around, but they wouldn't pay you.

Your work won't pay you.

LENORA FRAZIER: No, they won't.

RITA KNIGHT: I'm a full-time employee.

My company pays up to three days.

BRYAN PEPITONE: I am one of the program directors at a K through 12, small, private school in Cooper City.

They would pay me.

They will pay me throughout. Because of the size of the school, they explained it would be a hardship because I run the day-to-day Jack of all trades, master of none.

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THE COURT: Hardship to them.

BRYAN PEPITONE: We deal with students average, above average and with special needs.

THE COURT: Thank you.

Mr. Charles?

ACKIMO CHARLES: I'm an administrator. It is creating a hardship for me already being here with the Marjorie Stoneman Douglas.

We have to lock down.

I have an 89-year-old grandmother. Care taker.

One and three year old.

THE COURT: You work for the school board?

ACKIMO CHARLES: Yes.

THE COURT: You get paid from them.

ACKIMO CHARLES: Yes.

My boss is on the phone with the chief of performance because it is her and I.

I am not there.

I am creating a problem.

THE COURT: I will be happy to talk with them.

Let them call me.

Thank you.

MASSY SANAEI: Primary care giver to my

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son.

I am a full-time master's student. I work in Miami.

They won't pay for Broward courts.

THE COURT: What are you studying?

MASSY SANAEI: Environmental agriculture.

THE COURT: Pretty cool.

Ms. Kaposi?

THERESA KAPOSI: I'm retired. I have a job that is a hobby.

THE COURT: What might that hobby be?

THERESA KAPOSI: I work at Bonnet House.

THE COURT: Other than that, you're good.

THERESA KAPOSI: Two dogs.

THE COURT: What kind?

THERESA KAPOSI: Pounds puppies.

THE COURT: This is a very pet friendly courtroom.

LAUREN VANMEHREN: I'm a part-time employee. I don't normally work all this --

THE COURT: Very few companies pay part time.

LAUREN VANMEHREN: I have a pre-paid vacation October 5th through the 8th.

THE COURT: Friday through Monday. That

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wouldn't be an issue at all.

Where do you work?

LAUREN VANMEHREN: Insurance agency .

THE COURT: They won't page you.

Okay.

All right.

Here is what I'll ask.

If you guys would all follow Steve, we will have some of you back here in just a little while.

I'll give further instructions.

For those of you that will get to go back to the jury room, please understand we all appreciate the fact that you are here, that you are willing to participate.

And other than that, when you do go back there, have a wonderful day.

Follow Steve.

(Exit venire.)

THE COURT: Number 1, no work, no pay.

Ramos, 2, same thing.

3, Acosta, language.

4, Concepcion, seemed to be good.

5, still waiting to hear from him.

6, Devore, not going to get paid.

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7, Alvarez, not getting paid.

8, traveling.

9, won't get paid.

10, Chery, won't get paid.

11, not getting paid.

12, not getting paid.

13, McCue, work issues.

MR. POLAY: Correct.

THE COURT: She has the eight hours .

14 is no pay.

15, no pay.

16, will create a financial hardship.

17, financial hardship.

18, Knight, no pay.

19, Pepitone, is okay.

20, Charles.

I take it what is most important is the child care and the primary care.

MR. POLAY: Yes.

THE COURT: Let him go?

MR. SATZ: Yes.

MR. WILLIAMS: I would rather not have him here, considering the recentness.

THE COURT: 21, student.

22, Li, language.

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23, Kaposi, I have as good.

24, part-time.

25, language.

Send them in, Steve.

(Enter venire.)

THE COURT: I know we are waiting for information from a couple of you.

When you get that, tell you what we'll do. In a moment, you will go with Maribel, who is over, on your right. And she will take you into our jury room.

There is a questionnaire for you we are asking you fill out.

There is no line and no request for your email address or phone number.

If you decide to put it down, even though not asked for, it will be in everybody's hands.

There is another list that I'll ask you please print your name, give us a good email address and a number you can be reached.

This is not a list for distribution.

Just my purposes.

If there is an emergency and we need to reach you, we can reach you.

She will give you information how you can

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reach my office in the event that you have an emergency or if you find out what the information is, as far as your employer, please give Pam a call.

Maribel will take you out, show you where you need to be back next Tuesday the 2nd at 1:30 in the afternoon.

BRYAN PEPITONE: When I was outside, the private school, pay up to five days.

THE COURT: That takes care of you, Mr. Pepitone.

RICHARD FERRER: I spoke to the company owner's son. Said they might pay up to three days.

You will get your cards back.

Don't worry about filling out the questionnaire.

But we do appreciate you guys were here.

(Exit venire.)

THE COURT: Next group?

(Enter venire.)

(Ral Estevenz through Valerie Corsaro.)

THE COURT: Good afternoon, ladies and gentlemen.

VENIRE: Good afternoon.

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THE COURT: Does this work? Good afternoon.

VENIRE: Good afternoon.

THE COURT: We have been doing this all week.

You guys are the lowest I have heard.

Let me first introduce myself. I am Paul Backman.

I am one of your judges here in the 17th Judicial Circuit.

Before I tell you the reason you're here, I just want to ask is there anybody that does not speak and understand the English language?

THE COURT: You are?

DIANA PEREZ ESTEVA: Diana Perez.

THE COURT: Native language.

DIANA PEREZ ESTEVA: Spanish.

THE COURT: Do you understand English?

DIANA PEREZ ESTEVA: A little.

THE COURT: I saw another hand up in the front row.

MARIE BELIZAIRE: Yes, I speak a little. Not too much.

THE COURT: Native language.

MARIE BELIZAIRE: Creole.

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THE COURT: Anyone else?

Okay.

Let me tell you what you're all doing here or let me tell you what we're all doing here.

We're looking for individuals who can serve on a proceeding, criminal proceeding, starting next Tuesday, the 2nd of October, with an outside date of finishing just before Thanksgiving.

Now, we recognize all of us have conflicts that arise daily in our lives.

Now, I have a full list of what I believe are the most, the most common, the most common conflicts.

If you find one creatively that none of us have heard, always want to hear it.

Before I start with Mr. Estevenz, then I'll finish that row, the second, third row and our special seat.

Please don't raise your hands.

Everybody will get to talk.

Let me tell you where we find most of our conflicts.

If you are a full-time student and being with us will interfere with your education, we

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don't want you.

Understand the way I am saying that, not that we wouldn't love to have you serve with us but we won't interfere with anyone's education.

If you are a primary care giver to a parent, grandparent, child or part of your professional responsibilities, please let us knows.

If you are unemployed and actively looking for employment, please let us know.

If you have a pre-paid vacation between now and Thanksgiving, please let us know. There are many dates -- as I said, we have been doing this Tuesday, Wednesday and 75 this morning -- it might fit in with our schedule. Please let us know.

If you have child care issues, where you cannot make arrangements to have your child or children picked up from school in the afternoon or if there is child care, after-school care but it will cost you money, we don't want anybody to have to take out money with to be with us.

If you have medical issues which you believe would interfere with your ability to be

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with us physically, mentally, we won't ask what those are. That I have to leave to your own discretion.

I will tell you for individual that have a bad back and need to stand up and need to stretch, that is not a problem.

If you have diabetes, if your blood sugar takes a dive and you need insulin or you need to eat something, that has never been a problem.

Those arrangements will always be made because your health is most important.

If you are a commissioned employee or a part-time employee or combination of both, if your being with us will effect your financial bottom line in a negative fashion, we don't want you up.

I don't want to be responsible for anybody being put out, on the street.

Also, I know Steve mentioned this to you when you were all outside before. If you are a full-time employee, and you know what your company policy is, as far as paying for jury service, please let us know.

That's really the critical thing.

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If that's an issue, you can start with that, because you don't have to go any further.

You can give me 17 reasons.

If you don't get paid, we don't want you. If the anybody can think of another one we haven't mentioned, fine.

You can start us off.

RAL ESTEVENZ: I'm self-employed. That's my situation.

I'm the --

THE COURT: What do you do.

RAL ESTEVENZ: I teach music lessons.

THE COURT: If you're not doing that, you're not making money?

RAL ESTEVENZ: Yes.

My wife. I have a five-month new born.

She's at home now.

THE COURT: Congratulations.

RAL ESTEVENZ: Thank you.

THE COURT: Boy or girl?

RAL ESTEVENZ: Girl.

THE COURT: Mr. Petitme?

STENO PETITME: Not too much English. I am retired.

THE COURT: You're native language is

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Creole?

STENO PETITME: Yes.

THE COURT: How well do you understand and speak English?

STENO PETITME: Well, I come in, heard people form the country.

THE COURT: Thank you.

MICHAEL WEBSTER: I speak English.

I am employed at John Knox Village full time.

THE COURT: Do they pay?

MICHAEL WEBSTER: I have been trying to get them. My boss isn't there. I don't know.

THE COURT: It is something you can let us know about, when you find out?

MICHAEL WEBSTER: Yes.

THE COURT: Do you have any other conflicts.

MICHAEL WEBSTER: Yes, I'm a -- I take water pills.

I go to the restroom a little frequently.

THE COURT: At any time during the course of this proceeding you need to use the restroom, that is not a problem. All you have to do is, if we're in trial, you just get ahold

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of one of my court deputies. We will make sure that is taken care of immediately. That's the least of your problems.

MICHAEL WEBSTER: Thank you, sir.

MICHAEL SCHUCK: I'm a full-time employee. They will pay up to five days.

THE COURT: Who do you work for?

MICHAEL SCHUCK: Hamms' Management Corporation.

MONIQUE ALLEN: I am full time and part time. Full-time, only today.

THE COURT: Who do you work for?

MONIQUE ALLEN: Home Foreman.

LISA CLARIZIO: Self-employed. I write data base software.

THE COURT: If you are not working --

LISA CLARIZIO: Right now, I have scheduled trips to New York, China and Columbia.

MADELINE GARCIA: I work full time.

I called my boss. Asking how much is jury duty. He said I expected the court to pay. Job doesn't pay.

I work for a foster home.

RONALD CROSKEY: I work for Miami Dade Fire Rescue.

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I believe they cover it.

THE COURT: They do.

MARIE BELIZAIRE: I just got a part-time job, part-time teacher. I don't know their policy.

THE COURT: We found out, going through this whole process, very few places pay on part-time employees. Is that part-time job critical to your financial bottom line?

MARIE BELIZAIRE: Somewhat.

THE COURT: What does somewhat mean? Do you count on it to make all of your bill payments?

MARIE BELIZAIRE: No.

THE COURT: Like play money?

MARIE BELIZAIRE: Always wanted to be an educator. Ended up being a fireman.

CLINTON MCCLAIN: I work for Publix.

They do pay. But I have a six-month old new born. My mother is watching.

THE COURT: Who is watching the new born?

CLINTON MCCLAIN: My mother.

THE COURT: Do you work?

CLINTON MCCLAIN: Yes.

THE COURT: Work during the day?

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CLINTON MCCLAIN: During the day.

THE COURT: Somebody is always taking care of your child.

CLINTON MCCLAIN: Yes.

MR. WILLIAMS: Full time?

CLINTON MCCLAIN: Full time.

THE COURT: Did I tell you our work schedule?

Okay. I generally forget.

The work schedule would be Tuesday, Wednesday, Thursday, Friday.

Generally, I like to have my jury back by 9:45 and work until 5:00, 5:30, depending upon our situation with witnesses.

As to Friday's, there may be Fridays we don't work.

May be Friday's we work half a day.

May be Fridays we work all day.

All of that I would be able to tell you on the Thursday. So I gave you the time and dates.

Good.

Now you know how that falls.

GEORGE DALISAY: I'm retired.

THE COURT: No conflicts?

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GEORGE DALISAY: I have a colonoscopy October 5th, a Friday.

THE COURT: If we can accommodate, that would be your only conflict?

GEORGE DALISAY: Yes.

THE COURT: That's the 5th?

GEORGE DALISAY: Yes.

Yes, sir.

DAVID SPARKS: I'm a full-time employee. I have conflicts with work.

I don't know if they cover the whole thing.

THE COURT: Did you call them?

DAVID SPARKS: I did.

They wanted to send a letter. We are in the fourth quarter of financials. And I also have two trips.

One in October. One in November.

Paid for.

THE COURT: Where are you going?

DAVID SPARKS: North Carolina in October. Orlando in November.

THE COURT: Do you know the dates?

DAVID SPARKS: 17th through the 22nd in the October.

I believe it is the weekend or week before

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Thanksgiving.

THE COURT: I'm hoping we'll be finished by then.

JOSEPH KOVACS: Full-time student. Keiser University, studying psychology.

JOSE LOPEZ: Unemployed. Trying to do real estate.

THE COURT: Will they pay you?

JOSE LOPEZ: No.

THE COURT: You work on commissions?

JOSE LOPEZ: Commissions.

JASON ALI: Seeking employment with hospitality management.

THE COURT: If I put that in different terms, you're presently unemployed, looking?

JASON ALI: You can call it that.

THE COURT: We wish you nothing but the best.

WILLIAM MANNING: Full-time employee. My employer will cover five days.

LOUIS MARTINEZ ESTRELLA: Same. Commissioned. I work on commissions.

I'm a hair dresser.

MICHAEL CHISHOLM: Full-time employee.

They cover everything. Broward County

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School Board.

THE COURT: Oh, yes they do.

Are you a teacher?

MICHAEL CHISHOLM: No.

Maintenance worker.

THE COURT: That would be your only conflict.

MICHAEL CHISHOLM: I have a mother that I watch at night.

THE COURT: I don't work at night.

MICHAEL CHISHOLM: Okay.

ANN WANTUCK: Full-time employee at a bank. They cover five days.

Suntrust in Miami.

LYDIA KOLBER: Full-time employee. Teach at a private school. Cover three days.

I am the major bread winner. I have two in college.

THE COURT: No, no, no, no.

If you are not getting paid --

LYDIA KOLBER: Not getting paid.

ANDREE CLARK: Retired.

No conflicts.

THE COURT: Wish you had one?

ANDREE CLARK: No.

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WILLIAM HOWARD: I am retired. You answered my question about what the schedule would be. I do have a physical exam and testing to be done. But I think, I didn't know what day to make it.

THE COURT: Mornings.

WILLIAM HOWARD: Since you say we won't be here Monday.

THE COURT: We will not be here on Mondays. If you get stuck and need to do something on Friday, we absolutely can make arrangements.

WILLIAM HOWARD: I don't really have any issue then.

VALERIE CORSARO: I'm currently unemployed.

And I have a conflict with a pre-paid trip in October.

THE COURT: What kind of work?

VALERIE CORSARO: Human resources.

I just moved here from New York.

THE COURT: You are looking?

VALERIE CORSARO: I just started because I'm still --

THE COURT: You're looking for work?

VALERIE CORSARO: Eventually, yes.

THE COURT: You want to be with us while

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you're looking?

When is your vacation.

VALERIE CORSARO: October 16th through the 22nd.

THE COURT: Going anyplace good?

VALERIE CORSARO: New York.

Kind of cold.

THE COURT: What I'll ask each of you now is please follow Steve. We'll have some of you back in just a little while.

I'll explain from there what we're doing.

The rest of you will have an opportunity to go back to the jury room.

I'm sure they will process you out.

I want you to know, on behalf of all of us, how much we appreciate the fact you did take your time to come down and participate.

Probably one of the, it is one of the highest forms of service we in this country perform.

Thank you and follow Steve.

THE COURT: All right.

26, Estevenz, self employed.

27, language.

28, going to let us know.

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29, not getting paid.

30, not getting paid.

31, not getting paid.

32, Garcia, not getting paid.

33 --

MR. SATZ: He's okay. Said he doesn't need the money.

THE COURT: I was just, I had a blank.

34, language.

35, McClain, was okay.

36, the one with the colonoscopy on the 5th, I am bringing him back, see where we are.

MR. SATZ: Okay.

MR. WILLIAMS: Yes.

THE COURT: 37, traveling.

38 is a student.

39, Lopez, commission. Looking for a job.

Ali is unemployed. Looking.

41, isn't getting paid.

42, Judge Robollo's wife we already excused.

43, works on commission.

44, I show as good.

45 isn't getting paid.

46, language.

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47, not getting paid.

48 and 49, Clark and Howard, both good.

And 50, Corsaro, unemployed and vacation.

MR. POLAY: Correct.

MR. WILLIAMS: I texted my former intern. Worked at John Knox. She said they pay every day.

THE COURT: Lets bring them in.

(Enter venire.)

THE COURT: Let me tell you what we will do now.

Marabel will take you into our jury room and give you a questionnaire that we ask that you please fill out.

The questionnaire does not call for your Email address or phone number.

If you decide to put it down, it will be a distributed item.

There is a list in there where I ask you to please put your name. Put your Email and your phone number where you can be readily reached. That is for my purpose and my purpose only so that in the event of an emergency, my office can reach you and let you know.

We'll give you information so you can reach

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my office in the event of an emergency.

She will show you where you need to be when you come back next Tuesday afternoon at 1:30.

And with that, follow Marabel.

(Exit said venire.)

THE COURT: Everybody is ready. Let's bring them in.

(Enter venire.)

(Carlos Camacho through Sandra Reyes-Crespo.)

THE COURT: Good afternoon.

I'm Paul Backman, one of your judges here in the 17th Judicial Circuit.

Before I tell you what it is we're doing, is there anyone that does not understand and speak the English language?

Everybody understand and speaks English?

Okay.

Let me tell you why we're here.

What we are busy doing is trying to find individuals that have no conflicts between next Tuesday, which is October 2nd, and up to Thanksgiving.

Now, we all recognize that everyone has individual conflicts that arise on a daily

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basis. And we put together what I think is a very comprehensive list of most conflicts that exist.

Of course, if you can be creative, come up with a new one, it would be nice to know.

And I'm not going to ask anybody to raise their hand.

When we finally go through it, I'll start with Mr. Camacho and go finish that row and second row and our special person in the last row.

Here is what we have.

First of all, let me tell you our trial schedule.

We would be working Tuesday, Wednesday, Thursday and Friday. I like to have my jury back at 9:45. I like to work until 5:00, 5:30, depending upon where we are with a witness.

Sometimes a witness finishes at 3 o'clock and we have no one else. So you get to go home. On Friday's, that's a determination that gets made on Thursday.

Depends upon where we are in the trial. We have some individuals that have had doctor's appointments or other plans that start on

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Friday's. Of course, we're able to make adjustments.

So you will need to let me know that.

Here is what we're not, who we're not looking for.

If you are a full-time student and being with us would interfere with your education, as much as we would like to have you, we don't want you.

If you are a primary care giver to a parent, grandparent, a child or it is part of your professional responsibilities, please let us know.

If you are unemployed and actively looking for a job, again, let us know.

If you have a pre-paid vacation between now and Thanksgiving -- by the way, I don't think this case is going that long.

I would rather be on the over than under side. Because that creates real problems.

Child care. If you have children or a child that needs to be picked up in the afternoon and you cannot make arrangements that comport with our trial schedule, please let me know.

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If you have any medical issues that would interfere with your ability to participate with us either physically, mentally, I'm not asking you what that medical reason is. None of my business.

Let me tell you, if your back hurts, can't sit too long, if you need to stand up and stretch, that's not an issue.

We will always make those provisions.

We have individuals that have come through with diabetes. When their blood sugar runs low, have to take insulin or eat, that's never been a problem. We have stopped until that individual is ready to go again.

Of course, there may be individuals that need to use the restrooms on a more constant basis than others. That too is not an issue.

Anything else medically you think interferes, please let me know.

If you're a commissioned employee or a part-time employee, and you won't get paid, let me know. A lot of that falls into individuals that are self employed and if they are not working, they are not making money.

We don't want to interfere with anyone's

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financial well being.

Last but not least, if you are a full-time employee, and you know what your employer's payment service is, please let me know.

Some of them will pay for today. Some three days. Some five days. It is all over the ballpark.

Many employers pay for every single day you're with us so you don't lose any income.

Again, we don't want to put anybody out, on the street.

Mr. Camacho, you're up.

CARLOS CAMACHO: Yes, sir. It would interfere with my finances.

I just got a position two weeks ago. I am a supervisor for the Community Outreach Program. We're short-staffed. I have interviewed two candidates on Tuesday. It would interfere with my job.

THE COURT: Do you know if they will pay you?

CARLOS CAMACHO: It would not be my full salary. That's all I need to know.

THE COURT: Ms. Verolla?

CLARA VEROLLA: I don't work, sir. I have

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anxiety.

THE COURT: Nervous?

CLARA VEROLLA: Yes.

THE COURT: Everybody is nervous.

CLARA VEROLLA: I know.

THE COURT: Do you take medication for your anxiety?

CLARA VEROLLA: Not at this moment, no.

JULIE MILLER: No, I have no problem.

THE COURT: Do you work?

JULIE MILLER: Yes, for the post office.

THE COURT: They definitely pay.

RAMIRO FORERO OROZCO: Yes, I have a problem.

I am a full-time student.

THE COURT: Where do you go to school.

RAMIRO FORERO OROZCO: Broward college.

THE COURT: Studying?

RAMIRO FORERO OROZCO: I just started. Undecided.

STEPHAN LEANDER: I would have a conflict with work. It would just be, I would probably be replaced. I'm a chef at a restaurant.

THE COURT: What restaurant?

STEPHAN LEANDER: Great, little Italian

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restaurant. Sera Bello.

BOBBIE SIMS: No, there won't be a conflict.

THE COURT: You're okay?

BOBBIE SIMS: Yes.

THE COURT: Do you work?

BOBBIE SIMS: Yes, for the postal service.

DEBRA VEGA RIVERA: Currently unemployed. Actively looking.

THE COURT: When you're actively employed?

DEBRA VEGA RIVERA: I'm a medical assistant.

ASHAN AHMED: I'm a student. Full-time student. Broward College. Trying to get into the nursing program.

JONATHAN SCOTT: I pick up my son every day after work at 5 o'clock, every day.

THE COURT: Where do you live?

JONATHAN SCOTT: Plantation.

THE COURT: I would have to stop by 4:30 for that to work, give or take.

JONATHAN SCOTT: If you can make an exception, yes, you have to stop.

JONATHAN SCOTT: Yes, I have to be there to pick him up.

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THE COURT: No alternative arrangements can be made?

JONATHAN SCOTT: No, I pick him up every day, after work.

VICTORIA COSTANO: Scheduling conflicts. Not a vacation.

It is a conference for my job in Vegas in October.

October 27th through November 3rd.

CARLOS CAMACHO: I have a trip in November.

THE COURT: Where are you going?

CARLOS CAMACHO: Argentina and Cuba.

JAMES CHARLES: Currently full-time student. I work with the United States Air Force Reserve.

THE COURT: Where do you go to school?

JAMES CHARLES: Kaplan.

Public health.

NELSON ORELLANA: I work in Houston, Texas. I get paid half of my shift. I live here. Get out-sourced. To keep my job, I fly there and come back.

CHRISTOPHER RESETCO: I think financially, since I have a full-time job, they only pay two, three days.

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ALEXANDER LOPEZ: My employer is out of Miami, Florida. They will not pay anything.

RICHARD SAFATY: Full-time, self-employed. I own a travel agency.

THE COURT: You're not there, you're not making commissions?

RICHARD SAFATY: I have to close the store.

THE COURT: Work by yourself?

RICHARD SAFATY: Currently.

GEORGINA PARKER: No problem. Work for Broward County public schools. Superintendent.

JUSTIN BOCCIO: I don't get paid unless I work. I'm a pilot for a charter company here in Pompano.

THE COURT: Our special, lonely individual?

SANDRA REYES-CRESPO: Conflict with work. I'm with one agent. I work at State Farm Insurance.

I am starting my new agency on October 4th. She said they are under-staffed.

THE COURT: Which translates to you won't get paid.

SANDRA REYES-CRESPO: Correct.

THE COURT: What I'll need you guys to do for me, at the present time, is go out with

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Steve so we can talk about you behind your backs.

Some of you will be back in here in a few moments.

I'll explain further from there.

For those of you that won't be coming back in here, I think you have to go back to the jury room so they can process you out.

I want you to know, on behalf of all of us here, how much we appreciate the fact you came down and did participate. Not everybody can serve.

Thank you very much.

Follow Steve.

(Exit venire.)

THE COURT: 51, Camacho, 51 won't be paid.

52, anxiety, going bye-bye.

53, Miller is good.

54, student.

55, isn't getting paid.

56, Sims, is okay.

57, Vega, won't get paid.

58 is a full-time student.

19, Scott, child care.

60, Castano, is traveling.

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61, Charles, is a student.

62, not getting paid.

63, 64, 65, none are getting paid.

66, Parker, is the only one.

67 and 68 aren't getting paid.

(Enter venire.)

THE COURT: Welcome back.

Gabe there is going to take you into our jury room and give you all a questionnaire we will ask you to fill out.

It does not ask for your Email address or phone number.

If you put it down, understand it won't remain very private.

There is a list, asking, which I'm asking for you to print your name, provide a good Email, where you can always get it and a phone you can be readily reached at. That is not for publication.

It is for my utilization in the event my office needs to communicate with you if there is an emergency.

And he will give you information so you can communicate with my office in the event of an emergency.

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He will also take you out and show you where you need to be Tuesday afternoon at 1:30.

So with that, have a wonderful day.

(Exit venire.)

MR. SATZ: Since our jurors are coming Tuesday, I suggest we go through them and see what we need.

THE COURT: We can always pull more Wednesday.

MR. SATZ: Right. Right.

THE COURT: Just might push our openings back.

MR. WILLIAMS: We have a question.

In light of Ms. Parker, does the State Attorney have regular contact with Brunstein's office regarding the news case?

MR. SATZ: I have never seen her before in my life.

MR. WILLIAMS: Not seen.

Speak to her?

MR. SATZ: I don't speak to her. No.

MR. POLAY: You don't plan on speaking to additional jurors --

THE COURT: Hang on.

I went to get through Pam first.

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JUDICIAL ASSISTANT PAM COE: I have got some call backs.

First one is from Essa Sillah, from this morning.

First group.

MS. MCCANN: Number 22,

JUDICIAL ASSISTANT PAM COE: Employer will only pay five days.

Excusing him?

MR. SATZ: Yes.

THE COURT: 22 is gone from this morning.

JUDICIAL ASSISTANT PAM COE: Crystal Renold was from 9-25. September 25 a.m. Group 1.

MR. SATZ: McDonald's girl?

JUDICIAL ASSISTANT PAM COE: Also has no vehicle. Absolutely no transportation to get here.

MR. POLAY: She's excused by the defense.

JUDICIAL ASSISTANT PAM COE: John Silcox was a bit more precise on his dates. The wedding date he's gone, out of the country, is from October 30th through November 7th.

MR. POLAY: That won't work for us.

MR. SATZ: What is he doing?

JUDICIAL ASSISTANT PAM COE: Out of the

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country for a wedding, October 30th through November 7th.

Excusing him?

MR. POLAY: Defense has no objection.

JUDICIAL ASSISTANT PAM COE: Ashley Cole called.

Has an issue with her employer.

I don't know what it is.

MCCARLOS CAESAR: Page 3. Fourth from the top.

MR. WILLIAMS: She works for the dermatologist.

No way a dermatologist will pay.

MR. SATZ: Let's wait and see.

MR. POLAY: I agree.

JUDICIAL ASSISTANT PAM COE: When she calls back, I will send you all an Email.

Donovan Everett was the principle of US Farmer, regarding juror David Kavanaugh. He will still come in on Tuesday.

He ask if he can be waived.

Something to do with being a principle scientist.

MR. SATZ: That's too bad. We aren't waiving him.

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JUDICIAL ASSISTANT PAM COE: I had others. They just asked for me to send an email to their employer.

THE COURT: We have lost three. Now we are at 101.

We will go through them and see what happens.

Monday afternoon at 1:30.

MR. POLAY: You just want us.

THE COURT: And your client.

MR. POLAY: To go through the questionnaires?

THE COURT: Yes. No one has an objection to Pam's letting these go that we have gone through?

MR. POLAY: No objection.

MR. SATZ: No objection.

MR. POLAY: I still, I disagree. I guess, I may be the minority. I still think, Judge, if we can get a few more jurors, that would be a good move. Rather be overly cautious.

MR. SATZ: We can do that, if we run out. We can do that again. At least we can go through them.

MR. POLAY: I understand.

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THE COURT: I wasn't going to start voir dire on Tuesday.

MR. WILLIAMS: Just do the Witt and other stuff.

MR. SATZ: If we run out, take another day and do it.

THE COURT: Right.

MR. POLAY: Fine. That makes sense.

THE COURT: I know Mike doesn't take long.

MR. POLAY: I will be long.

I know Dohn will be long.

THE COURT: Other than that, we're good.

THE COURT: 1:30, Monday.

****

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 10th day of July, 2019.

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME VII
PAGES 475 - 602

Fort Lauderdale, Florida
October 2nd, 2018
9:40 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 2nd, 2018, commencing at 9:40 a.m.

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THEREUPON, the following proceedings were had:

(Discussions held off the record.)

THE COURT: Let's deal with a couple of things.

The statement of fact that Ms. McCann was kind enough to do yesterday, I believe was circulated to everybody, is there an issue with what I'll say to the jury?

MR. WILLIAMS: Second paragraph.

The crimes in this case took place, we are asking during the early morning hours be stricken.

The crimes in this case took place on March 11th.

THE COURT: Do you care?

MS. MCCANN: Yes, I do care.

THE COURT: They will hear it anyway.

MR. WILLIAMS: Trying to make things simpler.

Last sentence, the issue of the defendant's guilt has been decided.

MS. MCCANN: I think it should be there. They are here only for a re-sentencing.

THE COURT: I don't have an issue.

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MS. MCCANN: They are here for a sentencing. Take the "re" out. Sentencing.

THE COURT: It is not in here.

MR. WILLIAMS: Verbally.

MS. MCCANN: I misspoke.

THE COURT: Do you want to bring in the couple of jurors first, ones with issues?

Mr. Kavenaugh has an issue.

JUDICIAL ASSISTANT PAM COE: Would you like me to read the letter first from his employer? I can make copies. But I can read it real quick .

MR. WILLIAMS: Before we get to that, in case Kavanaugh stays on the jury --

THE COURT: I'm bringing them in singularly.

JUDICIAL ASSISTANT PAM COE: Here is the letter from Dr. Amish Doshi, president CEO of U.S. Farmer.

I am requesting a deferral from jury duty for the October 20, '18 term for David Kavanaugh because he's employed full time as a principal scientist at an emerging pharmaceutical company. His absence during this period would impact the overall operations

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of the company for the following reasons. We have several projects whereas the principle scientists for US Farmers are responsible for data analysis and compilations in order for to us be in regulatory compliance.

Additionally, we have projects such as designing and conducting experiments to evaluate the feasibility of the projects in the resulting product.

Third, he's the only principal scientist on staff.

Please put his name back in the lottery, as he would be glad to serve at a later time when the company has additional resources to support his absence.

I appreciate your understanding to my situation and await your response to my request.

Please contacts me with your decision or if you have further questions.

That's that.

MR. SATZ: The State's position is that's the employer. It is not him.

MS. MCCANN: Yes.

THE COURT: I hear you.

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So we just bring him in and let him know that and irritate the hell out of him?

MR. POLAY: He never expressed --

THE COURT: He just said my employer isn't happy.

MR. POLAY: He never expressed it will affect him financially.

Obviously, he's unhappy to be here.

JUDICIAL ASSISTANT PAM COE: Would you like me to bring him in first?

THE COURT: No.

JUDICIAL ASSISTANT PAM COE: There is one that knows the defendant.

Howard Enslen, number 36.

(Enter Howard Carl Enslen.)

THE COURT: Good morning, Mr. Enslen.

How are you?

HOWARD CARL ENSLEN: Nervous.

THE COURT: Nothing to be nervous about.

Pam brought to my attention you approached her and indicated that you know Mr. Hojan?

HOWARD CARL ENSLEN: I don't --

THE COURT: The defendant.

HOWARD CARL ENSLEN: Uhm, I was looking on my phone. I don't know. It was about a week

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or so ago. And I can't read, I couldn't read the article because my phone wouldn't let me. I ran out of free articles.

THE COURT: Don't you hate when that happens?

HOWARD CARL ENSLEN: Yes.

But I saw the man's face. And I, I recognized him.

THE COURT: By virtue of the picture that was in the paper?

HOWARD CARL ENSLEN: Yes. And it said a little something about a, what's going to be going on here, I think. So, therefore, I don't know if you want to use me or not.

THE COURT: The fact that you may have read something, depending upon -- how much did you read?

MR. WILLIAMS: Judge, I know what he's talking about. The caption --

THE COURT: Talking about the one in the Sun Sentinel?

MR. WILLIAMS: Yes.

THE COURT: I read the article.

Did you read the caption?

HOWARD CARL ENSLEN: That's all I could

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read.

THE COURT: Let me ask it this way.

Do you know about the event itself?

HOWARD CARL ENSLEN: A little.

THE COURT: What do you know?

HOWARD CARL ENSLEN: Waffle House in Davie. Was it on a, the one on 148th? I'm not sure.

I know they are all over the place.

THE COURT: Well, you heard it anyway. That was on --

MR. SATZ: 148. 4689.

HOWARD CARL ENSLEN: I know where that is. There is a Publix out there. I delivered there about 30 times.

THE COURT: That's okay.

HOWARD CARL ENSLEN: Can I say something else?

THE COURT: Go.

HOWARD CARL ENSLEN: I don't know what I'm allowed to say.

THE COURT: Anything you think is relevant.

HOWARD CARL ENSLEN: About locking people in the cooler, putting them in the cooler. That's all I know.

Oh, I know something else.

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THE COURT: Tell me.

HOWARD CARL ENSLEN: I don't know if I'm allowed to say it.

THE COURT: Say it, please.

HOWARD CARL ENSLEN: Deadlock jury on life or death.

Deadlock, the jury was dead-locked. That's why the sentence, is that why we're here?

THE COURT: I think you're confusing that with a case being tried in another courtroom. That was Ibar.

MR. WILLIAMS: No.

THE COURT: Mikel --

MR. WILLIAMS: Yes.

THE COURT: That's a co-defendant. Not why we're here.

MR. WILLIAMS: If we can approach, I would like to make a record.

THE COURT: I'll give you that chance in a minute.

Could you set aside anything that you know, remember, and make a determination for what you will be asked for in this case based upon what is presented here today or I should say during the course of the trial?

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HOWARD CARL ENSLEN: I'll do what I'm supposed to do. Play by the rules.

THE COURT: Have you talked to anybody else outside about that, what you just told us? Outside? Other potential jurors?

HOWARD CARL ENSLEN: I was talking to one guy.

I said -- I didn't mention anything else whatsoever.

I said I know basically what this is about, basically.

That's all I said.

THE COURT: Anybody want to ask a question?

MR. SATZ: Just, the Judge asked you the most important question.

Can you set aside anything you read about this case and just base your vote on the evidence that is brought forward? Or will you be influenced by something that you read?

HOWARD CARL ENSLEN: No, I will be impartial.

MR. SATZ: Okay. Okay.

HOWARD CARL ENSLEN: Fair to you.

Fair to this guy.

Got to be impartial.

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Why are we here? We're not here to lie or be prejudiced or whatever.

MR. SATZ: Yes, sir.

THE COURT: Mr. Polay?

MR. POLAY: Good morning.

How are you, sir?

HOWARD CARL ENSLEN: Nervous.

MR. POLAY: Don't be.

Let me ask you this.

When you spoke to the other juror, did you tell him about what you read?

HOWARD CARL ENSLEN: No, sir.

MR. POLAY: You just said I know basically why we're here? Is that it?

HOWARD CARL ENSLEN: I know basically because the gentleman sitting next to you, I recognized him of what I saw on my phone. That's it.

MR. POLAY: I understand what you're saying with respect to that.

What I want to know is what did you say to this other juror?

HOWARD CARL ENSLEN: And I also told the bailiff -- I don't know where she is; but I said I know basically, basically, what this is

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about. That's it.

MR. POLAY: Let me go back to the conversation you had with the juror.

Was it in front of just one other juror?

HOWARD CARL ENSLEN: One other.

MR. POLAY: Do you remember that person's name?

HOWARD CARL ENSLEN: Some tall guy with glasses. He said he has to take care of two kids or something. I don't even know if you will use him because he has to take care of some kids.

MR. POLAY: Do you know if that person came back and filled out a questionnaire with you?

HOWARD CARL ENSLEN: Yes.

A tall guy with glasses.

MR. POLAY: Do you remember the color of his hair? Anything to that effect?

HOWARD CARL ENSLEN: Black.

THE COURT: Was he in your group?

HOWARD CARL ENSLEN: When we went back into the little room?

THE COURT: Yes, to fill out --

HOWARD CARL ENSLEN: Yes, he was sitting across from me.

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MR. POLAY: You never mentioned any facts?

HOWARD CARL ENSLEN: No.

MR. POLAY: Did you say it was about the Waffle House?

HOWARD CARL ENSLEN: No,

MR. POLAY: You said that because you read the caption in the Sun Sentinel then?

HOWARD CARL ENSLEN: Yes.

MR. POLAY: When I asked you your knowledge of this came from the Sun Sentinel, the article itself, from the caption; is that correct?

HOWARD CARL ENSLEN: Yes. I saw the case.

When I go on their site, I go all the way down and look at stuff. It happened to be there.

MR. POLAY: I do the same thing. That's okay.

HOWARD CARL ENSLEN: I saw the guy's picture.

When I walked in here last week, I recognized him. That's basically it, other than I read something about a dead looked jury.

MR. POLAY: I appreciate your candor, sir.

THE COURT: You read that article before you even came for jury duty?

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HOWARD CARL ENSLEN: Oh, yes. Absolutely. It was a few days before.

THE COURT: Okay.

I wanted to make sure it was preceding your jury service.

Anybody else have another question?

MR. SATZ: No.

THE COURT: If you would kindly return outside?

Please do not discuss the nature of our conversations.

HOWARD CARL ENSLEN: You got it.

THE COURT: Thank you.

Don't be nervous.

(Exit Howard Carl Enslen.)

THE COURT: Mr. Williams?

MR. WILLIAMS: The article he's talking about, in his questionnaire, he said he gets the news on his phone via the Sun Sentinel. I get the same thing on my phone.

Talking about Mr. Hojan here for resentencing.

That's my concern.

He has been sentenced before. He's back again.

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THE COURT: I didn't read it on line.

I actually get a hard copy.

I have the article.

It has to be made a part of the article.

MR. WILLIAMS: The on-line article is not necessarily --

THE COURT: They are identical.

MR. WILLIAMS: They are updated.

THE COURT: When was it updated?

MR. POLAY: I can tell you, as an officer of the Court, the on-line article definitely stated resentencing.

THE COURT: In the caption?

MR. POLAY: Yes. In the caption.

THE COURT: He doesn't seem to recognize that from reality. He told us what he knew.

What is the State's position?

MR. SATZ: He said he could set aside whatever he read. Didn't read much.

THE COURT: I agree. I don't think, at the present time, that rises to the type of pre-trial publicity that would interfere with his ability to be fair, impartial and set aside what he knows, which is, basically, not much.

The mere fact he knows it happened at a

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Waffle House, the mere fact that he recognized the picture of Mr. Hojan -- of course, we couldn't ask him the $64,000 question with regard to what was actually in that headline because that could prejudice the individual.

But I got the distinct impression, listening to him, he recognized the picture and recognized --

MR. WILLIAMS: If my memory serves me correctly, the picture showed Mr. Hojan in a beautiful, red or orange jump suit.

THE COURT: No. It was in the last trial. He was dressed.

MR. WILLIAMS: Sure?

THE COURT: Yes.

I'll be happy to bring in the picture to do that definitively. But I did not bring it with me today.

MR. POLAY: I just think it's, that he should be excused, given the fact that he read an article where he, where it definitively states it is a resentencing.

In his mind, he will think he already received a death penalty.

MR. WILLIAMS: Or didn't and now about to

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give it to him.

MR. POLAY: Exactly. I think putting him on, when we have some other jurors --

THE COURT: All we are doing now is a screening process.

You will get them on voir dire.

JUDICIAL ASSISTANT PAM COE: There was a late arrival. Ms. Ravelo. I stated in my Email yesterday, her son is a Biscayne Bay police officer. Number 27. She wanted to come in, talk to you guys in private about it. Didn't act like she wanted to be excused but let off on the date for her son's sentencing.

Nancy Linnett-Ravelo.

MR. WILLIAMS: Her son is facing sentencing in court. Probably has to go there.

THE COURT: Let's play her by ear.

JUDICIAL ASSISTANT PAM COE: She wanted to speak to you.

THE COURT: I thought you said she didn't want to come in.

JUDICIAL ASSISTANT PAM COE: She does.

(Enter Nancy Linnett-Ravelo.)

THE COURT: Good morning.

Do you go by Linnett-Ravelo?

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NANCY LINNETT-RAVELO: Yes. Compound last name.

Yes.

THE COURT: You wanted to talk to us.

NANCY LINNETT-RAVELO: I wanted to let you and everyone involved know my son is, was a Biscayne Park police officer.

He's being indicted.

I want you to know because I didn't know, you know, what kind of case was going on, as far as, if that has anything to do with me. But it is fair you know about it.

THE COURT: We definitely appreciate you brought it to our attention. Will that interfere with your ability to be fair and impartial?

NANCY LINNETT-RAVELO: Absolutely not.

THE COURT: I understand that the sentencing --

NANCY LINNETT-RAVELO: That's the only thing I have.

THE COURT: October 18th.

NANCY LINNETT-RAVELO: I think it is October 16th.

THE COURT: Tuesday or a Thursday.

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NANCY LINNETT-RAVELO: I'll tell you in a second.

The October, 18th. It is a Thursday.

THE COURT: You want to be there?

NANCY LINNETT-RAVELO: Yes.

THE COURT: I don't blame you.

Is it morning, afternoon on just a day --

NANCY LINNETT-RAVELO: It sales here 8:30 in the morning. But I don't know. I have never been to any of those.

THE COURT: Is it state or federal court?

MR. WILLIAMS: State. I have the article. You can look him up.

THE COURT: He's looking him up. Has him on his computer.

That's why sometimes, you know, not everything is what you see or what they are convicted of.

MR. WILLIAMS: I'm sorry. It is federal court.

MR. SATZ: What is he being sentenced for?

NANCY LINNETT-RAVELO: Two things.

His captain told him to falsify some police reports. Basically, they are going for the captain, you know. And then the other thing

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was, uhm, excessive --

MR. SATZ: Force.

NANCY LINNETT-RAVELO: Yes, sir.

MR. WILLIAMS: Looks like he's cooperating.

NANCY LINNETT-RAVELO: Oh, completely. It is like what you hear and what it is is not what it is. It will come out.

I think, after they deal with the captain and other witnesses come up, but I did work for the Department of Labor. I am reintroducing all kinds of first time offenders and life offenders back into society, giving them a career. And like, like, like not life.

THE COURT: Would any of that interfere with being fair and impartial?

NANCY LINNETT-RAVELO: No.

THE COURT: Any another questions?

MR. WILLIAMS: No questions.

THE COURT: Thank you.

You can rejoin the others. Please don't discuss what we discussed in here.

NANCY LINNETT-RAVELO: No.

I won't. That's why I was glad this was closed.

THE COURT: This is about as private as it

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gets.

NANCY LINNETT-RAVELO: Thank you.

(Exit Nancy Linnett-Ravelo.)

MR. SATZ: After talking to Ms. McCann, we agree with the defense about Mr. Enslen.

THE COURT: We are going back to Mr. Enslen.

MR. SATZ: We have no problem with him being excused.

JUDICIAL ASSISTANT PAM COE: He was number 36.

Is he being excused?

THE COURT: Yes.

Mr. Enslen is an agreed strike.

Anybody with regard to Ms. Ravelo?

MR. SATZ: I have a concern, her trying to curry favor with the State and the son is up for sentencing.

MR. WILLIAMS: I don't think that's where she is coming from. The State Attorney's Office declining to prosecute --

THE COURT: Let's see how the voir dire goes.

JUDICIAL ASSISTANT PAM COE: Mr. Kavanaugh is next.

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There is a gentleman that showed up, very familiar. May have been excused. Michael Pierre.

THE COURT: He's in front of Ms. Ravelo.

MS. MCCANN: I don't have him.

THE COURT: Here he is.

I have him here.

JUDICIAL ASSISTANT PAM COE: Why doesn't anybody have his questionnaire?

THE COURT: I don't know.

I will look right now.

Nigel Pierre.

MR. SATZ: Why wouldn't he have filled out a questionnaire?

MR. POLAY: We didn't excuse him.

THE COURT: And he's here today.

We can have him fill out a questionnaire.

MR. POLAY: That's what we should do.

THE COURT: Let's see how this morning goes.

MR. POLAY: The numbers match up.

THE COURT: I have it. He's on today's list or the one we got the other day, from the jury room.

THE COURT: We'll put him in 36, where

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Mr. Enslen is.

With regard to Mr. Pierre, we'll slip him into seat 36, where Enslen is.

(Enter David Kavanaugh.)

THE COURT: We have a letter from your employer.

We understand your employer's position. The question that I need to ask, at this junction, if you are with us, will you be paid?

DAVID KAVANAUGH: Yes.

THE COURT: You wouldn't be enduring financial hardship?

DAVID KAVANAUGH: No.

THE COURT: Just an irritated boss?

DAVID KAVANAUGH: Well, I would have to do my work after I get done.

THE COURT: What would that entail in terms of your time? I mean if we leave here at 5 o'clock, you have to get home. You will probably eat or whatever you do. Then you will start working?

DAVID KAVANAUGH: Yes.

THE COURT: Do you have any concept of the approximation of how long each night you would be working?

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DAVID KAVANAUGH: I would probably say four to six hours.

THE COURT: You're talking anywhere, potentially, from 11 o'clock until two in the morning, maybe longer, maybe less?

DAVID KAVANAUGH: I would be able to work, if I got out of here at 5:00, I could start at 6:00.

I can tele-commute.

THE COURT: You can do it during lunch?

DAVID KAVANAUGH: I can bring my laptop here.

THE COURT: You can bring it.

During the trial, you just can't have it.

DAVID KAVANAUGH: Obviously.

THE COURT: We have other limitations as well. As far as people working from their laptop, I don't think we have ever interfered with that.

THE COURT: Are you going to be able to concentrate on this proceeding or always be worried about work?

DAVID KAVANAUGH: I always worry about work.

THE COURT: You understand we would need

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your full concentration.

DAVID KAVANAUGH: I would be able to segment it.

THE COURT: State have any questions?

MR. SATZ: You can be fair and impartial? It wouldn't affect your ability to be fair and impartial? You can do your job as a juror.

DAVID KAVANAUGH: I believe so. Yes.

THE COURT: That's a tricky word.

DAVID KAVANAUGH: What's that?

THE COURT: I believe.

DAVID KAVANAUGH: Yes.

THE COURT: It is one of those where you can do it or can't do it?

DAVID KAVANAUGH: Please restate the question.

MR. SATZ: Can you do it?

DAVID KAVANAUGH: Yes.

MR. WILLIAMS: Is your company in the middle of FDA trials?

DAVID KAVANAUGH: In the next month, we would be manufacturing.

MR. WILLIAMS: For your FDA group?

DAVID KAVANAUGH: Yes.

MR. WILLIAMS: For quality control?

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DAVID KAVANAUGH: I work as the principal scientist.

MR. WILLIAMS: Is this the primary product your company is developing now for seeking FDA approval?

DAVID KAVANAUGH: It is one of the primary products, yes.

MR. WILLIAMS: Without disclosing trade secrets, how many do you have in the pipeline?

DAVID KAVANAUGH: They have at least three.

First to file submissions. This would be four. And I believe they have at least three other in the pipeline, sir.

MR. WILLIAMS: The others in the pipeline aren't as close to being submitted as the one you're working on now?

DAVID KAVANAUGH: No, the one we are doing now is demonstration badges. Next month, manufacturing the six demonstration badges for civilians, for demonstration.

THE COURT: What kind of a drug is it? What does it do?

DAVID KAVANAUGH: Mixed amphetamine salts.

THE COURT: Which does what? I know what amphetamines do.

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DAVID KAVANAUGH: It is for ADHD.

THE COURT: I'm just nosey and curious.

MR. WILLIAMS: With this kind of complex trial going on, will you be able to go home at six and give that job your best and come back here the next day and disengage and give this job your best; or would it be better --

DAVID KAVANAUGH: I can. I mean they are significantly different things. I manage what I do at work. It is science based data analysis and evaluation of experiments.

I think, you know, when I get into that mode, I do that.

I get into thinking in that way. I will have to think in a different way during this trial.

MR. WILLIAMS: True.

There is, there is only so much time and energy. For the next number of weeks, you will be basically working a 12-hour day for free.

DAVID KAVANAUGH: Well, I'm -- I'm hoping they give me some sort of reprieve.

MR. WILLIAMS: If they don't, can you say you will give your best effort to your employer and my client?

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That's what we're looking for.

We want your hundred percent, undivided attention.

Obviously, your employer is banking on your input towards the success of the FDA trial.

DAVID KAVANAUGH: Yes.

MR. WILLIAMS: I know you want to do your civic duty. Can you really give each side a --

DAVID KAVANAUGH: It would be a strain.

THE COURT: You're not a 9-to-5 employee.

DAVID KAVANAUGH: 8:30 to 5:00.

THE COURT: Really?

You surprised me.

I would think in this type of employment, with what you do -- okay.

MR. SATZ: You're free to work weekends?

DAVID KAVANAUGH: Yes, I can work, like I said, I have a laptop, VPN access to the certain versions at work.

I don't have some of the software on my laptop at home. I do have IT install some software that I normally have on my PC at work. But I have to have IT install the software. See if we have the extra licenses for them.

I imagine they do that.

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THE COURT: Anybody else?

MR. WILLIAMS: Are you, are there trade secret concerns with this, obviously, with the work you're doing?

DAVID KAVANAUGH: Like the formula, the manufacturing process?

MR. WILLIAMS: The stuff you have access to on your laptop, the additional programs, that potentially involve trade secret disclosures. You mentioned you have different programs installed to do the work here.

DAVID KAVANAUGH: Yes. I don't have, my laptop I use at home does not have the full sweep of software I have at work. I can ask them to install that soft wear.

MR. WILLIAMS: Do you have a dedicated modem in your laptop.

DAVID KAVANAUGH: I do not.

MR. WILLIAMS: You realize you would be using the courthouse WIFI, which is an open WIFI?

DAVID KAVANAUGH: Yes.

I wouldn't be able to do that. The VPN wouldn't let me go through there .

THE COURT: Anything else?

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MR. SATZ: No.

THE COURT: Could you rejoin the others for the time being and please don't discuss the nature of our conversation?

DAVID KAVANAUGH: Thank you.

THE COURT: Thanks.

(Exit David Kavanaugh.)

MR. WILLIAMS: The gentleman is trying to do the right thing. His job will be, after dealing with us all day long is not like being a buyer for a department store, how many brown slacks does he need to order or gray shirts. This is complex, scientific equations, dealing with potentially a very useful drug to society. I ask he be excused and let him put his name back into the pool.

MR. SATZ: He answered he could do it.

I object to him being excused.

THE COURT: You know where my major concerns comes in? That's the use of an unsecure Internet, with, you know, if he gets hacked with those trade secrets that might be on his computer, from what I am gathering, he would need, I don't know about you, but I wouldn't want to be responsible for that. I'll

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let him go.

Want me to make his employer's letter a part of the file?

MR. WILLIAMS: Yes.

THE COURT: That will be Court Exhibit 1, I guess.

Please tell me that's it.

JUDICIAL ASSISTANT PAM COE: That is. I don't know how many you want coming in.

THE COURT: 21 at a pop.

JUDICIAL ASSISTANT PAM COE: We are missing two. 44 and 54.

That's Robert Ortez and Jack Newman.

MR. SATZ: We excused Robert Ortez.

THE COURT: You said 44 is Ortez, Pam?

JUDICIAL ASSISTANT PAM COE: Yes, Robert Ortez.

There are two.

MR. SATZ: He's excused.

MS. MCCANN: Our group has Ruby Harbuck Davis as 44.

MR. WILLIAMS: I have a Robert Michael Ortez we excused.

There is a Ray Anthony Ortez.

JUDICIAL ASSISTANT PAM COE: We have two

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Ortezes?

MR. SATZ: Ray Ortez is on the list. Robert was excused.

THE CLERK: His employer only paid five days. He's gone.

MR. WILLIAMS: Yes.

Robert is gone.

MR. SATZ: Are you going to explain the aggravating, mitigating circumstances?

THE COURT: Yes. And Witt.

THE COURT: I'll do that.

MR. SATZ: So they will know their function.

THE COURT: Right.

Third paragraph says if none of you are adamantly opposed, after going through two end zones.

MR. SATZ: Right.

THE COURT: Adamantly opposed to or adamantly in favor of one sentence or another, would you be able to listen to aggravating factors, any mitigating circumstances, arguments of the attorneys, blah blah blah. I can simply slide in there that aggravating factors are those that are provided by law and

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mitigating circumstances are things with regard to the defendant's life circumstances and background.

MR. SATZ: A weighing process.

THE COURT: Yes.

MR. SATZ: So they will know what their function is.

(Enter in 21 venire.)

THE COURT: Morning, ladies and gentlemen.

Welcome back and thank you for coming back.

It is always appreciated when you're asked to come back another day and you actually do.

First and foremost, has anybody's circumstances changed that we need to discuss that would interfere with your ability to be with us during this proceeding?

Yes?

KARLA GISELLE CAMPOS: I'm available as long as it starts next week. Tomorrow I'm going out of town until Saturday.

THE COURT: Well, the proceeding itself will start next week. But there is a good chance you guys could be here for the rest of the week.

Talk to me about your situation.

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KARLA GISELLE CAMPOS: I'm going to Disney tomorrow until Saturday. Mom's birthday.

THE COURT: I hear what you're saying.

Last week, when were you were here, I told you this whole week.

KARLA GISELLE CAMPOS: No, I misunderstood.

THE COURT: Yes, sir.

HOWARD RITTER: I have a doctor's appointment tomorrow.

THE COURT: What time.

HOWARD RITTER: Nine and 1:30. I thought you said if it happens it won't start until next Tuesday.

I thought that's what you said.

THE COURT: Okay. Just hang in there for the moment.

Let me, first of all, apologize for the -- I need my glasses to read up close.

Let me apologize for the time delay.

You can see that a number of your colleagues had to come in privately, discuss certain things. As I said, there are times, especially during this phase, where these kind of interactions will transpire.

Could be any one of you on any particular

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day.

I apologize for that.

Now, the reason you're here as potential jurors is to determine the appropriate sentences to be imposed upon the defendant, whose name is Gerhard Hojan, for his conviction for murder in the first degree of Willie Absolu and his conviction for murder in the first degree of Christina Delarosa.

The crimes in this case took place during the early morning hours of March 11, 2002, at the Waffle House restaurant located at 4989 SW 148th Avenue in Davie, Florida.

In a previous proceeding, the defendant was found guilty and convicted of murder in the first degree of Willie Absolu as to Count I of the indictment and murder in the first degree of Christina Delarosa in Count II of the indictment.

Attempted first degree murder of Barbara Nunn as to Count III of the indictment. Attempted felony murder of Barbara Nunn as to Count IV of the indictment.

Armed kidnapping of Willie Absolu as to Count V of the indictment.

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Armed kidnapping of Christina Delarosa as to Count VI of the indictment.

Armed kidnapping as to Barbara Nunn as to Count VII of the indictment.

Armed robbery of Christina Delarosa as to Count VIII of the indictment.

And armed robbery as to Barbara Nunn as to Count IX of the indictment.

The only issue is for you to determine the appropriate sentences to be imposed upon the defendant for his conviction for murder in the first degree of Willie Absolu and his conviction for murder in the first degree as to Christina Delarosa.

The issue of the defendant's guilt has already been decided and is not for your consideration in this case.

So the first thing I need to ask -- and I'll go row by row, like I did last week -- are any of you familiar with the facts I just laid out during this preliminary statement of facts?

First row? Okay.

Mr. Alvarez?

JORGE LUIS ALVAREZ: Yes, I have worked next to that Waffle House. Same reason my

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fiance won't eat there.

THE COURT: Say no more.

Ms. Wareham?

SARAH BETH WAREHAM: I grew up in Southwest Ranches my entire life. Very familiar with it. My dad still lives there.

THE COURT: Mr. Delnegri?

THEODORE JOSEPH DELNEGRI: Just from the news. I have lived here my whole life. I have known about it.

THE COURT: Anybody in the second row?

Mr. Horevitz?

TRACE HOREVITZ: Yes, I know about it. Until you asked -- answer is yes, I do.

THE COURT: Okay. Who else?

Ms. Rosa?

WANDA ROSA ALVERIO: Yes, that's my neighborhood. I know all about it. I live in the area.

THE COURT: Last row?

Now, Mr. Alvarez, how intimately familiar are you with the facts of the case?

JORGE LUIS ALVAREZ: My fiance explained it widely. Two years ago, told me all of the details.

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THE COURT: I don't want you to say anything --

JORGE LUIS ALVAREZ: No, no, no.

Also, one of the victim's father worked at a place I worked, at the Mardi Gras Casino.

THE COURT: I don't know what your father and fiance told you. I don't want to know right this second.

Ms. Wareham, you got your information?

SARAH BETH WAREHAM: I was a freshman in high school. Whatever the news source. It was talked about. It was a place I had been before. The news put out the details on this as what was known.

THE COURT: Your information is from way back then?

SARAH BETH WAREHAM: Yes, but I have seen the current update, current news.

THE COURT: I'll talk to you in a minute.

Mr. Delnegri?

THEODORE JOSEPH DELNEGRI: Nothing current. I just remember the story.

THE COURT: Would you be able to set aside anything you remember from back then and make your determination as to the appropriate

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sentence only upon what you hear in this courtroom?

THEODORE JOSEPH DELNEGRI: I believe so. I don't have a great memory anyway.

THE COURT: I love that word.

THEODORE JOSEPH DELNEGRI: Yes, sir. Yes.

THE COURT: Believe.

That's one of the words that scares lawyers considerably. It is not a definitive yes. Not a definitive no.

It's a uhm, ahhh, we'll see.

We all do it.

Somebody asks you a question, you give the answer, yes, I believe so.

We all take it in one way.

You all take it in a different way.

Just common terminology, how the law looks at it versus how we all look at it, when confronted with a question like that.

Mr. Horevitz, you got your information from?

TRACE HOREVITZ: The news.

THE COURT: Back then?

TRACE HOREVITZ: Both.

THE COURT: Current.

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TRACE HOREVITZ: Yes. Before and after the laws were switched and everything was sent back. I know it was from before.

THE COURT: Say no more.

Ms. Rosa?

WANDA ROSA ALVERIO: We were interested because it was our neighborhood back then.

THE COURT: All right.

All right.

I need you to please escort Mr. Alvarez, Ms. Wareham, Mr. Delnegri, Mr. Horevitz and Ms. Rosa into the jury room a moment, please.

(Exit said venire men and women.)

THE COURT: The rest of you, if you would kindly wait outside for us and stay away from the other groups, please.

THE COURT: I will bring them in one at a time?

MR. SATZ: Yes.

THE COURT: Let's start with Mr. Alvarez.

(Enter Jorge Luis Alvarez.)

THE COURT: Have a seat.

All right.

Mr. Satz, care to inquire?

MR. SATZ: Good morning.

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How are you?

JORGE LUIS ALVAREZ: Good morning.

Good.

MR. SATZ: In spite of what your fiance told you, can you set that aside and base your vote on the evidence and the law as presented during these proceedings?

JORGE LUIS ALVAREZ: I heard -- it is kind of hard.

I am not going to lie.

Also, due to the fact of how it happened and what happened, kind of like triggers, you know, because I worked with the victim's father.

MR. SATZ: The fact you worked with the victim's father -- I mean you will learn about the facts anyway. Fact you work with -- which victim?

JORGE LUIS ALVAREZ: The female, Delarosa. 17-year-old.

MR. SATZ: The fact you worked with her father, would that influence you?

JORGE LUIS ALVAREZ: Influence, close to home.

I knew the person.

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MR. SATZ: You feel you couldn't be fair and impartial?

JORGE LUIS ALVAREZ: True.

MR. SATZ: Thank you.

MR. WILLIAMS: Nothing.

THE COURT: You can rejoin the others. Don't discuss any of what you just said.

JORGE LUIS ALVAREZ: Yes, sir.

(Exit Jorge Luis Alvarez.)

MR. POLAY: Motion for cause.

MR. WILLIAMS: Strike for cause.

MR. SATZ: Yes.

Said he can't be fair and impartial.

THE COURT: Let's bring in Ms. Wareham. I'll approach this differently.

I think I want them to tell us what they know.

The mere fact they know the facts --

MR. WILLIAMS: We know one knows about Hurst.

THE COURT: Interesting.

(Enter #9, Sarah Beth Wareham.)

THE COURT: Tell us what you know.

SARAH BETH WAREHAM: In detail?

Obviously, from back thing I was probably

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about 14 years old.

I don't remember much.

I remember it as the Waffle House that got shot up two blocks from my dad's house.

Close to home.

Kind of conversation circulated through my family.

As it got brought back up, it was conversations started again --

THE COURT: Brought back up?

SARAH BETH WAREHAM: When the news put out. My dad, we would go there every Sunday for dinner.

Oh, did you see they are doing retrials for the people?

I'm like, that's the Waffle House.

Guy from down the Waffle House, remembers doing that.

From overhearing conversations, I tried not to look into it after I came last week.

I know there was a freezer involved.

THE COURT: The facts of the case will all come out.

SARAH BETH WAREHAM: Right. Right. That's about it. I know one of the women was young.

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17. Had a daughter or a son or child.

THE COURT: That would all come out.

SARAH BETH WAREHAM: Anything publicly put out is all I know. Nothing else. Used to say it was haunted when we were in high school.

THE COURT: Mr. Satz?

MR. SATZ: Good morning.

How are you?

SARAH BETH WAREHAM: Good.

MR. SATZ: The fact that, what you know, what you just told the Judge, would you, do you feel you can be fair and impartial and just base your vote on the law and evidence as presented in this hearing?

SARAH BETH WAREHAM: Absolutely.

MR. SATZ: Thank you.

Nothing further.

MR. POLAY: Good morning.

Do you think the fact that you grew up so close might affect your ability to be fair and impartial in this case?

SARAH BETH WAREHAM: I don't think so. Whether I lived close or not, it happened.

MR. POLAY: You brought up "haunted."

SARAH BETH WAREHAM: It was like, like -- I

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mean.

MR. POLAY: You said it.

SARAH BETH WAREHAM: I don't believe in ghosts. I'll say that.

MR. POLAY: You know, things that you hear are rumors and aren't evidence.

SARAH BETH WAREHAM: True.

MR. POLAY: You stated someone was 17. No one was 17.

SARAH BETH WAREHAM: Right.

MR. POLAY: What I'll ask you is --

MR. SATZ: Wait, wait, wait.

Wait, wait, wait --

THE COURT: I don't think we're going there.

That's a fact of the case. She already knows about it .

MR. POLAY: She missed --

MR. SATZ: No, she didn't.

MR. POLAY: Okay.

I'll go on.

THE COURT: I'll deal with that when I get to the other three questions.

MR. POLAY: Let me ask you this.

You're saying it came up recently in family

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discussions?

SARAH BETH WAREHAM: Yes, oh, you remember when that happened. Whatever the news put out.

MR. POLAY: Anybody say what should happen, your father say this should happen?

SARAH BETH WAREHAM: No.

THE COURT: Did you read the article?

SARAH BETH WAREHAM: I did.

MR. POLAY: Can I go there?

THE COURT: Go ahead.

MR. POLAY: Do you remember what you read about in the article?

SARAH BETH WAREHAM: What I told the Judge already. I kind of skimmed.

MR. POLAY: When you read it, did you understand what was about to transpire?

SARAH BETH WAREHAM: No.

MR. POLAY: Do you know anybody that worked there?

SARAH BETH WAREHAM: No.

MR. POLAY: Nothing further.

THE COURT: Thank you.

You can join the others.

Please don't discuss what we discussed.

SARAH BETH WAREHAM: Thank you.

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THE COURT: Let's bring in Mr. Delnegri, number 10.

(Enter Theodore Delnegri.)

THE COURT: All right.

Tell me what you know.

THEODORE DELNEGRI: I don't remember details.

I grew up here.

I just know something happened there.

THE COURT: All of the facts of what transpired will come out.

THEODORE DELNEGRI: I might be able to remember something when it comes out. I don't remember the facts or details.

I didn't follow it.

THE COURT: You read anything recently?

THEODORE DELNEGRI: No. No.

THE COURT: Mr. Satz.

MR. SATZ: If you remember, you know, anything, can you be fair and impartial?

THEODORE DELNEGRI: Yes.

MR. SATZ: Set aside anything that --

THEODORE DELNEGRI: Yes.

MR. SATZ: That's all I have.

MR. POLAY: Have you ever been to this

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Waffle House.

THEODORE DELNEGRI: In Davie, no.

MR. POLAY: Is there anything about what you remember that would affect your ability to sit on this case?

THEODORE DELNEGRI: No.

MR. POLAY: If you remember anything.

THEODORE DELNEGRI: Right.

It's 16 years ago. Lots happened since.

I know vaguely something happened. Wasn't good. Whatever it was, I won't have a problem making a decision.

MR. POLAY: You remember back from 16 years ago?

THEODORE DELNEGRI: 2002.

MR. POLAY: Very good.

You said your memory isn't good.

THEODORE DELNEGRI: Short-term is good. Long-term stuff goes away.

THE COURT: Thank you.

Don't discuss what transpired.

THEODORE DELNEGRI: Yes, sir.

(Exit Theodore Delnegri.)

THE COURT: Mr. Horevitz, please.

MS. MCCANN: For the record, the Court just

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read the factual statement.

THE COURT: He started to say that.

MS. MCCANN: He was cut off.

I would like the record to reflect the Court already told the jurors it was 2002.

MR. POLAY: I was joking about he fact, he said --

THE COURT: I know. That was a joke.

(Enter number 13, Trace Horevitz.)

THE COURT: Mr. Horevitz, tell us what you know.

TRACE HOREVITZ: Three people robbed at the Waffle House. Three people in the back cooler.

All three shot. Two dead. One survived. 9 to 3 for the death row. Overturned. Sent back here. Has to be unanimous.

Quick overview. I have other cases too.

THE COURT: Is any of that going to influence your ability to make a determination in this case based upon the facts that get presented here and the law?

In other words, you already have a predisposition?

TRACE HOREVITZ: Yes, pretty much.

THE COURT: What is that?

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TRACE HOREVITZ: I mean I have already read about it, thought about it way back, before I got my jury duty thing.

THE COURT: Without hearing any of the facts, any of the law, you have already determined what you would vote?

TRACE HOREVITZ: I think, I mean I already thought about it. To say I haven't thought about it would be a lie. Doesn't mean my mind couldn't be changed.

I think it would be difficult, to be honest with you.

THE COURT: Only you can answer this.

Do you feel you can be fair and impartial?

TRACE HOREVITZ: No. No, honestly.

MR. SATZ: That's fine. Thank you.

MR. POLAY: No questions.

THE COURT: Thank you. You can rejoin the others and not discuss anything further.

And Ms. Rosa.

(Exit Trace Horevitz.)

THE COURT: Am I correct we are executing him?

MR. SATZ: Yes.

MR. POLAY: Yes.

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THE COURT: Ms. Rosa now.

(Enter Wanda Rosa Alverio.)

THE COURT: Tell us what you know.

WANDA ROSA ALVERIO: Pretty much what's in the news and comments from the neighbors. Happened in the same neighborhood I lived. It was all over about the case.

Not much. Not details.

THE COURT: From the news? The news back then?

WANDA ROSA ALVERIO: Yes.

THE COURT: Any recent.

WANDA ROSA ALVERIO: No.

THE COURT: You understand that a decision in this case has to be based on the facts that you hear during the course of the trial. You have already heard the fact, the basic fact scenario.

That's consistent with what you knew from back then?

WANDA ROSA ALVERIO: Yes.

THE COURT: But you understand, if any of the facts that, in your mind, you think that are presented here, during this proceeding, are different than what you remember or might have

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discussed with neighbors, because you know how information goes, you understand it is what you hear in the courtroom that counts?

WANDA ROSA ALVERIO: Yes.

THE COURT: And you can be fair and impartial?

WANDA ROSA ALVERIO: I would say yes.

THE COURT: You seem to hesitate.

WANDA ROSA ALVERIO: Yes.

THE COURT: That's your final answer?

WANDA ROSA ALVERIO: Yes.

THE COURT: Mr. Satz?

MR. SATZ: As long as you feel you can be fair and impartial, that's all I want to know.

Can you?

WANDA ROSA ALVERIO: Well, I have my religious belief. I'll go based on that. It will be part of my concerns.

THE COURT: Okay.

You need to go further.

WANDA ROSA ALVERIO: Well, I know the case has already been decided. It is just a matter of deciding the years of sentence.

The decision has been taken. It is not up to me. It is just deciding on the years.

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THE COURT: Who is it up to?

You understand that's the purpose you're here for, to make that determination? And I'll explain in just a little while how that is done.

Do you think your religious beliefs would interfere with that?

WANDA ROSA ALVERIO: It might, in a way, yes.

THE COURT: Mr. Satz?

MR. SATZ: How would it interfere, your religious beliefs?

WANDA ROSA ALVERIO: I believe in forgiveness. I believe in people's rehabilitation.

I believe, I worked for many years with people in rehab.

I understand that you can have a chance in life. I don't know if that will be beneficial or it will be good for the case.

That's my opinion.

MR. SATZ: You feel you may not be fair and impartial?

WANDA ROSA ALVERIO: Probably not, if that's how you see it.

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Depends the guise of who sees it, my decisions.

I'll try my best.

I can't guarantee. I'll go for, I believe everybody deserves a chance.

I believe everybody will do better in life than they did before.

MR. SATZ: You have a doubt you can be fair and impartial?

WANDA ROSA ALVERIO: Yes. Of course.

THE COURT: Mr. Polay?

MR. POLAY: No questions.

THE COURT: thank you.

You can rejoin the others for a couple of minutes.

WANDA ROSA ALVERIO: Thank you.

(Exit Wanda Rosa Alverio #16.)

THE COURT: I take it she's gone?

MR. SATZ: Yes, I move for cause.

MR. POLAY: For the record, I didn't ask her any questions because once she stated she had a doubt whether or not she would be fair and impartial, no matter how much rehabilitation or questioning I do, that was her answer.

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I'm sure the Court would have stricken her anyway.

MR. SATZ: she put that in her questionnaire, that any reason you couldn't, you know, sit and follow your oath, she said yes, for religious beliefs.

MR. POLAY: That, too.

THE COURT: We are giving Alvarez, Horevitz, Rosa their exit papers.

THE COURT. Next group, after I read the facts, I'll do the Witt questions right there.

MR. WILLIAMS: I still think Ms. Wareham knows we're back for resentencing. That she should be excused for cause.

MR. SATZ: Object.

She didn't say that.

THE COURT: I don't think she said that.

MR. WILLIAMS: Knew it was back, back for what?

MS. MCCANN: I think she said retrial. That was her words. Not new sentencing.

MR. WILLIAMS: Under the new rules, sentencing is a trial. She is absolutely correct.

(Short recess had.)

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MR. POLAY: Wareham, we have an objection, number 9.

Motion to have her stricken.

MR. SATZ: Objection.

THE COURT: I'll leave her for the time being. Number 9.

Now, part of what I'm seeing as a problem is we're telling them what the basic fact is. Telling them they are here to make a determination and not giving them the parameters of Witt, as far as the death penalty.

I am almost thinking that we need to reverse the process. Give them, what I'm referring to, is give them the fact pattern.

The last line I give them, of course, when I hear the determination of guilt is already final. Because I tell them it is here for a determination of an appropriate sentence, I ought to go right into the three Witt questions so when they talk to us about the facts, I can actually ask them, intelligently, well, would you always vote for life? Always vote for death? Can you be fair? The aggravators, the mitigators?

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MS. MCCANN: We haven't even told the jurors the possible penalties in this case.

Didn't say what the sentences could be.

THE COURT: You're right.

MR. SATZ: I think that's one of the problems with Ms. Rosa. She had no idea.

MR. POLAY: I understand.

I have no problem doing it the way you suggested. Ms. Rosa did, in her jury questionnaire, indicates she will have issues use because of her religious beliefs.

THE COURT: No question.

I think she made it abundantly clear where she is.

MS. MCCANN: In drafting this, I went from the standard instructions, talking about preliminaries to give, the language at the top in cases where it is a different jury than that which determined guilt.

Maybe at the beginning of this you alert them they are here to determine the appropriate sentence and put in there, you know, after, that he has been convicted of first degree murder, the possible penalties in this case are, just, you know, do it like we did for the

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preliminary instructions you were going to give.

At the bottom of this, you can go into Witt.

MR. SATZ: You were going to do Witt anyway.

When?

THE COURT: Right after we finish with the pretrial publicity, as we go along, unless you just want to do the pretrial publicity, get rid of whomever we have. Bring them back tomorrow. We will deal with that issue in a minute.

And do Witt.

MR. WILLIAMS: Pretrial publicity will get rid of people whether they are against or --

THE COURT: I agree with you.

We just got rid of three.

MR. POLAY: I don't mind your doing it the way you suggested.

When you are dealing with pretrial publicity first, you are presenting poison. That's somewhat important.

I think you're doing it the right way.

Maybe somewhat tedious.

However, I think you're preventing any

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prejudicial --

THE COURT: I hear exactly -- look, you can tell I'm uncomfortable with the way in which we're doing this.

If I'm not mistaken -- please refresh my recollection -- we handled, because of the number of jurors we dealt with, and of course we did it over weeks, we dealt with pretrial publicity once.

And we dealt with law enforcement.

And we did general voir dire.

We didn't do the issue of death qualifying until we got through it because the law hadn't changed yet.

My thinking we handle each in its own process.

MR. SATZ: We did.

MR. POLAY: We did.

THE COURT: I am thinking right now we should just do pretrial publicity.

It will push us back in terms of voir dire.

We can't rush this through.

We have only talked to the first 21.

MS. MCCANN: Want to alert them to the possible sentences?

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THE COURT: I think I have to.

MR. WILLIAMS: I say stick with pretrial.

THE COURT: Instead of going the rest of the way and bring them back tomorrow?

MR. POLAY: Fine.

I have no problem.

JUDICIAL ASSISTANT PAM COE: Can you make it earlier than 945, please?

THE COURT: Not a problem.

JUDICIAL ASSISTANT PAM COE: Today, we had a lot of issues.

You didn't start dealing with the first group until 10:30, quarter to 11:00?

THE COURT: Yes.

Issues have to be dealt with. They come up every single day.

MS. MCCANN: Tomorrow, we have argument on, what is it, the other motion in limine?

THE COURT: Predicated on the fact we were going to get through this process.

We are not getting through this process the way I can see it.

Before I get to that, what are we doing with the two people that have conflicts?

MR. SATZ: Conflicts?

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THE COURT: One going to Orlando. The other has two doctor appointments.

MS. MCCANN: Over the weekend, she was going to Orlando?

THE COURT: She's going tomorrow.

MR. POLAY: Want to just see?

THE COURT: We are not getting through all of this today.

MR. SATZ: Tomorrow is Wednesday.

MR. WILLIAMS: She is going to Disney tomorrow through Sunday.

MR. POLAY: Forget it.

Just send her home.

MR. SATZ: Why would she be excused.

THE COURT: Won't be here.

MR. WILLIAMS: Going with her mother.

THE COURT: She is gone until next week.

MR. SATZ: Well, why don't we bring her in and ask her about the death penalty and let her go.

THE COURT: Then we wouldn't be starting voir dire until next week.

Campos is number 18 on the jury list you and I are working on.

I can do Witt requests now, with Ritter,

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with the doctor.

MR. SATZ: I have no problem excusing him.

I thought he was antagonistic.

MR. WILLIAMS: I agree.

MR. POLAY: No.

THE COURT: He has a doctor appointment.

One in the morning.

1:30 in the afternoon.

All right.

Ritter goes and Campos goes.

All right.

DEPUTY: The three you dismissed are in the jury room.

Ones here, want them out front?

MR. SATZ: walk them through.

THE COURT. Ones that we -- let's bring them, that group in and the other group so I can excuse them.

JUDICIAL ASSISTANT PAM COE: The other group?

THE COURT: The ones outside.

JUDICIAL ASSISTANT PAM COE: Doing those first.

THE COURT: No, I want them all. I have done the pretrial publicity.

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We have excused those people.

JUDICIAL ASSISTANT PAM COE: I get you.

THE COURT: We have a couple more we're excusing from the whole group.

I just want the 21.

But I need to bring them in and tell them that.

(Enter venire.)

THE COURT: Good news. Bad news.

As I said, this is a process. And it's, as I found out this morning, because of problems that we run into, we're going to take this in a different direction.

Ms. Campos, we will let you celebrate your mother's birthday.

So you can breathe easy.

Mr. Ritter1, you're going to be able to go to your doctors. That won't be an issue.

The better news for you guys, you don't have to come back.

For the rest of you, I need you back at 9:15 tomorrow morning. We'll --

Based upon all of you guys, what I'm hearing with your group, last week, I must not have communicated this appropriately. I know

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at some point, you know, it is very easy to get confused between it will start next week.

I understand that.

I know sometime during this whole process last week, I was telling everybody this whole week, I guess I didn't do it with you.

Tomorrow, I'd like to say you'd be out before this. Won't be later.

Weeding down.

Today is dealing with pretrial publicity. Tomorrow, another issue.

Then we'll be able to get to voir dire, which now I'm thinking won't start until next week.

We are playing this by ear.

Everything will be handled day by day.

Tomorrow, you will be able to go in at some point. Probably in the afternoon, if that works.

I cannot tell you whether this group will be back on Thursday or not. Please don't take that as a commitment. I don't know, really.

We are just playing it by ear.

I apologize. We will see you tomorrow around 9:15.

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For those of you that need notes, go to the jury room. They'll get you what you need.

Friday will find itself working out. Let's see where Thursday is.

Bye-bye, guys.

(Exit venire.)

MR. WILLIAMS: When we bring the next group in, find out who has publicity problems, send them in the jury room.

Tell them to come back at 9:15.

MR. SATZ: I have a question.

Originally, it was supposed to be 11. Now you have it at ten?

THE COURT: The 11 is when we get to the 63. Right now, Steve set it up this way. I assume prefer to do 7, 7, 7.

Let's do 7, 7, 7.

So much easier.

MR. SATZ: Since we have it set up, do it like this now?

THE COURT: Okay.

THE COURT: Bring whomever in.

JUDICIAL ASSISTANT PAM COE: Elisa Weinstein learned yesterday her husband will be gene from October 15 to October 31st. She has

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two small kids.

Number 25 on the list.

THE COURT: Bring her in.

THE COURT: Pam, send the rest to lunch to return by 1:30.

JUDICIAL ASSISTANT PAM COE: I can tell you who is coming? Started at 22 with Ashley Rowe and ending with Ruby I Davis, number 45.

MR. SATZ: Doing another group?

THE COURT: Just asking the issue if, just asking if anybody has issues.

(Enter Elisa Weinstein.)

THE COURT: You have a change of circumstances?

ELISA MICHELLE WEINSTEIN: Yes.

THE COURT: Your husband will be gone for half a month?

ELISA MICHELLE WEINSTEIN: Yes, I have a four-year-old and almost three-year-old.

THE COURT: And you are now going to be their primary caregiver?

ELISA MICHELLE WEINSTEIN: Right. The morning is not an issue. It would be picking them up from school. Latest I can get there is 6:00. Coral Springs.

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THE COURT: Yes.

You can get back in an hour?

THE COURT: As we go through the process, we can make more of a determination.

I have no problem stopping if you are on the final jury.

ELISA MICHELLE WEINSTEIN: That's fine.

THE COURT: Might as well stay and bring the rest of them in.

(Enter venire.)

THE COURT: Good morning.

THE COURT: I apologize for the time.

We have quickly discovered this morning that the way in which I thought this process would go is going to be handled in a different way.

Obviously, I was supposed to have three groups in by lunch.

I'm only asking, basically, one question. But you also know the first 40, 45 minutes I had to deal with three individuals privately, which I'll always do when necessary for any of you.

Because we don't want you to have to disclose certain things to anybody.

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That's a decision you make.

When I talked to you guys last week, what did I tell you in terms of our process for this week?

VENIRE: Jury selection may start on Thursday if you got the jury picked.

THE COURT: You were told you would be here potentially all week?

VENIRE: No.

If the trial started, Thursday of this week.

VENIRE: If not, Tuesday of next week.

THE COURT: Did anybody's circumstances change that would interfere with your ability to be with us? We had a couple that have suddenly found out they are the sole caretaker.

CHERRER ANTENOR: Yes. I checked with my school for the, if I can extend more than one week.

I teach two extra classes. I won't be getting that money, which is $900 per two weeks.

THE COURT: That's critical to your financial bottom line?

CHERRER ANTENOR: Yes, I am the only one

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working in the family.

WILLIE JAMES BRADFORD: I have a court date on the 10th, in the afternoon .

THE COURT: You're a witness in the case?

WILLIE JAMES BRADFORD: No, I'm a defendant, traffic case.

THE COURT: Here in this building?

WILLIE JAMES BRADFORD: No, downtown Miami.

THE COURT: Second row?

ZACHARY WILLIAMS: So I had the schedule with me and my wife.

I have was going to look to see if I had other family to cover the time frame in between.

I'm not able to.

My parents will be away from October 20th to November 4th.

THE COURT: Child care issue?

ZACHARY WILLIAMS: Yes, Tuesday and Thursday afternoons.

THE COURT: Another hand in that row?

Last row, we have Mr. Ebanks?

STUART ANTHONY EBANKS: Yes, I have to pick up my son.

THE COURT: Did you move to Miami?

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STUART ANTHONY EBANKS: Yes, recently.

THE COURT: Then you don't have to worry about that issue.

You have to live in Broward.

THE COURT: Ms. Davis?

RUBY HARBUCK DAVIS: I had a business trip scheduled, 16th, 17th, 18th.

THE COURT: Is it one that can be changed?

RUBY HARBUCK DAVIS: It is an audit. I have to go to Virginia Beach.

THE COURT: Are you the auditor?

RUBY HARBUCK DAVIS: No, but I manage the area being audited.

THE COURT: IRS?

RUBY HARBUCK DAVIS: Jenny May. Manager of residential services and port folio.

THE COURT: I just wanted to know how much trouble I'd be in. If it were the IRS, I'd say have a good day.

I want to tell you why you're here.

The reason you're here as potential jurors is to determine the appropriate sentences to be imposed upon the defendant for his conviction of murder in the first degree of Willie Absolu and his conviction for murder in the first

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degree of Christina Delarosa.

For murder in the first degree, there are only two possible sentences.

One is life in prison. Life meaning life.

The other is death.

We'll get into that at a later stage.

The crimes in this case took place in the early morning hours of March 11, 2002, at the Waffle House restaurant, located at 4689 SW 148th Avenue, in Davie, Florida.

In a previous proceeding, the defendant was found guilty and convicted of murder in the first degree of Willie Absolu as to Count I of the indictment; murder in the first degree of Christina Delarosa as to Count II of the indictment; attempted first degree premeditated murder of Barbara Nunn as to Count III of the indictment; attempted felony murder of Barbara Nunn as to Count IV of the indictment; armed kidnapping of Willie Absolu as to Count V of the indictment; armed kidnapping of Christina Delarosa as to Count VI of the indictment; armed kidnapping of Barbara Nunn as to Count VII of the indictment; armed robbery of Christina Delarosa as to Count VIII of the

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indictment; and armed robbery of Barbara Nunn as to Count IX of the indictment.

The only issue before you is to determine the appropriate sentences to be imposed upon the defendant for his conviction of murder in the first degree of Willie Absolu and his conviction for murder in the first degree of Christina Delarosa.

The issue of the defendant's guilt has already been decided.

That is not an issue for your consideration.

Now, the one question I have for you -- and I'm going row by row by row -- is whether or not any of you have ever heard of this case?

And if you have, I don't want you to tell me what you know about the case. I just want you to let me know that you think you have information or know something.

We'll talk to you privately as it relates to that.

Let start in the front row.

Anybody in the first row?

In the of course, we start with you.

NIHAL CIANI: I have heard about it in the

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paper. More detail.

THE COURT: From when?

NIHAL CIANI: At the time.

THE COURT: 2002?

NIHAL CIANI: Yes.

At the time, when it happened.

THE COURT: No other hands?

Second row?

Mr. Williams, I don't need to address that with you.

Anybody else in the second row?

Third row?

This is how I wanted it to go.

As you can see, it is 12 o'clock.

Okay.

The only two that knew anything were Ms. Ciani and Mr. Williams.

Okay. Then the rest of you, I'm going to ask you return tomorrow morning at 9:15.

And we will go through the next step that I have to go through before we get to actual voir dire.

Now you know why I told you a long outside date? Because there are things you can't predict.

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Mr. Williams, we will give you your card.

You can leave. You have to go back to the jury room to process you out.

Am I correct on Ms. Ciani?

MR. WILLIAMS: Yes. And Mr. Ebanks.

MR. SATZ: Yes.

THE COURT: Ms. Ciani, we'll give you your card back. You can go back to the jury room because of your conflict.

Mr. Ebanks, we'll give you your card back because you don't live in Broward County anymore.

STUART ANTHONY EBANKS: Thank you.

THE COURT: Ms. Davis?

Want to talk?

MR. SATZ: Talk.

THE COURT: Ms. Davis, if you would stick around a minute.

The rest of you, see you tomorrow at 9:15.

(Exit venire.)

THE COURT: Want to ask her the question?

MR. SATZ: When is your business trip?

RUBY HARBUCK DAVIS: October 16th.

MR. SATZ: Tuesday?

RUBY HARBUCK DAVIS: Tuesday, Wednesday,

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Thursday.

I will be back on Friday.

MR. SATZ: What happens if you don't go?

RUBY HARBUCK DAVIS: Well, it is one of the audits I can't really reschedule. We out source the servicing. We have three employees that work with me.

I don't know anyone can substitute.

MR. SATZ: Say it doesn't get done? How would that affect you?

RUBY HARBUCK DAVIS: Jenny May is the government. Governmental audit. It will get done whether I'm there or not. They will perform the audit. It is a lot of focus around my area, what I am responsible for.

MR. SATZ: If you are selected on this jury and you couldn't go, would your, would that affect your ability to be fair and impartial in this case?

RUBY HARBUCK DAVIS: I don't think so. It is hard for me to say what my mental state may be if I were stressed out about it.

THE COURT: Where would your mind be? Would you be able to fully concentrate here, during the course of the trial, while the audit

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is taking place?

RUBY HARBUCK DAVIS: Maybe not.

THE COURT: Follow-up?

MR. SATZ: No.

MR. POLAY: No questions, Judge.

THE COURT: Mike?

MR. SATZ: No.

THE COURT: We will give you your card back.

Have a good audit.

RUBY HARBUCK DAVIS: Thank you.

(Exit Ruby Davis.)

THE COURT: Okay. 1:30.

(Recess had.)

(Afternoon session begins.)

JUDICIAL ASSISTANT PAM COE: Before we look for the lost jurors, can we discuss Mr. Newman?

THE COURT: Do we have any information on Mr. Newman.

THE COURT: He has the medical document. His doctor, who is Dr. Gupta, he writes patient is under my care. He's too sick for jury duty. Please excuse my patient.

MR. SATZ: Is he here?

JUDICIAL ASSISTANT PAM COE: Pompano. He

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didn't show up this morning.

MR. POLAY: He was missing info on his questionnaire, as well.

THE COURT: What am I doing? He's not here anyway. Doesn't mean I can't drag him in.

MR. POLAY: No objection to excusing him.

MR. SATZ: I would like to find out what the story is.

JUDICIAL ASSISTANT PAM COE: Would you like me to call him?

THE COURT: Call the doctor's office? They won't tell you anything.

JUDICIAL ASSISTANT PAM COE: I'll call the number on the prescription.

THE COURT: Give it a shot. We'll leave his seat empty, for the time being.

(Enter venire.)

THE COURT: Good afternoon.

This morning, we went in the rotation we needed to go.

This morning took a bit of time. Plus I had three individuals that we had to deal with separately.

The last group I had in here, before you, took us 15 minutes. You know, it is just, the

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expression would be a crap shoot on how lucky you get.

I apologize for that.

Additionally, I told you guys that we might be here all week, didn't I?

Please tell me that.

VENIRE: All week?

THE COURT: Maybe.

Let me start with the first question.

Has anybody's circumstances changed from the last week you need to bring to my attention?

BENJAMIN ALIAGA RIOS: Friday, I have to go to Orlando.

Will be there for five days.

THE COURT: Friday won't be an issue.

COURT REPORTER: Five days.

THE COURT: What?

COURT REPORTER: He said for five days.

THE COURT: Coming back next Monday?

BENJAMIN ALIAGA RIOS: Tuesday, actually.

THE COURT: You will be here for Tuesday?

BENJAMIN ALIAGA RIOS: Tuesday.

Anybody else?

ROBIN LOUISE LOVETT: I forgot my husband

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is having surgery on October 24th in Atlanta, in October.

October 24th, in Atlanta.

And then also, I got some tickets I didn't know I was going to have because my husband is a scout for the Milwaukee Brewers.

They clinched yesterday.

They bought us tickets to the hotel to go to the divisional play-offs.

I would love to stay with you guys, but --

THE COURT: But you got a better offer.

ROBIN LOUISE LOVETT: I'll cry the whole time.

THE COURT: Second row?

JOEL MCCRAY: I got the results from the urologist I have a prostate problem. I'm on medication yesterday. That medication case is making me go to the restroom a lot. Today, I have been there 15, 20 times. I don't see a restroom here, inside of the room. I may have to go out there too often.

If that's a problem, then I will be here.

If I have to go --

THE COURT: If you have to go, you have to go. You don't even have to raise your hand.

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Just go.

But you have to come back.

THE COURT: Anybody else?

LAWRENCE VINCENT: How do I explain, I work with kids in the high school, getting them jobs.

This is the critical time for me to get them jobs.

I'm not able to call in a sub. If I'm not there, the kids will be at a disadvantage.

THE COURT: I know you told us that last week.

We will talk about that.

How's that?

LAWRENCE VINCENT: Yes, sir. Thank you very much.

THE COURT: Let me tell you why you're here.

After I deal with this, you may be back tomorrow. Maybe not.

The reason you're here, as potential jurors, is to determine the appropriate sentences to be imposed upon the defendant for his conviction for murder in the first degree of Willie Absolu and his conviction for murder

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in the first degree of Christina Delarosa.

The sentences, the only sentences that can be imposed are either life Florida state prison, life meaning life; or death.

That's a different issue we'll deal with.

The crimes in this case took place during the early morning hours of March 11th, 2002 at the Waffle House restaurant located at 4689 SW 148th avenue in Davie, Florida.

In a previous proceeding, the defendant was found guilty and convicted of murder in the first degree of Willie Absolu as to Count I of the indictment and murder in the first degree of Christina Delarosa as to Count II of the indictment.

Attempted first premeditated murder of Barbara Nunn as to Count III of the indictment. Attempted felony murder of Barbara Nunn as to Count IV of the indictment.

Armed kidnapping of Willie Absolu as to Count V of the indictment.

Armed kidnapping as to Christina Delarosa as to Count VI of the indictment.

Armed kidnapping as to Barbara Nunn as to Count VII of the indictment.

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Armed robbery of Christina Delarosa as to Count VIII of the indictment.

And armed robbery as to Barbara Nunn as to Count IX of the indictment.

The only issue before you is to determine the appropriate sentences to be imposed upon the defendant for his conviction for murder in the first degree of Willie Absolu and his conviction for murder in the first degree as to Christina Delarosa.

The issue of the defendant's guilt has already been established; and is not for your consideration during these proceedings, if you happen to be a member of our jury.

My question at this time is do any of the facts that I just referenced ring a bell to anybody?

Do you know anything about this case?

I'll do it like I did the last time.

Anyone in the front row?

SUSAN WIENER: Read it in the newspaper.

THE COURT: When?

SUSAN WIENER: Years ago. The Waffle House murder.

THE COURT: You're right.

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That took place 16 years ago. Something like that. But anything you knew, would that interfere with your ability to participate?

VENIRE 7: No.

THE COURT: You understand the defendant has already been convicted of those crimes.

You are not making a determination is he guilty or not guilty.

Do you remember any of the facts?

VENIRE 7: Barely.

Can I ask a question?

THE COURT: You can try.

If he is found guilty, why does it take four to seven weeks?

THE COURT: Well, that is something you would find out during the course of the proceeding.

But any facts that might -- any facts that might jog your memory during this proceeding, if you are a part of the jury, could you set those aside and make a decision only upon what you hear in this courtroom, the evidence introduced in this courtroom and the law as I'll give it to you?

VENIRE 7: My heart just fell in my stomach

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when you were reading off all those convictions.

THE COURT: Those aren't the issue. We're only here for sentencing on two counts.

MR. WILLIAMS: Can we have a sidebar on this.

THE COURT:

THE COURT: Yes.

(Sidebar had.)

MR. WILLIAMS: I think we are poisoning the rest of this jury. When you first read it, Mr. Polay and I said why is she laughing? I think the questioning of her should be done individually, like we did with other people with potential knowledge.

THE COURT: All right.

Just based upon what she said, I didn't think we need to go there.

MS. MCCANN: For the record, I was looking at the jury when you read it. I didn't see her laugh or grin. I read on the questionnaire she wears a hearing aid. I don't know if she wasn't hearing everything. Could be responsible for what you saw.

THE COURT: Which person? The one I'm

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talking to?

MR. WILLIAMS: Yes .

MR. POLAY: I'm moving to strike everybody sitting here now.

THE COURT: Why?

MR. POLAY: I'll tell you why.

When she said if he was found guilty, why is this taking so long, why will it take a couple weeks to get this far, to me that's highly prejudicial. I ask everybody on the panel be stricken as a result of the statement she made.

MS. MCCANN: The answer is the Judge said he was going to explain she's in the same boat as everybody else.

No different.

THE COURT: Yes.

Your motion is denied.

(Sidebar concludes.)

THE COURT: Okay.

Anybody else that this rings a bell to?

Mr. Virgin?

MR. VIRGIN: Yes.

THE COURT: Anybody else?

All right.

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Here is the deal.

Ms. Wiener and Mr. Virgin, if you would stick around a couple minutes.

As far as the rest of you, 9:15, right outside, where you were this morning.

We will get you in here.

I don't anticipate you will be here very long.

I don't think you will make it through the morning. Hopefully, you will be out by lunch. Then I'll tell you what is going on tomorrow from there.

With the exception of the two that I have pointed out -- .

MR. POLAY: Judge, Ms. Lovett.

THE COURT: Ms. Lovett, stick around, please. Now, the rest of you can go.

(Exit said venire.)

THE COURT: Anybody want to ask Ms. Lovett any questions?

MR. SATZ: Not to get personal, your husband is having surgery in Atlanta?

ROBIN LOUISE LOVETT: Yes.

MR. SATZ: October 24th?

ROBIN LOUISE LOVETT: Yes.

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MR. SATZ: When are you going up there?

ROBIN LOUISE LOVETT: Probably the 22nd. The surgery is on a Thursday. Don't have office hours on the Wednesday.

I will be going up Tuesday.

MR. SATZ: You will be going Tuesday, Wednesday, Thursday. The next day, also?

ROBIN LOUISE LOVETT: Next day is my birthday. Staying in Atlanta. We have a home in Atlanta and a home in Miramar. Like he's off after the Braves. Then he comes down here. Then I teach until like late. I go up there. That's how we travel. This is the last thing, for the implant for --

THE COURT: Dental?

ROBIN LOUISE LOVETT: Dental. They put him under anesthesia. And I need to drive him.

I'm his next of kin.

THE COURT: That is not a fun procedure.

MR. SATZ: How long will you be, free tickets?

ROBIN LOUISE LOVETT: Well, we just clinched yesterday. Chicago and somebody played today at 1 o'clock to see who gets the wild card.

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THE COURT: Chicago is out.

ROBIN LOUISE LOVETT: They lost? Oh, good.

MR. POLAY: No, they are didn't. They play the Rocky's today.

ROBIN LOUISE LOVETT: 1 o'clock.

Whoever gets the wild card. Whoever plays that, we go to Milwaukee for that.

MR. SATZ: How many games will you be there for.

ROBIN LOUISE LOVETT: According, if they win, I guess, I am hoping they win.

MR. SATZ: Is he a --

MR. WILLIAMS: Is he a scout for the Brewers?

ROBIN LOUISE LOVETT: Yes.

THE COURT: The way the playoffs work, it goes five games.

Did they change that?

MR. WILLIAMS: First round.

THE COURT: I'm gathering the Brewers have home-field advantage. Potential of three games there.

Would you be traveling to the other games as well?

ROBIN LOUISE LOVETT: If we won that, to go

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to the World Series, Yes, sir.

I'll probably just do our games. Not whoever they played. Just our games.

THE COURT: If they win that, there will be the next round.

ROBIN LOUISE LOVETT: Yes. I hope to do that, sir.

THE COURT: Any questions?

MR. WILLIAMS: No.

MR. POLAY: I have no questions.

MR. SATZ: No.

THE COURT: I think we'll let you go.

MR. WILLIAMS: You practiced law. What type.

ROBIN LOUISE LOVETT: I'm a defense lawyer by nature.

JUDICIAL ASSISTANT PAM COE: Might like to add Mr. Macliff to your remaining jurors here.

He has bladder issues.

His prostate --

THE COURT: He told us that.

JUDICIAL ASSISTANT PAM COE: He was surprised he had to come back.

MR. WILLIAMS: Having been there and had that, some of the medications make you.

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THE COURT: Drowsy.

MR. WILLIAMS: Yes.

THE COURT: He's outside?

JUDICIAL ASSISTANT PAM COE: Yes.

THE COURT: Mr. Virgin, our teacher, bringing him in?

JUDICIAL ASSISTANT PAM COE: Jamie Macliff is outside.

THE COURT: Bring him in, please.

(Enter Mr. Macliff, number 12.)

THE COURT: You wanted to ask a question?

MR. WILLIAMS: You said you're on medication.

JAMIE MACLIFF: Yes, I am.

MR. WILLIAMS: Besides the urge to go, does is the medication make you drowsy, loopy or anything?

JAMIE MACLIFF: Might make me drowsy. Couple times, when I go down to pick up something, I feel dizzy.

That's it.

I didn't fall or anything. I have a card from my urologist.

MR. WILLIAMS: You think that, do you feel, besides having to go, you feel a constant need

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to go?

JAMIE MACLIFF: Yes.

MR. WILLIAMS: That's annoying?

JAMIE MACLIFF: Yes, it is.

MR. WILLIAMS: Is that such a distraction or is it a distraction that you lose concentration sometimes.

JAMIE MACLIFF: I have been, it is embarrassing. You're in court, have to ask permission to go to a restroom. It is an enlarged prostate. The medication makes me go too often.

MR. WILLIAMS: Has he said if the medication doesn't work, you will have to undergo surgery.

JAMIE MACLIFF: No, he didn't mention that.

MR. WILLIAMS: You said you felt a little dizzy when you bent down.

JAMIE MACLIFF: Yes.

MR. WILLIAMS: Any of the medication affected your ability to concentration?

JAMIE MACLIFF: After I started taking it, you know, I noticed that I get kind of dizzy when I bend over. Thinking about either calling the Doctor. I have another appointment

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in December. But I wanted to talk to him first. I went, Friday I went there. Doctor's office. He was out of town.

I was planning on going today.

Stop there.

MR. WILLIAMS: Do you think the constant urge affects your ability to fully concentrate?

JAMIE MACLIFF: Yes, I keep anything about it. Trying not to think about it. Then this comes back. It is in my mind. If I know there is a restroom around here, even like that, it is embarrassing.

MR. SATZ: Would that embarrassment effect your ability to concentrate?

JAMIE MACLIFF: Probably, yes.

MR. SATZ: It would? Okay.

THE COURT: Card?

MR. SATZ: Yes. No problem.

MR. POLAY: Yes.

THE COURT: We will let you go. I hope your condition gets better.

JAMIE MACLIFF: Thank you, Your Honor.

(Exit Jamie Macliff.)

THE COURT: All right.

JUDICIAL ASSISTANT PAM COE: When I went

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out to get Mr. Macliff, Kalena Armstrong-Henry approached me and started complaining she's a college teacher and that she does not have coverage if she has to sit on the panel.

MR. WILLIAMS: She voiced a concern when she was here the other day.

THE COURT: Want to the keep her, see the process?

MR. SATZ: Yes.

THE COURT: Ms. Wiener has the hearing issue?

(Enter Susan Wiener No. 7.)

THE COURT: I know from your questionnaire that you have hearing issues.

SUSAN WIENER: I am wearing hearing aids. Yes.

THE COURT: Both ears?

SUSAN WIENER: Yes.

THE COURT: Have you been able to hear everything I have been saying?

SUSAN WIENER: Yes.

THE COURT: As long as people talk and you can hear, you're fine.

SUSAN WIENER: Right. If they talk softly, no.

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THE COURT: Would you have any difficulty, if you were a part of our jury, and you didn't hear something, raising your hand, saying can that be repeated.

SUSAN WIENER: If you don't mind, I do it all of the time.

THE COURT: There is a lawyer in this courtroom now, if you had a conversation with the lawyer next to him, they wouldn't hear each other.

SUSAN WIENER: Then I won't have a problem with that.

THE COURT: No. Because he has to speak up.

Because my court reporter also has to hear.

MR. SATZ: You know something about the case?

SUSAN WIENER: Well, I have lived in Florida many years. Of course, from reading the newspaper and so on.

MR. SATZ: You understand you are not determining guilt.

SUSAN WIENER: Right.

MR. SATZ: As Judge Backman indicated, you will be voting on punishment. Understand that?

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SUSAN WIENER: Right. And -- okay.

THE COURT: You were about to ask a question.

Please, ask it.

SUSAN WIENER: I mean the choices?

THE COURT: It is Florida law.

SUSAN WIENER: I know. I know.

I think it would be, honest, for me, it, I'm assuming the death penalty is one of the choices.

THE COURT: As I said, either life in prison or death.

SUSAN WIENER: I think that would be difficult for me.

THE COURT: That's something we can discuss with her in the morning, is it not?

MR. SATZ: Yes.

So based upon what you read, you understand, can you put that out of your mind and base your vote, whether life or death, on what you hear in this courtroom and follow the law?

SUSAN WIENER: Yes, I would have to.

THE COURT: Do you feel you can do that?

SUSAN WIENER: It would be difficult. I

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mean -- but, I guess I would have to listen to all of the evidence.

MR. SATZ: Right. You feel you can do that, in spite of what you read?

SUSAN WIENER: Well, the person, he was already found guilty.

MR. SATZ: Right. You will hear, you know, evidence.

You will find out about the case. You will hear certain other things and have to make a decision if you will vote life or death.

THE COURT: There is a procedure I'll go through tomorrow.

SUSAN WIENER: Okay. It would be very difficult for me to sentence someone to death. I mean I have never been in that situation. Just being honest.

THE COURT: Anybody who thinks that's an easy thing to do, it is not.

Everybody else I'm sure will say the same thing. It is difficult. And it is.

Could you listen to everything and follow the law?

SUSAN WIENER: Yes.

MR. SATZ: Nothing further.

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MR. WILLIAMS: No questions.

THE COURT: Thanks. I'll ask you to come back tomorrow morning at 9:15. Where you were this morning.

SUSAN WIENER: Is this going to be all week?

THE COURT: I don't think so.

SUSAN WIENER: By tomorrow? And when does the trial start?

THE COURT: Good question. Hopefully next week.

SUSAN WIENER: Okay. I'll try to take a vacation in November.

THE COURT: When in November. I know you talked to us.

SUSAN WIENER: We wanted to do it the beginning of November.

THE COURT: I'm telling you, this will be over by Thanksgiving, at the latest.

SUSAN WIENER: Retiring?

THE COURT: No. Going on vacation.

See you tomorrow morning.

Thank you.

(Exit Susan Wiener.)

THE COURT: Let's bring in Mr. Virgin.

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(Enter Mr. Virgin, No. 12.)

THE COURT: Mr. Satz?

MR. SATZ: You're concerned about your students?

MR. VIRGIN: Yes, sir.

MR. SATZ: Do you feel that concern would interfere with your ability to concentrate on matters brought forth in this courtroom?

MR. VIRGIN: I don't feel the students would have as much an effect as the past experience I have had. Should I --

THE COURT: This is the time.

MR. VIRGIN: Okay.

In the late '80s, I was an area director with Wendy's.

A co-worker, Bill Schmidt, was killed in a similar situation.

I don't think that I would be fair.

THE COURT: You're right. This is the place you would say it.

MR. VIRGIN: It was the Wendy's on Sunrise and 4th.

MR. SATZ: I tried that case.

Mr. Hedgewood.

MR. WILLIAMS: I defended Mr. Hedgewood.

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THE COURT: Small world.

MR. VIRGIN: I was as area director. Bill Schmidt was one of my directors.

THE COURT: We will give you your card back.

Thank you.

MR. SATZ: They knocked that Wendy's down.

MR. VIRGIN: Yes.

We sold it. It was Checkers.

They changed it to something else.

MR. POLAY: Just don't say anything to anybody, Mr. Virgin.

MR. VIRGIN: No problem.

THE COURT: Missing any of the next guys?

JUDICIAL ASSISTANT PAM COE: No.

Two groups of 18?

THE COURT: Yes.

JUDICIAL ASSISTANT PAM COE: Can we discuss Mr. Newman? I called.

He just went there yesterday for the doctor visit. I spoke to a Jamie Williams who works for Mohan Gupta.

He does have anemia and very low hemoglobin levels.

That's all I got out of there.

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They authenticated. Pulled his file and got this in there.

MR. POLAY: We have no objection.

MR. SATZ: No problem.

THE COURT: Mr. Newman goes bye-bye.

Anybody need a quick break?

(Recess had.)

(Enter venire.)

THE COURT: For those of you that will be back tomorrow, I'll, first of all, since last week, when you were here, have, has anybody's circumstances changed to a point where it would interfere with your ability to be with us?

Anybody in the front row.

Second row?

You are?

ELIZABETH SARAH: Elizabeth Sarah.

So my employer only pays me for three days.

THE COURT: You were checking that out for us.

Thank you.

Mr. LaBlank?

MR. LABLANK: My dean of my college put together a letter that said it will really interfere with the courses my students are in

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the middle of right now.

THE COURT: Does he want to come in your place?

Let me ask you this.

The dean -- we have had a bunch of different bosses.

I understand that for a trial that could possibly go to Thanksgiving, that it is quite an inconvenience to them. I understand that. We all do.

The question is whether or not that will interfere with your ability ain't to sit, concentrate and participate?

It is about you, not the dean.

I appreciate that. I still can't tell you that you will be a part of this jury. We still have, after tomorrow morning, we still have one more process, which would be determinative; and I don't know if tomorrow is determinative of whether or not you would be staying with us.

My question is the same from last week.

Whether or not participating would create a financial hardship for you or interfere with your ability to participate and be fair and impartial.

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MR. LABLANK: I am fine.

THE COURT: You can be with us, if you were selected.

MR. LABLANK: Well, I'll still have to run my classes somehow. They won't find a substitute for my classes.

THE COURT: What do you teach?

MR. LABLANK: Software design.

THE COURT: All right. Thanks.

I saw another hand go up.

Ms. Williams?

MS. WILLIAMS: Because I failed to give a proper documentation within the five days, they are not willing to pay all of my time.

THE COURT: Explain. What documentation?

MS. WILLIAMS: The jury summons.

THE COURT: You mean when you originally got it?

MS. WILLIAMS: Yes.

I informed her.

I didn't give her the documentation within five days.

THE COURT: They already knew.

MS. WILLIAMS: She knew.

She knew. But the person handling it

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didn't know, which is her husband.

A family-owned business.

THE COURT: If you're with us, will you get paid?

MS. WILLIAMS: Not all of my salary.

THE COURT: Just part of it.

MS. WILLIAMS: Yes.

THE COURT: How much of your salary would they be paying?

MS. WILLIAMS: She didn't indicate how much.

THE COURT: Thanks.

Anyone else?

MONICA GORDON DIXON: I have a doctor's appointment I have to keep.

THE COURT: When is that.

MONICA GORDON DIXON: It is this Thursday. I have to be scheduled to do tests after I go in on Thursday.

THE COURT: Do you know when the tests --

MONICA GORDON DIXON: No, I don't know until I see the doctor on Thursday.

THE COURT: You definitely need tests?

MONICA GORDON DIXON: Yes. I have an appointment Thursday at 8:30. I thought it was

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next week. It is this week. I have the paperwork.

THE COURT: No reason I would doubt that. Maybe I'm strange. I still take a person's word as fact.

I appreciate you have documentation, the same way our professor has documentation.

Don't be so sad.

Thank you.

Hang with us a bit, Ms. Dixon.

Back row? All right.

Let me tell you why you're here.

After I deal with this, you will be gone. By that, you will be finished with us this afternoon.

The reason you're here, as potential jurors, is to determine the appropriate sentences to be imposed upon the defendant for his conviction for murder in the first degree of Willie Absolu and his conviction for murder in the first degree of Christina Delarosa.

In Florida, there are only two potential sentences for an individual convicted of murder in the first degree.

That's life with no eligibility for parole.

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Life means life. Or death.

Those are the only two choices.

The crimes in this case took place during the early morning hours of March 11, 2002, at the Waffle House restaurant, located at 4689 148th Avenue, in Davie, Florida.

In a previous proceeding, the defendant was found guilty and convicted of murder in the first degree of Willie Absolu as to Count I of the indictment; murder in the first degree of Christina Delarosa in Count II of the indictment; attempted first degree murder of Barbara Nunn as to Count III of the indictment; attempted felony murder of Barbara Nunn as to Count IV of the indictment; armed kidnapping of Willie Absolu as to Count V of the indictment; armed kidnapping of Christina Delarosa as to Count VI of the indictment; armed kidnapping as to Barbara Nunn as to Count VII of the indictment; armed robbery of Christina Delarosa as to Count VIII of the indictment; and armed robbery as to Barbara Nunn as to Count IX of the indictment.

The only issue before you to determine the appropriate sentences to be imposed upon the

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defendant for his conviction for murder in the first degree of Willie Absolu and his conviction for murder in the first degree as to Christina Delarosa.

The issue of the defendant's guilt has previously been decided and is not for your consideration in this case.

Okay.

First, based upon the facts that I have just read to you, are they familiar to any of you?

I'll go row by row.

The first row, anybody know anything, read anything? I know it is 16 years ago.

Okay.

Second row?

MR. LABLANK: I think -- I lived in Davie at the time, near that Waffle House. I was going to Broward College and FAU over there.

THE COURT: Hang on.

Anybody else in that row?

How about our lucky person in the back?

No?

So see?

That was simple and quick.

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At this point, I'm going to ask you to return tomorrow at 9:15.

Ms. Sarah, I need you to stick around a bit.

Mr. Lablank, if you would stick around a minute.

Ms. Williams, if you would stick around a minute.

The rest of you I need tomorrow at 9:15. Same place you were.

What I'll ask, please don't start doing any independent research, Googling, for anything.

Anything and everything, for those of you that make the jury, is going to happen right here in this courtroom, before you.

I know I told you to stay away from the Sun Sentinel and the Herald, the local sections.

Other than that, see you tomorrow morning.

BRYAN EDWARD RUNGE: I didn't raise my hand earlier. I will make it work if you pick me. My job will only pay three days.

THE COURT: How will you work around that?

BRYAN EDWARD RUNGE: I have other sources of income, like a jack of all trades with South Florida cost of living.

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THE COURT: This job that will only pay you for three days, is that a material part of your financial?

BRYAN EDWARD RUNGE: That's my full-time job. I'll be switching next month to a Lyft driver and work the days we are not here. I am not worried about it.

I'll make it work.

I just want it noted.

THE COURT: Thank you, Mr. Runge.

Don't think we don't appreciate that.

Stick around.

Okay. The rest of you, tomorrow morning.

For those I asked to stick around a minute, please stick around.

Ms. Williams, please stay.

Mr. Runge, stick around.

Steve, if you will take the other four into the jury room.

(Exit venire.)

THE COURT: I know you said you can work around this.

If you are going to be losing your main source of income, that's not going to create a financial hardship for you?

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BRYAN EDWARD RUNGE: Financial hardship. Nothing that will be unbearable.

Between the side jobs, I could probably fill in a decent amount on the weekends.

That's enough to pay my rent.

Because work has been keeping me busy, the pets in my house, working on re-homing anyway.

I won't have too many expenses other than that, utilities and groceries.

Also, I had a friend that needed a place to stay that just moved in. They will be helping out when and where they can.

They are visiting from Brazil.

Their income isn't steady.

I am not unaccustomed to living pay check to pay check. Doing that a bit while in this is not a big deal.

My job will put me on leave.

If it is something I wanted to come back to afterwards, I would be able to do that. I am probably switching to becoming a Lyft driver to have more freedom for studying.

I plan on doing that halfway through October. That is something I can do from Friday evening until, if I remember correctly,

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we are not here Monday. That's a solid three days. Weekends nights is probably where I will be doing most of my driving.

If I switch gears to that line of work, it won't be a hindrance.

THE COURT: I'm impressed that knowing that all you had to say to me is yes, it would be a financial hardship and you're gone, that you are willing to commit to participate.

I'm floored.

I'll tell you, that's the type of commitment that I think everybody should have.

BRYAN EDWARD RUNGE: I agree.

No offense to the professionals in here, but a jury is what keeps our legal system grounded. It is a very important part. I would be honored to be a part of it.

THE COURT: Anybody want to ask a question?

MR. SATZ: No.

MR. POLAY: No, sir.

THE COURT: Thank you.

See you tomorrow. 9:15.

(Exit Mr. Runge.)

THE COURT: Do we need to deal with Ms. Sarah?

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MR. SATZ: No.

Only getting paid for three days.

THE COURT: I didn't want to take that on my only. Leave her a minute.

Williams?

MR. WILLIAMS: Not getting paid full salary.

MR. SATZ: Right.

THE COURT: And what about Lablank?

First of all, if we are not getting rid of him, I need to ask him about his knowledge of the Waffle House, considering he lived there.

Did I miss somebody?

MR. SATZ: Ms. Dixon.

She has an appointment at 8:30. Maybe she can still make it.

THE COURT: She said Thursday.

MR. SATZ: That's still okay. And then if she has to get -- .

THE COURT: Still early enough in the process.

MR. WILLIAMS: May not make it past tomorrow.

MR. POLAY: We'll see.

THE COURT. The only one I need to bring

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this is -- bring in Ms. Sarah, Ms. Williams.

I'll excuse them.

Then put Mr. Lablank in.

(Enter venire.)

THE COURT: Ms. Sarah, Ms. Williams, based upon your circumstances with your work, we're going to give you your card.

You can go back to the jury room.

They will process you out.

Thank you for being with us as long as you have.

(Exit said venire.)

THE COURT: Steve, can I have the last two, please.

(Enter venire.)

THE COURT: Ms. Dixon, I need you back tomorrow morning. We will play your situation by ear.

(Exit Ms. Dixon.)

THE COURT: You lived in Davie at the time?

MR. LABLANK: Yes.

THE COURT: What do you know?

MR. LABLANK: I remember the case. Read details. Shooting in the freezer.

If I remember correctly, if that's the case

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I'm thinking of.

THE COURT: It is.

MR. LABLANK: I just remember it. Pretty gruesome.

My and my college buddies would go to it.

THE COURT: That issue has been resolved.

MR. LABLANK: Yes.

You asked if I knew anything about the case.

THE COURT: I did. That's why I wanted to know.

Do you remember anything else?

I mean the facts of the case will come out anyway.

MR. LABLANK: No. Locked in the freezer. Murdered in the freezer, I believe. That's what I remember.

THE COURT: Mr. Satz?

MR. SATZ: The fact Judge Backman indicated you will learn the facts anyway, you know what your position would be, as a juror, to hear other facts and circumstances and vote on a penalty.

Do you feel you can do that in a fair, impartial way?

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MR. LABLANK: Yes, fair and impartial? Yes. Kind of a tough question to ask.

MR. SATZ: You are not determining, you know, guilt. That's been determined.

You will determine the appropriate punishment, after hearing the facts and circumstances.

Sure you can do that with an open mind?

MR. LABLANK: I guess. I mean, I don't know. I mean --

THE COURT: You understand you haven't heard what the process and law is yet.

MR. LABLANK: No, I haven't.

I am not sure.

I know I have pretty strong feelings about those types of matters.

THE COURT: We will discuss that tomorrow.

MR. POLAY: Mr. Lablank, you indicated that you and your college buddies would go to that particular Waffle House back in the day?

MR. LABLANK: Yes.

MR. POLAY: You indicated you're not sure if you can be fair and impartial?

MR. LABLANK: Well, it is a strange situation to be in. I, you know, my dad was a

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victim of some violent crime. If you ask me, I, I, I think I can. But I have strong feelings about it.

MR. POLAY: As you sit here now, you are not sure if you can be fair and impartial?

MR. LABLANK: I don't know. I honestly, I don't know.

MR. POLAY: You have a doubt?

MR. LABLANK: I have a doubt. I can't be a hundred percent sure.

THE COURT: Any follow-up?

MR. SATZ: You have a doubt whether you can be fair and impartial?

MR. LABLANK: I would say yes.

I'll try.

THE COURT: No right or wrong answers.

MR. LABLANK: Hard question to ask.

MR. SATZ: That's the whole purpose, getting people that will be fair and impartial. If you feel you can't be fair and impartial --

THE COURT: Nothing wrong with that.

MR. LABLANK: I don't know. I have a doubt if I can.

That's the best I can give you.

THE COURT: All right. We will send you

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back to the jury room.

Your dean will be very happy. They will process you out.

Thanks for being with us.

MR. LABLANK: Okay.

THE COURT: The bottom line is if this is a decision for anybody that is not difficult, I would be surprised.

Thank you again for being with us.

MR. LABLANK: Thank you.

JUDICIAL ASSISTANT PAM COE: I have a gentleman outside, number 86 on my list. Michael Howard Webster.

He came up to me, stated he's over 70 years old and has medical issues.

Can we just excuse him?

THE COURT: If he says he's over 70 and doesn't want to serve, nobody can make him.

MR. POLAY: No objection.

MR. SATZ: Right.

JUDICIAL ASSISTANT PAM COE: I'll line up the last group.

MR. WILLIAMS: Judge, we didn't inform Mr. North, the 70-year-old. He was on an earlier group.

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THE COURT: We will see him. I told you guys, if you don't remind me -- and you remember everything, Dohn.

MR. WILLIAMS: Try to.

MR. POLAY: I forgot as well.

THE COURT: Now what?

JUDICIAL ASSISTANT PAM COE: We never brought in Mr. Pierre this morning. Guy that filled out the questionnaire. I am putting him in this group.

Nigel Pierre.

(Enter venire.)

THE COURT: Mr. Pierre, for whatever reason, you didn't fill out a questionnaire until this morning.

NIGEL PIERRE: No, I completed it last week, when I was here.

I was taken to the back room.

THE COURT: Okay.

Did you check with your employer? You work for American Airlines?

NIGEL PIERRE: Yes.

THE COURT: Do you know if you will get paid?

NIGEL PIERRE: Yes.

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THE COURT: They are going to pay you?

NIGEL PIERRE: Yes.

THE COURT: Thank you.

Welcome.

Thank you for being as patient as you are. The first group I brought in was still from this morning.

Discovered this morning that the best laid plans of mice and men often go astray. Murphy's Law came about as well.

I'll have you guys out of here probably before 3:30. Then those of you that don't have a problem this afternoon will be back tomorrow morning.

I will tell you what that process is later.

First of all, have any of your circumstances changed from the time you were here last week until today that would interfere with your ability to participate with us?

Same question I basically asked last week. Sometimes circumstances change.

Everybody is good?

You are, sir?

WILLIAM HOWARD: I'm William Howard.

I haven't been able to make changes in

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scheduling my procedures I have coming up.

THE COURT: They are when?

WILLIAM HOWARD: I have one that is next Thursday. Cardiologist. And then the other one is still pending. It is a procedure that is done in out-patient.

I'm trying to make it for Monday, so I could make this. As of yet, I have not.

VENIRE: Thanksgiving vacation?

THE COURT: Me too.

I know. You're all just asking.

I can assure you, I told you I'm retiring at the end of the year. I'm going on vacation in November.

Might as well.

All right.

Let me tell you will why you're here.

All right.

The reason you're all here as potential jurors is to determine the appropriate sentences to be imposed upon the defendant for his conviction for murder in the first degree of Willie Absolu and his conviction for murder in the first degree of Christina Delarosa.

The crimes in this case took place during

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the early morning hours of March 11, 2002, at the Waffle House restaurant located at 4689 SW 148th Avenue, Davie, Florida.

In a previous proceeding, the defendant was found guilty and convicted of murder in the first degree of Willie Absolu as to Count I of the indictment; murder in the first degree of Christina Delarosa as to Count II of the indictment; attempted first degree pre-meditated murder of Barbara Nunn as to Count III of the indictment; attempted felony murder of Barbara Nunn as to Count IV of the indictment; armed kidnapping of Willie Absolu as to Count V of the indictment; armed kidnapping of Christina Delarosa as to Count VI of the indictment; armed kidnapping of Barbara Nunn as to Count VII of the indictment; armed robbery of Christina Delarosa as to count VIII of the indictment; and armed robbery of Barbara Nunn as to Count IX of the indictment.

The only issue before you is to determine the appropriate sentences to be imposed upon the defendant for his convictions for murder in the first degree of Willie Absolu and his conviction for murder in the first degree of

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Christina Delarosa.

The issue of the defendant's guilt has already been established and is not an issue for your consideration during the course of this process. Nor is it to be considered in any way. It is already established.

So it is a non-issue.

And I'll deal with this in two ways.

First of all, I don't know if you're all aware of it, but in the State of Florida, there are only two possible penalties for a conviction for murder in the first degree.

The first is life Florida State prison without any eligibility for parole.

In Florida, life means life.

Or death.

And we will discuss that process tomorrow.

What I want to deal with now is whether or not -- and I want to go like last week, row by row. Whether or not any of you are familiar with the facts and circumstances surrounding the facts that I just brought out.

Anybody in the front row?

Second row?

The two of you in the third row?

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Nobody is familiar with this at all.

Any questions by anybody?

MR. SATZ: No.

MR. POLAY: Just ask if they have seen it in the newspapers perhaps.

THE COURT: Any of you read anything in the newspaper with regard to this?

I can tell you it would have been a week ago Saturday in the Sun Sentinel. Okay. Now you know why I tell you. Of course, this was before I talked to you last week.

Now you know why I tell you guys no local sections.

I probably have to cut you out of the whole paper all together, considering the way they have been reporting these days. Leave them alone.

Also, I need you back tomorrow morning at 9:15.

And please, no independent research. Don't start Googling anything. Don't go back, start reading articles.

That is critical. And I can't emphasize that enough.

And I am going to ask that you not only

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pledge or promise me that you will not use your Internet for anybody nor let anybody talk to you about potential facts of this case.

Everybody can do that for me?

VENIRE: Yes.

THE COURT: Great.

See you tomorrow.

MR. WILLIAMS: Are we clear as to Mr. Howard's schedule.

THE COURT: Stick around, Mr. Howard.

The rest of you, see you at 9:15 tomorrow morning.

(Exit venire.)

(Discussions held off the record.)

THE COURT: Mr. Howard, do you have a procedure being done on Thursday?

WILLIAM HOWARD: Not Thursday. Thursday, the 9th, is the cardiologist for a follow-up. Next Thursday.

The other procedure I have coming up not yet scheduled, due to this, mainly I'm holding offer on it, is a colonoscopy.

THE COURT: THE COURT: That's not part of any cardiac issue.

WILLIAM HOWARD: No.

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MR. WILLIAMS: They asked you to hold off on the colonoscopy because of the cardiac situation?

WILLIAM HOWARD: No.

I was supposed to have the colonoscopy already done. When I got this notice, I had to tell them I had to wait. I didn't know, I didn't understand this stuff.

They told me to contact them whenever I knew and they would try to schedule it to get it done for me before it was too late because my insurance may expire at the end of the year. They want to make sure it is done before.

THE COURT: What time is your appointment on the 9th?

WILLIAM HOWARD: Nine o'clock.

THE COURT: Local?

WILLIAM HOWARD: Yes. Hollywood Memorial.

MR. SATZ: I don't see a problem.

MR. WILLIAMS: The 9th, sounds like he will be out of pocket, not available. You won't be available all day the 9th; is that correct? October 9th.

WILLIAM HOWARD: I can be available in the afternoon. Rather. The appointment is for

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9:00. They are pretty fast. Vein work place. I am usually in and out within an hour.

MR. WILLIAMS: Okay.

MR. SATZ: Okay.

WILLIAM HOWARD: That's the appointments. That's not an appointment appointment. That one I can put off. I can reschedule for another time. The colonoscopy is the one most important.

THE COURT: No kidding.

WILLIAM HOWARD: It's not just a walk in the hospital.

THE COURT: Here are some thoughts you can run by the doctor or whomever is performing the procedure.

First of all, Mondays are good.

What are the dates you're away?

MS. MCCANN: I leave the Friday, the 19th through Wednesday, the 24th.

THE COURT: You're back on the 24th?

MS. MCCANN: I fly in on that morning.

THE COURT: Those are additional dates. I think after Thanksgiving, you can schedule anything you want, without having any difficulty. Of course, that's all predicated

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on whether you actually make the jury.

See you tomorrow morning at 9:15. We'll continue through process.

See you tomorrow.

The dates are good dates we're not in trial.

WILLIAM HOWARD: Okay. Great. Thank you very much.

(Exit William Howard.)

THE COURT: We'll split them up in groups.

MR. SATZ: Tomorrow, just death qualification.

So I start on Thursday.

THE COURT: All things being equal.

MR. POLAY: I'll go Tuesday?

THE COURT: You will go, with all of the number of people that will be gone on Friday, instead of excusing them, we will just start on Thursday and see where we go.

JUDICIAL ASSISTANT PAM COE: Working Friday?

THE COURT: I don't know.

We kept a bunch of people with Friday issues.

MR. POLAY: I thought we were taking Friday

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off.

THE COURT: I think we have to.

We have four, five of the people going away.

MR. SATZ: Let's see who we come out with.

THE COURT: Really all predicated on what happens between now and Thursday.

(Discussions held off the record.)

(Proceedings conclude.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 10th day of July, 2019.

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME VIII
PAGES 603 - 746

Fort Lauderdale, Florida
October 3rd, 2018
10:00 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 3rd, 2018, commencing at 10:00 a.m.

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THEREUPON, the following proceedings were had:

THE COURT: Before we start, I want to reiterate what I talked about before, in terms of the process for this morning.

We're bringing them 25, 25, 26.

I'm going to give them, basically, the preliminary instruction that outlines what aggravators and mitigators are.

Then I'll go through the three Witt questions so they at least have some semblance of semblance understanding, which, of course is what you guys will take them through anyway.

Those that get through that process, in other words, they say they are not in either end zone, they can listen, blah, blah, blah, those we send home until tomorrow morning.

That way, we get through the bulk of individuals quicker.

And then we bring back any of the individuals you want to talk to or we automatically know will go.

We can do the ones that really need questioning in the afternoon.

I think that will streamline our process

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and get us to where we need to go quicker, without starting our last group that is here now, you know, some time later this afternoon.

Everybody okay with that?

Before we start the questioning by lawyers, we'll handle the motion in limine the State filed.

Let's bring them in.

(Enter venire.)

THE COURT: Good morning.

VENIRE: Good morning.

THE COURT: Everybody good?

Awwww. Okay. The last stage, before we actually get to voir dire, which is when the lawyers will really have access, I'm going to streamline this process a little bit so that we don't end up with you guys here all morning and then I bring in the next group -- well, honestly, you guys left yesterday at 20 after eleven, something like that? You know the next group was finished by five minutes to 12? And the afternoon group went almost as quickly. So I have come up with what I think is the way to get most of you out of here very quickly. Those that aren't out very quickly, I'll

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explain what we'll do.

No, you will not have to come back tomorrow, at least for the questioning we're doing here today.

Tomorrow, we'll start with Mr. Satz' actually -- I know you haven't met him yet. But he will start his questioning before the Defense does.

Let me start by explaining what today is all about.

You already know that in the State of Florida, there are only two possible penalties for murder in the first degree.

Remember, that has already been established and not for your consideration.

The defendant has, in fact, been convicted of those offenses. So you're only here to determine what an appropriate sentence would be.

As I told you yesterday, it is not just as simple as a jury going back and saying I want this, I want that.

There is a process.

I'll tell you whatever determination is made by a jury has to be unanimous.

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MR. POLAY: Judge.

THE COURT: What?

MR. POLAY: Can I approach for one second.

(Sidebar had.)

MR. POLAY: You just said any decision the jury has to make --

THE COURT: All right. All right. All right. I know how to correct it. No problem.

MR. POLAY: Thank you.

(Sidebar concludes.)

THE COURT: Let me clarify what I just said.

Any decision to impose death has to be unanimous. That's what I meant to say. Unfortunately, I have lawyers that have no problem correcting me. And I have no problem being corrected.

I want you to have accurate information.

Now, let me tell you how it works.

In the State of Florida, there are what we call aggravating factors. Those aggravating factors have to be proven by the State of Florida beyond and to the exclusion of a reasonable doubt.

And I will instruct you on the law as to

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reasonable doubt.

Aggravating factors are statutory in nature.

In other words, the State cannot just say they don't like the defendant; therefore, you should impose a particular sentence.

It has to be outlined.

And there are -- I'm not sure how many we have to deal with. I don't want to deal with that now.

This is what a jury has to do.

With regard to the evidence, it is up to a jury to determine, first, whether each aggravating factor is proven beyond a reasonable doubt.

Now, there can be as few as one or as many as 16, 18, how ever many exist based upon the facts of the cases that fall within the parameters of Florida law are what would have to be proven.

You would then have to find whether one or more aggravating factors exist beyond a reasonable doubt.

You would then need to determine whether the aggravating factors found to exist beyond a

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reasonable doubt are sufficient to justify the imposition of the death penalty.

You would also have to determine whether mitigating circumstances -- and I'll explain what mitigating circumstances are in a minute for you -- are proven by the greater weight of the evidence.

In other words, they do not have to be established beyond and to the exclusion of a reasonable doubt.

You just need to find that they exist in your opinion, based upon the facts.

You would then have to determine whether the aggravating factors outweigh the mitigating circumstances and whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.

Now, as I said, an aggravating factor -- and you will hear this -- for those of you that make the jury, you will hear all of this again.

But an aggravating factor, as I said, is a standard to guide the jury in making a choice between a sentencing decision of life imprisonment without the possibility of parole or death.

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It is a statutorily-enumerated circumstance that increases the gravity of the crime for the harm to the victim.

And you must unanimously agree as to each aggravating factor and it was proven beyond a reasonable doubt before you can consider it in arriving at your final verdict. In other words, if there is an aggravating factor and you don't find it beyond a reasonable doubt, you can't consider it.

In order to consider the death penalty as a possible personality, you must determine, as I indicated, that at least one aggravating factor has been proven beyond a reasonable doubt.

I might as well read reasonable doubt now, too.

And the State has the burden -- this is the instruction on reasonable doubt -- the State has the burden to prove each aggravating factor beyond a reasonable doubt.

A reasonable doubt is not a mere, possible doubt; a speculative, imaginary or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists.

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On the other hand, if after carefully considering, comparing and weighing all of the evidence you do not have an abiding conviction that the aggravating factor exists or if having a conviction, it is one which is not stable, but one which wavers and vacillates, then the aggravating factor has not been proved beyond a reasonable doubt and you must not consider it in providing your verdict on the appropriate sentence to the Court.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, conflicts in the evidence or a lack of evidence. If you have a reasonable doubt as to the existence of an aggravating factor, you must find it does not exist.

However, if you have no reasonable doubt, you should find that the aggravating factor does exist. As I indicated to you just a few minutes ago, before moving on to the mitigating circumstances, you must determine that the aggravating factor or factors are sufficient to impose a sentence of death.

If you do not unanimously agree that the aggravating factor or factors are sufficient to

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impose death, do not move on to consider the mitigating circumstances.

In other words, it is a process, as I indicated to you.

Now, should you find a sufficient aggravating factor or factors do exist to justify a sentencing decision for the imposition of the death penalty, it will then be your duty to determine whether the aggravating factor or factors you unanimously find to have been proven beyond a reasonable doubt outweigh the mitigating circumstances you find to have been established. Unlike aggravating factors, you do not need to unanimously agree a mitigating circumstance has been established.

A mitigating circumstance is not limited to the facts surrounding the crime.

It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant.

In other words, a mitigating circumstance may include any aspect of the defendant's character, background or life or any other circumstances of the offense that reasonably

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may indicate that the death penalty is not an appropriate sentence in this case.

As I said, a mitigating circumstance does not have to be proven beyond a reasonable doubt. Only needs to be proven by the greater weight of the evidence, which means that it has to exist and which means evidence that more likely than not tends to prove the existence of a mitigating circumstance.

If you determine, by the greater weight of the evidence, that a mitigating circumstance exists, you may be able to consider -- you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as not sentence imposed.

Now, that's the process.

You can see that it is not a simple process. It is one where the State has to establish and you have to accept unanimously that the aggravating factor or factors exist.

You would have to find that the aggravating factors or factor that is found to exist unanimously are sufficient to impose a sentence of death.

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And again, that would have to be unanimous.

Mitigating circumstances are basically anything in a defendant's life, background, character, facts of the case, that you believe exist, again, not beyond a reasonable doubt or unanimously. And you weigh that process.

It is your determination what weight to give it.

So we all know that when you're dealing with the ultimate sentences, it is not something that we trivialize in any way. And we do expect that it will be a very difficult decision on each of your parts.

With that in mind, let me ask you this.

Now, I'm going to read this. It is only four short paragraphs. And I don't want anybody to respond. Then I'll start right with Ms. Knight. And I'll follow up with those questions.

So as you know, there are only two possible penalties in the State of Florida for murder in the first degree. One is life without the possibility of parole. The other is death.

This is a case where the State of Florida is seeking the death penalty.

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With that in mind, I have some questions for all of you.

Do not -- do any of you have a firm opinion on that?

In other words, if a person is convicted of murder in the first degree, would any of you always vote for the death penalty with no consideration for a vote for life without the possibility of parole? Number one.

Or, in the alternative, would any of you always vote for life with no consideration of a vote for the death penalty?

And last, if none of you are adamantly opposed to or adamantly in favor of one sentence or another, would you be able to listen to any aggravating factors, any mitigating circumstances, arguments of the attorneys and the instruction by this Court and be willing to consider both penalties before making a decision?

Ms. Knight, those are the three questions.

First, would you always vote for death because an individual is convicted of murder in the first degree?

ANDRIA KNIGHT: No.

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THE COURT: Would you always vote for life if an individual is convicted with no consideration of aggravating factors?

ANDRIA KNIGHT: Yes.

THE COURT: Always vote for life?

ANDRIA KNIGHT: Correct.

THE COURT: No circumstances by which you believe you could listen to all the facts, listen to aggravating factors, mitigating circumstances and the law and consider both as a possibility?

ANDRIA KNIGHT: No.

THE COURT: Absolutely, positively not?

ANDRIA KNIGHT: Correct.

THE COURT: You're in one of the end zones?

ANDRIA KNIGHT: Yes.

THE COURT: Can't be moved from that end zone?

ANDRIA KNIGHT: No.

THE COURT: Is that a religious belief?

ANDRIA KNIGHT: Yes.

THE COURT: By the way, everybody has their own opinions.

There are no right or wrong answers. It is only what you personally believe.

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None of us will take issue with any of what you say.

Okay, Ms. Stelzer, same questions.

Would you always vote for death because an individual is convicted of murder in the first degree with no consideration of mitigating circumstances?

BEVERLY STELZER: No.

THE COURT: Would you always vote for life without consideration of any aggravating factors?

BEVERLY STELZER: No.

THE COURT: Would you be able to listen to any aggravating factors, any mitigating circumstances, arguments of the attorneys, the instructions by the Court, and consider both possible penalties before making a decision?

BEVERLY STELZER: Yes.

THE COURT: Ms. Branscum, first question, would you always vote for death with no consideration of mitigating circumstances?

LINDA BRANSCUM: No.

THE COURT: Would you always vote for life without consideration of any aggravating factors?

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LINDA BRANSCUM: No.

THE COURT: Would you be willing to listen to any aggravating factors presented, mitigating circumstances, arguments by the lawyers and the law, of course, and consider both sentences as possible sentences?

LINDA BRANSCUM: Yes.

THE COURT: Ms. Johnson, you know the questions.

Would you always for death?

PAMELA SUE JOHNSON: No.

THE COURT: Would you always vote for life?

PAMELA SUE JOHNSON: Yes.

THE COURT: You're in an end zone?

PAMELA SUE JOHNSON: Clearly.

THE COURT: Nobody can move you to the one-yard line?

PAMELA SUE JOHNSON: No.

THE COURT: Is that religious belief?

PAMELA SUE JOHNSON: I imagine it is.

It is in line with my religion. I believe it is more than that.

THE COURT: Ms. Mosiello?

DINA MOSIELLO: Yes.

THE COURT: Ms. Mosiello, would you always

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vote for death?

DINA MOSIELLO: No.

THE COURT: Would you always vote for life?

DINA MOSIELLO: No.

THE COURT: Would you be able to consider aggravating factors presented, mitigating circumstances presented, argument of lawyers, the law, consider both possible sentences before imposing a decision?

DINA MOSIELLO: Yes.

THE COURT: Ms. Tasch, would you always vote for death?

ANGELA TASCH: No.

THE COURT: Would you always vote for life?

ANGELA TASCH: Yes.

THE COURT: You're in an end zone?

ANGELA TASCH: Yes.

THE COURT: Can't move you towards the one-yard line?

ANGELA TASCH: Not in terms of the death penalty, no.

THE COURT: Ms. Bryan, would you always vote for death?

KIM BRYAN: No.

THE COURT: Would you always vote for life?

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KIM BRYAN: Yes.

THE COURT: You're in an end zone. No possible way of moving you even to consider both possible penalties before making a decision?

KIM BRYAN: I don't, I would not want to. I don't want to. I wouldn't want to be responsible for putting anyone to death. I'm just, unless it was, I just --

THE COURT: You couldn't even consider the alternative, based upon aggravating factors presented, mitigating circumstances.

KIM BRYAN: As relates to this particular case?

THE COURT: That's all I can ask.

KIM BRYAN: No.

THE COURT: You couldn't? No, no, no. You said no.

I wanted to clarify.

KIM BRYAN: No, no, no, no, no uhm, I, no. No, I just don't believe in the death penalty.

THE COURT: Ms. Wareham, you would always vote for death?

SARAH WAREHAM: Yes.

THE COURT: No circumstances you would

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consider mitigating circumstances?

SARAH WAREHAM: No.

THE COURT: You're in the other end zone?

SARAH WAREHAM: Yes.

THE COURT: Can't move you to the one-yard line?

SARAH WAREHAM: No.

THE COURT: Mr. Delnegri --

THEODORE DELNEGRI: Yes.

THE COURT: Yes, you would always vote for death?

THEODORE DELNEGRI: Yes.

THE COURT: You would not be able to consider mitigating circumstances.

THEODORE DELNEGRI: No.

THE COURT: Under any set of circumstances?

THEODORE DELNEGRI: No.

THE COURT: Can't move you to the one-yard line to make a determination? In other words, if you thought of the worst crime in the history of this world, would you -- wrong way to do it.

It's the reverse.

Under no circumstances would you consider both penalties before deciding what your

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verdict would be?

THEODORE DELNEGRI: No.

THE COURT: Ms. McCray, would you always vote for death?

JOEL MCCRAY: No .

THE COURT: Always vote for life?

JOEL MCCRAY: No.

THE COURT: Would you be able to listen to aggravating factors presented, mitigating circumstances presented, arguments of the attorneys, the law, consider both possible penalties before making your decision?

JOEL MCCRAY: Yes.

THE COURT: Mr. Hensel?

JOSHUA HENSEL: Yes.

THE COURT: You would always vote for death?

JOSHUA HENSEL: Yes.

THE COURT: There are no circumstances by which you could ever consider mitigating circumstances and make a determination.

JOSHUA HENSEL: No, sir.

THE COURT: Can't move you out of that end zone?

JOSHUA HENSEL: No, sir.

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THE COURT: Ms. Stone, would you always vote for?

JUNE STONE: No.

THE COURT: Always vote for life?

JUNE STONE: No.

THE COURT: Would you be willing to listen to aggravating factors presented, mitigating circumstances presented, arguments of the lawyers, the law as I give it to you and consider all of that before making a decision as to the penalty that you would impose?

JUNE STONE: Yes.

THE COURT: Mr. Haywood, would you always vote for death?

MICHAEL HAYWOOD: No.

THE COURT: Always vote for life?

MICHAEL HAYWOOD: Yes.

THE COURT: There are no circumstances by which you would be willing to listen to aggravating factors, arguments, the law, before; and consider the possibility of both before you vote?

MICHAEL HAYWOOD: No.

THE COURT: Ms. Santana, would you always vote for death?

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EMMYS SANTANA: No.

THE COURT: Would you always vote for life?

EMMYS SANTANA: No.

THE COURT: Would you be willing to consider aggravating factors presented, mitigating circumstances presented, arguments of the attorneys, the law, and consider both possible penalties before making a decision?

EMMYS SANTANA: Yes.

THE COURT: Ms. Williams, would you always vote for death?

LONI WILLIAMS: No .

THE COURT: Would you always vote for life?

LONI WILLIAMS: No.

THE COURT: Would you be willing to consider aggravating factors, mitigating circumstance, you would consider both possible penalties before making your decision?

LONI WILLIAMS: Yes.

THE COURT: Ms. --

ADRIANA HOYOS-MARINUCCI: No.

No.

And yes.

THE COURT: That makes it so much easier.

THE COURT: Ms. Rowe?

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ASHLEY ROWE: No. I wouldn't be comfortable. Death, I would not, I mean -- would you repeat them?

THE COURT: Would you always vote for death?

ASHLEY ROWE: No.

THE COURT: Would you always vote for life?

ASHLEY ROWE: Be more inclined to vote for life. I can't say always.

THE COURT: That's not the question.

I'll go to the last question.

Would you be willing to listen to aggravating factors, mitigating circumstances, arguments of the attorneys, the law that I give you and consider both possible penalties before making your decision?

That's the real question. Can you consider everything before you do it?

ASHLEY ROWE: No .

THE COURT: Always going to vote life?

ASHLEY ROWE: No.

But I have to give you a yes or no answer. It is closer.

I would be very uncomfortable.

THE COURT: I wouldn't think anybody is

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comfortable. If you find one person comfortable with that in this courtroom, I would be really floored.

But the reason I keep -- Ms. Rowe, I'm not picking on you at all.

When you say I would be uncomfortable, which I think everybody would, but you can't be definitive, my question still remains, going to the third, would you be willing to consider everything before making your decision? That's the real question.

So far, those individuals that have said always life or death have been very definitive in the fact they wouldn't be able to consider anything else.

You seem to be vacillating.

I have understand why you vacillate.

It is not an easy yes-or-no answer.

I am not asking for a definitive answer. You can answer based upon your own mind set.

But could you consider everything before you make that decision?

ASHLEY ROWE: Probably not. No. No. No. No.

THE COURT: That's one of the terms that

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scars lawyers.

ASHLEY ROWE: No.

THE COURT: Mr. Gordon, would you always vote for death?

DAVID GORDON: No.

THE COURT: Always vote for life?

DAVID GORDON: No.

THE COURT: Would you be willing to consider aggravating factors, mitigating circumstances, arguments of the lawyers, the law, and consider both possible penalties before making a decision?

DAVID GORDON: Yes, that's correct.

THE COURT: Mr. Denson?

BARRY DENSON: Yes.

THE COURT: Yes, you would always vote for death?

BARRY DENSON: Yes.

THE COURT: There are no circumstances by which you would be willing to consider any other sentence?

BARRY DENSON: No, sir.

THE COURT: No way to move you out of the end zone.

BARRY DENSON: No, sir.

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THE COURT: Ms. Weinstein?
ELISA WEINSTEIN: No.
THE COURT: You wouldn't always vote for death?
ELISA WEINSTEIN: No.
THE COURT: Would you always vote for life?
ELISA WEINSTEIN: I don't think so.
THE COURT: The question is --
ELISA WEINSTEIN: No, I would not.
THE COURT: Would you be willing to consider aggravating factors, mitigating circumstances, arguments, the law, consider both possible penalties before making a decision?
ELISA WEINSTEIN: Yes.
THE COURT: Mr. Rolle?
WHITING ROLLE: Yes.
THE COURT: Yes, what?
Would you always vote for death?
WHITING ROLLE: No.
THE COURT: Always vote for life?
WHITING ROLLE: No.
THE COURT: Would you be willing to consider the aggravating factors, mitigating circumstances, arguments of the lawyers and the

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law and consider both possible penalties before making a decision.

WHITING ROLLE: Yes.

THE COURT: Same question, Mr. Pierre.

NIGEL PIERRE: No.

No.

And yes.

THE COURT: Ms. Linett?

NANCY LINNETT-RAVELO: No.

No.

And yes.

THE COURT: Mr. Graham?

DAVID GRAHAM: No.

No.

And yes.

THE COURT: Ms. Castano?

ANDREA CASTANO: No.

No.

And yes.

DINA MOSIELLO: Judge, sorry.

I, I, I don't, I would like to change my answer.

THE COURT: I am listening.

DINA MOSIELLO: I would not ever vote for the death penalty.

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THE COURT: I have to ask this.

What changed?

DINA MOSIELLO: I guess it is a religious belief. More so a personal belief.

THE COURT: No one will move you out of that end zone?

DINA MOSIELLO: No.

THE COURT: Fair enough.

All right.

I'll send all of you guys out.

Please segregate them. You will find out what is going on in a few minutes.

I need to talk to the attorneys.

(Exit venire.)

THE COURT: The reason I sent them out without doing anything, the ones that answered the questions no, no and yes, I'll send them home.

Do you want to talk to the lawyers to find out their definitive answer?

MR. WILLIAMS: The only one that seemed to be, Ashley Rowe.

THE COURT: I was about to say Ms. Rowe was very vacillating.

MR. WILLIAMS: Everybody else, they are

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either a 1 or a 7 on our grading scale.

MR. POLAY: Instead of having them say no, no, yes, could you please ask them individually the questions?

THE COURT: If you wish.

MR. POLAY: I do.

MR. SATZ: I agree.

THE COURT: Not a problem.

MR. WILLIAMS: I don't want to pull a Moldof and try to rehabilitate these people.

MR. POLAY: It's turned into a verb.

THE COURT: I am coming to the conclusion, I'm afraid to ask, the way this is going, the way this is going, we'll need more jurors. The way this, if this pattern continues.

We have 14 that cleared today.

We are losing 11 right off the bat.

MR. SATZ: We always said it would be 40 to 50 percent.

THE COURT: Right.

That brings us down to 65.

We have another 50 to go.

See how it goes.

We can always contact the individuals we told to come back at 9:15 tomorrow.

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Or do we voir dire all of these people, once we are finished with this process, and see what happens.

If we need more jurors, we'll get more jurors.

I'll have to get them next week.

MR. WILLIAMS: Aren't the jurors coming in tomorrow?

THE COURT: Not for us.

I can get them.

Do I tell these people to come back at 9:15 tomorrow and see what the story is?

MR. POLAY: You know what I would recommend? Let's go through the next group and see where we are.

MR. WILLIAMS: We can get rid of the ones we are getting rid of. Let the others hang out.

MS. MCCANN: It is still early.

THE COURT: Why don't I tell them to come back at 9:15. See where we are.

MR. SATZ: If you tell them to come back at 9:15 and tell them to go home --

THE COURT: You're right. The jurors didn't like that the last time.

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All right.
These are the ones we are letting go.
Knight, which is 1.
Johnson, 4.
Mosiello, 5.
Tasch, 6.
Bryan, 7.
Wareham, 8.
Delnegri, 9.
Hensel, 11.
Haywood, 13.
Rowe we'll ask to come back at 1:30.
19, Denson.
That's it.
MS. MCCANN: Can we go over those again, who we have left?
THE COURT: 2, Seltzer.
3, Branscum.
10, McCray.
12, Stone.
14, Santana.
15, Williams.
16, Hoyos-Marinucci.
18, Gordon.
20 through 25.

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Castano is the last, 25.

MR. POLAY: The last four or five people, actually, I ask we bring them back, as well as Mr. Gordon. I needed the Court to ask the questions on the record, if you don't mind. Number 18, 21 through 25.

THE COURT: What about Weinstein?

MR. POLAY: You asked her the questions. Everybody was -- I know. Sorry.

THE COURT: Here is how it goes. As far as the ones going?

Steve, you have those that are going?

DEPUTY: Yes.

THE COURT: Those people you can tell to return back to the jury room.

Ask Ms. Rowe to come back at 1:30.

Bring in Gordon, Rolle, Pierre, Linnett, Graham and Castano together.

(Recess had.)

(Enter said venire.)

THE COURT: I need to ask you the questions. But I need to ask them in full.

Mr. Gordon, would you always impose death for a person convicted of murder in the first degree?

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DAVID GORDON: No.

THE COURT: Would you always impose life?

DAVID GORDON: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

DAVID GORDON: Yes.

THE COURT: Mr. Rolle, would you always vote for death?

WHITING ROLLE: No.

THE COURT: Would you always vote for life.

WHITING ROLLE: No.

THE COURT: Would you listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law I give you and consider all of that before making your determination and decision?

WHITING ROLLE: Yes.

THE COURT: Mr. Pierre, would you always vote for death?

NIGEL PIERRE: No, sir.

THE COURT: Always vote for life?

NIGEL PIERRE: No, sir .

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THE COURT: THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law I give you and consider both possible penalties before making your decision?

NIGEL PIERRE: Yes.

THE COURT: Ms. Linnett-Ravelo, would you always impose death for a person convicted of murder in the first degree?

NANCY LINNETT-RAVELO: No.

THE COURT: Would you always impose life?

NANCY LINNETT-RAVELO: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

NANCY LINNETT-RAVELO: Yes.

THE COURT: Mr. Graham, would you always vote for death for a person convicted of murder in the first degree?

DAVID GRAHAM: No.

THE COURT: Would you always vote for life?

DAVID GRAHAM: No.

THE COURT: Would you be able to listen to

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the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

DAVID GRAHAM: Yes.

THE COURT: Ms. Castano, would you always impose death for a person convicted of murder in the first degree?

ANDREA CASTANO: No.

THE COURT: Would you always impose life?

ANDREA CASTANO: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

ANDREA CASTANO: Yes.

THE COURT: The group that you guys were with is outside. I am going to ask for your patience.

We will get back to you hopefully very quickly.

(Exit venire.)

THE COURT: All right.

I need the next group.

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MR. SATZ: Judge, it might be a good idea to bring in Ms. Ravelo separately. I don't want to embarrass her about her son. I'm sure defense counsel doesn't either.

The police officer being sentenced.

THE COURT: Can I have --

MR. SATZ: We don't have to do it now. I wanted to inform the Court. I don't want to embarrass her.

THE COURT: We are ready.

(Enter venire.)

THE COURT: Good morning.

And it is earlier than yesterday.

Let me tell you what today is all about.

After today, I can assure you the next process is when the lawyers actually get to start questioning you guys.

Today, I'm going to deal with the issue, I told you yesterday, that with respect to a conviction for murder in the first degree, there are only two possible penalties.

One is life without eligibility for parole, life meaning life; and death.

Now, it is not as simple as that.

If it were that simple, it would be a

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process that is absolutely fraud.

And there is an entire process before any of you are asked to make the ultimate decision on what is the appropriate sentence.

I want to review that with you now.

Then I have three questions which I'll read to you.

And I'll ask each of you those questions individually, after you have had an opportunity to hear it.

So let me tell you that before an individual in the State of Florida can be sentenced to death, a jury has to make certain determinations and findings.

These are what we call aggravating factors.

An aggravating factor is a standard to guide the jury in making a choice between a sentencing decision of life imprisonment without the possibility of parole or death.

It is a statutorily enumerated circumstance that increases the gravity of the crime or harm to the victim.

By statutorily enumerated, that means the aggravating factors that the State can present are all laid out by statute.

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You cannot just, as an aggravating factor, say oh, I don't like the defendant and have that considered.

You must unanimously agree to each aggravating factor or that each aggravating factor was proven beyond a reason doubt before it may be considered by you in arriving at your final verdict.

In order to consider the death penalty as a possible penalty, you must determine at least one aggravating factor has been proven beyond a reasonable doubt.

The State has the burden of proving each aggravating factor beyond a reasonable doubt.

A reasonable doubt is not a mere, possible doubt; a speculative, imaginary or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists.

On the other hand, if after carefully considering, comparing and weighing all of the evidence you do not have an abiding conviction that the aggravating factor exists or if having a conviction, it is one which is not stable, but one which wavers and vacillates, then the

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aggravating factor has not been proved beyond a reasonable doubt and you must not consider it in providing your verdict on the appropriate sentence to the Court.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, a conflict in the evidence or a lack of evidence.

If you have a reasonable doubt as to the existence of an aggravating factor, you must find it does not exist.

However, if you have no reasonable doubt, you should find that the aggravating factor does exist.

By the way, for those of you that make the jury, you will hear this again. This is actually what the law is.

As I said, the State has to prove the existence of one or more aggravating factors beyond a reason doubt.

It is process.

This is the process that has to be followed by a jury.

First, whether each aggravating factor is proven beyond a reason doubt.

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Second, whether one on more aggravating factors exist beyond a reasonable doubt.

Third, whether the aggravating factors found to exist beyond a reasonable doubt are sufficient to justify the imposition of the death penalty.

Whether a mitigating circumstance -- and I'll go through what a mitigating circumstance is in just a minute.

Whether mitigating circumstances are proven by the greater weight of the evidence.

In other words, they just have to be shown to exist. That's a determination for each juror to make.

Whether the aggravating factors outweigh the mitigating circumstances.

And whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.

That's the process we have to follow.

Let me tell you, before moving on to what a mitigating circumstance is, that, as I said, the aggravating factor or factors are sufficient to impose a sentence of death.

If you do not agree unanimously that the

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aggravating factor or factors are sufficient to impose death, do not move on to consider the mitigating circumstances.

Now, should you find sufficient -- should you find a sufficient aggravating factor or factors do exist to justify sentencing, a sentencing decision for the imposition of the death penalty, it will then be your duty to determine whether the aggravating factor or factors that you unanimously find to have been proven beyond a reasonable doubt outweigh the mitigating circumstances that you find to have been established.

Unlike aggravating factors, you do not need to unanimously agree that a mitigating circumstance has been established.

A mitigating circumstance is not limited to the facts surrounding the crime.

It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant.

In other words, a mitigating circumstance may include any aspect of the defendant's character, background or life or any circumstance of the offense that reasonably may

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indicate the death penalty is not an appropriate sentence in this case.

As I said, a mitigating circumstance need not be proven beyond a reasonable doubt.

Mitigating circumstances need only be proven by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance.

If you determine, by the greater weight of the evidence, that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion.

As I indicated, there is a process that a jury has to go through before even getting to the determination of whether or not what decision you should impose.

Here are the three questions I'll ask.

As you know, there are only two possible penalties in the State of Florida for murder in the first degree.

One is life without the possibility of parole. As I said, life means life.

The other is death.

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This is a case where the State of Florida is seeking the death penalty.

With that in mind, I have some questions for all of you.

Here is the first one.

Do any of you have a firm opinion on that?

In other words, if a person is convicted of murder in the first degree, would any of you always vote for the death penalty, with no consideration for a vote for life without the possibility of parole.

Question 1.

Or in the alternative, would any of you always vote for life with no consideration of a vote for the death penalty.

If none of you are adamantly opposed to or adamantly in favor of one sentence or another, would you all be able to listen to any aggravating factors, any mitigating circumstances, arguments of the attorneys and instructions by this Court and be willing to consider both possible penalties before making a decision?

Now, those are the three questions.

And Mr. Antenor, would you always vote to

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impose a sentence of death?

CHERRER ANTENOR: No.

THE COURT: Would you always vote to impose a sentence of life?

CHERRER ANTENOR: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making a decision?

CHERRER ANTENOR: Yes.

THE COURT: Mr. Bradford, would you always vote for death?

WILLIE BRADFORD: Yes .

THE COURT: Always?

WILLIE BRADFORD: Yes .

THE COURT: No consideration of mitigating circumstances? No chance of ever voting for life?

WILLIE BRADFORD: No.

THE COURT: If we're on the football field, you're in the end zone?

WILLIE BRADFORD: Yes.

THE COURT: No way to move you out of that end zone?

WILLIE BRADFORD: No.

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THE COURT: Not even to the half yard line?

WILLIE BRADFORD: No.

THE COURT: I have to ask.

Ms. Brown, would you always vote for death?

PATRICIA BROWN: No.

THE COURT: Would you always vote for life?

PATRICIA BROWN: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making a decision?

PATRICIA BROWN: Yes.

THE COURT: Mr. North, would you always vote for death?

MICHAEL NORTH: No.

THE COURT: Would you always vote for life?

MICHAEL NORTH: No.

THE COURT: Would you consider aggravating factors, mitigating circumstances, arguments of the attorneys, the law I give you and consider both possible penalties before making a decision?

MICHAEL NORTH: Yes.

THE COURT: Ms. Moon, would you always vote

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for death?

SUSAN MOON: No.

THE COURT: Would you always vote for life.

SUSAN MOON: No.

THE COURT: Would you be able to listen to aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making a decision?

SUSAN MOON: Yes.

THE COURT: Ms. Legons, would you always vote for death?

APRIL LEGONS: No.

THE COURT: Would you always vote for life?

APRIL LEGONS: No.

THE COURT: Would you listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making a decision?

APRIL LEGONS: Yes.

THE COURT: Ms. Diaz, would you always vote for death?

ANA DELLIZ DIAZ: No.

THE COURT: Always vote for life?

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ANA DELLIZ DIAZ: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

ANA DELLIZ DIAZ: Yes.

THE COURT: Mr. Lawson, would you always vote for death?

CORNELL LAWSON: No.

THE COURT: Always vote for life?

CORNELL LAWSON: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

CORNELL LAWSON: Yes.

THE COURT: Mr. Cole, would you always vote for death?

LARRY COLE: No.

THE COURT: Would you always vote for life?

LARRY COLE: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating

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circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

LARRY COLE: Yes.

THE COURT: Mr. Aliaga, would you always vote for death?

BENJAMIN ALIAGA RIOS: No.

THE COURT: Always vote for life?

BENJAMIN ALIAGA RIOS: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

BENJAMIN ALIAGA RIOS: Yes.

THE COURT: Mr. Beeler, would you always vote for death?

RODNEY BEELER: No.

THE COURT: Always vote for life?

RODNEY BEELER: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

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RODNEY BEELER: Yes.

THE COURT: Ms. Golder, would you always vote for death?

SHALLIS GOLDER: No.

THE COURT: Always vote for life?

SHALLIS GOLDER: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

SHALLIS GOLDER: Yes.

THE COURT: Ms. Starkes, would you always vote for death?

SHARON STARKES: No.

THE COURT: Would you always vote for life?

SHARON STARKES: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

SHARON STARKES: Yes.

THE COURT: Ms. Armstrong, would you always vote for death?

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KALENA ARMSTRONG-HENRY: No.

THE COURT: Always vote for life?

KALENA ARMSTRONG-HENRY: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

KALENA ARMSTRONG-HENRY: Yes.

THE COURT: Mr. Ortiz, would you always vote for death?

RAY ANTHONY ORTIZ: No.

THE COURT: Always vote for life?

RAY ANTHONY ORTIZ: No.

THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

RAY ANTHONY ORTIZ: Yes.

THE COURT: Ms. Wiener, would you always vote for death?

SUSAN WIENER: No.

THE COURT: Would you always vote for live?

SUSAN WIENER: No.

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THE COURT: Would you be able to listen to the aggravating factors, mitigating circumstances, arguments of the attorneys, the law and consider both possible penalties before making your decision?

SUSAN WIENER: Yes.

THE COURT: Ms. Balentine, would you always vote for death?

LAUREN BALENTINE: No.

THE COURT: Always for life?

LAUREN BALENTINE: Uhm, can I do a maybe? Is it a yes, no?

THE COURT: Here is the thing. Everybody has their own opinion with regard to this issue.

There are no right or wrong opinions.

It is only what you feel inside.

When you hesitate, the question then becomes could you listen to the aggravating factors, the mitigating circumstances, the arrangements of the lawyers, the law and consider both possible penalties before you make a decision.

LAUREN BALENTINE: Yes.

THE COURT: That's the real question.

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LAUREN BALENTINE: Then that's the answer.
THE COURT: That's your real answer.
LAUREN BALENTINE: Yes.
THE COURT: Final answer?
LAUREN BALENTINE: Final answer.
THE COURT: Thanks.
Ms. Lynch, would you always impose the death penalty?
LESLIE LYNCH: No.
THE COURT: Would you always impose a sentence of life?
LESLIE LYNCH: No.
THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?
LESLIE LYNCH: Yes.
THE COURT: Ms. Krefft, would you always vote for death?
NURIAN KREFFT: No.
THE COURT: Would you always vote for life?
NURIAN KREFFT: No.
THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law around consider both

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possible penalties before making a decision?

NURIAN KREFFT: Yes.

THE COURT: Ms. Sou, would you always vote for death?

KIT YINK SOU: No.

THE COURT: Always vote for life?

KIT YINK SOU: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

KIT YINK SOU: Yes.

THE COURT: Ms. Backus, would you always vote for death?

CYNTHIA BACKUS: No.

THE COURT: Always vote for life?

CYNTHIA BACKUS: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

CYNTHIA BACKUS: Yes.

THE COURT: Mr. Joseph, would you always vote for death?

SAM JOSEPH: No.

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THE COURT: Always vote for life?

SAM JOSEPH: No.

THE COURT: THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

SAM JOSEPH: Yes, sir.

THE COURT: Mr. Kramer, would you always vote for death?

STUART KRAMER: Yes.

THE COURT: There are no circumstances by which you would consider any other sentence?

STUART KRAMER: Well, according to what you mentioned to us yesterday, these people were held against their will and killed?

THE COURT: He was convicted of that.

But that doesn't prove -- you haven't heard any aggravating factors or mitigating circumstances.

You haven't heard the law.

The question is if you considered all of that, would you, before making a decision between voting for life or voting death? Or what would you always vote for death, which is absolutely your right to do.

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STUART KRAMER: I believe in an eye for an eye.

THE COURT: Let me rephrase.

You would always vote for death?

STUART KRAMER: Correct.

THE COURT: Mr. Dean, would you always vote for death?

DAVID DEAN: No.

THE COURT: Always vote for life?

DAVID DEAN: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

DAVID DEAN: Absolutely.

THE COURT: Mr. Molina, would you always vote for death?

JOSE MOLINA: No.

THE COURT: Always vote for life?

JOSE MOLINA: No.

THE COURT: THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

JOSE MOLINA: Yes.

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THE COURT: Okay, if you guys would do me a favor, just -- Steve, take them outside.

(Exit venire.)

THE COURT: If I have this right, 27 Bradford and 48, Kramer, we're letting go?

MR. SATZ: Right.

MR. WILLIAMS: Yes, sir.

THE COURT: Okay.

While Steve is figuring that out, 27 and 48 are going bye-bye.

Back to the jury room.

Okay.

We got 23 out of that group. We have 11 out of the first group.

We are at 36.

What do you want me to do with the group outside?

We have one more group.

MR. WILLIAMS: bring them in.

THE COURT: The ones outside, leave them there for the time being?

MR. WILLIAMS: Yes.

MR. SATZ: I would like to bring back Ms. Balentine, the lady that hesitated.

THE COURT: 1:30.

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MR. WILLIAMS: Number 42.

MS. MCCANN: One other thing.

We have Rowe and Balentine coming back at 1:30.

With regard to Weiner, yesterday, she had different views on the death penalty than expressed today.

Can she come back at 1:30 as well?

She had a different answer yesterday.

THE COURT: She did?

Pam, can you tell Steve to have Ms. Weiner, 41, come back at 1:30?

MR. SATZ: How many so far now?

THE COURT: If everything holds, we have 23 and 11, 34.

MR. POLAY: I'll tell you. I think your first inclination, your gut is right.

THE COURT: I'll know by lunch.

The next group can come in.

(Enter venire.)

THE COURT: Welcome back.

Today, I want to discuss another issue.

After we're finished with these issues today, we'll get to a point, at some juncture, when the lawyers will get to start asking you

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questions.

I told you yesterday that this is a case where the determination that the defendant has been found guilty had beyond and to the exclusion of a reasonable doubt of two counts of murder in the first degree, that we are here for the jury that ultimately gets to make the determination as to what appropriate sentence should be imposed.

As I told you yesterday, there are only two possible penalties.

One is life without eligibility for parole -- life meaning life in the State of Florida.

The other is death.

This is not an easy process. This is not one we simply you with facts and tell you okay, go. Boom.

I know it is not an easy decision. It is not an easy process for anyone to participate in.

However, I do want you to understand that in this process there is a procedure that needs to be followed before a jury can even consider the possibility of the imposition of a death

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penalty.

I want to go through that.

Then I have three questions that I'm going to ask collectively.

I'll explain what they are.

I'll start with Mr. Hayles and ask each and every one of you the same question to a point where it is repetitive and to a point where you can probably do this alone, without me, knowing the questions.

In our system, before a jury can ever consider the possibility of the imposition of a death penalty, there are criteria.

First, it is incumbent on the State of Florida to prove beyond and to the exclusion of a reasonable doubt -- and I'll explain these terms in a minute -- that an aggravating factor or factors exist.

It has to be proven beyond a reasonable doubt.

I'll define that for you in a moment.

That decision has to be unanimous as to each and every factor or factors that you find.

An aggravating factor is a standard to guide the jury in making the choice between a

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sentencing decision of life in prison --

(Enter venire person.)

THE COURT: Good timing.

Perfect timing.

We're talking about the role of the jury when it comes to the ultimate determination of whether it's the imposition of life or the imposition of the death penalty imposed.

I'll start that from the beginning.

That an aggravating factor is a standard to guide the jury in making a choice between a sentencing decision of life imprisonment, without the possibility of parole; or death.

It is a statutorily enumerated circumstance that increases the gravity of the crime or the harm to the victim.

What that means is aggravating factors are only those that are set forth by Florida law.

In other words, can't make one up.

Just because the State says to you I don't like the defendant, which they will never say because they are not allowed to say, that won't be an aggravating factor. It has to be statutory.

That all gets laid out to you once we get

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to that part of the case.

As I said, the jury must unanimously agree that each aggravating factor was proven beyond a reasonable doubt before it may be considered by you in arriving at your final verdict and decision.

In order to consider the death penalty as a possible penalty, you must determine at least one aggravating factor has been proven beyond a reasonable doubt.

The State has the burden to prove each aggravating factor beyond a reasonable doubt.

A reasonable doubt is not a mere, possible doubt, speculative, imaginary or forced doubt.

Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists.

On the other hand, if after carefully considering, comparing and weighing all of the evidence you do not have an abiding conviction that the aggravating factor exists or if having a conviction, it is one which is not stable, but one which wavers and vacillates, then the aggravating factor has not been proved beyond a reasonable doubt and you must not consider it

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in providing your verdict on the appropriate sentence to be considered.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, conflicts in the evidence or a lack of evidence.

If you have a reasonable doubt as to the existence of an aggravating factor, you must find that it does not exist.

However, if you have no reasonable doubt, you should find that the aggravating factor does exist.

Now, before I go on and explain what mitigating circumstances are, it is important that you understand that the aggravating factor or factors -- that you must determine that the aggravating factor or factors are sufficient to impose a sentence of death.

If you do not unanimously agree that the aggravating factor or factors are sufficient to impose death, you don't go beyond that and have to consider any mitigation factors because your determination would be life.

You all understand that.

Now, let me tell you what the process is.

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Then I'll explain what mitigating circumstances are.

Now, what I'm telling you, what I have read to you so far, this is actual law that the jury will hear during the course of the proceeding.

Anything you're hearing now will be identical to what you hear later.

In order for you to make the determination as to the decision that you make, the first thing you have to do is determine whether aggravating -- whether each aggravating factor is proven beyond a reasonable doubt.

If none are proven beyond a reasonable doubt, that's it.

You then have to determine whether one on more aggravating factors exists beyond a reasonable doubt.

You have to determine whether the aggravating factors found to exist beyond a reasonable doubt are sufficient to justify the imposition of the death penalty.

You then need to determine whether mitigating circumstances are proven by the greater weight of the evidence.

In other words, they just have to be shown

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to exist.

Whether the aggravating factors outweigh the mitigating circumstances and whether the defendant should be sentenced to life imprisonment, without the possibility of parole, or death.

Now, let me go into mitigating circumstances.

Should you find that sufficient aggravating factors or factor do exist to justify a sentencing decision for the imposition of the death penalty, it will then be your duty to determine whether the aggravating factor or factors that you unanimously find to have been proven beyond a reasonable doubt outweigh the mitigating circumstances that you find to have been established.

Unlike aggravating factors, you do not need to unanimously agree that a mitigating circumstance has been established.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant.

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In other words, a mitigating circumstance may include any aspect of the defendant's character, background or life or any other circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proven beyond a reasonable doubt by the defendant.

A mitigating circumstance need only be proven by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance.

If you determine by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed.

Now the three questions I for you -- and again, I'm going to read them to you now.

Then I'll go individually, up and down the rows.

Now, this is a case where the State of

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Florida is seeking the death penalty.

With that in mind, I have some questions.

Do any of you have a firm opinion on that, the death penalty?

In other words, if a person is convicted of murder in the first degree, would any of you always vote for the death penalty with no consideration for a vote for life without the possibility of parole?

That's the first question I'll ask.

Second, in the alternative, would any of you always vote for life with no consideration of a vote for the death penalty?

That's the second question.

If none of you are adamantly opposed to or adamantly in favor of one sentence or the other, would you be able to listen to any aggravating factors, any migrating circumstances, arguments of the attorneys, instructions given to you by the Court and be willing to consider both possible penalties before making a decision?

So, Mr. Hayles, let's start it off.

Would you always vote for death?

PAUL HAYLES: No.

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THE COURT: Always vote for life?

PAUL HAYLES: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law and consider both possible penalties before making a decision?

PAUL HAYLES: Yes.

THE COURT: Mr. Mazza, would you always vote for death?

ROBERT MAZZA: No.

THE COURT: Always vote for life?

ROBERT MAZZA: No.

THE COURT: THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

ROBERT MAZZA: Yes.

THE COURT: Ms. Beard, would you always vote for death?

VANESSA BEARD: No.

THE COURT: Always vote for life?

VANESSA BEARD: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible

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penalties before making a decision?

VANESSA BEARD: Always.

THE COURT: Mr. Runge, would you always vote for death?

BRIAN RUNGE: No.

THE COURT: Always vote for life?

BRIAN RUNGE: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

BRIAN RUNGE: Yes.

THE COURT: Ms. De Lima-Santiago, would you always vote for death?

EVA DE LIMA-SANTIAGO: No.

THE COURT: Always vote for life?

EVA DE LIMA-SANTIAGO: Yes.

THE COURT: There are no circumstances you can think of by which you would ever consider aggravating factors and the possibility of both sentences before making a decision?

EVA DE LIMA-SANTIAGO: I'm open to that.

THE COURT: Which?

EVA DE LIMA-SANTIAGO: Listening.

THE COURT: You wouldn't always vote for

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death?

EVA DE LIMA-SANTIAGO: I am against capital punishment.

THE COURT: That's fine.

Everybody has an opinion. That doesn't necessarily preclude you from being able to participate.

EVA DE LIMA-SANTIAGO: Right. Right.

THE COURT: The question is, we have, let's play on a football field, soccer field. If you're in the end zone, that is a definitive determination that you will vote one way or the other way.

If you get on to the field of play, that's really where the third question comes in by which the question I ask is can you listen to the aggravating factors, listen to the mitigating circumstances, arguments by the attorneys, the law and consider both possible penalties before making a decision?

EVA DE LIMA-SANTIAGO: Yes.

THE COURT: So you're willing to do that and you wouldn't always vote for life? And I don't want to put words in your mouth.

EVA DE LIMA-SANTIAGO: This is the first

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time I'm doing this.

I have always been against capital punishment. But I understand you have to consider the circumstances, the thing that has happened and the law. That's where I'm at now.

THE COURT: How many of you sitting here have gone through this process before?

It is new to everybody.

This goes to everybody. There are guidelines and procedures.

Right now, all you know is that this process is to determine, based upon the defendant's having been already convicted of murder in the first degree of two individuals, what the appropriate sentence should be.

And it is a question of how open-minded you are.

If you are not open to that, that's fine. Everybody is entitled to their opinion, their beliefs, religious or otherwise.

We won't question those.

EVA DE LIMA-SANTIAGO: I'm not open to that.

THE COURT: You are or not?

EVA DE LIMA-SANTIAGO: No.

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THE COURT: You would always vote for life?

EVA DE LIMA-SANTIAGO: Absolutely.

THE COURT: Okay.

I am note trying to put words in anybody's mouth.

EVA DE LIMA-SANTIAGO: That's fine. That's fine.

THE COURT: Ms. Acher, would you always vote for death?

MONIQUE ACHER: No.

THE COURT: Always vote for life?

MONIQUE ACHER: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

MONIQUE ACHER: Yes.

THE COURT: Mr. Loiseau, would you always vote for death?

WILFRAND LOISEAU: No.

THE COURT: Always vote for life?

WILFRAND LOISEAU: Yes.

THE COURT: No circumstances by which you can ever consider a sentence other than life?

WILFRAND LOISEAU: No. I won't be able to

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do it.

THE COURT: Ms. Dixon, would you always vote for death?

JUANITA DIXON: No.

THE COURT: Always vote for life?

JUANITA DIXON: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law and consider both possible penalties before making a decision?

JUANITA DIXON: No.

THE COURT: You gave me three no's.

JUANITA DIXON: No.

THE COURT: Has to be one of the three.

JUANITA DIXON: Got to be one of the three? I say no.

THE COURT: You won't vote for death?

JUANITA DIXON: I won't do it.

THE COURT: I'll ask again.

Would you always vote for death without consideration of mitigating circumstances?

JUANITA DIXON: Yes.

THE COURT: Would you always vote for life without consideration of aggravating factors?

JUANITA DIXON: No.

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THE COURT: Okay. You're standing in that end zone, and nobody is moving you out of it?

JUANITA DIXON: No.

THE COURT: fair enough.

Mr. Valdes, would you always vote for death?

RIGOBERTO VALDES: No.

THE COURT: Always vote for life?

RIGOBERTO VALDES: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

RIGOBERTO VALDES: Yes.

THE COURT: Ms. Fuller, would you always vote for death?

LEE ANN BETH FULLER: No.

THE COURT: Always vote for life?

LEE ANN BETH FULLER: Yes.

THE COURT: There are no circumstances by which you can consider any sentence other than life?

LEE ANN BETH FULLER: No. Life is my choice.

THE COURT: No matter what?

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LEE ANN BETH FULLER: No matter what.

THE COURT: Mr. Delacruz, would you always vote for death?

JAVIER DELACRUZ: Yes.

THE COURT: There are no circumstances by which you could listen to mitigating circumstances, arguments, law, and consider both before making that decision?

JAVIER DELACRUZ: Before I answer, for this specific case?

THE COURT: This specific case.

JAVIER DELACRUZ: No. My mind is made up. I would not listen to any other opinion.

THE COURT: Mr. Berke, would you always vote for death?

BRADLEY BERKE: No.

THE COURT: Always vote for life?

BRADLEY BERKE: Yes.

THE COURT: There are no circumstances by which you would ever consider any aggravating factors, law, consider both penalties?

BRADLEY BERKE: No:

THE COURT: Mr. Bloom, would you always vote for death?

PETER BLOOM: No.

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THE COURT: Always vote for life?

PETER BLOOM: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

PETER BLOOM: Yes, sir.

THE COURT: Mr. Santiago, would you always vote for death?

EDWIN SANTIAGO: Yes.

THE COURT: There are no circumstances you would listen to mitigating circumstances, arguments of the law and consider both before making that decision?

EDWIN SANTIAGO: No.

THE COURT: You're standing in that end zone, and nobody is moving you out?

EDWIN SANTIAGO: Yes, sir.

THE COURT: Mr. Schick, would you always vote for death?

JOEL SCHICK: No.

THE COURT: Always vote for life?

JOEL SCHICK: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of

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lawyers, the law and consider both possible penalties before making a decision?

JOEL SCHICK: Yes, sir.

THE COURT: Ms. Concepcion, would you always vote for death?

SUSAN CONCEPCION: No.

THE COURT: Always vote for life?

SUSAN CONCEPCION: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

SUSAN CONCEPCION: Yes.

THE COURT: Ms. Kaposi, would you always vote for death?

THERESA KAPOSI: No.

THE COURT: Always vote for life?

THERESA KAPOSI: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

THERESA KAPOSI: Yes.

THE COURT: Mr. Croskey, would you always vote for death?

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RONALD CROSKEY: No.

THE COURT: Always vote for life?

RONALD CROSKEY: No.

THE COURT: THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

RONALD CROSKEY: Yes.

THE COURT: Mr. McClain, would you always vote for death?

CLINTON MCCLAIN: No.

THE COURT: Always vote for life?

CLINTON MCCLAIN: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

CLINTON MCCLAIN: Yes.

THE COURT: Mr. Dalisay, would you always vote for death?

GEORGE DALISAY: Yes.

THE COURT: Always vote for death?

GEORGE DALISAY: Yes.

THE COURT: There are no circumstances you would consider ever imposing a life sentence?

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GEORGE DALISAY: No.

THE COURT: You're in that end zone and you're not moving?

GEORGE DALISAY: Yes.

THE COURT: Mr. Chisholm, would you always vote for death?

MICHAEL CHISHOLM: No.

THE COURT: Always vote for life?

MICHAEL CHISHOLM: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

MICHAEL CHISHOLM: Still no.

I don't want to judge nobody.

No.

THE COURT: Let me start from the beginning.

MICHAEL CHISHOLM: Okay.

THE COURT: Let me try it. Sometimes I talk fast.

Would you always -- as you know, this is a death penalty case.

There are only two choices.

Would you always vote to impose the death

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penalty?

MICHAEL CHISHOLM: No.

THE COURT: Would you always vote to impose life?

MICHAEL CHISHOLM: I don't want to decide the rest of their life. No. Just the way I feel.

THE COURT: No, no, no.

You're entitled -- also, besides the fact you won't vote for death --

MICHAEL CHISHOLM: I don't feel no one have a choice to sentence someone to death. No.

And I don't feel that we, as citizens, should feed them the rest of their life.

No.

THE COURT: Ms. Clark, would you always vote for death?

ANDREE CLARK: No.

THE COURT: Always vote for life?

ANDREE CLARK: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

ANDREE CLARK: Yes, sir.

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THE COURT: Mr. Howard, would you always vote for death?

WILLIAM HOWARD: No.

THE COURT: Always vote for life?

WILLIAM HOWARD: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

WILLIAM HOWARD: Yes.

THE COURT: Ms. Miller, would you always vote for death?

JULIA MILLER: No.

THE COURT: Always vote for life?

JULIA MILLER: No.

THE COURT: THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

JULIA MILLER: Yes.

THE COURT: Ms. Sims, would you always vote for death?

BOBBIE SIMS: No.

THE COURT: Always vote for life?

BOBBIE SIMS: No.

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THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

BOBBIE SIMS: Yes.

THE COURT: Ms. Parker, would you always vote for death?

GEORGINA PARKER: No.

THE COURT: Always vote for life?

GEORGINA PARKER: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

GEORGINA PARKER: Yes.

THE COURT: Steve, do me a favor.

Take the group out. Keep them segregated from the others.

I'll give you further marching orders from there.

(Exit venire.)

THE COURT: All right. Let me go through this quick.

55, Santiago, is going?

MR. SATZ: Yes.

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MR. WILLIAMS: Yes.
THE COURT: 57, Sou.
MR. SATZ: Yes.
MR. POLAY: Yes.
THE COURT: 58, Dixon.
MR. SATZ: Yes.
MR. POLAY: Yes.
THE COURT: Fuller letter, 60.
MR. POLAY: Yes.
MR. SATZ: Yes.
THE COURT: 61, Delacruz?
MR. POLAY: Yes.
MR. SATZ: Yes.
THE COURT: 62, Berke.
MR. SATZ: Yes.
MR. POLAY: Yes.
THE COURT: 61, Santiago.
MR. SATZ: Yes.
MR. POLAY: Yes.
THE COURT: 70, Dalisay?
MR. SATZ: Yes.
MR. POLAY: Yes.
THE COURT: Chisholm?
It confused me to no end.
MR. POLAY: I'm confused.

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He took both sides.

Didn't want to kill. In other words, didn't want to feed people the rest of their lives.

THE COURT: Thirdly, said he wouldn't consider anything.

MR. POLAY: Bring him back at 1:30 to clarify the record.

That's why I put a question mark.

MR. SATZ: That's the same kind of answer as Ms. Dixon.

THE COURT: I can bring them in and ask.

MR. POLAY: Didn't understand him.

I don't know if it's the acoustics.

THE COURT: He said no. No. No.

MR. SATZ: He won't judge.

He won't follow the Judge's instructions.

MS. MCCANN: He didn't fill out all of the questions on the questionnaire.

MR. POLAY: I'm not sure he understood.

THE COURT: That creates an issue.

MR. POLAY: From what he said on the record, I don't want him.

THE COURT: Didn't we have that inquiry with him last week, pushed it through?

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MR. WILLIAMS: When he said he didn't want to judge, gave an indication he's a Jehovah's witness.

THE COURT: I don't see him.

MR. SATZ: I think he answered he wouldn't follow your instructions.

MR. POLAY: Whenever he said no to number 3, basically, can you follow the law. He said he won't follow the law.

THE COURT: None of this group is coming back at 1:30. We have 17 that are coming back.

For a total of 51.

Is that what everybody has? 11, 23 and 17.

MS. MCCANN: How many do you have coming back?

THE COURT: I have 51. 11 the first. 23 in the afternoon. 17 just now.

MS. MCCANN: I have 51.

MR. WILLIAMS: 51.

THE COURT: What am I doing with the ones outside?

MR. WILLIAMS: I think you move jurors tomorrow to expand the panel.

MR. SATZ: I do, too.

THE COURT: I'll hear your --

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MR. SATZ: We both used 17 --

THE COURT: I'll see if I can get jurors for tomorrow.

THE COURT: I'll tell these guys Tuesday now.

MR. POLAY: Yes.

THE COURT: Or go to Wednesday.

I'll move my meeting.

We can bring back whoever gets back tomorrow on Monday afternoon.

I'll have these guys coming at --

MR. POLAY: One thing I would like to, doesn't have to be on the record --

THE COURT: Tuesday, I'll have the group back at 9:15, which means we get started about 9:30, quarter to 10.

MS. MCCANN: Can we go through each name, as we do it?

THE COURT: We will go with the ones coming back.

2, Seltzer; 3, Branscum; 10, McCray; 12, Stone; 14, Santana; 15, Williams; 16, Hoyos.

Rowe is coming back at 1:30. I didn't count her.

Gordon is 18. Weinstein is 20. Rolle, 21;

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Pierre, 22.

Linnett, 23; Graham, 24; Castano, 25; Antenor, 26; Brown, 28; North, 29; Moon, 30.

31 is Legons. 32 is Diaz. 33 is Lawson. 34 is Cole. 35 is a Aliaga-Rios. 36 is Beeler. 37 is Golder. 38 is Starkes. 39 is Armstrong. 40 is Ortiz.

We have 41, Wiener, coming back at 1:30. Balentine, 42, at 1:30. 43, Lynch. 44, Krefft. 45, Sou. 46, Backus. 47, Joseph. 49, Dean. 50, Molina. 51, Hayles. 52, Mazza.

53, Beard. 54, Runge. 56, Acher. 59, Valdes. 63, Bloom. 65, Schick. 66, Concepcion. 67, Kaposi. 68, Croskey. 69, McClain.

72, Clark. 73, Howard. 74, Miller. 75, Sims. And Parker is 76.

MR. WILLIAMS: I have one other thing to say.

THE COURT: I guess it is 55, which includes the three coming back.

MR. WILLIAMS: We never informed Juror 29, Michael Steve North, of his statutory right to opt out.

THE COURT: Is he still with us?

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MR. WILLIAMS: Yes.

Number 29 on the list.

According to his questionnaire, he's 70.

THE COURT: Ask Mr. North to come back in here and the rest to come back Tuesday at 9:15, except for the 1:30's.

But they have been told that.

(Enter Mr. North.)

THE COURT: Real quick, I wanted to inform you, because I know by your questionnaire you're over the age of 70. Service over the age of 70 is strictly volunteer.

If you don't want to serve, by law, you don't have to.

MICHAEL NORTH: Right.

THE COURT: You want to stay with us?

MICHAEL NORTH: Yes.

THE COURT: See you Tuesday at 9:15 .

(Exit Mr. North.)

(Recess had.)

(THEREUPON, afternoon proceedings begin, as follows:)

THE COURT: We have three people other than the three people we needed today bring back who have conflicts.

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Do you we know who the people are, Steve?

DEPUTY: Yes, sir.

Juror 28. Brown.

I think they are all work-related. They can tell you.

28, Brown. 40, Ortiz. 52, Mazza.

The three you told me to have come back: 17, 41, 42.

THE COURT: Deal with them one at a time.

Let's deal with Ms. Brown.

(Enter Patricia Brown.)

THE COURT: Hi, Ms. Brown.

PATRICIA BROWN: Hi, Judge.

THE COURT: Talk to me.

PATRICIA BROWN: After I have found out we would have to come back on Tuesday for more questioning, I found out yesterday my company is going to be audited by AHCA. We're a health insurance company and a Medicade company. They can give us seven days notice they are coming in, auditing us.

I found out yesterday. I thought I would be done today, which is why I didn't say anything yesterday.

I have to be there. I am the supervisor of

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that particular department that is getting audited.

THE COURT: Any questions, Mr. Satz?

MR. SATZ: What if you're not there?

PATRICIA BROWN: I could lose my job. There are three supervisors.

I am the supervisor in charge of all of the letters and cases built that we review.

I am in utilization management.

My job is to make sure everything is done correctly.

When they are pulling the files for audit, I have to pull the files, print the letters, all of that. If I'm not there, nobody else has access. The other supervisor that has access is on medical leave. Has had surgery. Can't be back until November. We can't tell AHCA they have to wait until November.

MR. WILLIAMS: Because of a potential HIPAA violation, you're the one designated to have access to the files?

PATRICIA BROWN: Yes, sir.

THE COURT: Anything else, Mr. Satz?

MR. SATZ: The Judge told you we will start -- I mean last week, he said we will

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start Tuesday.

PATRICIA BROWN: I found out about it yesterday. They only give us seven days notice. They don't want us messing with the files.

That's the truth.

MS. MCCANN: How long does the audit last?

PATRICIA BROWN: Tuesday through Friday. Depends on what they find. Hopefully by Thursday.

We have had them last two weeks.

MR. WILLIAMS: They pull random files?

PATRICIA BROWN: Yes. They give us a list of 40 files they want.

In the files, we have to provide all of the out-patient, in-patient, denial letters done, grievances and appeals done. Provider complaints done.

We have to pull that.

We have to print it all.

Sometimes it is over a thousand pages long.

File by file.

We have questions about this.

It is a fun process.

MR. WILLIAMS: If they find something in

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the files --

PATRICIA BROWN: One company was fined $350 million dollars. I don't want to be responsible for my company getting fined $350 million.

I'll be out of a job.

REPORTER: Can you spell AHCA?

PATRICIA BROWN: Agency for Health Care Administration.

THE COURT: We will let you go back to the jury room and go back to work.

I hope the audit works out.

PATRICIA BROWN: Thank you. I would have loved to have been on this trial.

THE COURT: I understand that. Sometimes things happen.

PATRICIA BROWN: Okay.

Thank you.

(Exit Ms. Brown.)

THE COURT: Can we have Mr. Ortiz?

(Enter Ray Ortiz.)

THE COURT: All right, Mr. Ortiz.

Talk to me.

RAY ANTHONY ORTIZ: My partner, I got in contact with him you yesterday. Corporate is

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sending him to one of our stores reopening in Orlando.

He has to be there throughout the duration of this, towards tomorrow. Then at the start of next week.

No one is present. Since I'm the other inventory control, I have to be present.

THE COURT: When does he come back?

RAY ANTHONY ORTIZ: Be coming back probably Wednesday.

The matter, the reporting data we do daily, the company doesn't want us to be that behind.

THE COURT: We don't need you tomorrow, Friday, Saturday, Sunday, Monday.

Could you be back by Tuesday?

RAY ANTHONY ORTIZ: I'm not sure.

THE COURT: If he wasn't back by Tuesday but came back on Wednesday, what would happen?

RAY ANTHONY ORTIZ: Tuesday, I have to be there, for sure.

THE COURT: Mr. Satz?

MR. SATZ: What if you couldn't be there? What would happen?

RAY ANTHONY ORTIZ: We'll be backed up with

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work. Well, we're also having an audit. Haven't had our audit yet in our stores. Our region is getting the audit completed.

THE COURT: Who do you get audited by.

RAY ANTHONY ORTIZ: It is within the company. They have their own. People hire them.

MR. WILLIAMS: What type of business was it?

RAY ANTHONY ORTIZ: Flooring business. Floor & Decor.

MR. WILLIAMS: The one on Atlantic.

RAY ANTHONY ORTIZ: Yes, correct.

MR. SATZ: If you are not there, how will it effect you personally?

RAY ANTHONY ORTIZ: Well, personally, I mean, for me, I have to get the job done.

No doubt about it, whether he's there or not. I don't want to be backed up. Corporate asks for a lot. There is so much. So much stuff is going in and out of the store.

We have keep track of it.

We recently caught theft within our store. The pressure is on us. That's our job. Quality control. Making sure stuff is what it

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is.

Basically keeping track of the money.

THE COURT: How many people?

RAY ANTHONY ORTIZ: 100 associates work at the store. We're constantly getting products in and out of the store. A lot of things that can happen.

MR. SATZ: If the Judge said, look, I can't excuse, would that effect your ability to be fair and impartial?

RAY ANTHONY ORTIZ: Would you mind repeating that?

MR. SATZ: If the Judge said look, we're in this process. You will be on the jury, how would that effect your ability to be fair and impartial.

RAY ANTHONY ORTIZ: Fair and impartial, meaning what exactly?

MR. SATZ: You know, during the trial, you're being fair.

RAY ANTHONY ORTIZ: Fair as in my decision-making?

MR. SATZ: Yes.

RAY ANTHONY ORTIZ: Wouldn't effect my decision-making.

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MR. WILLIAMS: Would it effect your attention span?

RAY ANTHONY ORTIZ: Yes.

MR. WILLIAMS: You're wondering what is going on back at the store?

RAY ANTHONY ORTIZ: Yes.

RAY ANTHONY ORTIZ: There would be lapses in terms of your giving us 100 percent, you undivided attention of what is being testified to there, up there?

RAY ANTHONY ORTIZ: Yes.

MR. SATZ: And you, if the guy is back Tuesday, you can be here Tuesday?

RAY ANTHONY ORTIZ: If.

Yes.

MR. SATZ: All right.

THE COURT: All right. Tell you what. I'll -- I need you had back at 9:15 on Tuesday.

Hear me out.

If your partner is back, you stay.

If he's not, you will let me know at that hour on Tuesday.

How's that? Fair enough?

RAY ANTHONY ORTIZ: That's fair.

THE COURT: Okay.

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See you Tuesday morning.

RAY ANTHONY ORTIZ: All right. Thank you.

THE COURT: Hopefully, from our perspective, your partner will be back.

RAY ANTHONY ORTIZ: Who knows.

I'll see.

THE COURT: I hear you.

RAY ANTHONY ORTIZ: Okay.

Thank you.

(Exit Ray Anthony Ortiz.)

THE COURT: Who is the next one?

DEPUTY: Number 52. Mazza.

(Enter Robert Mazza.)

THE COURT: Talk to me, Mr. Mazza.

ROBERT MAZZA: I have a work trip, Monday, Tuesday, Wednesday of next week.

THE COURT: When did you discover that.

ROBERT MAZZA: I knew.

It wasn't one of the questions you asked. You asked if we had pre-paid vacations, one of the other questions.

I have didn't take that as --

THE COURT: You knew we would be in court.

ROBERT MAZZA: Not really. I didn't know how long this was going to, you know, this is

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my third day here. Started last week.

I didn't know if it would go two weeks in.

THE COURT: I told you starting October 9th, you would be here potentially until Thanksgiving.

ROBERT MAZZA: I am talking about the screening process.

THE COURT: I have to ask this. I am not trying to be difficult with you.

But yes, we're still in the screening process. But if you had already been picked for the jury, you would have been here.

ROBERT MAZZA: Yes.

True. But, uhm, I didn't think, you know, I thought I would have known by now and probably could have made other plans.

Now it is right up on the division meeting that I have.

MR. SATZ: Mr. Mazza, what happens if you don't go, if the Judge says you will be on the jury?

ROBERT MAZZA: I mean it is not good for me. I'm only an employee less than a year there. I don't want it to tarnish my reputation. I work for a particular division.

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MR. SATZ: Any way you can call somebody, say I will be on this jury? Can you get somebody else? It is only Wednesday.

ROBERT MAZZA: I prefer not to, to be honest. I already missed three days. This trip was planned.

MR. SATZ: nothing further.

MR. WILLIAMS: Mr. Mazza, where are you traveling to?

ROBERT MAZZA: Orlando.

MR. WILLIAMS: Are you the only person from your local office that is going?

ROBERT MAZZA: No. But only in my position, though.

MR. WILLIAMS: You're the only one from your division or subsection that is going?

ROBERT MAZZA: I guess my speciality.

MR. WILLIAMS: Your speciality. I don't know how to characterize it.

Your speciality wouldn't be represented at this regional meeting if you weren't there?

ROBERT MAZZA: Correct.

THE COURT: Anybody have another question?

MR. SATZ: How would it effect you, if the Judge said could you still be fair and

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impartial, if the Judge said you will be on the jury?

ROBERT MAZZA: Yes, I can be fair and impartial if I were chosen. Meeting, it is a big meeting, a once-a-year meeting. Not a quarterly review or monthly thing I can skip.

MR. SATZ: What if the Judge called your employer?

ROBERT MAZZA: I don't have an issue with that, if you want to. See, if he asked him.

MR. SATZ: Would you object to that?

ROBERT MAZZA: No, sir.

MR. SATZ: Maybe we can do that.

MR. WILLIAMS: You said you have been their less than a year?

ROBERT MAZZA: Yes.

MR. WILLIAMS: This is the first of these types of meetings you have been to?

ROBERT MAZZA: This will be the first, yes.

MR. WILLIAMS: Let me ask you, if you're sitting here Tuesday, Wednesday of next week, will you be thinking about what is going on up there, what am I missing?

ROBERT MAZZA: Yes, because in our line of work, October, November, December is a busy

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part of our business.

MR. WILLIAMS: I forget what type of business?

ROBERT MAZZA: I work for a spirits and liquor distributor.

MR. WILLIAMS: All the gift boxes coming up this time of year?

ROBERT MAZZA: Yes.

MR. WILLIAMS: Which one do you work for?

ROBERT MAZZA: Southern.

MR. WILLIAMS: What is your speciality?

ROBERT MAZZA: Business analyticals and intelligence.

THE COURT: Steve, do me a favor and take Mr. Mazza into the jury room for a minute.

DEPUTY: Follow me.

THE COURT: What am I missing here?

MR. SATZ: What do you mean?

THE COURT: We were supposed to start the trial on Tuesday.

MR. WILLIAMS: Yes.

THE COURT: We went through this whole process of people and their time frames. And he has this planned in advance and doesn't tell anybody.

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MS. WILLIAMS: Well --

MR. SATZ: I suggest you call the employer.

THE COURT: The only difference between what you said and I would do is I wouldn't ask.

MR. SATZ: Whatever.

MR. WILLIAMS: I hate to see this guy's job messed up.

MR. POLAY: I am get the impression, Judge, I have been here three days, that's enough.

MR. SATZ: He said he wouldn't mind if you called his employer.

That's my suggestion.

THE COURT: Pam, you get his employer's information?

JUDICIAL ASSISTANT PAM COE: Yes.

THE COURT: Bring him back out.

(Enter Robert Mazza.)

THE COURT: Mr. Mazza, here is what we'll do.

I certainly understand where you're coming from. I am going to ask if you could, Pam you want him to write it down?

JUDICIAL ASSISTANT PAM COE: I can write it down.

THE COURT: Give her the employer's

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information.

I'll talk with the boss.

If it can be worked out for you to be here, you will have to be back at 9:15 on Tuesday. And I'll definitely let you know which way.

ROBERT MAZZA: Okay.

THE COURT: Fair enough?

ROBERT MAZZA: Thank you, sir.

THE COURT: You will hear from us. If it is negative -- we'll let you know one way or another.

ROBERT MAZZA: By phone?

THE COURT: Yes. Thank you.

ROBERT MAZZA: Thank you.

(Exit Robert Mazza.)

THE COURT: Number 17, Rowe.

(Enter Ashley Rowe.)

THE COURT: Okay, Ms. Rowe.

First of all, thank you for coming back and humoring me. The lawyers, I think have a couple questions they want to ask you.

Mr. Satz?

MR. SATZ: Good afternoon, Ms. Rowe.

ASHLEY ROWE: Good afternoon.

MR. SATZ: Number 1, there is no right or

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wrong answer. Everyone has opinions or impressions.

There is nothing wrong with being in favor of the imposition of the death penalty. Nothing wrong with being opposed to the imposition of the death penalty.

You answered to the Judge you felt you would always vote for life.

ASHLEY ROWE: Yes.

MR. SATZ: Have you had time to think about that?

ASHLEY ROWE: Uhm, it is hard for me to answer yes or no.

I don't mean to be difficult. I always felt I was in favor of the death penalty until yesterday, when we could have potentially be put in a position where we can determine if someone faced it. For 24 hours I have been trying to figure out my concrete feelings.

I can't say I have a concrete feeling.

I can say it is not something I would want to be responsible for, determining one being put to death.

MR. SATZ: Do you feel you couldn't, if you felt the aggravating circumstances that you

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hear outweigh the mitigating circumstances, do you feel you're capable of voting for the death penalty?

ASHLEY ROWE: Can you define aggravating and mitigating?

MR. SATZ: As Judge Backman said, they are statutorily defined.

You know, the State has to prove each one beyond a reasonable doubt. I can't really, at this point --

ASHLEY ROWE: I don't even know what the words mean.

I know when my mom get aggravated with me. I don't know how they pertain to court.

MR. SATZ: Let's say this. If the Judge defines what the aggravating circumstances are, we have to abide by what the Judge says the law is.

ASHLEY ROWE: Right.

MR. SATZ: If he defines what a statutory, aggravating circumstance is, and you feel that the aggravating circumstances were proven beyond a reasonable doubt, and you make that determination in your own mind, if you felt the aggravating circumstances that were statutorily

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defined and the definition was given to you by Judge Backman, if you felt they were established beyond a reasonable doubt and you felt that those aggravating circumstances that you felt were proven beyond a reasonable doubt outweighed any mitigating circumstances, do you feel you're personally capable of voting for the death penalty?

ASHLEY ROWE: And it needs to be a yes or no?

MR. SATZ: Yes. The reason, again, there is no right or wrong answer. You have been in here.

Some people would only vote for death. Some people felt they can only vote for life. Some people were in the middle. Nothing wrong with any of that.

When you asked do I have to answer yes or no, the answer is kind of yes because this is our only opportunity to, you know, we can't see what is going on in your mind. The answer to you, from me, is yes, I would like an answer.

There is no wrong or right answers.

ASHLEY ROWE: I am trying to be honest.

It is hard to give a yes or no. I mean to

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me it would determine, I guess, I mean, can I just speak candidly?

MR. SATZ: Of course.

THE COURT: We hope you will.

ASHLEY ROWE: It would determine exactly the specifics, like --

MR. SATZ: No, you will hear what happened.

ASHLEY ROWE: Like how, like, how was that? If someone is driving drunk, might not be a situation --

MR. SATZ: This isn't a driving drunk case.

ASHLEY ROWE: Maybe it depends the specifics of the case.

MR. SATZ: You will hear the specifics of the case.

The question is, you know, we're asking you these questions in a vacuum because you don't know what the facts are. You don't know what aggravating or mitigating circumstances are.

We are asking you if you can fairly, because some people are so opposed to the death penalty, they can't vote for it.

ASHLEY ROWE: Right.

MR. SATZ: And some people adamantly for the depth penalty, they will always vote for

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it.

They wouldn't be fair in this particular case because they have already, they wouldn't be able to listen to Judge Backman's instructions.

In other words, their feelings about the death penalty would interfere with their ability to follow the Judge's instructions?

ASHLEY ROWE: I don't think that's me.

MR. SATZ: You feel you could, you're capable of voting for the death penalty if you felt the aggravating circumstances that were proven beyond a reasonable doubt outweighed any mitigating circumstances?

ASHLEY ROWE: Yes.

MR. SATZ: Yes, what?

ASHLEY ROWE: Yes, I would be able to vote for the death penalty if the circumstances were extreme.

MR. SATZ: Thank you.

MR. POLAY: In light of the answer, I have no questions.

THE COURT: Thank you for your candor.

We will see you Tuesday morning at 9:15.

(Exit Ashley Rowe.)

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DEPUTY: 41, Wiener.

(Enter Susan Wiener.)

THE COURT: Thank you for coming back. It's appreciated. Better than me having you come back tomorrow.

SUSAN WIENER: Yes. That traffic is awful.

THE COURT: Where do you come from?

SUSAN WIENER: Palm Beach county line. There is no good way to get here.

THE COURT: Mr. Satz, you had a couple questions?

MR. SATZ: Thank you.

Good afternoon.

SUSAN WIENER: Good afternoon.

MR. SATZ: I'll ask you some questions. There is no right or wrong answer. Just looking for honest answers.

We are talking about the death penalty.

I had thought you said the other day that you do not believe in the imposition of the death penalty.

Is that correct?

SUSAN WIENER: It, it's such a tough call, you know, to take someone's life. But, on the other hand, like the Judge said before, there

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are mitigating circumstances that, that could be the correct answer. I mean, given the case, from what I remember and read, so on, pretty brutal. Otherwise, we're taking -- if I recall, well --

MR. POLAY: You can say it.

THE COURT: We want you to be candid.

SUSAN WIENER: No, I mean I'm a mother. My daughter is a lot older. If I recall, one of the women that lost her life had a baby. That poor child. I mean it just, I tear up, thinking about it.

THE COURT: Of course, the defendant in this case has already been convicted of that.

SUSAN WIENER: Right.

THE COURT: Those facts would come out anyway, during the course of the trial.

I think the question Mr. Satz is asking, and I don't mean to put words in his mouth. He's quite capable all on his own.

What we are looking for is individuals that can look at the facts, listen to the arguments and listen to the law. It is all based upon aggravating circumstances. Not like when you get aggravated with your children.

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SUSAN WIENER: Can you explain the difference between aggravating and mitigating circumstances, in laymen's terms.

THE COURT: I'll try.

Aggravating factors are statutory.

It is what the law is. They are the only ones that can be considered if they apply in a particular case.

SUSAN WIENER: Black and white.

THE COURT: Well, as far as what they can pursue, yes. And those specifics are determined based upon the facts of the case, which you will hear one way or the other. And the state, if they take a position, if it is one of these where it is a red light, that's making light of things; and that's a statutory one, and you don't think, based upon all of the facts they have proven that beyond a reasonable doubt, that's a factual determination, based upon --

SUSAN WIENER: You might think it is a yellow light, rather than a red.

THE COURT: Right. A mitigating circumstance can be anything in the defendant's life or background.

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It is a weighing process, to determine, if you find aggravators beyond and to the exclusion of a reasonable doubt, as I defined it and I'll keep defining it during the trial, and you find there are mitigators that have been established, you are the one that weighs the mitigators.

You can give them great weight, some weight, little weight. And you do the weighing process to decide, you know, how am I going to votes.

The question is can you consider a vote, based upon all of that.

SUSAN WIENER: As far as the vote is concerned, it is 100 percent or majority?

THE COURT: Voting for death requires unanimous. Anything less than unanimous is an automatic life sentence.

I don't make those decisions.

SUSAN WIENER: Right.

THE COURT: It is all based upon criteria that is all laid out. It is basically like taking a test, the verdict forms. You know, it starts with question number one.

You keep going in progression.

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It tells you where to stop, depending upon your findings. That's about as simplistic as I can put it.

The question is, you know, everybody has their own opinions. Whatever they are, we respect them.

You can continue on with questions you may have.

MR. SATZ: Based upon what Judge Backman said, if at the end of these proceedings you feel the aggravating factors were proven beyond a reasonable doubt be, outweighed any mitigating circumstances you felt were established, are you personally capable of voting for the death penalty?

SUSAN WIENER: If it is aggravating circumstances outweigh the mitigating, then yes. Not, not the opposite.

MR. SATZ: Of course.

SUSAN WIENER: If there was something out of the control --

MR. SATZ: Right. Right. Okay. That's fair. Okay.

I have nothing further.

MR. POLAY: Ms. Wiener, let me ask you

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this.

When you said not the opposite, what do you mean?

Mitigating circumstances --

SUSAN WIENER: I mean something, something, of course, sometimes, outside influences. Like I said, I have a daughter. And there is peer pressure.

I am not saying that's the case. There could be other things that, uhm, forced him into doing this for some reason or another.

I don't know.

THE COURT: That's part of the process of the facts.

SUSAN WIENER: Exactly.

I'm not saying it was as dare.

And maybe under other circumstances, it wouldn't have happened.

THE COURT: Those are determinations that get made based upon what is presented to you.

SUSAN WIENER: If it is based upon the law, it is a different scenario.

THE COURT: It is the same.

It is based upon the law in terms of whether or not -- if the jury find unanimously,

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beyond a reasonable doubt, that aggravators that are statutory have been proven, when you talk about those outside influences, that's where mitigation comes in. And you can consider that.

Was it a dare? Was it this? That's all a matter of what gets presented to you.

You make your decision based upon the law from there.

Mr. Satz started this off correctly. We are doing this in a vacuum. Because you don't know the facts.

SUSAN WIENER: That's correct. I don't. I mean it is only what the press or --

THE COURT: The press has nothing to do with this.

SUSAN WIENER: Exactly. But that's the only information that we know.

THE COURT: You believe everything you read.

SUSAN WIENER: No. Look at our president, the way he talked about the press.

THE COURT: Not going there on an open record.

SUSAN WIENER: That's what I am saying.

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You don't know what else was surrounding the incident.

THE COURT: That's why you don't make the decision until after you know all of that.

Mr. Polay?

MR. POLAY: Let me ask you this.

When you indicated you were aware of the fact, you're a mother, and you heard a mother lost her life and you said that poor child, given that fact scenario, could you be fair and impartial in this case?

Shaking your head no?

SUSAN WIENER: I mean that poor child has grown up without a mother?

MR. POLAY: You don't think, given that, that you can be fair and impartial?

SUSAN WIENER: It is a difficult situation.

THE COURT: Of course it is difficult. You understand all sympathy has to be left out of this decision process?

SUSAN WIENER: Yes. Leaving the Sympathy out, you know, after Judge Backman said that --

MR. POLAY: I want to know what you're thinking.

I know the Judge will read you, give you

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the law.

At this point in time, I want you to be honest with me.

Do you think that will affect your ability to be fair and impartial, knowing a woman lost her life and she had a child? And you came into the courtroom. And you said that is something that hit you very hard.

SUSAN WIENER: Yes, it did.

MR. POLAY: Do you think that will effect your ability to be fair and impartial?

SUSAN WIENER: It could.

MR. POLAY: Okay. I understand.

Mr. Satz said something to you that is true.

He said there are no right or wrong answers.

Everyone has opinions and feelings.

All we want to know is what you're feeling.

SUSAN WIENER: I understand. You have to take the feelings out of the decision.

MR. POLAY: I understand that.

Sometimes you can't.

Like you sat down, and you said, oh my gosh, she has a kid.

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I have a daughter. First thing you said. I understand that. That's all.

SUSAN WIENER: Okay.

THE COURT: Anybody else have a question?

MR. SATZ: No, Your Honor.

THE COURT: I think we will send you back to the jury room and thank you for being with us.

SUSAN WIENER: Thank you.

(Exit Susan Wiener.)

MR. SATZ: Is that what you want?

MR. POLAY: Yes, sir.

THE COURT: State moving to strike her?

MR. POLAY: We are. That was my question. She couldn't be fair and impartial.

MR. SATZ: I wanted to have it on the record.

THE COURT: Okay.

(Enter Lauren Balentine.)

THE COURT: Welcome back, Ms. Balentine. The lawyers have a couple questions.

Mr. Satz?

MR. SATZ: How are you?

LAUREN BALENTINE: Very well.

MR. SATZ: I'll ask you a couple questions.

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No right or wrong answers.

Everybody has opinions and impressions.

Nothing wrong with it.

You saw there are people that would automatically vote for the death penalty. People that would never vote for the death penalty. Always vote life. Nothing wrong with either one.

You had indicated originally you would always vote for life.

LAUREN BALENTINE: I wasn't, I kind of wanted a maybe. I know that is not acceptable.

I always thought I believed in the death penalty, always, until I came in here and it was asked of me as a possible, potential juror, that that is something I would be asked to do in this trial. I thought about it last night. It weighed on me. I didn't know if I could, you know, say somebody deserved the death penalty. I was wavering.

MR. SATZ: Nothing wrong with that feeling.

There are some people that are intellectually in favor of the death penalty but could never vote for it themselves.

Nothing wrong with that, either.

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Are you like that, that you may feel you're in favor of death but you could never personally vote for it, even if you felt the aggravating circumstances that were proven beyond a reasonable doubt outweigh any mitigating circumstances?

LAUREN BALENTINE: I try to be as honest as possible.

I really don't have an honest answer for you.

I don't know, I don't know how I'm going to feel.

I do believe in the death penalty, on an intellectual level.

On an emotional level, at this moment, not hearing anything else, I don't know what I would do.

MR. SATZ: You understand this is our only opportunity to talk to you about this.

There is nothing wrong with your feelings.

We hate to put you on the spot. This is our only time to do this.

If you felt that you were in favor of the death penalty, you don't know if you could ever vote for life. It would be the same kind of

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thing?

LAUREN BALENTINE: I'm totally in favor of it. I was.

All of a sudden, it was a sense of holy shit, I don't know. I guess with so many other potential jurors interviewed, it should be an easy check-off. Let her go home.

She doesn't know.

MR. SATZ: You never know.

I know you're not happy with this question.

I have to get a yes or no.

If you felt, at the end of these proceedings that you felt the aggravating circumstances proven beyond a reasonable doubt, outweigh any mitigating circumstances, do you feel you are personally capable of voting for the death penalty?

LAUREN BALENTINE: Yes.

THE COURT: Mr. Polay?

MR. POLAY: No questions.

THE COURT: See you Tuesday morning at 9:15.

LAUREN BALENTINE: Wonderful.

Thank you.

(Exit Lauren Balentine.)

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THE COURT: We'll handle the motion Mr. Raft is here for.

MR. SATZ: Let's do it.

MR. RAFT: The reason we filed a motion in limine regarding the suggestion that the law favors a life sentence or prefers a life sentence, if I understood the circumstances correctly, during the Tephford trial, there was an inquiry about the Court voir dire regarding the potential penalty in this case.

The Defense either used those words or words similar to the effect the law prefers or the law favored the imposition of life because the State has such a high burden they have to meet.

It is the same high burden as it would be in the guilt phase of a regular trial.

No more appropriate than to say the law favors a not guilty verdict at trial.

The law doesn't favor anything.

Doesn't prefer anything.

My understanding, from a brief conversation this afternoon, the Defense's position is given the circumstances, they can say the law is satisfied with a life sentence.

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The problem I have is the same thing.

The law has no interest in outcome.

It doesn't make a difference whether or not -- it doesn't favor a verdict or a life sentence.

It doesn't prefer one. It is not satisfied by one.

The law is only satisfied by one thing.

A fair and just proceeding.

The outcome is completely irrelevant.

I think it is a misstatement to ever suggest the law plays favorites or cares about an outcome at all.

Its only interest is to make sure the system is fair.

If it is an unfair proceeding, even the imposition of a life sentence is inappropriate. It may be barred, barred for review under double jeopardy principles.

It is still, nonetheless, inappropriate.

When talking about what the law favors, it is the parties that favor an outcome.

It's the parties that argue for an outcome.

But to say that the law has an interest I think is wrong.

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As I indicated in my motion in limine, I think that's the reason why the standard jury instruction in 3.11 tells you, as the law giver, because you are, literally, the embodiment of the law, in giving the instructions.

Members of the jury, please disregard anything I said that makes you think I favor one verdict over another.

They don't favor.

Don't prefer.

They are not satisfied by anything other than fairness.

That's all we are asking for.

It is the use of the word law that causes the problem for me in that regard.

That's the reason for asking for the motion in limine.

THE COURT: Who's arguing it?

MR. POLAY: Motion in limine.

Judge, you said the word law.

That would mean if you look back between your career, every single closing argument you have heard should not be allowed. What you do is argue the law from the instructions.

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If I'm precluded from saying that it is okay to find my client, to find a verdict of life because I met certain legal burdens or overcome barriers, that's taking away all argument.

THE COURT: I'm not suggesting you can't do that. Nor did I hear Mr. Raft say you couldn't.

I think what you said reenforced what Mr. Raft said.

It is a question of during your voir dire, you understand I have heard your voir dire before. You understand the law favors life over death.

MR. POLAY: I agree. I don't need to say favor.

But I can say, in closing, the law is satisfied with a life verdict.

Why not?

What would preclude me from saying the law is satisfied with a life verdict if I show, if my argument is the mitigating circumstances outweigh the aggravators.

THE COURT: Nothing, as long as you add that last part to it.

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MR. POLAY: Okay.

THE COURT. The only thing the motion in limine goes to is your ability to say the law favors a life sentence.

Nothing else.

MR. POLAY: I agree. The law doesn't favor one or the other.

THE COURT: Than I can grant his motion.

MR. POLAY: They want to preclude me, the State, from getting up and arguing the law would be satisfied with a life verdict. That would eliminate me from arguing anything.

MR. RAFT: That's actually, in all candor, I disagree a bit with what he's saying.

In a closing argument scenario, when you are saying an argument to a jury, not in the jury selection, not in opening, but in closing argument, when you're specifically permitted, by law, to argue that you believe the facts and evidence that establish a certain set of facts, it is completely appropriate to say based on the facts and law, based on the facts in this case, the law compels a life sentence be imposed. Based on the facts, in an argument, I take no issue with that.

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We are talking about in voir dire and suggesting the law either favors, prefers or is satisfied by when there has been no presentation of the evidence and no argument to the jury about what they have heard.

That's my concern.

It is limited exclusively to the issue of voir dire to suggest that the law has an interest at all.

It doesn't.

MR. POLAY: I take issue with Mr. Raft's argument as how it pertains to voir dire.

THE COURT: Explain how it does.

MR. POLAY: Easily.

Like in closing.

I'm questioning a particular juror about whether or not they can in fact return a life verdict.

I am going through the weighing process.

I can say well, if you find or if you believe, is it possible, if the mitigating circumstance outweigh the aggravating factors, do you understand your verdict can be life and the law would be satisfied with life, why not? Why can't I do that?

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THE COURT: I don't know you can't.

That's the first time you said it like that.

MR. RAFT: As phrased, I don't have a problem the way he just phrased it.

If it is, even in voir dire, if you find the mitigating factors -- or that they are a draw, because I believe the law currently says the aggravating factors have to outweigh, unless the aggravating factors outweigh, that the law would be satisfied with a life sentence.

It is completely appropriate, if phrased that way, because you're asking if they make those findings.

It is an extension of asking them can you be fair.

I don't have a problem with that.

This started as an outgrowth with this idea in voir dire you can say favors and prefers, which you can't.

THE COURT: Well, you can, providing no one objects.

MR. RAFT: Okay. We are objecting.

MR. POLAY: Again, I disagree with

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Mr. Raft.

THE COURT: He just said what you proposed, there is nothing wrong with.

How can you object?

MR. POLAY: Mr. Raft is a very very persuasive arguer.

He puts parameters of what he agrees to, of what I should agree to.

Here is the problem. The law also states even if you find the aggravators outweigh the mitigators, you can vote for a life verdict.

THE COURT: That's correct.

MR. POLAY: That's something. I should be able to say given no circumstances, that the law would be satisfied with returning a life verdict in no circumstances.

THE COURT: Mitch --

MR. POLAY: I think you understand me.

THE COURT: I understand you perfectly. I've tried enough cases with you.

What you have been saying now, there is nothing wrong with. The motion in limine went towards your saying favors, prefers.

That you can't do.

Everything then depends upon the

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phraseology and the way in which you put a question to a jury.

So far, what you have been talking about, that's proper voir dire.

MR. SATZ: Our objection is a naked, if you satisfy, like Mr. Raft is arguing, the law, you know, isn't doing anything. It just says what it is. There is not somebody outside called the law, the law will be satisfied. You can't do that.

THE COURT: No. I agree with you fully.

MR. POLAY: I understand.

There has to be an attachment.

MS. MCCANN: It is has to be in context. That's really it.

THE COURT: We're good on that.

MR. WILLIAMS: I wanted to raise another point.

I want to make sure this is not improper, to say to the jury death is different. The vast majority of persons convicted of first degree murder receive life sentences because the death penalty is reserved for the worst of the worst.

MR. SATZ: I object to that. Has nothing

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to do with the facts in this case.

Other jurors have voted for life. You can do the same thing. Completely improper. Has to be regarding the facts in this case.

That's like saying they just convicted a guy and he only killed one person next door.

MR. POLAY: You're saying I can't bring up it should be reserved for the worst of the worst?

MR. RAFT: Nothing to do with the legal -- voir dire is to ask if they can follow the law. That's not the law.

MR. POLAY: That's not the law. Comes from Urchin, from a case. Every voir dire I have ever argued pertaining to voir dire you have allowed me to bring up it is reserved for the worst of the worst.

I understand there is a parameter pertaining to most other death cases.

MR. WILLIAMS: Most first degree murderers are sentenced to life. That's a true fact.

MR. SATZ: that's not admissible. There are a lot of true facts. It is like me saying this guy is the wors5 of the worst.

MR. WILLIAMS: I assume you will say that.

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MR. RAFT: No.

MR. SATZ: No.

I'll just argue the facts and circumstances. I feel the aggravating circumstances outweigh the mitigating circumstances.

I won't call him a monster and all that other stuff.

MR. RAFT: There is something called proportionality. My understanding is the jury doesn't get involved in proportionality.

That's an analysis done by the court after the fact.

Everything we are talking about now is addressing itself to an issue outside the parameters of the jury.

No reason to voir dire on subject matter the jury is expressly precluded from considering.

MR. WILLIAMS: There is a question now in light of the unanimous requirement whether or not there will ever be a proportionality analysis.

MR. SATZ: It will not be up to the jurors.

THE COURT: You're correct. That's not up

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to the jurors.

I don't understand if the jury has the final word -- a Spencer hearing is still required.

A lot of questions have to be answered by the appellate courts.

The question is do you have any cases that support that?

MR. POLAY: I have been doing it in every single death case I tried.

Reserved for the worst of the worst.

The courts have allowed it.

THE COURT: Didn't you utilize that in your last trial?

MR. POLAY: Yes.

That's why I was like -- okay.

THE COURT: Tell you what, you can give me that tomorrow.

MR. POLAY: State vs. Dixon. 283 So.2d 1.

This is an instruction, out of Dixon, I have gotten before.

You may not consider the death penalty as a possible punishment unless you find this homicide is one of the most aggravating, less mitigating of all first degree murders.

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Meaning the worst of the worst.

MS. MCCANN: That's different.

THE COURT: You can use that language, but you are now interpreting what the words are.

MS. MCCANN: Then we can get up and say he is the worst of the worst. That opens the door to our doing that.

MR. SATZ: I have to know ahead of time. I go first. I don't want him getting up, saying the worse of the worst and I'm precluding from saying he is the worst of the worst.

THE COURT: He can use the language of Gibson. That's as far as he can go.

How you argue is a different thing.

I'll give you an opportunity.

We are not death qualifying or voir diring anybody tomorrow.

It is not a priority for me now and will be determined before voir dire.

MR. RAFT: Can I have a moment to chat with Mr. Polay?

THE COURT: Yes.

(Discussions held off the record.)

MR. RAFT: As a result of conversations we had with the Defense, there were issues about

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subject matters appropriate for voir dire in general.

As the Court suggested and Mr. Satz, when the objections are made, you will rule, but there is a case. I know the Defense is familiar with it. I have extra copies for them. This is Calloway, 210 So.3d 1160, a January opinion from 2017 from the Supreme Court. I have clipped and highlighted the portion. This is the discussion of how far can you go in discussing aggravating and mitigating circumstances in your voir dire in terms of trying to find out the feelings the jurors have.

In that case, the Court said, in the traditional limits, of not pretrying your case still apply to death cases.

They distinguish the line of cases in the past they allow inquiry into the areas such as the theory of defense.

I don't presume to know what questions are intended to be asked.

I thought everybody should have the benefit of that case law before we start discussing subject matter in terms of what the inquiry

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would be.

MR. POLAY: I'm familiar with Calloway.

The State brings it up with regard to the Colorado method.

Basically, the voir dire with the jury.

THE COURT: The stake-out question?

MR. POLAY: Yes, it is a stake-out question. It is actually not a stake-out question. In that case, it was. Case specific.

We are talking about hypotheticals.

That's the difference.

MR. RAFT: Okay.

I think what we are talking about a difference won't have much of a distinction in the eyes of the law.

THE COURT: I think the case Mr. Polay is referencing is United States vs. Angela Johnson.

MR. POLAY: Yes.

THE COURT: The second one --

MR. RAFT: 356 Fed 3rd?

THE COURT: Fed 2nd.

MR. WILLIAMS: Fed Sup 2nd, 822.

You have read it?

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I'll put this off until you have had a chance to analyze it.

MR. RAFT: Here is what I want the Court --

THE COURT: You have it.

MR. RAFT: I don't have it.

I have the Supreme Court decision it claimed it is based upon.

I understand the Defense's interest in wanting to use the Colorado method.

I want to use the Florida method.

Calloway is the Florida method.

The only use of making an argument of having a federal appeal court's opinion or district court opinion weighing heavily on your decision-making process is supposedly it's drawing its wisdom from the United States supreme Court.

The case it's based on is Morgan vs. Illinois, which, really everyone should read.

How they expound on Morgan vs. Illinois is astounding.

This is 112 Supreme Court 2222, 1992 opinion. Been around for about 25 years.

Been cited, according to the West Law things I looked at, over 12 hundred times. In

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Florida, once. Not for the proposition being suggested by the Defense.

(Discussions held off the record.)

MR. RAFT: On Morgan vs. Illinois, the Illinois practice at the time, lawyers are not allowed to voir dire at all. The judge does it.

You have to submit the questions.

The State, in a death penalty case, submits a question.

We want to ask if you are so death scrupled, that you could never, under any set of circumstances, ever impose the death penalty.

The Judge says of course I'll ask that.

The Defense says, we would like you to ask the opposite.

Please ask if you are predisposed to imposing death on a conviction for a first degree murder charge, regardless of the circumstances. The judge said no, we will skip that.

That's basically Morgan vs. Illinois. You can't give one and not the other.

That's not fair.

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From that, we take off running.

That why I feel we should be following the dictates of our Supreme Court and not a federal district judge or a federal appeals court interpreting a case from the United States Supreme Court, which Calloway, the Florida Supreme Court, is in complete compliance.

THE COURT: First of all, Florida courts trump out-of-state courts.

They are persuasive. But they are just that. It goes into a full analysis.

I want to read the two cases I was just given, unless you want to argue on your Colorado.

MR. POLAY: I'm not arguing Colorado law decision.

THE COURT: I know.

You're going with the method.

MR. POLAY: With questions that I believe that I should be asking the jury to find out whether or not they can be fair and impartial, given certain scenarios.

They are hypotheticals, yes.

Hypotheticals are allowed.

I am not going into facts specific like

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Calloway.

I gave the State Calloway.

I am not surprised it comes back because I can distinguish it. It is in the cases I gave Your Honor.

I understand that.

MR. RAFT: Is that the list --

MR. POLAY: Yes.

MR. RAFT: Absolutely, 100 percent accurate. That's the first place I found Calloway is Mr. Polay's list.

MR. POLAY: I've given you positives and negatives. It is distinguishable.

In Calloway, they talk about a case specific aggravator.

I will not do that, Your Honor.

MR. SATZ: Can we have the questions in advance, so we can object prior?

MR. POLAY: I'm not, no offense, I'm not sure what I'll ask, honestly.

I feel out jurors like anything else. I have nothing specific.

I don't write down questions.

I never have.

I never will.

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It is something I just get a feeling for. Best way I can say it is it is almost like a free-flow method.

Certain questions I ask, obviously, pertaining to their jury questionnaires.

With respect to the death penalty, how I will pose hypotheticals, depends upon individual jurors after I go over their questionnaires somewhat.

THE COURT: Of course, you face the potential of an objection at the time it is asked.

MR. POLAY: All I can say, if the Court precludes it, it precludes it.

I will ask the Court, as you always do, give me an opportunity to proffer the questions I want on the record. That's all I can ever ask of you.

THE COURT: I want to go through the rest of the cases.

I haven't read Calloway in a very very very long time.

Since last year.

MR. RAFT: I'm at the Court's disposal.

Whenever you need me, whenever I'm needed,

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I'll be here.

THE COURT: What else do we need to address?

Tomorrow, Steve, when they all come up, first thing, who will be getting them? You or Pam?

As you know, we are high jacking 150 jurors tomorrow.

All taken care of.

75 and 75.

When you first, after you get through your role call, please tell every single one, like I think you did last week, to call their employers to find out what --

JUDICIAL ASSISTANT PAM COE: No, you did that.

THE COURT: Steve did it, outside.

JUDICIAL ASSISTANT PAM COE: My role call, down there, no.

THE COURT: We will until they get up here. I need them to make their phone calls before they get in here.

JUDICIAL ASSISTANT PAM COE: About?

THE COURT: Whether their employers pay, you know, whether they cover them for jury

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service; and if so, how long.

(Discussions held off the record.)

(Proceedings conclude.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 10th day of July, 2019.

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

ORIGINAL

Defendants.

TRIAL PROCEEDINGS
VOLUME IX
PAGES 747 - 887

Fort Lauderdale, Florida
October 4th, 2018
10:00 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 4th, 2018, commencing at 10:00 a.m.

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THEREUPON, the following proceedings were had:

(Short docket held with Judge Backman.)

(Trial proceedings start, as follows:)

(Enter first set of venire. Carl Silverstein through Patricia Brouwer.)

THE COURT: Good morning, everyone.

VENIRE: Good morning.

THE COURT: Wow, an enthusiastic group at this hour of the morning. You must have all had your coffee.

Still working on mine.

I am Paul Backman.

I'm one of your judges here in the 17th Judicial Circuit.

At least for another three months.

I make everybody sad when I say that.

But they are throwing me out of -- the Florida Constitution has an age limit on judges. So I guess after 35 years, I have to leave.

Let me tell you why you're here.

It is because I just wanted to entertain you all morning.

How many of you think that jury service is

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important? Okay. Good.

We'll see how important it is in a minute.

You notice they were calling off two groups of jurors this morning? The group that you weren't called in, that trial is probably going about six months. All of us in here, with the exception of the accused, we just came out of a 22-month three-day trial that had nothing to do with this case.

This case is going to be like a walk in the park. This case will end no later than Thanksgiving.

And we realize that everyone, all of us have challenges in our every-day lives.

And we have conflicts in our every-day lives.

While I'm going to have an opportunity to go down each row, starting with Mr. Silverstein, in a minute, I just want to go through with you the various conflicts that we know, based upon our experience, most people we've come in contact with and tell you who we don't want. Understand the way I say that, we would love that every single one of you can be with us. Obviously, you know there is another

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50 people outside. I'll tell you that we have already gone threw 350 people, because we recognize that there are individuals that just we don't want to interfere with their lives in certain respects.

Let me go through who we are not really looking for because of your lives.

If you are a full-time student and being with us would interfere with your education, we are not going to interfere with your education.

But you have to let us know.

If you are a primary caregiver to a parent, grandparent, a child or it is part of your professional responsibilities, again, if that creates a conflict, we are not looking for you.

If you are unemployed, actively looking for a job, we don't want to interfere with your ability to do that.

And we'll discuss it.

If you have a pre-paid vacation, please let us know when. Many times, it works within our schedule; and we can accommodate it. A lot of people I have talked to have already said we have trips planned, you know, around Thanksgiving. As I said, we anticipate it will

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be finished by then.

More importantly, right after Thanksgiving, I have my own vacation. Mine is already prepaid.

And I'm not giving that up.

So we do have our anticipation of time.

Quite honestly, I think Thanksgiving is a stretch. I would rather tell you a longer date and you're happy with me than a shorter date and I have to tell you my name is somebody else's because you will be upset.

In addition to pre-paid vacations, if you have travel plans, work-related, we need to discuss it. For I go through this with every single group.

Yesterday, we had an individual for his third time who said oh, I can't be back next week, which is when we thought the trial would originally begin.

He said I have to travel for work. And I'm the last one in. It is important I go. He never brought it to to our attention.

It is something else I add to my list.

Also, if you have child care issues, and you cannot make arrangements for the afternoon,

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let us know.

We will discuss it.

Let me give you a concept of what our trial schedule is so you know what it is we're dealing with.

Once we finish picking our jury, which I'm hopeful will be by the end of next week, we will begin.

We, I anticipate our schedule will be working Tuesday through Friday. Friday, how long we work will be depending upon where we are on Thursdays.

We may not work a Friday, maybe half a day, maybe a little longer. I like to start by 9:30, which is why I have my jurors ultimately coming back at 9:15.

Surprisingly, in the last trial we just finished, we had 19 jurors, which included our alternates. Of single one was back at 9:15, back at 9:15 every day. I can't get six people to come back.

I like to start working at 9:30, working until about 5:00, 5:30. There are exceptions.

When people have certain issues in the afternoon that come up, we always do our best

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to accommodate. We know that a lot of kids, children, get picked up at 2:00. 230, 3 o'clock.

We recognize that and the question we ultimately ask is whether or not it is possible to make alternative arrangements during the course of the trial.

It is a task, a task that can't always be accomplished. We recognize that. You dictate.

If you only wanted to work until 2 o'clock every single day, fine with all of us; but plan to be here until February.

For every hour you don't work, it has to be made up.

That's why I work full days, four days a week.

On Mondays, when we wouldn't be in trial, that's why, that's when I do all of my other work I'm responsible to do.

My job is to get you in here and out of here as quickly and as humanly possible, understanding we are here for a criminal case. If you have medical issues that you believe will interfere with your ability to serve, we need to know that. We have had individuals who

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have had diabetes, back issues, need to stretch; individuals that need to use the restroom on a constant basis.

Diabetics, when your blood pressure runs low, we understand you need to eat or you need insulin.

And we will stop for that.

If you need to stretch your back, you can stand and stretch it.

That's not an issue.

If you need to use the restroom, it is not a problem. They are available.

And we will make all of those arrangements. That won't become an issue.

If you are a salaried -- if you are a commissioned employee, or you work on a base-pay plus commissions, and that income is critical to your financial bottom line, again, we don't want to interfere with anybody's financial well being.

And we are not looking for individuals of that nature.

If you have full-time employment, that's the reason Steve, when he went out there, because just before I asked you to make phone

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calls about what your employers pay, don't pay, we know that a lot of employers will pay only three, five, ten days. We have a pretty good idea, based upon past experience, who does and doesn't pay.

You will find a lot of employers will pay for every single day we're here.

What we have found is if you're an employee, and your employer will only pay form eight hours a day and you work ten hours a day, and that additional compensation interferes with your financial well-being, again, we don't want to interfere with anybody's financial well-being.

Again, if you know what the policy is, let us know.

If you're waiting for a call back from your employer, when you get that call, if you just step outside, find out what it is, then let us know.

And we can move forward from that.

Usually, what I start with is, and I didn't do it today, simple question, anybody that has difficulty understanding the English language and speaking the English language?

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Front row?

AN-JOLET TORRES ROLON: Me.

THE COURT: You are not in the front row. You're in the second row.

AN-JOLET TORRES ROLON: Sorry.

THE COURT: Second row, talk to me.

English?

AN-JOLET TORRES ROLON: A little bit.

THE COURT: A little bit?

AN-JOLET TORRES ROLON: Yes.

THE COURT: Anybody else in the second row?

Third row?

Our special set, all the way in the back.

PATRICIA REYNA BROUWER: I'm good.

THE COURT: If you are over the age of 70, you don't have to serve, unless you want to.

That's the law. And I sometimes forget that.

Mr. Silverstein, any issues?

CARL SILVERSTEIN: Primary care giver for my pets.

THE COURT: This is a very pet-friendly courtroom. But that won't help.

What about employment?

CARL SILVERSTEIN: I am waiting to hear for

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a start date.

THE COURT: Go back and explain that one.

I gather you are starting a new job?

CARL SILVERSTEIN: Yes.

THE COURT: And that is going to be critical to your financial well being?

CARL SILVERSTEIN: It will help.

THE COURT: That's not an answer to my question. Remember, I'm a lawyer underneath all of this.

CARL SILVERSTEIN: I forgive you.

THE COURT: I appreciate that.

That's why they now call me Judge.

But that's a scary thing, when you say that. I mean if it will create a financial hardship for you, we don't want to interfere with that. I can't answer that question. Only you can.

CARL SILVERSTEIN: It won't be a hardship. It will be a welcome addition.

THE COURT: By working?

CARL SILVERSTEIN: Yes.

THE COURT: Understand, just getting through this process now is not to be considered indicative of the fact you will be

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on our jury. We have two more processes to go before we get to the lawyers.

We're hopeful to get through at least this and one other today.

Ms. Muth?

STACIE MUTH: I have a work trip October 22nd through the 25th.

THE COURT: What our our dates?

MS. MCCANN: The 19th through the 24th.

THE COURT: That falls in there? That's not a problem.

Your employment? You work. Will they pay you?

MS. MCCANN: Yes.

THE COURT: Mr. Cooper?

KENJAHSAH COOPER: Every weekday, I have to pick up my little brother between 3:00 and 4:00 p.m.

THE COURT: Any alternative arrangements that can be made?

KENJAHSAH COOPER: There are days where my mom is off work.

Most likely, yes.

THE COURT: You think that will create a problem for you.

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KENJAHSAH COOPER: Not necessarily.

THE COURT: Ms. Roquett, any problems?

BEATRIZE ROQUETT: I am self-employed. That's my only income. I don't have any other .

THE COURT: that's why we ask these questions.

Ms. Marques?

TATIANE MARQUES: Although it is an honor to be here, I'm a full-time student at UMAS Lowell. I do on-line classes.

I work full time from home. I'm a full-time mom. Year-old I have to drop off --

THE COURT: You got me with the student.

TATIANE MARQUES: Thank you. I neede tod --

THE COURT: I hear you.

Mr. Echols?

TERRY ECHOLS: I am the only full-time employee at an office of two.

THE COURT: If you're not working, what happens?

TERRY ECHOLS: Phones don't get answered. I will not get paid.

THE COURT: That's an easy one.

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Ms. Bear?

CHELSEA BEAR: I have work trips in October and November.

THE COURT: When in November?

CHELSEA BEAR: November 12th through the 15th.

THE COURT: That may or may not -- I don't know. If it is pre-paid and critical to your employment? You know, obviously, if you are a member of the jury, we will have to accommodate in some way.

October.

CHELSEA BEAR: The 22nd through the 24th.

THE COURT: Not a problem .

We have to see how the November works out.

THE COURT: Will you get paid?

CHELSEA BEAR: I'm waiting to hear.

THE COURT: Ms. Stefanos?

LEONA STEFANOS: I'm self- employed. I own a clothing store.

THE COURT: Want to advertise?

LEONA STEFANOS: Men's clothing, men's clothing store.

THE COURT: Ms. Roberts?

KIMBERLY ROBERTS: I am a single mother of

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four.

THE COURT: How old are your kids?

KIMBERLY ROBERTS: I have 24-, 8-, 10- and 6-year-old.

THE COURT: School schedules and child care?

KIMBERLY ROBERTS: After school care may be an issue as far as picking them up.

Latest I can pick them up is 5:30.

THE COURT: What town?

KIMBERLY ROBERTS: Fort Lauderdale .

THE COURT: If we were out by 5:00, you would be good?

KIMBERLY ROBERTS: Yes.

THE COURT: What time do you drop them off.

KIMBERLY ROBERTS: About 7:30.

THE COURT: I am not even awake at 7:30 in the morning.

Ms. Wright?

LOUISA WRIGHT: No issues.

THE COURT: Do you work?

LOUISA WRIGHT: Yes.

THE COURT: They pay?

LOUISA WRIGHT: I'm self-employed. I have an assistant.

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KIMBERLY ROBERTS: You didn't ask me if I work.

THE COURT: You didn't tell me if that's a problem.

KIMBERLY ROBERTS: It is not. I'm a registered nurse at Broward Health North. I'm not sure if they will be able to cover my shift. I work in the out-patient --

THE COURT: We appreciate that. Question is whether or not they pay.

MR. WILLIAMS: Is she full time?

KIMBERLY ROBERTS: I am.

MR. WILLIAMS: Yes.

THE COURT: They pay.

And we do understand that your employer may have an issue. But -- and I hate to sound callous in this -- but that's their problem. They are always welcome to call me.

KIMBERLY ROBERTS: Okay.

THE COURT: Ms. Shaattah Harroch?

BETTY SHATTAH-HARROCH: I own a school. I teach. And I also take care of my mother twice a week FROM four to six in North Miami.

THE COURT: If you ARE not teaching, I take it your income drops, even though you ARE the

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owner?

BETTY SHATTAH-HARROCH: Yes or no. More the responsibility of the students, nobody can take my place.

They can replace me one or two days.

I'm not sure about the whole time.

THE COURT: Mr. Swinger-Vargas?

GERALD SWINGER VARGAS: I have don't have a problem. Only days I have scheduled is November 20th through the 26th.

THE COURT: Should not be an issue.

GERALD SWINGER VARGAS: I'm sorry.

November 20th through December 3rd.

THE COURT: That's okay.

I won't be here either.

THE COURT: Employment?

GERALD SWINGER VARGAS: I'm good.

THE COURT: Mr. Shah?

HUMAD SHAH: How are you?

THE COURT: Good so far.

HUMAD SHAH: I have child-care issues. My wife is a nighttime RN. The earliest I can go to work is 9:00, from Pembroke Pines.

THE COURT: That's fun.

HUMAD SHAH: We have somebody that has to

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watch the four kids.

As far as work is concerned, they pay up to ten days. After that, I'm on my own.

THE COURT: Not interested. We are, but we, that will create a financial strain. Won't do it.

Mr. Caesar?

MCCARLOS CAESAR: I called my foreman.

He said to bring the slip to present it.

THE COURT: They will pay you.

MCCARLOS CAESAR: I don't know. I am the only one working.

I work for the union.

Electrical company.

THE COURT: Which union.

MCCARLOS CAESAR: 49. Miami.

THE COURT: They have indicate, as long as you bring verification?

MCCARLOS CAESAR: Yes.

THE COURT: You can have all of the verification you want.

Mr. Applebaum?

ERIK APPLEBAUM: My wife is seven and-a-half months pregnant. I have work trip all next week.

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A prepaid vacation November 8th through that upcoming Monday.

Work pay is not an issue.

THE COURT: Where are you going next week.

ERIK APPLEBAUM: Las Vegas.

I am in the gaming industry.

THE COURT: The other one.

Ms. Forehand?

SHIRLEY FOREHAND: I have child care issues.

I get off work at 2:00. Granddaughter comes home at 4:00. I pick up my other grandson. Daughter is a nurse.

I have my grand children from 2:00 until quarter to 8:00.

I take care of my grand kids.

ANTHONY WILLIAMS: I have a couple. Unemployed now.

I had an interview today I had to reschedule to come here.

I take care of my disabled mother.

THE COURT: The employment, I think is -- taking care of your mother is extremely important.

You're presently unemployed?

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ANTHONY WILLIAMS: Yes.

THE COURT: You're actively looking for a job?

ANTHONY WILLIAMS: Yes, sir.

THE COURT: Hopefully you will find one. Mr. Delgado?

FELIPE DELGADO: I am the sole bread winner for my family. Softwear engineer. Only pay for three days.

THE COURT: Mr. Schulte?

ROBERT SCHULTE: My employer will only pay five days.

THE COURT: Ms. Lebin?

SUZANNE LEBIN: I have a prepaid trip in October, end of October. The 25th and 26th, 27th, 28th.

Then I have a possible medical issue.

THE COURT: I am not asking you in public to disclose any of that.

Is that the type of situation that will interfere with your ability to participate?

SUZANNE LEBIN: I'm not sure. I would have to discuss it with somebody.

THE COURT: Like your doctor?

SUZANNE LEBIN: Yes.

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THE COURT: Work?

SUZANNE LEBIN: Work I'm okay with. They would pay me. I also am teaching a course. Need to be available for that.

THE COURT: When do you normally teach that course?

SUZANNE LEBIN: On-line course. There is in-person sessions. I teach related to the course and the course is on-line.

I have to be available to respond to questions during the day, when people are moving through the course.

THE COURT: During lunch, times like that?

SUZANNE LEBIN: Yes.

THE COURT: Mr. Leiderman?

PEDRO LEIDERMAN: I work on base pay plus commission.

THE COURT: That will interfere with your bottom line?

PEDRO LEIDERMAN: Yes, my employer doesn't pay, either.

THE COURT: Mr. Evans Pedro?

ROMAR EVANS PEDRO: No issues.

THE COURT: Do you work?

ROMAR EVANS PEDRO: Yes.

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THE COURT: Who do you work for?

ROMAR EVANS PEDRO: Department of Health and Human Services.

THE COURT: They pay.

ROMAR EVANS PEDRO: Yes.

THE COURT: Any other potential issues?

ROMAR EVANS PEDRO: No.

THE COURT: Mr. Cazeneuve?

BISSEN CAZENEUVE: I'm the only one working at my house.

I take care of both of my parents. Dad is in a wheelchair. I am studying for Social Security Administration. I am taking my classes seriously.

THE COURT: Who do you work for?

BISSEN CAZENEUVE: Security company.

THE COURT: Do they pay?

BISSEN CAZENEUVE: I tried calling.

No one answered.

MR. WILLIAMS: if he is an hourly working, they are pay.

BISSEN CAZENEUVE: Hourly.

Yes.

THE COURT: They won't pay.

In our special seat, Ms. Brouwer?

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PATRICIA BROUWER: Only thing, I have is a prepaid trip in November. 7th, 8th, 9th. That's it.

THE COURT: Going any place good?

PATRICIA BROUWER: Orlando.

THE COURT: Steve, take the group outside. We will have information for you in a few minutes.

(Exit venire.)

THE COURT: Number 1, Silverstein, is waiting for a call.

We need to get that information.

Two said okay.

Three, Cooper, said okay.

Four, no work, no pay.

Five, student.

Six, no work, no pay.

Bear, waiting for a call. Has an October and November trip.

MR. WILLIAMS: The November trip looks like the entire week before the Thanksgiving week.

MS. MCCANN: The 16th, that was our end date. This is taking longer than we thought. I think we should keep her until we get further along.

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THE COURT: Eight, self-employed.

Roberts, 9.

MR. SATZ: Four kids.

MR. WILLIAMS: Child care.

MR. POLAY: Lives in Fort Lauderdale.

THE COURT: I am know.

Being limited like that, every single day, could impact us. I don't know that it would.

Let's leave that for the time being.

Ten, Wright, was okay.

MR. WILLIAMS: Self- employed. Said she was okay.

MS. MCCANN: Has an assistant.

MR. SATZ: Said she is okay. She's okay .

THE COURT: 11, language, Torres.

I have a questionmark on 12, Shattah.

MR. SATZ: Mother's care in Miami.

MR. WILLIAMS: Right.

THE COURT: 13, was okay.

Shaw, 14, no work, no pay.

MR. WILLIAMS: Swinger said the job is okay. Talking about a business trip.

MR. SATZ: Yes, November 20th to December 3rd.

THE COURT: I thought he said something

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about work.

MR. WILLIAMS: I have he's okay.

We don't know what he does to make the blanket statement.

THE COURT: Let's leave him for the time being.

I am on Shah, 14.

MS. MCCANN: No, 13 we were talking about.

MR. WILLIAMS: Made the blanket statement. We don't have an idea of what he does for employment. Just said I'm okay.

THE COURT: That's on 13. Okay. We'll deal with him.

14, Shah, no work, no pay.

15 said he's okay.

16 is traveling.

MR. POLAY: Caesar is a question.

Waiting for a calling from the union.

MR. WILLIAMS: He's with the United Electrical Union. Depends upon his union contract.

MS. MCCANN: He's waiting for a call.

THE COURT: Appelbaum is away next week and in November.

17 has child-care issues.

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I show 18, 19, 20, Williams, Delgado and Schulte, no work, no pay.

MR. WILLIAMS: Delgado said no pay for jury service. Right.

THE COURT: 19, three days.

20, five days.

18, unemployed, looking for work.

That to me is no work, no pay.

What about 21?

MR. WILLIAMS: Medical issue. Didn't say she had work-related.

MS. MCCANN: Out October 25th through the 28th.

THE COURT: Get rid of her?

MR. WILLIAMS: Yes.

MR. POLAY: Yes.

THE COURT: 22, Leiderman, no work, no pay.

Evans, 23, was okay.

24 is no work, no pay.

25, Brpiwer. Has a trip right in the middle of things.

MR. WILLIAMS: Could being the last week.

THE COURT: You're right. Is that one we play by ear and see how she goes through the rest of the process?

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MR. SATZ: Yes.

MR. POLAY: Sure.

MR. SATZ: Want to ask Applebaum, work trip, how that will affect him if he doesn't go?

THE COURT: Also away in November. Else gone in the middle of everything.

These are the ones that we are telling to go home, yes?

MR. WILLIAMS: Yes.

THE COURT: 4, Rouquett; 5, Marques; 6, Echols; 8, Stefanos; 9, Roberts; 11, Torres; 12, Shattah; 14, Shah, all gone.

16, Applebaum, is gone. 17, gone, Forehand. 18, Williams; 19, Delgado; 20, Schulte; 21, Lebin; 22, Leiderman. All gone. 24, Cazeneuve, is gone. That's it.

What did we decide to do with the last one?

MR. SATZ: Keep her a while.

THE COURT: Okay. Next.

(Enter venire. Rubin Dolce through Maung Oo.)

THE COURT: Morning, ladies and gentlemen.

Dare I ask how your doing?

VENIRE: Good.

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THE COURT: If you remember this morning, when they were calling, they called two groups? They called your group and a group for Judge Bailey.

You're fortunate. That trial will go five, six months. And all of us in here, on a different case, just came out of a 22-month, 3-day trial.

It had nothing to do with this trial.

Nothing to do with the accused in this case.

This is going to be like a walk in the park.

This is a case that, first of all, let me introduce myself.

I'm Judge Paul Backman. I am one of your judges here in the 17th Judicial Circuit.

We anticipate, at the far reach of this trial, we'll be finished by Thanksgiving.

Now, don't panic.

We all no that each and every one of us have conflicts in our every-day lives.

I think all of you understand the importance of jury service.

Again, we understand that there are

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difficulties in each and every person's life that might interfere with their being with us.

So I have what I think is a very comprehensive list of issues that, based upon all of our experience, come up and individuals that we're not looking to interfere with their lives.

So I don't want anybody to raise their hand.

When I'm finished going through this, I'll go person by person until I reach all the way at the end.

Let me go through this list of what we believe are conflicts that may or may not interfere with your ability to be here.

That's going to be a decision you will have to make, not me, nor them.

If you are a full-time student and being with us would interfere with your education, we don't want to do that.

If you are a primary care giver to a parent, grandparent, child or it is part of your professional responsibilities, again, unless it is the type of thing that you can participate with us, we don't want to interfere

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with that care.

If you have child care issues, I think dropping children off in the morning will never be an issue. And picking them up in the afternoon, we know a lot of places, children have to be picked up at 2:00, 2:30, 3 o'clock. Sometimes later. But unless, if you can make arrangements during the course of the trial to pick up children later than their normal time frame, without it costing you financially, that would impact you, again, that's something we need to discuss. On that note, let me first tell you what I and anticipate our trial schedule will be.

My belief is the sacrifice of your time, spending with us, my job is to get you in and out of here as quickly as humanly possible.

I like to work full days.

I usually like to start at 9:00 in the morning and go until 5:00, 5:30 or if we run out of witnesses, there are days you may go home at 2:00, 3:00, 4:00. It is difficult to judge.

And I like to work Tuesday, Wednesday, Thursday, Friday. How long on Friday's will be

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determined on where we are on a Thursday.

You might work part of the day, all of the day, none of the day. Again, it is generally four days a week. Not on Mondays.

Monday is when I do all of my other work.

If a holiday like Veteran's Day, if we're still in trial, a Monday holiday, Tuesday we won't be in trial. Of course, I will give you advanced notice.

That's the situation.

If you are unemployed and you're actively looking for employment, again, we don't want to interfere with your ability to get a job.

If you have medical issues that you believe would interfere with your ability to participate with us, only you can answer that question.

I'll not ask you what medical condition you have. That's none of my business. But I can tell you that over the years, we have had many diabetics, people with back issues, people that need to use the restroom constantly.

Diabetics, when their blood pressure drops, we stop so you can take insulin or get something to eat. We don't want anybody having

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a problem.

Back issues, you can stand up and stretch.

If you need the restroom, that's not an issue.

If you have pre-paid vacations, between now and Thanksgiving, depending upon when they are, I mean we won't stop anybody from going on a pre-paid vacation.

Those dates may coincide with dates we already know we may not be in trial.

Again, let us know.

If you're a commissioned employee, we don't want to interfere with your financial well being. That goes for individuals who are on a base pay and also work on commission. If that will interfere with your financial bottom line, again, we don't want to interfere with that.

If you are a full-time employee, that's one of the reasons that when Steve was out their earlier, he asked you to call your employers, to find out what their policy is on jury service. We know that some companies will pay three days, five days, ten days. A lot will pay you for every day you're here.

If you're only paid three, five, ten days,

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if that interferes with your bottom line, we don't want to do that.

For those of you that work full time and your employer will say I'll pay you for eight hours a day, but you work ten, your salary is based upon ten, twelve hours a day, we're not going to interfere with that. Because we recognize that's part of your income that you need.

If you're a day laborer, paid daily, they won't pay you.

Again, if you're waiting for a call, let me know when you get the call or text.

You won't be here very long. Some of you will be getting an invitation to go home.

The rest of you will have to be back at 2:00 this afternoon.

One last thing.

Anybody that doesn't speak or understand the English language?

Front row?

Mr. Dolce?

RUBIN DOLCE: Yes, sir.

THE COURT: Creole?

RUBIN DOLCE: Yes.

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THE COURT: Do you understand English?

Yes, a little bit.

THE COURT: Little bit scares lawyers. You obviously speak it.

RUBIN DOLCE: Not good enough.

THE COURT: I think you're talking beautifully.

Ms. Solano, speak English?

AMANDA SOLANO: No.

THE COURT: A little?

AMANDA SOLANO: A little.

THE COURT: Back row?

Mr. Oo, our special seat, any difficulty?

MAUNG OO: I am good.

If anybody is over the age of 70, I want you to know that you have the right to serve. But you are automatically excused if you do not want to serve.

Mr. Shockley, any difficulties?

PAUL SHOCKLEY: I am trying to think of something. That's a long time.

Transportation could be a problem. I have an older car.

THE COURT: Do you work?

PAUL SHOCKLEY: No. I am retired.

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THE COURT: Other than your car may be breaking down --

PAUL SHOCKLEY: I have a 93-year-old mother who I don't take care of her full time. I'm with her a couple times a week.

THE COURT: If there is a problem, we will stop.

Getting through this morning is not indicative you will make the jury for trial. We have gone through about 375 people. There is another two steps after this before I let the lawyers at you.

We're trying to figure out preliminary difficulties.

THE COURT: Ms. Hollensen?

ANN HOLLENSEN: I have a trip to see my mom, who is 83, with Parkinson's.

I leave October 12th and return the 22nd. That's paid for a long with my car. I got trip insurance.

THE COURT: I don't want to you cancel.

Mr. Weinberger?

MARC WEINBERGER: I have a pre-paid vacation October 28th to, seven days later. It is a crucial. The 4th. 28th of October.

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Sunday to the following Sunday.

THE COURT: Going into November.

Going any place good?

MARC WEINBERGER: Get on a ship and go. Allure of the Seas.

THE COURT: Have you been on it?

MARC WEINBERGER: Yes.

THE COURT: I don't have to tell you how wonderful it is.

Ms. Fagan?

DIANE FAGAN: I'm at ASGM. Holloween is our biggest season.

I don't know how they will pay.

I'm salary. Waiting on my GM to get back to me.

THE COURT: I understand employers aren't always the happiest.

Without being too caustic, that's their problem. I understand.

DIANE FAGAN: Once I find out --

THE COURT: I hear you.

Mr. Bland?

ERIC BLAND: I travel for work.

I work on cruise ships.

THE COURT: Which ones.

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ERIC BLAND: Mostly for Holland.

Royal Carribean and Holland. Do their radio systems for fire teams and stuff like that.

THE COURT: You work for a company, I take it, that does that?

ERIC BLAND: Yes.

THE COURT: You don't work for the cruiseline?

ERIC BLAND: Right. For a company.

THE COURT: Would you be paid for that period of time.

ERIC BLAND: No, they will not be paying me.

THE COURT: That's all it takes.

Mr. Brook?

DOUGLAS BROOK: I only will be paid for five days.

TRUDY HENRY: I'm a mother of a three kids. 10-, 6- and 1-year-old. I have a full-time and part-time job.

THE COURT: You won't get paid, no matter what?

TRUDY HENRY: No.

ROBERT STENNER: I'll be on a cruse. 26th

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of November, October, through First part of November.

THE COURT: The Allure?

ROBERT STENNER: Yes. 45th anniversary.

THE COURT: Beautiful ship.

Been on it?

ROBERT STENNER: Yes, sir.

And I own my own business.

THE COURT: The ship alone gets you out of here.

Ms. Bitna?

SHANYGHE BITNA: I'm a full-time student.

THE COURT: Where.

SHANYGHE BITNA: Nova Southeastern.

THE COURT: Studying?

SHANYGHE BITNA: Multi-disciplinary studies and higher education and student affairs.

THE COURT: Mr. Lazenbhy?

ERIC LAZENBY: I am a commissioned-sales rep in the surgical business. I'm required to be on and engaged. I also deal with trauma cases.

THE COURT: If you're on commission, you won't get paid.

ERIC LAZENBY: Right.

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THE COURT: You don't need to go beyond that if your income will suffer.

ERIC LAZENBY: Income is one thing.

Patient care will suffer.

THE COURT: You won't get paid. You don't need to go there.

ERIC LAZENBY: Very good. Thank you.

THE COURT: Mr. Solano, the reason I skipped you is because of the language issue.

Mr. Mayo?

JERRY MAYO: I have various things going on. I'm going through a civil case in this courtroom.

THE COURT: On the other side.

JERRY MAYO: I work as a delivery driver for Downtown Pizza from 5:00 to 4:00 in the morning. No sleep. I don't get paid hourly.

THE COURT: Do you get paid if --

JERRY MAYO: No.

THE COURT: Thank you. That's what I need to know.

Ms. Weissbein?

RHONDA WEISSBEIN: I have medical issues .

THE COURT: Do you think they will interfere with your participating?

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RHONDA WEISSBEIN: Yes.

THE COURT: Ms. Ferriter?

JUSTINE FERRITER: I do sales now and work off commissions.

BRUCE DAVIS: I'm a commissioned sales person also.

THE COURT: What do you sell?

BRUCE DAVIS: I am in the mortgage business.

THE COURT: Mr. Shumate?

ALVIN SHUMATE: Only thing that pertains to me, I am unemployed and waiting for a company to give me a call .

THE COURT: Are you reaching out to them or hoping they pick it up in the air.

ALVIN SHUMATE: How ever.

THE COURT: I hear you.

VICTOR GONZALEZ: I will be flying out of Guadamala in October, on a missions trip. I have be flying out the 17th and returning the 23rd.

THE COURT: Is that already paid for?

VICTOR GONZALEZ: Yes. All reservations. It is a missionary trip.

I work for Publix.

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After the missions trip, I can't take any time off. I service all of their equipment in the stores.

They need me to be present for the highest, you know, line season for us. Right before Halloween until after Christmas, it is crazy.

THE COURT: full-time with Publix?

VICTOR GONZALEZ: Average is 50 hours a week.

THE COURT: Full time?

VICTOR GONZALEZ: Yes.

THE COURT: We know they pay.

VICTOR GONZALEZ: Up to 40.

MR. WILLIAMS: Don't pay the extra ten hours.

THE COURT: Ms. Spears?

DEBRA SPEARS: I'm a full-time medical student at Nova.

THE COURT: DO or MD?

DEBRA SPEARS: DO.

THE COURT: Where do you want to practice, what discipline?

DEBRA SPEARS: Not entire lip sure yet. Still figuring that out.

THE COURT: Mr. Echavarria?

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SEBASTIAN ECHAVARRIA PINILLOS: I am a full-time employee. I have medical issues.

THE COURT: You think the medical issues would interfere?

SEBASTIAN ECHAVARRIA PINILLOS: Yes, sir.

CHARLES GERVOLINO: I have NO issues.

THE COURT: Do you work?

CHARLES GERVOLINO: Yes.

THE COURT: FOR.

CHARLES GERVOLINO: Ryder.

THE COURT: They pay?

CHARLES GERVOLINO: Yes.

THE COURT: Every day.

CHARLES GERVOLINO: Yes.

THE COURT: Mr. Reimer?

DAVID REIMER: I am an attorney, general counsel for a developer. I have a trial starting in on Tuesday, Dade County. In the 11th Circuit.

Court-ordered. Thursday and Friday in a 15-party case.

I can keep going.

I have another court order, because I handle 558, big, multi-party cases. In November, I have another court -- order.

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THE COURT: All right. All right.

You realize my court order would take priority.

You do realize that.

DAVID REIMER: Yes.

THE COURT: They can all call me if there is a problem.

Ms. Hambright?

COURTNEY HAMBRIGHT: I am a public high school teacher.

THE COURT: For the Broward School Board?

COURTNEY HAMBRIGHT: Yes.

THE COURT: They pay.

COURTNEY HAMBRIGHT: If I'm out of my classroom for four, five weeks, the progress of instructions, essentially, at the beginning of the year, establishing relationships with your students and building skills, so they can write essays. It will be massively disruptive to my instruction.

I have the 10th grade.

Working with other teachers would be disruptive.

ROBERY LANG: I'm a full-time worker for Walmart.

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THE COURT: Do they pay?

ROBERY LANG: They pay, they said.

THE COURT: Is that your only potential problem?

ROBERY LANG: I am a diabetic.

THE COURT: Of course, if you, if your blood sugar drops and you need a break to eat, not a problem at all.

MR. POLAY: With respect to Mr. Lang, I think he needs to call and say how long it will be.

We have had this issue before with Walmart.

THE COURT: Did you tell them how long the trial would be?

MR. POLAY: I told them I could be sequestered until around Thanksgiving. I talked to the personal manager of the days I go to court, I will be paid.

THE COURT: During the course of the proceeding, you won't be sequestered.

When we get to deliberations, that's a different issue.

Mr. Oo?

MAUNG OO: I have a sushi chef. Work for a company in South Carolina.

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THE COURT: If you're not on the jury, who will feed us?

Do you get paid frm the company if you are on jury service?

MAUNG OO: I'm full time. I get paid.

THE COURT: Have you talked to your employer?

MAUNG OO: I called my boss. He's busy. Haven't heard back.

THE COURT: Do you travel for work?

MAUNG OO: I travel out of state lines. Sometimes California, South Carolina. New York. Everywhere.

THE COURT: Thank you.

What I'll ask, at this point, is you follow Steve outside. We will have information for you in just a couple of minutes.

(Exit venire.)

THE COURT: Ready?

27, Shockley, okay.

28, Hollensen, is traveling.

29, Weinberger, traveling.

30, Fagan, was okay.

MR. WILLIAMS: No, she was checking.

THE COURT: It's the same thing to me now.

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Until they're gone.
31, Bland, is gone.
32 is gone.
32 is Brook.
33, Henry, is gone.
34, Sterner, gone, travewling.
35, Bitna, student.
36, Solano, language.
37, Lazenby, no money.
38, Mayo. No work, no pay.
39, Weissbein, Medical.
40, gone.
41, Davis, gone.
42, Shumate, gone.
43, Gonzalez, gone.
44, Spears, gone.
45, Echavarria, gone.
46, Gervolino -- wow -- staying.
47, our lawyer?
MR. POLAY: I have no problem excusing him.
MR. WILLIAMS: Nor do I.
MR. SATZ: I have no problem.
THE COURT: Gone.
48, Hambright, staying.
49, Lang, staying.

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What about our suchi chef?

MR. WILLIAMS: I can't imagine he will be paid.

MS. MCCANN: He travels for work.

THE COURT: I understand.

MR. POLAY: Can I say one thing? Every Walmart employee we have encountered in the last up-teen months indicated they don't get paid.

MR. SATZ: He said he called.

MR. POLAY: I know. I am in shock.

THE COURT: I thought they paid.

MR. WILLIAMS: They pay five or three days.

THE COURT: I think I'll have him re-call and reconfirm when he comes in this afternoon.

JUDICIAL ASSISTANT PAM COE: I'll line up the next.

Keeping five?

THE COURT: Yes.

(Enter venire. Sheila Jonace through Scott McKittrick.)

THE COURT: Morning, ladies and gentlemen.

VENIRE: Good morning.

THE COURT: We've gone through close to 400 people the last couple of weeks.

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You're wondering how long you'll be here.

First of all, I'm Paul Backman.

I am one of your judges here in the 17th Judicial Circuit.

What we are, what I'm telling everyone is our anticipated outside date to the finish is before Thanksgiving.

Now that doesn't mean it will end then.

It may be much sooner.

I would rather be long on my date than short on my date. What happens then is you get very upset with me.

They were pulling jurors besides you guys that came up for Judge Bailey. Remember that? His is going like six months. Maybe longer.

On a totally different case that has no involvement with the accused in this case, the rest of us just came out of a 22-month, 3-day trial. This is like a walk in the park for us.

We recognize, all of us, that people have conflicts in their everyday lives.

We understand that.

I have an entire list of conflicts that, based upon experience, have come up.

These conflicts I'll read what I anticipate

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will cover everything. And we will discuss them.

First of all, does anybody have any difficulty understanding and speaking the English language?

Front row?

Second row?

Third row?

Mr. McKittrick, in our special seat?

DONEL GEORGES: My strong language might be, I'm not sure. But my strong language --

THE COURT: Native language?

DONEL GEORGES: Yes.

THE COURT: Creole?

DONEL GEORGES: Yes.

THE COURT: Speak English? Understand English?

Your accent is fine.

But I can't answer the question in terms of what your understanding and what your abilities to communicate are.

Only you can.

A lot of people have a native language other than English.

Do you think that would interfere with your

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being with us?

DONEL GEORGES: That's my --

THE COURT: You're Mr. Georges?

DONEL GEORGES: Yes. That's my concern.

THE COURT: Stick around a bit and see how it works. Good enough?

Some of these conflicts may play in.

All right. If you are a full-time student and being with us would interfere with your education, we don't want to do that. We don't want to interfere.

If you are a primary caregiver to a parent, a grandparent, a child or part of your professional responsibilities, we don't want to interfere, unless you tell us that, you know, your care, your care giving during the day own't be interrupted.

If you are unemployed, actively looking for work, we don't want to interfere with your financial well being.

If you have a prepaid vacation or you travel for work that cannot otherwise be rescheduled, that's only on the work, please let me know. There are many prepaid travel plans that people have that fall within certain

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days that we might not be in session. This is as good a time to tell you the anticipated schedule would be Tuesday, Wednesday, Thursday, Friday.

I like to start by 9:30. I like to work until 5:00, 5:30.

I understand there are childcare issues.

I'll address that in a minute.

I have told every jury I have ever had over 35 years I was 14 and-a-half when I became a judge. That's why I look so young. .

Lawyers have to laugh. You don't.

You know, if the jury only wants to work until 2 o'clock every day, fine with all of us. Plan on being here through Easter.

Every hour we don' work, we have to make up.

I want everybody to get back to their every-day, normal lives as quickly as possible.

We understand the time frame involved.

That's the anticipated schedule of working.

Mondays, we won't be in trial.

If we're still in trial by Veteran's Day, that's a Monday holiday day, Tuesday we won't be in session, either. That's when I have to

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do my other work.

If you have child care issues, arrangements can't be made for the pick-up of your children until 5:00, 5:30, 6 o'clock, or have somebody pick them up, we don't want to interfere with that. We don't want child care to be a financial burden on you.

If you have medical issues you believe will interfere with your ability to participate with us, I won't ask you what that medical condition is. I'll ask you whether or not you in your own mind believe it would interfere with your participation.

We have had many individuals that have sat on the jury who were diabetics.

When your blood sugar runs low, you need to eat or take insulin, we stop.

So that can be done.

If you have back issues, need to stretch from time to time, that's never a problem.

You can do that right in the middle of trial, standing where you are and stretching if you need to.

If you need constant bathroom breaks, fine.

If you are a commissioned employee or a

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base-pay commissioned employee, and it will interfere with your financial well being, we don't want anybody out on the street because of the trial.

If you are a full-time employee -- that's why you were asked to call your employers to find out their policy on jury service. Some are five days, three days, some ten days. Obviously, if the trial goes beyond that, which it will, you won't get paid for that extra time.

I know that is financially difficult. We don't want to interfere.

Many employers pay for every single day you're here.

However, if you are in a ten-hour work day and your employer will only pay you for eight hours a day, and that two hours will interfere with your bottom line, we don't want to interfere.

Everything I am telling you is based upon lots and lots of experience, going through these processes in the past.

Anyone over 70?

Okay.

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I was going to tell you if you are over 70, it is your choice whether you want to serve or not.

We will start with Ms. Jonace.

SHEILA JONACE: Child care.

I pick up my child from school every day.

He gets off at 2:00. They are able to hold him until 5:00. Normally, I get off work at 4:00 and pick him up.

THE COURT: Where do you pick him up?

SHEILA JONACE: He goes to school in Broward, West Miramar.

I work in Coral Gables.

THE COURT: From the courthouse, you're going back in the, if I worked until 4:30, you won't get back to Miramar by 5:00.

SHEILA JONACE: I was a little late just coming here. Traffic is horrible.

THE COURT: Ms. Bolboa?

YHAZMIRA BOLBOA: Yes.

I am in the middle of starting a new job on Monday.

I called in. They said because I'm not in the company yet, they won't pay.

HANNON TIM KEE: No problem.

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THE COURT: Do you work?

HANNON TIM KEE: Yes. For Broward Sheriff's Office.

THE COURT: Are you certified?

HANNON TIM KEE: I'm a dispatcher.

PRISCILLA SENIOR: I have a ,edoa; ossie.

THE COURT: Do you think that will interfere with your ability to participate?

PRISCILLA SENIOR: Yes.

THE COURT: Ms. Davis?

GLORIA DAVIS: Two. My job only pays five days.

THE COURT: No need to go to the second.

Mr. Baker?

JUSTIN BAKER: I'm a full-time student at Broward College, studying physical therapy.

JAIANNA SEABORNE: I'm a solo practioner defense attorney.

THE COURT: Here in Broward?

JAIANNA SEABORNE: Broward, Miami and Palm Beach. Criminal defense and personal injury.

THE COURT: Do you know any of these guys?

JAIANNA SEABORNE: I have seen them around.

THE COURT: At the State's table?

JAIANNA SEABORNE: I'm not sure. I think I

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have seen him.

I have had some cases in Broward.

THE COURT: Not in front of me.

JAIANNA SEABORNE: No.

PEDRO BRULL: My employer won't pay for more than five days.

LEE HUNTLEY: I am a business owner. Insurance.

THE COURT: Employees?

LEE HUNTLEY: Do we have employees? It is a family business.

We have two employees.

Mom and sister. I do homeowners.

THE COURT: Who do you write for?

LEE HUNTLEY: Like company wise?

THE COURT: Yes.

LEE HUNTLEY: Personal property. Heritage.

THE COURT: All of them?

LEE HUNTLEY: Federated.

THE COURT: The company would keep running if you were here, yes?

I'm only asking questions.

LEE HUNTLEY: Yes.

THE COURT: Remember, it is not indicative you get through this process that you will be

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on the jury. We have two more processes we have to go through.

One will be this is afternoon for those of you that get through this cut.

After that, we will explain what goes on.

Ms. Vatel?

NATHALIE VATEL: First, I tried contacting my employer.

I don't know how many days.

I work for Allura.

Also, I go to school part time.

THE COURT: During the day?

NATHALIE VATEL: Evening.

THE COURT: What are you studying?

NATHALIE VATEL: Nursing.

THE COURT: Putting the work asside for a minute, if we're out of here between 5:00, 5:30, and of course you're getting paid for your employment, if that's the case, would that interfere with your education?

NATHALIE VATEL: It may.

I start class at 5:00 p.m. If it is that late, I won't get to class on time.

THE COURT: Mr. Greenhouse?

CHRISTINE GREENHOUSE: Medical issues.

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THE COURT: Think those would interfere?

CHRISTINE GREENHOUSE: Absolutely.

HARUMI YAZAWA: I have a child I have to drop off, pick up and mother I take care of at home. School starts at 8:00. Then she gets out at 2:00.

THE COURT: You have no way of taking care of her after that?

HARUMI YAZAWA: Usually I'm the one. She's just with me.

RICHARD MOLASKY: I am self-employed. I fix windows.

THE COURT: Self-employed.

Mr. Georges?

DONEL GEORGES: That was my concern. Work. Language, that strong accent.

THE COURT: Ms. Alejo?

YHELITSA ALEJO: My company only pays ten days. I work for Linder.

ELISHA DAVID CONWAY: My job only pays for five days.

NICHOLE NODA: Full-time student. Nova. I'm a freshman.

RICHARD MARTINEZ: Elderly care. Parents, during the day.

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THE COURT: Do you work.

RICHARD MARTINEZ: Retired.

WILLIAM FRANKLIN: I can be a juror.

THE COURT: Do you work?

WILLIAM FRANKLIN: No.

THE COURT: Retired?

WILLIAM FRANKLIN: Yes.

THE COURT: How's retirement treating you?

WILLIAM FRANKLIN: Great.

THE COURT: I should look forward to it.

rRICHARD RUIZ: Employer only pays five days.

CHRISTIAN LISENA: I'm salary plus commission. Summons for federal jury duty next month, if that matters.

THE COURT: Federal judges trump me.

That wouldn't have been an issue.

MICHAEL RIGGIO: No issues,

THE COURT: Do you work?

Yes. Bridgestone, as a service advisor. They will pay as long as I'm here.

BARBARA VARGAS: I am self-employed. I work from home. My company is VQ Mining Electric.

So I can probably come and work. But I

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have a helper.

He helps me a lot. But I cannot abuse him. If I really have to come here, I have to work in the night.

I sell to Europe.

THE COURT: And during breaks, during lunch.

BARBARA VARGAS: If you are short of people, I can sacrifice myself.

THE COURT: If you are selling to Europe, you work at a different time frame because of their hours.

BARBARA VARGAS: Just wherever it is. I mine, make part time.

THE COURT: Mr. Goldberg?

HOWARD GOLDBERG: I am a commissioned sales person.

SCOTT MCKITTRICK: Medical issue.

THE COURT: Think that will interfere?

SCOTT MCKITTRICK: Yes.

THE COURT: If you guys would follow Steve a moment, we will have information for you in just a minute.

(Exit venire.)

THE COURT: Ready?

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51, Jonace, is gone.
52, Balboa, gone.
53, Tim Kee, is okay.
54, Senior, is gone.
55, Davis.
56, Baker.
57, Seaborne.
58, Brull.
All gone.
MR. POLAY: Why is Seaborne gone?
THE COURT: I don't know. That's our attorney. I had a questionmark.
Leave her for the time being.
MR. WILLIAMS: Yes.
MR. POLAY: Yes.
THE COURT: She is self-employed, though.
She said she is self-employed.
MR. WILLIAMS: Didn't say no work, no pay.
MR. SATZ: We can ask her.
THE COURT: Bringing her back.
59, Huntley, is okay.
60, Vatel.
61, Greenhouse.
62, Yazawa.
63, Molasky.

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64, Georges.

65, Alejo.

All gone?

MR. POLAY: Correct.

MR. SATZ: Yes.

THE COURT: 66, Conway.

67, Noda.

68, Martinez, are all gone.

MR. SATZ: Yes.

MR. POLAY: Yes.

THE COURT: Franklin, is okay. 69.

Ruiz, 70 and Lisena, 71, all gone.

MR. WILLIAMS: Gone.

MR. POLAY: Correct.

MR. SATZ: Correct.

THE COURT: 72, Riggio, is okay.

Vargas, 73; 74, Goldberg; 75, McKittrick, I show gone.

MR. POLAY: Correct.

MR. SATZ: Correct.

THE COURT: I show we're bringing back five.

Elaine Dara, number 27, is Judge Kollra's deputy.

She will be on your list tomorrow.

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(Enter venire.)

THE COURT: Good morning.

I guess closer to lunch, you become more enthusiastic.

I was going to bring you in, in the afternoon. Decided, based upon the way we have been going, I would rather you come in now. Many of you will get to go home after, after this.

Some of you will have to come back at 2 o'clock this afternoon, because of the way this process goes.

Let me first introduce myself. I'm Paul Backman. I am one of your judges here in the 17th Judicial Circuit.

Let's me tell you why you're here.

We're here, looking for a jury for a proceeding that we anticipates, at the outside, will go until Thanksgiving. May end prior to that. I would rather you be happy with me because it is prior than give you a date and find out you then have to keep going. Sometimes that happens.

I think our time frame is good enough.

I know you are sitting there, saying that's

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a long trial. Remember this morning when you were there, they were calling out jurors for Judge Bailey? That's at least a six-month trial.

On a case separate than this, that doesn't involve the accused here, the rest of us came out of a 22-month, 3-day trial.

We didn't loss one juror during that entire period of time. They recognzed theirs responsibilities and how important it is.

However, we all know that everybody has conflicts in their daily lives. Not all conflicts create an issue that interfers with your ability to serve.

There are many issues that arise in individuals that we believe would interfere with your ability to participate.

I'll go through what is think is a very oomprehensive list of not excuses but serious conflicts that could have a significant impact on your life.

First of all -- and I'll go row by row, -- is there anybody that has any difficulty understanding and speaking the English language?

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Front row? Row by row.

Mr. Mijovski, native language is?

IVANCO MIJOVSKI: Macedonia language.

But I understand good. But some of the difficult words maybe I cannot understand.

THE COURT: If something were said and you didn't understand it, any problem raising your hand?

Did you vote in the name change?

IVANCO MIJOVSKI: Not yet.

THE COURT: Have you taken a position?

IVANCO MIJOVSKI: Yes.

THE COURT: Anyone else in the front row?

LIDIA RODRIGUEZ: I don't understand.

THE COURT: Speak English.

LIDIA RODRIGUEZ: No.

THE COURT: A little?

LIDIA RODRIGUEZ: No.

THE COURT: Mr. Oraa?

MARCIANO ORAA: Yes, sir.

THE COURT: Native language?

MARCIANO ORAA: A little English.

THE COURT: Anyone else in the front row?

Second row?

Third row.

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SARA ESCOBAR PATINO: Spanish.

I have understand it.

I can speak. The same thing.

Maybe I can't understand some terms. I don't know.

THE COURT: Would you have any difficulty saying can you repeat it, explain it?

SARA ESCOBAR PATINO: No, I don't think so. Just in case because sometimes I maybe no, understand.

THE COURT: Anyone else in the back row?

I will go through the list and talk with each of you.

If I get your name wrong, correct me. I don't do it intentionally.

If you are a full-time student and this trial would interfere with your education, we don't want to interfere with that. You need to let us know.

If you are a primary care giver to a parent, grandparent, child or it is part of your professional responsibilities, if you believe it will interfere with your ability to participate, let us know.

If you have a pre-paid vacation or you

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travel for work, please let us know. It is very possible your date may coincide with dates we may not be in session.

Let me tell you what I anticipate our schedule would be,. Makes it easier with the following questions.

I like to work around I anticipate we work Tuesdays, Wednesdays, Thursdays, Fridays. How long on a Friday or if a Friday will depend where we are on a Thursday.

I like to start by 9:30 in the morning and work until 5:00, 5:30.

That's where we have to have the discussion on child care.

The question on that is whether or not you can make alternative arrangements for the pick-up of your children that will not result in any financial hardship.

If you're unemployed and actively looking for a job, we don't want to interfere with your ability to get one.

If you work on commission, or if you're a base salary plus commission and that will interfere with your financial bottom line, we don't want to do that.

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If you are a full-time employee -- I know you have been asked to call your employers, find out what their policies are. Some employers will pay three days, five days, ten days.

I can tell you this trial is going longer than that.

You need to make sure your employer, if they pay, will pay for every day you're here.

We have experienced that individuals sometimes work a ten-hour day but will only get compensated for an eight-hour day.

We don't want to interfere with any loss of income unless you decide it will not be critically important to your financial bottom line.

If you have medical issues -- and I won't probe into medical issues you may have. This will be predicated on your own decision.

But if you have medical issues that you believe will interfere with your ability to participate, you need to let us know.

Diabetics, people with back issues, people that need constant bathroom breaks.

If you are diabetic, your blood sugar

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drops, you need to eat or need insulin, we stop.

If you have back issues and you need to stretch, not a problem.

Just stand and stretch where you are. We will keep going.

If you need constant bathroom breaks, let us know. We will accommodate that.

If you are 70 and above, serving on a jury becomes your discretion. 70 and above, you have an automatic excuse, unless you chose you want to participate. I can see I have no one that falls into that category. If you do, let me know.

Any problems?

ISABEL MOREJON: I work on commission. Self-employed.

THE COURT: Mr. Mijovski?

IVANCO MIJOVSKI: Full-time pediatric associate. Policy is five days only pay.

THE COURT: Are you a doctor?

IVANCO MIJOVSKI: No, work in the facility.

THE COURT: How many offices do they have?

IVANCO MIJOVSKI: Five.

We're busy.

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Just opened one week ago Royal Palm. Next month, Parkland.

THE COURT: Ms. Guagenti?

CHRISTINE GUAGENTI: I don't have a problem.

I am not sure of my employer's policy.

They are out at a meeting .

THE COURT: Who do you work for.

CHRISTINE GUAGENTI: United Surgical Partners, international.

THE COURT: They will call you back or text you?

CHRISTINE GUAGENTI: Yes.

THE COURT: When you get the answer, let me know.

Ms. Tantipathananandh?

PANIDA TANTIPATHANANANDH: I have a vacation at the end of the month. I work a two-hour shift.

THE COURT: Do you know what the work policy is on employment?

PANIDA TANTIPATHANANANDH: I get paid for eight on the days I'm here.

THE COURT: You need the rest of that?

PANIDA TANTIPATHANANANDH: Yes.

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THE COURT: Where were you going on the trip?

PANIDA TANTIPATHANANANDH: Cuba.

THE COURT: First time?

PANIDA TANTIPATHANANANDH: Yes.

THE COURT: I don't need to know that.

I am just very nosey.

THE COURT: Mr. Lancelot? Mr. Levy?

LANCELOT ST. PATRICK LEVY: I only get paid for three days.

THE COURT: Ms. Days?

CLARE DAYS: Pre-paid vacation October through the 21st. Halloween Horror Nights. Eight-year-old and my husband. The 19th through the 21st. The 2nd is not too much. He will get out at 2:00. I can probably alternate some type of pick up, as far as getting out of school. He doesn't go to aftercare. I have to arrange his pick up.

THE COURT: Think you would be able to do that?

CLARE DAYS: Possibly.

THE COURT: That's a scary word for a lawyer.

CLARE DAYS: Yes.

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THE COURT: Let us know if it becomes problematic.

CLARE DAYS: I will.

MARIO CARTAYA: Good morning. A couple of issues, Your Honor.

Number 1, I'm an architects for the new courthouse.

THE COURT: It is your fault.

MARIO CARTAYA: It is all my fault. We are remodeling this area.

Construction of the parking garage is about to start. It is a very busy time for us in the office. And I'm the owner.

I am the architect of record.

THE COURT: Another issue?

MARIO CARTAYA: That's the number one issue.

Two is I have a lymphoma survivor. I am being re-evaluated right now as we speak for what could be a re-onset.

THE COURT: I hope not.

MARIO CARTAYA: I hope not either.

THE COURT: Ms. Rodriguez?

I'm sorry Ms. Marte?

SERENA MARTE: I work part time. The

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situation of getting paid is one.

I don't have a car.

THE COURT: That's all you needed.

TATIANA LOZAMA: My employer will only pay, it is a family business. I run the office. Both of the partners, my dad and vice president are in Spain for two weeks.

All he said is let them know that. Today the office is closed because I'm here.

THE COURT: Every date we are here, you're away, the office is closed?

TATIANA LOZAMA: Yes. I am the only administrator.

THE COURT: Is he paying you for today?

TATIANA LOZAMA: Yes.

My phone rang 40 times already.

THE COURT: Ms. FLORENCE?

ESTHER FLORENCE: I work per diem.

THE COURT: Won't get paid?

ESTHER FLORENCE: No.

RAYMOND BALSYS: I'm currently unemployed. PS, looking for work. I also am a newly-recovering alcoholic. Started a program. I am seeing a therapist three times a week.

RICHARD SILVANI: Self-employed.

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If I don't work, I don't get paid.

THE COURT: Self-employed?

RICHARD SILVANI: Yes.

MICHAEL DEL GAUDIO: I have no issues.

I don't want to sit in here for two months, truthfully.

I work for the Department of Transportation.

THE COURT: We know they pay.

MICHAEL DEL GAUDIO: Yes.

HUGO CORDOVA: Childcare issues.

They get out at 230 .

THE COURT: You're the only one that picks them up?

HUGO CORDOVA: Yes.

THE COURT: No arrangements?

HUGO CORDOVA: No.

JANET LUGO: Currently unemployed, looking for a job. Florida floral delivery driver.

THE COURT: You need to work, I take it?

JANET LUGO: Yes.

DRAKE LAMONT: I have an exam coming up, which is contingent upon employment.

Service of seven exams to be a financial analyst. Scheduled for October 19th. I have

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also have the following week, I have to do a chec-up for my left ear which I had an operation on a few years ago.

Took me three months to get the appointment.

THE COURT: Ms. Morris?

BELITA MORRIS: No issues.

I work for Broward schools. Full time employee. Teacher. Science. 7th grade.

TONI VAUGHN: Dental hygenist.

Currently unemployed.

I also have a small trip on October 12th through the 14th.

PAUL KELLY: Bartender, Kelly's at Oakland and Federal.

THE COURT: You work on tips?

PAUL KELLY: Yes.

DAWN SMITH: I'm currently retired.

As of October 29th, I'll be the primary care giver for my two-month old grandson.

DENNIS PEREZ: Job only pays three days.

ERNST JOSEPH: I have two jobs.

One, three days. The other one, none.

CARLOS RAYO ESCOBAR: I have court in October and November in New York City.

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THE COURT: Definitely have to be there on those?

CARLOS RAYO ESCOBAR: Yes. I have child support on October 23rd.

Then visitation for November 20.

I work at night until 2 o'clock in the morning.

THE COURT: What do you do?

Do you get paid if you're here.

CARLOS RAYO ESCOBAR: I won't be here at 2 o'clock in the morning.

THE COURT: No.

CARLOS RAYO ESCOBAR: They won't pay me being here during the day. I don't work during the day.

THE COURT: Ms. Dara, Deputy?

ELAINE DARA: Can I pass?

THE COURT: Yes.

MR. POLAY: Sure, yes.

MR. WILLIAMS: Yes.

THE COURT: We figured.

Mr. Lyon?

JAMES LYON: I am an attorney and solo practitioner. Wills, trusts, probate, real estate, commercial transactions.

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THE COURT: If you're here, you're not getting paid?

JAMES LYON: Correct.

THE COURT: Okay.

Here is what I need from you guys.

Just follow Steve.

Many of you will get to go home.

Those that don't will have to be back at 2 o'clock this afternoon for round two.

(Exit venire.)

THE COURT: One, Morejon, is gone.

Two, Mijovski, is gone.

Three, Guagenti, stays.

MR. SATZ: She's checking.

THE COURT: For the moment, she's still heard.

4, gone.

MR. WILLIAMS: What did she do?

THE COURT: She offered to tell me. Knew she wasn't getting paid. I wasn't curious.

Number 5, language. Gone.

Levy, six, gone.

7, Days, still here.

8, Cartaya, question mark. Medical issues and architect.

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Gone?

MR. WILLIAMS: Yes.

THE COURT: 9, Rodriguez, language.

10, Marte, gone.

11, Lozama, gone.

12, Florence, gone.

13, Balys, gone.

14, Silvani, is gone.

15, Del Gaudio, stays.

16, Cordova, gone.

17, Lugo, gone.

18, LaMont, gone.

19, Escobar, gone.

20, Morris, is staying.

21, Vaughan is gone.

22, Kelly; 23, Smith; 24, Perez; 25, Joseph are all gone.

26, Rayo Escobar, gone.

Dara is gone.

Our-self employed attorney is gone?

MR. WILLIAMS: Yes.

THE COURT: We got four.

THE COURT: Go to lunch.

(Recess had.)

(Afternoon session begins.)

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THE COURT: Let's bring Ms. Days in.

(Enter Clare Days.

THE COURT: You did checking around?

CLARE DAYS: Yes. My husband was supposed to be changing his shift to do nights. Wouldn't have been a problem. I called him on break.

He said he no longer, his boss doesn't need him to do that anymore. He's a truck driver.

He's on call. He said yes, he will keep his schedule because of that reason.

THE COURT: Any questions?

MR. SATZ: No.

MR. POLAY: No, sir.

THE COURT: All right. We will give you your card back. Thank you for checking and being with us for the time you were. We appreciate it. Have a good day.

CLARE DAYS: No problem.

Thank you.

(Exit Clare Days.)

THE COURT: So we have 1 through 22.

(Enter venire.)

THE COURT: Okay.

First off, I know a couple of you were

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waiting for information from your job, such as Mr. Silverstein.

Did you get any information?

CARL SILVERSTEIN: No.

THE COURT: Still waiting?

CARL SILVERSTEIN: Yes. It may be a few days. I don't know.

THE COURT: That's okay. If you get through today, you don't need to come back until Tuesday morning.

You have time to let us know whatever happens. That's not a problem.

Who else was making a call?

Ms. Fagan?

DIANE FAGAN: They will only cover two weeks.

THE COURT: We will give you your card back.

You can go to the jury room. They will process you out. Thank you so much for your participation and willingness to serve?

THE COURT: Anybody else making a phone call?

CHELSEA BEAR: Yes.

Yes, they said only five days.

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THE COURT: Same thing.

Thank you.

CHELSEA BEAR: Okay.

CHRISTINE GUAGENTI: My employer didn't get back to me yet.

THE COURT: Okay. Instead of having you guys come back either tomorrow or Monday to do what I'll do, because of how small the group is, I'll do the two additional stages at one time.

I'll do one now.

Depending upon how many go from there, I'll do the next stage.

I want to read you a factual scenario that deals with this case.

I don't believe I told you previously, well, let me read this.

Then you will see.

The reason you're here as potential jurors is to determine the appropriate sentence to be imposed upon the defendant for his conviction for murder in the first degree of Willie Absolu and his conviction for murder in the first degree of Christina Delarosa.

The crimes in this case took place during

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the early morning hours of March 11, 2002, at the Waffle House restaurant, located at 4689 SW 148th Avenue in Davie, Florida.

In a previous proceeding, the defendant was found guilty and convicted of murder in the first degree of Willie Absolu as to Count I of the indictment; murder in the first degree of Christina Delarosa as to Count II of the indictment; attempted first degree pre-meditated murder of Barbara Nunn as to Count III of the indictment; attempted felony murder of Barbara Nunn as to count IV of the indictment; armed kidnapping of Willie Absolu as to Count V of the indictment; armed kidnapping of Christina Delarosa as to Count VI of the indictment; armed kidnapping of Barbara Nunn as to Count VII of the indictment. ; armed robbery of Christina Delarosa as to Count VIII of the indictment And armed robbery of Barbara Nunn as to Count IX of the indictment.

The only issue that will be presented to you, as jurors, is to determine, is to determine the appropriate sentence to be imposed upon the defendant only on his convictions for murder in the first degree of

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Willie Absolu and his conviction for murder in the first degree of Christina Delarosa.

Now, as far as that proceeding, the crimes that I called out and indicated to you, those have already been determined.

The question of whether the defendant is guilty or not guilty is in no way part of this process.

And you have to consider that.

I think you know, for murder in the first degree, there are only two possible sentences in the state of Florida.

One is life Florida State Prison with no possibility of parole, life meaning life; and death.

That's a separate issue that we will talk about.

What I want to ask, at this point, and again, I'll attempt to go through my, well, does anybody have any recollection of that case?

LOUISA WRIGHT: Yes.

I am very familiar.

THE COURT: I don't want you to say a word.

PAUL SHOCKLEY: I might.

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THE COURT: How about in the second row?

How about the third row?

MICHAEL DEL GAUDIO: This was 2002?

THE COURT: Yes.

Steve -- nobody else has any recollection?

COURTNEY HAMBRIGHT: Vaguely familiar. I don't know any details.

THE COURT: Anyone that thinks they know anything about it, raise your hand for me.

Okay. If you would take those three individuals into the jury room for me, for a minute.

(Exit said venire.)

THE COURT: Mr. Silverstein, do you know anything about the case?

CARL SILVERSTEIN: No. I was confusing it with there was a shooting on Broward Boulevard at a Waffle House.

It is not the same. The date was --

THE COURT: That's okay.

That's why we asked the question.

CARL SILVERSTEIN: Aren't you the one that determines the sentence, rather than the jury?

THE COURT: It changed.

I'll explain all of that afterwards.

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Ms. Muth?

STACIE MUTH: No.

THE COURT: Mr. Cooper?

KENJAHSAH COOPER: No.

THE COURT: Mr. Swinger Vargas?

GERALD SWINGER VARGAS: No.

THE COURT: Mr. Casear?

MCCARLOS CAESAR: No.

THE COURT: Mr. Evans?

ROMAR EVANS PEDRO: No.

THE COURT: Ms. Brouwer?

PATRICIA BROUWER: No.

THE COURT: Mr. Gervolino?

CHARLES GERVOLINO: No.

THE COURT: Courtney Hambright?

COURTNEY HAMBRIGHT: No.

THE COURT: Mr. Lang is not here.

Ms. Tim Kee?

SHANNON TIM KEE: No.

THE COURT: Ms. SEABORNE?

JAIANNA SEABORNE: No.

THE COURT: Ms. Huntley?

LEE HUNTLEY: No.

THE COURT: Mr. Franklin?

WILLIAM FRANKLIN: No.

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THE COURT: Mr. Riggio?

MICHAEL RIGGIO: No.

THE COURT: Ms. Guagenti?

CHRISTINE GUAGENTI: No.

THE COURT: Ms. Morris?

BELITA MORRIS: No.

THE COURT: If you guys, would you follow Rick? He will take you outside for a few minutes.

Then we want to talk about a few things.

We'll be right back to you.

(Exit said venire.)

MR. POLAY: Ms. Hambright indicated she had a vague recollection.

I ask we bring her into the back, question her as well.

THE COURT: Let's bring her back. I'll ask her now.

MR. SATZ: You asked. She said no or vague.

THE COURT: I just asked her directly.

MR. POLAY: I would like to ask her some questions about her vague recollection.

THE COURT: Next time.

MR. POLAY: That would be in front of the

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whole jury, Judge.

I think that's a mistake.

THE COURT: Can I have Ms. Hambright?

(Enter Courtney Hambright.)

THE COURT: I have a quick question for you.

COURTNEY HAMBRIGHT: Sure.

THE COURT: I realized, after I asked you the question individually, when I asked it collectively, you said I have a vague recollection.

COURTNEY HAMBRIGHT: I heard about things in Waffle houses. I think there are multiple crimes there.

I don't know -- I don't know the specifics of the case.

I have heard two different things about Waffle Houses.

THE COURT: Let me ask you this.

If you become a part of this entire process, for the proceeding, if any of the testimony jogged your memory of, oh, now I remember this, first off, would you tell us?

COURTNEY HAMBRIGHT: Yes.

THE COURT: Secondly, you understand any of

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the facts that you may think you heard or know are not what is utilized during the course of this proceeding. It is only what you actually hear in the courtroom.

COURTNEY HAMBRIGHT: Right.

THE COURT: You can put all of that aside?

COURTNEY HAMBRIGHT: Yes.

I think it is from generally reading and watching the news.

I think multiple thing that is happen in Waffle Houses.

THE COURT: This is specifically the one at Davie and --

MR. SATZ: 4689 SW 148th Avenue.

THE COURT: By I75. All the way out there. Been a long time ago.

Questions?

MR. SATZ: No.

MR. POLAY: Do you remember reading anything recently in the paper about this?

COURTNEY HAMBRIGHT: No. No:00]. I don't really read the Sun Sentinel too much.

MR. POLAY: That's fine.

COURTNEY HAMBRIGHT: I have one other question.

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THE COURT: Ask it now.

COURTNEY HAMBRIGHT: I did do a little math over the lunch break in terms of my salary. One thing that I wanted to say is that, like, the base teacher salary is like 43 thousand dollars a year.

THE COURT: Totally underpaid.

COURTNEY HAMBRIGHT: Right. Based upon performance, we get scaled salaries. I also get a bonus from the State for my rating as a teacher. And I get bonuses for my students that take AP classes and Cambridge Math classes.

In a way, it is like a commission. I would say last year, my salary, based upon that, would have been increased about 13 thousand dollars, based upon my math.

THE COURT: I'll take a wild guess, as a teacher, that's income critical to your bottom line?

COURTNEY HAMBRIGHT: It is about a fifth of my salary. And part of that is based upon classroom instruction. Part of the model they use for evaluating us is based upon teacher-to-teacher leadership in the school. I am

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concerned being out of the classroom five, six weeks from the first to the second quarter will make it so I won't be able to instruct. And I won't be able to be an effective teacher-to-teacher leader.

I am concerned about the impact it will have on my school year, my salary.

MR. SATZ: Aren't all teachers under that same thing?

COURTNEY HAMBRIGHT: Yes.

MR. SATZ: Every school teacher would have the same issue you have.

COURTNEY HAMBRIGHT: But I get it. I am highly effective. I get it like every year. I think there was one year. I got it last year.

I get the additional income.

If I were out of the classroom for five weeks for my AP kids, I don't get to teach them poetry, how to write essays.

It is, in a sense, a commission of sort.

I don't know.

MR. WILLIAMS: What percentage of the teachers get that extra bonuses.

COURTNEY HAMBRIGHT: Varies from year to year.

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I believe that in 2017, 2018 in Broward County, it was about 18 percent.

MR. SATZ: All school teachers are eligible for that.

COURTNEY HAMBRIGHT: Yes.

MR. WILLIAMS: Only 18 percent achieve it.

COURTNEY HAMBRIGHT: Yes. I work around the clock.

THE COURT: Any other questions?

MR. WILLIAMS: No.

THE COURT: For the moment, you can rejoin the others.

(Exit Ms. Hambright.)

THE COURT: We found our missing juror.

I'll do him over separately?

MR. POLAY: Send him home. Ridiculous.

Bring him back Monday, with the other jurors.

THE COURT: He was at the wrong courtroom. That's all.

THE COURT: Bring in Ms. Wright.

(Enter Louisa Wright.)

THE COURT: Okay, Ms. Wright, tell us what you know.

LOUISA WRIGHT: I used to be a horse

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trainer. Worked right across from the Waffle House. That used to be one of the stables that I used to train the horses and some other people that used to be there.

I was familiar with Delarosa.

I used to go into the Waffle House and eat. I was also familiar at that time when that happened.

THE COURT: You understand the determination of whether or not the defendant committed these murders is already a done deal. My question, before I let the lawyers at you, is whether or not that relationship that you had with Christina Delarosa would impact your ability to listen to what transpires, forget that, whether you can be fair and impartial in terms of being a member of this and making an ultimate determination.

LOUISA WRIGHT: It was a horrific situation.

Everybody in the surrounding areas suffered from it.

THE COURT: Will it interfere with your ability to be fair and impartial.

LOUISA WRIGHT: It just might. It just

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might .

THE COURT: The only one that can tell me is you.

LOUISA WRIGHT: I think so.

MR. SATZ: No questions.

MR. POLAY: Nothing.

THE COURT: We will give you back your card and send you back to the jury room.

MR. POLAY: Thank you. I'm sorry.

THE COURT: Do not apologize. You have nothing to apologize for. And you're right, it was brutal.

But I want to thank you on behalf of all of us for you're participation.

It is truly appreciated you came down and were willing to serve.

LOUISA WRIGHT: Thank you.

Have a wonderful afternoon.

(Exit Louisa Wright.)

THE COURT: Next is Shockley.

(Enter Paul Shockley.)

THE COURT: All right, Mr. Shockley, tell us what you know.

PAUL SHOCKLEY: Well, I said it was my best recollection, it was at a Waffle House right

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off of 75 and I believe Sheridan. If it is what I'm thinking of, it was a continuation of something that happened across the state, they had done stuff at another place, killed people. Put people in the freezer.

Came over this way. Got involved.

I am getting old. But I do remember the Waffle House and the, apparently locking up some of the people in the freezer and killing some people.

You asked and --

THE COURT: No, listen, we want you to be able to open us and tell us. That's why we do it privately.

PAUL SHOCKLEY: I could be mixing up numerous crimes there. That's the extent of what I know about it.

MR. SATZ: You know the defendant has already been convicted?

PAUL SHOCKLEY: Yes.

MR. SATZ: You are not determining guilt. That's already been determined.

PAUL SHOCKLEY: I understand that. He asked if I heard about it. I had heard.

MR. SATZ: Your function, if you are

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selected to be on this jury, is to hear aggravating circumstances that are statutorily defined and mitigating circumstances that are established. And you are supposed to weigh them and vote on a sentence, whether it is life in prison without patrol or death. I mean you will hear the facts of what happened. And that's what you will consider, in addition, you know, to what the aggravating and mitigating circumstances may be.

So can you put aside what you think you remember about it?

PAUL SHOCKLEY: Put it aside.

Meaning what?

I already know he's guilty.

MR. SATZ: No. Consider that. You are not determining that.

PAUL SHOCKLEY: Right. Put aside what, though?

MR. SATZ: put aside what you, not that he has been found guilty; but put aside what you think you remember, heard about it, if it differs from what you hear.

You will make you decision on what you hear in this courtroom. The law from Judge Backman,

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facts from the witness stand and aggravating and mitigating circumstances. And you have to follow the law.

Can you put aside anything that happened outside of this courtroom and just base it on what happened in this courtroom?

PAUL SHOCKLEY: I guess.

MR. SATZ: And figure a sentence.

You are not determining guilt.

PAUL SHOCKLEY: I guess.

MR. SATZ: I know we all have a tendency, will you meet me? I guess. Okay. In a courtroom, it's either yes or no.

Do you feel you can be fair and impartial and base your sentence on what happens in this courtroom? Or have you made up your mind?

PAUL SHOCKLEY: No, that I'm not sure of.

MR. SATZ: Haven't made up your mind. Haven't heard anything.

PAUL SHOCKLEY: Right.

MR. SATZ: Would you agree to base your decisions, make up your mind, on what you hear in this courtroom?

PAUL SHOCKLEY: I guess I could.

MR. SATZ: Because the fact you heard the

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defendant has been found guilty, you are just considering the sentence.

Understand that?

PAUL SHOCKLEY: Yes.

MR. SATZ: Because if you were determining guilt, and you have heard facts that may be on may not be, that may be something.

But this is, you're making a determination as to the sentence.

PAUL SHOCKLEY: Yes.

MR. SATZ: And you haven't heard anything yet, whether, what aggravating factors there are, if any or what mitigating circumstances there are, if any.

Judge Backman will explain to you what your role is.

Right now, you're in a vacuum. No one told you what your function would be here.

We are trying to find out if you can be fair and impartial and listen to what happens in this courtroom, as far as the facts and the law.

Do you feel you can do that and be fair and impartial?

PAUL SHOCKLEY: I don't see why not.

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MR. SATZ: Thank you.

THE COURT: Do you have any questions?

MR. POLAY: I have no questions.

THE COURT: Thank you.

You can join the group out there, for the moment.

PAUL SHOCKLEY: Thank you.

(Exit Paul Shockley.)

THE COURT: Next is Del Gaudio.

MR. SATZ: Judge, why don't you explain the procedure. This is different than guilt or innocence.

THE COURT: I understand that. That is part of what the preliminary instructions and Witt questions go to.

MR. SATZ: I understand.

THE COURT: Right now, it is just pre-trial publicity.

(Enter Michael Del Gaudio.)

THE COURT: You indicated you heard something about this case before?

MICHAEL DEL GAUDIO: A long time ago. Vaguely. We used to go to that Waffle House.

Only thing I remember from the news. Not in terms of I can tell you everything about it,

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no. I can't.

THE COURT: Have you seen anything recently with respect to it?

MICHAEL DEL GAUDIO: No.

THE COURT: You're not here to determine if the defendant is guilty or not guilty.

MICHAEL DEL GAUDIO: Right.

THE COURT: That's been established.

MICHAEL DEL GAUDIO: Right.

THE COURT: If during the course of the proceeding you would, you were to have your memory jogged with regard to what you may or may not remember, it was 16 years ago.

You understand only what you hear in this courtroom would go into the ultimate determination based upon criteria I'll lay out for you in a few moments.

Would anything you remember from that interfere with your ability to be fair and impartial in terms of participating?

MICHAEL DEL GAUDIO: I don't know what it is about or what it is. It wasn't -- ain't about the murder. Something else.

THE COURT: Sentencing.

MICHAEL DEL GAUDIO: I feel he should be

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killed. I feel they should put him in the electric chair.

If you take somebody's life, you deserve to lose your own.

That's my opinion.

THE COURT: You're entitled to it. There are people --

MICHAEL DEL GAUDIO: Regardless if I remember what it says and I remember something, that's my perspective on it.

THE COURT: There are people that take the same perspective from the other side of the spectrum that would never ever do it.

Would you ever consider, based upon aggravators and mitigators, would you ever, under any set of circumstances, consider a sentence of life for somebody convicted of murder in the first degree?

MICHAEL DEL GAUDIO: No.

THE COURT: No hesitation?

MICHAEL DEL GAUDIO: No.

THE COURT: If you are on a football field. You're firmly in that end zone?

MICHAEL DEL GAUDIO: Right.

THE COURT: Nobody will move you to the

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half yard line?

MICHAEL DEL GAUDIO: No.

That's my decision.

If somebody took somebody's life, yes.

MR. SATZ: No questions.

MR. POLAY: No questions.

THE COURT: All right. Tell you what, I appreciate all of that. I don't want you to read into what we'll do.

I'll give you your card back.

You can go to the jury room. They will process you out.

Thank you for being with us.

MICHAEL DEL GAUDIO: You're welcome.

MR. WILLIAMS: Are you related to Richy Del Gaudio?

MICHAEL DEL GAUDIO: Yes.

THE COURT: Who is that?

MR. WILLIAMS: I represented him.

(Exit Michael Del Gaudio.)

MR. SATZ: How about our defense lawyer --

THE COURT: She didn't know anything about the case. That group hasn't been death qualified.

MR. POLAY: We can deal with Mr. Shockley

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on the record.

THE COURT: Yes.

Go ahead.

MR. POLAY: I didn't question him because Mr. Satz said to him, I think it was three times, you have to answer yes or no.

He said I believe. I guess so. Those are not definitive answers.

MR. SATZ: I thought they were definitive or I would have continued asking him.

MR. WILLIAMS: A definite maybe.

THE COURT: We'll keep him for the moment.

MR. SATZ: What about Mr. Cooper?

THE COURT: What about him?

MR. WILLIAMS: He showed up.

Lang you're talking about.

DEPUTY: Lang is missing.

MR. SATZ: Might as well bring him in and ask him the questions.

(Enter Robert Lang.)

THE COURT: We missed you, Mr. Lang.

ROBERT LANG: I swear it was the 7th floor. I was up there.

THE COURT: Waiting.

ROBERT LANG: Right. Where is everybody?

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I talked to a few people and was directed to the right floor.

I apologize.

THE COURT: I know you work for Walmart. Did you discuss with them that they would actually pay you for the whole trial?

ROBERT LANG: Except for my days off, Sunday and Wednesday. Wednesdays, I wouldn't be getting paid.

Be working on Wednesdays.

MR. SATZ: That's his day off.

THE COURT: So the trial wouldn't interfere. You would be paid for Tuesday, Thursday and Friday. They will pay you.

ROBERT LANG: They pay me for the over days that I don't work.

MR. SATZ: That's what he's saying.

He will get paid.

THE COURT: Okay.

Let me tell you what I did with the whole group. And you're lucky.

You get it all by yourself.

Reason all of you are here is to determine the appropriate sentences to be imposed upon the defendant for his conviction for murder in

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the first degree of Willie Absolu and murder in the first degree of Christina Absolu.

Now, the crimes in this case took place was during the early morning hours of March 11, 2002, at the Waffle House restaurant, located at 4689 SW 148th Avenue in Davie, Florida.

In a previous proceeding, the defendant was found guilty and convicted of murder in the first degree of Willie Absolu as to Count I of the indictment; murder in the first degree of Christina Delarosa as to Count II of the indictment; attempted first degree pre-meditated murder of Barbara Nunn as to Count III of the indictment; attempted felony murder of Barbara Nunn as to count IV of the indictment; armed kidnapping of Willie Absolu as to Count V of the indictment; armed kidnapping of Christina Delarosa as to Count VI of the indictment; armed kidnapping of Barbara Nunn as to Count VII of the indictment. ; armed robbery of Christina Delarosa as to Count VIII of the indictment and armed robbery of Barbara Nunn as to Count IX of the indictment.

The only issues that you will be asked to determine is what a, what the appropriate

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sentence is that should be imposed upon the defendant for his conviction of murder in the first degree of Willie Absolu and his conviction for murder in the first degree of Christina Delarosa.

As I think I indicated, the issue of whether or not the defendant is guilty or not guilty has already been established. My question initially is do the facts of this case ring a bell, where it jogs your memory and you nip you know something about it?

ROBERT LANG: No.

THE COURT: Anyone?

MR. SATZ: No.

MR. POLAY: No, sir.

THE COURT: If you can join the other ones? They will be back here in a couple of seconds.

(Exit Robert Lang.)

THE COURT: All right. Ready?

Let's go.

(Enter venire.)

THE COURT: Mr. Swinger?

GERALD SWINGER VARGAS: I didn't realize this would start so soon.

I have plans from the 10th to the 14th. I

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am going to Illinois. Family trip.

THE COURT: Already paid for.

GERALD SWINGER VARGAS: Yes. Lasts Wednesday through Sunday.

I'll be okay the following Tuesday.

THE COURT: We will give you your card back. Have a good family trip.

GERALD SWINGER VARGAS: All right. Sorry.

(Exit Gerald Swinger Vargas.)

THE COURT: Ms. Seaborne?

JAIANNA SEABORNE: I am set for trial October 14th and 22nd.

And October 29th before Judge Cohen.

And set for trial November 13th.

I have a prepaid family vacation --

THE COURT: Anybody want to ask questions?

I understand.

Anybody want to ask any further questions?

MR. SATZ: I have no questions.

MR. WILLIAMS: No.

THE COURT: We will let you go.

You knew that already, didn't you.

JAIANNA SEABORNE: Kind of.

(Exit Jaianna Seaborne.)

THE COURT: Give her her card.

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Let me tell you, all right, this is the last thing that we'll do today.

This is the end as far as today is concerned.

In Florida, there are only two possibilities for the offense of murder in the first degree.

One is life without the possibility of parole. Life meaning life.

The other is death.

This is a case where the State of Florida is seeking the death penalty.

In order to understand how this process goes, I want to tell you it deals with what are known as aggravating factors and mitigating circumstances.

I want to give you a background and then go through the process employed.

Then I have three individual questions I'll ask the same one of each and every one of you.

Let me explain and define an aggravating factor.

It is a standard to guide the jury in making the choice between a sentencing decisions of life imprisonment, without the

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possibility of parole or death.

If it is a statutorily-enumerated circumstance that increases the gravity of crime or the harm to the victim.

In other words, the State is limited by statute and law to only certain aggravators they have the right to present based upon the facts of the case.

Remember the defendant has been convicted of these.

That's not an issue you consider in any way.

Now, a jury has to unanimously agree on each aggravating factor proven beyond a reasonable doubt before it may be considered by you in arriving at your final verdict.

What I'm reading to you right now is law. This is what you would hear during the course of the proceedings as well.

In order to consider the death penalty as a possible penalty, you must determine that at least one aggravating factor has been proven beyond a reasonable doubt. As I said, all aggravating factors have to not only be proven beyond a reasonable doubt but the jury has to

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find unanimously that it exists.

Now, the State has the burden to prove each aggravating factor beyond a reasonable doubt.

A reasonable doubt is not a mere, possible doubt; a speculative; imaginary; or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists.

On the other hand, if after carefully considering, comparing and weighing all of the evidence you do not have an abiding conviction that the aggravating factor exists or if having a conviction, it is one which is not stable, but one which wavers and vacillates, then the aggravating factor has not been proved beyond a reasonable doubt and you must not consider it in providing your verdict on the appropriate sentence to the Court.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, conflicts in the evidence or a lack of evidence.

If you have a reasonable doubt as to the existence of an aggravating factor, you must find it does not exist.

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However, if you have no reasonable doubt, you should find that the aggravating factor does exist.

Before moving on to the mitigating circumstances, I want to go through the process with you.

Now, when the evidence is presented, and all of this falls within the evidence that will be presented to the jury. And you find, or will find that before you can even consider the imposition of death, you have to make the following determinations. And this is all in writing. It is like taking a test.

You have to determine whether each aggravating factor is proven beyond a reasonable doubt.

Whether one or more aggravating factors exist beyond a reasonable doubt.

Whether the aggravating factors found to exist beyond a reasonable doubt are sufficient to justify the imposition of the death penalty. Whether mitigating circumstances, which, as I said, I'll define for you in just a moment, are proven by the greater weight of the evidence.

In other words, they just have to be found

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to exist.

Whether the aggravating factors outweigh the mitigating circumstances and whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.

Now, a mitigating circumstance you only start to determine if you find there is -- should you find sufficient aggravating factor or factors do not exist to justify a sentencing decision for the imposition of the death penalty -- I did that backwards.

Should you find sufficient aggravating factors do exist to justify a sentencing decision for the imposition of the death penalty, it will then be your duty to determine whether the aggravating factor or factors you unanimously find to have become proven beyond a reasonable doubt outweigh the mitigating circumstances that you find to have been established.

Unlike aggravating factors, you do not need to unanimously agree that a mitigating circumstance has been established.

A mitigating circumstance is not limited to

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the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant.

In other words, mitigating circumstances may include any aspect of the defendant's character, background or life or any circumstance of the offense that may reasonably may indicate that the death penalty is not the appropriate sentence in this case.

A mitigating circumstance need not be proven beyond a reasonable doubt by the defendant. A mitigating circumstance need only be proven by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance.

If you determine, by the greater weight of the evidence, that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion as to the sentence to be imposed.

I will read these collectively and ask each of you individually the same questions.

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I have explained there are only two possible penalties in the State of Florida for murder in the first degree.

One is life without the possibility of parole. The other is death.

This is a case the State of Florida is seeking the death penalty.

With that in mind, I have the following questions for you.

Do any of you have a firm opinion on the death penalty?

In other words, if a person is convicted of murder in the first degree, would any of you always vote for the death penalty with no consideration for a vote for life without the possibility of parole or, in the alternative, would any of you always vote for life with no consideration of a vote for the death penalty.

If none of you are adamantly opposed to or adamantly in favor of one sentence or another, would you be able to listen to any aggravating factors, mitigating circumstances, arguments of the attorneys and instructions given by me and be willing to consider both possible penalties before making a decision?

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Mr. Silverstein, would you vote for, for anybody convicted of murder in the first degree, would you always vote for death?

CARL SILVERSTEIN: Yes.

THE COURT: There are circumstances, in a death case, you would ever consider imposing a sentence of life?

CARL SILVERSTEIN: Possibly but hardly ever.

THE COURT: The question comes down to the third one I asked about whether or not you have the ability to listen to the aggravating factors. Aggravating factors have to be established by evidence.

Of course, you have heard no evidence.

If you find there are aggravators, listen to aggravating factors, mitigating circumstances, and you have no idea what those may be and how they may play into your decision, listen to the arguments of the lawyers, arguing their respective decisions, listen to the law I'm required to give you and consider both possible penalties before making a decision.

That's the ultimate question.

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Everybody has an opinion with respect to the death penalty. No one will say to you that the decisions you have to make are easy. But they have to be based on certain criteria.

Not a matter of just saying that oh, I don't like him; therefore I'll vote one way or another.

That's not what it is based upon.

In other words, can you listen to everything before you ultimately make a decision?

CARL SILVERSTEIN: I could.

Given the information you provided, I don't see where the choice is anything but pretty clear-cut in this case.

THE COURT: You wouldn't consider life?

CARL SILVERSTEIN: I would consider it. I would say my mind is probably 90 percent in favor of the death penalty at this point.

THE COURT: If the end zones are the ultimate in terms of always death, always life, am I getting you to the half-yard line? Or are you staying in the end zone.

CARL SILVERSTEIN: That's pretty generic.

THE COURT: Everything has to be generic

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because you don't know anything yet.

Other than the fact the defendant has already been convicted.

The sentencing in here is only on the two counts of murder.

CARL SILVERSTEIN: Then again I'm weighing death penalty versus life in prison without parole.

To me, given what I know about those two sentences, it is kind of a moot difference. In the case of a double homicide, first degree --

THE COURT: I get your idea.

Thank you.

Ms. Muth?

STACIE MUTH: Yes.

THE COURT: For a person convicted of murder in the first degree, would you always vote for death?

STACIE MUTH: No, sir.

THE COURT: Would you always vote for life?

STACIE MUTH: Probably.

THE COURT: Those are words that scare lawyers.

STACIE MUTH: I know.

Then I would say yes.

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THE COURT: You would not be able to listen to aggravating factors, mitigating circumstances, arguments of the lawyers, laws and consider both possible penalties before making a decision?

I know these are not easy questions.

STACIE MUTH: I don't think that I could.

THE COURT: There is another one of those words.

STACIE MUTH: No, sir.

THE COURT: Okay. No circumstances under which you would ever consider imposing a sentence of death or I should say making a decision with respect to that?

Now I'm asking it a different way.

STACIE MUTH: Right.

My first answer is to say no.

It is hard to answer so black and white. I know we have to.

THE COURT: Mr. Cooper, for a murder in the first degree, would you always vote death?

KENJAHSAH COOPER: No.

THE COURT: Would you always vote life?

KENJAHSAH COOPER: No.

THE COURT: Would you listen to aggravating

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factors, mitigating circumstances, arguments of the lawyers, the law that I give you and consider both possible penalties before making a decision?

KENJAHSAH COOPER: Yes, sir.

MCCARLOS CAESAR:

THE COURT: Mr. Caesar, would you always impose death for a person convicted of murder in the first degree?

MCCARLOS CAESAR: No.

THE COURT: Would you always impose life?

MCCARLOS CAESAR: Yes.

THE COURT: No circumstances you can think of you would ever believe the death penalty is appropriate?

MCCARLOS CAESAR: I'll listen.

I understand.

I won't vote for death.

THE COURT: No matter what?

MCCARLOS CAESAR: Always forgiving.

THE COURT: Mr. Evans, would you always impose death for a person convicted of murder in the first degree?

ROMAR EVANS PEDRO: No.

THE COURT: Would you always impose life?

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ROMAR EVANS PEDRO: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law that I give you and consider both possible penalties before making a decision?

ROMAR EVANS PEDRO: Yes.

THE COURT: Ms. Brouwer, would you always impose death for a person convicted of murder in the first degree?

PATRICIA REYNA BROUWER: No.

THE COURT: Always vote for life?

PATRICIA REYNA BROUWER: Yes.

THE COURT: No circumstances you can think of by which you would ever consider voting for death?

PATRICIA REYNA BROUWER: No.

THE COURT: Mr. Shockley, would you always impose death for a person convicted of murder in the first degree?

PAUL SHOCKLEY: Yes.

THE COURT: Any circumstances you can think of you would ever consider a life sentence?

PAUL SHOCKLEY: No.

THE COURT: You are stuck in the end zone?

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PAUL SHOCKLEY: Yes.

Stuck in my ways.

THE COURT: Everybody has an opinion.

You're entitled to it. No right or wrong answers.

Mr. Gervolino, would you always vote for death?

CHARLES GERVOLINO: It is a hard situation. My religion doesn't believe in that. Somebody takes somebody's life away, you are telling me he's guilty, I would say yes.

I was born and raised as a Catholic.

Hard to determine to get rid of somebody because of their mistakes.

THE COURT: The first two questions are the two extremes.

I'll only vote for death or life.

We are looking for individuals on the playing field.

Anyone that thinks an imposition or vote for the death penalty is easy, it is not. How many of you have ever been asked to do that before?

Exactly.

None.

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With everybody else I talked to, it was the same answer.

The question really becomes will you listen to aggravating factors, will you listen to mitigating circumstances, listen to arguments of the lawyers and their positions, listen to the law that I'm required to give you and consider both possible penalties before you make your decision?

CHARLES GERVOLINO: I probably can do that.

THE COURT: Another scary word.

CHARLES GERVOLINO: I would say yes.

I would say yes.

THE COURT: Ms. Hambright, would you always impose death for a person convicted of murder in the first degree?

COURTNEY HAMBRIGHT: No.

THE COURT: Always vote for life?

COURTNEY HAMBRIGHT: Yes.

THE COURT: Any circumstances you can conceive of that you would think a sentence of death is appropriate?

COURTNEY HAMBRIGHT: No.

THE COURT: Nothing? So you're in the opposite end zone.

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COURTNEY HAMBRIGHT: I don't think the death penalty should exist.

THE COURT: That's a political issue.

COURTNEY HAMBRIGHT: Yes.

THE COURT: Nothing at all would move you out of the end zone?

COURTNEY HAMBRIGHT: No.

THE COURT: Mr. Lang, would you always impose death for a person convicted of murder in the first degree?

ROBERT LANG: No.

THE COURT: Would you always impose life?

ROBERT LANG: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law that I give you and consider both possible penalties before making a decision?

ROBERT LANG: Yes.

Ms. Tim Kee, would you always impose death for a person convicted of murder in the first degree?

SHANNON TIM KEE: No.

THE COURT: Always vote for life?

SHANNON TIM KEE: No.

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THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law that I give you and consider both possible penalties before making a decision?

SHANNON TIM KEE: Yes.

THE COURT: Ms. Huntley, for a conviction of murder in the first degree, would you always vote for death?

LEE HUNTLEY: No.

THE COURT: Always vote for life?

LEE HUNTLEY: Yes.

THE COURT: No circumstances you can conceive you would consider a sentence of death?

LEE HUNTLEY: No.

THE COURT: Can't budge you out of that end zone?

LEE HUNTLEY: No.

THE COURT: Mr. Franklin, would you always impose death for a person convicted of murder in the first degree?

WILLIAM FRANKLIN: No.

THE COURT: Always vote for life?

WILLIAM FRANKLIN: No.

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THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law that I give you and consider both possible penalties before making a decision?

WILLIAM FRANKLIN: Yes.

THE COURT: Mr. Riggio, would you always impose death for a person convicted of murder in the first degree?

MICHAEL RIGGIO: No.

THE COURT: Would you always impose life?

MICHAEL RIGGIO: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law that I give you and consider both possible penalties before making a decision?

MICHAEL RIGGIO: Yes, I would.

CHRISTINE GUAGENTI:

THE COURT: Mr. Guagenti, would you always impose death for a person convicted of murder in the first degree?

CHRISTINE GUAGENTI: No.

THE COURT: Would you always impose life?

CHRISTINE GUAGENTI: No.

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THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law that I give you and consider both possible penalties before making a decision?

CHRISTINE GUAGENTI: Yes.

THE COURT: Ms. Morris, would you always impose death for a person convicted of murder in the first degree?

BELITA MORRIS: No.

THE COURT: Would you always impose life?

BELITA MORRIS: Yes.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law that I give you and consider both possible penalties before making a decision?

BELITA MORRIS: Yes, I would.

THE COURT: Steve, could you take the whole group outside for a minute?

(Exit venire.)

THE COURT: Silverstein is gone?

MR. POLAY: Yes.

MR. SATZ: I understand their position. Very similar, only the other way around.

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Ashley Rowe was the same way, only for life. I think it is the same thing.

Same thing with Ms. Balentine.

Didn't think they could ever vote for death. And they said they would consider it.

He said he would consider, too.

I don't think, I think they are all in the same spot.

THE COURT: Before I go there, let me try this a different way.

Is Muth, 2, good?

MR. SATZ: No.

MR. POLAY: Converse argument.

MR. SATZ: No.

Said no, sir.

THE COURT: Let me finish.

Cooper, is he good?

MR. SATZ: Yes.

MR. WILLIAMS: Yes.

THE COURT: Evans good?

MR. SATZ: Yes.

MR. POLAY: Yes.

THE COURT: Gervolino?

MR. POLAY: He said okay.

MR. SATZ: Right.

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THE COURT: He's good. Coming back.

MR. SATZ: Right. I would like to talk to him, though.

THE COURT: I understand.

Hambright?

MR. SATZ: Gone.

THE COURT: Okay.

Lang, 49 good.

MR. SATZ: Right.

MR. WILLIAMS: Yes.

THE COURT: Tim Kee is good.

MR. SATZ: Right.

MR. WILLIAMS: Right.

THE COURT: Franklin is good.

MR. SATZ: Right.

MR. WILLIAMS: Right.

THE COURT: Riggio is good.

MR. SATZ: Right.

MR. WILLIAMS: Right.

THE COURT: Gaugenti is good.

MR. SATZ: Right.

MR. WILLIAMS: Right.

THE COURT: And Morris is good.

MR. WILLIAMS: Correct.

MR. SATZ: Yes.

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THE COURT: That's nine individuals.

MR. WILLIAMS: Correct.

THE COURT: Any of the people good still waiting for phone calls?

MS. WILLIAMS: Yes.

A couple.

THE COURT: So we are at 62, plus the possibility of losing a couple more when we find out about their jobs.

MR. WILLIAMS: Yes.

THE COURT: You want to talk about certain ones.

MR. SATZ: Right.

THE COURT: Want to bring --

MR. POLAY: Can I make a record with Mr. Silverstein?

THE COURT: I haven't done anything yet.

MR. WILLIAMS: The question is who are you bringing in.

THE COURT: I haven't gotten there yet.

Who are the definite ones that are going?

Not the ones in question. The ones that no arguments whatsoever.

MR. POLAY: I think Silverstein made it clear.

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THE COURT: Stop it.

MR. POLAY: You're going to rehabilitate someone, knowing the facts of this case, I'll vote death.

MR. WILLIAMS: Double homicide.

THE COURT: Would you guys let me talk? I don't want to talk about people anyone wants to talk to, whether we rehabilitate or don't. I want to deal with only those people that both the State and the Defense agree are gone so we know who we might possibly have to talk to. .

MR. WILLIAMS: Caesar said always vote for life.

THE COURT: He did say that.

MR. SATZ: Yes.

THE COURT: Mr. Caesar goes.

MR. WILLIAMS: Brouwer said always vote for life.

MR. SATZ: Yes.

MR. POLAY: Mr. Shockley always vote death.

MR. SATZ: Yes.

MR. WILLIAMS: Hambright.

MR. SATZ: Yes.

MR. POLAY: Huntley.

THE COURT: Huntley, gone?

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MR. SATZ: Yes.

THE COURT: So the only two in question that anyone is even thinking about talking to is one and two?

MR. POLAY: I don't think there is a question about either of them.

THE COURT: Lay out what you want to say.

MR. POLAY: Mr. Silverstein comes in here saying deserves death.

Then asked some questions. Equivocates a bit. Knows what he knows. Knows too much about the case. Double homicide. No. It is a death case.

I don't know why we are wasting our time.

Ms. Muth as well.

Can't be rehabilitated. Who are we kidding.

THE COURT: Mike?

MR. WILLIAMS: I want to make sure, his exact words, clear cut, double homicide, death penalty.

Exact words.

Clear cut.

MR. SATZ: I'm not contesting.

All I want is, you know, we did the same

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thing with Rowe.

THE COURT: I understand.

Talk to me about Muth.

MR. SATZ: As counsel said, she said no, sir.

THE COURT: She is gone.

MR. SATZ: Right.

MR. WILLIAMS: Right.

MR. POLAY: She equivocated like Mr. Silverstein.

MR. SATZ: She did not. Come on. Gee whiz.

MR. POLAY: That's why we are saying they both should go.

MR. SATZ: I'm not saying Silverstein shouldn't stay. I want an opportunity --

THE COURT: Can I have Mr. Silverstein, please.

(Enter Carl Silverstein.)

THE COURT: Mr. Satz?

MR. SATZ: Good afternoon.

I wanted to make sure everybody understood what you're saying. When Judge Backman said the defendant has already been found guilty, you understand that.

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CARL SILVERSTEIN: Yes.

MR. SATZ: it would be your function to make a determination as to the appropriate sentence, right.

CARL SILVERSTEIN: Correct.

MR. SATZ: I think, at the end, you said that, when Judge Backman explained to you aggravating circumstances and mitigating circumstances, even though you favor the death penalty, you would listen to that and consider it in rendering your sentence?

CARL SILVERSTEIN: I will listen to almost anything somebody has to say.

Like I mentioned with the Judge, I am 90 percent in favor of the death penalty in this type of case, given what he said already. It is like he mentioned the football field? Okay, I'm on the two yard line.

First and goal.

MR. SATZ: Nothing further.

MR. POLAY: Didn't you say that knowing what you know about this case, you're going to impose the death penalty?

CARL SILVERSTEIN: Yes, I said that.

MR. POLAY: That's from your mouth, right.

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CARL SILVERSTEIN: Right.

MR. POLAY: So clear cut, that's from you.

CARL SILVERSTEIN: Right. Right. I also said I think it is a moot point, given the way our legal system functions, that life in prison versus the death penalty, I mean, lots of death row inmates die in prison before ever executed? What is the average? 30, 30 plus years before sentence is carried out.

It is a moot point to me. Given the circumstances here, a double homicide here.

MR. POLAY: We should just kill him.

CARL SILVERSTEIN: Bring back Judge Roy Bean.

Hang them at sunrise.

MR. SATZ: I have no further questions.

CARL SILVERSTEIN: Swift justice.

THE COURT: Thank you.

THE COURT: Thank you.

Follow Steve for a minute.

CARL SILVERSTEIN: Thank you.

MS. MCCANN: I would like the record to reflect there were no other jurors in the courtroom when Mr. Silverstein did his colloquy.

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MR. POLAY: Motion to strike.

MR. SATZ: I have no objection.

THE COURT: Ms. Muth?

MR. POLAY: No.

THE COURT: thank you.

Steve, you have the list of those that are staying.

MR. POLAY: For the record, Ms. Muth said to this Court I'm pro life, no matter what, like Mr. Silverstein said, in the opposite way, just want to kill people.

THE COURT: Thank you for making the record.

Let's go.

(Enter venire.)

THE COURT: At this point, Steve, will take you into the jury room in a few moments.

We have a questionnaire we would like each of you to fill out.

Once up guys have all filled those out, and do me a favor, fill them out in full.

Don't miss any questions.

If you can avoid it, don't.

It does not ask for your phone number or your Email. So if you provide it, it will be

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public.

There is also a list, this I'll ask you to please print your name, provide a good Email address you can be reached at and a telephone number you can always be reached at. This is in the event my office needs to contact you in the event of an emergency.

Steve will give you information as to how you can reach my office in the event of an emergency.

Understand this is not a list for publication. It will only be handled by myself and my judicial assistant.

At the end of the case, it gets destroyed.

Tuesday morning, 9:15, out front.

Please don't start reading newspapers. Don't read, don't go on the Internet or start Googling anything.

That only creates problems.

Right now, please be very careful. I don't think you will see it on the local news.

You never know.

No local sections of the Sun Sentinel or Herald.

With that, I'll see you then.

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There are a couple of you waiting for phone calls. When you get that information, please call my office and let us know.

Then we will deal with it before you have to come back.

Fair enough?

Just go with Steve.

Thanks.

(Exit venire.)

MR. SATZ: Judge, you were going to let us talk to Mr. Gervolino, the gentleman that was Catholic.

THE COURT: Yes.

Send him out, please.

(Enter Charles Gervolino.)

THE COURT: Mr. Satz?

MR. SATZ: Mr. Gervolino, a quick question,

You mentioned when Judge Backman was talking to you about the death penalty, the aggravating, mitigating circumstances, you mentioned your religious background is Catholic.

CHARLES GERVOLINO: Yes.

MR. SATZ: Do you think your religion would play anything, effect your ability one way or

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the other?

CHARLES GERVOLINO: I would think very hard on it. It was brought up. Thing is, I'm a guy that likes to listen to the whole story. Understand that. But I was brought up, my father was a cop for 38 years. A lot of things, eight of us in the family. Very Catholic that way.

MR. SATZ: That's okay. Nothing wrong with being for or opposed to the death penalty. No right or wrong answers.

You mentioned it. We wanted to make sure, you know, whatever decision you make is not influenced by any outside forces.

CHARLES GERVOLINO: No. It would be my choice.

MR. SATZ: Your religion wouldn't affect your decision making?

CHARLES GERVOLINO: No.

MR. SATZ: Thank you.

MR. POLAY: No questions.

THE COURT: Back you go.

CHARLES GERVOLINO: Thanks.

(Exit Charles Gervolino.)

THE COURT: Good with him?

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You want me to pull jurors for tomorrow or Monday afternoon? I would vote for Monday afternoon.

MR. POLAY: I vote Monday afternoon.

THE COURT: I'll pull another 50 down.

MR. WILLIAMS: We will just be getting questionnaires.

THE COURT: We need a couple of extras.

What is our count?

DEPUTY: 63.

THE COURT: We are within range.

I would rather have a couple extras.

MR. POLAY: In the end, better be safe.

THE COURT: Agreed.

No motion that's been filed.

MS. MCCANN: We understood you raised the issue.

You told me that.

We did the research.

THE COURT: I think pretty much the argument is over.

It won't be a very long -- we have done a lot of it. I have read the cases. It is just a matter of whatever finality you want to put on it.

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MR. POLAY: Sure.

No problem.

THE COURT: I can do that Monday at like 11.

MR. POLAY: I go after Mr. Satz anyway. Monday is fine. Doesn't matter.

MS. MCCANN: We are thinking openings and witnesses a week from Tuesday.

THE COURT: I would like to open by the end of the week.

(Discussions held off the record.)

(Proceedings conclude.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 11th day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME X
PAGES 888 - 948

Fort Lauderdale, Florida
October 5th, 2018
10:00 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 5th, 2018, commencing at 10:00 a.m.

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THEREUPON, the following proceedings were had:

THE COURT: Jury issues?

JUDICIAL ASSISTANT PAM COE: David Graham. He was here at 9-25 in the afternoon.

His only question is are we working next Friday. Didn't say why. I called him back. Got the voice mail. I have waiting on a call for him.

It is not the week the State needed off. Not the 19th.

THE COURT: Depends on whether or not we have our jury.

If we don't, obviously, we'll still keep doing voir dire.

JUDICIAL ASSISTANT PAM COE: The second one is Bryan Runge. The gentleman from Spirits and whatever?

THE COURT: No, that was Mazza.

This was the guy willing to forgo main income to serve.

JUDICIAL ASSISTANT PAM COE: He said his employer, after going round and round, went to the HR rep. He does and will get paid for the entire jury service.

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Last one is Robert Lang.

He was from yesterday morning. Group 2.

THE COURT: That I had to do individually.

JUDICIAL ASSISTANT PAM COE: He was so nervous on the phone.

He said I'm so very nervous about having to put someone to death. Just a nervous wreck.

For the first 30 minutes, I had the runs. If I had to do it, I would. Can you excuse me please. I just can't do it.

JUDICIAL ASSISTANT PAM COE: I say bring them all back in. Because he said I can do it. In the next breath, but I really want to be excused. I just can't do it.

THE COURT: I hear what you're saying.

Going back to the first guy, tell him it is an answer we can't give him right this minute.

But I guess maybe we need to bring that guy back in, see what he has to say.

MR. SATZ: Sure.

THE COURT: That's it.

(Enter venire.)

(Enter Kimberly Atterberry through John Craig.)

THE COURT: Morning ladies and gentlemen.

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Such enthusiasm early in the morning.

Funny, we have been doing this now a couple of weeks. We understand.

Let me introduce myself.

I'm Paul Backman.

I am one of your judges here in the 17th Judicial Circuit.

The reason that your presently in here, we are looking for individuals who can serve as jurors on a case that we anticipate will go no longer than Thanksgiving.

I know you think that's a very long time. The other group being called out, theirs is six months on a trial. With the exception of our accused in this case, the rest of us just came out of a 22-month and three-day trial.

This, to us, is a walk in the park. For you, not so much.

We recognize everybody in their every day lives has conflicts.

We recognize those conflicts.

And we try to accommodate every place we can.

I have what I think is a pretty comprehensive list of conflicts where pretty

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much -- and I don't want you to take this the wrong way.

We would love every single one of you to participate with us.

But we don't want you with these conflicts.

So I will ultimately go person by person, starting with Ms. Atterberry.

After I have read through the list and then talk to you about whatever conflicts you may have and what we'll do.

Let me start by saying if you are a full-time student and being with us will interfere with your education, we don't want you. We don't want to interfere with that.

If you are a primary care giver to a parent, grand parent, a child or it is part of your professional responsibilities, again, we won't interfere with that.

If you are presently unemployed and actively seeking employment, we don't want to interfere with that.

If you have a pre-paid vacation or travel for work that's already set out, please let us know. There are days that we know we may not be in session. And we might be able to

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accommodate in the sense that it may work out and coincide with our dates.

Anything pre-paid, I assure you, especially if it is a cruise, we're not going to interfere with that.

If you have child care issues and you cannot make arrangements in the afternoon to get somebody to help you out with any children that need to be picked up, again, we need to discuss it. We know that many, depending upon the age of the children and the schools they go to, some get out at 2:00, 2:30, 3 o'clock.

At this point it might be helpful if I tell you our schedule.

I anticipate we'll be working Tuesdays, Wednesdays, Thursdays and Fridays. Our Friday time frame as how long we work will be dependent upon where we are, which we will know on a Thursday.

I like to start with my jury in here by 9:30. I like to work until 5:00, 5:30. Of course, you get lunch in between there.

We will not be in trial on Mondays.

That's when I have to do my other work. If there is a holiday and the only Monday holiday

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I'm aware of between now and Thanksgiving is Veteran's Day.

If we happen to still be in session, we would not work on Tuesday.

That would become my Monday. It would only be a Wednesday, Thursday, Friday.

If you have medical issues which you believe will interfere with your ability to participate with us, only you can tell us.

I will not inquire what that is as far as your medical situation. It is private and not our business.

I can tell you this, many times I have individuals that tell us, tell me and the rest, they have diabetes, back issues. They need frequent bathrooms breaks. We are well aware if somebody's blood sugar runs low, they need to eat or take insulin, we stop so that individual can take care of whatever needs to be done.

If you have a back issue, not a problem. You can get up and stretch.

If you need bathroom breaks, there are bathrooms available. Of course, we accommodate that as well.

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If you are a commissioned employee, live off of commissions, we don't want to interfere with your financial well being. That goes if you're base pay, commission or tip-based, we don't want to interfere with that.

If you are a full-time employee, and the reason Steve asked you before to make phone calls is find out what your jobs, what the policy of each of the companies is, some only pay three days, five days, ten days.

It is all over the place. Many will pay you for every single day you're here.

If you are an employee that works ten hours a day and your employer will only pay you for eight and the extra two hours, which would come out to ten hours a week, if it is critical to your bottom line, we don't want to interfere with that.

If you can be creative, come up with conflicts we never thought of, give it a shot. Never hurts.

Ms. Atterberry, conflicts?

KIMBERLY ATTERBERRY: I'm a stay-at-home mom with my kids.

Like they mentioned today because we have

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to be here early and go so far.

I had to call in for them. Hard for me to get them.

THE COURT: We don't start until 9:30.

KIMBERLY ATTERBERRY: One gets out at 12:00. One gets out at 2:00. Other at 4:30. That's on me.

THE COURT: Okay.

Ms. Molina?

CAMILA MOLINA: Full-time student.

Work at Publix and for the City of Oakland Park. I go to Broward College North, studying pharmacy.

THE COURT: What kind of a job.

CAMILA MOLINA: I'm a pharmacy technician.

THE COURT: Ms. Snediker?

STACEY SNEDIKER: Nothing of the conflicts you read off pertains to me. I work. They don't pay.

THE COURT: Who do you work for?

STACEY SNEDIKER: A vending company. Private.

THE COURT: The reason I ask that particular question, because we keep building a list so we can help people out that haven't

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been able to reach their employers.

DEAN OSBORNE: I am an owner of a small shipping company. We are pretty much, I wear all of the hats.

I ship to the Caribbean.

THE COURT: That would create a problem for you if you were here? Financially?

DEAN OSBORNE: Yes. I have just have an eight-month old. I don't have a chance to take time off. I need to make it work.

CHESTINE BANAS: I don't have conflicts. I work for Broward County. I work at the library.

THE COURT: Mr. Vrablic?

JOHN VRABLIC: I'm self-employed. It wouldn't work for me. I'm a scrapper, recycler.

THE COURT: Ms. Hudson?

FRANCENE HUDSON: Yes and no. Yes, they pay for five days.

THE COURT: Forget it. You have to go beyond that.

Obviously, this trial will go more than five days.

KATHYA DELGADO: I don't think I have any.

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They are verifying the days.

There is a limit.

THE COURT: Let me know then.

KATHYA DELGADO: Of course.

KATHLEEN ROY: I have no conflict.

THE COURT: Do you work?

KATHLEEN ROY: No.

THE COURT: Retired?

KATHLEEN ROY: Yes.

THE COURT: Just in case there is anyone that is 70 or above -- and looking at you guys, I don't think there are any -- you have the option of whether you want to serve or not. If you tell me you're 70 and above -- I won't ask you how old -- but you can just opt out by telling me I don't want to serve. I want everybody to know that.

Invariably, I forget to do it.

Mr. Sandstrom?

BRIAN SANDSTROM: No conflicts at all.

THE COURT: Do you work?

BRIAN SANDSTROM: No.

THE COURT: Unemployed?

BRIAN SANDSTROM: I'm unemployed.

THE COURT: You're good?

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BRIAN SANDSTROM: Yes.

THE COURT: Mr. Hughes?

MICHAEL HUGHES: I'll be paid for three days.

GISSELLE BONILLA NEGRON: I will be paid for today. I have to use my PTO.

THE COURT: We don't want anybody using personal time or vacation time.

Ms. Carter?

SONIA CARTER: I am a hopeful mom.

THE COURT: I bet your kids would love you to be here.

SONIA CARTER: Yes.

SANDRA PIEDRA: I have tickets for New York on October 10th.

THE COURT: That's next Wednesday.

SANDRA PIEDRA: Yes.

THE COURT: Going to do any good up there?

SANDRA PIEDRA: I was going to look at property.

THE COURT: You're traveling.

By the way, is there anyone that has difficulty understanding the English language and speaking the English language?

Okay.

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RENEE JENKINS: I am a full-time student at Broward College and work off of tips.

THE COURT: What are you studying?

RENEE JENKINS: Sociology.

PATRICIA NAVIA: I am traveling on November 2nd to the 10th.

THE COURT: Going anyplace good?

PATRICIA NAVIA: Columbia.

THE COURT: That's good.

PATRICIA NAVIA: Back to visit my family.

My aunt is sick.

THE COURT: Ms. Nahidino?

SHEKOUFEH NAHIDINO: I'm a banker. They pay for whatever.

ELLIOTT GLANTZ: Special ed teacher in Broward County. They pay for it. I have a special ed class.

THE COURT: Ms. Goldberg?

JAMIE GOLDBERG: I am reading my company's policy. I work for Kroeger. I will let you know.

MICHAEL SNYDER: I am a commission-based employee.

CHRISTINE JONES: I have a medical schedule

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and I'm working part time now.

THE COURT: If you are not working, you won't get paid?

CHRISTINE JONES: That's correct.

GEORGE GRIFFIN: I am self-employed. I work for AT&T. I am a landscape person.

ANTONIO HERRERO: Company pays for a week.

THE COURT: Say no more.

Mr. Haralambis?

MICHAEL HARALAMBIS: Commission-based employee.

They don't pay for any days.

THE COURT: Mr. Craig?

JOHN CRAIG: I see no conflicts. I work for Broward County schools. Teacher.

THE COURT: Right.

They pay.

Thank you.

If you guys will follow Steve a minute, we will have further instructions for you.

If any of you are waiting for information and find out, tell Steve. He will let me know.

JAMIE GOLDBERG: They pay for everything.

KATHYA DELGADO: My company said no conflict.

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THE COURT: Thank you.

(Exit venire.)

MR. SATZ: Did you ask Sandstrom if he was looking for a job?

THE COURT: I asked if he was unemployed.

He keeps saying he's.

MS. MCCANN: I couldn't tell if he said he was going to school or not going to school.

THE COURT: Can I have Mr. Sandstrom back?

MS. MCCANN: If he's going to school, I wonder if it is high school. We had that, once.

MR. WILLIAMS: As long as he's 18.

(Enter Brian Sandstrom.)

THE COURT: I want to ask you a couple quick questions.

You said you're presently not working.

Are you looking for a job?

BRIAN SANDSTROM: No.

THE COURT: Are you a student?

BRIAN SANDSTROM: No.

THE COURT: So you are good?

BRIAN SANDSTROM: Yes.

THE COURT: All right. Thanks.

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You can rejoin the others.

(Enter Brian Sandstrom.)

THE COURT: We will run through this.

1, Atterberry, gone.

2, Molina; 3, Snediker; 4, Osborne are all gone.

Banas said okay, 5.

6, Vrablic; 7, Hudson are gone.

8, Delgado, said okay.

9, Roy, is okay.

10, Sandstrom, is okay.

11, Hugher; 12, Bonilla; 13, Carter are all gone.

14, Piedra; 15, Jenkins; 16, Navia, all gone.

17, Nahidino is good.

18, Glantz, is good.

MR. SATZ: Special ed.

THE COURT: He's a teacher. I'll do whatever you want.

I just heard he's a teacher.

19, Goldberg, is good. Got her phone call.

20, Snyder; 21, Jones; 22, Griffin; 23, Herrero; 24, Haralambis are all gone.

25, Craig, is okay.

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We have eight.

We're bringing them back Monday or this afternoon? What do you want?

I don't care.

MR. SATZ: Let's do it Monday.

THE COURT: I don't want to bring them back and find out we don't have a --

MR. WILLIAMS: Monday.

THE COURT: Yes.

DEPUTY: If they have issues?

THE COURT: Have them call.

THE COURT: You want the questionnaires?

Tell them to come back at 11 o'clock on Monday, please.

DEPUTY: Want their names and phone numbers?

THE COURT: Get the next 25 in after that.

(Enter next 25 venire.)

(Sierra Schneider through Teresa Tancredi.)

THE COURT: Good morning, ladies and gentlemen.

I can see you're all having a wonderful time today.

Let's me introduce myself. I am Paul Backman.

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I'm one of your judges here in the 17th Judicial Circuit.

Let me tell you what we're doing.

We're going through a, what I call a weeding process.

We're looking for individuals who can serve on this proceeding that we hope to start, well, will start in one fashion or another next week. And we anticipate the outside date of completion before Thanksgiving.

Now, I recognize, you know, that could go up until then.

It could be finished at the end of this month.

It could be finished at any time in the beginning of November.

I would rather give you a far-out date than a too soon date.

Now, we all recognize -- by the way, you remember the other panel they were calling this morning? That's for a minimum six-month trial.

All of us, except the accused, were on a totally separate case not involving the accused in here a couple months ago. We just came out of a 22-month, three-day trial.

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This to us is a walk in the park.

We recognize all of us have conflicts that arise in our daily lives. Many of, many of which might interfere with you ability to be with us.

When I say we are not looking for certain individuals that -- and I'll go through what I think is a very comprehensive list of conflicts.

So far, I haven't found anybody in 35 years that, that have come up with another one.

If you're creative enough and can find one, maybe we can let you go.

I'm ultimately starting with Ms. Schneider and going individually.

Let me go through the list. Then individually, we can talk about any conflicts you may have.

If you are a full-time student and being with us would interfere with your studies, we don't want you.

We don't want to interfere with anybody's education.

If you're a primary care giver to a parent,

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grand parent, child or it is part of your professional responsibilities, again, we don't want you.

I will just go through the list now.

If you're unemployed and actively seeking employment, let us know.

If you have a pre-paid vacation or, and/or you travel for work and it is already paid for, let us know.

There are certain days we know we will not be in session. If in your time off, it may coincide with that. Otherwise, we won't interfere with anybody already pre-paid for whatever it is they are doing.

If you have child care issues, where you can't make arrangements for the pick-up of your child, without incurring any additional, financial obligations, let us know.

We're all aware many schools, depending upon the age, they get out at 12:00, 2:30 and 3:00, let us know.

The schedule I anticipate we'll be working is Tuesdays, Wednesdays, Thursdays, Fridays.

How much time on a Friday, well, it really goes every day. Depending where we are with a

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witness or what we still have lined up in the case of the hours I like to work, 9:30 until 5:00, 5:30.

If you have medical issues and those medical issues, in your opinion, will interfere with your ability to participate, let us know.

I'll not ask anybody, because it is none of our business what that medical issue might be.

However, I have had many individuals serve on my panels that are diabetic. Individuals with back issues. People that need to frequently use the restroom.

I'll tell you if you're diabetic, need to eat or take insulin, no problem. We will stop.

Back issues, need to stretch, just stand up and stretch. Not a problem.

If you need to use the restroom at any time, that will not be a problem either.

If you're commissioned-base salary, we don't want to interfere with your financial well being.

If you are a base-pay salary on work on tips or commission, again, we don't want to interfere.

Anyone that has any difficulty

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understanding and speaking the English language?

I should always start off with that.

Good.

Last but not least, if you are a full-time employee, and your employer is not going to pay you for every day you're here, because we know that some employers won't pay -- some will give you three days, five days, ten days.

I Can tell you this trial will go more than that.

So we don't want anybody getting stuck in a situation they won't get paid.

If you happen to work ten hours a day and your employer will only pay you for eight, again, we won't interfere with that.

This is the reason Steve asked you before to make phone calls.

If you have not heard back from your employer, just let me know when you do hear back.

Ms. Schneider, I know you have at least one conflict.

Talk to me.

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SIERRA SCHNEIDER: I have an 18-month-old boy. Milo. I'm a single mom right now. 18 months this month.

THE COURT: Ms. Rossingnol?

TAYLOR ROSSIGNOL: I am between jobs now and missing an interview today.

THE COURT: What time is your interview?

TAYLOR ROSSIGNOL: 12.

THE COURT: You might be able to get there.

TAYLOR ROSSIGNOL: That would be nice.

MR. SATZ: We don't have any problem.

THE COURT: You want to go now?

TAYLOR ROSSIGNOL: Sure.

I was going to say I don't have reliable transportation.

THE COURT: Right now, don't worry about that. We don't want you to miss your interview.

TAYLOR ROSSIGNOL: I appreciate you.

THE COURT: Oh. I have to tell my wife.

We will give you your card. Go back to the jury room. They will process you out.

I hope you do well on your interview.

THE COURT: Mr. Paluch?

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MATTHEW PALUCH: I am a banker. Company will pay ten days.

AURORA MOREJON: I have two grand kids. Eight, twelve. Depend on me to take them and pick them up at 4 o'clock.

My daughter works. Not able to do it. I have been doing it for years.

THE COURT: By the way, while I don't think anybody falls into the category, if you are 70 and above, you have an automatic excusal, unless you wish to serve.

If you are, just tell me when we get there. I am not asking anybody their age.

You have that issue?

AURORA MOREJON: Yes.

THE COURT: Mr. Gaines?

PATRICK GAINES: I work for Miami Dade County. Scheduled to travel and paid for in October and November. I work mornings. Fire marshall's office.

THE COURT: We know they pay. They are scheduled.

PATRICK GAINES: Yes, and paid for. I am a divisional training officer.

No one else can do that.

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THE COURT: Ms. Copeland?

TIHARAH COPELAND: I'm a full-time student. Missing class now at Broward College. Studying business administration.

JEFFREY MANCHESTER: Pre-paid employment trip next week, Thursday to the following Monday. 11th to the 15th.

LISA VARELA: I work for State Farm Insurance. I haven't heard back from them.

THE COURT: Is that your only potential conflict?

LISA VARELA: Yes.

THE COURT: Let us know when you hear back.

LISA VARELA: Yes.

THE COURT: Ms. Mann?

JERI LEE MANN: My employer will pay only five days.

THE COURT: Thank you.

DYLAN KELLY: My income is tips.

RICHARD SLAUGHTER: I am okay.

THE COURT: Work?

RICHARD SLAUGHTER: They say they pay it all the way. I work for Walmart.

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I hope that HR person is right.

MR. WILLIAMS: They were yesterday.

RICHARD SLAUGHTER: Okay.

THE COURT: Mr. Morell.

MILES MORELL: Full-time student at Broward College. Studying history.

I have a part-time job.

THE COURT: You already got it.

All you can do is talk me out of it.

MIRHAEL BURKE: Full-time student at Florida International. Studying information technology.

THE COURT: Dealing with computers?

MIRHAEL BURKE: Yes.

THE COURT: Can you help me turn mine on?

Ms. Cummings?

KENDAL CUMMINGS: Medical advisor. I have a trip in Austin for two weeks, starting the 11th and another trip in normal Northern Florida the following week for five days.

THE COURT: Forget it.

Those are scheduled?

KENDAL CUMMINGS: Following I'll be in North Carolina for three weeks, scheduled by the company.

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And it is commission-based.

THE COURT: Ms. Crandell?

JENNIFER CRANDELL: Full-time mom. And my boss won't pay.

LISBONNE GELIN: I am working full-time.

My daughter works full time. Assisting, going to doctors in West Palm. My husband is diabetic.

THE COURT: Thank you.

ALINA MADDOX: I work with my husband.

Own our own business. I know I'll get paid. I'm sure he wouldn't want me to be gone.

THE COURT: What is your business?

ALINA MADDOX: We own Mega Cycle. Bike store in Weston.

THE COURT: Other than the fact your husband may not be happy --

ALINA MADDOX: There are no issues.

DEBORAH FLOYD: Company pays five days.

DANIEL SALVAT: My company only pays five days.

PAULETTE GURLEY-CAMPBELL: My company pays for how ever long I need to be here. I have a planned trip November 1st, that Thursday.

THE COURT: For how long?

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PAULETTE GURLEY-CAMPBELL: Thursday, Friday and come back on Monday.

THE COURT: If we were able to, going anyplace good?

PAULETTE GURLEY-CAMPBELL: Syracuse to visit my daughter.

THE COURT: If we can accommodate those dates, you would be okay?

PAULETTE GURLEY-CAMPBELL: Yes.

THE COURT: Who do you work for?

PAULETTE GURLEY-CAMPBELL: Memorial Health Care.

STEVEN CHANDLER: Company only covers five days.

BRENNA MCINTOSH: I am a full-time student at FAU, masters in social work.

ROBERT OLIVO: Employer only pays five days.

ALEXCIA ELVEN: I am free. Available. My employer pays until whenever. Work for HV Optical Group.

THE COURT: Our special seat, Ms. Tancredi.

TERESA TANCREDI: I have medical issues.

THE COURT: Okay. If you guys will follow Steve for a minute, we will give you more

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instructions from there.

(Exit venire.)

THE COURT: Okay.

Let's run through this.

Let's see. All right. Let's see.

We have 26, Schneider; 27, Rossignol.

MR. SATZ: That's the oldest maker of skis in the world.

THE COURT: 27, Rossignol; 28, Paluch; 29, Morejon; 30, Gaines; 31, Copeland; 32, Manchester are all gone.

Waiting on 33, Varela.

We have 34, Mann; 35, Kelly both gone. Slaughter, 36 is good. 37, Morell; 38, Burke; 39, Cummings; 40, Crandell are all gone.

Gelin --

MR. SATZ: I didn't understand.

THE COURT: Gone?

MR. POLAY: Yes.

MR. SATZ: Yes.

THE COURT: That was 41.

42, Maddox is good.

43, Floyd; 44, Salvat both gone.

45, Gurley-Campbell is good.

MR. WILLIAMS: Had all of the trips.

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MS. MCCANN: Trip is Friday to Monday.
Works for Memorial.
MR. POLAY: See what transpires.
THE COURT: I thought it was Thursday to Monday.
Let's play that one by ear.
46, Chandler;47, McIntosh; 48, Olivo are all one.
49, Elvin is good.
And 50, Tancredi, gone.
MR. POLAY: Correct.
THE COURT: What's the lucky number here. ?
MR. POLAY: Five.
MR. SATZ: We have 13 so far.
THE COURT: Five with one waiting for a phone call.
DEPUTY: Five come back Monday at 11:00.
THE COURT: Yes.
Safe story.
Let's bring in the next group.
(Enter venire.)
Enter Elizabeth Connors through Kristina Thomas.)
THE COURT: Morning, ladies and gentlemen.
VENIRE: Morning.

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THE COURT: Your enthusiasm is under whelming.

Good morning.

VENIRE: Good morning.

Welcome.

Let me introduce myself. I am Paul Backman.

I'm one of your judges here in the 17th Judicial Circuit. Before I begin, is there anybody that has any difficulty understanding and speaking the English language?

Anyone in the first row? Second row? Third row?

Here is why you're here. We are looking for individuals who can serve on this proceeding starting next week.

The outside date of finish is before Thanksgiving.

The panel they were calling before you? Theirs is going six months.

Unrelated to this, not including the accused, all of us came out about a month and-a-half ago from a 22-month, three-day trial. To us, this is just a walk in the park.

We all representing each of us have

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conflicts in our daily lives.

Some will interfere with your ability to participate. For the most part, we won't interfere with people that have the type of conflicts I'll go through with you.

I here is the list I've compiled.

I'll start with Ms. Connors after I go through this list.

Anyone 70 or above, serving is your option.

ELIZABETH CONNORS: I am.

HERMAN RIVERA: Me.

THE COURT: Whoa. I just want you to know serving is your option.

It is an automatic excusal under the law. But you're allowed to serve. I won't ask anybody their age.

I was shocked you would even raise your hand.

ELIZABETH CONNORS: Sure.

THE COURT: Okay. Let me go through my list.

If you are a full-time student and participating with us would interfere with your studies, we don't want to do that. Let me know.

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We don't want to interfere with anybody's education.

If you're a primary care giver to a parent, grand parent, child or it is part of your professional responsibilities, again, we don't want to interfere.

If you're unemployed and actively seeking employment, let us know.

If you have a pre-paid vacation or pre-paid plan, you travel for work, let us know.

There are certain days we know we will not be in session. If in your time off, it may coincide with that. Otherwise, we won't interfere with anybody canceling anything that is maybe already pre-paid for whatever it is they are doing.

If you have child care issues, where you can't make arrangements for the pick-up of your child, without incurring any additional, financial obligations, let us know.

We're all aware many schools, depending upon the age, they get out at 12:00, 2:30 and 3:00, let us know.

I anticipate we'll be working is Tuesdays, Wednesdays, Thursdays, Fridays.

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Depending where we are with a witness or what we still have lined up in the case of the hours I like to work, 9:30 until 5:00, 5:30.

The early mornings won't be a problem in terms of drop-offs. The afternoons you have to check.

If you have medical issues and those medical issues, in your opinion, will interfere with your ability to participate, let us know.

I'll not ask anybody, because it is none of our business what that medical issue might be.

However, I have had many individuals serve on my panels that are diabetic. Individuals with back issues. People that need to frequently use the restroom.

I'll tell you if you're diabetic, need to eat or take insulin, no problem. We will stop.

Back issues, need to stretch, just stand up and stretch. Not a problem.

If you need to use the restroom at any time, that will not be a problem either.

If you're commissioned-base salary, we don't want to interfere with your financial well being.

If you are a base-pay salary on work on

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tips or commission, again, we don't want to interfere.

If you are a full-time employee, and your employer is not going to pay you for every day you're here, because we know that some employers won't pay or some will give you three days, five days, ten days.

This trial will go more than that.

So we don't want anybody getting in financial trouble, in a situation they won't get paid.

Steve asked you before to make phone calls.

If you haven't heard back from your employer, just let me know when you do hear back.

Ms. Campbell, talk to me.

Do you want to serve?

ELIZABETH CONNORS: Actually, no.

THE COURT: Okay.

That's an option. That's what the law provides.

Mr. Maurice?

MARSHAL MAURICE: I mean not really. No fond of it.

THE COURT: Do you work?

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MARSHAL MAURICE: Not fond about it.

I am not fond to do it.

THE COURT: That I heard. My question is do you work.

MARSHAL MAURICE: Yes, I do.

Full-time. I work for the State at a school. I am not sure how long they will cover.

THE COURT: You work for the State of Florida?

MARSHAL MAURICE: Yes.

THE COURT: They pay you for every single day.

MARSHAL MAURICE: I work for FIU in Miami Dade.

THE COURT: I assure you every person sitting with you feels the same way.

NICHOLE HAYES: I'm a full-time student and work a job.

I manage a project in --

THE COURT: Where do you go to school?

NICHOLE HAYES: I go to Nova, studying marine biology.

THE COURT: Ms. Rakoczi?

TERERIA RAKOCZI: I can't. I am not

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driving. For me, it is very hard to get here. Also, work at a small business.

THE COURT: Your business?

TERERIA RAKOCZI: No. I work for someone.

THE COURT: Would they pay you?

TERERIA RAKOCZI: We are two persons.

THE COURT: Thank you.

Ms. Willliams?

GENTEL WILLLIAMS: I don't have a problem serving.

Right now, I'm going through an emotional time. Recent death in my family.

THE COURT: Sorry to hear about that.

Do you work?

GENTEL WILLIAMS: Yes. I'm a pastor in Dania Beach.

THE COURT: Would you get paid?

GENTEL WILLIAMS: Yes.

THE COURT: Mr. Young?

PAUL YOUNG: I have a pre-paid vacation. I have a hearing deficiency. I hear you on and off. Some thing I hear.

Some things I don't hear.

I try to read lips.

I have a paid vacation coming up on the

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15th.

THE COURT: It is on a Monday.

PAUL YOUNG: 15th through the 19th, yes.

MANUEL CUETO: One-man operation. Self-employed. I build race engines.

THE COURT: Not working, you're not earning.

MANUEL CUETO: Exactly.

RITA MADZI: I have a pre-paid vacation, 18th. It is a Thursday. Through the 2th.

THE COURT: If we accommodate that, you're leaving orange the 18th?

RITA MADZI: Yes.

THE COURT: During the day.

RITA MADZI: Yes.

THE COURT: If we can accommodate that, you have no other conflicts?

RITA MADZI: I have a full-time job. Coordinator for Marriott.

THE COURT: Do they pay you.

RITA MADZI: Yes.

FERNANDE LOUSSAINT: Full-time job will only pay me for three days.

ROY-ANNE TIFFANY SMITH: I am a full-time student at FIU. Social work.

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Getting my master's degree.

ROXANNE STEWART: Full-time. Only will pay me for three days.

ELVAN ESRA AYDOGAR: I am not working. One child in middle school. I am the one responsible to drive back and forth. I have a health issue. Colitis.

Need a lot of bathroom breaks. I am on medication now.

THE COURT: Mr. Rivera?

HERMAN RIVERA: I'm retired. I'm going through medical treatment the next two weeks.

THE COURT: Think that will interfere?

HERMAN RIVERA: I think so.

ROBERT LAUDERDALE: Full-time college student at Broward. Just getting my associates for now.

BELINDA SANTIAGO GONZALEZ: Full-time employee. I will get paid. I work for a company called Creative Drive.

THE COURT: They will pay you for the whole trial.

BELINDA SANTIAGO GONZALEZ: That's what I was told.

STEVEN RIFKIN: I am a semi-retired

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dentist. I have travel plans for October and November. 17 through 21. And November is the week before, of Thanksgiving.

THE COURT: You're still relying on the income from your dental practice?

STEVEN RIFKIN: It helps.

Asking me if I can survive without it? I married a very wealthy woman.

I'm just kidding.

THE COURT: Ms. Bowie?

MIRNA BOWIE: I work full time.

My employer will pay how ever long it takes. I have two vacations planned.

October 13th through the 21st. Other is --

THE COURT: Already paid for?

THE COURT: Yes.

THE COURT: Going anyplace good?

MIRNA BOWIE: San Francisco.

THE COURT: Both times.

MIRNA BOWIE: No. Other is a cruise on a Royal Caribbean.

THE COURT: When is the cruise.

MIRNA BOWIE: The week of Thanksgiving. The Saturday before Thanksgiving.

THE COURT: Mr. Rosario?

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JOSIE ROSARIO: I am a loan originator and real estate agent.

THE COURT: Well, is being with us going to interfere with your work.

JOSE ROSARIO: No.

THE COURT: Other than that, you have no other conflicts that you are presently aware of.

JOSE ROSARIO: No. My wife has a trip October 16th. See her aunt.

THE COURT: You are going as well?

JOSE ROSARIO: Yes. We're going to celebrate her 95th birthday up in Tampa.

THE COURT: Mr. Dawkins?

CLAY DAWKINS: I work part time at Goodrich.

THE COURT: If you are not working, you are not making money?

CLAY DAWKINS: No.

ROSENIQUE DUVERNA: I am a registered nurse. Part time. They don't pay. I am starting a new job in two weeks.

THE COURT:

THE COURT: Where are you presently working.

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ROSENIQUE DUVERNA: At a hospital. West Boca medical. They pay 80 hours and six months. They just sent me the text the.

THE COURT: But you are starting a new job in two weeks?

ROSENIQUE DUVERNA: Yes.

JOHN ROMANDETTI: Self-employed restaurant consultant. I have an engagement in Michigan and Arizona soon.

CHRISTOPHER JOYCE: Semi-retired.

THE COURT: No other issues?

You could be with us if you need to be?

CHRISTOPHER JOYCE: I could be.

THE COURT: Would you be if you made the jury?

CHRISTOPHER JOYCE: I would be willing to serve.

CYNTHIA ERAZO: Full-time employee. They pay.

I work for Memorial Health Care Systems.

RYAN GAVULIC: I work full time. My understanding is they pay. I work for MTI America.

THE COURT: And Ms. Thomas?

KRISTINA THOMAS: I am starting a new job

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on Monday.

THE COURT: I don't think they would appreciate your not being there.

If you guys will just follow Steve a minute, we will have further instructions for you in a couple of minutes.

(Exit venire.)

THE COURT: Ready?

51, Connors, is exercising her option to opt out. 52, Maurice is good.

53, Hayes; 54, Rakoczi not good.

MR. POLAY: Right.

MR. SATZ: Yes.

THE COURT: 55, Williams?

MR. SATZ: In mourning.

MR. POLAY: Can we leave her on now?

THE COURT: Seriously?

MR. POLAY: I'll defer to Mr. Williams.

MR. WILLIAMS: Let her go.

Bad timing.

THE COURT: Gone.

56, Young; 57, Cueto, gone.

58, Madzi.

MR. WILLIAMS: Leave her for now.

MS. MCCANN: Agreed.

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MR. SATZ: Yes.

THE COURT: 59, Louissaint; 60, Smith; 62, Aydogar; 63, Rivera; 64, Lauderdale, all gone.

MR. SATZ: Right.

MR. POLAY: Right.

THE COURT: 65, Santiago Gonzalez is good.

66, Rifkin is good.

MR. POLAY: Sure he's good?

CLERK: Travel plans the 17th through the 21st.

THE COURT: That's a one-day work week. I don't think we can afford that.

Rifkin is gone.

67, Bowie; 68; Rosario -- put him on hold.

69, Dawkins; 70, Duverna; 71, Romandetti; all gone.

72, Joyce; 73, Erazo are both good.

74, Gavulic is good.

75, Thomas, is not good.

MR. SATZ: Right.

MR. POLAY: Right.

THE COURT: Can we have Rosario, 68, please.

(Enter Jose Rosario.)

THE COURT: A couple of quick follow-ups to

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unconfuse us.

You're a loan originator and a real estate agent. Both of those are commission-based.

JOSE ROSARIO: Yes.

THE COURT: Your being with us wouldn't interfere with it?

JOSE ROSARIO: My wife works along with me.

As far as the paperwork and things like that, we can do it.

THE COURT: When are you traveling?

JOSE ROSARIO: I believe it's, it's the 19th through the 21st, of October. A weekend.

MR. WILLIAMS: Could I ask him, unrelated.

Did you just have a death in the family.

JOSE ROSARIO: Well, I lost a few -- .

MR. WILLIAMS: I mean the last couple weeks.

JOSE ROSARIO: No.

MR. WILLIAMS: Okay.

Thank you.

THE COURT: Let's see.

We have seven.

(Enter venire.)

(Enter Edward Huston through Gary

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Chisling.)

THE COURT: Good morning.

VENIRE: Good morning.

THE COURT: Let me take this opportunity to introduce myself. I am Paul Backman.

I am one of your judges here in the 17th Judicial Circuit.

Before I begin, I wanted you to know the time parameters for today.

First, anyone that has difficulty understanding the English language or speaking the English language?

Mr. Perez?

TIBISAY PEREZ DEOSUNA: Yes.

THE COURT: Little English?

TIBISAY PEREZ DEOSUNA: Stochastic.

THE COURT: Ms. Kaya, native language?

ANITA KAYA: Laos.

THE COURT: Welcome.

ANITA KAYA: Thank you.

THE COURT: Do you have difficulty understanding and speaking English?

ANITA KAYA: Yes, sir.

THE COURT: Any other hands? Okay.

Let me explain why you're presently here.

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We are looking for individuals who can serve on this proceeding, which will start Monday afternoon and go possibly as long as before Thanksgiving. I know you think that sounds very long. Remember the other panel that they were calling? That one is probably six, seven months.

On a different case that did not involve the accused here, all of us were in this courtroom, about a month and-a-half ago, just came out of a 22-month, three-day trial.

We all know each and every one of us have conflicts that arise in our every day life. We recognize that. We know there are some difficulties and conflicts in our daily lives that will interfere with your ability to be with us.

I have what I think is an extremely complete list of those individuals that would need to identify themselves. I don't want you to get the impression we don't want you. I would love to have every single one of you.

We recognize these conflicts.

I'll go through this, starting with you,

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Mr. Huston, and go down each row, each person individually.

Let me go through this and see where you all fall.

If you are a full-time student and being with us would interfere with your education, we don't want you.

We don't want to interfere with anybody's education.

If you're a primary care giver to a parent, grand parent, child or it is part of your professional responsibilities, again, we don't want you.

If you're unemployed and actively seeking employment, again, we don't want to interfere with your ability to make money.

If you have a pre-paid vacation or, and/or you travel for work and it is already paid for, let us know.

There are certain days we will not be in session. Your plans may coincide with that. Otherwise, we won't interfere with anybody already pre-paid for whatever it is they are doing.

If you have child care issues, where you

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can't make arrangements for the pick-up of your child, without incurring any additional, financial obligations, let us know.

Drop-off is not a problem.

Many schools have different afternoon pick-ups and care plans.

Let us know.

I anticipate we'll be working is Tuesdays, Wednesdays, Thursdays, Fridays.

How much time on a Friday really depends where we are with a witness or what we still have lined up in the case of the hours I like to work, 9:30 until 5:00, 5:30.

If you have medical issues and those medical issues, in your opinion, will interfere with your ability to participate, let us know.

I'll not ask what because it is not our business what that issue might be.

I have had many individuals serve on my panels that are diabetic. Individuals with back issues and people that need to frequently use the restroom.

If you're diabetic, need to eat or take insulin, no problem. We will stop.

Back issues, need to stretch, just stand

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up, stretch. Not a problem.

If you need to use the restroom at any time, that will not be a problem.

If you're commissioned-base salary, we don't want to interfere with your financial well being.

If you are a base-pay salary on work on tips or commission, again, we don't want to interfere.

Last but not least, if you are a full-time employee, and your employer is not going to pay you for every day you're here, let us know.

We know that some employers won't pay every day.

Some will give you three days, five days, ten days.

This trial will go more than that.

We don't want anybody getting stuck in a situation they won't get paid.

If you work overtime normally and your employer will only pay you for eight, again, we won't interfere with that.

This is the reason Steve asked you before to make phone calls.

If you have not heard back from your

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employer, just let me know when you do hear back.

We are not going to hurt anybody in terms of financial aspects.

I don't want to be on the front page of the paper because somebody was evicted for serving on my trial.

Last thing, if you are 70 or older, and please if you are, don't raise your hands, I want you to know serving on a jury is optional.

Under the law, it is an automatic exclusion. That is a choice that the person gets to make.

I just wanted all of you to be aware of it.

Mr. Huston, let's start with you.

Nip problems?

EDWARD HUSTON: I'm a full-time employee. My employer does not pay.

THE COURT: Ms. Krebs?

JULIA KREBS: Sole proprietor. I sell live bait and do a tender service right in Port Everglades.

THE COURT: Ms. Russel?

THERESA RUSSEL: I am salary-commissioned. My company does pay ten days.

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THE COURT: That's as far as you need to go.

RAYMOND SAGUINE: Self-employed plumber.

THE COURT: If you are not working, you're not earning.

RAYMOND SAGUINE: Right.

DAMON JONES: Full-time employee. My company pays. Work for AHF.

THE COURT: That's your only conflict?

DAMON JONES: Yes.

THE COURT: Ms. Ross Weiss?

SUZANNE ROSS WEISS: I am a self-employed bookkeeper .

THE COURT: If you are not keeping the books --

SUZANNE ROSS WEISS: I have nothing.

THE COURT: Mr. Shuford?

DARRYL SHUFORD: Salaried employee. No issues. Work for CY Trust fund.

THEODORE FRANCO: Full-time employee for Hertz Construction. They pay three days.

RICHARD ANTRICAN: I work for a fire protection contractor. Three days.

KEVIN WRIGHT: I work for National Tool. They pay five days.

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SHELLY FANDINO: My husband -- I'm a mom. My husband, I take care of two kids. Help with 91-year-old grandmother.

My husband travels a lot.

ROSADO MELENDEZ: Self-employed barber, sir.

ANGELA BALCOM: I'm a caregiver for my husband right now.

MICHAEL LACASSSE: Employee.

Unsure how long they pay. I work for Conroy Seabrook. I'm a paralegal. Work with five attorneys.

They don't know their policy.

I made the phone call. Emailed. Texted. No one seems to know.

THE COURT: That would be your only conflict?

MICHAEL LACASSSE: Yes.

THE COURT: Mr. Herr?

ANTHONY HERR: Self-employed painter.

MARITZA KRONER: I work for Memorial Hospital.

They said they would pay.

THE COURT: THAT'S your only potential conflict?

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MARITZA KRONER: Yes.

CHARLES PATTERSON: Medical issues.

COLBY ALONSO: I have a pre-planned vacation, crucial, 11-15 through 19. I work for American.

They said they will pay.

I am a translator for them.

THE COURT: Leaving on a Thursday, coming back on a Monday?

COLBY ALONSO: Yes, sir.

THE COURT: If we were finished by then, you wouldn't have any other issues?

COLBY ALONSO: No. Our schedules are complicated. I would lose a couple hours a month. They will pay to a certain amount. Then it cuts off. Mine are always more than that. Wouldn't be a financial hardship for me.

THE COURT: Willing to serve if selected?

COLBY ALONSO: Yes.

THE COURT: Ms. Byrd?

MARY BYRD: I'm a primary care giver of my two grand daughters. I work for Broward County schools. If I didn't have custody of my two grand daughters, wouldn't be a problem.

THE COURT: There is no after care or

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something of that --

MARY BYRD: They are in after care at their school. One is over at five. The other is over at six. It would be a problem getting there.

THE COURT: Where do you pick them up.

MARY BYRD: In Hollywood.

ERIN FROMM: I have a two- and three-year-old I'm a primary care giver.

I don't have a child care service.

FRANK AHRENS: I am a teacher in a small, private school. Allowed five personal days.

THE COURT: They don't pay you other than that?

FRANK AHRENS: That's correct.

JIMMIE BUTLER: Full-time employee. Employer doesn't pay.

IRA FOX: I am in charge of a large medical practice.

THE COURT: Dr. Fox?

IRA FOX: Yes, sir.

THE COURT: What practice?

I'm nosey.

IRA FOX: Anesthesia, pain care

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consultation.

THE COURT: What happens if you're with us?

IRA FOX: People have to have surgery awake.

Well, it is a specialized practice.

We treat people with chronic pain. It is something you can't be away from that long. In fact, they were hoping I would be back this afternoon.

THE COURT: You may.

Actually, you will be out of here in a little bit.

Mr. Salzinger?

ZACHARY SALZINGER: Full-time employee. Two weeks.

ELYSSA GABLES: Full-time student in Orlando, studying biomedical science.

THE COURT: Want to be a doctor?

ELYSSA GABLES: Dentist.

THE COURT: Mr. Chisling?

GARY CHISLING: Full-time employee. Five days.

THE COURT: If you will go with Steve a minute, we will have most of you out of here probably in five minutes.

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(Exit venire.)

THE COURT: Ready?

MR. SATZ: Yes.

THE COURT: 1, Huston; 2, Krebs; 3, Russell; 4, Seguine are gone.

5, Jones is okay.

I have 6, Weiss, gone.

I have 7, Shuford, okay.

Then I have 8, Franco; 9, Antrican; 10, Wright; 11, Fandino; 12, Melendez; 13, Balcom, they are all gone.

MR. SATZ: Yes.

MR. POLAY: Yes.

THE COURT: 14, LaCasse --

Waiting for an answer.

We will wait on him. For the moment, he stays.

Let's keep going.

15, Herr, is gone.

16, Krones, is good.

17, Patterson, is gone.

18, Alonso, is good.

19, Perez; 20, Kaya; language.

Both gone.

Then we have 21, Byrd. Gone.

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22, Fromm, gone.

23, Ahrens; 24, Butler; gone.

Letting Dr. Fox go.

MR. SATZ: Yes.

MR. WILLIAMS: Yes.

MR. POLAY: Yes, sir.

THE COURT: 26, Salzinger, gone.

27, Gables; 28, Chisling, are gone.

MR. WILLIAMS: Five. More likely four.

THE COURT: Understanding we may get a phone call or two.

All right.

That's it.

We will see what happens.

Think I should order more for Monday afternoon?

MR. SATZ: Can't hurt.

MR. WILLIAMS: Can't hurt.

THE COURT: I figure 2 o'clock, I'll ask for them.

Let's order 50 for Monday afternoon.

Remember, I have the rest of our jurors coming back Tuesday morning, to start voir dire.

I think we have 63 we can talk to. Between

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today's group and if we pull Mondays, take some of the questionable people that we kept around, get rid of them if we have more solid prospects.

We will worry about that when we get there.

Look at the time.

See you Monday.

(Proceedings conclude.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 11th day of July, 2019.

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME XI
PAGES 949 - 990

Fort Lauderdale, Florida
October 8th, 2018
10:45 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 8th, 2018, commencing at 10:45 a.m.

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THEREUPON, the following proceedings were had:

(Proceedings were had, unrelated to State vs. Hojan, which are not made a part of this transcript.)

THE COURT: Are they all lined up?

DEPUTY: Yes.

Number 1 is missing.

THE COURT: If someone is not here yet, just leave that seat open.

(Enter venire.)

THE COURT: Okay.

Good morning, ladies and gentlemen.

I'll try to get you out of here as quickly as I can. This is another process. I think, as I said to you on Friday, this is a two-part. We'll see exactly where it goes.

Now I can't see you guys now.

I can see what I have to read.

I want to read you something.

Then we will talk about it.

The reason you're here as potential jurors is to determine the appropriate sentence to be imposed upon the defendant for his conviction for murder in the first degree of Willie Absolu

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and his conviction for murder in the first degree of Christina Delarosa.

The crimes in this case took place during the early morning hours of March 11, 2002, at the Waffle House Restaurant located at 4689 SW 148th Avenue in Davie, Florida.

In a previous proceeding, the defendant was found guilty and convicted of murder in the first degree of Willie Absolu as to Count I of the indictment; murder in the first degree of Christina Delarosa as to Count II of the indictment; attempted first degree premeditated murder of Barbara Nunn as to Count III of the indictment; attempted felony murder of Barbara Nunn as to Count IV of the indictment; armed kidnapping of Willie Absolu as to Count V of the indictment; armed kidnapping of Christina Delarosa as to Count VI of the indictment; armed kidnapping of Barbara Nunn as to Count VII of the indictment; armed robbery of Christina Delarosa as to Count VIII of the indictment and armed robbery of Barbara Nunn as to Count IX of the indictment.

The only issue before you is to determine the appropriate sentences to be imposed upon

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the defendant for his conviction of murder in the first degree of Willie Absolu and his conviction for murder in the first degree of Christina Delarosa.

The issue of the defendant's guilt has already been determined. And it is not for your consideration or determination at all in this proceeding.

Now, my question -- and I just need a show of hands -- is how many of you, if any, are familiar with the facts of this case?

Anyone?

ELLIOTT GLANTZ: Sounds like something I heard on the news.

THE COURT: Do you remember when?

ELLIOTT GLANTZ: No.

THE COURT: Recent?

ELLIOTT GLANTZ: No. A while ago.

THE COURT: Probably something you heard in 2002 or 2004?

ELLIOTT GLANTZ: I don't know.

THE COURT: Do you remember anything of what you heard back then?

ELLIOTT GLANTZ: No.

THE COURT: If you were to serve with us

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and your memory started to get jogged as to what you think you heard or remembered, would you be able to set that aside, make a determination only upon what you hear in this courtroom and the law?

In other words, --

ELLIOTT GLANTZ: I understand.

Yes. Yes. Yes. Yes. Yes. I don't have an easy answer, honestly.

THE COURT: You will hear everything about the case anyway.

ELLIOTT GLANTZ: Oh. Yeah, yeah. So it is narrowed down to that.

THE COURT: Right.

ELLIOTT GLANTZ: Yeah.

THE COURT: The whole question, you will hear everything anyway. But you don't remember any of the particular facts? I am guessing other than it was at a Waffle House.

ELLIOTT GLANTZ: That's all that comes to my mind. Yes.

THE COURT: Anybody else?

Okay. That was Step 1.

Now let's talk about Step 2.

There are only two possible penalties in

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the State of Florida for murder in the first degree.

One is life without the possibility of parole, life meaning life.

The other is death.

In this case, where -- this is a case where the State of Florida is seeking the death penalty.

Now, I want to give you an idea of how, this isn't a matter of saying to you guys all right, you have heard everything. What will you do?

There is an entire process that we go through before any determination of a sentence can be decided.

And I just want to go through and explain what the process is.

Now, in a case where the State of Florida is seeking the imposition of the death penalty, there are what we call aggravating factors. Aggravating factors I'll define for you in just a minute.

After a jury determines -- and these determinations all have to be unanimous by the jury. So let me go through and tell you what

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an aggravating factor is. Then I'll complete this process for you.

An aggravating factor is a standard guide the jury, in making the choice between a sentencing decision of life imprisonment without the possibility of parole or death, it is statutorily enumerated circumstance that increases the gravity of a crime or the harm to a victim.

In other words, the State is limited in what they can argue to you as an aggravating factor by what the Florida law provides.

Everybody understands that?

It is not like the State of Florida can get up before the jury and say I don't like the defendant, so you should consider that as an aggravating factor.

That plays no part. It is strictly based upon what the law requires.

Now as I indicated a minute ago, you must unanimously agree that each aggravating factor was proven beyond a reasonable doubt before it may be considered by you in arriving at your final verdict.

In order to consider the death penalty as a

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possible penalty, you must determine at least one aggravating factor has been proven beyond a reasonable doubt.

The State has the burden to prove each aggravating factor beyond a reasonable doubt.

A reasonable doubt is not a mere, possible doubt; a speculative; imaginary; or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists.

On the other hand, if, after carefully considering, comparing and weighing all of the evidence you do not have an abiding conviction that the aggravating factor exists or if having a conviction, it is one which is not stable, but one which wavers and vacillates, then the aggravating factor has not been proved beyond a reasonable doubt; and you must not consider it in providing your verdict on the appropriate sentence to the Court.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, conflicts in the evidence or a lack of evidence.

If you have a reasonable doubt as to the

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existence of an aggravating factor, you must find it does not exist.

However, if you have no reasonable doubt, you should find that the aggravating factor does exist. Before moving on to the mitigating circumstances, the jury must determine that the aggravating factor or factors are sufficient to impose a sentence of death.

If you do not unanimously agree that the aggravating factor or factors are sufficient to impose death, do not move on to the consideration of mitigating circumstances.

Now, there is a process -- I'll do this here.

Should you find sufficient aggravating factor or factors do exist to justify a sentence decision for the imposition of the death penalty, it will then be your duty to determine whether the aggravating factor or factors that you unanimously find to have been proven beyond a reasonable doubt outweigh the mitigating circumstances that you find to have been established.

Unlike aggravating factors, you do not need to unanimously agree that a mitigating

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circumstance has been established.

A mitigating circumstance is not limited to the facts surrounding the crime. It can be anything in the life of the Defendant which might indicate that the death penalty is not appropriate for the defendant.

In other words, a mitigating circumstance may include any aspects of the defendant's character, background or life or any circumstance of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in the case.

A mitigating circumstance need not be proven beyond a reasonable doubt by the defendant.

A mitigating circumstance need only be proven by the greater weight of the evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstance.

If you determine, by the greater weight of the evidence, that a mitigating circumstance exists, you may consider it established and give that evidence such weight as you determine it should receive in reaching your conclusion

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as to the sentence to be imposed.

As I said to you, this is a process.

I'll go through what has to be determined before you can consider a death penalty.

The first thing a jury has to do is determine whether each aggravating factor is proven beyond a reasonable doubt.

Second, whether one or more aggravating factors exist beyond a reasonable doubt.

Third, whether the aggravating factor or factors found to exist beyond a reasonable doubt are sufficient to justify the imposition of the death penalty.

Four, whether mitigating circumstances are proven by the greater weight of the evidence.

Fifth, whether the aggravating factor or factors outweigh the mitigating circumstances.

Last, whether the defendant should be sentenced to life imprisonment, without the possibility of parole or death.

Now, I have three questions that I'll pose to you.

I'll do this person by person.

Here we go.

As I said, this is a case where the State

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of Florida is seeking the death penalty. With that in mind, I have some questions for you.

First one being do any of you have a firm opinion on the death penalty?

In other words, if a person is convicted of murder in the first degree, would any of you always vote for the death penalty, with no consideration for a vote of life without the possibility of parole?

In the alternative, would any of you always vote for life, with no consideration of a vote for the death penalty?

If none of you are adamantly opposed to or adamantly in favor of one sentence or another, would you be able to listen to any aggravating factors, any mitigating circumstances, arguments of the attorneys and the instructions by the Court and be willing to consider both possible penalties before making a decision?

Basically, can you consider everything and make a decision?

Ms. Delgado, in a conviction for murder in the first degree, would you always impose death?

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KATHYA DELGADO: No .

THE COURT: Would you always impose life?

KATHYA DELGADO: Yes.

THE COURT: Under no circumstances you can think of would you ever consider a vote or a consideration of a vote for death?

KATHYA DELGADO: No.

THE COURT: Ms. Roy, would you always vote for death?

KATHLEEN ROY: No.

THE COURT: Would you always vote for life?

KATHLEEN ROY: Yes.

THE COURT: Under no circumstances you can think of would you ever consider a vote or a consideration of a vote for death?

KATHLEEN ROY: Absolutely not.

THE COURT: There are no right or wrong answers. Everybody has an opinion, one way or another.

Mr. Sandstrom, for a conviction of murder in the first degree, would you always vote for death?

BRIAN SANDSTROM: Uhm, yes, I believe. Depends.

THE COURT: Let me ask you this. Would you

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always vote for life?

BRIAN SANDSTROM: Yes.

THE COURT: There are no circumstantial you can think of where you would consider the imposition of the death penalty?

BRIAN SANDSTROM: If the crimes are very severe, I think death would be considered a possibility.

THE COURT: Let me ask you the third question.

Would you be willing to listen to aggravating factors, mitigating circumstances, arguments of lawyers, the law, and consider both possible penalties before making a decision?

BRIAN SANDSTROM: Yes.

THE COURT: Ms. Nahidino, would you, for a conviction of murder in the first degree, would you always vote for death?

SHEKOUFEH NAHIDINO: No, not always.

THE COURT: Would you always vote for life?

SHEKOUFEH NAHIDINO: No.

THE COURT: Would you listen to aggravating factors, mitigating circumstances, arguments of the lawyers, the law that I give you and

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consider both possible penalties before making a decision?

SHEKOUFEH NAHIDINO: Yes.

THE COURT: Mr. Glantz, would you always vote for death?

ELLIOTT GLANTZ: No .

THE COURT: Would you always vote for life?

ELLIOTT GLANTZ: Yes, due to my religious beliefs.

THE COURT: Under no circumstances you can think that you'd consider a vote or a consideration of a vote for death?

ELLIOTT GLANTZ: No.

THE COURT: Ms. Goldberg, would you always vote for death where an individual is convicted of murder in the first degree?

JAMIE GOLDBERG: No.

THE COURT: Always vote for life?

JAMIE GOLDBERG: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

JAMIE GOLDBERG: Yes.

THE COURT: Mr. Craig, in a murder in the

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first degree conviction, would you always vote for death?

JOHN CRAIG: No.

THE COURT: Would you always vote for life?

JOHN CRAIG: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

JOHN CRAIG: Yes.

THE COURT: Ms. Varela, in a murder in the first degree conviction, would you always vote for death?

LISA VARELA: Depends upon the circumstances.

THE COURT: Always vote for life?

LISA VARELA: Depends upon the circumstances.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

LISA VARELA: Yes.

THE COURT: Mr. Slaughter, in a murder in the first degree conviction, would you always

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vote for death?

RICHARD SLAUGHTER: No.

THE COURT: Would you always vote for life?

RICHARD SLAUGHTER: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

RICHARD SLAUGHTER: Yes.

THE COURT: Ms. Maddox, in a murder in the first degree conviction, would you always vote for death?

ALINA MADDOX: No.

THE COURT: Would you always vote for life?

ALINA MADDOX: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

ALINA MADDOX: Yes.

One more thing, not related to that.

I forgot to mention on Friday, didn't occur to me, about my weekly Wednesday allergy shots. I brought my insurance records.

THE COURT: I'll believe what you tell me.

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When do you get them?

ALINA MADDOX: Wednesday afternoon at 4:45.

Have to wait 15 minutes to make sure I don't have a reaction.

If selected, is it possible to make an accommodation?

THE COURT: We have to wait and see if you make the final cut.

I have just wanted to bring it up.

THE COURT: How many shots do you get?

ALINA MADDOX: I get three shots every Wednesday. I have to get them the next three to five years to no longer have an allergy.

Thank you.

THE COURT: Thank you for letting us know.

Ms. Gurley-Campbell, in a murder in the first degree conviction, would you always vote for death?

PAULETTE GURLEY-CAMPBELL: No.

THE COURT: Would you always vote for life?

PAULETTE GURLEY-CAMPBELL: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

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PAULETTE GURLEY-CAMPBELL: Yes.

THE COURT: Ms. Elvin, in a murder in the first degree conviction, would you always vote for death?

ALEXCIA ELVEN: No.

THE COURT: Always vote for life?

ALEXCIA ELVEN: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

ALEXCIA ELVEN: Yes.

THE COURT: Mr. Maurice, in a murder in the first degree conviction, would you always vote for death?

MARSHAL MAURICE: No.

THE COURT: Always vote for life?

MARSHAL MAURICE: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

MARSHAL MAURICE: Yes.

THE COURT: Ms. Madzi, in a murder in the first degree conviction, would you always vote

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for death?

RITA MADZI: No.

THE COURT: Would you always vote for life?

RITA MADZI: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

RITA MADZI: Yes.

THE COURT: Ms. Santiago-Gonzalez, in a murder in the first degree conviction, would you always vote for death?

BELINDA SANTIAGO GONZALEZ: No.

THE COURT: Would you always vote for life?

BELINDA SANTIAGO GONZALEZ: Yes.

THE COURT: Under no circumstances you can think of would you ever consider a vote or a consideration of a vote for death?

BELINDA SANTIAGO GONZALEZ: No.

THE COURT: Mr. Rosario, in a murder in the first degree conviction, would you always vote for death?

JOSE ROSARIO: No.

THE COURT: Would you always vote for life?

JOSE ROSARIO: Yes.

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THE COURT: Under no circumstances you can think of would you ever consider a vote or a consideration of a vote for death?

JOSE ROSARIO: No.

And Judge, just to add, I also have a allergy injection.

THE COURT: Thank you.

THE COURT: Mr. Joyce, in a murder in the first degree conviction, would you always vote for death?

CHRISTOPHER JOYCE: No.

THE COURT: Would you always vote for life?

CHRISTOPHER JOYCE: Yes.

THE COURT: Under no circumstances you can think of would you ever consider a vote or a consideration of a vote for death?

CHRISTOPHER JOYCE: No.

THE COURT: Ms. Erazo, in a murder in the first degree conviction, would you always vote for death?

CYNTHIA ERAZO: No.

THE COURT: Would you always vote for life?

CYNTHIA ERAZO: Yes.

THE COURT: Under no circumstances you can think of would you ever consider a vote or a

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consideration of a vote for death?

CYNTHIA ERAZO: No.

THE COURT: Mr. Gavulic, in a murder in the first degree conviction, would you always vote for death?

RYAN GAVULIC: No.

THE COURT: Would you always vote for life?

RYAN GAVULIC: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

RYAN GAVULIC: Yes.

THE COURT: Mr. Jones, in a murder in the first degree conviction, would you always vote for death?

DAMON JONES: No.

THE COURT: Would you always vote for life?

DAMON JONES: Yes.

THE COURT: Under no circumstances you can think of would you ever consider a vote or a consideration of a vote for death?

DAMON JONES: Yes.

THE COURT: Would you be able to ever vote for the death penalty?

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DAMON JONES: Yes.

THE COURT: Let's go back.

You told me you wouldn't automatically vote for death.

DAMON JONES: No.

THE COURT: You told me you would automatically vote for life.

DAMON JONES: Yes.

THE COURT: Yet, you can think of circumstances you think you can vote and the proper sentence would be death?

DAMON JONES: Yes.

THE COURT: Mr. Shuford, in a murder in the first degree conviction, would you always vote for death?

DARRYL SHUFORD: Yes.

THE COURT: Any circumstances by which you believe you could vote for life?

DARRYL SHUFORD: Yes.

THE COURT: Would you automatically vote for life?

DARRYL SHUFORD: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible

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penalties before making a decision?

DARRYL SHUFORD: I would think the jury did that prior. I would probably have made up my mind.

THE COURT: I can't tell you whether a jury did or didn't do anything.

Mr. LaCasse, in a murder in the first degree conviction, would you always vote for death?

MICHAEL LACASSSE: No.

THE COURT: Would you always vote for life?

MICHAEL LACASSSE: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

MICHAEL LACASSSE: Yes.

I would like to clarify on Friday, I'm unsure of my employer's position regarding jury duty. They will pay up to five days. After that, I have to work at night, if I were selected.

After I have left here, I would have to go to the office, work until midnight or so, whatever.

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THE COURT: Effectively, you will be up about 24 hours every day.

MICHAEL LACASSSE: Maybe not 24. Most of it the.

THE COURT: Ms. Kroner, in a murder in the first degree conviction, would you always vote for death?

MARITZA KRONER: No.

THE COURT: Would you always vote for life?

MARITZA KRONER: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

MARITZA KRONER: Yes.

THE COURT: Ms. Alonso, in a murder in the first degree conviction, would you always vote for death?

COLBY ALONSO: No.

THE COURT: Would you always vote for life?

COLBY ALONSO: No.

THE COURT: Can you consider aggravating factors, mitigating circumstances, arguments of lawyers, the law and consider both possible penalties before making a decision?

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COLBY ALONSO: Yes.

THE COURT: All right.

If you guys will follow Steve a minute.

(Exit venire.)

MR. SATZ: Not doing Banas?

THE COURT: See if we need to.

MR. SATZ: She may have a good reason she was not here and she is No. 1.

MR. POLAY: I wanted to strike this whole panel. That's my motion.

I think that particular juror, when he said that a jury is, has already made up their mind, and that's why I would impose death in this case, I don't think that can be unheard from these particular potential jurors. I ask you strike every one of them and bring up new ones.

I truly believe once he said that, this particular potential panel is completely prejudiced.

MS. MCCANN: The State would disagree.

This Court instructed the jury from the outset, when it read the preliminary instructions, the charges, that the defendant had been found guilty and that the jury was not

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to concern themselves with issues of the defendant's guilt in this proceeding.

I think it is fair to assume that that juror was speaking about what the Court had instructed the jurors this very morning.

MR. POLAY: We were specifically on the subject of the death penalty.

Not on the guilt phase.

I think, in an abundance of caution, it would be very prudent to bring in a new 20, 25 people in lieu of that. This Court, yes, I agree with the State with this respect you instructed them pertaining to you are not to concern yourself with the guilt phase. You discussed everything about the death penalty. This juror said I'll go along with the death penalty. Basically we're saying he was already given death. I think that is something that can't be washed from their ears. It is something over poweringly prejudicial to my client.

MS. MCCANN: That's not what the record says.

MR. WILLIAMS: The record said I probably made up my mind, because a jury already did

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that.

THE COURT: Before that, he indicated he would always vote for death. I am not talking about after his comment, which this Court clarified.

But I don't agree with the contention of the Defense.

You made your motion.

It is denied.

If you want me to bring in Ms. Banas, I'll do an inquiry.

MR. SATZ: Okay.

(Enter Chestine Banas.)

THE COURT: Good morning. Little tardy.

CHESTINE BANAS: I wasn't advised of the room change. I was sitting downstairs, on the third floor since 11:15. Then I was told to check it out.

THE COURT: I was concerned. When jurors show up late, lots of reasons.

Not any good.

Could have been sick, in a car accident.

I would like to make sure.

CHESTINE BANAS: How were the other ones advised?

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THE COURT: To be outside?

CHESTINE BANAS: By text?

I have a land line.

THE COURT: No. They were all told on Friday, when you guys were taken out.

DEPUTY: Yes, sir.

THE COURT: Nevertheless, you're here.

THE COURT: Let's me see if you know anything about the case first.

This is in regards to two murders of which the defendant has been convicted, along with other charges that you will hear about, at Waffle House in 2002.

Are you familiar with anything as it relates to that?

CHESTINE BANAS: No.

THE COURT: Now, obviously, you heard, when you came in, that I was talking about the death penalty.

CHESTINE BANAS: Right.

THE COURT: Before a death penalty can be imposed, there are what we call statutory aggravating factors. Those are set forth by statute. They have to be proved beyond a reasonable doubt by the State of Florida. And

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the jury has to find unanimously that it existed.

There are also what we call mitigating circumstances, which can be anything in the defendant's life, background, anything as it relates to himself, facts of the case, that you would find are consideration for a sentence of life. Mitigating circumstances just have to be shown to exist. And they don't have to being found unanimously. That whole process goes through until such time as a jury ultimately reaches a verdict.

Now, I am doing this in an abbreviated fashion because you did get to hear the last questions.

And my question is, understand, the convictions of the defendant have already been determined. That is not a matter for consideration in any respect by the jury.

It is already a done deal.

The question I have is for murder in the first degree, would you always vote for the imposition of the death penalty?

CHESTINE BANAS: No.

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THE COURT: Would you always vote for the imposition of life?

CHESTINE BANAS: Yes.

THE COURT: Under no circumstances you can think of would you ever consider a vote or a consideration of a vote for death?

Not that I can think of. Not that I can conceive of.

THE COURT: Questions?

MR. SATZ: No.

MR. POLAY: No.

THE COURT: Thank you.

You can rejoin the others.

CHESTINE BANAS: Thank you.

(Exit Chestine Banas.)

THE COURT: 1, Banas, good?

MR. SATZ: Strike.

THE COURT: 2, Delgado, gone?

MR. SATZ: Yes.

MR. WILLIAMS: Yes.

THE COURT: 3, Roy, gone?

MR. SATZ: Right.

MR. WILLIAMS: Right.

THE COURT: 4, Sandstrom, stays?

MR. SATZ: Yes.

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THE COURT: 5, Nahidino, stay.

6, Glantz goes.

7, Goldberg --

MR. WILLIAMS: I have a comment to make about Ms. Goldberg.

THE COURT: Okay.

MR. WILLIAMS: When Ms. Roy said she would always vote life, Ms. Goldberg laughed. Then the Court said that everybody was entitled to their opinion.

THE COURT: I don't recall that.

MS. MCCANN: I don't either.

MR. WILLIAMS: I immediately said to Mr. Polay, I can't believe Ms. Goldberg is laughing.

MS. MCCANN: This Court makes comments intermittently about that.

MR. WILLIAMS: Right after she laughed, sat forward in her seat --

MR. POLAY: We would like an opportunity to talk to her.

THE COURT: I'll hold off on her.

8, Craig, stays.

9, Varela, stays.

10, Slaughter, stays.

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11, Maddox, our allergy shot person on Wednesdays at 4:30. And it is in Hollywood. That means on Wednesdays --

For the time being, keep her?

MR. SATZ: Okay.

MR. WILLIAMS: Yes.

THE COURT: 12, Gurley-Campbell, stays.

13, Elvin, stays.

14, Maurice stays.

15, Madzi, stays.

16, Santiago-Gonzales, goes.

17, Rosario, goes.

18, Joyce, goes.

19, Erazo, goes.

20, Gavulic, stays.

21, Jones? I'll take anybody's suggestion.

MR. SATZ: Go.

MR. WILLIAMS: Both he and Mr. Shuford.

THE COURT: Shuford I know is gone.

Both gone.

MR. SATZ: Yes.

MR. WILLIAMS: Yes.

THE COURT: 23, LaCasse, I show going.

MR. SATZ: Yes.

MR. WILLIAMS: Yes.

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THE COURT: 24, Kroner; 25, Alonso, I show both good.

MR. WILLIAMS: Yes.

THE COURT: Can I have Ms. Goldberg?

MR. SATZ: I would like to speak to Sandstrom, too.

Might be a, the guy that talked about the death penalty, ask him what he meant.

(Enter Jamie Goldberg.)

THE COURT: Mr. Williams?

MR. WILLIAMS: When Ms. Roy indicated there was never a time she could envision giving a death sentence, you kind of chuckled. Can you tell me what that was about?

JAMIE GOLDBERG: Uhm, well, I take a lot of answers that were so extreme, yes, never life, not neutral.

MR. WILLIAMS: Up until that time there wasn't an answer of always death. Basically three answers of always life.

JAMIE GOLDBERG: Yes.

MR. WILLIAMS: That's why I was wondering.

JAMIE GOLDBERG: Oh, maybe it surprised me. It surprised me the order in which people are answering.

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A pattern.

Extreme one way and got unusual for a while.

I don't remember Mr. or Mrs. Roy? The third row?

MR. WILLIAMS: the first two questioned said always life.

JAMIE GOLDBERG: Yes.

MR. WILLIAMS: There was a reaction from you.

JAMIE GOLDBERG: Because I thought I was interpreting the questions. My answer is different than theirs.

THE COURT: Mr. Satz?

MR. SATZ: No.

THE COURT: You can rejoin the others a moment.

(Exit Jamie Goldberg.)

THE COURT: You wanted to talk to Sandstrom.

And Shuford.

Are those the only two we are bringing in?

Then the others, tomorrow at 9:15.

MR. SATZ: Judge, just going to ask what he meant by that?

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(Enter Darryl Shuford.)

THE COURT: I want to follow up on something you said.

You made a comment about why you think we're going through this, basically, as far as what a jury may have done.

Remember that?

DARRYL SHUFORD: Yes.

THE COURT: Can you explain?

DARRYL SHUFORD: If the jury has already convicted him --

THE COURT: Of murder in the first degree, no question.

DARRYL SHUFORD: Right.

Then I believe in the death penalty.

THE COURT: I know.

You said that.

Your comment is in relationship to whether he was guilty of the two murders.

DARRYL SHUFORD: No. He has already been convicted, which he has been.

THE COURT: I told you that.

DARRYL SHUFORD: Then I believe in the death penalty.

THE COURT: No circumstances you can ever

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consider life?

DARRYL SHUFORD: I don't think so. No.

THE COURT: Anybody want to follow up?

Appreciate it.

Thank you.

(Exit Darryl Shuford.

MR. SATZ: I think that clears it up.

(Enter Brian Sandstrom.)

THE COURT: Just a couple follow-up questions.

MR. SATZ: With reference to Judge Backman's questions, I noticed you hesitated an bit.

First question, in a first degree murder case, when a defendant has already been convicted, would you always vote death?

BRIAN SANDSTROM: I would choose death, if, like the evidence, kind of --

MR. SATZ: Would you automatically vote death?

BRIAN SANDSTROM: No.

MR. SATZ: So you wouldn't automatically vote for death?

BRIAN SANDSTROM: I wouldn't, it depends.

MR. SATZ: Would you automatically vote for

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life?

BRIAN SANDSTROM: No. I have to know what I'm looking at.

MR. SATZ: For the third question, you would have to see what the aggravating factors are and the mitigating circumstances before you render a decision?

BRIAN SANDSTROM: Yes.

MR. SATZ: Thank you. Nothing further.

THE COURT: Mr. Polay, Mr. Williams?

MR. POLAY: Good afternoon, Mr. Sandstrom.

Mr. Satz just asked you a question, conviction of a first degree murder, would you always vote for death. You were somewhat hesitant. Would you agree with that?

MR. POLAY: I kind, it is a little, uhm, I'm, I'm not sure, really.

It depends, for me, I don't know what, how severe things are.

MR. POLAY: You heard the Judge tell you my client is already convicted of two first degree murders, correct?

BRIAN SANDSTROM: Yes.

MR. POLAY: What I'm asking you, knowing that, as you sit here today, would you vote for

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the death penalty?

BRIAN SANDSTROM: Possibly, yes.

MR. POLAY: What you're saying is because of the fact we're dealing with two first degree murder convictions that you already know occurred, you're saying you would vote for the death penalty?

BRIAN SANDSTROM: Possibly, yes.

Excuse me. Uhm, --

MR. POLAY: Let me try to simplify.

Do you believe that, in effect, like the Bible stays, an eye for an eye?

BRIAN SANDSTROM: I'm not kind of religious.

I am not --

MR. POLAY: Maybe I used a bad analogy. Do you think you can keep an open mind or if you're really one of those people that just believes in the death penalty?

BRIAN SANDSTROM: I can keep an open mind.

MR. POLAY: Is there anything about the fact you just heard my client was convicted of two first degree murders that would make you feel you should automatically vote for death?

BRIAN SANDSTROM: I don't, not really, no.

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THE COURT: If you can wait in between the doors.

(Exit Brian Sandstrom.)

THE COURT: Well?

MR. SATZ: I'm ambivalent. I don't know.

MR. WILLIAMS: This is a young man that doesn't work. Lives at home.

MR. POLAY: I'm nervous whether or not he's all there. I mean Mr. Satz can get him to answer any question he wants.

Same with me.

THE COURT: Mike is ambivalent.

If you don't want him, he goes.

MR. POLAY: I think we are better off without him.

THE COURT: Okay.

He goes home. Back to the jury room.

MR. SATZ: So you're not picking any more?

THE COURT: Do we need them?

We already cleared over 60, close to 70.

And I can only put 63 in here. I have close to 70.

MR. SATZ: Okay, then.

THE COURT: I'll release them.

(Ending at 12:30 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 10th day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

ORIGINAL

Defendants.

TRIAL PROCEEDINGS
VOLUME XII
PAGES 991 - 1076

Fort Lauderdale, Florida
October 9th, 2018
9:40 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 9th, 2018, commencing at 9:40 a.m.

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THEREUPON, the following proceedings were had:

THE COURT: Ready?

JUDICIAL ASSISTANT PAM COE: Mr. Graham, seven-day-paid vacation, starting October 9th. A seven-day vacation starting October 29th.

MR. POLAY: He said he had stomach issues.

JUDICIAL ASSISTANT PAM COE. He's 13 on the list.

Also, Elisa Weinstein, number 10 on my list. She evidently went off anti-anxiety meds a bit ago.

This trial is bringing the anxiety back.

Christine Guagenti, number 59 on page 4, the last page, her work, you guys are waiting for her to get back from her employer. Her employer only pays for two weeks.

THE COURT: You didn't tell them anything?

JUDICIAL ASSISTANT PAM COE: They are filling out forms and information sheet.

MR. SATZ: Can we leave the seating charts, the chairs open?

JUDICIAL ASSISTANT PAM COE: Yes.

Can I bring in number 10 first?

THE COURT: Yes.

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(Enter Elisa Weinstein.)

THE COURT: Talk to us.

ELISA WEINSTEIN: The Thursday before, I stopped taking meds for anxiety. I have been on it since my baby was born, post-partum. I wanted to try life without medication. Then this happened.

I find myself crying at the drop of the hat. Getting twitches in my eyes.

Yelling at my baby.

I am anxious and overwhelmed. My husband is leaving the country next week. I'm just overwhelmed.

THE COURT: Let me ask you this. Did you decide to stop taking the medication on your own?

ELISA WEINSTEIN: Yes.

THE COURT: Did the doctor tell you that you should?

ELISA WEINSTEIN: No.

She gave me a prescription in case I needed it again. But no.

I kind of stopped it on my own back in August. I started taking myself off slowly. When I went to see her a couple weeks ago, she

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is like just stop taking it now.

I really thought I could handle it. My body is telling me something different.

THE COURT: What happens if you go back on it? I know you don't want to.

ELISA WEINSTEIN: I am tired of the waking, sleepless nights, restless legs. I have been on three different meds.

Nothing was working well for me. I wanted to do it with natural things.

MR. SATZ: Do you think it will interfere with your ability to be a juror?

ELISA WEINSTEIN: I do. I didn't think it was.

I was honest last week, when I gave my answers.

The more it is on my heart and mind, I don't know if I can make a decision fairly, without using my emotions right now.

I'm like a ball of crazy emotions.

I had anxiety about coming in and talking about my anxiety this morning.

I'm struggling with it and with everything else going on outside of here. Leaving my kids for four to seven weeks, without a reading

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teacher. I have a boy with epilepsy who has to have medication administered as soon as he 2the seizure.

They will have a substitute in there. There are extenuating circumstances that, causing all of this on me.

And I thought I could handle it. I have been okay. Last week the twitches started again, the headaches, crying, yelling. Someone suggested going to my doctor to talk about it. I went to my doctor. She wrote me a note I have been on medication.

It is starting to affect my health.

So I don't know. I tried. I'm trying. I think if it wasn't four to seven weeks of being here, I would feel better.

That's a long time to be away from my job when I am so personally involved with my 18 first graders.

MR. SATZ: Thank you.

MR. POLAY: I have no questions.

MR. WILLIAMS: No questions.

THE COURT: All right.

I know it is never easy to talk about stuff. We will give you your card back, let

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you go back to the jury room. They will process you out. All I can say is number 1, I hope you feel better. Number 2, I know I speak on behalf of all of us when I say that we truly appreciate the time you gave us and your willingness to participate.

With that, Steve has your card.

Have a good day.

(Exit Elisa Weinstein.)

(Enter David Graham.)

THE COURT: Mr. Graham, how are you this morning?

I understand you have a trip.

DAVID GRAHAM: Seven days of vacation I asked your assistant about. Seven days of vacation starting October 29th.

THE COURT: I don't know how this will come out. Why didn't you tell us that.

DAVID GRAHAM: I did two times. Twice. Yes.

THE COURT: Nothing --

DAVID GRAHAM: That's why I brought it up a third time.

THE COURT: We all appreciate that. I think now that you say that, it jogs my memory

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a bit. I think I asked you the possibility of taking the vacation in late November or December.

DAVID GRAHAM: You didn't ask me that.

THE COURT: Now I'm asking.

DAVID GRAHAM: It is done by seniority. I'm not able to change it. It was done last January.

MR. WILLIAMS: He has training.

DAVID GRAHAM: No. That was the other pilot.

MR. SATZ: Is it a pre-paid vacation?

DAVID GRAHAM: Yes.

MR. SATZ: You already paid for it?

DAVID GRAHAM: Yes.

MR. SATZ: Nothing further.

MR. WILLIAMS: Nothing.

THE COURT: We'll give you your card back.

Go back to the jury room.

Thank you for your participation and willingness to serve.

Have a good day.

(Exit David Graham.)

(Enter Christine Guagenti.)

THE COURT: Hello, Ms. Guagenti.

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Your employer will only pay you for two weeks?

CHRISTINE GUAGENTI: Yes.

THE COURT: We will give you your card back.

Go back to the jury room.

Thank you for your participation, your willingness to serve.

Have a good day.

(Exit Ms. Guagenti.)

THE COURT: Is that it?

JUDICIAL ASSISTANT PAM COE: That's it as far as issues.

I'm missing three jurors.

THE COURT: All right.

Go. Check it out.

JUDICIAL ASSISTANT PAM COE: I did. They are not here yet.

I'll handle the 13.

THE COURT: Tell them they may be needed Thursday, Friday. If it is next week, we will let them know on Friday.

Do we have all?

DEPUTY: We are missing number 5 and number 45 didn't answer.

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I'll check.

THE COURT: Only missing one juror right now?

JUDICIAL ASSISTANT PAM COE: Only missing one juror. Santana, number 5.

THE COURT: Let's bring them in.

(Enter venire.)

THE COURT: Good morning, ladies and gentlemen. Still excited, I see.

First of all, I want to thank every single one of you, on behalf of all of us, for your willingness and your participation. Now we have reached the point where we're going to start voir dire.

In other words, the lawyers are going to have an opportunity to talk to you.

Yes.

You.

After we're all finished, we'll, hopefully, be in a position to empanel our jury and be able to actually start.

Now, you know, because we have gone through this, whenever you have been with us, that this is a case where jurors are going to be asked to determine the appropriate sentence to be

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imposed or sentences to be imposed upon the defendant, whose name is Gerhard Hojan, for his conviction for murder in the first degree of Willie Absolu and his conviction for murder in the first degree of Christina Delarosa.

As I indicated to you, the crimes in this case took place during the early morning hours of March 11, 2002, at the Waffle House Restaurant, located at 4689 SW 148th Avenue in Davie, Florida.

As I have also indicated to you, the issue of the defendant's guilt has already been determined. Again, that's not an issue which you will have any participation in or can question.

Now, one thing I haven't had an opportunity to do is introduce all of the participants in this case.

At this juncture, I think it is appropriate I do so.

The first person I want to introduce, to my far right, is Ms. Hortence Vassel. She is my in-court clerk. Effectively, she's the Court's secretary. She keeps all of the notes, exhibits and tells me what to do.

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Don't worry, all of the women in here tell me what to do, including Pam, who presently isn't here. You have been dealing with my JA, who has only been with me for 22 years.

To my left, down in front, is Vivian Rock, my court reporter. She takes down everything said in the courtroom, including the statements I'm presently making.

She takes down the entire proceeding.

Again, I think I have indicated to you, when you have been in here, if a question calls for a yes or no answer, please, no shaking of the head left or right or up and down. No um-hum, hum-hum, because all of that shows up the same on a transcript.

So if you don't answer appropriately, I assure you Vivian will remind you.

Shy she is not.

And Vivian has been with me a very long time.

How long.

VIVIAN ROCK: Over a decade.

THE COURT: You can see, when I told you, women in this courtroom rule my life.

Representing the State of Florida in this

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case is Mr. Mike Satz and Ms. Carolyn McCann.

MR. SATZ: Good.

MS. MCCANN: Good morning.

THE COURT: Any of you related by blood or marriage to Mr. Satz or Ms. McCann?

Do you know either from any business or social relationships?

Representing the defendant, Gerhard Hojan, in this case, is Mr. Dohn Williams, Mr. Mitch Polay.

Are any of you related by blood or marriage to either Mr. Williams or Mr. Polay?

Do you know either of them from any business or social relationships?

The defendant in this case is Mr. Gerhard Hogan.

DEFENDANT: Good morning.

THE COURT: Are any of you related by blood or marriage to Mr. Hojan.

Do you know him from any business or social relationships?

The individual to my immediate right, who also tells me what to do, is Carolyn Bandklayder. She has been with me a long time as well. She's my staff attorney.

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When there are critical issues coming up, she is basically doing the legal research, while I'm trying to listen to lawyers.

As I indicated, this is voir dire, which means, literally, to seek the truth.

What we ask, when the questions are asked, for your honest, candid responses. There are no right answers. No wrong answers.

Just your honest opinion for the questions that are asked.

So if you do not understand the question, if there is a question asked that you wish to not talk in front of, what are we, 57 of your brand new friends, please, let me know.

I will be more than happy to make arrangements so you can discuss that in private.

Private means every one in this courtroom but your at the potential jurors. Just so you know. I mean that's how it has to be.

So understanding that, understanding what we're truly looking for is individuals who can be fair and impartial to both the State of Florida, the Defense, who are willing to consider aggravating factors that are found to

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exist, again, they have to be found unanimously.

We have talked about this extensively prior to your being here today.

Willingness to listen to mitigating circumstances that you find to exist.

Listen to arguments of the attorneys and the way that works, I'll explain once we have our actual jury. Of course, the law. What I read to you guys, when we were going through the initial three stages, that's the law. That's law.

What you hear at any time I have to give you the law is in fact law I'm bound to follow.

You don't have to like the laws. I'm sure there are many laws I don't like.

But that's irrelevant.

My job and your job is to follow the law.

In fact, you have already heard what the roles are.

In this case, the State of Florida has the sole burden of proving that aggravating factors exist beyond and to the exclusion of a reasonable doubt. That's their job. And they have to do that through competent evidence.

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The Defense has no obligation to do a thing.

Everybody understand that?

It is up to the state of Florida to prove that there are aggravating, there is an aggravating factor or factors that a jury fined to exist beyond and to the exclusion of a reasonable doubt. That's your job.

You are, effectively, the finders of fact.

My job, which is different than everybody else's job, is to sit here, look good, try to entertain you.

More importantly, to tell you what the law is. That's my role.

Everybody understand what their role is, in terms of this process we're going through now is?

VENIRE: Yes.

THE COURT: Well, Mr. Satz, they are yours.

MR. SATZ: Okay.

Thank you, Your Honor.

Good morning again.

As Judge Backman indicated, my name is Michael Satz.

This is Carolyn McCann.

We are from the Broward County State

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Attorney's Office.

What we are trying to do today, all of the lawyers here, is to empanel the most impartial jury to here this death penalty case.

As Judge Backman indicated, we are not trying to pry; but we are. But if we're prying and it is a question you feel is too personal and you don't want to answer it in front of, as Judge Backman says, in front of your new friends, we can do it at sidebar and do it as private as we possibly can.

Again, there are no right or wrong answers to any of the questions that we ask. You know, the lawyers want to hear what you feel and what your impressions are, what your opinions are. We have heard ourselves speak all of the time. We are not interested in what we know.

We want to know what you know and feel. There is no right or wrong answers.

In this death penalty proceeding, you already know that there are two convictions of the defendant, Gerhard Hojan, for first degree murder. And it is not just one sentence.

It is just not one sentence you're considering.

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It is two sentences.

Two.

The reason I say it is two sentences is because the defendant, Gerhard Hojan, murdered two people.

One was Christina Delarosa. The other was Willie Absolu. So you're going to have to come up with a sentence based upon the aggravating and mitigating circumstances you will consider and have two sentences.

Everybody understand?

In this death penalty proceeding, like any other death penalty proceeding in the state of Florida, it is always the same, no matter what the facts and circumstances.

No matter who was killed or how many people were killed. It is always the same.

What I mean by that, it is the law.

So the State presents aggravating factors. And those aggravating factors are statutorily defined. As Judge Backman has stated many times, that those aggravating factors that are statutorily defined, must be proven beyond a reasonable doubt.

So each juror has to look at those

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aggravators and see if they are proven beyond a reasonable doubt.

Then when you come up with your final decision, it has to be what?

Unanimous.

So if one person votes for life, the sentence is life.

So that's why, you know, we're being very careful in asking our questions.

So this death penalty case is like any other, no matter what the facts, circumstances, not matter how many people were killed, the State must prove the aggravating, statutorily defined aggravating factors beyond a reasonable doubt.

Mitigating circumstances don't have to be proven beyond a reasonable doubt. Judge Backman told you that.

It has to be by the greater weight of the evidence.

Then what you do, in this case, is, this death penalty case, like any other death penalty case, no matter the facts, circumstances, no matter how many people were killed, you have to take the aggravating

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factors you feel have been proven beyond a reasonable doubt and each factor, each circumstance is different. And you give it a different weight and a different value, depending upon how you feel about it.

Everybody understand that?

So it is a weighing process.

You can give it a lot of weight, little weight, some weight, a tiny bit or no weight. But you have to do that on your own, beyond a reasonable doubt, the aggravating factors, compare against the mitigating factors that only have to be established by the greater weight of the evidence. Then you must decide do those aggravating factors proven beyond a reasonable doubt outweigh the mitigating circumstances beyond a reasonable doubt.

Everybody understand that?

This death penalty case, like any other death penalty case, the jurors must do that. That is the law. That is the procedure.

Everybody with me?

I'll ask you some general questions. And I'll ask you some specific questions.

Anybody own a gun?

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Okay.

Let's, Ms. Branscum, what kind of gun do you own?

LINDA BRANSCUM: No idea. A .9 mm. and a .22.

MR. SATZ: Do you do shooting?

LINDA BRANSCUM: No.

They belong to my husband.

MR. SATZ: A .9 mm. is probably a semi-automatic handgun?

LINDA BRANSCUM: Yes.

MR. SATZ: Do you know the difference between a semi-automatic handgun and a revolver?

LINDA BRANSCUM: Yes.

MR. SATZ: For those of you that don't own guns, a semi-automatic hand gun is what you see on TV and in the movies all of the time. Don't do cowboy guns anymore.

A revolver.

A semi-automatic, as you will find out, from the testimony, loads from the handle what we call a magazine. Loads from the handle, right.

There are bullets in it.

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Each magazine has a different capacity.

10, 15, 6, 5 rounds.

You know, the casing, the back of the bullet, it is ejected from the gun. A revolver, the back of the bullet, the casings stay in the gun.

Everybody understand that? Those of you that have guns understand it.

Somebody else said they had a gun.

Ms. Balentine, what type of gun do you have?

LAUREN BALENTINE: Rifles and a Glock.

MR. SATZ: The Glock, do you know the caliber?

LAUREN BALENTINE: I think a .45.

MR. SATZ: You fired it?

LAUREN BALENTINE: Yes.

MR. SATZ: You know the casing is ejected from the gun.

Do you remember which Glock you have?

LAUREN BALENTINE: I think a .9 mm. Glock.

I am not sure. That's my husband's.

I only shoot the rifle.

MR. SATZ: Ms. Stone?

JUNE STONE: If my husband owns guns, yes.

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MR. SATZ: Do you know what he owns?

JUNE STONE: A little bitty one and a revolver and an antique rifle, I believe.

MR. SATZ: One is a semi-automatic handgun?

JUNE STONE: I don't know.

I don't think anything automatic.

I think you have to do the thing and pulling the trigger.

MR. SATZ: A semi-automatic handgun, you still have to pull the trigger?

JUNE STONE: True. I have never shot it.

MR. SATZ: With an automatic, it keeps firing.

A semi-automatic, the reason it is called a semi-automatic, when you put the magazine in the semi-automatic handgun, the handle, the bullet goes out, through the muzzle. The casing, back of the bullet, cartridge casing is ejected.

Another bullet is automatically put in the slide, slides forward and ready to be fired.

A revolver, cowboy gun, a wheel gun. It goes around. The casing, back of the bullet, the cartridge casing stays in.

All good with that?

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Mr. North?

MICHAEL NORTH: I have a .38 revolver and a .32 Berretta. Semi.

MR. SATZ: You have fired both?

MICHAEL NORTH: Not the Berretta. I have fired the .38.

Years ago.

MR. SATZ: You know the difference between a revolver and a semi-automatic handgun?

MICHAEL NORTH: Yes.

MR. SATZ: Ms. Armstrong?

KALENA ARMSTRONG-HENRY: Various rifles, revolvers. I own a .9 mm.

MR. SATZ: You're well aware of how a semi-automatic hand gun operates?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: Anybody back here? Okay.

Let's see.

BOBBIE SIMS: .9 mm., .22 and a .38.

MR. SATZ: .38 is a revolver?

ROBERY LANG: Yes.

MR. SATZ: You know the difference between the two?

ROBERY LANG: Yes.

MR. SATZ: Anybody else?

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Ms. Kaposi?

THERESA KAPOSI: I have a .38.

MR. SATZ: A revolver.

You have the one gun?

THERESA KAPOSI: I have more. I don't know what they are or where they are.

MR. SATZ: Mr. McClain?

CLINTON MCCLAIN: A .9 mm. And a .22.

MR. SATZ: You're well aware of how each operate?

CLINTON MCCLAIN: Yes.

MR. SATZ: Anybody else in the back?

Mr. Riggio?

MICHAEL RIGGIO: I have a Glock .9 mm.

MR. SATZ: That's the only weapon you have?

MICHAEL RIGGIO: Yes, sir.

MR. SATZ: You're aware of how a semi-automatic operates?

MICHAEL RIGGIO: Yes.

MR. SATZ: Anybody else?

Mr. Howard?

WILLIAM HOWARD: I have a shotgun.

MR. SATZ: No hand guns?

WILLIAM HOWARD: No.

MR. SATZ: You're aware of the difference

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between revolvers and semi-automatic handguns?

WILLIAM HOWARD: Yes.

MR. SATZ: Mr. Franklin?

WILLIAM FRANKLIN: I have a .357 revolver.

MR. SATZ: A wheel gun.

You know how that operates, compared to a semi-automatic hand gun?

WILLIAM FRANKLIN: Yes.

MR. SATZ: The next question, has anybody taken part in any rallies, marches, done any picketing?

Mr. Runge?

BRIAN RUNGE: Yes.

MR. SATZ: What type of rally or picketing?

BRIAN RUNGE: The March after the election I drove a few friends down to Miami and participated?

MR. SATZ: It was a political rally?

BRIAN RUNGE: Yes.

MR. SATZ: Anything happen as a result of that?

BRIAN RUNGE: No.

Just drove them there, walked around. Drove back.

MR. SATZ: Not a bad experience.

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BRIAN RUNGE: No.

MR. SATZ: Yes?

WILLIAM HOWARD: Picketing jobs for unfair practice.

MR. SATZ: A union would do, police union or firefighter type of thing?

WILLIAM HOWARD: Yes.

MR. SATZ: Satisfying experience for you?

WILLIAM HOWARD: Yes.

MR. SATZ: Anybody else?

ANDREE CLARK: March against gun violence.

MR. SATZ: How long ago was that?

ANDREE CLARK: This spring, after the shooting.

MR. SATZ: Satisfy experience for you?

ANDREE CLARK: Yes.

MR. SATZ: Anybody else?

LESLIE LYNCH: We went to Washington DC for March Of Our Lives after the Douglas shooting.

MR. SATZ: Satisfactory experience for you?

LESLIE LYNCH: Amazing.

MR. SATZ: Anybody else?

Mr. Cole?

LARRY COLE: Same thing.

Local March for Douglas. Didn't go to

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Washington.

MR. SATZ: Satisfactory experience for you?

LARRY COLE: Didn't get the results we were hoping for right away.

Hopefully.

MR. SATZ: Anyone ever felt so strongly about a situation or an issue that they wrote a letter to the editor or called their congressman or called a radio show, anything like that?

ASHLEY ROWE: Yes, for animal rights. I called a radio show.

They were talking poorly about pit bulls. The Michael Vick advertisers, I told them I would pull my add as a result of him being paid.

MR. SATZ: What kind of add were you doing?

ASHLEY ROWE: I work for an add agency.

MR. SATZ: Did you get a satisfactory result with that?

ASHLEY ROWE: Yes.

They did eventually pull the show. I don't know if it was because of me.

THE COURT: Ms. Armstrong?

KALENA ARMSTRONG-HENRY: I wrote to my

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senators, about them trying to repeal the Affordable Care Act. A long time ago, I was watching a news story, a reporter was reporting on children's issues use.

When they wanted to show the children, I guess not having a good time or bad things about children, they went to a minority neighborhood, black area. Wanted to show children experiencing life well, went to a white neighborhood. I felt it objectionable. I called the news station and spoke to a reporter.

MR. SATZ: Did you get any satisfaction?

KALENA ARMSTRONG-HENRY: He apologized. He explained what was going on. Why he went where he went. Not to cast dispersion on things.

MR. SATZ: You were satisfied with the explanation?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: How long ago was that?

KALENA ARMSTRONG-HENRY: About 22 years ago.

MR. SATZ: Anybody else?

Mr. Beeler?

RODNEY BEELER: Years ago, military decided

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they were in the Army or whatever, decided to change to the Black Berets.

Black Berets were part of the Army Rangers. I didn't think it appropriate military to change the Arm Ranger unit from the Black Berets. That was Black Berets. I wrote to the local congressman.

Said it wasn't right for them to do that. It was the Army Rangers. There stature. Their uniform. For the entire Army to be like that. But that was just my opinion.

I knew there would be nothing done about changing it.

MR. SATZ: But you got satisfaction out of --

RODNEY BEELER: Well, I mean, it was my opinion. Yes. Expressing my opinion.

MR. SATZ: Anybody else?

Mr. Runge?

BRIAN RUNGE: I was part of a program that sent out reminders and texts to call your local senator about neutrality?

MR. SATZ: Get satisfaction with that?

BRIAN RUNGE: Leaving voice mails. Never actually talked to anybody.

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MR. SATZ: How long ago was that?

BRIAN RUNGE: This last year.

Several months ago.

MR. SATZ: Ms. Bachus?

CYNTHIA BACKUS: 20 years ago, I emailed the senators of Utah about medical funding.

It was satisfying how many replied to me.

MR. SATZ: Anybody else over here?

Mr. Valdez?

RIGOBERTO VALDES: I wrote to the Diana Ross Edmund's office. She was helpful in getting my daughter back.

She was taken out of the country to Canada, for a long, long process. I was able to get custody of my daughter.

MR. SATZ: How long ago it was that?

RIGOBERTO VALDES: Back in 1999.

MR. SATZ: It was a good experience?

RIGOBERTO VALDES: Yes.

MR. SATZ: Anybody else over here?

Anybody ever engaged in a jail or prison ministry? Anybody?

Ms. Castano?

ANDREA CASTANO: Yes.

I was with my church. We would go to the,

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it was a while ago.

I was probably in high school. We went to juveniles and talked with the kids when they were eating.

MR. SATZ: How was that?

ANDREA CASTANO: It was a good experience.

MR. SATZ: Only time?

ANDREA CASTANO: We did it more than once.

MR. SATZ: How many times do you think you did it?

ANDREA CASTANO: I want to say probably three, four times I did it.

MR. SATZ: It was satisfactory for you?

ANDREA CASTANO: Yes.

MR. SATZ: Just juveniles?

ANDREA CASTANO: Yes. The adults had to be a with adults.

MR. SATZ: Does your church still do that?

ANDREA CASTANO: I don't know.

I'm not with that church.

After college I left that church.

I don't live in that area. It was in Miami.

MR. SATZ: Anybody else?

No?

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All right.

Here is one that maybe a lot of you will be raising your hand.

Anybody an employer or a supervisor or have been in the past that had to hire/fire somebody?

Ms. Rowe, you were a supervisor, employer?

ASHLEY ROWE: Yes.

I'm a manager.

Interview and hire people.

MR. SATZ: How about firing?

ASHLEY ROWE: I have been present while someone is fired.

I didn't have to deliver the message.

MR. SATZ: How many times have you done that?

ASHLEY ROWE: Fired? That was once.

MR. SATZ: Do you feel you could have done that on your own?

ASHLEY ROWE: Yes.

MR. SATZ: Because some people don't feel like firing somebody is --

ASHLEY ROWE: I could do it. I don't want to. I could do it.

MR. SATZ: You feel you can do it?

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ASHLEY ROWE: Yes.

MR. SATZ: You hesitated about it?

ASHLEY ROWE: Yes.

MR. SATZ: You feel you're the kind of person that honestly doesn't want to get involved in the firing process, even though the firing was appropriate?

ASHLEY ROWE: No, I'll voice my opinion, if I believe it is right or wrong. The face-to-face of telling someone your job is terminated is uncomfortable for me.

MR. SATZ: You only had to do that once?

ASHLEY ROWE: Yes.

MR. SATZ: Even though you didn't do the firing yourself, how did you feel after that process?

ASHLEY ROWE: I just wanted to hide. I didn't want to see the person while they packed up their belongings.

MR. SATZ: Ms. Stone, were you an employer or supervisor?

JUNE STONE: I was an officer manager in Fort Lauderdale.

MR. SATZ: With a company?

JUNE STONE: An electrical contractor.

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MR. SATZ: How long had you worked for them?

JUNE STONE: About 25 years.

MR. SATZ: You had to do the hiring and firing?

JUNE STONE: Not the whole time I was there.

I worked my way up to office manager.

MR. SATZ: When you were the office manager?

JUNE STONE: Hired and fired.

MR. SATZ: How many people do you think they fired?

JUNE STONE: I don't think that many. Mostly, they would quit.

MR. SATZ: They knew the writing was on the wall and you didn't to say good-bye?

JUNE STONE: I was not the only one that could fire. I was one of.

MR. SATZ: How did you feel about that?

JUNE STONE: Too bad it happened. But it had to happen to make everybody's life easier in the office.

MR. SATZ: You didn't feel that, you're not the kind of person that couldn't fire somebody?

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JUNE STONE: No, I could.

MR. SATZ: Mr. McCray?

JOEL MCCRAY: I am the coordinator of our after-school program and the elementary school. I do the hiring for the after-school program. If I have to let you go, I have to let you go. Because of those, the person assumed they have to have a job. I had to let them go.

MR. SATZ: You can hire, fire somebody if you felt they deserved it?

JOEL MCCRAY: Yes.

MR. SATZ: You don't want to go around firing somebody that doesn't deserve to be fired?

JOEL MCCRAY: No.

MR. SATZ: If it has to be done, you're willing, able to do it?

JOEL MCCRAY: Yes.

MR. SATZ: Anybody else?

NIGEL PIERRE: I was managing new hire, flight attendants.

I had to release at least five people. The first time was the most difficult time is the first time I went to do it.

I had never done it before. After that,

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not that it became easier, it wasn't as painful.

MR. SATZ: Certainly not a pleasant experience.

You thought you were capable of doing when it was deserved.

NIGEL PIERRE: Yes.

MR. SATZ: Anybody else?

LONI WILLIAMS: I am a supervisor for an AC company. I hire people. I train them. If they are inadequate, I have to release them.

MR. SATZ: How many people do you think you have had to fire?

LONI WILLIAMS: Maybe eight.

MR. SATZ: Not a pleasant experience?

LONI WILLIAMS: No.

But it has to be done.

MR. SATZ: You felt it had to be done?

LONI WILLIAMS: Yes.

MR. SATZ: You're capable of doing it if it was deserved?

LONI WILLIAMS: Yes.

MR. SATZ: Good for the whole company?

LONI WILLIAMS: Yes.

MR. SATZ: Anybody else on the front row?

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ADRIANA HOYOS-MARINUCCI: Yes.

I was a supervisor at the time. I wasn't the sole person that was, that had to do it.

I gathered information just to prove that, this person wasn't fit for the company.

MR. SATZ: You feel you can do it on your own, if you had to?

ADRIANA HOYOS-MARINUCCI: I could do it on my own. It was a corporation.

MR. SATZ: Let's say you will be our officer to do those things, do you feel you can do it if you felt it was deserving?

ADRIANA HOYOS-MARINUCCI: Yes.

MR. SATZ: Ms. Lynch?

LESLIE LYNCH: Yes, I have hired and fired numerous people.

MR. SATZ: You are a supervisor?

LESLIE LYNCH: And employer.

MR. SATZ: How many people do you feel you have had to let go in your career?

LESLIE LYNCH: Dozens.

MR. SATZ: Not a pleasant experience.

But you felt capable of doing it when deserved.

LESLIE LYNCH: Yes.

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MR. SATZ: Mr. Beeler?

RODNEY BEELER: Yes.

I am a supervisor.

I have been in supervisory positions in the past.

MR. SATZ: You have had to fire people?

RODNEY BEELER: I didn't fire them. They fire themselves.

MR. SATZ: If you had to, you feel you're capable of doing it if deserving?

RODNEY BEELER: Yes.

MR. SATZ: Ms. Balentine?

RODNEY BEELER: Had to let people go if they didn't properly do their positions.

It is very strenuous work.

If you are not capable after a certain amount of time, you have to let go.

MR. SATZ: Unpleasant experience?

RODNEY BEELER: Sure.

MR. SATZ: You felt you were capable of doing it when appropriate fit for your company.

RODNEY BEELER: Absolutely.

MR. SATZ: Anybody else up here?

The people I didn't talk to up here, supervisor, personally, being an employer,

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anyone here who felt if they were in that position they honestly don't feel they could fire anybody?

Anybody feel that way? If you were an employer or supervisor, other than the folks I spoke to, feel it so unpleasant for you, you wouldn't want to and couldn't do it.

Some people feel that way.

Anybody here?

Anybody, Ms. Bachus --

CYNTHIA BACKUS: Yes, I have had various leadership positions the last 20 years with two different companies, both hiring and firing.

In all of the firing, I had to let them go. HR rep was in the room. Both companies have had very lucrative type of probations and write-ups. It is not a surprise when you are firing them, 30, 60 days notice.

They had ample opportunity to correct themselves.

MR. SATZ: Anyone else?

DAVID DEAN: I was an operations manager.

I did hiring and firing.

One was sufficient evidence I found myself. Other presented to me.

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I backed, backed them up on my own.

I have done that. I wouldn't have problems.

MR. SATZ: When it has to be done, you felt capable?

DAVID DEAN: Did it individually or as a group. Especially, if there was a theft.

MR. SATZ: You felt if justified, you could do it?

DAVID DEAN: I did.

MR. SATZ: Anybody else on that side of the room?

Mr. Hayles?

PAUL HAYLES: In supervision.

Not with the initial firing.

But getting feedback.

MR. SATZ: If you were, you provided great feedback, want you to handle it on your own, feel capable of letting someone go, firing them if justified and good for the company?

PAUL HAYLES: Yes.

MR. SATZ: Anybody else over here?

MONIQUE ACHER: I am a teacher.

Naturally I was working a second job.

I wasn't in a supervisory position.

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I was aware of someone doing something if I told them, it would get them fired. I did. Brought it to the attention of the supervisor.

MR. SATZ: You would have no problem firing someone if you felt justified, if good for the organization?

MONIQUE ACHER: Correct.

MR. SATZ: Anybody over here?

JOEL SCHICK: Yes, for the past 12 years. Had to fire five, six people.

Always based upon -- I'd let them know why it was wrong, against company policy. Work with them to correct the issue or release them at the edge of the program.

MR. SATZ: Unpleasant, but you're capable of doing it?

JOEL SCHICK: Yes.

MR. SATZ: Ms. Clark?

ANDREE CLARK: I was working as a manager. It was a.

I had to do that after each allegation.

MR. SATZ: You were capable of doing it, even though unpleasant?

ANDREE CLARK: Yes.

MR. SATZ: Ms. Sims?

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BOBBIE SIMS: I am a post master at the post office. My particular area, I do all of the hiring and firing. I have no problem. They basically fire themselves.

MR. SATZ: When justified, you had no problem releasing them for the good of the post office and workers?

BOBBIE SIMS: Yes.

MR. SATZ: Mr. Gervolino?

CHARLES GERVOLINO: Been in retail for 48 years. Done firing and hiring. I usually don't like firing anybody. They justify it. Give them many chances.

Got to let them go.

I don't really feel bad about it.

I feel I gave though all of the chances to do the right thing. I have no hard feelings about that.

MR. SATZ: Anybody else?

Mr. Riggio?

MICHAEL RIGGIO: I was employed years ago as a sales manager.

I did hiring and firing. There were cases I had to let people go.

MR. SATZ: You felt you were capable of

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doing that when justified?

MICHAEL RIGGIO: Yes.

MR. SATZ: As unpleasant as it may be?

MICHAEL RIGGIO: Yes.

MR. SATZ: Anybody else?

You're Mr. Evans?

ROMAR EVANS PEDRO: It wasn't necessarily a supervisor role.

My previous job I was in a section that managed the acceptance agent program throughout Florida, Virgin Islands and Peurto Rico, still a part of my duties were to see the people that were eligible for the program and those that were not adhering to the standards set by the foreign affairs. I did do a lot of taking in a lot of the people.

But I did do a lot of releasing people.

It was a voluntary program.

MR. SATZ: If you were called upon to make that kind of decision, you feel you could do that?

ROMAR EVANS PEDRO: Yes. Yes, sir.

MR. SATZ: Anybody else?

Anybody else I didn't speak to over here, been a supervisor, employer, they feel maybe

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they are not the type of person who can honestly fire somebody, they would be so uncomfortable they couldn't do it if they were in a supervisory position, that I haven't talked to?

Now what I would like to do is start over here and ask you some individual questions that, off of the questionnaire that we all reviewed.

Is that okay?

BEVERLY STELZER: Yes.

MR. SATZ: All right.

You had served on, as a juror twice? Two criminal cases?

BEVERLY STELZER: Right.

MR. SATZ: Here in Broward County?

BEVERLY STELZER: Yes.

MR. SATZ: Do you remember when they were?

BEVERLY STELZER: Eight, nine years ago maybe. I'm not sure.

I know what one of its cases was.

I am not sure.

MR. SATZ: The one you remember?

BEVERLY STELZER: It was done here in Fort Lauderdale, where a young gentleman shot

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somebody on the railroad tracks, here in Fort Lauderdale.

MR. SATZ: Don't tell me the verdict. Did you reach a verdict?

BEVERLY STELZER: Yes.

MR. SATZ: There was another one?

BEVERLY STELZER: Yes.

MR. SATZ: Do you remember the charges in the other one.

BEVERLY STELZER: It was before the Ft. Lauderdale -- quite a ways back.

We reached a verdict.

MR. SATZ: Anything happen as a result of your jury service to cause you to have negative feelings about anything involved in the criminal justice system?

BEVERLY STELZER: The one in Fort Lauderdale, not just me, some of the jurors felt uncomfortable because the family of the defendant's, guilty party was in there, and kept looking at each of us individually.

We all felt very uncomfortable.

The Judge had the bailiff escort us out when the trial was over to our car.

They asked the family to leave the

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courtroom. Then were being disruptive.

MR. SATZ: Has that left lasting feelings with you?

BEVERLY STELZER: I remember I felt a little uncomfortable, knowing I was there to do a duty. To be stared upon made me nervous.

MR. SATZ: Would that past experience have any effect on your service here on this case?

BEVERLY STELZER: No.

MR. SATZ: You indicated your husband is an ex-police officer?

BEVERLY STELZER: Yes.

Retired City of Miami Police Departments and retired Marine.

MR. SATZ: Are you still at Walmart?

BEVERLY STELZER: I retired in 2015.

MR. SATZ: 23 years there?

BEVERLY STELZER: Yes.

MR. SATZ: Your husband was in the Marine Corps for how long?

BEVERLY STELZER: 20 years.

Retired.

MR. SATZ: Looking at the questionnaire, I'll ask everybody this question.

I have asked in your opinion about police

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officers.

Friend, close friend, relative ever arrested?

BEVERLY STELZER: No.

MR. SATZ: Have you had an experience with a police officer, anyone in your family, close friend, that was a negative experience?

BEVERLY STELZER: No.

MR. SATZ: Cause you to have negative feelings about police officers?

BEVERLY STELZER: No.

MR. SATZ: How do you feel about the way police officers do their job?

BEVERLY STELZER: From what I have seen, they do it well.

MR. SATZ: Our criminal justice system in the United States, how do you feel about our system. You served on two juries and reached a verdict on two cases?

Here you are again.

You're aware of the criminal justice system.

How do you feel about it?

BEVERLY STELZER: In a way, it's fair, how it is run.

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All depends.

MR. SATZ: Nothing is perfect?

BEVERLY STELZER: Nothing is perfect.

MR. SATZ: System can be perfect, but you have people in it. People are not always perfect.

BEVERLY STELZER: Not everything is perfect.

MR. SATZ: Other than the cases you sat on, did you ever follow any particular criminal case? I know sometimes we say I followed the O. J. Simpson case?

BEVERLY STELZER: No. No.

MR. SATZ: Some of the cases, Casey Anthony case?

BEVERLY STELZER: No.

I try to stay away from doing that.

MR. SATZ: How do you feel about, Judge Backman went, asked you the three questions about the death penalty. I want to go over it with everybody a bit again.

How do you feel about the imposition of the death penalty? Are you in favor or opposed to it.

BEVERLY STELZER: I kind of like oppose it.

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I really don't like it.

MR. SATZ: Is it because of religious beliefs?

BEVERLY STELZER: No.

MR. SATZ: You know, Judge Backman asked you, you could consider the aggravating factors proven beyond a reasonable doubt?

BEVERLY STELZER: Right.

MR. SATZ: But if someone asked you your feelings about the death penalty, you're opposed to it?

BEVERLY STELZER: Yes.

I am opposed to a death penalty.

MR. SATZ: Would that, in any way -- and there is no right on wrong answer. There are some people, as you know, from sitting in here, there are people on both sides and people in the middle and nothing wrong with being opposed to the death penalty.

My questions aren't, I'm just trying to find out, you know, where you stand. You're opposed to it.

Would your opposition of the death penalty interfere at all with your considering the aggravating factors and mitigating

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circumstances, if any?

BEVERLY STELZER: I don't know. No.

MR. SATZ: No? The answer is no?

BEVERLY STELZER: Yes.

MR. SATZ: Judge Backman said remember people are saying I would never vote for life, never vote for death. Some in the end zone. One the half-yard line.

Where are you on the football field?

BEVERLY STELZER: I, like the past criminal things, I like to hear everybody's output on everything.

MR. SATZ: Their what?

BEVERLY STELZER: The evidence.

MR. SATZ: Of course. Of course.

BEVERLY STELZER: I would like to listen both sides.

MR. SATZ: Right.

BEVERLY STELZER: That will determine what I look for.

I like to listen both sides.

Hear what they have to say.

MR. SATZ: Even though you're opposed to the death penalty, it wouldn't interfere with your ability to listen Judge Backman's

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instructions?

BEVERLY STELZER: Right.

MR. SATZ: And it wouldn't interfere --

BEVERLY STELZER: With my vote.

It wouldn't interfere with my vote.

MR. SATZ: You could still vote for the death penalty, even though you're opposed to it?

BEVERLY STELZER: Right. Right. Right.

MR. SATZ: Some people are intellectually in favor of the death penalty but can never personally vote for it. Because it is just like a very important decision.

BEVERLY STELZER: It is an important decision. But you have to listen the facts. The facts.

MR. SATZ: You're opposed to it. But you could vote for it?

BEVERLY STELZER: I could, if I studied the stuff.

MR. SATZ: If you were selected as foreperson, would you be willing to be the foreperson in a death penalty case?

BEVERLY STELZER: I don't know.

MR. SATZ: You don't know?

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BEVERLY STELZER: No.

MR. SATZ: What if you were selected by the other jurors as the foreperson? Would you be capable of signing the sentence, the verdict form, sentencing the defendant in this case to death?

BEVERLY STELZER: I believe so.

MR. SATZ: You feel you can do it?

BEVERLY STELZER: Yes.

MR. SATZ: Ms. Branscum, you had put in your questionnaire your husband was director of IT?

LINDA BRANSCUM: Yes.

MR. SATZ: Where was that?

LINDA BRANSCUM: The company was Daily Management Resorts in Westin.

MR. SATZ: How long has he been there?

LINDA BRANSCUM: He worked there for 14 years.

He passed four years ago.

MR. SATZ: I'm sorry.

How about your employment history?

LINDA BRANSCUM: I have been with my company for two and-a-half years.

MR. SATZ: What do you do for them?

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Bookkeeping?

LINDA BRANSCUM: I do bookkeeping and logistics.

MR. SATZ: What did you do before that.

LINDA BRANSCUM: I stayed at home and home-schooled my kids.

MR. SATZ: When you home-schooled your kids, all the way through high school?

LINDA BRANSCUM: No, for seven years.

MR. SATZ: Then they went to school?

LINDA BRANSCUM: They went. Yes. My husband got ill. I had to go back to work.

MR. SATZ: How many kids do you have?

LINDA BRANSCUM: Two.

MR. SATZ: What do they do?

LINDA BRANSCUM: Daughter is a graduate student. My son is a senior in high school.

MR. SATZ: The death penalty, are you in favor of it or opposed?

LINDA BRANSCUM: Yes.

I am in favor of it.

MR. SATZ: As I mentioned, some people are intellectually for the death penalty but not personally capable of doing that.

Do you feel you are personally capable of

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doing that?

LINDA BRANSCUM: Yes.

MR. SATZ: If you feel, at the end of this case, that the State has proven aggravating factors beyond a reasonable doubt, and that those aggravating factors outweigh the mitigating circumstances that were established by the greater weight of the evidence, do you feel you're capable of voting for the death penalty?

LINDA BRANSCUM: When Judge Backman asked the other day if we would always vote for the death penalty, in my world, that meant today, in this courtroom, outside of this courtroom, at any time, always, would I vote for the death penalty. And I answered yes.

I was unsure if he was talking about the case in here.

MR. SATZ: Right?

LINDA BRANSCUM: That being said, my answer would have been totally different.

I wouldn't need any -- I'm sold on the death penalty in this case.

MR. SATZ: No matter what, any mitigating circumstances may be provided to you, you have

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already made your decision?

LINDA BRANSCUM: That's correct.

MR. SATZ: Like I said, there are no right or wrong answers.

What we are looking for is what these two ladies said.

Honest impressions and feelings and impressions.

Ms. McCray, your spouse is self-employed.

JOEL MCCRAY: Yes.

MR. SATZ: What does your spouse do?

JOEL MCCRAY: Business consulting.

MR. SATZ: Who does he work for?

JOEL MCCRAY: Self-employed.

MR. SATZ: How long has he been doing that?

JOEL MCCRAY: Since we have been together. 15 years.

MR. SATZ: Always done the same thing?

JOEL MCCRAY: Done like event planning.

MR. SATZ: You had indicated that you got, where did you get your degree and when?

JOEL MCCRAY: Alabama State university in 1997.

MR. SATZ: You're a teacher now?

JOEL MCCRAY: Yes.

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21 years.

MR. SATZ: Where do you teach now?

JOEL MCCRAY: Thurgood Marshall Elementary School.

MR. SATZ: How long have you been there?

JOEL MCCRAY: 21 years.

MR. SATZ: That's it. You're there?

JOEL MCCRAY: Yes.

MR. SATZ: You said one of your sorority sisters is a public defender?

JOEL MCCRAY: I think she is. I'm an alpha cappa alpha. We are in all fields. I think she is.

MR. SATZ: You put that on your questionnaire.

JOEL MCCRAY: Yes.

MR. SATZ: Are you in contact with her much?

JOEL MCCRAY: Not outside of our sorority. Once a month.

MR. SATZ: You never discuss cases with her or anything?

JOEL MCCRAY: No. We do the business of our sorority.

MR. SATZ: Do you know where she's a public

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defender?

JOEL MCCRAY: I think she works for Broward County. I think here.

MR. SATZ: Here in Broward County?

JOEL MCCRAY: Yes.

MR. SATZ: Does she live in Broward?

JOEL MCCRAY: Yes.

MR. SATZ: Do you know her name?

JOEL MCCRAY: Deon Trawick.

MR. SATZ: Yes, she does work here. She has been in this courtroom. You have a cousin who is an attorney for child net?

JOEL MCCRAY: Yes.

THE COURT: If anyone needs to use the restroom, pick up and go. Don't have to raise your hand.

Just come back.

Hang on.

We will take a quick break.

(Exit venire.)

(Recess had.)

THE COURT: Ready?

Let's go.

(Enter venire.)

MR. SATZ: Ms. McCray, your cousin is with

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Child Net?

JOEL MCCRAY: Yes.

MR. SATZ: Male, female?

JOEL MCCRAY: Female.

MR. SATZ: What does she do?

JOEL MCCRAY: She is an attorney.

Goes for cases for parents, trying to fight for their rights.

She is on the side for the State.

MR. SATZ: How long has she been doing that?

JOEL MCCRAY: I want to say maybe a year.

MR. SATZ: Before that?

JOEL MCCRAY: She was a foreclosure attorney.

MR. SATZ: Do you know how long she has been a lawyer, attorney?

JOEL MCCRAY: Maybe five years. Maybe.

MR. SATZ: You indicated on the questionnaire someone was charged with an offense, a criminal offense?

JOEL MCCRAY: Yes.

MR. SATZ: Someone in your family?

JOEL MCCRAY: Yes.

MR. SATZ: Who?

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JOEL MCCRAY: Uhm, it's hard to say.

My dad and my brother.

MR. SATZ: Here in Broward County.

JOEL MCCRAY: Yes.

MR. SATZ: Do you know how long ago it was?

JOEL MCCRAY: I want to say 1992. I was in college.

MR. SATZ: Do you remember what the charges were?

JOEL MCCRAY: I would prefer not to say it in the whole room.

MR. SATZ: You can do it in private?

JOEL MCCRAY: Yes.

MR. SATZ: Anyone else?

JOEL MCCRAY: No. Outside of a friend that probably made poor choices in high school.

MR. SATZ: Someone testified. Is that the same as your dad and brother?

JOEL MCCRAY: Yes.

MR. SATZ: Someone was questioned?

JOEL MCCRAY: Yes.

MR. SATZ: Your dad and your brother?

JOEL MCCRAY: Yes.

MR. SATZ: Someone in your family or friends was a victim?

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JOEL MCCRAY: Yes. My aunt was murdered.

MR. SATZ: Here in Broward County?

JOEL MCCRAY: Yes.

MR. SATZ: Do you remember how long ago that was?

JOEL MCCRAY: In the 90's.

MR. SATZ: Was the perpetrator arrested?

JOEL MCCRAY: Yes, they found him two, three years later by a DNA test in Miami Dade.

MR. SATZ: Was the murder in Dade County?

JOEL MCCRAY: No, in Broward County.

MR. SATZ: What happened to that case?

JOEL MCCRAY: We really don't know. Didn't tell us a lot. I didn't know the outcome. We just found they found him with the DNA test.

I don't know anymore.

MR. SATZ: You don't know if the case went to trial?

JOEL MCCRAY: No.

MR. SATZ: Is that the only person in your family or friends who have been the victim of a crime?

JOEL MCCRAY: Yes.

MR. SATZ: Did anything happen as a result of your aunt being murdered to cause you to

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have negative feelings about the criminal justice system?

JOEL MCCRAY: No.

MR. SATZ: About police?

JOEL MCCRAY: No, I respect them.

MR. SATZ: Anything happen as a result of your dad and brother's case to cause to you have negative feelings about the criminal justice system?

JOEL MCCRAY: No, because my dad was a cop.

MR. SATZ: He was a police officer?

JOEL MCCRAY: Yes.

MR. SATZ: Who did he work for?

JOEL MCCRAY: Broward County.

MR. SATZ: Sheriff's office?

JOEL MCCRAY: Yes.

MR. SATZ: Some of your family being victims, some being arrested, you don't have negative feelings about the criminal justice system?

JOEL MCCRAY: No.

MR. SATZ: Have you personally ever had an experience with law enforcement that didn't amount to an arrest but was unpleasant?

JOEL MCCRAY: No, I can't say. Getting

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pulled over for a ticket is unpleasant anyway.

MR. SATZ: How about some of your friends? Anybody discuss any kind of incidents with you that didn't amount to an arrest that caused you to say boy, I have a negative feeling about police?

JOEL MCCRAY: No, because I sat on both sides.

Seen both cases, signed with family and police department.

MR. SATZ: As a general rule, your dad being a police officer, aunt being a victim of a crime, police officers, they are like everybody else? Good, bad lawyers, police officers, teachers?

As a general rule, how do you feel police officers do their job.

JOEL MCCRAY: To the best of their ability.

MR. SATZ: You don't have negative feelings regarding them?

JOEL MCCRAY: No.

MR. SATZ: During your life, have you followed any particular criminal case or desired to follow any particular case. Like the Casey Anthony case up in Orlando?

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JOEL MCCRAY: No. Didn't really.

MR. SATZ: Do you believe in the imposition of the death penalty, or are you opposed to it?

JOEL MCCRAY: I'm not opposed to it. I have to hear the facts. It is case by case basis for me. That's the way I stand, based upon the evidence.

MR. SATZ: Because some people are intellectually in favor of the death penalty. But when it comes down to personally voting for it, they are not capable of doing it. How do you feel about that?

JOEL MCCRAY: I think if I had, if it came to the case I had to vote, I could vote.

MR. SATZ: If you felt the aggravating factors proven beyond a reasonable doubt outweighed any mitigating circumstances established by the greater weight of the evidence, do you feel you are personally capable of voting for the death penalty?

JOEL MCCRAY: Yes.

MR. SATZ: If you were selected, would you be willing to serve as the foreperson?

JOEL MCCRAY: Yes.

MR. SATZ: If you were the foreperson,

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would you have difficulty signing your name to the verdicts, sentencing the defendant to death in this case?

JOEL MCCRAY: No.

MR. SATZ: Ms. Stone, your spouse is retired?

JUNE STONE: Yes.

MR. SATZ: How long?

JUNE STONE: About five years.

MR. SATZ: What did your spouse do?

JUNE STONE: He designed security systems in buildings.

MR. SATZ: Was he self-employed?

JUNE STONE: Yes.

MR. SATZ: He did that most of his career?

JUNE STONE: If not for himself, for other companies.

MR. SATZ: How about your employment?

JUNE STONE: I'm retired. Oh? History? I worked for a electrical contractor for about 25 years.

Then I worked for a painting company the last ten, before I retired.

MR. SATZ: You have been retired about five years also?

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JUNE STONE: One year plus a few months.

MR. SATZ: You served on a jury trial, but it was a civil case?

JUNE STONE: Yes.

MR. SATZ: You're aware the difference between a civil and criminal case?

JUNE STONE: Yes.

MR. SATZ: Understand the burden in a criminal case, the State has the burden?

JUNE STONE: Yes.

MR. SATZ: Some people feel that if they are selected as a juror in the penalty phase, but not the guilt phase, they have a problem with that. Do you have any problem with that?

JUNE STONE: I don't understand the question.

MR. SATZ: Some people feel that they haven't determined guilt. It's determined. You determine the penalty.

Do you have an issue with that?

JUNE STONE: No.

MR. SATZ: Do you believe in the imposition of the death penalty?

JUNE STONE: I am not opposed to it.

MR. SATZ: Does that mean you're in favor

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of the imposition?

JUNE STONE: Seems gentler to say not opposed than in favor.

MR. SATZ: We talked about, I looked at everybody's questionnaire. I didn't see you had put anyone that your family or friends had been arrested?

JUNE STONE: Right.

MR. SATZ: Have you or anyone in your family or any of your friends ever had an unpleasant experience with a police officer?

JUNE STONE: Traffic tickets. Being pulled over.

MR. SATZ: How do you feel police officers do their job?

JUNE STONE: Well.

MR. SATZ: Our criminal justice system, you feel it works well?

JUNE STONE: What I have seen, yes.

MR. SATZ: In this case, we talk about the death penalty. Some people are intellectually in favor of it. When it comes down to voting, they feel they wouldn't want to do that.

How do you feel about that?

JUNE STONE: I can do it.

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MR. SATZ: If aggravating factors in this case are proven to your satisfaction beyond a reasonable doubt and that those aggravating factors that are proven beyond a reasonable doubt to your satisfaction, outweigh any mitigating circumstances, proven by the greater weight of the evidence, do you feel, beyond a reasonable doubt, those aggravating factors outweigh those mitigating circumstances, do you feel you're personally capable of voting for the death penalty?

JUNE STONE: I am.

MR. SATZ: If you were selected as the foreperson, would you be willing to serve?

JUNE STONE: I would rather not.

MR. SATZ: Most people are surprised by that question.

If you were selected and you were the foreperson, would you have any difficulty, be willing to sign the verdict forms, consent to sentencing the defendant to death?

JUNE STONE: I would have no difficulty.

MR. SATZ: Ms. Williams, how are you?

LONI WILLIAMS: I am okay.

Yourself?

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MR. SATZ: Good. Thank you.

You have an associates degree in crime scene?

LONI WILLIAMS: Yes.

MR. SATZ: Where did you get that?

LONI WILLIAMS: Keiser in Fort Lauderdale.

MR. SATZ: Are you pursuing anything, dealings in forensics?

LONI WILLIAMS: I was. I have since, I guess backed off a little.

MR. SATZ: Why?

LONI WILLIAMS: Planned on getting my masters in psychology.

MR. SATZ: Did you plan it for a long time, to get involved in forensics?

LONI WILLIAMS: Yes.

MR. SATZ: What are you doing now?

LONI WILLIAMS: I'm a supervisor for an AC company.

MR. SATZ: You have been doing that for how long?

LONI WILLIAMS: Like ten years.

MR. SATZ: Before that, you were in school?

LONI WILLIAMS: Yes.

MR. SATZ: You applied to the Broward

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Sheriff's Office?

LONI WILLIAMS: Yes.

MR. SATZ: Is that still pending?

LONI WILLIAMS: I got hired. I didn't accept it because of the pay scale, wasn't good for my life style.

MR. SATZ: Any regrets about that?

LONI WILLIAMS: Yes, sometimes.

MR. SATZ: Someone in your family was the victim of a crime?

LONI WILLIAMS: Me. I had my apartment burglarized before.

MR. SATZ: Anything happen as a result? Did they apprehend somebody?

LONI WILLIAMS: No.

MR. SATZ: Anything happen as a result of that burglary cause you to have negative feelings about law enforcement and the criminal justice system.

LONI WILLIAMS: No, but maybe the crime scene technician that came to my house, or the officer that came to my house.

I knew what them should have done, and they didn't do it accurately.

MR. SATZ: Did you say something to them?

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LONI WILLIAMS: Of course.

MR. SATZ: After you thoroughly embarrassed them, what happened?

LONI WILLIAMS: Nothing.

None of my stuff was recovered. Nothing. Nothing.

MR. SATZ: Then you served on jury duty?

LONI WILLIAMS: Yes.

MR. SATZ: When was that?

LONI WILLIAMS: It was here, on the same floor. I want to say it was 2008, 2009. It was a criminal case where a guy sold drugs to a police officer.

MR. SATZ: Don't tell me the verdict. Did you reach a verdict in that case?

LONI WILLIAMS: Yes.

MR. SATZ: Anything happen in that case cause you to have negative feelings about the police, judges, the criminal justice system?

LONI WILLIAMS: No.

MR. SATZ: That was your only jury service?

LONI WILLIAMS: Yes.

MR. SATZ: You have never been arrested, nor your family?

LONI WILLIAMS: No.

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MR. SATZ: Ever had an unpleasant experience with a police officer, anybody, family, friends that caused you to have negative feelings about police officers?

LONI WILLIAMS: No.

MR. SATZ: How do you feel about police officers, other than the guy that came --

LONI WILLIAMS: Honestly, I have no ill feelings about them. I commend them for what they do.

MR. SATZ: How do you feel about our criminal justice system?

LONI WILLIAMS: I feel it can be improved.

MR. SATZ: What can't?

LONI WILLIAMS: Right.

MR. SATZ: But you don't have negative feelings about the system, like the guy that came out to your house to do the burglary, should have done a better job?

LONI WILLIAMS: Everybody has their days, I guess.

MR. SATZ: Have you followed any particular criminal case, desired to follow any?

LONI WILLIAMS: A lot. I was in the legal aspect course at Keiser. I did all of the

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time. There was one recently we investigated as a mock investigation in my class. The lady in Delray that did a murder for hire for her boyfriend, that one.

MR. SATZ: Boca?

LONI WILLIAMS: Yes.

MR. SATZ: You followed that?

LONI WILLIAMS: Yes. When it comes back for trial, we'll be following it again.

MR. SATZ: Anything happen as a result of your following that, cause you to have feelings about the criminal justice system one way or another?

LONI WILLIAMS: No.

MR. SATZ: How do you feel about the imposition of the death penalty.

LONI WILLIAMS: I'm biased.

MR. SATZ: You're biased?

LONI WILLIAMS: No. I'm unbiased.

MR. SATZ: In the middle.

LONI WILLIAMS: Yes.

MR. SATZ: Judge Backman's football field, you're in the middle of the field?

LONI WILLIAMS: Yes.

MR. SATZ: You understand when you're

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weighing aggravating factors and mitigating circumstances, it is a weighing process.

You may give some aggravating factors more weight than others.

LONI WILLIAMS: For me, it is based on the information given to me. Based on that, that's how I'll make a decision.

MR. SATZ: Of course.

You will follow the Judge's instructions. He will tell everybody that will happen.

LONI WILLIAMS: Yes.

MR. SATZ: He will tell you that you have to evaluate each factor and circumstance and give it a weight?

LONI WILLIAMS: Yes.

MR. SATZ: Feel you're capable of doing that?

LONI WILLIAMS: Yes.

MR. SATZ: If the aggravating factors that are proven beyond a reasonable doubt to your satisfaction outweigh any mitigating circumstances that are shown by the greater weight of the evidence, do you feel you're personally capable of voting for the death penalty?

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LONI WILLIAMS: Yes.

MR. SATZ: As I pointed out, some people are intellectually in favor of the death penalty. When it comes down to personally voting, they don't want to do it.

You don't feel you're in those shoes?

LONI WILLIAMS: No.

MR. SATZ: Some people believe in the death penalty but would do it only for limited circumstances. What I mean by that -- if I'm coming around to everybody, sometimes I forget to ask the question. Bring it to my attention.

Some people say I believe in the death penalty but limited to certain circumstances.

A child is killed. Serial killer.

You don't feel that way?

LONI WILLIAMS: No.

MR. SATZ: Each and every penalty phase on a murder case are the same criteria you follow. Statutory, aggravating factors if proven beyond a reasonable doubt and mitigating circumstances proven by the greater weight of the evidence.

It is a weighing process. Not only as to the aggravators outweighing the mitigators but as to each aggravator for and each mitigator.

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It is a weighing process.

You could do that?

LONI WILLIAMS: Yes.

MR. SATZ: Knowing the possible consequences, would you be willing to be the foreperson on this jury?

LONI WILLIAMS: I'm pretty bossy.

Yes.

MR. SATZ: If you're selected as the foreperson, would you have difficulty signing the verdict forms, sentencing the defendant to death?

LONI WILLIAMS: No.

MR. SATZ: Ms. Marinucci, looking at your questionnaire, your significant other works for the City of Pompano?

ADRIANA HOYOS-MARINUCCI: Yes.

MR. SATZ: Doing?

ADRIANA HOYOS-MARINUCCI: Works for the utility department for ten years.

MR. SATZ: What is your employment issue as a physical therapist?

ADRIANA HOYOS-MARINUCCI: I'm always at Holy Cross Hospital.

MR. SATZ: Always?

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ADRIANA HOYOS-MARINUCCI: Yes.

MR. SATZ: I didn't see anyone in your family or yourself ever been arrested.

Ever had an unpleasant experience with a police officer or any of your family or your friends.

ADRIANA HOYOS-MARINUCCI: No, besides tickets, being upset about that.

MR. SATZ: How do you feel police officers do their job?

ADRIANA HOYOS-MARINUCCI: To the best of their ability.

MR. SATZ: Good and bad ones?

ADRIANA HOYOS-MARINUCCI: Yes.

MR. SATZ: How do you feel about the criminal justice system?

ADRIANA HOYOS-MARINUCCI: I believe in it.

I think it is the best country in the world as far as fairness.

MR. SATZ: Have you followed or desired to follow any particular case in the newspapers, TV or anything?

ADRIANA HOYOS-MARINUCCI: No.

MR. SATZ: Do you believe in the imposition of the death penalty or opposed to it?

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ADRIANA HOYOS-MARINUCCI: I believe in it.

MR. SATZ: You weigh aggravating factors and mitigating circumstances, each and every one and give them each a weight you feel they deserve?

ADRIANA HOYOS-MARINUCCI: Yes.

MR. SATZ: As I pointed out and asked the question, some people are in favor of the death penalty on a limited circumstance, like a child killed or serial killer.

You go through aggravating factors, mitigating circumstances and make a decision based on what you find.

If you find the aggravating factors proven beyond a reasonable doubt outweigh any mitigating circumstances established by the greater weight of the evidence and you feel the aggravating factors outweigh the mitigating circumstances beyond a reasonable doubt, are you personally capable of voting for the death penalty?

ADRIANA HOYOS-MARINUCCI: Yes.

MR. SATZ: Knowing the possible consequences of this case, would you be willing to be the foreperson?

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ADRIANA HOYOS-MARINUCCI: I wasn't sure what that meant.

MR. SATZ: Every jury, civil, criminal, there is always an elected, by the other jurors, foreperson who acts like a foreman. I have never been in there?

I imagine let's discuss this. Directs.

And the job of the foreperson, whatever the case, is to sign the verdict form.

Would you be willing to be the foreperson?

ADRIANA HOYOS-MARINUCCI: Yes.

MR. SATZ: If you were the foreperson, would you have any difficulty signing the verdict form, sentencing the defendant to death?

ADRIANA HOYOS-MARINUCCI: No.

MR. SATZ: Ms. Rowe, looking at your questionnaire, you have a bachelor's degree where and when?

ASHLEY ROWE: Harris College in 1997.

MR. SATZ: Communication?

ASHLEY ROWE: Yes.

MR. SATZ: Your employment history?

ASHLEY ROWE: Doing advertising now.

For 21 years.

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MR. SATZ: Have you been at the same company or moved around.

ASHLEY ROWE: Been at about four companies my entire career?

MR. SATZ: You minored in psychology?

ASHLEY ROWE: Yes.

MR. SATZ: Used it at all? You probably use it every single day?

ASHLEY ROWE: Yes, usually in dating.

MR. SATZ: Does that work?

ASHLEY ROWE: No.

MR. SATZ: Doesn't work for me either. How about arrests? In looking at your --

ASHLEY ROWE: No, never been arrested.

MR. SATZ: Family, friends?

ASHLEY ROWE: No.

MR. SATZ: Ever had an unpleasant experience with police officers?

ASHLEY ROWE: No.

MR. SATZ: Any of your family or friends?

ASHLEY ROWE: No.

MR. SATZ: How do you feel police officers do their job?

ASHLEY ROWE: Like you have been saying, some good, some bad.

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MR. SATZ: No negative feelings?

ASHLEY ROWE: No.

MR. SATZ: How about the criminal justice system? Think it works well?

ASHLEY ROWE: To what I'm aware of, yes.

MR. SATZ: Have you followed, desired to follow any particular criminal case?

ASHLEY ROWE: Yes. Jodi Arias, Casey Anthony. Then I had a friend that was murdered.

MR. SATZ: Where?

ASHLEY ROWE: In New York.

MR. SATZ: How long ago?

ASHLEY ROWE: 1994.

MR. SATZ: Were you living in any York at the time?

ASHLEY ROWE: Yes.

I was in college.

MR. SATZ: Was it your girlfriend, boyfriend?

ASHLEY ROWE: No, a friend I graduated high school with the year prior.

MR. SATZ: What happened with the case?

ASHLEY ROWE: The defendant was found guilty of murder.

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MR. SATZ: Anything happen as a result of that case cause to you have negative feelings about the criminal justice system or the way the case was handled?

ASHLEY ROWE: No.

MR. SATZ: Do you believe in the imposition of the death penalty, or are you opposed to it?

ASHLEY ROWE: I do believe in it.

MR. SATZ: Same thing with aggravating factors and mitigating circumstances, you have to wait, give it what weight it deserves.

ASHLEY ROWE: Yes.

MR. SATZ: If you feel the statutorily defined aggravating factors outweigh what you found beyond a reasonable doubt, you have to find each aggravator beyond a reasonable doubt, and you feel that that aggravator or activators were proven beyond a reasonable doubt and they outweigh any mitigating circumstance or circumstances that were proven by the greater weight of the evidence, and you feel that the aggravating factors outweigh the mitigating circumstances beyond a reasonable doubt, do you have any problem voting for the death penalty?

ASHLEY ROWE: Yes, I have a problem.

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MR. SATZ: What is the problem?

ASHLEY ROWE: I'm not a practicing Catholic.

I was brought up Catholic.

One of the Ten commandments is Thou Shall Not Kill. That would be my hold-up.

MR. SATZ: Do you feel that hold-up would interfere -- there is no right or wrong answers.

Believe me, there are people that are opposed and would never vote for it. Some people would always vote for the death penalty.

There is no wrong answers.

Do you feel your religious belief -- again, nothing wrong with that -- would it interfere with your ability to fairly and impartially sit on this case and render a fair decision because of those religious convictions?

ASHLEY ROWE: Yes, they would interfere.

MR. SATZ: Substantially interfere?

ASHLEY ROWE: They would weigh very heavily on me. I can't give you a yes or no.

MR. SATZ: It may prevent you from being fair and impartial?

ASHLEY ROWE: Correct.

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MR. SATZ: Thank you.

There are no right or wrong answers.

Just honest answers.

Mr. Gordon, you have a bechelor's degree and a post-graduate degree.

DAVID GORDON: Yes. PhD in psychology.

MR. SATZ: Post-grad, the same thing?

DAVID GORDON: That was my degree.

MR. SATZ: What was the bachelor's degree?

DAVID GORDON: Psychology.

MR. SATZ: You're retired now?

DAVID GORDON: Yes.

MR. SATZ: You were a psychotherapist?

DAVID GORDON: Yes.

MR. SATZ: What type of --

DAVID GORDON: Behavioral.

MR. SATZ: Self-employed?

DAVID GORDON: I was for a number of years. Them I worked for a company that produced educational seminars for mental health professionals.

MR. SATZ: Ever do any forensic work?

DAVID GORDON: No.

MR. SATZ: Ever have a desire to do forensic work?

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DAVID GORDON: No.

MR. SATZ: You indicated on your questionnaire you did clerk for a law firm in college?

DAVID GORDON: Yes.

MR. SATZ: What law firm?

DAVID GORDON: Probers and Wells, in Manhattan.

MR. SATZ: Did you like it?

DAVID GORDON: Well, sort of made me realize I didn't want that as a career.

MR. SATZ: You should start out by saying no offense.

THE COURT: On that, you want to break for lunch?

MR. SATZ: All right.

THE COURT: Probably as good a time as any.

All right. Please, I need you guys back outside, in front, at 1:20. And when all of you gather, we'll bring you in and continue.

(Exit venire.)

(Proceedings conclude for the morning session.)

(Recess had.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 11th day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME XIII
PAGES 1077 - 1251

Fort Lauderdale, Florida
October 9th, 2018
1:30 p.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 9th, 2018, commencing at 1:30 p.m.

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THEREUPON, the following proceedings were had:

(Afternoon session begins.)

THE COURT: Ready?

JUDICIAL ASSISTANT PAM COE: I have two I have missing outside.

THE COURT: Hang on.

Can we deal first with Santana?

JUDICIAL ASSISTANT PAM COE: If you want to.

THE COURT: Never mind.

Go ahead.

JUDICIAL ASSISTANT PAM COE: Mr. Croskey is late, again.

The only one I'm missing is Morris, right now.

45 os Croskey.

60 is Morris.

I have a gentleman outside who is on the list coming in this afternoon, says he has to be out by 3 o'clock.

His name is Benjamin Rios, 22.

I don't know if you want to address that individually.

I have another issue with Mr. Runge, who

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had no pay issues, now seems to have a pay issue.

THE COURT: Said he would make it work, didn't need the income.

JUDICIAL ASSISTANT PAM COE: And then I have issues with the group of 13 that aren't coming back yet, until we might need them.

I can hold off on going over those. Because we may not need them at all.

Might be better if I don't bring that up.

MR. WILLIAMS: Why not bring it up.

JUDICIAL ASSISTANT PAM COE: Want me to bring it up?

THE COURT: Hang on.

One person that didn't show up, ultimately, was number 5, Santana.

Pam, you spoke to her or got a message?

JUDICIAL ASSISTANT PAM COE: I spoke to her.

I got a phone message and spoke to her.

She moved to Volusia County on Sunday. She said it was an urgent matter.

Didn't go into specifics.

MR. WILLIAMS: Her Facebook page said she lived in Hialeah.

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THE COURT: Now she lives in Volusia County.

Getting rid of her?

MR. SATZ: If that's true, yes.

MR. WILLIAMS: Yes.

THE COURT: That's what she says.

MR. WILLIAMS: Okay.

JUDICIAL ASSISTANT PAM COE: If you want to grab your list of the 13 jurors that came back I gave you this morning?

No. 1, Nahidino, claims she has a doctor's appointment at 2:00, tomorrow.

10, Rita Madzi, is on vacation.

Said she brought it up to you all on October 18 and 19.

THE COURT: I told her that we would play that one by ear. We know about that one.

Depends whether or not we are still picking a jury.

JUDICIAL ASSISTANT PAM COE: That was it.

No. Colby Alonso, 13, sent me an email. Wanted me to send them, her job an email.

This is the email she sent me this afternoon.

I called in, to my company, American

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Airlines, for them to remove me from my three-day trip, which was to leave for Paris tomorrow. They have me marked off now from October 10th through the 12th, in order to remove me from the trip entirely. Doing such ensures they now, doing such ensures they know I'm required to be here, in Florida. I fly out of Charlotte, North Carolina and must originate all trips I work from there and that I am paid protected for those days of work loss. I have only informed my company of those days needing marked as jury duty, pending any further need for me.

I think I'm assuming, from the letter, she needs me to Email them every day she will be here, even if picked, because of her flight schedule.

MR. WILLIAMS: She is a member of the union. She will be paid.

JUDICIAL ASSISTANT PAM COE: That was it.

THE COURT: All right.

Mike, who are we supposed to bring back individually and talk to?

MR. SATZ: McCray.

We move to strike Ms. Rowe. I am sure they

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will move to strike Ms. Branscum, number 2.

THE COURT: Branscum is 2. Rowe is 8.

MR. SATZ: I'm moving to strike Ms. Rowe.

I assume they will move to strike Branscum.

Up to them.

MR. POLAY: Oh, yes.

THE COURT: Good on both?

You want to leave her?

MR. POLAY: No. I agree with the strike.

THE COURT: What about Branscum?

MR. SATZ: I agree.

MR. POLAY: Branscum has to go. She is pro death penalty.

THE COURT: Where were these the other day?

MR. SATZ: She said when you asked her the question, in general, outside, she wouldn't automatically vote for or against.

But this particular case, she already made up her mind.

MR. WILLIAMS: That's exactly what she said.

THE COURT: That's exactly how the question was posed.

I couldn't say in this case.

MR. WILLIAMS: No, you couldn't.

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MR. SATZ: Nobody is faulting you.

MR. WILLIAMS: She just now narrowed it down.

THE COURT: McCray we have to bring in?

MR. SATZ: She didn't want to discuss --

THE COURT: Let's have Ms. McCray, please.

(Enter Joel McCray.)

THE COURT: Hi, Ms. McCray.

Just a couple follow-up questions.

Mr. Satz?

MR. SATZ: This is as private as it gets.

JOEL MCCRAY: Okay.

MR. SATZ: If it is okay....

JOEL MCCRAY: About my dad.

MR. SATZ: And your brother.

JOEL MCCRAY: My dad, I think it was embezzlement.

THE COURT: Would it have been the feds?

JOEL MCCRAY: Yes.

But he was a detective for BSO.

MR. SATZ: Is he still in --

JOEL MCCRAY: He's deceased.

MR. SATZ: Sorry.

JOEL MCCRAY: That's okay.

MR. SATZ: What about your brother.

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JOEL MCCRAY: Drugs. Well, he wrote a bad check. I have several brothers.

One wrote a bad check. He had to do time. That was in Georgia.

My brothers here, younger brothers, do traffic violations, driving with a suspended license.

MR. SATZ: And you said your aunt was killed.

Do you remember how long ago it was?

JOEL MCCRAY: It was in the plate '90s.

I know I was a teacher. It had to be in the late '90s. Happened on Broward. Found her body. Murdered. Left in the bushes.

MR. SATZ: Based upon DNA?

JOEL MCCRAY: They found him. Years later, the guy who murdered her was arrested in Miami. DNA found him.

MR. SATZ: You don't know what happened with the case?

JOEL MCCRAY: No.

MR. SATZ: What was your aunt's name?

JOEL MCCRAY: Shiela Griffin.

MR. SATZ: Of course, you probably don't remember the guy who was arrested, his name.

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JOEL MCCRAY: No.

MR. SATZ: That's all I have.

THE COURT: Will any of that interfere with your ability to be fair and impartial in this case?

JOEL MCCRAY: No.

MR. WILLIAMS: Can we ask her to step out?

THE COURT: Sure.

(Exit Joel McCray.)

MR. WILLIAMS: The aunt was killed on Broward Boulevard. The defendant has not yet been convicted because I was, at one point, his attorney with RCC. She looked familiar. I may have reached out and talked with her. I don't know. But the defendant was apprehended 17 years later, in Miami, because of DNA. The aunt was living in Broward, not Broward Boulevard. I think it was Sistrunk.

Place is, has actually been destroyed since then.

THE COURT: It wasn't my case.

MR. WILLIAMS: No.

I'm concerned if she knows me.

THE COURT: I have asked if they knew any of the lawyers.

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MR. POLAY: If they are, if that comes up, and they find out, names are mentioned, his name is mentioned, it could effect her ability.

THE COURT: She said all she knows, he was arrested.

Doesn't know the name or anything about the case.

MR. SATZ: We don't have an objection.

THE COURT: Okay.

MR. WILLIAMS: She knows Deon Trawick.

THE COURT: She knows about her because of her sorority.

THE COURT: I think I need Mr. Rios.

JUDICIAL ASSISTANT PAM COE: He needs to leave at 3:00.

Then we have Mr. Runge.

(Enter Benjamin Rios.)

THE COURT: Have a problem at 3 o'clock?

BENJAMIN ALIAGA RIOS: Yes, I have to pick up my son.

First day at FED EX.

THE COURT: First day?

BENJAMIN ALIAGA RIOS: Yes, he was just hired.

THE COURT: He doesn't have transportation?

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BENJAMIN ALIAGA RIOS: No. He's 18 years old.

THE COURT: How about Uber? We won't be finished by 3:00.

BENJAMIN ALIAGA RIOS: I was asking if you will be finished, if I can reschedule for tomorrow. I don't know the schedule.

THE COURT: Once we start this process, everyone has to be here during the whole process, as much as I hate to say that to you.

I know it is not what you want to here.

Will you have to pick him up every day?

BENJAMIN ALIAGA RIOS: No, no. Just for today.

THE COURT: Today is kind of critical.

THE COURT: How will he get home any other day?

BENJAMIN ALIAGA RIOS: He has a different schedule. Just for the first day, he has training.

In the morning.

It is a difficult time.

THE COURT: Can you possibly ask him to take Uber.

BENJAMIN ALIAGA RIOS: Well, he doesn't

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answer the phone until 2:30, 3 o'clock.

They don't allow them to use the phone. It is by the airport. It is like a warehouse area. Kind of complicated, where they are located.

THE COURT: Mr. Satz, any questions?

MR. SATZ: No.

MS. WILLIAMS: No, sir.

THE COURT: Could you wait for us?

(Exit Benjamin Rios.)

MR. SATZ: Well, we can let him go and put him with the 13.

THE COURT: That's a good idea.

MR. WILLIAMS: There you go.

MR. POLAY: That's fine.

THE COURT: Could you ask him to come back for a minute, please.

(Enter Benjamin Rios.)

THE COURT: Tell you what we will do, Mr. Rios. We have a compromise.

BENJAMIN ALIAGA RIOS: Okay.

THE COURT: We have 13 other jurors that are on call to come in possibly later in the week or early next week. We will put you on that group.

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And we'll be in communication with you either through Email, text or phone call.

Fair enough.

BENJAMIN ALIAGA RIOS: Fair enough.

THE COURT: Have a good day.

Hope your son had a good day.

BENJAMIN ALIAGA RIOS: Thanks.

(Exit Benjamin Rios.)

(Enter Brian Runge.)

THE COURT: What happened?

BRIAN RUNGE: I left a voice mail after talking to HR. HR rep were the ones that actually recognized the process.

I was told to bring in proof. When I went downstairs, they said they don't do it. Do it afterwards if I serve. They took care of me.

HR said we don't need this. You will get your paperwork afterward.

She told me I'll get paid when I'm was here. I left the first voice mail.

She pointed me to the employee handbook, which says I won't get paid. So does my supervisor. So I haven't gotten a straight answer from the company. I left a second voice mail. I shouldn't have left the first one.

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First, great news. I let them know.

I wasn't clear. I thought great news. You were waiting.

I have don't know for sure the company I work for, I err on the side of them not paying for the whole thing.

THE COURT: HR tells you they will pay and you get conflicting comments.

Why don't you stay with us the balance of the day. You're here.

Maybe you can get further clarification before tomorrow.

BRIAN RUNGE: I don't think I'll get further clarification from work.

Last time I walked in, the HR office, she got mad.

THE COURT: What do you want to do?

BRIAN RUNGE: I'm almost definitely switching to Lyft. I am trying to get everything lined up for that this week. I'll do that on the weekends, when we aren't in here.

I had a side gig cancel on me this weekend. Doesn't put me as positive. I am committed to do what I need to do on my end to keep my head

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above water, while this is going on.

THE COURT: Finances have to come, be a first priority.

BRIAN RUNGE: Right, right, right.

I was planning on switching work anyway. If I switch to the work I have want to switch to, you will leave me Friday evening until Tuesday to bring in some cash that way.

THE COURT: As I said, what do you want to do?

BRIAN RUNGE: I am fine with it either way. Happy to be here if you need me. I am not the most convenience choice but completely am comfortable with making it work.

MR. SATZ: No questions.

MR. POLAY: No questions.

THE COURT: Thanks.

(Exit Brian Runge.)

MR. SATZ: We're excusing Rowe and Branscum?

THE COURT: Yes, Branscum is going. That's number 2. Totally.

McCray, number 3, is gone.

So is Santana, 5.

Rowe, 8.

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Weinstein, 10.

Rios, 22, is the one being reassigned.

59, Guagenti, we removed.

Have you already gotten rid of everybody going?

DEPUTY: Pam let them go, with the cards.

THE COURT: Then bring them in.

(Recess had.)

THE COURT: All right.

(Enter venire.)

THE COURT: Before Mr. Satz starts again, I just want to the address one little thing.

Pam indicated to you guys we would probably work until about five. It'll be between 5:00 and 5:30.

Mr. Satz?

MR. SATZ: Your Honor.

Mr. Gordon, I think we ended with your insult -- I mean --

DAVID GORDON: Unintentional.

The reason I decided it wasn't right for me, it was in the time of the '70s, before computers came in. All of the research was done in the volumes of law books.

Watching attorneys doing that, it struck

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me, that's is not what I want to do.

MR. SATZ: With the advent of computers, you're going back?

DAVID GORDON: Yes. Ha.

MR. SATZ: You indicated in your questionnaire, someone was questioned, anyone testified, questioned?

DAVID GORDON: Must have been referring to I was questioned for a jury back in New York many years ago. I was not impaneled.

MR. SATZ: Someone was a victim?

DAVID GORDON: The question was I ever a victim of a crime. It was a vehicle theft.

MR. SATZ: That happened where?

DAVID GORDON: 1999, in New York.

MR. SATZ: Anything happen as a result of that case cause you to have negative feelings about the criminal justice system, police officers?

DAVID GORDON: No.

MR. SATZ: You have never been arrested. Any family or friends?

DAVID GORDON: No.

MR. SATZ: Any of your family, friends, had an unpleasant experience with a police officer

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that didn't amount to an arrest?

DAVID GORDON: No.

MR. SATZ: Like questions or accused of anything?

DAVID GORDON: No.

MR. SATZ: How do you feel about police officers, the way they do their job?

DAVID GORDON: Most do their job well.

MR. SATZ: Your feelings about the criminal justice system, think it works well?

DAVID GORDON: It seems to.

MR. SATZ: Have you ever had the opportunity, desire to follow any particular criminal case?

DAVID GORDON: Well, the O. J. Simpson case.

MR. SATZ: Anything happen as a result of that case to cause you to have negative feelings about the criminal justice system or anything involved with it?

DAVID GORDON: No.

MR. SATZ: How do you feel about the death penalty? Are you in favor of the imposition of the death penalty or opposed?

DAVID GORDON: I think it is appropriate in

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certain cases.

MR. SATZ: Some people feel they are intellectually in favor of the death penalty. When it comes down to doing it, they feel they couldn't do it.

Do you feel that way?

DAVID GORDON: No.

MR. SATZ: Some people say I believe in the death penalty but have limitations. I would vote for the death penalty if it was a murder of a child or a serial killer.

DAVID GORDON: I see what you're saying.

MR. SATZ: Do you have limitations like that?

DAVID GORDON: I don't think I have particular feelings that way, no.

MR. SATZ: Like I said in the beginning, in any capital felony penalty phase for the death penalty, there are aggravating factors that are statutorily defined, that have to be proven beyond a reasonable doubt. And mitigating circumstances can be established by the greater weight of the evidence. You, and I'll ask you, if you feel that the aggravating factors were proven beyond a reasonable doubt, and they

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outweigh any mitigating circumstances, in your opinion, beyond a reasonable doubt, are you personally capable of voting for the death penalty?

DAVID GORDON: Yes.

MR. SATZ: If you were selected as the foreperson, would you be willing to serve.

DAVID GORDON: If I had to, yes.

MR. SATZ: If you were the foreperson would you have difficulty at all signing the verdict form?

DAVID GORDON: That would be part of my duties.

MR. SATZ: Mr. Rolle, how are you?

WHITING ROLLE: Good.

MR. SATZ: You're presently working as a chef?

WHITING ROLLE: My wife is the chef.

MR. SATZ: What was her employment history?

WHITING ROLLE: She just kept working. She's in the hotel work about 25 years or so. Diplomat.

MR. SATZ: She is still working there?

WHITING ROLLE: Yes.

MR. SATZ: Your work history, do you have a

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cleaning company?

WHITING ROLLE: Well, closed down half of it. Auto repair shop is closed. Cleaning company is not doing too well. Put out applications. Getting back in the hotel business.

MR. SATZ: Ever worked at the Diplomat?

WHITING ROLLE: No.

MR. SATZ: You want to work in the hotel business?

WHITING ROLLE: Yes.

I was in the hotel business almost 40 years.

MR. SATZ: What did you do?

WHITING ROLLE: Manager, mostly housekeeping, front desk.

MR. SATZ: Any particular hotel?

WHITING ROLLE: Marriott, Sheraton, Radison, Hilton.

Been around.

MR. SATZ: On your questionnaire, the question, remember this, is there something that would prevent you from following your oath? And you said yes?

WHITING ROLLE: I don't know. An oath?

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MR. SATZ: Did you make a mistake, putting yes instead of no?

WHITING ROLLE: Could have been. Yes.

MR. SATZ: As you are sitting there now, you don't have anything like that?

WHITING ROLLE: No.

MR. SATZ: You indicated there were no arrests, anybody in your family, friends?

WHITING ROLLE: No.

MR. SATZ: Ever had an unpleasant experience with a police officer that didn't amount to an arrest?

WHITING ROLLE: No.

MR. SATZ: Family, friends?

WHITING ROLLE: Not that I know of.

MR. SATZ: How do you feel about police officers?

WHITING ROLLE: They do a good job.

We need them.

MR. SATZ: Criminal justice system a good system?

WHITING ROLLE: Yes.

MR. SATZ: Have you the opportunity or desire to follow any particular criminal case, Casey Anthony case we talked about or any case

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like that?

WHITING ROLLE: No.

MR. SATZ: How do you feel about the imposition of the death personality?

WHITING ROLLE: It is okay.

MR. SATZ: Some people have limitations.

Say I believe in the death penalty only if it is a child killed or a serial killer. Do you have limitations?

WHITING ROLLE: No.

MR. SATZ: If the aggravating factors are proven beyond a reasonable doubt and outweigh any mitigating circumstances, by the greater weight of the evidence and you have no reasonable doubt as to that, you feel the aggravating factors outweigh the mitigating circumstances, are you personally capable of voting for the death penalty?

WHITING ROLLE: Yes, sir.

MR. SATZ: If selected as foreperson, willing to do that?

WHITING ROLLE: I would.

MR. SATZ: If you were the foreperson, would you have difficulty signing the verdicts, sentencing the defendant to death?

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WHITING ROLLE: No.

MR. SATZ: Mr. Pierre, looking at your questionnaire, bachelor's degree was from where?

NIGEL PIERRE: Florida International.

MR. SATZ: What was it in?

NIGEL PIERRE: Music.

MR. SATZ: You went into flight service management?

NIGEL PIERRE: I have been a flight attendant a fairly long time. Started my undergraduate before going into management.

MR. SATZ: You have your pilots license?

NIGEL PIERRE: I got that before the under grad.

MR. SATZ: What do you do now? Flight management?

NIGEL PIERRE: Flight service manager. Basically a supervisor?

MR. SATZ: Who do you work with?

NIGEL PIERRE: American Airlines.

MR. SATZ: Been doing that how long?

NIGEL PIERRE: Been with American since 2000.

MR. SATZ: Before that?

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NIGEL PIERRE: I flew for BWIA.

MR. SATZ: With arrests on your questionnaire, nobody in your family, none of your friends?

NIGEL PIERRE: No.

MR. SATZ: Ever had anyone in your family, friends, an unpleasant experience with a police officer, cause you to have negative feelings about a police officer?

NIGEL PIERRE: No.

MR. SATZ: How do you feel about the way police officers do their job?

NIGEL PIERRE: Good and bad.

MR. SATZ: Like flight attendants?

NIGEL PIERRE: Yes.

MR. SATZ: How about the criminal justice system. How do you think it works in the United States?

NIGEL PIERRE: It appears to be fair, unnecessarily pleasing to one party or another. I believe the system is fair.

MR. SATZ: Have you had the opportunity or desire to follow any particular criminal case over the years?

NIGEL PIERRE: I followed the O.J Simpson

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thing to a limited extent. The Trayvon Martin case.

MR. SATZ: Anything happen as a result of your following those cases to cause you to have negative feelings about the criminal justice system?

NIGEL PIERRE: No.

MR. SATZ: Do you believe in the imposition of the death penalty?

NIGEL PIERRE: I believe it is appropriate.

MR. SATZ: Do you have limitations? Some people say I believe in it, only with child killers, serial killers?

NIGEL PIERRE: No.

MR. SATZ: Some people feel they are intellectually in favor of the death penalty. When it comes down to doing it, they feel they couldn't do it.

Do you feel that way?

NIGEL PIERRE: I don't have limitations.

MR. SATZ: If selected as the foreperson, would you be willing to serve?

NIGEL PIERRE: Yes.

MR. SATZ: If the aggravating factors proven to your satisfaction beyond a reasonable

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doubt outweigh any mitigating circumstances, would you vote for the death penalty?

NIGEL PIERRE: It would be my duty.

MR. SATZ: If you were the foreperson, would you have any difficulty signing the verdict form, condemning the defendant to death?

NIGEL PIERRE: Shouldn't. It is part of the process of saying yes.

I wouldn't have a problem.

MR. SATZ: Thank you.

Ms. Castano, how are you?

ANDREA CASTANO: Good.

MR. SATZ: Looking at your, you have a bachelor's degree from where?

ANDREA CASTANO: University of Central Florida.

MR. SATZ: Health services?

ANDREA CASTANO: Yes.

MR. SATZ: Now you do organ --

ANDREA CASTANO: Recruit.

MR. SATZ: Tell me about that.

ANDREA CASTANO: Whenever you need an organ transplant, you get it from a live or dead donor.

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I deal with the dead donor.

MR. SATZ: How long have you been doing that?

ANDREA CASTANO: Three and-a-half years.

MR. SATZ: Before that?

ANDREA CASTANO: I worked in hospice.

MR. SATZ: Which hospice?

ANDREA CASTANO: Vitas.

MR. SATZ: How long?

ANDREA CASTANO: A year. Currently with them.

MR. SATZ: Still do some of it?

ANDREA CASTANO: Probably haven't worked for six months for them. I am per diem to them.

MR. SATZ: There was something about counseling?

ANDREA CASTANO: I was when I was younger. Due to family situations, I was mandated by the courts for my father to keep me, I had to be put in counseling.

MR. SATZ: Grieving or what?

Would you rather do it in private?

ANDREA CASTANO: Yes. Yes.

MR. SATZ: At any time I ask a question you

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feel --

ANDREA CASTANO: Yes.

MR. SATZ: No problem.

I looked at your questionnaire, too. There were no arrests, no one in your family or friends?

ANDREA CASTANO: No.

MR. SATZ: Have you ever had a negative experience with a police officer, questioned, accused, something that didn't amount to an arrest, unpleasant experience for you?

ANDREA CASTANO: No.

MR. SATZ: Follow any particular criminal cases?

ANDREA CASTANO: Southwood Stabbing. Middle school. Happened at Southwood. I knew people in the class and knew of him. I followed the case.

MR. SATZ: Anything happen as a result of that case cause you to question the criminal justice system?

ANDREA CASTANO: No.

MR. SATZ: How do you feel about police officers about the way they do their job.

ANDREA CASTANO: Good and bad apples.

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MR. SATZ: The criminal justice system?

ANDREA CASTANO: Fair.

MR. SATZ: Reference to the death penalty, do you believe in the imposition of it or opposed?

ANDREA CASTANO: I believe in it.

MR. SATZ: You understand if you're selected as a juror, you will have to weigh the aggravating factors proven beyond a reasonable doubt, as you will about any mitigating circumstances you found to exist, correct?

ANDREA CASTANO: Yes.

MR. SATZ: If you feel the aggravating factors proven beyond a reasonable doubt outweigh any mitigating circumstances, can you personally vote for the death penalty?

ANDREA CASTANO: Yes, if the evidence shows.

MR. SATZ: You are not limited, as I spoke about before, I would only vote for the death penalty in child cases, serial killers or whatever, prominent people being killed? You have no limitations?

ANDREA CASTANO: No.

MR. SATZ: If you were selected as

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foreperson, would you be willing to serve?

ANDREA CASTANO: If I had to.

MR. SATZ: As the foreperson, would you have any difficulty signing the verdict form, condemning the defendant to death?

ANDREA CASTANO: No.

MR. SATZ: Mr. Antenor, your wife is a teacher.

CHERRER ANTENOR: Yes, been a teacher about five years.

MR. SATZ: All with a particular school?

CHERRER ANTENOR: No, two. Northwest Christian Academy in North Miami Florida. Now Arch Creek in Miami.

MR. SATZ: Do you have a bachelor's degree?

CHERRER ANTENOR: Bachelor's first from the University of Miami. Masters there too.

MR. SATZ: It is in design analysis?

CHERRER ANTENOR: Engineering and design.

MR. SATZ: What is your employment history?

CHERRER ANTENOR: Last six years, I worked for a communication company. Before that, I was a manufacturing engineer in Spencer, Indiana.

MR. SATZ: And your brother-in-law is

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planning to apply in law enforcement?

CHERRER ANTENOR: Yes.

MR. SATZ: Where is he going to apply?

CHERRER ANTENOR: In Texas. Dallas, Texas. Just moved last week over there.

MR. SATZ: Your cousin applied also or just your brother-in-law?

CHERRER ANTENOR: My cousin applied also.

MR. SATZ: In Texas also?

CHERRER ANTENOR: No, here in Florida.

MR. SATZ: Do you know where he applied to?

CHERRER ANTENOR: City of Miami.

MR. SATZ: You indicated on the questionnaire that you know someone who has testified?

CHERRER ANTENOR: Yes.

MR. SATZ: Who is that?

CHERRER ANTENOR: My brother.

MR. SATZ: In reference to?

CHERRER ANTENOR: A drug case.

MR. SATZ: He was a witness for the State.

CHERRER ANTENOR: He was the defendant.

MR. SATZ: Your brother-in-law?

CHERRER ANTENOR: Yes.

MR. SATZ: He was arrested?

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CHERRER ANTENOR: Yes.

MR. SATZ: That was in Miami?

CHERRER ANTENOR: Yes.

MR. SATZ: Is this the same brother-in-law applying to be a police officer or different?

CHERRER ANTENOR: Different.

MR. SATZ: Don't laugh.

There are guys that do that. People learn from their mistakes.

Other than your brother-in-law, anyone else you know ever been arrested in your family or friends?

CHERRER ANTENOR: No.

MR. SATZ: How do you feel about police officers? Ever had an unpleasant experience with a police officer that didn't amount to an arrest?

CHERRER ANTENOR: No.

MR. SATZ: Family, friends?

CHERRER ANTENOR: Brother-in-law.

MR. SATZ: That was unpleasant, yes.

Did anything ever happen that you have ever had negative feelings about law enforcement?

CHERRER ANTENOR: No, I think they do the best job they can.

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MR. SATZ: The criminal justice system?

CHERRER ANTENOR: Not personal.

It is the best we have.

MR. SATZ: You followed any particular criminal case over the years?

CHERRER ANTENOR: Only what I see in the news.

MR. SATZ: Not in any details?

CHERRER ANTENOR: No.

MR. SATZ: Believe in the death penalty or opposed.

CHERRER ANTENOR: When appropriate, yes.

MR. SATZ: Do you have any limitations, like child killer or serial killer?

CHERRER ANTENOR: No.

MR. SATZ: You understand any capital felony in a penalty phase, all the same. Aggravating factors are presented and mitigating circumstances.

Aggravating factors have to be proven beyond a reasonable doubt. Mitigating circumstances by a greater weight of the evidence.

You make a determination individually. Unanimously. If you individually found that

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the aggravating factors outweighed the mitigating circumstances, can you personally vote for the death penalty?

CHERRER ANTENOR: Yes.

I would like to add something to that.

I'm a Christian. All decisions I make, involving right or wrong, is governed by the Bible. I'm letting you guys know I'll include that in my decision. Personal faith this.

MR. SATZ: How would that work?

CHERRER ANTENOR: If I look at the evidence and think the death penalty is appropriate, I agree. If I don't, I will disagree. I won't. Based upon the evidence.

MR. SATZ: Being a Christian, how does that effect it?

CHERRER ANTENOR: Depends on the evidence and what is presented?

MR. SATZ: Maybe it's me. If you weren't a Christian, wouldn't you do the same thing?

CHERRER ANTENOR: Yes.

MR. SATZ: Being a Christian add anything to that equation?

CHERRER ANTENOR: It may.

MR. SATZ: In what way?

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CHERRER ANTENOR: Well, like, mercy. If there is mitigating circumstances that call for more leniency or mercy, might. If I wasn't Christian, I probably wouldn't.

MR. SATZ: You feel that may add something to the evaluation of mitigating circumstances?

CHERRER ANTENOR: Yes.

MR. SATZ: Would it add anything to your evaluation of the aggravating factors?

CHERRER ANTENOR: Right.

MR. SATZ: Because you're a Christian, you feel you would be leaning for life?

CHERRER ANTENOR: Yes.

I might.

Or I might not.

It depends.

MR. SATZ: You agree, you know, to follow the law?

CHERRER ANTENOR: Yes.

MR. SATZ: The aggravating factors proven beyond a reasonable doubt to your satisfaction outweigh any mitigating circumstances, you can vote for the death penalty, personally capable of that?

CHERRER ANTENOR: Yes.

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MR. SATZ: If selected as a foreperson, you would be willing to serve?

CHERRER ANTENOR: Yes.

MR. SATZ: As a foreperson, knowing the consequences of this case, would you be willing to vote and sign the verdict form, condemning the defendant to death?

CHERRER ANTENOR: Yes.

MR. SATZ: Anything that I didn't ask you that you would say I wish he would have asked me I would have told him. He's beating around the bush.

I can tell him something about how I feel about this.

CHERRER ANTENOR: No. Anything else you want to ask me? I don't know.

MR. SATZ: As a lawyer, I try to ask all of the questions I think are appropriate. We want you to speak. I have heard myself speak a lot. I don't need to hear me. I want to hear you and your feelings. Because you try, everybody will weigh things differently.

Everybody is different.

The good thing about the jury is people come from different walks of life. And their

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experiences and common sense. Of course, I have found, you know, in my life, common sense isn't so common. You bring all of that into it.

When you mentioned you added another factor, about being a Christian, I don't know how that really factors into your evaluation or should I ask you more, this is me, thinking, asking more questions about that, how would it effect you more than someone who, you know, wasn't a Christian.

You don't need to ask questions regarding that. Everybody comes into the courtroom with biases.

You have to put those thing aside and look at the evidence.

CHERRER ANTENOR: I wanted to be forthright.

MR. SATZ: I understand. That's what I'm looking for.

I wasn't challenging you.

I am trying to get as much information so I understand where everybody is coming from. That's all.

Thanks.

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Mr. North, your wife, what is her employment? She is in sales?

MICHAEL NORTH: I'm sorry?

MR. SATZ: Your wife, her employment history?

MICHAEL NORTH: Yes.

My wife.

MR. SATZ: Yes.

MICHAEL NORTH: I didn't put anything down about my wife.

MR. SATZ: You're in sales then, your employment history?

MICHAEL NORTH: I was, yes.

MR. SATZ: You're retired?

MICHAEL NORTH: Yes.

MR. SATZ: What was your employment record with sales?

MICHAEL NORTH: Business. Business, straight commission.

MR. SATZ: What kind of business?

MICHAEL NORTH: Renting business, office supplies and furniture.

MR. SATZ: Was it your own business?

MICHAEL NORTH: I worked for a company for 26 years. Started my own business.

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MR. SATZ: Same type of business?

MICHAEL NORTH: Yes. It was a cleaning business.

MR. SATZ: You indicated someone testified?

MICHAEL NORTH: I don't know what you're talking about.

MR. SATZ: Sometimes I wonder myself.

In, you know, the questionnaire, remember anyone been arrested, anyone testified, anyone questioned, do you remember these questions on the questionnaire?

MICHAEL NORTH: Yes.

I don't remember writing down anyone testified.

MR. SATZ: Maybe it was like you put a yes when you meant a no. Possible?

MICHAEL NORTH: Probably what happened.

MR. SATZ: You don't know anyone that testified?

MICHAEL NORTH: No.

MR. SATZ: Someone who was a victim?

MICHAEL NORTH: No.

I think you have my questionnaire mixed up with

Somebody

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Else's.

MR. SATZ: I'll try the next.

You were on a civil jury?

MICHAEL NORTH: Yes.

MR. SATZ: Are received a verdict in that?

MICHAEL NORTH: Yes.

MR. SATZ: That was your only experience in the

Courtroom?

MICHAEL NORTH: Yes.

MR. SATZ: You don't know anyone the victim of a crime?

MICHAEL NORTH: No.

MR. SATZ: None of your family or friends have been arrested.

MICHAEL NORTH: No.

MR. SATZ: Have you ever had an experience with a police officer that didn't amount to an arrest but that was unpleasant?

MICHAEL NORTH: Not yet.

MR. SATZ: Expecting one?

MICHAEL NORTH: No.

MR. SATZ: Anything ever happen in your life to cause you to have negative feelings about police officers?

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MICHAEL NORTH: No, sir.

MR. SATZ: How do you feel the way police officers do their job?

MICHAEL NORTH: Do it the best they can.

MR. SATZ: The criminal justice system?

MICHAEL NORTH: Very fair.

Tries to be.

MR. SATZ: During the course of your life, have you had the desire or have you followed any particular case?

MICHAEL NORTH: Only one ever paid attention to was the O. J. Simpson case. How could you not see it.

MR. SATZ: With reference to the death penalty, are you in favor of the imposition of the death penalty?

MICHAEL NORTH: Yes.

MR. SATZ: Any limitations, like some people say I would vote for the death penalty with serial killers or child killers?

MICHAEL NORTH: No.

MR. SATZ: No limitations?

MICHAEL NORTH: Right.

MR. SATZ: You will follow the law?

MICHAEL NORTH: Yes.

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MR. SATZ: If you feel the aggravating factors proven beyond a reasonable doubt outweigh the mitigating circumstances, you are capable of voting for the death penalty?

MICHAEL NORTH: Yes.

MR. SATZ: Any problem knowing the possible consequences, any problem with being a foreperson if you are selected?

MICHAEL NORTH: No.

MR. SATZ: If you're selected as foreperson, any difficulty signing the verdict form, condemning the defendant to death?

MICHAEL NORTH: No.

MR. SATZ: Thank you.

Ms. Moon?

SUSAN MOON: Yes.

MR. SATZ: Bachelor's degree?

SUSAN MOON: From Chamberlin College of Medicine, 2007.

MR. SATZ: Now you're a full-time nurse?

SUSAN MOON: Yes, I have been for 31 years.

MR. SATZ: What is your employment history as a nurse?

SUSAN MOON: Right now, I work at Cleveland Clinic Hospital in Weston.

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Assistant nurse manager on the oncology floor.

I have been there 25 years.

MR. SATZ: You indicated someone has been arrested?

SUSAN MOON: Yes.

MR. SATZ: Rather do that in private?

SUSAN MOON: Yes.

MR. SATZ: Anything happen as a result of that to cause you to have negative feelings?

SUSAN MOON: No.

Everybody was treated with respect and fairness.

MR. SATZ: No negative feelings about the criminal justice system?

SUSAN MOON: No.

MR. SATZ: Feel it is a good system?

SUSAN MOON: Slow.

But it is good and fair.

MR. SATZ: Police officers, have negative feelings about police officers?

SUSAN MOON: Not at all.

MR. SATZ: Feel they do their job as best they can?

SUSAN MOON: Yes.

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As a nurse, work closely with them and prisoners on the floor.

MR. SATZ: When you indicated someone was questioned, that had to deal with the thing we will talk about in private?

SUSAN MOON: Yes.

MR. SATZ: That's the only time?

SUSAN MOON: Yes.

MR. SATZ: Someone, maybe you were the victim of a theft?

SUSAN MOON: Yes, a home burglary.

MR. SATZ: Was someone arrested?

SUSAN MOON: I believe he was. He lived in the neighborhood.

MR. SATZ: Do you remember what happened?

SUSAN MOON: No, I don't remember his case. No.

MR. SATZ: Ever contacted about it?

SUSAN MOON: No.

MR. SATZ: Anything significant happen about that that caused you to wonder what is going on or anything?

SUSAN MOON: Not really.

MR. SATZ: Other than that one thing we will talk about in private, anyone else ever

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arrested?

SUSAN MOON: No.

MR. SATZ: Ever had an unpleasant experience with a police officer?

SUSAN MOON: No.

MR. SATZ: Have you followed any particular criminal case?

SUSAN MOON: O. J. Simpson.

MR. SATZ: Are you in favor of the imposition of the death penalty or opposed?

SUSAN MOON: I am in favor.

But I think life in prison sometimes is a worse punishment.

MR. SATZ: In this penalty phase, like in any other penalty phase, you know, as Judge Backman indicated and I attempted to explain to everybody, no matter what the facts and circumstances in a death penalty portion, there are aggravating factors that the State, you know, present. And they have to be proven beyond a reasonable doubt. Then the Defense would have mitigating circumstances?

They may or may not be established by the greater weight of the evidence. You have to weigh each aggravating factor. But some you

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may feel have more value or weight than others. The same thing with mitigating circumstances.

You weigh the aggravating factors against the mitigating circumstances.

I ask you, based upon how you feel about life and death, if you felt that the State established the aggravating factors outweighed the mitigating circumstances, would you vote for the death penalty?

SUSAN MOON: Yes.

MR. SATZ: You wouldn't have any problem with that?

SUSAN MOON: No problems.

MR. SATZ: Some people feel they are intellectually in favor of the death penalty. When it comes down to doing it, they feel they couldn't do it.

SUSAN MOON: I have no problem.

MR. SATZ: If you're selected as the foreperson, you could serve as foreperson?

SUSAN MOON: Yes.

MR. SATZ: As a foreperson, you would have no problem signing the verdict form, condemning the defendant to death?

SUSAN MOON: No problem.

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MR. SATZ: Ms. Legons?

APRIL LEGONS: Yes.

MR. SATZ: So your spouse is a technician?

APRIL LEGONS: Yes.

MR. SATZ: What is their profession?

APRIL LEGONS: Worked for Hallmark. Been there 25, 20 years, helps with restaurants.

MR. SATZ: You have a bachelor's degree from where?

APRIL LEGONS: Chamberlin College of Medicine.

MR. SATZ: You're a registered nurse?

APRIL LEGONS: Yes.

MR. SATZ: Working in any particular hospital or office?

APRIL LEGONS: For the Veteran's Administration.

I have only been there since May. I started in May.

MR. SATZ: Where were you before that?

APRIL LEGONS: Before that, Broward General Hospital there.

MR. SATZ: For how long?

APRIL LEGONS: I was there for four years.

MR. SATZ: It indicates you were at

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Everglades PI?

APRIL LEGONS: Yes. I worked there about four years also.

MR. SATZ: You were a nurse. What kind of facility was that.

APRIL LEGONS: I worked in the clinic. Also if we had to go to the unit, for an emergency, I went there or in the infirmary.

MR. SATZ: You indicated that you know someone who is a victim of a burglary.

You?

APRIL LEGONS: Yes.

MR. SATZ: Someone apprehended?

APRIL LEGONS: No.

MR. SATZ: Because someone wasn't apprehended, do you have negative feelings about the police?

APRIL LEGONS: No. I pretty much suspect my neighbors.

MR. SATZ: Tell the police yet?

APRIL LEGONS: Yes.

MR. SATZ: You don't know anyone ever arrested?

APRIL LEGONS: My uncle was arrested for drugs.

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He was in and out for drugs over a long period of time.

MR. SATZ: Here in Broward County?

APRIL LEGONS: No, Pensacola, Florida.

MR. SATZ: Anything happen as an result of that case with your uncle that caused you to have negative feelings about police officers?

APRIL LEGONS: No.

MR. SATZ: Criminal justice system?

APRIL LEGONS: No.

MR. SATZ: Have you personally or anyone in your family or any of your friends had an experience with a police officer that did not amount to an arrest but it was an unpleasant experience?

APRIL LEGONS: No.

MR. SATZ: You feel police officers do their job.

APRIL LEGONS: Good and bad, like everything.

MR. SATZ: I never met a bad nurse, though. That's one thing you don't hear about.

APRIL LEGONS: Plead the 5th.

MR. SATZ: Follow any particular criminal case?

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APRIL LEGONS: O. J. and Trayvon Martin.

MR. SATZ: In favor of the imposition of the death penalty or opposed?

APRIL LEGONS: In favor if the situation warrants it.

MR. SATZ: Talked about limitations. I'm in favor of it if it is a child killed or a serial killer. Do the you have limitations?

APRIL LEGONS: No.

MR. SATZ: You will follow the law, as Judge Backman indicated, determine if there are aggravating factors proven beyond a reasonable doubt, compare that to mitigating circumstances, proven by the greater weight of the evidence?

APRIL LEGONS: Yes.

MR. SATZ: If you feel the aggravating factors outweigh the mitigating circumstances, are you personally capable of voting for the death penalty?

APRIL LEGONS: Yes.

MR. SATZ: If selected as the foreperson, would you be willing to serve?

APRIL LEGONS: Yes.

MR. SATZ: As the foreperson, would you

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have difficulty signing the verdict form, condemning the defendant to death?

APRIL LEGONS: No. Because I would have been a part of the process.

MR. SATZ: Ms. Diaz, you're also In nursing?

ANA DELLIZ DIAZ: Yes.

MR. SATZ: How long have you been a nurse?

ANA DELLIZ DIAZ: 20 years.

MR. SATZ: Where are you now?

ANA DELLIZ DIAZ: University hospital, ACA Corporation, for 13 years.

MR. SATZ: You had written in your questionnaire, not quite sure about victim of a crime.

ANA DELLIZ DIAZ: Yes. I have a nephew that is, I called to see what he was involved in. Something with the mob. He was in a fight. He was involved in a fight and almost killed a person.

MR. SATZ: When was that?

ANA DELLIZ DIAZ: Six years ago.

MR. SATZ: Where was that?

ANA DELLIZ DIAZ: Chicago.

MR. SATZ: Was he arrested?

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ANA DELLIZ DIAZ: Yes.

MR. SATZ: What happened with the case?

ANA DELLIZ DIAZ: Well, he, I think he's in jail. He was in jail I think three years.

MR. SATZ: Anything happen as a result of him being arrested and prosecuted cause to you have negative feelings about police officers or the criminal justice system?

ANA DELLIZ DIAZ: No.

MR. SATZ: Know anyone else arrested?

ANA DELLIZ DIAZ: No.

MR. SATZ: Ever had an unpleasant experience with a police officer that didn't amount to an arrest?

ANA DELLIZ DIAZ: No.

MR. SATZ: Anybody in your family or any of your friends?

ANA DELLIZ DIAZ: No.

MR. SATZ: How do you feel police officers do their job?

ANA DELLIZ DIAZ: Good.

MR. SATZ: Criminal justice system, what is your feeling about it?

ANA DELLIZ DIAZ: Well, good.

MR. SATZ: Have you followed any particular

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criminal case over the years?

ANA DELLIZ DIAZ: No.

MR. SATZ: With reference to the death penalty, are you in favor of the imposition of the death penalty or opposed to it?

ANA DELLIZ DIAZ: Favor.

MR. SATZ: No limitations, like child or serial killer?

ANA DELLIZ DIAZ: No.

MR. SATZ: Each penalty phase will be the same, no matter the facts and circumstances, aggravating factors proven beyond a reasonable doubt and outweigh the mitigating circumstances, do I believe that beyond a reasonable doubt, right?

ANA DELLIZ DIAZ: Yes.

MR. SATZ: If you believe that, are you capable of personally voting for the death penalty?

ANA DELLIZ DIAZ: Yes.

MR. SATZ: Some people feel they are intellectually in favor of the death penalty. When it comes down to doing it, they hesitate.

Do you feel that way?

ANA DELLIZ DIAZ: No.

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MR. SATZ: Willing to be the foreperson if you are selected?

ANA DELLIZ DIAZ: Yes.

MR. SATZ: If you are the foreperson, would you be willing to sign the verdict forms, sentencing the defendant to death?

ANA DELLIZ DIAZ: Yes.

MR. SATZ: Mr. Lawson?

CORNELL LAWSON: First time in jury duty. My boss is giving me views, his views, of my jury duty on this hourly, PTO thing.

He said pay up to a couple days or, and that's it.

I don't know how it works.

MR. SATZ: Judge, do you want to --

THE COURT: If they are not going to pay you, we don't want to you put you in that position.

We don't want you to use vacation time or personal time. If they are telling you they won't pay you, we will say thank you and let you go, unless you want to stay and volunteer.

CORNELL LAWSON: If I get full pay me for it.

THE COURT: I won't pay you.

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What the jury room pays, I don't think you can live on.

MR. SATZ: Your employer --

CORNELL LAWSON: Giving me his views.

Don't know if they want me to be here or not.

THE COURT: Who do you work for?

CORNELL LAWSON: Solaris.

THE COURT: You spoke to them before today.

CORNELL LAWSON: Last week.

Said they only page me a couple days.

Only thing here, it is up to three years (phonetic) plus I get paid this percentage. I don't know.

THE COURT: How long have you been there.

CORNELL LAWSON: How much years there? Eight.

THE COURT: If they are not going to pay you, we don't want to put you in a financial bind.

If you want to hang with us, see if they change their answer, fine.

Give him back his card.

CORNELL LAWSON: Thank you.

(Exit Cornell Lawson.)

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THE COURT: Mr. Cole, how are you?

LARRY COLE: Good.

MR. SATZ: Your employment history?

LARRY COLE: 42 years with Publix. Retired now.

MR. SATZ: Always in the same area?

LARRY COLE: Always in Broward County.

MR. SATZ: Different markets?

LARRY COLE: Started at 15 and worked my way up to store manager.

15, 16 different stores throughout the time.

MR. SATZ: How long have you been retired?

LARRY COLE: About three and-a-half years.

MR. SATZ: I think you indicated someone was the victim of a crime?

LARRY COLE: My daughter was robbed at a bank. Gun to her head. Open the safe. BB&T in Broward.

MR. SATZ: Someone apprehended?

LARRY COLE: No.

MR. SATZ: Going on, unsolved?

LARRY COLE: Yes.

MR. SATZ: Anything happen as a result to cause you to have negative feelings about

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police because someone wasn't apprehended?

LARRY COLE: No.

MR. SATZ: Arrests, you don't know anyone arrested.

LARRY COLE: My daughter had a DUI. That's it.

MR. SATZ: Anything happen, ever have a negative experience with a police officer?

LARRY COLE: Not at all.

MR. SATZ: Anybody in your family or friends?

LARRY COLE: No.

MR. SATZ: How do you feel police officers do their job? Okay?

LARRY COLE: Yes. Hear about the bad ones.

MR. SATZ: Criminal justice system?

LARRY COLE: Slow. You know. Seems like it favors the defendant a little more than the victim. Never been involved in any.

MR. SATZ: You have never had jury duty?

LARRY COLE: No. Never been selected.

MR. SATZ: Followed any criminal case over the years?

LARRY COLE: Not really. Just what is on the news.

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I won't sit and watch it.

MR. SATZ: The death penalty, in favor or opposed?

LARRY COLE: In favor.

MR. SATZ: Do you have limitations, like child or serial killers?

LARRY COLE: I don't think so. No.

You made it clear it's the law. Doesn't really matter.

MR. POLAY: I want to clarify one thing with respect not law. You were going to instruct the jury there are limitations, reserved for the most -- could I go sidebar?

(Sidebar had.)

THE COURT: I thought we addressed this.

MR. POLAY: No. No. The way it is coming out from Mr. Satz is that the death penalty is appropriate for any first degree murder. That's not the law.

THE COURT: That's not what I have been hearing either.

MR. POLAY: The way it is coming out, the way the jury is taking it, it is okay in any first degree murder.

You will wind up instructing this jury it

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is for the most aggravated, least mitigated of homicides.

Saying there is no limitations is not true.

MR. SATZ: I didn't say there were limitations.

MS. MCCANN: He's asking personally limitations.

MR. SATZ: Child killers.

MR. POLAY: Basically, when you told me I can't get into the worst of the worst, I think the door is wide open now.

MR. WILLIAMS: He's asking if they will only do it for the worst of the worst.

MR. POLAY: That's what he said. The question. Child killers, serial killers. I think I, everything that the State said I shouldn't be able to do, the door is opened up for me.

THE COURT: First of all, if the door is open, that's a determination to be made by the Court.

MR. POLAY: True as well. That's my humble opinion.

MR. SATZ: That's not what I'm doing.

Some people believe in the death penalty

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just for serial killers or child killers. That's their personal belief.

I am asking if that's their personal belief. I'm asking them to weigh the aggravators compared to the mitigators. If that's true, can they vote for the death penalty.

MR. POLAY: I'm not saying you are asking the wrong question. I am saying --

THE COURT: Let Mike finish his voir dire. Then we can argue what you can and cannot say.

You won't be getting up during their process anyway, until he's finished.

MR. POLAY: Okay. That's fine.

THE COURT: All right.

(Sidebar concludes.)

THE COURT: Mr. Satz?

MR. SATZ: I was asking you follow up on what Judge Backman said, about aggravating factors.

State has to prove them beyond a reasonable doubt. Mitigating circumstantial only have to be established by the greater weight of the evidence.

One of the things you will be asked to do,

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has an aggravating factor or factors been proven beyond a reasonable doubt. If you feel it has, you look at the mitigating circumstances established.

By the way, as Judge Backman said, you have to weigh each aggravating factor.

They will have different values to you.

Mitigating circumstances will have different values to you.

If you feel that the aggravating factors outweigh the mitigating circumstances, and you feel that it is beyond a reasonable doubt, can you vote for the death penalty, personally?

LARRY COLE: Yes.

MR. SATZ: If you're selected as a foreperson, would you be willing to serve?

LARRY COLE: Yes.

MR. SATZ: If you were the foreperson, would you have any difficulty signing the verdict, condemning the defendant to death?

LARRY COLE: No.

MR. SATZ: The point I was trying to make about limitations, it is personal limitations. Some people say I would only vote for the death penalty in these circumstances.

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What I am trying to say, what Judge Backman said is the standard, wait and see if there are aggravating factors, wait and see if there are mitigating circumstances and weigh them in making your decision.

Everyone starts out with the same law Judge Backman will read you.

All of you can do that.

Mr. Beeler, you have a bachelor's degree from where and when?

RODNEY BEELER: Emory University, 2004.

MR. SATZ: Your employment history?

RODNEY BEELER: Five years right now at Bravier in Boca.

Before that, three years in Memphis.

Before that, four years in Athens, Georgia.

MR. SATZ: You have served before on a criminal case?

RODNEY BEELER: Yes, in Georgia.

MR. SATZ: Reach a verdict?

RODNEY BEELER: Yes.

MR. SATZ: Remember the charge?

RODNEY BEELER: Aggravated assault.

MR. SATZ: Anything happen as a result of that cause to cause you to have negative

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feelings about the criminal justice system?

RODNEY BEELER: No.

MR. SATZ: Any negative feelings about police officers?

RODNEY BEELER: No.

MR. SATZ: No arrests in your family, friends you know. Yourself, never been arrested?

RODNEY BEELER: No. DUIs, friends.

MR. SATZ: Anything happen as a result of those cases to cause you to have negative feelings about the system, police officers, prosecutors?

RODNEY BEELER: No.

MR. SATZ: Ever had an unpleasant experience with a police officer that didn't amount to an arrest?

RODNEY BEELER: No.

MR. SATZ: Any of your family or friends?

RODNEY BEELER: No.

MR. SATZ: You feel the criminal justice system works well? What is your personal feeling about the criminal justice system?

RODNEY BEELER: Not perfect.

MR. SATZ: Have you followed any particular

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criminal case over the years?

RODNEY BEELER: O. J. Simpson.

MR. SATZ: Believe in the imposition of the death penalty?

RODNEY BEELER: Yes.

MR. SATZ: Any personal limitations?

RODNEY BEELER: No.

MR. SATZ: Some people say I would only vote for it if a child was killed.

RODNEY BEELER: No.

MR. SATZ: You understand Judge Backman's instructions about you will determine if there is any aggravating factors statutorily defined, aggravating factors proven beyond a reasonable doubt?

RODNEY BEELER: Yes.

MR. SATZ: Then you weigh them against any mitigating circumstances, right?

RODNEY BEELER: Yes.

MR. SATZ: And you weigh each of the aggravating factors?

RODNEY BEELER: Yes.

MR. SATZ: And you weigh each one of the mitigating circumstances?

RODNEY BEELER: Yes.

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MR. SATZ: And if you feel that the State proved those aggravating factors beyond a reasonable doubt, are you personally capable of voting for the death penalty?

RODNEY BEELER: Yes.

MR. SATZ: Any problem if you are selected as a foreperson, knowing the possible consequences of this case?

RODNEY BEELER: No.

MR. SATZ: If you are the foreperson, would you have difficulty signing the verdict farm, condemning the defendant to death.

RODNEY BEELER: No.

MR. SATZ: Ms. Golder, how are you?

SHALLIS GOLDER: Good. Thank you.

MR. SATZ: You have a degree in accounting and finance?

SHALLIS GOLDER: Currently pursuing my degree in finance.

MR. SATZ: What exactly are you doing?

SHALLIS GOLDER: I am in guest solutions. I work in the operating command center and 24-hour room, dispatchers, maintenance scheduling, crucial scheduling person. I work in there.

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I am on the customer service side.

I am a middleman between the operations people and the situations. I help determine what compensation is done for delays, cancellations.

MR. SATZ: Oh, I see.

Before that, what did you do?

SHALLIS GOLDER: I was in schooling.

Right out of school, I started with the airline.

MR. SATZ: You indicated somebody was charged with a crime?

SHALLIS GOLDER: I think my dad was. This is a conversation that popped up. I heard about it when I was, maybe five years ago.

Adult thing that slipped out of my parents' mouth. It was over 25 years ago.

MR. SATZ: Nothing about that causes you to have negative feelings about the criminal justice system?

SHALLIS GOLDER: No.

MR. SATZ: Anyone else ever arrested, charged with a crime?

SHALLIS GOLDER: No.

MR. SATZ: Ever have an unpleasant

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experience with a police officer that didn't amount to an arrest?

SHALLIS GOLDER: No.

MR. SATZ: Family, friends?

SHALLIS GOLDER: No.

MR. SATZ: How do you feel about the way police officers do their job?

SHALLIS GOLDER: Do the best they can.

MR. SATZ: The criminal justice system?

SHALLIS GOLDER: Could be better.

MR. SATZ: Criminal cases, follow any? Desire to?

SHALLIS GOLDER: No.

MR. SATZ: Believe in the death penalty or opposed.

SHALLIS GOLDER: I believe in it.

MR. SATZ: Any personal limitations?

SHALLIS GOLDER: No.

MR. SATZ: You agree to follow the law. Talked about aggravating factors, proof beyond a reasonable doubt, mitigating circumstances established by the greater weight of the evidence?

SHALLIS GOLDER: Yes.

MR. SATZ: Feel you're personally capable

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of voting for the death penalty?

SHALLIS GOLDER: Yes.

MR. SATZ: If you are selected as the foreperson, would you be willing to serve?

SHALLIS GOLDER: Yes.

MR. SATZ: If you are the foreperson, would you be willing to sign the verdict forms, sentencing the defendant to death?

SHALLIS GOLDER: Yes.

MR. SATZ: Ms. Starkes, how are you?

SHARON STARKES: Fine. Thanks.

MR. SATZ: Your significant other is a high school coach?

SHARON STARKES: Yes.

MR. SATZ: Where?

SHARON STARKES: Miami Northwestern High School. Girls team.

MR. SATZ: What is your, you're in financial administration?

SHARON STARKES: That's correct.

MR. SATZ: What is your employment history?

SHARON STARKES: Well, I have been to the University of Miami, in their technology finance department financial administrator. Financing analyst with them for eight years.

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Prior to that, I was a contractor administrator and finance administrator for a company that did airplane repairs.

MR. SATZ: How long did you do that?

SHARON STARKES: 26 years.

MR. SATZ: You indicated that you have a sibling that is a probation officer?

SHARON STARKES: Yes.

MR. SATZ: Where?

SHARON STARKES: Dade county.

MR. SATZ: Been doing that?

SHARON STARKES: Quite a few years. Like 17.

MR. SATZ: One sibling that is a police officer?

SHARON STARKES: Yes.

MR. SATZ: Male or female?

SHARON STARKES: Female.

MR. SATZ: Where does she work?

SHARON STARKES: That was my cousin. In Dade County.

MR. SATZ: Someone was a victim?

SHARON STARKES: Correct.

MR. SATZ: What was the victim of what?

SHARON STARKES: Robbery. My daughter.

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MR. SATZ: Here in Broward County?

SHARON STARKES: Dade County.

MR. SATZ: What happened with that case?

SHARON STARKES: What happened? They never found the person.

MR. SATZ: You served as an alternate juror one time?

SHARON STARKES: Yes, I have.

MR. SATZ: Is that here, in Broward County?

SHARON STARKES: Dade County.

MR. SATZ: Don't tell me the verdict. Do you remember the charge?

SHARON STARKES: Yes, murder.

MR. SATZ: Anything happen as a result of that case cause you to have negative feelings about the criminal justice system?

SHARON STARKES: Not at all.

MR. SATZ: Known anyone ever arrested?

SHARON STARKES: Yes.

MR. SATZ: Who?

SHARON STARKES: A cousin.

MR. SATZ: What was your cousin arrested for?

SHARON STARKES: I want to say robbery and manslaughter.

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Manslaughter came later.

MR. SATZ: Where was that?

SHARON STARKES: In South Carolina.

MR. SATZ: How long ago?

SHARON STARKES: About nine years ago.

MR. SATZ: Anything happen as a result of that case, cause you to have negative feelings about the criminal justice system or police?

SHARON STARKES: No. I don't know details of the case.

MR. SATZ: Ever had an unpleasant experience with a police officer that didn't amount to an arrest?

SHARON STARKES: Note.

MR. SATZ: Anyone in your family or friends?

SHARON STARKES: No. Not that I know of.

MR. SATZ: How do you feel about police officers? You have a sibling that is a police officer.

Other than that, how do you feel about police officers?

SHARON STARKES: I feel good and bad.

MR. SATZ: The criminal justice system?

SHARON STARKES: The same. Feel more good

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about it than bad.

MR. SATZ: The death penalty, do you believe in the imposition of the death penalty?

SHARON STARKES: I do.

MR. SATZ: Are you personally capable of voting for the death penalty if you feel the aggravating factors proven beyond a reasonable doubt outweigh the mitigating circumstances established by the greater weight of the evidence?

SHARON STARKES: Yes.

MR. SATZ: Beyond a reasonable doubt?

SHARON STARKES: Yes.

MR. SATZ: Feel you are capable of voting for the death penalty?

SHARON STARKES: Yes.

MR. SATZ: Personal limitations?

SHARON STARKES: No.

MR. SATZ: Willing to be the foreperson?

SHARON STARKES: Not necessarily. If I had to.

MR. SATZ: If you were the foreperson, have any difficulty signing the verdict form, condemning the defendant to death?

SHARON STARKES: No problem.

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MR. SATZ: Ms. Armstrong, how are you?

KALENA ARMSTRONG-HENRY: Good.

MR. SATZ: Your spouse is retiring or has retired?

KALENA ARMSTRONG-HENRY: Retiring this month from the Army. Been in there 30 plus years.

MR. SATZ: Stationed all over?

KALENA ARMSTRONG-HENRY: Not a lot of different places.

THE COURT: Mr. Satz, I hate to interrupt you.

One of my colleagues is desperately seeking one of my lawyers.

We'll take a quick break.

Just don't disappear from the front area of the courtroom.

(Exit venire.)

(Recess had.)

[]

THE COURT: Ready?

All right, Steve.

Let's go.

(Enter venire.)

THE COURT: Thank you all for your

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patience.

MR. SATZ: Ms. Armstrong, talking about your employment.

You're a full-time professor?

KALENA ARMSTRONG-HENRY: Yes, at Broward County since 2011. Accounting and finance.

MR. SATZ: Before that.

KALENA ARMSTRONG-HENRY: Accountant, staff accountant at a law firm. Comptroller.

MR. SATZ: Law firm? Which?

KALENA ARMSTRONG-HENRY: It was in New York. The name eludes me now.

MR. SATZ: Did they do criminal law?

KALENA ARMSTRONG-HENRY: No.

MR. SATZ: You sat on a jury twice?

KALENA ARMSTRONG-HENRY: I was an alternate for one.

MR. SATZ: Criminal or civil case?

KALENA ARMSTRONG-HENRY: Domestic violence.

MR. SATZ: Here in Broward County?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: Anything happen as a result of that case cause to you have concerns about anything?

KALENA ARMSTRONG-HENRY: No.

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MR. SATZ: The second one?

KALENA ARMSTRONG-HENRY: It was a long time ago.

I was actually on the jury. And it was a man accused of stealing something.

MR. SATZ: Anything happen as a result of that case cause you to have negative feelings?

KALENA ARMSTRONG-HENRY: No.

MR. SATZ: You indicated you don't know anyone ever arrested?

KALENA ARMSTRONG-HENRY: No.

MR. SATZ: Ever had an unpleasant experience with a police officer that didn't amount to an arrest?

KALENA ARMSTRONG-HENRY: No.

MR. SATZ: Think police officers do their job appropriately, like any other profession?

KALENA ARMSTRONG-HENRY: Yes. You have bad apples. They do their job. Put their life on the line.

MR. SATZ: The criminal justice system is made up of people.

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: How do you feel about the criminal justice system?

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KALENA ARMSTRONG-HENRY: It is a good system. It needs tweaking.

Things that need to be fixed.

MR. SATZ: How did you feel -- have you watched any criminal cases over the years?

KALENA ARMSTRONG-HENRY: O. J. Simpson.

MR. SATZ: That's it?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: The imposition of the death penalty, are you in favor?

KALENA ARMSTRONG-HENRY: Taking a life is wrong. If you murder someone, that's wrong. If you do, understand there are penalties. From our system, there are penalties you face.

MR. SATZ: The answer to my question, you're in favor of the death penalty?

KALENA ARMSTRONG-HENRY: Depends upon the case.

MR. SATZ: Right.

When Judge Backman described, in this death penalty case, like any other death penalty case, the State has to prove statutory, aggravating factors beyond a reasonable doubt.

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: You consider any mitigating

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circumstances established by the greater weight of the evidence?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: For the aggravating factors and mitigating circumstances, you will give them, you will evaluate them, give them what you feel they deserve?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: If you feel the aggravating factors outweigh the mitigating circumstances that have been established by the greater weight of the evidence, and if you feel that those aggravating factors outweigh the mitigating circumstances, are you personally capable of voting for the death penalty?

KALENA ARMSTRONG-HENRY: I believe I have to follow, I'll listen to the evidence and follow what the law says. But I'm only human.

I have a feeling of my decisions.

MR. SATZ: Of course, that's why we have human beings on juries.

In reaching your decision, you make personal decisions.

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: An aggravating factor, you will

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give it what weight you feel it deserves?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: Mitigating circumstances you give what weight you feel it deserves?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: After you have done that, put your personal feelings in it and you feel yourself -- although has to be unanimous. We are talking about you now.

You feel the aggravating factors you're considering were proven beyond a reasonable doubt, you feel that way, and you feel that those aggravating factors outweigh the mitigating circumstances you feel were established, and you're following the law?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: And you feel the aggravating factors outweigh the mitigating circumstances, are you personally capable of voting form the death penalty?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: Some people have personally limitations.

Do you believe in the death penalty? Yes, I do. But I only believe when a child is

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killed or when it is a serial killer.

Each of those cases, each of the death penalty cases are evaluated under the same rules, aggravating factors have to be proven beyond a reasonable doubt. Mitigating circumstances have to be shown by the greater weight of the evidence. All decisions have to be unanimous.

Everything has to be beyond a reasonable doubt. Same standard.

When I ask if you feel the aggravating factors outweigh the mitigating circumstances, you have no reasonable doubt as to that, would you vote for the death penalty.

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: You have no personal limitations?

KALENA ARMSTRONG-HENRY: Yes, I do. I expressed that because I'm a person.

I feel for other people. I know there are certain situations where there is two sides to what is happening. His side. Victim's. As I started saying in the beginning, taking a life is wrong. However, if you take a life, murder, that's worse.

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MR. SATZ: Let's say you're selected as a fore person. Would you be willing to serve as a fore person?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: If you are a fore person, would you have difficulty signing the verdict, condemning a defendant to death?

KALENA ARMSTRONG-HENRY: I can sign that.

MR. SATZ: Your husband was a police officer in Knoxville?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: When?

KALENA ARMSTRONG-HENRY: Early '90s. 1992 to 1995.

MR. SATZ: Then he left that to do what?

KALENA ARMSTRONG-HENRY: Shortly after that, he went into the military.

MR. SATZ: You have a niece that is a BSO deputy?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: What does she do for the Broward Sheriff's Office?

KALENA ARMSTRONG-HENRY: Deputy, assistant deputy, deputy, I'm not sure. Works for BSO. Deputy. She has a uniform and a weapon.

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MR. SATZ: How long has she been doing that?

KALENA ARMSTRONG-HENRY: Actually the last two years.

Worked for BSO prior to a different capacity.

MR. SATZ: Do you know what district she's working?

KALENA ARMSTRONG-HENRY: No.

Told me, but I forgot.

MR. SATZ: Your brother-in-law is a police officer in Philadelphia?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: Is he a detective or patrolman?

KALENA ARMSTRONG-HENRY: Not a patrolman anymore.

I think I works in a call center. 911 call center? I think he's a supervisor.

MR. SATZ: Thank you.

Mr. Ortiz, your employment history, you had indicated you were in inventory control?

RAY ANTHONY ORTIZ: Yes, for Floor & Decor.

MR. SATZ: How long have you been with them?

RAY ANTHONY ORTIZ: I have been with them

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for 14 months.

MR. SATZ: Before that?

RAY ANTHONY ORTIZ: Before that, I was working at a Subway restaurant for four years.

MR. SATZ: Before that, I assume you were in school?

RAY ANTHONY ORTIZ: High school.

MR. SATZ: You indicated on your questionnaire you know someone who is a victim of a crime?

RAY ANTHONY ORTIZ: My sister.

MR. SATZ: What type of crime was she a victim?

RAY ANTHONY ORTIZ: She was assaulted.

MR. SATZ: About how long ago?

RAY ANTHONY ORTIZ: About five years ago.

MR. SATZ: In Broward County?

RAY ANTHONY ORTIZ: Yes.

MR. SATZ: Do you know what happened to that case?

RAY ANTHONY ORTIZ: Never found the people that assaulted her.

MR. SATZ: As a result of that, have negative feelings about police officers, based upon someone wasn't apprehended?

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RAY ANTHONY ORTIZ: No.

MR. SATZ: Know anyone ever arrested?

RAY ANTHONY ORTIZ: No.

MR. SATZ: You yourself, any family or friends ever had an unpleasant experience that didn't amount to an arrest but was unpleasant?

RAY ANTHONY ORTIZ: No.

MR. SATZ: Negative feelings about police officers?

RAY ANTHONY ORTIZ: No.

MR. SATZ: How do you feel police officers do their job?

RAY ANTHONY ORTIZ: Do the best they can.

MR. SATZ: Criminal justice system, feeling one way or another about our system in the United States?

RAY ANTHONY ORTIZ: I believe it is fair.

MR. SATZ: Following any criminal cases over the years or desire to?

RAY ANTHONY ORTIZ: No.

MR. SATZ: Are you in favor of the imposition of the death penalty or opposed?

RAY ANTHONY ORTIZ: In favor.

MR. SATZ: Do you have any personal limitations? Some people say I'll only want it

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if a child is killed.

RAY ANTHONY ORTIZ: No limitations.

MR. SATZ: You will agree to follow the law as Judge Backman gives you, talking about aggravating factors that have to be proven beyond a reasonable doubt, mitigating circumstances.

RAY ANTHONY ORTIZ: Yes.

MR. SATZ: If you feel the aggravating factors in this case outweigh any mitigating circumstances, you feel it to such an extent, beyond a reasonable doubt, are you personally capable of voting for the death penalty?

RAY ANTHONY ORTIZ: Yes.

MR. SATZ: Would you be willing to be the fore person, knowing the consequences?

RAY ANTHONY ORTIZ: Yes.

MR. SATZ: Would you sign the verdict form, condemning the defendant to death if you're the fore person?

RAY ANTHONY ORTIZ: Yes.

MR. SATZ: Ms. Balentine, your husband owns a diving service?

LAUREN BALENTINE: Yes. About 25 years.

MR. SATZ: You work with him?

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LAUREN BALENTINE: I do.

MR. SATZ: Before that, what was your employment?

LAUREN BALENTINE: I was a stay-at-home mom.

MR. SATZ: Children grown?

LAUREN BALENTINE: He's is a junior this year.

MR. SATZ: Before working with your husband at the dive center, what did you do?

LAUREN BALENTINE: I didn't work really. Just raised the kids. Started kind of young.

MR. SATZ: Do you know anyone ever arrested?

LAUREN BALENTINE: Yes.

MR. SATZ: Who?

LAUREN BALENTINE: I was.

MR. SATZ: Would you rather discuss it in private?

LAUREN BALENTINE: No. It's okay.

MR. SATZ: What were you arrested for?

LAUREN BALENTINE: DUI.

MR. SATZ: How long ago?

LAUREN BALENTINE: 12 years ago.

MR. SATZ: Here in Broward County?

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LAUREN BALENTINE: Yes.

MR. SATZ: The office I have work with probably prosecuted you?

LAUREN BALENTINE: Possibly. But I was not convicted.

MR. SATZ: Really?

LAUREN BALENTINE: Really.

MR. SATZ: So you got away. So...

LAUREN BALENTINE: No, I was not guilty.

MR. SATZ: Anything happen as a result of that case cause you have negative feelings?

LAUREN BALENTINE: Not at all.

MR. SATZ: You feel a police officer treated you fairly?

LAUREN BALENTINE: Yes.

MR. SATZ: Anyone else that you know of been arrested? Family or friends?

LAUREN BALENTINE: My cousin, older cousin, in Pennsylvania, she's a drug addict.

MR. SATZ: Anything happen as a result of the case up there cause you to have negative feelings about the criminal justice system?

LAUREN BALENTINE: No.

MR. SATZ: How do you feel about police officers?

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LAUREN BALENTINE: I am grateful we live in a country that has them.

My son completed three years at the Broward County Explorers Program for the police department. I am grateful.

MR. SATZ: The criminal justice system?

LAUREN BALENTINE: I know little of it. From what I'm gathering, it is thorough.

MR. SATZ: Have you had an opportunity to follow any criminal case?

LAUREN BALENTINE: No.

MR. SATZ: The imposition of the death penalty? Are you in favor or opposed to it?

LAUREN BALENTINE: I believe in the death penalty. I do believe in it.

MR. SATZ: Some people are in favor of the imposition of the death penalty.

Some people feel they are intellectually in favor of the death penalty. When it comes down to doing it, they feel they couldn't do it.

Do you feel that way?

LAUREN BALENTINE: I would have a difficult time voting for it. I wouldn't say I wouldn't be able to, depending upon what we talked about, being able to weigh the circumstances of

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the case. It would be difficult.

MR. SATZ: It is a difficult decision.

LAUREN BALENTINE: I believe I have would be capable.

MR. SATZ: You will follow the law as Judge Backman gives it to you about the aggravating factors, if a factor is established or factors are established beyond a reasonable doubt and weigh them against any mitigating circumstances that have been shown to exist by the greater weight of the evidence and you weigh each one of the aggravating factors?

LAUREN BALENTINE: Correct.

MR. SATZ: And each one of the mitigating circumstances?

LAUREN BALENTINE: Yes.

MR. SATZ: If you feel that the aggravating factors outweigh the mitigating circumstances, would you be willing to vote for the death penalty?

LAUREN BALENTINE: Yes.

That's the law, right? That's what we're saying.

MR. SATZ: You don't have limitations on the death penalty?

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LAUREN BALENTINE: No.

MR. SATZ: Personally?

LAUREN BALENTINE: No.

MR. SATZ: Would you be willing to be the fore person if you are selected?

LAUREN BALENTINE: Not really, no. I wouldn't want to do it. But I guess if I had to, it is in God's hands. If they thought it should be my role, I would accept.

MR. SATZ: If you were the fore person, would you have difficulty signing the verdict form, condemning the defendant to death?

LAUREN BALENTINE: It would be difficult. If that was our decision, unanimous, then I would sign it.

MR. SATZ: Any question you feel I should have asked you I haven't with reference to your ability to be fair and impartial in this particular sentencing proceeding?

LAUREN BALENTINE: No, I can be fair and impartial.

Hard to make sure, to give a yes or no answer, being truthful.

But I can listen to, you know, I know the difference between right and wrong and I can

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listen to the information unbiased.

MR. SATZ: You understand this is our only opportunity.

LAUREN BALENTINE: Yes.

Heavy-hearted.

MR. SATZ: I agree. This is our only opportunity to see.

Like I said, there is no right or wrong answers. Everybody is different.

Everybody brings something different to the table.

That's why we do this.

LAUREN BALENTINE: I understand.

MR. SATZ: Ms. Lynch, your husband is director of business development?

LESLIE LYNCH: My wife.

MR. SATZ: How long has she been doing that?

LAUREN BALENTINE: About eight years.

MR. SATZ: Before that?

LAUREN BALENTINE: Recruiter for professional positions.

MR. SATZ: Did that for how long?

LAUREN BALENTINE: About 15 years.

MR. SATZ: You have a bachelor's and

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master's degree?

LAUREN BALENTINE: Yes.

MR. SATZ: Where did you get your bachelor's?

LAUREN BALENTINE: Michigan State University.

MR. SATZ: Master's?

LAUREN BALENTINE: St. Thomas.

Mental health counseling.

MR. SATZ: How long have you been doing that?

LAUREN BALENTINE: About 25 years.

MR. SATZ: You have indicated on your questionnaire you know someone that does criminal defense work?

LAUREN BALENTINE: Yes.

MR. SATZ: Who?

LAUREN BALENTINE: Friends and neighbors. Yes. Some class action stuff. Some criminal law.

MR. SATZ: Do you remember their names?

LAUREN BALENTINE: Sure.

Mark Deerman. I have neighbors.

MR. SATZ: Ever discuss their cases with you?

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LAUREN BALENTINE: No.

MR. SATZ: Ever done forensic work?

LAUREN BALENTINE: My agency does forensic work.

MR. SATZ: And you work with any agencies in the courthouse here?

LAUREN BALENTINE: Yes.

MR. SATZ: Who?

LAUREN BALENTINE: In drug court and in mental health court. I don't personally. I have an agency that does the services here in Broward County and all over Florida.

We work closely with drug court and mental health court here and provide services for forensic clients.

MR. SATZ: Ever do work with Dr. Collins?

LAUREN BALENTINE: I don't know who that is.

MR. SATZ: You indicated your neighbor is an assistant state attorney?

LAUREN BALENTINE: Yes.

MR. SATZ: Who is that?

LAUREN BALENTINE: Alexia Dirst.

MR. SATZ: You live in Sea Ranch Lakes?

LAUREN BALENTINE: Yes.

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MR. SATZ: You were deposed ten years ago in a medical fraud case?

LAUREN BALENTINE: Yes.

MR. SATZ: What were the circumstances of that?

LAUREN BALENTINE: Provider of behavioral health services. There was another provider that indicated they were providing service to the client we were providing services to. There was an investigation really for both companies. Paperwork and investigation lead the case down the line of this other company committing Medicaid fraud.

MR. SATZ: Anything happen as a result of that matter in your deposition cause you to have negative feelings about the proceeding you went through?

LAUREN BALENTINE: Not at all.

MR. SATZ: You sat on a jury before?

LAUREN BALENTINE: Yes.

MR. SATZ: Criminal case?

LAUREN BALENTINE: Yes.

MR. SATZ: Reach a verdict?

LAUREN BALENTINE: No. Settled.

MR. SATZ: Remember the charge?

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LAUREN BALENTINE: Attempted murder and some other charges.

MR. SATZ: Do you do any mental health counseling one on one now?

LAUREN BALENTINE: No.

MR. SATZ: In the past?

LAUREN BALENTINE: 20 plus years ago. I am an administrator.

MR. SATZ: As far as arrests, anybody in your family, friends, you ever been --

LAUREN BALENTINE: No.

MR. SATZ: Ever had an unpleasant experience with a police officer that didn't amount to an arrest.

LAUREN BALENTINE: No.

MR. SATZ: Anybody you know of?

LAUREN BALENTINE: No.

MR. SATZ: Ever had negative experience with police officers?

LAUREN BALENTINE: No.

MR. SATZ: How do you feel police officers do their job?

LAUREN BALENTINE: The best they can.

MR. SATZ: Criminal justice system?

LAUREN BALENTINE: Much to be desired in

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terms of efficiency.

I opposition to children getting tried as adults.

I work with the juvenile justice population. My agency.

But I think the processes are quite fair.

MR. SATZ: Do you have personal dealings with Maria Schneider?

LAUREN BALENTINE: No.

MR. SATZ: Do you know who she is?

LAUREN BALENTINE: No.

MR. SATZ: Have you followed any criminal cases?

LAUREN BALENTINE: Menendez Brothers, O. J., Casey Anthony.

MR. SATZ: The imposition of the death penalty, some people feel they are intellectually in favor of the death penalty. When it comes down to doing it, they feel they couldn't do it.

LAUREN BALENTINE: I am opposed to it personally.

I realize that it is a, it is legal in Florida. I would follow the law.

I believe I could listen to all of the

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circumstances and factors and I could vote yes for the death penalty.

MR. SATZ: Judge Backman likes to use the football field.

People opposed to the death penalty, never vote for it. People never vote for life.

Only death.

Where are you?

LAUREN BALENTINE: I believe that I can vote for the death penalty. It is just personally, I am not in favor.

As a result, if I went to the polls, I would not vote in favor of it.

Since it is the law, I understand I'll hear all kind of information and will be able to make a decision.

I believe in the law.

I'll be able to follow the instructions of the Judge and make a fair decision.

MR. SATZ: You understand it is a weighing process?

LAUREN BALENTINE: Yes.

MR. SATZ: If you feel the aggravating factors outweigh the mitigating circumstances established by the greater weight of the

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evidence and you feel the aggravating factors proven beyond a reasonable doubt, outweigh the mitigating circumstances that were established by the greater weight of the evidence, and you feel that they are outweighed beyond a reasonable doubt, can you personally vote for the death penalty.

LAUREN BALENTINE: Yes.

You don't have any personal limitations, even though you're opposed? I'd only vote for it for serial killers or a child killer?

LAUREN BALENTINE: No.

MR. SATZ: How about knowing the possible consequences, since you are opposed to the death penalty, same answer, if you were asked to be the fore person, would you be willing to serve?

LAUREN BALENTINE: I would.

MR. SATZ: If you were the fore person, would you have difficulty signing the verdict form, condemning the defendant to death?

LAUREN BALENTINE: I would do it. That's the rule. I could.

MR. SATZ: All right. I will give you guys a break and go over here.

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How are you doing?

NURIAN KREFFT: All right.

MR. SATZ: Ms. Krefft, your spouse is retired.

What was your spouse's employment?

NURIAN KREFFT: He was a project manager. He worked with AGO, overseas and with USA. He retired three years ago.

MR. SATZ: You're semi-retired?

NURIAN KREFFT: Right.

MR. SATZ: What does that mean?

NURIAN KREFFT: I work when I want.

MR. SATZ: That's a good deal.

NURIAN KREFFT: I am a real estate broker.

MR. SATZ: Before you were semi-retired, did what you want, what did you do with what you did want?

NURIAN KREFFT: I was raising my kids.

I was following my husband everywhere he went.

MR. SATZ: What do your children do now?

NURIAN KREFFT: My oldest is an engineer. He is a network, something with audio and digital technology.

My youngest is also an IT person.

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He's in Oklahoma. Not in this area.

MR. SATZ: And your brother practices law in Pennsylvania?

NURIAN KREFFT: Yes.

MR. SATZ: Criminal law?

NURIAN KREFFT: Not in Pennsylvania.

MR. SATZ: Moved it?

NURIAN KREFFT: Specifically.

MR. SATZ: What kind of criminal law?

NURIAN KREFFT: He was working with Department of Children.

He moved to the private sector recently.

I am not sure what he does.

MR. SATZ: Does he discuss his cases with you?

NURIAN KREFFT: No.

MR. SATZ: You indicated that you were a victim of a crime?

NURIAN KREFFT: Well, I had to, I had work done in my house. The contractor stole $5,000 from us. We can't, we couldn't recover it.

MR. SATZ: Did the police respond?

NURIAN KREFFT: We went to the police. Took him to court. But he never did anything. Never paid.

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MR. SATZ: Was he charged with a crime?

NURIAN KREFFT: He was.

MR. SATZ: Was he convicted?

NURIAN KREFFT: He was convicted, yes.

He was supposed to repay the money.

But he never did.

MR. SATZ: Do you have any hard feelings about that, about the criminal justice system?

NURIAN KREFFT: No.

MR. SATZ: Do you know anyone, family, friends, ever been arrested?

NURIAN KREFFT: No.

MR. SATZ: Anybody in your family, friends ever have a negative experience with a police officer that was unpleasant?

NURIAN KREFFT: No.

MR. SATZ: How do you feel personally about police officers?

NURIAN KREFFT: They do their best.

MR. SATZ: Criminal justice system?

NURIAN KREFFT: Of course. Same.

MR. SATZ: Ever had the opportunity or desire to follow any particular criminal case on TV or read about it?

NURIAN KREFFT: No.

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MR. SATZ: Do you believe in the imposition of the death penalty?

NURIAN KREFFT: I do.

MR. SATZ: If you feel the aggravating factors that are proven beyond a reasonable doubt outweigh the mitigating circumstances that were proven to exist by the greater weight of the evidence, can you personally vote for the death penalty?

NURIAN KREFFT: Yes.

MR. SATZ: Would you, if you were chosen as the fore person, would you be able to serve?

NURIAN KREFFT: Yes.

MR. SATZ: If you were the fore person, would you have any difficulty signing the verdict form, condemning the defendant to death?

NURIAN KREFFT: No.

MR. SATZ: Ms. Sou, how are you doing?

KIT YINK SOU: Good.

How are you?

MR. SATZ: I'm good. I am good.

Your spouse's employment history?

KIT YINK SOU: He's a nurse.

Did it a year. Didn't like it. Went back

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too his old business. Still worked in hospital in registration of patients.

MR. SATZ: How about your work?

KIT YINK SOU: I have been with Memorial Health Care System for 23 years.

MR. SATZ: You work in the pharmacy?

KIT YINK SOU: Yes.

MR. SATZ: You worked there for 23 years?

KIT YINK SOU: Yes.

MR. SATZ: Do you know anyone ever been arrested?

KIT YINK SOU: No.

MR. SATZ: You or anyone you know ever had an experience that didn't amount to an arrest that was unpleasant?

KIT YINK SOU: No.

MR. SATZ: How do you feel about police officers, about how they do their job?

KIT YINK SOU: I believe they do their job. I had a bad experience with one of the cops.

MR. SATZ: That's what I just asked you. Did you have an unpleasant experience with a police officer?

Not with arrests.

KIT YINK SOU: Nothing to do with arrests.

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MR. SATZ: I said have you ever had a unpleasant experience with a police officer that didn't amount to an arrest?

KIT YINK SOU: Yes.

MR. SATZ: What was that?

KIT YINK SOU: Do I have to talk about that?

MR. SATZ: No.

And you just, it was just a bad experience with that one officer?

KIT YINK SOU: Well, yes. Most of them, there is, there are good and bad cops.

MR. SATZ: As a general rule, how do you feel about police officers?

KIT YINK SOU: They try to do their job.

MR. SATZ: How do you feel about the criminal justice system?

KIT YINK SOU: Slow. Slow. It's slow.

MR. SATZ: How would you speed it up?

KIT YINK SOU: That's how I feel.

MR. SATZ: Ever followed any particular criminal case in the newspaper or television?

KIT YINK SOU: No.

MR. SATZ: How do under feel about the death penalty? Do you believe in it? Opposed

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to it?

KIT YINK SOU: I am against.

MR. SATZ: Are you saying you would always vote for life?

KIT YINK SOU: I'm not saying always.

I would never vote for death.

MR. SATZ: Never?

KIT YINK SOU: Never.

MR. SATZ: No matter what the facts and circumstances?

KIT YINK SOU: Yes.

MR. SATZ: Never vote for death?

KIT YINK SOU: Never.

MR. SATZ: Ms. Backus, you have a degree in education. Where did you get that?

CYNTHIA BACKUS: I didn't finish. University of Utah.

I retired from Delta Airlines.

I spent my first ten years with reservations, on the Internet.

I spent my last 11 years at the airport, training baggage handlers regarding ICE and OSHA.

MR. SATZ: Your boyfriend is a retired police officer?

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CYNTHIA BACKUS: I didn't want to write I had gone out a couple times with somebody, a retired cop. He's not my boyfriend.

That didn't work so well.

Needed another five pages for my dating life.

Needed them for me, actually.

MR. SATZ: To write about in your questionnaire.

CYNTHIA BACKUS: Had a couple dates.

I don't know how long -- he was really boring.

We will leave it at that.

MR. SATZ: Did he cause you to have negative feelings about police officers?

CYNTHIA BACKUS: None at all.

MR. SATZ: How do you feel about police officers?

CYNTHIA BACKUS: I am grateful we have them.

I respect them.

MR. SATZ: Ever known anyone arrested?

CYNTHIA BACKUS: Distant cousin many many years ago.

MR. SATZ: Don't know much about it?

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CYNTHIA BACKUS: Not at all.

MR. SATZ: Now do you feel about the criminal justice system?

CYNTHIA BACKUS: Seem to get it right most of the time.

MR. SATZ: The death penalty, in favor or opposed?

CYNTHIA BACKUS: I am in favor.

MR. SATZ: Do you have any personal limitations, like some people say I'm for it but only if it is a child being killed?

CYNTHIA BACKUS: No.

MR. SATZ: Limitations?

CYNTHIA BACKUS: No.

MR. SATZ: You agree you will follow the law as Judge Backman said, going over aggravating factors, have to be proven beyond a reasonable doubt?

CYNTHIA BACKUS: Yes. I believe I can listen to all of the evidence and make a fair decision.

MR. SATZ: If the aggravating factors outweigh the mitigating circumstances and you feel it has been proven beyond a reasonable doubt, you can vote for the death penalty?

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CYNTHIA BACKUS: Yes.

MR. SATZ: If selected, would you be willing to be the fore person if selected?

CYNTHIA BACKUS: Yes.

MR. SATZ: Regardless of the consequences in this case?

CYNTHIA BACKUS: Yes.

MR. SATZ: If you were the fore person, would you have difficulty?

CYNTHIA BACKUS: It has to be a unanimous decision?

MR. SATZ: Yes.

Everything in this proceeding has to be unanimous.

You agree you will weigh each one of the aggravating factors proven beyond a reasonable doubt and each one of the mitigating circumstances.

CYNTHIA BACKUS: Yes.

MR. SATZ: That are shown now exist?

CYNTHIA BACKUS: Yes.

MR. SATZ: Thank you.

Mr. Joseph, you have a bachelor's degree.

Where did you get it?

SAM JOSEPH: India.

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MR. SATZ: You're an accountant?

SAM JOSEPH: Yes.

MR. SATZ: Your employment?

SAM JOSEPH: Business specialist.

MR. SATZ: Who do you work with?

SAM JOSEPH: South Florida Network.

MR. SATZ: How long have you worked for them?

SAM JOSEPH: 14 years.

MR. SATZ: Before that, what did you do?

SAM JOSEPH: Before that, I was with the Department of Children and Families.

Before that, accountant. Then private sector, managing. We manage occupants office, analysis. Properties. And all bills are coming into my office. And I process that bill for payment.

MR. SATZ: In your questionnaire, you didn't answer 21.

Relatives or close friends, lawyers?

SAM JOSEPH: No.

MR. SATZ: You don't have any?

SAM JOSEPH: No.

MR. SATZ: You just didn't mark any?

SAM JOSEPH: Yes.

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No.

MR. SATZ: Yes. Okay.

Have you ever known anyone arrested?

SAM JOSEPH: No.

MR. SATZ: Anybody in your family or friends?

SAM JOSEPH: No.

MR. SATZ: Ever had an unpleasant experience with a police officer that didn't amount to an arrest?

SAM JOSEPH: No.

MR. SATZ: How do you feel about the way police officers do their job?

SAM JOSEPH: They do their job.

MR. SATZ: The American system of criminal justice?

SAM JOSEPH: I feel it is a bit slow.

That's what I feel.

MR. SATZ: What part do you feel is slow?

SAM JOSEPH: Like, in this case, took almost 16 years.

I think this happened in 2002.

Not, it's 2018.

MR. SATZ: All right.

Have you followed any criminal case on TV

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or newspapers?

SAM JOSEPH: No.

MR. SATZ: How do you feel about the imposition of the death penalty? Are you in favor or opposed?

SAM JOSEPH: Totally against the death penalty.

MR. SATZ: And you would never vote for it?

SAM JOSEPH: No.

MR. SATZ: Sure?

SAM JOSEPH: Yes.

MR. SATZ: No matter the facts and circumstances?

SAM JOSEPH: Correct.

MR. SATZ: Thank you.

Mr. Dean, you were pursuing criminology?

DAVID DEAN: Yes.

Starting a second life.

MR. SATZ: What was your first life?

DAVID DEAN: I did a lot. Technical support for various companies.

While I lost my job, I went back to school.

Found out I want to do criminology at the University of Florida.

MR. SATZ: Where are you now in your

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studies?

DAVID DEAN: Actually going to be starting IT with UF. Child protective services. Families.

So while I was in between my jobs, I lost my main job, which was technical support. I went back to school at Broward College. Did very well. Asked me to pursue further.

I chose criminology, child protective services to follow the footsteps of my family members currently police officers, but in the State of Vermont.

MR. SATZ: Tell me about your family in law enforcement?

DAVID DEAN: They were either military. My father was US Navy. Guam. Adopted. Mother is a nurse.

Military.

Uncle was State of Vermont. I think he did some government work. If you want to talk about it, it was up here in Miami, a big case. Did something here.

MR. SATZ: Why don't you want to mention it?

DAVID DEAN: During the 1990s.

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I have just got done studying it. I fully comprehend why I wasn't given any of that information.

I put two and two together of what he did. It was a drug bust.

Didn't interest me at the time. I wanted to work with CPS. Started doing home work that I want to do for my second life.

MR. SATZ: You indicated too you were the victim of a crime?

DAVID DEAN: Oh, yes. I was playing tennis.

Some guy, by the Dania Jai Alai. Broke into my car. Called the police.

They came over. Did a report. Never caught them. Now I just park closer.

MR. SATZ: Anything about that case cause you to have negative feelings of police?

DAVID DEAN: No. I have seen an increase of police presence.

Bonus.

MR. SATZ: You have family in law enforcement, correct?

DAVID DEAN: Yes. Nephew just graduated recently.

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MR. SATZ: Positive feelings about police officers?

DAVID DEAN: Yes. They have drastically improved.

MR. SATZ: How do you feel about the criminal justice system?

DAVID DEAN: It's fair.

MR. SATZ: Have you followed any cases in the TV or news?

DAVID DEAN: No.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or opposed?

DAVID DEAN: In favor.

MR. SATZ: Any person limitations?

DAVID DEAN: No.

Take the aggravating and mitigating and weigh them both.

MR. SATZ: Weigh the aggravators and mitigators and if you feel the aggravators proven beyond a reasonable doubt outweigh the mitigating circumstances established by the greater weight of the evidence and you feel the aggravating factors outweigh the mitigating circumstances, you can vote for the death

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penalty?

DAVID DEAN: Yes.

MR. SATZ: Willing to be the fore person if selected?

DAVID DEAN: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

DAVID DEAN: Absolutely.

MR. SATZ: Any question I failed to ask you that you, that would impact on your ability to be a fair, impartial juror in this case?

DAVID DEAN: No.

MR. SATZ: Mr. Molina, you have a bachelor's degree from?

JOSE MOLINA: NYU.

MR. SATZ: When did you get that?

JOSE MOLINA: In 1995.

MR. SATZ: Graduate degree?

JOSE MOLINA: Boston University.

MR. SATZ: So now you're in finance?

JOSE MOLINA: For the government, yes.

MR. SATZ: For the government?

JOSE MOLINA: Yes.

MR. SATZ: What do you do for the

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government?

JOSE MOLINA: I work for the SEC. I do compliance, examinations.

MR. SATZ: For how long?

JOSE MOLINA: 13 years.

MR. SATZ: Have you ever met -- someone was a victim you said, in your questionnaire?

JOSE MOLINA: Me, when I was in college. Parents home was broken into.

MR. SATZ: Did anything happen as a result that caused you to have questions about police officers?

JOSE MOLINA: No.

MR. SATZ: Ever been arrested?

JOSE MOLINA: No.

MR. SATZ: Anybody in your family or friends?

JOSE MOLINA: A cousin was in the '90s, for money laundering.

MR. SATZ: Did anything happen as a result of that case cause you to have negative feelings about the police or criminal justice system?

JOSE MOLINA: No.

MR. SATZ: How do you feel the way police

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officers do their work?

JOSE MOLINA: I think they are good.

MR. SATZ: The criminal justice system, how do you feel about the way it works?

JOSE MOLINA: It's fair.

MR. SATZ: Have you followed any particular criminal case over the years?

JOSE MOLINA: Just O. J.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or opposed?

JOSE MOLINA: In favor.

MR. SATZ: Any personal limitations on the death penalty?

JOSE MOLINA: No.

MR. SATZ: In other words, I would only vote for death if it was a child killing. Any personal limitations?

JOSE MOLINA: No.

MR. SATZ: You agree to follow the law Judge Backman indicates about aggravating factors having to be weighed, proven beyond a reasonable doubt, weighed against any mitigating circumstances that were proven by the greater weight of the evidence?

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JOSE MOLINA: Yes.

MR. SATZ: Weigh the aggravators and mitigators and if you feel the aggravators proven beyond a reasonable doubt outweigh the mitigating circumstances established by the greater weight of the evidence and you feel the aggravating factors outweigh the mitigating circumstances, you can vote for the death penalty?

JOSE MOLINA: Yes.

MR. SATZ: Willing to be the fore person if selected?

JOSE MOLINA: Yes.

MR. SATZ: If you're selected as a fore person, would you have difficulty signing the verdict form, condemning the defendant to death?

JOSE MOLINA: No.

MR. SATZ: Thank you.

Mr. Hayles, how are you?

PAUL HAYLES: Good.

MR. SATZ: You told us before you were a supervisor for water management?

PAUL HAYLES: Yes.

MR. SATZ: How long have you been doing

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that?

PAUL HAYLES: 17 years.

MR. SATZ: Before that, you did what?

PAUL HAYLES: Before that, I worked for, did odd jobs.

MR. SATZ: Your brother and cousin are lawyers?

PAUL HAYLES: Yes.

MR. SATZ: Where are they lawyers? Here in Broward County?

PAUL HAYLES: One in Washington.

My cousin in Washington.

One in England.

MR. SATZ: The one in England, what type of law does he practice.

PAUL HAYLES: My brother.

MR. SATZ: What kind of --

PAUL HAYLES: A lot to do with property.

MR. SATZ: In Washington?

PAUL HAYLES: She is, she works at the justice department.

MR. SATZ: Do you know what she does with the justice department?

PAUL HAYLES: No.

MR. SATZ: Never talk about her cases or

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anything?

PAUL HAYLES: No, never discusses it.

MR. SATZ: You indicated someone you know has been the victim of a crime?

PAUL HAYLES: Yes. Different people, friends.

MR. SATZ: Victims of a crime?

PAUL HAYLES: Police custody.

Some people that commit crimes. I know people that had, have had a crime committed to them.

MR. SATZ: What type of crimes have been committed against some of your friends?

PAUL HAYLES: I'm afraid he died in police custody.

MR. SATZ: Here in Broward County?

PAUL HAYLES: No, Jamaica.

MR. SATZ: How about here in the United States? Know anyone arrested in the United States?

PAUL HAYLES: My son.

Juvenile.

MR. SATZ: Here in Broward County?

PAUL HAYLES: In Broward and Palm Beach.

MR. SATZ: How long ago was he arrested?

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PAUL HAYLES: About four years ago.

MR. SATZ: What was he arrested for?

PAUL HAYLES: I think he was arrested for mischievous stuff.

MR. SATZ: Anything happen has a result of that case that caused you to have bad feelings about police officers?

PAUL HAYLES: Not in that case.

But to me.

MR. SATZ: What happened to you?

PAUL HAYLES: I was working one night. A robbery was committed. I was just driving in a county vehicle.

They pulled me over.

Held me at gunpoint about an hour.

I'm here, right.

MR. SATZ: That wasn't right.

Did they apologize?

PAUL HAYLES: No.

MR. SATZ: Do you know what police department that was?

PAUL HAYLES: Lauderdale Lakes. It was Broward Sheriff's Office.

MR. SATZ: Broward County Sheriff's Office?

PAUL HAYLES: Yes.

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MR. SATZ: Because of that incident, do you have negative feelings about police officers?

PAUL HAYLES: For that particular incident.

MR. SATZ: In general?

PAUL HAYLES: I believe they do good. But that particular incident, yes. At the time.

MR. SATZ: How many police officers were involved in that?

PAUL HAYLES: About three.

MR. SATZ: How about the criminal justice system, have any feelings about it?

PAUL HAYLES: I believe in it.

MR. SATZ: You believe it works?

PAUL HAYLES: Yes.

MR. SATZ: The death penalty, you believe in the imposition of the death penalty?

PAUL HAYLES: .....yes.

MR. SATZ: You hesitated.

You have a question about it?

PAUL HAYLES: I have to think about it.

MR. SATZ: Will you follow the Judge's instructions?

PAUL HAYLES: Yes.

MR. SATZ: Any death penalty case, the jury considers aggravating factors, if there is one

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or more, right?

PAUL HAYLES: Yes.

MR. SATZ: Each of those aggravating factors has to be proven beyond a reasonable doubt.

PAUL HAYLES: Correct.

MR. SATZ: You have heard that from Judge Backman?

PAUL HAYLES: Yes.

MR. SATZ: And then you hear mitigating circumstances that have to be established by the greater weight of the evidence?

PAUL HAYLES: Yes.

MR. SATZ: And if the aggravating factors that are proven beyond a reasonable doubt outweigh the mitigating circumstances, to such an extent that you have no reasonable doubt that the aggravating factors outweigh the mitigating circumstances, would you vote form the death penalty?

PAUL HAYLES: Yes.

MR. SATZ: Would you agree to, if selected, to be the fore person?

PAUL HAYLES: That I don't know about. Fore person?

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MR. SATZ: You wouldn't want to be the fore person?

PAUL HAYLES: Since it is my first time doing it.

MR. SATZ: Probably the first time for everybody in here?

PAUL HAYLES: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

PAUL HAYLES: Based on the evidence in the case, yes.

MR. SATZ: What else would you base it on?

You feel you can be fair and impartial?

PAUL HAYLES: Yes.

MR. SATZ: Any questions that I didn't ask you that you think I should ask you dealing with, you know, your ability to be fair and impartial in this particular case?

PAUL HAYLES: Do I have to answer now or another time.

MR. SATZ: What is the time frame you have in mind?

PAUL HAYLES: Maybe a day.

MR. SATZ: A day?

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PAUL HAYLES: Yes.

MR. SATZ: Well, I guess you can wait a day.

Thank you, sir.

Ms. Beard, how are you?

VANESSA BEARD: Good.

MR. SATZ: So you work for a hospice?

VANESSA BEARD: Yes.

MR. SATZ: How long?

VANESSA BEARD: Two years?

MR. SATZ: What did you do before that?

VANESSA BEARD: I worked at an Apple Store.

MR. SATZ: How long did you do that?

VANESSA BEARD: Two years.

MR. SATZ: Then were you in school?

VANESSA BEARD: No, went over to Best Buy. Than I was in school.

MR. SATZ: You know someone who practices law?

VANESSA BEARD: She's in school. She graduated with her criminal justice, a bachelor's.

Trying to get into law school.

MR. SATZ: You had a friend that worked for a law firm?

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VANESSA BEARD: Doing that. Same person.

MR. SATZ: You have indicated on your questionnaire you took courses in psychology and psychology and social work and counseling?

VANESSA BEARD: Right. I have an associates. In school, I was taking those classes.

MR. SATZ: Use that at all in what you are doing now?

VANESSA BEARD: No.

MR. SATZ: Have you or any of your friends, family ever been arrested?

VANESSA BEARD: Family.

MR. SATZ: Who?

VANESSA BEARD: My uncles.

MR. SATZ: More than one uncle?

VANESSA BEARD: Yes.

MR. SATZ: They were all arrested?

VANESSA BEARD: Yes.

MR. SATZ: Here in Broward County?

VANESSA BEARD: Yes.

MR. SATZ: What were they arrested for?

VANESSA BEARD: Drugs.

One was addicted.

One selling.

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MR. SATZ: Here in Broward County?

VANESSA BEARD: Yes.

MR. SATZ: The office I work with probably prosecuted your uncles.

VANESSA BEARD: Probably.

Probably know them.

MR. SATZ: How do you feel about that? Any bad feelings towards prosecutors, police officers?

VANESSA BEARD: No.

MR. SATZ: Anyone else that you know of been arrested?

VANESSA BEARD: No.

MR. SATZ: How do you feel about police officers?

VANESSA BEARD: I feel they do the best they can.

MR. SATZ: Have you personally ever had an unpleasant experience with a police officer that didn't amount to an arrest.

VANESSA BEARD: No.

MR. SATZ: Know anyone who has?

VANESSA BEARD: No.

MR. SATZ: The criminal justice system, what is your opinion.

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VANESSA BEARD: They try to be fair as much as they can.

MR. SATZ: How about you? Have you followed any particular criminal case over the years?

VANESSA BEARD: No.

MR. SATZ: How do you feel about the imposition of the death penalty?

Are you in favor or opposed?

VANESSA BEARD: In favor.

MR. SATZ: Have any personal limitations?

VANESSA BEARD: No.

MR. SATZ: Do you agree to follow the law as Judge Backman gives to you as far as the aggravating factors proven beyond a reasonable doubt and mitigating circumstances established by the greater weight of the evidence?

VANESSA BEARD: Yes.

MR. SATZ: Do you feel the aggravating factors outweigh the mitigating circumstances and you have no reasonable doubt, can you vote for the death penalty?

VANESSA BEARD: I can.

MR. SATZ: Willing to be the fore person if selected?

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VANESSA BEARD: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

VANESSA BEARD: No.

MR. SATZ: Mr. Runge, you do technical support for Apple now?

BRIAN RUNGE: Yes.

MR. SATZ: How long have you been doing that?

BRIAN RUNGE: A little over a year now.

MR. SATZ: Your employment history?

BRIAN RUNGE: Bunch of odd jobs.

Everything from mosquito extermination service to a doggy day-care.

MR. SATZ: Your list of TV shows, I mostly watch sports. So I'm a bad person to ask. I have never heard of those?

BRIAN RUNGE: The list you are looking at might be pod casts.

MR. SATZ: Are they?

BRIAN RUNGE: Yes.

MR. SATZ: Do they deal with any particular topic?

BRIAN RUNGE: Certain ones.

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I haven't followed any cases. I feel the pod casts I listen to go through several cases on different things. They will go through the court proceedings when they are telling the entire story about this person or like that.

MR. SATZ: Do you remember what any of the stories were about?

BRIAN RUNGE: Well, it depends.

Behind the Bastards covers dictators and other things. So if any of those people ended up in court, it would go through the proceedings.

MR. SATZ: Like Dictators in South America?

BRIAN RUNGE: Yes.

MR. SATZ: Brooklyn 99?

BRIAN RUNGE: That's just a comedy police show.

MR. SATZ: I am just wondering.

BRIAN RUNGE: That's fine.

MR. SATZ: I'm like Judge Backman. I'm curious.

BRIAN RUNGE: That's okay.

I can give you a Netflix recommendation.

MR. SATZ: How about the Daily Byte Guide?

BRIAN RUNGE: It is another pod cast that

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is just this is what is going on in the world right now. One of those type of things.

It would talk about the Kavanaugh trial and about the Lady Gaga movie that just came out.

MR. SATZ: You know someone who has been a victim. Were you a victim of a crime?

BRIAN RUNGE: Yes. Me and my brothers have had houses broken into, minor stuff that happens when you live in a neighborhood where that kind of stuff happens.

MR. SATZ: Arrests? You, anyone in your family, friends ever been arrested?

BRIAN RUNGE: No.

MR. SATZ: Ever had an unpleasant experience with a police officer that didn't amount to an arrest?

BRIAN RUNGE: Not particularly. We're fine.

MR. SATZ: Anyone in your family or friends?

BRIAN RUNGE: Not really.

MR. SATZ: What is your opinion about police officers and how they do their job?

BRIAN RUNGE: Definitely complicated job. Definitely been some mistakes. That

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happens in any line of work, I think.

MR. SATZ: The criminal justice system?

BRIAN RUNGE: Not perfect. It's better than a lot of other places. I don't know much about it to make suggestions. As good as I can make it.

MR. SATZ: Fair enough.

How about any particular, I mean other than the pod cast thing, other than the dictators, any domestic criminal cases that you may have --

BRIAN RUNGE: A few. One pod cast talks about a serial killer. Go through his court proceedings.

Nothing that went through court proceedings that affected my judgment, thoughts on the legal system in our country.

MR. SATZ: The death penalty, do you believe in the imposition of the death penalty or are you opposed to it?

BRIAN RUNGE: No pun intended, but a case-to-case basis, yeah.

MR. SATZ: Do you have personal limitations? You would only vote for death if it were a child killing?

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BRIAN RUNGE: No.

MR. SATZ: I wouldn't vote for death unless it were a child killing?

BRIAN RUNGE: No.

MR. SATZ: You will follow the law as Judge Backman gives it to you?

BRIAN RUNGE: Yes.

MR. SATZ: You hired Judge Backman talk about the procedure, have to be unanimous?

BRIAN RUNGE: Yes.

MR. SATZ: Aggravating factors have to be proven beyond a reasonable doubt?

BRIAN RUNGE: Yes.

MR. SATZ: Mitigating circumstances, greater weight of the evidence.

BRIAN RUNGE: Yes.

MR. SATZ: If you feel the aggravating factors outweigh the mitigating circumstances and you have no reasonable doubt, if you feel the aggravating factors outweigh the mitigating circumstances beyond a reasonable doubt, would you personally vote for the death penalty?

BRIAN RUNGE: Yes.

MR. SATZ: Be willing to be the fore person?

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BRIAN RUNGE: I haven't watched CSI in a while. That's just a juror who announces the verdict or signs for it? What is that exactly?

MR. SATZ: I have never been the fore person. I would assume the fore person, when people, jurors go back to deliberate, they conduct a meeting, like the head of a --

BRIAN RUNGE: That's fine.

MR. SATZ: A facilitator. Exactly.

BRIAN RUNGE: Okay.

MR. SATZ: The fore person, if you are the fore person, would you have difficulty signing the verdict form, condemn the defendant to death?

BRIAN RUNGE: I actually had a question on that.

Unless the defendant doesn't want me to, if I am the fore person, am I able to show up to that person's execution if the death penalty is decided?

MR. SATZ: Uhm --

BRIAN RUNGE: Because that would be my only reservation.

If I am the one that signs on it, I would feel I owe that person to be there when it is

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time.

MR. SATZ: Well, I really don't know the answer to that question. I would imagine, to some extent, you know, a crowd of people go.

I don't know.

BRIAN RUNGE: All right.

MR. SATZ: But would you be willing to sign the verdict form?

BRIAN RUNGE: Yes, I guess.

MR. SATZ: Any question I didn't ask you that you feel I should have asked you?

BRIAN RUNGE: Not really.

I would like some clarification on that. But I know it is a strange question. If I can get clarification on it.

MR. SATZ: Okay. All right.

BRIAN RUNGE: Thank you.

MR. SATZ: Ms. Acher?

MONIQUE ACHER: Acher.

MR. SATZ: You have a bachelor's degree from where and when?

MONIQUE ACHER: FIU, 1986.

Post grad, Nova. 2009, 2010.

MR. SATZ: You are a teacher?

MONIQUE ACHER: Yes Broward County, a high

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school. This is my 19th year.

MR. SATZ: Same high school?

MONIQUE ACHER: No. I have been to four different high schools.

MR. SATZ: Any particular subject you teach?

MONIQUE ACHER: Language arts. Science.

MR. SATZ: You indicated you assisted in a law firm?

MONIQUE ACHER: My brother is an attorney. Through high school. Yes.

MR. SATZ: What kind of law does he practice?

MONIQUE ACHER: It is bad faith litigation. Insurance companies, when they are not being fair.

MR. SATZ: How long has he been doing that?

MONIQUE ACHER: A long time.

MR. SATZ: You have indicated someone that you know, maybe you, have been the victim of a crime?

MONIQUE ACHER: Yes. They snatched my purse at a gas station, from the car. Juveniles.

MR. SATZ: Apprehended?

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MONIQUE ACHER: Yes.

MR. SATZ: Satisfied with the results?

MONIQUE ACHER: Yes.

MR. SATZ: Anyone you know ever been arrested?

MONIQUE ACHER: No.

MR. SATZ: Family or friends?

MONIQUE ACHER: No.

MR. SATZ: Have you or any of your family or friends ever had an unpleasant experience with a police officer that didn't amount to an arrest?

MONIQUE ACHER: No.

MR. SATZ: How do you feel about police officers in general?

MONIQUE ACHER: Generally do their job. I appreciate they are there.

MR. SATZ: Criminal justice system, your opinion?

MONIQUE ACHER: I believe it's fair.

MR. SATZ: Have you had the opportunity, desire to follow any particular criminal cases?

MONIQUE ACHER: O. J. and Casey Anthony.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or

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opposed?

MONIQUE ACHER: In favor.

MR. SATZ: Any personal limitations?

MONIQUE ACHER: No.

MR. SATZ: You agree to follow the law Judge Backman gives as to the aggravating factors and mitigating circumstances and give it a weighing process before you make your decision?

MONIQUE ACHER: Yes.

MR. SATZ: You feel you can be fair and impartial?

MONIQUE ACHER: Yes.

MR. SATZ: Willing to be the fore person if selected?

MONIQUE ACHER: Yes.

MR. SATZ: If you are the fore person, would you be willing -- would you have difficulty signing the verdict forms, condemning the defendant to death?

MONIQUE ACHER: I would not.

MR. SATZ: Mr. Valdes, tell me you're a manager where?

RIGOBERTO VALDES: Company, Canadian company, about 12 years.

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MR. SATZ: Before that?

RIGOBERTO VALDES: Export sales for quite a while, did ten years.

Traveled a lot. Sell containers for technology.

MR. SATZ: You indicated on the questionnaire you know someone who was charge with a crime.

RIGOBERTO VALDES: My son.

MR. SATZ: Here in Broward County.

RIGOBERTO VALDES: Yes.

MR. SATZ: What was he arrested for?

RIGOBERTO VALDES: Drug charges.

MR. SATZ: How long ago was that?

RIGOBERTO VALDES: It was about nine years ago.

MR. SATZ: Anything that happened as a result of that case cause you have negative feelings about the police, prosecutors, the justice system?

RIGOBERTO VALDES: No. Supporting him. Getting him into probation.

He's there, at the house.

He works as a title examiner. Pretty bright kid.

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Wrong crowd.

MR. SATZ: You're satisfied with the way his case was handled?

RIGOBERTO VALDES: Yes.

MR. SATZ: Anyone else ever arrested?

RIGOBERTO VALDES: My brother.

MR. SATZ: What was he arrested for?

RIGOBERTO VALDES: Charged with domestic violence in Dade County.

MR. SATZ: Anything happen with that case you have negative feelings about?

RIGOBERTO VALDES: A lot. Attorneys fees and lost time from work.

MR. SATZ: You said someone testified in question. Reference to your son's case?

RIGOBERTO VALDES: He didn't have to testify to anything.

He has his own attorney and everything.

Had the support of my dad and myself.

MR. SATZ: You said charged, testified and questioned. Is that all with reference to your son's case?

RIGOBERTO VALDES: No, not my son's case at all.

I wasn't involved.

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MR. SATZ: When you said yes to someone testified, what was that about?

RIGOBERTO VALDES: I don't remember that. No recollection.

MR. SATZ: Someone questioned, you said yes. Do you remember putting that? Is that with reference to your son?

RIGOBERTO VALDES: With reference to my son probably.

MR. SATZ: You indicated someone was a victim?

RIGOBERTO VALDES: Many years ago, someone broke into our house when I was living at home. It was a burglary.

MR. SATZ: Have you personally ever had a bad experience with a police officer, didn't amount to an arrest?

RIGOBERTO VALDES: Not good, bad.

Maybe in Orlando one time, on a traffic stop. I felt the highway patrolman was inexperienced and unprofessional. Out of his jurisdiction, go elsewhere to another county.

It is totally different. Like being in another world.

He stopped me. Gave me a ticket.

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Impolite.

I drove off. Let me go.

My hotel was there.

I turned into the hotel.

Immediately, he didn't like that. Followed me. Kept on, you know, riding on me.

I got very upset.

MR. SATZ: Would you hold that officer's attitude against anyone in this case?

RIGOBERTO VALDES: No.

MR. SATZ: How do you feel about police officers, other than that this guy, how police officers do their job?

RIGOBERTO VALDES: I think they try to do the best they can, under the circumstances, especially these days.

Not an easy job.

I would not like doing that job.

MR. SATZ: The criminal justice system, how do you feel about it?

RIGOBERTO VALDES: I traveled all over the world. In this country, we have probably the best system than anywhere else.

It seems to be fair. Tries to. Sometimes it works. Sometimes, some cases, it doesn't.

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It is the best system that I have seen so far.

MR. SATZ: Have you had the opportunity or desire to follow any particular case?

RIGOBERTO VALDES: O. J. trial. I had no choice. Big TV in the showroom where we met our clients.

MR. SATZ: Do you believe in the imposition of the death penalty or opposed to it?

RIGOBERTO VALDES: I believe in the death penalty.

MR. SATZ: Do you have any personal limitations?

RIGOBERTO VALDES: No.

MR. SATZ: You heard Judge Backman describe the procedure, about the aggravating factors have to be proven beyond a reasonable doubt?

RIGOBERTO VALDES: Yes.

MR. SATZ: Mitigating circumstances by the greater weight of the evidence?

RIGOBERTO VALDES: Yes.

MR. SATZ: Do you feel if you have no reasonable doubt, if the aggravating factors proven beyond a reasonable doubt outweigh the mitigating circumstances, would you be capable of voting for the death penalty?

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RIGOBERTO VALDES: Yes.

MR. SATZ: Would you agree if you were selected to be the fore person?

RIGOBERTO VALDES: Yes.

MR. SATZ: Would you have any difficulty signing the verdict form, condemning the defendant to death if you were the fore person?

RIGOBERTO VALDES: No.

MR. SATZ: Any questions I should have asked you I didn't that you feel deal with your service as a juror?

RIGOBERTO VALDES: No.

MR. SATZ: All the folks over here that I failed to ask that particular question, anybody feel that there was a question I should have asked you that I didn't ask you, that deals with your service as a juror in this particular case?

Thank you.

Mr. Bloom, how are you?

PETER BLOOM: Fine.

Thank you.

MR. SATZ: Bachelor's degree from where and when?

PETER BLOOM: Northwestern University,

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Chicago, 1996.

MR. SATZ: Retired?

PETER BLOOM: Yes.

MR. SATZ: How long have you been retired and employment prior?

PETER BLOOM: Retired five years.

Before that, quality control software tester.

MR. SATZ: How long had you done that?

PETER BLOOM: I did that for five years.

Before that, I also did software testing for other companies.

MR. SATZ: Your dad was with ATF?

PETER BLOOM: Yes.

MR. SATZ: How log?

PETER BLOOM: Since he was 18.

About 44 years.

MR. SATZ: How about for arrests, know anyone arrested, family, friends?

PETER BLOOM: No.

MR. SATZ: Anyone, yourself, friends, family had an unpleasant experience with a police officer that didn't amount to an arrest?

PETER BLOOM: No.

MR. SATZ: How do you feel about police

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officers in general?

PETER BLOOM: I believe they do a good job.

MR. SATZ: Criminal justice system?

PETER BLOOM: Fair.

MR. SATZ: Criminal cases you followed over the years?

PETER BLOOM: No.

MR. SATZ: Imposition of the death penalty? In favor or opposed?

PETER BLOOM: In favor.

MR. SATZ: Personal limitations?

PETER BLOOM: No.

MR. SATZ: You can follow the instructions Judge Backman gave about aggravating factors and mitigating circumstances?

PETER BLOOM: Yes.

MR. SATZ: If you're making a determination, if you find the aggravating factors have been proven beyond a reasonable doubt, outweigh any mitigating circumstances established beyond the greater weight of the evidence, can you vote for the death penalty?

PETER BLOOM: Yes.

MR. SATZ: Would you agree to be the fore person if selected?

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PETER BLOOM: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

PETER BLOOM: Yes.

MR. SATZ: Mr. Schick, your employment, recreation facilities?

JOEL SCHICK: Parks and recreation?

MR. SATZ: Supervisor?

JOEL SCHICK: Yes.

MR. SATZ: How long have you been doing that?

JOEL SCHICK: Currently a years. Prior to moving to Florida, I did it for six years outside of Chicago. Did retail management about 12 years prior.

MR. SATZ: Arrests? Friends or family?

JOEL SCHICK: No.

MR. SATZ: Anyone, yourself, friends, family had an unpleasant experience with a police officer that didn't amount to an arrest?

JOEL SCHICK: No.

MR. SATZ: How do you feel the way police officers do their job?

JOEL SCHICK: Good.

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MR. SATZ: Personal system of criminal justice?

JOEL SCHICK: Good.

MR. SATZ: Follow criminal cases over?

JOEL SCHICK: Didn't follow the trial. Watched the verdict on a trial in Chicago.

MR. SATZ: In favor of the imposition of the death penalty?

JOEL SCHICK: Yes.

MR. SATZ: Any personal limitations?

JOEL SCHICK: No.

MR. SATZ: Follow any particular criminal cases?

JOEL SCHICK: Didn't follow any. Just watched the verdict of a trial in Chicago.

MR. SATZ: You can follow the instructions Judge Backman gave about aggravating factors and mitigating circumstances and weigh each individually?

JOEL SCHICK: Yes, sir.

MR. SATZ: Personally capable of voting for the death penalty if you feel the aggravating factors proven beyond a reasonable doubt outweigh the mitigating circumstances?

JOEL SCHICK: Yes.

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MR. SATZ: Done beyond a reasonable doubt?

JOEL SCHICK: Yes.

MR. SATZ: Agree to be the fore person if selected?

JOEL SCHICK: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

JOEL SCHICK: Yes.

MR. SATZ: Any question you feel I should have asked you?

JOEL SCHICK: No.

MR. SATZ: Ms. Concepcion, where did you get your bachelor's and graduate's degree?

SUSAN CONCEPCION: FAU and UIU.

English and education.

MR. SATZ: You're a teacher?

SUSAN CONCEPCION: Yes.

MR. SATZ: Where?

SUSAN CONCEPCION: Dillard for four years.

11 years at Parkway Middle. Before that, school and jack of all trades.

MR. SATZ: Worked as a receptionist in a law firm?

SUSAN CONCEPCION: Yes. Parker, Shaffer &

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Engel and Strogen, Strogen and Levan in New York.

MR. SATZ: Knew someone charged, testified and questioned?

SUSAN CONCEPCION: I knew someone charged with a crime and witnessed one.

MR. SATZ: The one charged?

SUSAN CONCEPCION: It was a friend.

Armed robbery in New York.

MR. SATZ: What happened in that case?

SUSAN CONCEPCION: He did time for it.

MR. SATZ: Anything happen as a result of that case cause you to have bad feelings about the police or criminal justice system?

SUSAN CONCEPCION: No.

MR. SATZ: Is that the only person you know of been charged?

SUSAN CONCEPCION: Yes.

MR. SATZ: Anyone you know been arrested?

SUSAN CONCEPCION: No.

MR. SATZ: Someone testified?

SUSAN CONCEPCION: I did.

MR. SATZ: In that case?

SUSAN CONCEPCION: Different case.

I witnessed a murder in Queens.

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MR. SATZ: Anything happen as a result of that case?

SUSAN CONCEPCION: 25 to life.

MR. SATZ: Did you, any negative feelings about the criminal justice system, your participation as a witness?

SUSAN CONCEPCION: No.

MR. SATZ: Someone was questioned?

SUSAN CONCEPCION: I was.

MR. SATZ: Testified?

SUSAN CONCEPCION: I did.

MR. SATZ: Someone was the victim?

SUSAN CONCEPCION: Someone died.

MR. SATZ: Have you ever had a negative experience with a police officer?

SUSAN CONCEPCION: No.

MR. SATZ: Anyone you know?

SUSAN CONCEPCION: No.

MR. SATZ: Followed any particular cases?

SUSAN CONCEPCION: O. J.

MR. SATZ: The death penalty, are you in favor or opposed?

SUSAN CONCEPCION: Yes, in favor.

MR. SATZ: Personal limitations?

SUSAN CONCEPCION: No.

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MR. SATZ: You have heard, you can follow the instructions Judge Backman gave about aggravating factors and mitigating circumstances and weigh each individually?

SUSAN CONCEPCION: Yes.

MR. SATZ: By now, do you understand the procedure?

SUSAN CONCEPCION: Yes.

MR. SATZ: If you feel -- you can weigh the aggravators and mitigators and if you feel the aggravators proven beyond a reasonable doubt outweigh the mitigating circumstances established by the greater weight of the evidence and you feel the aggravating factors outweigh the mitigating circumstances, you can vote for the death penalty?

SUSAN CONCEPCION: Yes.

MR. SATZ: Willing to be the fore person?

SUSAN CONCEPCION: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

SUSAN CONCEPCION: Yes.

MR. SATZ: Any questions I should have asked you I didn't that you feel deal with your

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service as a juror?

SUSAN CONCEPCION: No.

MR. SATZ: Ms. Kaposi, you're retired from Publix?

THERESA KAPOSI: Yes.

20 years.

MR. SATZ: Now you volunteer with --

THERESA KAPOSI: Usually three days a week. Visit. Saw someone shot.

MR. SATZ: Anything happen as a result of that case?

THERESA KAPOSI: Withheld adjudication.

MR. SATZ: Negative feelings about the police?

THERESA KAPOSI: No.

MR. SATZ: Anyone else of arrested?

THERESA KAPOSI: My boyfriend who died. DUI.

MR. SATZ: Anything happen as a result of that case cause you to have negative feelings about the criminal justice system?

THERESA KAPOSI: No. When you're drunk, you're drunk.

MR. SATZ: Ever have an unpleasant experience with law enforcement?

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THERESA KAPOSI: Yes.

MR. SATZ: What happened?

THERESA KAPOSI: He left me at the alter. He found another girl and left weeks before we were supposed to get married.

MR. SATZ: You weren't at the alter?

THERESA KAPOSI: Close enough. When you get the dress, close enough.

MR. SATZ: I guess that's pretty unpleasant?

THERESA KAPOSI: Pretty embarrassing.

MR. SATZ: Won't hold it against all police officers, just is that one guy?

THERESA KAPOSI: Yes.

MR. SATZ: I guess that was an unpleasant experience.

I am going to move on to the next question. Followed any particular criminal case.

THERESA KAPOSI: No.

MR. SATZ: How do you feel about the death penalty. Are you in favor of the death penalty?

THERESA KAPOSI: Ye.

MR. SATZ: Personal limitations?

THERESA KAPOSI: No.

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MR. SATZ: You can weigh the aggravators and mitigators and if you feel the aggravators proven beyond a reasonable doubt outweigh the mitigating circumstances established by the greater weight of the evidence and you feel the aggravating factors outweigh the mitigating circumstances, you can vote for the death penalty?

THERESA KAPOSI: Yes.

MR. SATZ: Willing to be the fore person if selected?

THERESA KAPOSI: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

THERESA KAPOSI: In blue or black ink?

MR. SATZ: Depends.

Any question that I should have asked you I failed to ask.

THERESA KAPOSI: I don't think so.

MR. SATZ: Mr. Croskey, you served in the Airborne?

RONALD CROSKEY: Yes. Four years.

MR. SATZ: Now you're back, fire rescue?

RONALD CROSKEY: Yes.

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MR. SATZ: I guess you come in contact with law enforcement during your duties?

RONALD CROSKEY: I do.

MR. SATZ: How would you describe your relationship with the police officers?

RONALD CROSKEY: While on duty, great.

MR. SATZ: Off duty?

RONALD CROSKEY: I have had, have had bad experiences.

MR. SATZ: You have?

RONALD CROSKEY: Yes.

MR. SATZ: Do you hold those bad experiences --

RONALD CROSKEY: Hold the whole department responsible? No.

MR. SATZ: How many bad experiences have you had?

RONALD CROSKEY: I can count them.

From back when I was a kid. Racially profiled. I don't hold no department accountable for one person's actions. I believe that there are racist cops. Then there is everybody else.

Everybody else, good cops or bad cops. Happy cops. Mad cops. The racists separate

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them.

MR. SATZ: Do you find that exists with the fire department too?

RONALD CROSKEY: I haven't experienced it while on duty, no.

MR. SATZ: Experience it off duty?

RONALD CROSKEY: Yes.

MR. SATZ: You indicated you had bad experiences with police officers off duty. Have any bad experiences with firefighters, any of them being racist?

RONALD CROSKEY: Off duty, one made a racist remark at a Superbowl party. Too much alcohol. Truth serum. Truth came out.

Other than that, no. Just one guy.

MR. SATZ: With reference to police officers, your opinion about police officers in general?

RONALD CROSKEY: Like myself, public servant.

They do their job.

MR. SATZ: How do you feel about the criminal justice system?

RONALD CROSKEY: I don't know very much about it. Outside of what I have seen in the

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media or have heard on television.

I don't want to allow that to form my opinion or not.

MR. SATZ: Often times firefighters will testify.

RONALD CROSKEY: Yes, subpoenaed.

MR. SATZ: In a criminal case.

They respond, treat the victim. Say something to them. Have you been such a witness.

RONALD CROSKEY: No. I have been subpoenaed.

MR. SATZ: You would if you were a witness, just hadn't been called?

RONALD CROSKEY: Right.

MR. SATZ: How do you feel about the death penalty? Are you in favor of the imposition of the death penalty or opposed to it?

RONALD CROSKEY: In favor sounds like I, you know, want people to die.

Yes. If that's something I have to vote for, if that's the punishment, if the crime they committed is punishable by death --

MR. SATZ: Well, first degree murder in the State of Florida is punishable by life or

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death. What we're doing is selecting a jury to determine what the appropriate penalty is in this case. You heard Judge Backman's instructions about, you know, what you can do.

You will be making a determination if there is any aggravating factor or factors proven beyond a reasonable doubt.

RONALD CROSKEY: Right.

MR. SATZ: And you're going to weigh those aggravating factors?

RONALD CROSKEY: Yes.

MR. SATZ: And then there is mitigating circumstances that can be established by the greater weight of the evidence. You weigh each one of those.

Give it some weight, little weight, a lot of weight, like you would the aggravating factors.

RONALD CROSKEY: Yes.

MR. SATZ: You heard that from Judge Backman?

RONALD CROSKEY: Correct.

MR. SATZ: What you do is weigh the aggravating factors against the mitigating circumstances and make a determination whether

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those aggravating factors outweigh the mitigating circumstances beyond a reasonable doubt?

RONALD CROSKEY: I understand.

MR. SATZ: If, in your opinion, the aggravating factors in this case proven beyond a reasonable doubt outweigh the mitigating circumstances established by the greater weight of the evidence and you feel it has been done beyond a reasonable doubt, are you personally capable of voting for the death penalty?

RONALD CROSKEY: Yes.

MR. SATZ: Would you be willing to be the fore person?

RONALD CROSKEY: I don't know so much about that. Obviously, I'll be serving my country. If called to do that, I will.

MR. SATZ: If you're selected, you will do it?

RONALD CROSKEY: If they vote for me, yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

RONALD CROSKEY: I would do it. I won't lie, say I won't.

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MR. SATZ: I'm not saying it is not difficult. You know, if that's the unanimous verdict, that's the unanimous verdict?

RONALD CROSKEY: Yes.

MR. SATZ: The fore person signs it.

RONALD CROSKEY: I understand.

MR. SATZ: That's what I am asking.

RONALD CROSKEY: Yes.

MR. SATZ: That's why I ask would you have difficulty doing it?

RONALD CROSKEY: Yes.

Finding him guilty, of course I could find him guilty of doing it.

But signing it, I would do it.

MR. SATZ: Any questions I should have asked you I didn't that you feel deal with your service as a juror?

RONALD CROSKEY: Not that I can think of.

MR. SATZ: Thank you, sir.

Mr. McClain, your spouse is a detention deputy?

CLINTON MCCLAIN: Yes, sir.

MR. SATZ: Where?

CLINTON MCCLAIN: Here, sir.

MR. SATZ: How long?

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CLINTON MCCLAIN: Seven years.

MR. SATZ: What do you do?

CLINTON MCCLAIN: Deli technician for Publix, 15 years.

MR. SATZ: All with Publix?

CLINTON MCCLAIN: Yes.

MR. SATZ: Before that?

CLINTON MCCLAIN: High school.

MR. SATZ: You knew someone charged with a crime?

CLINTON MCCLAIN: My father and brother.

MR. SATZ: Here in Broward County?

CLINTON MCCLAIN: Brother in Broward. Father in Dade.

MR. SATZ: Your dad, what was he charged with?

CLINTON MCCLAIN: Armed robbery.

MR. SATZ: How long ago?

CLINTON MCCLAIN: Starting back in the '80s.

MR. SATZ: Anything happen as a result of those cases with your dad give you negative feelings with police officers?

CLINTON MCCLAIN: No.

MR. SATZ: Negative feelings with the

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criminal justice system?

CLINTON MCCLAIN: No.

MR. SATZ: Your brother's case, he was arrested in Broward County?

CLINTON MCCLAIN: Yes.

MR. SATZ: What was he arrested for?

CLINTON MCCLAIN: Armed robbery.

MR. SATZ: When?

CLINTON MCCLAIN: 1996.

MR. SATZ: Anything happen as a result of that case cause you negative feelings about the criminal justice system?

CLINTON MCCLAIN: No.

MR. SATZ: You indicated someone testified. Is that with reference to the same situation your brother and father were involved in.

CLINTON MCCLAIN: I don't remember that.

MR. SATZ: Never been charged or questioned on that?

CLINTON MCCLAIN: No.

MR. SATZ: Don't know anyone that's testified or questioned?

CLINTON MCCLAIN: No.

MR. SATZ: Someone a victim?

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CLINTON MCCLAIN: Victim.

I was on jury duty before.

MR. SATZ: I'm just reading your questionnaire. I don't know what I'm talking about.

CLINTON MCCLAIN: What are you referring to?

MR. SATZ: I was asking you.

CLINTON MCCLAIN: Jury duty, yes.

A juror before.

MR. SATZ: Someone was a victim?

CLINTON MCCLAIN: No.

MR. SATZ: No?

You don't know anyone that's a victim?

CLINTON MCCLAIN: No.

MR. SATZ: But you have served as a juror before in a criminal case.

When was that?

CLINTON MCCLAIN: In Dade.

MR. SATZ: What was the nature?

CLINTON MCCLAIN: Murder case.

MR. SATZ: Did you reach a verdict in that case?

CLINTON MCCLAIN: Alternate juror. Dismissed at the end.

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MR. SATZ: You sat through it?

CLINTON MCCLAIN: Yes.

MR. SATZ: Anything happen as a result of that case to cause you to have any negative feelings about the criminal justice system, the way it works?

CLINTON MCCLAIN: No.

MR. SATZ: How do you feel about police officers. The way they do their job?

CLINTON MCCLAIN: Some good. Some bad.

MR. SATZ: Criminal justice system?

CLINTON MCCLAIN: Either get it right or wrong.

MR. SATZ: Have you followed any particular case, criminal case during the course of your adult life?

CLINTON MCCLAIN: No.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or opposed?

CLINTON MCCLAIN: In favor.

MR. SATZ: Any personal limitations?

CLINTON MCCLAIN: No.

MR. SATZ: You heard Judge Backman talk about what your responsibilities would be. You

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can follow the instructions Judge Backman gave about aggravating factors and mitigating circumstances and weigh each individually?

CLINTON MCCLAIN: Yes.

MR. SATZ: If you felt the aggravating factors outweighed the mitigating circumstances beyond a reasonable doubt, can you vote for the death penalty?

CLINTON MCCLAIN: Yes.

MR. SATZ: Would you be willing to be the fore person if you're chosen?

CLINTON MCCLAIN: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

CLINTON MCCLAIN: No.

MR. SATZ: Any questions I should have asked you I didn't that you feel deal with your service as a juror?

CLINTON MCCLAIN: No.

MR. SATZ: Thank you.

Ms. Clark, your spouse is retired?

ANDREE CLARK: Yes.

MR. SATZ: Your spouse's employment history?

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ANDREE CLARK: Worked in marketing, promotional products.

MR. SATZ: You have a bachelor's degree from?

ANDREE CLARK: FIU.

MR. SATZ: Graduate degree?

ANDREE CLARK: From FIU.

MR. SATZ: Your employment history?

ANDREE CLARK: I was the international tax accountant.

MR. SATZ: And you studied, took a course and worked in a law firm?

ANDREE CLARK: I did not work in a law firm. Accounting firms. I have studied some law classes.

MR. SATZ: You didn't work in a law firm?

ANDREE CLARK: No.

MR. SATZ: And your sister is a police officer?

ANDREE CLARK: In Canada, yes.

MR. SATZ: Arrests?

Know anyone arrested, you, friends, family members?

ANDREE CLARK: No.

MR. SATZ: Anyone, yourself, friends,

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family had an unpleasant experience with a police officer that didn't amount to an arrest?

ANDREE CLARK: No.

MR. SATZ: How do you feel about police officers in general?

ANDREE CLARK: I think they are doing their job the best they can.

Good ones in general. It is good.

MR. SATZ: Have you followed any particular criminal case?

ANDREE CLARK: No, not really.

MR. SATZ: How do you feel about the criminal justice system?

ANDREE CLARK: Good system. Foundations are good. Sometimes it doesn't. It is biased. Doesn't always work out so well.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or opposed?

ANDREE CLARK: Opposed. I think it is not teaching. I don't see the point. I don't think it is a deterrence. It is a burden on the law, and the system.

MR. SATZ: You would automatically --

ANDREE CLARK: No, I would not. Having

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said that, it is the law in Florida. So I would listen to the instructions.

I would listen to everything. I would be able to weigh the factors.

MR. SATZ: Judge Backman used the football field. Some people --

ANDREE CLARK: I would be leaning towards maybe one side. I would be -- I could move, I think.

MR. SATZ: Willing to be the fore person if selected?

ANDREE CLARK: I would do it.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

ANDREE CLARK: I would do it as well.

MR. SATZ: Any questions I should have asked you I didn't that you feel deal with your service as a juror?

ANDREE CLARK: No.

MR. SATZ: Thank you.

Judge?

THE COURT: Yes?

MR. SATZ: Everybody is getting a little tired.

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THE COURT: Yes.

I think that's a good idea.

Tomorrow morning, 9:45.

Right out front. 9:45.

(Exit venire.)

MR. SATZ: I want to put on the record, two said they could never vote for death.

THE COURT: Steve said there were four people outside.

MR. SATZ: I want to put it on the record is.

THE COURT: I don't get how they get through -- off the record.

(Discussions held off the record.)

(Enter Cherrer Antenor.)

THE COURT: We forgot about your court date.

Can I ask what kind of a case?

CHERRER ANTENOR: It is a traffic case.

I have it here, in you want to see it, at one 1:15 in Hialeah.

THE COURT: Do you have a lawyer?

CHERRER ANTENOR: No. I am representing myself.

MR. POLAY: Is it set for trial?

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CHERRER ANTENOR: Yes.

MR. POLAY: Or a status hearing?

CHERRER ANTENOR: Set for trial.

I have a hearing.

THE COURT: I don't know I can get in the middle of it.

MR. SATZ: I don't know about them. I don't have an objection.

MR. WILLIAMS: Can we have a moment?

THE COURT: Sure.

Steve, could you take him out a minute.

(Exit Cherrer Antenor.)

(Discussions held off the record.)

THE COURT: Bring him in.

(Enter Cherrer Antenor.)

THE COURT: Because it is in Miami, I can't even make a phone call to at least get you a different court date.

What we will ask of you is go to your court date.

And come back Thursday morning at 9:15.

CHERRER ANTENOR: Thursday morning.

Thank you.

MR. SATZ: Wait. He's coming back for tomorrow morning, right?

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I'm still voir-diring.

MR. WILLIAMS: You already questioned him.

THE COURT: I see what Mike is saying.

Come back tomorrow morning. We will make sure you get out of here one way or another.

9:45.

(Discussions held off the record.)

MR. SATZ: I'm talking about personal limitations.

THE COURT: If someone says to Mike if it is a child killer or serial killer, that's the only one I would consider, that puts the person in an end zone.

MR. POLAY: I can talk about serial killers, child killers?

THE COURT: Do I care if you do?

MR. POLAY: No.

MR. SATZ: Can't say it is reserved for the worst of the worst.

THE COURT: It is a jury instruction for this Court to determine. We are not having that yet.

MR. POLAY: I should be able to the say it is reserved for the most aggravated and least mitigated of homicides.

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That's what the case law says.

MR. SATZ: Not what it says.

THE COURT: Bring me the case tomorrow.

DEPUTY: The firefighter guy has an issue with Mr. Satz.

THE COURT: Told them we would do it tomorrow?

DEPUTY: Yes.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 12th day of July, 2019.

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

ORIGINAL

Defendants.

TRIAL PROCEEDINGS
VOLUME XIV
PAGES 1252 - 1411

Fort Lauderdale, Florida
October 10th, 2018
10:00 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 10th, 2018, commencing at 10:00 a.m.

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THEREUPON, the following proceedings were had:

THE COURT: Ready?

JUDICIAL ASSISTANT PAM COE: Whiting Rolle, 11, his business failed. Has to go back to work.

Has his cell phone on him all of the time. Has had two interviews.

Second one, Mr. Ray Ortiz, number 27, is stating that his work is piling up. That's all he mentioned about that.

MR. WILLIAMS: If you will recall, Mr. Rolle told us earlier he had, had his business had failed and he was looking for employment.

MS. MCCANN: Wanting to go back into the hotel business.

MR. WILLIAMS: Mr. Ortiz is the Floor & Decor guy.

MS. MCCANN: Has a partner going to be out.

MR. WILLIAMS: Inventory with another guy on a big store on Atlantic. Partner was out of town.

MR. POLAY: I ask we bring them in when it is time.

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JUDICIAL ASSISTANT PAM COE: The last one is William Howard, number 48, feels super uncomfortable. Knows he'll be the first to be up, questioned by the State when he comes in.

Said he's very uncomfortable answering questions with the other jurors present.

MR. WILLIAMS: Is he one of our Walmart people?

MR. POLAY: Wants individual voir dire.

THE COURT: I don't know.

If I dig into the questionnaires, I can find out.

MR. WILLIAMS: We had two Walmart.

THE COURT: How many are you missing?

JUDICIAL ASSISTANT PAM COE: Eleven.

(Unrelated proceedings were had, which are not made a part of this record.)

THE COURT: We are bringing in the first one, Whiting Rolle.

(Enter Whiting Rolle.)

THE COURT: Talk to us.

WHITING ROLLE: When I came here, my partner, we had a cleaning company. We lost the garage. It is almost the same thing with the cleaning business. Can be a month, two

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months before you get a call. You know, my bank account is like down.

I'm missing payments on my house.

I have to go back --

THE COURT: You will end up with a significant financial hardship?

WHITING ROLLE: Yes.

THE COURT: Anybody?

MR. SATZ: No.

MR. POLAY: No, sir.

THE COURT: We will give you your card back. You can go back to the jury room.

I hope things work out for you real quick.

I'm sure you do, too. Thank you for your willingness to participate.

It is appreciated by all of us.

WHITING ROLLE: Thank you.

(Exit Whiting Rolle.)

JUDICIAL ASSISTANT PAM COE: Next is number 27. Ray Ortiz.

His work is piling up.

(Enter Ray Ortiz.)

RAY ANTHONY ORTIZ: Morning.

THE COURT: Talk to us.

RAY ANTHONY ORTIZ: My work is piling up.

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Talked to my partner yesterday. He says he needs me.

I am occupied. I have to go.

THE COURT: Mr. Satz, any questions?

MR. SATZ: I'm sorry you have to go.

RAY ANTHONY ORTIZ: Work is piling up. Accounts are, we're behind schedule.

We can count a lot of stuff. There is a lot of stuff we have to confirm, reserve.

One person can't do it alone.

We have two ICSs at our store. The amount of volume and sales we get --

MR. SATZ: If you are selected on the jury, will that effect your ability to concentrate?

RAY ANTHONY ORTIZ: Yes, most certainly.

MR. SATZ: Will that affect your ability to be fair and impartial?

RAY ANTHONY ORTIZ: Most certainly.

MR. POLAY: No questions.

THE COURT: We will give you back your card. You can go back to the jury room to be processed out.

Sorry you're facing that.

Your finances come first.

On behalf of all of us, thank up for coming

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down, participating, being willing.

MR. POLAY: As you know, circumstances arise.

THE COURT: You can just go home.

(Exit Ray Ortiz.)

JUDICIAL ASSISTANT PAM COE: The next is number 48, Mr. Howard.

(Enter William Howard.)

THE COURT: Talk to me.

WILLIAM HOWARD: The questions that he's going to be asking me I'm not comfortable about talking in front of the other people. I don't feel they need to hear it.

THE COURT: Mr. Satz, want to ask your questions now?

MR. SATZ: Sure.

What question in particular.

WILLIAM HOWARD: Has to do the questions of whether or not you have been arrested, know someone arrested.

MR. SATZ: Tell us about that.

THE COURT: This is as private as it gets.

WILLIAM HOWARD: Well, I have been arrested myself three times. I know someone, my ex-sister-in-law, my ex-wife's sister, six

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years after we were divorced, she killed her husband, murdered him. He was a very good friend of mine. We grew up together. Lived next door to each other. Both wound up marrying sisters.

MR. SATZ: What have you been arrested for?

WILLIAM HOWARD: Public intoxication, disorderly conduct and I was not arrested for it but charged for leaving the scene of an accident.

MR. SATZ: How long ago was that?

WILLIAM HOWARD: Might have been disorderly conduct. One was 1978. The other incident was 1983, maybe '84. And that was, that one was the one I was later charged with leaving the scene.

Last one was disorderly conduct. I am pretty sure that was 1991.

MR. SATZ: Did anything happen, Mr. Howard, as a result of those cases, to cause you to have negative feelings about police officers?

WILLIAM HOWARD: Well, at the time, when I was found guilty, after about 10, 15 minutes after the Judge heard my case for the leaving the scene of an accident, I was very upset for

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a long time.

I was out a lot of money. A lot of trouble.

It was a strange thing where a case was heard. Not the jury. Just a judge.

Found guilty. There was no evidence. There was nothing. Nothing to go on except they said my car looked like the car that was involved in an accident earlier that day.

I was not arrested. I was later, months later, I was, received by mail a summons to appear in court on the charge. And I did. That's when I found out what was going on.

I had to get an attorney. I was, you know, I was very upset for a long, you know, quite some time. I got over it because my sentence was to do the community service and pay restitution and probation.

I never would, I refused to pay any restitution.

So I never did. And they waived that. I did four hours of community service, I think out of a hundred. I know it was four. I think it was a hundred I was supposed to do.

After I did the four, my attorney called me

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in one day, told me I would no longer need to do any community service and that everything was pretty much wiped clean.

Supposedly, it don't even show up on my record. I worked at Turkey Point, the airport, had background checks. So far nothing has ever coming up about that incident. I don't know if I should bring it up now.

MR. SATZ: No, it is good you brought it up.

WILLIAM HOWARD: I never got an answer why. Things were just dropped.

MR. SATZ: Who was your lawyer.

WILLIAM HOWARD: I don't remember.

MR. SATZ: Here, in Broward County?

WILLIAM HOWARD: No, Miami. Dade County.

MR. SATZ: Do you remember who the judge was?

WILLIAM HOWARD: No.

MR. SATZ: Obviously, it was a bad experience for you.

You're emotional about it.

Think you're over it now?

WILLIAM HOWARD: Oh, yes. I'm over it. I got over it. It was a long time ago.

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MR. SATZ: Some things happened to me a long time ago I still have bad feelings about it. That's okay.

Do you have bad feelings about police officers?

WILLIAM HOWARD: No, not in general, no.

I know they do their best.

They are not perfect, like anybody else.

Everybody makes mistakes.

I make some.

MR. SATZ: Sure.

How about the criminal justice system? How do you feel, because of your arrests.

WILLIAM HOWARD: Well, the two arrests, they were legitimate. Public intoxication and disorderly conduct. It was the other one.

But that wasn't an arrest, even.

MR. SATZ: Right.

WILLIAM HOWARD: I felt that somebody ought to give me an explanation why I had to go through all of that.

MR. SATZ: Ever ask your lawyer what happened?

WILLIAM HOWARD: Yes, I asked.

MR. SATZ: I paid you money. Why don't you

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tell me what happened?

WILLIAM HOWARD: I have asked when he called me, told me I wouldn't have to do the community service after all and everything was done.

I still had to finish probation. I still hadn't finished that. I think it was two years.

I still had to finish that.

Only answer I got from him is he just got the information I was no longer going to have to do community service.

MR. SATZ: You never asked the question you still have?

WILLIAM HOWARD: I asked him what happened. How come all of a sudden things were dropped, I didn't have to do community service.

MR. SATZ: What did he say?

WILLIAM HOWARD: He just got the information it won't be required. That was the only answer I got from him.

I was just glad.

MR. SATZ: How do you feel about the American criminal justice system?

WILLIAM HOWARD: Well, I believe it is the

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best probably in the whole world. Not perfect. Never will be. But I have no problem with it. I wish things, sometimes when people make mistakes, they don't want to admit to it. And I believe it happens all of the time.

MR. SATZ: The other case, where your sister-in-law killed --

WILLIAM HOWARD: She murdered her husband.

MR. SATZ: How about that? Will that affect you in any way.

WILLIAM HOWARD: No, it won't.

MR. SATZ: Still feel you can be fair and impartial?

WILLIAM HOWARD: Yes.

MR. SATZ: Anything else you wanted to talk to us about in private?

WILLIAM HOWARD: No, sir.

MR. SATZ: I won't ask you about the arrest.

I'll ask you the other questions I have been asking the other jurors.

Is that okay?

WILLIAM HOWARD: That's fine.

MR. WILLIAMS: Mr. Howard, where did the murder case occur?

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In Dade County?

WILLIAM HOWARD: No. Somewhere in Texas.

MS. WILLIAMS: Is that where you're from?

WILLIAM HOWARD: Originally Lexington, Kentucky. My brother-in-law and his wife, sister-in-law, went to Texas, was living in Texas. That's where it occurred, the murder occurred.

MR. WILLIAMS: She was charged with murdering him?

WILLIAM HOWARD: Not at the time. Took eight years before it caught up with her.

MR. WILLIAMS: Did you have to testify or anything?

WILLIAM HOWARD: No. I didn't know anything about anything until it was over.

MR. WILLIAMS: Do you wonder why it took eight years to apprehend her?

WILLIAM HOWARD: Yes.

MR. WILLIAMS: Ever give any explanation?

WILLIAM HOWARD: They didn't have no evidence against her.

MR. WILLIAMS: They developed a case against her as time progressed.

WILLIAM HOWARD: Yes. Actually turned out

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that there was three gentlemen that was involved also in the murder. One of them was arrested on some other charge, I think somewhere in Georgia, years later. And he turned State's evidence against her and the other two.

That's how she got caught.

MR. WILLIAMS: She had at least one or more accomplices.

WILLIAM HOWARD: Yes, three.

MR. WILLIAMS: Do you know what happened to the accomplices? Did she get convicted.

WILLIAM HOWARD: Yes, she is still in prison.

MR. WILLIAMS: Accomplices get convicted?

WILLIAM HOWARD: That I don't know.

MR. WILLIAMS: Do you know if they were tried together, at the same time?

WILLIAM HOWARD: I don't know.

MR. WILLIAMS: What year was all of this?

WILLIAM HOWARD: The murder took place in 1983 or 1984. I think it was '84. She was found guilty in 1991.

MR. WILLIAMS: Were you still married to her sister at the time?

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WILLIAM HOWARD: No, we had been divorced six years prior to that killing.

We got divorced in 1978.

MR. WILLIAMS: So is there anything about that whole incident that you're reflecting back on today?

WILLIAM HOWARD: No.

MR. WILLIAMS: This is a murder case here.

WILLIAM HOWARD: Yes, I understand that. No. Every case is different.

No one I think of I'm sure is the same. Always some different circumstances.

MR. WILLIAMS: Was she facing, was your sister-in-law facing the death penalty?

WILLIAM HOWARD: No.

MR. WILLIAMS: They waived death?

WILLIAM HOWARD: As far as I know, I did ask my ex-wife about it, about that question. And she said that the prosecuting attorney was seeking life in prison.

MR. WILLIAMS: Okay.

WILLIAM HOWARD: She is, 30 years later, she is still there.

THE COURT: Thank you.

You can rejoin the others.

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WILLIAM HOWARD: Okay.
Thank you.
(Exit William Howard.)
THE COURT: Is that it?
JUDICIAL ASSISTANT PAM COE: Yes.
Still missing two.
Steve put papers on their chairs.
MR. SATZ: There is another juror Steve spoke to, the firefighter wanted to speak to us.
JUDICIAL ASSISTANT PAM COE: I can bring him in quick.
MR. SATZ: And I have two challenges for cause, Judge.
(Enter Ronald Croskey.)
THE COURT: Mr. Satz?
MR. SATZ: Morning.
RONALD CROSKEY: Morning.
How are you?
MR. SATZ: You wanted to tell me something?
RONALD CROSKEY: Yes, after, I vaguely remember, but I know it was dealing with the questioning in the way you asked the question made it difficult for me to give you a yes or no answer.

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Almost two parts of the question.

Question you asked, would I find it difficult, as a foreman, to --

MR. SATZ: To sign the verdict form?

RONALD CROSKEY: Absolutely.

Sentencing, sentencing someone to death. And my answer was of course, I would find it difficult. The answer is yes, I would sign it.

I have didn't know if I had made myself clear.

MR. SATZ: You did. I understand that perfectly. I understood what you said. You mean it is difficult to do. Difficult for anybody to do. If you were the foreman, would you do it?

RONALD CROSKEY: Yes, sir.

MR. SATZ: Okay, I understood that.

RONALD CROSKEY: That's all.

THE COURT: Thank you.

You can rejoin the others.

(Exit Ronald Croskey.)

JUDICIAL ASSISTANT PAM COE: Just missing one.

THE COURT: The two you were challenging?

MR. SATZ: Kit Sou was one of them. Number

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31. Said she could never note for death. I don't know where she was the whole week.

Mr. Joseph, 33, said the same thing.

I guess they were in the same group.

MR. POLAY: That's what they said.

MR. WILLIAMS: Yes.

THE COURT: We will give them their marching papers.

JUDICIAL ASSISTANT PAM COE: Who is that?

THE COURT: 31 and 33.

Sou and Joseph.

JUDICIAL ASSISTANT PAM COE: Lawson isn't here.

MR. SATZ: We got rid of Lawson.

MR. POLAY: Yes. Lawson was excused yesterday.

MR. SATZ: Yes.

MS. MCCANN: Yes.

THE COURT: That's why he's not here.

JUDICIAL ASSISTANT PAM COE: Okay.

(Recess had.)

THE COURT: Let's bring them in.

(Enter venire.)

THE COURT: My apologies for the time delay. There are just some things I don't have

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control over.

MR. SATZ: Mr. Howard, how are you?

WILLIAM HOWARD: Fine, thank you.

MR. SATZ: Have you followed any particular criminal case on TV or desired to?

WILLIAM HOWARD: No, sir.

MR. SATZ: Are you in favor of the imposition of the death penalty?

WILLIAM HOWARD: Yes, I am.

MR. SATZ: Some people are in favor only if a child or multiple children or serial killers. Do you have limitations on your feelings about the death penalty?

WILLIAM HOWARD: No, sir.

MR. SATZ: Yesterday, we talked about aggravating factors that the State has to prove beyond a reasonable doubt, statutorily defined.

I'm sure you heard that a number of times yesterday.

WILLIAM HOWARD: Yes.

MR. SATZ: Then there are mitigating circumstances presented only have to be established by the greater weight of the evidence.

If at the end of the case you feel that

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there was an aggravating factor or aggravating factors that outweigh, that have been proven beyond a reasonable doubt to you, that outweigh any mitigating circumstances that have been established, and you feel that the aggravating factors outweigh the mitigating factors, are you personally capable of voting for the death penalty?

WILLIAM HOWARD: Yes, I am.

MR. SATZ: If you were selected foreman, would you be willing to serve?

WILLIAM HOWARD: Yes, sir.

MR. SATZ: Would you have any difficulty signing the verdict form, condemning the defendant to death, if you were the fore person?

WILLIAM HOWARD: No, sir, I wouldn't.

MR. SATZ: Thank you.

Ms. Miller, how are you?

JULIA MILLER: Good. How are you?

MR. SATZ: Good.

Your spouse, his employment?

JULIA MILLER: Retired.

MR. SATZ: You're both retired?

JULIA MILLER: No, he is. I'm still

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working.

MR. SATZ: How long has your spouse been retired?

JULIA MILLER: Two years.

MR. SATZ: He was?

JULIA MILLER: Post office.

MR. SATZ: How long was he in the post office?

JULIA MILLER: 34 years.

MR. SATZ: You work now?

JULIA MILLER: 31 years.

MR. SATZ: And you also worked there for 30 years?

JULIA MILLER: Yes.

MR. SATZ: When are you getting ready to retire?

JULIA MILLER: I'm in the process.

MR. SATZ: You have indicated on your questionnaire you work as a, worked as a secretary at one time?

JULIA MILLER: Yes.

When I was 19. In New York, at a bank.

MR. SATZ: Do you know anyone ever been arrested?

JULIA MILLER: No.

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MR. SATZ: Your family, friends?

JULIA MILLER: No.

MR. SATZ: Have you, yourself, any of your family or friends ever had an unpleasant experience with a police officer that did not amount to an arrest?

Any negative feelings about police officers?

JULIA MILLER: No.

MR. SATZ: How do you think police officers do their job?

JULIA MILLER: They try to do the best they can. It's not easy.

MR. SATZ: The criminal justice system here in this country?

JULIA MILLER: It is good. You know, according to, that's the law.

MR. SATZ: And are you in favor of the imposition of the death penalty? Or are you opposed to it?

JULIA MILLER: I am in favor.

MR. SATZ: Some people, as I spoke to Mr. Howard, have limitations. I would only vote for it if it was this or this.

Do you have personally limitations?

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JULIA MILLER: Not at all.

MR. SATZ: You agree to follow the law?

JULIA MILLER: Yes.

MR. SATZ: Talked about today with Mr. Howard aggravating factors and mitigating circumstances?

JULIA MILLER: Right.

MR. SATZ: You understand these aggravating factors are statutorily defined, in other words, in the statute, and the State, me, has to prove one or more beyond a reasonable doubt?

JULIA MILLER: Right.

MR. SATZ: Then you weigh that against any mitigating circumstances that have been established by the greater weight of the evidence?

JULIA MILLER: Yes.

MR. SATZ: The question I want to ask every juror, if you feel that the aggravating factor, aggravating factors proven beyond a reasonable doubt outweigh the mitigating circumstances, are you personally capable of voting for the death penalty?

JULIA MILLER: Yes.

MR. SATZ: If you were selected or voted on

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to be the fore person, would us be willing to serve?

JULIA MILLER: Yes.

MR. SATZ: If you were the fore person, would you be willing to sign the verdict form, condemning the defendant to death?

JULIA MILLER: Yes.

MR. SATZ: Thank you.

Ms. Sims, good morning.

BOBBIE SIMS: Good morning.

MR. SATZ: You're the post master in Hallandale?

BOBBIE SIMS: Yes.

MR. SATZ: How long have you been doing that?

BOBBIE SIMS: 12 years.

Service for 38.

MR. SATZ: Getting ready to retire, too?

BOBBIE SIMS: Yes, I am. Real soon.

MR. SATZ: Nothing to do with the post office?

BOBBIE SIMS: No, no, no. Time served.

MR. SATZ: How about do you know anyone ever been arrested?

BOBBIE SIMS: No.

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MR. SATZ: None of your family, friends, anybody?

BOBBIE SIMS: No.

MR. SATZ: Have you or any of your familiar or friends ever had an unpleasant experience with a police officer that didn't amount to an arrest?

BOBBIE SIMS: Married to a police officer. That's it.

MR. SATZ: You didn't divorce him because he's a police officer?

BOBBIE SIMS: No. Wild ride.

MR. SATZ: Other than you ex-husband, do you have negative feelings about police officers?

BOBBIE SIMS: No.

MR. SATZ: Have you had the opportunity or desire to follow a particular criminal case?

BOBBIE SIMS: No. I watched different ones. Nothing really.

MR. SATZ: With reference to the death penalty, are you in favor of the imposition of the death penalty or opposed?

BOBBIE SIMS: I am in favor.

MR. SATZ: As I asked Mr. Howard,

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Ms. Miller, as I'll ask all the jurors, if the aggravating factors proven beyond a reasonable doubt outweigh the mitigating circumstances established by the greater weight of the evidence, if you feel that beyond a reasonable doubt that's the case, that the aggravating factors outweigh the mitigating circumstances, are you personally capable of voting for the death penalty?

BOBBIE SIMS: Yes.

MR. SATZ: If you were selected to be fore person, would you serve?

BOBBIE SIMS: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

BOBBIE SIMS: Yes.

MR. SATZ: Thank you.

Ms. Parker, good morning.

GEORGINA PARKER: Good morning.

MR. SATZ: You work with Dr. Runsey?

GEORGINA PARKER: Yes.

MR. SATZ: How long have you worked with Dr. Runsey?

GEORGINA PARKER: Four years.

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MR. SATZ: What did you do before that?

GEORGINA PARKER: Legal assistant.

MR. SATZ: Where?

GEORGINA PARKER: Fort Lauderdale, at Trip Scott.

MR. SATZ: How long were you with them?

GEORGINA PARKER: Ten years.

MR. SATZ: Before that, in school?

GEORGINA PARKER: Yes.

MR. SATZ: Did you work for anybody in particular at Trip Scott?

GEORGINA PARKER: Ed Maloney.

MR. SATZ: Good experience over at Trip Scott?

GEORGINA PARKER: It was.

MR. SATZ: How about arrests? Do you know anyone ever been arrested?

GEORGINA PARKER: No.

MR. SATZ: Ever, you personally or anyone that you are close to, family or friends, ever had an unpleasant experience with a police officer that didn't amount to an arrest?

GEORGINA PARKER: No.

MR. SATZ: Do you have negative feelings about police officers?

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GEORGINA PARKER: No.

MR. SATZ: The criminal justice system, how do you feel it works in the United States?

GEORGINA PARKER: Fine.

MR. SATZ: Have you had the desire, have you followed any particular criminal case through the system?

GEORGINA PARKER: No.

MR. SATZ: The death penalty, do you believe in the imposition of the death penalty or opposed to it?

GEORGINA PARKER: I'm not opposed to it.

MR. SATZ: Judge Backman used the football field. Some people say I would only vote for death?

GEORGINA PARKER: I am right in the middle.

MR. SATZ: You're on the 50?

GEORGINA PARKER: Yes.

MR. SATZ: That's fine.

If the aggravating factors are proven beyond a reasonable doubt to you, outweigh any mitigating circumstances, are you personally capable of voting for the death penalty?

GEORGINA PARKER: Yes.

MR. SATZ: If you were selected fore

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person, would you be willing to serve?

GEORGINA PARKER: Yes.

MR. SATZ: If you were the fore person, would you be willing to sign the verdict form, condemning the defendant to death?

GEORGINA PARKER: Yes.

MR. SATZ: thank you.

Mr. Cooper, good morning.

You're employed. What exactly are you doing?

KENJAHSAH COOPER: Currently employed. About to become a student at Broward College.

MR. SATZ: Currently seeking employment?

KENJAHSAH COOPER: Not currently.

MR. SATZ: Would sitting on this jury interfere with your Broward College?

KENJAHSAH COOPER: No.

MR. SATZ: You wouldn't have any kind of school or work conflicts?

KENJAHSAH COOPER: No, sir.

MR. SATZ: Before -- what type of employment were you involved in?

KENJAHSAH COOPER: I wasn't involved with any employment yet.

MR. SATZ: You have never been employed?

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KENJAHSAH COOPER: No.

MR. SATZ: You took criminal justice in high school?

KENJAHSAH COOPER: Yes, sir.

MR. SATZ: Are you looking for anything along those lines in the criminal justice field?

KENJAHSAH COOPER: No. No.

MR. SATZ: What do you think you would, when you get through with school, what are you looking to do?

KENJAHSAH COOPER: Currently looking for a, as a career, things that involve production, audio engineering. Currently looking for a degree in music theory.

MR. SATZ: The shows that you said that you watch or listen to, they are all music oriented? Some I didn't recognize?

KENJAHSAH COOPER: You know -- not necessarily music oriented.

MR. SATZ: You indicated you know someone that's been a victim?

KENJAHSAH COOPER: Yes.

MR. SATZ: Who is that?

KENJAHSAH COOPER: My mother.

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MR. SATZ: What was the nature of the crime?

KENJAHSAH COOPER: One I don't want to discuss right now.

MR. SATZ: We can do it in private.

KENJAHSAH COOPER: The other was a home invasion.

Didn't steal anything.

MR. SATZ: How long ago was the home invasion?

KENJAHSAH COOPER: Nine years ago.

MR. SATZ: The other event, when was that?

KENJAHSAH COOPER: The other event was around 2007.

MR. SATZ: Anything happen as a result of those two incidents -- I don't want you to discuss the other one. Do it in private. Anything happen as a result of those two incidents cause you to have negative feelings about police officers or the criminal justice system?

KENJAHSAH COOPER: No.

MR. SATZ: One of them you don't want to speak about, where did that happen? In Broward County?

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KENJAHSAH COOPER: Yes, in Broward County.

MR. SATZ: Was an apprehension made?

KENJAHSAH COOPER: No.

MR. SATZ: The other incident, did that happen in Broward also?

KENJAHSAH COOPER: Yes.

MR. SATZ: Apprehension made on that?

KENJAHSAH COOPER: Technically, no.

MR. SATZ: Arrests, do you know anyone, family, friends ever been arrested?

KENJAHSAH COOPER: No.

MR. SATZ: Have you or any of your family, friends, had an unpleasant experience with a police officer or officers that didn't amount to an arrest?

KENJAHSAH COOPER: No.

MR. SATZ: Have you had the opportunity to follow any criminal cases that have gone through the criminal justice system in the United States?

KENJAHSAH COOPER: Yes. Not extensively.

MR. SATZ: Which one was that?

KENJAHSAH COOPER: The murder of Joshsay Onfry.

MR. SATZ: He was involved in music. I can

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understand why.

Okay.

How about the criminal justice system in this country? How do you feel it operates?

KENJAHSAH COOPER: It can be slow sometimes. Otherwise, I am pretty okay with it.

MR. SATZ: The death penalty, how do you feel about the imposition of the death penalty? In favor or opposed?

KENJAHSAH COOPER: I'm not opposed to it. The only problem I have, occasionally, rare occurrence, sometimes an innocent person is framed for a crime might get the death penalty.

MR. SATZ: That's a worry, no matter what.

Even a day of incarceration when you didn't do something is problematic, certainly. Certainly with the death penalty.

Are you opposed to the death penalty?

KENJAHSAH COOPER: Otherwise, no.

MR. SATZ: You know what your function would be in this case?

KENJAHSAH COOPER: Yes.

MR. SATZ: The defendant has been convicted of two counts of first degree murder.

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KENJAHSAH COOPER: Yes.

MR. SATZ: You will be making a determination as to the appropriate sentence. With that regard, talked about aggravating factors, in this case or any other first degree murder case, where the death penalty is an issue, the same procedure happens. No matter who the victim was, no matter who the defendant was, no matter what the facts and circumstances, you understand that?

KENJAHSAH COOPER: Yes.

MR. SATZ: Your function, as indicated by Judge Backman, is to determine if there is any aggravating factor, factors proven beyond a reasonable doubt. If you find there are, you weigh that against any mitigating circumstances that have to be established by the greater weight of the evidence?

KENJAHSAH COOPER: Okay.

MR. SATZ: Then you weigh it. Not only do you weigh it, you weigh each aggravating factor, give it what weight you feel it deserves?

KENJAHSAH COOPER: Yes.

MR. SATZ: Has to be proven beyond a

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reasonable doubt which aggravating factor, right?

KENJAHSAH COOPER: Yes.

MR. SATZ: And then you make a determination that the aggravating factors that have been proven beyond a reasonable doubt outweigh any mitigating circumstances.

If that happens, do you feel you can vote for the death penalty, that you're personally capable of doing that?

KENJAHSAH COOPER: Yes.

MR. SATZ: If selected as fore person, would you be willing to serve?

KENJAHSAH COOPER: Yes.

MR. SATZ: If you were the fore person, would you be willing to sign the verdict form, condemning the defendant to death?

KENJAHSAH COOPER: Yes, I am.

MR. SATZ: Thank you.

Mr. Pedro, you had some college. Are you still going?

ROMAR EVANS PEDRO: Yes, currently enrolled. I'm pursuing two degrees.

One in international global studies. One in political science with pre-law.

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MR. SATZ: Where are you pursuing that?

ROMAR EVANS PEDRO: UCF.

MR. SATZ: When is your plan to graduate?

ROMAR EVANS PEDRO: Two and-a-half years.

MR. SATZ: How do you get -- UCF is --

ROMAR EVANS PEDRO: Well, long story short, I transferred into UCF after coming back from school in London. I do it on line to correspond with my working full time.

Because I got the job.

MR. SATZ: Okay. You applied, on your questionnaire, you applied to immigration customs, border protection in the Pembroke Pines Police Department?

ROMAR EVANS PEDRO: Yes.

MR. SATZ: Tell me about those?

ROMAR EVANS PEDRO: For customs and border protection, to be a customs and border protection officer.

I am still in the process for that. I have to wait for my polygraph. For immigrations and customs enforcement, it's for a deportation officer.

That I'm still in the process for. The caveat, it is federal employment. Takes

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forever. For the Pembroke Pines Police Department, was going to be a police service aids. I took myself out of the consideration. I moved. Didn't want to do it anymore.

MR. SATZ: Do you have any desire to be a police officer? One of the things you may investigate?

ROMAR EVANS PEDRO: Not really.

MR. SATZ: What exactly are you doing right now, for employment?

ROMAR EVANS PEDRO: I work for the Department of Health and Human Services in the Food and Drug Administration.

I have a consumer safety test.

MR. SATZ: You indicated you knew someone that was the victim of a crime?

ROMAR EVANS PEDRO: Yes. My mother for domestic violence. It was earlier this decade. Early 2000.

MR. SATZ: Happen here, in Broward County?

ROMAR EVANS PEDRO: Yes.

MR. SATZ: What happened with the case? Do you know?

ROMAR EVANS PEDRO: Well, I know that he was arrested. I know that there were many

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cases.

He was like never sentenced.

MR. SATZ: Still pending?

ROMAR EVANS PEDRO: No. It has been closed.

MR. SATZ: Was your mom satisfied with how the case was handled?

ROMAR EVANS PEDRO: Not really.

MR. SATZ: No complaints?

ROMAR EVANS PEDRO: Well, she felt that it wasn't, she felt it wasn't proven concluded and that he had a history of domestic violence after further investigation, the fact that he was let off, I guess you can say, didn't set well with her.

Understandably, she moved on with it.

MR. SATZ: Was she upset with the Judge on the sentence or?

ROMAR EVANS PEDRO: No. Wasn't upset with the Judge or the system. It was just the fact that it seemed like he can keep doing one thing and get away with it.

MR. SATZ: With reference to arrests, do you know anyone ever been arrested?

ROMAR EVANS PEDRO: No.

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MR. SATZ: Any family, friends?

ROMAR EVANS PEDRO: No. No.

MR. SATZ: Have you yourself or any family or friends ever had negative experience with a police officer, in other words, unpleasant experience that didn't amount to an arrest?

ROMAR EVANS PEDRO: Sometime ago, we were driving to Virginia. In the Carolinas, my father was pulled over; and he got into it with the state trooper, where he was adamant that he was pulled over for his race. But he was speeding. Even though he denied it.

He was speeding.

That's the only thing.

MR. SATZ: Do you have any negative feelings about police officers?

ROMAR EVANS PEDRO: No, no.

MR. SATZ: How do you feel about the criminal justice system?

ROMAR EVANS PEDRO: Well, for the criminal justice system, perhaps minimum sentencing and as in like some crimes have a minimum.

MR. SATZ: Minimum mandatory?

ROMAR EVANS PEDRO: There you go. That. And three strikes rule.

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Other than that, it is pretty good.

MR. SATZ: Have you followed, desired to follow any particular criminal case through the system?

ROMAR EVANS PEDRO: Not necessarily.

MR. SATZ: Are you in favor of the imposition of the death penalty or opposed?

ROMAR EVANS PEDRO: Imposition, depending upon the case, I can go either way with it.

MR. SATZ: Do you have any personal limitations, like some people would say, yes, I'm in favor of the death penalty if a child, or if multiple children are killed, serial killer? Do you have personal limitations?

ROMAR EVANS PEDRO: No.

MR. SATZ: We have been discussing aggravating factors, mitigating circumstances.

And you understand by now, in every penalty case, where the death penalty is an issue, the jury goes through that. It is a weighing process.

You have to weigh each aggravating factor, each mitigating circumstance. Of course, the aggravating factor, it is a higher burden. You have to prove each aggravating factor beyond a

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reasonable doubt.

ROMAR EVANS PEDRO: Yes.

MR. SATZ: Mitigating circumstances, by a greater weight of the evidence.

I'll ask you, at the end of the case, if you feel the aggravating factors proven beyond a reasonable doubt, outweigh the mitigating circumstances, and you feel the aggravating factors outweigh the mitigating circumstances beyond a reasonable doubt, are you personally capable of voting for the death penalty?

ROMAR EVANS PEDRO: Yes.

MR. SATZ: Position on the football field? How about you?

ROMAR EVANS PEDRO: 50.

MR. SATZ: Willing to be the fore person if selected?

ROMAR EVANS PEDRO: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

ROMAR EVANS PEDRO: Yes.

MR. SATZ: Thank you.

Mr. Gervolino, you have a bachelor's degree from where?

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CHARLES GERVOLINO: No.

High school only.

MR. SATZ: You work for Ryder?

CHARLES GERVOLINO: Yes.

Four months.

MR. SATZ: Before that?

CHARLES GERVOLINO: I worked in retail with Lowes Home Center, 20 years.

MR. SATZ: Okay.

CHARLES GERVOLINO: I have been in retail since 1973, managing and operations.

MR. SATZ: Your dad was a police officer?

CHARLES GERVOLINO: Yes.

MR. SATZ: Where?

CHARLES GERVOLINO: Long Ranch, New Jersey.

MR. SATZ: For how long?

CHARLES GERVOLINO: Retired. 90 years old today. Mom is 93.

He retired when she was 60.

MR. SATZ: She likes the younger guys, huh.

CHARLES GERVOLINO: Yes. We were taught very strict laws in our family.

MR. SATZ: You have some children?

CHARLES GERVOLINO: Yes.

MR. SATZ: Their occupation?

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CHARLES GERVOLINO: I have one that is, she is an RN, registered nurse. Runs the facility.

My other daughter is a dentist, hygiene.

Son works at a restaurant. Bachelor's degree in support management.

MR. SATZ: Arrests, know anybody ever arrested, family or friends?

CHARLES GERVOLINO: Nobody.

MR. SATZ: Unpleasant experience with a police officer, family, friends that didn't amount to an arrest, but unpleasant?

CHARLES GERVOLINO: No.

MR. SATZ: How do you feel police officers do their job?

CHARLES GERVOLINO: They do a hell of a job.

MR. SATZ: The American system of justice?

CHARLES GERVOLINO: I believe in it.

MR. SATZ: Did you have an opportunity or even desire to follow any particular criminal case?

CHARLES GERVOLINO: Not at all.

MR. SATZ: How do you feel about the death penalty or the imposition of it?

In favor of it or against it?

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CHARLES GERVOLINO: I believe, you know, somebody, in this case, we heard about a bit now, a life time is, to me, is a sentence. To me, that's a sentence.

Don't get me wrong. If I listened to this whole trial and understand it and make sure you prove to me that he did this, I would have no problem saying death penalty. You have to show me or prove to me. To me, a life time is a sentence.

MR. SATZ: Mr. Croskey is shaking his head.

No matter how anybody feels about that, what you're called upon to do -- this is for everybody -- is to weigh the aggravating factors or factor and see if it is proven beyond a reasonable doubt and weigh it against any mitigating circumstances. If you feel that the aggravating circumstances outweigh the mitigating circumstances, you know, are you capable of voting for death?

CHARLES GERVOLINO: Absolutely, sir.

MR. SATZ: Is anyone, because you feel that way about life, you feel it is worse than death, are you automatically going to vote for life because you feel that way?

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CHARLES GERVOLINO: No, didn't say that. I didn't say that.

MR. SATZ: I'm trying to gather information.

That's why we want you to talk.

CHARLES GERVOLINO: But life is a penalty. Definitely.

MR. SATZ: There is no question about that. But the question I'm asking, because somebody may feel like you and Mr. Croskey, life is worse than death, people may agree with that or disagree with that.

My question to you, if you feel that way, would you automatically vote for life if you feel that way?

CHARLES GERVOLINO: No.

MR. SATZ: Listen, getting impressions and opinions. There is nothing wrong with any of it.

Nothing wrong with being opposed to the death penalty. Nothing wrong with being in favor of it. Nothing wrong with feeling life is worse than death or death should be, you know, people have their opinions.

That's all I'm trying to find out.

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If you were elected the for person, would you be willing to serve?

CHARLES GERVOLINO: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

CHARLES GERVOLINO: Yes, sir.

Can I ask you one more question?

You asked everybody in this room, you asked all questions, yesterday, you were asking everybody. One question I felt that you asked about anybody having a gun in their possession, I own one. You never asked did anybody use a gun. Is that irrelevant in this case? I have used one.

My father taught us safety.

MR. SATZ: Maybe it is me.

I figure if you own a gun, you won't use it as a paperweight.

There is some people who may have a gun for protection and never use it because they never have to. I assume if someone purchased, this is here, if someone purchased a gun, has a gun, they will learn how to use it, so they don't shoot themselves. It was my assumption if you

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own a gun at sometime you learned how to use it.

In order to learn how to use it, you have to fire it.

CHARLES GERVOLINO: We were taught. My father being a cop, he taught us safety.

MR. SATZ: You don't own guns?

CHARLES GERVOLINO: No.

MR. SATZ: Thank you.

CHARLES GERVOLINO: Thank you.

MR. SATZ: Mr. Lang, how long have you worked for Walmart?

ROBERT LANG: 22 years.

MR. SATZ: At that one location?

ROBERT LANG: Yes.

MR. SATZ: Have you known anyone ever been arrested, family or friends?

ROBERT LANG: No.

MR. SATZ: Anyone that has ever had an unpleasant experience with a police officer that didn't amount to an arrest?

ROBERT LANG: No, sir.

MR. SATZ: How do you feel about police officers?

ROBERT LANG: Do a pretty good job for what

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they have to go through today.

MR. SATZ: The criminal justice system?

ROBERT LANG: Fair.

MR. SATZ: Have you had the opportunity, desire to follow any particular criminal case through the system?

ROBERT LANG: No, sir.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or opposed?

ROBERT LANG: I believe in it.

MR. SATZ: Do you have any personal limitations, like some people would say, yes, I'm in favor of the death penalty if a child, or if multiple children are killed, serial killer? Do you have personal limitations?

ROBERT LANG: No.

MR. SATZ: You can follow the instructions Judge Backman gave about aggravating factors and mitigating circumstances?

If the aggravating fact ors you feel they are proven beyond a reasonable doubt, outweighing any mitigating circumstances, are you personally capable of voting for the death penalty?

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ROBERT LANG: Yes.

MR. SATZ: Willing to be the fore person if selected?

ROBERT LANG: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

ROBERT LANG: Yes.

MR. SATZ: Ms. Tim Kee, you have a bachelor's degree?

SHANNON TIM KEE: Yes.

MR. SATZ: From where?

SHANNON TIM KEE: FIU.

MR. SATZ: Your degree was in psychology and criminal justice?

SHANNON TIM KEE: Minor, criminal justice.

MR. SATZ: Have you had the opportunity to use that in any way, desire to use it, the minor in criminal justice?

SHANNON TIM KEE: No.

MR. SATZ: You're a communications operator?

SHANNON TIM KEE: Yes. Dispatcher and on-call taker for Broward Sheriff's Office.

MR. SATZ: You have been there for how

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long?

SHANNON TIM KEE: Five years in December.

MR. SATZ: You know someone who has been charged, testified?

SHANNON TIM KEE: My brother.

MR. SATZ: Here in Broward County?

SHANNON TIM KEE: Yes.

Drug related.

MR. SATZ: How long ago?

SHANNON TIM KEE: 20 years ago.

MR. SATZ: Anything happen as a result of that case cause you to have negative feelings about law enforcement or the criminal justice system?

SHANNON TIM KEE: No.

MR. SATZ: When you say charged, testified, questioned, that's all dealing with that one situation with your brother, correct?

SHANNON TIM KEE: Yes.

MR. SATZ: Your dad is a retired police officer?

SHANNON TIM KEE: Yes.

City of Coral Gables.

Whole career.

MR. SATZ: Other than your brother, anyone

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else arrested?

SHANNON TIM KEE: No.

MR. SATZ: Any of your friends?

SHANNON TIM KEE: No.

MR. SATZ: Anyone close to you have an unpleasant experience with a police officers that didn't amount to an arrest?

SHANNON TIM KEE: No.

MR. SATZ: Have negative feelings about police officers?

SHANNON TIM KEE: No.

MR. SATZ: How do you feel about the criminal justice system?

SHANNON TIM KEE: Fair for the most part.

MR. SATZ: Have you had the opportunity or desire to follow any particular criminal case through the system?

SHANNON TIM KEE: Not during, no.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or opposed?

SHANNON TIM KEE: I am in favor.

MR. SATZ: Personal limitation?

SHANNON TIM KEE: No.

MR. SATZ: If the aggravating factors are

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proven beyond a reasonable doubt and outweigh the mitigating circumstances established by the greater weight of the evidence, you have any reasonable doubt as to that,. are you capable of voting for the death penalty?

SHANNON TIM KEE: Yes.

MR. SATZ: Willing to be the fore person if selected?

SHANNON TIM KEE: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

SHANNON TIM KEE: Yes.

MR. SATZ: Mr. Franklin, you have a degree in computer science?

WILLIAM FRANKLIN: Yes.

MR. SATZ: Where did you get that?

WILLIAM FRANKLIN: Nova.

MR. SATZ: Your employment history, what exactly have you been doing?

WILLIAM FRANKLIN: I did computer, computer repair technician about six years. Then I moved over to doing software development for 25 or more years.

MR. SATZ: You have served as a juror

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before?

WILLIAM FRANKLIN: Yes.

MR. SATZ: What was the nature of the charges?

WILLIAM FRANKLIN: Drunk driving.

MR. SATZ: You were the fore person?

WILLIAM FRANKLIN: Yes.

MR. SATZ: Was that a good experience for you?

WILLIAM FRANKLIN: Yes.

MR. SATZ: Did you come away with any negative feelings about the criminal justice system as a result of that?

WILLIAM FRANKLIN: No.

MR. SATZ: How about arrests? Know anyone ever arrested, any family or friends?

WILLIAM FRANKLIN: No.

MR. SATZ: Anyone, yourself, friends, family had an unpleasant experience with a police officer that didn't amount to an arrest?

WILLIAM FRANKLIN: No.

MR. SATZ: How do you feel about police officers, the way they do their job?

WILLIAM FRANKLIN: I am very happy with them. Several family members are police

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officers.

They are good guys.

MR. SATZ: Where are they police officers?

WILLIAM FRANKLIN: One of them, Palm Beach County.

One of them Jefferson County, Missouri.

Retired.

I don't remember the name of the cities. Lake worth.

MR. SATZ: How about the criminal justice system? How do you think it works in the United States?

WILLIAM FRANKLIN: Pretty good.

MR. SATZ: Had the opportunity, desire to follow any particular case through the system?

WILLIAM FRANKLIN: No.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or opposed?

WILLIAM FRANKLIN: I support it.

MR. SATZ: Do you have any personal limitations, like some people would say, yes, I'm in favor of the death penalty if a child, or if multiple children are killed, serial killer? Do you have personal limitations?

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WILLIAM FRANKLIN: No.

MR. SATZ: If the aggravating factor or factors proven beyond a reasonable doubt outweigh the mitigating circumstances in this case, are you personally capable of voting for the death penalty?

WILLIAM FRANKLIN: Yes.

MR. SATZ: Willing to be the fore person if selected?

WILLIAM FRANKLIN: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

WILLIAM FRANKLIN: Yes.

MR. SATZ: Mr. Riggio, you have a bachelor's degree.

MICHAEL RIGGIO: Yes.

MR. SATZ: From?

MICHAEL RIGGIO: St. Francis College in New York.

MR. SATZ: Graduate school?

MICHAEL RIGGIO: Yes, in New York.

MR. SATZ: Your graduate degree?

MICHAEL RIGGIO: Finance.

MR. SATZ: How about your employment?

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MICHAEL RIGGIO: I'm a service supervisor for Fire Stone. Been there about four years.

Prior to that, I sold cars about 20 years.

MR. SATZ: Where?

MICHAEL RIGGIO: At a Ford dealership in Margate. Became part of Auto Nation. VW dealership in Pompano.

I spent eight years at Car Max in Pompano.

MR. SATZ: Your daughter is a lawyer?

MICHAEL RIGGIO: She's an attorney.

MR. SATZ: She doesn't practice criminal law?

MICHAEL RIGGIO: She does not.

MR. SATZ: Has she ever?

MICHAEL RIGGIO: No.

MR. SATZ: You knew someone who has testified before?

MICHAEL RIGGIO: Well, I testified.

MR. SATZ: What situation?

MICHAEL RIGGIO: As I remember, because it was like 2002, I retained a lawyer to write up a divorce contract. After not hearing from her, she wasn't returning my calls. When I contacted the Bar Association, turns out the day I retained her, she was suspended a week

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before. Eventually, I think what was, I don't know if a trial or police military hearing, I think a police military hearing, brought by the Bar Association.

I testified on their behalf.

MR. SATZ: Were you satisfied with the result?

MICHAEL RIGGIO: Yes.

MR. SATZ: Arrests, do you know anyone, family, friends arrested?

MICHAEL RIGGIO: No.

MR. SATZ: Anyone, yourself, friends, family had an unpleasant experience with a police officer that didn't amount to an arrest?

MICHAEL RIGGIO: No.

MR. SATZ: Family or friends?

MICHAEL RIGGIO: No.

MR. SATZ: How do you feel police officers do their job?

MICHAEL RIGGIO: Do a good job.

MR. SATZ: How do you feel about our criminal justice system in the United States?

MICHAEL RIGGIO: It is fair, the best in the world.

MR. SATZ: Have you had the opportunity,

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desire to follow any particular criminal cases?

MICHAEL RIGGIO: Not really.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or opposed?

MICHAEL RIGGIO: In favor.

MR. SATZ: Do you have any personal limitations, like some people would say, yes, I'm in favor of the death penalty if a child, or if multiple children are killed, serial killer? Do you have personal limitations?

MICHAEL RIGGIO: None.

MR. SATZ: You agree to follow the law as Judge Backman states the law is, in this case or any other death penalty case, there is aggravating factor or factors and mitigating circumstances, you have to weigh each aggravating factor and each mitigating circumstance. Of course, the aggravating factors have to be proven beyond a reasonable doubt?

Mitigating circumstances do not. Just the greater weight of the evidence.

At the end of the proceeding, if you feel the aggravating factors proven are beyond a

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reasonable doubt, outweigh the mitigating circumstances established by the greater weight of the evidence, and you feel that way beyond a reasonable doubt, are you personally capable of voting for the death penalty?

MICHAEL RIGGIO: Yes.

MR. SATZ: Willing to be the fore person if selected?,

MICHAEL RIGGIO: Yes.

MR. SATZ: If you're selected as a fore person, would you sign the verdict form, condemning the defendant to death?

MICHAEL RIGGIO: Yes.

MR. SATZ: Ms. Morris, how are you?

BELITA MORRIS: Good.

MR. SATZ: Good.

You obtained a graduate degree?

BELITA MORRIS: Yes.

MR. SATZ: In what?

BELITA MORRIS: Education.

MR. SATZ: You're an instructor?

BELITA MORRIS: Teacher.

MR. SATZ: Where do you teach?

BELITA MORRIS: At Pompano Beach Middle School.

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MR. SATZ: How long have you been there?
BELITA MORRIS: Six years.
MR. SATZ: Is that right after school you went right there?
BELITA MORRIS: No.
MR. SATZ: You taught somewhere else before?
BELITA MORRIS: Yes.
MR. SATZ: What did you do before?
BELITA MORRIS: In-and-out jobs.
MR. SATZ: Give me an example.
BELITA MORRIS: Telemarketing, retail.
MR. SATZ: Your cousin is a lawyer?
BELITA MORRIS: She is.
MR. SATZ: What type of law does your cousin practice?
BELITA MORRIS: Not practicing.
Doesn't have a job.
MR. SATZ: You know someone that's been the victim of a crime?
BELITA MORRIS: Yes.
MR. SATZ: Who?
BELITA MORRIS: My husband.
MR. SATZ: What was he, what type of crime?
BELITA MORRIS: I don't think I can talk

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about the case because it is still open right now.

MR. SATZ: Can you tell me what the charge is?

BELITA MORRIS: Aggravated assault.

MR. SATZ: He's the victim?

BELITA MORRIS: Yes.

MR. SATZ: Is it in Broward County?

BELITA MORRIS: Yes.

MR. SATZ: It is still pending?

BELITA MORRIS: Yes.

MR. SATZ: Do you know who the judge is.

BELITA MORRIS: I do not.

MR. SATZ: Okay.

If it's pending in Broward County, my office is handling it. Office I work with. Does that cause you any kind of concern.

BELITA MORRIS: No.

MR. SATZ: Do you know anyone ever been arrested, any family or friends?

BELITA MORRIS: My brothers.

MR. SATZ: What were they arrested for?

BELITA MORRIS: One was, he beat someone up. I don't know what the charge was.

MR. SATZ: How long ago was that?

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BELITA MORRIS: 15 years ago.

MR. SATZ: How about the other?

BELITA MORRIS: The same thing.

MR. SATZ: That was 15 years ago, too?

BELITA MORRIS: No, this was probably about 9, 10 years ago.

MR. SATZ: Anything after the 15 years, the 9 years, your brothers get in any more trouble?

BELITA MORRIS: No.

MR. SATZ: After that?

BELITA MORRIS: They learned their lesson.

MR. SATZ: Any other people you know of ever been arrested?

BELITA MORRIS: No.

MR. SATZ: Anyone, yourself, friends, family had an unpleasant experience with a police officer that didn't amount to an arrest?

BELITA MORRIS: I have.

MR. SATZ: What was it?

BELITA MORRIS: About a year ago.

I was at my son's basketball game. My husband got into it with the ref.

They called the police. They were questioning my husband because I was standing next to him. They wanted to question me also,

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which was fine.

But the detail cop with him got nasty with me for no reason.

Kind of escalated from there. But there were no arrests.

MR. SATZ: Do you remember what police agency?

BELITA MORRIS: Coral Springs.

MR. SATZ: Was your husband arrested for arguing with the ref?

BELITA MORRIS: No.

MR. SATZ: Was it a bad call?

BELITA MORRIS: It was a bad call. There were several bad calls.

MR. SATZ: All right. That would be the extent of your --

BELITA MORRIS: Yes.

MR. SATZ: Do you have negative feelings about police officers?

BELITA MORRIS: I do not.

MR. SATZ: How do you feel police officers do their job?

BELITA MORRIS: As best as they can.

MR. SATZ: The criminal justice system, how do you feel it operates in this country?

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BELITA MORRIS: Fairly well, sometimes.

MR. SATZ: Have you had the opportunity, desire to follow any particular criminal cases?

BELITA MORRIS: No.

MR. SATZ: How do you feel about the imposition of the death penalty? In favor or opposed?

BELITA MORRIS: I'm on the football field, in between.

MR. SATZ: You're on the 50?

BELITA MORRIS: I'm on the 50.

MR. SATZ: Do you have any personal limitations, like some people would say, yes, I'm in favor of the death penalty if a child, or if multiple children are killed, serial killer? Do you have personal limitations?

BELITA MORRIS: No.

MR. SATZ: You have all been discussing for two days now what Judge Backman instructs us, telling everybody what the law is, about the aggravating factors, statutorily defined. Each aggravating factor or an aggravating factor has to be proven beyond a reasonable doubt.

Mitigating circumstances don't, just established by the greater weight of the

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evidence.

Aggravating factor or factors have to be proven beyond a reasonable doubt.

At the end of these proceedings, if you feel that the aggravating factors have been proven beyond a reasonable doubt, outweigh any mitigating circumstances, and of course you weigh each individual, whether one on more aggravating factors, whether one on more mitigating circumstances on there own, you will be given, you have the ability,, it is your duty to evaluate each one. Somebody may think deserves some weight, no weight, all weight, a lot of weight. At the end of the proceedings you feel the aggravating factors outweigh the mitigating circumstances beyond a reasonable doubt, are you personally capable of voting for the death penalty?

BELITA MORRIS: Yes.

MR. SATZ: If selected as a fore person, would you being willing to serve?

BELITA MORRIS: Yes.

MR. SATZ: If you were the fore person, would you be willing to sign the verdict form, condemning the defendant to death?

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BELITA MORRIS: Yes.

MR. SATZ: Thank you, ma'am.

I'll go back over here and ask everybody a question.

You heard me ask a lot of questions. The same to everybody.

I want to see how everybody felt about everything.

Does anyone want to change any of their answers? Has anything changed? In other words, arrested, anyone arrested, anything you looked at, something happened?

There is additional information. Anyone, anyone want to change any of that.

THE COURT: Ms. Armstrong?

KALENA ARMSTRONG-HENRY: I forgot to say I was military police.

MR. SATZ: Would that change any of your responses?

KALENA ARMSTRONG-HENRY: No.

I forgot to say it. It was a long time ago.

MR. SATZ: You put it on your questionnaire, I think?

That wouldn't affect you one way or

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another?

KALENA ARMSTRONG-HENRY: No.

MR. SATZ: Anybody else that wants to change their answer or add anything to it?

SUSAN MOON: I was a victim of armed robbery in the 1980's, at a 7-Eleven, where I worked.

MR. SATZ: Would that change any of your responses?

SUSAN MOON: No.

MR. SATZ: Anything happen as a result of that, cause you to have negative feelings about the police or criminal justice system?

SUSAN MOON: No.

MR. SATZ: Anybody else?

I asked questions that I think are important. That's just me.

Any questions you may think I wish this guy would have asked me this question, that would have been a good question? Anybody feel that way, there is a question you wish I would have asked, if you were me you would have asked?

RODNEY BEELER: I think, I have never owned a weapon.

I have fired many weapons.

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MR. SATZ: Okay. That's fine. It is like I explained to, explained before, I assume if you have a gun, you may -- maybe it is a bad assumption on my part, but if you own a gun, I expect you to handle it, may take a course if you buy one. You fired it, I assume, if you're buying it.

Okay.

Thanks.

Any other question you feel I maybe should have asked you that would be pertinent to your service?

Okay.

Thanks a lot.

THE COURT: I think the question they should have asked you is when can we go to lunch.

MR. WILLIAMS: Can we have a sidebar?

(Sidebar had.)

MR. WILLIAMS: Cooper wanted to discuss something.

MR. SATZ: Yes.

MR. WILLIAMS: Morris.

THE COURT: Do that after lunch.

MR. WILLIAMS: Okay.

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THE COURT: Who is the guy that has to go to court?

MR. SATZ: Antenor.

THE COURT: Okay.

(Sidebar concludes.)

THE COURT: We are breaking for lunch. I need you back outside at 1:45.

Mr. Antenor, you will be back tomorrow morning. 9:30.

See you after lunch.

(Exit venire.)

(Lunch recess had.)

(Afternoon session begins.)

THE COURT: If Moon is out there, bring Moon in.

Who's the next?

MR. WILLIAMS: Cooper.

(Enter Susan Moon.)

THE COURT: Well, Ms. Moon, you wanted to talk privately.

SUSAN MOON: About the first day?

THE COURT: About your son.

SUSAN MOON: Yes, we had a verbal altercation a couple years ago. It turned physical.

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He tackled me.

The police were called. He was charged with battery. The charges were dropped. We saw Judge Ross. And he had to do an on-line anger management. It was dismissed. No problems since then.

MR. SATZ: Were you satisfied with the outcome?

SUSAN MOON: Yes.

MR. SATZ: You agreed with the outcome.

SUSAN MOON: Yes.

MR. SATZ: How old was your son at the time?

SUSAN MOON: He was 16 or 17.

MR. SATZ: Okay.

So no problems, aftermath.

SUSAN MOON: No.

MR. SATZ: But no issues with the system or the police or anything?

SUSAN MOON: No.

MR. SATZ: Okay.

I am good.

MR. WILLIAMS: Nothing.

THE COURT: Thank you.

You can rejoin the others.

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SUSAN MOON: Thank you.

(Exit Susan Moon.)

THE COURT: I need Cooper, number 52.

DEPUTY: He is not here, Judge.

THE COURT: Who is the third one?

MR. WILLIAMS: Morris, number 60.

MR. SATZ: She said she couldn't talk about it because it's pending.

MR. WILLIAMS: Let's just see.

THE COURT: Let flush it a little bit. Is it pending here?

(Enter Belita Morris.)

MR. SATZ: We wanted to ask ,your husband, he's a victim and it is pending.

You didn't want to talk about it. It is not that you didn't want to talk about it but period because --

BELITA MORRIS: I didn't know if I could speak about it. It is an open case.

MR. SATZ: Are you a witness?

BELITA MORRIS: I am not.

MR. SATZ: Would it be okay, and the Judge can decide, can you tell us the alleged facts?

Is that okay?

BELITA MORRIS: Yes, long story short, he

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was at the store. He got into it with a guy at the store, owner of the store. He was asked to leave. When he got in his car to leave, he was about 200 yards away, the guy shot at him while he was in his car, leaving. He got shot in the back, through the car.

MR. SATZ: he got hit?

BELITA MORRIS: Yes.

It is an open case.

MR. SATZ: Aggravated battery.

BELITA MORRIS: Yes.

MR. SATZ: Your husband is the victim, and the store owner is charged?

BELITA MORRIS: Yes.

MR. WILLIAMS: How recent was that?

BELITA MORRIS: December.

MR. WILLIAMS: The case is still pending?

BELITA MORRIS: Yes.

MR. WILLIAMS: Is the gentleman in jail.

BELITA MORRIS: No. He has an ankle monitor.

MR. WILLIAMS: This case involves a shooting. You had a recent shooting where your husband was a victim. Will you be reflecting on that, when we are talking about people being

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shot in this case?

BELITA MORRIS: No, I'll not.

MR. WILLIAMS: Are you sure?

BELITA MORRIS: I'm positive.

MR. WILLIAMS: Thanks.

THE COURT: I think you can rejoin the others.

(Exit Belita Morris.)

THE COURT: Mr. Cooper?

(Enter Kenjahsah Cooper.)

MR. SATZ: Mr. Cooper, you didn't want to speak about your mom's case.

Now that we're semi-private, want to tell us about it?

KENJAHSAH COOPER: Sure.

The reason I didn't want to speak about it is because it involved abuse, verbal abuse, domestic abuse, stuff like that. Back in 2008, I just heard about this stuff for the first time. And I didn't know what to believe at the time. Taken me about five years to come to grips with anything. Found out my dad was beating my mom. That was one of the many reasons they were divorced. I didn't want to speak about it about, about it at the time

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because it is a bit sensitive.

MR. SATZ: What happened with the case?

Did your mom go to the police?

KENJAHSAH COOPER: She went to the police. Around the time my parents became separated at first. What they did is they escorted my dad out of the house. He wasn't arrested. He was escorted out. I didn't include that as an unpleasant experience. It wasn't as bad compared to someone else.

MR. SATZ: Up felt he should have been arrested?

KENJAHSAH COOPER: Now I do.

MR. SATZ: MR. SATZ: Was there any further incidents, physical or mental abuse, between your mom and dad after that incident?

KENJAHSAH COOPER: No.

MR. SATZ: How did your mom do after that? Was she okay?

KENJAHSAH COOPER: It was rough on her for a while. After a few months, it was like she was back to normal .

MR. WILLIAMS: Putting this together, your mom got a domestic violence injunction against your father; and the police came and escorted

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him out. There was an order for him to stay away; is that correct?

KENJAHSAH COOPER: Yes.

MR. WILLIAMS: And then, subsequently, after that, your parents got divorced?

KENJAHSAH COOPER: Yes.

MR. WILLIAMS: Would I be correct in assuming that you have, that you then chose to live with your mom?

KENJAHSAH COOPER: I chose to live with my mom because my dad, at the time, didn't have a steady job.

MR. WILLIAMS: You were sympathetic towards your mother, correct?

KENJAHSAH COOPER: Yes.

MR. WILLIAMS: I'm getting a vibe today because you felt like maybe you dad should have been arrested?

KENJAHSAH COOPER: Yes.

MR. WILLIAMS: Are you still residing with your mom?

KENJAHSAH COOPER: Yes.

MR. WILLIAMS: Does the subject ever come up?

KENJAHSAH COOPER: Every now and then, when

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we discuss it. My little brother asks why aren't our parents together anymore because he was born when they were separated.

MR. WILLIAMS: She was pregnant at the time?

KENJAHSAH COOPER: Yes. My mom would say, when you were around the same as when they got divorced, so about two years or so.

MR. WILLIAMS: This whole subject of violence, murder is a violent crime. Think you can deal with the subject of murder, having been all of these years, you're still reflecting on the violence that occurred between your parents?

KENJAHSAH COOPER: Yes.

MR. WILLIAMS: Yes, meaning what?

KENJAHSAH COOPER: Yes. Uhm. Yes, I'm okay with everything right now.

MR. WILLIAMS: You won't reflect, when talking about violence here, between this case and a man and a women.

KENJAHSAH COOPER: If you're asking if I'll have a flashback to it, no. The domestic violence that occurred, this all happened when I wasn't present. It never happened in front

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of me. I don't think I'll have a flash back.

MR. WILLIAMS: Not a, too much a flashback, would it bother you, violence of men towards women?

KENJAHSAH COOPER: Yes.

MR. WILLIAMS: During this case?

KENJAHSAH COOPER: Yes, sir.

MR. WILLIAMS: Because this case involves violence of a man towards two women?

KENJAHSAH COOPER: Oh.

MR. WILLIAMS: Will you be able to not reflect on the history of the violence between a man and a woman with your own family?

KENJAHSAH COOPER: Are you asking if it would affect my role?

MR. WILLIAMS: Potentially affect it.

KENJAHSAH COOPER: I'll try to be as impartial as possible.

So no, I don't think it will reflect back. Even though, as you said, it was between a man and two women.

MR. WILLIAMS: Well, I don't think is an equivocation.

KENJAHSAH COOPER: Well, then, what I'm, what about I'm --

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MR. WILLIAMS: Is that a true and correct answer?

KENJAHSAH COOPER: Yes.

MR. WILLIAMS: We want to know what people's true feelings are. There is nothing wrong with having feelings.

Only three kinds of answers you can give me. Truthful, untruthful, evasive answers. All we want is truthful answers, okay?

KENJAHSAH COOPER: Okay.

MR. WILLIAMS: Where do you fall with the issue of violence between a man and a women and it having an impact on your ability to sit here?

KENJAHSAH COOPER: Well, I personally think that if it is under, unless it is under self-defense, like a woman, acting, trying to kill a man, I don't think a man should lay a hand on a woman. When it comes to this case, hearing that the defendant killed and shot two women --

MR. WILLIAMS: Killed one woman.

KENJAHSAH COOPER: Okay.

MR. WILLIAMS: How will that affect you, in deciding the appropriate punishment?

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KENJAHSAH COOPER: I guess it would factor in for me of what, of more evidence of what I'll come up with after I hear every single detail about this case.

So I guess I'll keep that in mind.

MR. WILLIAMS: Keep what in mind? So we're clear.

KENJAHSAH COOPER: What I feel about it personally? But also, over this case in particular, because this is a murder that we're talking about here.

MR. WILLIAMS: Yes, sir.

MR. SATZ: Finished?

MR. WILLIAMS: Yes.

MR. SATZ: I think what Mr. Williams is asking you, not about your feelings about domestic violence.

He's asking you whether your mother's case would influence your thinking in this case.

KENJAHSAH COOPER: Oh.

MR. SATZ: That's what he's asking. He's not asking your feelings about domestic violence.

Else asking whether the domestic violence where your mom was a victim will affect you in

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this case.

KENJAHSAH COOPER: Well, okay. No. It won't.

MR. SATZ: Okay. Good.

THE COURT: Any follow-up?

MR. WILLIAMS: No, sir.

THE COURT: Thank you. You can rejoin the others.

(Exit Kenjahsah Cooper.)

MR. POLAY: We would be moving to strike him for cause.

He was equivocating. Would play in his mind. Changed his answer.

Mr. Satz tried to clarify it. Here is my caveat.

He did say any violence from a man towards a woman would come into play in his mind.

MR. SATZ: I disagree.

THE COURT: That's denied.

MR. WILLIAMS: I had one other question.

Juror 55, Mr. Lang, his answers were appropriate today. Earlier in the week, I believe Mr. Lang was the one that sent Pam an Email he was nervous as heck, had diarrhea, all of this other kind of stuff. I was wondering,

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he said he thought about it all weekend.

Is that correct?

JUDICIAL ASSISTANT PAM COE: I'm not sure if it was Mr. Lang.

MR. SATZ: Different Walmart guy.

THE COURT: Flush it out in voir dire.

No pun intended.

MR. WILLIAMS: Can we find out? I don't want to find out a guy has stomach problems.

JUDICIAL ASSISTANT PAM COE: I don't believe it was an Email.

MR. SATZ: It wasn't him. Different Walmart guy.

THE COURT: I believe we eliminated that person.

THE COURT: Let's go.

JUDICIAL ASSISTANT PAM COE: Before we start --

MR. POLAY: Ms. Parker, the secretary for the superintendent.

THE COURT: So?

MR. POLAY: We wanted to talk to her. Dr. Runsey is actively involved in the Stoneman Douglas case.

Mr. Satz is actively prosecuting.

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We would like to talk to her outside of the presence of the jury.

I don't want to corrupt the whole panel.

JUDICIAL ASSISTANT PAM COE: Because of the hour, I wanted to bring up a situation, when you're finished with the voir dire of this group, are we going to go through the picking process or bring in the following 14, voir dire them, and pick the jury after all of them have been voir dired?

THE COURT: Asking me?

JUDICIAL ASSISTANT PAM COE: Everybody.

THE COURT: Only one person gets to make that decision, Pam. Me.

After voir dire, we will start picking a jury.

THE COURT: I didn't say we won't use them.

(Discussions held off the record.)

THE COURT: Let's bring them in.

(Enter venire.)

THE COURT: Mr. Polay?

MR. POLAY: May it please the Court, counsel.

Good afternoon, everyone.

I am Mitch Polay. I have the privilege,

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along with H. Dohn Williams, of representing Gerhard Hojan.

I know it is a long, slow process.

So people said one thing about the criminal justice system. That it's slow.

How many people said that?

Let me explain one thing.

And one person said it was thorough. The reason that is, we are not dealing with whether or not someone ran a traffic light.

We are dealing with life or death. This is literally, literally, the most significant decision that can be made in a courtroom. Everyone understand that?

Literally, you, as a jury.

You.

Not me.

Not Mr. Satz.

Not His Honor.

You decide whether or not someone lives or dies.

That's why this process takes time.

We value life in this country. It is a slow process. I'll tell you right now, me, along with Mr. Williams, we're here to

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represent his life.

That's what we'll do.

That's what we hope you agree with us.

There are some principles I want to go over and things I want to talk to you each individually.

Yes, you will get upset.

I truly believe everyone hear is smart enough to understand this process takes time.

God forbid somebody you know, a friend, some family relative, you would want the same thing.

You would want attention given to the case. You don't just want to rush through things.

We're dealing with serious matters here.

You're literally deciding about two things.

Not just two things. Two of the most important things.

This isn't like great choices. Not like going to a restaurant, do I have the key lime pie or coconut cream pie.

The only two choices here, on the menu, are death by lethal injection or coming out of prison in a pine box.

Everyone understand that?

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Make no mistake about it.

I want to make sure everyone here knows that life means life.

Doesn't mean 25.

You hear that on TV.

How many people think that, life means 25 years?

LONI WILLIAMS: I thought that.

ADRIANA HOYOS-MARINUCCI: I did, too.

THE COURT: I'm telling you, and His Honor will tell you the same thing.

Life means life.

If, as a jury, if you return a sentence of life, he never gets out.

That's a misconception in the state of Florida.

That's something that, you know, I have seen before. It is understandable.

We all watch TV. I saw a lot of stuff. I don't know what you watch, what you listen to.

If you are not in the system every single day, easy to understand it.

Those are the two choices to make. Death by lethal injection. Not a great choice.

Coming out of prison in a pine box.

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Meaning you live your life in prison. You never get out.

Everyone understand that?

I'll start with you.

You're number one.

You're always picked first.

Do you think life in prison is a significant penalty?

BEVERLY STELZER: It all depends upon the crime. Life, to me, life in prison is what you said. Life is, life in prison is life. Don't get out.

To me, that's perfect.

MR. POLAY: I'm telling you, His Honor will tell you there is no parole in this case.

Everyone understand that?

I know I'm being redundant. These principles are important to understand really what the penalties are.

We have been talking about this how many days? Five, four days?

This has never come up.

I'm here to clarify a little bit, believe it or not.

MR. SATZ: Judge, I don't want to

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interrupt.

You said life is life.

THE COURT: Yes, I did.

MR. POLAY: You know, the reason I'm being redundant, everybody is being given new principles.

Yes, His Honor said it.

You hear so many new terms.

That's why this takes a while.

That's why it slows down.

A lot of people miss that.

Anybody miss that?

You think that's a significant penalty.

Do you think that's a significant penalty?

JUNE STONE: Yes.

LONI WILLIAMS: Yes.

MR. POLAY: I have to tell you, Baskin & Robins has how many flavors? 36? 31? I don't know.

We live in a homogenous society.

Everybody likes something different.

Like when you come into a courtroom, you come in with baggage. I'm not talking about exes, things of that nature.

I am talking about your opinions.

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Everyone has different feelings and beliefs.

Really, what you're thinking is the only thing I want to know.

If we all agree on everything, we wouldn't be here.

If we all agreed on everything, we would be eating the same food, listening to the same music, driving the same car, all working at the same job.

We don't live in that type of society.

So there is no right, no wrong.

People may be looking at me like I'm crazy.

Think about it.

There is only one thing you can ever say, and I know it may be difficult to speak in front of 50 some odd of your new friends, about this nightmarish subject of death.

That's what you're doing. You're taking a life, right?

What I am getting at is I want to hear from you.

That's really it.

Tell the truth. That's all. How you really feel.

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I am not passing judgment. The Judge isn't passing judgment on you.

Just wants to know.

That's all.

You think that's a significant penalty?

LONI WILLIAMS: Yes.

MR. POLAY: Do you think life in prison is a significant penalty?

ADRIANA HOYOS-MARINUCCI: To be honesty, in this country --

MR. POLAY: No, I want you to lie to me.

ADRIANA HOYOS-MARINUCCI: That's all I'm telling you.

Life in prison, from what you see, people get taken care of. They have privileges you think they shouldn't have. I am not sure if it is a significant penalty. Not easy to be behind bars the rest of your life.

MR. POLAY: Have you seen this personally?

ADRIANA HOYOS-MARINUCCI: No, I have heard about it. Not seen personally. What you read and see on TV. But I haven't heard that, you know, either criminals get, they don't get treated awful behind bars.

We are a humane country.

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MR. POLAY: You don't think life in prison is a significant enough penalty for first degree murder?

ADRIANA HOYOS-MARINUCCI: It is.

I'm not sure how significant it is. I don't know too much about what happens behind bars the rest of your life, when you don't have to get up, go to work.

MR. POLAY: What are you basing this on? What you hear? Have you seen it in a documentary? Been in the news?

ADRIANA HOYOS-MARINUCCI: Just from what you hear from TV, what you have seen, from health care workers that have been in prison, behind bars.

MR. POLAY: With the lifers, specifically?

ADRIANA HOYOS-MARINUCCI: That's where I don't know. It is an impression I have. Yes, it is a significant penalty. Enough for a murder? I don't know.

MR. POLAY: You're not sure?

ADRIANA HOYOS-MARINUCCI: Right.

MR. POLAY: What you're telling me, you're probably, more likely to impose the death penalty?

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ADRIANA HOYOS-MARINUCCI: Not necessarily. That's not what I'm saying.

MR. POLAY: If it is not a significant enough penalty for two murders, are you saying you're open minded?

ADRIANA HOYOS-MARINUCCI: To hear what the, what you guys kept saying.

MR. POLAY: I'll get into that.

ADRIANA HOYOS-MARINUCCI: You know, to weigh the aggravating factors.

MR. POLAY: And mitigating circumstances.

ADRIANA HOYOS-MARINUCCI: Yes.

MR. POLAY: What I'm asking you, as you sit here now, are you telling me you're definitely more inclined to go towards death?

ADRIANA HOYOS-MARINUCCI: No, not more inclined towards death, no.

I don't have enough information to say, well, you know, to me the more significant is pretty significant, behind bars, what does that mean, besides you're in a room, behind bars.

MR. POLAY: You know what death is.

They put a needle in with a chemical, and you're dead.

ADRIANA HOYOS-MARINUCCI: Right. I don't

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know what life behind bars for a person is. What does it entail, besides you're behind bars?

MR. POLAY: You're not going out to restaurants, shopping, not going to the mall. Not having conjugal visits. I'm asking you.

ADRIANA HOYOS-MARINUCCI: What do you have rights to? What do you do? Do you educate yourself? Exercise? What do these people have?

MR. POLAY: Why is that significant to you?

ADRIANA HOYOS-MARINUCCI: Because life in prison doesn't just mean you're in a wall, in a room. I don't think. I don't know.

MR. POLAY: You want people chopping rocks? I don't know. I am asking you.

ADRIANA HOYOS-MARINUCCI: I guess, like I said, I don't have enough information to think to say life in prison is a significant penalty. Maybe I'll find out, say, gosh, yes, that's pretty intense.

In this country, knowing how wonderful this country is, as far as how they treat humans --

MR. POLAY: I'll move on.

ADRIANA HOYOS-MARINUCCI: There you go.

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MR. POLAY: Don't worry.

I'll be back.

ADRIANA HOYOS-MARINUCCI: Maybe I'll learn more with the process.

MR. POLAY: You never know. I hope so. I'll be here a while.

Mr. Gordon, do you think that life in prison is a significant penalty?

DAVID GORDON: Yes.

MR. POLAY: You understand life means life?

DAVID GORDON: Yes.

MR. POLAY: Ever think otherwise?

DAVID GORDON: No.

MR. POLAY: Mr. Pierre, how about you? Do you think life is a significant penalty?

NIGEL PIERRE: Yes.

MR. POLAY: Is it, in your mind, significant enough? Is it a significant enough penalty in a first degree murder case?

NIGEL PIERRE: I think, again, it comes to weighing the additional information that needs to be provided, circumstances, mitigating and the other evidence.

MR. POLAY: Aggravating.

NIGEL PIERRE: And aggravating

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circumstances. Then we'll be in a better position to decide.

MR. POLAY: Mr. Cole?

LARRY COLE: It is significant.

You are still being taken care of. You have a bed. Some privileges. I am going by what you see on TV, that type of thing.

You're not working to earn those things. I work to get food on a table.

MR. POLAY: Are you sure about that? Do you know for a fact?

LARRY COLE: What I have seen on TV.

MR. POLAY: You're saying it is almost like a burden?

If someone is doing life in prison?

LARRY COLE: It is not a cake walk.

Not enjoyable.

MR. POLAY: Do you think it is a significant enough penalty in a first degree murder case?

MR. SATZ: I object.

What first degree murder case?

MR. POLAY: This one.

MR. SATZ: How would anybody know until they heard the facts, mitigating and

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aggravating circumstances?

Can't ask for a pre-commitment.

MR. POLAY: I'm not asking for a pre-commitment.

I'm asking if it is a significant enough penalty.

THE COURT: He told you his answer.

MR. POLAY: I didn't hear it.

Can you repeat your answer?

MR. SATZ: How can he say if it is significant enough in this case? That's my objection.

THE COURT: I won't put words in his mouth.

Can you repeat your answer?

LARRY COLE: I said it was a significant punishment. But it is not, I mean, he's getting fed every day. That was my answer to that part of the question. I don't know if that's what you're asking me.

MR. POLAY: Of course he will be fed. Would you agree, if you are in prison, you are getting fed.

LARRY COLE: He's not in a hotel. I understand that.

MR. POLAY: Does that bother you?

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LARRY COLE: A little bit.

MR. POLAY: That someone is getting fed?

LARRY COLE: Not fed.

Housed.

Provided with basic necessities.

MR. POLAY: Think we should just -- I'm not being facetious or sarcastic in any way. Are you saying it is better to kill someone?

LARRY COLE: If there is a hundred percent sure they committed murder, I think so.

MR. POLAY: In this case, you are not deciding guilt. You are just deciding the penalty.

What I'm asking you, so you know, he's convicted of two murders. What you're saying is he deserves to die?

LARRY COLE: I have a question about that.

When they said the burden of proof is on the prosecutor, what are you trying to prove if he's already convicted. Prove that it is heinous enough.

THE COURT: I will handle that one.

As we have been talking about from the beginning, your role is only to determine, when you say, proof beyond a reasonable doubt. It

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is the State's burden, in a penalty phase, which is a determination of what sentence defendant should receive, either life without the possibility of parole, or death.

In order to do that, the State of Florida has the responsibility to prove, beyond a reasonable doubt, that an aggravator or aggravators set forth by statute are found unanimously by a jury.

The Defense, if they wish, gets to put on mitigating circumstances, which only have to be found to exist.

Then it is a weighing process with the rules I set out for you to determine what an appropriate sentence would be.

Now, it is unconverted that Mr. Hojan has already been convicted of the two murders.

That's a non-issue.

The question is knowing that, are you automatically going to vote for death?

LARRY COLE: I am leaning that way, yes.

THE COURT: Leaning or not, you haven't heard anything.

LARRY COLE: That's what I am saying.

MR. POLAY: Are you committed to the fact

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that knowing he has been convicted of two murders, that you will only vote for death?

LARRY COLE: Yes.

THE COURT: You would never consider a life sentence?

MR. POLAY: He makes the rules.

THE COURT: That's the other half of the question.

LARRY COLE: You kind of talk what if it was a serial killer or child killer. Yes, I would always vote for that. If someone is committing a robbery and the clerk decided to jump them and the gun went off, no intent, maybe I would be, you know --

THE COURT: It is not a serial killing or a child killing.

LARRY COLE: You're telling me they are all equal.

Doesn't matter if it is a serial killer or child killer.

Murder is murder.

THE COURT: Can you consider both, before making your decision?

Or is your mind made up.

LARRY COLE: Have to be honest.

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If I have to given you a yes or no now, I have to say yes.

THE COURT: All right, Mitch.

Sorry.

MR. POLAY: That's okay.

Whatever you do is right.

THE COURT: I know that. I may not always be right. But I'm never wrong.

MR. POLAY: We bring in a bit of levity. Laugh a bit.

It doesn't take away from the scenario of the proceedings. I want everyone to understand that.

Everybody takes this seriously.

Just our way of dealing with a tense situation.

You don't go to a cocktail party around talk about these things.

Something rarely discussed.

It is difficult. I understand. We are basically prying into some of your personal feelings, by someone you don't know.

I am asking you questions.

Almost like speed dating. Boom. Boom. Boom. I am getting right to it.

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I want everyone to understand it's my job.

Please don't take it out on Mr. Hojan if you feel I'm prying too much. Don't like the way I question. Or you feel I'm just digging or taking too much time, being too thorough, being really slow. I just wanted to explain why.

I think everyone gets it.

Mr. Beeler, do you feel life in prison is a significant enough penalty?

RODNEY BEELER: Yes.

MR. POLAY: Significant enough penalty?

RODNEY BEELER: Yes.

MR. POLAY: Ms. Castano, do you think life in prison is a significant penalty?

ANDREA CASTANO: Yes, I have seen prisoners being treated....different in some way. The hospital, I worked at a certain hospital. This person was a life in prison person.

He had cancer. He had to come to the hospital. Due to the needs of security they needed, they had to take him, had a new part of the hospital. He was on the top floor. Had a beautiful view. Took up three rooms of it. He was watching movies. He was eating.

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I know someone else had the same treatment. Not a nicer room because of security. Because of security where we were in hospital, how the hospital was being filled, with the construction going on, they had this specific, I don't know if you call it inmate or prisoner.

MR. POLAY: Ever seen the opposite, an inmate was treated worse because he was an inmate?

ANDREA CASTANO: I personally have never. We are so bit on security for everyone else involved.

Even an inmate as well.

Certain people feel certain ways about inmates.

Beneficial for the inmate and the people in the hospital.

Beneficial for both. Not one or the other.

MR. POLAY: I saw that made you very emotional.

Do you feel that we are wasting time, keeping people in prison for life?

ANDREA CASTANO: No, I think it is not cut and dry. You couldn't, as you said, murder, you can't come to me, ask me if you heard

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someone murdered someone, can you still give him life in prison, I couldn't give you an answer. Depends on what happened. I wouldn't be able to give an answer yes, I would give death or life in prison.

I have would never by your telling me he killed two people, I wouldn't be able to decide that.

MR. POLAY: Let me backtrack a second.

What we will do here in this case, Mr. Satz will present evidence. I'll present mitigation.

You will have to make a decision.

That's up to you.

ANDREA CASTANO: You will give facts. If someone gives me one thing, that he killed two people, nothing else, how it occurred. Just hearing he killed two people, I wouldn't be able to give them the death penalty or life. I wouldn't buy the one factor.

Depends, I think kind of like he said, depends on what occurred and the facts behind it.

Mitigating circumstances.

MR. POLAY: I'll get into it more.

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Just asking about the penalties now.

How do you feel? You think life in prison is a significant enough penalty?

SHALLIS GOLDER: Yes.

MR. SATZ. Objection.

Significant enough penalty.

Significant as to what?

Is it a significant penalty? That's one thing?

Significant to what?

They haven't heard anything yet.

They can't put it on a particular thing.

MR. POLAY: Is this a speaking objection?

MR. SATZ: He has to know what I'm talking about.

THE COURT: Keep it within the confines, please.

MR. POLAY: Do you think it is a significant enough penalty for first degree murder?

MR. SATZ: That's my objection.

Because there is murders and there is murders.

He's trying to get a commitment to is that significant enough for first degree murder.

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Without hearing facts, no one can answer them.

THE COURT: There are only two penalties.

MR. POLAY: Right. That's why I'm asking.

MR. SATZ: If he's asking significant enough, it is getting a commitment without hearing any facts.

THE COURT: He's right. You can ask if it is a significant penalty.

MR. POLAY: That's what I'm doing.

THE COURT: No.

You are asking beyond that.

MR. POLAY: Do you think it is a significant penalty?

SHALLIS GOLDER: Yes.

MR. POLAY: Anything about life in prison bother you?

SHALLIS GOLDER: No. I understand the penalty. I'm pretty objective to everything going on.

MR. POLAY: Ms. Starkes, what about you?

SHARON STARKES: It is significant.

MR. POLAY: Think it is too lenient?

SHARON STARKES: Too lenient?

MR. POLAY: Is life in prison too lenient for a penalty for first degree murder?

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SHARON STARKES: No.

MR. POLAY: Mr. North?

MICHAEL NORTH: I think it is significant?

MR. POLAY: Too lenient?

MICHAEL NORTH: I wouldn't know. Haven't heard anything.

MR. POLAY: Ms. Armstrong?

KALENA ARMSTRONG-HENRY: Depends upon the situation.

MR. POLAY: What do you mean?

KALENA ARMSTRONG-HENRY: Depends what happened, why the person is being considered for life or death.

MR. POLAY: You heard this person, my client, is convicted of two counts of first degree murder.

Talking about premeditated murder.

That's why I'm asking you.

Do you think that's enough of a penalty.

MR. SATZ: Objection. He's doing --

THE COURT: Can we go sidebar, please?

(Sidebar had.)

THE COURT: I don't want to have the conversation where the jury can hear. I don't know what you're trying to get out of here.

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What transpires within a jail or within a prison is irrelevant. Because a person on death row, with the exception of personal things, gets the same thing. They stay there for 30 years --

MR. POLAY: I'm trying to get their feelings about whether someone should do life in prison.

Some said let's not give life in prison.

Kill him.

My way of going about the Witt questions in a back door.

I don't understand. Mr. Satz is giving hypotheticals. I am asking questions that remind a witness of it as well.

THE COURT: The determination of life and death is determined on predicators, aggravators and mitigators.

This is part of your new seminar. I understand. It is a question of can you listen, pay attention.

MR. POLAY: I should be able to ask, I don't know why I have a harness on me whether or not it is a significant penalty.

THE COURT: Enough. You have used enough.

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MR. POLAY: Significant penalty or significant enough.

MR. SATZ: You're getting a pre-commitment on somebody, trying to get it on something they haven't heard about. You can ask is it significant?

MR. POLAY: That is not a pre-commitment. I'm not asking if they mind life or death.

THE COURT: Will you explain to the jury they won't hear anything about, with regard to what transpires in a prison?

MS. MCCANN: We have a motion in limine on that granted.

MR. WILLIAMS: Ms. Hoyos has virtually said she wants to know what is going on in prison before she considers a life sentence.

MR. SATZ: Because he is asking someone who knows nothing about the system. Prison system, about something that is not.

MR. WILLIAMS: She has.

MR. SATZ: He is asking a question.

MR. WILLIAMS: She brought up the fact.

THE COURT: He asked significant enough.

MR. WILLIAMS: She said she heard all of the stuff about life in prison.

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She wants to know what it will be like.

THE COURT: You have already explained that. It is irrelevant.

MR. WILLIAMS: She has committed herself to only voting for life if she can know what prison life is like.

MR. SATZ: No.

THE COURT: It is the manner in which Witt is being asked.

MR. POLAY: I disagree.

Respectfully, people harbor these thoughts.

This is why I have to be able to ask the questions on voir dire in a death case.

They harbor the thought.

They think they are going to a country club.

That's how they think.

I need to know. I don't want to support these people watching TV, getting treatment.

MS. MCCANN: Significant enough becomes the answer I don't know whatever the conditions.

THE COURT: I agree.

MR. WILLIAMS: Before -- can we ask Ms. Hoyos, she brought it up, do you need to know what the legislator for a person serving

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life before you consider life? If she does, if she's pre-qualified, life or no life.

THE COURT: Do it privately.

MR. POLAY: Your Honor is prohibiting me from saying do you think life in prison is significant, is a significant enough punish?

THE COURT: If you want to put it that way, yes.

MR. SATZ: No.

Significant. Not significant enough.

THE COURT: He asked whether I was precluding him from asking that question, which includes significant enough.

MS. MCCANN: If you had to do a separate voir dire of Hoyos, of what she wants to hear before she can render her verdict in this case, that question will be asked of all 47 jurors sitting here.

They all have to be -- we are opening the door.

THE COURT: He's not asking that.

MR. WILLIAMS: Doing her separately.

MS. MCCANN: I'll see where this is.

MR. POLAY: Allow me to ask whether or not it is a significant penalty?

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MR. SATZ: Yes.
THE COURT: No problem with that.
MR. POLAY: Other okay.
THE COURT: Let's see how the rest goes.
(Sidebar concludes.)
MR. POLAY: Ready?
Slow process.
There you go.
Do you think life in prison is a significant penalty?
SUSAN MOON: For murder, yes.
MR. POLAY: Murder in the first degree?
SUSAN MOON: Yes.
MR. POLAY: Do you think it is a significant penalty?
APRIL LEGONS: It is.
MR. POLAY: Ms. Diaz, hi.
Do you think life in prison is a significant penalty?
ANA MORRA: Yes, it is.
MR. POLAY: Any reservations at all of anything brought up?
ANA MORRA: No.
MR. POLAY: Ms. Balentine, am I being thorough?

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LAUREN BALENTINE: Yes.

MR. POLAY: Do you believe that life in prison is a significant penalty?

LAUREN BALENTINE: Yes.

MR. POLAY: You agree we are not given great choice?

LAUREN BALENTINE: Yes.

MR. POLAY: Ms. Lynce, do you believe life in prison is a significant penalty?

LESLIE LYNCH: I do.

MR. POLAY: Any hesitation at all, reservations, questions about thing that have come up?

LESLIE LYNCH: No. I don't believe there is a tremendous quality in life in prison. No, I think it is tremendously significant of a penalty.

MR. POLAY: You disagree with some other people?

LESLIE LYNCH: I do.

MR. POLAY: Do you believe it is a significant penalty?

NURIAN KREFFT: Yes.

MR. POLAY: Hesitations, reservations?

NURIAN KREFFT: No.

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MR. POLAY: Do you believe life in prison is a significant penalty?

JOSE MOLINA: I do.

MR. POLAY: Reservations, hesitations, questions about anything?

JOSE MOLINA: No.

MR. POLAY: Mr. Hayles, life in prison, death, not great choices, you would agree?

PAUL HAYLES: Yes.

MR. POLAY: Not talking about lobster or steak.

Any problems with things that have come up? Any questions?

PAUL HAYLES: Just the severity of the case, what transpired, I don't know about it.

MR. POLAY: You will know.

You will find out.

Do you think life in prison is a significant penalty?

PAUL HAYLES: For the crime committed, yes.

MR. POLAY: Ms. Bachus, do you believe life in prison is a significant penalty?

CYNTHIA BACKUS: It can be. Can almost be worse if they have a long life left ahead of them and they feel remorseful for what they

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did, it would being worse.

I don't know either choice would be easy.

They are significant.

I would say none of us, anyone chosen to be on the jury, that would be the most significant decision, either way.

MR. POLAY: I think I alluded to that.

No choice you can make, in society.

That is more important. Because it is only you as a jury that makes this decision.

The president of the United States can't do this. Judge can't do this. Only you.

Everyone understand that?

If you think about it, you literally have the power of life or death.

Everyone understand that?

That's why we go over the concepts.

I'll keep going over some new principles as well.

It is like the old Roman emperors of old. Thumbs up or down.

That's what the law provides.

That's the decision that you make.

That's how significant it is.

Not just I'll do this or that. It is

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pretty significant.

MR. POLAY: Mr. Dean, any questions?

DAVID DEAN: No.

MR. POLAY: Do you believe life in prison is a significant penalty?

DAVID DEAN: Yes. Yes.

MR. POLAY: That was a definitive yes.

Ms. Beard, do you believe life in prison is a significant penalty?

VANESSA BEARD: I do.

MR. POLAY: Everybody says yes, yes, yes, yes.

I don't mind your telling me no. I want the truth.

If you want to say something, say it.

Mr. Runge, how about you?

Do you believe life in prison is a significant penalty?

BRIAN RUNGE: Yes, I can go either way.

MR. POLAY: When you say you can go either way?

BRIAN RUNGE: I believe both are significant.

MR. POLAY: Okay.

I would agree with you. How's that.

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Ms. Acher, how are you doing?

MONIQUE ACHER: Great.

MR. POLAY: Do you believe life in prison is a significant penalty?

MONIQUE ACHER: Yes.

MR. POLAY: Any questions or anything you want to bring up?

I'll be here a while, trust me.

MONIQUE ACHER: Not yet.

MR. POLAY: Ms. Tim Kee?

SHANNON TIM KEE: I believe both are significant.

MR. POLAY: Mr. Franklin?

WILLIAM FRANKLIN: There is a guy that used to work out at the gym where I work out.

MR. POLAY: Before you talk about somebody else, if you can, if you can answer my question?

WILLIAM FRANKLIN: The answer is it is not significant for some people.

I was going to describe why I know that, because I met a guy. He told me he didn't care about going back to prison or not.

MR. POLAY: You didn't speak to a guy doing life for murder. You met him at a gym.

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You didn't meet somebody doing life for murder; is that correct.

WILLIAM FRANKLIN: Probably not. No.

MR. POLAY: If he was doing life for murder, for first degree murder, he wouldn't be at your gym. Follow what I'm saying?

WILLIAM FRANKLIN: Yes.

MR. POLAY: I'll move on.

Mr. Riggio, how do you feel about the penalty of life in prison? Think it is significant?

MICHAEL RIGGIO: Yes.

Both bad decisions.

Both bad.

MR. POLAY: Ms. Morris --

BELITA MORRIS: Yes, I do?

MR. POLAY: I was going to say how you doing?

BELITA MORRIS: Fine, thank you.

MR. POLAY: You all seem tired.

Any questions, anything in your mine, anything you want to bring up?

BELITA MORRIS: No.

MR. POLAY: You believe life in prison is a significant penalty?

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BELITA MORRIS: Yes.

MR. POLAY: Mr. Lang, how about you? You seem hesitant.

ROBERT LANG: I disagree.

MR. POLAY: You don't think it is a significant penalty?

ROBERT LANG: No.

MR. POLAY: That's okay. Anyone else feel that way, let us know. Why don't you think it is a significant penalty?

ROBERT LANG: I don't know the facts or anything yet. Family members that have lost people, that are suffering. Just not happy with the situation.

MR. POLAY: I'm not asking about them. I'm asking you. Do you believe life in prison is a significant penalty?

ROBERT LANG: No, I don't.

MR. POLAY: What you are telling me is that you think in a first degree, premeditated murder, death is the appropriate sentence?

ROBERT LANG: Yes.

MR. POLAY: So given what you heard from the Judge, you made up your mind, you think

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death is the only appropriate penalty?

ROBERT LANG: After I get all of the facts together, that's what I would be thinking.

MR. POLAY: I appreciate the candor.

Only two choices.

You said it yourself.

Well, life isn't significant, isn't a significant penalty.

Therefore, the other choice is death.

You feel more comfortable with that?

ROBERT LANG: Yes.

MR. POLAY: You feel a lot more comfortable with death?

ROBERT LANG: Yes.

MR. POLAY: Fair enough.

Mr. Gervolino, any questions, concerns, anything you want to bring to my attention?

CHARLES GERVOLINO: Not at all. I like the life. Wouldn't bother me at all. Again I want to hear the law. I'm not against life. I think it is something that he deserves at this point that I can think of now because I don't know everything?

MR. POLAY: You grew up with a dad that was an officer?

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CHARLES GERVOLINO: Yes.

MR. POLAY: You heard the presumptions and everything.

CHARLES GERVOLINO: Yes.

MR. POLAY: Mr. Evans, any questions, anything thing come to mind now?

ROMAR EVANS PEDRO: No.

MR. POLAY: Do you think life in prison is a significant penalty?

ROMAR EVANS PEDRO: Yes, I think it is a significant penalty, even with, when you look at it, listening to a lot of what the other potential jurors have on their views on life in prison, at the end of the day, there is still a responsibility to whomever is incarcerated to not have them subjected to cruel and unusual punishment. So with that said, yes, I would still expect they would have to eat and do things to not be subjected to that because it is constitutionaly protected. However, it is still, it is still one of two bad choices.

MR. POLAY: Mr. Cooper, how about you, sir?

KENJAHSAH COOPER: I think life is pretty significant. Only way I can see it being any more worse is if you combine life with solitary

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confinement.

MR. POLAY: Ms. Parker, anything, any questions, anything come to mind?

GEORGINA PARKER: No.

MR. POLAY: Feel life is a significant penalty?

GEORGINA PARKER: Yes.

MR. POLAY: Any questions, anything?

BOBBIE SIMS: No.

MR. POLAY: Do you feel life in prison is a significant penalty?

BOBBIE SIMS: Yes, it is significant.

I have to speak on a couple things other jurors have said, about inmates. I was not asked what I did before. Post office.

MR. POLAY: I know what you did before. I was going to get into that.

BOBBIE SIMS: I was a corrections officer at a maximum security --

MR. POLAY: Judge --

THE COURT: I think that --

BOBBIE SIMS: Okay. It is like, okay, I'll leave it alone.

MR. POLAY: I know what you're going to say.

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BOBBIE SIMS: Okay.

MR. POLAY: You felt strongly enough you wanted to voice your opinion?

BOBBIE SIMS: Yes.

MR. POLAY: I get it.

Ms. Miller?

JULIA MILLER: I think it is significant. Life is significant.

MR. POLAY: I don't know. I am asking you what you know?

JULIA MILLER: I am telling you.

MR. POLAY: What you feel.

JULIA MILLER: I think it is significant.

MR. POLAY: You laughed at that.

It is funny.

BOBBIE SIMS: It is really not.

MR. POLAY: I know you want to speak so badly. But I can't.

BOBBIE SIMS: I understand.

MR. POLAY: Mr. Howard, life in prison, is it a significant penalty to you?

WILLIAM HOWARD: Yes, it is, depending upon the whole circumstances that lead up to this.

MR. POLAY: I'm not talking about the circumstances right now. I am talking about

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just the penalty itself.

Do you think it is a significant penalty?

WILLIAM HOWARD: Yes, it is.

It is very serious.

MR. POLAY: It's not fun?

WILLIAM HOWARD: It is like being dead. Dead.

MR. POLAY: That's why we're talking about this.

Mr. Valdez, how are you?

RIGOBERTO VALDES: Good.

Yourself?

MR. POLAY: Peachy keen.

Any issues you want to discuss of anything that came up?

RIGOBERTO VALDES: No. Learned mitigating and aggravating for sure.

MR. POLAY: You will hear that so much.

RIGOBERTO VALDES: Based upon that, I don't want to say too much. Sometimes you're cutting people off when they are trying to give an opinion when they ask.

I won't say too much there, with all due respect.

MR. POLAY: I had to?

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RIGOBERTO VALDES: Yes.

MR. POLAY: There is a reason.

RIGOBERTO VALDES: Yes.

To follow it up, it is a significant punishment. I have lost two parents in my life time, the last ten years.

I can basically compare someone in hospice, without knowing they are going to their death, if you don't have the right facts and information, if you can follow that. Or you can be in a regular hospital, under bad care, and a nurse telling you you should say good bye to your father because he doesn't have much time to live anyway. At that point, a doctor, second opinion, comes in and tells you, if you don't put your dad in intensive care, he will die.

He should be in intensive care.

Going back to aggravating and mitigating, basically the same thing, if you don't have the proper information, informed, you cannot make the right decision.

You will be making two bad decisions or good and bad decision, based on what you will hear from two sides.

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That's how I look at it and how I would weigh it. I would consider that life is a punishment, a significant punishment. I would also look at the other side and consider what the aggravators, aggravating factors are before I make an informed decision.

MR. POLAY: Do you think life is precious?

RIGOBERTO VALDES: Yes. Probably the hardest decision I have had to make personally, with my own experience with my parents. You know, sometimes it bothers me because you think, you know, did I do the right on wrong thing. Not about right and wrong.

It is about making an informed decision of what they want to do.

You can have some people go to prison, some people decide cases.

I don't want to live life in prison.

I would rather die.

That's a personal decision.

MR. POLAY: That's a decision they make, not what a jury makes?

RIGOBERTO VALDES: Exactly.

He would make that decision, that's what he wants you to plea for, for life.

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RIGOBERTO VALDES: That's understandable.

MR. POLAY: I can't go there. I understand what you're saying?

Do you think you're a merciful person?

RIGOBERTO VALDES: Yes.

MR. POLAY: Mr. Bloom, anything you want to bring up?

PETER BLOOM: No.

MR. POLAY: Life in prison, a significant penalty?

PETER BLOOM: Very significant.

MR. POLAY: I mine, do you believe life in precious?

PETER BLOOM: Yes.

MR. POLAY: Do you consider yourself to be a merciful person?

PETER BLOOM: Yes.

MR. POLAY: You hesitated there a second. That was kind of interesting.

I said is life precious. You said yes.

Reason for the hesitation?

PETER BLOOM: No.

I am just waking up.

I don't know mercy should be, being merciful should be a part of the questioning.

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Being asked to do it.

MR. POLAY: Well, that's interesting.

Do you think mercy should be earned or bestowed?

PETER BLOOM: No, there will be facts that we have to follow and hear.

I don't know mercy has anything to do with it, either case, life or, you know, the death penalty. Neither one is good.

To me, they are both bad.

The quality of life in prison is not good. You know, the death penalty is not good, either.

MR. POLAY: I guess, obviously, everyone knows I'm advocating for life. That's what I am doing here.

Not great choice.

PETER BLOOM: Just saying being merciful, doesn't make you go one way or another, in jail is not necessarily being merciful. Death is not being merciful.

MR. POLAY: Mr. Shick, life in prison a significant penalty?

JOEL SCHICK: Yes, sir.

MR. POLAY: You believe that?

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JOEL SCHICK: Yes.

MR. POLAY: No issues came up?

JOEL SCHICK: No.

MR. POLAY: Do you believe life is precious?

JOEL SCHICK: Absolutely.

MR. POLAY: Do you consider yourself a merciful person?

JOEL SCHICK: Yes.

MR. POLAY: Ms. Concepcion, how are you?

SUSAN CONCEPCION: Good.

MR. POLAY: Life in prison, significant penalty to you?

SUSAN CONCEPCION: Yes.

MR. POLAY: Any hesitation, anything in the back of your mind, life in prison?

SUSAN CONCEPCION: No.

MR. POLAY: Ms. Kaposi, life in prison --

THERESA KAPOSI: I have a question. I would like to digress.

MR. POLAY: Related to the case?

THERESA KAPOSI: Absolutely.

What is a typical day, week, month, year like for somebody in prison?

MR. POLAY: We are not allowed to answer

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that. I am not allowed to answer that.

THERESA KAPOSI: Because? Because why?

MR. POLAY: I'm not allowed to answer that.

THE COURT: The bottom line, that's an irrelevancy in determining the appropriate sentence.

Your sentence has to be predicated strictly on whether or not the State has been able to establish their aggravators beyond a reasonable doubt and of course the jury has to find that unanimously. The Defense gets to present mitigating circumstances. And you have to determine based upon the law and what I give you.

As far as the law and steps you have to go through, whether, in your consideration, after considering all of that, whether you can consider both sentences before making your decision. It is based upon that.

You will not, under any circumstances, hear what the conditions are or how anything goes.

You can sit here, ask me the same questions, in terms of the other way around.

What is involved.

Those aren't issues to be decided.

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That's why Mr. Polay can't go into it. That's why Mr. Satz did not go into it.

That's why when we had our individual getting ready to say all of that, I had to cut it off.

I appreciate that.

That's the reason why.

THERESA KAPOSI: You mentioned, is it going to be a life of luxury or penalty thing. I am in the middle.

MR. POLAY: Do you think life in prison is a significant penalty?

THERESA KAPOSI: Yes.

I am in the middle. I want to hear the whole can of worms.

MR. POLAY: Mr. Croskey, think life in prison is a significant penalty?

RONALD CROSKEY: Uhm.

MR. POLAY: Remember, we have two choices? Lethal injection and life in prison.

RONALD CROSKEY: Well, I have a question.

MR. POLAY: Okay?

RONALD CROSKEY: We are here to make a decision on how we feel about it?

MR. POLAY: About what?

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RONALD CROSKEY: Life in prison.

MR. POLAY: No.

Don't get to make a decision on that.

I am not sure what you're trying to ask.

RONALD CROSKEY: I'm trying to figure out why it is important to know would it be merciful or not.

Not making a decision based upon it, how we feel.

Making a decision based on aggravating factors and mitigating circumstances.

MR. POLAY: I am asking you this in a vacuum.

Life in prison, is that a significant penalty?

RONALD CROSKEY: Yes, life in prison, then you say I can't tell you --

MR. POLAY: Do you think death is a significant penalty?

RONALD CROSKEY: Yes, I think it is.

I was trying to figure out how you wanted to know how we felt in our heart.

MR. POLAY: I'll get to that.

That's a great question.

I am not trying to ignore you now.

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You asked a question so good. Basically, what Mr. Croskey is asking is that every juror here makes their own personal decision. This isn't a group decision. This isn't like you all have to agree. This is where, in that case, you make your own personal, morale decision after you hear that.

Everyone understand that? Not a group decision.

It is your own decision.

The only way my client gets death is if you all agree to kill him. If one person says I want life, that's the end of it.

Life. That's okay.

Get up. Hit the button.

Done.

That's it.

That's why I asked, you know, if you believed that you're a merciful person and believe life is precious.

We are dealing with a pretty important decision here.

Most everybody would agree with that.

I want to know.

I want to know if my client has a chance to

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live.

It couldn't be any more important than that.

I am bearing my sole.

I am telling you everything.

I want to know what you think. That's it.

Listen, the people at this table want my client dead. They advocate for that.

I want my client to live. I can't be any more forthright than that.

That's why I ask these questions.

Make sense?

RONALD CROSKEY: I'm good.

THE COURT: This is a good time to take a quick break.

We will take a quick break and continue.

(Exit venire.)

(Recess had.)

THE COURT: All right, Mr. Polay?

MR. POLAY: May it please the Court, counsel, I bet you everybody is tired. I know, I'm still here.

Want the good or bad news?

The bad news is I'm the last person to speak to you.

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You know what the good news is?

I'm the last person to speak to you.

Okay. In any event, let me move on.

I want everyone to understand, I was just touching on this subject before.

And I think it was with Mr. Croskey, asked me some interesting questions.

Why are certain things important.

I'll tell you this. This is more than just a weighing process. And everyone here, a lot of people are just saying weigh the aggravators and mitigators. It is a little more than that.

What I mean by that is everybody here brings in their own life experiences.

Remember I was talking earlier we don't have a homogonous society. Everybody has their own opinions.

Things of that nature.

Really what we do here is everybody gives their own weight to mitigation or to aggravation.

Everyone follow what I am saying?

You determine a weight.

We bring in people, not computers. If we had a computer, oh, we made a decision.

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That's why I say each and every one of you makes your own personal, morale decision when dealing with the death penalty.

It is not a situation we say, okay, it is 6 to 2. This is not a baseball game.

Everyone get that?

Really what I'm saying is one mitigating circumstance can outweigh 20 aggravators.

Everyone get that?

Make sure you understand that.

The Judge is going to instruct you you determine, your own weight. It is not a number. It is not a numbers game.

That's why I ask you from your heart. It was a great question. Why do I ask from your heart?

That's where your decision is made.

You know, you make a decision not only with your head but your heart. You are the one that gives weight to certain things.

And you make that determination as to whether or not someone lives or dies. That weighing process comes from yourself. Not from your neighbor. Not from juror 11 or 10. It comes from you. Each of you make your own

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decision.

That's why this is kind of very very different.

Because in a guilt phase, you know, when you determine whether or not somebody is guilty or not, every juror has to agree.

Every single juror has to agree.

Everyone knows what a unanimous decision is.

So in order to sentence someone to death, 12 people have to unanimously agree that he deserves to die. Life is not worth living for him.

Unanimity.

When Mr. Croskey asked a question why am I asking this, that's the best question I have ever been asked. Because each and every one of you come through the door, we all have opinions. Opinions are like noses. We all have them. I want to see who was listening.

These decisions that you make really come from yourself. You know, you have to look within yourself, your own personal, moral determination. That's really what it is.

Nobody can share that.

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Let's face it. It is something that is in each and every one of us.

We all have that.

That's why I was asking certain people if you believe life is precious, do you consider yourself a merciful person. Because, you know, this is the, your own personal, moral decision.

This weighing process you make is done with yourself. You don't ask juror number 2, hey, how much weight are you giving this?

It is your own feelings. Like I said, you never have to impose death.

Everyone hear that? The law is satisfied with a life sentence.

And the Judge will instruct you even if the aggravating factors outweigh the mitigating circumstances, you can legally sentence him to life.

Everyone understand that?

So the law is satisfied --

MR. SATZ: Objection as to the law is satisfied. The law is the law. The law doesn't have an opinion.

MR. POLAY: Judge, we agreed to that.

MR. SATZ: No, we did not.

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MR. POLAY: It was favored.

MR. SATZ: No. The law doesn't have an opinion. The law is the law.

MR. POLAY: Okay. It is okay to vote life. Like I said, we stand at different sides of this football field. I want you to understand that.

I'm here, advocating for my client's life. State is advocating for his death.

There is a bright line of demarcation.

It doesn't get any bigger than this.

So any problems with any concepts in the first group?

Nobody has any questions?

ANDREA CASTANO: I have a question.

Judge is saying specific steps.

We have to decide based upon the specific steps he tells us.

That' what we have to make the decision on.

MR. POLAY: There are steps.

He will give you a packet of the law.

That's why I'm going over certain things.

You do a weighing process.

Aggravating circumstances can from the case.

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I can present mitigating circumstances. Great question.

What you do is you determine the weight. You, yourself, personally, morally, you make your own judgment, you make your own determination.

Like I said, if there is 57 aggravators and one mitigator, that one mitigator can outweigh all of the aggravators.

You vote your conscience, your own personal, moral compass, in effect. That's what you do.

ANDREA CASTANO: Steps aren't like if it is this, it means this or do certain things.

MR. POLAY: The law says you do a weighing process. There is more. There is law that will tell you whatever decision you make, that's your decision. You make your own personal decision.

You will hear the Court tell you that, you know, mitigating circumstances outweigh the aggravators, you have to sentence to life.

You will hear the Court say even if the aggravating factors outweigh the mitigating circumstances, you can sentence him to life.

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Everyone get what I am saying? You know, that's what it is.

You make your own moral judgment. You make your own determination as to what weighs what.

I mean, it is an individual process.

That's why no two people are ever going to agree. Remember I came out with the one statement, we don't live in homogonous society.

We don't want to. We would all be listening to the same thing, eating the same food.

Everyone has different opinions. With the different opinions come different backgrounds.

You make your own determination.

That's what it is.

Everybody with me?

I'm not confusing you? That's good.

Anybody in this group have questions? Anything? Nothing? No? Anybody here? No? Okay.

Ms. Stone, hi.

JUNE STONE: Hi.

MR. POLAY: Everything all right with you so far? Any questions?

JUNE STONE: No.

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MR. POLAY: Any problems with any of the concepts we were discussing about aggravators or mitigators?

JUNE STONE: No. Of course, when we get them.

MR. POLAY: You will know what they are?

JUNE STONE: Yes.

MR. POLAY: I'll get into mitigation.

I want to ask you this question. Do you think the death penalty is the appropriate penalty in all premeditated murders?

JUNE STONE: No.

MR. POLAY: We are not talking about this case. A case down the hall.

JUNE STONE: Okay.

MR. POLAY: A guy kills somebody. Not self-defense. Not heat of passion. Not duress.

Meant to do it. Premeditated.

Killed an innocent victim.

What are your feelings about the death penalty, only appropriate penalty for a guilty murderer of that innocent victim?

MR. SATZ: I object. It is the same thing as this. You can't ask the juror to give an opinion without any facts, without any

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aggravating circumstances, without any mitigating.

THE COURT: Rephrase it.

MR. POLAY: I'll need time and to go sidebar a while. I'll be a while.

(Sidebar had.)

MR. POLAY: I am asking a hypothetical. It is an extension of the Witt that I believe I should be able to ask each and every one of these jurors.

I am asking a hypothetical about premeditation that deals directly with an extension of the Witt question. This is the Morgan Colorado method. I don't see what is objectionable.

MR. SATZ: He can certainly ask in all first degree murder cases or premeditated would you automatically vote for death. I have no problem with that. That's the same thing we all asked.

But to give a fact pattern, I object to that. It should be would you automatically vote for death.

MR. POLAY: Wasn't my question and wasn't my answer. Wasn't what I said.

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MS. MCCANN: Defense counsel to phrase it regarding a case down the hall, when there is an innocent victim, premeditated murder, that is trying to set forth in fact, getting the jury to commit.

THE COURT: This is the Colorado method.

MS. MCCANN: In disguise.

THE COURT: He didn't hide it. Said pursuant to Morgan.

Answer is no, you won't ask it that way.

MR. WILLIAMS: Can you phase the question this way? Can you envision a premeditated murder where life might be an appropriate sentence? That's not getting them to commit. That's getting them to think with their own mind.

MS. MCCANN: Then they go through the door and he's bound on it. What can you envision. What do you envision.

THE COURT: We are sticking with what the three Witt questions are. I appreciate it. I read all of the cases. You can take that, if he is convicted, well, if he gets the death penalty, fine.

Take it to the Supreme Court.

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MR. POLAY: I just need a record. Can you do me a favor?

I will respect your ruling.

I understand that.

Can you give me five minutes to make a record now?

THE COURT: How? If you ask them the questions, I have to shut every one of them down.

MR. POLAY: Without the jury here, I want to speak to the court reporter.

I will respect your ruling.

(Sidebar concludes.)

THE COURT: You guys want to go home? Have you had enough?

9:30 tomorrow morning.

(Exit venire.)

JUDICIAL ASSISTANT PAM COE: Ready?

THE COURT: I am afraid to ask.

JUDICIAL ASSISTANT PAM COE: Since you broke, Dohn, you were right. It was the gentleman. Robert Lang, number 55, is the individual who called me a couple times about being nervous, having the runs, blah, blah, blah, blah, blah. He made it a point to call

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me at about 12:10 to say he's still very nervous and uncomfortable.

May want to call him in.

THE COURT: Let's see if we can find him.

I think we can find him.

MR. POLAY: I think we got him for cause anyway.

THE COURT: What did he say?

MR. WILLIAMS: He started saying, this afternoon, life is not a significant penalty.

He started getting into, before Mr. Polay shut him down, he was concerned about the families, memories of the victims, whether they believe life would be an appropriate sentence.

Finally said death is the appropriate sentence in the case.

THE COURT: Do you have something different?

MR. SATZ: He did say what Dohn and Mitch said. At the end, he said he's leaning that way.

I was going to ask the Court to let --

THE COURT: Did we find him?

DEPUTY: They have gone.

THE COURT: We can deal with him in the

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morning.

MR. WILLIAMS: Plus the anatomical problems he's having.

THE COURT: Let's ask him in the morning, first thing.

All right, Mitchell, give us what your seminar had to say.

MR. POLAY: Judge, what I intended, so the record is clear, I am asking each and every one of them, asking each and every juror individually, I was going to ask them a hypothetical about another case.

Basically, what I would definitely do is ask each and every juror a question. Basically, what it is, is lay down, we will talk about a case down the hall, hypothetically, a case in another jurisdiction.

Say I have a client, a person committed a murder. It is not a case of self-defense. Not defense of others. Not heat of passion. Not duress. You and eleven other jurors decided, beyond a reasonable doubt, that the defendant acted intentionally and after deliberation, meaning premeditation, knew what he was going to do, meant to do it and did it, what are your

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feelings about the death penalty as the only appropriate penalty for that guilty murderer of that innocent victim.

My questions would, you know, be a bit divergent here and there. My argument is that I should be able to ask (A) these hypotheticals, backed by Witt. It is really an extension of Witt. Backed by Morgan and the Johnson case I gave this Court.

You know, that was the sum and substance of, you know, what I wanted to ask, Judge.

Really what it is, and the Court knows, it is not just a hypothetical. What it is, you want to get people to speak. And you know that. I know that.

I am trying to get somebody to say I need to know more. What more do you need? Then I go into other things, i.e, hold on, it is not a murder where he was insane. Not talking about mental retardation and on and on and on.

That's really where I'm going.

That's what I wanted to tell you.

But if the Court will preclude me from doing it, I'll abide by your ruling.

That's it.

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MR. SATZ: Pretty nice of you.

THE COURT: Question.

MR. POLAY: Yes?

THE COURT: You ones said other judges in this state are doing it?

MR. POLAY: Yes.

THE COURT: I sure would like to know who.

Mitch, I understand exactly what you are trying to do. I understand it.

If I were sitting in your position, I would try to get away with it.

But you are really, in a sense, getting a commitment based upon the set of facts and then opening the door to so many other things that are totally inapplicable.

Of course, we have the case in Florida that was case specific.

And there was no question about that.

MR. POLAY: I agreed with that.

THE COURT: But I read all of those cases. And I think you're, well, let's just say we have different interpretations of what Morgan and Johnson said. You know, I just didn't think, I still don't think that they support that position.

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But it is different.

This is a whole new world we're dealing with in terms of Florida statute.

You know, if the jury makes a decision that it is something other than life, only one, then raise it with the Supreme Court.

MR. WILLIAMS: The issue we want to make sure is crystal clear, for the record, the hypothetical is the jury understands it is a premeditated murder.

Often times, people say well, if it is self-defense or -- we want to make sure it is crystal clear this is a premeditated murder.

In this case, we won't say it. In this case, it is established it is a premeditated murder.

THE COURT: I have said it to the jury numerous times.

MR. SATZ: I don't have an objection if Mr. Polay wants to say to the juror would automatically vote for death if it is a pre-meditated murder.

MR. POLAY: Sure.

THE COURT: Nothing wrong with that.

MR. SATZ: That's what it is.

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That's what he's been convicted of.

I don't have a problem with him asking would you automatically vote for the death penalty it is premeditated.

MS. MCCANN: And that goes along with the Calloway decision.

MR. SATZ: If that's the question, I'm okay with that.

THE COURT: I understand exactly what you're asking. And I am just not buying it yet,

MR. POLAY: Okay.

Judge, obviously, I don't accept your ruling.

I object. I think I should be able to ask each and every one of these jurors this hypothetical that I would like to, which is really in steps and then strips, more or less.

MR. WILLIAMS: For the record, go through the steps, what the strips would be.

We will accept their thing, not realizing, because that doesn't satisfy what we want to do.

MR. POLAY: As I said, I would be asking a hypothetical, and make sure that they

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understand it is not this case.

What I would, what I'm prepared to do is say this person killed, in effect, summarizing, in effect --

MR. WILLIAMS: Don't summarize.

THE COURT: Don't summarize. Just do it.

MR. POLAY: I just did it. I will do it again.

THE COURT: For the record, why don't you just lay it all out so the record is crystal clear.

MR. POLAY: So I want to put you in a hypothetical situation. Not this case. Not this defendant. Basically, what this does is hypothetically put the jury at the point of conviction of a capital murder. What I'm doing is saying that, we're talking about a case of not self-defense, not defense of others, not heat of passion. Not duress. And then I would say, additionally, this is not a murder where the defendant was insane, not a murder where the defendant was mentally handicapped. Not a murder where the defendant was able to form a specific intent to commit the crime.

And you rejected, excuse me, also,

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additionally, not so drunk he couldn't act intentionally. Not so high on drugs that he couldn't act intentionally. After deliberation, as you see, making sure the jury knows it is premeditated murder 15 times.

MR. SATZ: That question is designed for a jury that will hear the guilt phase too.

THE COURT: Finish up, Mitch, please.

MR. POLAY: And I'm going to say despite whatever evidence you heard concerning this case, meaning aggravators and mitigators, you decided, beyond a reasonable doubt, that this defendant it was determined he acted intentionally after deliberation, knew what he was doing and meant to do it. What are your feelings about the death penalty as the only appropriate penalty for that guilty murderer of that innocent victim or victims.

THE COURT: Let me ask you this. Playing hypothetical.

You asked Juror 1 and Juror 1 says in that case I think death is appropriate. How do you then, I mean, I know what is coming next. That will be a challenge for cause.

MR. POLAY: You are exactly right.

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THE COURT: Right.

MR. POLAY: But it can't come on that.

I understand that, Judge.

That is exactly --

THE COURT: This is the Kevin theory of picking a jury.

MR. POLAY: No. No. You're the judge they don't speak about in the seminars. I'll tell you that they don't expect a judge to actually say that. They think that you will automatically, you know, accept that as a challenge.

No. You're a hundred percent correct.

What that does do -- and it was brilliant on your part, what it does for me is allows me, opens the door for me to have a communication with that particular juror as to what more do you need, going down the line.

Do you follow?

THE COURT: Let me ask you this.

If the juror says in that case death is appropriate, how are you going down the line? They have given you your answer.

MR. POLAY: I would say do you believe -- it is hard to say.

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What I would say is so do you believe that in every situation, where a defendant is, has been found guilty or you would find him guilty of premeditated murder that death is the only appropriate penalty.

THE COURT: You know how we get to that question?

You ask it.

MR. SATZ: I have no objection to that question.

THE COURT: That's. That's number 1 in Witt.

MR. POLAY: Well, posed a different way, exactly.

We don't say premeditation.

MR. SATZ: You can say premeditation.

THE COURT: I have already told this jury Mr. Hogan has been convicted of premeditated first degree murder. And I have told this panel that's in here at least three times. Now, I know they don't always listen, obviously.

MR. POLAY: Five people, Judge. I mean, you instructed life means life. Five people, "I didn't know that."

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MR. SATZ: I have a guy here who says death.

THE COURT: I think we have all been in a parallel universe. Possibly multiples.

I understand your question.

I think it is pretty clear on the record in the event it becomes an appellate issue.

I am sticking with my ruling.

MR. POLAY: If I can add one thing to the record, I would attempt to get case specific, not fact specific.

THE COURT: That, to me, sounds like a different --

MR. POLAY: Certain aggravators that aren't discrete.

THE COURT: I thought we talked about it.

MR. SATZ: Right.

MR. POLAY: I would add them into a hypothetical. It is not just one hypothetical. I would grow on the hypothetical.

Understand what I'm saying?

It's like a tree that grows. Plant the seed. I would grow on the hypothetical.

MS. MCCANN: It is like a cancer.

MR. SATZ: You can ask would you

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automatically vote if it was during a robbery?

MR. POLAY: All right.

MR. SATZ: And not consider mitigation.

It is very difficult to have people off the street who know nothing about this, and we labor in here all the time. And we argue about little things like "a" and "the".

You can't ask them in a vacuum. They don't know what we are talking about.

THE COURT: I agree with you, Mike.

MR. SATZ: If it is a non-discrete aggravator, would you automatically vote if it was during a robbery? Because it is in the information. Mr. Hogan has been convicted of that.

He can ask them that.

That's an extension of Witt, including the non-discrete aggravators.

THE COURT: You mean excluding them.

MR. POLAY: Right. I understand what he's saying. Not the HAC and CCP.

MR. SATZ: Right. Robbery. Would you automatically vote, you know, if it is in the indictment?

And you have read the indictment .

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THE COURT: Pecuniary gain.

MR. SATZ: without considering the mitigation.

THE COURT: Right.

MR. SATZ: If he asks that and they say if it is a first degree murder, premeditated, with a robbery, and I wouldn't consider the mitigating circumstances at all, I think they disqualify themselves. Because they won't pay attention to the mitigation.

MR. POLAY: Judge, those questions are coming.

THE COURT: I know they are. They will come quicker now.

MR. SATZ: Because they are appropriate questions. I would think they would come. Because they are appropriate questions, we wouldn't have any objection to an appropriate question. So that's appropriate.

MR. POLAY: Those questions are coming, Mr. Satz.

THE COURT: You made your record. I made my ruling.

MR. WILLIAMS: Can we make another record?

Can we go ahead, I move to disqualify

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Mr. Cole, 21.

MR. SATZ: Based on what he said, I agree. Mind if he comes in tomorrow morning, ask him.

That he would automatically vote for death.

MR. WILLIAMS: He already said --

MR. SATZ: I want to confirm it for the record. I have a client, too.

MR. WILLIAMS: I know. But he said it.

THE COURT: Fair enough. We will deal with those first thing in the morning.

MR. POLAY: Okay. Thanks, Judge.

(Discussions held off the record.)

THE COURT: Back on.

MR. POLAY: One more thing.

Judge, one of the reasons why, you know, I wanted to put this on the record is that, obviously, I want to make sure that it is memorialized.

If you remember, years ago, we filed Ring motions that we knew would be denied. They were denied.

Ultimately, because they were filed, we had a new sentencing hearing because of that.

It was preserved.

I want to make sure everything is

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preserved.

Because you don't know what will happen.

THE COURT: No problem.

(Proceedings conclude for the day.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 12th day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME XV
PAGES 1412 - 1572

Fort Lauderdale, Florida
October 11th, 2018
9:40 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 11th, 2018, commencing at 9:40 a.m.

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THEREUPON, the following proceedings were had:

THE COURT: Let's start.

Okay.

(Enter Larry Cole.)

THE COURT: Good morning, Mr. Cole.

Mr. Satz?

MR. SATZ: Mr. Cole, we asked about the death penalty. Judge Backman asked everybody if you would automatically vote for death. You indicated no.

Would you automatically vote for life? You said no.

You agreed to look at the aggravating factors and mitigating circumstances before you made your decision.

Has your answers changed.

LARRY COLE: Right, what I answered to those is like in any murder case.

MR. SATZ: That's what it was designed for.

LARRY COLE: In any murder case, yes.

As we talked through this more and more, I moved down the football field. Yesterday, I heard it was premeditated. I hadn't heard that the whole time we have been in here.

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THE COURT: I only mentioned it three, four times.

LARRY COLE: I didn't remember hearing that until yesterday.

That threw me.

MR. SATZ: You feel, now that you know it is a premeditated murder, you feel you couldn't consider life?

LARRY COLE: I don't think I can go another way.

MR. SATZ: You couldn't consider life.

LARRY COLE: No.

MR. SATZ: Thank you.

MR. POLAY: No questions.

THE COURT: We'll give you back your card. You can go back to the jury room. They will process you out. On behalf of all of us, I can't tell you how much we appreciate the fact you have given your time and that you were willing to serve.

MR. POLAY: Right.

(Exit Larry Cole.)

THE COURT: Next is Lang, 55.

(Enter Robert Lang.)

THE COURT: Good morning, Mr. Lang.

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ROBERT LANG: Good morning.

How are you, sir.

THE COURT: Talk to us. Pam says you have some issues you wanted to discuss that might affect your being with us.

ROBERT LANG: Well, I don't feel comfortable being on the jury.

I am kind of nervous every day.

I guess maybe that's part of it. I have lunches which are getting expensive. I have spent about $23.

I am trying to eat a little bit. That's costing, like three days, $23, $24. It is adding up.

Extra money in the gas tank. It is expensive. Cheapest I can find if $6, $7 a day for lunch.

THE COURT: Good luck with that.

ROBERT LANG: Half a sub sandwich and a bottle of water. It is kind of adding up.

THE COURT: That's affecting your financial well being?

ROBERT LANG: A little bit, yes.

THE COURT: Mr. Satz --

ROBERT LANG: I came from a drive from

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Hallandale, all the way to here.

MR. SATZ: Good morning. What you're describing, your nervousness and your concern about your lunches are going to maybe cause you not to be able to concentrate and may affect your ability to be fair and impartial?

ROBERT LANG: Yes.

MR. SATZ: Thank you. Nothing further.

MR. POLAY: No questions.

THE COURT: Tell you what. We will give you back your card. Send you back to the jury room. They will process you out. On behalf of all of us, I really can't tell you how much we appreciate the fact you were here and willing to participate.

That's what makes the system work.

Thanks again. Now you can go back to work.

ROBERT LANG: Yes.

(Exit Robert Lang.)

JUDICIAL ASSISTANT PAM COE: Runge is late, had issues yesterday.

THE COURT: Mitch, what are we going to do?

MR. SATZ: Do we have his phone number?

JUDICIAL ASSISTANT PAM COE: I do. I had no messages.

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I can go back, call him.

I'll do a quick check and make a phone call.

MR. POLAY: If you don't mind waiting a few more minutes.

(Recess had.)

JUDICIAL ASSISTANT PAM COE: He's here.

THE COURT: Let's bring them in.

(Enter venire.)

THE COURT: Good morning, ladies and gentlemen.

Welcome back.

Before Mr. Polay continues, I just want to cover two things I have neglected to do since the beginning of your participation with us.

The first one is that, obviously, because you know that I have put on that white, annoying noise, it is when I have to meet with the lawyers and discuss various things that have absolutely nothing to do in terms of the jury. Anything we're busy talking about, you can't speculate on what that is all about. Your determinations, for those of you ultimately selected, will be to just make decisions based upon what transpired in this

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courtroom with the evidence. Not anything that we may be discussing.

Secondly, I forgot to tell you guys, as perspective jurors and even for those that make the jury, you can't have any type of communication or interaction with the attorneys. Even if it is a beautiful day and you run into one of them and you say isn't it a beautiful day, they will ignore you.

I don't want you to think it is not because they don't like you.

They are under a court order from me they can't interact with you.

In effect, you can't interact with them.

Should that happen, please understand why. I apologize.

I have should have told you this right from the very beginning.

So it never becomes a question in anybody's mind.

We are all good with that?

MR. WILLIAMS: Yes.

There is something else. Something else we discussed at the end of yesterday.

Want me to talk up there?

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THE COURT: Might be nice.

(Sidebar had off the record.)

THE COURT: Another thing.

I know I have told you this in the past, that as perspective jurors and of course for those that become jurors, you can't do any independent research into this case.

You know the name of the defendant. I guess the question I have for you -- this is something I'll ask every single day of the trial -- is whether or not you have done any independent research, whether or not anybody discussed this with you, approached you or you have read or heard anything about this.

That's my question. I know it is, if I were a lawyer, asking that question, I would be objected to because it is a compound question.

Calls for lots of different answers.

Has anyone done any research on this case? Anybody been approached on this case? Read anything on this case?

So with that, Mr. Polay?

MR. POLAY: May it please the Court, counsel.

I know you're thrilled to hear from me

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again.

Again, I want to apologize for the amount of time this takes. I want to reinforce that one thoughts that we're dealing with the ultimate decision.

That's why this takes time.

I truly hope everyone here understands that.

One thing I didn't speak about yesterday, I'll go through everybody, we're talking about premeditated murder. Does everyone understand that? Talking about premeditated murder. Not a case with self defense. Not talking about a case where it is an accident. Not talking about a case where somebody is so drunk they can't form that intent.

Does everyone follow me?

I'll come to everyone on that.

So with that in mind, I want everyone to think about this. Because some people, I'm not saying you individually, but some people say well, I could only give death, dealing with premeditation. It is not a case of self defense or things of that nature. I want you to think about that individually, if that might

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change any of your answers.

Premeditation, His Honor will instruct you on the law, may not be what you think it is.

It is what the Judge tells you it is. I want to make sure everyone understands that.

Premeditation involves a thought.

The law does not give a specific time on that thought. It is just enough to say I'm going to do this.

Everyone follow me?

Again, not to be redundant, but I have to. This is a case of premeditation. Not talking about self-defense.

Not talking about a case of intoxication.

Case of someone being totally impaired. Someone being mentally unable to make this thought.

With that in mind, I'll ask more questions.

Think about that.

Anybody else, over night, did anybody think of anything they wanted to ask me?

Anybody?

I saw one juror had their hand up.

Mr. Hayles.

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PAUL HAYLES: I need information on premeditation.

MR. POLAY: The Judge is going to, at the end --

THE COURT: Want to talk about this?

MR. POLAY: Yes.

(Sidebar had.)

THE COURT: I won't instruct the jury on premeditation.

MS. MCCANN: This is a heightened premeditation. The defendant has been convicted of premeditated murder, which a previous jury already found.

THE COURT: I'll end up doing that?

MS. MCCANN: You could. I don't think you would have to do it. You have the CCP instruction.

Just as you won't define what robbery is. They have to accept the fact this was a pre-meditated murder. It is inherently a murder.

MR. WILLIAMS: Can't fully understand, the heightened premeditation, unless you have the base.

MS. MCCANN: They will know from the facts

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of this case that the defendant went into the freezer on three separate occasions, finally executing two of the victims on the last visit. That is heightened premeditation. The fact they were locked in there.

They know from the facts.

They have to accept a previous jury found this was a premeditated murder, as they found it was an armed robbery and kidnapping.

You won't have to go through the element of kidnapping. It is not for them to determine.

MR. WILLIAMS: We are not arguing it wasn't premeditated. If you are going to define heightened premeditation, you should know what premeditation is in the first place.

These people are not the original. The original jury might get away with that. They had the instruction on premeditation and used it in the guilt phase.

They know what premeditation is.

These are, lack of a better phrase, they are virgins to the whole process. If they don't know what premeditation is, how do they judge heightened premeditation?

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THE COURT: this we can argue when we, if we ever get to that issue.

For now, if you want to say the Judge may or may not instruct you on what premeditation is, you have to accept the fact the defendant has been convicted of premeditated first degree murder, which, of course, a couple people said they had no clue what that was.

I only read it four times.

MR. POLAY: That's the problem I have. Trying this case in a vacuum. I need to explain premeditation.

How can somebody make a decision on life or death without understanding what premeditation is?

MS. MCCANN: You know what? It enures to the State's benefit of the jury to learn what premeditation is.

THE COURT: If you want to read it, you can read it. Like reasonable doubt, has to be in its entirety.

MS. MCCANN: I don't want to be on a slippery slope, next they want to define kidnapping, armed robbery, all of the other crimes the defendant is convicted of.

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If they want to voir dire on premeditation, that's okay. Premeditation is an element of CCP.

They can make the argument armed kidnapping and armed robbery are elements of the other aggravators in this case.

MR. SATZ: Then you ought to the read the instruction, then, rather than have him.

MR. WILLIAMS: You want him to read it?

MS. MCCANN: As long as it is prefaced this is what the defendant has been convicted of. If that's what you want, I think it enures to the State's benefit.

MR. POLAY: I just want, that's, you know, I think they need to understand what premeditation is.

THE COURT: They are not arguing with you on that.

MR. POLAY: For purposes of voir dire, what I really want to do is just say that, you know, this is a conviction on premeditated murder and delve into the aspect it is not self defense, duress, things like that.

THE COURT: You already said that.

MR. POLAY: I understand.

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I want people to talk to me about it.

THE COURT: You want me to define premeditated, read the instruction on first degree pre-meditated murder, I will.

MR. WILLIAMS: You can predicate that instruction of the defendant has been previously found guilty of premeditated murder. This is the definition.

THE COURT: I think I know how to do it.

MR. POLAY: One second.

MR. SATZ: the only thing we have to be careful with, we don't have objections, but starting to go into the facts of the case of premeditation.

Can only be a little bit of time, you know.

THE COURT: If I'll give them the instruction, the instruction, of course, will say, has to be sufficient to form an intent.

MR. SATZ: What I am saying is I don't want any kind of, like, what if it only took two minutes, what do you think about that?

THE COURT: That's now going into the element the jury has determined.

MS. MCCANN: This is not a contract killing

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or murder for hire, where people did it before.

THE COURT: Run it by your client.

(Discussions held off the record.)

THE COURT: If you decide what you want to do, I'll know by virtue of what you say when you go there.

If you say the Judge will define what first degree premeditated murder is, I'll know I need to instruct them right then and there.

MR. SATZ: I prefer if he tells us. And you say, folks -- I don't want it to appear that he has coaxed you into it.

MS. MCCANN: I want it on the record if you are amenable to have his client agree.

THE COURT: I already said that.

MS. MCCANN: No sign. Has to be something agreed to.

MR. POLAY: Would it be okay if I say to Mr. Hayles or any other person the Judge may or may not instruct you on premeditation when the case gets sent to the jury? Because I think it will, with respect to CCP.

THE COURT: You're right. I think you also have to tell them the issues on first degree pre-meditated murder has already been

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determined and isn't for their consideration in this case.

MR. POLAY: I think I did that.

MR. POLAY: It has been told to them. But now you're back sliding. Can you do it, you know, talking about premeditation here, I think it is, you know, it is washing away what has been instructed.

The jury needs to know that, you know, they are listening to this case, knowing that all of these convictions are intact, that there has been a previous finding. You can't under undo what has been done. They are here for a sentence only.

THE COURT: You can go with what you want to go for. I want to make it clear, if they start asking what is kidnapping, what is armed robbery, I'll interrupt and remind the jury these two convictions have already been determined by a jury. Like I did from the beginning. This is not for their consideration.

You're right. Premeditated, because they haven't been instructed at all, goes to the heightened premeditation that is required for

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CCP.

You're right. They may need to know what premeditation is to determine what a heightened premeditation is. That's fair game. But you can't start getting into what is an armed robbery, what is an armed kidnapping.

MR. POLAY: That wasn't my intent. My intent is more in the minds of explaining to this jury that he's convicted of premeditated murder. And if that changes your mind as to whether or not you can only give a death sentence, because --

THE COURT: That's fair.

You haven't asked that.

MR. SATZ: We said that before.

MR. POLAY: That's where I was going.

THE COURT: There is nothing wrong with that question.

MR. SATZ: My concern, if he starts talking about it, can only be a short period of time, what that is doing is getting into the facts of the case.

MR. POLAY: I said the law doesn't provide --

MS. MCCANN: These jurors will come back

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and ask questions. Then it puts everyone in the position of saying we can't answer that.

MR. WILLIAMS: We know the premeditation issue has reared its head with, and changed Mr. Cole's mind.

MR. POLAY: Right.

MR. SATZ: I don't have any objections if he asks the fact it is a pre-meditated murder, would you automatically vote for death. That's okay.

If he starts talking, minimizing what premeditation is, it is getting into the facts.

THE COURT: We all know it can be one second.

MR. SATZ: That's all true. If he's getting into that, saying the Judge may or may not give you an instruction, I don't want them to think this Court is holding back information from them. If he is going to be saying that, we would rather have you give the definition of premeditation, rather than leaving it up in the air.

MR. POLAY: Let me ask the question this way. If I go back to Mr. Hayles now and I say

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to him the Court may or may not give you the instruction, you may hear the instruction about premeditation, I can't, you know, without being sufficient for the Court.

THE COURT: You have to start, precede that with determination of premeditated murder. Has already been determined by a jury.

MR. POLAY: I will. Okay. I understand what you're saying.

THE COURT: Let's see where we're going.

MR. SATZ: You can't say -- you can say would you automatically vote for death.

MS. MCCANN: Would you automatically vote for death because a jury already found that it was premeditated.

(Discussions held off the record.)

(Sidebar concludes.)

THE COURT: Mr. Polay?

MR. POLAY: Mr. Hayles, let me say this. This is to everyone.

My client has been convicted of first degree murder.

I want to make sure everyone understands this.

My client has been convicted, already has

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been convicted of two counts of premeditated murder.

Knowing that, understanding that, I want to know, and I'll ask each and every one of you whether or not that would make you automatically vote for the death penalty.

I want to make sure.

People have misconceptions.

This is not a case of self-defense, duress, a case where somebody was found to be incapable of making a decision. Everyone follow me?

Does that explain anything, change your position in any way, shape, form?

MICHAEL NORTH: I always heard that term. Never understood it.

MR. POLAY: Knowing my client has already been convicted of two counts of premeditated murder, would you automatically vote for the death penalty?

MICHAEL NORTH: No.

MR. POLAY: Does everyone understand the question?

You heard that?

I'll pick it up.

Ms. Stelzer, does this change your mind in

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any way, shape or form?

BEVERLY STELZER: No.

MR. POLAY: Knowing that my client has been convicted of two counts of premeditated first degree murder, that doesn't change your mind?

BEVERLY STELZER: No.

MR. POLAY: You wouldn't automatically vote for death?

BEVERLY STELZER: No.

MR. POLAY: You're okay?

BEVERLY STELZER: Yes.

MR. POLAY: Ms. Stone?

JUNE STONE: Correct. Doesn't change my mind.

MR. POLAY: Ms. Williams?

LONI WILLIAMS: No.

MR. POLAY: Ms. Hoyos?

ADRIANA HOYOS-MARINUCCI: Repeat the question?

MR. POLAY: Knowing my client has been convicted of two counts of pre-meditated murder, would that automatically make you say I'm voting for the death penalty?

ADRIANA HOYOS-MARINUCCI: No.

MR. POLAY: Mr. Gordon?

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DAVID GORDON: No, it wouldn't make me automatically vote for death.

MR. POLAY: It is okay if it changes your mind.

I can't tell you how many times people say I'm waiting for facts.

Was it a case of self-defense or something like that. I am telling you, as we stand right here, I'm being forthright with you. That's not the issue.

Everyone get that?

Ms. Diaz, knowing that, does that change your mind in any way, shape or form?

ANA DELLIZ DIAZ: No. I need to know the consequences and facts to decide his sentence.

MR. POLAY: Knowing that, you're saying you could be fair?

ANA DELLIZ DIAZ: Could be.

MR. POLAY: Could be?

ANA DELLIZ DIAZ: Could be.

MR. POLAY: You are not sure?

ANA DELLIZ DIAZ: I'm not sure.

MR. POLAY: When you say you're not sure you could be fair, are you saying because he has previously been convicted of two counts of

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premeditated murder, you may have an issue being fair?

ANA DELLIZ DIAZ: Not that. I think we need to look at the case and see the consequences, what was in his mind to do this. Probably he was not mentally helped.

MR. POLAY: Perhaps you didn't understand what I'm saying.

I said definitively, to everybody, this is not a case where my client wasn't able to, you know, there is no issue here.

He thought about it. He did it.

We're not talking about an issue where he was too intoxicated or high on drugs. I am telling you that.

Knowing he has been previously been convicted of two counts of first degree murder, knowing it is not a case of self-defense, knowing it is not a case of duress, would that affect your ability to be fair and impartial?

ANA DELLIZ DIAZ: No.

MR. POLAY: Ms. Legons?

APRIL LEGONS: No, it won't be automatic. It is way too serious to be automatic.

You have to hear everything else.

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MR. POLAY: Knowing that, understanding he has previously been convinced, does that make you think automatically to vote towards death?

APRIL LEGONS: No.

MR. POLAY: Ms. Moon?

SUSAN MOON: I can be impartial.

MR. POLAY: Knowing that doesn't affect you in any way, shape or form?

SUSAN MOON: No. One way or the other. Can I ask a question.

MR. POLAY: Sure.

I am not sure if I can answer it.

SUSAN MOON: On the first day the Judge brought up the kidnapping charges, we won't hear that part.

MR. POLAY: You will hear that too. Those are facts you're going to hear. I want to know, as we stand here now, knowing my client is convicted of two counts of pre-meditated murder, whether or not you would automatically vote for the death penalty?

SUSAN MOON: No.

MR. POLAY: That's what it is.

If you do, that's fine.

If you don't, that's fine.

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No right or wrong answers in this courtroom other than the truth.

Mr. North?

MICHAEL NORTH: No, wouldn't affect me.

MR. POLAY: Not in any way, shape or form?

MICHAEL NORTH: No, sir.

MR. POLAY: Mr. Antenor, how are you doing?

CHERRER ANTENOR: Good.

How are you?

MR. POLAY: How did it go yesterday?

CHERRER ANTENOR: It wasn't okay.

MR. POLAY: Not so well? Okay.

You weren't here yesterday when I first got up?

CHERRER ANTENOR: No.

MR. POLAY: I'll skip you for a while, if that's okay with the Court?

THE COURT: You're doing your voir dire, not me.

MR. POLAY: Any of these concepts ring a bell?

CHERRER ANTENOR: I wasn't here when you came up.

MR. POLAY: Does everyone want me to do everything I did yesterday?

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I'll get back to you.

Ms. Castano, does it affect you, anything about knowing the fact my client --

ANDREA CASTANO: No --

MR. SATZ: I object to does it affect you in any way.

Ask the question would they automatically vote for death knowing it was two counts of premeditated murder.

MR. POLAY: That's what I was going to ask. I think I asked it 12 times.

Ms. Castano, knowing my client has been previously convicted of two counts of premeditated murder, would it affect you in any way, shape, form?

ANDREA CASTANO: No.

MR. POLAY: Mr. Pierre, how about you?

NIGEL PIERRE: Won't affect my decision.

MR. POLAY: Knowing it is not an issue of self defense, an issue if my client was drunk or high?

NIGEL PIERRE: I can be impartial.

MR. POLAY: Mr. Beeler?

RODNEY BEELER: No. Won't affect my decision.

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MR. POLAY: You can keep an only mind, knowing my client has been convicted of two counts of premeditated murder?

RODNEY BEELER: Yes.

MR. POLAY: Mr. Golder, same question.

SHALLIS GOLDER: No.

MR. POLAY: Sure?

SHALLIS GOLDER: Positive.

MR. POLAY: Ms. Starkes?

SHARON STARKES: My first thought was that I'll probably vote in the negative.

MR. POLAY: Depends upon who you're talking to. You're saying that means death?

SHARON STARKES: Yes.

My first thought. Then, Then I realized and I know I have to weigh all of the facts to decide fairly, whether it warrants life or death.

MR. POLAY: Your first impression is to say oh, my gosh, he's convicted of first degree pre-meditated murder, I'll vote towards death?

SHARON STARKES: Right.

MR. POLAY: Now you're feeling you can be more objective?

SHARON STARKES: Yes.

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MR. POLAY: Sure about that?

SHARON STARKES: Absolutely.

MR. POLAY: Okay. I take you at your word?

Ms. Armstrong, does it, would that change the way you would vote automatically, knowing what I told you?

KALENA ARMSTRONG-HENRY: No.

MR. POLAY: Ms. Balentine?

Knowing he's previously convicted of two counts of first degree murder, would you automatically vote for death?

LAUREN BALENTINE: No.

MR. POLAY: Ms. Lynch, same question.

LESLIE LYNCH: No, we've known that since day two.

No. I know that's the fact. Hasn't changed.

MR. POLAY: Again, we, we are bringing in jurors of every walk of life.

Everybody doesn't understand the law. Has to be explained. People go to law school, lawyers, we do research, read case law to understand the law.

We expect you to understand it in five minutes.

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That's why I ask the questions over again and go through the processes.

Ms. Krefft, knowing my client is convicted of two counts of premeditated murder, would that automatically make you vote for death?

NURIAN KREFFT: No.

MR. POLAY: Ms. Bachus?

CYNTHIA BACKUS: No.

MR. POLAY: Mr. Dean?

DAVID GORDON: No.

MR. POLAY: Really?

Mr. Molina?

JOSE MOLINA: No, it won't.

MR. POLAY: Mr. Hayles, you said no already.

Ms. Beard?

VANESSA BEARD: No.

MR. POLAY: Mr. Runge, would that make you automatically vote for death?

BRIAN RUNGE: No.

MR. POLAY: Would it make you slide towards death? Would you be more apt to vote for death, knowing he was previously convicted of two counts of first degree murder?

BRIAN RUNGE: That's hard to say without

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all of the aggravating factors, administrative principles, like that.

MR. POLAY: Ms. Acher, would you automatically vote for death?

MONIQUE ACHER: I would never automatically do anything.

MR. POLAY: Does it change your position in any way, shape, form?

MONIQUE ACHER: Not at all.

MR. POLAY: Mr. Valdes, would that, knowing that fact, that he was convicted of two counts of premeditated murder, would you automatically vote for death?

RIGOBERTO VALDES: No.

MR. POLAY: Mr. Bloom?

PETER BLOOM: No.

MR. POLAY: Mr. Schick?

JOEL SCHICK: No.

MR. POLAY: Ms. Kaposi?

THERESA KAPOSI: I'm on the 50. Waiting for what you guys have to say.

MR. POLAY: Knowing my client was convicted of two counts of first degree murder wouldn't make you automatically vote for death?

THERESA KAPOSI: No.

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MR. POLAY: Knowing it is not a case of self-defense, you're saying that wouldn't make you automatically vote for death?

THERESA KAPOSI: Right.

MR. POLAY: Mr. Croskey, knowing that my client has been convicted of two counts of first degree murder, would that make you automatically vote for death?

RONALD CROSKEY: No, sir.

MR. POLAY: Make you slide more towards a more a vote for death, knowing that?

RONALD CROSKEY: No, sir.

MR. POLAY: Mr. McClain?

CLINTON MCCLAIN: No.

MR. POLAY: Ms. Clark?

ANDREE CLARK: No.

THE COURT: Mr. Gervolino?

CHARLES GERVOLINO: No. Not at all.

MR. POLAY: Mr. Evans?

ROMAR EVANS PEDRO: No.

MR. POLAY: Mr. Cooper?

CHARLES GERVOLINO: No.

MR. POLAY: Ms. Parker, does that affect you in any way?

GEORGINA PARKER: No.

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MR. POLAY: I know you just answered no. Would it make you slide more towards, well, he's convicted. I think I'm more apt to give him death now?

GEORGINA PARKER: No.

MR. POLAY: Ms. Sims?

BOBBIE SIMS: No.

MR. POLAY: You're okay. Nothing thank changed?

BOBBIE SIMS: No.

MR. POLAY: Ms. Miller?

JULIA MILLER: No.

Nothing changed.

MR. POLAY: Mr. Howard?

WILLIAM HOWARD: Nothing changed.

Won't sway me.

MR. POLAY: That won't persuade you?

WILLIAM HOWARD: That won't. I want to hear everything before.

MR. POLAY: You know that's my job. My job is to advocate for life. That's what I'm trying to do.

I said to everybody, everybody here, I'm not hiding that fact. That's what I'm here to do.

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You know, that's what I'll try to do, to the best of my ability, along with Mr. Williams.

Ms. Tim Kee?

SHANNON TIM KEE: No.

MR. POLAY: Would it make you slide more towards death, that he has been convicted of the two counts, I'm more apt to give him death now?

SHANNON TIM KEE: No.

MR. POLAY: Mr. Franklin?

WILLIAM FRANKLIN: No.

MR. POLAY: Would it make you slide more towards death, more inclined to give death, knowing this and knowing it is not self defense and have the ability to form the intent?

WILLIAM FRANKLIN: It would make me more apt to slide toward death knowing he had premeditated.

MR. POLAY: Like how far?

WILLIAM FRANKLIN: Ten yards.

MR. POLAY: In other words, you're about to give him death before we start?

WILLIAM FRANKLIN: No, that's not what I'm saying. It is a big deal. I won't say that

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I'm, I won't say I'll ignore that fact. It is not good.

MR. POLAY: I'll come back to you.

Mr. Riggio, knowing my client was convicted of two counts of first degree murder, would you automatically vote for death?

MICHAEL RIGGIO: I would not.

MR. POLAY: Knowing that, are you more apt to vote death now?

MICHAEL RIGGIO: I am not.

MR. POLAY: Won't change you?

MICHAEL RIGGIO: No.

MR. POLAY: Ms. Morris, knowing what I said to everybody here, are you going to automatically vote for death now?

BELITA MORRIS: No.

MR. POLAY: Are you more apt to say I'll give him death now, knowing that?

BELITA MORRIS: No.

MR. POLAY: You're aware we are not talking about a case of self defense or intoxication or somebody, you know, high. Everyone gets that?

Okay.

I want to make sure.

Let me move on to something else.

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One thing I want to make sure everyone understands is this. Not every first degree murder case is a death penalty case.

Does everyone understand that?

I want to make sure everyone understands that.

And what I anticipate you will hear is that the only cases that are death eligible, and you will get an instruction to this effect, are the most aggravated and least mitigated of first degree homicides.

Everyone understands that?

And what is interesting is when the State was up here, asking you about your opinions on the death penalty, the question I think was like number five was do you have any limitations in order for to you impose the death penalty.

Everyone remember that?

So I'll start again with you, Ms. Stelzer.

What did that mean to you, when you were asked that question, I have no limitations on the death penalty?

Because everybody here voted, said I have no limitations.

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Naturally, I'll tell you, I'm an inquiring mind.

I want to know what that meant.

BEVERLY STELZER: Can go either way.

MR. POLAY: You have to speak up.

BEVERLY STELZER: Can go either way. I can't really say.

MR. POLAY: Let me preface it with this.

If you remember, Mr. Satz was asking each and every one of you, you know, certain people can only give the death penalty for child killers or serial killers. Does that refresh everyone's memory?

That's what I was talking about. That type of thing.

Now I ask you the question.

BEVERLY STELZER: I would have to listen to the facts.

I can't say yes for life or death. I need to pursue it a bit further and understand. I understand the conviction and everything. But I would like to hear both sides a bit thoroughly.

Hard to explain it.

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MR. POLAY: I understand what you're saying. What you're saying is understandable. I understand you.

What I'm asking you is you were asked specifically whether or not there were any limitations on cases that you would give the death penalty to. You were given an example of child killers and serial killers, that type of thing.

What I'm asking you, do you have any limitations?

BEVERLY STELZER: Oh, no.

MR. POLAY: You're saying in any first degree murder case, depending upon the facts, you can give the death penalty?

BEVERLY STELZER: Yes.

MR. POLAY: How about you, Ms. Stone?

Ever think about that? Everybody is asked the question in a vacuum. You come off the street, asked your opinions on the death penalty. Limitations.

Are there things in your mind you would automatically give the death penalty or consider giving the death penalty to. That's what I'm asking.

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Everyone get me?

This is an extension of the question you were asked by the State. What I'm asking you, Ms. Stone, is this. Are there any circumstances that you see that you would give the death penalty to?

MR. SATZ: I object to that, Your Honor. My question was any limitations.

MR. POLAY: If you want to go sidebar, we can go sidebar.

THE COURT: Let's take five minutes.

(Exit venire.)

THE COURT: Okay.

Let's go.

MR. SATZ: My objection is, my question was do they have any limitations. In other words, would you only vote for the death penalty if it is a child killer or serial killer, anything like that. I am objecting to him going what kind of cases would you give the death penalty to.

MR. WILLIAMS: Well, he opened that door by saying that, would you just reserve it to child killers or serial killers.

We know, for example, that bringing up that

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child killer issue, killing a child is an aggravating circumstance. That would place a case into the death penalty.

But it is not an aggravating circumstance in this case.

He brought up that specter of an aggravating factor, child killer. Those are death penalty cases.

THE COURT: You can't ask a juror what cases would you give a death penalty in.

MR. WILLIAMS: But that's the problem.

He also said, Mr. Satz said in any of these death penalty cases, each one of these death penalty cases. I am writing down exact words, like any other death penalty case.

He left that broad, used that broad phrase throughout his voir dire in various ways and left it open, like any other death penalty case. What the heck does that mean? What do they know what that means when he says that, like any other death penalty case?

When he says each one of these death penalty cases.

THE COURT: That line is taken out of context.

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MR. WILLIAMS: He said that. Later on, he would say it.

He used those phrases independently and didn't always qualify them by the child killer and serial killer modifier.

MS. MCCANN: The reason Mr. Satz's questions are permissible is as this Court is well aware, if a juror can only vote for death if it is Adolph Hitler or Charles Manson but not any other circumstance, that juror is excusable for cause.

This goes to cause.

This doesn't go to the Colorado method of trying to nail them down.

THE COURT: I thought it was the Kevin Kulik method.

MS. MCCANN: The Kevin Kulik method.

But it is permissible to ask the jury if they will only vote for Charles Manson or Adolph Hitler for the death penalty.

If they can't, they can't vote for death in any other circumstance; and that's a cause challenge.

MR. WILLIAMS: He didn't ask that.

MS. MCCANN: Yes, is there any limitations

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to which you would only vote for death.

MR. SATZ: I gave an example of a child killer or serial killer.

THE COURT: You didn't ask them what.

MS. MCCANN: What the facts were.

MR. SATZ: Right.

I asked this case, you have to do the aggravating and mitigators. I knew that they would come up with this Colorado stuff about trying to pin them down and what kinds of cases you can vote for the death penalty.

MR. POLAY: This has nothing to do with any type of method. This has to do with responding to a wide, open brush paint stroke of saying all death cases, every death case.

When Mr. Satz, with all due respect, said what are your limitations --

THE COURT: He didn't say what are your limitations. He asked do you have any.

MR. POLAY: So, when people say no, I have to be able to go into how can you not have limitations.

I think that's fair game for me to ask about certain cases.

I am not being case specific in any way,

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shape, form.

THE COURT: You're not following it up.

MR. POLAY: You're not giving me an opportunity. I am going to. I intend to ask, well, certain questions. When you say not following it up, could you explain?

THE COURT: Absolutely.

The criteria is they can tell you whatever they want. That's not the criteria.

The criteria is can they listen to the aggravating factors, mitigating circumstances, consider both before making a decision?

That's exactly what Mike was doing. And he asked those questions.

MR. POLAY: I think, with all due respect, I think it is apples and oranges.

I'm asking questions pertaining to Mr. Satz's questions of the jurors when he said do you have any limitations or you have no limitations. And he gave examples of the serial killer, child killer.

In some cases, Mr. Satz said multiple victims.

I believe I should be able to inquire along those lines, in the same vein.

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Doesn't need to be with respect to aggravating and mitigating circumstances.

I think I should be able to talk about limitations and certain cases, not this case, certain cases where the death penalty, in there mind, would be appropriate.

MR. SATZ: That's my objection.

He's getting into specific things.

I try to limit it, that they have no limitation, in other words, some people say I'm in favor of the death penalty, but only if it is a serial or child killer.

That's a cause challenge. And he's trying to use that to get them to commit.

That's my objection.

MR. WILLIAMS: Questioned multiple times like this, he asked do they, do they limit the death penalty to child killers or serial killers, sometimes multiple death cases. When they would say no, they don't limit it, then he followed up, so you have no limitations. That's what rankled Mr. Polay and me, when he followed up, so you have no limitations.

That's what he's trying to ferret out now.

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You can find that multiple times in the record. So you have no limitations.

MR. SATZ: That was the whole purpose of the question. If they have limitations, it is cause.

MR. WILLIAMS: If they have no limitations on the death penalty, that's cause the other way.

MR. POLAY: Cause as well.

THE COURT: If they have no limitations?

MR. POLAY: In any case they can give it?

MR. WILLIAMS: Yes.

MR. SATZ: That's why you question would you automatically vote for death or life. You have to hear the aggravating and mitigating circumstances.

They are trying to pin them down before they hear anything.

That's my objection.

Can't get a pre-commitment.

MR. POLAY: Judge, in effect, what I'm doing is the reverse of Mr. Satz.

He's getting them to commit there is no limitations.

I want to inquire as to are there

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limitations.

THE COURT: You didn't ask that question.

MR. POLAY: Judge, I was asking. I was about to.

I was just about to.

Mr. Satz objected. Once he objects, I won't ask the question.

MR. SATZ: Because I know what he will do.

THE COURT: He's back-dooring the Colorado method.

MR. SATZ: If they have limitations, they won't follow the law; and it's cause.

MR. POLAY: Judge, this is one area where I truly believe I should be able to ask are there certain cases in your mind you think are worthy of the death penalty. Because Mr. Satz asked the jury about no limitations.

The way he did it, he made a broad stroke. All death cases.

All death cases.

THE COURT: You know that's not the question you asked them.

MR. POLAY: I know. I was about to. Mr. Satz objected.

I asked them, I remember asking this, I am

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almost positive I did, are there certain circumstances you think the death penalty is always warranted or appropriate.

THE COURT: That I think isn't reverse of what Mike said.

MR. POLAY: That's why we need a court reporter. I have ask you to look at that question.

THE COURT: Ask that question, I won't stop you.

MR. POLAY: I think that's what I asked.

MR. SATZ: Nos, if you ask are there any death cases you would automatically vote for death and not listen to the aggravating, mitigating circumstances, that's the reverse.

That's fine.

THE COURT: That's the other side.

MR. SATZ: That's fine.

To start saying how about if three people, two people, if somebody locked them in a freezer.

I am trying to get people for cause, if they have limitations, it's cause. He's trying to get in, have them pre-commit.

When he says I feel strongly about it, I

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feel strongly about it, too.

I know what he's trying to do.

He's trying to get them to pre commit.

That's wrong.

THE COURT: Just be artful and creative in the way, when you ask your questions.

MR. POLAY: So are you saying you would allow me to ask them under what circumstances would you automatically --

THE COURT: You understand that's not what you asked.

MR. POLAY: I think that's what I asked, Judge.

THE COURT: I don't.

Doesn't matter.

MR. WILLIAMS: Lay out the specific question.

MS. MCCANN: This is a slippery slope. That evolves into a whole conversation of what we went sidebar on.

What are the circumstances? They know it is a robbery, kidnapping. Somebody brought up the other stuff.

It is what it is. They know what the convictions are.

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To say would you do it here, here, it is like ordering in a Chinese restaurant. That's not what this is about.

They will get aggravators pursuant to statute and for mitigation, they can argue whatever they want to say, this doesn't go to cause. This is not a legal challenge.

It is them trying to get the jury to pre-commit, to say under these circumstances, this is what I would give.

They will strike all of these jurors. We will start all over again. It is not proper to do that.

To ask a juror, you know, could you only vote for death or if the juror says I can only vote for mass genocide, that's a cause challenge.

All of the other stuff isn't.

This is cherry-picking.

That is not allowed.

MR. WILLIAMS: How is it not cherry-picking when you ask these specific examples.

You have pick those cherries.

You don't want other cherries picked.

MS. MCCANN: It is Colorado picking.

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MR. POLAY: Nothing to do with that.

MR. SATZ: No.

Asking for cause.

If they can only vote when a child is killed is not qualified. It is a cause challenge.

THE COURT: That's correct. Just be creative.

MR. POLAY: I thought I was being creative.

THE COURT: I'll go back to your example, you know, the, what did he say, the one that said he was, what was he, sliding?

MR. POLAY: More apt to slide.

THE COURT: And you said where would you slide? That's not a criteria.

I was shocked you didn't get an objection on that. That's not my concern.

MR. POLAY: Okay.

THE COURT: Didn't say it was in the end zone.

MS. MCCANN: These questions are designed to go toward the aggravators in this case.

Premeditation, CCP, is an evolution of premeditation.

It is like asking them to commit as to what

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aggravators will you find. They can object and say I want to strike the juror because they are predisposed. Out of the six aggravators, they will find one, based on this voir dire. They are getting them to pre commit and then be able to exercise a challenge.

THE COURT: I thought we discussed earlier that the apparent aggravators from the facts, that we already know.

MR. WILLIAMS: You say the aggravators from within the four corners of the indictment.

THE COURT: That's what I'm referring to.

MR. WILLIAMS: Okay.

THE COURT: That that was fair game to ask about.

MR. SATZ: Right.

MR. POLAY: That's correct.

THE COURT: That you can do.

MR. POLAY: But I'm not at that subject matter, Judge.

That isn't the subject matter I'm discussing right now. I am doing, I was asking questions pertaining to limitations.

I believe Mr. Satz opened the door to under what circumstances.

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That's what I wanted to get into.

I was stopped.

THE COURT: Number one, there was no objection made.

2, in the absence of an objection, if the door gets opened, that doesn't mean it is still not subject to an objection from the other side.

MR. WILLIAMS: Oh.

THE COURT: Oh what?

MR. WILLIAMS: You can't open a door and complain you opened it.

THE COURT: You have to object.

MR. WILLIAMS: Seems to take --

MR. SATZ: I didn't open the door. Challenge for cause.

If someone will only vote for Adolph Hitler for the death penalty, that's a challenge for cause.

THE COURT: Correct.

MR. SATZ: All I was saying, any limitations.

I asked everyone of them, they were knowing what I was going to say about aggravating, mitigating circumstances. That's the whole

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thing. This case, like any other penalty phase, has to do with aggravating and mitigators.

I did that for every juror.

He's welcome to do that.

He can even say because it is during the commission of a robbery, would you automatically vote for death.

We agreed to that.

If it is a kidnapping, would you automatically vote for death because they are non-discrete aggravators that are in the four corners of the indictment, as is multiple deaths.

But if they have limitations, and I put somebody on there that they will only vote if a child is killed, it is all over.

THE COURT: I agree.

Stick within the four corners.

MR. POLAY: So --

THE COURT: Yes, I'm precluding you from doing that.

MR. POLAY: So the record is clear, you're precluding me from asking them questions under what circumstances they would automatically

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vote death? That's what I'm asking. That was the question I wanted to ask.

MR. SATZ: Well, you can ask if, are there any circumstances you would automatically vote for death and not listen to the mitigators.

THE COURT: Yes, that's fine.

MR. POLAY: Okay.

MR. SATZ: That's what we're looking for, people not automatically going to do it.

MS. MCCANN: It is a third part of the Witt inquiry. Goes back to what you said at the very beginning.

MR. POLAY: So the record is clear, you won't let me get into asking are there specific instances where you would automatically vote for the death penalty?

MR. WILLIAMS: He just agreed.

MS. MCCANN: That's different than saying would you only vote for death.

THE COURT: It is a matter of phrasing, Mitch.

MR. POLAY: That's why I came up with it. You said to be creative.

THE COURT: In a way that sticks within the confines of voir dire for a penalty phase, with

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a group that hasn't heard the actual trial itself.

If anybody needs a break, take it now.

(Recess had.)

THE COURT: Let's start.

(Enter venire.)

THE COURT: Mr. Polay?

MR. POLAY: Thank you, Judge.

Okay.

Thanks for letting us argue a little.

Who was I up to?

Still with me?

I'll ask you this question.

Can you think of specific instances when somebody is convicted of premeditated murder, where you would automatically vote death?

JUNE STONE: No.

MR. POLAY: Nothing comes to mind in history or anything?

JUNE STONE: Uhm, no. I mean, in history, like Adolph Hitler?

MR. POLAY: Okay.

JUNE STONE: But that's because I know all of the facts now.

MR. POLAY: You know all of the facts in

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this case?

JUNE STONE: No, of Hitler.

MR. POLAY: That's in line -- okay. Anything else?

JUNE STONE: No.

MR. POLAY: Again, the reason I was asking this, you know, the Government, when they were questioning you, everybody said they had no limitations. I asking you, asking you in a different way.

Ms. Williams, any specific instances whereby someone convicted of pre-meditated murder you would automatically give death?

LONI WILLIAMS: No.

MR. POLAY: Nothing comes to mind?

LONI WILLIAMS: Not off of the top of my head, no.

MR. POLAY: Even throughout history? Nothing?

LONI WILLIAMS: No.

MR. POLAY: Ms. Hoyos?

ADRIANA HOYOS-MARINUCCI: I can't think of anything.

MR. POLAY: Can't think back of anything that has ever happened before?

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ADRIANA HOYOS-MARINUCCI: I mean if you dig deeper, you can ask.

MR. POLAY: I don't want to dig deeper.

Like Ms. Stone brought up, Adolph Hitler. Okay.

Nothing that you can think of, off the top of your head?

ADRIANA HOYOS-MARINUCCI: No.

MR. POLAY: Mr. Gordon?

DAVID GORDON: Like Osama Bin Ladin. A head of a terrorist organization. That is a person that might be, should get the death penalty. Someone like that, that can do damage from behind bars, control others while in prison.

MR. POLAY: That's somebody you would automatically --

DAVID GORDON: Not automatically. Be inclined to.

MR. POLAY: Ms. Diaz?

ANA DELLIZ DIAZ: The same as Mr. Gordon. Terrorists.

MR. POLAY: Anything else come to mind?

ANA DELLIZ DIAZ: No.

MR. POLAY: Are you nervous?

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ANA DELLIZ DIAZ: Oh, yes, I'm nervous.

MR. POLAY: Don't be nervous.

Everybody here is in the same boat. Believe it or not, I'm nervous.

Ms. Legons?

APRIL LEGONS: No.

MR. POLAY: Can't think of anything?

APRIL LEGONS: No.

MR. POLAY: What are you telling me? You have to hear more, see more?

APRIL LEGONS: Yes.

MR. POLAY: No more --

APRIL LEGONS: Yes. Couldn't be automatic. I would have to know more.

MR. POLAY: Ms. Moon?

SUSAN MOON: I have been thinking about it. For a long time, I was a big proponent of the death penalty. Now I'm on the fence. And I do see where life in prison would be a just punishment. But I think they would have to, like, serve their time educating other inmates or doing some good while they were in jail.

MR. POLAY: I understand what you're saying.

Does that thought make you say to yourself

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I should give somebody convicted of pre-meditated murder death?

SUSAN MOON: No, not necessarily.

Did they hurt a person before. This one instance justify death? Will you have some redeemable qualities if I'm giving you life in prison?

MR. POLAY: That's a really interesting thing you bring up. When you judge somebody's life on one instance, that's what you hear about. You're making a determination about somebody's life of the worst possible moment of their life. That's how we judge people. That's very interesting.

I'll get back to it.

Believe it or not, that's the next topic.

Any specific instances, somebody is convicted of first degree premeditated murder, you think they should automatically get the death penalty. Anything come to mind?

SUSAN MOON: No, I think the premeditation is a bit questionable in my mind. If I hate my boss and I think I'll kill her and then I kill her ten years later, is that my premeditation? Have I thought about it every day for ten

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years?

THE COURT: I can answer that. That would be an ultimate fact for the jury to determine.

MR. POLAY: Mr. North, can you think of specific instances, somebody convicted of first degree premeditated murder, you automatically will give them death?

MICHAEL NORTH: When you hear something like that, the one instant somebody did bad. I think Timothy McVeigh that blew up the federal building, killed all of the children. Still had to get a fair trial.

MR. POLAY: That's a great thought you have given me. That came from your heart. That's something you thought about.

That's what I'm asking each and every one of you. That's what I want to know, what you think. Don't be shy.

That's what I'm saying. A lot of people say no, yes, just want me to move on.

I understand that. It's not easy.

Public speaking is one of the hardest things to do. One of the biggest fears.

I guess, you know, I got over it. That's all I can say.

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Mr. Anetnor, any specific instances where you think that somebody convicted of first degree, premeditated murder, that the death penalty should automatically be given to them?

CHERRER ANTENOR: No.

Depends about the circumstances.

Sociopath, terrorist, things of that nature, Timothy McVeigh, Nikolas Cruz.

Still need to know more with them, too.

MR. POLAY: Thank you.

Ms. Castano?

ANDREA CASTANO: No.

I have a question.

So life, can you sentence someone to life in prison, in solitary?

MR. POLAY: I'm not allowed to answer the question.

ANDREA CASTANO: By the law, can you?

MR. POLAY: I'll tell you, if I answer that question, I will be in trouble. That's all I'll tell you.

ANDREA CASTANO: Not for this. You're saying in general.

I am thinking, for Hitler, like in that

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sense, would I vote for like life in prison or death. That's why I was asking that question.

I would probably say I would vote for death for Hitler because it was over an extensive period of time he continuously killed people. That's why I would do it.

It was over an extensive period of time, thousands, thousands, gas chambers, all of the different things. I would say something like that, yes.

Because it was over an extensive period of time.

MR. POLAY: Fair enough.

Just want to know what you're thinking.

Mr. Pierre, any specific instances you would automatically vote for somebody convicted of premeditated murder?

NIGEL PIERRE: I can't think of any. Need access to the information, details and circumstances so you can make a clear decision.

MR. POLAY: Mr. Beeler?

RODNEY BEELER: No.

MR. POLAY: No instances?

RODNEY BEELER: Adolph Hitler. I don't know if he was convicted.

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MR. POLAY: Good point. He killed himself.

Ms. Golder?

SHALLIS GOLDER: No.

MR. POLAY: Nothing?

SHALLIS GOLDER: No.

MR. POLAY: Ms. Starkes?

SHARON STARKES: If it was my immediate family, premeditated murder, I probably would.

MR. POLAY: Any other instances you can think of?

SHARON STARKES: None come to mind at the moment. If it was my immediate family.

MR. POLAY: I tell you, if they do come to mind, raise your hand.

Ms. Armstrong?

KALENA ARMSTRONG-HENRY: Automatic is not quite fair. Nothing in life is automatic. Asking us to give a yes or no, for me, I'm increasingly not happy with the process.

MR. POLAY: Questioning?

KALENA ARMSTRONG-HENRY: Interviewed, as the day goes by, I am not happy. I understand this has to be done.

You ask me yes or no.

If I don't give you a yes or no, to ask me

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more questions --

MR. POLAY: I understand that. I just want you to understand that I'm trying to do my job to the best of my ability.

KALENA ARMSTRONG-HENRY: I understand. Not personally against you. Not personally against anything.

Personally telling you what I feel.

MR. POLAY: I have to go back to the question I asked you.

KALENA ARMSTRONG-HENRY: I know. I answered it. I won't give you a yes or no.

I don't have a yes or no. I don't have specific instances where something is automatic. Automatic. Nothing is automatic.

MR. POLAY: That is a good answer.

KALENA ARMSTRONG-HENRY: Then I can shut up.

MR. POLAY: I want you to understand something. I hope I'm not, one, I'm not aggravating you in any way, shape, form. I want you to truly understand I'm trying to do my job.

KALENA ARMSTRONG-HENRY: I'm aware of that.

MR. POLAY: If you're mad at me, be mad at

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me. If you're ultimately on this jury, please don't take that out on my client. Like I said, it is a grind. It really is.

KALENA ARMSTRONG-HENRY: I understand. I am not mad at you. It is against the whole thing, being made a part of right now.

MR. POLAY: I truly get it.

I want everyone, when I'm asking the questions, making a statement, not directed at you, I understand it takes time and it is a process. If you get mad at me, please, if you're ultimately on the jury, get mad at me. Don't take it out on my client.

Everyone understand that?

MR. POLAY: Ms. Balentine, any specific instances where somebody is convicted of premeditated first degree murder you would automatically give death?

LAUREN BALENTINE: No. Can't be back and white. No definitive line.

MR. POLAY: Ms. Lynch?

LESLIE LYNCH: I agree with Ms. Balentine. I think nothing is automatic.

MR. POLAY: Fair enough.

Even throughout history?

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LESLIE LYNCH: Yes.

Even Osama Bin Laden.

MR. POLAY: How about you?

RIGOBERTO VALDES: I wouldn't go automatic or any other sentences.

So no, I wouldn't.

MR. POLAY: That's a good answer.

Ms. Backus?

CYNTHIA BACKUS: I find your questions interesting.

If you asked me two weeks ago, I would have said I would go for the death penalty. Over the last few weeks, I have learned a lot about our judicial system and our legal system.

I respect the law. And I now have, like it is, it has opened my mind up to a completely different way of being fair and hearing the sides and determining what factors play into it. On a much lighter scale, you make important decisions every day at work.

I heard two kinds of a thousand stories and have to decide what is right. And so the facts I judged to an opinion two weeks ago, and I'm open to it now, I don't think there are limits.

I think you always have to be open, fair-

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minded, hear all of the facts.

MR. POLAY: Mr. Dean, can you think of specific instances you would automatically give the death penalty for someone convicted of premeditated murder?

DAVID DEAN: My mind is different because of the fact of Pablo Escobar and understanding the movie. It is a movie. His idea of not wanting to be extradited to the United States, face the judicial system, he didn't just fear coming to the United States.

He did premeditate all of those. Did he deserve the death penalty? Yes. Of course. That is something. But then I think about simple cases, like a mother committing homicide, drowning her kids, does she? Does she deserve the death penalty? No. I have to hear circumstances, mitigating and aggravating factors.

Revenge, lots killed.

I'll throw it out there.

My girlfriend cheated on me. Caught her with her lover.

Maybe Shawshank, good idea of a movie. Does he deserve the death penalty? Again, we

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didn't see the whole judicial part of it. I would have to listen to both factors.

So much my answer would be no, I would have to hear the aggravating factors and mitigating circumstances.

MR. POLAY: Thank you.

DAVID DEAN: I hope that helps.

MR. POLAY: It does.

I just want to know what you're thinking.

Thank you for sharing that.

Mr. Molina?

JOSE MOLINA: No.

MR. POLAY: Nothing at all?

JOSE MOLINA: No.

MR. POLAY: Mr. Hayles?

PAUL HAYLES: I would say Jeffrey Dahmer. Las Vegas killing. The DC Sniper.

I have think they deserve death.

MR. POLAY: Those are people you would say automatically deserve the death penalty?

PAUL HAYLES: Mass killing, yes.

MR. POLAY: Ms. Beard?

VANESSA BEARD: No?

MR. POLAY: Mr. Runge?

BRIAN RUNGE: No.

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Not automatic, certain cases. 98 percent.

Nothing that couldn't be changed, with, you know, factors coming to light.

MR. POLAY: Forgive me? 98 --

BRIAN RUNGE: 98 percent.

MR. POLAY: 98 percent, something in your mind?

BRIAN RUNGE: Circumstances brought up already, also like, you know, white supremacists shoot up a church. Seems like it is more likely that will be categorized as something's other than terrorists.

System won't follow through in the way it suits that situation, merit, that will put me almost on the way of the side of the death penalty. Without all of the factors, it wouldn't be 100 percent right off the bat.

MR. POLAY: Ms. Acher?

MONIQUE ACHER: When Judge Backman told us what this case was about, my heart sank.

I realized the gravity of what we are doing.

Jury duty, it is not a slight thing.

I feel we have had ample opportunity to

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say, because it was put out to us, this is not something you can do, just tell us, it is okay.

It is not something I think about just when I am here. This is heavy stuff.

My answer is the same, that it is not automatic. I just have to hear everything, with my heart and mind.

Everything has to come together.

MR. POLAY: I appreciate that.

Mr. Valdes?

RIGOBERTO VALDES: Like Mr. Hayles said a moment ago, Jeffrey Dahmer. Somebody in society that maybe could not, you know, shouldn't have been out there to cause all of the issues. It was a long time it was done.

Another one that comes to mind is Ted Bundy.

Not that I followed the cases at all. After the fact, you see over a long period of time, that would be two people that like come to mind right away that should not, you know, should not be a risk to society any longer.

Maybe they deserve to be put to death.

Just two people that come to mind.

MR. POLAY: Thank you.

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Mr. Bloom?

PETER BLOOM: No.

Nothing comes to mind. I don't believe that either, yes, I just don't believe that either cases the death penalty or being in jail is, one is, one is worse than the other, let's put it that way, to make a determination.

MR. POLAY: You think they are on equal footing?

PETER BLOOM: To a certain degree, yes. I don't think the death penalty, I think that's a terrible thing. Living the rest of your life in jail isn't a picnic either.

MR. POLAY: Interesting.

Mr. Schick, can you think of specific instances?

JOEL SCHICK: No. When they discuss terrorists and things like that, there will be different circumstances. You know, remorsefulness and different things like that. Hitler, whomever, kind of is there something you can get out of it. Remorsefulness or plain, there is no retention at all. Kind of --

MR. POLAY: Remorsefulness?

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JOEL SCHICK: Yes.

MR. POLAY: Is that important to you?

JOEL SCHICK: To a factor. I mean definitely, you know, hearing both sides, everything that is going on, if somebody is just flat out not remorseful of anything they have done, won't sway one way or another. It would be a mitigating factor that would weigh more on me than somebody remorseful versus not remorseful.

MR. POLAY: Ms. Concepcion?

SUSAN CONCEPCION: Nothing.

MR. POLAY: Any other questions, things come to mind about things we discussed, like Ms. Acher brought up she realized certain things, the gravity.

Anything weighing on your mind? Things to that effect?

SUSAN CONCEPCION: No.

MR. POLAY: Ms. Kaposi?

THERESA KAPOSI: Nothing.

MR. POLAY: Mr. Croskey?

RONALD CROSKEY: Yes, sir?

MR. POLAY: Anything come to mind when I ask the question, any specific instances, if

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somebody is convicted of first degree premeditated murder you would automatically give them the death penalty?

RONALD CROSKEY: No. As I said before, my children. Spouse. Someone in my family. I want justice.

MR. POLAY: If it is close to you, that's where you can find that?

RONALD CROSKEY: Say again?

When you say if it was in your family?

RONALD CROSKEY: Right, like children, someone in my family, eventually, automatically, you want death for that person.

MR. POLAY: Mr. McClain?

CLINTON MCCLAIN: No, I don't think so.

MR. POLAY: When you say you don't think so, I have to ask, are you sure?

CLINTON MCCLAIN: I am sure.

MR. POLAY: Ms. Clark?

ANDREE CLARK: Things of career criminals, like Pablo Escobar. Complete power, to achieve power by killing, I would definitely favor the death penalty.

MR. POLAY: Anyone else?

ANDREE CLARK: Yes, any mobs, mob person

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that is, like, making other people kill people and commit crimes as well. Just doing it for greed, it just doesn't sit well with me.

MR. POLAY: You say greed. Are you saying automatically robbery?

ANDREE CLARK: No. I want to emphasize career criminal. They want to be at the top. It is not the kind of, you know, in need of money now and committing this crime; but I don't want to be on top of the world, either. Best criminal. Someone that wants to be known as a criminal.

MR. POLAY: Like Scarface?

ANDREE CLARK: Yes. Proud of being a criminal.

MR. POLAY: Mr. Gervolino?

CHARLES GERVOLINO: The Boston bombing. At that time, I felt if they catch them, they should do that with them. I would have to, again, I would have to listen to all of the facts and understand where his mind was at the time to make that decision?

MR. POLAY: Didn't Mark Wahlberg catch them in the movie?

CHARLES GERVOLINO: No, no, no.

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MR. POLAY: Okay. I appreciate that.

CHARLES GERVOLINO: I have to weigh everything. That's the way I was brought up, in my family. Always listen to everything before you make a decision. Even at my job, I do the same thing.

Every time you ask me that question, I'll answer it the same way. I have to weigh everything out to make a decision. I could go either way.

I feel sorry for people. I have to listen to the facts.

My heart says I have to listen to the facts. I believe in that.

MR. POLAY: Mr. Evans, any specific instances?

ROMAR EVANS PEDRO: No. It would be very prejudiced to automatically go one way or another without considering everything.

No matter the circumstances or who was involved, it sucks to say it, but it all depends. In order to be fair, it's, I don't, I wouldn't really have any sway one way, automatically go one way or another.

MR. POLAY: Thank you.

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Mr. Cooper?

KENJAHSAH COOPER: I would have to agree. Even if it is like someone who is a, sorry, even if someone who is a serial killer or mass murderer, I would like to know all of the circumstances of why this happened.

Why they did it, before I make my decision.

MR. POLAY: Ms. Parker?

GEORGINA PARKER: No.

MR. POLAY: I'm not asking you more questions.

GEORGINA PARKER: I mean, I have to hear everything. I can't automatically answer your question. No.

MR. POLAY: Ms. Sims?

BOBBIE SIMS: No. I have to listen. Hear it all.

MR. POLAY: No specific instances in history, any cases you can think of?

BOBBIE SIMS: Not really. I have a thing with planned, premeditated. You know, you plan these mass murders, that's a whole different thing, as opposed to, could be planned, second, whatever. I have to weigh it.

MR. POLAY: Ms. Miller?

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JULIA MILLER: I would say no. What happened in Boston. The shooting, you know.

MR. POLAY: During the marathon?

JULIA MILLER: Yes. Those are the people that don't deserve to live.

MR. POLAY: Anything else?

JULIA MILLER: The one in Orlando. Things like that.

MR. POLAY: Mr. Howard?

WILLIAM HOWARD: Previously, I said I would listen to everything and so forth, before I make a decision. It has been tough. Then you ask about limitations again, I do have an issue, since I have been thinking about this a whole lot, as to whether or not I would go, vote death or life, depending upon the circumstances that took place that caused the person to murder someone. Someone like McVeigh, the bombing thing, Oklahoma, there is a person I would have wanted death penalty for him for sure.

If O. J. Simpson had been found guilty of killing those two people, I would have gone for the death penalty for him. I can't think of any other cases on top of my head that would

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change that. But in O. J. Simpson's case, let's say, if he did kill those people, and he did so because this other man took his girl, who was his girlfriend or ex-wife, but no longer, away from him, and that's why he did it, then he would get death. Those two people swindled him out of something, tricked him, openly embarrassed him, and then he committed the murder. Then he would get the death penalty. But had these two people had injured his children in some way, raped them, if he had raped his daughter, the boyfriend, beat her up, molested her and so forth, kidnapped her and then O. J. did it because of revenge, then I would still find him guilty. But I would not give him the death penalty.

MR. POLAY: One thing I wanted to point out is this.

If you remember, must have been an hour ago, this is not a case of self-defense. Basically had the ability to form the intent.

I'll ask you this. You opened up to me a bit. Would you automatically give the death penalty in a case that involved a robbery?

WILLIAM HOWARD: A robbery.

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MR. POLAY: A robbery?

WILLIAM HOWARD: No.

MR. POLAY: How about if it automatically involved a kidnapping?

WILLIAM HOWARD: Person premeditatedly kidnapped someone and then killed them?

MR. POLAY: Yes.

WILLIAM HOWARD: Not for kidnapping, no. I have to know why he murdered them. Punishment fits the crime.

MR. POLAY: What if it was just a robbery, would you automatically give the death penalty in those circumstances?

WILLIAM HOWARD: If someone robbed someone and then they went after them, if someone went, robbed me, and I went after them.

MR. POLAY: I'm not talking about you, sir. I am asking, in a vacuum, would you automatically vote for the death penalty if a murder was committed during the course of a robbery?

WILLIAM HOWARD: During the course of a robbery? No, because that wouldn't be premeditated.

MR. POLAY: What if the person did, did

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plan to kill somebody or had the, take that back. Strike that. Had the premeditated, had premeditation to kill?

WILLIAM HOWARD: While?

MR. POLAY: While committing the robbery?

WILLIAM HOWARD: Then, then that person, I would say, gets death. Because that person went there with the intent to kill and did so not out of revenge, you know. Temporary insanity.

MR. POLAY: Like I said to everybody, this is not a case where I'll tell you it is about temporary insanity.

Everyone follow me?

Ms. Tim Kee, I know it is getting near lunch.

Specific instances you would automatically give death?

SHANNON TIM KEE: Not automatic.

MR. POLAY: Mr. Franklin?

WILLIAM FRANKLIN: No.

MR. POLAY: Even if it involves a robbery, Mr. Franklin?

WILLIAM FRANKLIN: No.

I would not automatically vote for a death

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sentence.

MR. POLAY: Ms. Tim Kee, switching it up a bit, if in that specific instance, it involved a robbery, would you --

SHANNON TIM KEE: Not automatically.

Mr. Riggio?

MICHAEL RIGGIO: It would not be automatic to me. Listening to some of these horrific criminals we heard, horrific crimes, they are cannot be put to death without due process. Even as horrific as what they did, you cannot automatically say they should be put to death.

MR. POLAY: Some of the people that were mentioned were in fact tried and convicted.

MICHAEL RIGGIO: They went through the justice system and they made a deal.

MR. POLAY: That's why I was asking you, if there is some specific instance where you believe someone is deserving of the death penalty automatically?

MICHAEL RIGGIO: No.

MR. POLAY: Like I said, you know, I react to answers. There are no right or wrong answers.

Okay. Just the way it is.

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Ms. Morris, could you think of any specific instances?

BELITA MORRIS: No.

MR. POLAY: Nothing?

BELITA MORRIS: No. Automatic? No. .

MR. POLAY: Okay.

I want to go over concepts now --

THE COURT: I think this is a good time to break.

Please be back by 20 after 1:00, please.

(Exit venire.)

(Lunch recess had.)

(Afternoon session begins.)

THE COURT: Everybody ready?

All right, who is it we need?

MR. WILLIAMS: Ms. Parker. Number 51,

(Enter Georgina Parker.)

THE COURT: Hi, Ms. Parker.

How are you?

GEORGINA PARKER: Good.

THE COURT: Mr. Williams?

MR. WILLIAMS: You said earlier you were Mr. Runson's executive secretary.

GEORGINA PARKER: Yes.

MR. WILLIAMS: Obviously, Mr. Runson is

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heavily involved in Marjorie Stoneman Douglas' matter. I know you're his executive secretary. Are you, in any way, having regular communication with the State Attorney's Office about any of the Nikolas Cruz case or the Marjorie Stoneman Douglas matter?

GEORGINA PARKER: No.

MR. WILLIAMS: You realize Mr. Satz is prosecuting Mr. Cruz?

GEORGINA PARKER: No.

THE COURT: Now she knows.

GEORGINA PARKER: Yes. Now I know. But I don't follow -- I don't even watch the news, to be honest. I don't.

THE COURT: Okay. You can rejoin the others.

MR. POLAY: One thing, anything discussed here, just keep it to yourself.

MR. POLAY: Absolutely.

THE COURT: You can rejoin the others.

(Exit Georgina Parker.)

THE COURT: We have to deal with the student, the one that is, do you know what number he is? I know he's all the way in the back? See which one needs to talk to us.

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MR. WILLIAMS: Evans Pedro.

MS. MCCANN: Number 53.

MR. WILLIAMS: There is another, number 15, missed, missed the entire first segment of Mr. Polay's.

THE COURT: Mitch said he would go back and do it.

MR. WILLIAMS: Rather than going back through it, can we put him, in the selection process, move, make him juror 60? He would become the last spot. 61.

MR. POLAY: If you want me to, I will.

THE COURT: I have an idea.

(Enter Romar Evans Pedro.)

THE COURT: Talk to me.

ROMAR EVANS PEDRO: I'm just, earlier this morning, my boss let me know because I'm appointed to my new position, I have a one-year probationary period. There are only a certain number of days I could take.

I had to switch to in-person classes starting next week, Wednesday.

THE COURT: During the day?

ROMAR EVANS PEDRO: Yes. It is, it is four. I am full-time.

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MR. SATZ: You're going to be a full-time student now?

ROMAR EVANS PEDRO: I was originally doing it on line.

MR. SATZ: Full-time student?

ROMAR EVANS PEDRO: Yes.

MR. SATZ: What happens if you don't go? What would happen?

ROMAR EVANS PEDRO: What do you mean? Then I don't pass.

MR. SATZ: That's what I'm asking.

ROMAR EVANS PEDRO: I can't attend. I would lose my money.

MR. SATZ: You will be a full-time, personal student?

ROMAR EVANS PEDRO: Yes.

MR. WILLIAMS: Didn't you indicate they only pay you for a certain amount of juror days.

After that you don't get paid?

ROMAR EVANS PEDRO: It is not a matter of pay. It is a matter because I'm appointed, under a probationary period a year, there are only so many days I can take. I only started on the 17th of September.

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MR. WILLIAMS: Obviously, it will affect your employment.

ROMAR EVANS PEDRO: Correct.

THE COURT: We will give you back your card. You can go back to the jury room. They will process you out.

I thank you for being here, participating with us and willing to sit.

Thanks. Good luck in school. Good luck with your new promotion.

ROMAR EVANS PEDRO: Thank you.

Thank you.

MR. WILLIAMS: Good luck on your studies.

MR. POLAY: Thank you.

MR. SATZ: Thank you.

(Exit Romar Evans Pedro.)

THE COURT: I won't take him out of the number 15 slot. I'll let him sit in the back to seem like a natural flow.

MR. WILLIAMS: Figuratively have him being the last stop. Not literally.

THE COURT: We can do it any way you want.

MR. WILLIAMS: Let him sit where he is. Going through the selection process, he will be at the end of the line.

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MS. MCCANN: That means literally and figuratively, he will be at the end.

MR. WILLIAMS: I was talking about not moving him physically.

MS. MCCANN: For purposes of the jury selection, he would be at the end.

MR. SATZ: We have no problem.

THE COURT: Okay.

Let's go.

(Enter venire.)

(READER, #15, CHERRER ANTENOR, IS NOW #61.)

(Enter venire.)

THE COURT: Welcome back.

VANESSA BEARD: I have a question.

What time do you think we'll be out of here today?

THE COURT: 3:30 at the latest.

VANESSA BEARD: Sounds good. Thank you.

THE COURT: We welcome back. Always a positive sign when prospective jurors do return after lunch.

I am pretty sure Mr. Polay will be finished with his questioning of you guys before we leave....I think. It all depends.

MR. POLAY: He's the optimist.

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THE COURT: Always.

Go.

You're up.

MR. POLAY: Thank you.

Good afternoon, again.

So what I want to talk to each and every one of you about now is what is called aggravators and mitigation.

Remember, the Judge was talking about aggravating factors and mitigating circumstances.

I want to get into that and some of the legal aspects.

Then, as the Judge said, I probably, probably, will be done.

I know everybody is happy about that.

In any event, you remember before lunch, I was saying not every first degree pre-meditated murder case is a death penalty case.

Everyone remember that?

Basically, you have to do a weighing, have to have significant aggravating factors; the aggravating factor or factors have to be proven beyond a reasonable doubt.

Do a weighing process.

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Remember we were talking about that?

These aggravating factors are statutorily defined.

The Judge will read them to you. They come from our legislature, from the politicians.

These are what are called aggravating factors.

They come from the case itself. Everyone understand that? The case itself. And that's where they come from.

Now, mitigation is something that we argue as well. Like I said, I was telling everyone, you know, we're judging somebody, basically, on the worst moment of their life.

Think about it. That's what we are doing.

When you make that critical decision, life or death, we're actually looking at somebody's life for that short period of time, when something terrible happened, right?

That's what we're doing.

So what we're asking of you, both me and Mr. Williams, what we are asking of you, is to look beyond that.

Does everyone follow what I'm getting at? This is what is called mitigation.

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Mitigation could come from the case or any aspect of my client's life. Mr. Hojan's life, things that happened to him, things of that nature.

Everyone understand?

Things he did. Things he may not have done.

Character.

Things of that nature.

Everyone understand where I'm coming from?

It is not just you look at what is bad, because we're judging someone's life on something horrific, but we want you to know the person.

Does that make sense? Everybody okay with that?

Because, I mean, it makes sense if you think about it.

We know that he has been convicted of doing something bad.

If you will make that ultimate decision, we think it is important that you know a bit more about that person.

I want to make sure everyone here understands mitigation doesn't mean an excuse.

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There are a lot of people that say I don't want to hear that bunk, that's just an excuse. It is not an excuse.

What it is, it is an explanation. Everyone understand the difference between an excuse and an explanation? Why things happen. Why people do certain things. Not an excuse. Why things happen. It is an explanation, in effect, almost the opposite of that.

What I want to know, row by row, is this. Is, does anyone feel that they can't listen to mitigation? The only thing they want to hear about is the facts of the case? That alone is what makes their determination.

They don't care about his childhood, what he did as a kid, adult, work history, things of that nature. His character.

I just want to know about the case. And that's okay.

That's what I'll ask.

Row by row.

Anyone here that feels because he has already been convicted of premeditated murder it doesn't matter to you anything about his life or mitigation.

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Anybody? Okay to say yes.

Okay to say no.

Everyone is okay?

Ms. Williams, are you okay with that?

LONI WILLIAMS: Yes.

Second row of the first group, anyone going to say I won't listen that, to me it is bunk? I just wants to hear the facts? You hear that. Just give me the facts.

Anybody in the second row?

Everyone is okay, keep an open mind, listening to things like that.

Mr. Pierre, if you make the ultimate decision on someone, do you want to hear about their life and circumstances?

NIGEL PIERRE: I think it would be important.

MR. POLAY: How about you?

BEVERLY STELZER: Yes.

MR. POLAY: Would you want to hear a bit about him?

ADRIANA HOYOS-MARINUCCI: Yes.

MR. POLAY: In the back row, Mr. Beeler, would you want to hear a bit about his life?

RODNEY BEELER: Yes, absolutely. Something

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I do as a supervisor, dealing with punishment, disciplinary action.

MR. POLAY: Want to know work ethic?

RODNEY BEELER: Yes.

MR. POLAY: Everyone in the back row, including you, in our special seat, are you going to say I won't listen to mitigation, I don't care about his life, what happened to him, about things he did? Or you just wants to hear the facts?

LESLIE LYNCH: I care about his life and what he did.

LAUREN BALENTINE: I feel the same way.

MR. POLAY: Okay with that?

KALENA ARMSTRONG-HENRY: Yes.

MR. POLAY: Again, it is okay to say I don't care about what happened in his life.

I don't want to know about his life. I just want to know about the aggravating factors which have to be proven beyond a reasonable doubt from the State. Those come from the facts in the case.

Mitigating circumstances, you just have to be convinced they exist through testimony, evidence, things like that.

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It is a different burden.

Everyone understand that?

So starting with the first row, this section, Mr. Krefft, Mr. Dean, Ms. Bachus, anything you would discount, not pay attention to mitigation or do you just want to hear what happened in the case?

NURIAN KREFFT: I want to hear. I want to hear about his life.

MR. POLAY: Would you agree that's important?

NURIAN KREFFT: I think so.

CYNTHIA BACKUS: I would agree.

DAVID DEAN: I have taken many classes in psychology. It is very important to me.

MR. POLAY: Mr. Molina, how about you? Do you think that learning about someone's life is important? We call it mitigation. Initially. Or are you the type of person that just wants to hear about the facts of the case?

JOSE MOLINA: I think it is important. Mitigating factors.

MR. POLAY: Mitigating circumstances.

Not to beat a dead horse, but you know I will, because I'm condensing everything. You

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know, I am educating everybody on things, I'm sure, if you heard about this before, I want to know. 99.9 percent of lawyers have never heard about these concepts as well.

The aggravating factors come from the case, have to be proven beyond a reasonable doubt. The mitigating circumstances, things we present, both myself and Mr. Williams, will present, have to be proven, just have to be reasonably convinced they exist?

Everyone follow that? It is a different burden. Again, this is really really important. This is for everyone. I made this statement. Maybe you didn't grasp it or you probably did. Some did. Some didn't.

I made it kind of in a vacuum before, when (was speaking to you, explaining certain concepts.

You do this weighing process.

You know, everybody was regurgitating I weigh the aggravating factors vs. The mitigating circumstances. I will do the weighing process.

Everybody can say that.

In advertising, they say you hear something

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14 times, you actually remember the jingle, things of that nature.

I want to kind of put the brakes on a bit and explain something. That is that you do your own weighing process. I'll tell you right now, His Honor is not going to tell you how to do the weighing process.

It is something that comes from you. It is an individual, personal, moral judgment. You do your own weighing. That's why I was saying we don't live in this homogenous society. Because everybody is different.

I'm sure not everyone here ate the same lunch.

Not to be, you know, not to the make fun of that, but the truth is we all see things differently.

We all make our own weight.

Like I said, even if -- and this is important -- even if the aggravating factors outweigh the mitigating circumstances, you can give him life.

Everyone understand that? Okay? You will get an instruction to that. You can do that. It is something that, you know, you do, on your

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own. You make your own decision.

Again, it is not a group decision.

Everyone follow me?

It is very different. This is strange.

Very different. You are doing the sentencing.

We are not here on the guilt.

He has already been found guilty. Everyone understands that concept.

In the guilt phase, everyone knows that it is unanimous, right? And you can't have a hung jury. Know what a hung jury is? People disagree, and you have to redo it.

In the sentencing phase, where you will determine life, if he lives or dies by the needle, you can disagree. It is legally permissible to disagree.

Again, to find death, it has to be unanimous.

That means 12 people have to say you're going to die. That's why I am saying it is individual. Not a group thing.

If you are that person that says, hey, I think he deserves to live, you don't need to explain yourself. That's it. It is life.

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Every1 got me. It is your own, personal, moral compass, from what you hear, what you, believe. What is in your head, heart. Those are things we can't take away from you.

Yesterday, I was saying we all come into court with baggage. I was saying I'm not taking about ex-wives, ex-girlfriends, lovers, that type of thing.

Baggage, it is like our personal self. Everyone has their own personal self.

Things, experiences we all walk through these doors with.

I am not asking you to toss them away.

These are things that make you, you.

You is okay.

That is what I am really saying.

It is okay to be you.

That's why we have 12 people, from all different places. All different backgrounds.

It is okay to be you.

All right.

CHARLES GERVOLINO: Does everybody in that jury know what I decided?

Ballot?

Are we are on our own?

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I manage you discuss it. If you say life, it's life. You hit a buzzer, it is done.

You make a decision on your own.

MR. POLAY: I stopped, I think it was at mitigation.

Mr. Hayles.

Mitigation, will you listen to it? Are you the type of person that says I just want the facts?

PAUL HAYLES: In this case, I would listen.

MR. POLAY: So you are not discounting mitigation in any way, shape, form? You want to know about somebody before you decide to make a decision on their life?

PAUL HAYLES: Yes. Yes.

MR. POLAY: Okay?

Ms. Beard, how about you?

VANESSA BEARD: Yes.

MR. POLAY: I didn't ask the question. It was the same question. Yes, you would listen to the mitigation?

VANESSA BEARD: Yes. I think it is very important.

MR. POLAY: Again, I know I have said this eight times: It is okay to be you. If you're

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the type of person that just says show me the facts that interest me, that's okay.

Mr. Runge?

BRIAN RUNGE: I agree mitigation is a deciding factor.

MR. POLAY: You're willing to keep an open mind?

BRIAN RUNGE: Yes.

MR. POLAY: Ms. Acher, would you take into consideration mitigation?

MONIQUE ACHER: Absolutely. It's not one or the other. It is a combination of heart and mind.

MR. POLAY: Mr. Valdes, would you take into account mitigation?

RIGOBERTO VALDES: Yes.

MR. POLAY: Would you discount it in any way, shape, form, listen more to the facts, meaning the aggravating factors or listen to both?

RIGOBERTO VALDES: I wouldn't discount it. I would listen to both.

MR. POLAY: Mr. Bloom, how about you?

PETER BLOOM: Yes.

MR. POLAY: Keep an open mind?

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PETER BLOOM: Yes. Keep an open mind.

MR. POLAY: Do you think it is important?

PETER BLOOM: Yes.

MR. POLAY: Mr. Schick?

JOEL SCHICK: I think it is very important.

MR. POLAY: If you are making a decision, I would think you would want to know?

JOEL SCHICK: Yes. Every cause has an effect. It is important to understand the whole aspect of it.

MR. POLAY: Ms. Concepcion?

SUSAN CONCEPCION: Yes.

MR. POLAY: Would you discount it? Are you the type of person that just says I'm more interested in just what happened?

SUSAN CONCEPCION: No.

MR. POLAY: Talking about mitigation, I'm not saying this is an excuse.

It happened.

We're telling you why something, something about someone's life or their character we want you to know before you make that ultimate decision.

Do you follow that?

SUSAN CONCEPCION: Yes, I do.

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MR. POLAY: Ms. Kaposi?

THERESA KAPOSI: I am listening.

MR. POLAY: You would listen to both?

THERESA KAPOSI: At my age --

MR. POLAY: You're young.

THERESA KAPOSI: You're very kind.

Want to get married?

If I had my knowledge today that I did at 24, I wouldn't have gotten married. No, it is more a job, which is dumb. The older you get, the, more, the better you get to differentiate.

MR. WILLIAMS: Have good sense to not marry him.

MR. POLAY: Okay.

That's my partner.

Mr. Croskey, would you take into account mitigation? Or are you the type that I'm more about the facts?

RONALD CROSKEY: No, I can listen to both. What I'm being asked to do is weigh those mitigating factors versus the aggravated, the evidence, the aggravating -- I'm sorry?

MR. POLAY: Aggravating factors, mitigating circumstances?

RONALD CROSKEY: Yes, I have to listen to

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both to determine.

MR. POLAY: You understand even if you feel the aggravators outweigh the mitigators, you could legally vote life. You understand that?

RONALD CROSKEY: Correct.

MR. POLAY: Mr. McClain, are you can the type of person that just wants to hear about the facts, the aggravators? Or would you like to hear about his life?

CLINTON MCCLAIN: I would like to hear about his life.

MR. POLAY: Makes sense.

If you take the life, you should understand about the life. That's what it is.

Everyone get that?

Ms. Clark, will you listen to mitigators?

ANDREE CLARK: Yes.

MR. POLAY: Mr. Gervolino?

CHARLES GERVOLINO: It is important. Your upkeep of life depends upon family. I think it is important.

I really believe that sometimes you're upkeep in life and it is not the right thing, you make bad choices. My heart says I have to listen to everything and understand.

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MR. POLAY: Ms. Morris, how about you? Are you the type, because, you know -- this is why I'm asking this question. The Judge will tell you, you do your own weighing. You determine weight yourself.

If you say I just want to hear about the aggravating factors, that's okay. That's why I'm asking these questions.

Remember earlier, I was talking how each and every one of you have more power than anyone in the United States that exists, being you're on this jury.

You have the power over life and death. You, in your hands, you hold the power of life, power of one.

One person can make that decision.

What I am asking you, Ms. Morris, is this, are you the type of person that just wants to hear about what happened, that's all I care about? I don't want to hear about things that happened in his life or things that he has done or anything about his life, childhood, growing up, things of that nature?

BELITA MORRIS: No, I would want to hear, like you said earlier, I have the power to take

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away his life or extend it. I think his background, you know, would help me make that decision.

MR. POLAY: Mr. Riggio?

MICHAEL RIGGIO: I would want to hear about his background and everything.

MR. POLAY: You're not the type of person that would say I just want to hear about what happened, that's all?

MICHAEL RIGGIO: Right.

MR. POLAY: Mr. Franklin?

WILLIAM FRANKLIN: I would want to hear about mitigating circumstances?

MR. POLAY: You want to hear about his life?

WILLIAM FRANKLIN: Yes.

MR. POLAY: Just so everyone knows, mitigation isn't just about his life. It is also about things around his life. Things that's were done. You follow what I'm saying?

Basically, it's things about a person. How do you put it into a category? That's what I am saying. You can listen to those things?

WILLIAM FRANKLIN: Yes.

MR. POLAY: Ms. Tim Kee, would you be able

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to listen to things about, you know, Mr. Hojan's life?

SHANNON TIM KEE: Yes.

MR. POLAY: Do you want to hear these things?

SHANNON TIM KEE: Yes, I wants to hear everything.

MR. POLAY: How many people, by a show of hands, want to hear something about his life? Okay. That's unanimous?

Okay.

I got you.

MR. POLAY: You know --

WILLIAM HOWARD: This mitigating process, talking about his life, knowing the things about his life, so forth, is this also going to lead up to the events that took place?

MR. POLAY: The best way for me to answer it is that it could.

Is that important for you? Is that what urn saying to me?

WILLIAM HOWARD: Yes.

MR. POLAY: You want to know that day?

WILLIAM HOWARD: Not just that day.

Anything that took place that lead up to

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the incident's occurring. In my opinion, how he grew up, where, is not, it is not going to be the answer of why he did what he did. It is whatever took place, the, to cause this action is what I'm interested in. Not where he went to school, how his mother treated him, his father.

MR. POLAY: I understand what you're saying. I can't answer specifically. I am not allowed to get into certain things now.

WILLIAM HOWARD: I under stand about the case. You don't want to get into a lot of stuff. Mitigation portion that you are talking about his life, people saying how they grew up or things like that, I don't think that --

MR. POLAY: You don't think that's important?

WILLIAM HOWARD: No.

MR. POLAY: Do you think that's an excuse?

WILLIAM HOWARD: Not an excuse.

It could be important.

But I don't think so.

I don't think what happened to somebody when they are six years old determines whether or not they kill somebody when they are 40.

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All I can say, that's why we have 12 people. Everybody has different thoughts and beliefs, about the childhood effect and things of that nature.

That's why we bring in cross sections of the community to make determinations like this. Everybody has different baggage, beliefs, thoughts and things of that nature.

I appreciate your sharing that with me.

So you know, this, again, it is very strange. How many people have seen TV shows dealing with trials, a movie, anything else? Basically, everyone here knows, everyone is supposed to agree on the guilt phase, right?

But that's already been done. We are just dealing with sentencing. It is as different animal. There is no need for you to agree with your neighbor in this type of a case.

That's what I am getting at.

Any time someone is convicted, in the United States of America, whether first degree murder or stealing a pack of Wrigley's Juicy Fruit from Publix, everybody has to agree as to what happened.

Everyone follow me so far.

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What happens is each and every one of you are individuals, in effect.

That's what it is.

You make your own determination, in a sense.

I want to make sure everyone here knows that it is okay to disagree.

That's really what it is.

It is legally permissible to disagree. That's what happens all the time. That's what it is.

Everyone following me?

That's what it is.

If one person says one way, 11 say the other, that's okay.

That's decided.

Going deeper into this individuality, I said it a few times. Talked about your own moral compass, own personal beliefs, values. You determine weight. You make your own judgments.

You determine what is important to you. That's what it is.

I am sitting here, told you I will be forthright. That's what I'm telling you.

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You make that determination.

This isn't the time -- we want you to be individuals. This isn't a group thought agreement process. This is an individual determination. Because it makes sense, if you think about it, everyone that comes through the door comes in with different backgrounds.

We don't expect everyone to agree.

You're entitled to your own opinion.

You're entitled to your own belief.

Mr. Dough doesn't have agree with Mrs. Jones.

This is not a perfect world. It is permissible. It is allowed.

You make your own determination.

That's really what I'm telling you.

When you do that personal weighing process, not everybody will say, well, I weigh it the same way you do, Mr. Jones.

I weigh it different.

It doesn't matter. Doesn't matter what someone else says or what someone else compares it to.

You do your own. No two people here are the same. We are all different. Because I can

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tell you this. The bottom line is this. Everybody is different. With that in mind, I want to say this.

This is a very important decision for a lot of people.

You invest time, energy and thought into this.

One thing I want to say is this. No matter which way you decide to make your determination, either life or death, you're entitled to respect.

Really, when you go back there.

As individuals, you are entitled to your opinion. Be it against me, for my argument. You're entitled to it.

Nobody is entitled to disrespect anybody.

If somebody is different than you, respect it. We are all different. That's what I'm saying. Should not be bullying or aggravation back there.

You make up your mind, hit the buzzer. We're done.

Everyone follow me?

Everybody's opinion should be respected.

Everyone's decision should be respected.

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What I'm trying to get to is this...I'll tell you, I'm looking for people, you know, that aren't going to be, that will be strong. Have fortitude. That will say this is my belief. Sorry. That's it.

That's what we want. We don't want people that will agree with everybody.

Do you think you're the type of person that can stand up to people that way?

Eleven people against you, can you stand up to them?

LAUREN BALENTINE: Yes.

LESLIE LYNCH: If I felt that way, yes.

Yes.

MR. POLAY: Ms. Armstrong?

KALENA ARMSTRONG-HENRY: I'll stand up for myself and what I believe.

MR. POLAY: Ms. Starkes?

SHARON STARKES: Yes, I'll stand up for myself.

MR. POLAY: Everybody?

I'm hoping each and every one of you, just be yourself. That's what I'm saying. Express yourself. If you feel one way, that's it.

I'll tell you, if you feel life is

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appropriate, no breathing down your neck. Hit the buzzer. I'm done.

Understand what I'm saying? You do the weighing process.

This is a strange animal. You will be given the law. The law is the law. The law comes from His Honor.

I'll tell you that is the law.

But one thing that he is not going to do is tell you how to do the weighing process, which, if you think about it, is the thing that is missing.

This is new to everybody.

Nobody here has sentenced someone to life or death, right?

You want some direction.

It is human nature.

That's why I keep saying to you, do your own personal weighing process and make your own determination. That's why I keep talking about that.

I think everyone can understand.

Anybody have any questions?

I have a bit more. Not much more.

Any questions in the front group?

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CHERRER ANTENOR: Will we be hearing more of the mitigating circumstances before you make your selection?

MR. POLAY: Will I present it?

MR. POLAY: Yes.

MR. POLAY: No, no, no, no, no.

Good point. Let met explain.

This is the jury selection process. Once we have a jury, then you will hear evidence. This is not a, this is me speaking to you about qualifications to sit on this type of case, on the panel.

The answer is no.

If I did that, I wouldn't be standing here now.

I would have cuffs on me and be downstairs.

I know better.

Any other questions from the first group?

Nothing?

This group, second group, any questions or anything? Okay.

Third group? No? Nothing?

No thoughts, nothing bothers you?

From everybody?

First group? Second group?

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Everybody wants me to sit down?

Not happening.

I can't get into specifics.

I want everyone to understand.

I made no bones about it.

I'm advocating, I'm arguing for someone's life.

When you hear mitigation, and everyone said they would be open to it, listen to it, it is evidence that would support a sentence other than the needle.

Everyone get that?

That's what it really is.

Evidence that would support a sentence other than the needle. That's what I am getting at.

All I can ask you to do is keep an open mind, be fair, listen to our side and, as well. I won't make any bones about it. I'll tell you here, right now, that you will hear about a crime that my client was convicted of.

It may bother you. But I'll ask you, we know he was convicted. We ask you to please listen to what I have to say as well.

Everyone follow what I am saying?

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Listen to the mitigators.

It is something only you can do. Everyone here is smart enough to understand you can answer yes, no. Hey, I satisfied the lawyer, I'm done. You think we don't know that? We know that, too.

The truth of the matter is this. We, I want you to be yourself.

I want you to use your heart. Use your mind for the weight you think it should be used. That's what we are asking you to do.

At the end, I will ask you to show mercy.

I won't lie. I won't hide that in any way, shape, form. That's what I do. That's what I'll ask you to do.

Does anyone here feel they just can't do this, after hearing these concepts?

Anybody?

Just a few other topics.

One thing I want to get into is, and I, it is 2018. It is a different time here. I want to know if anyone would have any prejudice against my client, knowing, what you're going to find out, he's half white and half black.

Anybody?

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Anyone have a problem with that? Anyone? Anyone?

I have to get it out there.

I think you can understand why.

Initially, when people heard His Honor read about aggravating factors and mitigating circumstances and you do the weighing process.

Did anyone here, by a show of hands, think you had to do a counting process? Anybody? Okay. Okay. Good.

WILLIAM HOWARD: I don't know what under mean by counting.

MR. POLAY: Four mitigating circumstances, eight aggravating factors, that way.

WILLIAM HOWARD: Counting, not accounting. Counting and weighing?

MR. POLAY: Yes. Your understand what I'm saying? Nobody? Everybody?

That's good.

Judge, can I have a moment?

THE COURT: Yes.

(Small break had.)

MR. POLAY: Just some concepts I want everyone to understand.

I want everyone to understand every juror

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could vote for a life penalty based upon a mitigating circumstance. One mitigating circumstance that's found to exist, including mercy. Understand that? You can show mercy, even if there are no mitigating circumstances.

Follow what I'm saying?

You can show mercy.

You are allowed to show mercy.

Everyone get that?

VENIRE: Yes.

MR. POLAY: I was talking about everybody is entitled to their own opinion.

It should be respected.

No juror is ever going to be required to justify their decision.

I want you to know that. I am telling you that.

No one will ever coerce you or make you justify what you did.

Everyone get what I'm saying?

Here I am, telling you this. You never have to justify to me if you vote against me, you understand?

That's your decision.

But if you are back there, I want you to

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understand, you don't need to justify it as well to anybody else.

Make sense?

This is how you feel, that's how you feel.

If you're the one lone person, the one person that wants life and you have 11 people saying you're wrong, you are wrong, you're wrong, you feel you're right, hit the buzzer. You're done.

Everyone get that?

Bottom line, one vote for life means a life penalty without parole.

Two people didn't understand that. Life means you come out in a pine box. These aren't great choices.

I am advocating for life. Making no bones about that.

A non-unanimous decision for life is a life verdict. Only way my client gets death is unanimity.

Everybody has to agree with death, that he deserves to die.

Anyone have questions about mitigating circumstances in the first group?

Anybody?

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I did ask everyone a question.

Anyone have questions about mitigating circumstances? I want to go back to you, Mr. Howard.

You said to me that, I explained to you that mitigating circumstances come from someone's life, things that happened, about their character. You said it doesn't matter to you what happened during his childhood.

WILLIAM HOWARD: Correct.

MR. POLAY: You won't listen to that?

WILLIAM HOWARD: I would listen. I wouldn't allow that to influence me.

MR. POLAY: Only you can answer this. You're saying you would, in a sense, ignore it?

WILLIAM HOWARD: No, I wouldn't ignore it.

MR. POLAY: But you wouldn't, you wouldn't let it come into reason. But you wouldn't ignore it?

Maybe you can elaborate.

WILLIAM HOWARD: Well, okay, let's take, for example, I was talking about this, the Menendez Brothers. I am sure you remember that trial.

Killed their parents.

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MR. POLAY: I know. I watch things other than ESPN.

WILLIAM HOWARD: Here is two boys raised with a golden spoon in their mouth, had everything they wanted. They turned out to be a bad seed. You have other people out there that grew up in the ghettos. They are turning out to be attorneys, judges. Obama, he didn't grow up in the ghetto. But he made it to be President. I just don't feel that the childhood should be a factor in what a person does 40 years later.

MR. POLAY: You're saying you would discount it, you wouldn't listen?

WILLIAM HOWARD: I would listen.

MR. POLAY: We all would hear it. But you wouldn't incorporate it into your weighing process at all?

MR. SATZ: Judge, I'll object here. I don't think that you can start talking about individual mitigating circumstances with each one of the jurors.

Mr. Polay has said a thousand times, we all come in with baggage. Up to you. That's right.

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He can't go into the mitigators, what about this, that. It is up to the individual jurors.

THE COURT: I agree. Rephrase it.

MR. POLAY: Mr. Howard, you would give zero weight to anything that occurred during his childhood?

MR. SATZ: Judge, wasn't that my objection.

THE COURT: Kind of.

MR. POLAY: Are you sustaining the objection?

THE COURT: I kinda did.

MR. POLAY: I have to ask, Judge.

THE COURT: That's fine.

MR. SATZ: Don't ask that question.

I'm smart.

Really, what I want you to know is I'll ask you to keep an open mind about his life. That's what I'm asking you to do.

I'll ask each and every one of you not to discount or ignore certain things because what might not be important to you may be important to someone else. That's why I was bringing those things up.

Everybody has their own, individual weighing process.

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Additionally, I want to talk about this.

In a death penalty case, you're going to hear what is called victim impact evidence. What it is, somebody is allowed to testify about the victim's uniqueness in the community. I want you to understand you will hear this, if you're selected. But the Judge is going to instruct you that it should not come into your weighing process.

What I'm asking each and every one of you, I'm start with the front row, Ms. Stone, would that effect you, if you heard victim impact evidence? Someone from the victim's, either their family or a friend, gives you evidence about their uniqueness and the Judge will instruct you it does not come into the weighing process, do you think that would affect you in any way?

Would it come into your weighing process?

JUNE STONE: It might.

MR. POLAY: When you are saying it might, you are saying that you would have difficulty following the Judge's instructions?

JUNE STONE: No. But it would, I would have to be honest and say, first of all, seems

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strange to me there would be people called to weigh witnesses to it if we can't.

MR. POLAY: Let me clarify one thing.

It is not that they were witnesses to the offense. They are legally allowed to testify about a victim's uniqueness, the effect of loss on them.

It is not supposed to come into the weighing process. That's what I'm telling you.

What I want to know, how would you feel about that.

JUNE STONE: If you're telling me that I could do that, I could weigh all of the mitigating circumstances against the aggravating factors, but I might think and then I would have to say okay to myself, you have to go back to these factors, the weighing process. But I mean you can't unhear something.

I don't think it would make me --

MR. POLAY: Right. This is what I'm saying. Whenever I was talking to Mr. Howard, I said you will be listening.

Of course you will hear. I understand that.

You can't unhear something. Can't unring a

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bell.

What I'm saying to you, do you think hearing that type of evidence would affect your weighing process?

MR. POLAY: No. I could still weigh everything and come to my decision. That's out there.

I can't let you be surprised. This is why I want to talk about that. This isn't like oops, we have a surprise coming up. I want everybody to be informed.

You know, like I said, even if the aggravators outweigh the mitigators, you can always return a life verdict. You're allowed to do that. Allowed to show mercy.

Even if there is no mitigators, you can do that.

Everyone follow that?

I appreciate your candor.

MR. POLAY: Ms. Williams, do you think hearing that victim impact would affect you?

LONI WILLIAMS: I don't think it would affect me.

I would like to hear what kind of person the victim was, able to hear what kind of

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person the defendant was. I would like to hear what type of person the victim was.

I don't think it would affect my opinion. I would like to know what type of person they were.

MR. POLAY: Even if the Judge tells you it is not supposed to come into the equation?

LONI WILLIAMS: It wouldn't affect my ability to say how I feel the person should be sentenced. I would like to know what kind of person the victim was.

MR. POLAY: I'm sure you won't hear anything bad, right?

Do you think that would affect your weighing process at all?

ADRIANA HOYOS-MARINUCCI: If the Judge tells me I'm not supposed to, not relevant, I have to take that into account, it won't affect my decision.

MR. POLAY: How about you, Mr. Antenor?

CHERRER ANTENOR: It is not a mitigating circumstance on aggravating factors?

MR. POLAY: That's an instruction His Honor will read.

CHERRER ANTENOR: It is not an aggravating

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factor.

MR. POLAY: He will say that. But it is something you will hear. You will hear it is not supposed to come into the weighing process. Would that affect you in any way?

CHERRER ANTENOR: No. But you can't unhear.

MR. POLAY: Do you think that would affect you?

CHERRER ANTENOR: No.

Won't affect the weighing process. But it will affect me.

The way I think. Not the weighing process.

MR. POLAY: Way you think?

CHERRER ANTENOR: If I hear the victim was such and such character, I will process that. I won't assign a weight to it.

MR. POLAY: Ms. Castano, think it will affect your weighing process at all?

ANDREA CASTANO: No.

MR. POLAY: Trying to put it into words?

ANDREA CASTANO: Trying to think, asking me as a juror, a person. As a juror, no. A person, yes.

As a juror, I can separate the two if told

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to do so.

He's the boss. If he tells us that's what we have to do, that's what we have to do.

MR. POLAY: Think you can do it?

ANDREA CASTANO: Yes.

MR. POLAY: That's the question.

How about you, Mr. Pierre?

NIGEL PIERRE: I think I can separate them.

MR. POLAY: I'll go quicker.

Anyone in the back row think they wouldn't be able to put that out of their mind and it would come into play in their weighing process, hearing about the victim?

Anybody?

KALENA ARMSTRONG-HENRY: Everything I would hear is part of my decision. Not like you're a robot and you can turn things off. You have to turn everything in, make an informed decision.

MR. POLAY: If His Honor says you cannot use victim impact evidence in your decision, in your weighing process, can you do that?

KALENA ARMSTRONG-HENRY: I would hear what he requested of me. Easier said than done.

Because you have heard it, can't just make it go away.

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This decision is very serious that you have to make in this case. Regardless, that still will be in the back of your mind. Can't just turn it off like that.

If my commanding officer told me to shoot somebody, because they were my commanding officer, I would do it, because I have to follow my chain of command.

MR. POLAY: Do you think you would be able to follow the law as His Honor instructs you?

KALENA ARMSTRONG-HENRY: You can follow the law and still have a conscience of what you're saying. Not to say if you follow the law you don't have a conscience. You can follow the law. You have to make as informed decision. The law is not just, it is not always black and white.

MR. POLAY: In this case, if His Honor tells you that you cannot use this at all in your weighing process, in your sentencing determination, can you eliminate that? That's the question?

KALENA ARMSTRONG-HENRY: That's really the question. That's my answer to the question. You want me to say yes or no.

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MR. POLAY: I have to?

KALENA ARMSTRONG-HENRY: You asked us to be honest, also.

MR. POLAY: What you're saying is yes, it would come into play?

KALENA ARMSTRONG-HENRY: I did say everything I hear would be part of my decision.

MR. POLAY: Ms. Starkes, do you think this would some into sentencing, your weighing process?

SHARON STARKES: I agree it would come into the process. But I can separate the two. I don't have a dog in the fight.

MR. POLAY: You can listen to something, follow the law, not use it in your weighing process?

SHARON STARKES: Yes.

MR. POLAY: Mr. Beeler?

RODNEY BEELER: I can separate the two?

MR. POLAY: You think that would be hard?

RODNEY BEELER: No.

MR. POLAY: Ms. Golder?

SHALLIS GOLDER: I can distinguish it. If we are instructed not to weigh it in, instructed to not take that information into

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account, why are we hearing it?

VENIRE: Exactly.

THE COURT: Relax.

Because that's what the law says. That simple.

That's why we Mr. Polay said you will be instructed, when he refers to that, he's referring to me imparting the law to you that you have to utilize and follow while you're going through your deliberations, deliberative process.

MR. POLAY: Not hard to answer.

MONIQUE ACHER: When we hear that sort of testimony, will you instruct us beforehand this isn't going to, that it should not weigh in on your decision, or does it come later.

THE COURT: Well, you have already heard it.

MR. POLAY: Normally, it comes after you have heard it, everything. But the Judge has, does instruct you, depends upon, well, you have heard it already. You will hear it again.

Anyone in the front row feel that would, you know, effect them?

ANDREA CASTANO: How would you, stupid

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question, how do you know if it is not a mitigating, how do you know the difference. This is a victim, certain things. Mitigating.

MR. POLAY: I'll explain something.

Aggravating factors have to be proven beyond a reasonable doubt by the Government, the State. They are the ones that prove that. It has to be proven to each, each and everyone of you, unanimously, have to find they are proven beyond a reasonable doubt for that to come into the weighing process.

Mitigating circumstances or a mitigating circumstance is or are proven. You just have to be convinced they exist. They, quite candidly, could come from the State or come from the Defense.

That's normally where it comes from.

The victim impact, which is not supposed to come into your deliberative processes, at all, will also come form the State.

His Honor will instruct you.

Basically not supposed to come into play.

There is no bad question. The only bad question is the question you don't ask.

Go ahead.

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GEORGINA PARKER: Would you be bringing in the victim impact statements?

MR. POLAY: The victim impact comes from the State.

The victim impact, first row in the second group, would it impact your weighing process at all?

No.

Sure about that?

Positive?

CYNTHIA BACKUS: Makes it a challenge. It is not a fact, you have to be able to separate them. It would be a challenge.

MR. POLAY: Ms. Golder said why are we hearing it. That's the law. I am telling you what the law is. But you know we count on you to follow the law. We are asking you, basically, it is like as legal fiction, let's face it, to unhear something and not have it come into your process.

What we are asking is, you know, if you can really do it. That's what it is.

You think you can do it, Ms. Krefft?

NURIAN KREFFT: Yes.

CYNTHIA BACKUS: Yes.

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DAVID DEAN: Yes.

MR. POLAY: Think it would affect your process at all?

DAVID DEAN: No.

MR. POLAY: Back row, second group?

JOSE MOLINA: I can do it.

PAUL HAYLES: When the 12 get together, it will be brought up somehow it will be a factor.

MR. POLAY: I can't answer for other people. Only person I can question is you.

Do you think it would come into your deliberative process? In other words, would it affect your weighing process?

PAUL HAYLES: I mean, like, what's her name, Ms. Armstrong, like she said, it will be in the back of your mind. Even though the Judge said to separate it, you still will think about it.

MR. POLAY: Could you follow the law and not have is affect your deliberative weighing process?

PAUL HAYLES: Yes, I think I could.

MR. POLAY: When you say think?

PAUL HAYLES: Yes.

MR. POLAY: You think you can and you will,

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or you just think you will?

PAUL HAYLES: I could.

MR. POLAY: You know, only you know. You're the only person that can answer this. I can't answer it for you?

PAUL HAYLES: I am trying to look at it from a human.

MR. POLAY: That's what you are.

PAUL HAYLES: I'm looking at it. Think about it. Despite what me or other people say, I will still think about it.

MR. POLAY: Do you think you would be able to not think about it, not have it affect your weighing process?

PAUL HAYLES: I think I could come to a decision.

MR. POLAY: When you say a decision?

PAUL HAYLES: Life or death.

I could come to a decision on that.

MR. POLAY: My question to you is a bit more specific. I don't mean nitpick. What I'm asking you, and only you, is if these, hearing this, hearing this about the victim impact, would affect your weighing so you couldn't follow the law?

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PAUL HAYLES: No.

MR. POLAY: Ms. Beard, how about you? You think it would affect your weighing process?

VANESSA BEARD: No.

It wouldn't affect, hearing the facts, mediating, aggravating, deciding his sentence.

MR. POLAY: I mean I don't make the law. His Honor told you that you will hear it. That's the law. That's the law.

That's why I am bringing this up now.

I don't need surprises.

Mr. Runge?

BRIAN RUNGE: Yes, I can compartmentalize. I don't think it is an issue to separate the two.

MONIQUE ACHER: I feel the same way. I go by what the Judge told me to go by. I understand they have the right to do that. I'll hear it. I won't weigh it.

MR. POLAY: That's all we can ask.

In the front row, anybody that feels it would affect, come into their weighing process?

MR. POLAY: First row, everybody is okay? You know, Mr. Hayles brought up a great point. And it is kind of in line with what I was

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talking about in the jury room, where you make your own, individual determination.

If somebody brings up something that they are not supposed to, guess what? Guess what you're supposed to do? Ignore it. Right? That's what the law is.

Everyone follow me?

Okay.

You are supposed to say no, we can't discuss that. That is against the law.

And His Honor is also going to instruct each and every one of you who are on the case, when you take the oath as a juror, you agree to follow the law.

The law is there for a reason.

That's what we ask you to do is follow the law.

If something does something not within the confines of those instructions, they have to be reminded that that is not proper.

Everyone agree with that? Make sense?

Second row, in the third group, anyone feel that that victim impact would affect them in such a way that they are -- strike that.

Anyone feel that victim impact evidence

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would affect their weighing process?

WILLIAM HOWARD: I have a question.

We are not supposed to use it as a factor in our decision. But we are to use the defendant's background as a deciding factor?

MR. POLAY: That's called mitigation. I'm telling you, that's the law. That will come from His Honor.

WILLIAM HOWARD: Well, because --

MR. POLAY: Mr. Howard, that's the law. It will come from His Honor.

Let me say one thing, if the Court doesn't mind?

That's the law.

I didn't write the law. His Honor tells you the law.

You're only asked to follow the law.

My question to you is really this. Can you follow that law, not have the victim impact evidence come into play in your weighing process.

WILLIAM HOWARD: I can't honestly tell you.

I would like to say no, it would not. But people can put on a good show and impact a person's decision. A person can sit there and

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not cry and just tell a story, and you wouldn't pay no attention to it, maybe.

Another person can get up there, not the defendant, meaning the family member, family member of the murdered victim, cry and sob. Can be an old person. Can be a young person. And anybody sitting here that really, to me, can say that they cannot or they would not have some impact or maybe have some impact on them, on their decision, I just don't see it. I just don't see it. You sit there, watch an movie, this person here is crying their eyes out about the movie, love story. The other person sitting next to them is not affected by it at all. I can't tell you --

MR. POLAY: I understand what you are saying.

I don't mean to cut you short. His Honor reads the law. Jurors take an oath. They have to follow the law.

That's all I can say.

THE COURT: I'll throw one last thing in.

Sympathy can't be taken into account when dealing with matters of this nature.

The law provides the State can put on

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victim impact. That's what the law is. United States Supreme Court tells us that.

But that isn't the criteria, ultimately, a juror has to utilize in ultimately making a decision.

Everybody, I think everybody in here, I think you are right, everybody would have sympathy. But that can't weigh into your determination whether or not aggravators have been established beyond and to the exclusion of a reasonable doubt and whether unanimously a jury determines that and whatever mitigation is put on to be considered.

That's what you ultimately weigh.

WILLIAM HOWARD: That's what you try.

THE COURT: Well, that's what we ask of our jurors.

This isn't television, movies.

This is real life.

You're real people.

And Mr. Polay has said it a number of times.

You all come in with your prejudices and biases.

We can't ask you all to leave them on the

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little hook outside.

But we ask you to simply make a decision based upon facts and law. And exclude things that aren't included within that process.

That's all we can ask of each and every one of you.

MR. WILLIAMS: May I approach?

THE COURT: Sure.

(Sidebar had.)

MR. WILLIAMS: You have told him that the United States Supreme Court has mandated that.

THE COURT: I can correct that. That's by legislation.

MR. WILLIAMS: You haven't told him that they can't consider it.

THE COURT: No, I have. So has he. He being Mitch.

MR. WILLIAMS: You told them they can't consider it. You have haven't told them why. Because the United States Supreme Court says you can't consider it.

MS. MCCANN: This is the penalty phase about the defendant. That's why we have aggravators and mitigators. It is about him. That's why it can't be considered.

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It is true what the Judge said the United States Supreme Court has approved it. Because they have. The Florida legislature, in 1992, they incorporated it into 921.141.

THE COURT: This is what I don't like victim impact during the course of the trial.

MR. WILLIAMS: Supreme Court says you can't consider in the deliberative --

MS. MCCANN: Nothing said incorrect or inaccurate.

MR. WILLIAMS: He's given the weight of it. The weight of it, you're saying the United States Supreme Court has approved. Hasn't said who has approved, disapproved it being used as an aggravating factor.

MR. SATZ: He did.

THE COURT: I just said it is not an aggravating factor.

MR. WILLIAMS: Not why.

THE COURT: I can tell them.

I don't have a problem with that.

MS. MCCANN: To even the playing field, you can say under the United States Constitution, under the 8th Amendment, this is about him. That's why the victim impact --

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MR. WILLIAMS: I want it clarified. I want it clarified.

THE COURT: What do you want me to say?

MR. WILLIAMS: The United States Supreme Court said it can be heard by the jury but said it can't be considered in deciding life or death.

I want to push it off on the United States Supreme Court.

(Sidebar concludes.)

THE COURT: I want to clarify one thing that I said. I indicated that the United States Supreme Court has approved victim impact. But they have also made it clear that, first of all, it is not at aggravating factor. So it can't be considered. And it can be heard. But it cannot be considered. And that is just what the law is.

Again, we ask you to keep sympathy out of it. Same way while do with prejudice, bias. And just make a decision based upon the aggravating factors established to, that have been established beyond a reasonable doubt and unanimously to exist by a jury and any mitigation, any mitigation, that the defense

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puts forward.

Remember, the jury weighs, gives what weight they believe a mitigating circumstance should have.

Mr. Polay?

MR. POLAY: Thank you, Judge.

Really, what the Judge just said to you is that you have heard.

You have heard the bell ring.

The United States Supreme Court said it is not supposed to come into your process.

I mean that's from the United States Supreme Court. That's what it is.

Ms. Miller, are you comfortable with that?

JULIA MILLER: Yes. Won't affect me.

MR. POLAY: Only in your heart of hearts do you know, if you think this would affect your weighing process?

I can't answer that.

JULIA MILLER: No.

MR. POLAY: Ms. Sims?

BOBBIE SIMS: Yes, I can listen to it.

GEORGINA PARKER: I do it every day.

It is that white noise.

MR. POLAY: Mr. Cooper?

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KENJAHSAH COOPER: I'm fine with it.

MR. POLAY: Ms. Morris?

BELITA MORRIS: Yes.

MR. POLAY: Do you think hearing this type of thing would affect your weighing process?

BELITA MORRIS: No.

MR. POLAY: Mr. Franklin?

WILLIAM FRANKLIN: I can follow the law. Not let it affect me, the weighing process.

MR. POLAY: Ms. Tim Kee?

SHANNON TIM KEE: I'll follow the law.

MR. POLAY: With that, I am almost done. We really do want to thank you.

I don't think you understand that, how important it is for you to be as candid as you are, put in this uncomfortable position and participate says a lot about you.

Each and every one of you are smart enough to know how to get off . We know that. Okay. That fortitude is something that I am asking you to take into the jury room, if you believe something, one way or the other. That's what I am saying.

Just to sum up, I want to make sure of a few concepts.

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In order to have a death sentence, in order for a needle to be struck into my client's arm, it has to be unanimous. Unanimity.

One person says life, it is life.

Understand that concept?

Additionally, even if you're allowed to show mercy, even if the aggravating factors outweigh the mitigating circumstances, find no mitigating circumstances, it is permissible to sentence him to life.

Does everyone get that?

Because each and every one of you are an individual. Each of you have your own moral compassion.

Each and every one of you have make your own determination.

Each and every one of you determine weight, by yourself.

That's what I am talking about.

And I mean this. I don't mean this in a fun way. But how serious this is really can't be put into words.

You have as much power now as the Egyptian pharaohs or the Roman emperors.

Thumbs up or down.

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You do.

You have that kind of power.

Nobody else in the United States of America can make this type of decision.

That is why it is important to understand these concepts and important to ask each and every one of you questions because we know everyone that comes into this courtroom is different.

Everyone comes in with different beliefs. Everybody comes in with different prejudices, biases, upbringing.

You, in effect, from our perspective, have the power of one. One person can save a life. That's what I will be arguing.

I told you that.

I'll ask you to look for the good and follow the law.

With that, I'm done.

Truly, on behalf of my client and Mr. Williams, I want to thank each and every one of you, one, for your patience, two, your candor.

Three, we know it is not easy to get questioned like this in front of 60 of your new

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best friends, being asked questions that are just not the usual.

I mean we really put you out.

I want you to understand we really do appreciate what you have done.

With that, thank you.

THE COURT: With that, I need to talk with the lawyers a bit.

Just go with Steve.

We will be back to you shortly.

(Exit venire.)

THE COURT: Can I have Ms. Armstrong?

(Enter Kalena Armstrong-Henry.)

THE COURT: Hi, Ms. Henry.

Take a seat. Be comfortable.

If we have to come back tomorrow morning, I understand you have an issue?

KALENA ARMSTRONG-HENRY: Yes. I teach college. The class I wasn't able to teach this week because I was here. The class ended today. I have extended the students' assignment to noon tomorrow, telling them I'll be in the office from 9 to 12 if they need help. Grades are due at 3 o'clock.

Being here, I won't be able to do my

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grades.

MR. SATZ: Suggestion? Maybe we can do it, start at 1 o'clock tomorrow.

KALENA ARMSTRONG-HENRY: If I had time in the morning, I can do it.

THE COURT: I only need you for about an hour.

KALENA ARMSTRONG-HENRY: An hour tomorrow? When would I leave or when would I come in? I have to work around, I have to have, I need at least two hours. It is due by 3:00.

MR. WILLIAMS: Can we ask her to step out a minute?

THE COURT: Yes.

(Exit Kalena Armstrong-Henry.)

THE COURT: I think I know where you're going.

Cause challenge?

MR. WILLIAMS: Yes.

MR. SATZ: We object.

MR. WILLIAMS: She said she couldn't disregard the victim impact in rendering a decision.

She couldn't given a definitive impact. Couldn't get that out of her mind. That's the

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grounds for cause, unless Mitch has something else.

MR. POLAY: I asked it every which way until Tuesday.

She was very candid about that.

MR. SATZ: We object. Want to bring her in and talk to her about it?

THE COURT: We can do that right now.

Bring the rest back at 9:30 tomorrow?

9:45.

All right, 9:45.

Tell the jurors I'll need them all back at 9:45.

Bring Ms. Armstrong in now.

And everybody else, 9:45.

Tell them tomorrow they will be out of here before lunch.

(Enter Ms. Armstrong.)

MR. SATZ: I have a couple questions about the victim impact evidence. You have heard the Judge say, we have said it, you base your decision on the aggravating factors, obviously, weight, beyond a reasonable doubt and any mitigating circumstances established by the greater weight of the evidence. That's a

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weighing process. You and I, we talked about that.

You will hear victim impact evidence. Victim impact evidence, as Judge Backman indicated, isn't a consideration you take into account when you weigh the aggravating and mitigating factors.

Can you follow the law and do that?

KALENA ARMSTRONG-HENRY: Can I say something? When the Judge gave his explanation of everything, it made me feel better. But my point is getting you to understand from my point of view, it is a human factor.

I understand. You made it clearer. I understand.

You kind of, you make things clearer, make people see something from a different point of view.

I wanted you to understand that's important. But I, the question was can I?

MR. SATZ: Will you follow the law?

KALENA ARMSTRONG-HENRY: I can follow the law, yes.

MR. SATZ: We're all human beings, everybody is individual, we all have baggage

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and biases.

When we come in to make a decision, we do our best to put those aside and base whatever we do on the law and the facts as we find them. So as Judge Backman explained, it is a weighing process.

All you consider for the penalty is the aggravating factors and mitigating circumstances in the weighing process.

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: Do you feel you can do that?

KALENA ARMSTRONG-HENRY: Still not so easy, but --

MR. SATZ: None of this is easy. It is not easy for anyone.

KALENA ARMSTRONG-HENRY: I know.

MR. SATZ: The question is you have hired the law. You heard what Judge Backman said. He's the only one. Lawyers are, you know, can't do that. It is Judge Backman.

You have said, when he explained it, you felt better about it.

Can you follow that law?

KALENA ARMSTRONG-HENRY: Yes.

MR. SATZ: Thank you.

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MR. WILLIAMS: Ms. Armstrong, the law is what has created this conundrum you're put in. We don't understand it either.

The Supreme Court said you can hear the victim impact evidence. But you can't consider it. Putting you in an almost impossible task. Hear good things about a person, deceased in this case, two people deceased and they are saying don't consider it. You have been candid with us earlier, saying that's always going to be in the back of your mind. In this case, it will be good stuff about two people. What I'm asking you to do is really search your heart and say to do you really think you can totally disassociate all of the good evidence, all of the good things you hear about these two people and disassociate, forget about that, in making a decision as to Mr. Hojan's future? And only you can know that.

I can tell you are wrestling with it. I can hear it in your voice. You're a very caring person.

Nobody likes to say they can't follow the law.

What I'm asking you to do is can you search

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your heart and say that you really will be able to put it out of your mind a hundred percent in making a decision about Mr. Hojan's future?

KALENA ARMSTRONG-HENRY: I will give you an example. I had a lot of trepidation coming here every day. It's affecting my students. But I came. The law says I have to the come. But I came. Was I always happy about it? No.

Was I honest when I sat here? Yes.

My initial answer is I'll be fair. But I realize that I'll hear everything. And yes, it will be there. But yes, do I have to follow the law? Yes.

MR. WILLIAMS: It is not so much following the law. Can you blot it out of your mind?

We can all say we can follow the law.

KALENA ARMSTRONG-HENRY: Will it go away? No.

Can I follow the law?

MR. WILLIAMS: I'm not saying follow the law. I am saying will it impact your decision-making process?

KALENA ARMSTRONG-HENRY: It will always be there, yes. But I, I can follow the law. And it still will be there.

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MR. WILLIAMS: Following the law means saying not considering it, not dwelling on it, not bringing it up.

KALENA ARMSTRONG-HENRY: I don't know what you want me more to say. I have been honest the whole time I have been here.

MR. WILLIAMS: Ma'am, I haven't talked to you at all.

KALENA ARMSTRONG-HENRY: I know you haven't. It is not personal.

I am answering your questions.

I can follow the law. But I won't say nothing is going around there that will go away.

THE COURT: I'll see if I can put it in English. Because you have, you have been very forthright and candid. All of us appreciate it.

You will hear the victim impact. And I know you're, I don't think anybody can put it out of their mind.

The question is can you make your determination strictly on the aggravators? Because you understand that's not an aggravator. And listen to the mitigators and

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make your decision? And I know that's probably going to be one of the hardest things an individual is being asked to do.

Because it is counterintuitive.

That's my word for the day.

I was trying to make you laugh.

KALENA ARMSTRONG-HENRY: You have. But not right now.

THE COURT: Can you do me a favor?

Steve, in between the doors. Is the rest of the group gone?

DEPUTY: Yes. No other issues.

THE COURT: Go with him a minute.

(Exit Kalena Armstrong-Henry.)

THE COURT: Same position?

MR. SATZ: Absolutely. I think she's taking it seriously. That's what everybody wants.

MR. WILLIAMS: I want her to take it seriously but not -- I had more questions.

THE COURT: I thought you were finished.

MR. WILLIAMS: You started asking questions.

You said Steve, take her out.

THE COURT: What do you want to ask her?

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MR. WILLIAMS: Now what you're saying following the law, if somebody else in the jury room brings it up, will you have the strength to just tell them you can't consider it?

THE COURT: Fair question.

Steve?

(Enter Kalena Armstrong-Henry.)

THE COURT: I think we have one more question.

KALENA ARMSTRONG-HENRY: Okay.

MR. WILLIAMS: Ms. Armstrong, I believe your background, were you in the military?

KALENA ARMSTRONG-HENRY: Yes.

MR. WILLIAMS: At some point in your life, you had an assertive position with the military.

KALENA ARMSTRONG-HENRY: Correct.

MR. WILLIAMS: You said you can follow the law in regard to disregarding victim impact evidence. If you're part of this jury, and somebody else starts discussing victim impact evidence during your deliberations, will you be assertive enough to speak up, say we can't talk about that? We can't consider that?

KALENA ARMSTRONG-HENRY: Yes, they have to

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keep it to themselves like I have to. It is not a part of the decision-making process.

MR. WILLIAMS: We can count on you, if somebody starts discussing that, you have been in a position to give orders and inform them that they can't do that, not talk about that, because of the Judge's instruction?

KALENA ARMSTRONG-HENRY: Yes.

That's something I may have that I know I can't bring into it. I have to ask them the same thing. Can't bring it into the decision.

THE COURT: If I can have you out by 10:30ish?

KALENA ARMSTRONG-HENRY: That would be fine.

THE COURT: 9:45.

KALENA ARMSTRONG-HENRY: Even by 11:00, that would be fine.

THE COURT: Good.

KALENA ARMSTRONG-HENRY: Thank you.

THE COURT: I want everybody here at 9:30.

At 9:30, what I would like, this jury is coming back after that, I would like to start getting through this process.

We don't need the jurors in here while we

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pick.

Let's go with that.

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 18th day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME XVI
PAGES 1573 - 1611

Fort Lauderdale, Florida
October 12th, 2018
9:30 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

VOIR DIRE

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 12th, 2018, commencing at 9:30 a.m.

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THEREUPON, the following proceedings were had:

THE COURT: Ready?

MR. SATZ: Yes.

MR. WILLIAMS: Yes.

Judge, 22 is at the end of this group.

THE COURT: Yes.

We moved him.

22 went to the other group. So he's not available in this jury selection. .

MR. WILLIAMS: 15 was put at the end, number 61.

THE COURT: All right.

Let's start with challenges for cause.

MR. SATZ: Right now, we have none.

THE COURT: Mr. Williams, Mr. Polay?

All I want right now is numbers .

MR. WILLIAMS: 26, Armstrong.

38, Runge.

48, Howard.

THE COURT: Mike, do you agree with any of those?

MR. SATZ: I don't agree with Armstrong.

We brought her in yesterday. I don't agree with that one.

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THE COURT: The others?

MR. SATZ: Definitely not. Oh, Howard, I agree with Howard.

THE COURT: Howard is 48.

He's gone. You want to put on the record your rationale for Howard and Armstrong. I mean Runge and Armstrong. Not Howard.

MR. WILLIAMS: Runge is, he knows how to answer the questions.

But he's a very unusual juror, in my 45 years of doing this. I have never had a juror say that if his employer wouldn't pay him, he would quit his job so he could sit on the jury, and, in effect, drive a cab, which is a Lyft, L-Y-F-T, is a type of cab, on the weekends, to supplement his money, his salary, so he could sit on a jury. That's a guy who really wants to sit on this case. He knows it is a death penalty case.

He wants to sit on a death penalty case.

He, coupled that with the fact that in response to Mr. Satz's question about signing the verdict form, before he would answer the question, he said, he asked Mr. Satz whether he would be able to attend the execution because

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he felt it would be his duty to do so.

Given that seal, quitting his job, going to drive a cab, basically, on the weekends, and wants to know if he can attend an execution, that, to me, does not exhibit a mind set that will fairly and impartially view aggravating and mitigating circumstances.

MS. MCCANN: Can the State be heard?

THE COURT: Yes.

MS. MCCANN: First of all, Mr. Runge, he may be unusual, only because he's really part of the new economy, where people are piecing together different jobs to pet by. He works at Apple. If you have been there, it is filled with employees who look different. He's making use of his car to be a driver.

When it came to attending the execution, what he said, and the record will reflect it, he felt he would owe it to the defendant. I believe that shows he was being intellectually honest, that if he is going to vote for the death penalty, he would follow through and owe it to him.

I didn't see it was a sort of lust to attend an execution. His answers show he was,

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I think, intellectually honest about everything. He's one of the few jurors that said I can make it work.

I can make it work.

I can piece together my schedule.

You have plenty of jurors in here that weren't trying to make it work.

He's exactly the kind of juror who you commended for getting in here, trying to make it work.

There is nothing he said that gives rise to a challenge for cause.

MR. WILLIAMS: Well, he said he owed a duty to the defendant to attend his execution? What? To wave bye bye?

It is ridiculous.

THE COURT: I think I owe the same obligation.

If I put my signature on the bottom, I should have the courage to be there.

MS. MCCANN: On the two cases I worked on from appeal to finish, I attended the executions.

I felt to be intellectually honest about the work I do, I'm advocating the death

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penalty, I needed to see the end results, not to watch somebody die. You have to be intellectually honest of what you're working for.

THE COURT: Bottom line, I don't find the rationale being offered constitutes a challenge for cause. The Supreme Court and legislator give up pre-empts. Feel free, if you don't want him on your jury, for whatever reason, then feel free to exercise it.

MR. WILLIAMS: By the way, I did not, the State brought it up. I didn't comment on his appearance. The State says he works at an Apple store. When you go there, everybody looks different. I didn't make a comment on his appearance. I wanted that clear for the record.

THE COURT: I know.

THE COURT: You wanted to raise a challenge on Ms. Armstrong?

MR. WILLIAMS: No matter how it worked out yesterday, she equivocated on the fact of whether or not she can set aside the victim impact evidence. We stand by what we just said now and with the record that was made

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yesterday.

MR. SATZ: We would object to that. She made it clear at the end she could do that and follow the law.

THE COURT: That, too, based upon the entire record, is denied.

That all having been said, this is our presumptive panel.

Juror 1, Stelzer; 4, Stone; 6, Williams; 7, Hoyos-Marinucci; 9, Gordon; 12, Pierre, Nigel; 14, Castano; 16, North; 17, Moon; 18, Legons; 19, Diaz; 23 is Beeler.

All right, Mr. Satz, you're up.

MR. SATZ: I'll strike number 9, David Gordon.

THE COURT: Mr. Polay? Mr. Williams?

MR. WILLIAMS: No.

THE COURT: No? After you go, then I'll pull in the next. Like a baseball game, top and bottom of the inning.

MR. WILLIAMS: Strike number 6, Williams.

THE COURT: Now we bring in Golder, 24, and Starkes, number 25.

Mr. Polay, you're up.

MR. POLAY: Number 23, Beeler.

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MR. SATZ: Number 16, North.
THE COURT: All right. Let's bring in 26, Armstrong; 28, Balentine.
Mr. Satz?
MR. SATZ: Number 28, Balentine.
THE COURT: Mr. Polay, bottom of the round.
MR. POLAY: Pass.
THE COURT: That brings in 29.
Lynch.
Mr. Polay, top of the round.
MR. WILLIAMS: Pass again.
THE COURT: Mr. Satz?
MS. MCCANN: Up to Lynch, juror 29?
THE COURT: That's correct.
MR. SATZ: That would be our jury, then?
THE COURT: No. If you pasts, it goes back to the Defense for a final tender or strike.
If they pass, you get last shot.
It is a double round.
MR. SATZ: Pass.
THE COURT: Tender or strike, Mr. Polay?
MR. POLAY: Strike number 14, Castano.
THE COURT: That brings in 30, Krefft.
Mr. Satz?
MR. SATZ: We'll excuse number 1, Stelzer.

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THE COURT: Bottom of the round to you, Mr. Polay.

MR. WILLIAMS: Number 7, Hoyos.

THE COURT: Bring in 32, Backus and 34, Dean.

Mr. Polay?

MR. POLAY: Pass.

THE COURT: Mr. Satz?

MR. SATZ: Pass.

THE COURT: Tender or strike, Mr. Polay?

MR. WILLIAMS: 26, Armstrong, recognizing we were --

THE COURT: I'm fully you challenged her for cause.

MR. WILLIAMS: I want to make sure the record is clear.

THE COURT: Crystal.

Let's bring in 35, Molina.

Mr. Satz, I believe you're up.

MR. SATZ: Pass.

THE COURT: Mr. Polay, it is a pass to you.

THE COURT: Total of 20. You get ten.

They get ten.

You got 30 last time, because there were three defendants.

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THE COURT: Molina, 35, is in.

MR. WILLIAMS: Molina.

Is that five?

THE COURT: Six.

MR. POLAY: We're up to six.

THE COURT: Number 6, number 7, number 14, 23 and 26.

Now 35.

THE COURT: Let's bring in 36, Hayles.

Mr. Polay, top of the round.

MS. MCCANN: It's our turn.

THE COURT: Mr. Satz?

MR. SATZ: Number 36, Hayles.

MR. POLAY: Can we have a race neutral reason on Mr. Hayles, so the record is clear, black male.

MR. SATZ: Didn't they already strike a black person?

THE COURT: That's not quite the criteria.

MS. MCCANN: Juror Armstrong made comments about not being able to put out of her mind victim impact. When it was his turn to talk, he referred back to Juror Armstrong, said that's what I believe too.

He also has had, his son was arrested in

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Broward as a juvenile.

MR. SATZ: Cousin killed in police custody in Jamaica.

He said he was pulled over by BSO at gun point. Gave him a bad feeling about police.

THE COURT: The criteria under Melborne is whether or not an individual falls within a protected class. Certainly, this juror falls within a protected class.

The Court is required to ask for a race neutral reason.

Secondly, after a race neutral reason is given, the Court has to determine the genuineness of that strike before permitting it.

Based upon the various reasons, four, five, six given by the State, each and every one of those are sufficient to constitute a race neutral and gender neutral reason or any other type of reason.

The Court will permit the strike on juror number 36, Hayles.

MR. WILLIAMS: So we can clean up the record, we did strike a black juror, Williams.

THE COURT: Nobody objected.

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MR. WILLIAMS: I understand.

Remember, she studied to be a crime scene tech, hired by BSO. Money wasn't good enough.

THE COURT: As I said, while these constitute race neutral reasons, there was not an objection raised.

MR. WILLIAMS: I don't want a silk-stocking lawyer saying we're incompetent excusing Ms. Williams. Ms. Armstrong, obviously, she's of mixed race.

The bottom line is we moved to excuse her for cause.

We adopt all of these reasons.

THE COURT: Works for me.

THE COURT: Mr. Polay?

Bottom of the round.

Beard comes in, if up pass. That's 37.

MR. POLAY: Pass.

THE COURT: Bring in 37. Beard.

Mr. Polay, you're up.

MR. WILLIAMS: How many do we have?

THE COURT: Six.

MR. WILLIAMS: Juror 30, Krefft.

THE COURT: Defense seven.

MR. SATZ: Race neutral reason?

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MR. WILLIAMS: Krefft is white.

MR. POLAY: She is a white lady.

MR. SATZ: How many do they have?

THE COURT: They have used seven.

Runge comes in, number 38.

MR. SATZ: We'll excuse 37, Beard. She is African-American. Reason is her uncle was arrested for drugs. Our office prosecuted him. She works for hospice. Always dealing with people that are about to die. I'm concerned about the sympathy.

THE COURT: Are you or objecting to that?

MR. POLAY: Over objection.

MR. WILLIAMS: Objection.

MR. SATZ: What is the objection?

THE COURT: Asking for a race neutral reason, which you did.

MR. SATZ: I did.

THE COURT: There was a timely objection to the State's utilization of a strike, peremptory strike, with regard to a juror that falls within the a protected class.

Before the Court can ask for a race neutral reason, the State put on the record what constitutes race neutral reasons being

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exercised in a genuine manner. With regard to the other, one, that is a State's challenge, where there was a Defense objection, that was also exercised in a genuine manner.

That strike will be permitted.

THE COURT: Acher is coming in.

Mr. Satz?

MR. SATZ: Pass.

MR. WILLIAMS: Pass.

THE COURT: Tender or strike, Mr. Satz?

Your presumptive panel now is 4, Stone;, 12, Pierre, Nigel; 17, Moon; 18, Legons; 19, Diaz; 24, Golder; 25, Starkes; 29, Lynch; 32, Backus; 34, Dean; 38, 38, Runge; 39, Acher.

MR. SATZ: Strike 34, Dean.

MR. WILLIAMS: Race neutral reason.

MR. SATZ: What? He's not African American.

MR. WILLIAMS: Appears to be native American.

MR. SATZ: Born in Taiwan.

MR. WILLIAMS: Appears to be native American.

THE COURT: I tend to agree. Regarding appearance, I'm not about to ask him.

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If you needed to give a race neutral reason?

THE COURT: He did say he was born there.

He didn't say he was, his parents were natives from there.

MR. WILLIAMS: He's from a military family.

MR. SATZ: I can tell you why. I didn't like him. I don't really have a race neutral reason. I didn't think, I didn't go into it thinking about it that way. I didn't think he belonged to a protective class. I still don't know if he is in a protected class.

He was persuing criminalology. Abandoned it. Does a lot of stuff. Did a lot of stuff with, you know, rock music. Didn't feel he would be a good juror.

I never felt he was in a protected class.

THE COURT: That's the problem.

I don't know if he is or isn't.

MR. WILLIAMS: Could be a naturalized citizen.

MR. POLAY: He was born in Taiwan.

MR. WILLIAMS: I'm wondering, because his employment is with the Seminole Tribe. Seems

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to be partial Native American.

I don't know his ethnic background.

Maybe we should ask him.

THE COURT: Anything else?

MR. WILLIAMS: No, sir.

MR. SATZ: Can I have a minute?

THE COURT: Yes.

(Discussions held off the record.)

MR. SATZ: At this time, we withdraw our strike. And we pass.

THE COURT: I think we're to you guys for a tender or strike.

Use them or lose them.

MR. WILLIAMS: We tender.

MR. SATZ: Up to us?

With David Dean, number 34, Ms. McCann reminded me, he, David Dean, his uncle was involved with a police officer, got in trouble.

MS. MCCANN: It was down in Miami. A while ago. I assumed it was the River Cop Case.

Something famous, well publicized. And it was his relative.

He said that his whole family was military and law enforcement and that his uncle had something in Miami he got in trouble for.

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THE COURT: Based upon the reason just stated by the State, the Court will find that's race neutral, being exercised in a genuine manner.

That's your 7th strike.

MR. POLAY: Over our objection.

We are both at seven?

THE COURT: Yes. Tie score.

Bring in 40, Valdes.

MR. SATZ: Pass.

MR. WILLIAMS: Pass.

THE COURT: Tender or strike, Mr. Satz.

MR. SATZ: Okay. We're good.

MR. WILLIAMS: 40, Valdes.

THE COURT: Bring in 41, Bloom.

MR. WILLIAMS: Pass.

MR. SATZ: Pass.

THE COURT: Tender or strike?

MR. WILLIAMS: Tender.

THE COURT: Use them or loss them, Mr. Satz.

MR. SATZ: Strike Mr. Bloom, 41.

THE COURT: 41 it is.

That's 8 for you.

Bring in 42, Schick.

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MR. SATZ: Pass.

MR. WILLIAMS: Pass.

THE COURT: Mr. Satz, tender or strike?

MR. SATZ: We pass.

THE COURT: Use them or lose them.

MR. WILLIAMS: Right now, the 12th jury is Schick.

THE COURT: Want me to run them?

MR. POLAY: No, we're good.

We accept.

MR. WILLIAMS: Tender.

MR. SATZ: Tender.

MR. SATZ: We accept.

THE COURT: So we're all on the same page, let's make sure.

That's juror No. 4, Ms. Stone; juror 12, Mr. Pierre, Nigel; 17, Moon; 18, Legons; 19, Diaz; juror 24, Ms. Golder; 25, Mr. Starkes; 29, Lynch; 32 is Backus; 38 is Runge; 39 is Acher, and 42 is Schick.

That's what everybody has?

MR. POLAY: Yes, sir.

MR. SATZ: Yes.

THE COURT: Let's try alternates.

MR. POLAY: How many do you want?

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THE COURT: Five, six?

MR. SATZ: Five or six is good.

MR. WILLIAMS: There are 13 left.

THE COURT: So let's see. 43, Concepcion, would be the first alternate.

MR. SATZ: Fine with us.

MR. POLAY: Fine.

THE COURT: 44, Kaposi?

MR. SATZ: Fine with us.

MR. WILLIAMS: I want to raise a challenge to her.

THE COURT: If you don't like her, tell me. I am fine with that.

I just want to know who you can agree to right now.

You don't like her?

MR. WILLIAMS: No. Not using a challenge yet.

MR. SATZ: what do you mean you don't care?

THE COURT: All right. You're raising an objection.

MR. WILLIAMS: I'm raising an objection.

THE COURT: What is your challenge for cause?

MR. WILLIAMS: Her caviler answer to

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Mr. Satz's question about can we sign the death warrant. She said do you want it in blue ink or black ink.

THE COURT: That's a novel --

MS. MCCANN: That's a yes.

MR. WILLIAMS: That's a yes, all right. To me, doesn't reflect someone open-minded about this process. Very serious question.

Blue or black ink!

MR. SATZ: Wanted to get married, too. Not a reason for cause.

MR. WILLIAMS: Joking around?

THE COURT: That's denied.

I don't know how many strikes you will get.

I know that's the question that is coming.

MR. POLAY: We would strike Ms. Kaposi.

THE COURT: Gone.

Croskey?

MR. SATZ: That's okay with us.

MR. POLAY: We would strike Mr. Croskey.

MR. SATZ: Race neutral reason. We object.

MR. POLAY: He works as a paramedic and firefighter. Historically, they side with the prosecution.

MR. WILLIAMS: There will be paramedics and

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firefighters testifying in this case. We are concerned with his aligning himself with those witnesses.

THE COURT: Under that theory, at any time you have an individual sitting on your jury that has a similar background to witnesses that will testify, that's a race neutral reason?

MR. POLAY: He also said his best friend is a cop. He deals with law enforcement all of the time. There is not a clearer race neutral reason when somebody aligns them self, they work as a firefighter, friends are cops.

They are in the same vein.

I believe it is a race neutral reason.

MR. WILLIAMS: Firefighters here will testify to crucial things, aggravating circumstances. Not like they just showed up and medically treated someone.

They questioned these people.

MR. SATZ: There may or may not be a firefighter that testifies.

They objected to Mr. Dean, who we don't know if he was in a protected category.

His whole family was in law enforcement in Vermont. Can't have your cake and eat it, too.

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MR. WILLIAMS: The family in Vermont isn't the same as at the officers in Broward and Dade County.

MR. SATZ: Isn't blood thicker than water?

MR. WILLIAMS: Depends.

THE COURT: I'm going to permit that one, Croskey.

MR. WILLIAMS: Not as cause.

We exercise a peremptory challenge.

THE COURT: Why? I gave you cause.

MR. WILLIAMS: I'm sorry.

Cause.

THE COURT: 46, McLain.

MR. SATZ: Move to strike. Race neutral reason is his brother and his father were arrested for armed robbery, both of them.

MS. MCCANN: Broward County.

THE COURT: Prosecuted by your office.

MR. SATZ: Yes. In 1996.

THE COURT: I want to make sure.

Our professor that needed to get back, 26, I want to make sure she's staying as a strike.

MR. SATZ: Yes.

MR. WILLIAMS: Yes.

THE COURT: Pam, tell her to go.

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MR. WILLIAMS: Armstrong, she's gone.

JUDICIAL ASSISTANT PAM COE: She needed to get back to school.

THE COURT: We don't have a problem.

46 is valid reason being exercised in a genuine manner.

That leaves us with Clark.

MR. SATZ: How many strikes do we get?

THE COURT: For the moment, I'm giving two.

MR. SATZ: I'll excuse Ms. Clark.

THE COURT: 47.

48 is gone.

49 is Miller .

MR. POLAY: Strike Ms. Miller.

THE COURT: That's your last one.

MR. SATZ: I think that was our last one, too.

MR. POLAY: How many are you keeping?

THE COURT: So far, we have Gervolino; 56, Tim Kee; 57, Franklin/58, Riggio.

MR. SATZ: You skipped a bunch.

MR. WILLIAMS: Sims, Parker.

THE COURT: All right. I wanted to see if you were paying attention.

You have 50, Sims; 51, Parker; 52, Cooper;

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54, Gervolino.

Tell you what, I'll give you one more.

MR. WILLIAMS: Right now we have five.

THE COURT: I am letting you have another strike.

MR. WILLIAMS: If you go through five, Gervolino, we don't have a problem.

THE COURT: Your attorney is Tim Kee?

MR. POLAY: Yes. She is BSO.

MR. SATZ: Keeping five or six?

THE COURT: Five at a minimum. Six if we have them.

MR. WILLIAMS: Five, we're good through Gervolino.

MR. SATZ: We strike Gervolino, number 54.

THE COURT: 54 is struck. 55 is gone. 56, Tim Kee.

MR. WILLIAMS: Tim Kee is in a protected class.

We would strike her. Race neutral reason, BSO dispatcher. Father is a retired Coral Gables cop.

THE COURT: I don't think you need to go beyond that.

Were you going to object on that, Mike?

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MR. SATZ: I guess not.

MR. SATZ: Yes, I am. I'm going to object. Just because she is not a sworn police officer. Works for BSO.

MR. WILLIAMS: I'll give another reason. Retired Coral Gables cop.

MR. SATZ: I don't think that's a race neutral reason either.

Same thing. Going back to Mr. Dean. Whole family was in law enforcement in Vermont. Can't have your cake and eat it, too.

THE COURT: Are Franklin, Riggio and Morris acceptable to everybody?

MR. SATZ: I am concerned about Ms. Morris.

THE COURT: Tell you what. You can have Morris.

They can have Tim Kee.

We have Franklin, Riggio.

MR. SATZ: Riggio is the last one.

THE COURT: I forgot 15, Antenor.

MS. MCCANN: Can you read the alternates?

THE COURT: 43, Concepcion; Parker is 51; 52 is Cooper.

MR. SATZ: 50, Sims; 51, Parker; 52, Cooper; 57, Franklin; 58, Riggio.

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THE COURT: I'll go through them in a minute.

What we will do is bring in our panel first and put them in the jury room.

Then bring the rest of the group in and excuse them.

Then we'll bring the jury out, give them what I'll do and get them out of here.

Do you have 18 badges?

DEPUTY: Yes.

THE COURT: So everybody is on the same page, this is our regular panel. 4, Stone; 12, Pierre, Nigel; 17, Moon; 18, Legons; 19, Diaz; 24, Golder; 25, Starkes; 29, Lynch; 32, Backus; 38 is Runge; 39 is Acher; 42, Schick is the last one.

We have gone through our alternates, which are Concepcon, 43, Sims, 50; Parker, 51; 52, Cooper; Franklin, 57 and, 58, Riggio.

Mr. Hojan, during the course of the last two and-a-half weeks, you have had an opportunity to sit and participate with your lawyers in the jury selection process?

DEFENDANT: Yes, sir.

THE COURT: The 12 individuals and six

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alternates just mentioned are an acceptable group of people to try your case?

DEFENDANT: Yes, sir.

THE COURT: Do you have any issues, you want, are there any of those individuals that you have instructed your lawyers to excuse that haven't been excused?

DEFENDANT: No, sir.

THE COURT: Under the influence of any alcohol?

DEFENDANT: I wish.

THE COURT: Illegal drugs?

DEFENDANT: No.

THE COURT: Any medications?

DEFENDANT: No, sir.

MS. MCCANN: If the Court can inquire, has he had enough time to consult with his attorneys.

THE COURT: That's the Court's question.

DEFENDANT: Yes, sir.

MR. POLAY: One thing I wanted to put on the record, your staff has been fantastic, even after court, has been, your deputies have allowed us time to sit with Mr. Hojan after court, go over jury issues, questionnaires and,

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you know, basically, the jury selection strategy.

I want the record to be clear not only during court did we discuss this but after court and things of that nature.

MS. MCCANN: The State has know objection to that plan continuing so the Defense and Mr. Hojan have adequate time and privacy to discuss their case.

THE COURT: Court doesn't have an objection either.

(Enter venire.)

THE COURT: Good morning.

VENIRE: Good morning.

THE COURT: I have good news for you.

You are our jury.

With that in mind, if you would kindly swear them in.

(Jurors sworn.)

THE COURT: Don't sit.

Steve, would you take them into our luxurious accommodations, our jury room?

Ask the rest to come in, please.

You will be back out in five minutes.

Then I'll tell you what is going on.

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(Enter unselected venire.)

THE COURT: Good morning, everybody. Good news, bad news.

First, while you were all out there, we were in here, picking our jury. Reason you were out there is because I can never determine the time frame that it is, in fact, going to take.

I'll give you the bad news first.

You won't have the opportunity to sit on the trial. To me, that's kind of like the bad news.

When you actually get to sit on a jury, you get see exactly how our system works, how well it works.

I know a number of you, during this process, over the last two and-a-half weeks, have said this is the best system there is. It is not a flawless system. No question about that. But you will find out, as individuals, when you serve, you live the Constitution. And you see how it really does work.

And jurors, invariably, always get it right. Are there issues sometimes? Sure. Is this television and movies? Absolutely not.

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This is real life.

But I know on behalf of every single one of us how much we appreciate the fact that you did make that is sacrifice of time, you came down, participated and were willing, if selected to, if selected, to go all the way through and ultimately have to render a decision in the case.

With that in mind, I want to thank each and every one of you personally.

Tell under the good news? You get to go back to the jury room. They will process you out. You get to go home. You don't have to come back next week.

Thank you all so very much.

Enjoy the rest of your day and weekend and go back to work next week.

(Exit unselected venire.)

THE COURT: Let's bring them in.

(Enter jurors.)

THE COURT: I just want to go over a couple things with you guys.

I told you we just came out of a 22-month, three-day trial. I forgot I was in a different courtroom for that. They had a huge jury room.

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I forgot when I sent you back there, this one is a little cramped.

So we'll do the best we can to make you as comfortable as we can.

Our refrigerator, microwave and coffee machine are still back there for your use so that you have coffee that is available to you.

Believe me, we will provide you with the water and coffee, if you need it.

The refrigerators, if you want to bring goodies and snacks, that's fine.

Never a problem.

Let me go through this.

First of all, wherever you're presently seated, you need to stay in those seats.

Can't play musical seats, because you will have an opportunity to take notes.

Your notebooks will be on your seats in the morning, when you come back.

If you're concerned about you're sitting, as to your ability to see what is going on, there will be monitors set up so each of you will be able to see, you know, when the exhibits go up, we will have the front screen also.

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MR. SATZ: Right.

THE COURT: Obviously, there is only going to be one set that is on the front row. You guys will be able to buddy up to see it, if you need to.

A couple rules I want to go through.

First every all, we will start with preliminary instructions and openings on Tuesday.

Probably get into witnesses on Tuesday as well.

Please understand, especially at this point, that you cannot communicate amongst yourselves as to anything that is transpiring in this courtroom until you ultimately go back to deliberate and render a decision.

So understand that when you're back in that jury room, while you're sitting here, you want to talk about personal things, you will find a jury has a habit of forming a very tight-knit group over a course of time. I still have juries that get together once a year because it is group dynamics.

It is fascinating to watch it work.

So you want to talk about anything other

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than this case, fine.

I told you that you can't interact with the lawyers.

They can't interact with you.

If that becomes a problem, just find one of my deputies.

I guarantee it will never happen again.

If somebody attempts to approach you, talk to you about this case, please just tell them you're a juror on this case and to leave you alone. If they persist, find a deputy. And I'll deal with it. Because the same thing goes, in terms of researching, Googling, you don't need to start learning criminal law.

Everything you need to know will happen right here.

All of the facts will happen right here.

All of the law will happen right here.

All of the arguments.

Now, this includes when you go home and somebody, a neighbor, a friend, a spouse, a significant other says hey, what are you doing? What is going on? You're sitting on a jury. Those conversations don't happen either.

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Please, with the Sun Sentinel, the Herald, if you look at them on line, if you even look at them, no more, at least for the time being.

I haven't seen a reporter in here.

I guarantee you that either come Monday or following, this case will be in the paper, I anticipate. There may be cameras.

Actually, there would be only one camera.

No juror will ever be shown, in terms of their face, on TV, in any respect. They respect your privacy.

Even though they have the right to do it, the relationship we have with the press, they respect your privacy.

So with that in mind, understanding all of these rules, you all can commit to me and promise me that you will abide by them every single day of this trial?

JURORS: Yes.

THE COURT: I'll give you an idea of our scheduling.

Next week, Tuesday, Wednesday, Thursday. Not Friday.

We will not be working on the following Tuesday and Wednesday.

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So you have reference to dates, I'm talking about October 19, 23 and 24 of October. But we'll be working Thursday and Friday, the 25th, 26th.

Unless I'm mistaken, with the exception if we are still in session by Veteran's Day, we'll be pretty much working all week.

That's presently the situation.

I'll be going through this a number of times, I'm sure.

Can we do a schedule?

JUDICIAL ASSISTANT PAM COE: I'll send emails.

THE COURT: Just so you have it, next Friday is the 19th. Remember, we are not working on Mondays, unless it is a situation where you're deliberating. That's a different issue.

We will get to that when we get to that.

We will not be in session Tuesday the 23rd or Wednesday the 24th.

Other than that, we'll be in session, as I said, if we're still in session, by Veteran's Day on the 12th.

Won't be working on the 13th. We'll get to

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that. You will be working, 14, 15, 16.

If you are in deliberations, you will be here. We'll be here.

I'll approach that later.

Is there anything else I need to tell the jury at this time?

MR. WILLIAMS: No, sir.

MR. SATZ: No, Your Honor.

THE COURT: 9:30, on Tuesday.

Yes, sir.

JUROR: We all come back here at the same time as morning. Around 9:45.

THE COURT: 9:30. When you come back, Steve, you show them where they need to be?

DEPUTY: Yes, sir.

THE COURT: You don't go outside of the courtroom. You wait in the reception room.

When all of you are here, we will bring you out and get started.

If you have an issue, contact Pam.

If we have an issue and we need to communicate with you, we have all of your Emails.

What I'll ask you to do, before you leave, I want a new list with all of you, with the

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printing of your name, a reachable phone number and an Email address.

With that, have a good day.

JUDICIAL ASSISTANT PAM COE: If any of you do not have Judge Backman's business card, raise your hand.

I'll get you a few more.

THE COURT: Steve has them back there, in the jury room.

Have a good weekend.

See you Tuesday, 9:30.

(Exit jurors.)

THE COURT: All right, guys. I look forward to Tuesday.

****

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 12th day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

ORIGINAL

Defendants.

TRIAL PROCEEDINGS
VOLUME XVII
PAGES 1612 - 1760

Fort Lauderdale, Florida
October 16th, 2018
9:45 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 16th, 2018, commencing at 9:45 a.m.

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THEREUPON, the following proceedings were had:

THE COURT: Mr. Polay, do you have my prelims?

MR. POLAY: Yes. We have some matters to discuss, Judge.

THE COURT: Always.

MR. POLAY: This one is a dozy.

THE COURT: Let's go.

MR. POLAY: Okay. Just so the Court knows, on Sunday, October 14th, I went to a bar mitzvah in Miami, in Dade County. It was an affair with friends. Obviously, his son just turned 13.

Lo and behold, I walked in during the cocktail reception, the meet and greet, that type of thing. One of the jurors was at the bar mar mitzvah.

THE COURT: You cannot script this.

MR. POLAY: No.

It wasn't even in Broward County.

It is Ms. Acher. Immediately upon seeing it was Ms. Acher, she looked familiar. It was like it can't be. You know, people dressed up, lock a bit different. In an evening gown.

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Make up.

I thought that's a juror.

The person I was with walked over to her, said excuse me, ma'am, did you just go through voir dire in a trial.

She said yes.

That was it.

I realized it was her.

I have had no contact with her.

I didn't speak to her.

I immediately contacted Ms. McCann.

I said to Ms. McCann, you're not going to believe this, there is a juror here.

THE COURT: I thought you said this would be a dozy.

Is that an issue to anybody?

MR. SATZ: It is an issue to us.

MS. MCCANN: Yes.

MR. POLAY: I had no contact with her.

I didn't speak with her.

I didn't go near her. Even when everybody was dancing, I made sure I was far away.

The ultimate cherry, her table was right behind mine.

THE COURT: At least you weren't seated

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with her.

MR. POLAY: I informed Ms. McCann of the situation. I felt uncomfortable, Judge.

I wanted the Court to know.

I put the State on notice.

Hence --

THE COURT: That's where we are.

MS. MCCANN: Your Honor, the State, i MEAN, obviously, I commend Mr. Polay; and I would expect nothing less.

I felt him to be a man of integrity.

He was uncomfortable with it.

He told me about it immediately.

The State has a problem with Ms. Acher remaining on the jury. This isn't a casual elevator interaction or waving of a juror to an attorney or a wedding, where there are two sides.

This is a bar mitzvah, a commonality. Everybody is there for the same reason, same person. The fact she was seated at the table right behind Mr. Polay's, the bar mitzvah is from three to five hours long.

Cocktail hour, dinner, dancing, interaction, not with Mr. Polay and the juror.

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She knows he's a friend of a friend of hers. They have someone in common.

That's a question the jurors would be questioned about during voir dire, do they know anyone.

We have lost jurors for golfing.

This one knows this or that one.

It is an uncomfortable situation.

THE COURT: Don't we have to at least speak with her?

MS. MCCANN: Yes. But on its face, it is a problem.

MR. SATZ: The additional thing, he sent someone over to ask her -- I agree with Ms. McCann, Mr. Polay is an honorable person.

He sent someone over to ask, this is in Miami, nothing wrong with this. He asked this person to go over and say to her were you on a voir dire in a jury last week. There is no question. Who does -- now she knows, hey, how does this woman come over and ask me that. It puts everybody on notice. She will say, you know, look around. There is the lawyer that is, you know, it is a nice looking girlfriend. I wonder, all of that other stuff. Don't

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forget. In this case, one person, you know, voting for life, he must be a good guy, he's, you know, with, you know the bar mitzvah down in Miami.

THE COURT: Why don't we at least talk to Ma. Acher.

MR. POLAY: One other thing. Before, she looked familiar. Before someone said something to her, she was staring at me. You know, I realized she recognized me. Hence, we're here.

THE COURT: What is the position of the Defense with regard to Mr. Satz and Ms. McCann? Do I need to bring her out?

MR. WILLIAMS: There is no objection to her being excused.

THE COURT: Let's save that until I hear from her.

(Enter Ms. Acher.)

THE COURT: Ms. Acher.

MONIQUE ACHER: Good morning.

THE COURT: How was the bar mitzvah?

MONIQUE ACHER: Wonderful.

THE COURT: I take it you were asked whether or not you went through voir dire.

MONIQUE ACHER: Yes.

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THE COURT: Do you recognize anybody.

MONIQUE ACHER: Yes.

THE COURT: Who might that be.

MONIQUE ACHER: Uhm --

THE COURT: Well, I have to ask.

MONIQUE ACHER: Counsel for the defense.

THE COURT: Which one. He has two.

MONIQUE ACHER: I can remember his first name. Mitch.

THE COURT: Did you have any interaction other than --

MONIQUE ACHER: That moment? No.

THE COURT: I take it, well, you wouldn't have been there unless you were friends with the family, I take it.

MONIQUE ACHER: Uhm, it is a very distant, like we are people I see every, once every four, five years.

My son and the bar mitzvah boy we are friends with, the adults I don't interact with. We don't travel in the same circles.

Would it be uncomfortable? No, I never see them.

But I'll do whatever you think is the right thing.

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THE COURT: If you will be uncomfortable in any respect, you really need to let us no.

MONIQUE ACHER: It would make no difference. I do not see these people.

The last time I saw them was when my son was born, ten years ago. Next time I will see them is when my son has his bar mitzvah. It is like that. Very very distant.

MR. SATZ: How long was the bar mitzvah..

MONIQUE ACHER: We got there around 6 o'clock and left about quarter to 10:00.

MR. SATZ: What was your proximity to Mr. Polay?

MONIQUE ACHER: There were tables with our names. It was mostly like get your food and come back.

I was mostly on the dance floor with the kids.

I went back and forth to the table to eat, grab water, sit with my mother.

I didn't see him much. He was maybe two tables away.

We weren't in each other's orbit other than walking past each other.

MR. SATZ: A person came up, asked you if

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you had been on voir dire?

MONIQUE ACHER: Yes, asked my name. Asked were you recently in voir dire or on jury duty? I thought she was there.

I asked were you on jury duty with me?

She said no, come here.

Pointed him out.

Saw each other and didn't have interaction.

MR. SATZ: Who were you there with?

MONIQUE ACHER: My son, my mom. Relation is my brother's wife's brother's child. He's my brother's brother-in-law.

MR. SATZ: Did you discuss, somebody asked you who the lady was, that came up, asked you?

MONIQUE ACHER: Not at all.

MR. SATZ: Did you discuss it with anybody?

MONIQUE ACHER: No.

MR. SATZ: One of the lawyers on the case is here tonight?

MONIQUE ACHER: I think I mentioned it to the bar mitzvah boy's dad. I couldn't figure out the connection. Because I know everybody he would have invited. I didn't know they knew each other.

MR. SATZ: What did the bar mitzvah's boy's

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dad say to you?

MONIQUE ACHER: He knew him.

He's a friend.

He's a really nice guy.

I said I can't be anywhere near him.

MR. SATZ: He said he was a nice guy?

MONIQUE ACHER: Yes.

MR. SATZ: Thank you.

MONIQUE ACHER: Okay.

THE COURT: Mr. Williams, any questions?

MR. WILLIAMS: We have no questions.

THE COURT: I have another question.

MONIQUE ACHER: Absolutely.

THE COURT: I want to get to a bottom line.

You know this is a case where the State of Florida is seeking the death penalty.

MONIQUE ACHER: Yes, sir.

THE COURT: If you are back and deliberating, and you find the State has proven beyond a reason doubt one or more aggravating factors and there is mitigation that is presented, would you weigh that differently just because Mr. Polay was at the affair that you were at, with no interaction but the father said he's a good guy.

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MONIQUE ACHER: Absolutely not. I am not here for either attorneys. I'm here to here the case. It is about the defendant.

THE COURT: Would that make you uncomfortable if you had to make that decision?

MONIQUE ACHER: Absolutely not. No. It wouldn't change thing.

THE COURT: You can join the others.

MONIQUE ACHER: Thank you.

(Exit Monique Acher.)

THE COURT: I am listening.

MS. MCCANN: Based upon the colloquy just had, the State is fine with the fact that the juror said she can be fair and impartial, it would not affect her. Mr. Hojan has objected.

She has assured everyone it will not affect her.

We all agree Mr. Polay is a nice guy.

So we will keep her on the jury.

MR. WILLIAMS: As to the nice guy comment, do you really think the father of the boy having the bar mitzvah would invite somebody that is not a nice person?

MR. SATZ: The fact she went over and tried to find out who he was --

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THE COURT: No, no, no.

It is not that way. Never mind.

I understand. Okay.

Are we ready?

MR. POLAY: Can we bring Ms. Acher in to ask her not to discuss with the other jurors?

THE COURT: Steve, can I have just Ms. Acher a minute, for just a second.

(Enter Monique Acher.)

THE COURT: Ms. Acher, I have one thing I forgot to tell you. Please don't have any discussions with any of the other jurors about what we just discussed.

MONIQUE ACHER: Absolutely.

I haven't mentioned anything.

THE COURT: Bring the rest in.

(Enter jurors.)

THE COURT: Good morning, ladies and gentlemen.

JURORS: Good morning.

THE COURT: Members of the jury, the defendant has been found guilty of two counts of murder in the first degree in a previous proceeding. The only issue before you is to determine the appropriate sentence for each of

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the defendant's convictions.

The punishment for these crimes is either life imprisonment without possibility of parole, life meaning life. Or death.

The attorneys will now have an opportunity, if they are wish, to make an opening statement.

The opening statement gives the attorneys a chance to tell you what evidence they believe will be presented during the penalty phase of this trial.

What the lawyers say in opening statements is not evidence. And you're not to consider it as such.

After the attorneys have had an opportunity to present their opening statements, the State and the defendant may present evidence relative to the nature of the crime and the defendant's character, background or life.

You are instructed that this evidence is presented in order for to you determine as you will be instructed, first, whether each aggravating factor is proven beyond a reasonable doubt; second, whether one or more aggravating factors exist beyond a reasonable doubt; third, whether the aggravating factors

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found to exist beyond a reasonable doubt are sufficient to justify the imposition of the death penalty; fourth, weather mitigating circumstances are proven by the greater weight of the evidence; fifth, whether the aggravating factors outweigh the mitigating factors; and sixth, whether the defendant should be sentence to life imprisonment without the possibility of parole or death.

At the conclusion of the evidence and after argument of the attorneys, you will be instructed on the law that will guide your deliberations.

An aggravating factor is a standard to guide the jury in making the choice between a sentencing decision of life imprisonment, without the possibility of parole or death.

It is a statutorily enumerated circumstance that increases the gravity of the crime or the harm to a victim.

You must unanimously agree that each aggravating factor was proven beyond a reasonable doubt before it may be considered by you in arriving at your final verdict.

In order to consider the death penalty as a

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possible penalty, you must determine at least one aggravating factor has been proven beyond a reasonable doubt.

The State has the burden to prove each aggravating factor beyond a reasonable doubt.

A reasonable doubt is not a mere, possible doubt; speculative; imaginary; or forced doubt. Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists.

On the other hand, if after carefully considering, comparing and weighing all of the evidence you do not have an abiding conviction that the aggravating factor exists or if having a conviction, it is one which is not stable, but one which wavers and vacillates, then the aggravating factor has not been proved beyond a reasonable doubt; and you must not consider it in providing your verdict on the appropriate sentence to the Court.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, conflicts in the evidence or a lack of evidence. If you have a reasonable doubt as to the existence of an aggravating factor, you

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must find it does not exist.

However, if you have no reasonable doubt, you should find that the aggravating factor does exist.

Before moving on to the mitigating circumstances, you must determine that the aggravating factor or factors are sufficient to impose a sentence of death.

If you do not unanimously agree that the aggravating factor or factors are sufficient to impose death, do not move on to consider the mitigating circumstances.

Should you find sufficient aggravating factor or factors do exist to justify a sentencing decision for the imposition of the death penalty, it will then be your duty to determine whether the aggravating factor or factors that you unanimously find to have been proven beyond a reasonable doubt outweigh the mitigating circumstances that have been established.

Unlike mitigating factors, you do not need to unanimously agree that a mitigating circumstance has been established.

A mitigating circumstance is not limited to

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the facts surrounding the crime. It can be anything in the life of the defendant which might indicate that the death penalty is not appropriate for the defendant.

In other words, mitigating circumstance may include any aspect of the defendant's character, background or life or any circumstances of the offense that reasonably may indicate that the death penalty is not an appropriate sentence in this case.

A mitigating circumstance need not be proven beyond a reasonable doubt by the defendant. A mitigating circumstance only needs to being proven by the greater weight of the evidence, which means that evidence, which means evidence that more likely than not tends to prove the existence of a mitigating circumstances.

If you determine, by the greater weight of the evidence that a mitigating circumstance exists, you may consider it established and give that evidence such wait as you determine it should receive in reaching your conclusion as to the sentence to be imposed.

THE COURT: At this time, Mr. Satz, are you

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ready to open?

MR. SATZ: I am, Your Honor.

Good morning.

JURORS: Good morning.

MR. SATZ: Let me take you back to March 11, 2002.

I'll take you to a Waffle House.

This Waffle House is located at 4689 SW 148th Avenue in Davie, Florida.

Just to get your bearings, I75 and Griffin Road. In Davie.

And it is still there.

Now, this Waffle House faces north. Typical Waffle House.

It is approximately 4 o'clock in the morning.

And at 4 o'clock in the morning, there are three people working at this Waffle House.

There is an 18-year-old lady by the name of Christina Delarosa, a 38-year-old woman named Barbara Nunn and a 39-year-old cook named Willie Absolu.

There are no customers in this Waffle House at 4 o'clock in the morning.

Let me set the stage.

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The Waffle House faces north. As you walk in the front door, there is a counter.

As you go to the left, there are some booths you sit in.

On the east side, there are about four other booths by a plate-glass window.

Then there is a counter where people sit at a counter to order their food.

And on the east side of the counter is a cash register. Typical cash register.

Back then, when somebody orders, the server puts in waffles, coffee, Coke, whatever.

It registers.

The server puts in -- back then, the last four numbers of their Social Security number, so you know who made the order. And it goes to the central server for the Waffle Houses so they keep track of what is happening in their individual stores.

And below this cash register is what they call a drop box. It is a metal box with a slit in it with a padlock, a regular padlock, with a key.

The only people that have keys to the padlock were the manager, David Cominger; and

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the assistant manager.

They are weren't there.

It was just Christina, Barbara and Willie.

To the west of the counter, behind the counter, there is a swinging, full swinging door.

When the employees go through that door, here is what you see in the rear area.

That's for, you know, employees only.

As you go through the swinging door, to your right is the office. And it is literally as big as a closet.

In this office is a little desk.

Then there is a steel cabinet.

This steel cabinet has two top drawers and a combination safe.

Now, the office door is a metal door. And that is secured by a padlock also. And the only ones that have keys to the padlock are the manager and the assistant manager.

Inside of the office is this cabinet.

They do not keep any money in this combination safe. They keep it in the top of the two drawers on top of the combination safe. They keep money in there.

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What they keep in there is $600, which is what they call their bank.

They have make change, singles, ones and coins. A bunch of coins.

Then if there is a deposit that has to be made but then don't take it to the bank.

On this particular night, there was like $475 that wasn't deposited by the manager.

The drop box in front, under the cabinet, by the way, what happens is they monitor how much money is in the cash register.

If you get too many 20's or big bills, they drop it in the slit.

The server, too, keeps track of the money coming in. After the cash register has so much money, they wrap up, in a rubber band, the cash, to make sure there is only $150 or $200 in the cash register.

Because that's what they start out with. Either $150 to $200 every shift. So they know what is in the cash register.

They put the excess in that slit, in the box, secured by the padlock.

Now, the office door is secured by a padlock. So is a cash drawer in the office.

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And they do not use the combination safe.

Once you walk through the swinging door, the office is on your right. That was secured that night, just like the drop box under the register was secure with a padlock. The office door is secured with a padlock. Of course, the cash drawer inside of the office is secured with a padlock.

As you walk past the office, towards the rear, on the right, past the office door, there is another door.

This door leads out into a small hallway.

In this small hallway, there are two restrooms. A ladies' room and as men's room.

If you are a customer and you have to go to the restroom, you just go, you know, to the west side. There is a little hallway. There is the two restrooms.

Across from the restroom is this door the employees can use. To go into the restrooms; or they can use that door to get out of the back area. So there is that door.

As you walk further to the rear of the Waffle House, there is a preparation area. This preparation area the employees use. It is

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basically across from that door that leads out to the small hallway. You will see a photograph of that.

Further on, there are two doors.

The door straight ahead is what they call the back door or the delivery door. That leads to the outside. If you want to take, if somebody is bringing in a delivery, use the door from the outside. If you want to take something out to the dumpster, that's the door that leads to the outside.

As you are walking toward that door that leads to the outside, the delivery door, there is another door to the right of that. It is a heavy, metal, screen door. It is wire, a wire door.

You can see through it.

On the other side, they call this the commissary door, in which they keep their supplies.

This heavy metal commissary door is secured by a padlock, another padlock. Now we have four padlocks.

When you go through that commissary door, they keep supplies in there. The reason they

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keep it locked with a padlock is so management can keep control over their inventory: How much food is there, how much more they need. They can control their inventory like any other business would control their inventory.

When you go through this commissary door, when you turn to the left, there is a big, stainless steel door. This door is a walk -- you enter into a walk-in cooler. Like a refrigerator. And they keep things that have to be refrigerated in there.

Then, at the end of this walk-in cooler, right in the cooler, there is another stainless steel door.

When you open this stainless steel door, that's the walk-in freezer.

Okay?

So that's back there, in the commissary.

Remember, all four padlocks were secured at 4 o'clock in the morning on March 11, 2002.

Barbara Nunn, Christina Delarosa and Willie Absolu are working the third shift.

It starts at 10 o'clock p.m. on Sunday, March the 10th, 2002.

And it ends at 6 a.m., March 11th, 2002.

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That's the third shift.

So it is 4 o'clock in the morning.

In walks Jimmy Mikel and the defendant, Gerhard Hojan.

Barbara Nunn sees them.

She knows them.

Jimmy Mikel used to work at that Waffle House at 4689 SW 146th Avenue. And she worked with him approximately eight or nine times. Jimmy Mikel had worked at another Waffle House. I think started in November of 1999, he worked over at a Waffle House near Nova Southeastern University. 2580 SW 64th Avenue. He worked over there.

Then, when he stopped working over there, occasionally he would work at the Waffle House at 4689 SW 148th Avenue.

Barbara would work with him. When she would work with him, Hojan would come in and visit Mikel when he was working.

Matter of fact, Jimmy Mikel and Gerhard Hojan, even when Mikel wasn't working, they would go in there once in a while, have breakfast and talk to the employees.

So when they walked in at approximately 4

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o'clock in the morning, Barbara Nunn recognized them. She knows Jimmy Mikel as Jimmy. And she called Hojan Chip. But she knew Jimmy.

As a matter, Jimmy and Hojan had invited Barbara Nunn and a couple of the other employees to come over to another place where they worked called The Colosseum.

Back in 2002, there was a nightclub called the Colosseum. It was just south of State Road 84 in Fort Lauderdale. The address was 2520 South Miami Road. It was a nightclub.

Hojan and Mikel both worked there. They invited some of the employees at the Waffle House to come over there.

In fact, Barbara had gone over there a couple times, to the Colosseum.

And she walked up to Mikel and said, hey, you going to be working Thursday night? It's hip hop night. I want to come over.

I forget what Mikel said. But they went over and sat on the east side, third booth from the south.

Barbara Nunn says to Christina Delarosa, hey, they are good tippers. You take care of them.

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So Christina goes over to the booth. And they ordered a waffle, two Cokes and a cup of coffee.

Christina took their order. Goes to the register. Puts it in.

They are eating.

Meanwhile, Barbara and Christina are sitting at another booth.

There are no other customers in there.

They are talking.

Willie Absolu is at the grill, cleaning the grill.

Approximately 20 minutes to a half hour go by.

Mikel and Hojan are eating.

Jimmy Mikel gets up from the booth and walks out the front door of the Waffle House.

As he walks out, soon after, Hojan gets up and walks to the register with his check.

Christina Delarosa gets up. She walks behind the counter to what? To take care of the check and put it in.

Hojan is standing there.

And all of a sudden, Mikel comes back in. And he comes in. And he goes to the right.

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To the right is that little hallway, where the two restrooms are and the door that leads into the rear area.

As he does that, Hojan pulls out a black semi-automatic 380 handgun.

And he points it at Christina Delarosa.

Barbara Nunn was walking over to where Christina was.

She hearing the "click click."

"Click click."

"Click click."

Now, when that "click click," that's the sound of the handgun, a semi-automatic handgun, putting a round into the chamber.

You will hear, with a semi-automatic handgun, there is a handle. The way it operates, there is a magazine.

You slide the magazine inside of the Handle. But the gun will not fire until you pull back the slide and put a round into the chamber.

You do that, the clip or magazine is in there, to make it ready to fire.

You "click click."

Now there is a round in the chamber.

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This magazine held five rounds, five bullets.

Now there is one round in the chamber and four in the magazine.

"Click click."

When Barbara hears that, she looks, sees the black gun being pointed at Christina Delarosa.

Christina Delarosa looks at Hojan and says I have a six-month-old son. Am I going to be able to see him again?

Hojan responds yes. Just do what I say and start walking to the rear.

Hojan points the gun at Christina and Barbara and Willie. And they go through that swinging door that I described on the west.

They go through there.

They pass the office door.

They pass the door that leads out to the hallway, where the restrooms are.

And they come up to the commissary door.

And standing at the commissary door, with a pair of long bolt cutters with red handles, is Jimmy Mikel.

And he's in the process of snapping that

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master lock off of the door.

He snaps it off.

Barbara says to Mikel, Are we going to be all right?

Mikel says nothing.

They open the door.

In walks -- Hojan tells them to go through the commissary door, the heavy wire, metal door.

Barbara, Christina and Willie walk through there.

He tells them to go to the left and open up the cooler door.

Willie opens up the cooler door, the stainless steel cooler door.

They walk into the refrigerator, the walk-in refrigerator.

And he says, no, keep going.

Tells Willie to open up the stainless steel freezer door.

And he tells them to get into the freezer.

They get into this freezer.

This freezer is approximately 88 inches wide and 54 inches deep.

It's cold in that freezer, that small

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freezer.

And he puts Willie, and he puts Christina and he puts Barbara into that freezer.

And he closes the door.

A minute or two pass by.

And Christina says it is cold. She takes her hair down. She has long, blonde hair. It was up. She takes it down.

She says to Barbara, Barbara, are we going to be all right? Am I going to be able to see Kyle again?

That's her six-month old baby.

Am I going to be all right?

Hold on. Let's see what happens.

Then Hojan comes and opens the freezer door.

And he has the black .380 semi-automatic handgun.

And he says I want all of your cell phones.

Barbara says, well, I have a cell phone. But it is out front.

No one else said they didn't have any cell phones.

Hojan then closes the freezer door and leaves.

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They are still in the freezer.

A minute or two goes by.

Hojan comes back.

He opens up the freezer door. And he says I want your money.

Christina had like $197.

And she had been counting this, you know, in front of Barbara, while they were waiting for customers, just before 4 a.m., sitting at one of the booths.

Barbara had like $82.

Hojan says put your money on the shelf.

In the freezer, they have these shelves, like rack type shelves, where they can store stuff.

Barbara puts her money on the shelf.

Christina puts her money on the shelf.

Willie says, well, you know, I don't have my wallet. I left my wallet in the car, out front.

Well, he didn't.

What he did, he took his wallet out; and he hid it behind one of the boxes in the freezer, when he was in there.

Hojan takes Christina Delarosa's money.

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Takes Barbara Nunn's money. Leaves and closes the freezer door.

Barbara said, they're going to kill us.

Hojan is going to kill us. I know them. I know their names. He's going to kill us.

And Willie says hold on. And he grabs Barbara and Christina and says let's, let's, let's take it easy. Everything will be fine.

Everything will be fine.

No. He's going to kill us.

A couple minutes go by.

The freezer door opens.

It is Hojan again.

And he points his gun at Christina and Willie and Barbara. And he says turn around. Get on your knees. Put your hands on your head.

Barbara says whoa, whoa, whoa. You don't have to do this. Let's talk about this. Please, let's talk about this. You don't have to do this.

He then pushes Barbara and shoots her in the back of the head.

Now, Barbara had her hair up in a bun. The .380 bullet hits her in the back of the head,

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goes through her hair. Hits her occipital bone but does not penetrate her skull.

Fractured her skull.

But it doesn't penetrate.

She falls to the ground, unconscious.

Hojan then fires two shots into Willie Absolu and two shots into Christina Delarosa, emptying, emptying his five-shot, .380 automatic handgun.

Willie is shot in the left arm. You will see a photograph of it. The medical examiner will describe the wound to you.

The wound goes in his left arm. Exits his left arm. Goes through his neck. The bullet winds up in his right shoulder.

The second shot to Willie is directly to his head. Left side of his head.

That shot is fatal.

And there is stippling on that wound.

You will hear from the associate medical examiner exactly what stippling is.

Stippling is gunshot powder that comes from the gun. The bullet comes out of the gun, the muzzle of the gun, for a short distance. So comes gunshot powder.

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Within a certain, short distance, this gunshot powder goes.

If the target, especially the skin, it is embedded in someone's skin.

They are able to tell, the firearms examiner, the tool mark examiner, when he got the gun, fired it, did test rounds. The medical examiner looks at the wounds and stippling.

They can give you an opinion of approximately how far the muzzle of the gun was to the wound to the victim.

They will tell you, Carl Hammerle -- who, by the way, is now deceased. You will hear his testimony. His opinion was the muzzle of the gun to the left side of Willie's head, when the gunshot wound went into his brain, was between 6 inches to 18 inches.

In other words, the muzzle was that close to Willie Absolu's head.

The medical examiner will tell you, in her opinion, the first shot to Willie Absolu was the one in the arm because it looks like it was a defensive kind of thing, holding up your arm.

If the first shot was the one to his head,

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that was instantly fatal, he wouldn't have been able to move his left arm.

Christina Delarosa is shot in the neck. Right here. (Indicating.)

It goes. It travels. And it comes out by her right ear.

The second shot to Christina Delarosa was to her left breast.

It went through her body, severing her spine.

The associate medical examiner, Linda Rush O'Neal, found that bullet in her spine.

The bullet that went through her neck and came out her, right below her right ear, exited her body. The forensic crime scene examiner found that bullet in the freezer wall 22 inches up from the floor.

The medical examiner got the bullet from her spine. The medical examiner and the fire arms examiner is going to tell you, too, that there was stippling on her neck.

You will see a picture of that stippling on her neck.

In Dr. Rush O'Neal's opinion, the muzzle of the weapon that fired the bullet into Christina

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Delarosa's neck, the muzzle was anywhere from 6 to 12 inches away.

Carl Hammerle, the firearm examiner, will tell you it was from 6 to 18 inches away.

The fatal shots were, to Christina Delarosa, were the wound to the neck, the bullet that went through her neck and came out her right here and the shot to her spine.

The fatal shot to Willie Absolu was the shot to his head.

They died in that cold freezer. Right there.

Hojan closes the freezer door after he empties his gun, shooting all three: Willie, Christina and Barbara, in the head.

He closes that freezer door.

He goes out. And he joins Mikel.

What they do is they cut the lock, the padlock on the office door. And they go in. They cut the padlock on the metal, top metal cash drawer.

They take the money out of the cash drawer.

Then they go to the cash register.

They take the tray out of the cash register. And then they snap the lock on the

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drop box, the padlock on the drop box.

They take the money out of the drop box.

They take the tray from the cash register.

They go back to the office.

They leave the tray from the cash register back in the little office.

And they take the money from the cash drawer in the office.

They take the money from the cash register.

They take the money from the drop box.

They take Christina Delarosa's $197. And they take Barbara Nunn's $82.

And they leave.

They leave three people in that freezer.

Christina Delarosa is dead.

Willie Absolu is dead.

Barbara Nunn opens her eyes.

She is lying with Christina Delarosa and Willie Absolu. She is covered with blood.

She gets up and moves Willie's legs off of her.

Pushes the freezer door open and crawls out.

She looks out the cooler door, which was propped open.

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She looks out.

She doesn't see anyone.

She crawls up to the entrance of the cooler.

Then she gets up and looks out the commissary door.

She sees no one.

She runs out the back of the, the back door, the delivery door.

She goes maybe like a couple hundred feet.

Right in front of the Waffle House is a Shell Gas Station. That's right there on Griffin Road.

She goes over there, crosses the parking lot. Goes over to the Shell Station.

She knocks on one of the doors. The door is secure.

Smear can't -- so she goes over to the other door. The attendant let's her in, to the Shell Station.

She runs behind the counter of the Shell Station. And she gets down, on the ground.

She sits underneath the cash register.

And she said, don't let a white dude and a Big Mexican inside. I got shot.

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The attendant calls 911. Fire rescue and the police respond.

And Barbara Nunn asks the attendant to call her sister.

So he calls her sister on his cell phone.

She talks to her sister and her brother-in-law.

Says, Please come, please come, please come.

Then Barbara Nunn asks the attendant to call her mother in Iowa. And the attendant does that.

She says, Mom, I've been shot. I've been shot.

By that time, fire rescue gets there. They say what happened? What happened.

They see blood coming out of the back of her head. They try to treat her.

She said I work at the Waffle House. Jimmy, who used to work there, he's an ex-employee, and this Big Mexican came in. This big Mexican came in. The Big Mexican had a black gun. He shot me in the head. Please help me. Please help me. They work at the Colosseum.

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Then the Davie Police respond.

She tells them basically the same thing.

It was Jimmy.

She couldn't remember the name Chip. She called him the Big Mexican.

He's the one with the black gun that shot me.

They put her in an ambulance.

She's in there.

She finally -- they say, well look, let's put it on tape. So she gave a little, taped statement in the ambulance about what happened. You will hear that.

Then they take her to the helicopter. They fly her to Hollywood Memorial. They treat her there.

One of the male nurses sees a projectile drop from the back of her head.

You will hear his testimony. And he took that projectile. And he gave it to a Davie police officer, Patrick Donnelly, who happened to be there.

Gave it to Patrick Donnelly. Patrick Donnelly gave it to Dennis Shinberry, who was the Forensic guy, who was doing the forensic

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work at the Waffle House.

At 6 o'clock that night, they show her, you know, a photographic line-up. A Davie officer did.

She identifies, from six photographs, Gerhard Hojan as the big Mexican that shot her in the head. And the other line-up of six people, Jimmy Mikel, who was there with him, the other employee.

And they work at the Colosseum.

The police are now looking for Hojan and Mikel.

They find out that Hojan's parents have a home in Lee County, in Lee High Acres, at 100 Apache Street. Over in Lee County. Across Alligator Alley.

So Davie calls the Lee County Sheriff's department.

Hey, look, we're looking for this guy, Gerhard Hojan. And he has a silver, 2001 Dodge Ram pick-up. And his parents live at 100 Apache Street in Lee High Acres. Will you go, check it out.

They said sure.

So Lee County deputies go over to 100

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Apache Street. And they see there is a 2001 silver Dodge Ram pick-up.

It is backed up to the house, with the front facing the street. You can't see the tag.

So one of the Lee County deputies gets out, goes around the car to see what the tag number is. He's looking for WDB 04X as the tag number.

Sure enough, the tag number is WDB 04X.

So they decide to take strategic positions to see what happens.

Soon after, one of the Lee County deputies who strategically parked his vehicle, unmarked vehicle, down the street, sees a big person that fits the description of Gerhard Hojan come out of 100 Apache Street, walk to the street, look up and down the street and talking on his cell phone.

Then he goes back in the house.

Of course, this deputy notifies the other deputies of what is happening.

Soon after, Hojan comes out with another male, who turns out to be his father: Gerhard Hojan, Sr.

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And they get into a Ford Escort.

Hojan, Sr. is driving.

Hojan, Jr., the defendant in this case, is the passenger.

Lee County Sheriff's Department deputies stop the car and take Hojan, the defendant, into custody.

They take him to the substation.

They call the Davie police Department and say we have made a stop. The truck fits the description. This person fits who you're looking for. He gave his name as you told us. We have him here, at the substation.

Detective Anton, Detective Keso and Officer Kirkpatrick jump into the car.

Drive up from the Davie police Department and drive over to the substation, arriving at approximately 1:45 a.m. on March 12, 2002.

They say to Hojan, Sr., We would like you to consent to a search of your home.

He agrees to do that.

They asked Gerhard Hojan, the defendant in this case, Do you consent to a search of this truck?

He signs a consent form.

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Detective Anton and Detective Keso said we would like to talk to you. Detective Anton advises Hojan of his Constitutional Rights.

And they said we would like to talk to you about what happened in the Waffle House.

And the defendant, Hojan, says, yeah, Jimmy Mikel and I went over to the Waffle House. And we had breakfast. And then we went home.

And then Anton looks at him and says Barbara Nunn survived.

Hojan puts his head down and then tells them what happened.

That he and Mikel go to the Waffle House. They are having breakfast.

They decide to commit this robbery.

Mikel goes out, gets the bolt cutters. Goes in the employee door, across from the restrooms.

Goes in the back.

He puts his .380 automatic on Christina and Barbara and Willie and takes them to the back and describes how he put them in the cooler, in the freezer and how he shot all three people.

He even says that Barbara said, Please don't hurt us.

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And he describes how Christina Delarosa started to scream and cry. And how she tried to crawl under the racks in the freezer as he puts two bullets in her.

One in the left breast and one in her neck.

That they take the money.

You will find out that the loss from the Waffle House was $1,888.21. Plus the $197 from Christina Delarosa and $82 from Barbara Nunn.

He agrees to give them a taped statement as to what happened.

First it was an oral statement, described what happened.

Then you will hear Hojan, on this tape, saying what happened. Then Detective Keso travels over to 100 Apache Street. And he looks inside the 2001 Dodge Ram pick-up, silver. And behind the passenger's seat, on the floorboard, is a pair of bolt cutters with red handles.

And he takes that into custody.

He goes inside 100 Apache Street. In one of the bedrooms used by Gerhard Hojan, the defendant, he sees an nylon bag.

And in this nylon bag are two money orders.

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Two money orders.

They are both made out for $411.56.

Both money orders are made out: $411.56.

That's important.

I'll tell you why.

Also in the bag were coins.

434 quarters, 502 dimes and 363 nickels.

$176.85 in that bag.

Detective Keso takes it into custody.

These money orders were purchased at 6:40 a.m. on March 11th, 2002, a little over two hours from when Hojan shot and killed Christina Delarosa and Willie Absolu and shot Barbara Nunn in the head and left them in the freezer. Approximately two hours after. 6:40 a.m.

$411.56.

Because he went in there. And he, his payment, his payment to Enterprise Rent-A-Car was due.

And what do you think the payment was that was due?

$411.56.

That was at 6:40 a.m. In the morning.

And these two money orders were purchased

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at 3:30 North Federal Highway in Fort Lauderdale, 4th and-- NE 4th and Federal, there is a 7-Eleven store there.

Guess what?

There is a tape of Hojan walking in there and buying the money order at 6:40 a.m.

And if you go south on Federal Highway and you cross State Road 84, at 2520 South Miami Road, just off of US1, guess what is there?

The Colosseum.

At 5 o'clock a.m., on March 12, 2002, Detective Frank Quez from the Davie Police Department and John Stokes, go over to the Colosseum.

They look around in the northeast parking lot.

Guess what they find?

They find a Davis .380 semi-automatic handgun, completely empty.

No rounds in the chamber.

No bullets in the magazine.

It was a Davis, with a serial No. of AP412896.

That's the gun that fired the five casings that were found in the freezer.

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That was the gun that fired the bullets into Christina Delarosa and Willie Absolu and Barbara Nunn.

They found Hojan's gun in the parking area of the Colosseum.

At 7 a.m., the morning of the killing, right after 4 o'clock a.m., forensics from BSO, the Broward Sheriff's Office, because they were doing the work for the Davie Police Department, Detective Shinberry goes to the Waffle House.

And you know, he takes photographs. You will see the photographs. Both when Willie Absolu and Christina Delarosa are still in the freezer.

Then you will see photographs when they are removed.

When they are removed, Detective Shinberry found five cartridge casings.

Now, a cartridge casing is the back part of the bullet.

The front part of the bullet, what you call the projectile, goes out the muzzle of the gun, towards the target.

In a semi-automatic handgun, when that bullet or the projectile goes out the muzzle of

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the gun, the back of the bullet, the casing, the brass casing, is ejected.

And another round -- that's why they call it a semi-automatic -- goes right in, to the chamber, for the next round to be fired.

Shinberry found five casings inside the freezer.

This .380 Davis AP412896 is a top ejector.

In other words, the cartridge casing, you know, comes out the top.

Some are side-ejectors.

This was a top ejector.

You will hear from the testimony of Carl Hammerle that these five casings found by Detective Shinberry, in that freezer, all were fired from that Davis .380 semi-automatic handgun, AP412186, that was found in the Colosseum parking lot, belonged to Hojan.

Also he found the bullet that was 22 inches up from the floor that went through the neck of Christina Delarosa, came out the right side of her head, right below the ear. It went into the wall 22 inches up. That was fired from that gun, the Davis .380 semi-automatic handgun that was found in the Colosseum parking lot.

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He also attended the autopsy of Christina Delarosa and Willie Absolu.

And he recovered from Linda Rush O'Neal, the medical examiner, the bullet, the projectile, from the spine of Christina Delarosa.

He collected the bullet fragments from the head that Dr. Rush O'Neal removed from Willie Absolu's head and the bullet from his right shoulder.

He already had the bullet that Officer Donnelly had given him from Barbara Nunn's head and the bullet from the wall in the freezer.

You will hear from Carl Hammerle, the firearm and tool mark examiner.

He will tell you that the bullet that Dr. Linda Rush O'Neal removed from the spine of Christina Delarosa was fired from Hojan's .380 semi-automatic handgun that was found at the Colosseum.

He will tell you that the bullet that Shinberry got from the freezer wall 22 inches up from the floor was fired from Hojan's Davis .380 semi-automatic handgun.

And he will tell you the bullet fragments

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that Dr. Linda Rush O'Neal retrieved from the head of Willie Absolu was fired from that .380 Davis semi-automatic AP412896.

The other two bullets, the one, the bullet, the projectile in Willie Absolu's shoulder, had the same class characteristics but not enough individual characteristics.

What Carl Hammerle is saying, like that, when a bullet goes out of the muzzle of a gun, the muzzle, the barrel, has certain markings that are unique to every gun.

So in most guns, other than a Glock -- and this wasn't a Glock -- has lands and grooves and puts markings on the projectiles as it tumbles through the barrel.

If it has enough of those individual characteristics on the metal, they can make a comparison.

What they do, they take the gun, Carl Hammerle took a gun, a .380, and he fired it into a well of water in the lab. He takes that, puts it on a microscope.

He can tell if the individual characteristics match.

So the bullet from Christina Delarosa's

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spine, the bullet in the wall that went through her neck and came out the right side of her head, below her ear, those two bullets, and the bullet from Willie Absolu's head were fired from that .380 Davis automatic, AP412896 that they found at the Colosseum parking lot.

The other two bullets, the one in the right shoulder, had the same class characteristics, as did the bullet from Barbara Nunn's head, but not enough individual characteristics because of what happened to the bullet. It kind of crushes. Doesn't come out real nice so you can get all of the markings on it.

But Carl Hammerle says it has the same class characteristics but not enough individual characteristics.

And all five bullets were Federal Hydroshock .380 ammunition.

Also Detective Shinberry recovered the padlocks.

The padlock from underneath the drop box. The padlock from the door to the office. The padlock now on the floor that was on, that secured the metal cash box in the office. And the padlock from the commissary.

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What Carl Hammerle did is he's also a tool mark examiner.

And he can take bolt cutters, for instance; and he can cut metal similar to the kind of metal that is on the lock that, you know, the curved piece of the master lock.

And he can do just like you do with a bullet to compare it, the individual markings on the bullet to the individual markings on the bullet you know because you fired it yourself was fired from the particular gun.

You put it under the microscope.

You can compare it.

If it has enough individual characteristics, you can say that gun fired that bullet.

Same thing with the bolt cutters.

Both cutters on the rear floorboard, behind the passenger seat of the 2001 Ram silver pick-up truck that was leased by Gerhard Hojan, from Enterprise Rent-A-Car, that Keso took from the floorboard, Carl Hammerle takes those bolt cutters. And he cuts similar metal to the metal on the curve of the padlocks.

Low and behold, he's able to tell you --

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and you will hear his testimony, because remember, he's deceased -- but the padlock underneath the drop box was cut by these bolt cutters.

The Padlock on the floor in the office that secured the cash box was cut by these bolt cutters that were found on the floorboard behind the passenger's seat in Hojan's truck.

The padlock metal from the commissary door and the office door, although just like the other two bullets, had the same class characteristics but not enough individual characteristics to make a positive identification that those bolt cutters cut those two locks.

He made a positive identification as to the padlock underneath the drop, that was, the drop box underneath the cash register and the padlock that secured the cash drawer inside of the office.

You will hear from the medical examiner that she performed the autopsy on Christina Delarosa.

She is going to tell you that both of those shots, the one to the left breast that went

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through her body and severed her spine, was fatal and that she recovered the projectile from her spine.

She is going to tell you that the bullet to Christina Delarosa's neck that exited right below her right ear was fatal.

And she will give you her opinion as to how long Christina Delarosa lived after she was shot and what type of movement she could have had after she was shot.

She is going to tell you that she performed the autopsy on Willie Absolu.

She will tell you the shot to his left side of his head, was fatal.

She is going to give you her opinion about the stippling.

You will see pictures of the stippling on Willie Absolu's head, the left of his head and the neck of Christina Delarosa.

Remember her opinion, the muzzle of the weapon that fired the bullet into her neck was anywhere from 6 inches to 12 inches away.

Hammerle's was 6 to 18 inches away.

Same thing with Christina Delarosa. 6 to 8. 6 to 12.

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The bullet wound to the head of Willie Absolu was 6 to 12 inches away, the muzzle of the gun.

Based upon Dr. Rush O'Neal's opinion.

You will hear from the testimony of Gary Cokley, one of the manager's, the custodian of records, of the Waffle House.

And she's going to tell you how the money was kept. Why they used padlocks and how much the loss was.

$1,888.21.

She is going to tell you that the last sale at that restaurant, on March 11, 2002, was at 4:33 a.m. in the morning for $6.18, with 85 cents returned. And the server was Christina Delarosa.

And that was the last entry.

Hojan went into that robbery.

And he escorted these three people, at gun point, to go to the rear.

All the way to the back.

Waited until Mikel snapped the padlock.

Had them go through the cooler door. Refrigerator. Walk-in cooler.

Not there. Not there.

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Into the walk-in freezer.

88 inches by 54 inches.

It's cold.

That's where he puts them.

He puts them there.

He puts them there was one time.

He comes back for the cell phones.

That is two times.

He comes for the money.

That's three times.

He comes to kill them.

That's four times.

That was done to get $1,888.21.

$82 from Barbara Nunn and $197 from Christina Delarosa.

And he didn't want to leave any witnesses.

Barbara Nunn knew him.

But what?

Barbara Nunn survived.

Barbara Nunn survived.

She will come in here and tell you what happened.

And I submit to you there are six statutory aggravating circumstances in this case.

Six.

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One: Has the defendant been convicted of another capital or forceful felony.

The Judge will instruct you, you can consider, as prior convictions, contemporaneous convictions. Contemporaneous conviction would be during the killing of Willie Absolu, there was a murder of Christina Delarosa and the attempted murder of Barbara Nunn.

As to the murder of Christine Delarosa, there was a capital murder of Willie Absolu and the attempted first degree murder of Barbara Nunn.

Contemporaneous convictions can be considered prior convictions under the law.

That's one.

Number two -- and don't forget, there are two sentences for you to consider.

The death of Christina Delarosa and the death of Willie Absolu.

During their killing, during their first degree murders, it was done during the commission of another forceful felony, to-wit, armed kidnapping.

The defendant, Hojan, has been convicted of kidnapping. The kidnapping is taking Willie

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Absolu, Barbara Nunn and Christina Delarosa into that freezer, to secure them.

That's the death of Christina Delarosa and Willie Absolu during that armed kidnapping.

The third aggravating statutory aggravating circumstance: It was done for financial gain.

For financial gain.

$1,888.21. $197 from Christina Delarosa. And $82 from Barbara Nunn.

The fourth one, the capital murder was done both for Christina Delarosa and Willie Absolu to eliminate witnesses, to prevent a lawful arrest.

That was the purpose they were killed.

That was the purpose.

The fifth, the murder of Christina Delarosa and Willie Absolu was heinous, atrocious and cruel.

They are in this cold freezer. Christina Delarosa said, Will I see Kyle again? Barbara, it's cold in here.

What did Barbara say later on?

He's going to kill us.

They are waiting in that freezer.

Heinous.

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Atrocious.

Cruel.

The last one, the sixth one: Cold, calculated and premeditated.

Not just go in the back and let us take the money.

Not just in the storage area.

Not just in the cooler.

But in the freezer.

Cold.

Calculated.

Heightened premeditation.

Hojan put them in there.

He comes back for the cell phones.

He comes back for the money.

The fourth time, he comes back to kill them.

Cold.

Calculated.

Premeditated.

That's what the evidence is going to show.

Thank you.

THE COURT: Anybody need a quick break?

JURORS: Yes.

THE COURT: Steve.

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(Exit jurors.)

(Recess had.)

(Court reporter shuts down and starts a new file.)

THE COURT: Mitch, are you opening?

MR. POLAY: No. I wanted to put something on the record.

THE COURT: Yes?

MR. POLAY: Judge, I ask the Court to allow me to reserve my opening. I want my presentation of the mitigation fresh in the jury's mind.

As the court knows, I just, I think it was less than three months ago when I presented mitigation in the death case as well.

I used the same tactic. It was effective. That is the reason why. I feel if I give it now, it will be lost.

I would like to give it with my mitigation to be fresh in the minds of the jury.

THE COURT: Not a problem.

Have you discussed this with Mr. Hojan?

MR. POLAY: Yes.

THE COURT: Mr. Hojan, you understand your attorney has the right to open right now, tell

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them mitigation you anticipate will be put in on your behalf. You understand that?

DEFENDANT: Yes, sir.

THE COURT: You have no issue with the fact that Mr. Polay and Mr. Williams are going to wait until after the State has rested with their entire presentation?

DEFENDANT: Yes, sir.

MR. WILLIAMS: One other thing on the record about Juror Runge.

We had made a motion to challenge him for cause.

THE COURT: Correct.

MR. WILLIAMS: We had peremptories still left. Didn't exercise a PC and excuse him. We discussed that with Mr. Hojan. We were in agreement that notwithstanding that, given the future composition of the jury, had we discussed strikes, that we would probably be less happy with what was coming down the pike, as opposed to Mr. Runge.

And frankly, we think Mr. Runge will eventually be a disruptive force is the reason why we kept him on the jury.

MR. POLAY: These discusses went on during

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the jury selection, and Mr. Hojan was happy with Mr. Runge. He obviously wanted him.

Is that correct?

DEFENDANT: Yes.

THE COURT: I did a full colloquy with Mr. Hojan after the jury was picked. And you did agree with your attorneys not to exercise a peremptory challenge and leave Mr. Runge on?

DEFENDANT: That's correct.

THE COURT: You understand they could have knocked him off?

DEFENDANT: Correct.

THE COURT: You had no objection to that.

DEFENDANT: No, sir.

THE COURT: This is with full participation of your lawyers and all discussions on jury selection?

DEFENDANT: Yes.

MS. MCCANN: This is a strategy decision.

And the record is clear.

THE COURT: Strategic and tactical, correct?

DEFENDANT: Yes, sir.

THE COURT: Mr. Satz, ready to call a witness?

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Let's go.

(Enter jurors.)

THE COURT: Mr. Satz, ready to call a witness?

MR. SATZ: I am.

MR. POLAY: Can you tell the jury I'm reserving?

THE COURT: Oh. You're right. My apologies.

Thank you for reminding me.

As I indicated to you, in preliminary instructions, both the State average Defense have an opportunity to present an opening statement.

The Defense has exercised their right; and they will reserve their opening statement after the State of Florida has rested their case, just so you understand why we are going directly into a witness.

Mr. Satz?

MR. SATZ: Steven Cacciola.

STEVEN CACCIOLA,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

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THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Steven Cacciola, C-A-C-C-I-O-L-A.

DIRECT EXAMINATION

BY MR. SATZ

Q. Sir, what is your occupation?

A. Firefighter paramedic.

Q. How long have you been so employed?

A. 18 years.

Q. I would like to call your attention to the early hours of Monday morning, March 11, 2002.

Where were you working at that time?

A. Station 91.

Q. Where is that?

A. 1601, I'm not sure of the address. 1601, I believe, 148th Avenue, Davie.

Q. Where was your fire station?

A. There. That was the address.

Q. Do you still work at that fire station?

A. Yes.

Q. What happens that morning? You get a call to respond to the Shell station outside of the Waffle House?

A. Correct. Came in as a triple shooting.

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I believe it was 4:48 in the morning, something like that.

Q. What do you do?

A. We get into the truck.

We respond.

Typically with a call like that, we have to stage, wait until it is safe to enter via a police departments. The police go in first, make sure there is no active shooter or anything like that.

Then we're allowed to go in.

Q. Did you go into the Shell station?

A. Yes.

Q. Describe what happened.

A. I was met by the gas station attendent inside.

He asked me to come around the corner.

MR. POLAY: Objection to hearsay.

THE WITNESS: The individual was around the corner.

MR. POLAY: Judge, I object to hearsay.

THE COURT: Mr. Satz?

BY MR. SATZ:

Q. Don't say what anyone told you at that point.

You go in, right?

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A. Yes.
Q. Tell us where you went.
A. As soon as I walked in, I saw a trail of blood on the ground.
I followed the trail around the corner.
That's when I saw the victim later known as Barbara Nunn leaning up, against the counter. There was a pool of blood around her.
Q. What did you do?
A. I walked up.
Introduced myself.
She was lucid at the time, saying I got --
MR. POLAY: Objection as to hearsay.
MR. SATZ: Not hearsay when it is the victim, spontaneous.
THE COURT: Go ahead.
BY MR. SATZ:
Q. Go ahead.
A. She spoke to me and said she was shot in the head.
I asked her to show me.
She kind of pointed to the back of her head.
I turned her a bit to look, to see.
I had other people with me.

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We started treating her injuries right then and there.

Q. Describe how she was in the gas station, exactly how she was sitting and where.

A. She was sitting on the floor with her back up, against the counter.

Q. Did she tell you what happened?

A. Yes, she said --

MR. POLAY: Judge, objection. Hearsay.

THE COURT: Overruled.

Go on.

BY MR. SATZ:

Q. Continue.

A. Immediately, she just kept saying that was Jimmy. I worked with Jimmy before. But he doesn't work there anymore. He was with a big, fat Mexican who had a gun. And the Mexican is the one that shot me.

Q. How did you treat her?

A. Well, at that point, several other of my co-workers came in. We put her down, on the backboard. Secured her to the backboard. Put her on the stretcher. Then we brought her into the back of the rescue. And we did a further assessment at that time.

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Q. Did she tell you where Jimmy and the big, fat Mexican were working?

A. Yes, she said that --

MR. POLAY: Again, objection. Hearsay.

THE COURT: Overruled.

THE WITNESS: She said Jimmy used to work there. But he doesn't work there anymore. He works at the Collesum.

BY MR. SATZ:

Q. Where did you take her?

A. In the back of the rescue. We stabilized her there.

We called for air rescue to come, for further transport. Then once air rescue arrived, their medics came into the back of the rescue. And they assessed her for transport. Then we transported her from the rescue to the aircraft. Then the aircraft took her to the hospital.

MR. SATZ: Thank you very much.

No further questions.

MR. WILLIAMS: No questions.

THE COURT: Thank you very much, sir.

(Witness excused.)

THE COURT: Mr. Satz?

MR. SATZ: We are going to call Steve

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Klinger, who is going to read the testimony of the nurse at the hospital, Charles Herald.

(Steven Klinger sworn in to do readback of testimony of Charles Herald from written transcript.)

CHARLES HERALD,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Charles M. Herald, H-E-R-A-L-D.

And also Steven A. Klinger, K-L-I-N-G-E-R.

BY MR. SATZ:

MR. SATZ: You're Steven Klinger?

STEPHEN KLINGER: Yes.

MR. SATZ: You are going to read Charles Herald's testimony?

STEPHEN KLINGER: Correct.

MR. SATZ: Go on.

Just questions by me and again, go ahead.

(Steven Klinger reads back, as follows:)

DIRECT EXAMINATION

BY MR. SATZ

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"QUESTION: And your occupation, sir?

ANSWER: I'm an emergency room technician.

QUESTION: How long have you been so employed?

ANSWER: November of 2001.

QUESTION: I'd like to call your attention, Mr. Herald, to the early Monday morning, March the 11th, 2002. Were you on duty?

ANSWER: Yes, I was.

QUESTION: Where were you working then?

ANSWER: Memorial Regional Hospital.

QUESTION: Where is that located?

ANSWER: In Hollywood, Johnson and 35th.

QUESTION: Do you still work there?

ANSWER: I do.

QUESTION: Did anything happen that morning? I'm sure a lot happened. But with reference to this case.

ANSWER: There was a gunshot victim that came into the emergency room.

QUESTION: How did she come into the emergency room?

ANSWER: She arrived via helicopter.

QUESTION: What did you do?

ANSWER: I assisted on the transport team

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from the helipad to the trauma room.

QUESTION: When you got to the trauma room, how many people were in the trauma room?

ANSWER: Eight to ten.

QUESTION: And what did you observe?

ANSWER: A large, black female on a backboard collar.

QUESTION: Did you observe anything?

ANSWER: I observed a bullet fragment coming from the back of her head.

QUESTION: What did this bullet fragment look like?

ANSWER: Just a flattened, jagged piece of metal.

QUESTION: Let me show you State's Exhibit marked A for identification.

Mr. Herald, did it look like that?

ANSWER: Absolutely.

QUESTION: When you saw it, what did you do?

ANSWER: Kind of took a double take.

I was, like, wow.

QUESTION: So what did you do?

ANSWER: I got done with what I was doing. And then I grabbed a bag and put the metal in

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the bag.

QUESTION: Did you give it to someone?

ANSWER: I did.

I gave it to one of the Davie police officers.

QUESTION: Did you give the Davie police officer anything else?

ANSWER: The patient had some clothing, belongings, some shoes.

QUESTION: Did you take that clothing off the lady?

ANSWER: I did.

QUESTION: And what did you do with it?

ANSWER: Put it in a bag for her purposes and just ended up handing it to the police officer.

QUESTION: That's what you did?

You handed that to the same police officer?

ANSWER: I did.

QUESTION: Thank you, sir.

Your Honor, I have no further questions.

THE COURT: Mr. Polay?

CROSS EXAMINATION

BY MR. POLAY

QUESTION: Good morning, sir.

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ANSWER: Good morning.

QUESTION: You stated to the prosecutor that you had contact with Ms. Nunn, correct?

ANSWER: I beg your pardon?

QUESTION: You had contact with Barbara Nunn on this particular evening, a patient?

ANSWER: Yes.

QUESTION: Obviously, you were aware of the fact that it was in reference to a gunshot, correct?

ANSWER: I was.

QUESTION: During the time that you actually are treating this patient, you want to keep them calm, correct?

ANSWER: Yes.

QUESTION: In fact, and correct me if I'm wrong, this person was conscious, correct?

ANSWER: She was.

QUESTION: And they were aware of what was going on, correct?

ANSWER: She was.

QUESTION: And you also stated that you took some clothing and shoes into evidence, correct?

ANSWER: Yes.

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QUESTION: And you did this to preserve potential evidence, correct?

ANSWER: No.

QUESTION: You put it in a bag, right?

ANSWER: I do it because it is the person's belongings.

QUESTION: So you have shoes, correct?

ANSWER: Correct.

QUESTION: And some clothing, you put it in a bag; is that correct?

ANSWER: Yes.

QUESTION: And you hand it over to a police officer, correct?

ANSWER: I did, yes.

QUESTION: You don't give it to another doctor. You don't give it to anybody in the hospital, correct?

ANSWER: Sometimes I give it to the person's family.

QUESTION: I'm not talking about sometimes. I'm talking about this time.

ANSWER: Oh, yes.

That particular time, I gave it to a police officer.

QUESTION: So in this case, just so we're

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clear, you gave this evidence to a police officer, correct?

ANSWER: I did.

QUESTION: Thank you, sir.

MR. POLAY: I have nothing further.

THE COURT: Any redirect?

MR. SATZ: No, Your Honor.

THE COURT: Thank you very much, sir. You're excused."

(Readback concludes.)

MR. SATZ: Okay.

Thank you.

THE COURT: Do another or break for lunch?

MR. SATZ: Break for lunch.

THE COURT: I need you back at 1:15.

You know all of the rules and regulations.

We will see you then.

THE COURT: Have a nice lunch.

Leave your note pads, please.

(Exit jurors.)

(Recess had.)

THE COURT: Everyone is ready?

(Enter jurors.)

THE COURT: The jury is all here.

Mr. Satz?

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MR. SATZ: Your Honor, thank you.

Officer Donnelly.

PATRICK DONNELLY,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Patrick Donnelly, D-O-N-N-E-L-L-Y.

DIRECT EXAMINATION

BY MR. SATZ

Q. Sir, what is your occupation?

A. Currently a police officer for the City of Gainesville, Florida.

Q. I would like to call your attention to March 11, 2002.

How were you employed?

A. I worked for the Davie Police Department.

Q. How long had you worked for them up until that time?

A. About two years.

Q. How long did you continue working with Davie after that?

A. Approximately another two and-a-half years.

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Q. Then you went to Gainesville?
A. Yes, sir.
Q. I would like to call your attention to that Monday morning, March 11, 2002.
Did you come into contact with Barbara Nunn?
A. Yes, sir.
Q. Where?
A. At the Shell station at 14810 Griffin Road.
Q. Were you there when a helicopter came to get her?
A. Yes.
Q. Where did you go after that?
A. I responded to the hospital that she went to, that they took her to.
Q. When you were in the hospital, were you given something that was taken from Barbara Nunn?
A. Yes, I was given a projectile.
Q. Let me show you State's Exhibit marked number 8 and ask you if you can identify that?
A. Yes, sir.
Q. Did the nurse, Charles Herald, give you that?
A. I don't recall the name.
Yes, someone in the room that appeared to

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be a nurse or doctor gave me the projectile.

Q. Did you then give it to Detective Shinberry?

A. Yes.

MR. SATZ: It is already in evidence. I'll put it in evidence again.

That's all of the questions I have of Officer Donnelly.

MR. POLAY: No questions.

THE COURT: Thank you very much.

For the record, that's Exhibit 8.

(Witness excused.)

THE COURT: All right, Mr. Satz.

MR. SATZ: Barbara Nunn.

THE COURT: Can I see the lawyers a minute?

(Sidebar had.)

THE COURT: Just to make sure, she won't say anything about the last penalty phase?

MR. SATZ: I never talked to her about it.

THE COURT: I don't want to be starting all over again.

MS. MCCANN: I think we should have a conversation.

MR. SATZ: Want to ask the jury to go out and we can do it?

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THE COURT: Okay.

(Sidebar concludes.)

THE COURT: I need you guys to go back there a minute.

(Exit jurors.)

MR. SATZ: Ms. Nunn, do not mention anything about the prior death penalty proceedings, okay?

THE WITNESS: Yes.

MR. SATZ: If you have to, and I don't know a way it will come up, the trial is okay. Nothing about the death penalty portion of the old one.

Judge, is that okay?

THE COURT: Fine with me. All right, Steve.

(Enter jurors.)

THE COURT: Mr. Satz?

MR. SATZ: Barbara Nunn.

BARBARA NUNN,

being of lawful age, and having been first duly sworn in the above cause, testified on HER oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

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THE WITNESS: Barbara Nunn, N-U-N-N.

DIRECT EXAMINATION

BY MR. SATZ

Q. Ms. Nunn, where do you reside?

A. Davenport, Iowa.

Q. I would like to call your attention to March 11, Monday morning, March 11, 2002.

Where did you live on that occasion?

A. In Hialeah, Florida.

Q. Who did you live with?

A. My sister.

Q. Did you, on March 11, 2002, were you working?

A. Yes.

Q. Where were you working?

A. I was working at the Waffle House.

Q. Is that the Waffle House at 4689 SW 148th Avenue, in Davie?

A. Off Griffin Road?

Q. Yes.

A. Yes.

Q. Now, how long had you been working there up until that morning of March 11, 2002?

A. A little over a year.

Q. What were your duties and responsibilities

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at the Waffle House?

A. I was a cook.

Q. That Monday morning, approximately o'clock in the morning, were you working?

A. Yes.

Q. Who were you working with?

A. With Christina and Willie.

Q. What was Christina's function?

A. She was a waitress.

Q. How about Willie?

A. Willie was the cook that day.

Q. What were you doing that day?

A. I was a waitress.

Q. What time did you come to work that day?

A. Around four, I believe.

Q. What time? You worked 4 o'clock p.m. That would be on Sunday, the 10th, correct?

A. Yes.

Q. And then how long did you work?

A. I worked, well, 6 o'clock. Until the next shift came in.

Q. The shift ended at 6 p.m.?

A. Yes. Yes.

Q. Then what happened?

A. I was shot.

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Are you talking about --

Q. No.

I know.

The morning this happened --

A. Yes.

Q. -- you went to work, didn't you?

A. Yes.

Q. How many hours did you work?

A. Actually, I worked two shifts that day.

Q. When did you come to work?

A. The first time I came in, I worked from two to ten.

But I only worked until four.

Q. Why is that?

A. I was asked to come in for extra hours so I could work the second shift until the morning shift. Last shift or whatever it is called.

Q. That shift is --

A. Probably third shift. That's what it is called.

Q. From ten until two?

A. Yes. That's it.

Q. You were working that shift, you said, with Christina and Willie?

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A. Yes.

Q. I would like to call your attention to o'clock that morning, March 11, 2002.

Tell us what happened.

A. Chip and Jimmy came in and ordered some food.

Q. When they came in, were there any customers, other than --

A. No, there wasn't. There wasn't no other customers.

Q. So what happened?

A. Me and Christina was sitting at a booth, talking and stuff.

Chip and Jimmy came in. They had a seat two booths down from us. I told Christina --

Q. Would you do me a favor? You have a soft voice.

Would you talk up loud?

A. Yes.

Q. When they walked in, did you say anything to either of them?

A. I spoke to Jimmy.

Q. What did you say to him?

A. I asked him about the club, the Coliseum. I asked him about the club.

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Q. What did you ask him about it?
A. Was he going to be working that Thursday.
Q. Had you seen Jimmy before?
A. Yes, I had.
Q. How did you come to see him before?
A. He used to work with me on the Waffle House, on the second shift, two to ten.
Q. How many times did you work with Jimmy?
A. I would say, because he didn't stay long, I would say maybe eight, at the most maybe nine times.
Q. When Jimmy Mickel worked the Waffle House, what was his function?
A. He was a waiter.
Q. Chip. Had you seen him before?
A. Yes.
Q. How did you see him before?
A. With Jimmy.
Q. When would you see him with Jimmy?
A. Every time Jimmy came to work, he came, too.
Q. You saw him about eight or nine times also?
A. At the job I saw him that many times. Yes, at the job. That's it.
Q. At the Waffle House?
A. At the Waffle House.

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Q. Had you ever gone to the Coliseum?
A. Yes.
Q. How many times?
A. Twice.
Actually, the first -- yes, twice.
Q. You knew they both worked there, at the Coliseum?
A. Yes.
Q. This person you called Chip, do you see him in the courtroom today?
A. No.
Chip? Chip?
Yeah.
Right there.
(Indicating.)
Q. The person with the gray shirt and the black and gray tie?
A. Yes.
MR. SATZ: Madam Reporter, with the Court's permission, would you let the record reflect Ms. Nunn has identified the defendant in this case, Gerhard Hojan?
THE COURT: The record will so reflect.
BY MR. SATZ:
Q. Hojan and Jimmy go, sit somewhere?

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A. At the Waffle House.
Q. Yes?
A. Well, Jimmy went to work. Chip would sit at a booth.
Q. And on the night, the morning of when this happened, March 11, 2002, you talked to Jimmy about the Coliseum?
A. Yes, I did.
Q. Tell us what happened after that?
A. After we got done talking, Christina waited on him because I told her to. They tipped good.
They sat there for a while.
Then Jimmy gets up. And he goes outside.
And then a couple minutes after --
Q. So they are sitting at a booth?
A. Yes.
Q. Christina goes to waits on them?
A. Yes.
Q. What happens? What do you and Christina do?
A. We get up. After they get done, Jimmy goes out --
Q. No. When Christina waited on them.
A. Oh, she ordered their food. And then we sat down.

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Q. We?
A. Me and Christina sat down.
Q. Where?
A. At the end, where the big window is. Me and her was there, by the window. They were sitting in that booth there.
Q. How close to Mickel and Hojan were you sitting?
A. They were like three seats, three seats, I want to say, away from us. Three booths away from us.
Q. After a while, Mickel gets up? Jimmy gets up?
A. Jimmy, yes.
Q. Tell us what happened then?
A. Jimmy gets up. He goes outside.
Q. Out the front door?
A. Yes.
He went out the front door.
He gets up and goes out the, the front door. And we are still sitting there. And then Chip gets up and comes -- first Jimmy comes back.
I thought he was going to the bathroom.
Q. He walked in that direction?
A. Yes, back in the back. When you come into

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the waffle house, there is the bathrooms. Then there is our office. I assumed he was going to the bathroom.

Q. Okay.

A. Chip gets up.

Q. The defendant gets up?

A. Yes, he gets up. He, by this time, when he gets up under, Christina gets up.

I get up, behind Hojan.

We do our side work.

Before we, there is like a, in the Waffle House, there is something like (indicating) that you get in to, to pay.

She was already there.

I was going to go a little further. When we got there, I heard a "click click."

Q. What does that sound like? The "click click"?

A. Sounded like a gun or something.

I don't know. I just heard a "click click."

I didn't know that's the sound of when a gun is being used.

So that's when I turned, and I looked at him.

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Q. Looked at who?
A. Him. Chip.
Q. The defendant?
A. Yes.
Q. What was he doing?
A. He had the gun pointed at Christina.
Christina goes --
MR. POLAY: Judge, I object at this time. Can we go sidebar, briefly?
THE COURT: Why not.
(Sidebar had.)
MR. POLAY: I anticipate that Ms. Nunn will say something with reference to the fact Christina Delarosa saying will I ever see my six-month-old child, Kyle.
Something like that.
My objection is at this particular juncture, it is not relevant to any aggravator. It is not relevant to a penalty phase. I understand the Court allowed it in during the guilt phase. That was over objection.
I am asking the Court to keep that out. Additionally, it is hearsay, as well.
MS. MCCANN: Your Honor, it is absolutely admissible. It goes to HAC. It goes to the

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mental anguish Christina Delarosa started suffering immediately when the gun was pointed at her from the defendant in this case.

At that point on, all she's anything about is whether I will see my six-month-old son again.

MR. SATZ: It is part of the transaction.

THE COURT: I'll permit it.

Let's go.

(Sidebar concludes.)

THE COURT: Mr. Satz?

BY MR. SATZ:

Q. Ms. Nunn, Hojan points the gun at Christina?

A. Yes.

Q. What does Christina say?

A. She said I have a six-month-old son named Kyle. Am I going to see him again?

He said just do as I say, and you will be all right.

Q. What happens then?

A. Well, we go to the, start walking to the, through the walkway, you know, where the grill and stuff is, to go to the back.

Q. How do you get to the back?

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A. It's, it's, it's behind the grill. It's where the grill stuff is.

Q. All right.

A. And then walk straight back.

Q. Is there a doorway?

A. There is a doorway back there.

As we were walking back there, there is a swinging door.

We get back there.

And by the time we get back there, Jimmy was, had some red things that clips the locks or whatever.

And he --

Q. Hojan?

A. Chip comes through the back. So he goes through the side, like Jimmy went through. There is an office door by the bathroom. When we got back there, when we got up there, he was behind us or whatever.

He was there.

When we got to the storage area, like I said, Jimmy was clipping open the storage area with red clipper things.

I looked at Jimmy, and I asked him are we okay?

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He didn't answer me.

So we stepped into the storage room.

He says no, go all the way back.

Q. Who says go all the way back?

A. Jimmy. Jimmy told us to go all the way back.

Q. Okay.

A. We go all the way back to the freezer part. That's where we sat until Chip came back to ask me for my phone.

Q. When you and Willie and Christina are walking, describe how you get to the freezer?

A. When you get in the back, it is our prep area. And there is offices and shelves and stuff, counters and stuff back there.

Then you're, you're in this direction that I am in now.

There is prep tables.

Then there is the locker, the storage, dry area thing he clipped.

Once you go through there, there is like a, a, where the food that you pull out, to thaw out, the thawing out area, whatever you want to call it.

Then you walk a couple more steps.

Then there is the freezer.

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Q. Is there a door to the cooler?
A. Yes, you have to open up doors.
There are two doors.
Q. How did the door get opened?
A. We opened it. We opened the door ourselves.
Q. Who told to you open the door?
A. Jimmy.
Q. Where was Hojan? Where was Chip?
A. After we left the dry area, the first part, before we went in, I don't know.
Q. Okay.
A. I don't know.
Q. You don't know where Chip was or you don't know where Jimmy was?
A. I don't know where he was.
I think he was in the back.
I don't know where he was.
Q. Okay.
Didn't Chip take you back to the freezer?
MR. WILLIAMS: Objection. Leading.
THE COURT: Rephrase it.
BY MR. SATZ:
Q. Who took you back to the freezer?

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A. I'm sorry.

He took me back to the freezer.

(Indicating.)

He took us back to the freezer.

Q. Chip did?

A. Yes, he did.

Q. That happens when you get to the freezer?

A. We were waiting.

I guess we were just sitting in the freezer.

Q. When you get into the freezer, what happened with the door, with the door to the freezer?

A. Every time he came through the door, you're talking about the door moving? Every time he came through the door?

Q. Yes, did the freezer door close once you were in there?

A. Yes, it closes automatically. All the doors close automatically.

Q. The cooler door closes automatically?

A. Yes.

Q. And the freezer door closes automatically?

A. They close automatically, yes.

There is no propping them and letting them

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sit or anything like that.

They close.

Q. When the defendant goes back with you and puts you in the freezer, how were you in the freezer? How did you get in there?

A. The order we were in, it was, it was, uhm, Jimmy, I mean Willie, then me, then Christina. But I stood out further I think because I was bigger or the space was small. Smaller.

They were like behind me. I was out further.

Q. Chip puts you in the freezer, and the freezer door closes?

A. Yes.

Q. What happens in the freezer then?

A. Christina was talking about seeing her son --

MR. POLAY: Judge, same objection as before. Hearsay.

THE COURT: Same ruling.

BY MR. SATZ:

Q. Go ahead.

A. Christina was upset about her son. Wanted to see her son.

At that time, I told her we were fine.

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I comforted her and all of that stuff.

Then the freezer, you could see when he was coming because the freezer would move.

I don't know why.

When he opened up the first door, the freezer would move. We would know, be kind of like, you know.

But anyway, so, he came in.

Q. Did he open the freezer door?

A. He did. Chip.

Q. Chip opened the freezer door?

A. Yes.

He did.

Q. From the time you first, he put you in the freezer, Ms. Nunn, until the time he comes back the second time, how much time, approximately, went by?

A. I would say two to three minutes.

Q. He comes back a second time. Opens the freezer door. Then what happens?

A. He asked me for my phone. Everybody knows I keep my phone here. (Indicating.)

MR. POLAY: Objection to speculation.

MR. SATZ: How is that speculation when he asked her for a phone.

MR. POLAY: Judge, I just made an

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objection.

THE COURT: I know.

Go ahead.

BY MS. SATZ:

Q. Go ahead.

A. He asked me for my phone.

Everybody know I keep my phone right here. (Indicating.)

Q. Chip asked you for your phone?

A. Chip asked me for my phone.

Because everybody know I keep my phone right here. (Indicating.)

I said I don't have it.

And I lifted up my shirt to show him I didn't have the phone.

I told him where the phone was.

Then he leaves.

He asked them, too. Mainly, he came to me because Jimmy, because I worked with Jimmy. Always see me cooking. Whatever.

It is always right there. (Indicating.)

So he leaves.

And I say, I'd say maybe another three, two minutes, give or take, he comes back.

Q. Chip comes back?

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A. Chip comes back.
I'm sorry.
Chip comes back.
Chip asks us for our money.
Q. He opens the freezer door again?
A. Yes, he opened up the freezer door.
I'm sorry.
He opened up the freezer door. He asked us for our money.
So we gave him our money.
Q. How much money did you give him?
A. I gave him $85.
Q. How about Christina?
A. Christina gave him $197.
Q. How did you know she had $197?
A. We counted it, was counting our tips before they came in.
Q. How about Willie?
A. He got furious at Willie because Willie said he didn't have a wallet.
MR. POLAY: Objection.
Hearsay.
THE COURT: Overruled.
THE WITNESS: The reason I say he was furious at Willie, because, he said, You don't

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have a gun? I mean, You don't have a wallet? Willie was like no.

He got really loud with Willie.

Really furious with Willie.

Willie said no. Then he leaves.

Q. Chip leaves?

A. Chip leaves.

Q. Freezer door closes?

A. The door closes.

And he leaves.

Q. What happens in the freezer now?

A. Now, I know we're going to get shot. And I tell them that. I said they're going to kill us.

Q. Okay.

Who did you tell that to?

A. I told that to Willie and Christina.

I said they are going to kill us.

MR. POLAY: Judge, objection to a narrative.

BY MR. SATZ:

Q. What do you say to Willie and to Christina?

A. I told them they were going to kill us.

Q. What else did you say.

A. I said I know them. I can identify them. I said they are going to kill us.

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Q. Then what happens?

A. Then shortly after I said that, the door opens again.

Q. Who was at the door?

A. Chip.

Q. The defendant?

A. Yes.

Q. Then what happens?

A. This time, when he opened up the door, he put his foot in front of the door. And uhm, he had the gun turned this way, instead of this way. (Indicating.)

Q. On its side?

A. Yes.

He told us to get on our knees and put our hands on top of our head.

I wasn't doing that.

Christina and Willie did it.

I proceeded to tell him we don't have to do this. I said we can talk about this.

Why can't we talk about this? You don't have to do this.

The whole time, I had my hand, doing this. (Indicating.)

I was like you don't have to do this.

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Let's talk about it. You don't have to do this.

I kept turning my head, you know, saying you don't have to do this.

Then he shot me.

Q. Where did he shoot you?

A. He shot me right back here, in the back of my head. (Indicating.)

Q. That's Chip, the defendant in this case, who you identified?

A. Yes.

Q. What happens after he shoots you in the head?

A. I guess he finished shooting everybody else.

Q. What happened to you?

A. Oh, I fell on the ground. And, uhm, I fell on the ground.

Q. Then what happened?

A. I just fell on the ground.

I just remember falling on the ground.

And I just remember --

Q. You fall on the ground. Then what happens?

A. I guess I went, I must have left. And I woke up.

Q. When you woke up, were you on the ground?

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A. I was still on the ground. When I opened up my eyes, he was shooting Christina.

Well, actually, Christina, I saw Christina doing this. (Indicating.)

She was blocking something.

She was blocking something.

And I just closed my eyes and just laid there.

Q. And then what happened?

A. I knew the order that we was in, that everybody was shot. Plus I felt, when he shot Willie, Willie fell on me.

His legs and stuff fell across me.

So I had to push Willie off of me to crawl through the freezer, the freezer and walk in part of the storage bin and out through the prep area, back through the door.

Then I walked over to the Shell gas station.

Q. Tell us what happened when you got to the Shell gas station?

A. I went to the wrong door.

So I had to walk around to the right door. And the man let me in.

When I got there, I told him, I went

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straight up under a cash register.

I told him not to let no white man in or no Mexican man.

Q. Okay.

A. Big Mexican man.

I'm sorry. Big Mexican man.

Q. Then what happened?

A. The man called for help.

He called my sister for me.

I told my sister to come to me, that I have been shot in my head. And she gave the phone to her husband.

He kept asking me where I was.

I told him I had been shot and to come, get my sister to me.

Then I called, had him call my mother.

He called my mother.

I told my mother I had been shot. She was screaming.

Q. Where was your mother?

A. Davenport, Iowa.

Q. She was in Davenport, Iowa.

The attendant dialed the number for you?

A. Yes.

Q. Then where were you taken?

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A. Say that again?

Q. What happened after that? After you spoke to your mom?

A. Well, she started screaming.

I hung up the phone.

I was hearing a lot from him shooting. All I could here was hmmmmm, dinggggggg.

It was a loud ringing.

I was seeing triples and doubles and stuff. My vision and stuff was off, too.

My ears were really really bad.

I just hung up on her.

By this time, I guess it was the fire department or police or somebody got there and was asking me a lot of questions.

Q. Let me show you these photographs.

I'll show you State's Exhibit marked A for identification.

I'll put this over here.

Ms. Nunn, if you can turn.

See this?

I'll put this right up here.

You recognize that?

A. Yes.

That's my car. Waffle House.

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Q. Which is your car?
A. Burgundy Saturn.
Q. That's what the Waffle House looked like on March 11, 2002?
A. Yes.
Q. That's where you parked your car, your Saturn, the night you were working, right?
A. Yes.
Q. Now I'll show you State's exhibit marked 2B and ask you to take a look at that.
A. Okay.
Q. Do you recognize what that is?
A. Yes.
Q. I'll get you a pointer?
Ms. Nunn, here is the pointer.

Show us what this photograph 2B shows.
A. This is the working side, over here. All of this right here.
That's where the, where we worked at.
This is the aisle right here that Chip paid for his food at.
Q. Where was Christina?
A. On the other side. Right here.
Q. Where is the cash register?

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A. Right there.
Q. How about, you said there is a little hallway that leads to the restrooms?
A. Right here.
Q. That's where Jimmy went?
A. Yes.
Q. How about the door? The swinging door you were talking about?
A. That's right there.
Q. Now I'll show you State's Exhibit 2A.
Is that a better --
A. Yes, that's a better picture.
Q. That's a swinging door?
A. Yes, that's a swinging door there.
Q. Hallway to the bathrooms?
A. Bathrooms are on this side.
Q. I'll show you State's Exhibit X for identification.
I ask you do you recognize that?
A. Yes, I do.
Q. What is that?
A. This is a cash register. This is the, where we drop our money at when we are waitresses, when it was time to drop our money. Get too many big bills.

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Q. That drop box, is that secured with a padlock?

A. No.

Yes, it is. But not in that picture.

Q. And I'll show you State's Exhibit marked F for identification and ask you if you can identify that?

A. This is our prep area. That's the back door. Storage bin is over here that I was telling you guys about.

There is a counter there I told you guys about.

This is like our sinks and stuff.

Q. Here is State's Exhibit G for identification.

A. Okay.

When the door opens to the storage, the first entry, that's that room there. That's the first thing you see is that room there.

Q. That's the storage door you said was secured with a padlock?

A. Yes.

Supposed to be a padlock on that door there. It is locked every time the managers are gone.

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Q. Showing you State's Exhibit I for identification?

A. That's still the prep table.

That's the office.

And that's usually, that is locked when there is no manager or supervisor or anything or anybody like that.

Q. That is locked with a padlock also?

A. Yes, it is.

Q. Now, I'll show you State's Exhibit E for identification and ask you do you recognize who that is?

A. Yes.

Q. Who is that?

A. That's Christina.

Q. And I'll show you State's Exhibit marked D for identification.

Do you recognize who that is?

A. That's Willie Absolu.

Q. Do you recognize the face?

A. I don't want to look. I don't want to look, okay? I don't want to look at that. I don't even know where his face is at.

I can't see his face.

I don't want to look. I don't want to look

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at that.

I don't want to look at that. I don't want to see that.

Q. Okay.

All right. I'll show you State's Exhibit marked 2D and ask you to take a look at that and describe what doors those are.

A. That door is the storage bin I told you about, where we pull our food to thaw out.

That's the freezer, back there.

Q. That's Willie's legs?

A. That's Willie's legs.

Q. And I'll show you State's Exhibit marked 2C.

A. That's --

Q. What door is that?

A. That's the cooling place.

That's the storage, the dry storage.

Q. What is the other door there?

A. That's the door that goes outside.

Q. Is that the door you went out of?

A. Yes. Yes.

Q. Okay.

Ms. Nunn, I want to show you some I.D. pictures.

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Can I show them to you?

A. I really don't want to. We know it is Christina and Willie.

But okay.

Q. All right.

A. That's Willie.

Q. What is his name?

A. Willie Absolu. I can't remember.

Q. Willie Absolu?

A. Yes, that's it.

Q. All right.

Ms. Nunn, I want to show you State's Exhibit marked 9 in evidence.

At the hospital, were you shown this photographic display?

A. Yes.

Q. Okay.

A. That's Chip.

Q. Okay.

Is that your initials on there?

A. Yes.

Q. You picked out that person as who?

A. Chip.

Chip.

Q. Who did what?

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A. He shot me.
Q. I'll show you State's Exhibit ten.
Do you recognize that photographic display?
A. Jimmy.
Q. That's Jimmy.
Are those your initials on there, too?
A. Yes, it is.
Q. You presently live in Iowa?
A. Yes, I do.
Q. How many children do you have?
A. I have three.
Q. Have you ever been convicted of a misdemeanor of dishonesty?
A. Yes. Yes, I have.
Q. How many misdemeanors?
A. Four.
Four.
Q. Have you ever been convicted of a felony in a court of record?
A. Yes.
Q. How much times?
A. Two.
Q. How long did you know Willie Absolu?
A. You know what? I, it wasn't, it was, it was just about a few months.

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He had just came.

Q. How long did you know Christina Delarosa?

A. I had known Christina for maybe, maybe six months or longer.

Q. Is that the last time you worked at the Waffle House?

A. Yes.

MR. SATZ: Thank you, Your Honor.

I have no further questions.

MR. POLAY: Two minutes.

THE COURT: Need a break?

MR. POLAY: Yes, if you don't mind.

THE COURT: Steve?

(Exit jurors.)

(Recess had.)

THE COURT: Let's bring the jury back in.

(Enter jurors.)

THE COURT: Mr. Satz?

MR. SATZ: At this time, the State would offer State's Exhibits 9 and 10, which are the line-ups and photographs, State's Exhibit A.

THE COURT: A will come in as 1.

MR. SATZ: 2B.

THE COURT: 2B will come in as 2.

MR. SATZ: 2A.

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THE COURT: 2A will come in as 3.
MR. SATZ: X.
THE COURT: X will come in as 4.
MR. SATZ: F.
THE COURT: F will come in as 5.
MR. SATZ: G.
THE COURT: That will come in as 6.
MR. SATZ: Exhibit I.
THE COURT: Exhibit I will come in as 7.
MR. SATZ: C.
THE COURT: C will come in as 8.
MR. SATZ: E.
THE COURT: That will come in as 9.
I have 9?
Exhibit I is 7.
So then C comes in as 13.
MR. SATZ: E.
THE COURT: E comes in as 14.
MR. SATZ: B.
THE COURT: B will come in as 15.
MR. SATZ: 2C.
THE COURT: That will come in as 16.
MR. SATZ: N, as in nickle?
THE COURT: That will come in as 17.
MR. SATZ: 2H?

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THE COURT: 2H will be 18.

MR. SATZ: L.

THE COURT: L will be 19.

Mr. Polay?

MR. POLAY: We need a second, Judge.

(Discussions held off the record.)

MR. WILLIAMS: Judge, can we have a sidebar?

(Sidebar had.)

THE COURT: We took a break.

MR. POLAY: It was pertaining to questions, something I discussion with my client. Not pertaining to the evidence.

THE COURT: What's up?

MR. WILLIAMS: All this is doing, accentuated the blood.

THE COURT: What about it?

MR. WILLIAMS: Accentuated the blood.

All it is doing, this picture, D, for identification, all it is doing is accentuating the blood. It is the same picture as this.

MR. SATZ: My response is these are already in evidence. Plus the fact that this shows his arm. Underneath that arm is a casing.

This doesn't show that.

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MR. WILLIAMS: Well, the arm doesn't show the casing either, does it?

MR. SATZ: No, it doesn't. There is another photograph, the expert will say when we moved the arm, there is the casing.

MR. WILLIAMS: The other photograph of this shows the hole in the arm, with her?

MR. SATZ: Yes.

These are already in .

THE COURT: Just now?

MR. SATZ: Yes.

THE COURT: I don't have D.

What is the one he's complaining about?

Oh. That's already in.

(Sidebar concludes.)

CROSS EXAMINATION

BY MR. POLAY

Q. Good afternoon, Ms. Nunn.

A. Hi.

Q. Now, for how long a period of time did you know Jimmy, Jimmy Mickel?

A. I, I met Jimmy at my job. He didn't work there that long. I would say maybe about two months.

I worked with him on Mondays.

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I only worked with him a few times.

Q. You were friendly enough with him you would actually go to the Coliseum?

A. I'm friendly with anybody.

Q. Okay.

And you knew Chip worked there, at the Coliseum, as well?

A. Yes.

Q. You had gone to the Coliseum. And I guess they let you in for free before.

Is that right?

A. Yes.

Q. You know, you said to the jury that every time that you came in contact with Jimmy, chip was there; is that correct?

A. Yes.

Q. It was like Chip was always tailing Jimmy?

A. Yes.

Q. In fact, you said to me, one time --

MR. SATZ: MR. SATZ: Objection. He can ask the question. He's objecting to hearsay.

He's talking to her.

THE COURT: Ask a question.

MR. POLAY: I was going to, Judge. I couldn't.

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THE COURT: Give it a shot.

MR. POLAY: I'll try.

BY MR. POLAY:

Q. Every time Jimmy was working, Chip would be there, right?

A. Yes.

Q. You never had any problems with Chip prior to this evening; is that correct?

A. You said I never had any problems?

Q. Yes?

A. No.

But I didn't like him.

Q. But you liked Jimmy?

A. Yes, I liked Jimmy.

I didn't like him. I never liked him. (Indicating.)

Q. Well, you felt Jimmy was the boss of Chip, right?

A. Oh, yes.

Q. In fact, I believe -- strike that.

Jimmy worked at this Waffle House. There are certain things an employee would know. Is that correct?

A. Okay. Say that? Jimmy worked at the Waffle House, yes.

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Q. You, as employees, you know where the money is?

A. Yes.

Q. You know where things are dropped off?

A. Yes.

Q. Only an employee would know that, right?

A. Yes.

Q. I just want to take you back to another thing that Jimmy knew about you. He would see this when you worked with him. You said you're brought back to the freezer?

Correct?

A. Yes.

Q. And you said to the jury that Jimmy told you to go all the way back; is that correct?

A. I got the names mixed up.

He told me to go all the way back. (Indicating.)

MR. SATZ: He, meaning the defendant?

THE WITNESS: Meaning -- (Indicating.)

MR. SATZ: Chip?

THE WITNESS: Chip.

BY MR. POLAY:

Q. And Jimmy is there with bolt cutters, opening up the locks?

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A. Yes.
Q. So an employee would know these are locked, correct?
A. Yes.
Q. And an employee would know where the money is, correct?
A. Yes.
Q. So you go into the back of the freezer. And you say that you are there for two or three minutes. Correct?
A. I am guessing around that time.
Q. An estimate. I understand.
A. Yes.
Q. And then you say that Chip comes and asks you for your cell phone?
A. Yes, he did.
Q. And you said that Jimmy knew you had a cell phone, right?
A. Yes, Chip knew, too. He was there at work all of the time.
He knew too.
He knew. I keep it right here in my bra.
He knew, too.
Q. Well, you worked with Jimmy, right?
A. I worked with Jimmy. Chip sat right there,

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across from where, in that last booth. Sat in that last booth all of the time, where me around Christina sat. He sat there all of the time, smoking.

Q. My question to you, Jimmy knew you had a phone, correct?

A. Yes, jimmy and Chip knew I had a phone.

Q. Jimmy knew you had a phone?

A. Chip did, too.

Yes.

Q. That's a yes.

Jimmy knew you had a phone?

A. Yesssss.

Chip did too.

Q. You said to Mr. Satz that in the office, there is a padlock on money, correct?

A. There is a padlock on the office door.

Q. On the office door, correct?

A. Yes. Yes.

Q. There is also a padlock to, I guess, quote, protect the bank, where money is kept in the office?

A. Well, I can't tell you that part because I didn't go in the office. I was always on the outside. It is just a little room. About the size of that little space there.

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But he has been in that office. (Indicating.)

Chip has been in that office.

Q. Let me ask you this.

You felt -- correct me if I'm wrong -- you felt Chip was stupid, right?

A. I felt Chip was a muscle man.

A bully.

I think he was the muscle man. I have always thought that.

Q. You felt Jimmy was the mastermind?

A. Yes.

Q. Jimmy was the one with the plan, right?

A. I don't know if he had a plan.

He was the one he would gopher for.

Q. Chip was the gopher?

A. He always did everything --

Q. That Jimmy said?

A. That's just my opinion, okay?

Q. Understood.

Just one second, Judge.

THE WITNESS: (Discussions held off the record at defense counsel table.)

MR. POLAY: Nothing further, Judge.

MR. SATZ: Thank you, Ms. Nunn.

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I have nothing further.

THE COURT: Thank you, ma'am.

(Witness excused.)

THE COURT: Mr. Satz?

MR. SATZ: Joanne Carter.

JOANNE CARTER,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Joanne Carter, C-A-R-T-E-R.

DIRECT EXAMINATION

BY MR. SATZ

Q. Ms. Carter, what is your occupation?

A. I'm a police detective with the school board of Broward County.

Q. I would like to call your attention to Monday, March 11, 2002.

How were you employed?

A. As a detective with the Dave Police Department.

Q. How long had you worked for them?

A. At the time, 14 years.

Q. What date did you leave them?

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A. 2007.
Q. On March 11, 2002, did you have occasion to go to the Highwood Memorial Hospital and meet with Barbara Nunn?
A. Yes, I did.
Q. I want to show you State's Exhibit number 9, which is a photo display with the defendant, Gerhard Hojan.
Have you seen that before?
A. Yes, sir.
Q. What did you do with that, if anything?
A. I showed it to the victim. And I, she picked it out immediately.
And I circled and dated it and initialed it.
Q. Who initialed it?
A. The victim.
Q. The lady that just left?
A. Yes.
Q. When you showed her that line-up, did you know any of the suspects in this case?
A. No.
Q. You didn't know who was who?
A. No, I did not.
Q. I'll show you State's Exhibit marked 10. A

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line-up with Jimmy Mickel.

Have you seen that before?

A. Yes.

Q. What did you do with that?

A. I showed it to the victim. She picked him out immediately. She said it is Jimmy. He used to work at the Waffle House.

I signed it or circled it. Dated it and had her initial it.

Q. You didn't know who Jimmy Mickel was or Gerhard Hojan at all?

A. No.

MR. SATZ: Thank you.

No further questions.

MR. POLAY: No questions.

THE COURT: Thank you very much, ma'am.

(Witness excused.)

THE COURT: Mr. Satz?

MR. SATZ: Dennis Shinabery.

DENNIS SHINABERY,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

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THE WITNESS: Dennis Shinabery,
S-H-I-N-A-B-E-R-Y.

DIRECT EXAMINATION

BY MR. SATZ

Q. What is your occupation?

A. Right now, I'm retired.

Q. How long have you been retired?

A. Ten years.

Q. What year did you retire?

A. I retired from the Broward Sheriff's Office in 2004 and from the Margate Police Department in 2011.

Q. I would like to call your attention to March 11, 2002, approximately 7 o'clock in the morning.

Did you have occasion to go to 4689 SW 148th Avenue in Davie?

A. Yes.

Q. Where did you go to?

A. Waffle House Restaurant.

Q. What was your purpose for going there?

A. I was advised there was a crime scene there.

I was appointed as the lead crime scene investigator.

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Q. You were the lead crime scene investigator?
A. Yes.
Q. Did you take photographs?
A. I did.
Q. Let me show you now State's Exhibit A, was?
THE COURT: A was 1.
BY MR. SATZ:
Q. Here is a pointer.
See the photograph over there?
A. Yes.
Q. Tell us what that, did you take that photograph?
A. Yes.
Q. Is that the Waffle House you went to?
A. Yes. That's the main entrance.
Q. Showing you State's Exhibit -- Judge, should I have the clerk mark these?
THE COURT: Might be a good idea.
BY MR. SATZ:
Q. Now, showing you State's Exhibit 2, did you take that photograph?
A. Yes.
Q. Where is the entrance to the Waffle House?
A. Well, this exit to the right here.
Q. See where it says exit?

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A. Yes.
Q. Wouldn't that be the entrance?
A. Yes. Off to the right, here.
Q. You took that photograph?
A. Yes.
Q. Do you know where the cash register is?
A. Behind the counter here.
Q. Did you go behind the counter?
A. I did.
Q. What did you do when you were behind the counter?
A. Numerous photographs were taken first before we did anything.
Q. Did you see -- what did you see behind the counter, on the floor?
A. There was a lock on the floor.
Q. That would be behind, where the cash register is?
A. Yes. Right below where the cash register is.
Q. I'll show you State's Exhibit number 4.
Do you recognize that?
A. Yes.
Q. And you took that photograph?
A. I did.

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Q. When you go -- State's Exhibit marked 3, do you recognize that?
A. Yes.
Q. Did you go past that swinging door?
A. Yes.
Q. When you go past that swinging door, did you, what did you do? Did you take photographs back there?
A. Yes.
Q. Showing you State's Exhibit, Exhibit 7, do you recognize that photograph?
A. Yes.
Q. Did you take that photograph?
A. I did.
Q. Where would the office be?
A. The office would be right back in here.
Q. Is that the door to the office that is open there?
A. Yes.
Q. The storage door would be where?
A. Right here.
Q. Did you have occasion to, you mentioned there was a padlock behind the register, correct?
A. On the floor, yes.
Q. Did you take a photograph of that?

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A. Yes.
Q. Did you take it into custody?
A. Yes.
Q. The padlock?
A. Yes.
Q. I'll show you State's Exhibits marked Y and Z and ask you if you can identify those?
A. Yes.
Q. You took those photographs?
A. I did.
Q. Do those two photographs, Y and Z, accurately depict the lock as you saw it behind the counter, underneath the drop box?
A. Yes.
MR. SATZ: I would like to offer Y and Z.
MR. POLAY: Could I see that?
MR. SATZ: Sure.
THE COURT: State's Y and Z for identification will come in as 22 and 23.
BY MR. SATZ:
Q. Showing you State's Exhibit 22, would you show us where the lock was?
A. Right here.
Q. Where is the curved part of the lock.
A. Right here.

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Q. Showing you a close-up, State's Exhibit 23, what does that depict?

A. A close-up of the lock and curved part of the lock.

Q. You picked them both up, took them into custody?

A. Yes.

Q. Showing you now State's Exhibit P for identification, and ask you if you can take, if you can identify that?

A. Yes.

Q. What is that?

A. Picture I took in the office.

Q. Just as it is, with the tray on the floor?

A. Yes.

MR. SATZ: Offering State's Exhibit P.

THE COURT: State's P for identification comes in as State's 24.

BY MR. SATZ:

Q. State's Exhibit 24, does that accurately depict the office when you walked in?

A. Yes.

Q. And you took that photograph?

A. I did.

Q. Showing you State's Exhibits marked O and Q

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for identification and ask you if you can identify that?

A. Yes.

Q. What is that?

A. This is also a photograph taken in the office. It shows a cash drawer on the floor, one on the counter and cash drawer open.

Q. How about the lock?

A. It was on the floor.

Q. It truly and accurately depicts the office, lock, cash tray on the floor as you saw it on March 11, 2002?

A. Yes.

MR. SATZ: I would like to offer State's O and Q.

THE COURT: They will be 25 and 26.

BY MR. SATZ:

Q. Showing you State's Exhibit 25, what does that show?

A. In the office, that shows the cash drawer on the floor and lock on the floor also.

Q. State's Exhibit 26?

Same thing?

A. Yes.

Q. You took that lock into custody?

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A. I did.
Q. Here is State's Exhibit 24, again.
There are two cash trays in there, correct?
A. Yes.
Q. One on top of the desk?
A. Yes.
One or not the floor and one on the desk.
Q. Here is State's Exhibit 26, as I just showed you, one on the floor?
A. Yes.
Q. You can see the cash drawer on the top, right?
A. Yes.
Q. You took this lock into custody?
A. Yes.
Q. Showing you State's Exhibit, State's Exhibits V, U, T, S, R and W and ask you, Mr. Shinabery, if you would take a look at those exhibits?
A. Yes.
Q. You took those photographs?
A. Yes.
Q. Did those photographs truly and accurately depict the rear area, where the office door was and the lock, padlock to the office door?

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A. Yes.

MR. SATZ: At this time, I would like to offer Exhibits R, S, T, U, V, W.

THE COURT: Those will come in as State's 27 through 32, respectfully.

Wait.

We have 27, 28.

Got it.

BY MR. SATZ:

Q. Detective, State's Exhibit 31?

A. Yes.

Q. Where is the office.

A. The office is right here. (Indicating.)

Q. Showing you now State's Exhibit 30, with reference to the office door, was there a padlock?

A. Yes.

Q. Where is it?

A. Right here.

Q. The office door is where?

A. The office door is right over here.

Q. Showing you State's Exhibit 33, is that the close-up of that lock?

A. Yes.

Q. State's Exhibit 32, you took these photographs?

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A. Yes.
Q. Exhibit 32? What is that?
What is that?
A. The curved section of the lock that was cut off.
Q. Perspective picture, State's Exhibit 28?
A. Yes, that's in the same area. That's the curved section.
Q. You took that lock and the curved section into custody?
A. Yes.
Q. Showing you State's Exhibits 3H, J, K and H and ask you if you can identify those four photographs?
A. Yes.
Q. You took those photographs?
A. I did.
Q. Do they truly, accurately depict the back room area, preparation area, as it existed and the storage door as it existed on March 11, 2002?
A. Yes.
Q. Does it show the lock for the storage door?
A. Yes.
MR. SATZ: I would like to offer State's exhibits H, J, K and 3H?

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THE COURT: What is marked State's H, J, K for identification will come in as 34, 35, 36 respectively.

3H will come in as 38.

BY MR. SATZ:

Q. Now showing you State's Exhibit 34, what does that show?

A. That shows the padlock on the floor.

Q. By the storage door?

A. From the storage area.

Q. 35?

A. That's a close-up of the lock in the storage area.

Q. State's Exhibit 38?

A. Yes, that's the curved section of the same lock. That's outside of the storage area.

Q. Did you take that lock into custody?

A. Yes.

Q. Showing you State's Exhibit 29, you can take that out, examine it if you want to and tell me what that is?

A. These are the four padlocks and the curved sections of the padlocks I collected.

Q. What did you do with them once you collected them?

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A. They were processed for latent prints in the crime lab.

Q. Who did you give them to? Did you give them to someone to analyze?

A. I did it myself.

Q. No, the cuts?

Do you know who Carl Hammerle is?

A. Yes.

Q. Did you give him the locks?

A. Yes.

Q. Let me show you State's Exhibit, with the Court's permission, I would like for Detective Shinabery to come down and show us --

THE COURT: Fine with me.

MR. SATZ: Your Honor, these photographs have already been introduced into evidence. These are copies that I have already introduced.

THE COURT: For demonstrative purposes?

MR. SATZ: Yes.

BY MR. SATZ:

Q. Do you recognize those photographs?

A. Yes.

Q. The diagram in the middle, explain what that is?

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A. These, basically, are the photographs we saw before. Shows the positions of the padlocks.

Q. The diagram in the middle, what is that?

A. The crime scene sketch of the restaurant.

Q. Let's start with the first padlock found underneath the cash register, at the drop box.

A. That would be right here.

Q. The close-up?

A. Here. That's the drop box.

Q. There is a green line, pointing where it was?

A. Yes.

Q. Want to show us where that is?

A. Right here. Right here is where the drop box is. All of the cash registers.

Q. Let's go to the office.

A. Okay.

Q. You see the lock?

A. Yes. The lock is right here.

Q. Where would the office be on the new diagram?

A. The office would be right here. (Indicating.)

Q. Let's go outside the office door, the lock outside of the office door?

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A. That would be over here. It shows it was lying right in this area, in the area by the menus.

Q. The storage door?

A. The storage door would be right here. That's in the diagram. The door would be here.

Q. The curved part of the lock?

A. That was just outside of the door, kind of underneath this. This is the storage door. Curved piece of the lock was outside, underneath this little shelf here. In that area. Just outside of the storage.

Q. Detective, I want to show you State's Exhibits marked 13, 14, 15, 21, 18 and 20 and ask you if you can identify those?

A. Yes.

Q. What do the photographs depict?

A. This is the cooler area, where the two bodies were found.

Q. Did you take those photographs?

A. Yes.

Q. Do those photographs truly and accurately depict the bodies and how they were in the freezer, on March 11, 2002?

A. Yes.

Q. They have already been introduced into

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evidence.

So I want to start with State's Exhibit 15.

Is that how you saw it, when you first --

A. Yes.

It should really be turned.

Q. Okay.

I'm sorry.

And you took that photograph?

A. I did.

Q. Here is 21.

Did you take that photograph from a distance?

A. Yes.

Q. Is that the freezer there?

A. The freezer is back there.

There are two other cooling areas before you get to the freezer.

Q. Showing you State's Exhibit 20?

A. That should be turned also.

Q. Is that the way you first saw it when you first came?

A. Yes.

Q. And you took that photo?

A. Yes.

Q. State's Exhibit number 14?

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Do you recognize that photograph?
A. Yes.
Q. Did you take that photograph?
A. Yes.
Q. Is that the way that young lady was lying when you first came there?
A. Yes.
Q. Did there come a time you went back, after the body was removed, and found a projectile?
A. Yes.
Q. Where would it be with reference to this photograph , State's Exhibit 14?
A. This would be the north wall. Actually, can't see. Right there would be the north wall. Projectile was actually in the north wall.
Q. Did you take that projectile?
A. Yes.
Q. You took it into custody?
A. Yes.
Q. When the bodies were removed, were you able to find any cartridge shell casings?
A. Yes.
Q. How many did you find?
A. Five.
Q. Let me now show you State's Exhibits - I'm

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trying to get them in order.

3K, 3E, 2J, 2I, 2G, 3G, 2K, 2E and 2F.

(Discussions held off the record.)

DEPUTY: They are asking for a bathroom break.

THE COURT: Okay.

(Exit jurors.)

(Discussions held off the record.)

THE COURT: All right, I'll let them go now.

He said 3:30, 4 o'clock.

If we're going to break, might as well just break.

MR. SATZ: Okay.

Let's bring them in, please.

The first thing I'll do, is on the introduction of all of those exhibits, I'll put them on the record.

Then I'll send them home.

DEPUTY: Ready?

THE COURT: Yes.

(Enter jurors.)

THE COURT: Remember what I told you before? You have to remind me if somebody has to leave.

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Honestly forgot all about it. We will do that.

First things first.

Mr. Satz, with regard to the exhibits that you just asked to admit, what is marked as 2E, 2F, 2G will come in as 39, 40, 41.

2I, J and K will come in as 42, 43 and 44.

3E, 3G and 3K will come in as 45, 46 and 49.

With that, please, it didn't take much for you to realize camaras were in here today.

They are just doing a preview of my new show. You don't have to worry about that. The papers are in here as well.

So please avoid all TV stations tonight. No news.

If you want to watch the evening news or the national news, feel free. As far as everything else, you know all of the admonitions.

I know you have been abiding by them so far.

Correct?

JURORS: Yes.

Tomorrow morning, 9:15.

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See you guys tomorrow morning.

(Exit jurors.)

THE COURT: See you guys tomorrow morning at 9:30.

If you have issues, if you have a problem with another Judge, let me know.

****

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 18th day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

ORIGINAL

Defendants.

TRIAL PROCEEDINGS
VOLUME XVIII
PAGES 1761 - 1894

Fort Lauderdale, Florida
October 17th, 2018
9:30 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 17th, 2018, commencing at 9:30 a.m.

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THEREUPON, the following proceedings were had:

THE COURT: Let's go over a couple of things.

JUDICIAL ASSISTANT PAM COE: Okay, juror 16, Mr. Cooper, he's one of our alternates.

He needed to be let go yesterday, I guess, early.

He brought up he may have to leave early today. It is probably the same scenario.

Susan Concepion wanted to know if we have court on Friday, November 2nd. Because she is scheduled to attend the 2018 South Florida Gifted and Talented symposium.

She has something to do with it.

THE COURT: I think you will be finished, aren't you?

MR. POLAY: Yes.

JUDICIAL ASSISTANT PAM COE: It is a Friday.

THE COURT: Those are just the two --

Depends on when Mike finishes.

MR. POLAY: I am out of town.

I was going to discuss scheduling today. I have to arrange certain things.

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I was hoping -- I'll pull out my calendar.

THE COURT: I gave you a perspective start date.

MR. POLAY: I thought you said the 30th.

THE COURT: Right. That goes into the 1st .

MR. POLAY: Exactly. I can't, I don't see --

THE COURT: You said you needed three days.

MR. POLAY: Correct.

THE COURT: That's Tuesday, Wednesday, Thursday.

MR. POLAY: Correct. That would work.

THE COURT: Mike, you anticipate you're still on schedule for four days, plus our trip?

MR. SATZ: Yes.

THE COURT: I'm anticipating next Friday will be our view.

MR. SATZ: Working two days next week.

THE COURT: Yes. Thursday and Friday.

MR. SATZ: I think I will be ready, finished with the testimony in the courtroom, other than the victim impact stuff, by next Thursday.

THE COURT: Which means we should be on the lookout for next Friday.

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MS. MCCANN: For security reasons, we shouldn't pin it down.

Stay fluid with it.

With regard to the victim impact, it would be our preference, under the law, it would be reasonable to have it after the jury view, because it is not an aggravator, separate and distinct. It should come afterwards.

We can do the jury view in the morning and do the victim impact later in the day.

THE COURT: That's based upon turn around.

We talk to John about that. He will give you the prospect of timing.

MS. MCCANN: Or if we go to the waffle house in the afternoon, do the victim impact the next morning.

It won't be long.

THE COURT: If worse comes to worse, it will be just before Mitch starts.

It won't be an issue.

THE COURT: Let's bring out Mr. Cooper.

(Enter Juror Cooper.)

THE COURT: Good morning.

I hope everything worked out yesterday afternoon. Talk to me about today.

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KENJAHSAH COOPER: It will be the same situation today.

THE COURT: What is the latest you can be here?

KENJAHSAH COOPER: The absolute latest, maybe 4 o'clock.

THE COURT: All right.

Is this going to be a constant thing?

Or is today the end of it?

KENJAHSAH COOPER: Not every single time I'm here.

THE COURT: What does that mean?

KENJAHSAH COOPER: I know there are times my mom is off work, out of graduate school.

She can come, pick him up.

THE COURT: Talking about your brother?

KENJAHSAH COOPER: Yes.

THE COURT: He doesn't have a car?

KENJAHSAH COOPER: He's ten.

THE COURT: Let's me change feet for a minute. Never a dull moment in my world.

If you would just rejoin the rest for a minute.

(Exit Juror Cooper.)

THE COURT: I could have sworn last week he

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had to pick up his brother.

MR. SATZ: Who was 18. You asked him then. Doesn't have a car.

THE COURT: Didn't think I was totally losing it. Is that going to interfere with your time frame?

MR. SATZ: I don't know yet.

THE COURT: What's the worst thing that happens? We work the morning of, forgetting what Carolyn was talking about, with any victim impact, we can always work the morning of, if we get pushed.

Here are your alternatives. We keep him or we don't.

MR. SATZ: what about tomorrow?

THE COURT: You heard what he said. He doesn't know these things. Doesn't know the age of his brother.

THE COURT: Pam, could you just ask Mr. Cooper about tomorrow, please?

JUDICIAL ASSISTANT PAM COE: Of course.

(Exit Pam Coe.)

JUDICIAL ASSISTANT PAM COE: Judge, he's going to call his mom and let me know. Would you like Ms. Concepcion, while we wait?

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THE COURT: No, I'll just call them in.

Let's bring them out.

The witness is back on the stand.

Let's bring them in.

(Enter jurors.)

THE COURT: Morning, ladies and gentlemen.

Mr. Cooper, you let' me know when you have information, after lunch?

KENJAHSAH COOPER: Yes.

THE COURT: Mr. Satz?

MR. SATZ: I want to reintroduce State's Exhibit 29, which are the pad locks.

And I want to introduce the poster, which is State's Exhibit 30.

THE COURT: Is that marked --

MR. SATZ: I think we just called it number 30.

THE COURT: I have a number 30. Okay. Whatever number 30 is.

MR. SATZ: You already have a number 30.

THE COURT: According to this, I have my sheet and yours. It is T. It is the prep area.

MR. SATZ: What is the next number.

THE COURT: 50.

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MR. SATZ: When you get a chance --

THE COURT: It will be marked as, want to mark it as M?

MR. SATZ: It is now 50.

THE COURT: What is marked as State's M for identification will come in as State's Exhibit 50.

DENNIS SHINABERY,

being of lawful age, and having been previously first duly sworn in the above cause, testified further on his oath as follows:

DIRECT EXAMINATION (continued)

BY MR. SATZ

Q. Mr. Shinabery, I think we left off when we were talking about the casings that you found in the freezer?

A. Yes.

Q. I now want to show you State's Exhibits marked 2E, 2F, 2G, 2I -- wait a minute. Now they are in evidence.

It is 39, 40, 41, 42, 43, 44, 45, 46, 49 and ask you to take a look at those exhibits.

Did you take those photographs?

A. Yes, I did.

Q. Do those photographs truly and accurately

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depict the five casings that you recovered within the freezer of 4689 SW 148th Avenue in Davie, Florida?

A. Yes, it does.

Q. First, I want to show you -- and these photographs were taken after the bodies of Christina Delarosa and Willie Absolu were removed?

A. Yes.

Q. First, I want to show you State's Exhibit 44.

Would you be good enough to point to -- do you know what you can do, Mr. Shinabery? If you point here, everybody can see it on the screens.

I'll show you.

If you point down here, you understand what I'm saying?

A. Okay.

Q. A little technology.

There, you go.

THE COURT: Only the finest.

BY MR. SATZ:

Q. Okay, want to point out the casings?

A. One here. By these keys. There is another one right there.

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Q. And State's Exhibit 42?

A. Okay. We have two casings in this photograph. There is one right here. There is one up, by this, under this crate, right there.

Q. Here is State's Exhibit 41, with Willie Absolu and Christina Delarosa still there.

Can you put that in perspective of where the one casing is?

A. The one casing is by this set of keys up here.

Q. Showing you now State's 46, it is a close-up of that?

A. Yes.

That, again, shows the casing over by the keys. And the other one is right here.

Q. And showing you now State's Exhibit 45, with Christina Delarosa's body removed?

A. Yes.

One up here , under this crate. And then there is another one down here.

Q. And speaking of the crate, here is State's Exhibit 49?

A. That, again, shows the one under the crate.

Q. And here is State's Exhibit 40.

A. The casing is right here, by this phone.

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Q. And State's Exhibit 39, with Mr. Absolu's hand removed?

A. This was after they were removing the body. Right there.

Q. And I'll show you now State's Exhibit --

THE COURT: Can everybody hear the witness?

JURORS: Yes.

MR. SATZ: Steve, can you bring the easel over? I had these marked. What is the next letter. It is just a number. It is a wrong number.

For identification, it would be --

THE COURT: Aren't these the ones you here were in the area where Victim Absolu was. That's by the keys. That's kind of underneath the shelf. This is the one by his phone. That's all of the casings.

Q. They are all directed towards the freezer?

A. Yes.

They are all in the freezer.

MR. SATZ: I'll offer 3P.

THE COURT: It is already in as 51,

MR. SATZ: Okay. 51.

BY MR. SATZ:

Q. I'll show you State's Exhibit 36 and ask

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you if you can identify what these are?

A. Yes, these are the casings that I recovered in the cooler.

Q. These are the casings you pointed out, the five casings within the freezer?

A. Yes.

Q. Did you mark the locations where your found them?

A. Yes.

MR. SATZ: Reintroduce State's 36.

THE COURT: 36 shall be here.

BY MR. SATZ:

Q. Showing you State's Exhibit marked 2S and 2R and ask you --

MR. WILLIAMS: Judge, just a second.

BY MR. SATZ:

Q. I'll show you State's Exhibit 2S and 2R?

A. Yes.

Q. Do you recognize those?

A. I do.

Q. Did you take those photographs?

A. Yes.

Q. Do those photographs truly, accurately depict the scene as you saw them in the freezer?

A. Yes.

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Q. What do they depict?
A. A wallet on the box.
We opened it up, and it showed the identification inside.
Q. Whose wallet was it?
A. Willie Absolu.
MR. SATZ: At this time, I would like to offer State's Exhibit 2S and 2R.
THE COURT: 2R comes in as 52. No. You're right. 58 and 59.
MR. SATZ:
Q. Showing you State's Exhibit 58, where was that?
A. It was in the freezer area.
Q. By one of the shelves there?
A. Yes.
Q. And State's Exhibit 59?
A. That shows the contents of the wallet.
Q. Did there come a time where -- I'll just show you State's Exhibits 2P, 2O and 2N.
Ask you if you can identify those?
A. Yes.
Q. What are they?
A. They show, on the north wall of the , in the freezer area, a recovered projectile.

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Q. Did you recover it?
A. Yes.
Q. Let me show you State's Exhibit marked 52 and ask you if you can identify that?
A. Yes.
Q. What is that?
A. That's a projectile from the wall.
Q. That you just talked about that it was in State's Exhibit, where you took it out of the wall, State's Exhibit 2P, 20 and 2N?
A. Yes.
MR. SATZ: I would like to off State's Exhibit 2N, 2O and 2P?
THE COURT: What is marked as 2N, O and P will come in as 62, 63 and 64.
MR. SATZ: I would like to reintroduce State's Exhibit 52, the projectile from the wall.
THE COURT: That's fine.
BY MR. SATZ:
Q. Detective, now showing you State's Exhibit marked 63, you can use the pointer on here.
Show us where you removed the projectile from the wall.
THE COURT: Hold on a second.

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Okay, 2P is getting changed to 65.

MR. SATZ: All right.

BY MR. SATZ:

Q. Okay?

A. This, right here, is the hole where we recovered the projectile.

Q. Showing you State's Exhibit 65 now.

What does that show?

A. That, again, shows the hole, where we recovered the projectile, right there. That's Detective Torok, with the ruler, showing the height from the floor.

Q. You previously testified it was 22 inches up from the floor?

A. Yes.

Q. I'll show you 62?

A. That's a close-up of where we got that the projectile from.

Q. Detective, did there come a time where you attended two autopsies?

A. Yes.

Q. What was the dates of the autopsies?

A. It would have been the next morning.

Q. March 12, 2002?

A. The 12th, yes.

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Q. I'll show you State's exhibits marked 2Q, 2Z, 2X, 2W, 2V, 2T, 2U, 3F, State's Exhibit 64, State's Exhibit 67, State's Exhibit 17 and State's Exhibit 19 and ask you to take a look at these photographs.

Do you recognize them?

A. Yes, I do.

Q. With reference to State's Exhibit number 19, that's been introduced into evidence, you attended the autopsy of Christina Delarosa?

A. Yes.

MR. SATZ: Showing you now State's -- well , Your Honor, I would like to offer State's Exhibits 3F, 2U, 2T, 2V, 2W, 2X and 2Q.

THE COURT: All right, let's see if I have this.

What is marked as 3F for identification is coming in at State's 75.

2Q is coming in as 74.

2U is coming in as 68.

2T is 66, is 66.

2V is 69.

2W is 78.

2X is 79.

2Z is 80.

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BY MR. SATZ:

Q. Now, this, State's Exhibit 19, you attended the autopsy of Christina Delarosa?

A. Yes.

Q. Is that this lady reflected in State's Exhibit 74?

A. Yes.

Q. Showing you State's Exhibit 117?

A. Yes.

Q. Is that the Willie Absolu you saw in the freezer of the Waffle House at 4689 SW 148th Avenue?

A. Yes.

Q. You were there, at the autopsy?

A. Yes.

Q. Is this the same lady, Christina Delarosa?

A. Yes.

Q. This is the same individual, Christina Delarosa, in State's Exhibit 68?

A. Yes.

Q. Is this the same individual, Willie Absolu, as in State's Exhibit 69?

A. Yes.

Q. With reference to the autopsy, tell us what happened when you were there, at the autopsy?

A. I photographed, as the autopsy progressed.

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Medical examiner, Dr. Linda Rush O'Neil proceeded with the autopsy.

As a result, I collected certain pieces of evidence, brought them back to the crime lab.

Q. I'll show you State's Exhibit 54 and State's Exhibit 53 and ask you to take a look at that.

Can you identify those?

A. Yes.

Q. What are they?

A. They are projectiles that were recovered from the victim.

Q. Which victim was that recovered from?

A. Willie Absolu.

Q. Does it indicate where, did you type up where they came from?

A. Yes.

Q. Where did they come from?

A. A projectile from his right shoulder and projectile fragments from his head and his neck.

Q. I'll show you State's Exhibit marked 55. Ask you if you can identify that?

A. Yes. That's a projectile from victim Delarosa.

Q. Where was it?

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A. In her spine.
Q. You collected them.
A. Yes.
Q. All of the projectiles and did you turn them over to Carl Hammerle, the firearm examiner?
A. Yes.
Q. Showing you State's Exhibit 8 that's already been introduced from the head of Barbara Nunn. Have you seen that?
A. Yes.
Q. Did you also give that to Carl Hammerle?
A. Yes.
Q. You received that from Detective Donnelly?
A. From Davie Police Department, yes. Detective Donnelly or Officer Donnelly.

MR. SATZ: At this time, I'll reintroduce State's Exhibit 52, 8, 55, 54 and 53.

THE COURT: They will be coming in under those numbers.

BY MR. SATZ:

Q. Showing you State's Exhibits 56 and 57. Ask you if you can identify those?
A. Yes.
Q. What are they?
A. Clothing from the victims.

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Q. The victims being whom?
A. Christina Delarosa.
Q. Who else?
A. And Willie Absolu.
MR. SATZ: At this time, I have no further questions of Detective Shinabery.
THE COURT: Mr. Williams?
MR. WILLIAMS: Thank you.

CROSS EXAMINATION

BY MR. WILLIAMS

Q. Morning, Mr. Shinabery.
How are you doing?
A. Fine.
Q. Mr. Satz was discussing with you shell casings?
A. Yes.
Q. There were five shell casings found, found at various locations within the freezer?
A. Yes.
Q. The freezer floor was what? Cement or a hard surface?
A. Pardon?
Q. The freezer floor, was it cement, a hard surface?
A. Yes.

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Q. In fact, in the cooler area, that is out from the freezer, that was a hard surface?

A. Yes.

Q. Within the freezer, there were all types of cardboard boxes?

A. Yes.

Q. What we know about shell casings, when they are ejected from a firearm, when they land, they can tumble or move?

A. Yes.

Q. What we know about those shell casings is where they were found is the final resting place, correct?

A. That's correct.

Q. We don't know, from the shell casings, the location of the shell casings, you can't determine where the pistol was when it was fired, correct?

A. Correct.

Q. Now, you were, at the time of this incident, you were working for the Broward Sheriff's Office?

A. Yes.

Q. The Broward Sheriff's Office assisted the Davie Police Department in this investigation?

A. Yes.

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Q. The Broward Sheriff's Office provided technical assistance to the Davie Police Department?

A. Yes.

Q. Technical assistance in the form of crime scene investigation?

A. That's true.

Q. And when you arrived at the scene, it was your understanding that Mr. Absolu and Ms. Delarosa, that their bodies were in the same position as the Davie personnel found them; is that correct?

A. No.

The paramedics had gone in and pronounced them.

So they had moved them.

Q. They had moved them?

A. Well, they had checked the bodies.

Q. Checking the bodies is different than moving them?

A. Yes.

Q. Are you suggesting the Davie fire personnel put Ms. Delarosa's body on top of Mr. Absolu's body?

A. No.

Q. What you're suggesting is they may have touched the bodies, determining whether there was a pulse?

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A. Yes.
Q. In fact, the bodies were not removed from the freezer area until about 10 o'clock in the morning, until the medical examiner got there?
A. That's correct.
Q. It was the medical examiner, after examining the bodies in the position that they were in, in the freezer, that she then asked the bodies be being removed. Fair statement?
A. Yes.
Q. When you got there, you were designated the lead crime scene investigator for this investigation?
A. Yes.
Q. You have a protocol you were following?
A. Yes.
Q. The protocol, one of the things you do, very first thing you do, you take still photographs of the entire area designated to be the crime scene?
A. Yes.
Q. You do that before you touch, pick up or examine anything?
A. That's correct.
Q. In this case, you also had crime scene

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Investigator Lorrie Bell assisting you?

A. Yes.

Q. She took a video, after you did the stills, she took a video of the entire crime scene?

A. Yes.

Q. That's so later, when you're picking up stuff, when you moved Mr. Absolu's body, you can show, well, the casing was under his arm or hand?

A. Yes.

Q. You, have a before and after picture?

A. Yes.

Q. That's a picture you took of Mr. Absolu's body and Ms. Delarosa's body before they were moved?

A. That's correct.

Q. This area here, that's the threshold for the freezer?

A. Yes.

Q. This is the freezer door, correct?

A. Right here, yes.

Q. You have the freezer door, this is the threshold. I think you noted in the crime scene report that Mr. Absolu's knees are right at about the threshold, correct?

A. Yes.

Q. Now, he's, so we have a perspective, he's

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lying on his right side?

A. Yes.

Q. The injuries were to his left side?

A. Yes.

Q. Both the gunshot wounds to Mr. Absolu were more towards the left side of his body; is that correct?

A. That's correct.

Q. He ended up, his final resting position was on his right side, after the trauma to his left side?

MR. SATZ: Objection.

He doesn't know what happened with Barbara Nunn being in there, when she got up.

All he can tell is when he finds it.

MR. WILLIAMS: We have had no testimony from Barbara Nunn with respect to that.

BY MR. WILLLIAMS:

Q. This is his final resting place, correct.

A. Correct.

Q. The other pictures we have, Mr. Absolu's feet would be outside of the freezer, correct?

A. Yes.

Q. That would stuck maybe at some point, Mr. Absolu was outside of the freezer?

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MR. SATZ: Objection.

Calls for utter speculation.

THE COURT: Correct. Unless he knows .

BY MR. WILLIAMS:

Q. Is there anything indicating here in the photographs or what you examined, that Mr. Absolu backed up, out of the freezer.

A. No.

Q. No drag marks?

A. No.

Q. With the amount of blood there, if he moved backwards, you would see a blood trial going out of the freezer, correct?

MR. SATZ: Objection.

Calls for speculation.

THE COURT: Only if he knows from his experience.

BY MR. WILLIAMS:

Q. How many crimes scenes have you examined in your career?

A. Hundreds.

Q. If there is blood on the floor and a body is lying on it, dragged, it will leave a blood trial?

A. Normally.

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Q. Especially on a hard surface, like this?
A. Yes.
Q. Was there any indication there was a blood trail, that Mr. Absolu's body had been moved?
A. No.
Q. Now, Ms. Delarosa's body, part of it, her legs and everything, were on top of Mr. Absolu, correct?
A. Yes.
Q. Would that suggest to you, as a crime scene investigator, Ms. Delarosa was shot after Mr. Absolu?
MR. SATZ: Objection. Calls for speculation.
THE COURT: Again, only if he knows.
THE WITNESS: It appeared that way.
BY MR. WILLIAMS:
Q. It appeared that way, correct?
No proof Willie Absolu raised her legs and crawled up under?
A. No.
MR. WILLIAMS: That's all of the questions I have.
THE COURT: Mr. Satz?

REDIRECT EXAMINATION

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BY MR. SATZ

Q. You have no idea what Barbara Nunn did, do you.

A. No.

Q. You never saw Barbara Nunn at the scene?

A. No.

MR. SATZ: Nothing further.

THE COURT: Any further questions, Mr. Williams?

MR. WILLIAMS: No.

(Witness excused.)

THE COURT: Do you have another witness?

MR. SATZ: I do. I was going to have the testimony of Erin Cockley read, please.

THE COURT: Who is playing that role?

MR. SATZ: Lisa Arneaud.

THE COURT: State your name and spell your last name.

MS. ARNEAUD: Lisa Arneaud, A-R-N-E-A-U-D.

(Reader Lisa Arneaud sworn in by Judge Backman.)

THE COURT: Whose testimony is she reading?

MR. SATZ: Erin Cockley, E-R-I-N, C-O-C-K-L-E-Y.

THE COURT: Thank you.

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(Ms. Arneaud reads, as follows:)

MS. ARNEAUD: Starting with Mr. Satz.

He says Erin Cockley.

The clerk states, ma'am, raise your right hand, please.

Thereupon the witness was sworn in.

The clerk, please state your name and spell your last name for the record.

The witness, my name is Erin Cockley. Last name is spelled C-O-C-K-L-E-Y.

Thereupon, the witness, Erin Cockley, having been duly sworn in, testifies as follows.

Direct examination.

Q. Ma'am, what is your occupation?

A. I'm an executive vice president of support services for North Lake Foods.

Q. North Lake Foods does what?

A. We operate 150 franchise restaurants of Waffle House.

Q. How many Waffle Houses are in Broward County?

A. Three.

Q. Where are they located?

A. One is on Griffin Road. One is on Davie

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Road. And one is on Commercial Boulevard.

Q. What do you, in your language, what do you call the one on 148th Avenue, near Griffin Road?

A. 1124.

Q. So you give it a number. It is 1124?

A. Yes.

Q. What are your duties with North Lake Foods?

A. I currently do all support services, house all of our records, do risk management.

Q. So you're the custodian of the records?

A. Yes.

Q. For the Waffle House you refer to as 1124?

A. Correct.

Q. How does Waffle House keep the records? For instance, the purchases, the checks being paid, how does that work?

A. Our personal records are done with at the unit level and mailed to the corporate office. Our paychecks are done at our home office. Our sales reporting is done through a computer, through an Efile.

Q. If I were to go into a Waffle House and order bacon and eggs, would you, at the records, receive that purchase?

A. Yes.

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Q. How would you do that?

A. We have an Efile, which gets transmitted via the telephone line.

Or we dial in and we take the records from each unit.

Q. When you dial in and take the records from each, does that computer talk?

A. Correct.

Q. How does that work?

A. Each Waffle House facility has a server located in the manager's office, in the back room. In that server, we dial into that server at least six times a days and transmit all of our sales and records.

Q. So the purchase that I make, say it is at 2:20 p.m. on March the 1st, do you get that?

A. Yes.

Q. How do you get it? What form do you get it in?

A. In an Efile, through our computer system.

Q. What does it actually say about my purchase of bacon and eggs on March 1st?

A. It tells exactly the sales, who rang the sales in, who cashed the sales out.

Q. Time and date?

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A. Time and date.

Q. Is that information collected in the ordinary course of business activity?

A. Yes.

Q. Is there any way that the information is altered in any way?

A. Absolutely not.

Q. How do you keep that record of that purchase of my bacon and eggs?

A. In a file.

Q. How long do you keep it?

A. It is retained in the server for 30 days if it wasn't pulled by the corporate office. But we pull the records every day.

We keep it for seven years.

Q. So if I come into the Waffle House and somebody takes my order, they go to the register computer?

A. Correct.

Q. And they put it in; is that right?

A. Yes.

Q. And that, ultimately, goes to your record keeping; is that correct?

A. Correct.

Q. And you keep that during the course of your

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ordinary course of business activity?

A. Correct.

Q. So it would say who served, what date, what time and what I had, correct?

A. Correct.

Q. What is that called?

A. We have different reports. We have a sales report. And we have an order pad report.

Q. So that would go under which one?

A. Order pad report.

Q. Order pad report?

A. Correct.

Q. How about if when I go and pay the check?

A. It would indicate who cashed you out and what denomination of bill was received, how much change they received.

Q. And would it indicate who cashed out my check?

A. Yes.

Q. And is that kept in the ordinary course of business activity?

A. Yes.

Q. Pursuant to a subpoena, did you obtain the records for Monday morning, March 11, 2002?

A. Yes, I did.

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Q. And does it indicate the last purchase for Monday morning, March 11, 2002?

A. Yes, it does.

Q. And could you tell us what time that purchase was and what it was for?

A. That purchase was at 3:57:50 a.m. It was entered by Christina Delarosa, with a ticket number 3073. And it was for a waffle, a coffee and two Cokes.

Q. Does it list the price that was paid?

A. $6.15.

Q. With reference to that order, do you have a similar record for the payment of that order?

A. Yes, I do.

Q. And what is that called?

A. That is our cash out. It doesn't really say exactly what it is called. But basically, it is all of our cash transactions.

Q. It is called payments, something like that?

A. Payments.

Q. What time was the last payment?

A. The last payment was at 4:33:24 a.m. And it was entered by Christina Delarosa, cashing out the ticket at three zero seven three.

Q. That's 3:07:03.

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Was that for the two coffees, the Coke and the waffle?

A. Yes.

She obtained $7 and gave them back 85 cents in change.

Q. That was at 4:33 a.m., correct?

A. Correct.

Q. That was the last payment for that morning, correct?

A. Correct.

Q. And then there was a pay out key hit; is that correct?

A. Correct.

Q. What time was that?

A. That pay out key was punched in at 4:37:03 a.m. It indicates Christina Delarosa.

Q. And what is the pay out key? What is the significance of that?

A. The pay out key was designed on the register to be able to access in case of emergencies, where somebody would come in, during a robbery, and somebody could press that key, and the register would open so they could give them the funds that we have.

Q. So how would somebody, other than

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Christina, hit that pay out key and her number show up?

A. In the course of cashing somebody out, Christina would go to the register. It is their bill, in this case, $6.15. She entered the $7.

It tells her the change.

And she presses confirmed. And the register drawer opens.

At that point, she can give them change and shut the drawer back.

And then she must press okay again for her number to go out of the system.

Q. What if she doesn't press okay?

A. There is a five-minute delay, where somebody else could probably open another ticket that is existing on table management or add a ticket, which is a common practice sometimes, by our associates.

Q. So somebody that had worked at Waffle House would know that, correct?

A. Yes.

Q. And that's at 4:37 a.m., correct?

A. That's correct.

Q. Did there come a time when you went to the

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Waffle House to determine what the loss was?

A. Yes, I did.

Q. How did you do that?

A. Obviously, we went and we counted the money.

Q. With reference to the money and that particular Waffle House, is that done in accordance with your policy at every other Waffle House?

A. Yes.

Q. Tell us about that. Where is the money kept in the Waffle House, especially this one, 1124?

A. Well, the money procedures are relatively the same.

We don't have auto general manager.

So our managers basically work our first shift.

So during the course of the business or the end of the day, which we call our end of day, which is when our daily sales end is at 2 o'clock in the afternoon, the manager would work first shift. At 2 o'clock, they would do the end of the day.

And they would deposit all of the funds from that day.

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So our day went from two to two, basically, 2 o'clock to 2 o'clock, basically.

Q. And in the Waffle House, 1124, where is the money kept?

A. The money is kept either in the register, for the shift at hand --

Q. And when you start the register, what do you start it with?

A. $200 or 150, whichever the manager deems.

Q. What is that called?

A. Our change fund.

Q. That's in the register?

A. Correct.

Q. Where else did your money go?

A. There could be money in the drop box.

When the waitresses receive 20's they drop. We have a drop box that is located underneath our register.

They would drop money ongoing, throughout the shift, not to allow excess 20's in the register.

Also, then in the manager's office.

Q. And in the manager's office, what is kept there?

A. The manager keeps change in his office.

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Q. When you say keeps change, what is that?

A. When we open a Waffle House, we start out with a total of $600 in a Waffle House.

And what the manager does is he uses the 150 out front. And then he has the additional change to purchase change from the bank, which he keeps in the back safe. He tries to keep that money separate from the front money because you want to know whether it is basically a shortage created by the employee or a shortage created by management.

So he keeps a change fund back in his office.

Q. When you talk about a change fund, what does it consist of?

A. Coins, one's and five's.

Q. $600?

A. Correct.

Q. How is it kept in the manager's office?

A. Either in a safe or in a drop box.

Q. At 1124, do you know how the money was kept?

A. Yes.

The money was kept in a drop box.

We had a double drop box there.

Q. Is that a steel drawer?

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A. With a padlock.
Q. Why do you use padlocks?
A. Because of the fact that we're a 24 business and our manager are only there during the day. The reason we use padlocks is to secure internal theft or control our food or our money internally. We used to use safes in the manager's office. But the opportunity we would run into is in case of an emergency, where an upper management person would go, the manager would be there.
We need change or whatever.
So we started utilizing the padlocks.
Q. And the drawer is above the safe in 1124?
A. Yes.
Q. And there is a padlock on that?
A. Correct.
Q. There is a padlock on that, and there is a padlock on the office door?
A. Correct.
Q. What's the purpose of that?
A. To secure the manager's office while they aren't there.
Q. Is that a procedure at all of the Waffle Houses?
A. Yes.

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Q. How about there is a padlock on the drop box?

A. Yes,.

Q. Any other padlocks?

A. Yes.

Q. Where?

A. On the commissary door.

Q. Why is that?

A. That's how we control our internal food. The managers order food once a week from a commissary and does a pull every day and allows the employees to count the food and inventory the food that's out front.

He keeps his food stored in the commissary.

Q. And who had the keys to those padlocks?

A. The manager.

Q. And each one of those padlocks have a different key?

A. I think in those cases, correct. Now, I can't assure that because they could have a master lock that was one key to all of them.

Q. After March 11 of 2002, did you personally go in and determine what the loss was at the Waffle House?

A. Yes, I did.

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Q. How did you do that?

A. Well, basically, when we arrived, the only thing that was left in the unit was some pennies and nickles, which was a total of $20. The money that we should have had in the restaurant is we had a second shift, which would be our 2 o'clock to 10 o'clock shift, which we knew, according to our records, was $517.51.

Q. How do you know that?

A. That's the sales that are transmitted through the POS.

Q. Through the computer that you talked about?

A. Correct.

Q. That's the way that you keep track of all your money with a computer?

A. Correct.

Q. So you knew what the second shift made?

A. Correct.

Q. It was $517?

A. Correct.

Q. And what else?

A. The third money was $315.47.

So the total for the two shifts of money that we should have had was $832.98.

We included, in our loss, the $600 that we

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started out, at the beginning, when we opened 1124, for our change fund.

We also had a partial deposit that was not deposited on the prior business day.

Q. Why is that?

A. On this, that day, and some type, this would be typical on the weekend. Where depending upon the denominations of the bills that you give, a manager might not have enough 10's and 20's to put in the night depository.

Maybe he received a lot of 5's. He has a large cash pay out. Didn't quite have enough money to make his daily depository. So David Cormier, the unit manager, had made what we would call a partial deposit the day before, which was $475.23, short of what our daily report said that he should have had.

Q. So that was there as a loss?

A. Correct.

Q. You get notice when the deposit was made?

A. Yes.

Q. Do you know when the last night deposit was made?

A. Well, it was not stamped until Monday.

Q. Why is that?

A. Because on the weekend, we would drop in a

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night deposit envelope. And the bank would not stamp it until Monday.

Q. So Mr. Cormier made his last deposit when?

A. I'm assuming Sunday, after business.

But when we did receive it, it was stamped on Monday for $3,030 even.

Q. And did that jive with your computer records, with what should have been dropped for that Sunday morning and Saturday?

A. Minus the $475.23.

Q. It wouldn't have been deposited because it is small change; is that correct?

A. Correct.

Q. So your total loss, based on your inventory, was what?

A. $1,888.21.

Q. And with reference to Christina Delarosa, do you know her?

A. Yes, I do.

Q. How do you know her?

A. She was an employee. I was actually an area vice president at the time. And she worked under me.

Q. What type of positions have you had with Waffle House?

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A. I have worked with North Lake for 11 years. I started out at a unit manager.

And I went to district manager, which is a supervisor of three restaurants.

I was a district manager for two years.

And they promoted me to the division, which has about 10 or 11 stores.

And then I was promoted to area vice president.

An area vice president runs half of the state of Florida, or approximately 50 Waffle Houses.

Q. So if you were the unit manager of 1124, that would be your restaurant?

A. Correct.

Q. So you have met Christina Delarosa?

A. Yes.

Q. And according to the records that you were subpoenaed to bring, what were her dates of employment?

A. Christina was hired on 12-15 at unit 1124.

Q. 12-15?

A. '01, I'm sorry.

Q. And how about Willie Absolu?

A. He was hired by us on 12-02-01 at unit 258.

Q. And were they working at unit 1124 on March

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11, 2002?

A. Yes.

Q. What was Willie's function?

A. He was a grill operator.

Q. And who was access to the cash registers?

A. The servers.

Q. The waitresses?

A. Correct.

Q. So on Monday morning, March 11, Christina Delarosa and Barbara Nunn would have custody of the money in the cash register and the money in the drop box?

A. Correct.

Q. How about Jimmy Mikel.

Are you familiar with him?

A. Yes.

Q. How do you know him?

A. He was an employee for me at unit 929.

Q. Where is 929?

A. That's the Davie Road extension.

Q. Is that 2580 SW 54th Avenue?

A. Yes.

Q. What was his dates of employment?

A. He was originally hired by us on 11-2-99 and terminated on 2-7-2001. And that was at unit

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929.

Q. That's the Davie Road?

A. Right.

Q. And was there any kind of reemployment?

A. Yes.

He was rehired on October 20th of 2001 and terminated on 11-21-2001.

Q. And approximately how many days did he work?

A. We show eight days in our records.

However, the first two weeks Jimmy did return to work, he did not write his hours on his pre-list.

Q. So it was more than eight times?

A. Yeah.

He worked a couple days a week.

I could assume that there was a few more times he worked.

We paid him for hours.

But he did not record his hours.

Q. That was at 1124?

A. Correct.

Q. So approximately 8 to 12 times he worked at 1124, correct?

A. Correct.

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Q. Let me show you State's Exhibit marked J for identification. Ask you do you recognize that person?

A. Yes.

Q. Who is that?

A. Christina.

Q. Do you know her last name?

A. Delarosa.

Q. Showing you State's Exhibit K, do you recognize him?

A. That's Willie.

Q. And his last name?

A. I should know.

Absolu.

Q. Those are the two individuals that you talked about you employed, correct?

A. Yes.

Q. And the last day Jimmy Mikel worked was what date?

A. 11-5 of 2001.

Q. And that was at 1124, correct?

A. Correct.

MR. SATZ: Thank you, ma'am.

I have no further questions, Your Honor.

THE COURT: Cross?

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MR. POLAY: No questions, Judge.

THE COURT: Thank you very much, ma'am.

You're excused.

(Thereupon, the witness exited the courtroom.)

(Witness Lisa Arneaude concludes reading.)

THE COURT: Thank you.

MR. SATZ: Short break?

(Exit jurors.)

(Recess had.)

THE COURT: Everybody is ready.

Let's bring the jury in.

(Enter jurors.)

THE COURT: Our jury is back.

Mr. Satz?

MR. SATZ: Dr. Linda Rush O'Neil.

DR. LINDA RUSH O'NEIL,

being of lawful age, and having been first duly sworn in the above cause, testified on her oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Dr. Linda Rush O'Neil, O-'-N-E-I-L.

DIRECT EXAMINATION

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BY MR. POLAY

Q. What is your occupation?

A. I am an associate medical examiner for the District 19 Medical Examiner's Office in the state of Florida.

Q. Where is District 19?

A. Our office is in Fort Pierce.

We service Indian Rover, St. Lucie County, Martin County and Okeechobee County.

Q. How long have you been in District 19?

A. I have been there since May of 2009.

Q. Prior to that?

A. Associate medical examiner for Palm Beach County. I was there from May, June of 2004 until May of 2009.

Prior to that, I was an associate medical examiner District 19 Medical Examiner's office from 1999 until 2004.

Q. Were you ever in Broward County?

A. I'm sorry. Did I not state Broward County?

Q. You said District 19.

A. I'm sorry. I meant Broward County. That's 1999 to 2004.

Q. What district is Broward?

A. I forgot. I think 15.

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Q. What is your education?

A. I graduated from the University of Memphis in 1987 with a Bachelor's in Science Degree.

Following that, I attended East Tennessee State University, where I graduated in 1992 with a medical degree.

After that, I competed a five-year residency program in anatomic and clinical pathology, which I completed at the St. Louis University School of Medicine in St. Louis, Missouri.

After that, I did a year of training at the Broward County Medical Examiner's Office from 1997 to 1998.

Q. What is pathology?

A. Basically the study of the deceased' processes on the body. On the body tissues and on the body as it functions.

Q. What is forensic pathology?

A. A subset, subspecialty in pathology.

Basically, doing an autopsy examination, looking at the body, determining the cause and manner of death.

Q. Have you ever been qualified as an expert in a court of law in forensic pathology?

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A. Yes, I have.
Q. How many times?
A. Over a hundred times.
Q. In what courts?
A. Miami Dade County, Broward County, Palm Beach County, Martin County, St. Lucie County, Indian River County and Okeechobee County.
Q. What is an autopsy?
A. An examination of a deceased person, an external and internal examination.
Q. How many autopsies have you performed?
A. At this point, a little over 5,000. I haven't specifically counted.
Q. Of those approximate 5,000 autopsies, how many of those did you determine the cause of death?
A. There is very few that are ever undetermined. I'd say maybe 1 to 3 percent, at the most.
Q. And of the almost over 5,000 or 5,000 autopsies, how many involve gunshot wound deaths?
A. Many of those. I couldn't give you a specific number. Certainly over a few hundred.
Q. And have you done continuing education?
A. Yes.
Q. What have you done?

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A. Actually, I was just at the National Association of the Medical Examiner's Conference, which was in Palm Beach this last week.

I attend other national conferences and get medical education credits on line.

Q. When you first entered forensic pathology, where did you get your initial training?

A. The forensic pathology fellowship was at the Broward County Medical Examiner's Office.

Q. Licensure and professional organizations?

A. I am licensed as a medical doctor in the State of Florida.

I belong to the Florida Association of Medical Examiners.

Q. I would like to call your attention to Monday, March 11, 2002.

Did you have occasion to go to a certain location, like 4689 SW 148th Avenue in Davie?

A. I did.

Q. What was your purpose of going to that Waffle House?

A. I was notified, through our office, there was a death of individuals there.

I was requested to examine them at the scene.

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Q. Tell us what you did.
A. I went to that location.
Q. What time did you arrive?
A. It was approximately 9:45, 9:44 in the morning.
Q. A.M.
Okay.
A. Yes.
I went into the Waffle House, into the area the bodies were located at the scene.
I examined each of the individuals there.
Photographs were taken at the scene.
I saw evidence of the probable cause of death at the scene, which were gunshot wounds.
Q. How long, approximately, were you at the scene?
A. Maybe 20 to 30 minutes.
Q. Let me show you State's Exhibits 15, 14, 13, 20 and 74 and ask you do those photographs truly and accurately depict the scene as you saw it?
A. Yes, they do.
Q. And did there come a time you saw those bodies again?
A. Yes.
Q. Where?

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A. At the Medical Examiner's Office.
Q. The purpose for the bodies being at the Medical Examiner's Office was for what?
A. Autopsy examination.
Q. Did you perform an autopsy on Willie Absolu?
A. Yes, I did.
Q. I'll show you, now, State's Exhibits 17, 69, 78, 80 -- no. 78, 80, 79 and 67 and ask you if you can identify those?
A. Yes.
Q. Did he, his body, the way he was, other than the gunshot wounds, indicative of the age of 28, average 28-year-old male?
A. Yes.
Q. What is the first thing that you did with Willie Absolu?
A. Well, the beginning of the autopsy examination, the bodies are photographed as they appear when they come into the office.
Then an external examination is done, including evaluation of clothing, removal of clothing, removal of anything else that might be on the body.
An a X-ray. X-rays are done, if necessary.

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They were in this case.

And that would be the external examination, noting injuries, height, weight, anything that we can see externally.

Q. What did you do then?

A. Following the external examination, an internal examination was done.

Q. That is done in what way?

A. An internal examination involves opening the body cavities, the thoracic cavity, abdominal cavity, cardia cavity.

The organs are removed and evaluated.

So everything like that internally.

Also, at that time, sections of tissue, body fluids are collected for testing that may need to be done.

Q. What was your determination of your autopsy of Willie Absolu?

A. As far as the findings of the autopsy?

Q. Yes.

A. On examination of the body, there were gunshot wounds that were noted. There was a gunshot wound that entered, exited the left arm.

A gunshot wound that entered the neck.

I recovered a projectile from the body,

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from that wound.

Another gunshot wound that entered the left side of the head. I removed the projectile from that injury.

Q. Showing you State's Exhibits -- first of all, State's Exhibit 79, that's Willie Absolu, who you performed the autopsy on?

A. That's correct.

Q. Now , with reference to the wound to the arm and the neck and the shoulder, I'll show you, here's -- here is the pointer.

Could you tell us exactly what you're talking about? Where is the entrance and exit and reentry?

A. This is the left arm. The left harm is being held up. So you actually could see the armpit in this photograph here.

You see two holes in the arm.

Defect here and here.

Those are both gunshot wound defects.

This is the entrance.

If you look at the margins of the wound, nice, smooth, punched out.

This is the exit.

Q. If you can point here, then everybody could

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see on the screen?

A. This would be the exit defect. This is a bit more ragged, more edges than the entry wound.

Q. The reentry?

A. There is a reentry of this injury. There is a gunshot wound of the neck here.

This gunshot wound, if you look at this one, instead of having a nice, punched out, smooth appearance on the entrance wound of the arm, when this projectile exited the arm, it is not going as smoothly, traveling as smoothly. It is a bit wobbly in its trajectory.

So when it comes through, hits the neck, it will be a bit more ragged, irregular entrance defect.

Q. You recovered that in Mr. Absolu's right shoulder?

A. That's correct.

Q. Where would it be approximately in State's Exhibit --

A. From the posterior, right shoulder.

Q. As to, in your opinion, as to State's Exhibit, the arm and reentry into the neck, what position would the left arm be to get it to go in his left arm, exit his left arm, inside of his left

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arm and go into the neck?

What position would his arm be?

A. The arm would have to be raised for that type of trajectory.

Q. With reference to the entrance wound to the left arm, was there any stippling?

A. Yes.

Q. What is stippling?

A. When a firearm is fired, not only does the bullet, a projectile, come out of the end of the barrel, but also burned and unburned particles of powder, gun powder come out.

If those, the end of the barrel of the gun is close enough to skin, to strike the skin, after it leaves the barrel of the gun, it causes tiny abrasions on the skin. That's called stippling. Small, red abrasions of the skin.

Q. What can you tell from stippling?

A. Stippling helps us determine kind of a range of distance of fire. It is different with different weapons.

But they show that the end of the barrel of the gun was close enough when the burned particles came out, they were able to strike the skin and cause the stippling.

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Q. In your opinion, in this case to Willie Absolu's left arm, the stippling is indicated with what distance to you?

A. Typically, with a handgun, the general range is 12 to 18 inches.

Could be further or closer, depending upon the specific weapon.

Q. Showing you State's Exhibit 53, can you identify that?

A. There is a small envelope with my printing and initials on it.

Q. What is that?

A. This is a projectile, lead fragment recovered from neck.

Q. From his neck?

A. Correct.

Q. The one that wound up in his shoulder, into the neck?

A. Yes.

Q. Showing you State's Exhibits 67, 17 and 79, and this is State's 79, that's the head of Willie Absolu?

A. That's correct.

Q. What does that indicate?

A. In this photograph, you see the left side

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of his head. You can see this punched out, smooth hole defect, which is an entrance gunshot wound.

Actually, you can see these tiny, little red dots in the photograph that extend away from the central wound. Those are areas of stippling.

Those are stippling type abrasions.

Q. That's the left side of his head?

A. Yes.

Q. Here is another shot.

State's Exhibit 17.

And that's a shot of the neck wound and the wound to the left head?

A. That's correct.

Q. What was the cause of death of Willie Absolu?

A. Multiple gunshot wounds.

Q. As to the bullet, the wound to the head, stippling?

A. Yes.

Q. What can you tell us about that stippling?

A. Again, the same type of scenario. This would be showing the end of the barrel of the gun was at a range where when it was fired, the burned, unburned powder particles were close enough to cause the abrasion on the skin.

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Q. When he is shot in the left head, like he is here -- Willie Absolu -- would he have been able to move at all if that was the first shot?

A. Nothing of significance. This shot would pretty much cause unconsciousness.

Q. He wouldn't have been able to lift his left arm, then, after this shot?

A. No.

Q. In your opinion, the first shot was to his left arm.

A. The left arm wound, in my opinion, is a defensive type wound.

With a defensive type wound, that requires conscious movement because you're trying to block something from your body.

The left arm wound that went through the left neck, in my opinion, would have been before the Gunshot wound to the head.

Q. The wound to the left arm, that went through the neck and wound up in the right shoulder, would that have caused Willie Absolu to be unconscious?

A. There is nothing about that wound that would cause immediate unconsciousness.

Q. How about the wound to the head? Would he

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have been --

A. Unconscious. Yes.

Q. Showing you State's 54, could you look at that?

A. There are three envelopes with my printing and my initials signed on that, along with projectiles and projectile fragments that were recovered.

Q. Where were they recovered from?

A. There was a deformed copper-jacketed recovered from the right shoulder of Willie Absolu.

A left fragment from the right brain of Willie Absolu.

A copper and lead fragment from the left skull and brain of Willie Absolu.

Q. Now showing you State's Exhibit number 19, and I'll ask you if you recognize who that is?

A. Yes, this is a photograph of Christina Delarosa.

Q. And you did an external examination?

A. Yes.

Q. And did she exhibit all of the attributes of an 18-year-old female?

A. Yes.

Q. Then you performed an external?

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A. Yes.
Q. What did you find?
A. On the external examination, again, there were gunshot wounds.

There was a gunshot wound of the neck, which you see in this photograph, that exited the right side of the head.

There was a gunshot wound to her left breast region, which I recovered a projectile from inside of the body.

Q. I'll show you State's Exhibit 55 and ask you if you can identify that?
A. Yes.

This is an envelope that has my printing on it. Deformed copper-jacketed lead projectile from cervical spine of Christina Delarosa.

The gun, the projectile is in the envelope, package.

Q. The cause of death of Christina Delarosa?
A. Determined to be gunshot wound to the neck and chest.
Q. With reference to the gunshot wound to the neck, it exited below her right ear?
A. Yes.
Q. Showing you State's Exhibit 68, where did

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it exit?

A. This is the right side of the head. You can see this defect here, just in front of her ear. This is an exit wound of the projectile that entered the neck.

Q. It entered her neck, right?

A. Correct.

Q. And came out right there, below her right ear?

A. In front of her right ear, yes.

Q. Again, showing you this front view, again, State's Exhibit 19, what is that red mark surrounding the wound?

A. Again, in this photograph, you see central defects on her neck, which is a round, punched out, smooth hole, which is an entrance gunshot wound.

Then you see all of the red dots.

These are stippling marks, stippling abrasions.

Q. Based upon into -- and here is another photograph. State's Exhibit 64. Kind of a close-up. Is that a better view of the stippling we are talking about?

A. Yes.

Q. That's a close-up of the wound to her neck?

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A. Yes.

Q. In your opinion, the stippling indicates distance, the barrel, the end of the barrel or the muzzle of the gun to the wound to the neck was what?

A. Close enough to cause the stippling pattern, which, typically, in a handgun is 12 to 18 inches. Can be a little further or closer.

Q. With this wound to her neck that exited below her right ear, how long would she have been conscious, if at all?

A. Well, there is nothing specifically about this wound I can say definitely rendered her unconscious immediately. This wound went through her neck. It went, severed what is called the carotid artery, which is a main artery that goes up to feed our brain blood.

So with this wound, she would be bleeding pretty profusely; and unconsciousness would come pretty quickly. But I have to say the other wound is involved with that unconsciousness too. It effects other things in the body.

Q. If this was the first wound, what is the maximum she could be conscious?

A. If this was the first and only wound, consciousness would be less than a minute and she

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would be unconscious.

Q. Let me show you State's Exhibit 66.

What is that?

A. This is also a photograph of Christina Delarosa. This shows the entrance gunshot wound which entered the left side of her body, left side of her left breast. This is a wound I recovered a projectile from inside of the body.

Q. That you just identified?

A. Yes.

Q. What was the path of this projectile into her left breast?

A. This projectile went into the left chest cavity. Went through her left lung and went into the cervical vertebrae at the C6 level of her cervical vertebrae and actually transected the spinal cord at that level.

Q. Was this wound fatal, in and of itself?

A. Yes.

Q. The wound to her neck, would that have been fatal, in and of itself?

A. Yes.

Q. This wound to her left breast that almost severed her spine, would she have been able to move after that?

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A. If she were conscious, very limited movement after that. Maybe minor movements.

Nothing significant.

Q. With the wound to the neck, if that was the only wound, would there be movement after that?

A. There is nothing about that specific wound that would limit movement.

Q. Let me show you, did you notice anything in her hand?

A. In the autopsy report, there were multiple hairs recovered from her right hand I identified.

Q. Consistent with her own hair?

A. I didn't examine them further.

They were turned over to law enforcement.

Q. Were they long?

A. I didn't examine them further.

Q. I was going to show you a photograph of her shirt.

Let me show you State's Exhibits 57 and 56 and ask you if you can identify that?

A. These appear to be shirts from Christina Delarosa and Willie Absolu that were collected at the time of the autopsy.

Q. About the shirt to Christina Delarosa, what did you notice?

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A. Well, at the time of the autopsy examination, looking at the shirt, you can see there was a gunshot wound on the left side of the shirt, where the left breast would be, in that region.

Q. I'll show you State's Exhibit 75, the shirt you're talking about.

Show us what you mean.

A. May I see that picture up close, for a moment?

The lighting is --

Q. Sure.

A. Thank you.

This is a shirt that was on Christina Delarosa that was taken off and examined.

You can see there is an arrow pointing to a defect on the left side of the chest region.

That is actually where the projectile from the gunshot wound that went through her left breast would have entered.

Q. I notice there is no blood where that wound is.

A. That's correct.

Q. What is that indicative of?

A. If you look at the shirt, all of the blood is on the right side of the shirt region. There is

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no blood around that entrance point, on the left side of the shirt, which she would have been bleeding from.

To me, it means there was no real movement towards the left following this gunshot wound.

Q. The cause of death of Willie Absolu was what?

A. Multiple gunshot wounds.

Q. The cause of death of Christina Delarosa?

A. Gunshot wound to the neck and chest.

MR. SATZ: Thank you.

No further questions.

MR. WILLIAMS: I will be a while.

THE COURT: Are you available if we do it after lunch?

THE WITNESS: I guess I have to be.

THE COURT: I appreciate that.

THE WITNESS: Yes.

I need you guys back at 1:20.

You know all of the rules.

(Exit jurors.)

(Recess had.)

(Afternoon session begins.)

THE COURT: Want to talk about Mr. Cooper?

MR. SATZ: Sure.

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THE COURT: He will have the same problem for tomorrow.

Has to be out by 4 o'clock. He's our fourth alternate.

I mean we can quit today at 4:00, see where we are.

MR. SATZ: I have a problem. I have two officers from Lee High Acres.

THE COURT: I'll make it at your disposal.

MR. SATZ: Let's see how far we can go, if we can finish by 4:00. I have them in an order. I can't readjust it.

If we have to let him go --

THE COURT: I don't have a problem.

THE COURT: Your thoughts?

MR. WILLIAMS: Make a decision when we have to make it, which would be at 4:00.

THE COURT: I'm fine.

Let's go.

Our good doctor is on the witness stand.

Let's bring our jury in, please.

(Enter jurors.)

THE COURT: Mr. Williams, cross?

CROSS EXAMINATION

BY MR. WILLIAMS

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Q. Let's go back in time.

You performed this autopsy on Mr. Absolu and Ms. Delarosa in March of 2002?

A. That's correct.

Q. When you testified in October of 2003, you had performed 1700 autopsies at that time, approximately?

A. Approximately. I don't recall specifically at that time.

Q. If I showed you a copy of your prior testimony, would that refresh your memory?

A. Sure.

Q. Mr. Satz had asked you the question approximately how many autopsies have you performed.

Your answer?

A. Just over 1700.

Q. So that was 18 months after these autopsies.

So at the time you did these autopsies, how many autopsies do you think you did in that 18-month period before you testified?

A. I don't know.

Q. Let's talk about stippling. That's caused by gunpowder, correct?

A. Powder or anything else that comes out of

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the end of the barrel from the bullet, other than the projectile.

Q. Well, projectile doesn't cause stippling?

A. No, other than the projectile.

Q. Other than.

So mostly gunpowder is coming out of the muzzle of the gun when a projectile is fired?

A. Mostly that's what is associated with stippling, yes.

Q. In the past, with shotgun shells or something, it might be cardboard or something coming out also --

A. Wadding associated with it, yes.

Q. This was a .380 automatic pistol, correct?

A. That was what was reported to me.

Q. It was reported to you that in the projectiles you removed or recovered, they were consistent with being a .380 caliber?

A. That's correct.

Q. In your direct examination, you said the stippling can vary between as to whether or not it is a larger caliber gun or smaller caliber gun?

A. Stippling can range, can vary with the gun and the ammunition used.

Q. Right.

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So in this case, a .380 is kind of in the middle range of calibers, correct?

A. I would say yes.

Q. You have a .22, a .25 common in the United States. A .32, a .380, a .38?

A. Yes.

Q. .44, a .45?

A. Yes.

Q. A 9 mm. 10 mm.?

A. Yes.

Q. It is actually hot, it is hot gunpowder, mainly, that is making contact with the skin?

A. Not necessarily. These aren't really burn injuries.

It is like something scraping the skin. It is like an abrasion, a scraping of the skin.

Q. It is traveling with enough velocity that it actually leaves, in this case, on Ms. Delarosa's throat, it left red marks?

A. Yes, red abrasions.

Q. That's caused by the powder itself and can be the fact it is burning powder?

A. Not typically burn -- usually stippling is caused because of the force it hits the skin. It causes an abrasion or scraping of the skin.

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Q. Let's talk about, let's talk first about Willie Absolu.

Now, let me show you what is marked State's Exhibit 78 in evidence. Now, that's the picture of his arm, correct?

A. Yes.

Q. That is the entrance wound?

A. Yes.

Q. That's the exit wound?

A. Yes.

Q. Then it went into the throat?

A. Yes.

Q. This is, you can see the armpit here?

A. Yes.

Q. This would be the underside of his left arm, correct?

A. Well, this part, where the entrance wound is, which would be right here, is kind of the lateral aspect.

Q. If I have my arm up, like this?

A. Yes.

Q. Coming in here, out here, into the throat?

A. Yes.

Q. If I understand correctly, that shot just went through tissue?

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A. Through the arm, yes.
Q. Through the arm, through tissue, but didn't strike the bone?
A. That's correct.
Q. So it is below the bone, in his upper arm?
A. Yes, that's correct.
Q. Through tissue and through the neck?
A. Yes, the bone would be deeper into the tissue.
Q. Obviously, if it struck bone, it wouldn't have gone in an struck his -- chances are it wouldn't strike his neck?
A. It may or may not have.
Q. Especially a low caliber gun, like a .380?
A. May or may not have.
Q. Have you ever seen a .380, in an autopsy, crack a bone and land somewhere else?
A. I am not sure.
Q. You said maybe.
I am talking about a .380 caliber projectile, a slug. Have you ever seen, in the course of an autopsy, seen that fired, where it went through a bone, cracked a bone and exited it? A .380 caliber?
A. I have seen projectiles. That includes

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those with handguns.

Q. I'm being specific.

Not talking about a 9 mm. or a .40 caliber.

I am talking about a .380 caliber gun.

A. I would have to go back, review my records.

I couldn't specially say that.

Q. Right now, you don't know you have ever seen that?

A. I can't specifically say with a .380.

Q. Mr. Absolu suffered two gunshot wounds, correct?

A. Yes.

Q. He suffered wounds from two projectiles would be more accurate?

A. Correct.

Q. Let's talk about not the arm that pierced the neck but the gunshot wound to the head.

A. Okay.

Q. That was to the same side of the body as the gunshot wound through his arm, correct? Left side?

A. Yes.

Q. Now, if I understand correctly, that wound to the left side of Mr. Absolu's head perforated his skull and entered the, what, the left cerebellum?

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A. It entered the brain, actually, part of it.
Q. Cerebrum?
A. Yes.
Part of it, recovered part of it from the projectile, part from the left side of the brain and part from the right side of the brain.
Q. Went all the way through his brain?
A. Part. Part to the right side.
Q. The part went all the way through his brain, through the left side?
A. Part of it. To the right side.
Q. What functioning, in humans, what controls what functions?
A. We can't just look at specifically the tract of the projectile. The brain is, obviously, a very complicated piece of equipment we have.
When the projectile goes through the brain, it actually creates a cavity. It is creating a forced cavity that gets bigger and comes back out. It is actually creating more, it is effecting more than just the area it is going through.
Q. It is creating shock within the brain?
A. It sends a force through the brain.
Q. Force that goes out and then contracts?
A. Yes.

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Q. That would be, would have happened in this particular wound that Mr. Absolu suffered?

A. Yes.

Q. Now, that wound to his head would have been, was, obviously, a fatal wound?

A. Yes, sir.

Q. Was it a survivable wound?

A. Unlikely.

Q. What does survivable wound mean?

A. That within a timely manner, if this person received medical care, they could have survived the injury, which, in my opinion, is highly unlikely.

Q. This wound was catastrophic enough, even if he received prompt medical treatment, it is doubtful he would have survived?

A. That's my opinion, yes.

Q. After receiving that wound to the, to his head, you said that he could have still been breathing and unconscious for a period of time?

A. Yes.

I believe the wound would have rendered him unconscious.

He could have still been breathing, what we would say, be alive after that.

Q. Alive because he would be unconscious but

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technically alive because his heart was still beating?

A. That's correct.

Q. Unconscious means he's not, he's not cognitive of what is going on around him; is that correct?

A. That's correct.

Q. So at that point, he's not cognitive or aware of what is going on around him?

A. That's correct.

Q. Let me show you State's Exhibit No. 13.

This is the position that Mr. Absolu was found in, in the freezer, correct?

A. Yes.

Q. When you first went there, you observed that scene?

A. Yes.

Q. It was after you had a chance to observe both Mr. Absolu and Ms. Delarosa in the position she is in, in photograph 13, that you then asked they be removed from the freezer so you can conduct an examination on the spot?

A. Yes.

Q. You see there that Mr. Absolu, you can see the gunshot wound to his upper left arm?

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A. Yes.
Q. Depicted here?
A. Yes.
Q. Now, he's lying slightly on his right side?
A. That's correct.
Q. It looks like the way his shoulder is positioned, his right shoulder is under him?
A. That's the way it appears, yes.
Q. That wound that he suffered, assuming that the, that the first, the first wound that he, the first projectile that struck him was in the upper arm and the neck and the second one was the one to the head, would he have dropped right after being shot, if he was standing up?
A. Yes, he would have pretty much collapsed at that time.
Q. Collapsed right there?
A. Yes.
I mean no significant movement after.
Q. Is there any way, in terms of the two wounds that he suffered, is there any way of determining, in your opinion, how quickly the two shots were fired?
A. No, sir.
Q. We don't know how quickly the two shots

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Mr. Absolu received were fired?

A. The only thing I can say is he was alive for both shots. Anything else other than the timing, no.

Q. Obviously, he was alive, if the first shot was through the arm, that would not have rendered him immediately incapacitated?

A. That's correct.

Q. The second shot would basically have dropped him in his tracks, the shot, second shot, the shot to the left side of his head?

A. Yes.

Q. We don't know, in terms of sequencing, how quick the shots were, whether it was bang bang, do we?

A. I cannot say.

Q. Let's move on to Ms. Delarosa.

Now, she was struck by two projectiles?

A. Yes, that's correct.

Q. And if I understand correctly, both wounds that she suffered were potentially fatal wounds?

A. That's correct.

Q. Now, let's talk about the, let's talk about the wound. Let's talk about the wound first to the neck.

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That's the one that went through, perforated the carotid artery on the left or --

A. On the right side.

Q. On the right side. Okay.

Now, that's a main artery from the heart that goes to the brain?

A. That's correct.

Q. To give us an idea, in a young woman, the size of Ms. Delarosa, how big would that artery be? As big as the index of your finger, pinky finger or what?

A. A little smaller than the index. Like the pinky finger.

Q. Like that?

A. A little smaller than that diameter.

Q. You said it was transected?

A. Yes.

Q. What does that mean?

A. It was completely severed.

Q. Cut in half?

A. Yes.

Q. From that artery, as the heart is pumping, there is no more blood going to the brain through that artery?

A. Not through that artery.

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Q. That's what I said. Through that artery.
A. Correct.
Q. Because you have the other side?
A. Yes.
Q. You have half the blood flow that would normally go to the brain stopping when that artery was cut in half?
A. There are other vessels that go up to the brain, through the vertebral column.
Q. There are two main sources of blood to the brain?
A. Two larger sources of blood.
Q. One of the larger sources was stopped with that gunshot wound?
A. That's correct.
Q. Now, what does the average adult female, how much blood does the body, is in their body?
A. Approximately about 5000 cc's of blood.
Q. Can you convert that for us that aren't familiar with the metric system?
A. If you think about a two-liter bottle of soda, about two and-a-half of those.
Q. About five quarts?
A. About 5000 liters. I have to do the conversion.

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I am not sure about quarts. I would have to use my phone.

Q. You said a two-and-a-half liter bottle of Coke?

A. Yes.

Q. Now, the average heartbeat is or average number of heartbeats, what's the average number of heartbeats per minute?

A. Depends upon the person.

Everybody's average is different.

About 70.

Q. That would be 70 at rest?

A. Yes.

Q. And this, obviously, would not have been a restful situation?

A. That's correct.

Q. So it is safe to assume Ms. Delarosa's heart was beating faster than 70 beats a minute?

A. Yes.

Q. On average, the heart pumps that entire two and-a-half liters of blood through the whole system in a minute, doesn't it?

A. Pretty close, yes.

Q. Because it is a system. I mean it is a circular system?

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A. Right.
Q. So every minute, the entire blood supply is, of that human body, is pumped through the heart?
A. Being circulated, correct.
Q. How much blood would have been being expelled through that severed artery, with every heartbeat, if it is 70 beats a minute?
A. I can't specifically say how much would have been going through her artery at that time. The carotid artery is a large artery. This would be an educated guesstimate. About 5 cc's through that artery with every pump.
Q. Is that 5 cc's, is that, I'm trying to equate that into ounces or something that we might, us not familiar with, as familiar with the --
A. Again, I have to have a calculator.
Q. Metric system?
A. To do the calculation.
Q. Is it two to three ounces?
A. About that.
Q. Every time her heart beats, two or three ounces might be being expelled through that open artery?
A. That's correct.
Q. So if it is two ounces, then what? How

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much would be, if it is 70 beats a minute, how much would be expelled?

A. If I'm talking about cc's, let's say her --

Q. CC's.

A. Let's say her heart is beating a hundred times a minute, this kind of a situation, an estimate, a hundred times a minute, so a hundred times 5 would be 500 cc's of blood.

Q. In a minute?

A. In a minute.

Q. Of course her blood, with that artery severed, her blood pressure is dropping, correct?

A. That's correct. That would be correct.

Q. With that amount, with that rapid rate of blood loss, how long would it take before she would be unconscious?

A. In her, you know, I have to take into consideration the other wound also. The other wound that entered her left chest and went through her left lung, it is not just blood volume that is a problem for her now, it is actually respiration and respiratory problems because it severed her spinal cord. That's increasing also. And she is losing blood into her left chest cavity.

Q. It would exacerbate, make it occur much

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sooner she would be unconscious?
A. It would accelerate it.
Q. Accelerate it?
A. Yes.
Q. In response to Mr. Satz's question, you thought she would be unconscious in less than a minute?
A. Yes.
Q. It would?
It could have been please than that?
A. That's correct.
Q. Given all that was going on, inside her body at that point in time?
A. That's correct.
Q. Let's talk about the chest wound.
That's the wound that penetrated her spine?
A. That's correct.
Q. How soon after the spine was struck would she virtually become immobile?
A. Immediately, she would have problems with movement. There may be a little movement because of the level of the Spinal cord, where it was, a little movement of the upper part of her body, as far as like head, neck.
Q. You bring up a good point.

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The level that the projectile struck was at C6?

A. Yes.

Q. Can I get you to step down and can you point on me approximately where the C6 level would be?

A. In the front? Back?

Q. From the back.

Probably easier.

A. The spinal cord starts up here, at the base of the skull. C6 would be somewhere down here. Kind of the upper part of the back.

Q. Thank you.

A. Okay.

Q. If I understand what you just said, everything below, basically below the C6 level would have become instantly in a paralysis state?

A. Her lower extremities and lower torso, certainly. May be some areas of the arms, shoulders that may have been mobile.

So everything wouldn't have been immediately gone. There wouldn't be really any significant --

Q. When you say significant, you're talking about being able to twitch with the hand?

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A. There may be twitching type of movement, yes.

Q. When she suffered that injury, similar to the situation with Mr. Absolu, she would have probably dropped where she was at, right?

A. Yes. There wouldn't be any significant movement after that. Whatever her body position was in, it would probably not have been real significant.

Q. Not as significant.

In that photograph there on 13, she appears to be on top of, a portion of her body on top of Mr. Absolu?

A. In that photograph, yes.

Q. That's how you were told -- I'm sorry. That's what you believed the positions of the bodies were when the police discovered them, correct?

A. As far as I know, no one, as far as law enforcement, moved the bodies. That was the position they were in when I arrived at the scene.

Q. Based upon what we have discussed here today, you said Mr. Absolu would have dropped when he suffered that shot to the head. So we see him there on the floor, on his right side?

A. Yes.

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Q. Basically, what you said, as soon as Ms. Delarosa got the wound to the chest, penetrated her spine, she would have dropped?

A. There would be no significant --

Q. No significant movement.

So looking at the positioning of the bodies, as a medical examiner, would you conclude that Ms. Delarosa was shot after Mr. Absolu?

A. I would not be able to say that in this case.

I know there was a third party to this event.

I don't know if there was any movement from the third party that involved these two bodies.

Q. You're speculating a third party would have thrown Ms. Delarosa's body on top of Mr. Absolu?

Is that what you want this jury to believe?

A. No.

I am saying I don't know if, when the third person was there, if they moved the bodies or not when they were leaving.

Q. Are you aware that the third person you're talking about had been shot in the head?

A. Yes.

Q. You're thinking that the, you're suggesting

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that that third person that was shot in the head had the consciousness to move the bodies around that we see in State's Exhibits --

MR. SATZ: Objection. Calls for speculation.

MR. WILLIAMS: Well, she's speculating they were moved.

MR. SATZ: She's not speculating anything. She said she doesn't know the answer.

THE COURT: Ask another question.

BY MR. WILLIAMS:

Q. Isn't it reasonable to assume that that is the position each of those people were in after they both sustained their fatal, non-moving injuries?

A. I can't say if the bodies had been moved or not.

Q. I didn't say that.

I said is it reasonable to assume that that's the position they were in when they both suffered their last wound?

MR. SATZ: I object. She has answered the question. She doesn't know.

THE COURT: Ask another question.

MR. WILLIAMS: Judge, I asked her if it's reasonable --

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BY MR. WILLIAMS:

Q. Okay.

Let's use the word -- is it possible that that is the position that they were in after each of them suffered their final, fatal wounds.

A. Yes, it is possible.

MR. WILLIAMS: Thank you.

That's all I have.

THE COURT: Mr. Satz?

MR. SATZ: Nothing further.

THE COURT: Thank you very much, Doctor.

(Witness excused.)

THE COURT: Mr. Satz?

MR. SATZ: Tommy Douse.

If we can take a minute?

THE COURT: You know the way.

(Exit jurors.)

(Recess had.)

MR. SATZ: He's not here.

I will take him out of order.

THE COURT: Let's go.

(Enter jurors.)

THE COURT: Our jurors are back.

Mr. Satz?

MR. SATZ: All right.

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Joseph Andriole.

JOSEPH ANDRIOLE,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Joseph Andriole, A-N-D-R-I-O-L-E.

DIRECT EXAMINATION

BY MR. SATZ

Q. What is your occupation?

A. Right now, I'm a manager for Publix Supermarkets.

Q. How long have you been a manager for them?

A. 13 years.

Q. I would like to call your attention to Monday, March 11, 2002.

How were you employed at that time?

A. At the time, I was a manager for 7-Eleven, Inc.

Q. I would like to call your attention to 330 North Federal Highway, here in Fort Lauderdale.

Are you familiar with that location?

A. Yes, sir.

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That was the store I was a manager of.

Q. How long were you the manager of that store?

A. Approximately a year and-a-half.

Q. I want to show you State's Exhibit 84 and ask you to take -- you can take it out, if you have to, to look at those.

Tell me if you recognize what they are.

A. They are two money orders that were printed from that 7-Eleven store on 330 North Federal Highway in Fort Lauderdale.

Q. How do you know that?

A. There is a location number on, stamped on each money order.

026304. That's the store number, the store designation number of that store.

Q. How much are the money orders made out to?

A. Each made out for $411.56.

Q. Is there a time and date on them?

A. There is.

The date is March 11th, 2002.

The time is at 6:40 a.m.

Q. On March 11th, 2002?

A. Correct.

Q. Let me show you State's Exhibit marked 4L

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for identification and ask you if you can tell me what that is?

A. A money order close-out report that gets run at the end of every shift and at the end of every day that documents the amount of money orders and the amount of each money order that was sold that day.

Q. The two money orders that you have, each one has a different serial number?

A. That's correct.

Q. Are those serial numbers both reflected on the close-out report?

A. Yes.

Q. Does it also list the time and date they were purchased?

A. It does.

They were printed at 6:40 a.m. The transaction date is March 10th. It rolled over to the next day. So it is March 11th.

Q. It has the serial numbers?

A. Yes. 52 and 53, matches up with the two money orders.

Q. The amount?

A. $411.56.

Q. At that store, when you were the manager,

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did they have video recordings?

A. Yes, they did.

Q. Did a detective from the Davie Police Department come to meet with you and take from you or ask you to give him the tape recording that was running on March 11th, 2002, in the early morning hours?

A. Yes.

Q. Did you turn it over to him?

A. Yes.

MR. SATZ: Thank you very much.

Nothing further, I'm sorry, other than offering into evidence, for this hearing, 4L and State's Exhibit 84.

THE COURT: 84 comes in. 4L is 82.

MR. SATZ: Nothing further.

THE CLERK: 3M.

MR. SATZ: I read the wrong one.

3M.

THE COURT: There is no 4L.

It's 3M?

MR. SATZ: Yes.

THE COURT: 3M will be 82.

THE COURT: Mr. Polay?

CROSS EXAMINATION

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BY MR. POLAY

Q. Good afternoon, sir.

A. Good afternoon.

Q. You were the manager of. Store at this time?

A. Correct.

Q. So you weren't there when the money orders were actually purchased, were you?

A. No, I was not.

Q. You didn't have any conversations with the person that actually purchased the money orders?

A. No, I did not.

MR. POLAY: Thank you, sir.

THE COURT: Any redirect?

MR. SATZ: No.

(Witness excused.)

MR. SATZ: Tommy Douse.

TOMMY DOUSE,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Tommy Douse, D-O-U-S-E.

DIRECT EXAMINATION

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BY MR. SATZ

Q. Good afternoon, Mr. Douse.

A. Good afternoon.

Q. What is your occupation?

A. Maintenance worker for Broward County Animal Care.

Q. I would like to call your attention to March 11, 2002.

How were you employed at that time?

A. With 7-Eleven.

Q. What was your duties at the 7-Eleven?

A. Cashier.

Q. When you were the cashier at the 7-Eleven, there was video recording that morning you were working?

A. Correct.

MR. SATZ: Your Honor, I would like to play this video, have Mr. Douse identify it.

You can turn your seat and tell us.

(Exhibit published.)

BY MR. SATZ:

Q. Recognize anybody there?

A. Me.

Q. That's you in the red shirt?

A. Yes.

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(Video continues to be published. Inaudible sounds and dinging.)

VOICES ON VIDEO: Money order.

How much you want? (Unintelligible voices.)

BY MR. SATZ:

A. Mr. Douse, what are you doing over there?

A. Printing up the money order.

Q. That's where the money order machine is, right?

A. Correct.

MR. SATZ: Okay.

(Publishing of video concludes.)

BY MR. SATZ:

Q. Mr. Douse, do you recognize yourself selling money orders to that gentleman?

A. Yes, sir.

Q. I'll show you State's Exhibit marked 84.

Do you recognize those two money orders?

A. Yes, I do.

Q. Those are the money orders you gave to him?

A. Beg pardon?

Q. Those are the money orders you sold to him?

A. Yes. Yes.

Q. I'll show you State's Exhibit marked 71.

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Have you seen that photo display before?

A. Yes.

Q. How did you see it?

Tell us what happened.

A. From here?

Q. What did the police officer do? Show you those photographs?

A. Yes, he did.

Q. What did you do?

A. Initialed it.

Q. That's the person you sold the money orders to?

A. Yes, sir.

Q. There is an affidavit.

Did you fill that out and sign it, in the procedure that you used?

A. Yes, I did.

Q. They are your initials?

A. Yes.

MR. SATZ: At this time, I want to introduce State's Exhibit 71.

I have entered the video, which is state's Exhibit 3Q.

THE COURT: 3Q will be 83.

The others will come in as marked.

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MR. SATZ: This was 71.

THE COURT: Yes.

MR. SATZ: Thank you.

Nothing further of Mr. Douse.

Thank you, very much, Mr. Douse.

MR. POLAY: Nothing.

THE COURT: Thank you very much, sir.

(Witness excused.)

MR. SATZ: Brad Hamilton.

BRAD HAMILTON,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: My name is Brad Hamilton. I'm a retire captain from the Lee County Sheriff's Office.

DIRECT EXAMINATION

BY MR. SATZ

Q. Where is Lee County?

A. Fort Myers, Florida, on the West Coast of Florida. Might know where Sanibel is. We are next to that.

Q. How long have you been retired?

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A. About a year and-a-half now.
Q. How long were you with the Lee County Sheriff's Office?
A. 26 years.
Q. I would like to call your attention to Monday morning, March 11, 2002.
Were you on duty on that occasion?
A. Yes, sir.
Q. On that occasion, did you have occasion to come into contact with the defendant in this case, Gerhard Hojan?
A. Yes.
Q. Do you see him in the courtroom?
A. Yes.
Q. Would your point him out for us?
A. Gentleman in the blue shirt.
MR. SATZ: Madam Reporter, with the Court's permission, please let the record reflect Mr. Hamilton identified the defendant, Gerhard Hojan.
BY MR. SATZ:
Q. Where did you come in contact with him?
A. We had a, I came in contact with him on a traffic stop.
We had been given information to locate a

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vehicle, suspect vehicle.

Q. Did you have a tag number?

A. Yes.

Q. What was the tag number?

A. It was a silver colored Dodge Ram pick-up truck with a Florida tag of WDB 04X. Whiskey, delta, bravo.

Q. What time was it you came in contact with the defendant?

A. With the defendant, I probably came in contact with him probably 11:30, 11:45, something like that.

Q. P.M.?

A. Yes.

Q. On Monday, March 11th?

A. Yes.

Q. Did you ever see the silver truck?

A. I did see the silver truck initially, when I was given the information.

Q. Where did you see his silver truck?

A. It was parked at 100 Apache, in Lee High Acres, Florida, which is in Lee County.

Q. Based on some information, you performed a traffic stop?

A. Later on; yes, sir.

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Q. Tell us about the traffic stop. What type of vehicle? Who was in it?

A. Well, the traffic stop was on a small green, I believe green colored station wagon.

It had two individuals in the car.

The defendant was in the passenger's side. There was an elderly gentleman on the driver's side who turned out to be his father.

Q. And what happened? Where did you go to with the defendant?

A. Well, when we saw them leave the house -- we set surveillance on the house. When we saw them leaving, I organized everybody -- I was the supervisor -- to do a traffic stop on Homestead.

Q. Once you had him, where did you take him?

A. Once we secured the individual, we took him over to our substation, which was approximately a half a mile away.

Q. Eventually, did officers from the Davie Police Department come to the substation?

A. Yes, probably within 45 minutes.

MR. SATZ: Thank you.

Nothing further.

MR. POLAY: A few questions. Thank you, sir.

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CROSS EXAMINATION

BY MR. POLAY

Q. Good afternoon, sir.

A. Good afternoon, sir.

Q. You were surveilling, conducting surveillance on this house for about two hours?

A. No.

Q. How long?

A. Probably conducted surveillance for half an hour, 40 minutes, maybe.

Q. You actually observed Mr. Hojan leave the house and get into a green Escort with his father?

A. I didn't observe him. I was on the outside perimeter.

I had taken one of my deputies, put him in an undercover capacity, in a truck down the street. I wasn't in view of the house or vehicle.

Q. You were apprised of the fact they were actually getting in the car?

A. Yes, sir.

Q. Can you tell the ladies and gentlemen of the jury approximately how far the substation is from 100 Apache Street?

A. From Apache Street to that location where the traffic stop was, it was probably close to a

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mile. He had to pull out, get onto Homestead Road. By way a bird would fly, at least a half a mile to pull out on the road, approximately a mile.

Q. You said to the jury Mr. Hojan's father was driving the vehicle; is that correct?

A. Yes, later identified as his father, yes.

Q. You had contact with him?

A. I didn't have contact with the father.

I concentrated on Mr. Hojan.

Q. Correct me if I'm wrong, but you found out --

MR. SATZ: Objection, Your Honor, if he is going to elicit a self-serving statement from the defendant.

MR. POLAY: Can we go sidebar?

THE COURT: Sure.

MR. POLAY: It is not from the defendant. This is a penalty phase, Judge.

One of the things I attempt to bring out during the course of the penalty phase is Mr. Hojan, along with his dad, were headed towards the substation to surrender himself.

That is evidence for a penalty phase, Judge.

Shows cooperation.

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MR. SATZ: If he wants to elicit it on his side, that's fine. It is hearsay, now.

MR. POLAY: That's why I said it wasn't self-serving by the defendant. Made by the father, Judge.

Hearsay is admissible in this portion of the penalty phase.

MR. WILLIAMS: It is not a self-serving statement of the defendant. It is a statement by the father. The father is dead. There is no way to get it out.

THE COURT: That creates a problem.

Hearsay , it has to be subject to --

MR. WILLIAMS: It is hearsay. Heading in the direction of the police station.

He's stopped. He tells them he's going to the police station.

MR. SATZ: I remember it was objected to and you didn't let it in.

MR. POLAY: But I think, from my recollection of the transcript, Judge, you said if it goes to a penalty phase, it basically, may be a different story.

MR. SATZ: I don't recall that.

MR. POLAY: Can we take a break for a

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second? I want to show it to you.

(Sidebar concludes.)

THE COURT: You guys are out.

(Exit jury.)

MR. SATZ: Judge --

THE COURT: I am listening.

MR. POLAY: Before we say anything, maybe outside of the presence of the witness.

THE COURT: Could you excuse us?

MR. POLAY: No, no, no, no.

I wanted to ask him.

THE COURT: You're doing a proffer.

MR. POLAY: Yes.

VOIR DIRE EXAMINATION

BY MR. POLAY

Q. Mr. Hamilton, do you remember a conversation before, coming up from the father, meaning Mr. Hojan, the defendant's dad, that they were headed towards the sub-station?

A. No.

Q. Do you remember another officer telling you that?

A. No.

MR. SATZ: Want me to help you?

MR. POLAY: Sure.

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MR. SATZ: Hojan said it to him.

MR. POLAY: You're not helping me.

THE COURT: Help is a relative term, Mitch.

BY MR. POLAY:

Q. Do you remember the defendant saying that?

A. Yes, sir.

Q. It wasn't to dad. It was to Mr. Hojan?

A. It was to me.

Q. They made a left on Apache?

A. Yes and then a left on Homestead.

Q. That's towards the sub-station?

A. The sub-station is on that street.

But you couldn't see it from where, where the traffic stop was, we were still obscured, as the sub-station was in a strip mall.

Q. Then were headed in that direction?

A. They were headed, yeah, on the same street the sub-station is on.

MR. POLAY: Judge, my argument is that this definitely goes to mitigation. And I would ask that --

THE COURT: Self-serving statement by the defendant.

MR. POLAY: Here is my question.

How is it self-serving? This doesn't go to

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guilt. Talking about the penalty phase. It is a bit of a different issue here.

THE COURT: Yes. I tried a few.

MR. POLAY: The issue here, he didn't know he would be convicted, go to a penalty phase, when he's making a statement.

They were headed in that direction.

He gets in the car, with his dad, with the whole intention of turning themselves in.

He was receiving telephone calls about him being on the news, et cetera. He's heading in that direction, going there.

He even said it.

MR. WILLIAMS: He doesn't know at this time they know what he has done on the east coast of Florida.

MR. SATZ: When the Lee County Sheriff's Department stops hum, he doesn't know?

MR. WILLIAMS: Stops his father driving the car.

MR. SATZ: Correct.

MR. POLAY: If you remember, this is what I pointed out it should come in through this detective, it is that Mr. Hojan, according to the officers that are going to testify, believe

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there are no witnesses at this time.

Self-serving, I disagree with the Court. I think it goes to mitigation. It goes to cooperation.

MR. SATZ: The Defendant can certainly testify to that. There is no witness.

MR. WILLIAMS: The argument would be does he really say it?

THE COURT: I'm sorry.

MR. WILLIAMS: The argument will be did he really say it. We know he did.

THE COURT: Then what will you do?

MR. SATZ: All right.

We withdraw our objection.

THE COURT: That makes it easier.

Let's go.

MS. MCCANN: Judge, I think it has to be put in context, Mr. Hojan, according to the report, had been called by his friends.

His name has been on the news.

Wasn't like he just decided to take a ride to the police station with his dad and got pulled over.

There is a context to this.

THE COURT: Yes, there is.

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MR. SATZ: Well, now, Mr. Hampton has in his report, if he adds, if we withdraw our objection, suspect spontaneously uttered his friends were calling him, saying the police were looking for him and his picture had been on the new; and also said his father was driving him to the police station to find out what was going on.

MR. WILLIAMS: We don't mind that part.

MR. POLAY: No.

I can put it in context.

MR. SATZ: It is not putting it into context.

That's what he said.

MS. MCCANN: That's fine. Mr. Hojan left Barbara Nunn for dead.

He didn't know at that point she survived and had pointed him out as the big Mexican.

So that's fine if it comes in.

MR. SATZ: Just like Mr. Hamilton has in his report, that's exactly word for word.

You have that in your report?

THE WITNESS: Yes, sir.

MR. SATZ: Okay.

THE COURT: Well, I won't argue the point

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that the State has withdrawn their objection. The reality is this is testimonial hearsay. That doesn't come in, in a penalty phase. But it has been withdrawn.

I wanted to let you know that I did my own research.

(Enter jurors.)

THE COURT: Can I see the lawyers sidebar?

(Sidebar had.)

THE COURT: I'm going to want to do an inquiry with Mr. Hojan as to whether or not this is a strategic and tactical decision by the Defense with the path they are going to take.

MR. POLAY: I'm asking it a different way, Judge.

THE COURT: Okay.

MR. POLAY: I'll tell you exactly. Just say we are headed in the direction, towards the sub station. That's all.

MR. WILLIAMS: Were they taking him to or by the sub station.

(Sidebar and proceedings conclude. Testimony continues further, as follows:)

THE COURT: Mr. Polay?

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The objection has been withdrawn.

So you're up.

BY MR. POLAY:

Q. Mr. Hamilton, you were saying to the jury, at this particular time, in Lee County, specifically in the area of Lee High Acres, the substation for the police station was on Homestead Road?

A. Yes, sir.

Q. And the vehicle that was being driven by Mr. Hojan, with my client, Gerhard Hojan, as the passenger, was stopped on Homestead Road, correct?

A. Yes, sir.

Q. So the direction they were going, from 100 Apache Street to the place that they were ultimately stopped, that was the direction towards the substation; is that correct?

A. Yes, sir.

Q. And who else was with you when you actually performed the stop?

A. I had Charlie Lyerk. He's passed away.

I had K-9 Jinxy and James Creghan.

MR. POLAY: Thank you.

Nothing further.

MR. SATZ: Nothing further.

Thank you.

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THE COURT: Thank you very much.

(Witness excused.)

MR. SATZ: James Creghan.

JAMES CREGHAN,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Sergeant James E. Creghan, C-R-E-G-H-A-N.

DIRECT EXAMINATION

BY MR. SATZ

Q. What is your occupation?

A. I am a sergeant with the Lee County Sheriff's Office.

Q. How long have you been with the Lee County Sheriff's Office?

A. 30 years.

Q. I would like to call your attention to Monday, March 11, 2002.

Were you on duty on that occasion?

A. Yes, sir; I was.

Q. Did you have occasion to go to 100 Apache Street in Lee High Acres?

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A. Yes, sir.

Q. Is Lee High Acres and Apache Street in Lee County?

A. Yes, sir, in Lee High Acres, one of the towns that are in Lee County.

Q. How were you dressed when you had gone over there?

A. I had been given information about a possible suspect that would show up there.

I had put on regular clothes, blue jeans and a shirt. I got a pick-up truck I was sitting in when I was at the location.

Q. When you went to the location, what did you do?

A. I parked the truck away, maybe a block, block and-a-half. The blocks are small.

I was on the side of the road.

I was observing -- can I refer to my notes.

Q. Sure.

A. I was observing 100 Apache Street for a very large male subject.

Q. Did you come to see a vehicle?

A. Yes, I was looking, also looking for a silver Dodge pick-up truck.

Q. Were you looking for a certain tag number?

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A. Yes, I was.
Q. What tag number were you looking for?
A. WDB 04X.
Q. Let me show you State's Exhibit marked 3I for identification.
Do you recognize what that photo depicts?
A. Yes, sir.
That's the Dodge pick-up truck that was parked at 100 Apache Street that night.
Q. How was it parked?
A. It was backed up, against the fence, shrubbery and so forth, to where you couldn't drive by and read the tag.
Q. How did you find out what the tag number was?
A. We had a deputy sneak through the bushes, crawl up on the back of the struck, confirm what the tag was.
Then he moved out of the area.
Q. Let me show you State's Exhibit marked 3J and ask you if you recognize what that is?
A. Yes, sir.
That is the listed tag that is on the Dodge pick-up truck.
Q. The dodge pick-up truck you identified in

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State's Exhibit 3I?

A. Yes, sir. That was parked at 100 Apache Street.

MR. SATZ: I would like to offer 3J and 3I?

THE COURT: 3I and 3J will come in as 90 and 91.

BY MR. SATZ:

Q. Then what did you observe?

A. I was observing the place.

Then I noticed a very large male walk out of 100 Apache Street.

He walked up to the street.

Stood there for 30, 40 seconds. Like he can was looking for something. Looking up --

MR. POLAY: Objection. Calls for speculation.

THE COURT: As to his observation.

BY MR. SATZ:

Q. Just what you saw.

A. He was looking up and down the street.

Q. What time was it at this time he's looking up and down the street?

A. 12:23 a.m., on the 12th now.

Q. Now we're on March 12th?

A. Yes, sir.

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Q. He's looking up and down the street. What happens?

A. He goes back into the house. Then two people come out. The second person appears to be an older male. The first person is the same large subject that fit the description I had been given.

Q. What happens then?

A. They enter a small vehicle that departs. I believe the large subject is the suspect I'm looking for.

I alert my deputies who are stationed throughout two, three blocks out, so they are not on top of me. I give them directions the vehicle is going so they can stop it.

MR. SATZ: Thank you.

Appreciate your testimony.

CROSS EXAMINATION

BY MR. WILLIAMS

Q. Did you follow the vehicle?

A. No, sir; I did not.

Q. You just remained there at Apache Street?

A. I kept a cover on the silver Dodge truck until a uniformed deputy relieved me.

Q. Did you eventually go up to the scene, where the car was stopped?

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A. Yes, the truck. I went up to the truck.
Q. The car, where the car was stopped on Homestead?
A. No, sir.
Q. Do you know where it was stopped on Homestead?
A. Do I know the area?
Q. Do you know where approximately it was stopped on Homestead?
A. Yes, approximately.
Q. When the car left the house, it was a small, green car?
A. A dark-colored car.
Q. A dark-colored car. A small car. Elderly man driving and a large suspect in the passenger's seat?
A. Yes, sir.
Q. You know where approximately it was stopped on Homestead?
A. I know where my officer stopped it at.
Q. How far is that to the substation?
A. To the Lee High Substation, a mile and-a-half maybe, at max.
Q. At max?
A. Yes.

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Q. And the car would have been heading, when it was stopped, heading in the direction of the substation?

A. I have no idea.

Q. Well, if it continued on the path it was going, on homestead, would it have passed the substation?

A. Well, it wasn't on Homestead. I believe it was on Alabama, at Homestead. If it continued on its path, it would have been straight down Alabama.

Q. You're saying the car wasn't on homestead when it was stopped?

A. It was Alabama and Homestead.

From what I understand, they stopped it at the intersection.

Q. You don't recall making the turn onto Homestead?

A. No, I never seen it make the turn. No. No.

MR. WILLIAMS: Thank you.

MR. SATZ: Thank you, Sergeant.

THE COURT: Thank you very much.

(Witness excused.)

MR. SATZ: Kylie Akins.

KYLIE AKINS,

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being of lawful age, and having been first duly sworn in the above cause, testified on her oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Kylie Akins, K-Y-L-I-E, A-K-I-N-S.

DIRECT EXAMINATION

BY MR. SATZ

Q. Where do you live?

A. Plant City, Florida.

Q. Did you know Christina Delarosa?

A. I did.

Q. How did you know her?

A. We were friends.

Q. Do you know where she worked?

A. Yes.

Q. Where?

A. Waffle House in Davie, Florida.

Q. 4689 SW 148th Avenue?

A. Yes.

Q. When she was working, would you go there?

A. Yes. Often.

Q. How old were you on March 11, 2002?

A. 16.

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Q. And Christina was?
A. 18.
Q. When you went there, did you ever go there when Christina Delarosa working and the defendant in this case, Gerhard Hojan, was there?
A. Yes.
Q. Have you seen the defendant, Gerhard Hojan, before?
A. Yes.
Q. How many times?
A. Over four, five times.
Q. And you saw him in the same company with Christina Delarosa?
A. Yes.
Q. Approximately how many times?
A. The same amount of times. Four, five times.
Q. I would like to show you State's Exhibit 19.

Do you recognize who that is?
A. Yes.
Q. Who is that?
A. Christina.
Q. Delarosa?
A. Delarosa. Yes.

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MR. SATZ: Nothing further, Your Honor.

CROSS EXAMINATION

BY MR. WILLIAMS

Q. You said you saw Mr. Hojan in the Waffle House?

A. Yes.

Q. Do you know who Mr. Mickel is?

A. Yes.

Q. When Mr. Hojan was at the waffle House, was Mr. Mickel with him?

A. Yes.

MR. WILLIAMS: Thank you.

THE COURT: Follow-up on that?

MR. SATZ: No.

Thank you.

THE COURT: Thank you so very much.

(Witness excused.)

MR. SATZ: Detective Franquiz.

JAMES FRANQUIZ,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: James Franquiz,

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F-R-A-N-Q-U-I-Z.

DIRECT EXAMINATION

BY MR. SATZ

Q. What is your occupation?

A. Police officer for the city of Ustas in Lee County, Florida.

Q. I would like to call your attention to Monday morning, March 11, 2002.

How were you employed on that day?

A. Detective with the Davie Police Department.

Q. Did you have occasion to get involved in the investigation of an event that happened at the Waffle House at 4689 SW 148th Avenue in Davie?

A. Yes.

Q. Did you go to that location?

A. Yes.

Q. As a result of that, did you take part in an investigation?

A. Yes, sir.

Q. I would like to call your attention to 5 o'clock a.m., March 12th, 2002.

Did you have occasion to go to a certain location?

A. Yes.

Q. Where?

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A. The Colosseum on the way to the Broward County Jail, for one of the defendants.

Q. Where is the Colosseum?

A. It was off of Federal Highway. I have the exact address.

I don't know the exact address.

Q. What is the exact address?

A. 2520 South Miami Road.

Q. Did you find an item?

A. Yes, sir; I did.

Q. What did you find?

A. A Davis Industries Model P .380 semi-automatic pistol.

Q. I want to show you State's Exhibit marked 87.

I ask you if you can identify that?

A. Yes, I can.

Q. How can you identify it?

A. Black semi-automatic Pistol. I photographed it. Collected it with Latex gloves. I cleared the weapon. I stored it. I turned it over to the Broward Sheriff's Office Crime Seen Unit.

Q. When you examined it, you say cleared it, tell us what was in it, if anything.

A. If I may, when I cleared the weapon, the

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weapon, first I'll make it safe. When I found the weapon, it had a magazine inside of it. This is a magazine.

Holds five rounds.

When I collected the weapon, I wanted to make it safe. Do that so there is not an accidental discharge.

When I cleared the weapon, wearing Latex gloves, I emptied the magazine.

Q. Was there anything in the magazine?

A. No, sir.

And I pulled the slide back.

If there is a slide in there, it will eject. There was no round in there.

Q. The gun was completely empty?

A. Yes.

Q. If there were five rounds in that magazine and you wanted to make it ready to fire, what would you do?

A. If you have a fully-loaded magazine -- in this case, this weapon holds five rounds -- if you don't have one already in the magazine, you have to chamber a round. Otherwise, you will get a click.

"Click."

You have do pull the slide back and do it

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that way. Slide it back. Just chambers a round in there.

Then you would have four in here and one in the chamber.

Q. In order to be able to fire it, after you put the five rounds in the magazine in, you have to get it back so there is a round in the chamber?

A. Correct.

Q. Let me show you State's Exhibit marked 3C and 3B.

A. Yes, sir.

Q. Do you recognize those photographs?

A. Yes, those are the photographs I took that we found, how we found the gun lying in the woods.

Q. You took those photographs?

A. Yes.

Q. Do they truly and accurately depict the area where you found it in the lot of the Coliseum?

A. Yes, sir.

Q. What part of the lot was it?

A. In the back of the parking lot. In a wooded area.

We were directed through there.

I flashed my flashlight around.

My partner at the time observed it.

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I went out to my car, got my camera , took pictures the way we found it.

MR. SATZ: I'm offering 3B and 3C.

THE COURT: They will come in as 92 and 93.

BY MR. SATZ:

Q. Showing you 93, you can take this pointer. If you will point down here, you can, so everybody can see it.

A. Right here. That's how I found it.

Q. Here is State's Exhibit 92.

A. Right there.

Q. Okay. It was completely empty, correct?

A. Yes, sir.

MR. SATZ: No further questions.

CROSS EXAMINATION

BY MR. POLAY

Q. Good afternoon.

A. Good afternoon.

Q. Now, you said to the ladies and gentlemen of the jury that one of the defendant's took you to the area of the gun; is that correct?

A. That's correct.

Q. And the person that took you to the gun was Jimmy Mickel; is that correct?

A. Yes, sir.

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MR. POLAY: Thank you, sir.

MR. SATZ: Nothing further.

(Witness excused.)

MR. SATZ: That's our last witness for the day, Judge.

THE COURT: Them you're excused.

(Witness excused.)

THE COURT: Mr. Cooper, we don't have to worry about today.

9:15 tomorrow morning.

MR. SATZ: Please remember all of the admonitions.

See you then.

MR. SATZ: Before we go, I wanted to introduce the gun, State's Exhibit 87.

THE COURT: Okay.

87 is in.

MR. SATZ: Thank you.

THE COURT: Now you guys can go.

(Exit jurors.)

****

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 12th day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

ORIGINAL

Defendants.

TRIAL PROCEEDINGS
VOLUME XIX
PAGES 1895 - 2051

Fort Lauderdale, Florida
October 18th, 2018
9:40 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 18th, 2018, commencing at 9:40 a.m.

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CARL HAMMERLE	1945	1987	2004	2006
ROBERT ANTON	2007	2038		

****

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State Exhibit 56,57 .1993

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THEREUPON, the following proceedings were had:

THE COURT: Pam?

JUDICIAL ASSISTANT PAM COE: I just have one juror issue.

Juror Ana Diaz, number 5, when she requested I send an Email to her employer about the days she served on jury duty and future dates. Her boss emailed me back and said hi, Pamela, thank you for the update.

We are supportive of Ana's fulfillment of her civic duty. However, too many days away from work, ten days so far until tomorrow plus the upcoming weeks is causing a back log of her work responsibilities here in the hospital. Any consideration in this regard will be very much appreciated.

MR. WILLIAMS: Can't we give the hospital or whoever it is, the projection now?

THE COURT: I intended to. Pam wanted to bring it up.

I'll send the projection to him. Because they are not aware of how few more days we really need.

JUDICIAL ASSISTANT PAM COE: That was it.

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THE COURT: All right.

Are we ready.

All right. Let's go.

(Enter jurors.)

THE COURT: (Enter jurors.)

THE COURT: Good morning, ladies and gentlemen.

Ms. Diaz, you're aware that your employer sent me an Email?

ANA DELLIZ DIAZ: Yes.

THE COURT: I am taking care of that.

ANA DELLIZ DIAZ: Thank you.

THE COURT: And it will not be a problem. No contempt of court for your employer. Don't worry about it.

THE COURT: Mr. Satz?

MR. SATZ: Scott Kiso.

SCOTT KISO,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Scott Kiso, K-I-S-O.

DIRECT EXAMINATION

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BY MR. SATZ

Q. What is your occupation?

A. I am a field investigator for a personal injury attorney in central Florida.

Q. I would like to call your attention to March 12, 2002.

How were you employed on that date?

A. I was a detective with the Davie Police Department.

Q. And how long, up to that date, March 12, 2002, had you been a police officer with the City of Davie?

A. About 14 years.

Q. And when did you eventually leave the Davie Police Department?

A. I retired in 2013.

Q. On March 12, 2002, did you have occasion to travel to Lee County, Florida?

A. Yes, I did.

Q. Where did you leave from to go to Lee County?

A. I left from the Davie Police Department to the Lee County Sheriff's Office.

Q. What time did you, of night, did you leave to go over there?

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A. Do you mind if I refresh my recollection?
Q. That's fine, if it will help you.
A. I think it was about 11:15. 2315 hours.
Q. That would be March 11th, 2002?
A. That's correct.
Q. How did you travel over to Lee County?
A. Motor vehicle.
Q. Who was with you?
A. Myself, Robert Anton and Kevin Kilpatrick.
Q. How were they employed?
A. Bob Anton, Robert Anton, was a detective at the time.

Kevin Kilpatrick was a uniformed officer.

Q. You drive over to Lee County?
A. Yes.
Q. Where did you go?
A. To the Lee County sheriff's Office.

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Q. When you got there, approximately what time was it?
A. About an hour later.
Q. Do you have the time?
A. I'm not sure if I noted that.

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Let me look.

I don't see the time we arrived.

Q. When you got there, did you come in contact with the defendant in this case, Gerhard Hojan?

A. Yes, I did.

Q. What time did you come in contact with him?

A. Approximately 1:40 in the morning.

Q. 1:40 a.m. on March 12th, 2002?

A. That's correct.

Q. Do you see him in the courtroom today?

A. Yes.

Q. Can you point him out?

A. Sitting here at this table.

MR. SATZ: Madam Reporter, with the Court's permission, would you let the record reflect Scott Kiso has identified the defendant, Gerhard Hojan?

THE COURT: The record shall so identify.

BY MR. SATZ:

Q. Where was it exactly you came into contact with the defendant?

A. The Lee County Sheriff's Office substation in Lee High Acres.

Q. Who was with you?

A. Detective Anton.

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Q. What type of room were you in?
A. We went into the substation and into an interview room, where we made contact with Mr. Hojan.
Q. Approximately how big was the interview room?
A. It was, from my memory, probably 8 by 12. Something like that.
Q. Were you all seated? Standing?
A. Seated at a table, yes.
Q. It is you and Robert Anton; is that correct?
A. Correct.
Q. How was the lighting?
A. Like it is here.
Q. Air-conditioned?
A. Yes.
Q. What is the first thing that happened when you met with the defendant?
A. Detective Anton read the defendant his Miranda Warnings.
Q. Constitutional warnings?
A. Yes.
Q. Then what happened?
A. We began questioning Mr. Hojan.

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Q. When you were questioning him, were you recording it in any fashion at that time?

A. Initially, no.

Q. What happens initially?

A. Initially, we're just asking him what had occurred that evening, that we were involved in an investigation of an incident that occurred in the town of Davie.

Q. Tell us what he told you.

A. If I might, if I can refresh my recollection again -- he stated that he was at home, watching TV at approximately 3 a.m. His roommate came out of his bedroom and said hey, let's go to breakfast. He said they went to the Waffle house in Davie. Had breakfast. Initially, he said they went back home after breakfast.

Q. His roommate was Jimmy Mickel?

A. That's correct.

Q. Then what happened?

A. At some point, Detective Anton had told Mr. Hojan that Barbara Nunn had survived the incident and had identified him as being involved.

Q. Then what happened?

A. He dropped his head and essentially told us, began to tell us what had happened.

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Q. Did you record what he told you orally? Did you write it down?

A. Yes, I did.

Q. What did he tell you orally?

A. I'll look at my notes.

Q. Sure.

A. He went to breakfast --

MR. POLAY: Judge, I object.

He's reading off of his notes.

MR. SATZ: He's reading off of his notes. This happened in 2002.

THE COURT: Why not.

THE WITNESS: He went to breakfast.

Jimmy explained, or they discussed how easy it would be to rob the Waffle House.

At some point, Jimmy went out to the truck and got some bolt cutters from the truck.

Mr. Hojan stated that he had the gun. And he put the employees in the cooler of the Waffle house and told them to stay there.

He returned --

MR. POLAY: Sorry to interrupt.

If he doesn't remember, we have to establish predicate for past recollection.

BY MR. SATZ:

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Q. Do you remember exactly what he told you?
A. I mean I have a pretty good recollection, yes.
Q. You made notes, didn't you, when he was speaking to you?
A. Yes, I did.
Q. And there came a time where you took these notes and put them verbatim in a police report?
A. That's correct, yes.
Q. And this was back in March, on March 12, 2002?
A. Yes.
Q. And this police report would be verbatim of what Gerhard Hojan told you, correct?
A. Yes.
Q. I'll ask -- and was your police, would your police report refresh your memory of exactly what he told you?
A. Yes.
MR. SATZ: Your Honor, I ask he read his police report because this isn't a memory test.
THE COURT: Go ahead.
THE WITNESS: Okay.
MR. POLAY: My only objection is that we have the statement.

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MR. SATZ: The what?

MR. POLAY: The statement .

THE COURT: Go ahead, Mr. Satz.

BY MR. SATZ:

Q. You have your police report there.

A. Yes.

Q. Tell us what he told you.

Just not a guess.

What he actually told you.

A. Okay.

He advised he was home, watching television at approximately 3 a.m. His roommate, Jimmy, came out of his bedroom and said let's go eat. Let's go to breakfast.

Mr. Hojan advised they went to the Waffle House for breakfast.

He advised that while eating, he and Jimmy talked about how easy it would be to rob the Waffle House.

Mr. Hojan advised when they finished eating, Jimmy went out to the truck, retrieved a set of bolt cutters.

He advised that Jimmy came back into the Waffle House and he, Mr. Hojan, pulled out a .380 caliber handgun he had in his front pocket.

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Hojan advised he ordered the three employees to the rear of the store, to the cooler, and told them to stay.

He advised that after putting the employees in the cooler, he walked back out to the front, where Jimmy was.

Hojan stated that Jimmy instructed him to return to where the employees were and watch them.

He said he returned to the cooler.

As he opened the door, the cook reached for him and grabbed the gun.

Hojan advised that the gun went off and that the black male cook was shot. Hojan advised that the cook was, as, as he was falling to the floor, or, no, that the cook fell to the floor and that he began to again close the door, leaving the two remaining employees in the cooler.

Mr. Hojan advised he again went to where Jimmy was. Hojan advised Jimmy told him there cannot be any witnesses.

He said he returned to the cooler and opened the door.

He instructed the two females to turn around.

He then shot the black female once and that

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she fell to the ground.

Hojan advised that the white female was screaming and trying to climb under the shelves. And he shot her twice.

He advised he could not remember where he shot any of the victims.

He said everything happened very fast.

Do you want me to keep reading?

Q. Yes.

A. He, we asked if there was any conversation prior to shooting the victims. Hojan advised the black female said please don't hurt us. And the white female victim was screaming.

Hojan advised all three victims appeared to be dead when he left the cooler.

He advised he went back to where Jimmy was and said let's get out of here.

He advised he doesn't know for sure if Jimmy ever entered the cooler. But he thinks he heard the cooler door open and shut when Jimmy went to that area, before they left the store.

He advised he then drove home.

Stated after he arrived home, he began watching television again.

After a short time, he told Jimmy that he

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had to get out of there; and he was going to his parents' home.

He advised that he changed clothes. And he put the clothes, a hamper of clothes in his truck and drove to his parents' home in Lee High Acres.

He advised that Jimmy told him that he would get rid of the gun and that he did not know what Jimmy did with the gun.

He advised he purchased the gun from an acquaintance a year ago for $100. Advised that the clothing he was wearing at the time of the robbery was at his parents' home, in the hamper and that he had taken them with him, containing his dirty laundry.

Hojan advised the shoes he was wearing he left at his home in Davie.

And that's where that statement concluded,

Q. What happened after that?

A. Detective Anton spoke with, I believe, Detective Stokes, over the phone. And we did go back and clarify a couple of items.

Q. Did there come a time you took a taped statement?

A. Yes.

Q. How did that occur?

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A. We took a recorded, taped statement of that statement.

Q. And that was after the oral statement you just told us about?

A. Yes. Yes.

Q. And that was, you have a taped statement, correct, with Detective Anton?

A. That's correct.

Q. After the taped statement, did you come back and ask him any additional questions?

A. I did not. I know Detective Anton did.

Q. Were you there when he asked him questions?

A. Yes.

Q. What did he ask him?

A. He asked him about the Enterprise, the Enterprise rental.

I believe Hojan mentioned he went to the Enterprise but that the business was closed.

And then he also mentioned the gun, that they threw the gun off of a bridge on State Road 84.

Q. And then did there come a time you went to a certain location?

A. Yes. I responded to 100 Apache Street in Lee High Acres.

Q. Did you have a consent form signed by

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Mr. Hojan to search his truck?

A. Yes, I it.

Q. And let me show you State's Exhibit marked 90, introduced into evidence.

Do you recognize that?

A. Yes.

Q. What is that?

A. The Dodge pick-up Mr. Hojan gave us consent to search.

Q. State's Exhibit 91, is that the tag number?

A. Yes, it is.

Q. Showing you State's exhibit 3D for identification, I ask you, Mr. Kiso, do you recognize that?

A. Yes, these were the bolt cutters we found behind the front seat of the truck.

Q. Does that photo truly and accurately depict the bolt cutters as you saw them on the early morning hours of March 12, 2002?

A. Yes.

Q. Did you take that photograph?

A. Yes.

Q. Did you take those bolt cutters into custody?

A. Yes.

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MR. SATZ: I would like to offer State's Exhibit 3D.

THE COURT: 3D for identification will come in as State's 95.

BY MR. SATZ:

Q. Is that exactly the way you found them?

A. Yes.

Q. Showing you State's Exhibit 81, see if you can identify those?

A. Yes, sir. These are the bolt cutters.

Q. Did you initial it, put it in a bag?

A. Yes.

MR. SATZ: I would like to re-offer State's 81, the bolt cutters?

THE COURT: 81 will be 81.

BY MR. SATZ:

Q. Did you enter the residence of 100 Apache Street?

A. Yes.

Q. Where did you go?

A. His mother -- I believe it was his mother -- directed me to the bedroom, where he had his clothing.

Q. Showing you State's Exhibit marked 3R for identification, ask you if you can identify that?

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A. Yes, this is a nylon satchel located within his bedroom.

Q. Did you take that photograph?

A. Yes.

Q. Does it accurately depict where the bag was and the condition? Did you take it into custody?

A. Yes.

MR. SATZ: I would like to offer State's Exhibit 3R.

THE COURT: 3R will come in as 96.

BY MR. SATZ:

Q. That's the bag you took into custody?

A. Yes, sir.

Q. Did you open up the bag?

A. Yes, sir; I did.

Q. Let me show you State's Exhibit marked 86. Do you recognize that?

A. Yes.

Q. What is that?

A. This is a bag full of coins found within the blue satchel.

Q. Did you count the coins?

A. Yes, sir.

Q. Would you tell us what kind of coins and how much was in there?

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A. There was $176.87 in quarters, dimes, nickles and pennies.

Want the exact amount of each?

Q. Yes. Let's hear it.

A. One second.

It was 434 quarters. 363 nickles. 502 dimes and two pennies.

MR. SATZ: I would like to re-offer State's Exhibit 86.

THE COURT: 86 will come in as 86.

BY MR. SATZ:

Q. Showing you State's Exhibit 84, already identified as two money orders, do you recognize those?

A. Yes, sir.

Q. How do you recognize those?

A. They were located within the blue satchel as well.

Q. Showing you, now, State's Exhibit marked 85.

A. This is the satchel.

MR. SATZ: Your Honor, we are reintroducing State's Exhibit 84, the money orders.

State's Exhibit 84 are already in evidence.

THE COURT: 84 is 84.

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BY MR. SATZ:

Q. You took custody of all of that evidence and brought it back to Broward County?

A. Yes, sir.

MR. SATZ: Thank you.

Nothing further.

MR. POLAY: Judge, we need five minutes.

THE COURT: Steve?

(Exit jurors.)

(Recess had.)

THE COURT: Ready?

Let's go.

(Enter jurors.)

THE COURT: Mr. Polay, cross?

MR. POLAY: Thank you, sir.

CROSS EXAMINATION

BY MR. POLAY

Q. Good morning, sir.

I just want to go over a few things that you went over with Mr. Satz.

The one thing I want to point out is this. You were present when my client signed a consent to search form?

A. Yes.

Q. He didn't have to agree to this?

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A. That's correct.
Q. He cooperated with you?
A. Yes.
Q. Would you agree with that?
A. Yes, sir.
Q. Additionally, he was polite to you, was he not?
A. Yes, sir.
Q. In fact, he was saying yes, sir and no, sir?
A. Yes.
Q. Didn't fight you in any way, shape or form?
A. No.
Q. In fact, you said that you took a statement from him for about 40 minutes before you went on tape; is that correct?
A. Yes, approximately.
Q. And you said to Mr. Satz that you memorialized what he said to you by taking notes, correct?
A. Yes.
Q. And then later on, you had to transcribe these notes into your report?
A. Yes, sir.
Q. And you said to the jury that when

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Detective Anton said to him Barbara Nunn had survived, he put his head down?

A. Yes.

Q. You didn't include that in your report, did you, initially?

A. Not initially.

Q. That wasn't included in your notes, correct?

A. No.

Q. And these notes memorialized everything that you can recall, correct?

A. It was mainly what Mr. Hojan was saying.

Q. Mainly.

So you didn't get everything, correct.

A. Probably not.

Q. So to get everything, you would agree with me that a tape recording would be the best way to memorialize everything?

A. Yes, sir.

Q. And correct me if I'm wrong, but you actually took a taped statement from my client, did you not?

A. Yes, we did.

Q. Just so we're clear, you had a tape recorder, correct?

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A. Yes.
Q. You chose not to hit play or record?
A. We recorded the statement, yes.
Q. For 40 minutes, you did not record, isn't that the correct?
A. Yes, that's correct.
Q. And that was a conscious choice you made?
A. Well, I was not really the lead in this situation. Detective Anton was.
Q. Additionally, well, after 40 minutes, you decide to use a tape recorder, right? Or Detective Anton did, correct?
A. Yes.
Q. Now, you read off of your report just before?
A. Yes.
Q. I mean for, I guess, about five, six minutes, you were reading to the jury about things you took notes of?
A. Yes, sir.
Q. These are things that you remember, right? Is that correct?
A. Yes.
Q. And correct me if I'm wrong, but you said it earlier, to the best of your ability. You can't

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remember or write down everything.

You would agree with me?

A. Yes, sir.

Q. Initially, you said to the jury, before you even spoke to Mr. Hojan, you read him his Miranda rights?

That's what you said.

A. Detective Anton did.

Q. You were present?

A. Yes.

Q. Correct me if I'm wrong, so the jury understands it, you Mirandize somebody, you're telling them they don't have to speak with you?

A. Yes, sir.

Q. He knew he didn't have to speak to you?

A. Yes, sir.

Q. But he agreed and cooperated, agreed to speak with you anyway?

A. Yes, sir.

Q. He signs a consent to search form?

A. That's correct.

Q. You had him sign that, right?

A. Yes.

Q. But you didn't have him sign any type of Miranda waiver, did you?

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A. No.
Q. So when he's initially Mirandized, this isn't on tape, is it?
A. No, it is not.
MR. SATZ: Judge, I object now. He's getting into issues use that have already been --
MR. POLAY: This goes to mitigation.
THE COURT: Be careful.
Go on.
BY MR. POLAY:
Q. So when you tell somebody, you're giving them a detailed warning, when you Mirandize them, that they do not have to speak with you?
A. Yes, sir.
Q. You wouldn't take a statement from somebody unless you felt they understood what you were saying?
A. Yes.
Q. You felt that he understood that he didn't have to cooperate with you?
A. He indicated he understood his rights.
Q. You felt comfortable he understood that he didn't have to speak to you, but he agreed anyway.
A. Yes.

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Q. You agree he cooperated with you, in that aspect?

A. Yes, he did.

Q. He cooperated with you for a while. I mean you actually took a statement from him in excess of an hour. Is that correct?

A. I guess, yes.

Q. Well, I don't want a guess.

A. I don't have the exact time.

Q. Approximately.

A. We were there a while.

Q. So he cooperated with you, answered all of your questions, correct?

A. Yes, sir.

Q. Before you go on tape, do you remember Mr. Hojan's saying to you and to Detective Anton I didn't mean to shoot anybody? I didn't mean to shoot them?

A. Do I remember him saying those words?

Q. Yes?

A. Prior to the confession?

Q. Prior to the -- well, he gave two statements, right? You said to the jury he gave two statements.

One statement to you that was off tape,

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correct?

A. Yes.

Q. One statement that was on tape, correct?

A. Yes.

Q. Prior to going on tape, do you remember Mr. Hojan's satisfying I didn't mean to shoot them?

A. I do not recall that.

Q. That's not in your notes?

A. No, not that I know of.

Q. But in the statement, he says that he wished it never happened, correct?

A. In the taped statement?

Q. Yes.

A. I don't have those transcripts. I don't recall.

Q. You don't recall?

If you looked at the transcripts, would that refresh your memory?

A. Possibly, yes.

MR. POLAY: Judge, can I approach the witness? I'm referring to page 17 of the statement.

THE COURT: Yes.

BY MR. POLAY:

Q. Read the bottom half of the statement to

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yourself, sir.

A. Okay, sir.

Q. Does it refresh your memory?

A. Yes.

Q. You would agree with me that he said to you he wished this didn't happen, correct?

A. Yes.

Q. He said he wished he had never gone there?

A. That's correct.

Q. He also said he wished he never did it, correct?

A. Yes.

Q. And he was also, you remember him crying?

A. Yes.

Q. Now, in your report you read for the jury, you said that Hojan advised that after putting the employees into the cooler, he walked back out, to the front, where Jimmy was. And Hojan advised that Jimmy instructed him to watch the employees.

Remember that?

A. Yes.

Q. Then the next thing you said to the jury was this. Hojan advised that when he returned to the cooler, after Jimmy had told him to go, watch them, he opened the door; and Hojan advised that the

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cook reached out for him and grabbed the gun.

Do you remember that?

A. Yes.

Q. And Hojan advised that the gun went off, and the male cook was shot?

A. That's correct.

Q. Then Hojan told you that as the cook was falling to the floor, the gun went off again, striking the cook, right?

A. Yes.

Q. Hojan tells you that the cook falls to the floor?

A. Yes.

Q. Then Hojan says he goes back out, goes to Jimmy Mickel?

A. Yes. Yes.

Q. And then Hojan tells you that Jimmy told him that there can't be any witnesses; is that correct?

A. That's what he says, yes.

Q. Did you ever go to the scene?

A. No, I did not.

Q. Did you ever see -- one second, Judge.

You didn't go to the scene; is that correct?

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A. That's correct, sir.

Q. So, in your notes and what you memorialized in your report, was there was some type of struggle with the cook?

A. That's what Mr. Hojan indicated.

Q. That's what you memorialized?

A. Yes.

Q. You felt he was cooperative with you?

A. Yes, he was.

Q. Now you said that Mr. Hojan said that he told you that he threw the gun away, off a bridge on 84?

A. When we went back in.

He said, I believe he said that "they" threw the gun off of 84.

Q. This is a big difference.

I want to make sure the jury understands it.

I don't want "theys." I don't want "possiblies".

What I am asking you is did Mr. Hojan tell you specifically that he threw the gun? Or did he see Jimmy threw the gun?

A. I believe it was they threw the gun off of the bridge.

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Q. You know, when you say believe, what I'm asking you --

A. That's what I have in my report.

Q. That's what you have in your report?

A. Yes.

Q. You can't say definitively Jimmy threw the gun or Jimmy got rid of the gun, can you?

A. No.

If I may, he initially said Jimmy was going to get rid of the gun.

MR. POLAY: Thank you, sir.

REDIRECT EXAMINATION

BY MR. SATZ

Q. If you memorialized everything Mr. Polay was asking you about, what did you memorialize about what Hojan said about the gun the second time?

A. He said that they --

Q. They.

Not Jimmy, right?

They?

A. Yes.

MR. SATZ: That's all I have.

THE COURT: Thank you very much.

THE WITNESS: Thank you, sir.

(Witness excused.)

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MR. SATZ: I'll have Ms. Arneaud read Stephanie Symmers testimony.

(Lisa Arneaud sworn to read back testimony.)

MS. ARNEAUD: Here we go.

Thereupon, the witness exited the courtroom.

That was the other person.

MR. SATZ: Stephanie Symmers.

THE CLERK: Raise your right hand, please.

Thereupon, the witness was sworn in.

THE CLERK: Please state your name and spell your last name for the record.

THE WITNESS: Stephanie Symmers, S-Y-M-M-E-R-S.

Thereupon the witness, Stephanie Symmers, having been duly sworn in, testifies as follows.

DIRECT EXAMINATION

BY MR. SATZ

Q. Your occupation, ma'am?

A. Area manager with Enterprise Rental Car.

Q. What are your responsibilities?

A. Currently, I oversee five rental branches in Broward County.

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Q. I'd like to call your attention to this particular case.

Have you ever leased a car to Gerhard Hojan?

A. Yes.

Q. When did you do that?

A. It was in 2001.

I think he rented a car from us from about January to March.

Q. Do you have any of those records with you?

A. Rosemarie has them outside.

Q. Let me show you.

Would it help to get them? Would you mind?

A. No.

MR. SATZ: Your Honor, could she step down to get her records?

THE COURT: Certainly.

BY MR. SATZ:

Q. Thank you?

A. Sure.

Q. When was this car rented or leased to Mr. Hojan?

A. January 30th.

MR. POLAY: Judge, we don't want her reading off of the record.

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If she recalls or not.

BY MR. SATZ:

Q. Ms. Symmers, the records you have in front of you, are they the business records of Enterprise Leasing?

A. Yes.

Q. Are they kept in the normal course of business activities?

A. Yes.

Q. How are they kept?

A. After the contracts are written, we have them in a file. Once the contracts are closed or the cars are returned, the rental agreements are sent up to our corporate office and kept there.

Q. Are they protected?

A. Yes.

Q. Are they altered in any fashion?

A. Not that I'm aware of.

Q. Are they kept in the ordinary course of business?

A. Yes.

MR. SATZ: Your Honor, I would offer these leases.

Ms. Symmers, looking at the records, as

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your business records, exception to hearsay rule?

THE COURT: Gentlemen?

MR. POLAY: Briefly.

THE COURT: Sure.

VOIR DIRE EXAMINATION

BY MR. POLAY

Q. Do you keep these records, ma'am?

A. At the time the rental agreement is closed, the contracts usually about once a week are sent up to the corporate office.

Q. Do you send them out or somebody else?

A. It could be me or another person.

Q. You don't know who was entering in the data?

A. The original document is sent up to the corporate office. And then they go to another place, where they are put on data imaging, which is like an Internet-based micro film.

Q. You personally don't know if they are accurate or not, do you?

A. Well, yeah, I do, because I wrote the contract.

Q. I understand you wrote the contract?

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But do you watch every time the data is entered into the computer?

In other words, are you watching when everything is typed up to see that it is accurate?

A. Well, I type the contract myself and hand write the type of car on the agreement. After the rental agreement is closed, it is sent to the corporate office. And they have it assigned to someplace where they keep the documents.

MR. POLAY: Okay. Nothing further.

THE COURT: Continue.

DIRECT EXAMINATION (resumed)

BY MR. SATZ

Q. And you have the original documents?

A. Yes.

Q. And you recognize your filling it out?

A. Absolutely.

Q. So what were the terms of the agreement?

A. Well --

MR. POLAY: Judge, just for the record, we would make an objection.

THE COURT: Well, if she using it for purposes of refreshing her recollection, there

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is nothing wrong with it.

Go on.

THE WITNESS: The agreement was for a silver pick-up truck.

And on it, looks like this was for the 30th of January.

Went, extended for two weeks.

And at the time, the customer was supposed to come in and make additional payments.

BY MR. SATZ:

Q. Does it indicate the person's name and address?

A. Yes.

Q. What was the name?

A. Gerhard Hojan.

Q. The address?

A. 13310 SW 8th Street, David, Florida, 33315.

Q. Would you recognize that person if you saw him again?

A. Yes.

Q. Do you see him in the courtroom?

A. Yes.

Q. Would you point him out for us? The person sitting in the middle?

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A. Yes, with the blue shirt.

MR. SATZ: Madam Reporter, with the Court's permission, would you let the record reflect Ms. Symmers has identified the defendant, Gerhard Hojan.

BY MR. SATZ:

Q. What kind of car was it? What kind of vehicle was it?

A. It was a silver Dodge Ram pick-up truck.

Q. Was the original document that you filled out, does that list the tag number?

A. It has the unit number, which we have the unit number and the license.

And I just have the unit number on here.

Q. Where would the tag number be?

A. I'm sure it is somewhere else in this file.

But we can look it up in the computer.

You put the unit number in, and it pops up and the license plate as well.

Q. Where would that be? Is this the original?

A. Yes.

The unit number and the license plate is there.

Q. What is the tag numbering?

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A. WDB 04X.
Q. I'm showing you State's Exhibit marked 42. Do you recognize that?
A. That looks like the truck, yes.
Q. What's the tag number?
A. WDB 04X.
Q. Was Mr. Hojan, was he making payments to you?
A. Yes, he was.
Q. What was the last day of the last payment, according to the business records of Enterprise Leasing?
A. On this rental agreement, it shows the last payment was done on the 30th of January.
Q. And how much was that for?
A. 411.56, plus, and in a money order and $164.14 in cash.
Q. Do you accept cash?
A. As a rule, we don't, for security reasons. We ask that customers bring money order in lieu of cash so we don't have that cash on hand.
Q. And the last payment was $411.56?
A. Yes.
Q. And the date was?

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A. The 30th of January.
Q. What time do you open for business in the morning?
A. 7:30.
Q. A.M.?
A. Yes, sir.
Q. And with the contract with Gerhard Hojan, when was his next payment due after that $411.56 on January 30th?
A. From what I see here, it was the 12th of February.
Q. Have you ever tried to make contact with Mr. Hojan about the payment?
A. Yes. I would have to refer to the call back notes in the contract. But we would trying to call. If the customer is a little bit late coming in to make the payment, we would contact the customer.
Q. What is a call back note?
A. Any time a contract is written, we have a certain extension date, which, in this case, is February 12th. Then when February 12th would come, if the customer didn't come in, we would give the customer a call and say you're due to come in. When are you going to be here.

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And we would make a note in the call back notes.

Q. When were payments due?

A. I think payments were due every two weeks.

Q. And what was the payment every two weeks?

A. 411.56.

Q. And the last payment that you received was January 30th of 2002; correct?

A. That's what I see here.

Let me just take a quick peek.

On this contract, I also have a printout copy here, which shows more detailed payments.

It shows on 2-21, we had a money order for $411.56.

Q. When was the next payment due?

A. It would be two weeks after that.

Q. Two weeks after February 11th? I mean February 21st, right?

A. Yes.

Q. When you make call notes, you have it in your own handwriting?

A. No. It would have my employee number in there.

Let's me just see here.

Yeah, I do have call back notes here.

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On 2-28, there is a note in here.

Not by me, but one of my employees.

Q. Just you?

A. No.

There are no call back notes in here for me.

Q. What's a call back note?

A. It's an attempt to reach the customer, and we document we have attempted to reach the contract.

Q. Have you ever tried to reach Mr. Hojan?

A. It don't show here that I have.

Q. Do you have any independent recollection of it?

A. I can't say 100 percent for sure just because I deal with so many customers.

But I was branch manager.

And it is very likely if the renter was falling behind, I would be involved in it.

Q. If the last payment was made February 21st, 2002, you're saying the next payment was due in two weeks; correct?

A. Yes.

Q. What would be the normal procedure for a call out note?

A. We would attempt to contact the customer.

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And in the call back notes in the computer, we would put our employee number and left message for customer to bring additional deposit. That type of note would be placed in the computer.

Q. So the leasing of this car is for every two weeks, not a lease for a year or six months?

A. Correct. We do a lot of rentals on a long-term basis.

But the customers come in every two weeks to make payments.

Q. This one was open-ended?

A. Pretty much a lot of them are.

Q. This one in particular?

A. This one, yes.

When the contract was originally written, it was for two weeks.

Q. So two weeks from February 21st, you were requiring $411.56?

A. Correct.

Q. Did you ever receive that?

A. No.

MR. SATZ: Your Honor, I have no further questions.

Thank you.

THE COURT: Cross, Mr. Polay.

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MR. POLAY: I just have a few questions.

THE COURT: Sure.

CROSS EXAMINATION

BY MR. POLAY

Q. Good morning, Ms. Symmers?

A. Good morning.

Q. You had a chance to look at all of your notes now, correct?

A. Yes.

Q. Not some seven minutes ago, when the prosecutor was asking you when the last payment was, you said to this jury on January 30th. Do you remember saying that?

A. Yes.

Q. And you had a chance to look at your notes and you realized other payments were made, correct?

A. Correct.

Q. Just so this jury is clear, you documented that a payment was made on February 1st, correct.

A. Yes.

Q. Another payment was made on February 1st, correct?

A. One second.

Q. Why don't you look at your second page?

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A. Sorry about that.

Give me just a second.

Yes, February 1st, we rewrote the contract on February 1st.

So there was a credit balance from the original contract to the second contract, which made the $164 show in cash.

And there was $411.56 in a money order.

Q. That was on February 1st, correct?

A. Yes.

Q. And on February 6th, another payment was made?

A. Hang on just a second.

Let me find the payment history.

There was a few payments made on the contract that was 325879. Here it is.

2-6.

There was a payment of $205.78. And on 2-21, $411.56.

Q. So it would be fair to say there were payments being made in February; is that correct?

A. Yes.

Q. You said to this jury that you don't recall making any type of call back to this client?

A. No.

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According to the payment history, he was coming in on a regular basis and on time.

Q. So you were getting payments, correct?

A. Yes.

Q. You weren't concerned as being the manager, correct, because you were in the business of renting cars, correct?

A. Right.

Q. You make money by renting cars, correct?

A. Yes.

Q. As in this particular case, you were making the money for renting the car, correct?

A. He was making his payments on time.

Q. And that makes you happy, correct?

A. Absolutely.

Q. So were you not concerned?

A. Correct.

Q. Or else you would have made some calls, correct?

A. Correct.

I'm sure it was at the end.

We were expecting him to come in. And he didn't. That is when we started making a few phone

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calls.

Q. But you did not make any call backs?

A. Correct. It is not my employee number.

MR. POLAY: Thank you, ma'am.

REDIRECT EXAMINATION

BY MR. SATZ

Q. Whose employee number was it that made the call?

A. It looks like there was a couple of different ones.

I have Anthony Mundon and a Sean Johnson, who is currently still with the company.

Q. What are the dates of those call backs?

A. The 7th of March it says that the customer --

MR. POLAY: Again, Your Honor, I don't think this has been moved into evidence.

MR. SATZ: Judge, I have a custodian of records right outside.

MR. POLAY: Okay.

BY MR. SATZ:

Q. Ms. Symmers, why don't you just leave that stuff right there?

A. Okay.

THE COURT: Anything else of the Witness?

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MR. SATZ: No, Your Honor.
THE COURT: Mr. Polay?
MR. POLAY: No, thank you.
THE COURT: Thank you.
You're excused.
THE WITNESS: Thank you.
Thereupon, the witness exited the courtroom.
(Reading concludes.)
MR. SATZ: Thank you, ma'am.
Thank you, Judge.
THE COURT: Let's take a quick break.
(Exit jurors.)
(Recess had.)
THE COURT: Ready?
(Enter jurors.)
(Jeff Marcus sworn to read back testimony of Carl Hammerle.)
THE COURT: Mr. Satz?
MR. SATZ: Carl Hammerle.
THE CLERK: Sir, raise your right hand, please.
(Thereupon the witness was sworn in.)
THE CLERK: Please state your name and spell your last name for the record.

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THE WITNESS: H-A-M-M-E-R-L-E, first name Carl. Last name Hammerle.

Thereupon the witness Carl Hammerle, having been duly sworn in, testifies as follows:

DIRECT EXAMINATIN

BY MR. SATZ

Q. Sir, what is your occupation?

A. I'm a firearms and tool mark examiner employed by a Broward Sheriff Sheriff's Office crime laboratory hear in Fort Lauderdale, Florida.

Q. How long have you been employed?

A. As a firearms and tool marks examiner in Florida, I have been employed nine and-a-half years.

Q. What is your education?

A. I started my formal education in firearms in the city of Dayton, Ohio Police Department that lasted five years, of which I was the range officer and armorer.

I taught people how to use guns.

But then I also had to fix them.

I went to the Miami Regional Crime Laboratory in Dayton, Ohio and studied under the program of firearms and tool marks examiner's academy.

After completing that program, I then went

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to their main laboratory in London, Ohio, Ohio Laboratory.

And I did further studies of tool mark examination.

Since then, I completed courses at the FBI National Academy for advanced techniques and firearms identification for gun powder and gunshot residue detection for mussel to target distance determination and their shooting scene reconstruction course.

I have also had courses with the Bureau of Alcohol, Tobacco and firearms in silent and converted weapons and other restricted firearms as well as courses in the imaging system of IVIS and drug fire.

Continuing education I received through seminars and workshops sponsored by the Association of Firearms and the Association of Firearms and Tool Mark Examiners, by the International Association of Identification and the Florida Division of the International Association for identification.

Q. And you have done lecture and instruction where?

A. I have guest-lectured at Nova Law.

I teach a course at the Criminal Justice

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Institute here in Broward County. I have also guest lectured at the University of Dayton, in Dayton, Ohio and St. Thomas University.

I have spoken at the International Association for Identification and for the Florida Division of International Association for identification.

Q. And certification?

A. I'm certified by the AFDE in firearms, tool mark and gunshot residue, which are three separate certifications, which are offered to people in my field.

Q. How do you get certified?

A. You take a lengthy test.

And you have proficiency testing. It's two parts.

First you have to pass the written part. Then if you pass that, you're allowed to take the practical part. There are two practicals for each certification.

And I have completed all of these, sir.

Q. What is firearms identification?

A. Firearms identification is the forensic science dealing with the function and the operability of firearms.

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How they function.

What they do when they function, as far as how they mark different components, how the bullet marks as it is going down the barrel, why it's marked, how cartridge casings get marked from different operations of a firearm so it deals with the identification.

Basically, the markings of tool marks by firearms through their functioning.

Q. What means do you use to make an identification?

A. There is only one instrument you can use to make an identification.

It is a comparison microscope.

It is two microscopes that are put together by an optic bridge that we can look at either one object or both objects at the same time under the same magnification.

Q. How many times have you looked at a weapon and a casing to make a comparison whether that casing was fired from that weapon?

A. Thousands of times.

During your training, every time you test a firearm, you then have to match, for lack of a better term, you have to match the bullet back to

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each other to show your training officer.

Then you also have to do the same with an cartridge casing.

So during my training, every time I test-fired a weapon for operability, I had to do those tests.

Now, as a certified examiner, it would be when it is called for.

I may have a case where I don't do any for a day or two. Then I may have a case where I'm doing 10 or 12 in one day.

It just depends on the case you're working on.

Q. What is a casing?

A. The cartridge casing is the metallic envelope, the metallic part of the cartridge case before the cartridge.

A cartridge has four components. The bullet, the gun powder, the cartridge case, the firing pin which is in the back of the cartridge.

During the firing process, the primer is struck by the firing pin. And that sends a spark into the cartridge case itself, which ignites the powder.

The powder causes gas to form and send the

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bullet down the barrel so the bullet is marked by the barrel.

Then the cartridge case swells up to the size of the chamber and backs out of the chamber and stabilizes against the breech face so you get markings from the chamber. You get markings from the breech face. You get markings from the firing pin itself.

Then there is a little thing called the extractor, which pulls the cartridge case out of the chamber.

So that leaves markings.

And all of these markings are left during. The firing process or the cycling process.

Q. So when you're given a cartridge casing from a crime scene, how do you compare that to a particular weapon?

A. First I test-fire the particular weapon so I have known standards.

I would examine the weapon to see if it is safe. If it is safe, I would take it into my shooting room, which is in the laboratory; and I would shoot it several times, collecting the bullets and cartridge casings. The cartridge casing comparison, what I'm going to do, I would then take

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my cartridge casing that I just produced in the laboratory, put that under the microscope and examine them to see if they reproduce well enough to make an identification off of them.

If they do, then I would take one of those, use that for my standards and take the evidence casings and look for class individual markings that match the test that I just fired.

Q. What is a class characteristic?

A. Class characteristics, when you're talking about tools, are design features.

If I want to make a firearm, I would draw up a blueprint. And every cartridge or bullet that passes down the barrel or fires through that gun would have the same class characteristic because the same design features would mark the bullet.

So when you're looking for class characteristics, you're looking for design features.

Q. What are individual characteristics?

A. Individual characteristics are the individual markings that are left on the firearm, either in the barrel or in the different parts that I Have spoken about during the machining process.

They are random in nature and not repeatable, if you wanted to.

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So those are the markings that's part of the individual firearm; and when the firearm is used, those markings are then transferred to either the bullet, the face of the barrel or the cartridge case in the case of the cartridge during the firing process.

So you would have those class characteristics because it was fired in a class of firearms.

But you would also have individual characteristics, which are unique to one particular firearm within that whole class.

If you have those class and individuals with sufficient numbers, then I can say that something found at a crime scene came from the firearm that I have in my hand that I created my test with.

Q. What's the difference between a semi-automatic handgun and a revolver?

A. A revolver has a chamber that has as a cylinder that has chambers drilled into it. This cylinder rotates around the central access, hence the name revolver.

The example I like to give, mostly everybody has seen the Lethal Weapon movies with

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Danny Glover.

MR. POLAY: Mel Gibson.

THE WITNESS: Thank you.

Mel Gibson.

Danny Glover, being the old cop, he used a revolver. It's a real gun. John Wayne used a revolver in all of his western movies.

So with that type of a firearm, the cartridges are loaded into the firearm one at a time.

Then when you fire it, the cartridge casing stays in the firearm until you manually open it and eject it yourself.

With a semi-automatic pistol, the cartridges are housed in a box magazine.

The magazine is then put into the conventional handgun, into the handle of the firearm. And as you cycle the firearm, it will slide back.

Let it go.

It will strip the first cartridge off of the magazine and load it into the chamber.

At the same time, it will then cock the hammer or the striker so that when you pull the trigger, the firing pin will go forward, start

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the process that I talked about earlier where the primer is struck.

The pressure drives the bullet down the barrel. The back pressure, then of the cartridge case, hitting the back of the bridge face, opens the slide, knocks the spent cartridge case out. And as it is closes itself out, if there is another cartridge in the magazine, it will strip it off of the magazine and load it into the firearm.

And you can shoot it as many times as you have cartridges in the magazine once you get the chamber loaded.

BY MR. SATZ:

Q. What happens to the cartridge casings?

A. They are expelled from the firearm.

Q. So they leave the weapon?

A. That's correct.

Q. In a revolver, the cartridge casings stay within the weapon?

A. That's correct, sir.

Q. In order to get, when you put the magazine in the handle of a semi-automatic handgun, you're saying you have to go click click to get it in the chamber to fire, right?

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A. That's one way.

Or you have to hold the slide back and manually drop one into the chamber and let it go.

That's not recommended for obvious safety reasons.

You can end up shooting yourself if you do it that way. But that's the second way.

Yes, you have to manually load the chamber before you can fire a semi-automatic pistol.

Q. And with the projectile, the other part of the bullet, you have the cartridge casing and the bullet, right?

A. That's correct.

Q. What happens with the bullet?

A. The bullet goes down the barrel and it strikes or doesn't strike, depending upon if you --

Q. What means do you use to make an identification with a projectile?

A. Same thing.

I would fire standards into the water recovery tank.

I would fire standards into the water recovery tank, collect the standards, look at the standards under the microscope to make sure they are repeatable markings, both class and individual.

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The class markings on the projectile would be the number of lands and grooves and twists, how wide they are.

So I look to see if the class markings are good. Then I look for the individual markings, which would be the accidental machine markings left in the barrel.

After I then match, for lack of a better term, match my test bullet, I would take one test bullet and use that to compare against the projectile evidence that is sent to the laboratory.

Q. How many times have you done that?

A. Literally thousands of times, same with the cartridge casing.

Q. With reference to firearms identification, how many times have you been qualified as an expert in a court of law on firearms identification?

A. 336 times all total. That's 227 times in the state of Florida, 19 times in the state of Ohio; 8 times in federal court and three in military court. Plus or minus one or two.

Q. And tool mark identification, what's that?

A. Fool mark identification is the science, it's the self-discipline of firearms and tool mark examination.

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It deals with being able to detect what tool would have marked a particular object, the tool being a harder object leaves impressions or depressions on the softer marking implements of the bullet. The bullet is softer than the barrel. So the bullet is marked by the barrel.

The metal in the cartridge case is softer than the metal in the cartridge casing; or the primer is sorter than the metal in the breach face. So the firing pin or the metal of a tool, a bolt cutter, like the one before, or any bolt cutter, the metal of those teeth are harder than the shackle that it is cutting.

So the harder tool would mark the receiving evidence. And by using, again, the comparison microscope, after making tests or making sure the tests are inconclusive, you would compare the tests with the evidence.

Q. How many times have you made that type of comparison?

A. Literally thousands. The reason being firearms, either in the form of bullets and cartridge casing, or say, for example, cut belts or something cut with a bolt cutter or something scratches with a screwdriver, they are all tool

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marks.

Bullets and cartridge casings are very specific types of tool marks and lend themselves a lot easier for identification because they are self marking.

The bullet only goes down the barrel one way.

They are all tools.

They are all different.

They are all classified as tool markings.

It is just that some are associated with firearms, where the others are associated with hand tools.

Q. How many times have you been identified as an expert in a court of law in tool mark identification.

A. Tool mark identification specifically would be 200.

Q. In what courts?

A. All of the courts that I mentioned.

Florida, Ohio, federal and military.

Q. You mentioned gunshot residue and mussel to target distance.

What is that?

A. Gunshot residue is the detection of those

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materials that are discharged from the firearm during the firing process.

I am looking for visible soot and smoke.

I'm looking for vaporous lead when it gets visualized through a process called sodium rhodizonate.

I'm looking for gun powder. It's in the form of unburnt gun powder, visually or microscopically or burnt gun powder, by using a Brice Test, which is a chemical specific test for nitrites, which are the byproduct of burning nitrates, which is one of the formulations in the gun powder.

So unburnt gun powder has nitrates.

Nitrates are the burnt gun powder I use chemically.

Q. Gunshot residue, what is that?

A. Gunshot residue is a discharge material from the firearm itself.

Q. And can you find that on somebody's hand once they fired a gun?

A. It is theoretically possible, yes, sir.

Q. How do you do that?

A. The way now that is recognized in the state of Florida is to do it by taking a little, sticky

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dabber, dabbing the hand in the area of the back of the hand, the palm, and then mounting it under a scanning electronic microscope.

And if something is identified as gun powder, then using the x-ray defraction, which is a high energy beam to see how the particle absorbs or refracts the x-ray material, so you can identify specifically the particles that's in the instrument.

Q. And how long after a person fires a weapon can you collect this residue from someone's hands?

A. The state of Florida will do it up to eight hours.

That's not when I was collecting for the test.

Q. You would do it less?

A. Yes.

Q. Why?

A. Because the material in gunshot residue, this material is not imbedded in the skin. It lays on the skin. It is very small in nature.

You couldn't see it if you were looking at it with a naked eye.

That's why you would use a scanning electron microscope.

If you were to wash your hands once, it is

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gone.

If you're nervous and sweating and touching other objects, you're passing it from your skin to other things.

Just from the normal, everyday activity, you will shed the material that causes you to be associated with gunshot residue.

When I was teaching it, I was teaching a 4-hour window. That was the swabbing method used that is no longer used though.

Q. So you wouldn't do it after four hours?

A. I wouldn't particularly do it after four hours.

Q. And you said the State don't do it after eight hours?

A. Correct, sir.

Q. Do you know if anybody does it after eight hours?

A. No, sir.

The State of Florida is the only one that I know of that goes up to that length.

Q. So 20 hours would be out of that range?

A. Yes, most definitely.

Q. How about mussel to target? How do you make a determination about that?

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A. Mussel to target determination is based on, first, you're doing a visual.

Then a microscopic and chemical testing of let's say an object of clothing.

First, I would look to see if there is any gunshot residue on it in the form of visual soot and smoke.

Then I would like to see if there was gun powder on it.

If there was, I would collect some of the gun powder for identification purposes.

Then I would do chemical testing in the form of a Brice test, which is the test for nitrites in the gun powder.

I would develop a gun powder pattern.

After that, I would do a test for the lead, to see if I could visualize the vaporous lead.

You have to do them in that order. Because if you do the sodium rhodizonate test first, you negate the Brice test.

So if I found a pattern, if I saw visible soot and smoke that would give me an indication of how far the mussel was.

Soot and smoke generally goes out to about a foot.

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If I have a vaporous lead, a vaporous lead would generally go out to about 18 inches.

We are talking common handguns.

Then with the gun powder, if I get a pattern, I would note how big that pattern was.

If I have a firearm, the cartridges associated with that shooting, I can then go into the laboratory, shoot patterns at known distances, develop them through the Brice test and through the sodium rhodizonate so that I can duplicate in the laboratory what I found on the evidence when I first examined it.

Then I compare it, giving myself a window for error.

The reason you must leave a window for error, I can shoot ten patterns, using the same ammunition and the same firearm, and the conditions in the firearm will change ten different times, depending on if it will be dirtier at the tenth shooting from the first shooting.

If one of the loadings has slightly more powder in it than another one, if there is more powder left in the barrel after one shot than the other.

So you can fire ten different times right

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after each other with the same known pattern and have very slight variations in the size of the pattern.

So I shoot until I create a window where I'm sure that whatever I find is going to fit within that window, I'm very conservative.

Q. And what windows can you give?

A. It depends on the size of the pattern.

If a size of a pattern is extremely small, my window is going to be a lot smaller. If there is a medium size pattern, it's going to be about a foot or so.

If there is just sparse gun powder, I can't tell.

So you are going to get something at the very end.

And if there is no gun powder, I can't tell you anything other than the fact that a firearm will leave gun powder up to a certain distance but lacking an intermediate target.

I didn't find any.

There are different ranges as to what I find.

Q. And how many times have you conducted such test to determine mussel to target distance?

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A. Several hundred.

Q. How many times have you been qualified as an expert?

A. Prior to today, plus or minus a few, 336.

Q. If you're able to find a shooter's clothes with a mussel to target distance to six to 18 inches, would you expect to find blood on the clothes?

A. Not usually because it depends on what was hit.

I have examined clothing from both the victims and witnesses.

And if blood was there and it was my job to turn it over to the section of the laboratory that analyzes blood so they can do their analysis.

So I look for it, but I don't examine it.

Q. Would you expect to see it if you could find the clothes?

A. If I had the clothing, it would depend on what was actually hit because it would depend on if you would have blood coming back onto the shooter.

Q. You mean what it hit on a person?

A. Yes, sir.

Q. Like an artery or something, right?

A. Yes.

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And whatever that person is wearing, if they are wearing clothing or if you shoot somebody through the head -- I'm rather sparse -- so if you shooting the scalp, you might get something back with somebody with a full head of hair.

You may not because of the material that the blood would have to travel to, to get to the shooter.

MR. SATZ: Your Honor, I would like to offer State's 3W into evidence.

THE COURT: Mr. Polay?

MR. POLAY: No objection, Judge.

THE COURT: What is marked as 3 for identification will come in as State's Exhibit 87, where upon State's Exhibit 87 was received into evidence.

BY MR. SATZ:

Q. I ask you, Mr. Hammerle, can you identify that for us?

A. Yes, I can identify it.

It has my marks on it, the date I worked it, on the object itself and the packaging has my initials on it and my tested it.

Q. And what did you do? What is that, by the way?

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A. This is a Davis .380 auto, semi-automatic pistol and a magazine.

Q. And the serial number is what?

A. The serial number on this thing is, I would have to go back to my notes because I never memorize them.

It's A as in apple, P as in Paul, 412896.

(Mr. Marcus' reading is interrupted as follows:)

MR. SATZ: Your Honor, if I can interrupt, 87 is the gun that has been introduced.

THE COURT: 87 shall come in as 87.

(Mr. Marcus continues with reading testimony of Carl Hammerle.)

BY MR. SATZ:

Q. What is the capacity for that weapon?

A. The magazine will hold five cartridges. And then you can have a sixth one in the chamber if you would load the chamber and top off the magazine or load the chamber first manually, with the slide back, and then put the magazine fully loaded into it.

Q. But the magazine is made for five rounds?

A. The magazine holds five. It is possible that you could put a sixth in it.

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Q. Would you mind taking that out of it? You put it in there, right?

A. I did. I am prepared. I don't bring knives to court usually.

I brought this, too.

But I'm going to make it safe when I'm done.

I'll need gloves, please.

Q. Now, where is the magazine?

A. Here.

Q. And that holds five bullets, right?

A. This holds five cartridges.

Q. How do you load the magazine?

A. You load the magazine with five cartridges, take the magazine, put it in the receiver.

Q. Okay.

If it was just like that, would it fire?

A. No.

Q. How do you make it ready to fire?

A. You have to pull the slide back, let the slide go.

Q. Now it's ready to fire, right?

A. Yes, sir, unless you put the safety on.

Q. If there was already a bullet in the chamber when you slide or slid the slide back, what

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would happen to the bullet, the first bullet?

A. If there was an cartridge in the chamber, I insert the magazine, pull the slide back.

I'm going to extract the first cartridge that is already loaded and kick it out.

Q. Right, the bullet will fly out, right?

A. The cartridge will fly out.

Q. Right.

So if there were five bullets in there, and you did that, then it would be ready to fire the five shots, right?

A. That's correct.

Q. What's a trigger pull?

A. A trigger pull is the amount of weight it takes to disengage the sear so that the firing pin was fired.

Q. What is the trigger pull on that weapon?

A. The trigger pull on this particular firearm is 11 and 3 quarter pounds.

Q. What's that mean?

A. That means it takes, once you set the trigger, it takes 11 and three quarter pounds hanging from the trigger to make it function to make the firing pin move toward. That is heavy.

Q. Let me show you first projectile fragments

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from the neck area of Willie Absolu.

And that's State's Exhibit marked 53.

Ask you if you recognize that?

A. Yes, I recognize those.

Q. What did you do with that?

A. I weighed them and cataloged them.

Q. Then what?

A. With this, basically, I didn't do anything else because what you have in here is core material.

Q. What does that mean?

A. That's the lead in the material from the bullet. It doesn't contact the barrel. So there is no markings from the firearm on it. All I can say is this is lead consistent with core material from the bullet.

Q. Let me show you State's Exhibit marked 54, which has been identified as the projectile from the right shoulder of Willie Absolu and projectile fragments from the head of Willie Absolu, ask you if you have seen that?

A. Yes, I have, sir.

Q. What were you able to do with State's Exhibit 54?

A. 54 has three envelopes.

C contains --

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Q. Mr. Hammerle, we were talking about now, the projectile from the right shoulder of Willie Absolu and projectile fragments from the head of Willie Absolu, okay?

A. That's correct, sir.

C is a .380 auto bullet.

D is a core from a bullet.

And E is two pieces of bullet jacket. One piece having the base on it. The other piece being from the barren surface. So that's a much deformed bullet.

Q. The projectile from the shoulder of Willie Absolu, what were you able to do with that?

A. I was able to put that under the microscope and confirm that that has class markings and some individual markings. But not enough individual markings to say that it came from that particular firearm to the exclusion of all other firearms.

Q. Why is that?

A. It didn't mark very well as it traveled down the barrel.

Q. And how about the fragments from the head of Willie Absolu?

A. The fragments from the head of Willie Absolu, you have two pieces. You have a piece with

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the base on it. I put that under the microscope and concluded that has some class and some individual. But again, but again, not enough to say that it was fired from this particular firearm to the exclusion of all other firearms.

The flat piece of bullet jacket from the barren surface identified back to this particular firearm to the exclusion of all other firearms.

So there are two pieces of bullet jacket in there. One of them has class and some individuals. The other one has class and sufficient individuals.

So I can say one part of that bullet was fired from this gun. The other part of the bullet has class and some individual but not enough to say it was fired from this.

Q. And that's from the head of Willie Absolu, correct?

A. That's correct, sir.

Q. Now I show you State's Exhibit marked 55, that has been identified as the projectile from the spine of Christina Delarosa. Have you seen that?

A. This is a .380 auto bullet. It is a Federal Hydroshock. And this is identified by using a comparison microscope. My test. Back to this particular firearm, to the exclusion of all other

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firearms.

Q. So the bullet found in the spine of Christina Delarosa was fired from the gun which is State's Exhibit --

A. 87.

Q. Is it 87?

A. Yes. It was. This bullet, your State's 55, was fired from 87, to the exclusion of all other firearms.

Q. Let me show you State's Exhibit marked 52, the projectile.

Sorry.

Mr. Hammerle, I'm going to show you State's Exhibit marked 52 that has been identified as the projectile from the north wall of the freezer in the Waffle House and ask can you identify that?

A. Yes. This is a .380 auto bullet. And this particular projectile was examined. And I concluded that it was fired from this particular firearm to the exclusion of all other firearms.

Q. That's State's Exhibit 87, correct?

A. State's Exhibit 52 was fired, in my opinion, from State's Exhibit 87, to the exclusion of all other firearms.

Q. I'm going to show you State's Exhibit

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marked 8, which has been identified as the projectile and fragments recovered from Barbara number.

Have you seen that before?

A. Yes, I have.

Q. What did up do with that?

A. I did the same type of test. I put it under the comparison microscope, compared it to the test I fired from State's 87. And I concluded it has some class and individual by not enough individual to say it was fired to the exclusion of all other firearms.

Q. So the ones that you couldn't, that had a class but not individual, you can't say that it was fired, you can say it wasn't enough?

A. It has some class and some individual. But too few individual to say it was fired from that particular firearm.

Q. What can you say about all of the projectiles that you were given?

A. All of the metal pieces are consistent with Federal Hydroshock bullets. All of the cartridge casings I was given with Federal Hydroshock show that those are consistent with the same manufacturer.

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Q. So you examined five pieces or five projectiles, correct?

A. Well, actually there is more, because the packaging with the partial projectiles gave them separate numbers.

Q. I want to show you State's Exhibit marked 36 that has been identified as the five casings from the freezer of the Waffle House and ask if you recognize those.

(Jeff Marcus is interrupted in reading.)

MR. SATZ: Let me interrupt.

Here's the projectiles, with the same numbers, 53, 54, 52, 55 and 36.

(Jeff Marcus continues to read as follows:)

A. Yes, I do.

I recognize these.

They bear my initials, and they bear my designators on the individual cartridge casings.

Q. What did you do with those casings?

A. First I cataloged them.

And they are all Federal .380 auto cartridge casings.

Then I microscopically compared these cartridge casings with the tests that I produced in the laboratory, using State's Exhibit 87 and found

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that all five cartridge casings were fired from that particular firearm, to the exclusion of all other firearms.

Q. How do you make that determination?

A. By looking at both the class and the individual characteristics that are imparted on the cartridge casings themselves, after doing a comparison of the test.

If you compare the tests and find there are sufficient markings, you then do the individual markings, or the individual pieces of evidence against your test.

And my conclusion, then based on the matching markings, any impressions that are left on those cartridge casings, that they were fired in that particular gun.

Q. With reference to this particular gun, this Davis .380, do all semi-automatic handguns eject the same way?

A. No. That has a top ejector. That's one of the few firearms that doesn't eject to the right-hand side.

Q. Will you tell us what the difference is?

A. The ejector is a little piece that you can see on the top of the slide.

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Usually, it's on the right-hand side.

Firearms are made for right-handed people.

So if you pull a gun with your right hand, you want it to go across you.

You don't want it shooting across your body.

This particular ejector throws them straight up.

This also has an ejector. That's the part that actually knocks it out of the gun.

The ejector on this particular firearm is the firing pin itself.

So this one, depending, this is going to take it and throw it up and slightly to the back, if I hold it straight out. Or if I hold it down, it's going to send it forward.

Or if I hold it gangster style, like in the movies, it is going to send it this way.

I can hit the same spot on the wall with straight cartridge casings all around this room, depending upon how I hold my wrist.

Q. So it depends on where you hold your hand as to the direction of potential flight?

A. Correct.

Q. Can you tell anything about where casings

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were found?

A. The only thing in my experience that I can tell you about a cartridge casing, where they are found, is to say that's where they're found.

Unless when I was up North, it was a lot easier for cartridge casings because they fell on the snow, if they are not going to bounce.

If a particular cartridge casing that comes out of a firearm is spent, if it hits the ground, and depending upon how it hits, if it hits the same spot on the ground, one can jump forward, and the other can jump backwards.

It is like a football when it flies through the air.

Once they hit, they don't bounce the same way every time.

Cartridge casings don't either.

Plus, depending upon how many cartridges you have in the magazine depends on how much pressure there is on the slide, which effects how fast it opens, which effects how far it will be thrown.

The last cartridge in a magazine is going to be thrown a lot further than the first cartridge off of a full magazine because there is more

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pressure on the slide, as it moves back and forth.

All I can say, with regards to where they are found, that's where they've been found because you don't know if somebody kicked it. You don't know the circumstances of what happened during the dynamics of the scene until they are picked up.

Q. In any event, that is a top loader. And if you held your handgun like that, it would fly forward, correct?

A. Yes, sir.

Q. Or if you did it like that, it would, correct?

A. Correct.

Q. Now, looking at State's Exhibit marked 81, I thought I was looking upside down, but I'm not. Have you seen that?

A. Yes, I have.

(Jeff Marcus' reading is interrupted.)

MR. SATZ: Excuse me. And the bolt cutters are 81. And they have been introduced.)

(Jeff Marcus continues reading.)

Q. And what did you do with that?

A. I cataloged it and then made test cuts with it.

Q. What is that?

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A. This is a set of bolt cutters. It is a set of bolt cutters that they have marked on them 24-inch. I guess you've got 24-inch handles.

They're fairly nice bolt cutters.

Q. And I show you now State's Exhibit 29, padlocks found within the Waffle House identified.

(Jeff Marcus' reading is interrupted.)

MR. SATZ: Here is State's Exhibit 29.

THE COURT: 29 will be 29.

(Jeff Marcus continues to read.)

A. Yes, I have seen all of these.

There are my initials and then my test cut. I package them in the same package, with the padlock, when I was finished.

Q. The one that has been identified as ES1, small master lock by the drop box, did you look at that?

A. Yes, I looked at that as I looked at the rest of them, also.

Q. Tell me what analysis you did?

A. I looked to see if it has class that would be consistent with an opposed jaw-cutting instrument, which is what a bolt cutter is and it does.

I also look to see if the jaws of the bolt

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cutters would open far enough to allow me to cut these particular blocks and determine that they did.

So then I took lead wire and cut the lead wire.

And then I compared my lead wire against itself to see if it reproduced and found they did reproduce the markings from the edge of the bolt cutter onto the material that was being cut.

Then I put my test under the microscope and then examined my test against the evidence and found that the small master lock was cut by this particular bolt cutter beyond and to the exclusion of all other bolt cutters.

Q. And with reference to the padlock labeled DS4 found on the office floor of the Waffle House, did you look at that?

A. Yes, I did.

I determined that this particular padlock was also cut by these bolt cutters, to the exclusion of all other bolt cutters.

Q. How did you make that determination?

A. Same way. I looked at the test that I had previously shown to be reproducible.

I put the test under the one side of the microscope, with the cut shackle under the other

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side of the microscope.

And you can see my index point, it is still visible.

It is at that point that I made my identification to my test.

Q. The master look or the padlock that is designated as DS2 was found under the office floor.

Did you perform an analysis of that?

A. I performed my test on all of the cut areas and determined that they are from the same class, that I could not exclude the padlock being cut from this particular bolt cutter.

Q. And why is that?

A. It has the same class characteristics. But it doesn't have enough individual characteristics.

Unfortunately, with a hardened shackle, you don't get a really good cut. You get a fracture.

You get a little cut from the very beginning, where the teeth is at the edge of the bolt cutters, starts to dig into the metal.

But instead of slicing through it, it fatigues the metal.

With enough pressure, it separates and pops.

That's why it is a real easy match to put

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one shackle back onto the part of the shackle that it was cut from because it leaves a real nice fracture. But it doesn't make sufficient marks for a good cutting match.

That's why I was only able to match two.

But I cannot exclude the other ones.

Q. And that would hold true were the padlock DS5 found on the floor of the storage area in the Waffle House?

A. That's correct, sir.

Q. And you can't exclude it either, correct?

A. I can't exclude it. It has class characteristics, as a cutting tool, like this particular tool does.

But I can't say it particularly cut those.

I can't say it did. I can't say it didn't.

Q. Let me show you now State's Exhibits 57 and 56 that has been identified as the shirts of Christina Delarosa and Willie Absolu.

(Jeff Marcus' reading is interrupted.)

MR. SATZ: They are already introduced into evidence, the shirts.

(Jeff Marcus continues to read.)

A. Yes, I did, sir.

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I examined them for bullet defects and processed them chemically for the presence of gunshot residue after doing a microscopic examination of the clothing.

Q. And the exhibit that is marked LR12 on Christina Delarosa, were you able to do any mussel-to-target distance on that shirt?

A. All I can say, definitively, is that there is a bullet defect in the front because the bullet went from and the hole. But there was not enough gun powder to put it into a pattern for a range.

The close range that I would give it was 36 or more inches.

Q. So it was 36 or more inches, correct?

A. As far as I can tell, sir.

Q. How about the shirt of Willie Absolu?

A. The shirt of Willie Absolu, again, I found nothing visual or microscopically.

I did find gunshot residue in the form of bullet wipe across the entrance hole. Again, with similar conclusions to the Brice test, I would say 36 or more. I can't say anything closer because there is not enough definitive pattern developed.

Q. I want to show you now State's Exhibit marked 64 --

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(Jeff Marcus' reading is interrupted.)

MR. SATZ: That's this.

(Jeff Marcus continues reading.)

Q. -- that's been identified as the neck area of Christina Delarosa.

Have you seen that?

A. Yes, sir.

Q. Did you examine that carefully?

A. Yes, I did, sir.

I examined that carefully along with the report from the medical examiner.

Q. Were you able to make any kind of a determination just from looking at the photograph?

A. Well, after I consulted with the medical examiner to make sure that I was seeing what I was seeing, it was stippling.

Q. What is stippling?

A. Stippling is gun powder that is driven fast enough and with enough force to actually break the skin. It is also called gun powder tattooing by some people.

So using the medical examiner's measurements, I then shot patterns to see if I could then get a range as to the mussel-to-target distances associated with those particular defects.

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Q. And were you able to get an estimate?

A. Yes, I did. With the mussel-to-target on the young lady -- I don't want to get this wrong, so I'm going to go back. On the neck of the young lady, I gave a mussel-to-target distance of greater than six inches, less than 18 inches.

Q. That would be from the front end of the mussel to the target, correct?

A. That's correct.

Q. Let me show you State's Exhibit marked 67, which has been identified as the head of Willie Absolu.

(Jeff Marcus' reading is interrupted.)

MR. SATZ: That's this.

(Jeff Marcus continues reading.)

Q. And ask you if you have seen that?

A. Yes, I have, sir.

Q. Did you perform any kind of analysis using that?

A. Yes.

Again, after consulting with the medical examiner, using the reports to make sure what I was seeing was reported out, I shot patterns to determine the mussel-to-target distance determination of a particular gunshot entrance hole

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would be greater than six inches, less than 18 inches.

Q. Thank you, Mr. Hammerle.

MR. SATZ: Your Honor, I have no further questions.

THE COURT: Cross?

CROSS EXAMINATION

BY MR. POLAY

Q. Good afternoon, Mr. Hammerle.

A. Good afternoon, sir.

Q. You want to touch the gun?

A. No, thanks.

Q. I always learn something from you.

I know a little bit about movies.

You know about guns.

Let me ask you this.

You were explaining to the ladies and gentlemen of the jury that by giving certain tests, you can find out whether or not a gun expelled a particular cartridge, correct.

A. Yes, sir.

Q. And you also indicated that by doing a particular test, you can make a determination as to whether or not a particular projectile was expelled from a gun, correct?

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A. That's correct.

Q. You can find out a lot of information by looking at a cartridge, by looking at a projectile and that type of thing, correct?

A. That's correct.

Q. But through all of your analysis, or all of your tests, you can't say you actually shot a gun, can you?

A. Never, sir.

Q. Really, what you're doing is you're looking at things that were found from the scene and you're just making a determination as to whether or not these casings, these projectiles were fired from a particular gun, correct?

A. Yes, sir; that's correct.

Q. Just to make it clear, you didn't go to the scene of the crime, did you?

A. I didn't collect any of this evidence.

And I did not go to the scene when the evidence was collected.

Q. And you do your analysis by the evidence that is given to you, correct?

A. That's correct, sir.

Q. And the more evidence and the better evidence that is collected, you can do a better

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analysis; correct?

A. That's correct.

Q. You were talking to the prosecution about this four-hour window for gunshot residue, GSR, correct?

A. Yes, sir.

Q. And you said the State of Florida accepts eight hours, correct?

A. Yes, sir.

Q. Correct me if I'm wrong, but I thought I heard you say that when you were looking at the shirts, you were doing some form of a GSR test, correct?

A. That's correct.

Q. Now the form of GSR testing you were doing was days later, correct?

A. It is as different test, looking at different material.

Q. But it is still a form of the GSR test, correct?

A. That's correct.

Q. Just so that the ladies and gentlemen of the jury know, when we talk about the GSR test, in the most basic sense, we're talking about actually testing somebody's hands to see if there is actually

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gun powder residue on that hand, correct?

A. There is two types of GSR testing.

One is on clothing, on object. And the other one is on skin.

The one on skin we don't do in our lab because we don't have the equipment for it.

Q. But you have heard of it being done, right?

A. Oh, sure.

Q. You have heard of detectives actually taking some type of sticky tape and lifting a defendant's hands, correct?

A. Yes, sir.

Q. You mean that's not rare that something? That's something that's done, that's something you have heard about before, correct?

A. Yes, sir. Within the proper time limitations, it can be used to impeach a person if they claim no association with a firearm if in fact they become positive.

Q. I noticed you were pretty funny up here today because you put your gloves on.

You did not want to touch that gun, correct?

A. That's correct.

I am sensitive to cyanoacrylate, which is

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the active ingredient in Superglue.

Q. You're familiar with what the Superglue technique is, correct?

A. Yes, sir; I do.

Q. That's to lift a prints from a particular object, correct?

A. It stabilizes a print on the object, yes.

Q. So this particular gun was processed, correct?

A. Yes, sir.

Q. The cartridges that you talked about that were found at the scene, do you remember if they were actually processed for prints or any type of DNA analysis or anything to that effect?

A. The cartridge casings were all processed.

Q. Do you know, if you know, if they were processed for any type of DNA analysis; or was it just for print analysis?

A. It would be for prints.

Q. The gun, how about the process that was done on that? Was that just for prints or was it for any type of DNA analysis?

A. I have it down for prints.

Q. One other point I want to bring up is you were talking about blood being spattered at a crime

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scene.

Do you remember you were talking to Mr. Satz about that?

A. Not splattered. He was asking about blood on the clothing.

Q. And you can't say that blood wouldn't go on clothing, could you?

A. No, I can't say it.

Q. Depends upon a number of factors, correct?

A. That's correct, sir.

Q. You can't tell whether or not somebody walked in blood, whether or not they would get some on their shoes, on their pants or if it would be on another part of their body, correct?

A. Well, not exactly.

If I'm at the scene, I used to do footwear analysis.

And as many times as I have done footwear analysis examination, where somebody stepped in blood, then transferred that blood, that blood to other parts of the room, it would be on the shoes, on the floor.

And I would be able to identify shoe to the floor.

Q. Exactly.

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A. But I didn't do it in this case.
Q. I understand that.
But you're familiar with scenes being processed and blood being on shoes?
A. Yes.
Q. If you walk in blood, it could be on your shoes, am I right?
A. It could be.
Q. If you're at a shooting, you could have blood on your clothes, correct?
A. It could be possible.
Q. Well, you have seen it before, not just in theory. I want to talk about it in practice.
You have seen blood on clothes before, correct?
A. Yes, 99 percent of the time, it is on the victim.
Q. Okay, but you have seen it before?
A. Yes, sir; I have.
Q. And you said that you looked at these particular clothing objects for blood and for --
A. I look for bullet defects.
Q. And for bullet defects.
Did you look specifically on State's 56 and 57, did you look for any other type of evidence

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other than the bullet defects?

A. I looked at gunshot residue in the form of burnt or unburnt gun powder.

I looked for gunshot residue in the form of bullet wipe and the entrance hole.

Q. Let me ask you this.

Gun powder, if it is fired, hypothetically, you fire a gun there, with your right hand.

If you fired a gun from where you are sitting, could you have gun powder on your sleeve or on your cuff?

A. No.

Q. And explain why.

A. During class, when I took the class then, subsequently, I taught it three other times, I will have the shooter fire a gun.

Then we will process the gun for the gunshot residue. Then I test for which is on clothing. It is not found.

Q. Have you ever found it? Have you ever heard of tests where they have found it?

A. The only possible way to find it would be, I suppose, would be to SME Index.

The same thing with the sticky dabbers, which that would be much more sensitive.

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I don't know of anybody who has taken the time or expense to actually do it, though.

Q. Let me ask you this.

The time, the expense, I know it's costly, but do you know if in this case, if anybody analyzed my client's clothing in that way, if you know?

A. No, I have no idea.

Q. I know it's expensive.

Let me ask you this, another hypothetical, not with the gun outward, but if the gun is close, could you find gun powder?

A. Yes, if the gun is held in a tucked position.

Q. Or is closer to the body, correct?

A. If I were to hold it in a tucked position, where I touch the heel of my hand, then it would be nearly impossible for a semi-automatic pistol or a revolver to have some type of gunshot residue on the shooter.

Q. Take this a step further, as a hypothetical again, if you were to shoot across your body, could you find gun powder on a shirt area?

A. Yes, sir.

Q. I just want to go over one part, where you talked about where you find the cartridges.

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It was a great analogy.

You were saying if the cartridge is ejected, you can't tell anything about it, other than that's where it is found?

A. Yes, sir, unless certain parameters, like if you're at the beach and it falls in an area where it is going to stay and it doesn't bounce, like at your feet or up North, if you are in the snow. They don't bounce well in the snow.

Q. So if a cartridge hits something that's somewhat solid, you have no idea where it's going to go, just like a football in a football field?

A. That's correct.

Q. It could bounce forward, to the side.

You have no idea?

A. That's correct.

Q. Let me ask you this.

Are you aware of any gunshot residue tests that have ever been done in vehicles, in other words, like any transfers?

A. I have taken gunshot residue off of a windshield of a car before personally, off of a dashboard.

Q. My point it this.

You stated to the Prosecution that gunshot

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residue would probably be washed off a hand if someone washed their hands, correct?

A. It would be.

Q. Hypothetically, I am a shooter.

I get into my car.

I touch my car window.

I touch my steering wheel.

You can still test for that, can't you?

A. No.

Q. Why not?

A. Well, it will, what I would be testing for would be the burnt and the unburnt gun powder.

If you were in a car and you were shooting outside of the car, I would be asked to test for that.

The material that you're talking about is so fine that I don't know of anybody that actually does that test.

Q. You have never heard about it before?

A. Personally, I have never heard of it.

Q. Are you aware of that test?

A. I can swab any object in the courthouse and send it away to be tested.

Q. Right, you can swab a car, couldn't you?

A. I can swab anything.

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Q. Sure.

It may be expensive; but it is something that you can do?

A. I could.

But what would be the point? What are you trying to prove or disprove. Because as a detective, I would ask myself that.

Q. I understand that?

Hypothetically, being a detective, if somebody allegedly shot something and goes and touches a car within minutes, you could look for some type of a transfer, couldn't you?

A. In theory.

Q. Correct.

A. CSI does it all of the time.

Q. Forget CSI. Correct me if I'm wrong, but you have read situations, I'm sure, within your field, where people have looked for this type of evidence, correct?

A. No. Not off of cars.

Q. Well, you yourself said you can swab anything?

A. Well, you can in theory, you can swab anything.

Q. Well, if you can swab a hand, why can't you

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swab a windshield or a side window?

A. Because the data bases are built on GSR for hands.

When you talk about directional levels and stuff, these data basis for cars are positive or negative.

Those data bases are built for gunshot residue on hands, not on other things.

Q. Correct me if I'm wrong and you're the expert, but you're looking for residue, correct?

A. Yes, sir.

Q. And you find this residue to tape, I mean the only tape I know is Scotch Tape, okay?

A. Okay.

Q. You use some type of tape, correct?

A. Yes.

Q. There is nothing that would prevent you from walking over to a window with the tape and lifting it, correct?

A. That's correct.

Like I say, I can take a tape lift off of anything.

Q. Earlier, not some four minutes ago, before I took you off of your subject, you said you have done it before on cars, correct?

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A. We're talking about two different kinds of gunshot residue. The gunshot residue I look for is in the form of burnt and unburnt gun powder.

When I'm looking at a car, I'm looking for burnt and unburnt gun powder, which are particulars that are big enough to be seen with a naked eye. There is no need to build a data base, bring you up to a threshold level when you're talking about that. That's what I was, that's what I looked for in the past. I have never swabbed a car and sent the swabs off to be tested with the scanning electron microscope. I have never swabbed a car and had them tested for atomic absorption because those data basis were built on gunshot residue for -- gunshot residue for hands, not gunshot residue on objects.

Because you have to be careful what you send up and how you send it because you may be getting false positives or false negatives, depending upon what is, how you collect it and what you collect it from.

Q. I understand what you're saying, Mr. Hammerle. I'm not talking about data basis. I'm talking about something relatively simple.

I am not technical.

My point is this, and it's the last time

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that I am going to ask --

You know what? I'll move on.

You can walk up to a car and around put a piece of tape to see if there is any residue or any type of particle, correct?

A. I could. But the question is would it have scientifically relative meaning if you found something.

That's where you get into the fact that you have to have certain data bases to back up your opinions and your conclusions.

Q. I understand what you're saying?

A. That's the whole thing.

Q. I'll move on.

The bolt cutters.

A. Yes, sir.

Q. You said they were consistent. But you can't say that this is actually the bolt cutter that cut the shackle, correct?

A. Two of them I can't say that on.

Two of them I can.

Q. That's because you didn't have enough individual characteristics on two of them?

A. Yes, sir. That's because those two particular locks have more of a fractured pattern

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than any type of cuts in them.

Also, any time you use a bolt cutter, you cut a shackle, you're forming the cutting edge slightly.

If I were to cut, say, one of the bolt cutters, one of the shackles first, then to cut a deeply hard material, that deeply hard material is going to be formed to the bolt cutter slightly.

So if you have a whole series, you're more likely to be able to make a positive comparison to the last items cut as opposed to the first items cut because the blade gets deformed with more use.

Q. Let me ask you this with respect to the GSR.

Hypothetically, if someone did not wash their hands and they're not a profuse sweater, could you find GSR hours and hours later?

A. No.

Q. Are you aware of any studies that say differently?

A. No.

Excuse me. If a person is dead, if a person is dead and you bag their hand, then you can find it hours and hours later, as long as you kept them in a controlled environment, to where you

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didn't cool the body down, keep the body up to where condensation forms on the skin.

But other than that, I don't know of any studies that could have been done to show the length.

Those times are said to be experience that the labs have had of when a material loses its meaning.

Q. You were saying you were comfortable with four hours, right?

A. Yes, sir.

Q. For doing a GSR test?

A. Yes, sir.

Q. And that's because a normal human being, within a four-hour time period, would touch objects, correct?

A. Yes, sir.

Q. And when they touch objects, the residue would come off or if they washed their hands, correct?

A. Yes, sir.

Q. And you said that the State of Florida accepts eight hours, correct?

A. Yes, sir.

Q. So it would be fair to say that during,

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well, take your four-hour time period, during that four-hour time period, the reason that you don't have to go further is because it is eventually wiped away and lost on other objects or down the sink, via washing hands, correct?

A. That's part of it; yes, sir.

Q. Or it could be wiped off on your clothes, correct?

A. It could.

Q. Hypothetically, again, if I shot a gun, and you looked for GSR four hours later, it may not be on my hand; but it could be on my clothing if I wiped it?

A. It is theoretically possible. That's supposing that the gun leaves gunshot residue.

Q. Of course, I understand that.

MR. POLAY: Nothing further, sir.

THE COURT: Mr. Satz, any redirect?

REDIRECT EXAMINATION

BY MR. SATZ

Q. When you have casings for a gun and you process it, you have a choice, right? You can either do DNA or a fingerprint, right?

A. It's theoretically possible to do both. I don't know how practical it is.

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Q. If you had a choice, what would you do?
A. Whose DNA am I looking at?
Q. You under stand you have a piece of evidence, you have a choice of which one?
A. I go with the fingerprints.
Fingerprints are the most positive form of personal identification. Identical twins don't have the same fingerprints. They have the same DNA. If I wanted to definitely put something in somebody's hand, I am going to look for a fingerprint.
Q. Blood on shoes, you can, right? You said if somebody, the Defense asked you if you step in blood?
A. Yes, sir.
Q. And you get it on your shoes?
A. Yes, sir.
Q. In order to test the shoes, you have to have them, wouldn't you?
A. In order to test any clothing, I would have to have it.
I would have to take it that your handing me the closing that was worn during the time of the commission of the offense.
Q. Right. You can't test shoes if you don't have the shoes, can you?

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A. No, sir.
Q. And you can't test clothes if you don't have the clothes, can you?
A. That's correct.
MR. SATZ: Nothing further.
THE COURT: Mr. Polay?
MR. POLAY: I have a few questions.

RECROSS EXAMINATION

BY MR. POLAY

Q. In this case, you said to the prosecutor you looked at five casings, right?
A. Yes, sir.
Q. Five?
A. Yes, sir.
Q. Were any of the five, to your knowledge, checked for DNA?
A. No.
Q. Are you aware of any fingerprints or any blood evidence that came back to Mr. Hojan?
A. I don't get into what other examiners find.
duly sworn in the above cause, testified on his oath as follows:
THE CLERK: Please state your full name and spell your last name for the record.
THE WITNESS: Robert Anton, A-N-T-O-N.

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DIRECT EXAMINATION

BY MR. SATZ

Q. What is your occupation?

A. I'm a police officer with the town of Davie Police Department.

Q. How long have you been so employed?

A. 24 years.

Q. I would like to call your attention to March 11, 2002. A Monday night.

Did you have occasion to be somewhere?

A. Yes, I did.

Q. Where were you?

A. At the Waffle House located at 4689 SW 148th Avenue.

Q. From that location, did you travel outside of the jurisdiction of Davie?

A. Yes, I did.

Q. Where did you travel to?

A. Lee County, Florida.

Q. Who was with you?

A. Detective Kiso and Officer Kilpatrick.

Q. What time did you arrive in Lee County?

A. Can I refer to my report?

Q. If it will refresh your memory, sure.

A. We arrived over there at about

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approximately 1:15 a.m. on March 12th.

Q. Who did you come in contact with?

A. Captain Walker with the Lee County Sheriff's Office.

Q. Did you come into contact with anyone else?

A. Yes, once we went back to their substation, we met with a couple of other deputies. And I also met with Mr. Hojan and his father.

Q. And what did you have to do with his father?

A. I spoke to his father for a short period of time. He provided us with a consent to search of the residence.

Q. 100 Apache Street?

A. Yes.

Q. And then did you speak to the defendant, in this case, Gerhard Hojan?

A. Yes, I did.

Q. Do you see him in the courtroom today?

A. Yes.

Q. Would you be good enough to point him out?

A. Gentleman in the gray shirt. I believe it's a blue and purple tie.

MR. SATZ: Madam Reporter, with the Court's permission, would you let the record reflect

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Officer Anton has identified the defendant, Gerhard Hojan?

THE COURT: It shall.

BY MR. SATZ:

Q. What time did you come into contact with Defendant Hojan?

A. It was approximately 1:40 a.m. that morning.

Q. It was in the substation?

A. Yes.

Q. What is the first thing you did?

A. I met with him, with Officer Kilpatrick. We asked him if he would be willing to provide us with a consent to search for his vehicle.

Q. Did he give you a consent to search?

A. Yes, he did.

Q. I'll show you State's Exhibit 88, introduced into evidence.

Is that the consent form?

A. Yes, it is.

Q. So he agreed to the search of his truck?

A. Yes, he did.

Q. Then what happened?

A. Once I had sent the people off for the searches, myself and Detective Kiso re-entered the

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room and met with Mr. Hojan again.

Q. What is the first thing you did with him?

A. I read his Miranda warnings from a prepared text.

Q. Will you illustrate how you did that?

A. If I can refer --

Q. If it will refresh your memory, certainly.

A. The way it was read to him was have you previously requested any law enforcement officer to allow you to speak to an attorney.

I waited for a verbal response.

He stated to me that he hadn't.

I advised him you have the right to remain silent and refuse to answer any questions.

I asked him again if he understood.

He said yes.

Anything you say may be used against you in a court of law.

Do you understand that?

Again, he said yes.

You have the right to speak to an attorney before speaking to the police and to have an attorney present during any questioning now or in the future.

I again asked him if he understood that.

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He stated yes.

I advised him if you cannot afford an attorney, one will be appointed for you before any questioning, if you wish.

I asked him if he understood.

He stated that he did.

I asked him do you understand the Rights that I have explained to you?

He stated he did.

Having these Rights in mind, will your answer my questions at this time?

He stated yes.

Again, after that, I asked him if he understood everything I read to him and if he wanted me to re-explain anything to him.

He stated he understood everything.

Q. Did you have a conversation with him?

A. Yes.

Q. After the conversation, did you memorialize what he was saying?

A. Detective Kiso was taking the notes.

When we were done with the conversation, I put the information into my report.

Q. You memorialized it?

A. Yes.

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Q. You made a police report out of it.

A. Yes.

Q. Please tell us what happened, what Defendant Hojan said to you.

It is not a memory test.

If you have to refer to your notes to refresh your memory, you may do that.

A. Sure.

When I first started speaking to him, he advised us that him and Jimmy had gone to the Waffle House that morning for breakfast.

They had breakfast.

And they left and went home.

At that point, I explained to him that Barbara had survived.

He looked at me. He dropped his head down. Looking at the ground, he said I didn't mean to shoot her.

At that point, I asked her what do you mean by that?

He explained to me Jimmy and him had gone to the Waffle House to eat breakfast.

While he was sitting there, eating breakfast, they came up with a plan to rob the Waffle House.

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Once they came up with the plan, the plan was Jimmy went out to the vehicle.

Mr. Hojan had a .380 semi-automatic handgun in his pocket.

When Jimmy came back in, from the vehicle, with bolt cutters, Mr. Hojan produced the weapon and ordered the employees to the back of the store.

Once they got back to the store --

MR. POLAY: Objection. Narrative.

And also best evidence is the statement.

BY MR. SATZ:

Q. If it is in your report, I guess he wants you to read your report, the verbatim report.

MR. WILLIAMS: Yes.

THE WITNESS: You want me to start at the beginning?

BY MR. SATZ:

Q. Sure. Go ahead.

A. After he agreed to speak with us, Mr. Hojan stated that he and Jimmy went to the Waffle House on SW 148th Ave and Griffin Road for breakfast at approximately 3 a.m. Jimmy began to tell Hojan how easy it was to rob a Waffle House restaurant. They then made a plan to rob the store. Jimmy left the restaurant and went to the truck to retrieve the

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bolt cutters.

Hojan stated that he carried an unknown make .380 caliber semi-automatic handgun in his pocket.

Hojan stated when Jimmy came back in, he, Mr. Hojan, produced a handgun and ordered the workers to the rear of the restaurant.

He stated that he ordered them into the freezer.

Hojan stated that there were three employees: A large, black female; a black male; and a young, white female.

He stated he locked them in the freezer at this point.

He stated that he went back out and checked on Jimmy.

Jimmy told him to keep an eye on them.

When he went back to the freezer, he opened the door.

While he was standing there, the black male reached for the gun.

He stated that he shot the black male twice.

He stated that he then left the freezer and went to talk to Jimmy.

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He and Jimmy discussed it. And Jimmy stated that they could not leave any witnesses.

Hojan stated that he went back to the freezer and told the two females to face away from him.

He stated at this point, the black female began to give him some problems. And he shot her once in the back of the head.

The white female began to cry and attempted to crawl under the storage racks in the freezer.

Hojan stated he then shot her twice.

He stated that he was unsure of where he shot her.

He states he left the store through the front door.

He stated as he was leaving the store, Jimmy went to the back; and he heard the freezer door open.

Hojan stated that they went home. And he packed his things and he left for his parents' house.

He stated Jimmy was going to get rid of the gun by throwing it into the canal.

Q. Was that the extent of the oral conversation at that time?

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A. Yes.

Q. Then what happened?

A. When that was done, we retrieved the tape recorder.

I went back into the room, asked Mr. Hojan if he would be willing to give us a sworn, taped statement.

Q. What did he say?

A. Yes.

Q. You took a sworn taped statement?

A. Yes.

Q. After the taped statement, did you go back, talk to him again?

A. Yes.

Q. What was the conversation?

A. It was in reference to where he had gone after the incident had taken place.

The first two conversations, he didn't advise us he had gone to the Enterprise Rental car place. And when he got there, it was actually closed.

When he left, he stated to us they threw the gun off a bridge off of State Road 84, into a canal.

Q. Did you memorialize that?

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A. Yes.
Q. What were his exact words to you?
A. Hojan stated that they did go by Enterprise to pay his bill. But that the business was closed. He stated that on the way back home, he threw the gun off of a bridge on State Road 84.
Q. He threw the gun? That's what it says in your report?
A. Yes.
Q. Let me show you State's Exhibit 89, that's been introduced. Ask you if you can identify that?
A. Yes. It has my initials on it?
Q. What is that?
A. The taped statement I took from Mr. Hojan.
MR. SATZ: If I can play this now, Your Honor?
THE COURT: You certainly may.
(Exhibit published:)
OFFICER: Special reserve 20313727.
Statement is being taken from Gerhard, G-E-R-H-A-R-D. Middle name is Set, S-E-T. Last name is spelled H-O-J-A-N.
Date of birth is 5-31-75.
His home address is 13310 SW 8th Street, city of Davie, State of Florida.

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His phone number is 473-1512.

Statement is being taken by Detective Anton, ID Number 543 and Detective Scott Kiso, ID number 311.

Statement is being taken at the Lee County Sheriff's Office.

The date is March 12, 2002.

It is approximately 2:21 a.m.

Prior to going on tape, we talked a little bit?

GERHARD HOJAN: (Unintelligible.)

OFFICER: Were you advised of your Miranda rights?

GERHARD HOJAN: Yes, sir.

OFFICER: The rights I read to you, did you understand those completely?

GERHARD HOJAN: Yes, sir.

OFFICER: Having these rights in mind, are you still willing to talk to us?

GERHARD HOJAN: Yes, sir.

OFFICER: I just need you to speak up a little for me, Gerhard.

I'll set this over here.

Are you now under the care of a doctor or taking medication?

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GERHARD HOJAN: No, sir.

OFFICER: Are you under the influence of alcohol or any other debilitating substances?

GERHARD HOJAN: No, sir.

OFFICER: Earlier you told me you had a drink earlier?

GERHARD HOJAN: Yes, sir.

OFFICER: What was that drink?

GERHARD HOJAN: Rum and Coke, sir.

OFFICER: About how much of that did you drink?

GERHARD HOJAN: Maybe a swallow.

OFFICER: Are you impaired right now?

GERHARD HOJAN: No, sir.

OFFICER: You feel that your head is messed up?

GERHARD HOJAN: No, sir.

OFFICER: Prior to getting into this, what I'll do is swear you in.

Are you aware that under Florida State law it is as crime to knowingly furnish false information while under oath?

GERHARD HOJAN: Yes, sir.

OFFICER: Do you understand what that means?

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GERHARD HOJAN: Yes, sir.

OFFICER: What that means, I'll explain it to you so you definitely know. Once I swear you in, it can be a crime if you lie under oath.

GERHARD HOJAN: Yes, sir.

(Defendant sworn in.)

OFFICER: What I want you to do is I want you to tell me what happened earlier, early on Monday morning.

GERHARD HOJAN: I was watching TV at home. And my roommate came out, said let's go for some breakfast.

We went out to the Waffle House. And we sat down.

We were having breakfast.

He started talking about, he was talking about how it was easy to rob a Waffle House.

So he went out to the truck. Got bolt cutters.

I took the people into the cooler after he cut the locks off of it.

He left me in the cooler with the people. I went out to check what was going on.

I went back inside of the cooler.

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And when I opened the door, the cook and I had a little struggle. The gun went off. I shot him twice.

Then he says you can't have any witnesses.

So I had, so I shot the other two.

We left from the Waffle House. Went home. I sat at home, watching TV for a little bit.

Took my clothes, put them in the hamper.

I said look, I'm going to go home, see my parents, see my kids.

I said I'll see you back home, Thursday, when I get home.

I left from here to Lee High Acres.

OFFICER: Okay you said you were sitting at home, watching TV?

GERHARD HOJAN: Yes.

OFFICER: Do you remember about what time that was?

GERHARD HOJAN: Between two and three.

OFFICER: And then what happened? Jimmy came out?

GERHARD HOJAN: Came out of his room. Said he wanted to go to the Waffle House, have some breakfast.

OFFICER: (Unintelligible.)

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GERHARD HOJAN: Okay.

OFFICER: So you guys, what vehicle did you use to go up there?

GERHARD HOJAN: Silver truck.

OFFICER: Whose truck is it?

GERHARD HOJAN: It's mine, sir.

OFFICER: Is that the one that was at your parent's house?

GERHARD HOJAN: Yes, it is.

OFFICER: The one you rented from Enterprise?

GERHARD HOJAN: Yes, it is.

OFFICER: You went to the Waffle House. Do you remember what time you got to the Waffle House?

GERHARD HOJAN: Around 3-ish.

OFFICER: You guys sit down to eat breakfast.

Was anybody else present at the Waffle House, besides the employees?

GERHARD HOJAN: No, sir.

OFFICER: How many employees were there?

GERHARD HOJAN: Three.

OFFICER: Can you describe them to me? Do you know them by name?

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GERHARD HOJAN: No, sir, I don't know them by name.

OFFICER: Can you describe them to me?

GERHARD HOJAN: There was the cook, a black guy.

A waitress. White, young lady.

Then the heavy-set black woman.

That was the other waitress.

OFFICER: You guys sat down and had breakfast.

About how long were you there to have break fast?

GERHARD HOJAN: Probably until about 4-ish.

OFFICER: While you were eating breakfast, you said you guys were discussing robbing the place?

GERHARD HOJAN: Yes, sir.

OFFICER: You said jimmy went out to the truck.

Did you go out to the truck with him or were you sitting inside.

GERHARD HOJAN: I was inside, sir.

OFFICER: Did you have the gun on you, or was it in the truck?

GERHARD HOJAN: No, I had it with me, sir.

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OFFICER: Where did you have it? In your waistband?

GERHARD HOJAN: In my pocket, sir.

OFFICER: Do you remember which pocket you had it in?

GERHARD HOJAN: Right pocket.

OFFICER: Front pocket or rear pocket.

GERHARD HOJAN: Front.

OFFICER: Your right front packet?

GERHARD HOJAN: Yes, sir.

OFFICER: Do you know when he went to the truck what he went to the truck to get?

GERHARD HOJAN: They were bolt cutters.

OFFICER: What were the bolt cutters going to be used for?

GERHARD HOJAN: I guess to cut the locks on the safe, sir.

OFFICER: Did you see him use those on the safe?

GERHARD HOJAN: No, sir.

OFFICER: Once he came back in with the bolt cutters, what happened?

GERHARD HOJAN: I took the gun out of my pocket. And I told all three of them to go straight to the back. And Jimmy was already

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back there. I opened the door. Put them in the cooler.

Told them to empty their pockets.

And I went back outside. (Unintelligible.) I went back inside of the cooler. Once I opened up the cooler, that's when (Unintelligible). We got into a struggled, first.

OFFICER: Before going back there, did you go back there before you pulled the gun out or

GERHARD HOJAN: No.

OFFICER: How did you pull the gun out (unintelligible.)

GERHARD HOJAN: Yes, sir.

OFFICER: So you put him in the cooler. You go back out to check on Jimmy.

GERHARD HOJAN: A. Yes, sir.

OFFICER: You put everybody in the cooler?

GERHARD HOJAN: Yes, sir.

OFFICER: You go back to the cooler and you say you and the cook got into a struggle.

GERHARD HOJAN: Yes, sir.

OFFICER: I assume that was the black man?

GERHARD HOJAN: Yes, sir.

OFFICER: Okay.

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What kind of a struggle was it?

GERHARD HOJAN: Uhm, it was, as soon as I opened the door, he came at me. (Unintelligible.) Hands were --

OFFICER: Did you guys struggle at all or?

GERHARD HOJAN: No, it was just like as soon as he came towards me and he put his hands on me, grabbed me, where the gun was, that's when the first shot went off.

OFFICER: When did the second shot go off?

GERHARD HOJAN: He was, he still had a hold on me. As he was going down, it went off again.

OFFICER: Okay.

Now, did you shoot him again or just twice?

GERHARD HOJAN: No, sir. That was it?

OFFICER: You shot him twice?

GERHARD HOJAN: Yes.

OFFICER: What were the other two, what were the two girls doing?

GERHARD HOJAN: They 1were cooler. One, the heavy-set was on the left side. The other girl was on the right. And I walked back out again. Went back in. Jimmy says we can't leave any witnesses.

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That's when I went back in there.

And I shot them both.

OFFICER: When you went back in, did you, uhm, tell them to turn around or get down or lay down or?

GERHARD HOJAN: I told them to turn around.

OFFICER: They were still standing.

GERHARD HOJAN: Yes, sir.

OFFICER: And when you shot them, they were still standing or did you tell them to get on the floor.

GERHARD HOJAN: No.

I just shot them. They were still standing.

OFFICER: Which one was on the left of you?

GERHARD HOJAN: The heavy-set black girl.

OFFICER: Okay.

Where was the cook at this point?

GERHARD HOJAN: He was in the middle still, on the, he was on the floor.

OFFICER: So the black girl was on the left of you and the younger girl was on the right of you?

GERHARD HOJAN: Yes.

OFFICER: Who did you shoot first?

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GERHARD HOJAN: The black guy.

OFFICER: Okay.

Then after that, which one of the girls did you shoot first?

GERHARD HOJAN: Heavy-set black girl.

OFFICER: Where did you shoot her at?

GERHARD HOJAN: From what I remember, somewhere in the head. I wasn't sure because when it was happening, she gave me a little struggle, also.

OFFICER: What do you mean she gave you a little struggle?

GERHARD HOJAN: As I was pointing the gun at her, her hands were behind her. Hands going back and forth. Wasn't in one spot.

OFFICER: Once you shot her, what happened?

GERHARD HOJAN: She fell to the floor.

OFFICER: The younger one, what did she do when the other girl fell?

GERHARD HOJAN: She started screaming. And she started, like, trying to climb underneath the racks. And I shot her. I shot her twice.

OFFICER: Where did you shoot her at?

GERHARD HOJAN: I don't know. She was underneath the racks. I was just pointing at

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her.

OFFICER: (Unintelligible.)

GERHARD HOJAN: Yes, sir.

OFFICER: Was she facing you or was she turned away from you?

GERHARD HOJAN: Turned away from me.

OFFICER: She was under the rack?

GERHARD HOJAN: Yes, sir.

OFFICER: Did she say anything to you? Did the black female say anything to you?

GERHARD HOJAN: She said please, please don't hurt us.

OFFICER: The other girl didn't say anything?

GERHARD HOJAN: No, she was just screaming.

OFFICER: When you left the cooler, do you remember how the bodies were positioned?

GERHARD HOJAN: No, I just tried to get out of there when it, after it happened.

OFFICER: Did you move any of the bodies?

GERHARD HOJAN: No.

OFFICER: Didn't check their, check them for a pulse, check to see if they were still alive?

GERHARD HOJAN: No, sir.

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OFFICER: Could you tell if any of them were still alive?

GERHARD HOJAN: No, sir.

OFFICER: Did the black male say anything or did he appear to be dead?

GERHARD HOJAN: They all appeared to be dead, sir.

OFFICER: Once you came out, what happened when you got out, when you left out, after all three, after all three were shot, what happened?

GERHARD HOJAN: We, I came out. Jimmy (unintelligible) let's go, let's get out of here.

He was in the back.

He was by the back door.

I went out front. I got in the truck.

He came out, got in the truck; and we left.

OFFICER: Did he ever go in the cooler?

GERHARD HOJAN: Yes, sir.

OFFICER: After they were shot or before?

GERHARD HOJAN: After.

OFFICER: Were you still there when --

GERHARD HOJAN: No, I was walking out.

But I could see the cooler's open.

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OFFICER: (Unintelligible.)

GERHARD HOJAN: Probably.

OFFICER: You didn't see what he did inside?

GERHARD HOJAN: No, sir.

OFFICER: You got in the truck. Did Jimmy come out the front door or the back door?

GERHARD HOJAN: Front door.

OFFICER: Came out the front door?

GERHARD HOJAN: Yes, sir.

OFFICER: Where did you guys go from the Waffle House?

GERHARD HOJAN: Went home.

OFFICER: Straight home?

GERHARD HOJAN: Yes, sir.

OFFICER: What time was it when you got home, do you remember?

GERHARD HOJAN: Around 5-ish.

OFFICER: Around 5-ish?

How long, from the time you pulled the gun out, to the time you guys left, do you know how much time transpired? Like about how long, what was the time period between when you pulled out the gun and the robbery started until the time you guys left?

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GERHARD HOJAN: Five minutes, ten minutes.

OFFICER: You went straight home. Once you got home (unintelligible).

GERHARD HOJAN: Yes, sir.

OFFICER: Once you got home, what happened?

GERHARD HOJAN: Uhm, I went inside of the house. I sat down.

I watched some TV.

Jimmy was still outside.

I got up. Put my clothes in the hamper to come over. Put them in the truck. Put some signs, black signs in the back of the truck.

I told him, I said I'll see you later.

I'll see you on Thursday morning.

That's when we had to go to work.

I said I got to go.

I left.

OFFICER: Jimmy was outside when you left?

GERHARD HOJAN: Yes, sir.

OFFICER: He never came inside?

GERHARD HOJAN: He came in like once or twice.

OFFICER: And you guys never talked about what had happened?

GERHARD HOJAN: No, sir.

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OFFICER: What happened to the gun?

GERHARD HOJAN: Sir, it was in the truck. He said he, he said he took it. He said he was going to get rid of it.

OFFICER: Did he tell you where he was going to get rid of it?

GERHARD HOJAN: He said he was going to throw it in a lake on river.

OFFICER: Uhm, what kind of gun was it?

GERHARD HOJAN: .380.

OFFICER: What brand?

GERHARD HOJAN: I don't know.

OFFICER: Whose gun was it?

GERHARD HOJAN: It was mine.

OFFICER: Where did you get it?

GERHARD HOJAN: Uhm, when I used to, I used to have a friend that worked over, (unintelligible) didn't work there. He was (unintelligible.).

I guess he was a dealer or something. Said he had it for sale. I bought it off of him.

OFFICER: How much did you pay for it?

GERHARD HOJAN: A hundred dollars.

OFFICER: What color was the gun?

GERHARD HOJAN: Black.

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OFFICER: Was it a revolver or?

GERHARD HOJAN: Semi.

OFFICER: Semi-automatic?

GERHARD HOJAN: (Unintelligible.)

OFFICER: How long have you had it?

GERHARD HOJAN: Maybe a year.

OFFICER: Ever shoot it before?

GERHARD HOJAN: No, sir.

OFFICER: Did you guys, did you remove any shell casings or anything from that?

GERHARD HOJAN: No, sir.

OFFICER: After you left (unintelligible) since you left?

GERHARD HOJAN: No, sir.

OFFICER: Had you seen any of the stuff on the news today?

GERHARD HOJAN: No, sir.

OFFICER: What did you do when you got over to your parents' house?

GERHARD HOJAN: I came in.

My mom was just, my dad was out, by his boat. My mom was at home. The kids were at school.

OFFICER: Your kids live over there?

GERHARD HOJAN: Yes, sir.

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OFFICER: Did you tell anyone what happened?

GERHARD HOJAN: No, sir.

OFFICER: What did you do with the clothes you were wearing?

GERHARD HOJAN: At my parents' house in the hamper still.

OFFICER: Except the shoes are still at home, at the trailer?

GERHARD HOJAN: Yes, sir.

OFFICER: Describe the clothes that you were wearing. (Unintelligible).

GERHARD HOJAN: Black slacks. Like these. Black Polo shirt.

OFFICER: What kind of shoes?

GERHARD HOJAN: Sneakers.

OFFICER: What color?

GERHARD HOJAN: Black.

OFFICER: Like the same ones you're wearing now?

GERHARD HOJAN: Yes.

OFFICER: You wear a hat, a mask or anything?

GERHARD HOJAN: No, sir.

OFFICER: Jimmy wear a hat, a mask or

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anything?

GERHARD HOJAN: No.

OFFICER: Nothing else?

Have I or any (unintelligible) police department, forced you in any way, coerced or promised you anything for giving this statement?

GERHARD HOJAN: No, sir.

OFFICER: (Unintelligible.)

GERHARD HOJAN: No, sir.

OFFICER: You understand what that means? Have we threatened you in any way?

GERHARD HOJAN: No, sir.

OFFICER: Promised you anything?

GERHARD HOJAN: No, sir.

OFFICER: Do you understand what has happened?

GERHARD HOJAN: Yes, sir.

OFFICER: Have you given this statement of your own free will?

GERHARD HOJAN: Yes, sir.

OFFICER: Has everything you told us been true to the best of your knowledge?

GERHARD HOJAN: Yes, sir.

OFFICER: Prior to going on tape, we were

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talking to you, had you been offered water, food or anything like that?

GERHARD HOJAN: Yes, sir.

OFFICER: And you declined both of those?

GERHARD HOJAN: Yes, sir.

OFFICER: Is everything you told me the truth to the best of your knowledge?

GERHARD HOJAN: Yes, sir.

OFFICER: Anything else you want to add to your statement at this time?

GERHARD HOJAN: Just that I wish I had never gone there. Wish I had never done it.

I have real, I'm, I am just really sorry that I did it.

I wish I could take it all back.

OFFICER: Anything else you wish to add?

GERHARD HOJAN: No.

OFFICER: Statement is being concluded on March 12, 2002, at approximately 2:40 a.m.

(Tape concludes and is stopped.)

BY MR. SATZ:

Q. After that statement was taken, you went out; and you came back. That's when he told you that they went directly to 1311 East Sunrise Boulevard, to the Enterprise Rental Car?

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A. Yes.
Q. And it was closed?
A. Correct.
Q. Did you ever determine what time they opened in the morning?
A. If I can refer back to my report, I believe we did it another time.
Q. If you can look at page 8?
A. Yes, sir. They opened at 7:30 a.m.
Q. On March 11th, 2002?
A. Correct.
Q. That's the time he told you he threw the gun out of the car, off of the bridge?
A. Yes.
MR. SATZ: Thank you, Your Honor.
THE COURT: Mr. Polay?

CROSS EXAMINATION

BY MR. POLAY

Q. Good afternoon, sir?
A. Good afternoon.
Q. Now, you indicated that you went to the waffle House on that date, correct?
A. March 11th day?
Q. Yes.
A. Yes, sir.

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Q. Then you wound up being told, I guess by Sergeant Meyer, to go over to the West Coast?

A. Yes, sir.

Q. You indicated to the prosecutor that you arrived in Lee County about 1:15 a.m, correct?

A. Correct.

Q. 1:15 a.m., you know my client is already in custody, correct?

A. Yes.

Q. He's with the Lee County officers?

A. Correct.

Q. You were there with Detective Kiso and Officer Kilpatrick, from the town of Davie?

A. Correct.

Q. Mr. Satz, just -- can I approach?

He showed you what is in evidence as, I can't tell if that is 88 or 86.

It is a consent to search the vehicle.

This was signed by my client, was it not?

A. Yes, sir.

Q. Your handed him a printed form. You had him read it. He agreed to cooperate with you.

Is that correct?

A. Yes, sir.

Q. He didn't have to sign that, correct?

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A. Correct.
Q. And in fact, it says, on that, that you are agreeing, correct?
A. Yes, sir.
Q. You asked if he would cooperate, make things easier, right?
A. I asked if he would be willing to sign it; yes, sir.
Q. That makes things easier, does it not?
A. For me?
Q. Yes, of course.
A. Yes.
Q. You agree he cooperated in that respect?
A. He signed it; yes, sir.
Q. By signing it, you agree it is cooperation, right?
A. That's a decision he has to make based upon what he feels.
Q. In that same vein, let's talk about Miranda.
You have indicated to the ladies and gentlemen of the jury that you Mirandized my client; is that correct?
A. Yes, sir.
Q. You're telling him he does not have to

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speak to you, correct?

A. Yes, I am reading his Miranda Rights.

Q. In effect, you are telling somebody you don't have to cooperate. You don't have to give a statement. You don't have to say anything.

Isn't that basically what you did?

A. That's the basic premise of Miranda.

Q. You would agree with me that you read him Miranda. He tells you he understands everything. And he still agrees to cooperate with you.

A. He agreed to speak with us, yes.

Q. That's cooperation, is it not? He's agreeing to speak with you?

A. I couldn't be in his head to know if he was cooperating with us or willing to talk with us.

Q. He was polite, was he not?

A. He was very polite with us.

Q. He didn't fight with you in any way, shape or form?

A. No, sir.

Q. In fact, after almost every question, he said yes, sir; no, sir to you?

A. Yes.

He did.

Q. Never cursed at you in any way, did he?

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A. No, sir.
Q. He sat there. He was calm when he spoke to you.
A. Yes, sir.
Q. On the tape, you could hear him crying, correct?
A. I don't believe he was crying during the statement.
Q. You say he's not crying.
I just want to clarify one thing. You know, at the time it was Detective Kiso.
A. Yes.
Q. He sat there with you?
A. Yes.
Q. Detective Kiso testified earlier today.
And he said --
MR. SATZ: MR. SATZ: I object to what someone else testified. He can ask him what he did.
THE COURT: All you can do.
MR. POLAY: I'm not saying what he said. Everything is presumptuous.
Let me finish the question before I get interrupted, objected to.
That's all I ask.

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MR. SATZ: Presumption sometimes can be a good thing.

MR. POLAY: As is assumption.

We are not going there.

BY MR. POLAY:

Q. In any event, you said to Mr. Satz that Detective Kiso, the detective that testified earlier, was taking all of the notes?

A. He was taking notes when I was speaking to him, when we were on video, sir.

Q. This room was about 8 by 12?

A. I believe so.

Q. When you were speaking, before you were on tape, for the 40 minutes you were with Detective Kiso and my client, were you not?

A. I don't remember the exact amount of time. We were in there for a bit.

Q. You can look at your report if you want, if you don't remember, not that it matters, at this juncture.

A. Okay.

Q. The whole time you were speaking with my client, you were with Detective Kiso?

A. Yes, sir.

Q. In fact, you said you relied upon some n

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notes of Detective Kiso?

A. He will had taken the original set of notes.

Q. Did you use his notes to write your report?

A. To the original part, before we took a taped statement.

Q. Yes.

A. Yes, I probably would have referred to some of his notes.

Q. You would defer to him for the initial report?

A. I wouldn't say I would defer to him.

I would look at the notes to make sure what my memory was on point with it.

Q. If Detective Kiso said something --

MR. SATZ: Objection to what someone else said.

BY MR. POLAY:

Q. Well, if Detective Kiso wrote something down, you would rely upon that in preparing your report; isn't that correct?

A. Correct.

Q. Now, incidentally, you reminded Mr. Hojan again, when you go on tape, about Miranda, did you not?

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A. Yes, sir.
Q. So this is a second time where you're telling him you don't have to cooperate; and he still agrees to speak to you, correct?
A. I reminded him of his Miranda warnings and asked if he was willing to speak with me. And he agreed.
Q. Again, you tell him he doesn't have to say a word to you. Doesn't have to speak to you. Doesn't have to utter a sentence.
Yet, he does, correct?
A. He spoke to us; yes, sir.
Q. Now, with respect to your report, your first report, obviously, you're doing this from memory, as well as Detective Kiso's notes, right?
A. The report?
Q. Yes.
A. Yes, sir.
Q. So let me ask you this.
This report, you're missing a few things, are you not?
A. I would be shocked if I didn't omit something here or there.
Q. In fact, you omitted something you said to this jury you felt was important.

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You omitted the portion where you said to Mr. Hojan Barbara Nunn survived and his head went down?

A. Correct. That was not in my report.

Q. That's not in your report?

A. No, sir.

Q. From what you read, from your report,, you stated that my client went back into the freezer. And he leaves. He goes out to check on Jimmy.

Remember telling the jury that?

A. Yes, sir.

Q. And you remember Mr. Hojan's saying Jimmy told him to keep an eye on them?

A. Yes, sir.

Q. And then he said to you, when he went back to the freezer, he opened the door. And while he was standing there, the black male reached for the gun.

Remember that?

A. Yes, sir.

Q. And then he said he leaves the freezer after this, or the cooler, and Jimmy told him he couldn't leave any witnesses.

Remember that.

A. Yes. After he shot the cook? Is that what

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you're talking about?

Q. Yes.

It is in your report.

He state he left the freezer, went to talk to Jimmy?

A. I didn't know if you were talking about the time before.

I was confused. Sorry about that.

Q. That's okay.

You would agree Jimmy said you can't leave any witnesses; is that right?

A. Yes.

Q. What did you do with Detective Kiso's notes?

A. I don't know what he did with them.

Once I looked at them, I gave them back to him. I assume he transcribed it into his report.

I don't know.

Q. You didn't take your own notes?

A. I had taken notes during the taped statement, yes.

Q. What did you do with the notes?

A. Once I had everything on tape and everything was in the report, the notes were destroyed.

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MR. POLAY: That's all, Judge.

MR. SATZ: That's all.

I just want to put the taped state and consent form into evidence.

THE COURT: You're excused.

THE WITNESS: Thank you, Your Honor.

MR. SATZ: That's all we have for today.

(Witness excused.)

THE COURT: Steve, can you take the jury out just a minute.

(Exit jurors.)

(Discussions held off the record.)

(Enter jurors.)

THE COURT: I have a habit from time to time of sticking my feet in my mouth before I confirm things.

That's the reason I sent you out.

I have some very good news for you. We are way ahead of schedule.

You know you won't be here tomorrow. You will not be here next Monday, Tuesday, Wednesday, Thursday.

Next Friday morning, I need, I need you guys back.

I will have Pam send an Email just to

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remind you, at 12:30 next Friday, which I believe is October 26th.

Also, if I have this somewhat correct, the following week, the 30th, 31st and 1st, I anticipate we may finish with testimony.

Depending upon how that works will determine whether or not I will actually instruct you or whether I'll do it the week right after, which would be the first week of, the first full week of November.

So we're on track.

I anticipate, what, a half day.

Probably another four days.

So Ms. Diaz, I informed your employer of exactly what we were going to do.

And who's birthday is it?

Happy birthday.

All right, when are you coming back?

JURORS: Next Friday.

THE COURT: Time?

JURORS: 12:30.

THE COURT: Please remember all of the admonitions in terms of doing any research, papers, discussing the case amongst yourselves, the fact you still can't talk to the lawyers,

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they can't talk to you.

With that, we will see you next Friday.

(Exit jurors.)

THE COURT: All right.

See you guys Friday.

(Thereupon, proceedings for the day concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 19th day of July, 2019.

VIVIAN ROCK, COURT REPORTER

**** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 7/29/2019 11:25:19 AM.****

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

ORIGINAL

Defendants.

TRIAL PROCEEDINGS
VOLUME XX
PAGES 2052 - 2062

JURY VIEW

Fort Lauderdale, Florida
October 18th, 2018
11:40 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, The Waffle House, IN Davie, Florida, on October 26, commencing at 11:40 a.m.

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THEREUPON, the following proceedings were had:

THE COURT: I want to make sure we have the way in which we're doing this and the protocols down.

Originally, I told Broward Sheriff's Office that we would have him in here.

We did that 16 years ago.

MR. SATZ: Right.

THE COURT: But I thought about that. Because of how small the place is, that we leave all of us, for the most part, outside. Let this jury do like the other jury. Let them have the run of the place.

Of course, that will all be predicated on what all of you say.

Tony asked me, you know, what happens if they want to go to the Shell Station. Then I guess they would be escorted over to the Shell Station and then back.

I'm going to go on the bus, just like the last time. I'll advise them this is simply for their observation.

They can walk around, look at whatever they think is important.

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MR. SATZ: The doors are closed. Somebody will have to open it.

THE COURT: I think staff should do that, from in here.

MR. WILLIAMS: Just tell staff not to make conversation with them.

THE COURT: I'll deal with that in just a minute. I'll advise them so we don't run into another Ms. Dietz, from the last trial.

No talking. No pointing. This is as if they are in court.

Then, at the end, I'll just tell them they need to be back at 9:15 Tuesday morning, when you will do your, well, 930, you will do your impact.

Mitch, you will be ready to go right after that?

MR. POLAY: Right.

THE COURT: If everybody is okay with that protocol, that's how we'll play it.

I'll talk to the manager about getting them to where they need to be.

MS. MCCANN: The doors on, in the freezer, are deceiving. Once you go into it, you think

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that's it. There is another door.

THE COURT: You're right.

MS. MCCANN: You will think that's the end.

THE COURT: Everybody okay with that?

MR. SATZ: What about the employees? Will they be here?

THE COURT: Go home or be outside.

Steve will be here.

He talked to the manager.

He knows no talking.

He will open the two freezer doors and lead the jury to whatever they want.

MS. MCCANN: If the jury wants to go through it again, they can see it as many times as then want?

THE COURT: Yes.

(Heading to the bus with Judge Backman.)

(Bus 1).

THE COURT: All right, let me explain what is happening here today. This is what we call a site visit. It is just as if we're in court. In other words, you will have free reign of the place to look at, at your leisure. You have your note books, I believe. Steve has them. I know that we do have them for you.

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Of course, you will be able to take them in with you as well. You can't converse with any of the employees. Most of them will be out. You will have free reign. None of us will be in there with you.

Because of the way the freezers are structured, the manager will be the person that opens them for you. Then he will move out of your way.

If you want to see the gas station, you will just let us know.

Broward Sheriff's Office will walk you over there.

I guess the last thing, because I ran into this the last Trial I did, no pointing with each other as to this, this, this, the same way you can't have any conversations.

If you have questions, write them down. Maybe we'll be able to answer them for you. That will have to be dealt with on Tuesday.

As a reminder, Tuesday you come back at 9:15.

I'll tell you, I'm pretty confident we'll finish all of the testimony before the end of next week.

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As I said, we're way ahead of schedule.

I know you're excited to hear that.

Any questions before we take you over there?

JURORS: No.

THE COURT: Good.

(Leaving Bus 1.)

(Heading to Bus 2.)

THE COURT: Guy, guys.

You will be in an air-conditioned place.

Who wanted to have lunch?

Oh, I told them; but I don't think anybody will be in there.

Let me tell you, this is a field trip. It is a site visit. This is just as if you are seeing testimony in court. You can't talk as you go through it. You can't point. You know, you can be walking through, two people together -- I had this the last time, when we went on a site visit in my last trial. I had a couple of jurors that loved asking questions and making comments to each other. That was the 22-month trial. So I can start it again. You will have your notebooks. You can refer back

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to any testimony you have in terms of figuring things out.

You will have the run of the place. Don't stop at the fountain and have a drink. But the manager will be in there to open the two freezers for you.

Then he will step away. And you can look to your heart's content.

You have no time limit as to whether or not you want to stay in there. A couple people stay there while everybody else leaves, that's fine.

They can't talk to you. You won't talk to them.

Everybody is good with that?

JURORS: Yes.

THE COURT: Okay.

If you want to go to the Shell Station, which is, as you can see, right behind you, you will let us know. Broward Sheriff's Office will escort you over there. Again, you're on your own. The same rules apply.

When you're all ready to come back, at that point, they will escort you back.

After that, you will be taken back to the

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courthouse. You will be let go.

Next Tuesday, 9:15.

I'll tell you that my best guess is that all of the testimony will be finished by Wednesday afternoon, Thursday at the latest. We would close and finish the first full week of November.

So we're way ahead of our schedule.

I know you're pleased to hear that.

Anybody have a question?

Good.

(Exit Bus 2.)

MS. MCCANN: I wanted it on the record, Mr. Hojan agrees to the to sit inside there, since he sat in there the last time.

MR. WILLIAMS: I spoke with him.

I indicated it is Mitch and my preference he not sit inside, so close to where the event happened in this case.

He said he agreed.

He's fine sitting in the van.

I told him if there is anything he wants to discuss, let the deputies in the van know.

THE COURT: I'll ask.

Mr. Hojan, your lawyers just discussed with

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me the fact you're going to remain in the van. You won't be inside, where the jury can see you.

DEFENDANT: Correct.

THE COURT: You're okay with that?

DEFENDANT: Correct.

THE COURT: So far this morning, they haven't given you any drugs, alcohol, medications?

DEFENDANT: Yes, sir.

THE COURT: I am good.

Let's go.

(Jury view starts.)

(In Waffle House, speaking to jurors.)

THE COURT: All right. I understand that you want to walk over to the Shell Station. Broward Sheriff's Office will escort you over there.

However, the inside of the Shell Station has totally changed. So the only thing you will be able to do is really walk over and observe. I can't let you see a scene that is significantly different.

So with that, you would have to rely on your own recollection of the testimony you

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received by any witness that may have testified.

JURORS PARKER: Just the inside. The outside doors.

THE COURT: Everything else, I believe, is the same.

JUROR GOLDER: If we don't want to go over, is it okay if we stay here?

THE COURT: You don't have to. They will just take you back to your van. That's all.

It is not compulsory.

It is optional.

(Discussions had.)

THE COURT: I talked with the attorneys. I was correct. Broward Sheriff's Office will take you over.

Those going to the vehicle can stay here. Everybody else going to the station, here.

Okay.

They just told me I'm wrong. Everybody has to go.

(Shell Station view had.)

(View concludes.)

(Jurors return to their buses.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 20th day of July, 2019.

VIVIAN ROCK, COURT REPORTER

**** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 7/29/2019 11:25:19 AM.****

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME XXI
PAGES 2063 - 2177

Fort Lauderdale, Florida
October 30th, 2018
9:40 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 30th, 2018, commencing at 9:40 a.m.

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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THEREUPON, the following proceedings were had:

(Morning session begins.)

THE COURT: Is everybody ready?

MR. WILLIAMS: We have objections to the victim impact evidence. A few arguments I want to make.

I won't belabor the point.

The State has choreographed this portion of the trial very well.

By choreographed, I mean this. We were, basically, out of court last we can until Friday.

Friday afternoon at 2 o'clock, we had the jury do a jury view at the Waffle House. At that point in time, they got to see the location where the actual murder occurred.

At that point, the court was adjourned.

So the jury got to go home.

And over the weekend replayed that scene in their mind.

Now today, the last part will be the victim impact evidence.

So after having choreographed that scene on Friday, now Tuesday, the first day we're back

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in court, they will introduce the victim impact evidence.

Now, the victim impact evidence, you will eventually give them an instruction I believe will read as follows.

You have heard evidence about the impact of this murder on the family, friends, community of the decedents. This evidence was presented to show the victim's uniqueness as an individual and the resultant loss by the decedent's deaths.

They have now choreographed this to whereby the victim impact evidence as relates to Christina becomes the feature of this case.

By that I mean back in the '70s, when there was a lot of case law dealing with the admissibility of Williams Rule evidence, the courts, at that time, were applying a test where the Williams Rule was not supposed to become the feature of the trial.

And there what is a bunch of case law that talked about, for the victim impact evidence or the Williams Rule evidence to become the feature of the trial, such that there were times there was more Williams Rule evidence

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introduced, more people testifying about Williams rule than there was about the actual facts of the case.

Analogizing that to what we have here, we now have, it looks like, from my count, we have one, two, three, four, five and possibly six witnesses.

MS. MCCANN: Seven, Your Honor.

MR. WILLIAMS: Dealing with Christina. Willie has one.

We have one witness for Willie Absolu. One letter.

Then I'll count again. One, two, three, four, five, six, it looks like, six witnesses for Christina's death, which now becomes now the feature of the victim impact evidence. The death of the 17-, 18-year-old young mother now becomes the feature of the victim impact evidence presented to this Court.

And I'm objecting to not only the number of victim impacts statements that will be read regarding Christina because clearly this evidence is not to be considered an aggravating circumstance.

If you read these victim impact statements,

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the six they will introduce as to Christina, this victim impact evidence becomes, in my opinion, an aggravating circumstance that is highlighted by letters from six different people.

That's the first argument is the volume of victim impact evidence as it relates to Christina.

Then I have objections as to each of the letters, material I find objectionable in each of the letters that I'll go over regarding the first, Willie Absolu. Because his is the simplist, from my perspective.

Willie Absolu has a two-page letter from his brother.

Going down to the second paragraph, the third sentence in the second paragraph, I'll read it slowly, I still call him on my phone and then realize what I'm doing.

We used to talk to each other three or four times a day, more than I talk to my girlfriend.

That's the impact on it. That's dealing with his perception as opposed to of what he's doing as opposed to what Willie, Willie's impact on the community.

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He goes on, you cannot take one foot from the other. That I don't know, I'm not clear on what he means.

Going down, now he's talking about, in the last paragraph, last sentence, now this is my double responsibility.

He's talking about money, sending money to his mother in Haiti because Willie is not here.

He also says on page 2, first paragraph, second line, now this is my responsibility. Also referring to financial, a financial burden on him regarding Willie's two children, that I assume are still presently in Haiti.

Going down to paragraph 3, he goes on to say now it is his responsibility alone to provide financial support to the father.

And then the very last paragraph, of page 2, of the brother's statement, it says I'm the oldest. I should have died first.

I think those are highly inflammatory portions of his statement that should be excluded for the presentation.

Going over to the first letter, I'm not sure who it is from.

It says I met Christina in 2001, shortly

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after 9-11.

MS. MCCANN: That's Kylie Akins.

MR. WILLIAMS: Going down to the second paragraph, second sentence, where she says she was planning to have a little party for Kyle since he was turning six months old on Monday.

She had picked up an extra overnight shift so she could get him presents and a cake.

Unfortunately, she didn't live to celebrate his six-month birthday. None of us knew we wouldn't see her again.

Objecting to that.

Highly inflammatory, the third paragraph of her letter, reads her mom, Vivian, she couldn't be here.

Unfair to ask her to relive this memory again.

No mother should have to bury her daughter.

Objecting to that.

Highly inflammatory.

Continuing, the last paragraph, those moments were stolen from her baby Kyle, from her mom, step-dad, from her family and friends. Then it concludes with she appreciated her life to the point she begged for it.

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I am asking those portions be stricken. Inflammatory.

Going over to, I guess, this is the second, this is a letter from Kyle Delarosa, who would be the, the son. Going about the first paragraph, five lines down, it reads I have been told she loved me a lot and she was really nice. Continuing in that paragraph, I still think about the person that killed my mother, the man that killed my mom because of a vehicle payment. I was never told his name.

I ask that be stricken as highly inflammatory.

Going over to the letter of Shelly Langman, first paragraph, third line, reads Christina went camping with my son Jason and our family on Thanksgiving.

We went four days out in nature and did all kinds of things.

I ask that be stricken.

Continuing, she loved to clean; and we would go out to lunch and shopping.

I used to braid her beautiful hair.

I ask that be stricken.

Going down to the second paragraph, Shelly

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Langman's letter.

Christina and I went shopping a lot, showing off Kyle, buying him whatever he needed. Christina shared Kyle with our family and dropped him off at our house every night she had to work.

Christina was saving up so she and Kyle and my son Jason could get a place when she was 18.

I ask that be stricken.

Paragraph 3, do you remember Christina found an angel wind chime. My son Jason climbed the tree by her grave; and we hung it up there for her.

Christina was our angel.

So we found a pretty angel wind chime to make a beautiful sound when we were at her grave.

I ask that be stricken. Last paragraph reads we would come down south and visit Christina's family and go to the grave with flowers.

I have always tried to take Kyle to the grave with flowers and have little talks with him about his mom.

Kyle started calling me mama.

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I was heart-broken at first.

But Christina's mom, Vivian, said Christina would be happy Kyle called me mama.

I ask that be stricken.

The last paragraph, when Kyle is ready, he can research all about her. We would photo shop pictures of her and Jason with Kyle at different ages so she would know what she looked like.

It is still very hard to deal with her loss because when I look at Kyle, I see a beautiful picture of her in my face.

I ask that be stricken.

Moving over to the letter of Crystal Hall, it is really one paragraph letter that I'll go down to the seventh line.

It starts with in that sense, we were alike.

I can remember when she found out being pregnant a little earlier than she planned. But that wasn't going to stop her. Just more of a reason to push harder. Waffle House wasn't what she planned either. But it bought diapers and what she needed for her baby.

I remember giving her a ride home and

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laughing all the way home and her getting out, closing the fence, singing and giggling.

I have always stayed in touch with Shelly and Kyle and loved seeing him grow up.

I hate he does it without his mom there.

He will never remember how she used to hold him and sing to him.

He also was deprived of a lot of things no kid should have taken.

I have since moved from the town where Christina is buried. When I lived there, I used to visit her grave often, telling her that her son is loved and cared for well and how much we love and miss her every day. There was always flowers and wind chimes left near her.

People that showed up always cleaned her headstone and left a token of love.

I ask that be stricken.

Going over to the letter of Theresa Delarosa, first paragraph, third, second, third line, March 11, 2002, her life was viciously taken away from her.

Continuing, down it reads I remember when we would play we would always want, I would always want to be the boss or teacher. And my

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brother or cousins would get mad at me because they wanted to be in charge. But not Christina.

She knew how much it meant to me and just went along with it to make me happy. I remember talking about her dreams.

Christina always wanted to be a nurse to help people.

Second paragraph, the Waffle House was not the only thing robbed that day.

Going down to the third paragraph, there is not a day that goes by that I don't think about Christina. Actually, family members say Christina and I resemble each other.

So when I look in the mirror, I see myself and Christina.

When I visit Christina's mother, I see how she sees some of Christina in me and how the pain and feelings come rushing at her.

I see how Christina's mother remembers that she will never see her daughter alive again.

I ask that be stricken.

Last paragraph, to this day, I cannot watch the news because until you actually lose someone tragically and see it on the news, you

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don't know how it feels.

I ask that be stricken.

Going over to the last letter is from Barbara Nunn.

Barbara Nunn testified here.

The victim impact is directed at the actual people deceased.

If you read Barbara Nunn's letter, she's talking about how it affected her. Not how it affected Christina or not Christina's impact.

There are a few things in her letter that relate to Christina and Willie.

Most of it is dealing with reliving what happened to her, how it affected her mentally and physically.

The victim impact evidence, as I understand in a capital case is to be directed to those that actually died, not survivors.

The only portion of Barbara Nunn's letter that would I think be remotely admissible is at paragraph 2, she says Christina Delarosa was my friend. Paragraph 3, Willie Absolu was my friend too. I really liked Willie.

Continuing, paragraph 2, Willie supported his family.

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That's it, as far as I'm concerned, as far as Barbara Nunn's letter.

I won't belabor the point. I made my record.

And all of these, the things I have read off are not directed to the deceased, uniqueness to the deceased, uniqueness in the community, additional argument, as they are inflammatory. The comments I read off do not fit within the four corners of what I believe the statute says and what the instruction you give says.

Again, I think you have to tailor a ruling that it is strictly adheres to the four corners of the statute and the jury instruction.

The reason I say you have to strictly adhere to the four corners is because they are being told to disregard this evidence in terms of it being an aggravating factor.

So I think that in an abundance of caution, the Court has to travel on a road that has the portions that are read catered to, strictly catered to the way the statute is worded so you don't get into all of the highly inflammatory evidence.

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I'll leave that at that and respect the Court's ruling.

MS. MCCANN: There are two letters in here that address Willie Absolu and six letters that address Christina Delarosa.

Two are in common. That would be Barbara Nunn's.

The reason Willie Absolu has two letters, mentioned two times in two letters is that at the time of the murders on March 11, 2002, Willie Absolu had only been in this country for two years.

He was from Haiti.

His brother, Dieumeme Absolu, was here.

And he wrote a letter.

Christina Delarosa grew up in the area, went to school in the area, had aunts, uncles, cousins in the area.

Worked in the area like Willie Absolu did.

But she was a life-time resident of the area.

Willie Absolu was only in this country for two years.

That's why there is not a plethora of letters coming in for Willie Absolu.

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The fact there are more letters for Christina Delarosa doesn't make this a weighing process, where we tip the scale and say Christina's life was more valuable than Willie's.

It was not.

They were both valuable lives.

Willie Absolu and Christina Delarosa should not be penalized because Willie Absolu was only in this country two years and only has two letters to address him.

Where Christina has her cousin, her son, her son's grand mother, her friend, Barbara Nunn.

She impacted a lot of lives.

She lived here a long time.

Those letters should not be diminished or subtracted from because they are more numerous than what Willie had presented on his behalf.

Regarding the letters, everything that Mr. Absolu, Dieumeme Absolu, Mr. Willie Absolu's brother writes in his letter talks about the resultant loss to the community, why Willie was special and why his death had an impact on the community.

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Mr. Willie Absolu's community was a small community because he only lived here for two years.

Mr. Dieumeme Absolu can speak to that. There is nothing in the letter that goes beyond what the community is.

The fact his brother is his community doesn't detract from the fact that's his community.

The same with Barbara Nunn. That's was his community.

The State would object to everything where -- maintain the correctness of what has been presented in the letters written by Mr. Dieumeme Absolu.

Regarding Kylie Akins, she was a good friend of Christina Delarosa's.

She would go to the Waffle House.

She visited her when she was working.

She knew what Christina, why she was working, what she was saving for.

She knew why.

And those things made Christina special.

She writes that in her letter because she had a keen insight into Christina because she

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went to the Waffle House and visited her and knew that on Sunday night, hours before she was murdered, they were talking together.

She knew Christina was saving up money to buy a cake for Kyle's six-month birthday.

There is nothing inappropriate to show why a mother is special, working hard to buy birthday cake for her child while she's working in a Waffle House, when she would rather be doing something else, but has a responsibility, as this letter states, to buy diapers and take care of her son.

Characterizations about what Kyle is missing out on, what Christina's family is missing out on, what her friends are missing out on goes to the loss the communities that suffered because of Christina's death.

There is nothing inappropriate in this letter.

We ask it be read as written.

As to Kyle Delarosa, Christina's six-month-old son, they complained of the language. I have been told she loved me a lot and that she was really nice, too.

I still think of the person that killed my

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mother, the man that killed my mom because of a vehicle payment, I was never told his name.

What Kyle says in his letter is what he has left of his mother.

He has a picture of her and other people's memories.

Christina was unique to him. It was his mother.

To argue that these statements do not go to her uniqueness or to her special qualities really diminishes the fact of anyone that is murdered and has a young child that can't remember every, every event that happened.

People's memories are grainy over time. Kyle never got to have a memory. His memory is what he has been told.

There is nothing inappropriate in that letter.

Furthermore, what he says in there about the man killed my mother for a vehicle payment. I have never been told his name is so benign.

No vengeance in this letter. No asking for a certain penalty in this letter.

His family made a point to keep it from

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him, keep the gruesome facts of this case from him.

Nothing in this letter from Kyle that is inappropriate.

Shelly Langman is the grandmother of Kyle Delarosa. She adopted him. Took custody of him shortly after the death.

She had a special relationship with Christina Delarosa so much so she adopted her child after her murder.

She has raised Kyle.

The things she put in this letter come from her experience of raising Kyle, of trying to honor, keep her memory alive for Kyle by going to the cemetery, talking to Kyle about his mother, things she has done for Kyle over the years.

There is nothing in this letter that is inappropriate.

As for Crystal Hall, talking about what Christina did at the Waffle House, that it wasn't her life's dream to work there.

Just a means to an end.

Being pregnant made her push and work harder, work for her child.

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That's what made Christina special. That is what is appreciate as victim impact evidence.

There is nothing in this letter that is inappropriate. It should stand as written.

As to Theresa Delarosa's letter, the only thing in there that would be arguable and I agree a word should be taken out, the word viciously, because the characterization about the manner of the death should not be in there.

The State would agree the word viciously should come out.

It's the third sentence.

So the sentence should read but on March 11, 2002, her life was taken away.

There is nothing wrong with that statement if we remove the word viciously.

The State would agree to that.

The other characterizations by Theresa Delarosa, Christina's cousin, talk about there girlhood fun.

Only teenagers.

There is nothing inappropriate.

These statements, sentiments talk about why Christina was special and why she was special

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to this witness.

These people that have written about Christina come from different points in her life.

There is no limit on the number of people who can testify to victim impact evidence. The Florida Supreme Court has said that.

In this case, we have two victims.

These people that have written letters and want to be heard on this, because victims have a constitutional right to be heard.

There is nothing in here that is inappropriate.

As to Barbara Nunn, I would agree with the Defense that after the third paragraph, where she talked about how it changed her life, she didn't, she talked about Christina Delarosa, talks about Willie.

So we will not be reading that portion to the jury about losing her vision and the traumatic physical injuries she suffered.

We will be submitting these letters to the court so the are part of the record because Ms. Nunn has a right to be heard as well, Your Honor.

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MR. WILLIAMS: Can you specifically enumerate what you will read back?

THE COURT: You beat me to the question.

MS. MCCANN: Beginning with the paragraph that says Gerhard Hojan's crime changed my life.

MR. WILLIAMS: All the way down?

MS. MCCANN: Yes.

And Crystal Hall, you have that as well, viciously.

MR. WILLIAMS: Addressing Barbara Nunn, we accept the State's concession and the paragraph then said, we still think there is a problem in the first paragraph, she writes I was 38 years old when Gerhard Hojan forced me and my co-workers into a freezer, told us to get on our knees and shot me in the head while I tried to reason with him.

That goes to the characterization of the crime.

She already testified to that.

Second paragraph, she says the image of her bloody, lifeless body still haunts me.

THE COURT: Second paragraph?

MR. WILLIAMS: Yes.

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Then the second paragraph, the image of her bloody, lifeless body still haunts me.

That characterized the crime.

THE COURT: You're still in the first paragraph.

You're saying that Christina Delarosa was my friend.

There is where I see it.

MR. WILLIAMS: Right where it reads after that, about where the image of her bloody, lifeless body still haunts me.

Goes to the characterization of the crime and what she testified to on direct examination. Same with the stuff in the first paragraph.

MS. MCCANN: The State maintains the appropriateness of what is in that letter.

The first paragraph where she talks about I was 38 years old when Gerhard Hojan forced me and my co-workers into a freezer, told us to get on our knees and then shot me in the head while I tried to reason with him, those are the facts of the case.

Not a characterization. Those are facts.

There is nothing inappropriate having them

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in there.

The next paragraph, she talks about Christina Delarosa.

Her testimony is she recalls seeing Christina Delarosa in a defensive pose as Gerhard Hojan shot her.

That is victim impact that still haunts her.

There is nothing, nothing inappropriate about that.

She's the survivor of the three people herded into that freezer.

Yes, she has lingering after-effects as well she should. For her to express it still haunts her, there is nothing inappropriate about it.

She saw what happened to Christina Delarosa.

She didn't see what happened to Willie Absolu at the time he was murdered by the defendant.

She saw the after effect.

She doesn't talk about that.

She talks about what she saw.

Because she saw Christina defending

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herself.

There is nothing inappropriate about what is in there.

THE COURT: Isn't victim impact supposed to be directed to the uniqueness of the individual lost?

MS. MCCANN: And the resultant loss to the community and what they suffer. Certainly, there are two components to victim impact.

Christina Delarosa was special for the reasons Barbara Nunn stated in her letter.

Barbara Nunn also was a victim. A surviving victim. She has suffered from Christina Delarosa's death.

She suffers from it haunting her.

MR. WILLIAMS: I sympathize with Barbara Nunn.

Her post-traumatic stress is not the subject of what victim impact is about.

I'll leave it at that.

THE COURT: Want to know what I think?

MR. WILLIAMS: I'll leave my argument.

THE COURT: I understand.

Let's deal with Willie Absolu.

Let me deal with one aspect that you

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raised, preliminarily, before you actually went into the letters. When you say the orchestration. We have known, for quite some time, that last Friday was going to be our jury view and that today was going to be victim impact.

So if you want to say it is an orchestration, it is something we have known for quite a while for which there was no objection.

MR. WILLIAMS: We objected to the jury view all along.

THE COURT: I understand that.

I am not suggesting otherwise.

The reality is we would have done all of this earlier, probably in a morning and possibly an afternoon, but we were out of court, due to, you know, one of our lawyers being gone. And it had to be coordinated with the Waffle House itself as to an appropriate time that they could handle a jury view.

All of that wasn't an orchestration by Mr. Satz or the State. It is a reality that was done based upon circumstances.

MR. WILLIAMS: I don't believe there is

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anything in the record that indicated the Waffle House couldn't have done it last Thursday.

THE COURT: We all talked with Mr. Abrams.

We can put him under oath and say it in open court as he said it to each and every one of us when we were talking about the timing.

If you want, I mean if you contest that you did not know --

MR. WILLIAMS: I knew when we would do it. Nothing in the record as to why this date it was picked as to any other date.

THE COURT: You make right. May have talked about that ministerially, off the record. But Mr. Abrams is here.

He can be under oath.

He can reiterate what he said to all of us if that be your choice.

I mean it is now part of the record. No question.

MR. WILLIAMS: Let's move on. See where we're at and decide whether that is necessary.

I don't need Mr. Abrams under oath. Just need him to state what he says.

THE COURT: All right. With regard to the

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letter for Willie Absolu, all of that comes in.

MR. WILLIAMS: Okay.

MS. MCCANN: With regard to Kylie Akins, who did testify during the trial, when you go down to the third paragraph, starts her mom --

MS. MCCANN: Yes.

THE COURT: The sentence and Kylie, God Kylie, I don't think that should be mentioned to the jury.

MS. MCCANN: And Kylie, God Kylie.

THE COURT: Yes. And Kylie, period, god, comma, Kylie.

As to Kylie Delarosa, that's fine.

Langman is fine.

Barbara Nunn we have already dealt with.

The objection to the first two sentences or first two paragraphs, that's staying.

Theresa Delarosa, we have dealt with the viciously.

And the rest comes in.

I mean, you know, I am not a fan of victim impact during the course of the trial.

But the Supreme Court of both the United States and State of Florida indicated that it is admissible.

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What I would like to do, before Mr. Satz presents this, is give the jury instruction but in two respects.

Because I'll have to give it during final instructions anyway to the jury.

What I was thinking of doing is while the standard jury instruction says you have heard evidence, I was thinking that before we start, in order to truly point out that this is about the uniqueness of the individual and the loss to the community, that it be reason repeated twice but that you are about to hear about the impact of this homicide and where it says this evidence was, I would go with this evidence is, you know, put it so that it precedes and then, in the final arguments.

You know, I always have the same issue as it relates to how juries perceive this.

The more they hear that it is not to be considered, they will hear that instruction anyway, I would rather just do it before and an after.

Anybody have an issue with that?

MS. MCCANN: No.

MR. WILLIAMS: No.

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THE COURT: Why don't we go?

(Discussions held off the record.)

THE COURT: Also, I think I want to change one other word from the standard jury instruction, where it says however, you may not consider it.

I would like to say you shall not consider it.

MR. WILLIAMS: I ask the word must be substituted.

THE COURT: Wouldn't you rather have shall?

MR. WILLIAMS: No, you must not consider --

MS. MCCANN: I think the standards with regard to that language are sufficient. You're already giving them an instruction at the beginning of what they hear and how they should consider it.

THE COURT: I like my word better.

MR. WILLIAMS: The entire federal code is being modified to eliminate the word shall and substitute the word must.

THE COURT: That's nice.

Last I remember, I'm not a federal judge.

All right.

I'm ready.

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(Enter jurors.)

THE COURT: Good afternoon -- oh, it is still morning.

Two things.

First, have all of you that are going to vote voted?

Please don't leave it to election day itself because you will be in court that day.

And I can't tell you for what period of time.

Please, if you have mail-in ballots, I don't know the time frame.

I don't want anyone to be caught short. I am telling you a little better than a week in advance.

That's up to whomever is voting.

Want me to read it now?

Okay.

Now, you're about to hear evidence of the impact of this homicide on family, friends, community for both Mr. Absolu and Ms. Delarosa.

This evidence is presented to show the victim's uniqueness as an individual and the resultant loss by Mr. Absolu and Ms. Delarosa's death.

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However, you shall not consider this evidence as an aggravating circumstance.

Your decision to this Court must be based on the aggravating circumstances and mitigating circumstances about which you will be instructed at the end of this case.

At this point, Ms. McCann?

MS. MCCANN: Good morning.

Your Honor, the State would be introducing a letter by Ms. Barbara Nunn, as read by Ms. Lisa Lee Arnaude.

THE COURT: This doesn't have to be under oath.

MS. MCCANN: I don't think it needs to be.

THE COURT: Neither do I.

LETTER OF BARBARA NUNN

My name is Barbara Nunn. I was 38 years old when Gerhard Hojan forced me and my co-workers into a freezer, told us to get on our knees and shot me in the head while I tried to reason with him.

Christina Delarosa was my friend.

The image of her bloody, lifeless body still haunts me.

She worked so hard to provide for herself

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and her son. She was saving and looking forward to having a place of her own.

Willie Absolu was my friend, too. I really liked Willie. Willie was a great cook. He worked hard and worked a second job, cutting hair.

Willie had been cutting hair that day, before he worked his shift at Waffle House.

His wallet was probably fat.

Willie supported his family, and that commitment to support his family may have caused him to withhold his fat wallet from Hojan.

I feel very sorry for Willie's brother.

He took Willie's death very hard.

MS. MCCANN: Thank you.

THE COURT: Ms. McCann?

MS. MCCANN: The State would next be calling Mr. Dieumeme Absolu to the stand.

REPORTER: Can you spell your first name, please?

DIEUMEME ABSOLU: D-I-E-U-M-E-M-E.

My brother, Willie Absolu, was 28 years old when he was killed.

He came from Haiti two years before he died

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to be with his father and me.

He was working as a barber. When work got slow, he took a part-time job at the Waffle House to earn more money to support his family.

Willie's death was the worst thing that ever happened in my life.

Willie and I were always together. Now I can no longer see him.

I still call him on my phone and then realize what I'm doing.

(Witness breaks down and sobs.)

THE COURT: Steve, Steve?

Hang on.

Do you need a couple of minutes, sir?

DIEUMEME: Yeah, yeah, yeah.

THE COURT: Can we have send the jury out for a minute, please.

(Exit jurors.)

THE COURT: Mr. Absolu, take a deep, calming breath.

I know it is a very emotional time.

Would you like some water.

DIEUMEME ABSOLU: No, I'm good.

MR. WILLIAMS: We move for a mistrial.

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MR. POLAY: So the record is clear, when the jury was here and Mr. Absolu was reading his letter, not only was he crying, the record cannot substantiate this; so I ask to put on, say what happened.

He was almost like convulsing in front of the jury.

For that reason, that's the reason we are moving for a mistrial.

It is highly prejudicial.

MS. MCCANN: The State would or not. This is victim impact evidence. It is emotional.

Mr. Absolu's speaking about his brother.

To my vision, he was not convulsing.

He broke down a couple sentences into this.

Then this Court stopped the proceeding, and the jury was removed.

I like to ask Mr. Absolu, are you able to continue and, and be calm when you are reading it?

DIEUMEME ABSOLU: Yes.

MS. MCCANN: If you can, great. If not, we can ask someone else to read this. But if you can do this, I would prefer you do this.

Can you do this?

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DIEUMEME ABSOLU: Yes.

MR. WILLIAMS: We would prefer someone else read it.

THE COURT: I appreciate that very much.

Mr. Absolu has the absolute right to be here by Florida constitution.

And you have to figure, and this jury can understand, that an individual who loses a loved one might get rather emotional at the testimony.

Again, I think Ms. McCann stated it fairly well. Immediately when it was happening, the jury was sent out.

They will be advised again during final instructions that this is not aggravating circumstances to be considered.

And they will be further be instructed during the course of the instruction that sympathy cannot be considered in any way. Nor can bias or prejudice.

They will be, again, instructed.

Let's give it a shot.

MS. MCCANN: I would like the record to reflect Mr. Absolu is composed, calm, not crying.

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Are you ready to go forward, sir?

DIEUMEME ABSOLU: Yes,

THE COURT: Now, he's read interesting a handwritten?

DIEUMEME ABSOLU: Yes.

THE COURT: Does that totally correspond with what we have?

MS. MCCANN: There was nothing taken out of his letter. It does correspond.

He gave us the handwritten letter so I could read it and give it to the Defense.

THE COURT: I want to be sure nothing is added.

MS. MCCANN: Nothing added or deleted. It's the same thing.

Just for purposes of vision that we typed it.

THE COURT: That's fine.

All right, Steve.

(Enter jurors.)

THE COURT: All right?

MS. MCCANN: You're continuing?

DIEUMEME ABSOLU: My brother, Willie Absolu, was 28 years old when he was killed.

He came from Haiti two years before he died

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to be with his father and me.

He was working as a barber.

When work got slow, he took a part-time job at the Waffle House to earn more money to support his family.

Willie's death was the worst thing that ever happened in my life.

Willie and I were always together. Now I can no longer see him.

I still call him on my phone and then realize what I'm doing.

We used to talk three or four times a day, more than I talk to my girlfriend.

I could tell him anything. Secrets were locked away Willie. I cannot trust anyone now.

Willie and I were always together. I feel paralyzed without him. You can't take one foot from the other.

Willie was a good barber.

Everyone at the Waffle House liked him. He told stories and was always funny.

He did not care how old you were.

He could make you laugh.

Willie loved to talk to people. But music was his passion.

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He played the guitar when he wasn't working. He was always at church or with family.

Willie was creating new music. Music made us remember his death.

Everyone at his church found him to be unforgettable.

They remember him when certain songs are playing, and they cry.

They say that was Willie's song.

He was involved in a musical group at church and played during the services.

He went to church every Sunday.

We are a very close family.

Willie and I used to call our mother in Haiti together. Now she cries for him when I call her.

Willie used to send her money to help her life. Now this is my double responsibility.

Willie had two children. Jeffrey and Gimelda and their mother. Now this is my responsibility. His children are very young.

They will forget him. One day I'll have to explain to them how he died. It is hard.

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But I will have to.

My father has problems sleeping since Willie was killed.

He said that was his baby.

Because it has taken too much.

Willie was the youngest, but he was the one who always gave advice.

He knew the most about life.

He was always looking forward to see what is coming next.

If he got a dime, it wasn't his money. If you asked him, he would give it to you.

I am the oldest. I should have died first. But this pain will last for the rest of my life.

I'll never be the same.

MS. MCCANN: Thank you, Mr. Absolu.

(Witness excused.)

MS. MCCANN: The next witness is Ms. Theresa Delarosa.

THERESA DELAROSA:

THERESA DELAROSA: My name is Theresa Delarosa. And I would like to tell you about a very special person named Christina Delarosa.

Christina was technically my cousin but

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more like a sister to me. I love her dearly.

On March 11, 2002, her life was taken away.

Christina was the type of person who always tried to help everyone.

When we were little, we had regular weekend slumber parties.

We would stay up late and play games and try to make each other laugh and do girl talk. She loved to laugh. And I loved making her laugh.

When I couldn't think of anything else to say, I would say L is for laughing. And she would laugh and I'd keep saying it until her stomach hurt from laughing so much. I remember when we played I always wanted to be the boss or teacher. And my brother and other cousins would get mad at me because they wanted to be in charge. But not Christina. She knew how much it meant to me. And she just went along to make me happy.

I remember talking about our dreams. Christina always wanted to be a nurse so she could help people.

She also looked forward to having her own family one day.

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Everyone loved her, and she loved her family and friends.

Christina was a daughter.

Christina was a sister.

Christina was a granddaughter.

Christina was a cousin.

Christina was a niece.

Christina was a friend.

On September 12, 2001, she became a mother.

To her, her greatest achievement was her son Kyle. She loved and adored him.

She wanted to make a better life for her son and herself.

She got a job with the intention of providing for her son and saving some money so she could go back to school to become a nurse.

Even though she was 17 when she had Kyle, she was totally responsible. She did everything for her son.

She fed him, changed his diapers, washed his clothes, bathed him, entertained him; and when he was sleeping, she'd check to make sure he was breathing.

She loved him.

She was his mother and carried out all

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motherly duties with pride and enthusiasm.

Now there is a perfect little boy out there who won't remember what his mother's voice sounds like. He won't remember how his mother smells. He won't remember hearing his mother say I love you or how it felt when he was in his mother's arms.

He won't remember because he was only six months old when his mother was taken.

Kyle didn't have his mother there to walk him to his first day of school or when he learned to ride a bike or at his high school graduation.

Kyle won't have his mother at his wedding or have her see his children one day.

The Waffle House isn't the only thing that was robbed that day.

Me and my family were robbed of Christina.

Especially Kyle, because we had time to make memories with Christina.

There is not a day that goes by I don't think about Christina. Actually, family members say Christina and I resemble each other.

When I look in the mirror and see myself, I

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see Christina.

When I visit Christina's mother, I see how she sees some of Christina in me and all the pain and feelings come rushing out of her.

I also see how Christina's mothers remembers how she will never see her daughter alive again.

Christina's murder devastated her mother emotionally. She is not the same woman.

Her mother cannot handle being here today and reliving Christina's murder.

To this day, I cannot watch the news because until you actually lose someone tragically, you don't know how it feels. Not having Christina with me and my family is extremely painful.

I missed out on having my cousin, who's my best friend, share in my special moments throughout life.

I feel there is a piece of me missing and I'll never get it back.

MS. MCCANN: Thank you.

Do you recognize these?

THERESA DELAROSA: Yes.

MS. MCCANN: Can you identify them?

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THERESA DELAROSA: A picture of Christina holding her son.

Maybe a couple months old.

This is Christina, a school ID, going back to school.

She wanted to go back to school and become a nurse.

MS. MCCANN: Thank you.

Madam Court Reporter, with the Court's permission, State would like to mark this into evidence. Pre-marked as 3S.

THE COURT: Which corresponds to 97.

Ms. McCann?

MS. MCCANN: Thank you.

The next letter to be introduced was written by Kyle Delarosa.

It will be read by Mr. Carson Hancock.

KYLE DELAROSA

CARSON HANCOCK: Letter from Kyle Delarosa.

I lost my mom when I was six months old. My mom was taken from me when her life was taken away.

I was young when she was shot and killed. I have been growing up without my mother my whole life. It's been hard on me growing up

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without my mom.

I know that she was pretty because I have seen pictures of her.

I have been told that she loved me a lot and that she was really nice, too.

I have been living with my grandparents since I was six months old.

I still think about the person that killed my mother. The that man killed my mom because of a vehicle payment.

I was never told his name.

Growing up without my mother in my life has been hard.

Every day, people talk about my mom. And I just think about her and start to get upset.

MS. MCCANN: Thank you.

The next letter is from Ms. Shelly Langman.

It will be read by Ms. Lisa Lee Arnaude.

SHELLY LANGMAN

LISA ARNAUDE: My name is Shelly Langman.

And I am the grandmother of Christina's son, Kyle.

I knew Christina Delarosa very well the last few years of her life.

Christina was a very special girl.

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Christina went camping with my son Jason and our family for Thanksgiving.

We spent four days out in nature and doing all kinds of things in the park.

Christina was a nice person.

She was always a team player, had a great sense of humor and was a joy to have around.

Christina spent a lot of time at my house.

She loved to clean.

And we would go out to lunch and shopping.

I used to braid her beautiful hair.

Family was a big deal to her.

Christina was always thinking of her sister and brother and what they needed.

Even though she was still just a girl, Christina always held a job to help out at home.

When Christina had Kyle, the motherhood really came out.

Christina and I went shopping a lot, showing off Kyle and buying him whatever he needed.

Christina shared Kyle with our family and dropped him off at our house every night she

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had to work.

Christina was saving up so she, Kyle and my son, Jason, could get a place once she was 18.

After Christina was killed, it was a very difficult time. Our 2 youngest boys were close to Christina as well and still in grade school. So we really didn't know how to explain it to them.

To remember Christina, we found an angel wind chime.

My son Jason climbed the tree by her grave.

And we hung it there for her.

Christina was our angel.

So we found a pretty angel wind chime to make beautiful sounds when we were at her gave.

Not long after Christina was killed, Kyle came to live with us.

A couple years later, our family moved to Lake Placid, Florida. We would come down south and visit Christina's family and go to the grave with flowers.

I have always tried to take Kyle to the grave with flowers and have little talks to him about his mom.

Kyle started calling me mama.

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And I was heart-broken at first.

But Christina's mom, Vivian, said Christina would be happy that Kyle called me mama.

I have loved Kyle and made sure he has everything he needs.

There is a tender area in my hearts about her death.

When Kyle is ready, he can research all about her.

We would photo shop pictures of her and Jason with Kyle at different ages so he would know what she looked like.

It is still very hard to deal with her loss because when I look at Kyle, I see a beautiful picture of her in his face.

She is very much missed and will always be in our hearts and minds.

MS. MCCANN: Thank you.

The next letter is from Crystal Hall and be read by Lisa Arnaude.

CRYSTAL HALL

LISA ARNAUDE: My name is Crystal Hall. And I met Christina Delarosa years ago, when we were about 16 or 17. I remember when I met her thinking that her smile was so contagious.

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She loved life and loved her family. She did all she could to help her mom with her siblings.

She had big dreams for our small town, always talking of making a life, going to school and getting a better job than fast food, et cetera.

She was one of the most caring people I ever met, always helping everyone and anyone. And that's why we bonded.

In that sense, we were a lot alike.

I can remember when she found out about being pregnant, a little earlier than she planned.

But that wasn't going to stop her.

Just more of a reason to push harder.

Waffle House wasn't what she planned either. But it bought diapers and what she needed for her baby.

I remember giving her a ride home and laughing all the way home and her getting out and closing the fence, singing and giggling.

I have always stayed in touch with Shelly and Kyle and loved seeing him grow but hate that he does it without his mom there.

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He will never remember how she used to hold him and sing to him.

He also was deprived of a lot of things no kid should have taken.

I have since moved from the town where Christina was buried.

When I lived there, I used to visit her grave often, telling her that her son is loved and cared for well and how much we love and miss her every day.

There was always flowers and wind chimes left near here.

People who showed up always cleaned her headstone as a token of their love for her.

I know many many lives, including mine, have been touched by her; and we all miss her so much.

Thank you for listening to my story.

MS. MCCANN: Thank you.

The next letter was written by Kylie Akins.

KYLIE AKINS

KYLIE AKINS: I met Christina in 2001, shortly after 9/11, shortly after she gave birth to her son Kyle. We were 17 years old. And that is the same age her son is now.

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We were still kids.

We were still kids ourselves in most other people's eyes.

But Christina took her new role as a mom in stride.

And she would have moved mountains for that baby.

As far as she was concerned, he hung the moon.

Kyle was the reason for existence.

He was what grounded her.

Insurance tension.

He was the one that inspired her to work 12-hour shifts, to go back to school.

She loved that baby so much that she decided to go back to school to become a pediatric nurse.

I remember clear as day going to visit her at Waffle House during her shift to help her make flash cards and study.

You never know when it's the last time you will speak to someone. And the last time I spoke to Christina was Sunday evening.

She was planning on having a little party for Kyle, since he was turning six months

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old on Monday.

She picked up an extra overnight shift so she could get him presents and a cake.

Unfortunately, she didn't live to celebrate his first six-month birthday.

None of us knew we wouldn't see her again.

She would have been 34 years old this year, like me.

When you lose somebody, suddenly and unexpectedly, it hurts differently.

When you get to say good-bye, knowing that person is dying, it is a dull, throbbing, excruciating pain; and it's awful. But the suddenness of Christina's murder, it was sharper, like sudden, direct bursts of pain that come out of nowhere, like a lightening strike. That's what sudden loss is like.

Her mom, Vivian, she couldn't be here.

And it's unfair to ask her to relive this memory again.

No mom should ever have to bury their baby.

And Kylle never got to show his mother Christina, his first steps, his first laugh r to call her mama for the first time.

Kyle never had the chance to have his

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mother walk him into kindergarten on his first day, to hold him when he cried. And those moments were stolen from Kyle, from her mom and step dad, from her family and from her friends.

She was a light in this world.

She loved her life.

She appreciated her life to the point where she begged for it.

She it was a good person, an incredible mom.

And she deserved a chance to come home to Kyle.

MS. MCCANN: Thank you.

No other witnesses, Your Honor.

THE COURT: Steve, take the jury out.

(Exit jurors.)

MR. WILLIAMS: I'll ask for a mistrial. I'll continue with my statement of orchestration.

I'll agree with the Court, maybe the walk-through, physically, of the crime scene, could have only been done last Friday.

But this part could have been done last Thursday.

What we have had here, this young lady, the

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last lady to speak, she didn't have a constitutional right to be here.

She's not a family member. She is a friend. She is a friend. This orchestration, when I say orchestration, I mean that.

Look what happened.

Very last person to read the letter cried all the way through it.

That's not by accident. She was sitting out there, during all of the other presentations, and not a tear. Not a tear in her eye.

I watched her.

She gets up here, not up here for than ten seconds.

Start crying.

She just happens to be the last witness for the State. We have that compounded with Mr. Absolu's brother. His emotional breakdown.

This thing has been choreographed and juxtaposed, so Mr. Polay, after this emotional breakdown, has to give his opening statement. No time in between. Give his opening statement and begin to present our side of the case.

This thing is clearly orchestrated so this

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victim impact evidence, which is not an aggravating factor, becomes a feature of this trial, an emotional feature of this trial, compounded by they were selective on who they had read statements.

They could have had someone that wouldn't have been as emotional read the last witness' statement.

No, they puts her on.

She cried.

Let's talk about, then they put on a guy that looks like a GQ model to read Kyle's statement.

Put on Kelly Hancock's youngest son, who looks like he just stepped out of GQ to play the role of Kyle Delarosa. That's choreographed. Not by accident.

That was cleverly done so that they see the all American boy that looks like a GQ model, playing the role of Kyle Delarosa.

The totality of all of that, in our opinion, equals a mistrial.

MS. MCCANN: It is an outrageous insult to accuse Kylie Akins of fabricating her emotions and tears.

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It was not a play. It was not a joke. It was sincere emotion.

If this Court recalls, and the record will reflect it, there was a conversation about two weeks ago about when we would have the jury view and when the State would present victim impact.

The conversation went like this, that victim impact is not an aggravating factor.

Therefore, it goes at the end of the State's case.

The end of the State's case was the jury view.

We talked about it on the record. The Defense didn't object then.

Didn't object last week.

We had our jury view on Friday.

They knew the victim impact was today.

They don't like how it came out.

They don't like the emotion in this case.

They don't like the fact we are here for a resentencing on a double murder.

Their motions for a mistrial are an insult and should be denied.

MR. WILLIAMS: I never suggested this young

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woman's tears were fabrication.

She it was put on last.

She's the one that broke down.

She didn't break down, listening to everybody else.

That's a fact.

When she became emotional when she came on the stand, yes. They could have had someone else read her statement.

Take the emotion out of this thing, let it play out the way it is supposed to, which is not sympathy.

THE COURT: The jury will be instructed with regard to the issue of sympathy.

MR. WILLIAMS: They will unring that bell like this victim impact evidence bell?

THE COURT: I think you have less faith in the jury than I do.

I think the jurors are very adept at being able to understand what is being presented, what their responsibilities are.

Yes.

Victim impact is permitted.

The mere fact that our last witness, Ms. Akins, was a little bit emotional, she

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wasn't hysterical. And the fact that she wasn't related, because you said she wasn't a victim --

MR. WILLIAMS: Wasn't related.

No constitutional right.

THE COURT: She wasn't related.

Anyone can talk about the uniqueness of the loss to the community, how it effects them.

You don't have to have a constitutional right to be able to do that.

MR. WILLIAMS: My comment was made in response to your earlier comment, when I asked somebody read Mr. Absollu's statement to take the emotion out because he had broken down.

You made the comment that he has a constitutional right to be here.

I wanted to make sure this record is clear, the second person that broke down did not have a constitutional right to be here and someone could have substituted for her to avoid the emotional issue.

THE COURT: I don't think there is a comparison between Mr. Absolu and the way in which they approached it.

Ms. Akins was able to get

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through it.

She didn't stop.

She didn't ask for tissues, I don't believe.

And she just went through it. Is it emotional? Sure.

Will the jury look at it? Sure.

You're right.

They heard it.

The reality is that they hear what they hear.

They will be instructed as the law requires.

They were instructed prior to any victim impact, which is not required under the law. So that they get the full impact that it is not admissible.

The motions for mistrial are denied.

MS. MCCANN: I want the record to be clear about this, that the Defense was objecting when we had someone read Kyle Delarosa's testimony.

They didn't like the way he looked because he was an attractive and well-groomed person.

Then they object when we have live testimony because that person is emotional

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because she was a friend of Christina's.

They want it both ways.

They don't want any victim impact.

So they will hang an argument on anything they can.

All of this testimony by these witnesses was proper.

It was an unemotional as it could be, given the circumstances of the murders committed by this defendant, Your Honor.

THE COURT: The reality is if the jury comes back with a recommendation or decision with respect to death, argue it in front of the Supreme Court, if necessary.

(Recess had.)

THE COURT: Half the jurors are in the bathroom, for a break.

I'm going to send the jury to lunch.

Have them back at 1:15.

(Lunch recess had.)

(Afternoon session begins.)

THE COURT: Okay. The jury is back.

I'll bring them in.

And we'll start.

MR. SATZ: Mitch, don't you want to talk

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about --

THE COURT: Hold on.

MR. POLAY: I can do it afterwards.

MR. SATZ: Fine with me.

MR. WILLIAMS: Let's get the openings out of the way.

THE COURT: Once we open, I don't want to send the jury back again.

MR. POLAY: Here is, the objection Mr. Satz has is pertaining to the letter, the letter from Dr. Gupta.

Let me read the letter into evidence.

It is from his urologist.

To whom it may concern, Mr. Gerhard Hojan is a 43-year-old male, diagnosed with bladder cancer --

MR. SATZ: Want to just read it the way --

MR. POLAY: -- who was diagnosed with bladder cancer with a different urologist.

Patient reports being treated with BCG in our office cystoscopy and sitology were negative on 6-18-18. Subsequently, 9-4-18, surveillance -- oh my gosh, cystoscopy was performed. And it revealed an E-R-Y-T-H-E-M-A-T-O-U-S area.

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This needs to be followed up in three months with cystoscopy, again, since this may represent recurrent bladder cancer. That's from Dr. Gupta.

MR. SATZ: my objection, it's hearsay. It is a letter.

He's not the original diagnosing doctor. It is a single page.

I don't have any objection.

That's why I tried to get all of the hospital records.

When was it diagnosed. What was done with it. It is in remission. This new thing could be a recurrence.

Or it could be, you know, something where the veins come together and they have to look at it again.

Just putting that letter in, without the opportunity to cross-examine it, is hearsay.

I don't, if he wants to introduce all of the records dealing with the diagnosis and treatment, I don't have any problem with that.

MR. WILLIAMS: Except we don't have the records.

He knows it. Otherwise, he would have it.

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THE COURT: You can put this in tomorrow, couldn't you, if you were going to do it? You're not finishing today.

MR. POLAY: No. I'm not. My position is this: Hearsay is admissible. There is a letter from a doctor. I can call my investigator, saying she went to the doctor's office and got it from the doctor, if that's what they want.

THE COURT: Has this doctor done anything?

MR. POLAY: Yes, he's been treated.

MR. SATZ: No.

He just did the cystoscopy. Did one in June. He recommended one in three months.

MR. POLAY: No, he also did one in September as well. In his opinion, it's recurring.

MR. SATZ: That's not what it said.

MR. POLAY: Well, I am reading the letter, Mr. Satz.

MR. SATZ: You're misinterpreting the letter.

MR. WILLIAMS: June showed nothing. September showed possible. Wants it tested.

MR. SATZ: Right.

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THE COURT: Nothing wrong with that. The doctor actually did that.

MR. POLAY: And he did have bladder cancer. He's being treated for bladder cancer. That's what he's being treated for. That's what the letter says.

MR. SATZ: No. That's not what the letter says. It leaves it open it is recurring when it may not be reoccurring.

I can't cross examine a letter.

Because his investigator went to the doctor's office isn't the proper predicate.

If he wants to introduce all of the hospital records, you know, when the cancer was, at what grade it was. That it was in remission and, you know, this note is in the hospital records.

MR. POLAY: In addition, Mr. Satz objected to the admissibility of another record. This is from Armore Correctional Services, from 7-3-18. What I intended to introduce, HX, history of bladder cancer. Follow up with that word.

MR. SATZ: I don't have a problem if it is in conjunction with all of the hospital

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records.

It is misleading.

You can't cherry-pick records and what you want to introduce.

MR. WILLIAMS: Judge, then we move for a continuance and an order from this Court to order the Department of Corrections to provide us the medical records so we can put them in.

THE COURT: Who is the doctor that diagnosed him?

MR. POLAY: That was from the prison.

GERHARD HOJAN: Abrahmson.

MR. POLAY: At death row.

THE COURT: You couldn't get that record?

MR. POLAY: Not yet.

This is the bottom line. He has bladder cancer.

Being treated. Went into remission. Back. Went into remission.

Back.

That's what the letter is saying.

I don't know how it is misquoting something. Possible reoccurrence.

MR. SATZ: it is misleading because we both interpret it differently.

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The fact it will be retested it may be here don't mean it is.

MR. WILLIAMS: We are not saying it is. We are staying he will be re-tested.

MR. SATZ: Say what you want.

Let me know when I can talk.

MR. WILLIAMS: I'll get it.

MR. SATZ: I understand what you're doing.

I think it is misleading.

When was it diagnosed.

What grade cancer was it.

What were they doing for it.

If you want to put in there was cystoscopy and there may be a recurrence, but you're leaving it up to them.

They don't know what BCG treatment is.

Do you know what it is?

MR. POLAY: Well --

MR. SATZ: No, you don't. What it is, they test your blood and your urine and they put something in it. I am not an expert in it.

I mean I think you have to, if you put something in, you can't be misleading.

I don't have a problem your putting in records he was diagnosed with bladder cancer,

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when it was. That they had been treating it. They did this test now eight years later. What grade the cancer was.

It was negative, negative.

Now there may be something that may, they indicated may or may not come back, I don't have a problem with that. That's a fact.

Just these two records, cherry-picked, I think it is misleading .

THE COURT: Can't we work out a stipulation that incorporates it and takes care of this?

MR. SATZ: Okay.

MR. POLAY: Judge, I still disagree with Mr. Satz, respectfully.

This is the doctor that has done the testing on Mr. Hojan. This is his findings.

MR. SATZ: with all due respect, you know, I have a great deal of respect. I know these guys do their job very well.

They could have gotten these hospital records a long time ago.

MR. POLAY: Judge, I'm giving you a record where it says he has bladder cancer, has a history of bladder cancer.

MR. SATZ: what type of bladder cancer?

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MR. POLAY: Judge, this isn't medical school. I'm presenting mitigation to show he's being treated for bladder cancer.

Gone from remission to possibly back.

This isn't a civil trial.

We're dealing with mitigation, Your Honor.

MR. SATZ: If he wants to put in a statement in what year he was diagnosed with bladder cancer, what grade of cancer it was, and it was in remission and there is a possibility, you know, it may come back, that I don't have a problem with.

This is misleading.

I don't want the jury to think his cancer came back and it just occurred.

MR. POLAY: That's what the doctor said.

Looks like a reoccurrence.

MR. SATZ: Could be. Could be.

MR. POLAY: Which means that the test, that was done in September, which is approximately six weeks ago, indicated to this doctor it looks like levels are off and it may be back.

The problem that I have, Your Honor, is that this is October 30th.

He's not going back for another scope --

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THE COURT: Until the end of the year.

MR. POLAY: Yes.

MR. SATZ: That letter is misleading without the history.

If they want to introduce records, I don't have any objection, as long as the records are complete.

It doesn't say when it was diagnosed, what treatment he has been having.

And that's what, I think, what I think you have to do. Because they haven't done it doesn't mean you can take a shortcut.

MR. POLAY: Well, I take offense to that in one respect.

THE COURT: Can I ask a question?

MR. POLAY: Sure.

THE COURT: Is this something we can deal with tomorrow?

MR. WILLIAMS: Yes.

MR. POLAY: Yes, we can deal with it tomorrow.

During my opening, I want to mention something about being treated for bladder cancer.

MR. SATZ: I think you can say what year he

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was diagnosed.

MR. POLAY: And still being treated.

MR. SATZ: Yes. Didn't happen right now. He's been treated. Been diagnosed with it.

MR. POLAY: I won't say it is in remission. It may be back.

THE COURT: Well, it is still in remission at the moment.

MR. POLAY: No, it's not.

THE COURT: It is a possibility.

MR. POLAY: Right. All I want to say is he has a history of bladder cancer, being treated for it. That's all we know.

That's the truth.

MR. WILLIAMS: Reoccurring history of bladder cancer.

MR. SATZ: As long as you say when it was. What year was. That it wasn't three, six, ten months ago.

THE COURT: You have the ability to do that, don't you, Mitch?

MR. SATZ: Can ask the defendant?

MR. WILLIAMS: We will sit down with the defendant. Sounds like a endocrine form of the answer.

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I know the testing we're talking about.

I had it.

You are saying a 24-hour urine sample. I did that for five years.

THE COURT: Let's bring them in.

(Enter jurors.)

THE COURT: Mr. Polay?

MR. POLAY: May it please the Court, counsel.

Good afternoon, everyone.

JURORS: Good afternoon.

MR. POLAY: Once again, I'm Mitch Polay. Along with H. Dohn Williams, we have the privilege of representing Mr. Hojan.

First, I want to, what I really want to do, this is called my opening statement.

First I want to thank each and every one of you for the attention and work you have given.

Really what I want to say is that this is the point in time I'll ask you to pay particular attention to things that actually come from the stand at this particular juncture and any evidence.

The reason I'm asking you to pay extra close attention is that it comes down to like

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the most important decision you can actually make.

Each and every one of you, literally, hold a life in your hands.

I am not sure if everyone remembers, but during the voir dire process, doing the selection, I was saying to everyone, well, in effect, you have the power of the ancient Romans, the emperors and the pharaohs.

That's what you do, what you possess, what you have.

So I want to go down the road, show you why life is a fairer sentence in this particular case.

Again, life means life.

Certain people, during the course of the voir dire, whether indicating, well, I heard you get out.

No.

You die in prison.

That's the choice.

It is either death by lethal injection, or you die in prison.

Those are the choices. That's what we are dealing with here.

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No release.

No parole system.

I want to make sure everyone knows that.

The State wants my client to die.

I want to show you why he doesn't deserve the ultimate penalty. Why?

He's not the most vile, most sinister murderer that exists, not a monster.

This is not the most aggravated and least mitigated of homicides.

What I want to do, basically, is educate you on certain things.

I think each and every one of you have a right to know a bit about him. If you're asked to take a life, you should know a bit about the life you are asked to take.

That's my job.

I want to educate you on his life, show you about his life, influences on his life, things that happened.

We will go over those.

Again, I want to go over a few aspects of the law I think are important.

Everyone here votes individually.

It is not like during the guilt phase,

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where you have to have an unanimous verdict. It is an individual verdict.

You vote with your own moral compass.

You decide.

You don't have to a agree with your neighbor, the person sitting to the left or right.

You make your own judgment on the own weight you give each aspect of the case.

Everyone understand that?

That's what we are doing.

That's what it is.

Again, mitigating circumstances just, basically, have to be shown to exist.

Aggravating factors have to be proven beyond a reasonable doubt.

Again, if it is permissible, you will hear the Judge instruct you that one mitigator can outweigh ten aggravators, because it is an individual weighing process.

Your own moral compass, weight of both, that's what you do.

If you feel like it is a proper sentence, one person, it is life. That's how it works.

The Judge will give you an instruction if

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the aggravators outweigh the mitigators, you can sentence to life.

That is acceptable.

No other juror can compel you one way or another how to vote, how you feel.

Not saying if you want death or life.

I'm saying it is you.

That's what I'm saying.

You make this decision from the evidence you heard and the laws and your common sense.

What I'll do is really is ask each and every one of you to keep an open mind as I go through this road map.

The courtroom is not a place for vengeance.

It is not.

This is where the law is held.

This is the place where you determine what a proper sentence is. It is not supposed to come from vengeance.

It is supposed to come from the thought process.

First thing I want to talk about is the aggravators.

What I intend to show, if you remember, Mr. Satz was talking about CCP. Cold,

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calculated and premeditated.

What I intend to show you is that what happened at the Waffle House was less than a plan. It was more like a reaction to what happened.

If you remember, Mr. Williams, during his cross-examination of the medical examiner, from Willie Absolu, said there was a defensive wound, if you remember.

Mr. Hojan, in his statement, said that Willie went to him. Went to grab him. And the gun went off.

Hence, it was a reaction.

Not a plan.

Going back and forth, if you remember from his statement, he said I left. I am talking to Jimmy. I left. I am talking to Jimmy.

Shows panic.

Shows a mind set they are not sure what to do.

He's influenced by Mr. Mickel.

This is what I intend to show from the testimony.

If you think about it, even in his statement, what does he say? Jimmy said there

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can't be witnesses.

It was a reaction.

It wasn't thought out.

Something horrific happened. Yes.

But it wasn't something planned for ages, weeks or months.

You can see, from how he would leave the freezer, then go and then come back. Go and then come back.

If this was a well thought-out plan, CCP -- heinous, atrocious and cruel and everything else -- what you would have seen is a killing right away.

Boom. Boom. Boom. See you.

Not somebody analyzing what we should do. What has to be done. What shouldn't be done.

In effect, reaction versus planning.

The State is also going to say, well, another aggravator is a previous or contemporaneous felony.

I want to make sure that everyone here knows that that is not from another event. Not talking about violence in the past.

Talking about the conviction for one equals a contemporaneous conviction for the other.

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I hope everyone understands that.

Not talking about things that happened before.

Things that happened during the course of the same crime.

That's what the law is.

It is not in any way, shape, form, any violence that happened before.

I intend to show you Chip was a follower, aiming to please Jimmy Mickel.

I'll get into this with Ms. Family. You will understand why.

Remember in the statement? Jimmy said this. Jimmy said that.

He was a follower.

If you remember the testimony from Barbara Nunn, she said Jimmy was the brains.

He was too stupid.

That's the way she explained it.

End quote.

Well, for some reason, and you will see, when I bring forth the testimony from his life, he aimed to please people.

People liked him.

Always tried to please people.

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This is an anomaly, this case.

Every time the freezer door shut, he goes to Jimmy.

Now, I want to make sure everyone understands one thing.

I am not making an excuse, in any way, shape or form for what happened.

We are not here, making an excuse.

Mr. Hojan is not making an excuse.

What we intend to do with mitigation is explain why we are here.

It is an explanation. Not an excuse.

Big difference.

I want you to examine portions of his life to understand a bit about him.

Him.

That's really what I want each and every one of you to do.

It is just a significant way to explain why things happened.

It is not an excuse.

It is a reason -- you know, it is interesting. I intend now to give you a road map, a Reader's Digest version of his life, if you will.

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All we have heard about is this offense.

Yes, it is terrible.

There is no doubt about it.

But I want to show there is more to his life than these ten minutes.

Because we are sitting here, all of this time, and judging someone on ten minutes of time.

So I want to talk to you a bit about his life, his character, the things he has done. Things that, quite frankly, he didn't do.

First I'll start off with when he committed this crime, he was 26 years' old.

I'm also going to tell you there is no prior criminal history. None. This is an anomaly.

This is his first brush.

Yes, can't get any bigger.

But this is an anomaly.

He was working.

Always working.

Always working.

Always had a job.

You will discover he's a father of two, two children.

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One is 23 now. One is 22.

You will hear from Corey, his oldest son. He's 23.

You will hear from Corey he has constant contact with his father, visits his father.

You will hear more about the advice my client gives his son about not messing up, not making the mistakes he did. That he's sorry for what he did. Sorry about not providing the way he's supposed to. Not being the father he's supposed to.

Above all, you will hear he's remorseful for everyone else, the victims in this case.

You will hear that.

You will hear he's the father of a daughter who is 22, who has autism. She's non-verbal. I can't put her on the stand. I can't do that.

You will hear from his mom. His dad passed. His mom was Jamaican. Pauline. She met his dad, Gerhard, Sr., who is from Germany.

My client is biracial. His dad is German. Mom is Jamaican.

Whenever he was born, you will hear that his dad was married to another woman. Eventually, Gerhard, Chip, junior, who was born

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in the United States. US citizen. You will hear dad was not acceptant, at any time, of Mr. Hojan. You will hear that.

He felt, before this incident, that Chip was a disappointment.

A disappointment.

And he was verbally abusive. Emotionally abusive.

Called him fat. Told him he won't amount to anything.

Over and over again.

You will hear Junior witnessed emotional abuse to his mom. Physical abuse to his mom. That this man, Gerhard, Sr., was very very very controlling. Told people what to wear, what to do, how to do it or to do it, if they should do it.

That's how it was.

You will see a pattern that my client was constantly sent away from his home. His dad didn't want him around.

What happened is Pauline acquiesced.

She knew that Senior wanted her attention only.

He became a disruptive force in their life

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because the attention was away from daddy.

You will hear this: After he's born, his parents come back to the Keys. They have a small hotel there. In Marathon.

People know Marathon. It is not very big.

But Chip -- this is during his formative years, from like two to five -- is sent to live away, with a woman. And mom would see him on Tuesdays.

This is during the few years of his life.

Dad wanted it that way. That's how it was.

He lived with an Aunty Green, miles away.

He would see his mom on Tuesdays, if allowed. Get a couple hours with his mom.

Then you will hear a few years later, they moved back to Jamaica. His parents had a small hotel there.

Again, they sent Chip away, to live three hours away, some other place.

Chip eventually comes back.

Hence, it is a pattern. Comes back a little while.

Then he's sent away, overseas, to Gerhard, Sr.'s family in Germany, for like a year.

He's homesick. Begs to come back. He's

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around ten.

Eventually, he comes back.

You will hear around this age, when he came back to his dad, he's disciplined. He's hit with straps, with bamboo sticks, berated about his weight. Called stupid.

This went on and on and on.

Eventually, you will hear when he's about 14, he comes back to Jamaica. Lives with his parents full time.

His parents, at this time, owned some type of processing plant in Jamaica.

They sent him back to the States.

So he's 15 years old. Not spending much time with his parents.

When he's 15, his parents have a place in Broward County. North Miami Beach.

His Uncle Patrick, who you will hear testify, was supposed to be watching him.

15 years old.

Uncle Patrick has a life, too. Has to work on cruise ships. He's here for a three-year period. Patrick was there part of a school year.

And he's on his own.

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You will hear Chip didn't finish high school because what happened was he gets into a car accident. There is nobody there to drive him. Before Uber and things of that nature.

He doesn't complete school. In an accident. Can't operate the car because he's alone.

Does he have some family here? Yes. I won't way he doesn't. His cousin. His uncle. This is kind of where he gets a bit of life.

You will hear about things from his uncle. Things from his cousins.

You will hear positive influences Chip had on his cousins' life. He is there, giving them support. Telling them, you know, do well in school, things of this nature.

This is when he's like 16, 17. One cousin, Crystal, you will hear she was being bullied at school. She's afraid to go to school. Chip would take her to school, make sure she's okay. Pick her up. The uncle was working. He would volunteer his time and help family members.

You will hear that one thing recurrent from the family members, you will hear Chip was always upset about the fact his dad never

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accepted him.

He always wanted to be accepted. Always trying to placate him, please people. He always wanted his dad's affection and never got it.

That's one recurrent theme. Always looking for that father figure.

Looked at Uncle Patrick as a father figure. His cousin, older cousin, a relative of his mom. Much older, Charles. You will hear him testify. You will hear he always wanted to help. Always wanted to help.

I am not saying this is an excuse in any way, shape or form. I just want you to understand the life my client had and what went on in his life.

You will hear he was well liked.

He was nice to his family members.

And helpful.

You also will hear something interesting. During his incarceration, quite sometime now, he stayed in contact with his family. Monthly visits. Mom, you will hear, with the kids, come every month. They visit him. He talks to his kid. Gives his kid advice. Gives Brandy

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advice, the one with autism. She's non-verbal. You will hear she lights up when she has contact, hears his voice or sees him.

You will hear from some of his cousins that speak to him on the phone. He gives them advice.

Things of that nature.

Been a positive influence.

Again, you will hear he worked.

Was, in fact, married.

Wound up getting divorced. Found out his wife was cheating. Married him for papers, to get immigration status.

He has been in his kids' life.

You will hear things weren't great economically for him.

He's moving about. His mom wound up taking care of the kids for a while.

Again, Chip always had contact and contributed to the kids' welfare.

Moves in with Jimmy Mickel, you will hear, in 2000.

Next thing you know, he's working, doing security work. Working. Sells storage lockers. He would buy them at auction.

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Several products.

He was always doing work. Always gainfully employed.

You will hear about before the event.

I will tell you about after the events.

I want to show you why he's a good candidate for, to remain in prison the rest of his life.

During the course of his prison sentence here, it's 2018, you go back to 2002, all of that time, 16 some-odd years now, he has never received one disciplinary report.

In other words, his behavior has been good. Not one.

While he was incarcerated, he obtained his GED.

Not one disciplinary problem. Not one problem during his incarceration.

Under the circumstances, you will hear he tried to be the best father he can.

Let's face it, you can't be the best dad. You're in jail. He's trying. Something he's not giving up.

Giving advice to his cousins and his kids.

He's there the best he can be.

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You will hear that in 2015, he was diagnosed with bladder cancer, which he is still being treated with, being treated as of today.

Additionally, from the evidence, again, if you remember from the testimony from the State's side, they were talking about how it was on the news. You will hear Chip was turning himself in, to the police station.

I think you got the gist of that when I was cross-examining some of the officers from Lee County.

That's what he was doing.

He also gives a full statement. Doesn't have to.

Cooperated with the police.

Told you his involvement.

Didn't deny it.

Additionally, by his actions, by his own words, he showed remorse.

If you listen to his statement, you actually hear him cry.

What the heck did I do? This is out of character.

I intend to show this is an aberration. An

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anomaly.

Something not expected from him.

All I will do, really, is ask to you pay attention.

You have make that informed decision.

You determine what weighs heavily with you, what doesn't weigh heavily with you. You have to make that determination.

But I want you to listen carefully to the evidence I'll put forth, Mr. Williams puts forth.

We'll humbly ask you to save his life.

That's really what we will ask you to do.

We're going to try to show you or intend to show you, I think the evidence will show you he's not the most vile, evil, uncaring person worthy of the ultimate penalty. What I'll tell you is he is not a monster.

You will hear he is not a monster.

There is more to his life than these ten minutes.

We spent hours upon hours upon hours about this ten-minute period.

There is more to his life than simply these ten minutes.

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Nobody wants to be judged on their worst day or worst moment.

We respectfully and graciously ask you spare his life.

I ask you to pay attention to the testimony that comes from the stand and understand where it is coming from.

If there is some emotion from witnesses, I ask you to understand why.

With that, thank you.

THE COURT: Ready to call a witness?

MR. POLAY: Yes, sir.

Corey Hojan.

COREY HOJAN,

being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Corey Arthur Shafter Hojan, H-O-J-A-N.

DIRECT EXAMINATION

BY MR. POLAY

Q. Good afternoon.

Can you tell the ladies and gentlemen of

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the jury who you are?

A. I am Gerhard Hojan's son.

Q. Can you tell them how old your?

A. 23.

Q. Can you tell them what you do for a living?

A. I work at the Daily Sun Newspaper, for the print.

Q. Can you tell the ladies and gentlemen of the jury how old you were when this event took place?

A. I was six years old at the time.

Q. This gentleman right here, this is your dad?

A. Yes.

Q. Can you tell the ladies and gentlemen of the jury where you were born?

A. I was born in Miami, Florida.

Q. And who is your mom?

A. Barbara Ann Holgate.

Q. The first few years of your life, can you tell us where you lived?

A. As far as I can recall, the first few years of my life, we lived in, what was it? Waterway Hotels.

Q. That was owned by your grandparents?

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A. Yes.
Q. Did you live with your dad?
A. Yes, I lived with my father, mother and I believe grandparents at the time.
Q. Do you have any siblings?
A. Yes, I have a sister, Brandy Hojan.
She's 22 now.
Q. Anything special about her?
A. Yes, she has autism.
Q. She's non-verbal?
A. Not completely. If given time, it will take time to understand what she says.
She tries to communicate.
Q. You understand her?
A. Yes.
Q. I'm showing you Defense C.
Recognize that?
A. Yes.
That's my sister.
Q. Who is the handsome young kid right next to her?
A. That's me.
That was one of our trips down in Jamaica.
Q. Does this fairly and accurately depict what you guys looked like then?

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A. I believe so.
Q. You believe? Is that yes or no?
A. Yes.
MR. POLAY: I would like to move C in as Defense 1?
THE COURT: What is marked as Defense C for identification will come in as Defense 1.
BY MR. POLAY:
Q. I'll show you what is marked as Defense N. Do you recognize that?
A. Yes, that's my birth certificate.
MR. POLAY: Judge, I would like to, at this time, move Defense N in as Defense 2.
THE COURT: N will come in as 2 for the Defense.
BY MR. POLAY:
Q. Showing you what is marked as, I think that's G. Showing you what is marked as G, Defense E and F. Do you recognize those pictures?
A. Yes, I do. This was back in the Waterway Hotel.
Q. Fairly and accurately depict how, what you looked like at that age?
A. Yes, they do.
MR. POLAY: At this time, I would like to

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move E, F and G.

THE COURT: E, F and G will come in as 3, 4 and 5.

BY MR. POLAY:

Q. It has been about 16 years since the event took place?

A. Yes.

Q. Let's start with your dad. Do you communicate with your father?

A. Yes, do.

Q. Can you tell us how you communicate with your dad?

A. Whenever we are not visiting, I would receive letters from him.

When we do visit, it would be a family conversation, kind of conversation, continual conversation between father and son.

Q. Can you tell us for how long you have been visiting your dad?

A. Since 2006.

Q. That's when -- why was it 2006? That's when you were old enough to visit him?

A. I am not sure.

Q. In 2006, how old were you?

A. Eleven.

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Q. Can you tell them, starting in 2006, how often you actually visited your dad?

A. Most commonly visited once a month.

Q. Can you tell the ladies and gentlemen of the jury who would go, visit your dad?

A. For the most part, my grandmother, my sister and myself.

Certain occasions, my grandfather would join as well.

Q. What about your sister?

A. What about her?

Q. Did she visit as well?

A. Yes. There would be myself, my mother and my sister.

Q. You did say that.

A. Yes.

Q. It is a different type of relationship you have with your father because he's incarcerated?

A. Yes.

Q. Can you tell the ladies and gentlemen of the jury what you speak about with your dad?

A. Usually we would recap on current events. Events that happened in the family. Well, I go through on the progress my sister has with her speech.

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Q. When you meet with your dad or speak with your father, do you get any type of advice?

A. Yes.

Q. I need you to tell the ladies and gentlemen what type of advice you get?

A. Usually not make the same mistakes he did in his youth.

Don't just wait for an opportunity to come by.

If you want something, you have to work for it. Go for it.

As far as I know, those were the two bits of advice that stood out the most to me.

Q. For how long have you been getting advice from your dad?

A. Every visit.

Q. Could you tell the ladies and gentlemen of the jury if this advice has helped you in your life?

A. It has.

Q. Can you tell them now?

A. Now, I am trying to get into college.

Due to some complications, I have to find other ways to work around it.

Now I can wait until I'm the age of 24, I'll be labeled as independent. For the time being,

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I'm saving up, which is why I am working at the job I'm currently in now.

Q. Do you talk to your dad about life problems?

A. Yes.

Q. Can you tell the ladies and gentlemen of the jury how that has helped or hasn't helped? Tell them the effect this advice has on you?

A. Well, I haven't really been close to my mother.

That's pretty much the main problem I have.

Of course, he tells me that I shouldn't let that drag me down.

Whatever I do, I try to leave what happened in the past. And strive forward.

Even then, there are times when I think back, in past experiences, I can still feel it holding me back. I think of what my father tells me. And it is enough to keep me moving forward and do what I can to make sure I can at least make my father proud.

Q. Your mom is not incarcerated?

A. Correct.

Q. Can you tell us with whom you have a closer relationship with? Your dad or your mom?

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A. My father.
Q. Your dad is the one you rely upon for advice?
A. Yes.
Q. I'll show you what has been marked as Defense D.
Do you recognize this?
A. Yes. That's myself, my sister and my father.
Q. Are you visiting him there?
A. Yes.
MR. POLAY: Judge, what is marked as Defense D --
THE COURT: D will be 6.
BY MR. POLAY:
Q. I just want to go back a bit and talk about your sister, Brandy?
A. You have indicated that she suffers from, she has autism.
A. Yes.
Q. Can you tell us how Brandy reacts to your dad when she sees him?
A. Well, her mood was always at its best when she would see my father.
I mean he brings out, when she's around my

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father, she would, in a way, come out of her shell. Most of our life, we have been introverts.

He brings out the better part of us.

He would do what he can to make conversation with her. Try to get her to speak more. Encourage her.

Q. Does he do this on the phone as well?

A. Yes.

Q. You're 23 now?

A. Correct.

Q. Let's talk about some visit you had with your dad, some communications you had with your dad.

Have you spoken about the event, the reason we're here?

A. Not often.

Q. But you have?

A. Yes.

Q. I want you to tell the ladies and gentlemen of the jury what you have spoken to your dad about?

A. Well, the few times I asked him would be, uhm, what was it that brought him into that circumstance. Of course, didn't really get a clear answer.

But I know he was ashamed of what happened. It was just he never did what he did.

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Q. You mean he never did something before?
A. Right.
Q. Did he ever express anything to you about the event?
A. No.
Q. How about its effect on people?
A. Only a few that I can recall.
Q. Well, you have read about this event?
A. Yes.
Q. In fact, tell the ladies and gentlemen of the jury about what you thought recently?
I shouldn't say recently. That you thought about in the past?
A. Well, the, I mean about the situation itself?
Q. Well, you did some research recently?
A. Oh, yes. Uhm, well, when I am learned about the six-month-year-old child of one of the victims, I was actually concerned, thinking where is he today. And if I can meet him, I would do what I can to console him and apologize for what happened.
Q. And you expressed this with your dad, did you not?
A. Yes.
Q. Can you tell us what your dad said about

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this, about its effect?

A. I can't really recall what happened. It was something I tried blocking out.

Q. You have had conversations were your dad about victims and their families, right?

A. Right.

Q. Can you tell them what was said?

A. Well, I was thinking about how did the boy grow up? Did he have any memory of his mother at that age?

Q. You discussed this with your father?

A. Not often.

Q. I understand not often. But that means yes?

A. Yes.

Q. Do you remember your dad's responses?

A. No.

Q. Did you talk to your dad about the victims in this case?

A. No.

Q. Has he given you advice about the offense he committed?

A. No.

Q. He never said anything about that?

A. No.

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Q. Have you spoken with your dad about the effects on you?

A. Yes.

Q. Why don't you tell us what he spoke about?

A. Well, back to the college situation, my mother was not willing to disclose her info. For whatever reason is beyond me. And I turned to my grandmother for the info. But couldn't get it from her. She never had legal guardianship of me. I couldn't use my dad. I wasn't the last parent I lived with.

Q. I want to take a step back. Life advice you received from your father, could you tell the ladies and gentlemen what type of life advice you received?

A. As I said before, can't always wait for an opportunity to come by.

If you want something bad enough, it is something you have to work for, which is what I have been doing the past three years.

Q. You and I have spoken before?

A. Yes.

Q. Now, you have spoken to your father about remorse, feeling bad about what happened?

A. Yes.

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Q. Your father made statements to you about feeling bad about what happened?

A. Correct.

Q. Can you tell us what he said?

A. Well, he wishes he never did what he did.

If he were still out here, he probably would have gone through a whole more, gotten further out in life than what I'm living with now. Probably would have been more extroverted. More experienced.

Q. You have also spoken to your dad about the remorse he had for the victim --

MR. SATZ: Objection. Leading.

MR. POLAY: Can we go sidebar? There is a reason?

THE COURT: I'll give you a little latitude.

MR. POLAY: Thank you.

BY MR. POLAY:

Q. You have spoken to your dad about remorse?

A. Correct.

Q. You spoke to your dad about remorse for the victims, meaning the people killed and what happened?

A. No.

Q. Well, didn't you speak with your dad about

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how you felt about what happened?

A. No, I haven't.

Q. Why don't you tell the ladies and gentlemen of the jury how you feel about what happened and how it effected you?

A. Well, when I first got the news, it was a shock. It was heartbreaking. Shock because I never would have imagined my father committing that act. It was heartbreaking because I felt I lost my father that day.

Q. What you can remember, can you tell the ladies and gentlemen of the jury how he was as a dad?

A. He was a good father.

He always does what he can.

As far as I can recall, he was your typical father.

Even those bits I can recall, everything was positive.

Q. Your memories are positive?

A. Yes, all memories of my father were good memories.

Q. Do you remember doing anything in particular?

A. Uhm, oh, back in Waterway, I remember when

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me and my sister used to sit on the back porch and watch my father and my grandfather fish. And whenever they would land a fish, I would venture closer to it. My sister would retreat.

Q. To this day, how do you feel about your dad as a father, given the circumstances that basically block your relationship? How is he as a dad.

A. I still honor him as a father, nonetheless. No matter how old, rarely we would see each other or the distance between us, even the few memories I have of him as a child, I still honor him as a son should.

Q. The type of communication you have with your dad, it is continual?

A. It is.

Q. Again, I want to highlight this. What type of communications do you have with your dad? Meaning visits. How else?

A. Visits, usual phone calls. Letters he would write me.

Q. The letters he would write, can you tell the ladies and gentlemen of the jury what would be contained within these letters?

A. It would either be happy birthday, merry Christmas. All of them contain the usual "I love

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you." "I miss you." "Wish I were there."

And a few, there would be web sites for funds for college.

Q. So your dad was trying to help you the best he could to direct you to areas to help you with your education?

A. Yes.

Q. Have you ever spoken to your dad about him not being there for you.

A. I try not to. I wouldn't want myself to think of him as anything but a loveable father.

I understand he couldn't be there due to other circumstances, because of people he was dealing with.

Q. Has he expressed his remorse or said anything to you about not being there, in your life?

A. Yes. As a matter of fact, he said before he regrets, said before he regrets what he did.

If he hadn't did what he did, he could have helped me out more. We could have accomplished a lot more if he were still out here.

Q. How do you feel about your dad?

A. I love him. I still care about him. And I still worry about him. In fact, over the past few weeks, I had a few breakdowns, just worrying what

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would happen to him if nothing works out.

Q. Can you tell us why you need him in your life?

A. Most of my life, I have, in a way, grown up without a father figure. But my dad's absence, my grandfather was the one to fill his shoes. Of course, some, when I was with my grandparents, they didn't really have a father figure to live up to. After we moved back with them, my grandparents, five years later, my grandfather was deceased. So I was mostly the man of the how's. Every once in a while I would think what two I do? What could I do if my dad were here with me.

Of course, I wonder, think of further on, down the road, when I have my own kids, I think what can I tell them? What can I tell them about their grandfather?

Of course, every now and then, I would think of still visiting him, even years later.

Q. Anything you want to say to the jury as to your feelings?

A. My only hope is that he has another chance. Give him this chance to turn his life around.

And that I know it is difficult. But when you're in and once you're out, things change.

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Society's perspective on you can differ. At times, not in your favor.

Q. Let me ask you this.

Do you love your dad?

A. With all of my heart.

Q. Does Brandy love him?

A. She does. Every fiber of her being.

We both love him very much, no matter, no matter what the circumstances.

Q. Do you feel like you need your dad in your life?

A. I still do.

MR. POLAY: Thank you.

MR. SATZ: Judge, no questions.

THE COURT: Thank you very much.

You're excused.)

(Witness excused.)

THE COURT: Steve, take the jury out a minute.

(Exit jurors.)

(Recess had.)

THE COURT: Let's bring them in.

(Enter jurors.)

THE COURT: Okay.

Good news, bad news.

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Actually, I think it is good news, good news.

Due to our next witness, who isn't presently available until tomorrow morning, we will be breaking.

The other news, is Halloween a conflict for anyone?

I anticipate that we will finish, as far as the Defense's presentation, tomorrow.

As I keep telling you, we're way ahead of schedule.

With that, you know not to read the papers. You know all of the admonitions.

I know you have all been sticking to them.

9:15 tomorrow.

Hopefully, there won't be a major accident that ties people up, as there was this morning.

We will see you then.

(Proceedings conclude for the day.)

****

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 23rd day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

ORIGINAL

Defendants.

TRIAL PROCEEDINGS
VOLUME XXII
PAGES 2178 - 2297

Fort Lauderdale, Florida
October 31st, 2018
9:50 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on October 31st, 2018, commencing at 9:50 a.m.

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THEREUPON, the following proceedings were had:

(Morning session begins.)

THE COURT: Can we start?

Ready?

MR. POLAY: I think we want to bring something up.

MR. WILLIAMS: We want to see if we can resolve the medical issue.

Yesterday, I sat down with Mr. Hojan. He went through his history regarding the bladder cancer incident.

What happened, in 2015, after detecting blood in his urine, they did the cystoscopy. I believe that that was December of 2015. Ultimately, I think it was January of 2016. He was taken from the prison to Memorial Hospital in Jacksonville, Florida. They removed two tumors. He was returned to the prison. Later testing revealed another tumor.

He was taken back to Memorial Hospital in Jacksonville.

One other tumor was removed. Then he started that BCG, which is an insertion of a chemical through a catheter in the bladder.

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He was undergoing that treatment when he was transferred to the Broward County Jail.

When he got to the Broward County Jail, they didn't continue that treatment.

Apparently, didn't get the word or whatever. But we know, then, it was July of this year or September? July, they ran the test again.

There wasn't any concern. Ran it in September, there was an area of concern. That's where it stands.

They want to run a test in December to see.

He had three tumors. Bladder cancer that was removed in 2015. Removed in 2016. Again in 2016. Apparently, it is in a holding pattern.

We are waiting to see what happens with the latest test they want to schedule in December.

MR. SATZ: Do you know what grade of cancer it was?

MR. WILLIAMS: From the testing that's been done, only speaking from personal experience, I think an endocrine form of cancer, a slow-growing tumor.

Mr. Hojan indicated they had also taken him

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in for a CAT scan.

I had the full body scan.

It can move to your lungs or so.

MR. SATZ: What grade is it?

MR. WILLIAMS: I don't know they give a grade.

Right now, there is no sign of it. Like with me, no sign. Who knows if and when it will return.

THE COURT: Thank you for that history.

MR. WILLIAMS: We are going to move in the letter. I sent over a proposed stipulation, outlining what I related to the Court.

Mr. Satz yesterday expressed a concern when did he get the cancer. We know he was operated on twice in 2016.

MR. SATZ: Do you have the stipulation? I haven't seen it.

MS. MCCANN: I didn't either.

THE COURT: You forgot to send it.

I sent it to Mitch. I said do you want me to send it to Mr. Satz.

MR. POLAY: I said yes.

MR. WILLIAMS: Oh, I didn't see that.

MR. SATZ: It's hard to stipulate on it

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then.

THE COURT: I haven't seen it.

THE COURT: Can we take care of that right now?

MR. WILLIAMS: Yes.

THE COURT: Can we put witnesses on, while we're doing this?

MR. SATZ: why don't you do that. We will review it over lunch.

THE COURT: Let's bring if the jury in.

THE COURT: Morning, everyone.

Happy Halloween.

I wore my costume today. I decided to come as a judge.

Mr. Polay?

MR. POLAY: Thank you.

Judge, at this time, I would like to move Defense, for identification, M, and publish it. M, as in Mitch.

THE COURT: M will come in as 7.

MR. POLAY: Permission to publish?

THE COURT: Sure.

Everybody's screens working?

JURORS: Yes.

MR. POLAY: Judge, at this time, Defense

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would like to move Defense R for identification into evidence and publish it.

THE COURT: R will come in as 8. Is that a composite of two pages?

MR. POLAY: Yes. This is the certification of records, showing that there are no disciplinary records for Mr. Hojan.

Judge, at this time, Defense to like to move in O for identification into evidence and publish it.

THE COURT: O will come in as 9.

MR. POLAY: This is the diploma he received while in custody.

At this time, I ask defense P come into evidence.

Permission to publish?

THE COURT: P will come in as 10.

MR. POLAY: This is participation in a program while incarcerated.

I'm ready to call a witness.

THE COURT: Proceed.

Pauline Holgate.

PAULINE HOLGATE,

being of lawful age, and having been first duly sworn in the above cause, testified on her

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oath as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Pauline Holgate.

DIRECT EXAMINATION

BY MR. POLAY

Q. Good morning.

A. Good morning.

Q. Can you tell the ladies and gentlemen of the jury your relationship to Gerhard?

A. He's my son.

Q. How old is Gerhard?

A. Pardon me?

Q. How old is he?

A. He was barn in 1975. He's 40, 40 plus.

Q. Can you tell the jury where he was born?

A. He was born in Teaneck, New Jersey.

Q. Can you tell the ladies and gentlemen who Gerhard's dad is?

A. Gerhard, Sr.

Q. Can you tell them how you met Gerhard, Sr. And where and where you were living?

A. We met in Jamaica. We lived in Jamaica for a while. Then we moved to Marathon Key.

Q. Let me take a step back.

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When Gerhard was born, were you married to Gerhard, Sr.?

A. No, we weren't.

Q. Was he married to somebody else at the time?

A. Yes, he was. Yes, he was.

Q. That person's name, the person he was married to, was that Rita?

A. Yes, it was.

Q. After Gerhard is born, let's tell the jury, where was he taken initially, after he was born in New Jersey?

A. We went back to Jamaica for a while. Then we came back to the States in 1976.

Q. When you come back to the States, he's approximately one year old?

A. Yes.

Q. Can you tell us what you were doing to support yourself?

A. We invested in a small hotel and restaurant in the Florida Keys, in Marathon, at which time my son stayed with Mrs. Green, who took care of him. He lived with her because our hours were long. And we couldn't keep him at home.

Q. This is when he was one?

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A. Yes.
Q. Until what age was he watched by someone other than yourself?
A. Approximately, I think four years' old.
Q. Could you tell the jury how often you would actually see Gerhard?
A. Once a week, when we would close the restaurant for that one day.
Q. Do you remember what day that was?
A. That was a Tuesday.
Q. Why don't you tell the ladies and gentlemen of the jury why you didn't see him more?
A. Because we were engaged in the restaurant. The hours were long. We, we opened up at 11:00 in the morning. We didn't close until like 10:30, 11 o'clock at night.
Q. You didn't have time for him?
A. No.
Q. And Mrs. Green, the woman that is raising

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him, she wasn't a relative?
A. No, she wasn't.
Q. During this time period, say from one until

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he was five years of age --

A. I think it was five years.

Q. Was he going to school?

A. He started school. He started school when he was five years' old. He went to Stanley Switlik Elementary.

Q. How long did you have the hotel in Marathon for?

A. From 1976 until 1988 I think it was.

Q. When did Gerhard come back? Junior? When did Junior come back to you?

A. When he started primary school, uhm, he it was, yes, 1977 -- I'm sorry. 1977, we bought the hotel. When he started school, when he actually started school, when started elementary school.

Q. How long did he live with you at the hotel in Marathon?

A. Then we went back to Jamaica in 1988.

Q. Okay.

Well, let me ask you this. From the ages of five to seven, when Junior was five to seven years of age, where was he living?

A. He stayed with us in Marathon.

Q. Did your husband want him there?

A. Did he what, sir?

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Q. Did he want Junior there?
A. Not really. It was --
Q. Tell the jury why.
A. When my son came, it was, like, he wasn't, like, expecting a child. And he was used to having all of my attention. And then he came. And he was taking up too much attention from him. And so it became a, a tussle. He, this child was taking up too much of my attention. And so he, basically, didn't want him around because he was --
Q. You can say it, ma'am.
A. He was taking up too much attention from him. So that's when, after we went back to Jamaica, he sent him to the boarding school, where he stayed. He stayed there.

And then --

Q. Let me just backtrack a little bit.

So when Junior is about seven years' old, did you go back to Jamaica?
A. Yes. I think.
Q. Who are the Haliburton family?
A. Uhm, he went, that's the Catholic school he sent him to in Mandaville. The Haliburton family, she was a secretary of the school. And so he stayed with them.

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Q. For how long did he stay?
A. I don't quite remember all of these timelines.
He was probably there for about a year.
Q. This is when he's seven, eight years' old?
A. Yes.
Q. Who wanted him away from the home?
A. Pardon me?
Q. Who wanted Junior away from the home?
A. His father. His father.
Q. I know this is hard. I'll ask you this. Why did you acquiesce to this?
A. Why did I what?
Q. Agree to this.
A. I had no control over it.
I -- he was very dominating.
I had, I had, had, actually, no control over this.
I'm a weak mother, I guess. Otherwise, I would have protected him. I would have stood up for him.
Q. Did you want to stand up for Junior?
A. Yes. Yes, I did.
Q. Why don't you explain to the jury when Gerhard is about five to eight years old, what type

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of father Gerhard, Sr. Was to him?

A. He wasn't really a good father. I don't know that he loved my son.

At one point, he even questioned whether he was really his father.

Q. Well, let me take a step back.

Where was Senior from?

A. Germany.

Q. What was his race?

A. He was Caucasian.

Q. And how did he treat you? Let's talk about that. How did he treat you?

A. Not very good, either. Emotionally -- he slapped me a couple of times. But emotionally, he was very abusive.

Q. How was he abusive to you emotionally?

A. Emotionally, he told me I wasn't worth anything.

I wouldn't get anywhere in life if I walked out on him. I threatened a couple of times to leave.

He said I wouldn't go anywhere.

That I wouldn't get anywhere in life if I didn't stay with him, if I wasn't with him.

He was the only one that could make me,

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make anything out of me.

He called me stupid. He called me ugly.

Q. Pauline?

A. Yes?

Q. Are you okay?

A. Yes.

Q. Now, these early years, say from about five to ten, could you tell the jury how Senior treated Junior?

A. He beat him.

Q. Well, could you tell the jury how he was beating him?

A. He beat him, he beat him with a leather strap that he kept just for that purpose.

He had a piece of bamboo he kept in the closet that he used to beat him.

He pulled him by his ears.

He pulled him by his hair.

At one point, he punched him in the nose and drew blood because he was playing with his favorite toy train set. He came in, caught him. Chip was racing the cars around the set. And he punched him.

And so I took him. We went for a walk, down the road, to get him away.

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Q. How about emotionally, how did Senior treat Junior?

A. Uhm, he always derided him about his weight, most of all.

He always had a weight problem.

Q. Tell the jury what Senior would say to Junior about his weight?

A. He just told him he was fat.

He was a slob.

He needed to get up and exercise.

He needed to get rid of the weight.

Q. Do you remember how else Senior was abusive?

A. He told him he wasn't worth anything.

Q. Can you repeat that?

A. No.

Q. Senior said what?

A. That he's not worth anything. He's not going to get far in life.

Q. I'll show you something. You can look on the monitor.

Recognize that?

A. That's me and him.

Q. Do you remember approximately how old?

A. He was probably about two years' old.

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MR. WILLIAMS: What exhibit number?

MR. POLAY: I didn't move this in. It is marked A.

THE COURT: A will be eleven.

BY MR. POLAY:

Q. I'm showing you Defense L.

Do you recognize that?

A. Yes.

MR. POLAY: I would like to move this into evidence as number 12, if possible.

BY MR. POLAY:

Q. Do you recognize that?

A. Yes, that's Chip.

Q. Do you remember approximately how old he was then?

A. He was probably about five or six. That was down in the Keys.

Q. Is that the weight problem you were discussing?

A. Yes.

MR. POLAY: Judge, L will come in as 12?

THE COURT: Yes.

BY MR. POLAY:

Q. Do you remember, Pauline, do you remember when Chip came back to live with you from the school

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and living with the Haliburton family?

A. Could be 1989 maybe.

I am not sure.

Q. Let me ask you this. Do you remember when the next place you sent him off to was?

A. Beg your pardon?

Q. Do you remember where you sent him next, after you sent him to the Haliburton family, where was he sent next?

A. He came back to St. Lucea to live there for a year.

He went to Gros High School. That was the point his father sent him off to Germany.

Q. He's about ten, eleven, when he's sent to Germany?

A. I think so, yes.

Q. When you say high school, it is not high school here?

A. No.

Q. How long was he sent off to Germany for?

A. I don't have the exact time span. Approximately a year, year and-a-half. I am not sure. I'm not sure.

Q. Why did he come home?

A. He didn't want to be away from his family.

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Q. So he comes home from Germany.
A. Yes.
Q. He's about 11, 12, at this point in time?
A. I guess, yes.
Q. Where did you send him next?
A. When he came back to the States, he, we had a home in North Miami Beach. That's where he stayed.
Q. Do you remember -- let me ask you this. Do you remember when he came back from Germany, sending him to Port Antonio, Jamaica?
A. Port Antonio. Yes. There, he stayed with my brother and his wife.
Q. He comes back from Germany. Comes to Jamaica. And he's sent away again?
A. Yes.
Q. Is that a yes?
A. Yes. I'm sorry.
Q. Could you tell the jury why he was sent away again?
A. His father didn't want him around. He didn't want him around.
Q. How did you feel at this time?
A. I wanted him to be there with me. He should be with his parents.

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But I have no control for it, over it.

Q. How did this man control you?

A. I wish I could explain how hard it is when you're in an abusive relationship, it is not that easy. It is not that easy to walk away.

Q. Did you eventually walk away?

A. Yes, I did. Way too late. Way too late.

Q. I just want to show you a few more pictures.

Judge, can I move in I as 13?

THE COURT: I will come in as 13.

BY MR. POLAY:

Q. Do you remember that?

A. Uhm, that's Chip.

Q. Yes?

A. Yes.

Q. Do you remember approximately, approximately how old he was?

A. Yes, he was just over a year. That was in Marathon. Yes.

MR. POLAY: Now I have J. Ask to move this in.

THE COURT: J will be 14.

BY MR. POLAY:

Q. I want you to look at this page here.

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Who is in that picture?
A. That's my mother-in-law.
Q. Why don't you tell the jury about her?
A. She wasn't a very nice person, either. My son was sitting on the porch, back in Marathon. I was inside. She didn't like him, either.
Q. Let --
A. Screamed --
Q. Let me take a step back.
Your mother-in-law, where was she from?
A. Germany.
Q. Ever meet your father-in-law?
A. No.
Q. Do you know anything about your father-in-law?
A. From what I heard, he was in the Army. He was an SS soldier.
Q. For Nazi, Germany?
A. Yes.
Q. Did gramma ever show any affection or any type of love or even acknowledge Chip?
A. Not really. Not really.
He was biracial. Was not acceptable to them.
Q. Would she, did she ever accept you?

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A. No. No.

MR. POLAY: I ask to move K in as 14.

THE COURT: K will be 14.

THE CLERK: 15.

MR. POLAY: 15.

THE COURT: 15.

BY MR. POLAY:

Q. 15.

Do you ever remember your mother-in-law touching chip? Showing affection?

A. I can't remember her hugging him or anything like that, no.

It is not like a normal grandmother would pick him up or something.

Q. How did chip react to her?

A. I don't know if he was too young to understand what was going on. Because he had -- but he must have. Because he had so much love from my side of the family.

Q. Were your berated? Were you put down in any way?

A. By her?

Q. By grandma?

A. Yes, she spoke about his first wife very highly. And she said I'm, I'm a hard worker. I

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work really hard by his side. But she is special. She is really special.

Q. So, I think we're up to around the ages of 12, 13 with Chip. He's sent to family, in Port Antonio, Jamaica?

A. Yes.

Q. Do you remember what school he went to?

A. THP High School.

Q. How far was that from where you were living?

A. About five and-a-half, six hours' drive.

Q. How often would you actually see him?

A. Not that often.

Not really that often. Because we were involved with the factory, hotel, or --

Q. So just around the age of 14, do you remember Chip's coming back to live with you?

Did you own a plant?

A. Yes.

Q. Where was this plant?

A. In Lucea.

It was a meat processing plant.

Q. During this time period, Chip is actually living with you?

A. Yes, he went to Lucea's.

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That's the year he went to Lucea's.

Q. That's the first year in ten years he's residing with you?

A. Yes.

Q. This lasted for how long? One year?

A. One year.

Q. He's 15.

Where does he get sent next?

A. That's at the point he was sent off to Germany, I think.

Yes, because we were living in Lucea. After Lucea's High School.

Yes, that's when he got sent off to Germany, I think.

Q. I think you said earlier he was sent off to Germany when he was 10, 11 edge.

So at 15, did you send him back to the States?

MR. SATZ: Objection. Who is testifying?

BY MR. POLAY:

Q. At 15, do us remember if you sent him back to the States?

A. 15, he came back to the States, yes.

Q. Now you remember?

A. Yes.

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Q. Where did he reside?
A. 1050 NE 203rd Terrace, North Miami Beach.
Q. Tell the jury where you and your husband were living when he's 15?
A. We're in Jamaica.
Q. He's 15 years old?
He's a teenager?
A. Yes.
Q. And he's not with mom or dad?
A. No, he wasn't.
Q. Who was watching him?
A. I had a younger brother who was a musician. He is a musician. He stayed with him.
I thought he was there for a couple of years, with Chip. But, but he wasn't there that long. I think he was probably there with him about six months.
Then he went, got a job on a cruise ship. And he went to Europe, at which point Chip was alone.
Q. Do you remember what ages Chip was alone?
A. That was when he was 15, 16.
15, 16.
Q. He's in high school at that age?
A. Yes.

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Q. Did Chip finish high school?
A. No, he didn't.
Q. Do you remember why?
A. I think he didn't have transportation back and forth. I am not a hundred percent sure.
Q. Do you remember something happening to him?
A. He got an injury on his foot. He couldn't drive. He couldn't drive.
Q. Did you wind up living with Chip again?
A. Yes.
Q. Do you remember approximately how old he was?
A. It was in 1993.
Q. Approximately how old was he?
A. 1993. 75. He was 17, 18. I am not sure.
Q. Where were you living and with whom?
A. In Hollywood, Florida.
Q. And Chip lived with you there?
A. Yes.
We had an apartment building.
Q. How many units did you have?
A. 18.
Q. Could you tell the ladies and gentlemen of the jury what Chip was doing at this point in time?
A. Well, he worked at a place.

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Q. What type of work was he doing?
A. Well, first he started off being in the restaurant. Most of the times, he was doing security, security jobs in night clubs.
Q. Do you remember him working as a cook anywhere?
A. Yes.
Q. Can you tell us where?
A. I think that was Ruffies Restaurant, I think.
Q. Do you remember anywhere else?
A. He worked at IHOP when he was in school.
Q. Can you tell the ladies and gentlemen of the jury if Chip stayed at home or he worked?
A. He worked.
Q. Did he always work?
A. Most of the time. But sometimes he was idle, yes.
Q. When he was idle, what would he do?
A. He was alone with us.
Q. Doing what?
A. He would help out. Help out. We were renovating the building we just bought. He would help us with the renovations.
Q. Tell us what he would do.

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A. He would help to paint. He would help to scrub. We had to clean up all of the apartments.

They were dilapidated.

We were carrying out carpet.

Putting down new flooring.

You know, painting. Tiling.

Q. Did your son ever get married?

A. Yes, he did.

Q. Could you tell the jury to whom he married?

A. Barbara.

Q. What was your relationship to Barbara?

A. My niece.

Q. Do you remember approximately how old Chip was when he got married to Barbara?

A. 19.

Q. And when Chip got married to Barbara, was he working?

A. Yes.

I am sure.

Yes.

Q. Was he supporting her?

A. Barbara? Well, he didn't after they lived with me, actually.

They lived at the Waterways Apartment.

Weren't paying rent.

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She was working.
He was working.
Q. That's what I'm asking.
Was he working?
A. Yes. Yes.
Q. Do you remember him working security?
A. Yes.
Q. So Barbara is his first cousin?
A. Yes.
Q. And can you tell the jury why Barbara married Chip?
A. For papers.
Q. You have to say that --
A. For her papers.
Q. What type of papers?
A. To get into the United States.
MR. POLAY: I ask that Defense B be moved into evidence.
THE COURT: B is 16.
BY MR. POLAY:
Q. Do you see Chip in that picture?
A. Oh, yes.
Q. What type of work was he doing?
A. He was doing security at Dave & Busters.
Q. And you see him there, in the back?

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A. Yes.
Q. This is when he was married to Barbara?
A. Yes.
Q. That's okay, Pauline.
Pauline, I'm going to show you what is in as Defense 3.
Take a peek.
Who is that?
A. Chip and Corey.
Q. Okay.
A. His first birthday.
Q. How many children does Chip have?
A. Two.
Q. Can you tell the jury their names?
A. Corey and Brandy.
Q. I just want to talk about Corey for a second.
Corey has been living with you, correct, now?
A. Yes.
Q. Can you tell the ladies and gentlemen of the jury what type of issues Corey has?
A. Physically? Mentally?
He's semi-autistic, also.
He was diagnosed with Asperger's Syndrome.

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He has problems processing. He has problems finishing his sentences.

He doesn't show too much emotions. He's, not that he's not emotional. Just he doesn't know how to express himself emotionally.

He has a speech impediment. He has a speech problem. We start speaking and then he would do, like, blah, blah, blah, blah.

And he has to start over.

Q. How about Brandy?

A. Brandy doesn't speak at all.

Q. She's non-verbal?

A. Yes.

Q. And you take care of the grand children?

A. Until her mom took her in 2015.

Q. Corey is still with you?

A. Corey still lives with me, yes.

Q. I want to ask you a question.

When Brandy and Corey were young, say one, two years' old, with whom did they live?

A. With me.

Q. Was Chip there?

A. Yes.

Q. Was Chip the dad?

A. Yes.

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Q. Did he act like a father.
A. Yes. He loves his children.
He loves his children.
Q. I want you to tell them what type of father --
A. He's a wonderful father.
I can't compare. I can't compare.
He's a wonderful father.
He loves his kids.
His kids love him.
Even though Brandy doesn't speak, when she looks at him, she sparkles.
You can see the love.
Q. What type of support did Chip give his kids when he was with them?
A. He loves them.
He spoke with them.
He read them stories.
He played with them.
I mean he was, he is a good father.
He is a good father.
Q. Let me show you Defense 4.
Do you recognize that?
A. Yes.
That's Chip.

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Q. Who is Chip with there?
A. Corey. Corey.
Q.
I'll show you something else.
I'll show you Defense 1.
Who is that in the picture?
A. Corey and Brandy.
Q. Those are both of Chip's kids?
A. Yes.
Q. I'll show you Defense 6.
A. That's Corey, Brandy and Chip.
Q. I want to take a step back a second.
When Chip was married to Barbara, the kids are living with them?
A. Yes.
Q. Chip was working at this time?
A. Yes.
Q. Does there come a point in time where the relationship doesn't work between Barbara and Chip?
A. Yes. Yes.
Q. Do you remember approximately how old the kids were at this point in time?
A. Four and five maybe. I'm not sure.
Q. Around there?
A. Yes.

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I am not a hundred percent sure.

Q. And at this time, who is supporting the children?

A. Both.

Q. Well, --

A. But they still lived with me.

Q. I want you to tell the jury how Chip would support the children.

How?

A. Well, he bought food for the house when he was working.

He gave them emotional support. He was always there emotionally for them.

He's a good father.

Just physical and emotional support.

He was --

Q. Compare his ability to relate to his children, compared to Gerhard, Sr.'s ability to relate to his child?

A. No comparison.

No comparison.

Chip is a wonderful father. Wonderful father.

He always coddled his children.

Q. Do you remember Chip's having any type of

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hobbies?

A. Yes, he used to be involved in kite flying at Haulover Beach.

He was a member of a kite club.

He got an award, I think, at one point.

Q. Do you remember what that was for?

A. No.

Q. No?

A. No.

But I know he got an award.

I don't remember what for.

MR. POLAY: I ask H come in as 17.

THE COURT: 17.

MR. POLAY: Ask to publish.

THE COURT: Yes.

BY MR. POLAY:

Q. Do you ever remember going to Haulover?

A. Yes.

Q. Spending time with him there?

A. Yes.

Q. How about the kids?

A. Yes.

Q. Do you remember Chip doing anything for other people there?

A. For the children. For the children.

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Q. Tell the jury.
A. He would teach them to fly kites.
Kite flying.
He would give them emotional support.
Q. What kind of children were these?
A. Younger kids. I don't know if they had any -- just regular children, I think. He used to teach them kite flying.
Q. How often would he do this?
A. Once. I'm not a hundred percent sure.
I'm not a hundred percent sure.
I won't say. I'm not a hundred percent sure.
Q. Okay.
Now, at the time of the incident we're here for, where were you living?
A. Lee High Acres.
Q. What was Chip doing at that time for a living?
A. He was working at a nightclub, also, I think.
Q. Doing what?
A. As a bounce. Security.
Q. Where were the children at this time?
A. With me.

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Q. Can you tell the jury how often he would come over?

A. As soon as he got a day off, he would be up there, to see them. Maybe like once a week.

Q. How was he supporting them?

A. He would contribute money to the household.

Q. This was ever we can?

A. Not really.

When he found it possible, which was maybe once a month.

Q. He would come over on his day off?

A. Yes.

Q. The night of the incident, Chip comes over, correct?

A. Yes.

Q. You hear about it, correct?

A. I was at work. I didn't hear about it until I came home.

Q. Well, when you came home, you heard about it, right?

A. Yes.

I got two phone calls. One from Barbara. One from my daughter.

I don't remember who called first.

They told me what was going on.

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My daughter actually told me exactly what was going on.

Q. What did you tell Chip to do?

A. I woke him.

He was sleeping on the couch. I woke him up.

I asked him what is going on.

And he said nothing like that, Mom.

And I said, well, this is what your sister just told me. And, uhm --

Q. What did you tell him to do?

A. I told him -- I woke his father up. And I said you need to get him down to the police station, like, right away, and get this straightened out.

Q. Did Chip comply?

A. Yes, he did.

Q. He said okay?

A. Yes, he did. He went. He went.

Then his father came back, like, two hours later.

I said where is my child.

He said they kept him.

Q. What was your relationship like with Chip?

A. My relationship with Chip?

Q. Yes.

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A. I love my son. We had a strong relationship. We still have a strong bond.

Q. He never wanted to hurt you, did he?

A. Chip?

Never.

Never.

Q. Let's just talk a little bit about what is going on when he's incarcerated.

How often would you go, see him?

A. While he was incarcerated? Once a month.

Q. Every month, you went to see him?

A. Yes.

Q. Who did you take with you?

A. The children.

Q. Every month?

A. Corey and Brandy, yes.

Q. I want you to tell the jury what Chip would do to maintain contact with his children?

A. While we didn't see him? While we didn't see him?

Q. In other words, you would go once a month?

A. Yes.

Q. The other weekends or days, what would you do; or what would he do?

A. He wrote.

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He wrote to the kids.

Of course, Brandy couldn't understand. Corey did.

We exchanged letters back and forth.

Q. Was there a communication any other way?

A. There was no other means of communication.

Q. No telephone?

A. No. No, not there. Only since he has been down here we have been able to speak on the phone or speak once a week.

Q. How was Corey with Chip?

A. He loves his father. He loves his father.

Q. With respect to -- do you remember what Corey would speak to Chip about?

A. Sometimes, I would hear.

Sometimes I wouldn't.

Because they would walk away, if we went to visit.

They normally talked about fishing, about life. You know, Chip said he was sorry.

Q. I'll get to that.

What type of advice would Chip give Corey and Brandy?

A. He spoke to him about school. He spoke to him about his future.

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He said make sure you don't make the same mistakes I did.

He always encouraged him. Here is how you get into college.

He would pull up web sites, save them when we would go to visit. He would also go to various web sites he had access to on the subject of autism.

Then he would feed that back to us when we visited.

Q. Do you remember Corey ever asking Chip for advice on any particular subject, life crises or things like that?

A. I know they spoke. Like I said, sometimes they would walk away. I would not be privy to their conversations. Like when we would go to visit him, a lot of times they would walk away together. I wouldn't be privy to their conversation. It was between both of them.

Q. These visitations have gone on for years?

A. Yes.

Q. Would Brandy visit?

A. Yes.

Q. How was Chip with Brandy?

A. He loves her.

He loves his kids.

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Q. How is Brandy with Chip?

A. As soon as we pull up to the facility, she knows who is there, who she goes to visit.

She would beam. Beam.

Q. She's non-verbal?

A. Correct.

Q. What would you notice about her?

A. She would smile. As soon as he came in, she would get up right away, go over. She would hug him. He would try to encourage her to speak.

They, they had a, they have a good relationship. They have a good bond.

Q. Now, I want to talk about your conversations with Chip.

You have spoken to him about this event, have you not?

A. Yes.

Q. I want you to, I want you to tell the jury what he said to you about this event.

A. He really doesn't understand what happened. But he knows it did happen. And how sorry he is for the lives, all of the lives that its affected. He spoke about the child. I don't know his name.

Q. Child of whom?

A. From the young lady.

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And we wonder how the child is doing.

It is not a subject that we broach too often.

Q. But it has come up?

A. It has come up. It has come up.

Q. Pauline, you were talking to the jury about visiting Chip often.

Can you tell them how far a drive this was every month, from where you live?

A. When we were living in Lee High, it was like five, six and-a-half hours.

Q. You went every month?

A. Yes.

Q. For years?

A. Pardon me?

Q. You have to answer yes or no?

A. Yes.

I'm sorry.

Q. How is your son's health?

A. He's had, he was diagnosed with bladder cancer recently. He got treatment for it. I think he still has to go back for another treatment. I think he's not in remission.

Q. To your knowledge, has Chip discussed this with Corey?

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A. Yes. I'm sure he has. Yes, I'm sure he has.

Q. Anything else you want to say to the jury about your son?

A. He's a good person. I don't know what happened. I, I really don't know what happened.

But he's, he's a wonderful person.

I just ask that you give him a chance at life, please.

Please.

MR. POLAY: Thank you.

Nothing further.

THE COURT: Mr. Satz?

MR. SATZ: Your Honor.

CROSS EXAMINATION

BY MR. SATZ:

Q. Ms. Holgate, good morning.

A. Good morning.

Q. You indicated that you met Mr. Hojan, Sr. In 1974?

A. It was about then, yes.

Q. You were married?

A. No.

Q. You weren't married?

A. No.

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Q. No. You were married to somebody else?
A. Yes.
Q. Who were you married to?
A. Alvin Dennis.
Q. What year did you marry Alvin Dennis?
A. 1967, I think.
Q. Did you have any children?
A. Yes, we did.
Q. How many children did you have?
A. Two.
Q. When were they born?
A. 1971. 1973.
Q. What are their names?
A. Al, Martine and Karen Amish. Karen Ann Martine and Michele.
Q. Where does Alvin Dennis live now?
A. Leesburg.
Q. Leesburg?
A. Yes.
Q. You all got divorced?
A. Yes.
Q. What year did you get divorced?
A. 1976.
Q. 1976. These after you had the defendant in this case.

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A. Yes.
Q. Who got custody of the two daughters. Born in 1971 and 1973?
A. He did.
Q. Alvin Dennis?
A. Yes.
Q. At the time you met Hojan, Sr., what was he doing for a living?
A. He was running a hotel in Jamaica.
Q. Where?
A. Negril, Jamaica.
Q. What was the name of the hotel?
A. Sundowner Hotel.
Q. Who owned it?
A. He and his ex-wife.
Q. Did he wind up selling that hotel?
A. Yes, eventually.
Q. What year did he sell the hotel?
A. I am not sure. It was in the '80s.
I think it was in '88.
I'm not sure.
Q. Do you know how much money he got for that hotel?
A. No.
Q. No idea?

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A. I, I don't know.
Q. When he owned the Sundowner, did you work at the Sundowner?
A. Yes.
Q. Then you all left to go to the Keys in what year?
A. 1976.
Q. You got married in what year?
A. 1977.
Q. When Hojan, Sr. married you, you already had the defendant in this case?
A. Already. Yes.
Q. He was already born?
A. Yes.
Q. It wasn't a surprise?
A. What wasn't a surprise?
Q. When Hojan, Sr. married you, you already had the defendant in this case, Hojan, Jr.?
A. Yes.
Q. He knew you had a child?
A. Yes.
Q. And he married you?
A. Yes.
Q. You went to the Keys in 1976?
A. Yes.

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Q. Hojan, Sr. Bought a hotel or motel?
A. Yes.
Q. What was the name of that motel.
A. Sea Ray Motel in Marathon, Florida Keys.
Q. He bought a restaurant, too?
A. Yes.
Q. Do you know how much he paid for the restaurant?
A. No clue.
I think he invested, at the time, 40 something thousand dollars.
Q. How about for the hotel?
A. The hotel was ours. We put a down payment on the motel. We were making monthly payments.
Q. How many units were in the hotel?
A. 15.
Q. How long did you have the hotel in Marathon?
A. Until 1988, 1989. 1988, 1989. I am not sure.
Q. How long did you have the restaurant?
A. We sold the restaurant shortly after we got the motel.
Q. Did you have the hotel and the restaurant at the same time?

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A. At this time, yes.
Q. You sold the restaurant?
A. Correct.
Q. You still lived in Marathon.
A. Correct.
Q. Running the hotel?
A. Correct.
Q. There came a time you sold the hotel and went back to Jamaica?
A. Yes, went back to Jamaica before we sold the motel.
Q. Before you sold the motel? The hotel?
A. Yes.
Q. What year did you go back to Jamaica? You told Mr. Polay 1989?
A. 1988, 1989. I am not a hundred percent sure.

Been so long.

Q. Let's say it was in 1988.

So in 1988, the defendant in this case, your son Chip, Hojan, was 13?
A. Yes. I guess, yes.
Q. He wasn't 5 or 7 when you went back to Jamaica, was he?
A. No.

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Q. He was 13?
A. Couldn't have been.
MR. POLAY: Judge, it is vague. She went back a number of times.
We have to be specific which time and when.
BY MR. SATZ:
Q. Let be specific.
When did you go back to Jamaica? What year did you go back to Jamaica?
You told Mr. Polay it was 1989.
MR. POLAY: I object. She said she went back to Jamaica a couple of times. Maybe three times.
MR. SATZ: The record speaks for itself. I recall the testimony, saying they moved back --
THE COURT: You can ask. You always have redirect.
BY MR. SATZ:
Q. What what's the date, the year? I don't need the month. What was the year you all moved back to Jamaica?
A. 1988 or 1989, as I can remember.
Q. When you moved back in 1988 or 1989, the defendant in this case, your son, Chip, was 13, wasn't he?

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A. Yes.
Q. When you go back, when you owned the hotel and the restaurant, your son was living with you, wasn't he?
A. No, he wasn't. Not in the beginning.
Q. Where was he living?
A. He was living with Mrs. Green.
Q. That was in Marathon?
A. Correct.
Q. Mrs. Green took care of him?
A. Correct.
Q. For how many years?
A. She took care of him until he was probably about four years' old.
Q. Then he came back to live with you in the hotel?
A. Right.
Q. So he was born in 1975. So at four years old, if my math is correct, 1979, he moved back with you?
A. Yes.
Q. Then you all moved back to Jamaica for good in 1988 or 1989?
A. Yes.
Q. When you moved back to Jamaica in 1988 or

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1989, what did your husband, Mr. Hojan, Sr., do for a living?

A. He still had the hotel.

Q. How long did he have that hotel?

A. He had it. After he sold the hotel, then we went ahead and he got the meat processing plant.

Q. He sold the hotel?

A. Yes.

Q. What year did he purchase the meat packaging plant?

A. I think it was the same year he sold the motel.

Q. That would be 1989?

A. I think.

I am not a hundred percent sure, sir.

Q. You worked there with him, in the meat packaging plant?

A. Yes, I did.

Q. You said that you sent or your husband sent your son to Germany?

A. Yes.

Q. Is that while you had the meat packaging plant?

A. Yes.

Q. You indicated to Mr. Polay your son wanted

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to come back home?

A. Yes.

Q. You brought him back home?

A. Yes.

Q. He was over in Germany for a year?

A. Year, year and-a-half. I'm not a hundred percent remembering.

Q. Did your husband want him to go there to learn German?

A. Yes.

Q. You motioned Mr. Hojan, your husband's mother, how often did you see her during your marriage?

A. Quite a lot. She visited with us once in Florida. Visited with us once in Jamaica.

We would go over there, to see her, like every two years. So we did see quite a lot of her.

Q. You all traveled to Germany?

A. Yes.

Q. How long were you married to Hojan, Sr.

A. 1977 to 2007.

Q. 30 years?

A. Yes.

Q. When you divorced him, you lived at 100 Apache Street in Lee High Acres?

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A. That's correct.
Q. That was in 2007?
A. Correct.
Q. Five years after the defendant was arrested?
A. Yes.
Q. In 2007, when you got divorced, you all still lived in the same house together?
A. Yes.
Q. How long did you live in the house together?
A. I don't -- he lived in his part. I lived in my part. We had our separate lives.
He lived there until he found something of his own.
Q. How long did you and Hojan, Sr., after your divorce, live in the same home at 100 Apache Street in Lee High Acres?
A. Until 2012.
Q. Hojan, Sr. passed away in 2013?
A. Correct.
Q. There came a time -- I don't think you mentioned this -- that the defendant, Hojan, Jr., your son, went to military school?
A. Yes.

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Q. What year was that?
A. I don't remember. It was after he came back from Germany.
I don't remember. So much. It's just --
Q. I understand.
When he went to military school, where were you all living?
A. Jamaica.
Q. Where was, what year was that?
A. I don't remember.
Q. You don't know how old he was when he went to military school?
A. No.
Q. Do you know why --
A. He was, he was in his, he wanted, his father wanted him to have a military career.
Q. Whose father?
A. Chip's father.
My son's father.
Q. He sent him to military school?
A. Admiral Farragut, yes.
Q. Where is that?
A. St. Petersburg.
Q. St. Petersburg, Florida?
A. Yes.

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Q. How long was he there?
A. Not too long.
Q. What happened?
MR. POLAY: Judge, I object.
Can we go sidebar, briefly.
(Sidebar had.)
MR. POLAY: My objection is Mr. Satz is going to ask a question that he got expelled for a reason. A prior bad act. That's not relevant to this proceeding. It is not admissible in this proceeding. Nothing to do with this proceeding. Outside of the scope of this proceeding. Highly prejudicial. I ask that that not be brought up. I didn't go near it. It is outside of the scope, as well.
MR. SATZ: He got expelled. He's going in on his whole background.
THE COURT: You're making him out to be a saint.
MR. POLAY: I never said anything about him behaving in the school. Never mentioned.
THE COURT: What did he get expelled from? Military school?
MR. POLAY: Yes. For possession of a diving knife. That is, in effect, a prior bad

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act when he was a juvenile. That's not admissible in this case .

THE COURT: That he got expelled from school?

MR. POLAY: When he's 14 years old?

I didn't bring that up. I never spoke about that behavior in school.

MR. SATZ: He spoke about everything.

MR. POLAY: I never spoke about everything.

MR. SATZ: Well --

THE COURT: I'm not saying the issue with the knife can come out. Certainly that he was expelled.

MR. WILLIAMS: That he acted out, got kicked out.

THE COURT: Fine.

MR. POLAY: I need the jury gone. I need to talk to him.

THE COURT: You can object all you want.

MR. SATZ: Want to take the jury out to instruct her not to talk about the knife?

THE COURT: Steve --

MR. SATZ: Before that happens, if they are going to use no prior history of criminal conduct, you know, I have to bring her back

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about the knife.

MR. POLAY: Where is the criminal conduct? That's not criminal conduct.

THE COURT: Yes.

He just got expelled for it.

MR. POLAY: Yes, that was nothing --

THE COURT: We can do that at another time.

(Sidebar concludes.)

THE COURT: Steve --

(Exit jurors.)

THE COURT: The jury is gone.

MR. POLAY: If Mr. Satz asks you questions about Admiral Farragut, do not mention anything about the knife, okay?

THE WITNESS: Yes.

MR. POLAY: That's over objection.

If going into his behavior at school, she may not know.

THE COURT: That he got expelled?

MR. POLAY: Or the reason or what happened, the actual facts.

THE COURT: Right now, we're fine.

MR. WILLIAMS: I think the answer is given the option of voluntarily leaving or being

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expelled, resigning like people do from their jobs, the option of resigning or being fired, he took the resigning as a result of the disciplinary incident.

MR. POLAY: My objection is going near this, it is akin to, you know, to criminal activity.

THE COURT: That he got expelled?

MR. POLAY: That's not criminal.

THE COURT: Exactly.

It is not criminal activity.

MR. POLAY: The reason.

MR. WILLIAMS: We are not getting into that.

THE COURT: He's not asking that.

MR. SATZ: You instructed her not to say it.

MR. WILLIAMS: The reason, double, triple hearsay of criminal activity.

THE COURT: Not talking about criminal activity.

MR. WILLIAMS: The knife.

THE COURT: We're not talking about the knife. He's not asking that.

MR. WILLIAMS: Okay.

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THE COURT: Let's take a few.

(Recess had.)

THE COURT: Let's bring them in.

(Enter jurors.)

THE COURT: The jury is back.

Mr. Satz?

MR. SATZ: Thank you.

BY MR. SATZ:

Q. The last time we were talking, you and your husband sent the defendant, Hojan, Jr., to Admiral Farragut Military School in St. Petersburg?

A. He did.

Q. You said he was expelled?

A. Yes.

Q. How long was he there before he was expelled?

A. Not long.

Q. How long?

A. I can't remember. Been so many times he moved around from here to there. It is hard for me to keep track.

Q. Was it months?

A. It was months, yes.

Q. Then he comes back to Jamaica?

A. No, he went to Archbishop Curley after

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that.

Q. How old was he when he was expelled from Admiral Farragut?

A. I don't remember.

Q. Do you remember where he was living?

A. In our house, in North Miami Beach.

Q. You were there?

A. No, I was in Jamaica.

Q. Who was living in your house in North Miami beach?

A. With my brother.

Q. When he was 16, you bought him a Bronco?

A. Yes.

Q. Is that how he got to Archbishop Curley, in the Bronco?

A. Yes.

Q. He lived with your brother for how long?

A. My brother stayed with him for, I am not sure. Then my brother left him and went back on the cruise ship. Left him there. He was by himself.

Q. At your house in North Miami Beach?

A. Yes.

Q. When your brother went on a cruise ship, who was living with your son?

A. He was alone.

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Q. Alone, going to Archbishop Curley?
A. Yes.
Q. How long did you leave him alone?
A. I didn't leave him alone. His father left him alone.
Maybe a year.
Maybe a year.
Q. When did you come back to the United States?
A. 1993, I think.
Q. What year did your son, he went to Archbishop Curley but didn't graduate?
A. Correct.
Q. He went to the 11th grade.
When he stopped going to school, where was he?
A. North Miami Beach.
Q. You were still in Jamaica?
A. Yes.
Q. How long did he stay in North Miami Beach, not going to high school, when you were in Jamaica, with your husband?
A. I don't remember, sir.
Q. Was it months?
A. Yes.

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Q. In 1993, you moved back to the United States?

A. Yes.

Q. Where did you move to?

A. Back to my house, in North Miami Beach.

Q. You also sold the meat packaging place?

A. In Jamaica.

Q. You sold it?

A. That was afterwards.

Q. When did you sell the meat packaging place?

A. It was probably, maybe two years, two years later or a year later. I don't remember.

Q. When you moved back to the United States, you buy an apartment complex in Hollywood?

A. Yes.

Q. Where was it?

A. On Ocean Drive.

Q. Ocean Drive, on the beach in Hollywood?

A. Correct.

Q. How many units was it?

A. 18.

Q. There came a time -- you had a niece. You still do. Barbara Holgate?

A. Correct.

Q. She marries your son?

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A. Yes.
Q. You told Mr. Polay she married your son for papers?
A. Yes.
Q. You knew that?
A. I advised them against it.
Q. He's 19 years old?
A. Yes.
Q. How old was she?
A. 18.
Q. They get married?
A. Yes.
Q. They live with you in Hollywood?
A. No.
Q. They don't?
A. No.
Q. Where do they live?
A. I told them they couldn't stay there.
Q. They were 18, 19 years old. Where did they go?
A. I have no clue. They left for a while. I told them I couldn't tolerate the situation.
Q. You couldn't tolerate it.
A. No.
Q. You said they couldn't live with you?

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A. Correct.
Q. Barbara Holgate was your sister's daughter?
A. My brother's child.
Q. How long were they away from you?
A. They were about three months away.
Q. They were gone for three months?
A. About that, if I remember correctly.
Q. Then both your son, the defendant in this case, Chip Hojan, and Barbara Holgate moved back or moved with you into the Waterways?
A. Yes.
Q. They lived there?
A. Yes, because she was pregnant.
Q. She got pregnant when?
A. Same, during the time they were gone.
Q. How long was your son Chip married to Barbara Holgate?
A. I don't remember, sir.
I am really not a hundred percent sure.
They divorced --
Q. Weren't they married six years?
A. I don't remember. I am not sure.
Q. Did you ever testify they were married six years?
A. Maybe. I don't remember. I don't recall.

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I don't recall.
Q. The first child born was Corey?
A. Yes.
Yes.
Q. Two years later, Brandy is born?
A. A year later.
Q. They lived with you?
A. Yes.
Q. Who got custody after the divorce between Barbara Holgate and your son?
A. We had temporary custody of the children.
Q. Who was awarded permanent custody?
A. Nobody.
Q. What happened to the temporary custody?
A. I still have it.
Q. All of these years, you have had temporary custody of Brandy and Corey?
A. Yes.
Q. When your son and Barbara married, they were always living with you?
A. Yes.
Q. Other than the three months?
A. Yes.
Q. What kind of grandfather was Hojan, Sr.?
A. He loved the grand children.

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Q. He was a wonderful grand parent?
A. Yes. Yes.
Q. There came a time where Chip bought a home in Orlando?
A. Correct.
Q. When was that?
A. In the '90s someplace.
Q. Didn't you and Barbara Holgate and the children, Brandy and Corey, and the husband, Hojan, Sr. move up to Orlando with your son?
A. That's correct.
Q. And during that time --
A. Oh, she didn't, she didn't move here. It was just us. She was still here, in, well, in Miami someplace.
Q. Wasn't there a time she moved up to Orlando?
A. Yes, she did. She was there for maybe, maybe a month or so.
I am not sure. Then she left permanently.
Q. And then you all moved where?
After Orlando?
A. Lee High Acres.
Q. What year was if you moved there?
A. 2000.

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Q. There came a time where Hojan, Sr. Touched your daughters, correct?
A. Yes.
Q. When was that?
A. I don't know. I didn't find out until it was, like, they were adults.
They told me.
Q. Your daughter's told you?
A. Yes.
Q. They told you that he touched their breasts, right?
They both told you that?
A. Yes.
Q. They were dressed though?
A. Yes.
Q. They had their clothing on?
A. Yes.
Q. You confronted Hojan, Sr.?
A. Correct.
Q. He denied it?
A. He denied it. Correct.
Q. How often would you see your daughters?
A. I saw my daughters on a regular basis.
Q. Now, you never, you never told the defendant, Chip Hojan, about what your daughters

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told you, did you?

A. No. But I think them discussed it amongst themselves.

Q. You don't know that?

A. I don't know.

Q. In fact, you don't have a clue whether he knew it or not, isn't that correct?

A. I don't know. I thought he knew. I'm sure they discussed it. Because they were very close.

Q. Do you remember giving a deposition to me and your saying you don't have a clue whether he knew it?

A. That's what I just said. I don't know that he knew. But I'm sure he discussed it with his sisters because they were very close.

Q. Page 53 of Ms. Holgate's deposition.

I'll show you page 53.

I want to see if you remember.

I'm sorry. It is page 51.

Do you remember this question?

To your knowledge, Hojan, Jr., the defendant in this case, had no idea about the touching by your husband?

And your answer was I have no clue. I have no clue.

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A. I have no clue.
Q. That's what I was asking.
A. All I am saying to you, I'm sure he discussed it with his sisters because they are very close.
Q. Tell me about your son's employment history.
You said he worked at IHOP when he was in school?
A. Yes.
Q. How old was he when he was in school and worked at IHOP?
A. He was probably about, I don't recall. Maybe 15. I am not sure.
Q. Where were you living when he was working at IHOP?
A. North Miami Beach.
Q. You were living there, right?
A. Yes, for a time.
Q. Then he worked at Dave & Busters?
A. Yes.
Q. How old was he when he was working at Dave & Busters?
A. I can't recall. I can't remember all of these dates.

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He was probably about 18, 19. I am not sure.

Q. Brandy and Corey have always lived with you?

A. Most of the time, yes.

Q. Until 2015? Remember? Barbara Holgate, you told Mr. Polay --

A. Took Brandy. Yes.

Q. Brandy is living with her mom now?

A. Correct.

Q. But for the length of the marriage of Chip and Barbara Holgate, they were living with you at the Waterworks?

A. Most of the time.

Q. What was his employment, other than Dave & Busters? The defendant? What was his employment? You said he was a bouncer and security guard?

A. Yes.

Q. Where did he work?

A. I can't remember. He worked at quite a few places. I don't know the name.

The only place I remember besides Ruffies was Dave and Busters.

Q. You don't remember any of the places he worked?

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A. I know he worked at a couple nightclubs. I don't remember the names.
Q. Ever hear the name Colosseum?
A. I can't recall.
Q. Did you ever go, visit the Colosseum?
A. I don't know what is that. Only place I ever visited where he worked was Dave & Busters, that I remember.
Q. When you moved to Lee High Acres. 100 Apache Street, what year was that?
A. 2000.
Q. Corey and Brandy are living with you?
A. Yes. Yes.
Q. Where was the defendant living?
A. He was down in Broward County, someplace.
Q. Do you know where?
A. No.
Q. Do you know who he was living with?
A. No.
Q. You have no idea who he was living with?
A. No.
Q. Do you know what he was doing for a living?
A. He was working some nightclub.
Q. On March 11, 2002, you come home, what was your --

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A. I worked in a nursing home.
Q. The nursing home was in Fort Meyers?
A. Yes.
Q. Your husband, Hojan, Sr., what was he doing?
A. He worked at, as a security guard at a government facility.
Q. You're still married to him?
A. Correct.
Q. You didn't get divorced until 2007?
A. Yes.
Q. You get off work at about what time?
A. I get off of work about 11:15. It takes about 40 minutes to get home. Close to 12.
Q. Now going from March 11th until March 12th. Changes at midnight?
A. Yes.
Q. You get a call from Barbara Holgate?
A. I got a call from Barbara and my daughter. I don't know which called me first.
They both called me that evening.
Q. They both told you cops are looking for Chip?
A. Yes.
Q. For the Waffle House murders?

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A. Didn't say Waffle House.

Just said they are looking for him for murder.

Q. You go, wake him up? He was sleeping on the couch.

A. Yes.

Q. You wake him up?

A. Yes.

Q. You asked him about it. He said I didn't do it.

Did he tell you that?

A. He said mom, nothing like that. Didn't say I didn't do it. Said nothing like that.

I went, woke up his father. I said please take him down to the police station so we can get this straightened out.

Q. Did he say it is not true?

A. I don't recall.

Q. You remember giving me a deposition?

A. Yes, sir.

Q. Page 49 and 50.

Remember this question: Okay, when she told you that he was wanted for murder, did you ask him about that?

A. Yes, I did.

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Q. Exactly what you said.
Yes, I did.
And what did he say?
He said it is not true?
A. Yes. It is not true.
Q. Said it is not true, right?
A. Yes.
Q. And then you said, well, then you woke up your husband?
A. Yes.
Q. Said hey, hook, get it straightened out?
A. Correct.
Q. Your children were there, grand children?
A. Grand children.
Q. And Brandy.
A. Yes.
Q. At that time, they were how old, in 2002?
A. Brandy was born in 1995. Corey was born in 1995. Brandy was born in '96.
I don't calculate that well. They were young.
MR. SATZ: That's all I have.
Thank you.
THE COURT: Mr. Polay?
MR. POLAY: I have follow-ups.

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REDIRECT EXAMINATION

BY MR. POLAY

Q. You testified that Chip went to a few different schools in Jamaica, correct?

A. Two different schools in Jamaica, yes.

Q. All before the age of 13?

A. Yes.

Q. You were back in Jamaica?

A. Yes.

Q. Before 13?

A. Yes.

Q. When he was sent to Germany, do you remember how old he was, around?

A. Like I said, he has been bounced around so much, it is so hard. So hard to remember all of these dates. You know, and what ages, it's, I just don't, I don't know.

Q. When you testified before, to Mr. Satz and when Chip was about 15 years of age and he was residing with Patrick, you said that he was alone a lot during that time period?

A. Yes.

Q. Could you tell the ladies and gentlemen of the jury what Patrick did for a living?

A. Patrick is a musician.

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He still is a musician.

He worked nights.

So he wasn't there in the evenings, actually, for supervision of homework and stuff like that.

Q. Did he work anywhere else?

A. At that time? Patrick? No.

He was a musician.

Q. Where would he work?

A. Different clubs in the area.

Q. Cruise lines?

A. Yes. That's when he left and went on the cruise line.

He left, alone.

He got a job to do the cruise line, back and forth, between Miami and Europe. And he left.

MR. POLAY: Thank you.

THE COURT: Anything further?

MR. SATZ: No.

THE COURT: Thank you very much, ma'am.

THE WITNESS: Thank you.

MR. SATZ: Just one question.

RECROSS EXAMINATION

BY MR. SATZ:

Q. What was the tuition for Admiral Farragut?

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MR. POLAY: Judge, this is outside the scope.

MR. POLAY: I don't remember.

THE COURT: She said she doesn't remember.

Thank you, ma'am.

(Witness excused.)

THE COURT: Mr. Polay, want to break for lunch?

MR. WILLIAMS: Can you see if Wayne Holgate is out there?

MR. POLAY: May not be there, here until the afternoon.

I want to check.

DEPUTY: He's out there.

MR. WILLIAMS: Judge, what time did you want to break for lunch?

THE COURT: How long is the witness?

MR. WILLIAMS: It is up in the air.

Won't be as long as Ms. Holgate.

THE COURT: Let's go to lunch.

1:15.

(Exit jurors.)

DIRECT EXAMINATION

BY MR. WILLIAMS

Q. Let's start with background information on

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yourself.

Where do you live?

A. Lauderdale Lakes.

Q. How long have you lived there?

A. Roughly 12, 13 years.

Q. Where were you born?

A. Jamaica.

Q. How old were you when you came to the United States?

A. Two.

Q. Were you educated here locally?

A. Yes.

Q. Where did you go to high school?

A. Graduated from Nova High School.

Q. Were you active in sports there?

A. Yes.

Q. What sports did you play?

A. Track and field, football were my main sports.

Q. Win any honors?

A. Yes.

Q. What?

A. Internationals for track and field.

With football, all county.

Q. As a result of your athletic career, were

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you able to go to college?
A. Yes.
Q. Where did you go to college?
A. Florida Memorial University.
Q. Where is that?
A. North Miami.
Q. From Florida Memorial, did you go someplace else?
A. Troy State.
Q. Where is that?
A. Alabama.
Q. How long were you at Troy State?
A. A year-and-a-half.
Q. Then you, something happened in your life. You dropped out of school?
A. I left, yes.
Q. Your girlfriend had a baby down here in South Florida?
A. Yes.
Q. You dropped out of school to come back, support your child?
A. Yes.
Q. You continued your education after you got back down here?
A. Off and on, yes.

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Q. What did you, you eventually became certified as what?

A. Pharmacy technician.

Q. Where did you go to school to become a pharmacy technician?

A. Florida Education Center.

Q. Are you working as a pharmacy technician?

A. Yes.

Q. Do you work for a drug store?

A. Yes.

Q. How long have you worked for that drug store?

A. About eleven years.

Q. Are you still persuing your education?

A. Yes.

Q. What are you hoping to become?

A. Environmental scientist.

Q. Where did you pursue your environmental science education? What school?

A. Broward College.

Q. Now we know a bit about you.

Do you know this man over here?

A. Yes, I do.

Q. What name do you know him by?

A. Chip.

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MR. WILLIAMS: Let the record reflect he's referring to the defendant, Gerhard Hojan.

THE COURT: It shall.

BY MR. WILLIAMS:

Q. What is your relationship, is there a familial relationship between you and Chip?

A. Yes, he's my cousin.

Q. Obviously, his mother's side of the family?

A. Yes.

Q. First cousin? Second cousin.

A. Breaking it down to technicalities, maybe like third.

Q. But there is a familial relationship?

A. Yes.

Q. The age, is Chip older or younger than you are?

A. Older.

Q. How much older is he than you?

A. About seven years.

Q. When you were growing up, did you grow up here, in South Florida?

A. Yes.

Q. You said you came over here at two?

A. Yes.

Q. Did you live in South Florida when you came

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over at two years of age?

A. Yes.

Q. Did you have interaction with your cousin Chip after you came to the United States?

A. Yes.

Q. How would you describe your relationship with Chip?

A. Inspiring.

Q. Inspiring?

In what way?

A. Well, with life in general, to not give up on a lot of things that I want to achieve myself, in life. To constantly learn new things.

He taught me things I never even thought to look at. Hobbies.

Different hobbies that he had.

He allowed me to look at them differently.

Q. Were there rough spots in your life?

A. Yes.

Q. When you were younger?

A. Yes.

Q. Did Chip assist you in any way, getting through the rough spots?

A. To not make the same, stupid mistakes.

Q. Did you heed that? Did you heed that

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advice?
A. Yes.
Q. I noticed you smiled when you first looked over at him.
A. Yes.
Q. Do you still consider him to be a family friend?
A. Absolutely.
Q. A confidant?
A. Absolutely.
Q. Did you know Chip to have any hobbies?
A. Yes.
Q. What kind of hobbies did he have?
A. He collected different things.
Q. Did he ever have a hobby where he interacted with kids?
A. With kids, apparently. Uhm, I can say I recently learned that he did.
Q. Do you know anything about him flying kites?
A. Yes, that. Very much so.
Q. Did you know about it when it was going on?
A. I didn't know it was connected to kids.
Q. Did you know he had a hobby of flying kites?

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A. Yes, I did.
Q. Did you go with him ever, to fly the kites?
A. Yes, I did.
Q. Where did you go?
A. Mostly the beach.
Q. Are you familiar with Haulover Beach?
A. Yes.
Q. Was it that area?
A. One of.
Q. How often would you go?
A. On average, maybe once a month.
Q. Did you go with him on those occasions?
A. Not every occasion.
But I did go with him.
Q. After he was arrested for this event, did your frequency of contact with him diminish or slow down?
A. Yes.
Q. Since he has been back here in Broward, have you had contact with him?
A. Yes.
Q. When I say it slowed down, is that because of the geography or distance involved is why it slowed down?
A. Partially.

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Mostly I just didn't want to see him in that type of situation.

Q. You didn't want to visit him in the circumstances he was in, physically visit him?

A. Correct.

Q. Once he day back here, locally, to Broward County, did us reestablish a relationship with him?

A. Then we started speaking.

Q. In person?

A. On the phone.

Q. How would you describe his attitude in the conversations you have had with him since he has come back here, locally, to Broward County?

A. Full of hope.

Q. Anything else that you all discussed?

A. Things we still want to accomplish.

Just stuff to try to better yourself.

Q. Does he talk to you about your career plans, your future?

A. Yes.

Q. What have you drawn from what he has related to you?

A. To definitely pursue my dreams, pursue what I want to do personally with my life. Don't let side stuff stop me from stopping what I want to

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accomplish. Environmental science is a growing career now. That doesn't mean not to do what you want to do.

Q. Environmental science, please educate me. I don't understand when you say you want to major in environmental science.

What is that?

A. It branches out into a few areas. A lot of it is geology.

Like it can branch off to, not treasure hunting.

Well, I think you understand when you go out to, like the people that went out to discover the pyramids.

Whatever the practical term is.

It branches out to checking emission levels in the air, o-zone. Understand how the climate is changing with what we do in our every-day life, with fossil fuels, with using different types of energy, how it effects the earth, as well as how we live on earth because of what we do.

Q. You're how old?

A. 36.

Q. You're still actively pursuing this in college?

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A. Yes.
Q. What do you think has been the frequency of contact between you and Chip since he has gotten back here, back in South Florida?
A. It would have been every week that, that I contacted him or we were able to speak if I put money on my phone.
Q. By put money on your phone, he has to call you collect?
A. Right.
Q. You need money on your cell phone in order for him to call you collect?
A. Yes.
Q. When you have money on your cell phone, then he's able to reach out to you?
A. Yes.
Q. Fair statement, where he's presently at, you can't call him?
A. No, not that I know of.
Q. Were you still, were you away at college or still down here when Chip had his first child, Corey?
A. I was here, I believe. I left about 2003.
Q. You know Corey, don't you?
A. Yes.

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Q. How would you describe, from what you observed, the relationship between Corey and Chip?

A. I can't speak thoroughly on their relationship. I know there is one.

Q. Does Chip ever discuss Corey with you when you talk?

A. He mentioned him. It's mostly about us.

Q. The conversations you have with Chip are mostly social, between you and he?

A. For the most part.

Q. As far as your aspirations?

A. As well as his.

Q. As well as his aspirations?

A. Yes.

MR. WILLIAMS: Thank you.

CROSS EXAMINATION

BY MR. SATZ

Q. Good afternoon.

Do you know who Barbara Holgate is?

A. Barbara.

Q. Holgate?

A. His ex-wife?

Q. Do you know her?

A. Yes.

Q. How often do you see her?

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A. Not often. Maybe once every few years.
Q. In 2002, that's when the defendant was arrested. Chip was arrested?
A. Yes.
Q. How many times, did you see him a lot before he was arrested?
A. Chip?
Q. Yes.
A. You can say that. I saw him fairly often.
Q. Where?
A. We would get together at a random spot. Go to the beach. Meet at a restaurant or just hang out at places. No specific places.
Q. Where did he live?
A. Who?
Q. Where did he live?
A. Oh.
Q. Where did he live?
A. Oh, in Weston, I think.
Q. In Weston?
A. Yes.
Q. Where in Weston?
A. Off of 575.
Q. Who did he live with?
A. He had a roommate.

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Q. Do you know who the roommate was?
A. No, sir.
Q. He did security?
A. Yes.
Q. For strip clubs?
A. I have known him to do that, yes.
Q. Which strip clubs was he security for?
A. The last one I can remember, Ecstasy.
Q. So from 2002, you never went up to see him in prison?
A. No.
Q. You only saw him when he came back down here, you could speak to him on the phone?
A. This is the first time I'm seeing him.
Q. When did you first start speaking to him on the phone?
A. When he got back down.
Q. When was that?
A. I can't say.
Q. Do you know how many months?
A. I don't want to give the wrong information.
Q. He told you don't make the same mistakes I did, right?
A. I wouldn't quote that. But that's where he always lead me.

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Q. Pardon me?
A. That's where he always lead me, not to make the same mistakes I made or he made.
MR. SATZ: okay. Nothing further .
THE COURT: Any redirect?
REDIRECT EXAMINATION
BY MR. WILLIAMS
Q. When you said you saw him at Weston, was that a manufactured home or trailer, that he lived, in that area?
A. Trailer. Yes.
MR. WILLIAMS: Thank you.
MR. SATZ: Nothing further.
THE COURT: Thank you very much.
You're excused.
(Witness excused.)
MR. WILLIAMS: Charles Holgate.
CHARLES HOLGATE,
being of lawful age, and having been first duly sworn in the above cause, testified on his oath as follows:
THE CLERK: Please state your full name and spell your last name for the record.
THE WITNESS: Charles Holgate, H-O-L-G-A-T-E.

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DIRECT EXAMINATION

BY MR. WILLIAMS

Q. Good afternoon.

A. Good afternoon.

Q. How are you doing?

A. All right.

Q. You and I never met before today; is that correct?

A. I think I saw you at the trial.

Q. But I'm talking about you and I have never met or spoken before today; is that correct?

A. That's correct.

Q. I want you to tell the jury a bit about yourself.

Where do you live?

A. Plantation. Here in Fort Lauderdale.

Q. How long have you lived in Plantation?

A. I have lived in Plantation maybe about since 2000. About 2000.

Q. You have lived there roughly 18 years?

A. Yes.

Q. Prior to living in the location you live in Plantation, where did you live?

A. Lauderhill.

Q. How long did you live in Lauderhill?

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A. Maybe about seven years prior.
Q. Where are you from originally.
A. Jamaica.
Q. How old were you when you came to the United States?
A. I came to the United States in 1982. I was born in 1954. So that would be about 28.
Q. 28?
A. Approximately. If my math is correct.
Q. Your math is probably better than mine.
When you came here, obviously, you were an adult?
A. That's correct.
Q. What type of work, when you first came here, what type of work did you do?
A. I was in sales when I first came, I was into retail sales. Later on, sales, in-home sales. Real estate, mortgages, life and health insurance.
Q. What type of work are you presently doing?
A. Life insurance.
Q. You sell life insurance?
A. Yes, sir.
Q. How long have you been selling life insurance?
A. Off and on, since about 1987.

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Q. Okay.

You have been involved in life since about 21 years?

A. Approximately.

Q. Do you work for yourself or a company?

A. Both.

I have an insurance agency. I also do work for, we are contracted with an agency, where I do their Medicare for them.

Q. Let's talk about your agency. Do you own the agency?

A. Yes.

Q. Give it a plug. What's the name of it?

A. Alpha Gamma Financial Group in Lauderhill.

Q. You have been selling insurance at least for 21 years, involving the insurance business?

A. Yes.

Q. Do you know Chip?

A. I do.

Q. Do you know him by the name Chip?

A. I do.

Q. Mr. Gerhard Hogan, you know him by the nickname of Chip?

A. Yes.

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Q. If I use the name chip, we know who you're talking about?

A. Yes.

Q. You got the name Holgate. How are you related to Chip?

A. Actually, Chip is my cousin.

However, Chip's mom and myself are cousins. But we had the close relationship we call each other brother and sister.

Chip would call me Uncle.

Q. You and his mother, who testified here earlier today, are cousins?

A. Yes.

Q. The relationship between you and she is so close, you refer to each other as brother and sister?

A. Yes.

Q. Chip was born in 1975. Where were you living in 1975?

A. Jamaica.

Q. He was born here, in the States. When after 1975 would be the first time you came into contact with Chip?

A. I migrated here in 1982. I would say somewhere in the '90s.

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Q. When you first came here, you didn't have contact with him until he was about how old?
A. He was as teen-ager.
Q. Do you have children of your own?
A. I do.
Q. How many?
A. Three.
Q. Who are they?
A. Crystal, Dwayne and Charles Holgate.
Q. Dwayne is the young man that just testified?
A. Yes.
Q. That's your son?
A. That's correct.
Q. So Dwayne is about five, six, seven years younger than Chip. Your other children, how do they fall in relationship to Chip's age?
A. Crystal is currently at 30 years old.
Charles was born in, uhm, I am in a brain lapse here.
'75. Charles is born in '75.
Q. Charles is born the same year as Chip?
A. Yes.
Q. Same age?
A. Yes.

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Q. Charles, Jr.?
A. Not fully Junior.
Doesn't have my middle name.
Q. Charles, The Younger?
A. Appropriately, sir.
Q. Charles, The Younger and Chip are the same age?
A. Yes.
Q. I think you said earlier you didn't meet chip until he was a teenager?
A. Yes.
Q. At this point in time, we have two teen boys about the same age?
A. Yes.
Q. Was Chip ever a guest in your house?
A. Yes.
Q. This is when you were living in Plantation?
A. Yes.
Q. How often was Chip a guest in your home?
A. He would be there from time to time. Sometimes he would be there overnight. Sometimes. It was pretty often.
We had a good relationship, the family, that is.
I would visit them sometimes.

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They would come over and visit sometimes.

Q. They?

A. They as in Chip and his mom and sometimes Chip's dad as well and the girls, the daughters.

Q. Chip's?

A. Chip's sisters. Sibling.

Q. Half-sisters?

A. Yes.

Q. At some point, they were here, in the United States, also, the girls?

A. Yes.

Q. In terms of the frequency of visits, did Chip's dad, was it rare he came; or did he come all of the time?

A. He didn't come all of the time. He came less.

Q. How would you describe Chip's relationship with your children the times he was a guest in your home?

A. Very good relationship.

Q. What did you observe about Chip when he was a guest in your home?

A. Chip was fun to be with, to be around.

He was very helpful.

There were times when I needed, if my water

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heater went out, he would fix it.

All I had to do is buy the water heater.

He would fix it.

Light bulbs.

Little things around the house, he was very very helpful.

Occasions my car went down.

All I had to do is buy the part.

He would fix it.

He was very good with the kids.

I recall my younger daughter, for example, whenever she gets her grades or grades from school, Chip would reward her.

I think he gave her $5 for each A she got. B's was a collar.

He would encourage her to bring up the other grades.

Q. That's Crystal?

A. Yes.

Q. How much younger? You said she's 30 now?

A. Yes.

Q. She was fairly young then?

A. That's correct.

Q. She would have been in elementary school at this point in time?

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A. Yes.
Q. You said he was helpful.
Sounded like he was handy.
A. Handy, electrical things were fixed.
He would do things around the house and help out, yes.
Q. Would you describe him as a positive influence on your children?
A. Absolutely.
Q. In what way would you characterize him as a positive influence?
A. Positive influence, in that the example I just cited, with encouraging Crystal to bring up her grades.
If the kids were to fall out of line, he would try to discipline them, tell them you have to listen to your parents.
Things of that nature.
Q. What was your relationship was Chip's father?
A. Just being, him being Jerry, really. Not a great, not a great, just as my sister's husband. Her husband.
Q. At this point in time, you're a successful

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black businessman?

Fair statement.

A. Uhm, success.

Thanks for the prediction.

Q. I'm wondering about, you know, what Chip's father, was there animosity between you two, jealousy because of your success?

A. None whatsoever.

He was a successful man.

He was a hotelier.

Q. Did he treat you as an equal? Be candid in here. We are letting out the dirty laundry.

A. Nothing specific I can remember.

We got along okay.

Q. You got along because of the kids?

A. Yes, because I didn't know him prior.

Q. He wouldn't be the guy you would call up, go out, have a beer with after work?

A. He didn't impress me as that type of a person. With that being said, if he visited or I visited, we would share a beer together.

Q. When he's a guest in your home?

A. Yes.

Q. Because you were being a good host?

A. I try to be.

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Q. Since chip has been back here in Broward County, for this proceeding, have you had contact with him?

A. Yes.

Q. Did you come here physically or telephone?

A. Physically.

Q. You came over physically to the Broward County Jail?

A. Yes.

Q. You were able to visit with him?

A. Yes.

Q. How many times have you met with him?

A. At least twice, that I recall.

Q. What was, when you came here, visited with him physically at the Broward County Jail, how would you describe his attitude?

A. He was optimistic. Knew the trial was coming up, being in that situation. He was, he was, uhm, his spirits were high.

MR. WILLIAMS: Thank you, sir.

MR. SATZ: No questions.

THE COURT: Thank you very much, sir.

(Witness excused.)

MR. WILLIAMS: May we approach?

THE COURT: Yes.

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(Sidebar had.)

MR. WILLIAMS: We would request the jury be excused and the Court hold an in-camera hearing regarding a particular witness, so we can --

(Sidebar concludes.

THE COURT: Steve --

(Exit jurors.)

MR. WILLIAMS: We would like in in-camera hearing with the Court, court reporter and our client regarding a matter that we want sealed, in case there is later appellate proceedings.

THE COURT: I don't have a problem with it.

MS. MCCANN: What is the nature of this?

MR. WILLIAMS: It is about whether to call or not call a particular witness.

MS. MCCANN: That would be Dr. Brannon.

MR. WILLIAMS: Yes.

MR. POLAY: The reason we need it in camera is certain things have to be put on the record only Mr. Williams and myself are aware of.

That information is confidential.

THE COURT: Fine with me.

MS. MCCANN: I would trust this Court would do a super adequate inquiry, no matter which way it unfolds.

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THE COURT: Absolutely.

Let's do it.

MS. MCCANN: Especially in light of the fact that, you know, this defendant has filed a 3.851 in this case.

THE COURT: Okay.

Everybody out of the courtroom, with the exception of BSO.

(Humans leave.)

THE COURT: Okay. Let's do this.

(In camera proceedings were had, which is not being made a part of this record until reporter has permission to unseal it for public view.)

(In camera proceedings conclude.)

THE COURT: Okay.

Let's ask them all to come back. The transcript will, well, I think I'll, it will be under seal. Let's see if we even need it before I have Vivian prepare it.

Let's take a break.

(Recess had.)

(Humans allowed to return.)

MR. POLAY: Judge, I am sending you the report.

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THE COURT: Mr. Hojan, raise your right hand.

(Defendant sworn.)

THE COURT: You understand, at this point, your lawyers have two things that they are going to place on the record and be made a part of the record that you have the opportunity, if you wish, to come forward, take the stand and testify in your own behalf.

You also have the right, if you so desire, to remain silent, not have that fact counted against you.

Of course, if you took the stand, you would be subject to impeachment based upon any prior felony convictions or any crimes of dishonesty, misdemeanor thefts, things of that nature and be subject to cross examination by the State as well.

And you're aware of all of that?

DEFENDANT: Yes, sir.

THE COURT: You have discussed all of this with your attorneys?

DEFENDANT: Yes, sir .

THE COURT: After discussing it with your attorneys, have you formed your own independent

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determination as to whether you wish to testify or not?

DEFENDANT: Yes, sir .

THE COURT: What is your decision?

DEFENDANT: I'm not going to.

THE COURT: Anybody forcing you to remain silent?

DEFENDANT: No, sir.

THE COURT: Under the influence of any alcohol?

DEFENDANT: No.

THE COURT: Drugs?

DEFENDANT: No.

THE COURT: Medications?

DEFENDANT: No, sir.

THE COURT: this is your decision and your decision alone?

DEFENDANT: Yes, sir.

THE COURT: Anybody wish the Court to do a further inquiry?

MS. MCCANN: None.

MR. POLAY: No.

MS. MCCANN: On an unrelated topic, that would be in this case the Defense has filed a numerous witness list.

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I would like to read off the names of people listed on that witness list to make sure that they do not want them to be called.

THE COURT: Read them off.

MS. MCCANN: I'll read the whole list.

I know some have been called.

Pauline Holgate, called as a witness.

Corey Hojan, called as a witness.

Max McCord, listed but not called.

David Craig was listed, not called.

Louis Mulgany was listed, but not called.

Charles Holgate. I think, I'm not sure if that's junior or senior.

Charles Holgate. Then next to it, Charles Holgate, Dwayne and Crystal.

Barbara Ann Davis, listed, not called?

Patrick Holgate, listed, not called.

Dr. Michael Brannon, listed, not called.

Carey Ann Chism, listed, not called.

Ron McAndrew, listed, not called.

And Patrick Holgate.

MR. WILLIAMS: Dwayne was called.

MS. MCCANN: There was a vigorous research into the defendant's history for presentation at this penalty phase, numerous witness lists

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filed. It is with the defendant's consent that no other witnesses will be called that were listed.

THE COURT: Mr. Hojan, you're familiar with all of those individual?

DEFENDANT: Yes.

THE COURT: Do you wish any of those to be called in addition to those that have testified?

DEFENDANT: No, sir.

MR. WILLIAMS: Only one exception I would make.

THE COURT: The one we had the in camera on?

MR. WILLIAMS: No, Ron McAndrew was not called because of a prior ruling of this Court that he could not be called.

MR. POLAY: There was a motion in limine the Court granted. Therefore --

THE COURT: He may want to call that individual. But he's precluded by court order?

MR. POLAY: Exactly.

THE COURT: Any of the others you want called?

DEFENDANT: No, sir.

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MS. MCCANN: Thank you.

THE COURT: Let's bring the jury in.

Do we have the stipulation worked out?

MR. WILLIAMS: Yes. I'll read it.

THE COURT: Do you have a stipulation, Mitch, on the --

MR. WILLIAMS: We have the medical record.

MR. SATZ: Just the one letter.

MR. POLAY: Dohn will read it into the record.

THE COURT: But you have one?

MR. POLAY: Yes.

MR. WILLIAMS: We'll substitute a better written copy of this.

Instead of publishing it, read it.

MR. SATZ: Just the one letter?

MR. WILLIAMS: I'll publish it.

(Enter jurors.)

THE COURT: The jury is back.

MR. WILLIAMS: Your Honor, we have two stipulations that will be entered into. I want to publish to the jury what will be marked as Defendant's Exhibit T for purposes of identification, which will be admitted as Defendant's Exhibit 18. This is a letter. The

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letterhead reads Urology Medical Specialist, Sonja K. Gupta, M.D., board certified urologist.

To whom it may concern, Mr. Gerhard Hojan is a 43-year-old male whom was diagnosed with bladder with a different urologist.

Patient reports been treated for BCG in our office, cystoscopy and cytology were negative on June 18th, 2018. Subsequently, on September 4th, 2018, a surveillance cystoscopy was performed; and it revealed an etrimosis (phonetic) area. It needs to be followed up in three months with a cystoscopy, again, since this may represent recurrent bladder cancer, signed Dr. Gupta, October 17th, 2018.

Next stipulation marked Defendant's V will be admitted as Defendant's Exhibit 19. Stipulation, defendant Gerhard Hojan, and the State of Florida, by and through the undersigned attorneys stipulate to the following facts. Gerhard Hojan has no prior criminal convictions other than the counts in this case, signed Michael J. Satz, State Attorney; Mitchel B. Polay, defense attorney.

THE COURT: Those stipulations are in fact

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agreed to by both parties?

MR. SATZ: Yes.

MR. POLAY: Yes.

THE COURT: Those are facts the jury can take as facts?

MR. SATZ: Yes, sir.

MR. POLAY: Yes, sir.

MR. WILLIAMS: With the publication and acceptance of those two stipulations, the Defense rests.

THE COURT: Thank you.

Take them out for a couple minutes.

(Exit jurors.)

THE COURT: For the record, the two exhibits we just introduced are 18 and 19.

THE COURT: Okay.

Mike, any rebuttal?

MR. SATZ: No, sir.

THE COURT: So, we're going to close, start closings Tuesday at, I figure 9:30.

I'll have the jury back at 9:15. Wait a minute. No, I'll bring the jury back at 9:45.

I take it, if they are not finished in one day, we're sequestering them?

MR. SATZ: I think you have to.

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MR. POLAY: I think you have to.

THE COURT: I think you can avoid it if you waive off.

MR. WILLIAMS: On Friday, at the Waffle House, I had a discussion with Captain Tiango.

I suggested they should make the reservations for at least one night.

THE COURT: But I have to tell them to bring their bags.

MR. POLAY: Any way we can do it Wednesday? Tuesday is election day.

THE COURT: I asked all of the jurors to vote prior to being here.

MR. WILLIAMS: I know you did. But people may be interested, they won't have access to communications.

They may be interested in what is going on with this country and state. I would respectfully request we push it off until Wednesday, the 7th.

MR. SATZ: Why don't you leave it up to the jurors.

THE COURT: Can always authorize BSO to tell them the results of the election.

Bring them in.

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(Enter jurors.)

THE COURT: All right.

Let's talk.

You know, at this point, the State has finished their case.

The Defense has finished their case.

What lies before us, if you can recall back to the preliminary instructions, is closing arguments, jury instructions, deliberations.

Now, this decision I'm leaving strictly to you.

Normally, I would ask that you be back on Tuesday, at 9:30. Then we would close right after that.

In a case of this nature, if the jury isn't finished in a day -- and I want you to know there is no time schedule, then, by law, I have to sequester you.

That, in and of itself, isn't a problem. But it is election day.

You would not be able to get any results that night because pretty much all of your communication will be cut off.

So I'm willing to do this Wednesday so that there is no conflicts. And that's the, that's

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a decision, we're all comfortable with your telling us.

Want to go, talk about it?

JUROR: I mean I think Wednesday is good, if anybody hasn't done early or mail-in voting, would have Tuesday to take care of it.

THE COURT: All in favor?

Almost got away with it.

JUROR: If you remember, the very very beginning, I said I had a trip that was planned. I leave town Thursday morning. My ticket is booked. Football ticket is purchased. I am on a plane Thursday morning.

If we get it done Thursday --

JUROR: Tuesday it is.

JUROR: Vote right after we leave here.

THE COURT: Everybody, I think, indicated to me they either voted already or would vote before Tuesday?

JUROR: Should find early voting places open Saturday or Sunday.

THE COURT: Can I talk to you guys for a second?

(Sidebar had.)

THE COURT: Is she an alternate?

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MR. SATZ: It wouldn't make a difference. You would excuse her anyway.

DEPUTY: She just told me her trip is the next Thursday.

THE COURT: Okay.

(Sidebar concludes.)

THE COURT: Okay.

Wednesday, 9:30. Okay?

Oh, I forgot.

Bring a bag. You have to pack, just in case.

JUROR: When do we find out who the alternate jurors are?

THE COURT: Wednesday.

Let me tell you.

Wait, we don't need you tomorrow.

We will all be here. You won't.

We have to get ready for closings.

There is a whole lot of stuff I have to be involved in that does not involve you guys whatsoever.

Now, I have gone through this in the past with sequestration.

Bring a bag. Can't tell you what to pack or how long to pack for. You can be finished

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in ten minutes or ten days.

Don't know.

If you want to bring -- they will keep you away, pretty much from everything, including goodies and smacks and stuff like that. Feel free to bring your own.

Don't bring any electronic stuff. They will take it away from you.

Did they say you can have an Ipod?

MR. POLAY: No Internet access.

No WIFI.

THE COURT: No Booze.

I will tell you this.

If you are sequestered, you're allowed to have two drinks at dinner. Of course, you're paying for the drinks.

Pam will be down there helping, when you come in.

BSO will be totally aware.

We'll be able to get you in, without your waiting in line nor 16 hours.

All of your bags are going to be stored in the conference room, behind me. It is out in the hall.

If it becomes an issue you are sequestered,

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BSO will go through that with you.

Your bags will be searched before you ever get to go to a hotel.

So have a wonderful weekend.

Vote.

We will see you guys Wednesday morning.

Please vote.

(Exit jurors.)

(Discussions were had on 11-1-2018 without a reporter being present.)

(Said proceedings were continued on November 7, 2018.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)

SS:

COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 23rd day of July, 2019.

Vivian Rock

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME XXIII
PAGES 2298 - 2484

Fort Lauderdale, Florida
November 7th, 2018
9:30 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on November 7th, 2018, commencing at 9:30 a.m.

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BARBARA NUNN	2441	2475		

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THEREUPON, the following proceedings were had:

THE COURT: Ready?

MS. MCCANN: I would like to point out when the Defense called witness Pauline Holgate to the stand to testify on the defendant's behalf, during these proceedings last week, that she cried. She cried pretty much throughout her testimony.

The reason I'm putting that on the record is because the Defense put it on the record when our witness, Ms. Akin, cried.

And I just want the record to be clear that their was emotion expressed by defense witnesses as well.

Thank you.

THE COURT: Don't forget Mr. Absolu's brother.

MS. MCCANN: Yes.

MR. WILLIAMS: The most emotional.

MR. POLAY: And Barbara Nunn cried as well.

THE COURT: We'll begin soon.

(Recess had.)

(Second file for the morning session begins.)

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THE COURT: Everybody ready? Let's bring them in.

(Enter jurors.)

THE COURT: Morning, ladies and gentlemen.

At this point, you have heard, seen all of the evidence.

At this time, the attorneys are going to present their closing arguments.

Please remember what the attorneys say is not evidence. And you're not to consider it as such.

In closings, both sides will have an equal opportunity, in terms of time, to address you, with the State being given their opportunity to go first.

Then you will hear from the Defense. And then you will hear from me.

At this point, Mr. Satz?

MR. SATZ: Your Honor, thank you.

Good morning, ladies and gentlemen.

JURORS: Good morning.

MR. SATZ: Ladies and gentlemen, now it is your duty to make a decision as to what the sentence should be for the first degree murder of Willie Absolu and the first degree murder of

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Christina Delarosa.

It is not just one sentence.

It is two sentences.

One for Willie Absolu's death and one for Christina Delarosa's death.

I submit to you based upon the evidence and testimony introduced in these proceedings, there are six aggravating factors that have been proven beyond any reasonable doubt and that these six aggravating factors far outweigh any mitigating circumstances that may have been produced during these proceedings. And they far outweigh those mitigating circumstances beyond any shadow of a doubt.

At this point, I would like to, once again, remind you, with all of the evidence that has been introduced in this case, you can -- and Judge Backman will tell you -- you can take it back with you and examine it and review it. Please do that. I think it is important that you evaluate everything in this case.

The statements that the defendant, Gerhard Hojan, gave to Detective Anton and Detective Kiso. Remember there was an oral statement and taped statement? You can take the taped

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statement back and review it.

The 7-Eleven tape, where Gerhard Hojan is in the 7-Eleven at 6:40 a.m. on March 11, 2002, a little bit after two hours, after he murdered Christina Delarosa and Willie Absolu. You can watch that video and how he acted in that 7-Eleven. You can take back the gun and look at that gun. See how scary that gun is and how it operates.

There is a magazine or clip that goes into the handle. In order to make that fire, you pull back the slide.

"Click, click."

Remember the testimony of Barbara Nunn? That gun scared her.

If you want to scare someone, you just have to point it at them.

Why do you inject a round into a firing chamber? Inject a round. Inject a round. Put a round. Place a round in that firing chamber to fire it.

Take back the bag.

Remember when Detective Kiso went to 100 Apache Street and Mr. Hojan, Sr. Consented to the search of his house and the bedroom being

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used by Gerhard Hojan, the defendant in this case, there was a bag, a photograph of it leaning against the wall? In the bag were the two money orders. Take them and look at them.

They are important. It was $411.56. Both of these were purchased at 6:40 a.m. on March 11, 2002, a bit after two hours after he murdered Christina Delarosa and Willie Absolu.

You know what else is in that bag? Coins. Coins from the Waffle House.

Take it back. Lift it up. Lift up those coins. 434 quarter, 502 dimes and 363 nickels.

And those coins and those money orders were in the bag. You will see a picture, I'll show you a picture of the bag, a nylon bag in evidence, neatly put in the bag in that bedroom. All of this evidence you can take back, including the photographs, to review it.

I submit to you that in this case, the defendant, Gerhard Hojan, has already been convicted, as everybody knows, of the first degree murder of Christina Delarosa, the first degree murder of Willie Absolu, the attempted murder of Barbara Nunn, three counts of armed kidnapping: The armed kidnapping of Willie

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Absolu, the armed kidnapping of Christina Delarosa and the armed kidnapping of Barbara Nunn and the armed robbery of Christina Delarosa and Barbara Nunn.

And that's important because now we'll discuss what the aggravating factors are.

So I'll put them up, so when I'm speaking, you can look at them. The Judge will give you the jury instructions.

You can take it back and look at them all.

There are six aggravating factors that I submit to you the testimony and the evidence has shown to be proven beyond a reasonable doubt.

And the first one is that has the defendant, who has committed the first degree murder of Willie Absolu, Christina Delarosa, had any previous convictions of a capital felony or a felony of violence towards another person?

Capital felony is murder in the first degree.

So he has been convicted of a capital felony in the first degree murder of Willie Absolu and the first degree murder of Christina

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Delarosa.

And the Judge is going to instruct you that you can consider contemporaneous convictions. In other words, convictions at the same time as the first degree murder of Willie Absolu and the first degree murder of Christina Delarosa if, if, if the episode involves multiple victims.

In this case, there are multiple victims.

Willie Absolu, Christina Delarosa and Barbara Nunn.

Let's just take the first degree murder of Willie Absolu. You have, with that, the contemporaneous, the same time, conviction of the first degree murder of Christina Delarosa and the attempted murder of Barbara Nunn. So there are two contemporaneous convictions during, when Willie Absolu was, the first degree murder of Willie Absolu that you can consider as previous convictions, as you will hear from Judge Backman, you can consider as contemporary convictions.

As to the first degree murder of Christina Delarosa, there is as contemporaneous capital felony: The first degree murder of Willie

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Absolu and the attempted murder of Barbara Nunn.

So you can consider those contemporaneous convictions because there are multiple victims as to that aggravating factor: Previous convictions or contemporaneous convictions.

I submit to you, ladies and gentlemen, that aggravating factor has been proven beyond a reasonable doubt.

The second aggravating factor that I submit to you the evidence has proven beyond and to the exclusion of every reasonable doubt, that during the commission, the defendant in this case, Gerhard Hojan, was in commission of the first degree murder of Willie Absolu and the first degree murder of Christina Delarosa, was engaged in another violent felony, to-wit armed kidnapping.

And there is no question that Gerhard Hojan has been convicted of the armed kidnapping of Willie Absolu, the armed kidnapping of Christina Delarosa and the armed kidnapping of Barbara Nunn.

That is a matter of record.

He has been convicted of those three counts

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of armed kidnapping. He has been convicted of that.

Let's look at the facts of this.

Armed kidnapping.

Here is Jimmy Mikel and the defendant, Gerhard Hojan, having breakfast.

Jimmy Mikel goes out to Hojan's silver Ram 2001 truck. Silver truck. He gets bolt cutters and comes back and goes in the little hallway. In, through the door, across from the restrooms, into the back area.

Hojan, at the same time, gets up and approaches the register.

Christina Delarosa, who waited on them -- remember Christina Delarosa made the waffle and brought two Cokes and a cup of coffee and sat at the other table with Barbara Nunn, as they had breakfast?

Here is Gerhard Hojan.

He gets up. He takes his Davis .380 semi-automatic handgun, fully loaded, with five bullets -- fully loaded, with five bullets -- and he pulls back the slide.

"Click click."

Remember that sound that Barbara Nunn told

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you about.

Heard the "click click."

"Click click."

Take the gun back with you.

Pull back the slide.

You will see, that's what the sound is.

Why does somebody put a round in the firing chamber? Isn't the gun scary enough, if you're pointing it at the 18-year-old Christina Delarosa and Barbara Nunn and Willie Absolu? Isn't that scary enough?

Why put one? Why place a bullet in the chamber?

And he has them, the defendant, Gerhard Hojan, has them go from the back of the counter, where the register is, out that swinging door.

You were all there. Saw the waffle house.

And they pass the office door.

They pass the employee preparation area.

He has them pass the door that goes out, to the restrooms.

There is Jimmy Mikel. And he snaps the padlock on the storage area. Remember the wire, photographs in here, of the wire

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commissary door? They snap the lock and go in there.

Why didn't Hojan keep them in the preparation area?

Why didn't he keep them behind the wire door?

Then they go through the stainless steel cooler door.

Why didn't he keep them in the cooler?

Nope. Walk through the cooler, to the back of the cooler, where there is what? Another stainless steel door to the freezer.

Hojan puts them in that freezer.

Why didn't he leave them in the preparation area?

Nobody could see where they were.

Why didn't he leave them in the commissary area, behind the steel, wire door?

Why didn't he leave them in the cooler?

No. Into that small, cold freezer.

Because armed kidnapping is confining, moving, taking someone somewhere to help facilitate other crimes.

The robbery, of course.

And what else?

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The murder of Christina Delarosa and the murder of Willie Absolu.

Because as soon as Gerhard Hojan took his.380 Davis automatic out of his pocket and pointed it at Christina Delarosa and Barbara Nunn and Willie Absolu, he knew that he was going to have to eliminate them as witnesses.

Why?

They know him. Those guys were having breakfast.

They weren't disguised.

Jimmy Mikel used to work there.

Hojan used to come in with him.

Barbara Nunn went to The Colosseum. They were invited. She knew them.

Remember the testimony of Kylie Akens? She said yes, I have been to the waffle House to visit my friend, Christina. And Chip. Hojan was there. Christina knew him.

If he wasn't going to kill these witnesses, if he wasn't going to eliminate them, they would have had the money from the Waffle House and from Christina Delarosa and from Barbara Nunn for maybe two hours before they were apprehended.

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Because the victims knew they.

And that's why he confined them, not in the preparation area, not in the storage area, not in the cooler, but in the freezer, to facilitate their death.

So I submit to you, ladies and gentlemen, that that second aggravating factor, that during the commission of another felony, to-wit, armed kidnapping, has been proven beyond and to the exclusion of every reasonable doubt.

The third aggravating factor that I submit to you has been proven beyond and to the exclusion of every reasonable doubt is that the first degree murder of Christina Delarosa and the first degree murder of Willie Absolu was done to avoid or prevent a lawful arrest.

In other words, to eliminate witnesses.

And that's exactly what Gerhard Hojan knew he was going to have to do to get away with this robbery.

Barbara Nunn knew him.

Christina Delarosa knew him.

He would have gotten that $1888.21 from the Waffle House and approximately $200 in tips

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from Christina Delarosa and approximately $80 in tips from Barbara Nunn for approximately two hours before they were apprehended.

Those witnesses had to be eliminated.

That's why they were in that cold, dark freezer.

When he pulls the gun out -- "click click" -- and he points it at Christina Delarosa, what does she say?

She said, Am I going to see my six-month-old son Kyle again?

Why would she say that? Why would she say that? She was saying that because she knew. She knew. She knew she may not see her six-month-old son Kyle again.

Then they are herded back, again, not in the preparation area, not in the commissary area, behind the steel-wire door, not in the cooler, but in the freezer.

When Christina Delarosa is in the freezer, what does she say to Barbara Nunn? Barb, it is cold in here. Am I going to see Kyle again?

She knew. She knows these guys.

Barbara Nunn, she says, after Hojan comes back, after he takes the money from them --

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remember that? She says he is going to kill us. I know them.

I know them.

So Hojan goes the first time and puts Willie Absolu and Christina Delarosa and Barbara Nunn in that freezer.

He comes back a second time. A minute or two passes. Remember the testimony of Barbara Nunn? And he asks for the cell phone.

Barbara Nunn, who had a cell phone, said I don't have it.

Remember she lifted up her shirt? Said I don't have my cell phone. It's out front.

He leaves.

Closes the door.

You were out, at the Waffle House.

You know the freezer, stainless steel freezer door, stainless steel, opens out. Not in.

There is no way they could have protected themselves. No way they could have barricaded themselves in the small freezer.

He comes back a third time and asks for their money.

He puts the gun at them and demands their

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money.

Christina Delarosa's tip money and Barbara Nunn's tip money.

And he says put it on the shelf.

Christina Delarosa takes out her money, puts it on the shelf.

Barbara Nunn takes out her money and puts it on the shelf.

He says to Willie Absolu, where is your money?

He said, Well, it is out in the car. He doesn't believe him. Gets mad at him.

Remember the photograph, Willie put his money behind boxes in the freezer?

Then he leaves. A minute or two goes by, Barbara Nunn's testimony. And he comes back. And he shoots and kills Willie Absolu and Christina Delarosa and shoots Barbara Nunn in the back of the head.

That's five shots.

Remember?

Two into Willie Absolu. Two into Christina Delarosa. And one in the back of the head of Barbara Nunn.

How many bullets does this, Hojan's .380

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Davis semi-automatic handgun hold?

Five?

He emptied his gun into those three innocent people, in that cold freezer.

And Barbara Nunn's testimony -- this is important -- because she says when Hojan comes the fourth time, the first time he puts them in there. Second time, cell phones. Third time, money. Fourth time he comes to kill them.

When he's pointing the gun at them on the forth time, she says, Hey, you don't have to do this. Can't we work it out?

Hojan tells them to turn around and get on your knees.

And Barbara Nunn says she's the first one that is shot. She is shot in the back of her head.

Barbara Nunn survived.

Barbara Nunn survived.

Think about it, if Barbara Nunn didn't survive.

Then Willie Absolu -- it is important; and I want to show you this.

These shots are important.

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You know, take it back and look at them.

The first shot to Willie Absolu goes in his left arm and comes out the interior of his left arm. Goes in his neck and winds up in his right shoulder.

Why is that important? Why is that the first shot?

Remember the testimony of Dr. Linda Rush O'Neil?

In her opinion, this shot is a defensive wound.

Barbara Nunn is shot and falls to the ground.

Willie Absolu puts up his arm (indicating) as a defense. Goes through his arm. Comes out. Goes through his neck and into his right shoulder.

Linda Rush said that's the first shot because the second shot to Willie Absolu's head was fatal.

He wouldn't have been able to move after that shot.

In her opinion, that was the second shot.

And her opinion, remember the testimony of Carl Hammerle, the expert firearm examiner,

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this shot to Willie Absolu's head had stippling.

Remember Carl Hammerle and Dr. Linda Rush O'Neil, they explained to you what stippling is. The powder is, that is in the skin. They can tell approximately how far the muzzle of the weapon is to the wound.

And both Carl Hammerle and Linda Rush O'Neil gave the opinion that when Hojan fired his .380 Davis automatic into the head of Willie Absolu, the barrel of his gun was 6 to 18 inches away.

6 to 18 inches.

Right up on the person.

And then Christina Delarosa.

Christina Delarosa, there is the stippling on her neck. And that shot comes out right below her right ear. Car Hammerle and Dr. Linda Rush O'Neil gave you their opinion that the muzzle of Gerhard Hojan's .380 Davis automatic was 6 to 18 inches away from her neck when he fired that bullet into her neck and it came out the right side of her ear.

Then he shoots her in her left breast. It goes through her breast, through her lung and

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almost severs her spinal cord.

So five shots are fired at these three innocent people.

Five shots.

The shot to Christina Delarosa's neck, according to Dr. Linda Rush O'Neil, was fatal. The shot to her left breast, that went through her lung and almost severed her spine, was fatal.

The shot to Willie Absolu's left side of his head was fatal.

Barbara Nunn survived. Shot in the back of the head. But she survived.

Five shots.

He emptied his gun.

Five shots.

Three of the shots were head shots.

One to Christina Delarosa's neck and comes out of her head: Head shot.

The shot to Barbara Nunn, back of her head was a head shot.

Of course the shot to Willie Absolu, the left side of his head is a head shot.

That's important because of the elimination of witnesses.

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When you want to eliminate somebody -- and the evidence shows that this was an execution. Three people shot in the head.

Wanted to what?

Prevent or avoid a lawful arrest by what?

Eliminating the witnesses.

Barbara Nunn knew the defendant, Gerhard Hojan. She knew Jimmy Mikel.

Christina Delarosa knew Jimmy Mikel and knew Gerhard Hojan.

There was no way they were going to get away with this robbery by leaving any witnesses.

And the fourth aggravating factor, I submit to you, that has been proven beyond and to the exclusion of every reasonable doubt, is that this first degree murder of Willie Absolu and the first degree murder of Christina Delarosa was done for financial gain.

That's what it was about.

This money didn't belong to Gerhard Hojan.

He wanted it.

And he took it by force.

And he knew, when he got up with that gun, the way to get that is to go and go where the

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money is, take the money and eliminate the witnesses.

Financial gain.

What did they do?

Hojan puts them in the freezer; and he not only takes the $1,888.21 from the Waffle House, but he takes the tip money from 18-year-old Christina Delarosa and $80 from Barbara Nunn.

There is no way he could have gotten away with that, by leaving any witnesses.

What he does, he puts them in the freezer, gets their money, comes back again. Shoots them to death. Shoots Barbara Nunn in the head. She survives.

Then they go with the bolt cutters.

Remember where the bolt cutters are found? In the truck, in Lee High Acres, in Lee County, behind the passenger's seat, in the defendant's truck.

That Mikel went out to his truck to get them and bring it back and snap the lock on the wire commissary door that leads to the cooler and freezer? You were there. You saw that.

They snapped the lock on the office door.

They snapped the lock on the steel drawer.

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There are photographs of it, above the safe. They take the office bank, $600 and a partial deposit that wasn't deposited yet.

They go to the cash register. They bring the drawer from the cash register. There is a photo of it right over here.

They don't just take the money from the cash register.

They take the drawer and bring it back to the office, where the cash drawer was in the steel drawer above the safe. And they take that money.

Then also snap the lock on the drop box, to take that money.

They would not have been able to have this money for themselves if they left any witnesses.

Financial gain.

What's the first thing that Gerhard Hojan does with his new-found money?

He goes over to the 7-Eleven at 330 North Federal Highway and purchases two money orders for $411.56.

$411.56 is the amount of the car payment on his truck.

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Then he takes the coins, amounting to $176 and the money orders.

And he goes, here it is. Take it back. This is what -- remember the testimony of Detective Kiso, when Hojan, Sr. Consented to the search of his house in the bedroom used by the defendant, Gerhard Hojan? He finds this bag. In this bag -- and take it back with you.

Feel how heavy these coins are. And it is in this bag. Not left in the truck. But placed in this bag, with the money orders.

So I submit to you based upon the testimony and the evidence, that the fourth aggravating factor, that the first degree murder of Willie Absolu and the first degree murder of Christina Delarosa was done for financial gain.

The $1888.21 that belonged to the Waffle House; the approximately $200 that belonged to Christina Delarosa, the victim of the armed robbery; and approximately $80 in tip money that belonged to Barbara Nunn, her tip money. She was the victim of the armed robbery.

No question that fourth aggravating factor has been proven beyond and to the exclusion of every reasonable doubt.

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The next aggravating factor, that the capital felony -- remember the capital felony is the first degree murder of Willie Absolu.

And the capital felony is the first degree murder of Willie Absolu was especially heinous, atrocious or cruel.

Think about this.

Think about this.

What is the first thing that happens when Gerhard Hojan points that loaded gun at Christina Delarosa?

Am I going to be seeing my six-month-old child Kyle again?

She senses that there may be a death here of herself.

Why would she say that?

Then back in the freezer. She says, Barb, it's cold in here. Am I going to be able to see Kyle again?

Barbara says, after the money is taken from them, on Hojan's third trip back there, He's going to kill us. I know them.

You were at the Waffle House. That cold, small freezer. That's where these three people are.

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What are they anticipating? There is no question what Barbara Nunn is anticipating. She says it.

He's going to kill us.

I know them.

Sure enough, here comes Hojan.

And he shoots -- and Barbara Nunn says, Wait, .Wait.

Take the defendant's statement back with you.

He says the same thing in his statement.

Barbara Nunn says, Wait. You don't have to do this. We can work this out.

After he told them to turn around.

Can you imagine what they are thinking when he tells them to turn around in this cold, small freezer?

Then he shoots Barbara Nunn in the back of the head.

And she falls to the ground.

What is Willie Absolu thinking now?

He puts up his arm to protect himself. Defensive wound.

He gets shot in the arm. It goes through his arm, through his neck. Winds up in his

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right shoulder.

Gerhard Hojan shoots him in the head, within 6 to 18 inches.

Now you have Christina Delarosa.

She is in that freezer.

She sees Gerhard Hojan shoot Barbara Nunn in the back of the head. Falls to the ground. She sees it.

She sees and hears Willie Absolu shot in the arm. Goes through his neck and his shoulder and then shot in the head and falls to the ground.

She is the last one.

She is the last one.

She gets shot in the neck. Comes out the right side of her head. And she's shot in her left breast.

The anticipation of death.

Being in that cold, small freezer.

Especially heinous, atrocious or cruel.

That's what happened.

That's why you're here.

Willie Absolu.

Christina Delarosa.

The evidence has shown, the testimony has

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shown that these two people, these two people -- and not that they were killed, not that they were murdered.

How they were murdered.

How they were killed.

Especially heinous, atrocious or cruel.

When Gerhard Hojan came back the fourth time, the evidence and testimony has shown, he executed these two people.

He snuffed out their lives.

And he tried to do that with Barbara Nunn.

Miraculously, she survived.

She survived.

Especially heinous, atrocious or cruel, waiting in that cold freezer, anticipating your death.

The last, the sixth aggravating factor I submit to you has been proven beyond and to the exclusion of every reasonable doubt, that the first degree murder of Willie Absolu and the first degree murder of Christina Delarosa was cold, calculated and premeditated.

When you're talking about premeditation, we are talking about more than just premeditation for first degree murder.

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We are talking about heightened premeditation.

In other words, a substantial opportunity to reflect on what you're going to do.

Let's look at the facts of this case.

Mikel and the Defendant Hojan are having breakfast. According to the statement that the defendant gave to Detective Anton and detective Kiso. That's when they talked about the robbery. They had breakfast. Remember Christina Delarosa served them a waffle, two Cokes and a coffee?

Mikel gets up.

Walks out to Hojan's silver 2001 Ram truck. Gets the bolt cutters.

Comes in. Starts walking to the hallway, to where the restrooms are. Across from that is the door that goes into the preparation area.

At that time, Hojan gets up, pulls out his Davis .380 automatic, fully loaded. Puts one in the chamber and directs them, Christina Delarosa and Barbara Nunn and Willie Absolu, not just to the back area, not just to the preparation area, not just to the storage area

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behind the wire, steel commissary door that was locked. Not just into the cooler but into the freezer.

Why?

Why?

Wasn't just, oh, I just happened to do that.

He directed them directly back there.

Mikel is back there, snapping at the padlock off of the commissary door, the steel, wire door.

Hojan takes them back, through the cooler, through the stainless steel cooler door. Through the cooler. Through the stainless steel cooler door. And he puts them in there.

And they take the money from the office. They snap the lock at the office. Snap the lock off the steel door above the safe. Snap the lock off the drop box under the cash register.

It was calculated. It was planned.

That's why they were in the freezer.

To eliminate them as witnesses, to get away with the $1888.21 and approximately $200 in tips from Christina Delarosa and $80 in tips

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from Barbara Nunn.

That was the plan. That was calculated.

What does Hojan do after that?

They get away. 6:40 a.m., he's down at 330 North Federal Highway, in Fort Lauderdale, getting two money orders from his truck payments.

It was cold.

It was calculated.

It was premeditated.

But Barbara Nunn survived the bullet to the back of her head.

So I submit to you, ladies and gentlemen, that these six aggravating factors have been proven beyond and to the exclusion of every reasonable doubt.

And that these six aggravating factors far outweigh any mitigating circumstances that may have been presented, and not only outweigh but outweigh it by any reasonable doubt whatsoever.

Victim impact testimony was presented.

Victim impact testimony is not an aggravating factor. It is not.

But what it does, it shows the uniqueness of the individual that has been murdered.

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Willie Absolu. 28 years old.

Christina Delarosa, 18 years old.

Because the act of murder is the ultimate depersonalization of an individual.

It is the ultimate de personalization of an individual.

It is a transition from a human being who has hopes, desires and goals into nothing.

Talks about their uniqueness.

Their uniqueness to their friends, to their family and what they have to offer.

And you heard the victim impact testimony about Willie Absolu and Christina Delarosa.

So I submit to you that the aggravating factors, not the victim impact, that are proven beyond a reasonable doubt, outweigh any mitigating circumstances beyond any reasonable doubt.

There was testimony, and I'm sure Mr. Polay will argue that the defendant, Gerhard Hojan, was remorseful.

Really?

Really?

When was he remorseful?

Was he remorseful when he herded Willie

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Absolu, Christina Delarosa and Barbara Nunn though the swinging door?

Was he remorseful when he herded them past the preparation area?

Was he remorseful when he had them go through the steel wire commissary storage door that Jimmy Mikel snapped the lock off of? Was he remorseful when he did that?

Was he remorseful when he made them open the stainless steel cooler door and had them walk into the cooler.

Was he remorseful when he had them open the freezer door and had them go into the freezer, the small, cold freezer?

Was he remorseful?

He left them there a minute or two.

He comes back and asks for the cell phones. Remember Barbara Nunn said she had one, but it wasn't on her? She lifted up her shirt.

He left them.

Was he remorseful after that?

He comes back a minute or two later, and he demands the money? The tip money from Christina Delarosa and Barbara Nunn? Said put it on the shelf.

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Gets to Willie. Remember Barbara Nunn's testimony? Said he was really mad because Willie said he didn't have the wallet? Left it in the car?

Was he remorseful about that?

He closes the freezer door and leaves?

Was he remorseful then?

He comes back the fourth time. He shoots Barbara Nunn in the head. She falls to the ground, to the floor of that freezer.

Was he remorseful then?

Was he remorseful for shooting Barbara Nunn in the back of the head?

Was he remorseful after he shoots Willie Absolu in the arm and in the neck and shoulder and shoots him in the head? Say within 6, 18 inches? Did he say no, I'm remorseful then?

No.

What he does is he shoots Christina Delarosa in the neck.

Was he remorseful then?

Take his taped statement back.

Remember what he said?

Christina, the white waitress, she was screaming, trying to crawl underneath the

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shelves?

He shoots her in the left breast.

Was he remorseful then?

Now there are three people shot in the freezer.

Three people.

Was he remorseful then?

What does he do?

Takes the money, snapped the lock off of the office door. Snapped the lock off the steel drawer above the safe. Takes the money.

They go out front. Take the cash drawer out of the cash register.

Goes back to the office. Takes the money from the cash register.

Snaps the lock off the drop box below the cash register.

They take the money and leave.

Is that when Gerhard Hojan was remorseful, driving away from 4689 SW 148th Avenue in Davie?

Is that when he was remorseful?

That drive into Ft. Lauderdale, at 330 North Federal Highway, to the 7-Eleven?

Take the 7-Eleven tape back with you.

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Watch it. See if he looks remorseful as he's buying two money orders in that 7-Eleven for two car payments for $411.56.

Then he leaves The 7-Eleven.

And he goes home.

And he says in his statement, then he travels over to Lee High Acres, Lee County, 100 Apache Street, where his parents live.

He didn't leave the coins and the money orders in his truck. And I guarantee you that the money and coins weren't kept in that nylon bag.

He takes them in, to 100 Apache Street, puts it in the bedroom he's staying.

Was he remorseful then?

He's so remorseful he brings the money into his parents' home?

Was he remorseful then?

Then he falls asleep on the couch.

Remember what his mother, his mother's testimony?

She gets a call from her daughter and gets a call from Gerhard Hojan's ex-wife Barbara, saying Hojan's picture was on the news and he's wanted for murder?

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What does she do?

She has to wake him up.

This remorseful person, she has to wake him up.

She says hey, I got a call from my daughter, Barbara Holgate. Your picture is on the TV. Did you do this?

What did he say?

I didn't do this.

She said you better go to the police station and straighten it out.

Was he remorseful then?

Then they are stopped by the Lee County deputies.

They are taken to the substation.

Detective Kiso and Detective Anton come over from Davie. They interview him.

And they say to him what happened?

He said, yes, Jimmy and I went to the Waffle House. We had breakfast. And then we went home.

Is that true?

No, that's not true.

Was he remorseful then?

And then Detective Anton says Barbara Nunn

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survived.

And he puts his head down.

Is that when he's remorseful?

Because somebody survived?

Is that his remorse?

Was he remorseful?

And then he gives a statement to Detective Anton and Detective Kiso. Take it back with you. There are some things he didn't tell the truth on that.

He says Willie Absolu was the first person that he shot.

Remember the way the wounds are, wounds claimed by Dr. Linda Rush O'Neil? She said this is a defensive wound?

Barbara Nunn's testimony, she was the first one shot.

She was shot in the back of the head.

That wasn't true.

He's trying to tell the police, oh, he had to shoot Willie because Willie was coming at him.

That's not what happened. That's not what Barbara Nunn testified to. That doesn't fit the evidence of exactly what happened.

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And then he says, in that statement, that he went directly home after the shooting at the Waffle House.

No. No. No.

That's not true.

He went to the 7-Eleven.

Then when Detective Anton and detective Kiso talked to another officer, they asked him again.

Oh, yeah, I went by Enterprise. But it was closed.

Still didn't say anything about the 7-Eleven.

You can watch the tape again.

Then, in the statement, he said that Jimmy Mikel threw away the gun.

Is that true?

Then they confront him again.

He said no, we threw the gun off a bridge on State Road 84.

Is that true? No.

Because the gun was found in the parking lot of the Colosseum night club, where Mikel and Hojan worked.

Remorse?

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Really?

Another one of the mitigating circumstances that Mr. Polay may be talking about is the defendant's childhood.

Well, you have heard the testimony just as anyone else.

Seemed that he had a relatively privileged childhood.

Certainly, his parents were fairly affluent.

MR. WILLIAMS: Judge, we have an objection to make.

THE COURT: I'll deal with it later.

The jury will recollect specifically and collectively the testimony coming forth during this proceeding.

Continue.

MR. SATZ: Mrs. Holgate, the defendant's mother, said they owned a hotel in Jamaica.

They had a hotel in Marathon, in the Keys.

That they had a restaurant in the Keys.

They sent him to Germany.

They sent him to Admiral Farragut's private school.

When they couldn't be with him, they had

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somebody take care of him.

They bought him a Bronco truck when he was 16 years old.

And he gets married.

He gets married and has two children.

Where do they live? They live with the father, Hojan, Sr., and the mother.

And they had a hotel or an apartment complex on Hollywood Beach.

You can determine whether his childhood was bad or good or whether that was a mitigating circumstance or what weight you want to give it, if you find it to be a mitigating circumstance.

And Mr. Polay may argue that Jimmy Mikel influenced Gerhard Hojan.

Really?

Who is the major player in this event?

Who has the gun?

Who places a round in the chamber of that gun?

Who herds the three employees back, through the back area, preparation area, past the office, into the commissary, past the commissary door, where Mikel snapped the look.

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Into the cooler, into the freezer.

Who went back three times after he put him in the freezer?

Who took their money?

Who wanted their cell phones?

Who shoots them.

Gerhard Hojan.

Certainly the major player from what the evidence shows in this case.

And Mr. Polay made a comment. And he said power of one. You all have the power of one.

Remember that?

Who had the power of one?

Who had the power of one when he fired the bullets into Willie Absolu and into Christina Delarosa?

Who had the power of one?

Gerhard Hojan had the power of one.

And he exercised that power of one.

Mr. Polay also said don't judge Gerhard Hojan by his worst day.

I submit to you this wasn't Gerhard Hojan's worst day, March 11, 2002.

It was the worse day for Willie Absolu.

And it was the worst day for Christina

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Delarosa.

That was their worst day.

That was truly their worst day.

Ladies and gentlemen, I submit to you that as to the first degree murder of Willie Absolu, there are six aggravating factors that have been proven beyond a reasonable doubt and that this, these six aggravating factors outweigh any mitigation that you may want to give to any of the mitigating factors presented.

And the aggravating factors presented, as to the death of Willie Absolu outweigh any mitigation as to the death of Willie Absolu, beyond every and any reasonable doubt.

And therefore, for the sentence for the first degree murder of Willie Absolu, it should be death. And for the first degree murder of Christina Delarosa.

Six aggravating factors have been established by the testimony and the evidence beyond a reasonable doubt.

And any mitigation as to the first degree murder of Christina Delarosa, any mitigation, whether you want to give it any weight or not or what weight you want to give is far

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outweighed, that mitigation is far outweighed by the aggravating factors established in this case beyond any reasonable doubt.

Because of those six aggravating factors that outweigh any mitigating circumstances beyond a reasonable doubt, I submit to you that the appropriate sentence for the first degree murder of Christina Delarosa's death.

Thank you.

THE COURT: Before Mr. Williams starts, we'll take a quick break.

(Exit jurors.)

(Recess had.)

THE COURT: All right, Mr. Williams, you had an objection.

MR. WILLIAMS: We had three objections.

THE COURT: I only heard one.

MR. WILLIAMS: Well, I was reluctant to interrupt closings.

THE COURT: Fair enough.

Let's start with the first.

MR. WILLIAMS: The first was the recalling Ms. Nunn's testimony, where she supposedly said the defendant said turn around and get on your knees.

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I concede that in her trial testimony, in her pretrial deposition, she said that. But it wasn't brought out in the testimony before this Court.

That's the first thing.

We were also concerned about the argument made regarding victim impact. That argument came right after the conclusion of the aggravating circumstances. That comment about hopes and desires, I think can all be interpreted as an aggravating circumstance, giving the juxtaposition of where it occurred within the presentation.

Another objection was that during the process or discussing potential mitigation, I think the law permits them to discuss mitigation.

But the manner in which it was discussed denigrated the mitigation, which is not acceptable.

MR. POLAY: In light of those three points, Judge, we're moving for a mistrial. I want to elaborate on what Mr. Williams brought up with respect to Barbara Nunn's testimony, I'm intimately familiar with it, not only from the

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first trial, but also from depositions and statements that she made.

During the course of this particular penalty phase hearing, post Hurst, she did not bring out the fact that Mr. Hojan allegedly said turn around and get down on your knees.

That's highly prejudicial.

I'll stand on that.

MR. SATZ: Your Honor, I remembered the testimony that, she definitely said turn around.

I thought she said get on your knees.

That's my recollection.

I agree with them she said it at the trial and deposition.

My recollection, she said it here.

For sure, I know she said turn around.

She said he said turn around, because she put her hands up.

I purposely said victim impact evidence is not an aggravating factor. It was used to show uniqueness of the people who were killed.

That's what the law is.

I didn't even leave it hanging.

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I said it is not an aggravating factor for you to consider.

The other one, I was just talking about the mitigation.

I am allowed to talk about mitigation. .

And I wasn't denigrating. I was --

THE COURT: First of all, I recall the testimony being the same as yours, Mike. That turn around, get on your knees.

However, even if that were not said, this Court has already instructed the jury that it is their collective recollection as to what was said during the course of this proceeding.

More importantly, when you consider all of the aggravators, at least from my perspective, it would be harmless error at best.

That's not for me to determine.

The objections are overruled.

The motion for mistrial is denied.

As soon as they're ready, bring them in.

(Recess had.)

THE COURT: Let's bring them in.

(Enter jurors.)

THE COURT: Mr. Williams?

MR. WILLIAMS: Good morning.

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JURORS: Morning.

MR. WILLIAMS: You know you haven't heard much from me during this trial.

And when you're a young lawyer, you want to give the closing statement. You want to give the opening statement.

When you get older, you start having doubts. Am I going to say the right thing? Am I going to forget something?

If I do forget something and you have evidence to the contrary that fills in the blanks, you rely on your memory and your notes.

Life is interesting because yesterday, I was sitting at my computer, preparing for this argument. I get an instant message. It is from a guy I went to high school with. 1965. Turned out to be the athletic director of our high school.

He sent me a picture. Two pictures of me at the scene of a crime.

I went back and said, Harold, you don't know what a welcome, good remembrance that was considering what I'm through sitting here, preparing for.

July, 1975, Gerhard Hojan was three years

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old. And I just finished probably my first defense in a first degree murder case.

40 years later, I can tell you it doesn't get any easier.

Time doesn't make this responsibility any easier to do.

Time and experience don't.

Mr. Satz and I have been friends for 45 years.

Here, for the past few weeks, as we have been in the past, we have been adversaries. But there has been no yelling, no belittling, no mocking conduct between us. Wouldn't it be nice if other government officials conducted themselves with such civility.

You know, I want to talk about civility for a minute. Civility doesn't mean weakness.

There may be some in this country now that think if you're civil, fighting over an issue, if you are civil and fighting over an issue, it is a sign of weakness. It is not.

Civility doesn't mean Mr. Satz and I don't believe in the righteousness of our case. .

But we have learned over the past 40 something years that the best decisions are

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made in a calm, deliberative manner, not with hysterical screaming to juries, histrionics. That doesn't lead to a well-reasoned decision.

When I am talking about civility, don't think I'm excluding Ms. McCann and my co-counsel, Mr. Polay.

They have exercised and always will exercise the same civility. They are, they are not in the over 70 club yet.

Judge Backman likes it when Mr. Satz and I are in here because then he's the third oldest person in the courtroom.

THE COURT: I haven't hit 70 yet.

MR. WILLIAMS: You will be in the club soon.

THE COURT: Yes.

MR. WILLIAMS: So surely, shortly, you will be called upon to make a life-and-death decision.

Unless, like some of us, you have had to make a decision to turn off life support for a parent or a loved one, this will be the first time, in your life you have been called upon, you, individually, to make a decision of turning off life.

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Don't you want someone that favors life to be making that decisions?

I think we all should favor life first and only take life when it's legally appropriate.

During this proceeding, I'll refer to my client as Chip. That's meant as no disrespect to him.

If you remember, everybody, including Ms. Nunn, who testified, knew him by the name of Chip.

In recalling the testimony, if you have been taking notes, any reference to Chip means Mr. Hojan.

Now, there is one undisputed thing.

Mr. Hojan, Chip, is going to die in prison.

Get any fanciful thoughts you heard from TV or news that he will be out of jail some day, get those thoughts out of your mind. Because it is not happening.

He's the only person in this courtroom that knows where he's going to be when he dies.

Now, most probably, most probably, he will die in one of three ways.

First, the government official, should you

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vote death, a government official will inject a poison into his blood stream. And he will die at some unknown, undetermined time in the future.

Two, his bladder cancer may return, and he may suffer from the ravages of bladder cancer and die at some unknown, undetermined time in the future.

Three, he may die from the other maladies of growing old, potential obesity. And if so, it will be at some undetermined time in the future.

All we know, as we stand here today, sit here today, is that he's going to die in prison at some undetermined, unknown time in the future.

You, today, will be deciding whether it will be choice number 1.

I want to discuss with you some legal concepts. Mr. Satz discussed with you some legal concepts. I'll discuss them with you.

I'll try to do it in a teaching fashion.

I used to be a public high school teacher before I became a lawyer. I still teach at Nova law school.

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I want to take you through it.

If at any time it is not clear what I'm getting at, kind of give me one of those hey,-I-don't-understand-what-you're-getting-at looks, Mr. Williams; and I'll try to address it.

Before I get to that, Mr. Satz talked about the power of one.

Florida has not abolished the death penalty. But the law has changed such that one person on a jury can decide that a life is worth saving.

The power of one is a safety valve of salvation, a safety valve of mercy.

Now, some of you have been on jurors, served on a criminal jury before. If you remember from your experience, whether it was a six-person or twelve-person jury, to get a final verdict, it had to be unanimous. Whether the verdict was guilty or not guilty, in those trials, the verdict had to be unanimous.

Otherwise what happened.

There was a potential do-over.

Didn't have a unanimous verdict. So you start the process over again, until you get a

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unanimous verdict, one way or another.

This penalty trial does not require a unanimous verdict for there to be finality.

It is permissible. It is a lawful verdict, it is a final verdict, if you have a split vote.

Whatever that split is, it is lawful.

If it is a split verdict, this case is over and done with.

It is not a do-over, like in a regular, criminal trial.

I say to you it is a safety valve. It is a safety valve. This one vote, power of one is a safety valve so that we, as a society, can ensure that the death penalty is reserved for people such as Ted Bundy. A serial killer that stalked, month after month, victims. Or a person like Timothy McVey, who planned to bomb a federal courthouse over months, a period of time --

MR. SATZ: Judge -- excuse me, Mr. Williams.

I hate to interrupt you.

I object to that argument.

That's not what the law is.

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It is not reserved for serial killers or Timothy McVey.

It is based upon the law that's been presented.

And I object to that.

THE COURT: Let's stick to the law, Mr. Williams.

MR. WILLIAMS: I'll show how that applies in this case, that it is reserved for the most heinous, the worst of the worst.

Let's go through, you will get a packet. The Judge will instruct you after the argument is over. Each of you will get a packet to go through. 14 pages.

This will be yours.

Every word in here, in this packet, has meaning and is important.

I want to discuss certain portions of it with you so you understand the import and impact of this 14-page packet.

If you're taking notes, I refer you to the first page.

It says an aggravating factor is a circumstance that increases the gravity of the crime or the harm to the victim.

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No facts other than proven aggravating factors may be considered in support of the death sentence.

So the aggravating factors concentrate and are restricted to the crime itself or how the crime affected the victims.

There is no outside, other circumstances, that can be considered as an aggravating factor.

That's why, when Mr. Satz went over with you, there are certain clearly defined aggravating circumstances that apply in this case that the Court has determined apply in this case.

Okay?

So you can't think of anything else other than the facts in this case and the harm to the victim in determining the aggravating factor portion of this.

The first task that you have, as jurors, and this is a process, a process, is that you determine every aggravating factor that's been proven beyond a reasonable doubt.

Each of you will go through the aggravating factors.

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You will determine whether you feel one, two, three, four, five, six, how ever many it is, have been determined beyond a reasonable doubt.

After you get done with that task -- that's the first task.

If you don't, if you don't establish the aggravating factors beyond a reasonable doubt, you don't go to step 2.

Step 2 is, and reads, I'll read you from page six. A lot of words in between 1 and 6.

If you unanimously find that one or more aggravating factors have been proven beyond a reasonable doubt, then the defendant is eligible for the death penalty. And you must make additional findings to determine whether the appropriate sentence to be imposed is life in prison without possibility of parole or death.

Now, I want you to stay there.

Eligible.

If the aggravating factors have been proven, he's eligible -- not that it is automatic. He's eligible. He's eligible.

So you move on from there in our lesson.

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You go to the next page, 7, discusses mitigating circumstances.

Reading in part from that page.

A mitigating circumstance can be anything in the life of the defendant which might indicate that the death penalty is not appropriate.

It is not limited to the facts of the crime.

See how that differs from the aggravating circumstances?

The aggravating circumstances are restricted to the facts of the crime and its impact on the victim.

Mitigating circumstances are much broader in scope.

Is not limited to the surrounding facts of the crime.

A mitigating circumstance may include any aspect of the defendant's character, background or life or any other circumstance of the offense that may reasonably indicate that the death penalty is not an appropriate sentence.

So it can include anything about his past, his background.

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You can also tap back into the characteristics of the defense to determine whether or not there is mitigation.

So you will get this packet. You will see that on pages 7, 8 and 9, there are listed 30 mitigating circumstances.

What I might suggest to you, when you get back there, you take some quiet time. You each have a packet. You have your pens and pencils.

You go down the list of 30 and see which, in your mind, have been established.

Check that off.

You say, well, how do I determine it has been established, Mr. Williams? We have heard all of this stuff.

Well, the instruction is on page 9.

It is the defendant's burden to prove that mitigating circumstances exist as explained before these proceedings, the defendant need only establish a mitigating circumstance by the greater weight of the evidence, which means evidence that is more likely than not, that tends to establish the existence of a mitigating circumstance.

The mitigating, the 30 mitigating

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circumstances you will see, they do not have to be proven beyond a reasonable doubt, like the aggravating circumstances.

See the difference?

Mitigation is broader in scope than the aggravating circumstances.

Aggravating circumstances require proof beyond and to the exclusion of a reasonable doubt. The mitigating circumstances have a much lower standard of proof by the greater weight of the evidence.

By the greater weight of the evidence means it is more likely than not.

Say to yourself what is more likely than not?

If you had scale, more likely than not. Reflection, it would be 1/10th of a percent over 50 percent. That's how, that's what that burden is.

If it is more likely than not that "X" occurred, then it has been established.

Okay?

I submit to you some of the mitigating circumstances have been established beyond a reasonable doubt, even though that is not what

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is required.

Now, going on, page 9, if you determine by the greater weight of the evidence that mitigating circumstances exist, you must consider it established and give that evidence such weight as you determine it should receive in reaching your verdict about the appropriate sentence.

Any juror persuaded as to the existence of a mitigating circumstance must consider it in this case.

So if in your mind that burden has been met, you must, you must consider it. You can't say well, it has been established; but I won't consider it.

If it has been established by the greater weight of the evidence, you're legally obligated. That is what must means, to consider it.

The next sentence is particularly interesting.

It says further, any juror may consider a mitigating circumstance found by another juror even if he or she did not find that factor to be mitigated.

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So if one of you decides this mitigating circumstance has been established, by this burden of proof, more likely than not, and you're not quite sure in your mind it has or you say it hasn't, you're still obligated to consider the findings of your other, of your fellow jurors.

In other words, hear them out.

Now you have six aggravating circumstances over here.

You have 30 something mitigating circumstances over here.

You say how do I do that? How do we weigh these?

Page 10 says the process of weighing aggravating and mitigating factors is not a mechanical, mathematical process.

In other words, you should not merely vote on the number of aggravating factors and compare that number to the total number of mitigators.

It goes on to say in your decision-making process, each juror must decide what weight to be given to a particular aggravating factor or mitigating circumstance.

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Regardless of the result of each individual juror's weighing process, even if you find that sufficient aggravators outweigh the mitigators, the law never compels nor requires you to determine that the defendant should be sentenced to death.

That's the mercy provision.

That line there on page 10 is the mercy instruction.

Now, you're back there in the jury room.

You're talking about mitigating circumstances. Comment on that.

I want to use an example totally unrelated to this case. Just an example.

If you had a mitigating -- a woman is on trial -- and it came out she was a mitigating circumstance was she was a good cook and homemaker. Okay. Proven. Has some weight. But does it have greater weight in your mind? Yes, she is a good cook and homemaker. But she donated her time to cooking meals at a homeless shelter.

That gives new meaning in your life, important to the fact of being a good cook.

When you are going through the mitigating

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circumstances, carefully study them. And when the 12 of you, whomever eventually will go back into the jury room to make this decision -- I have been back there. I know it is cramped. Each of you, each of you is entitled to be treated with respect, with dignity.

And each juror's vote will be respected.

You're encouraged to talk amongst each other.

But you're never required to justify or explain, put into words the reason for your vote.

That's your own personal decision.

A juror may vote for mitigation even if there is no mitigation that exists.

A juror may vote for life, even if no mitigation exists.

I say that.

But there is mitigation in this case.

I say it as an example to you, that you can vote mercy at any point in this proceeding. .

Bullying.

When you get back into the jury room, no one person or persons is permitted to bully other members of this panel.

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Just because someone is older, more educated, maybe makes more money, doesn't mean that their vote is more important.

You're each entitled to the dignity and respect, not subject to bullying.

If somebody has to yell at you, or speak to you in a condescending tone, they are not a very effective communicator. They think blustering and yelling and bullying is what changes people's minds.

If there is somebody back there, bullying, acting inappropriately, treating anybody with a lack of respect or dignity, I suggest you tell the foreman send the Judge a note as to what is happening.

That's not to be permitted.

This is not at stampede to justice by a bully.

Mr. Satz and I differ upon how the shooting incident occurred.

There is sworn testimony in the record that highlights this difference. Okay?

Now, first of all, we know that Jimmy Mikel and Chip came to the Waffle House in Chip's car.

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Now, put out of your mind that they went to the Waffle House with the intent to commit a robbery and kill everybody in the Waffle House.

Why do I say that?

The facts bear it out.

You're going into a Waffle House, that you don't know how many people are in there.

If the plan is to kill everybody in the Waffle House, all guns are dangerous.

But you don't take a Saturday night special that holds five bullets, if that's the so-called plan.

I want to go through with you Chip's confession. You will hear it. You have a tape of it. I want to go through it with you, highlight important parts I think demonstrate the shooting did not occur in the exact sequence Mr. Satz suggests it does.

That puts this tragic incident in a different perspective.

First of all, we know Barbara, fortunately, that Barbara Nunn survived.

We know that she identified Jimmy Mikel and Chip as the perpetrators. Because that's the only way the police knew to look for Jimmy

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Mikel and Chip, is the interview they had with Ms. Nunn.

So they find, through the investigation, where Mikel and Chip live. Trailer out in Davie.

Then go there. They are not there.

They get Mr. Mikel.

Mr. Mikel takes them to where the gun is.

It is Mikel that knows where the gun is, Mikel that takes them to the club, retrieved the gun you have here in evidence.

From there, they go, alert authorities on the West Coast.

Chip's parents' house is put under surveillance.

They establish his pick-up truck is there. See someone that matches his description outside.

So they stop.

How does that stop them?

How does this occur?

There is a call or calls to Chip's mom about him being involved in something in Fort Lauderdale.

She wakes him up and he disclaims, doesn't

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confess to his mother. But she says to him, well, let's wake your father up. Go down to the police station and get this straightened out.

Does he run?

Does he jump in the pick-up truck and take off?

No. No.

The ever wanting to please mom, ever wanting to please the parents, he wakes his father up.

They start driving to the police station. You don't think he knows in the back of his head what will happen when he gets to the police station?

He doesn't get to the police station. They are traveling in the little Ford. Travelling in the little Ford. His dad, born in 1937, this is 2000.

They get stopped.

He's taken to the police station. And he gives a recorded statement that you will listen to. I hope you will listen to.

Now, let's talk about when the recording statement was taken.

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March 12, 2002, at 2:21 a.m.

So this is less than 24 hours. Less than 24 hours since the crime has been committed. Less than 24 hours, he's in police custody.

Police do what? The police do what the police are required to do.

They advise him of his Miranda Rights.

You have seen that on TV. Right to remain silent. Right to have a lawyer.

A. He waives his right to have a lawyer.

He waives his right to remain silent.

And he gives the police a statement.

Now, this statement is just Chip and the police.

There is no lawyer in there, guiding, well, maybe you better say this, that.

That is not happening. This is a conversation between Chip and two policemen.

So he's in that room.

He waived his right to a lawyer.

He waived his right to remain silent.

After they advise him of his right to remain silent, and he waives it, they then say to him, Detective Anton, you will hear, are you aware under Florida state law it is a crime to

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knowingly furnish false information under oath?

Chip: Yes, sir.

Do you understand what that means?

Yes, sir.

Detective Anton: What that means, I'm just going to explain to you so you definitely know, it is, once I swear you in, it can be a crime to lie under oath.

And he has him raise his right hand.

He administers the oath.

He says to him do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Yes, sir.

What does the detective, right after the oath is administered, right after the oath is administered, the detective says, Anton says I want you to tell me what happened early on Monday morning.

Throws out that broad question.

Chip says I was watching TV at home. My roommate came out and said let's go for some breakfast.

We went out to the Waffle House.

We sat down.

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We were having breakfast.

He was talking about how easy it was to rob a Waffle House.

So he went out to a truck, got bolt cutters.

I took the people into the cooler after he cut off the locks.

He left me in the cooler with the people.

I went out to check what was going on.

I went back inside the cooler.

When I opened the door, the cook and I had a little struggle.

The gun went off. I shot him twice.

And then he says can't have any witnesses.

So I shot the other two.

First words out of his mouth is that he had a struggle with Willie Absolu.

And Mikel then says to him we can't have any witnesses.

Okay?

How does this tie in?

We know, we know that Mikel is the prior employee, who is familiar with the inner workings of that Waffle House.

Mikel goes out to the truck and gets the

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bolt cutters because he knows there is a lot of padlocks in order to get to the money. And it is Mikel leading the way, cutting the padlocks, with Chip herding the people through the areas that he unlocked, that Mikel unlocks.

It is Mikel that is taking them to the freezer, the cooler and freezer.

He's taking them in there because he's clipping the locks to clear the way.

So the, I would suggest to you that the facts are consistent with Willie Absolu being shot first.

Why do I say that?

Well, you go further over into, into the statement, Detective Anton says once he came back with the bolt cutters, what happened? Now he's taking, he's asking Chip what happened when, when Mikel returned to the restaurant with the bolt cutters.

I took the gun out of my pocket.

I told all three of them to go straight to the back.

Jimmy was already back there.

Opened the door. I put them in the cooler. I told them to empty their pockets.

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I went back outside to see what he was doing.

Then I went back in the cooler.

When I opened up the cooler, that's when the cook and I got in a struggle.

That's the second time that he said that the struggle began with Willie Absolu, the cook.

Then he goes on.

Detective Anton asks him okay, when you went back into the cooler, and you say the cook got into a struggle?

Yes, sir.

Anton: I'm assuming that was the black man?

Hojan: Yes, sir.

Detective Anton: What kind of struggle was it?

As soon as I opened the door, he came at me. It was a little hand thing.

Anton: Did you guys struggle at all?

No, it was just like he, as soon as he came towards me, and he put his hands on me, he grabbed the hand from my gun, and the gun was, and that's when it went off.

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Anton: How did the second shot occur?

As he was, as he still had hold of me, he was going down, I shot him again.

That explains it.

That's consistent with what the medical examiner said.

He shot from a close range.

Anton: So you say you shot him twice?

Yes, sir.

Anton: What were the other two, what were the two girls doing?

Chip: They were in the cooler. One, the heavy-set was on the left side. The other girl was on the right side. And I walked back out. I went back in. And Jimmy says we can't leave any witnesses. That's when I went back in there. And I shot them both.

Now, that is consistent with Ms. Nunn's testimony in this regard. She is in the cooler.

She says, Christina. And she says they are going to kill us.

Well, yeah. That's a logical conclusion in that Willie has just been shot. Such that when he comes back -- he's left at this point.

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Now, when he comes back, it would be logical at that point, Ms. Nunn's knowing that there had already been shots fired, two shots fired, that she would reach out to try to stop him and herself get shot.

Mr. Satz and I are in agreement Christina was the last person shot.

We are in disagreement over who was shot first and who was shot second.

Because after that portion I just read you, where he said he went back into the cooler, shot them both, meaning the women, Anton says who did you shoot first?

The black guy.

Then Anton okay.

Then after that, which one of the girls did you shoot first?

The heavy-set black girl.

Where did you shoot her?

From what I remember, it was in the head. I wasn't sure as it is happening. She gave me a little struggle. That's consistent with her testimony.

So this is the third time, remember, they have already interviewed.

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Barbara Nunn has identified these guys, Mikel and Chip, as the perpetrators.

This is the third time, under oath, questioning just by police officers, no lawyers there to assist them in guiding through questioning, this is the third time he said he shot Willie Absolu first.

Now, when you listen to that statement, nowhere in it, they asked him three times who he shot first.

What was the shooting sequence.

Nowhere in this statement does he say, do the police say, wait a minute, wait a minute.

Ms. Nunn says she was shot first.

Then while she will was unconscious, lying on the floor, the other two people were apparently shot.

They don't question his explanation or his explanation of how it happened.

Three times he tells them. Nobody is there saying no, that's not the way it happened.

Listen to the statement.

It starts, according to, it starts at 12:21 a.m. and ends at 12:40 a.m. That's about 19 minutes or so.

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At no point in time do they challenge his version of how this thing started.

According to his version, this is a robbery that gets out of control. That results in the shooting of Mr. Absolu first. And then Jimmy Mikel, the guy who has cuts all of the locks to get all of the money, tells him, after hearing that, you have to shoot.

And that's what happens.

That's what happens.

Under the guidance of Jimmy Mikel, the other two women are shot.

I want to talk about mitigating circumstances.

How does this, how does that scene turn into what happened at the Waffle House?

I wish I had a definitive answer for you, as to how this child, lying on the floor, looking at some type of toy, goes from that innocence to that shooting at the Waffle House?

We know before the Waffle House incident, he has no prior criminal convictions. No prior criminal convictions.

All of a sudden, this happens. Trying to go back through someone's life and explain how

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you went from this to the Waffle House shooting is a difficult if not impossible task.

Let's talk about, let's talk about his upbringing.

I suggest to you that gives us some insight into who was her Gerhard Hojan, Sr.?

What do we know about him. He was born in 1937.

You can do the math.

We know he was born in Germany.

If you remember your history class, World War II was going on when he was three to eight years old. In 1940, 1945, his father was living in a war zone.

History shows that to you.

You don't leave your common sense at home.

His father was living in an area being bombed and invaded by allied forces.

That impact that had been on him, as a child, I don't know.

But we do know that his father virtually grew up without a a father also because his father was killed in the war.

Now, we jump ahead to the early 1970's.

At some point in the early 1970's, Gerhard,

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Sr. Comes to Jamaica.

And, at some point, he's married to a woman named Rita. And they have a small hotel. Don't get the idea this is the MGM Grand. These are small, 18-, 15-room, mom and pop hotels.

He and Rita, Gerhard, Sr. And his wife Rita own this business.

Somewhere before May of 1975, Gerhard takes up with Pauline.

He's still married.

But he takes up with Pauline.

He and Pauline, obviously, have a child that is born, born out of wedlock.

And Pauline is working in this motel, hotel, that is owned by Gerhard and Rita.

The thing we know, that they end up, by 1977, the group, by that, I mean the group, Rita, Pauline, with Chip, and Gerhard, Sr. are now in the Florida Keys. They have a small business they are operating there. And we know that in 1977 that Gerhard divorced Rita. And about a week or so later, marries Pauline.

So you think to yourself, well, Gerhard has a father.

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Family is going to live together.

Matrimony and marriage has made this now a family unit.

But we know that's not the case. Because they have, at some point in the Florida Keys point in their lives, they have a restaurant and another little mom and pop hotel, motel.

So Chip is packed off with a lady down the road.

And we know, if any of you are teachers, that children's personalities are greatly formed in the first five years of their lives.

For the first portion of his life, he's living with the lady down the street, down the road.

His mother is seeing him one day a week. Tuesday.

I think she said it was Tuesday. Tuesday.

So this is the interaction he's having with his mother and father.

Now, we do have some, besides the picture I showed you earlier, we have other pictures from the early days.

You know the story?

What is it, a picture tells us a thousand

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words?

There were times when Grandma visits.

What do you notice about that picture?

I'll pull it down a bit.

Body language.

Body language.

Pauline has her arm around her mother-in-law. Mother-in-law is like this. Right? Chip is like that. And this proud, German mother-in-law, she doesn't want to touch that half white kid, does she? The half black kid. She has her hands under here.

No contact.

You heard Pauline say Grandma would never hug her grand child. See there? He's trying to, looks like he's reaching out, Chip, trying to reach out, grab grandma's coat.

Grandma is having nothing to do with either her daughter-in-law or her grandson.

What do we know? We know that when he got old enough, the, his father wanted to place him in various boarding situations.

He's out of the house. He had a boarding situation, had a boarding situation in Jamaica. She was talking about Mandaville.

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He was up there. That's pretty good. They were in Negril. If you are familiar with Jamaica, Mandaville and Negril are a pretty good ways apart. You ain't seeing your son.

So his father doesn't have to see this disappointment.

His father, the disappointment is out of sight and out of mind.

And then he sends him, at some point, to Germany.

You need a score card to figure out where he was at various points of time he wasn't at home.

He was in Germany.

Some people want to say he lived a privileged life style.

No kids.

No kids want to be a part of the family. So he's over in Europe, Jamaica.

Ends up in St. Petersburg. All at boarding schools.

His father wanted him to pursue a military career.

The explanation for the Farragut Academy.

His father wanted the fat disappointment

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out of the house.

Maybe if he was over there, in that setting, he might lose weight and become someone.

The disappointment is out of sight.

After the Farragut Academy, does he come back home?

No.

Remember, they are down in Jamaica. I am not sure whether they are still operating one of the hotels or a meat packing plant.

The bottom line is mom and pop are in Jamaica. Now Farragut Academy didn't work out. We own a house up in Miami. Let's drop him up there.

So you put a 15-year-old adrift in a house in Miami, ostensibly under the supervision of the uncle who is a musician. What do musicians do? Common sense tells me they play gigs at night.

So he's adrift.

Then the uncle eventually gets a job opportunity to play on cruise ships overseas in Europe, in the Mediterranean.

Whatever little time he might have been

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there when he was at the house in north Miami, he's not there anymore.

You have a kid who is 15. Overweight. Half white.

And he's left on his own.

Well, he has a Bronco.

Okay. I forgot that makes everything okay. He has as Bronco. A Ford Bronco. Life is swell.

You have a car.

Eventually, he's injured.

Doesn't complete high school.

He was going to a good high school back then. Kids need discipline.

Kids need structure.

So he doesn't graduate from high school.

Are things getting better in this man's psyche? Mind? No.

Because when he's 19, he marries his mother's brother's daughter, who is 18, for the purpose of getting her US citizenship. Papers. Getting US citizenship.

Come into the country as allowed. I'm sure there are people that do that all of the time. Been done over the years. May not marry your

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first cousin.

But marrying people to get citizenship.

You heard Pauline say she wasn't in favor of this. That's when they had the little mom and pop motel down in Hollywood.

She wasn't in favor of this marriage and wouldn't let them live there until what? Until three months later, when they are expecting their first child.

These two are not self-sufficient, 19-year-old Chip, a non-high school graduate and his 18-year-old bride. Just came over from Jamaica.

They reluctantly allow them to live with them.

There is a reason first cousins don't marry.

We saw it in this courtroom.

They compound the problem by having a second child. What have we got going here? We have, we can't get into his head. But we have a guy who has made bad choices. We have a guy who is talked into marrying his cousin.

That may be understandable, you're doing the right thing.

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Helping the family.

It happened.

Then he's working these various jobs. IHOP. A doorman at various places. You want to call him a bouncer. He's a doorman.

If you know the psychology behind being a doorman and bounder, if that's what you want to call them.

You hire a big guy. The idea is might be so big people don't want to mess with him. Not that you wouldn't want your bouncer or door man getting into battles. You just want somebody so big people will say I don't want to mess with that.

That's where he, what he does.

He drifts from place to place being a doorman or someone characterized as a bouncer.

Talking about he's the muscle.

His last place of employment is the Colosseum. It is down toward the air port. North of the airport, on the east side of Federal Highway. It was a place that was a lot of different bars and night clubs over the '70s, '80s, '90s.

This place, when it became the Colosseum,

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this was not a redneck bar, not a biker bar, where you need a tough guy.

If any of you were living here at the time, you will know it was a dance club, a gay and lesbian dance club.

Doesn't need a bouncer, tough guy. Need a door man.

That's where he was working when all of this takes place.

You say what kind of, you made bad choices in terms of getting married to his cousin, having a child by her. But unlike his father, we have photographic evidence to show what a loving father he was.

There he is. That child seems so small compared to his largeness.

Here he is.

Here he is.

Compare those photos with the tenderness expected in him, as opposed to the grandma photo.

Remember, all of these photos are in evidence.

So he's a caring father.

Yes, there were times he had to live with

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his parents. Let's face it, he was ill equipped education wise, being a high school drop out.

He was, he's a big k9d at heart.

We talked about him being a kite flyer. There is a picture of him there, being a kite flyer.

Even after he's charged with these crimes, he still tries to better himself.

In 2004, he created a program in the Broward County Jail. This is while he's on, this is after he has been arrested for first degree murder. Both first degree murders.

He is taking the time to try to better himself.

Eventually, before that high school program, in 2002, it is a little over, shortly, not long after the waffle House incident he takes the time, while in jail, to get a high school diploma.

Now, the most startling thing, from my perspective, having been a lawyer for 45 years, is that the entire time he has been incarcerated, he has never had a disciplinary action.

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And there is Defense Exhibit 8 is an attestation from the Florida Department of Corrections that he has never had a disciplinary problem.

You get a disciplinary problem for talking back to a guard.

That is evidence of Chip to please, the guy always trying to please someone in authority.

And just as he pleased Detective Anton by giving a truthful statement within 24 hours after the event, he sought to please the Department of Corrections by showing them I can be, I'm a good person. I don't, I'm a good prisoner. I don't cause problems. That is what is so perplexing about this incident.

Even since he has been in jail, he still tries to do good things.

A father with a son, father of a son and daughter with autism. Daughter is so severely autistic, she is non-communicative.

It would be easy to write them off. They are out of sight and out of mind.

But what do we have in the testimony? Pauline, the grand mother, his mom, once a month, she drives five, six hours to take these

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two kids to visit their father.

Here is a photograph in evidence.

You can take it back and look at it. That's the two kids, visiting their dad. That's in prison.

And you can sees on their faces how happy they are to see their father.

Here is another picture.

Pauline, basically, works as a minimum wage health care home attendant, raising her two grandchildren until the end, they are adults now.

But until the daughter went to live with her mother.

Her grandson still lives with her.

You saw him testify. It is questionable whether he can live on his own.

But he still lives with grandma. And grandma takes them to visit his father.

You heard his testimony about, uhm, the advice he gets from his father. You know, children don't ask to be brought in this world. Children are the ones that suffer.

Christina's son suffered by not having a mother, mother he never lived with, too young

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to remember.

Now we have two other children that are about to suffer.

And allowing these, I'm not talking, allowing these damaged children; and I don't mean that derogatorily, but that's a fact.

Damaged.

Allowing these damaged children to remain to have a relationship with their father is a mitigating circumstance that justifies mercy.

Not for him.

But for them.

A death sentence will mean that these kids will sit around, wondering when these damaged kids, may not be able to process this like you and I, sitting around and, sitting around and wondering when does daddy die.

Some of you came in here, I'm sure, with the philosophy an eye for an eye. And I doubt that anything I have said is going to change your mind if that's your philosophical belief.

But what I say to you is that is old.

That's not new. That's old testimony. Not new testimony. And I ask you to have mercy on Gerhard Chip Hojan and grant him a life

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sentence.

MR. WILLIAMS: Thank you.

(Closings by Mr. Williams conclude.)

THE COURT: Steve, before I do final instructions, can you take the jury out for just a few minute?

(Exit jurors.)

THE COURT: At this point, do you have another matter you wants to put on the record?

MR. POLAY: Yes.

As you recall, during the --

DEPUTY: They're ready, Judge.

MR. POLAY: Just before we actually started the sentencing phase, a number of motions in limine were filed by the State.

I was precluded, in jury selection, from saying certain things to the jury, i.e., worst of the worst.

At that time, I argued Dixon vs. State, which stands for the proposition that not all first degree murders are eligible for the death penalty. The death penalty is reserved for only the most aggravated and least mitigated of first degree murders.

From that case, I was going to ask the

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Court to include in the jury instructions that special instruction, that which I just read.

So the record is clear, I'm requesting a special instruction to be included with the packet that goes to the jury that not all first degree murders are eligible for the death penalty. The death penalty is reserved for only the most aggravated and least mitigated of first degree murders.

MS. McCANN: Your Honor, the State would object.

This Court granted a motion in limine prior to these proceedings. The standard jury instructions discuss the facts that what happens, what happened happened before a jury, we recommend a death sentence. There are many things that have to happen. It basically says the same thing. All of the steps have to be followed.

The motion for the special should be denied.

THE COURT: Denied.

MS. McCANN: Can I put something on the record?

The State had filed a notion in limine

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prior to trial regarding what arguments could or could not be made about serial killers, notorious killers in history that can not be mentioned; and this Court granted it.

I'll give Mr. Williams the benefit of the doubt because I know he's a man of integrity that what he said was a slip of the tongue maybe four times. But I would just like to put on the record that Hess vs. State 794 So.2d 1249 Florida 2001, Florida Supreme Court says they can't do what Mr. Williams just did.

I would like to put on the record it is improper argument; and we didn't object at the time because we didn't want to interrupt the Defense.

Can't discuss the impact of the Defendant's execution on the Defendant's family as a mitigating factor.

That's exactly what Mr. Williams did.

That's Burns vs. State, 699 So.2d 646 Florida, 1997.

I put these things on the record, Your Honor, because if the defendant is sentenced to death, we will be cross-appealing.

Thank you.

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MR. WILLIAMS: I apologize.

I forgot about that motion.

In fact I had never anticipated that would be given in closing arrangements until Mr. Polay decided that, with mutual agreement, that he would like me to do it.

The other case, the last case you cited, I wasn't familiar with that issue.

MR. POLAY: So the record is clear, that wasn't a decision made today. It was made last night.

It was a decisions we made strategically last week.

MR. WILLIAMS: I didn't mean to suggest it was a last-minute deal.

I just, I hadn't familiarized myself with that issue.

THE COURT: I think I'll reiterate two things Ms. McCann said.

You're a person of integrity.

And maybe it was a slip of the tongue four, five times.

And they are ready.

MR. WILLIAMS: For?

THE COURT: To come out.

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Let's bring them out.

MR. WILLIAMS: You're giving all the instructions now, before lunch?

THE COURT: Yes. 14 pages.

Let's bring them in.

(Enter jurors.)

THE COURT: Members of the jury, at this time, you have heard all of the evidence and the arguments of the attorneys.

And it is now your duty to make a decision as to the appropriate sentence that should be imposed upon Gerhard Hojan.

For each count of first degree murder, there are two possible punishments for each count.

Life imprisonment, without the eligibility of parole; or death.

In making your decision, you must first unanimously determine whether the aggravating factor or factors alleged by the State have been proven beyond a reasonable doubt.

An aggravating factor is a circumstance that increases the gravity of the crime or the harm to the victim.

No facts other than those then proven

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aggravating factors may be considered in support of the death sentence.

A separate sentencing verdict will be rendered for Count I, the murder in the first degree of Willie Absolu; and for Count II, the first degree murder of Christina Delarosa.

And I will now instruct you separately on the alleged aggravating circumstances for each victim.

As to Count I, Willie Absolu, the aggravating factors alleged by the State for Count I, the first degree murder of Willie Absolu are: First, the Defendant was previously convicted of another capital felony or felony involving of the use of threat of violence to another person.

I further instruct you that a violent felony committed contemporaneously with a capital crime can qualify as a violent, a prior violent felony when the criminal episode involves multiple victims.

The crime of murder in the first degree of Christina Delarosa is a capital felony.

The crime of attempted first degree murder of Barbara Nunn is a felony involving the use

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of violence to another person.

Second, the first degree murder of Willie Absolu was committed while the defendant was engaged or was an accomplice in the commission of or in an attempt to commit or flight after committing or attempting to commit the crime of armed kidnapping.

Third, the first degree murder of Willie Absolu was committed for the purpose of avoiding or preventing a lawful arrest.

Fourth, the first degree murder of Willie Absolu was committed for financial gain.

Fifth, the first degree murder of Willie Absolu was especially heinous, atrocious or cruel.

Heinous means extremely wicked or shockingly evil.

Atrocious means outrageously wicked and vile.

Cruel means designed to inflict a high degree of pain, with utter indifference to or even enjoyment of the suffering of others.

The kind of crime intended to be included as especially heinous, atrocious or cruel is one accompanied by an additional act that

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showed that the crime was consciousness or pitiless and was unnecessarily torturous to Willie Absolu.

Sixth, the first degree murder of Willie Absolu was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification.

Cold means the murder was the product of calm and cool reflection.

Calculated means having a careful plan or prearranged design to commit murder.

A killing is premeditated if it occurs after the defendant consciously decides to kill.

The decision must be present in the mind at the time of the killing.

The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing.

The period of time must be long enough to allow reflection by the defendant.

The premeditated intent to kill must be formed before the killing.

However, in order for this aggravating

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factor to apply, a heightened level of premeditation demonstrated by a substantial period of reflection is required.

A pretense of moral or legal justification is any claim of justification or excuse that although insufficient to reduce the degree of murder, nevertheless, rebuts the otherwise cold, calculated or premeditated nature of the offense.

The aggravating factors alleged by the State -- that's supposed to be Count II -- in Count II, the first degree murder of Christina Delarosa are:

First, the Defendant was previously convicted of another capital felony or a felony involving the use of threat of violence to another person.

I further instruct you that a violent felony committed contemporaneously with the capital crime can qualify as a prior violent felony when the criminal episode involves multiple victims.

The crime of murder in the first degree of Willie Absolu is a capital felony.

The crime of attempted first degree murder

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of Barbara Nunn is a felony involving the use of violence to another person.

Two, the first degree murder of Christina Delarosa was committed while the defendant was engaged or was an accomplice in the commission of or in an attempt to commit or in flight after committing or attempting to commit the crime of armed kidnapping.

Third, the first degree murder of Christina Delarosa was committed for the purpose of avoiding or preventing a lawful arrest.

Fourth, the first degree murder of Christina Delarosa was committed for financial gain.

Fifth, the first degree murder of Christina Delarosa was especially heinous, atrocious or cruel.

Heinous means extremely wicked or shockingly evil.

Atrocious means outrageously wicked and vile.

Cruel means designed to inflict a high degree of pain, with utter indifference to or even enjoyment of the suffering of others.

The kind of crime intended to be included

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as especially heinous, atrocious or cruel is one accompanied by a additional acts that showed that the crime was consciousness or pitiless and was unnecessarily torturous to Christina Delarosa.

Sixth, the first degree murder of Christina Delarosa was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification.

Cold means the murder was the product of calm and cool reflection.

Calculated means having a careful plan or prearranged design to commit murder.

A killing is premeditated if it occurs after the defendant consciously decides to kill.

The decision must be present in the mind at the time of the killing.

The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing.

The period of time must be long enough to allow reflection by the defendant.

The premeditated intent to kill must be

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formed before the killing.

However, in order for this aggravating factor to apply, a heightened level of premeditation, demonstrated by a substantial period of reflection, is required.

A pretense of moral or legal justification is any claim of justification or excuse that although insufficient to reduce the degree of murder, nevertheless, rebuts the otherwise cold, calculated or premeditated nature of the offense.

As explained before this presentation, before the presentation of evidence, the state has the burden to prove an aggravating factor beyond a reasonable doubt.

A reasonable doubt is not a mere, possible doubt, a speculative, imaginary or forced doubt.

Such a doubt must not influence you to disregard an aggravating factor if you have an abiding conviction that it exists.

On the other hand, if after carefully considering, comparing and weighing all of the evidence you do not have an abiding conviction that the aggravating factor exists or if having

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a conviction, it is one which is not stable, but one which wavers and vacillates, then the aggravating factor has not been proved beyond a reasonable doubt; and you must not consider it in providing a verdict.

A reasonable doubt as to the existence of an aggravating factor may arise from the evidence, a conflict in the evidence or a lack of evidence.

If you have a reasonable doubt as to the existence of an aggravating factor, you must find that it does not exist.

However, if you have no reasonable doubt, you should find the aggravating factor does exist.

A finding that an aggravating factor exists must be unanimous, that is all of you must agree that each presented aggravating factor exists.

You will be provided a form to make this finding as to each alleged aggravating factor.

And you should indicate whether or not you find each aggravating factor has been proven beyond a reasonable doubt.

If you do not unanimously find that at

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least one aggravating factor was proven by the State, then the defendant is not eligible for the death penalty. And your verdict must be for a sentence of life imprisonment, without the possibility of parole.

At such point, your deliberations are complete.

If, however, you unanimously find that one or more aggravating factors have been proven beyond a reasonable doubt, then the defendant is eligible for the death penalty. And you must make additional findings to determine whether the appropriate sentence to be imposed is life imprisonment, without the possibility of parole; or death.

If you do unanimously find the existence -- this is mitigating circumstances.

If you do unanimously find the existence of at least one aggravating factor, and that aggravating factor is or the aggravating factors are sufficient to impose a sentence of death, the next step in the process is for to you determine whether any mitigating circumstances exist.

A mitigating circumstance can be anything

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in the life of the defendant which might indicate that the death penalty is not appropriate.

It is not limited to the facts surrounding the crime.

A mitigating circumstance may include any aspect of the defendant's character, background or life or any circumstances of the offense that may reasonably indicate that the death penalty is not an appropriate sentence in this case.

Among the mitigating circumstances you may consider are:

First, the defendant has no criminal convictions other than the counts in this case.

Second, the defendant has had no disciplinary reports filed against him during his incarceration over approximately 16 years.

Third, under the circumstances, the defendant is a good father.

Fourth, before his incarceration, the defendant was a good son.

Since his incarceration, he has attempted to maintain a positive relationship with his mother. His father is deceased.

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Fifth, the defendant has no history of drug or alcohol abuse.

Sixth, before the incident, the defendant was a good citizen that maintained consistent employment and helped provide for his family.

Seventh, the defendant has had a positive influence on friends and family.

Eighth, the defendant has maintained positive, ongoing relationships during his incarceration.

Ninth, the defendant has been respectful in Court.

Tenth, the defendant was physically and emotionally abused by his father.

Eleven, the defendant struggled to please his father and was rejected by his father throughout his childhood.

12, the defendant was displaced throughout his childhood. His parents sent him to reside with friends and family members during the majority of his childhood.

13, the defendant, at the age of 15, was sent to live in Miami, while his parents remained in Jamaica; and he had limited adult supervision during this time.

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14, the defendant did not complete high school because he suffered from a foot injury and was unable to drive himself to school.

15, the defendant's mother was subservient to his father and does not serve as a protector for him during his formative years.

16, the defendant had no positive father figure.

17, the defendant was ridiculed throughout his childhood about his weight by his father.

18, the defendant had a desire to please his mother and his father.

19, the defendant was influenced by others.

20, the defendant has a hobby. He was a passionate kite flyer.

21st, the defendant has demonstrated he has been able to continue to build positive relationships while incarcerated with family members and his son and his non-verbal, autistic daughter.

22, the defendant was told by his co-defendant that, in quotes, we can't leave any witnesses.

23rd, the defendant has demonstrated remorse, as reflected in his recorded

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statement, made within 24 hours of the incident, wherein he expressed he, again in quotes, wished he could take it back.

24th, the defendant has expressed remorse for his actions to his family and has expressed remorse for the victims' families.

25th, the defendant's son suffers from autism and Asperges syndrome. The two of them have a close relationship; and his son depends upon him for advice.

26th, the defendant is loved by his family members and friends.

27, the defendant obtained his high school diploma, GED, while incarcerated.

28, the defendant cooperated with the police by voluntarily giving a statement and consenting to the search of his vehicle.

29th, the defendant was diagnosed with and treated for bladder cancer. He is currently undergoing treatment by Dr. Grouper.

30th, the existence of any other factors in the defendant's character, background or life or the circumstances of the offense that would mitigate against the imposition of the death penalty.

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It is the defendant's burden to prove that a mitigating circumstance exists.

As explained before these proceedings, the defendant need only establish a mitigating circumstance by the greater weight of the evidence, which means evidence that more likely than not tends to establish the existence of a mitigating circumstance.

If you determine, by the greater weight of the evidence, that a mitigating circumstance exists, you must consider it established and give that evidence such weight as you determine it should receive in reaching your verdict about the appropriate sentence to be imposed.

Any juror persuaded that the existence, any juror persuaded as to the existence of a mitigating circumstance must consider it in this case.

Further, any juror may consider a mitigating circumstance found by another juror, even if he or she did not find that factor to be mitigated.

Your decision in finding the appropriate sentence should be based upon proven aggravating factors and established mitigating

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circumstances that have been presented to you during these proceedings.

You will now engage in a weighing process.

You must weigh all of the following?

A, whether the aggravating factor or factors found to exist is or are sufficient to justify the death penalty.

B, whether the aggravating factor or factors outweigh or waive any mitigating circumstance or circumstances found to exist.

And C, based upon all of the consideration, pursuant to these instructions, whether the defendant should be sentenced to life imprisonment, without the possibility of parole or death.

The process of weighing aggravating factors and mitigating circumstances is not a mechanical or mathematical process.

In other words, you should not merely total the number of aggravating factors and compare that number to the total of mitigating circumstances.

The law contemplates that that different factors or circumstances may be given different weight or values by different jurors.

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Therefore, in your decision-making process, each juror must decide what weight is to be given to a particular factor or circumstance.

Regardless of the results of each juror's individual weighing process, even if you find that the sufficient aggravators outweigh the mitigators, the law neither compels nor requires you to determine that the defendant should be sentenced to death.

Once each juror has weighed the proven factors, he or she must determine the appropriate punishment for the defendant.

The jury's decision regarding the appropriate sentence must be unanimous if death is to be imposed.

To repeat what I have said, if your verdict is that the defendant should be sentenced to death, your finding that each aggravating factor exists must be unanimous.

Your finding that the aggravating factors are sufficient to impose death must be unanimous.

And your finding that the aggravating that the aggravating factor or factors found to exist outweigh the established mitigating

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circumstances must be unanimous.

And if your decision is to impose a sentence of death, it must be unanimous.

You will be provided with two forms to reflect your findings and decision regarding the appropriate sentence for each count of first degree murder.

I will review those with you in a little bit.

If your vote on the appropriate sentence is less than unanimous, the defendant will be sentenced to life imprisonment without the possibility of parole.

The fact that the jury can make its decision on a single ballot should not influence you to act hastily or without due regard to the gravity of these proceedings.

Before you vote, you should carefully consider and weigh the evidence, realizing a human life is at stake and bring your best judgment to bear in each of your verdicts.

When considering the aggravating factors and mitigating circumstances, it is up to you to decide which evidence is reliable. You should use your common sense in deciding which

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is the best evidence and which evidence should not be relied upon in making your decision as to what sentence should be imposed.

You may find some of the evidence not reliable or less reliable than other evidence.

You should consider how the witnesses acted as well as what they said.

Some things you should consider are did the witness seem to have an opportunity to see and know the things about which the witness testified.

Did the witness seem to have an accurate memory.

Was the witness honest and straight forward in answering the attorneys' questions.

Did the witness have some interest in how the case should be decided.

Did the witness' testimony agree with the other testimony and other evidence in the case.

Had the witness been offered or received any money, preferred treatment or other benefit in order to get the witness to testify.

Had any pressure or threat been used against the witness that effected the truth of the witness' testimony.

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Did the witness, at some other time, make a statement that was inconsistent with the testimony given in court.

Has a witness been convicted of a felony.

Does the witness have a general reputation for dishonesty or truthfulness.

The fact that a witness is employed in law enforcement does not mean their testimony deserves more or less consideration than that of any other witness.

Expert witnesses are like other witnesses, with one exception: The law permits an expert witness to give an opinion.

However, an expert's opinion is only reliable when given on a subject about which you believe that person to be an expert.

Like other witnesses, you may believe or disbelieve all or any part of an expert's testimony.

It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom.

The witness should not be discredited by talking to a lawyer about their testimony.

You will rely on your own conclusion about

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the credibility of any witness.

A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

The defendant exercised a fundamental right by choosing not to be a witness in this case.

You must not view this as an admission of guilt or be influenced in any way by his decision.

No juror should ever be concerned that the defendant did or did not take the witness stand to give testimony in the case.

These are some general rules that apply to your discussions. And you must follow these rules in order to return a lawful verdict.

You must follow the law as it is set out in these instructions.

If you fail to follow the law, your decision will be a miscarriage of justice.

There is no reason for failing to follow the law in this case. And all of us are depending upon you to make a wise and legal decision.

Your decisions must be based only upon the evidence that you have heard from the testimony

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of the witnesses in either the trial phase or the penalty phase of this trial and have seen in the form of exhibits in evidence and these instructions.

Your decision must not be based upon the fact that you feel sorry for anyone or are angry at anyone.

Remember, the lawyers aren't on trial. And your feelings about them should not influence your decisions.

Your decisions should not be influenced by feelings of prejudice, racial or ethnic bias or sympathy.

Your decisions must be based upon the evidence and the law contained in these instructions.

You have heard evidence about the impact of these murders on the family and friends of Willie Absolu and Christina Delarosa.

This evidence was presented to show the victim's uniqueness as individuals and the resultant loss by Willie Absolu's and Christina Delarosa's death.

However, you may not consider this as evidence of an aggravating factor.

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Your decisions must be based on the aggravating factor or factors, the mitigating circumstance or circumstances and the weighing process about which you have been instructed.

Now, in just a few moments, you will be taken to the jury room by the deputy.

When you have reached decisions in conformity with these instructions, the appropriate form should be signed and dated by your fore person.

During deliberations, jurors must communicate about the case only with one and only when all jurors are present in the jury room. You are not to communicate with any person outside of the jury about this case. And you must not talk about the case in person or through the telephone, writing or electronic communications, such as the blog, Twitter, Email, text message or any other means.

Many of you have your cell phones, tablets, laptops or other electronic devices here, in the courtroom. We have already taken them away from you.

But the rules do not allow you to bring those phones or any other type of electronic

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devices into the jury room. Being we already have them, we will take good care of them.

Do not contact anyone to assist you during your deliberations.

These communication rules apply until I discharge you at the end of the case.

If you become aware of any violations of these instructions or any other instructions I have given you in this case, you must tell me by giving a note to the court deputy.

During the trial, items were received into evidence as exhibits.

You may examine whatever exhibits you think will help you in your deliberations.

These exhibits will be sent into the jury room with you when you begin your deliberations.

I cannot participate in your deliberations in any way.

Please disregard anything I might have said or done that make you think I prefer one decision over another.

If you need to communicate with me, send a note, through the court deputy, signed by the fore person. Of course, ring the buzzer, which

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I know you have no clue where it is.

You may continue deliberations while you wait for my answer. And I'll answer any question, if I can, in writing or orally, here, in open court.

But you will have these instructions anyway.

You can reread them.

If you have questions, I'll talk to the attorneys before I answer it. So it may take some time. Of course, this is a sentence that says that and that's when you continue deliberations while you wait.

In closing, let me remind you it is important you follow the law spelled out in these instructions in making your decision.

There are no other laws that apply to the case.

Even if you do not like the laws that must be applied, you must use them.

For more than two centuries, we have lived by the Constitution and the law. No juror has the right to violate rules we all share.

I know your lunch has arrived.

In a few moments, when you go back there,

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you will be able to eat.

Of course, you can deliberate at that time as well.

If you want any breaks, during the course of your deliberations, just send out a note. You will be able to take a break. Of course, every single one of you must participate in the break. There is no option as it relates to that.

As I said, there are two verdict forms being sent back. They are applicable to both.

Of course, as to Count I, it deals with Willie Absolu. As to Count II, Christina Delarosa.

What they say is: We, the jury, find as follows as to the defendant Gerhard Hojan in this case.

As I said, this applies to both. But in this count, the aggravating factor for Count I only deals with Willie Absolu.

We, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor.

The defendant was previously convicted of another capital felony or a felony involving

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the use of threat or violence to another person.

Yes or no.

We, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor, the first degree murder of Willie Absolu was committed while Gerhard Hojan was engaged or was an accomplice in the commission of or attempt to commit or flight after committing or attempting to commit armed kidnapping.

Yes or no.

Third, we, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor, the first degree murder of Willie Absolu was committed for the purpose of avoiding or preventing a lawful arrest.

Yes or no.

Four, we, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor, the first degree murder of Willie Absolu was committed for financial gain.

Yes or no.

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Fifth, we, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor, the first degree murder of Willie Absolu was especially heinous, atrocious or cruel.

Yes or no.

Sixth, we, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor, the first degree murder of Willie Absolu was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification.

Yes or no.

If you answer yes to at least one of the aggravating factors listed, please proceed to Section B.

If you answered no to every aggravating factor listed, do not proceed to section B. The defendant Gerhard Hojan is not eligible for the death sentence and will be sentenced to life imprisonment without the possibility of parole.

Please sign and date the verdict form.

B, sufficiency of the aggravating factors.

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Reviewing the aggravating factors that we have unanimously found to be established beyond a reasonable doubt, in Section B above -- shouldn't that be A above?

MR. SATZ: Yes.

MS. McCANN: Yes.

MR. POLAY: Yes.

THE COURT: I'm changing that.

Reviewing the aggravating factors that we have unanimously found to be established beyond a reasonable doubt in Section A above, we, the jury, unanimously find that the aggravating factors are sufficient to warrant a possible sentence of death.

Yes or no.

If you answered yes to Section B, please proceed to Section C.

If you answered no to Section B, do not proceed. The defendant Gerhard Hojan will be sentenced to life in prison without the possibility of parole. And please sign and date the verdict form.

C, we, the jury, find that a mitigating circumstance or circumstances was or were established by the greater weight of the

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evidence.

Yes or no.

If you answered yes above, please provide the jury vote as to the existence of a mitigating circumstance or circumstances.

Please proceed to Section D regardless of your findings in Section C.

D, we, the jury, unanimously find that the aggravating factor or factors that were proven beyond a reasonable doubt in Section A outweighs the mitigating circumstances established in Section B. No. C.

We, the jury, unanimously find that the aggravating factor or factors that were proven beyond a reasonable doubt in Section A above outweigh the mitigating circumstances established in Section C above as to Count I.

Yes or no.

If you answered yes to Section D, please proceed to Section E.

If you answered no to Section D, do not proceed. The defendant Gerhard Hojan will be sentenced to life in prison without the possibility of parole.

E, jury verdict as to the death penalty.

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Having unanimously found that at least one aggravating factor has been established beyond a reasonable doubt in Section A above, and that aggravating factor or factors is or are sufficient to warrant a sentence of death, Section B above, and the aggravating factor or factors outweigh the mitigating circumstance or circumstances in Section D above, we, the jury, unanimously find that the defendant, Gerhard Hojan, should be sentenced to death.

Yes or no.

If your vote to impose death is less than unanimous, I'll impose a sentence of life without the possibility of parole.

It needs to be dated and signed by the fore person.

I would appreciate the fore person also printing his or her respective name.

As I said, the verdicts as to Count II, dealing with Christina Delarosa, are identical.

The difference is it deals with Christina Delarosa. And you have to go through the same process.

Is that okay with everybody?

Mr. Satz?

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MR. POLAY: Yes.

MR. WILLIAMS: Yes.

MR. SATZ: Yes.

THE COURT: Now, it is my job, at this point, before I let you retire to begin your lunch and deliberations, to recognize and tell you all who the alternates are.

When you hear your name, please stay seated where you are.

Susan Conception, Bobby Sims, Georgina Francine Parker, Kennisar Cooper, William Allen Franklin and Michael Riggio.

If you guys please stay where you are, the balance of the panel can retire to begin your deliberations.

Twelve copies of the verdict forms for Counts I and II are being sent back.

Each of you has one.

All of the jury instructions I just tried to read to you are all in writing. 12 copies of those will be sent back to you as well.

If you decide you want to see any of the evidence, send out a note. We will send it back.

If you want us to send everything back

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right now, we will be happy to do that as well.

That's your call.

Let us know by ringing the ball and sending out a note. Ringing the buzzer.

At this time, the jury is free to retire and begin their deliberations.

Hang on.

Can I just let the alternates go back first and get their stuff?

MS. McCANN: Can we go sidebar?

THE COURT: Yes.

MS. McCANN: I don't think they should be getting 12 separate verdict forms.

THE COURT: You're right.

MS. McCANN: I had Kim make all the copies. I gave them to you. But --

THE COURT: You're right.

I'll correct it.

MR. McCANN: Thank you.

THE COURT: I need to let the jurors get their stuff. Most of their stuff for overnight is in my office anyway.

Steve can take them out.

Steve, please.

When the alternates go in, to get their

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stuff, after that, take them to my office, where their clothes are. And then bring them back in here so I can instruct them on what they are doing.

As soon as that is taken care of, I'll send this group back out. As soon as you're out of the jury room, let me know. And I'll send them out to deliberate.

As soon as you finish in the jury room, let me know. I'll send them in.

DEPUTY: Okay.

(Sidebar concludes.)

THE COURT: One last thing.

You're only getting one verdict form per count. Not 12.

My alternates, please get your stuff.

Steve will then take you to my office, where I believe all of your clothes might be.

(Alternates exit.)

THE COURT: As soon as they are finished, you will be able to go in.

Remember, if you need anything, just send out a note.

(Recess had.)

THE COURT: Okay.

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You guys can go and start your deliberations.

(Exit jurors.)

THE COURT: First of all, with respect to the jury instructions I just gave to the jury, with the exception of any objections that were previously made, as relates to them, was there any other objection to them?

MR. POLAY: None other than previously stated.

THE COURT: With regard to the verdict forms, those are consistent with what we decided, correct?

MR. POLAY: Correct.

THE COURT: Any objections to those?

MR. POLAY: They're standard verdict forms, Judge.

THE COURT: I'll take that as no objection to those.

If the jury wants a break, any problem, as long as I have them all together, sending them on a break?

MR. POLAY: No.

MR. SATZ: No.

THE COURT: If they have a question, we

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will get everybody back.

If they want any of the evidence, anybody have a problem with my just sending those items back?

MR. POLAY: No, sir.

MR. SATZ: You have to have a recorder for the video.

THE COURT: They may have to see that out there.

We have a cassette.

Anything they might have to come out for, like read back, we'll bring them out and have them hear the read back.

We'll work it out.

(Recess had while jurors deliberate.)

MR. SATZ: How do you want to do the evidence? Some of the evidence was introduced at the trial, not this proceeding.

THE COURT: Well , they can't have --

MR. SATZ: Technically speaking, they can have it all.

If the Defense has any objection --

MR. WILLIAMS: I want to keep the records clear with just what was introduced in this proceeding.

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THE COURT: We'll do it that way, unless they have a question with regard to something else.

MR. SATZ: How do you know what to put back?

THE COURT: We have the list.

MR. SATZ: All right.

As long as you'll do it that way, that's all right.

Technically speaking, everything has been introduced.

THE COURT: Even the jury instructions reflect back to the trial.

MR. WILLIAMS: By mistake.

MR. POLAY: No, actually, it wasn't.

Testimony had to be read in.

MS. MCCANN: It wasn't a mistake.

There was testimony from the first trial.

Hammerle was deceased.

THE COURT: Medical examiner.

Don't have to worry about separating bullets from guns.

There are no extras.

(Recess had while jurors deliberate.)

(Enter alternates.)

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THE COURT: Just take a seat. Okay.

You guys have been our alternates.

However, however, you're not yet discharged and excused from your jury responsibilities. As an alternate, if something between now and the time a decisions is made by your colleagues, something happens, and one of you has to replace or more than one of you has to replace a given juror, you would be called in to do it.

So all of the rules I have stated to you right from the very beginning, they are still all in effect.

My suggestion is, depending upon how Pam wants to do it, you can either call Pam -- obviously, if we need you, we'll get ahold of you. I am sure you're interested in what your colleagues will or will not do.

We can send an Email, instead of your independently calling.

Does that work?

ALTERNATES: Yes, sir.

THE COURT: We'll tell you, one way or another, what is going on.

At this point, now, you can go home.

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(Exit alternates.)

(Recess had while jurors deliberate.)

THE COURT: We have everybody here.

MR. WILLIAMS: One of the requests, pictures of Barbara Nunn's injuries.

None were introduced in this proceeding.

I know the jury instruction says evidence from the trial in this proceeding.

That jury instruction is directed at or assumes the same jury heard both the trial and the penalty phase.

That's not the case here.

MR. SATZ: I don't think there are photographs of Barbara's injuries at all.

THE COURT: I'll let them know that.

MR. SATZ: In the emergency room, they never took anything.

THE COURT: That was one thing.

MR. WILLIAMS: I didn't know, not being associated with the first trial.

MR. SATZ: If you say because of emergency treatment, there were no photographs.

THE COURT: I think, if we're ready, I can deal with them.

(Enter jurors.)

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THE COURT: All right.

Members of the jury, you sent out a note with seven requests.

You want Barbara's testimony.

The only way you get Barbara's testimony is here, in open court. We do not have a transcript we can send back to you.

Of course, you're certainly entitled to it. If you want it, you will get it. That's not an issue.

You want the police audio interrogation with Mr. Hojan. That's on cassette. We have a cassette player for you that you will be able to take back.

You want the coin bag from the Waffle House, the blue one?

JURORS: Yes.

JURORS: The heavy one.

THE COURT: The coins. Yes. Coin bag.

MR. SATZ: There is a bag with the coins. The coins are out of the bag. The bag is there too. You have both.

THE COURT: We'll send you both.

You want photos from the freezer. Not a problem.

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You want photos from Barbara's injury. There are none. Her injuries were treated in the emergency room. They don't take pictures there. You have her testimony.

The victim photos, you want that, the one on the poster board.

JURORS: Yes.

THE COURT: That's not a problem.

Now, I need you to, please, help me out with this one.

Defendant's first testimony/transcript and written is, what it says is first written testimony slash transcript.

JURORS: There was the first conversation that, the first investigation that was had. Transcript of that is what we would like to have, please.

MR. POLAY: I don't think there is one.

MR. POLAY: There is none of that.

JUROR: A gentleman read it from Lee County.

MR. SATZ: What they are talking about, I think what the jurors are talking about is when Detective Anton and Kiso interviewed the defendant prior to putting on tape. That can

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be read back.

THE COURT: That would also have to be read back.

MR. WILLIAMS: The document he was referring to wasn't introduced into evidence.

THE COURT: Right.

Just needed clarification of that.

Anything that came in, in the way of testimony, has to be done in open court. You cannot have a transcript. So even though we might have a transcript, you can't have it.

The question I have for is do you want Barbara's testimony?

JURORS: Yes.

THE COURT: And you want the testimony from the detectives on the other side?

JURORS: Yes, please.

JURORS: They have to personally come in?

THE COURT: No, no, no. I am not saying there aren't transcripts. It has to be in open court. You can't have a copy of the transcript. Can't take it with you.

We will send this stuff you want back now while we get prepared to do the read back.

We will call you. Don't call us.

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(Exit jurors.)

(Jurors deliberate.)

MR. WILLIAMS: The freezer pictures.

The poster is 51. Shows the victim.

We have individual pictures. These are all Exhibits 13, 14, 15, 16, 18, 20, 21, 39, 40, 41, 42, 43, 44, 45, 46, 49, 58, 59, 62, 63, 65, 74.

They had requested the coins that is Exhibit 86. They had requested the blue canvas bag that the coins were in. That's 85. They had requested the cassette tape of the defendant's statement. That's Exhibit 89. And then there is a portable cassette player to go with it.

MR. SATZ: You got the coins?

MR. WILLIAMS: Yes.

I have of the coins .

You want to send this stuff back now?

MR. SATZ: Look at the bag. Tag on it you don't object to?

MR. WILLIAMS: The bags have the other exhibit stickers. I guess different trials.

MR. POLAY: Yes, with different dates.

We have A and B, different case number.

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Different dates.

MR. SATZ: Judge, I showed this to Mr. Polay and Mr. Williams. Remember the issue about on your knees? Well, we all have a copy of Barbara Nunn's testimony. Her testimony was he told us to get on our knees and put our hands on top of our head. I wasn't doing that. So --

THE COURT: That's what I recall.

MR. WILLIAMS: I stand corrected.

MR. POLAY: As do I.

I said that to Mr. Satz.

MR. SATZ: I'm not saying they misrepresented. I want to make sure it is on the record.

Your Honor, I want to put on the record, I am sure Mr. Polay does, too, that he took the coins out of their bag, because they had two different tags on it, from the two different trials. And they went back without the tags on it. There were two tags on the outside bag of the nylon bag and took it out of the nylon bag. There was just that one tag on it.

MR. POLAY: Yes. That's correct. I didn't want the jury to see the different dates,

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different trials this was involved in.

THE COURT: I understand.

MR. SATZ: The clerk has the original tags.

When the evidence comes out and this is over, she sill put it back in the original bags, with the markings on them.

THE COURT: All right.

Let's bring them in.

(Enter jurors.)

THE COURT: Welcome back.

You asked for the testimony of the two detectives, Kiso and Anton; and Barbara Nunn.

We have the transcript that Vivian is going to read the questions and answers, that the lawyers asked. You don't get to hear them again.

Do you want to do that now or in the morning?

Barbara Nunn is 43 pages.

Kiso and Anton are a total of almost 60 pages.

JURORS: Hear Barbara's today, please.

THE COURT: And the other two in the morning?

JURORS: Yes.

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THE COURT: Done deal.

Madam Court Reporter?

(Testimony of Barbara Nunn read back as follows:)

DIRECT EXAMINATION

BY MR. SATZ

Q. Ms. Nunn, where do you reside?

A. Davenport, Iowa.

Q. I would like to call your attention to March 11, Monday morning, March 11, 2002.

Where did you live on that occasion?

A. In Hialeah, Florida.

Q. Who did you live with?

A. My sister.

Q. Did you, on March 11, 2002, were you working?

A. Yes.

Q. Where were you working?

A. I was working at the Waffle House.

Q. Is that the Waffle House at 4689 SW 148th Avenue, in Davie?

A. Off Griffin Road?

Q. Yes.

A. Yes.

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Q. Now, how long had you been working there up until that morning of March 11, 2002?
A. A little over a year.
Q. What were your duties and Responsibilities at the Waffle House?
A. I was a cook.
Q. That Monday morning, approximately 4 O'clock in the morning, were you working?
A. Yes.
Q. Who were you working with?
A. With Christina and Willie.
Q. What was Christina's function?
A. She was a waitress.
Q. How about Willie?
A. Willie was the cook that day.
Q. What were you doing that day?
A. I was a waitress.
Q. What time did you come to work that day?
A. Around four, I believe.
Q. What time? You worked 4 o'clock p.m. That would be on Sunday, the 10th,

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correct?

A. Yes.

Q. And then how long did you work?

A. I worked, well, 6 o'clock. Until the next shift came in.

Q. The shift ended at 6 p.m.?

A. Yes. Yes.

Q. Then what happened?

A. I was shot.

Are you talking about --

Q. No.

I know.

The morning this happened --

A. Yes.

Q. -- you went to work, didn't you?

A. Yes.

Q. How many hours did you work?

A. Actually, I worked two shifts that day.

Q. When did you come to work?

A. The first time I came in, I worked from two to ten.

But I only worked until four.

Q. Why is that?

A. I was asked to come in for extra

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hours so I could work the second shift until the morning shift. Last shift or whatever it is called.

Q. That shift is --

A. Probably third shift. That's what it is called.

Q. From ten until two?

A. Yes. That's it.

Q. You were working that shift, you said, with Christina and Willie?

A. Yes.

Q. I would like to call your attention to 4 o'clock that morning, March 11, 2002.

Tell us what happened.

A. Chip and Jimmy came in and ordered some food.

Q. When they came in, were there any customers, other than --

A. No, there wasn't. There wasn't no other customers.

Q. So what happened?

A. Me and Christina was sitting at a booth, talking and stuff.

Chip and Jimmy came in. They had a

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seat two booths down from us. I told Christina --

Q. Would you do me a favor? You have a soft voice.

Would you talk up loud?

A. Yes.

Q. When they walked in, did you say anything to either of them?

A. I spoke to Jimmy.

Q. What did you say to him?

A. I asked him about the club, the Coliseum. I asked him about the club.

Q. What did you ask him about it?

A. Was he going to be working that Thursday.

Q. Had you seen Jimmy before?

A. Yes, I had.

Q. How did you come to see him before?

A. He used to work with me on the Waffle House, on the second shift, two to ten.

Q. How many times did you work with Jimmy?

A. I would say, because he didn't stay

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long, I would say maybe eight, at the most maybe nine times.

Q. When Jimmy Mickel worked the Waffle House, what was his function?

A. He was a waiter.

Q. Chip. Had you seen him before?

A. Yes.

Q. How did you see him before?

A. With Jimmy.

Q. When would you see him with Jimmy?

A. Every time Jimmy came to work, he came, too.

Q. You saw him about eight or nine times also?

A. At the job I saw him that many times. Yes, at the job. That's it.

Q. At the Waffle House?

A. At the Waffle House.

Q. Had you ever gone to the Coliseum?

A. Yes.

Q. How many times?

A. Twice.

Actually, the first -- yes, twice.

Q. You knew they both worked there, at the Coliseum?

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A. Yes.
Q. This person you called Chip, do you see him in the courtroom today?
A. No.
Chip? Chip?
Yeah.
Right there.
(Indicating.)
Q. The person with the gray shirt and the black and gray tie?
A. Yes.
MR. SATZ: Madam Reporter, with the Court's permission, would you let the record reflect Ms. Nunn has identified the defendant in this case, Gerhard Hojan?
THE COURT: The record will so reflect.
BY MR. SATZ:
Q. Hojan and Jimmy go, sit somewhere?
A. At the Waffle House.
Q. Yes?
A. Well, Jimmy went to work. Chip would sit at a booth.
Q. And on the night, the morning of when this happened, March 11, 2002, you talked to Jimmy about the Coliseum?

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A. Yes, I did.
Q. Tell us what happened after that?
A. After we got done talking, Christina waited on him because I told her to. They tipped good.
They sat there for a while.
Then Jimmy gets up. And he goes outside.
And then a couple minutes after --
Q. So they are sitting at a booth?
A. Yes.
Q. Christina goes to waits on them?
A. Yes.
Q. What happens? What do you and Christina do?
A. We get up. After they get done, Jimmy goes out --
Q. No. When Christina waited on them.
A. Oh, she ordered their food. And then we sat down.
Q. We?
A. Me and Christina sat down.
Q. Where?
A. At the end, where the big window is. Me and her was there, by the window.

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They were sitting in that booth there.

Q. How close to Mickel and Hojan were you sitting?

A. They were like three seats, three seats, I want to say, away from us. Three booths away from us.

Q. After a while, Mickel gets up? Jimmy gets up?

A. Jimmy, yes.

Q. Tell us what happened then?

A. Jimmy gets up. He goes outside.

Q. Out the front door?

A. Yes.

He went out the front door. He gets up and goes out the, the front door. And we are still sitting there. And then Chip gets up and comes -- first Jimmy comes back. I thought he was going to the Bathroom.

Q. He walked in that direction?

A. Yes, back in the back. When you come into the waffle house, there is the bathrooms. Then there is our office. I assumed he was going to the

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bathroom.

Q. Okay.

A. Chip gets up.

Q. The defendant gets up?

A. Yes, he gets up. He, by this time, when he gets up under, Christina gets up.

I get up, behind Hojan.

We do our side work.

Before we, there is like a, in the Waffle House, there is something like (indicating) that you get in to, to pay.

She was already there.

I was going to go a little further.

When we got there, I heard a "click Click."

Q. What does that sound like? The " Click Click"?

A. Sounded like a gun or something. I don't know. I just heard a "click click."

I didn't know that's the sound of when a gun is being used.

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So that's when I turned, and I looked At him.

Q. Looked at who?

A. Him. Chip.

Q. The defendant?

A. Yes.

Q. What was he doing?

A. He had the gun pointed at Christina. Christina goes --

Q. Ms. Nunn, Hojan points the gun at Christina?

A. Yes.

Q. What does Christina say?

A. She said I have a six-month-old son named Kyle. Am I going to see him Again?

He said just do as I say, and you will be all right.

Q. What happens then?

A. Well, we go to the, start walking to the, through the walkway, you know, where the grill and stuff is, to go to the back.

Q. How do you get to the back?

A. It's, it's, it's behind the grill.

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It's where the grill stuff is.
Q. All right.
A. And then walk straight back.
Q. Is there a doorway?
A. There is a doorway back there.
As we were walking back there, there is a swinging door.
We get back there.
And by the time we get back there, Jimmy was, had some red things that Clips the locks or whatever.
And he --
Q. Hojan?
A. Chip comes through the back. So he goes through the side, like Jimmy went through. There is an office door by the bathroom. When we got back there, when we got up there, he was behind us or whatever.
He was there.
When we got to the storage area, like I said, Jimmy was clipping open the storage area with red clipper things.
I looked at Jimmy, and I asked him are we okay?

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He didn't answer me.
So we stepped into the storage room.
He says no, go all the way back.
Q. Who says go all the way back?
A. Jimmy. Jimmy told us to go all the way back.
Q. Okay.
A. We go all the way back to the freezer part. That's where we sat until Chip came back to ask me for my phone.
Q. When you and Willie and Christina are walking, describe how you get to the freezer?
A. When you get in the back, it is our prep area. And there is offices and shelves and stuff, counters and stuff back there.
Then you're, you're in this direction that I am in now.
There is prep tables.
Then there is the locker, the storage, dry area thing he clipped.
Once you go through there, there is like a, a, where the food that you pull out, to thaw out, the thawing out area,

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whatever you want to call it.
Then you walk a couple more steps.
Then there is the freezer.
Q. Is there a door to the cooler?
A. Yes, you have to open up doors.
There are two doors.
Q. How did the door get opened?
A. We opened it. We opened the door ourselves.
Q. Who told to you open the door?
A. Jimmy.
Q. Where was Hojan? Where was Chip?
A. After we left the dry area, the first part, before we went in, I don't know.
Q. Okay.
A. I don't know.
Q. You don't know where Chip was or you don't know where Jimmy was?
A. I don't know where he was.
I think he was in the back.
I don't know where he was.
Q. Okay.
Who took you back to the freezer?
A. I'm sorry.

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He took me back to the freezer.
(Indicating.)
He took us back to the freezer.

Q. Chip did?

A. Yes, he did.

Q. That happens when you get to the freezer?

A. We were waiting.
I guess we were just sitting in the freezer.

Q. When you get into the freezer, what happened with the door, with the door to the freezer?

A. Every time he came through the door, you're talking about the door moving? every time he came through the door?

Q. Yes, did the freezer door close once you were in there?

A. Yes, it closes automatically. All the doors close automatically.

Q. The cooler door closes automatically?

A. Yes.

Q. And the freezer door closes automatically?

A. They close automatically, yes.

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There is no propping them and letting them sit or anything like that. They close.

Q. When the defendant goes back with you and puts you in the freezer, how were you in the freezer? How did you get in there?

A. The order we were in, it was, it was, uhm, Jimmy, I mean Willie, then me, then Christina. But I stood out Further I think because I was bigger or the space was small. Smaller. They were like behind me. I was out further.

Q. Chip puts you in the freezer, and the freezer door closes?

A. Yes.

Q. What happens in the freezer then?

A. Christina was talking about seeing her son --

Q. Go ahead.

A. Christina was upset about her son. Wanted to see her son. At that time, I told her we were fine.

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I comforted her and all of that stuff.

Then the freezer, you could see when he was coming because the freezer would move.

I don't know why.

When he opened up the first door, the freezer would move. We would know, be kind of like, you know.

But anyway, so, he came in.

Q. Did he open the freezer door?

A. He did. Chip.

Q. Chip opened the freezer door?

A. Yes.

He did.

Q. From the time you first, he put you in the freezer, Ms. Nunn, until the time he comes back the second time, how much time, approximately, went by?

A. I would say two to three minutes.

Q. He comes back a second time. Opens the freezer door. Then what happens?

A. He asked me for my phone. Everybody knows I keep my phone here.

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(Indicating.)

Q. Go ahead.

A. He asked me for my phone.

Everybody know I keep my phone right here. (Indicating.)

Q. Chip asked you for your phone?

A. Chip asked me for my phone.

Because everybody know I keep my phone right here. (Indicating.)

I said I don't have it.

And I lifted up my shirt to show him I didn't have the phone.

I told him where the phone was.

Then he leaves.

He asked them, too. Mainly, he came to me because Jimmy, because I worked with Jimmy. Always see me cooking. Whatever.

It is always right there. (Indicating.)

So he leaves.

And I say, I'd say maybe another three, two minutes, give or take, he comes back.

Q. Chip comes back?

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A. Chip comes back.
I'm sorry.
Chip comes back.
Chip asks us for our money.
Q. He opens the freezer door again?
A. Yes, he opened up the freezer door.
I'm sorry.
He opened up the freezer door. He asked us for our money.
So we gave him our money.
Q. How much money did you give him?
A. I gave him $85.
Q. How about Christina?
A. Christina gave him $197.
Q. How did you know she had $197?
A. We counted it, was counting our tips before they came in.
Q. How about Willie?
A. He got furious at Willie because Willie said he didn't have a wallet. The reason I say he was furious at Willie, because, he said, You don't have a gun? I mean, You don't have a wallet? Willie was like no. He got really loud with Willie.

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Really furious with Willie.
Willie said no. Then he leaves.

Q. Chip leaves?

A. Chip leaves.

Q. Freezer door closes?

A. The door closes.
And he leaves.

Q. What happens in the freezer now?

A. Now, I know we're going to get shot.
And I tell them that. I said
they're going to kill us.

Q. Okay.
Who did you tell that to?

A. I told that to Willie and Christina.
I said they are going to kill us.

Q. What do you say to Willie and to
Christina?

A. I told them they were going to kill
us.

Q. What else did you say.

A. I said I know them. I can identify
them. I said they are going to kill
us.

Q. Then what happens?

A. Then shortly after I said that, the

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door opens again.

Q. Who was at the door?

A. Chip.

Q. The defendant?

A. Yes.

Q. Then what happens?

A. This time, when he opened up the door, he put his foot in front of the door. And uhm, he had the gun turned this way, instead of this way. (Indicating.)

Q. On its side?

A. Yes.

He told us to get on our knees and put our hands on top of our head.

I wasn't doing that.

Christina and Willie did it.

I proceeded to tell him we don't have to do this. I said we can talk about this.

Why can't we talk about this? You don't have to do this.

The whole time, I had my hand, doing this. (Indicating.)

I was like you don't have to do this.

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Let's talk about it. You don't have to do this.

I kept turning my head, you know, saying you don't have to do this.

Then he shot me.

Q. Where did he shoot you?

A. He shot me right back here, in the back of my head. (Indicating.)

Q. That's Chip, the defendant in this case, who you identified?

A. Yes.

Q. What happens after he shoots you in the head?

A. I guess he finished shooting everybody else.

Q. What happened to you?

A. Oh, I fell on the ground. And, uhm, I fell on the ground.

Q. Then what happened?

A. I just fell on the ground.

I just remember falling on the ground.

And I just remember --

Q. You fall on the ground. Then what happens?

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A. I guess I went, I must have left. And I woke up.

Q. When you woke up, were you on the ground?

A. I was still on the ground. When I opened up my eyes, he was shooting Christina.

Well, actually, Christina, I saw Christina doing this. (Indicating.) She was blocking something.

She was blocking something.

And I just closed my eyes and just laid there.

Q. And then what happened?

A. I knew the order that we was in, that everybody was shot. Plus I felt, when he shot Willie, Willie fell on me.

His legs and stuff fell across me. So I had to push Willie off of me to crawl through the freezer, the freezer and walk in part of the storage bin and out through the prep area, back through the door.

Then I walked over to the Shell gas

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station.

Q. Tell us what happened when you got to the Shell gas station?

A. I went to the wrong door.

So I had to walk around to the right door.

And the man let me in.

When I got there, I told him, I went straight up under a cash register.

I told him not to let no white man in or no Mexican man.

Q. Okay.

A. Big Mexican man.

I'm sorry. Big Mexican man.

Q. Then what happened?

A. The man called for help.

He called my sister for me.

I told my sister to come to me, that I have been shot in my head. And she gave the phone to her husband.

He kept asking me where I was.

I told him I had been shot and to come, get my sister to me.

Then I called, had him call my mother.

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He called my mother.
I told my mother I had been shot.
She was screaming.
Q. Where was your mother?
A. Davenport, Iowa.
Q. She was in Davenport, Iowa.
The attendant dialed the number for you?
A. Yes.
Q. Then where were you taken?
A. Say that again?
Q. What happened after that? After you spoke to your mom?
A. Well, she started screaming.
I hung up the phone.
I was hearing a lot from him shooting. All I could here was Hmmmmm, dingggggg.
It was a loud ringing.
I was seeing triples and doubles and stuff. My vision and stuff was off, too.
My ears were really really bad.
I just hung up on her.
By this time, I guess it was the fire

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department or police or somebody got there and was asking me a lot of questions.

Q. Let me show you these photographs. I'll show you State's Exhibit marked A for identification.

I'll put this over here.

Ms. Nunn, if you can turn.

See this?

I'll put this right up here.

You recognize that?

A. Yes.

That's my car. Waffle House.

Q. Which is your car?

A. Burgundy Saturn.

Q. That's what the Waffle House looked like on March 11, 2002?

A. Yes.

Q. That's where you parked your car, your Saturn, the night you were working, right?

A. Yes.

Q. Now I'll show you State's exhibit marked 2B and ask you to take a look at that.

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A. Okay.
Q. Do you recognize what that is?
A. Yes.
Q. I'll get you a pointer?
Ms. Nunn, here is the pointer.
Show us what this photograph 2B shows.
A. This is the working side, over here.
All of this right here.
That's where the, where we worked at.
This is the aisle right here that Chip paid for his food at.
Q. Where was Christina?
A. On the other side. Right here.
Q. Where is the cash register?
A. Right there.
Q. How about, you said there is a little hallway that leads to the restrooms?
A. Right here.
Q. That's where Jimmy went?
A. Yes.
Q. How about the door? The swinging door you were talking about?
A. That's right there.
Q. Now I'll show you State's Exhibit 2A.

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Is that a better --

A. Yes, that's a better picture.

Q. That's a swinging door?

A. Yes, that's a swinging door there.

Q. Hallway to the bathrooms?

A. Bathrooms are on this side.

Q. I'll show you State's Exhibit X for identification.

I ask you do you recognize that?

A. Yes, I do.

Q. What is that?

A. This is a cash register. This is the, where we drop our money at when we are waitresses, when it was time to drop our money. Get too many big bills.

Q. That drop box, is that secured with a padlock?

A. No.

Yes, it is. But not in that picture.

Q. And I'll show you State's Exhibit marked F for identification and ask you if you can identify that?

A. This is our prep area. That's the back door. Storage bin is over here

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that I was telling you guys about. There is a counter there I told you guys about. This is like our sinks and stuff.

Q. Here is State's Exhibit G for identification.

A. Okay. When the door opens to the storage, the first entry, that's that room there. That's the first thing you see is that room there.

Q. That's the storage door you said was secured with a padlock?

A. Yes. Supposed to be a padlock on that door there. It is locked every time the managers are gone.

Q. Showing you State's Exhibit I for identification?

A. That's still the prep table. That's the office. And that's usually, that is locked when there is no manager or supervisor or anything or anybody like that.

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Q. That is locked with a padlock also?
A. Yes, it is.
Q. Now, I'll show you State's Exhibit E for identification and ask you do you recognize who that is?
A. Yes.
Q. Who is that?
A. That's Christina.
Q. And I'll show you State's Exhibit marked D for identification.
Do you recognize who that is?
A. That's Willie Absolu.
Q. Do you recognize the face?
A. I don't want to look. I don't want to look, okay? I don't want to look at that. I don't even know where his face is at.
I can't see his face.
I don't want to look. I don't want to look at that.
I don't want to look at that. I don't want to see that.
Q. Okay.
All right. I'll show you State's Exhibit marked 2D and ask you to take

a look at that and describe what doors those are.

A. That door is the storage bin I told you about, where we pull our food to thaw out.

That's the freezer, back there.

Q. That's Willie's legs?

A. That's Willie's legs.

Q. And I'll show you State's Exhibit marked 2C.

A. That's --

Q. What door is that?

A. That's the cooling place.

That's the storage, the dry storage.

Q. What is the other door there?

A. That's the door that goes outside.

Q. Is that the door you went out of?

A. Yes. Yes.

Q. Okay.

Ms. Nunn, I want to show you some I.D. pictures.

Can I show them to you?

A. I really don't want to. We know it is Christina and Willie.

But okay.

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Q. All right.
A. That's Willie.
Q. What is his name?
A. Willie Absolu. I can't remember.
Q. Willie Absolu?
A. Yes, that's it.
Q. All right.
Ms. Nunn, I want to show you State's exhibit marked 9 in evidence.
At the hospital, were you shown this photographic display?
A. Yes.
Q. Okay.
A. That's Chip.
Q. Okay.
Is that your initials on there?
A. Yes.
Q. You picked out that person as who?
A. Chip.
Chip.
Q. Who did what?
A. He shot me.
Q. I'll show you State's Exhibit ten.
Do you recognize that photographic display?

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A. Jimmy.
Q. That's Jimmy.
Are those your initials on there, too?
A. Yes, it is.
Q. You presently live in Iowa?
A. Yes, I do.
Q. How many children do you have?
A. I have three.
Q. Have you ever been convicted of a misdemeanor of dishonesty?
A. Yes. Yes, I have.
Q. How many misdemeanors?
A. Four.
Four.
Q. Have you ever been convicted of a felony in a court of record?
A. Yes.
Q. How much times?
A. Two.
Q. How long did you know Willie Absolu?
A. You know what? I, it wasn't, it was, it was just about a few months.
He had just came.
Q. How long did you know Christina

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Delarosa?

A. I had known Christina for maybe, maybe six months or longer.

Q. Is that the last time you worked at the Waffle House?

A. Yes.

MR. SATZ: Thank you, Your Honor. I have no further questions.

(Recess had.)

THE COURT: Mr. Satz?

MR. SATZ: At this time, the State would offer State's Exhibits 9 and 10, which are the line-ups and photographs, State's Exhibit A.

THE COURT: A will come in as 1.

MR. SATZ: 2B.

THE COURT: 2B will come in as 2.

MR. SATZ: 2A.

THE COURT: 2A will come in as 3.

MR. SATZ: X.

THE COURT: X will come in as 4.

MR. SATZ: F.

THE COURT: F will come in as 5.

MR. SATZ: G.

THE COURT: That will come in as 6.

MR. SATZ: Exhibit I.

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THE COURT: Exhibit I will come in as 7.
MR. SATZ: C.
THE COURT: C will come in as 8.
MR. SATZ: E.
THE COURT: That will come in as 9.
I have 9?
Exhibit I is 7.
So then C comes in as 13.
MR. SATZ: E.
THE COURT: E comes in as 14.
MR. SATZ: B.
THE COURT: B will come in as 15.
MR. SATZ: 2C.
THE COURT: That will come in as 16.
MR. SATZ: N, as in nickle?
THE COURT: That will come in as 17.
MR. SATZ: 2H?
THE COURT: 2H will be 18.
MR. SATZ: L.
THE COURT: L will be 19.
Mr. Polay?

CROSS EXAMINATION

BY MR. POLAY

Q. Good afternoon, Ms. Nunn.
A. Hi.

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Q. Now, for how long a period of time did you know Jimmy, Jimmy Mickel?
A. I, I met Jimmy at my job. He didn't work there that long. I would say maybe about two months.
I worked with him on Mondays.
I only worked with him a few times.
Q. You were friendly enough with him you would actually go to the Coliseum?
A. I'm friendly with anybody.
Q. Okay.
And you knew Chip worked there, at the Coliseum, as well?
A. Yes.
Q. You had gone to the Coliseum. And I guess they let you in for free before.
Is that right?
A. Yes.
Q. You know, you said to the jury that every time that you came in contact with Jimmy, chip was there; is that correct?
A. Yes.
Q. It was like Chip was always tailing

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Jimmy?

A. Yes.

Q. Every time Jimmy was working, Chip would be there, right?

A. Yes.

Q. You never had any problems with Chip prior to this evening; is that correct?

A. You said I never had any problems?

Q. Yes?

A. No.

But I didn't like him.

Q. But you liked Jimmy?

A. Yes, I liked Jimmy.

I didn't like him. I never liked him. (Indicating.)

Q. Well, you felt Jimmy was the boss of Chip, right?

A. Oh, yes.

Q. In fact, I believe -- strike that. Jimmy worked at this Waffle House. There are certain things an employee would know. Is that correct?

A. Okay. Say that? Jimmy worked at the Waffle House, yes.

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Q. You, as employees, you know where the money is?
A. Yes.
Q. You know where things are dropped off?
A. Yes.
Q. Only an employee would know that, right?
A. Yes.
Q. I just want to take you back to another thing that Jimmy knew about you. He would see this when you worked with him. You said you're brought back to the freezer? Correct?
A. Yes.
Q. And you said to the jury that Jimmy told you to go all the way back; is that correct?
A. I got the names mixed up. He told me to go all the way back. (Indicating.)
MR. SATZ: He, meaning the defendant?
THE WITNESS: Meaning --
(Indicating.)

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MR. SATZ: Chip?
THE WITNESS: Chip.
BY MR. POLAY:
Q. And Jimmy is there with bolt cutters, opening up the locks?
A. Yes.
Q. So an employee would know these are Locked, correct?
A. Yes.
Q. And an employee would know where the money is, correct?
A. Yes.
Q. So you go into the back of the freezer. And you say that you are there for two or three minutes. correct?
A. I am guessing around that time.
Q. An estimate. I understand.
A. Yes.
Q. And then you say that Chip comes and asks you for your cell phone?
A. Yes, he did.
Q. And you said that Jimmy knew you had a cell phone, right?
A. Yes, Chip knew, too. He was there at

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work all of the time.
He knew too.
He knew. I keep it right here in my bra.
He knew, too.

Q. Well, you worked with Jimmy, right?

A. I worked with Jimmy. Chip sat right there, across from where, in that last booth.
Sat in that last booth all of the time, where me around Christina sat.
He sat there all of the time, smoking.

Q. My question to you, Jimmy knew you had a phone, correct?

A. Yes, jimmy and Chip knew I had a phone.

Q. Jimmy knew you had a phone?

A. Chip did, too.
Yes.

Q. That's a yes.
Jimmy knew you had a phone?

A. Yesssss.
Chip did too.

Q. You said to Mr. Satz that in the

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office, there is a padlock on money, correct?

A. There is a padlock on the office door.

Q. On the office door, correct?

A. Yes. Yes.

Q. There is also a padlock to, I guess, quote, protect the bank, where money is kept in the office?

A. Well, I can't tell you that part because I didn't go in the office. I was always on the outside. It is just a little room. About the size of that little space there. But he has been in that office. (Indicating.) Chip has been in that office.

Q. Let me ask you this. You felt -- correct me if I'm wrong -- you felt Chip was stupid, right?

A. I felt Chip was a muscle man. A bully. I think he was the muscle man. I have always thought that.

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Q. You felt Jimmy was the mastermind?
A. Yes.
Q. Jimmy was the one with the plan, right?
A. I don't know if he had a plan. He was the one he would gopher for.
Q. Chip was the gopher?
A. He always did everything --
Q. That Jimmy said?
A. That's just my opinion, okay?
Q. Understood.
Just one second, Judge.
MR. POLAY: Nothing further, Judge.
MR. SATZ: Thank you, Ms. Nunn.
I have nothing further.
(Read back of Barbara Nunn concludes.)
THE COURT: Based upon your request, we will break for the balance of the day.
Do you remember what time you want to come back?
JURORS: 9 o'clock, sir.
THE COURT: I have a couple things I have scheduled for tomorrow morning. I think we'll be able to start the read back by 10:00.
You still be able to deliberate during that

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period of time.

If you have additional questions, we can deal with them at that time as well.

JURORS: 9:30 okay?

THE COURT: Sure.

See you guys tomorrow morning.

(Exit jurors.)

(Proceedings conclude for the day.)

****

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 23rd day of July, 2019.

VIVIAN ROCK, COURT REPORTER

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION JUDGE: PAUL L. BACKMAN

CASE NO: 02-5900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

ORIGINAL

GERHARD HOJAN,

Defendants.

TRIAL PROCEEDINGS
VOLUME XXIV
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TRIAL DELIBERATIONS/VERDICT

Fort Lauderdale, Florida
November 8th, 2018
9:00 a.m.

APPEARANCES:

MICHAEL J. SATZ, ESQ.
CAROLYN MCCANN, ESQ.,
appearing on behalf of the plaintiff;

MITCH POLAY, ESQ.
H. DOHN WILLIAMS, ESQ.,
appearing on behalf of the defendants.

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Ft. Lauderdale, Florida, on November 8th, 2018, commencing at 9:00 a.m.

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TRIAL DELIBERATIONS/VERDICT

THEREUPON, the following proceedings were had:

(Jurors have been deliberating since 9 o'clock a.m. Had lunch brought in.)

(Buzzer rang for various reasons.)

(At 2:56 p.m., the following proceedings were had.)

THE COURT: While I have everybody here, I have three notes the jury sent out during the course of the day.

The first one I think I told you guys about. They no longer wanted the detective's read back.

Second dealt with the autopsy pictures.

The last one, just came out recently, they wanted a clean verdict form as to Counts I and II.

MR. SATZ: You told us about the autopsy photograph.

THE COURT: I don't know if Vivian had it on the record.

Dohn, you took down the numbers of the actual exhibits we sent back?

MR. WILLIAMS: The autopsy photos.

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Yes.

THE COURT: Please.

MR. WILLIAMS: Vivian, are you ready?

REPORTER: Yes.

These are all State Exhibits.

17, 19, 69, 64, 66, 67, 68, 75, 78, 79, 80.

THE COURT: Okay. I wanted that on the record.

Nobody has an objection?

MR. WILLIAMS: No.

MR. SATZ: No, you told us about the autopsy photos.

THE COURT: And they did have lunch.

(Deliberations continue.)

(Buzzer at 3:17 p.m.)

THE COURT: All right.

The jury sent out a note, indicating they have reached a decision.

If they are ready --

DEPUTY: All right. Stand by.

(Enter jurors.)

THE COURT: Members of the jury, I understand you have reached your decisions in this case?

JURORS: Yes.

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THE COURT: Mr. Fore person, if you would kindly hand those to the deputy, please.

Would the clerk please publish the jury's findings.

THE CLERK: In the Circuit Court of the 17th Judicial Circuit , in and for Broward County, Florida, State of Florida vs. Gerhard Hojan, case number 02-5900 CF10B, Judge Paul L. Backman.

Verdict as to sentence, Count I, we, the jury, find as follows as to the defendant, Gerhard Hojan, in this case, we, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor. The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to another person.

Yes.

We, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor, the first degree murder of Willie Absolu was committed while Gerhard Hojan was engaged or was an accomplice in the commission of or an

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attempt to commit or flight after committing or attempting to commit the crime of armed kidnapping.

Yes.

We, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor, the first degree murder of Willie Absolu was committed for the purpose of avoiding or preventing a lawful arrest.

Yes.

We, the jury, unanimously find that the State has established, beyond a reasonable doubt, the existence of the aggravating factor, the first degree murder of Willie Absolu was committed for financial gain.

No.

We, the jury, unanimously find that the State has established, beyond a reasonable doubt, the existence of the aggravating factor, the first degree murder of Willie Absolu was especially heinous, atrocious or cruel.

Yes.

We, the jury, unanimously find that the State has established beyond a reasonable doubt

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the existence of the aggravating factor, the first degree murder of Willie Absolu was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification.

No.

Section B, reviewing the aggravating factors that we unanimously found to be established beyond a reasonable doubt in Section A above, we, the jury, unanimously find that aggravating factors are sufficient to warrant a possible sentence of death.

Yes.

Section C, mitigating circumstances.

We, the jury, find that a mitigating circumstance or circumstances was or were established by the greater weight of the evidence.

Yes.

If you answered yes above, please provide the jury vote as to the existence of the mitigating circumstance or circumstances.

Vote of 12 to 12.

Section D.

Eligibility for the death penalty for Count

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I.

We, the jury, unanimously find that the aggravating factors that were proven beyond a reasonable doubt, Section A, outweigh the mitigating circumstances established, Section C above, as to Count I.

Yes.

Section E.

Jury verdict as to death penalty.

Having unanimously found that at least one aggravating factor has been established beyond a reasonable doubt in Section A above and that the aggravating factor or factors are sufficient to warrant a sentence of death, Section B above, and the aggravating factors, factor or factors, outweigh the mitigating circumstantial in Section D above, we, the jury, unanimously find that the defendant, Gerhard Hojan, should be sentenced to death.

Yes.

So say we all this 8th day of November, 2018, fore person, Nigel Pierre.

THE COURT: Anybody wish the jury polled with respect to their verdicts?

MR. POLAY: Yes.

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THE CLERK: Ms. June Stone, is this your verdict?

JUNE STONE: Yes.

THE CLERK: Mr. Pierre, is this your verdict?

NIGEL PIERRE: Yes.

THE CLERK: Ms. Moon, is this your verdict?

SUSAN MOON: Yes.

THE CLERK: Ms. Legons, is this your verdict?

APRIL LEGONS: Yes.

THE CLERK: Ms. Diaz, is this your verdict?

ANA DELLIZ DIAZ: Yes.

THE CLERK: Ms. Golder, is this your verdict?

SHALLIS GOLDER: Yes.

THE CLERK: Sharon Starkes, is this your verdict?

SHARON STARKES: Yes.

THE CLERK: Leslie Lynch, is this your verdict?

LESLIE LYNCH: Yes.

THE CLERK: Cynthia Bachus, is this your verdict?

CYNTHIA BACKUS: Yes.

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THE CLERK: Brian Runge, is this your verdict?

BRIAN RUNGE: Yes.

THE CLERK: Monique Acher, is this your verdict?

MONIQUE ACHER: Yes.

THE CLERK: Joel Schick, is this your verdict?

JOEL SCHICK: Yes.

THE CLERK: In the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, State of Florida vs. Gerhard Hojan, case number 02-5900 CF10B, Judge Paul L. Backman.

Verdict as to sentence, Count II, we, the jury, find as follows as to the defendant, Gerhard Hojan, in this case, we, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor. The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to another person.

Yes.

We, the jury, unanimously find that the

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State has established, beyond a reasonable doubt, the existence of the aggravating factor, the first degree murder of Christina Delarosa was committed while Gerhard Hojan was engaged or was an accomplice in the commission of or an attempt to commit or flight after committing or attempting to commit the crime of armed kidnapping.

Yes.

We, the jury, unanimously find that the State has established beyond a reasonable doubt the existence of the aggravating factor, the first degree murder of Christina Delarosa was committed for the purpose of avoiding or preventing a lawful arrest.

Yes.

We, the jury, unanimously find that the State has established, beyond a reasonable doubt, the existence of the aggravating factor, the first degree murder of Christina Delarosa was committed for financial gain.

No.

We, the jury, unanimously find that the State has established, beyond a reasonable doubt, the existence of the aggravating factor,

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the first degree murder of Christina Delarosa was especially heinous, atrocious or cruel.

Yes.

We, the jury, unanimously find that the State has established, beyond a reasonable doubt, the existence of the aggravating factor, the first degree murder of Christina Delarosa was committed in a cold, calculated and premeditated manner, without any pretense of moral or legal justification.

Yes.

Section B, sufficiency of aggravating factors.

Reviewing the aggravating factors that we unanimously found to be established beyond a reasonable doubt in Section A above, we, the jury, unanimously find that aggravating factors are sufficient to warrant a possible sentence of death.

Yes.

Section C, mitigating circumstances.

We, the jury, find that a mitigating circumstance or circumstances was established by the greater weight of the evidence.

Yes.

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If you answered yes above, please provide the jury vote as to the existence of the mitigating circumstance or circumstances.

Vote of 12 to 12.

Section D.

Eligibility for the death penalty for Count I.

We, the jury, unanimously find that the aggravating factors that were proven beyond a reasonable doubt, Section A, outweigh the mitigating circumstances established, Section C above, as to Count II.

Yes.

Section E.

Jury verdict as to death penalty.

Having unanimously found that at least one aggravating factor has been established beyond a reasonable doubt in Section A above and that the aggravating factor or factors is sufficient to warrant a sentence of death, Section B above, and the aggravating factor or factors outweigh the mitigating circumstantial in Section D above, we, the jury, unanimously find that the defendant, Gerhard Hojan, should be sentenced to death.

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Yes.

So say we all this 8th day of November, 2018, fore person, Nigel Pierre.

THE COURT: Members of the jury --

MR. WILLIAMS: Judge, poll the jury?

MR. POLAY: For the second count.

THE COURT: Oh, yes.

My apologies.

Hortence?

THE CLERK: Ms. Stone, is this your verdict?

JUNE STONE: Yes.

THE CLERK: Nigel Pierre, is this your verdict?

NIGEL PIERRE: Yes.

THE CLERK: Susan Moon, is this your verdict?

SUSAN MOON: Yes.

THE CLERK: Ms. Legons, is this your verdict?

APRIL LEGONS: Yes.

THE CLERK: Ms. Diaz, is this your verdict?

ANA DELLIZ DIAZ: Yes.

THE CLERK: Ms. Golder, is this your verdict?

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SHALLIS GOLDER: Yes.

THE CLERK: Sharon Starkes, is this your verdict?

SHARON STARKES: Yes.

THE CLERK: Leslie Lynch, is this your verdict?

LESLIE LYNCH: Yes.

THE CLERK: Cynthia Bachus, is this your verdict?

CYNTHIA BACKUS: Yes.

THE CLERK: Mr. Runge, is this your verdict?

BRIAN RUNGE: Yes.

THE CLERK: Monique Acher, is this your verdict?

MONIQUE ACHER: Yes.

THE CLERK: Joel Schick, is this your verdict?

JOEL SCHICK: Yes.

THE COURT: In addition to your recognition individually that each verdict as read was in fact your verdicts, does that include each of the findings as to the aggravating factors, each being unanimous?

ALL JURORS: Yes.

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THE COURT: Anyone that differs from that?

JURORS: No.

THE COURT: Thank you.

You know, it is a little melancholy for me. I think I told you, in the beginning, this is the end of my career. This is the last time I'll address a jury.

I want you to know I take it with great pride all of the opportunity to serve.

I know it is mentioned quite often how people go out of their way to make excuses and not serve on a jury..

Jury service, like voting last Tuesday, is one of the most fundamental rights and privileges we all share.

Our system only works because of good individual such as yourselves, not only from this county, this state, but all over this country.

Other individuals are making that sacrifice of their time, coming down and participating. Without you, the system just doesn't work.

And I think you have had an opportunity, irrespective to how you feel about the verdicts you may have just issued, you have had an

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opportunity to see that your system works.

And the job that you had, which has, has to be one of the most difficult decisions anyone can make, is not an easy thing of going back into a jury room and saying this is what we'll do.

So I commend you on the time that you took, the diligence and patience that you had during this process.

And I have, on behalf of all of my colleagues, in addition to myself and my whole staff, a certificate of appreciation for you, that does recognize your performance of your responsibilities.

I want you to know you get an exemption for a whole one year. Maybe they will call you back.

We would love to have you back.

You only get one of these in return for your jury badges and buttons.

If you don't want one, you still have to give us your badges and your buttons.

Again, thank you very much.

Steve will take care of you.

And thank you for your service.

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(Exit jurors.)

THE COURT: Steve, can you tell him I need the jurors back a minute, please.

(Enter jurors.)

THE COURT: I forgot to tell you something. That's all.

Very quickly, I wanted you to also Be aware that at this juncture, you don't have to talk to anybody with regard to the case.

If you want to, certainly, you're welcome to do so. If you want to talk to the lawyers, that's fine.

The only one that can make you talk is me.

If the press approaches you, and I know at least the Sun Sentinel won't do it -- you still writing for the Herald, also?

RAFAEL: No.

THE COURT. The Herald won't approach you either. Rafael writes for them.

The bottom line is, if anyone tries to talk to you, and you tell them to go away and they don't, you call me. I assure you, I'll take care of it.

With that, again, thank you.

(Exit jurors.)

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THE COURT: All right. Let's talk about some dates.

Whatever reason, we still have to have a Spencer hearing.

MR. WILLIAMS: Didn't you say you were coming back the week of December 10th.

THE COURT: I am.

But that's then putting me under a whole lot of pressure.

Anything I do, I have to do by the end of December.

Thank you.

This is what I want.

I want sentencing memorandums, obviously.

Today is the 8th.

MS. MCCANN: Will you want them contemporaneously filed?

THE COURT: Yes.

THE COURT: How long do you need to do the memo?

MR. WILLIAMS: I need time to wind down.

THE COURT: That's nice.

MR. POLAY: Can we do it after Thanksgiving?

THE COURT: All right.

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I will tell you what.

I'll be kind.

MS. MCCANN: For purposes of the Spencer Hearing, I have dates I'll be out in December.

I know you're on vacation as well.

I'll be out of the state November 30th , through and including December 6th.

THE COURT: No, problem.

MS. MCCANN: December 14 through and including December 18.

THE COURT: All right. Spencer hearing and memos, December 10, 1:30.

All right?

MS. MCCANN: Yes, sir.

THE COURT: See you then.

MR. SATZ: Thank you, Your Honor.

****

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
SS:
COUNTY OF BROWARD)

I, VIVIAN ROCK, certify that I was authorized to and did stenographically report the foregoing proceedings and that this transcript is a true record.

Dated this 24th day of July, 2019.

VIVIAN ROCK, COURT REPORTER

**** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 7/29/2019 11:25:19 AM.****

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA
CRIMINAL DIVISION
JUDGE PAUL L. BACKMAN

CASE NO: 02-005900CF10B

STATE OF FLORIDA,

Plaintiff,

Vs.

GERHARD HOJAN,

Defendant.

_____/

Broward County Courthouse
201 Southeast Sixth Street
Ft. Lauderdale, Florida

TRIAL MASTER INDEX

The above-styled cause came on for a trial before the HON. PAUL L. BACKMAN, as Judge of the Circuit Court of the 17th Judicial Circuit, in and for Broward County, Florida, at 201 SE 6th Street, Room 5780, Ft. Lauderdale, Florida.

**** FILED: BROWARD COUNTY, FL Brenda D. Forman, CLERK 7/29/2019 11:25:19 AM.****

APPEARANCES:

MICHAEL J. SATZ
Carolyn McCann, Esq. and
Jeff Marcus, Esq.
Assistant State Attorneys
on behalf of the Plaintiff.

OFFICE OF THE PUBLIC DEFENDER
H. Dohn Williams, Jr., Esq. and
Mitch Polay, Esq.
Special Public Defenders
on behalf of the Defendant

*Rule 1.31(g) Florida Rules of Civil Procedure requires copies to be obtained from the court reporter, unless the Court rules otherwise.

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