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IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

State of Ohio, : CASE NO: 2017-CR-403
Plaintiff, :
:
-vs- : TRANSCRIPT OF PROCEEDINGS
Austin Taylor Burke, :
Defendant. : VOLUME I - JURY TRIAL

Be it remembered, that at the Jury Trial of the above-entitled cause, in the Court of Common Pleas, Trumbull County, Ohio, beginning on the 5th day of March, 2018, and continuing thereafter, as hereinafter noted, before the Honorable Andrew D. Logan, the following proceedings were had:

Official Court Reporter: Lori J. Rittwage

A P P E A R A N C E S:

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On behalf of the State of Ohio:

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March 5, 2018

THE COURT: Again, the Court calls case 2017-CR-403, which is state of Ohio versus Austin Burke. This matter is set for jury trial today. The state is in court through Assistant Prosecutor Christopher Becker. The defendant is in court along with his attorneys, Mr. Olson and Mr. Hartwig.

We're here prior to the jury being summoned up in court for any last-minute items but in particular to indicate whether there had been any settlement negotiations between the parties and the nature and extent of those.

Mr. Becker, did the state make an offer regarding a resolution of this matter?

MR. BECKER: Your Honor, yes, it's been awhile, and it was rejected by the defense. The state had proposed amending the aggravated murder charge in Count 1 to murder with a firearm specification which carries a potential penalty of 18 years to life in prison with a three-year firearm specification, running the other charges concurrently. And that was rejected. So I think that's why we're here today.

THE COURT: Right. And, Mr. Olson, you don't mind if I talk to your client?

1 MR. OLSON: I do not, Your Honor.

2 THE COURT: Mr. Burke, you understand that
3 the serious nature of these charges would result in, if you
4 were convicted of just charge one, not even all the rest of
5 the charges, the potential sentence could be life without
6 possibility of parole; you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. That's -- and if
9 you were convicted of a lesser offense still there's a
10 possibility that the Court could add 11 years as to both the
11 robbery charges with the firearm spec and additional time for
12 the other charges.

13 So even if they didn't convict you of this aggravated
14 murder, but a lesser murder, you could still get 50 some years
15 in prison; do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. You are rejecting
18 that at this point in time?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You want to go forward?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You've discussed this with your
23 attorneys?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions to
3 the Court?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. I just wanted to
6 make sure that this was on the record so in the event you're
7 convicted you can't come back and say your attorneys were
8 ineffective in not discussing this issue with you.

9 All right. Anything else at this time, Mr. Olson?

10 MR. OLSON: Nothing further, Your Honor.

11 THE COURT: Mr. Becker, we're through until
12 the jury?

13 MR. BECKER: Yes, Your Honor.

14 THE COURT: Okay.

15 (Whereupon, the following proceedings were
16 had with the prospective jurors present.)

17 * * *

18 VOIR DIRE OF THE POTENTIAL JURORS

19 THE COURT: Good morning, Ladies and
20 Gentlemen. Welcome back to Courtroom Number 1. I'm Judge
21 Logan. I will be presiding over the case for which you've
22 been summoned. You've met my bailiff, Ms. Camuso. My court
23 reporter is Ms. Rittwage. If there is anything we can do to

1 make your stay here a little bit more comfortable, please make
2 sure we're aware of that. It's our intention that your
3 service as jurors be as rewarding as possible. It's obviously
4 not monetarily rewarding, but it will be rewarding in the
5 sense that you'll better under our American system of justice.

6 Ladies and Gentlemen, you've been summoned this date
7 for a criminal case that is styled on the court's docket as
8 case 2017-CR-403, State of Ohio versus Austin Burke. This is
9 a serious criminal case involving allegations of murder and
10 robbery.

11 Now, I'm going to read from the indictment as to a
12 couple of the counts just to refresh your memory as to whether
13 or not you know anything about this particular case because
14 we'll go into that a little later.

15 It indicates that on or about the 12th day of June,
16 2017, and in Trumbull County, Ohio, Austin Burke did purposely
17 cause the death of another, one Kenneth Brandon Hayes Sample,
18 while committing or attempting to commit, or while fleeing
19 immediately after committing or attempting to commit,
20 kidnapping, rape, aggravated arson, arson, aggravated robbery,
21 robbery, aggravated burglary, burglary, trespass in a
22 habitation when a person is present or likely to be present,
23 or escape, with a specification regarding a firearm.

1 There is a robbery count relative thereto, tampering
2 with weapons, having guns while under disability, and then the
3 final count is, again, an aggravated robbery. That on or
4 about the 20th day of June, 2017, the defendant did, in
5 attempting or committing a theft offense, or in fleeing
6 immediately after the attempt or offense, did have a deadly
7 weapon on or about his person, or displayed the weapon,
8 brandished it, indicated he possessed it, or used it. Again,
9 with a firearm specification.

10 Again, I'm just reading those to give you a sense of
11 the charge because we will ask a little later on if you know
12 anything about this particular case.

13 Now, I want to introduce the parties that will be
14 presenting this case. At the table at my left, which is
15 state's table, is Assistant Prosecutor Christopher Becker. He
16 represents the state in this matter. At the table toward my
17 right are Attorneys Edward Hartwig and Bradley Olson, along
18 with the defendant, Austin Burke.

19 Now, jury service may be somewhat strange to you so a
20 short explanation would be in order. Those who participate in
21 trial do so in accordance with certain established rules.
22 That is true of the witnesses, the lawyers, the judge, and you
23 as jurors. The lawyers present the evidence in accordance

1 with these rules. The judge enforces these rules and
2 determines what evidence will be admitted. You will be the
3 sole judges as to the facts, the credibility of the witnesses,
4 and the weight to give to any of the testimony.

5 Now, the state of Ohio and the defendant are entitled
6 to jurors who will approach this case with open minds and
7 agree to keep them open until a verdict can be reached.
8 Jurors must be as free as humanly possible from any bias,
9 sympathy or prejudice, and you must not be influenced by any
10 preconceived notions either as to the facts or as to the law.

11 Now, although you may be qualified to serve as a
12 juror in a general sense, there may be something that would
13 make it inappropriate for you to serve in this particular
14 case. That is why the first part of each juror -- or first
15 part of each trial is the questioning of the jurors, again, in
16 order that we can make sure that you would be fair and
17 impartial when this case is presented. It's an important part
18 of the case, and it's necessary that you be sworn in before we
19 can ask you any questions.

20 Ms. Camuso.

21 (Whereupon, the venire was administered the
22 oath.)

23 THE COURT: All right. At this time, the

1 Court and then counsel will ask you some questions. These
2 questions are not designed to pry into your personal affairs,
3 but to discover if you have any knowledge of this particular
4 case, if you have any preconceived opinions you cannot lay
5 aside, or if you have any experience that might cause you to
6 identify with one side or the other in this particular case.

7 Now, if at any point in time the Court or counsel ask
8 you a question that would be uncomfortable for you to answer
9 in open court, just make sure we're aware of that. You can
10 approach the bench and give the answer in the privacy of the
11 sidebar solely with the Court and counsel.

12 All right. As we begin, I will ask you questions as
13 a group. If you are silent in your answer, we will consider
14 that a negative answer. If your answer is other than the
15 negative, please raise your hand and we'll go into it a little
16 further. If we are addressing a question or an answer that
17 you have, we'll ask you what your juror number is, so beware
18 of that as we go along.

19 First of all, have any of you been subpoenaed in good
20 faith to testify as a witness in this case?

21 Do any of you have any physical defects that might
22 prevent you from serving as a juror in this case?

23 Are any of you not residents of Trumbull County? Has

1 anyone moved out of the county?

2 Do any of you have an interest in the outcome of this
3 case in any fashion?

4 Have any of you, to the best of your recollection,
5 read or heard anything about this particular case? That's why
6 I mentioned the nature of it. All right. I'm going to have
7 you come to the bench one at a time.

8 Counsel, if you'll approach. And Ms. Camuso, if
9 you'll bring the jurors ahead one at a time.

10 BAILIFF JODI CAMUSO: 156.

11 THE COURT: 156? That's Miss Alberini?

12 JUROR NO. 156: Yes.

13 THE COURT: All right. Miss Alberini, what
14 do you know about this case?

15 JUROR NO. 156: I was --

16 THE COURT: This is for the court reporter.

17 JUROR NO. 156: Oh, okay. I was Brandon's
18 8th grade teacher at Howland Middle School and my daughter is
19 a good friend of Brandon's -- was a good friend of Brandon's.

20 THE COURT: That was the deceased?

21 JUROR NO. 156: Yes.

22 THE COURT: Okay. Any questions,

23 Mr. Becker?

1 MR. BECKER: Well, with that in mind, do
2 you think you're too close?

3 JUROR NO. 156: I'm sorry?

4 MR. BECKER: With that in mind, do you feel
5 that you're too close to this case or would you be able to
6 separate that out?

7 JUROR NO. 156: I don't think I can
8 separate it. Only because all of my daughter's friends were
9 Brandon's friends.

10 MR. BECKER: Okay. So you think that you
11 would be influenced by the fact that you knew him and you have
12 children that are his friends? You couldn't give the
13 defendant the benefit of the doubt?

14 JUROR NO. 156: Yeah. I don't think I
15 could.

16 THE COURT: Do you have any questions?

17 JUROR NO. 156: I'm going to be honest.

18 MR. OLSON: I don't have any questions.

19 THE COURT: You're excused. Thank you very
20 much.

21 JUROR NO. 156: Thank you.

22 BAILIFF, JODI CAMUSO: Juror Number 148.

23 THE COURT: You are Dawn Adams?

1 JUROR NO. 148: Yes, I am.

2 THE COURT: What do you know about this
3 case?

4 JUROR NO. 148: I don't really remember a
5 lot. I just remember reading in the newspaper a story about
6 the criminal act and, you know --

7 THE COURT: You don't have any particular
8 individual involvement in this?

9 JUROR NO. 148: No.

10 THE COURT: But you read it in the paper?
11 You watch the news?

12 JUROR NO. 148: Yeah. Pretty much. He
13 does look familiar, so I don't know if he went to my school or
14 not. I teach at the TCTC, but I don't know him, I don't
15 think.

16 THE COURT: You haven't prejudged this case
17 in any fashion?

18 JUROR NO. 148: No.

19 THE COURT: You understand what's in the
20 newspapers and what's in the news could be --

21 JUROR NO. 148: Right. Could be biased.

22 THE COURT: And that all the evidence would
23 have to be presented in this case?

1 JUROR NO. 148: Sure.

2 THE COURT: And you could disregard
3 everything else that you've heard?

4 JUROR NO. 148: Sure.

5 THE COURT: And you could be fair to
6 everybody?

7 JUROR NO. 148: Yes.

8 THE COURT: Any questions?

9 MR. BECKER: I'm going to follow up just
10 with what the Judge said.

11 JUROR NO. 148: Uh-huh.

12 MR. BECKER: Obviously we want people in
13 our forum that read the newspaper, that watch the news. The
14 question here is, though, can you put aside anything you've
15 heard and decide this case solely on what you hear in the
16 courtroom?

17 JUROR NO. 148: Yes.

18 MR. BECKER: Okay. So you wouldn't let
19 those outside media influences make the decision for you? You
20 could just base it on the courtroom?

21 JUROR NO. 148: No.

22 MR. BECKER: Okay. Thank you, ma'am.

23 MR. HARTWIG: Couple questions. I'm sorry,

1 ma'am.

2 Do you recall any of the specifics that were in the
3 newspaper or on television about the case prior to coming in
4 today and hearing the summary from Your Honor?

5 JUROR NO. 148: No. Basically just what he
6 said. Just what I read about, you know, that there was a
7 murder. But I don't know that he did it.

8 MR. HARTWIG: Is there anything at the time
9 or now -- is there anything about what you read or saw that
10 makes you so uncomfortable that you wouldn't want to serve on
11 the jury?

12 JUROR NO. 148: No.

13 MR. HARTWIG: Okay.

14 THE COURT: Thank you very much.

15 BAILIFF JODI CAMUSO: 284.

16 THE COURT: You are Donna Gleydura?

17 JUROR NO. 284: Yes.

18 THE COURT: All right. Miss Gleydura,
19 please tell us what you remember about this case.

20 JUROR NO. 284: I read it in the paper.

21 THE COURT: Right.

22 JUROR NO. 284: And my neighbor's name was
23 Sample, so that's what caught my attention. And I really

1 don't remember a whole lot. I mean, other than the fact of
2 what happened.

3 THE COURT: You say your neighbor's name is
4 Sample?

5 JUROR NO. 284: Uh-huh.

6 THE COURT: Do you know if they're related?

7 JUROR NO. 284: I don't think so. I mean,
8 I didn't ask.

9 THE COURT: But that kind of rang a bell
10 for you and you thought you better come up and talk to me?

11 JUROR NO. 284: Yeah. Just in case.

12 THE COURT: Now, you understand anything
13 that might be in the paper or on TV isn't necessarily
14 accurate? And you understand if you're in the courtroom you
15 have to rely only on the evidence that we present in the
16 courtroom to make any decisions? Can you disregard everything
17 that you've read and heard and rely only on the evidence that
18 you see and hear in this courtroom?

19 JUROR NO. 284: Yeah. I imagine I can.
20 You know.

21 THE COURT: And, again, you hadn't
22 indicated to me that there was something that you really are
23 committed to that you've heard or read about.

1 So you can rely -- you know, again, you have to kind
2 of disregard anything you might have read. All the evidence
3 will be presented from the witness stand.

4 JUROR NO. 284: Well, at my age, I
5 disregard a lot. So, you know. I might nap, you know, if you
6 pick me.

7 THE COURT: All right. But you can do your
8 best to set aside everything and rely only on the evidence
9 that's presented by the state and the defense in this case?

10 JUROR NO. 284: I think so.

11 THE COURT: All right. Mr. Becker, any
12 questions?

13 MR. BECKER: No questions, Your Honor.

14 THE COURT: Mr. Hartwig, any questions?

15 MR. HARTWIG: No questions, Your Honor.

16 THE COURT: You may have a seat.

17 BAILIFF JODI CAMUSO: Juror Number 255 just
18 came in. She wasn't in for any of the orientation and I
19 haven't sworn her in yet. Do you want me to swear her in?

20 THE COURT: Yes, swear her in.

21 BAILIFF JODI CAMUSO: It's going to have to
22 go on record, I assume.

23 THE COURT: Let's work with the rest of

1 them first.

2 BAILIFF, JODI CAMUSO: Okay.

3 Number 211.

4 THE COURT: You are Megan Smith-Vincent?

5 JUROR NO. 211: Yes, sir.

6 THE COURT: What do you know about this
7 case?

8 JUROR NO. 211: I'm a student driver
9 instructor and I've had a few kids that were friends with
10 Mr. Brandon Sample.

11 THE COURT: You know some of the kids that
12 knew him? Have they talked about it?

13 JUROR NO. 211: We just -- I mean, I
14 haven't read anything about it, but they just mentioned, like,
15 that they lost somebody. So I knew a little bit about the
16 case, but I haven't read.

17 THE COURT: And understanding what you
18 might have read or heard from one of these people might not be
19 accurate --

20 JUROR NO. 211: Correct.

21 THE COURT: -- can you disregard that stuff
22 and rely only on the evidence that we hear and see in this
23 case?

1 JUROR NO. 211: Yes, sir.

2 THE COURT: That's all you can rely upon in
3 this case; you can do that for us?

4 JUROR NO. 211: Yes, sir.

5 THE COURT: Mr. Becker, any questions?

6 MR. BECKER: No. Thank you.

7 THE COURT: Mr. Hartwig, any questions?

8 MR. HARTWIG: Just a few questions. Did
9 you read anything on social media?

10 JUROR NO. 211: I have no social media.
11 Just Snapchat.

12 MR. HARTWIG: That's unusual.

13 JUROR NO. 211: Right.

14 MR. HARTWIG: Do you recall anything being
15 said specifically about Mr. Burke? Austin Burke?

16 JUROR NO. 211: Negative.

17 THE COURT: All right. Thank you.

18 BAILIFF, JODI CAMUSO: 241.

19 THE COURT: You are Darlene Frantz?

20 JUROR NO. 241: Yes.

21 THE COURT: All right. Darlene, tell me
22 what you know about this case.

23 JUROR NO. 241: I don't. I just know I get

1 the paper. I remember seeing his picture, but I don't
2 remember any of the details.

3 THE COURT: Right. And again, the
4 newspapers are out there. They may not be accurate in what
5 they put in there, but you don't remember any of the
6 specifics?

7 JUROR NO. 241: No, I don't.

8 THE COURT: You just knew this was going
9 on?

10 JUROR NO. 241: Right.

11 THE COURT: You can disregard anything you
12 might have read or heard and rely only on the evidence that
13 you hear in this case?

14 JUROR NO. 241: Yes. Yes, I can.

15 THE COURT: Any questions, Mr. Becker?

16 MR. BECKER: No, Your Honor.

17 THE COURT: Mr. Hartwig?

18 MR. HARTWIG: No questions.

19 THE COURT: Have a seat.

20 JUROR NO. 241: Okay.

21 BAILIFF, JODI CAMUSO: 168.

22 THE COURT: You are Mr. DiTommaso?

23 JUROR NO. 168: Yes.

1 THE COURT: What do you know about this
2 case?

3 JUROR NO. 168: Not a lot. I just remember
4 seeing it on the news.

5 THE COURT: You saw some type of news
6 report on this?

7 JUROR NO. 168: (Nods head.)

8 THE COURT: All right. And you understand
9 that in a trial the only evidence that can be relied upon is
10 the evidence as presented from the witness stand because we
11 don't know about the reliability of anything you might have
12 read or heard in the news. Can you disregard everything that
13 you read and heard in the news and rely only on the evidence
14 we present in this case?

15 JUROR NO. 168: Yes.

16 THE COURT: All right. Any questions,
17 Mr. Becker?

18 MR. BECKER: No, Your Honor.

19 THE COURT: Any questions, Mr. Hartwig?

20 MR. HARTWIG: Yes. Do you know -- did you
21 know the decedent Brandon Sample in any way?

22 JUROR NO. 168: No.

23 MR. HARTWIG: Or the defendant Austin

1 Burke?

2 JUROR NO. 168: No.

3 MR. HARTWIG: Do you recall any specifics
4 from reading the articles, or just general?

5 JUROR NO. 168: General.

6 MR. HARTWIG: No further questions.

7 THE COURT: Have a seat.

8 BAILIFF, JODI CAMUSO: 199.

9 THE COURT: You are Anita Pace?

10 JUROR NO. 199: Yes.

11 THE COURT: And, Anita, tell us what you
12 know about this case.

13 JUROR NO. 199: I remember reading it in
14 the paper.

15 THE COURT: All right.

16 JUROR NO. 199: And I honestly -- it's been
17 so long I don't remember all the details. It would probably
18 come back to me if I heard details, but --

19 THE COURT: All right. Well, that's what
20 we're all about here is getting you the details.

21 JUROR NO. 199: Yes.

22 THE COURT: But you can't rely upon
23 anything that was in the paper.

1 JUROR NO. 199: Right.

2 THE COURT: Or anything in the news as
3 being reliable.

4 JUROR NO. 199: Right. Yeah. I just
5 remember the case, but not --

6 THE COURT: So you'd have to be able to
7 disregard everything you read and heard.

8 JUROR NO. 199: Uh-huh.

9 THE COURT: And rely only on the evidence
10 that you hear in this case.

11 JUROR NO. 199: Yes.

12 THE COURT: And you don't know either of
13 the parties?

14 JUROR NO. 199: No.

15 THE COURT: The defendant or the decedent
16 in this case?

17 JUROR NO. 199: No.

18 THE COURT: And you can listen to the
19 evidence and be fair and impartial?

20 JUROR NO. 199: Yes.

21 THE COURT: Mr. Becker, any questions?

22 MR. BECKER: Yeah. Just briefly.

23 You said you read some things in the paper. Is that

1 where you got your information?

2 JUROR NO. 199: Yeah. Whenever this case
3 was at the time.

4 MR. BECKER: Okay. You don't remember any
5 of the details, though, of what you read?

6 JUROR NO. 199: No. No. Not --

7 MR. BECKER: Okay. Not a whole lot?

8 JUROR NO. 199: No.

9 MR. BECKER: And even if you did, you
10 understand that there's not been a trial. There's been no
11 evidence or testimony. No one has heard the evidence yet.

12 JUROR NO. 199: Right.

13 MR. BECKER: Not the judge, not the
14 attorneys. No one has actually heard. So whatever the
15 newspaper put in there may or may not be incorrect, and you
16 can set that aside; right?

17 JUROR NO. 199: Yes.

18 MR. BECKER: Okay. Thank you.

19 THE COURT: Mr. Hartwig.

20 MR. HARTWIG: Yes, ma'am. Do you recall
21 when you did read the newspaper whether or not you prejudged
22 the case at that point in time?

23 JUROR NO. 199: I can't really say because

1 it seems like it leaned one way. You know. You didn't hear
2 both sides or anything like that.

3 THE COURT: Okay. That's the nature of
4 most cases.

5 JUROR NO. 199: Yeah.

6 MR. HARTWIG: Thank you, Your Honor.

7 THE COURT: Have a seat. Thank you.

8 JUROR NO. 199: Uh-huh.

9 BAILIFF, JODI CAMUSO: Anybody else need to
10 speak to the Judge?

11 Judge, do you want to bring up Number 255 --

12 THE COURT: Yes.

13 BAILIFF, JODI CAMUSO: -- that came in late
14 and then just kind of explain to her what the charges are?

15 THE COURT: Right. Go ahead and swear her
16 in.

17 For the record, this is Juror Number 255 who came in
18 late. She is being sworn in by bailiff Camuso.

19 (Whereupon, Juror Number 255 was sworn in
20 by the bailiff.)

21 THE COURT: Step forward. And, again, you
22 are 255?

23 JUROR NO. 255: Uh-huh.

1 THE COURT: So that would be Miss Rogers?

2 JUROR NO. 255: Yes.

3 THE COURT: All right. Ms. Rogers, again,
4 we've just gotten to the part of this case where -- you
5 understand it's serious charges. It's aggravated murder and
6 robbery with gun specifications. The serious nature of these
7 regarding an incident that happened back last year, on or
8 about June 12, 2017, in Trumbull County, Ohio. And it's
9 alleged that the defendant did purposely cause the death of
10 one Kenneth Brandon Hayes Sample, age 22, while committing or
11 attempting to commit, or in fleeing immediately after
12 committing or attempting to commit kidnapping, rape,
13 aggravated arson, arson, aggravated robbery, robbery,
14 aggravated burglary, burglary, trespass in a habitation when a
15 person is present or likely to be present. That's just to
16 give you an idea. Do you know the defendant, Austin Burke?

17 JUROR NO. 255: Huh-uh.

18 THE COURT: Do you know the decedent,
19 Kenneth Hayes?

20 JUROR NO. 255: No.

21 THE COURT: All right.

22 JUROR NO. 255: At least not by name, but
23 maybe the face. But neither one of them sound familiar to me.

1 THE COURT: And you don't remember reading
2 or hearing anything about this case --

3 JUROR NO. 255: Huh-uh.

4 THE COURT: -- at any point in time?

5 If called upon, then, you could listen to the
6 evidence they put on the witness stand and be fair and
7 impartial in your decision?

8 JUROR NO. 255: Yes, sir.

9 THE COURT: Any questions, Mr. Becker?

10 MR. BECKER: No. Thank you very much.

11 THE COURT: Any questions, Mr. Hartwig?

12 MR. HARTWIG: No questions, Your Honor.

13 THE COURT: All right. We're through that
14 part of it.

15 Now, have any of the prospective jurors formed or
16 expressed an opinion as to the guilt or innocence of the
17 defendant in this case? Now, it's highly inappropriate to do
18 that. We haven't heard any of the evidence yet. But it's
19 important that you don't even in jest suggest something.
20 Someone might overhear it. It might cause problems with the
21 verdict when it finally comes down. Withhold any expression
22 of an opinion until you're in the jury room.

23 Do any of you have an action pending between you and

1 any of the parties to this cause of action?

2 Do you or any members of your family have a lawsuit
3 pending in which any of the attorneys in this case is an
4 attorney for you or against you?

5 Do any of you know or are you related to any of the
6 parties to this cause of action or the attorneys who represent
7 them?

8 Now, the Court will instruct you concerning the law
9 as it applies in this case. Is there any one of you who
10 cannot accept the law as explained to you by the Court and
11 apply it to the facts as you find them in this case?

12 Now, the Court will instruct the jury as to the
13 degree of proof required to prove the issues in this case. Is
14 there any one of you who cannot follow the instructions of the
15 Court in that respect?

16 Now, in arriving at your verdict, is there any one of
17 you who cannot lay aside such matters as race, religion or
18 sympathy, as none of these are to have any effect upon your
19 deliberations?

20 Now, is there any one of you who cannot base the
21 verdict solely on the facts as testified to by the witnesses,
22 the exhibits that are admitted into evidence, and the law
23 given to you by the Court?

1 Is there any reason why you cannot serve on this jury
2 and render a fair and impartial decision when the case is
3 finally submitted to you?

4 Now, it is the duty of the jury to decide whether or
5 not the defendant is guilty or not guilty of the crime
6 charged. If he is found guilty, it then becomes the duty of
7 the Court to determine any sentence. The Court makes this
8 decision with the benefit of an investigation that gives the
9 Court a large amount of information that is not available to
10 you as jurors. So my question is this: Is there any one of
11 you who cannot perform your duty in determining the guilt or
12 innocence of the defendant without concerning yourself with
13 any potential sentence?

14 Seeing no answers in the affirmative, if you'll
15 please call 12 jurors into the jury box.

16 BAILIFF, JODI CAMUSO: Number 1, Kathleen
17 Hollenbank; Number 2, Dawn Adams; Number 3, Anna Shargo;
18 Number 4, Kellie Bordner; Number 5, Mark Stimpert; Number 6,
19 Michelle Pattinson; Number 7, Melvin West; Number 8, Eric
20 Mikesell; Number 9, Tindoro Fuda; Number 10, Dominic
21 DiTommaso; Number 11, Gerald Wills; and Number 12, Kevin
22 Williamson.

23 THE COURT: Now, at this time, the Court

1 and then counsel will address their questions to the jurors
2 who are in the jury box, but I ask everyone to listen to these
3 questions. They may be asked of you if you are at any point
4 in time in the jury box. It may facilitate the selection of
5 the jury if you can volunteer something you know is important
6 to the Court or counsel.

7 I know the parties have all received the
8 questionnaires, so we're not going to try to be redundant
9 here. But, in general, have any of you in the jury ever been
10 involved in any criminal event as a victim or a witness or in
11 any fashion? If you do, please raise your hand.

12 All right. Juror Number 4, can you tell us a little
13 bit about that?

14 JUROR NO. 4: I've been in a jury for
15 almost 25 years, so...

16 THE COURT: All right. Okay. You're an
17 attorney in this case. So you know people that are involved
18 in the criminal system?

19 JUROR NO. 4: Yes.

20 THE COURT: Would that affect your ability
21 to be fair and impartial?

22 JUROR NO. 4: Not at all.

23 THE COURT: And the second one was Juror

1 Number 11. That's Mr. Willis.

2 JUROR NO. 11: Yes.

3 THE COURT: What happened to you?

4 JUROR NO. 11: I'm a victim of domestic
5 violence.

6 THE COURT: All right. And would that
7 affect your ability to be fair and impartial in this case?

8 JUROR NO. 11: It shouldn't, no.

9 THE COURT: Should not? Doesn't have
10 anything to do with this case.

11 Do any of you have -- oh, yes, ma'am. Juror Number
12 3, Miss Shargo?

13 JUROR NO. 3: Yes. I was called for -- as
14 a witness to listen to a grand jury case to see if they were
15 going to be indicted. I don't know if that applies or not.

16 THE COURT: Okay. What was the charge?

17 JUROR NO. 3: What was the charge?

18 THE COURT: Yeah.

19 JUROR NO. 3: It had to do with the county.

20 THE COURT: With the county?

21 JUROR NO. 3: Yes.

22 THE COURT: But you can disregard anything
23 that happened there and rely only on the evidence here in this

1 case?

2 JUROR NO. 3: Oh, yes.

3 THE COURT: Do any of you on the jury have
4 relatives or close friends in law enforcement? Raise your
5 hand. And again, my only thing there is most people know some
6 people in law enforcement. There will be people from law
7 enforcement on the stand. And my instruction to you is
8 everyone must be held to the same standard when they are in
9 the jury box. And so you can't immediately give more
10 credibility to someone in law enforcement than a lay witness.
11 It's you that has to determine everyone's credibility when
12 they're in the jury box.

13 All right. Have any of you been in court as a
14 plaintiff or a defendant in a civil lawsuit? Any hands?
15 Counsel. All right.

16 And is there anything -- I guess I'll ask you, have
17 any of you ever been on a petit jury before? Raise your hand.
18 Juror Number 5, what was the case? Criminal or civil?

19 JUROR NO. 5: Criminal.

20 THE COURT: Criminal? In this courtroom --
21 or courthouse?

22 JUROR NO. 5: In this courthouse, yes.

23 THE COURT: All right. How long ago?

1 JUROR NO. 5: I want to say about two years
2 ago.

3 THE COURT: Okay. And the charge?

4 JUROR NO. 5: Breaking and entering and --
5 with a firearm.

6 THE COURT: Okay. And you sat on the jury?

7 JUROR NO. 5: Yes.

8 THE COURT: And came to a verdict?

9 JUROR NO. 5: Yes.

10 THE COURT: And what was the verdict?
11 Guilty or not guilty?

12 JUROR NO. 5: Not guilty.

13 THE COURT: Very well. And would that
14 affect your ability to be fair and impartial in this case?

15 JUROR NO. 5: No.

16 THE COURT: All right. Now, in general,
17 can any of you think of anything in your past that would cause
18 you to identify more with the state or more with the defendant
19 with these type of charges? Yes, sir? Juror Number 8. That
20 would be Mr. Mikese11?

21 JUROR NO. 8: Yes, sir.

22 THE COURT: All right.

23 JUROR NO. 8: I've been on the criminal

1 side of it. I served a little bit of time, so I know what
2 it's like to be behind bars.

3 THE COURT: Right.

4 JUROR NO. 8: And I don't know if --

5 THE COURT: Would you come up to the bench,
6 please?

7 JUROR NO. 8: Sure.

8 (Whereupon, the following sidebar
9 discussion was had.)

10 THE COURT: Mr. Mikesell.

11 JUROR NO. 8: I've been charged with quite
12 a few crimes in my life. I've been found not guilty on most
13 of 'em, but I have served time. And I can see myself siding
14 one way or the other very quickly.

15 THE COURT: Okay. You can't set that
16 aside? You think that it might affect your ability to
17 deliberate in this case?

18 JUROR NO. 8: Maybe.

19 THE COURT: Any questions, Mr. Becker?

20 MR. BECKER: Just briefly. You say you've
21 been -- I don't want to embarrass you, but you have served
22 some time for a felony?

23 JUROR NO. 8: I was charged on quite a few

1 felonies, found innocent on those, and got charged on the
2 lesser.

3 MR. BECKER: Okay. So you've only served
4 time on misdemeanors?

5 JUROR NO. 8: Yeah.

6 MR. BECKER: But you feel because of your
7 past and your personal experience it would be easier to find
8 against the state?

9 JUROR NO. 8: Yeah.

10 THE COURT: Any questions, Mr. Hartwig?

11 MR. HARTWIG: No.

12 THE COURT: Thank you very much. You're
13 excused.

14 (End of sidebar discussion.)

15 BAILIFF, JODI CAMUSO: David Zatvarnicky.

16 THE COURT: Mr. Zatvarnicky, you've heard
17 all the questions we've asked in general here. Obviously you
18 know a lot of people that are in law enforcement?

19 JUROR NO. 8: Yes, sir, I do.

20 THE COURT: Again, the fact that you're in
21 law enforcement, would that affect your ability to be fair and
22 impartial in this case?

23 JUROR NO. 8: No, sir.

1 THE COURT: You can listen to the evidence
2 and make a call based on the evidence that you see before you?

3 JUROR NO. 8: Yes, sir.

4 THE COURT: Any other questions that I've
5 asked of this jury that you think you need to respond to?

6 JUROR NO. 8: No, sir.

7 THE COURT: Very well. Mr. Becker, you may
8 inquire.

9 MR. BECKER: Thank you, Your Honor.

10 May it please the Court, Mr. Hartwig, Mr. Olson, and
11 the defendant and, most of all, Ladies and Gentlemen of this
12 prospective jury.

13 First of all, I want to take my time, take a moment
14 here to thank all of you for your participation here today,
15 your service to our community. As the Court has indicated,
16 the 12 jurors that are already seated are most likely to be
17 the bulk of our jurors in this case. However, those of you
18 that are in the back of the courtroom that do get called,
19 please keep in mind any answers that you feel would be
20 relevant. So I'll try to direct my attention mostly to the 12
21 jurors in the box.

22 With that said, I do want to thank each and every one
23 of you for your service today. This is really the most

1 important part of the case in terms of your service in this
2 case. Because it's really the only time in this proceeding
3 that not only do we get to talk to you as lawyers, but it's
4 also the only time that you folks get to talk to us as jurors.
5 If you are seated and selected as jurors in this case, we will
6 not be able to have that interaction. For instance, if we're
7 here on Tuesday or Wednesday and I see you in the hallway I
8 can't stop and chitchat with you about the case and say, "Hey,
9 how do you think things are going?" Or, "Should I ask this?"
10 Or, "Should I ask that?" Obviously that's inappropriate. So
11 the only time we'll be able to speak to you from this point
12 forward will be here in the four walls of the courtroom. It's
13 not that we're rude. It's not that we don't want to speak to
14 you or talk to you. It's just that the rules prohibit that.
15 And obviously that would look as if we're trying to influence
16 you outside of the four walls of this courtroom. And that's
17 certainly something that no one wants to have happen.

18 As the Court has indicated to you, if you have -- and
19 we've already had a few people come up for a sidebar -- if
20 there is something that you feel is sensitive in nature, by
21 all means, we'll take you up to the bench there and we'll have
22 a discussion out of the earshot of everyone else in the
23 courtroom.

1 The Court has indicated -- and I don't mean to be
2 redundant, but this case will probably last all week into
3 Friday. I think at the latest it would go until Monday, but
4 hopefully it will only go until Friday. Is there anyone that
5 has any issue with that timeframe; work schedule,
6 baby-sitters, parents, trips, anything like that? Okay.

7 In Ohio, criminal cases are prosecuted in the name of
8 the state of Ohio. And criminal cases are brought forth by
9 the local county prosecutor's office that represents the state
10 of Ohio. So there's 88 counties. We obviously live in
11 Trumbull County. And criminal cases that occur within this
12 jurisdiction that are violations of state law are styled State
13 of Ohio versus whoever the named defendant is. And, in this
14 case, it's Austin Taylor Burke.

15 Now, with that understanding -- and I know I'm going
16 to get a couple of answers because I know we have two people
17 on this prospective jury that actually work for the county.
18 Is there anyone here familiar with Trumbull County Prosecutor
19 Dennis Watkins or any of the assistants? Or anyone that works
20 in the office. And I know obviously we have two. Okay,
21 three. We have three because you have a relationship working
22 with our office, probably on civil matters; correct?

23 JUROR NO. 4: Yes, sir.

1 MR. BECKER: Okay. Would there be anything
2 that would prohibit any -- is there anybody else other than
3 these three? No one else know the prosecutors?

4 JUROR NO. 9: I played golf with him.

5 MR. BECKER: Okay. You golfed with Dennis?
6 You're related to Frank somehow?

7 JUROR NO. 9: Yeah. He is my brother.

8 MR. BECKER: Right. And I think I may have
9 actually met you a couple of times. But you probably have met
10 Dennis and some of the other people. That wouldn't be a
11 problem for you to sit as a fair and impartial --

12 JUROR NO. 9: No.

13 MR. BECKER: Okay. I'll just go right down
14 the list. Wouldn't be a problem?

15 JUROR NO. 1: (Shakes head.)

16 MR. BECKER: Ann Marie, I know you're
17 retired now, but you used to work with our office sometimes as
18 the auditor's office; correct? Not gonna be a problem for
19 you?

20 JUROR NO. 3: No.

21 MR. BECKER: Okay. And you've probably
22 worked with, what, Lynn, or maybe Bill Danso?

23 JUROR NO. 4: Yes, Bill.

1 MR. BECKER: Okay. Bill. And he's on the
2 civil side of our office.

3 JUROR NO. 4: Right.

4 MR. BECKER: But that wouldn't create a
5 problem for you to sit as a fair and impartial juror?

6 JUROR NO. 4: No, sir, not at all.

7 MR. BECKER: All right. The defendant in
8 this case is obviously represented by Mr. Olson and
9 Mr. Hartwig. Is anyone familiar with either of those two
10 gentlemen?

11 JUROR NO. 8: I'm familiar with Mr. Hartwig
12 through other proceedings that I've been involved with with my
13 occupation. But nonetheless, I've had the opportunity to meet
14 him.

15 MR. BECKER: Right. You just know him
16 because he's done some defense work in the past?

17 JUROR NO. 8: That's correct.

18 MR. BECKER: You wouldn't hold that against
19 him or hold that against, more importantly, his client?

20 JUROR NO. 8: Not at all.

21 MR. BECKER: Is anyone here familiar with
22 the defendant? He is 19 years old. He is from Bristolville,
23 Ohio. Anyone familiar with either the defendant or his

1 family? I believe his mother's name is Jamie Sell. Is anyone
2 familiar with any of those people? You look like you --

3 JUROR NO. 2: I'm not positive.

4 MR. BECKER: You think maybe he was a
5 student?

6 JUROR NO. 2: A student.

7 MR. BECKER: At TCTC at one point?

8 JUROR NO. 2: I think. I am not positive.
9 He looks very familiar.

10 MR. BECKER: All right. Would that play
11 any role in your decision-making here?

12 JUROR NO. 2: No.

13 MR. BECKER: Okay. You wouldn't go out of
14 your way to say, well, boy, he might have done all of this,
15 I'm really convinced the state proved their case, but he was
16 such a good student that I can't --

17 JUROR NO. 2: No.

18 MR. BECKER: You wouldn't do that; right?
19 And conversely, the other way is you wouldn't say, boy, he was
20 an awful student -- I don't think the state proved his case,
21 but he was awful and I'm going to find him guilty.

22 JUROR NO. 2: No.

23 MR. BECKER: Okay. I'm going to read a

1 list of witnesses here that will be testifying and -- or
2 potential witnesses. They may or may not testify. And if
3 we -- I'll read the list. And if you hear any names, just
4 keep that in your memory banks there and then we'll ask you if
5 you recall any of them.

6 The state anticipates calling Detective Wayne Mackey,
7 Detective John Greaver, both of the Warren Police Department,
8 a Rickey Roupe, Haley Roupe, Deidre Keener, Jessica Simms,
9 Josh White, Meredith Loges, Melanie Engle, Nathan Moats,
10 Officer Nick Mancini of Cortland, Dr. Humphrey Germaniuk the
11 Trumbull County Coroner, William T. Moskal of the Bureau of
12 Criminal Investigation or BCI, Tim Cook, Jamie Sell, Stephanie
13 Taylor, Dave Morris of the Cortland Police Department, Britni
14 Williams, Jamie Hillard, Shawn Marx, Donavon Bunner, John
15 Weston of the Cortland Police Department, a Leah Smith,
16 Kimberly Pistilli, that's P-i-s-t-i-l-l-i, Justin Borawiec,
17 that's B-o-r-a-w-i-e-c, Stacie Cassidy, Mike Roberts from BCI,
18 Joanne Gibb from BCI, Brittani Merten, Chris Mannella of Niles
19 Police, Lynda Eveleth of BCI, William Prince, Brandon Rice,
20 Ken Sample, Dan Lester who works in the Trumbull County Jail,
21 and Stephanie Kerstetter, K-e-r-s-t-e-t-t-e-r.

22 Is anyone familiar with any of those individuals?
23 Okay. I'll take it by your silence that none of you are.

1 Well, let's talk about criminal cases. As I
2 indicated to you, criminal cases are brought to court by the
3 local county prosecutor's office in the name of the state of
4 Ohio. And almost exclusively -- there are some exceptions --
5 those cases are investigated by some type of law enforcement
6 agency. And this case is no different. In fact, this case
7 was investigated primarily by the Cortland Police Department
8 and the Warren City Police Department. There are actually two
9 different dates that are involved here. There are basically
10 two separate events that led to crimes on June 12th, and the
11 allegation is that there were some events that occurred on
12 June 20th that led to some crimes being allegedly committed on
13 June 20th of 2017.

14 The crimes involving June 12th would involve the
15 Warren Police Department, and the crimes that are alleged to
16 have occurred on June 20th involved the Cortland Police
17 Department.

18 Now, does anyone have any feelings or any thoughts
19 about either of those police departments? And it could be as
20 simple as someone got a ticket and "I don't like Warren
21 Police" or "Cortland police didn't do this for me," or "They
22 stopped me one day when I was in a hurry and, you know, they
23 gave me a seatbelt ticket." Anybody like that? Anybody have

1 any experience with any of those departments?

2 All right. Now, the meat of this case, like most
3 cases in a criminal setting, is there are two very, very
4 important concepts. And the way it works is -- I think we
5 have had some people that have served on prior jury duty. And
6 it's a concept we hear all the time. You've probably read it
7 in newspapers. Some of you have studied it actually. But the
8 concept of reasonable doubt -- and the Court will instruct you
9 later on on what reasonable doubt is.

10 And essentially, though -- I'm going to try and give
11 you a silly -- a couple silly examples. And they're not
12 really silly because I think they're very basic examples of
13 what I'm trying to tell you and what we're trying to get
14 across.

15 The defendant in this case does not have to present
16 one witness. The defendant in any case never has to present
17 one witness. And that is because he is presumed innocent
18 unless and until the state can prove his guilt beyond a
19 reasonable doubt.

20 Now we're going to talk about beyond a reasonable
21 doubt in a minute. But if the Court were to say to myself and
22 say, "Well, Mr. Becker, go ahead and have a seat. I'm just
23 going to tell the jury what the instructions are and give you

1 the instructions relating to the elements of the crimes and
2 what your duty is and then say, okay, the jury room is back
3 here through this door, go back and vote." Mr. Fuda, what
4 would your verdict have to be if you had to vote right now.

5 JUROR NO. 9: I don't know.

6 MR. BECKER: Anybody have an idea?

7 JUROR NO. 1: Innocent.

8 MR. BECKER: Right. You'd have to note not
9 guilty or innocent. Correct. Because you've not heard one
10 bit of evidence or testimony in this case; correct? And it
11 remains that way unless and until the state can prove to you
12 beyond a reasonable doubt that this defendant is guilty of the
13 crimes charged. Or we'll discuss later you can find him
14 guilty of some, all, or none of the charges. But unless we
15 meet our burden of proof you cannot find him guilty.

16 Is there anyone who is unfamiliar with that concept?
17 I assume we're all familiar, whether through movies or novels
18 or just reading the newspaper what I'm talking about.

19 Now, along with that -- and really what that is is
20 it's the presumption of innocence. He is presumed innocent
21 unless and until the state can prove his guilt beyond a
22 reasonable doubt. So he has what's called, sometimes they
23 refer to it as a cloak or a blanket of innocence that covers

1 him and protects him throughout these proceedings. And,
2 again, unless and until the state presents to you evidence
3 that proves his guilt beyond a reasonable doubt.

4 Now, I use this as a little bit of a silly example
5 sometimes. But is it Mr. -- am I pronouncing it right,
6 Mr. Stimpert?

7 JUROR NO. 5: Yes.

8 MR. BECKER: Okay. Mr. Stimpert, I see on
9 your left hand you have a gold band; is that correct?

10 JUROR NO. 5: Yes.

11 MR. BECKER: And I don't know if the jurors
12 in the back can see, but if you hold your hand up they can see
13 that you have a wedding ring on; correct?

14 JUROR NO. 5: Yeah.

15 MR. BECKER: All right. Let me ask some of
16 the other jurors. Mr. Williamson, I see you back there in the
17 back. You see Mr. Stimpert, he has a gold band on his finger.
18 Is that proof to you beyond a reasonable doubt that he is
19 married?

20 JUROR NO. 12: Yeah.

21 MR. BECKER: That's proof beyond a
22 reasonable doubt? You don't need any more?

23 JUROR NO. 12: I see his ring.

1 MR. BECKER: Okay. Is there anybody who
2 thinks differently? Okay. Go ahead.

3 JUROR NO. 1: He might just like the ring.

4 MR. BECKER: Excuse me?

5 JUROR NO. 1: He might just like the ring,
6 right.

7 MR. BECKER: So you might need some more
8 evidence; correct?

9 JUROR NO. 1: (Nods head.)

10 MR. BECKER: Okay. And what kind of
11 evidence would you want me to present to you to show that he's
12 married?

13 JUROR NO. 1: A marriage certificate, proof
14 that he hasn't been divorced.

15 MR. BECKER: Okay. Would you like some
16 people -- anybody else? Any other thoughts? What evidence
17 you'd like.

18 JUROR NO. 8: Testimony.

19 MR. BECKER: Testimony. Right. From who?

20 JUROR NO. 8: From the wife.

21 MR. BECKER: That's always a good one.
22 Sometimes that's not good testimony. But, yeah. Maybe the
23 preacher who married them.

1 JUROR NO. 8: Right.

2 MR. BECKER: Or whoever officiated.

3 Whether it be a civil union or done by a mayor or something.

4 Maybe some of the witnesses? Maybe some photographs; right?

5 Maybe a video? All right.

6 Mr. Stimpert, how long have you been married?

7 JUROR NO. 5: 20 -- 26 years.

8 MR. BECKER: She won't get a copy of this.

9 Don't worry. Were you married in a large ceremony or a --

10 JUROR NO. 5: A large ceremony.

11 MR. BECKER: So you probably had, what, 200

12 people, 300 people?

13 JUROR NO. 5: Probably about 200.

14 MR. BECKER: 200 people? You would agree

15 with me that probably a number of those people are not around

16 anymore?

17 JUROR NO. 5: Correct.

18 MR. BECKER: Unfortunately, some of them

19 have passed or maybe they've just moved on in your life. So

20 it would be impossible for me to get all 200 witnesses here to

21 that event?

22 JUROR NO. 5: Correct.

23 MR. BECKER: Do you know where your

1 marriage license is?

2 JUROR NO. 5: Yes.

3 MR. BECKER: Okay. Do you have the video
4 of the wedding?

5 JUROR NO. 5: Yes.

6 MR. BECKER: Okay. DVD or VHS?

7 JUROR NO. 5: Beta.

8 MR. BECKER: Right.

9 JUROR NO. 5: VHS.

10 MR. BECKER: VHS. Okay. Has it been
11 played in awhile?

12 JUROR NO. 5: Not in a long time.

13 MR. BECKER: Okay. It hasn't been
14 converted to a DVD or digital; right?

15 JUROR NO. 5: No.

16 MR. BECKER: Have some photographs?
17 Probably have a wedding album; right?

18 JUROR NO. 5: Yes.

19 MR. BECKER: All of you agree that at some
20 point, even Mr. Williamson, you can see the point I was trying
21 to make is the fact that he has a ring on his finger doesn't
22 necessarily mean he's guilty of the crime of marriage; right?

23 JUROR NO. 12: (Nods head.)

1 MR. BECKER: Okay. So you, too, would like
2 to see some evidence of him being married. You would agree
3 you'd like to maybe hear from the spouse or hear from some of
4 the people or see some physical evidence that he was married;
5 correct?

6 JUROR NO. 12: Right.

7 MR. BECKER: Okay. So let me ask you this.
8 What if we couldn't get all 200 witnesses that were at that
9 wedding? Would that be enough to cause you to think that he's
10 not guilty? No? Okay. Because you understand people move.
11 Sometimes people die. Sometimes people don't remember things.
12 I mean, there might be people that you know that were at your
13 wedding and you might have pictures of them and they would
14 say, "Boy, I don't remember being at that wedding 22 years
15 ago"; right? It's a common event in human life; right?

16 So, with that said, let's talk about another issue
17 that is going to be a theme in this case or something that
18 would be important to you. The Court is going to tell you
19 that to determine reasonable doubt, it's not proof beyond all
20 possible doubt because, just like in Mr. Stimpert's marriage
21 example, you would agree that sometimes people move or maybe
22 they have water damage in their house. Their wedding book may
23 have been damaged or lost or stolen or something?

1 JUROR NO. 5: Yes, sir.

2 MR. BECKER: Sometimes it's hard to get all
3 of the evidence together, for whatever reasons; correct?

4 JUROR NO. 5: Correct.

5 MR. BECKER: Do all of you agree with that?

6 And the Court is going to instruct you at some point
7 that reasonable doubt is a doubt based on reason and common
8 sense and would you rely on it in the most important of your
9 affairs. And there are some things that are important, and
10 there are some things that are not important.

11 Mr. West, do you own your own house?

12 JUROR NO. 7: No.

13 MR. BECKER: You rent?

14 JUROR NO. 7: Yes.

15 MR. BECKER: Okay. Let me get back to you.

16 Miss Adams, do you own your own home?

17 JUROR NO. 2: Yes.

18 MR. BECKER: Okay. How long have you lived
19 there?

20 JUROR NO. 2: 40 years.

21 MR. BECKER: All right. When you purchased
22 that house, what were some of the things that you thought were
23 important when you purchased that house?

1 JUROR NO. 2: The neighborhood, the school
2 system.

3 MR. BECKER: Okay. And everyone agrees
4 those are some important things you might want to put on your
5 checklist? Was there a certain style of house you looked for?

6 JUROR NO. 2: I guess.

7 MR. BECKER: Okay. Ranch or two-level,
8 split level?

9 JUROR NO. 2: Two-story.

10 MR. BECKER: Okay. You wanted a two-story?
11 Did you worry about -- was it a new house? Did you build it
12 or did you buy it used?

13 JUROR NO. 2: Nope. It was older.

14 MR. BECKER: Okay. Did you worry about or
15 have the roof examined and the hot water heater and the
16 furnace and those type of things?

17 JUROR NO. 2: We were 19.

18 MR. BECKER: But those were things like if
19 you had gone in there and seen big holes in the roof, you'd
20 say, "Oh, my goodness. This probably is not for us"; right?

21 JUROR NO. 2: Well, yeah.

22 MR. BECKER: So those were reasonable
23 things to put on your checklist --

1 JUROR NO. 2: Sure.

2 MR. BECKER: -- in making that purchase
3 which is probably the most important or largest purchase
4 you've ever made. Most people's home is their biggest
5 purchase.

6 JUROR NO. 2: Sure.

7 MR. BECKER: And did you worry about how
8 many hurricanes had gone by your house at the time?

9 JUROR NO. 2: No. We live in Ohio.

10 MR. BECKER: It's not really a concern here
11 in Ohio. It might be a concern in a different case or in a
12 different situation if you were moving to Florida or North
13 Carolina, but obviously earthquakes and hurricanes are not the
14 kind of things we worry about in Ohio.

15 So you can see how each situation in each case has
16 different things that are important. Everyone agree with that
17 basic concept and what I'm saying? Okay.

18 Now, each and every one of you, I believe, was here
19 in this very courtroom last week for juror orientation; is
20 that correct? Okay. And, Mr. Wills, you were here last week
21 as well in this courtroom and Judge McKay got up on the bench
22 and kind of gave you the general rules about serving as a
23 juror; correct?

1 JUROR NO. 11: Yeah.

2 MR. BECKER: Now, without -- I want you to
3 think about this, but don't say it out loud. How old did you
4 think Judge McKay was? And just hold your thought right
5 there, how old you thought he was. Is it Mrs. Pattinson?

6 JUROR NO. 6: Yes. Pattinson.

7 MR. BECKER: Mrs. Pattinson, you were here
8 as well?

9 JUROR NO. 6: Correct.

10 MR. BECKER: What number -- I just want you
11 to think of how old you thought Judge McKay was, all right,
12 when he was up here on the bench and maybe how tall he was
13 too. And both of you can tell me how tall he was.

14 All right. Mr. Wills, how old do you think Judge
15 McKay was?

16 JUROR NO. 11: 62.

17 MR. BECKER: All right. Mrs. Pattinson?

18 JUROR NO. 6: 56.

19 MR. BECKER: Wow. He's looking young.
20 He's a lot older. You guys are giving him the benefit of the
21 doubt.

22 How tall do you think he was?

23 JUROR NO. 6: Oh, 5'9".

1 MR. BECKER: Okay.

2 JUROR NO. 11: 5'10".

3 MR. BECKER: Do you remember what color tie
4 he had on?

5 JUROR NO. 6: (Shakes head.)

6 JUROR NO. 11: I do not.

7 MR. BECKER: Now, the reason I used that
8 little example is because, do you agree that you were both in
9 the same room together; correct?

10 JUROR NO. 6: Correct.

11 MR. BECKER: You two don't know each other,
12 yet you gave a pretty big swing of ages here, fifty something
13 and sixty something. You're pretty close on the height. You
14 couldn't remember his tie; right? But you know you were here
15 and you got oriented as a juror; correct? Okay. So my point
16 is -- and does everyone on this jury understand that sometimes
17 events happen and you may not pay attention to every detail,
18 but you know it happened; correct? And you remember the
19 important things. You remember you were here. You remember
20 there was a judge here in a robe and got on the bench; right?
21 And he told you some of the rules. I'm sure you probably
22 couldn't remember verbatim. If I asked you how long it
23 lasted, Miss Pattinson, how long would you say it lasted?

1 JUROR NO. 6: I don't know. Three hours.
2 I don't know.

3 MR. BECKER: Three hours? Okay. Anybody
4 have a different time that was here?

5 JUROR NO. 2: I think we were out of here
6 by 10:30.

7 MR. BECKER: 10:30? Okay. So you got
8 here, what, about 8:30? An hour and a half? So now we have a
9 pretty big discrepancy there. Miss Adams and Miss Pattinson,
10 one of you said three hours, one of you said an hour and a
11 half. That's an hour and a half time difference. Does that
12 mean you're lying about being here for jury orientation?

13 JUROR NO. 2: I hope not.

14 MR. BECKER: Does that mean she's lying
15 about being here?

16 JUROR NO. 2: No.

17 MR. BECKER: In fact, the fact that she
18 gave a different answer, does that influence you and think
19 that she's lying if she wasn't here?

20 JUROR NO. 6: (Shakes head.)

21 MR. BECKER: Okay. Now, if she said
22 something totally crazy like we did it outside in the gazebo
23 and the Judge passed out candy bars afterward, that would be a

1 little something that you would say, wait a minute, that
2 didn't happen outside. It was February. It was probably
3 raining that day, if I know Ohio.

4 So you have to look at the totality of what was said
5 and the totality of what was taken; correct?

6 Do each and every one of you feel that you can do
7 that with witnesses as they come in here and testify? And
8 would it surprise you if some witnesses in some cases come in
9 and say, "Well, this happened at 2 in the morning" and someone
10 else says, "Well, no, it was really 3 in the morning"? Would
11 that surprise you?

12 Would it surprise you if some jurors said -- or I'm
13 sorry -- some witnesses came into the courtroom and said, "I
14 think he was 5'10"" and another one comes in and says, "You
15 know, I think he was 5'7". Is that the kind of thing that
16 would surprise you? Okay.

17 So you realize there are sometimes -- now, it might
18 be very important if they both said they measured him with a
19 tape measure, correct, and they got two different
20 measurements? But you can understand -- and you as jurors are
21 going to have to figure out what's important and what's not
22 important to believe and disbelieve witnesses. You may
23 believe all of a witness's testimony. You can believe some of

1 it, all of it, or none of it. And that's really your job here
2 in the courtroom.

3 Now, would you agree -- and let me ask you, is there
4 anybody here who is feeling a little uncomfortable with all
5 these questions at 'em? Anybody who's like I don't want to be
6 here or scared or didn't know what to expect; right? What if
7 you were on the witness stand and being cross-examined under
8 oath? Would that change anybody's opinion? Someone might not
9 want to be here, particularly in a case like this. If they
10 had information, maybe they'd be scared? Anybody feel that
11 sometimes a witness can be scared? Go ahead.

12 JUROR NO. 1: Sure. Facing the people in
13 court might be intimidating.

14 MR. BECKER: Sure. This isn't a type of
15 case like this, but if we had a drug dealer -- and he's not
16 charged with anything to do with drugs -- but if we had a drug
17 dealer and he had brought drugs in from Detroit and sold them
18 to let's say a confidential informant, and now the
19 confidential informant is charged and says, "Well, yeah, I got
20 the drugs from this guy," you can imagine that would be scary.

21 JUROR NO. 1: Terrifying. Terrifying.

22 MR. BECKER: Right. Okay. Let's ask you
23 this. We have -- every case has witnesses in it. And every

1 case gets witnesses based upon an investigation or when they
2 come forward. Sometimes witnesses don't come forward. We
3 have lots of unsolved crimes. Homicides. Sometimes we've all
4 heard, unfortunately, of cases where there's been rape or
5 incest or molestation and the victim doesn't come forward or
6 doesn't come forward for years. Are you all familiar with
7 that? Okay.

8 Mr. Stimpert, I'll go back to you. You certainly are
9 probably aware of cases like that where a victim maybe was
10 hesitant to come forward because a stepfather may have raped
11 the victim; correct?

12 JUROR NO. 5: Correct.

13 MR. BECKER: You can imagine the fear that
14 that victim may have in coming into a courtroom and
15 testifying; correct?

16 JUROR NO. 5: Correct.

17 MR. BECKER: And there's other cases where
18 witnesses may be hesitant or may have been afraid to come
19 forward and may not have said anything. Let me ask you this.
20 Would it surprise you? What would you have to look at to see
21 if that person was telling the truth? What if the police had
22 been called, say, to an investigation of a 7-year-old that
23 alleged that they were molested and told their mother and they

1 said, "No, it didn't happen," but then two, three years later
2 the mother and father get divorced and the daughter brings it
3 up again and says, "Well, it really did happen, but I was
4 afraid because I lived with my dad"? Is that something you
5 would evaluate and look at?

6 JUROR NO. 5: Yes.

7 MR. BECKER: Is that something that every
8 juror here would look at and evaluate? And those are the kind
9 of things that you would look at and try to evaluate in terms
10 of whether or not the witness was telling the truth; is that
11 correct? So all times that a witness doesn't say everything
12 or maybe even lie about something happening doesn't mean that
13 it didn't happen; correct? Each and every one of you agree
14 with that? Okay.

15 Sometimes there is evidence that a person leaves that
16 sort of links them to a crime. And there's things that we see
17 that they forgot or that they know or acknowledge. And
18 sometimes it's harder to find those, and sometimes we never
19 find those. But all of you are open to the possibility that
20 the police did the best job they could? Okay. And law
21 enforcement? I mean, they can only do as best they could.

22 Now, I'm going to follow that up with a question that
23 I like to ask. And is it Mrs. Bordner?

1 JUROR NO. 4: Yes, sir.

2 MR. BECKER: Okay. Mrs. Bordner, let me
3 ask you. I know you have a background as an attorney, so I'm
4 going to ask you this. How are the witnesses chosen? Whether
5 it is a civil or criminal case, how are the witnesses chosen?

6 JUROR NO. 4: Based on whether or not they
7 have any information relative to a particular case.

8 MR. BECKER: Right. And it's -- the
9 witnesses -- I'm sure that you've had cases in your practice
10 where you've wanted maybe better witnesses or different
11 witnesses, but they're a product of whatever the facts were;
12 right?

13 JUROR NO. 4: Yes, sir.

14 MR. BECKER: Okay. So you've handled cases
15 that -- maybe some auto accidents?

16 JUROR NO. 4: Yes, sir.

17 MR. BECKER: And you may have had some
18 witnesses that weren't maybe the best witnesses, the
19 eyewitnesses?

20 JUROR NO. 4: Yes, sir.

21 MR. BECKER: You didn't actually pick them
22 yourselves; right? I mean, they were the product of what
23 happened and where the crime happened or where the accident

1 happened at; correct?

2 JUROR NO. 4: That's correct.

3 MR. BECKER: And that applies to the
4 criminal side as well. For instance -- this isn't the case,
5 but if this was an allegation of Austin Burke running a
6 dogfighting operation, we'd expect to find certain witnesses
7 there; correct?

8 JUROR NO. 4: Correct.

9 MR. BECKER: We'd probably have some people
10 that owned the dogs; correct?

11 JUROR NO. 4: Correct.

12 MR. BECKER: We might have some people
13 there that were gambling since that's what they like to do
14 there.

15 I would hope we wouldn't find Father Kish from
16 St. Roberts up in Cortland or someone like that. I hope we
17 wouldn't find any local police officers there; correct?

18 JUROR NO. 4: We would hope not.

19 MR. BECKER: Does everyone agree, though,
20 that the witnesses aren't really picked by either side?
21 They're sort of a by-product of what happened. So if
22 Mr. Burke was running a dogfighting operation, we'd expect the
23 witnesses to be the people that he invited there or the people

1 that he trusted to bring their dogs to fight and ones that he
2 wanted to gamble; right? It wouldn't necessarily be people I
3 wanted; right? So in some ways, would you agree that in
4 criminal cases the witnesses are sort of chosen by who the
5 victims are, who the defendant associates with, who the
6 defendant shows things and does things and tells things to;
7 correct?

8 JUROR NO. 4: Correct.

9 MR. BECKER: Otherwise, you know, I'd call
10 in the pastor up here at the Methodist church and have him
11 testify to every case and say, "Boy, isn't he a great witness?
12 He's a pastor. He's a family man. He's been at the church
13 for 40 years." But that's not always the case; correct?

14 JUROR NO. 4: Correct.

15 MR. BECKER: Would you expect anything
16 different? I mean, that's basically how we get the witnesses;
17 correct? Does everyone agree with that?

18 All right. Is it Mr. DiTommaso?

19 JUROR NO. 10: DiTommaso.

20 MR. BECKER: DiTommaso. I'm sorry. I
21 mispronounced your name there. Mr. DiTommaso, let me ask you.
22 One of the things in a case is direct and circumstantial
23 evidence. And I know we hear that a lot and the Court is

1 going to explain that. What is -- do you know the difference
2 between direct and circumstantial evidence? Or do you think
3 you do?

4 JUROR NO. 10: I think I do.

5 MR. BECKER: Okay. What do you think it
6 is?

7 JUROR NO. 10: Circumstantial is like, like
8 theoretical almost.

9 MR. BECKER: Well, circumstantial
10 evidence -- and I'll tell you, the Court is going to tell you,
11 circumstantial evidence is a fact that you can infer other
12 facts from. For instance, I've been standing here and I've
13 put my hands on the podium. And it's probably not a conducive
14 surface to leave fingerprints. And there won't be any
15 fingerprint evidence in this case. But I may have left some
16 DNA on here. And it's possible there could have been. But
17 evidence that my hands were on this podium -- let's just
18 assume they got DNA off this podium. And there was a crime
19 committed in this courtroom and they were trying to charge
20 Chris Becker with it. And they came here and they swabbed
21 these handles and they found some of my DNA from my skin
22 cells. Now, it's also possible that I couldn't leave anything
23 here. They might not find anything. But let's assume they

1 found some skin cells here, some skin cells that had my DNA in
2 it. Would that mean that I committed the crime?

3 JUROR NO. 10: Huh-uh.

4 MR. BECKER: Might put me there; right?

5 JUROR NO. 10: (Nods head.)

6 MR. BECKER: What if they found DNA from,
7 say, another lawyer? Let's say they didn't find any of my
8 DNA. You would agree there's probably been a lot of people
9 that have probably touched this podium over the years; right?

10 JUROR NO. 10: Uh-huh.

11 MR. BECKER: Okay. That's circumstantial
12 evidence. It's on there, but it doesn't mean I did it.

13 Direct evidence, though, is either someone that has
14 direct knowledge, either they saw something or heard
15 something; correct? So if someone was, let's say, looking in
16 through the crack of the door there and saw me steal the court
17 reporter's computer here and stuff it in my box and leave,
18 that's direct evidence; right?

19 Now my question is, the charge is I'm charged with
20 stealing the laptop. They may question how good the person's
21 eyesight was, maybe any motive they'd have to testify against
22 me. But generally, direct evidence is evidence that someone
23 either saw or heard something; correct? And the evidence that

1 we think sometimes the greatest is DNA and fingerprints.
2 That's not direct evidence. That's circumstantial evidence.
3 Is there anyone who disagrees with me on that or has a
4 different opinion?

5 Okay. So -- and the Court is going to tell you
6 direct and circumstantial evidence have the same weight. And
7 you can make inferences from that fact that my DNA was either
8 on or not on this podium. And you use that to fit into the
9 rest of the evidence.

10 Now, speaking about evidence -- and particularly
11 witnesses -- I think it's Mr. Wills? Mr. Wills, you have
12 three children that are adults now; is that correct?

13 JUROR NO. 11: Yes.

14 MR. BECKER: Okay. And I imagine you had
15 the same issues that I had growing up sometimes. Close in
16 age, sometimes a fight would break out or an argument or
17 something would happen. Maybe your kids weren't as bad as
18 mine?

19 JUROR NO. 11: They were.

20 MR. BECKER: Okay. And oftentimes did you
21 find yourself having to settle a dispute or figure out who did
22 what or how something got broke or how somebody got hit with a
23 whiffle ball bat or something?

1 JUROR NO. 11: Yes.

2 MR. BECKER: Okay. And when those kind of
3 incidences happened at your home, I realize it's probably like
4 my house, there was no presumption of innocence in my house.
5 They were all guilty until they're innocent. But it's not
6 like that. What are some of the things that you would look
7 for? For instance, if there was a dispute about who broke
8 something or who hit somebody, how something got started, did
9 you delve into it and try to find out, hey, something is wrong
10 here. Somebody is not telling me the truth here?

11 JUROR NO. 11: Yeah.

12 MR. BECKER: And did sometimes you find,
13 like I did, that, yeah, this person wasn't really telling the
14 truth? What they were telling me wasn't jibing. One of my
15 kids was not telling me exactly how it happened. And then you
16 settled the dispute that way; correct?

17 JUROR NO. 11: Yes.

18 MR. BECKER: Anybody have those kind of
19 experiences in real life either with their own siblings, their
20 own children? Sometimes it happens at work. Well, that's
21 kind of what you're going to have to do here. Because
22 obviously at one point, one side, that's this side, is saying
23 that this defendant, and throughout the case, committed these

1 crimes beyond a reasonable doubt. And even though he doesn't
2 have to present any witnesses, or even take the witness stand
3 himself, they are going to try and attack the witnesses. And
4 some of them will be -- they'll tell you they didn't come
5 forward right away. Or they added on or embellished the story
6 or had additional information later on. Sort of like the
7 incident where we talked about with the 7-year-old who was
8 molested and then when dad moved out and got divorced and then
9 all of a sudden they came forward and said, "Well, yeah, he
10 really did." And you find out there is some physical evidence
11 that corroborates that story. Will all of you be open to that
12 kind of testimony? And you'll evaluate it?

13 And there are going to be other witnesses that were
14 honest right from the very beginning and that said, "This is
15 what I know," and, "This is what I said," and, "This is what I
16 saw." Does that surprise you that different people -- that
17 different people would be involved and different witnesses
18 would have different recollections of things? Just like the
19 example of jury orientation. No? Okay.

20 All right. I'm almost done here. I'm going to ask
21 you just a few more questions here. The Court is going to
22 instruct you on what the law is for these various crimes. The
23 Court doesn't make the law. That job is up to our state

1 representatives and our state senators down in Columbus. They
2 create the laws for the state of Ohio. And one of the things
3 we always worry about is sometimes jurors say, "Well, that
4 shouldn't be the law. I don't think that's how it should be."
5 So, Mr. West, having heard that, are you the kind of person
6 that's going to follow the law?

7 JUROR NO. 7: Yeah.

8 MR. BECKER: Okay. You'll follow the law
9 as the Court instructs you and not create your own idea of
10 what you think it should be?

11 JUROR NO. 7: Correct.

12 MR. BECKER: Okay. Each and every one of
13 you promise to do that?

14 All right. Is there anyone who has ever heard of
15 Ginseng? Anyone know what Ginseng is? It's a root that grows
16 in the ground. You're familiar with it?

17 JUROR NO. 1: The tea?

18 MR. BECKER: Right. It grows out in the
19 wild. And I'm going to tell you, there's an actual law in the
20 state of Ohio, and it says no person shall dig, harvest, cut,
21 root up, gather or otherwise collect wild Ginseng from its
22 natural habitat, except from September 1st to December 31st.
23 And I don't know if that's because the Ginseng can, you know,

1 is dormant at that time and it's not, you know, flowering or
2 mushrooming or doing whatever it needs to do. But that's the
3 only time you can take it in the state of Ohio. So you can go
4 out and you can find it in your backyard or one of the parks
5 or something and dig it up. But you can only do it from
6 September 1st to the end of the year, December 31st. So what
7 if the testimony was August 31st at about 10 p.m. up at
8 Mosquito Lake Park the forest ranger who has his watch on goes
9 out and he checks to make sure that no one is cutting Ginseng
10 up or digging it up early. And there's no question about the
11 time. There's no question about the defendant is digging it
12 up. Are you going to be the type of juror -- or any of you --
13 to say, "Oh, come on, Becker. What's the big deal? It's
14 10:00 on August 31st. Cut the guy a break. Let's get out of
15 here"? Or are you going to say, "Well no, the law is the
16 law"?

17 JUROR NO. 1: The law is the law.

18 MR. BECKER: Does everyone agree with that?

19 Okay. Now, the Court has already talked a little bit
20 about sympathy. And I'm not going to touch upon that. But I
21 do want to touch upon sometimes crazy facts that happen and
22 things that sometimes people want to know why. Why did this
23 happen? Why did this have to happen this way? Or why did

1 this go down this way or happen?

2 And one of the things that the Court is going to tell
3 you is the state doesn't have to prove motive. It might be
4 one of those things that comes into play, but the state
5 doesn't have to prove motive. Does that surprise you? Do you
6 think -- you might say, well, they have to prove why they did
7 it. We just have to prove they did it; correct? Okay.

8 So the state has to still meet its burden of proof of
9 beyond a reasonable doubt, which is the highest standard of
10 proof, but it is not all possible doubt. Just like
11 Mr. Stimpert's example when we were trying to prove that he
12 was married. Some of you, in your minds, may reach the
13 conclusion that he was married if you saw his ring, a woman
14 came in and claimed his spouse under oath and said, "Yeah, we
15 are married," and you had the wedding certificate. Some of
16 you might want a little more. Some of you may want to see
17 some photographs in a wedding and his wife in a bridal gown.
18 Some of you may want to see a VHS or that beta that he has at
19 home; right? But each and every one of you has to determine
20 this case and each and every charge that you're satisfied
21 yourself that the state has proved the case beyond a
22 reasonable doubt. And then you have to talk with your fellow
23 jurors to see if they're convinced. Because in a criminal

1 case, and in this case, it takes each and every one of you to
2 find the defendant guilty. Each and every one of you has to
3 sign off on that verdict form. So you have to believe it
4 yourself and you have to have your other 11 jurors believe it
5 their self too.

6 So I'm going to go right down the line and ask. And
7 it doesn't matter if the state -- if you don't believe we
8 proved the case or you believe we proved the case. But if
9 you're the type of juror and each one of you individually
10 believes, either way, that the state has not proved beyond a
11 reasonable doubt its case, or has proved beyond a reasonable
12 doubt its case, are you going to stick to your guns and
13 listen, but stay firm in your convictions? Whatever your
14 belief is. Whether it's not guilty or guilty. But being open
15 to the other possibility that you might be wrong; correct?

16 JUROR NO. 1: Correct.

17 THE COURT: Okay.

18 JUROR NO. 2: Yes.

19 JUROR NO. 3: (Nods head.)

20 JUROR NO. 4: Yes.

21 JUROR NO. 5: (Nods head.)

22 JUROR NO. 6: (Nods head.)

23 JUROR NO. 12: (Nods head.)

1 JUROR NO. 11: (Nods head.)

2 JUROR NO. 10: (Nods head.)

3 JUROR NO. 9: Yes.

4 JUROR NO. 8: (Nods head.)

5 JUROR NO. 7: (Nods head.)

6 MR. BECKER: And you all would stick to
7 your convictions; correct? And that's regardless of whether
8 you believe he's guilty or innocent once you've heard the
9 evidence back in there; correct? Okay.

10 Who here on our jury owns firearms? Who has firearms
11 in their home? I'm going to go right down the list here.
12 What kinds of firearms do you have?

13 JUROR NO. 1: A small pistol.

14 MR. BECKER: Do you know the caliber?

15 JUROR NO. 1: No. My husband bought it.

16 MR. BECKER: Okay. Have you fired it
17 before?

18 JUROR NO. 1: Yes.

19 MR. BECKER: Okay. No?

20 JUROR NO. 3: Rifles.

21 MR. BECKER: Okay. And have you fired
22 those before?

23 JUROR NO. 3: When I was young. They're

1 unloaded. Nothing --

2 JUROR NO. 4: Ruger .22.

3 MR. BECKER: Ruger .22. Okay.

4 JUROR NO. 5: .22 and a 12-gauge.

5 MR. BECKER: And I assume you both have
6 fired those?

7 JUROR NO. 4: (Nods head.)

8 JUROR NO. 6: (Shakes head.)

9 MR. BECKER: What do you have, sir?

10 JUROR NO. 10: I have a 20-gauge, a
11 12-gauge, .380, 9-millimeter, and a .22.

12 MR. BECKER: Okay. And you've fired all of
13 those?

14 JUROR NO. 10: Yes.

15 MR. BECKER: Okay.

16 JUROR NO. 9: .410.

17 MR. BECKER: .410?

18 JUROR NO. 8: .40-caliber SIG Sauer.

19 JUROR NO. 7: No.

20 MR. BECKER: Okay. Well, at this time, I
21 think I'm going to thank each and every one of you for your
22 service. We may take a break because we're getting close to
23 11:00. Of course Mr. Burke's attorneys are going to ask you

1 some questions about what they feel are important issues in
2 this case. And I do want to take this time and thank each and
3 every one of you. I have a son who's currently serving in
4 Iraq right now, and short of serving your country in the
5 military, I can't think of a more important duty that we have
6 in this country other than serving as jurors in these matters.
7 Because, honestly, without you folks, there's no jury system.
8 There's no justice. You folks speak for justice. You folks
9 are going to determine this case. And you will determine this
10 case and the disputes and the facts in this case. And at the
11 end of the day, Mr. Burke and the state of Ohio can go home
12 next week or at the end of this week and say, well, we
13 received a fair trial from 12 jurors who were open-minded, who
14 were not influenced by anything outside of that courtroom. We
15 got to talk to them, they talked to us, and they determined
16 this case. So I'm going to thank you. They'll ask you some
17 questions. We may take a break though.

18 THE COURT: I think Mr. Becker had a good
19 idea. Let's take a short break at this point in time. We'll
20 take 15 minutes.

21 The jurors who are in the jury box, come back into
22 those same seats here. Don't speculate on this case and don't
23 discuss it with anyone.

1 Take 15 minutes, and we'll come right back.

2 (Whereupon, a recess was had commencing at
3 10:55 a.m. and concluding at 11:13 a.m.)

4 THE COURT: Mr. Hartwig, you may inquire.

5 MR. HARTWIG: Thank you, Your Honor.

6 Mr. Becker. Good morning, Ladies and Gentlemen. I'm
7 going to do my best not to repeat things that Your Honor has
8 indicated and Mr. Becker, how he summarized it.

9 But in short, we appreciate you and the sacrifice
10 you're making to be away from your families for one week. And
11 that's on behalf of myself, Mr. Olson and my client.

12 So on that note, we try not to pry into your personal
13 lives. We have you do questionnaires. They don't ask you too
14 much, but we get to learn some things about you. So in all
15 fairness, you learned some things about Mr. Becker.
16 Personally, I'm born and raised in Mahoning County. I've been
17 practicing for just shy of 20 years. I'm married. I have
18 three kids. I'm not wearing a wedding ring. We'll get into
19 that here in a couple minutes. I do criminal defense work,
20 like Mr. Olson does. And I've been doing that for many years.
21 And I do it because I appreciate the jury system, just like
22 Mr. Becker does. It's one of the most honorable service
23 things you can do in your lifetime. So I, like Mr. Becker,

1 thank you for that.

2 Just a couple preliminary matters. I must have drawn
3 the short straw or something, but my back is to you here at
4 the table. I'm trying to do my best to take notes and look at
5 you at the same time. So I mean no disrespect if something is
6 going on and I'm a little busy there.

7 So like Mr. Becker indicated, this process is the
8 only time you get to talk to us. And we need to talk to you.
9 Not just to ask you questions and have you shake your head.
10 We need to know what your thoughts and feelings are. We all
11 have life experiences, good or bad. All the biases,
12 prejudices, opinions, whatever it might be. There are no
13 right or wrong answers if we ask you questions. So don't be
14 embarrassed. We're not going to pry, but it's important that
15 you be honest with us. You may be good for one particular
16 kind of case but not for another. That serves well for
17 everyone involved. The state and the defense. So our goal is
18 to get fair and impartial jurors.

19 So let's talk a little bit about how the case gets
20 started, just in case some people aren't familiar. Does
21 anybody know what an indictment is? Can you raise your hand?
22 All right. I would expect Miss Bordner and Mr. Zatvarnický.
23 Go ahead, trooper, tell me what that is.

1 JUROR NO. 8: It's basically where an
2 officer or police department would present their findings to
3 what would be a panel of grand jury members and then present
4 those findings and then they would make a ruling whether it
5 would be a true bill or not on the -- those specific charges.

6 MR. HARTWIG: So would you agree with me
7 that what the decision is is their probable cause that
8 somebody may have committed a crime; right?

9 JUROR NO. 8: Yes, sir.

10 MR. HARTWIG: And then they issue, like you
11 said, a true bill, but an indictment. It is just a piece of
12 paper that says so and so is charged with a crime; correct?

13 Now, would you also agree with me that that's a
14 secret proceeding?

15 JUROR NO. 8: That's correct.

16 MR. HARTWIG: And that it's a one-sided
17 presentation of supposed facts?

18 JUROR NO. 8: Correct.

19 MR. HARTWIG: So the defense doesn't get to
20 go. They don't call witnesses; correct?

21 JUROR NO. 8: Correct.

22 MR. HARTWIG: Does anyone here believe that
23 if a person is indicted and they're charged they must have

1 done something wrong? Miss Hollenbank?

2 JUROR NO. 1: I wasn't there to hear what
3 happened, so I would have to go by their words. So I'd have
4 to hear it myself.

5 MR. HARTWIG: Okay. Miss Adams?

6 JUROR NO. 2: I agree.

7 MR. HARTWIG: Miss Bordner, I know you're a
8 practicing attorney. And you've done defense work in the
9 past?

10 JUROR NO. 4: Yes.

11 MR. HARTWIG: Would you agree with me that
12 it has no impact whatsoever on the guilt or innocence of any
13 particular thing?

14 JUROR NO. 4: Not whatsoever.

15 MR. HARTWIG: Much less Mr. Burke.

16 Okay. Does everyone agree with that? And if you
17 don't, can you raise your hand and we can have a discussion
18 about it?

19 Miss Shargo?

20 JUROR NO. 3: Repeat that question so I can
21 understand it a little more clearly.

22 MR. HARTWIG: Okay. Very good. I
23 appreciate you asking me that.

1 So if someone is charged with a crime --

2 JUROR NO. 3: Uh-huh.

3 MR. HARTWIG: -- by way of a piece of
4 paper.

5 JUROR NO. 3: Uh-huh.

6 MR. HARTWIG: And they've done something
7 that the police and the prosecutor believe they did, do you in
8 any way in your mind think automatically they must have done
9 something?

10 JUROR NO. 3: No.

11 MR. HARTWIG: Okay. Which dovetails into
12 the concept that Mr. Becker discusses, the presumption of
13 innocence; correct?

14 JUROR NO. 3: Correct.

15 MR. HARTWIG: So despite a grand jury
16 charging someone, do we all agree that the presumption of
17 innocence still follows any particular defendant? And you're
18 shaking your head. Mr. Fuda?

19 JUROR NO. 9: Yes.

20 MR. HARTWIG: And why do you think that's
21 important? Let's ask Mr. Stimpert. Why do you think that
22 concept of presumption of innocence is so important in the
23 United States of America?

1 JUROR NO. 5: It's the constitutional
2 right. They have to be found guilty beyond a reasonable doubt
3 for any criminal or crime.

4 MR. HARTWIG: Sure. Now sometimes, whether
5 you're watching television or talking with friends, those seem
6 like buzz words sometimes. Like beyond a reasonable doubt.
7 Right? And Your Honor will be the one who gives you the law.
8 But, you know, I expect that he would tell you that's the
9 highest burden in the United States of America. Okay?

10 And Mr. DiTommaso, why do you think beyond a
11 reasonable doubt is required in a criminal case?

12 JUROR NO. 10: Because it's worse to send
13 an innocent man away.

14 MR. HARTWIG: Right. Because, Mr. Fuda, we
15 agree that someone's liberty is at stake; correct? It's not
16 beyond all doubt, but it is an extremely high burden for an
17 important reason. Miss Adams, do you agree?

18 JUROR NO. 2: Yes, I do.

19 MR. HARTWIG: Has anybody served on a civil
20 trial? So in a civil trial -- let's say you're in a car
21 accident and they dispute maybe who caused the accident, there
22 is a much different burden. It's called preponderance of the
23 evidence. Okay? And that's basically like a 50.1 percent.

1 If you tip the scale, then you win. So and so caused the
2 accident. So it's a big difference in burden; would you agree
3 with me, ma'am? Miss Pattinson?

4 JUROR NO. 6: (Nods head.)

5 MR. HARTWIG: Right. And why do you think
6 it's so different? Do you think it's property versus life?
7 Do you think that's the reason we have such a high burden in a
8 criminal case?

9 JUROR NO. 6: Yeah.

10 MR. HARTWIG: And do you agree with that,
11 disagree with it?

12 JUROR NO. 6: I agree.

13 MR. HARTWIG: Are you comfortable with it?
14 Let's say that.

15 JUROR NO. 6: I'm comfortable with it.

16 MR. HARTWIG: Okay. So you could require
17 that the state, as instructed by the Judge, require the state
18 to prove all elements of each particular charge beyond a
19 reasonable doubt?

20 JUROR NO. 6: Uh-huh.

21 MR. HARTWIG: Okay. And if the state
22 couldn't, would you be comfortable rendering a not guilty
23 verdict?

1 JUROR NO. 6: Can you repeat that again?

2 MR. HARTWIG: Okay. If you didn't feel in
3 your mind, and after discussing it with fellow jurors if you
4 were a juror, you didn't feel the state proved beyond a
5 reasonable doubt every element of every charge, could you find
6 a verdict of not guilty on any particular charge?

7 JUROR NO. 6: Uh-huh.

8 MR. HARTWIG: You think you could?

9 JUROR NO. 6: Probably not.

10 MR. HARTWIG: Probably not? Okay. I want
11 to make sure I understand your answer. Would you feel
12 comfortable saying someone is not guilty in a case?

13 JUROR NO. 6: No.

14 MR. HARTWIG: Why?

15 JUROR NO. 6: Because -- I don't know.

16 MR. HARTWIG: Well, it's okay. Like I
17 said, there's no right or wrong answers. Go ahead and try to
18 tell me, you know, what's the reasoning behind that.

19 JUROR NO. 6: I don't know.

20 MR. HARTWIG: Okay. Let me ask you a
21 different question. If you really felt that the state didn't
22 do its job, okay, based on the law, and all 11 other jurors
23 think they did, would you be able to maintain your opinions in

1 deliberation and stick to your opinion of not guilty?

2 JUROR NO. 6: No.

3 MR. HARTWIG: You would feel some pressure?

4 JUROR NO. 6: Uh-huh.

5 MR. HARTWIG: Okay. All right. We'll hop
6 around a little bit. Okay? I don't want to stay on you and
7 make you uncomfortable, but we'll talk a little bit more about
8 that. Okay?

9 So let's say, Mr. Wills, you had a friend, very good
10 friend, that was accused of a crime. And you weren't judging
11 him as a juror, judging him as a friend, how would you want
12 the testimony or the evidence presented to you before you
13 found that your friend was actually guilty? What type of
14 quality of evidence would you want?

15 JUROR NO. 11: I'd want a lot of evidence.
16 I'd want facts. Facts that I would believe.

17 MR. HARTWIG: In order to convince you in
18 your mind beyond a reasonable doubt your friend was, in fact,
19 guilty. Yes?

20 JUROR NO. 11: Yeah.

21 MR. HARTWIG: Right. So when we talk about
22 quality of evidence versus quantity of evidence, if somebody
23 just presented 20 witnesses to you and they were all average

1 or worse, would that mean anything to you, that there were 20
2 of them?

3 JUROR NO. 11: No.

4 MR. HARTWIG: Okay. And if there were one
5 good one, you would be -- you would have to consider that as
6 well?

7 JUROR NO. 11: One good one beyond a
8 reasonable doubt, yeah.

9 MR. HARTWIG: Okay. Okay. Mr. West, how
10 do you feel about that?

11 JUROR NO. 7: About the same. I would, you
12 know.

13 MR. HARTWIG: Okay. What if -- what if you
14 were judging your friend and found out that testimony or
15 evidence that could have been presented to you --

16 JUROR NO. 7: Uh-huh.

17 MR. HARTWIG: -- wasn't.

18 JUROR NO. 7: I think I would be upset
19 about it.

20 MR. HARTWIG: Okay. And would you agree
21 that you would be upset because you would want all
22 available --

23 JUROR NO. 7: Evidence.

1 MR. HARTWIG: -- easily available evidence
2 or information that could go to that finding; right?

3 JUROR NO. 7: Right.

4 MR. HARTWIG: You would agree with that?

5 JUROR NO. 7: Yes.

6 MR. HARTWIG: Mr. DiTommaso, I see you
7 shaking your head. What are your thoughts?

8 JUROR NO. 10: I would want as much
9 evidence as possible so you could make a decision based on
10 very accurate circumstances.

11 MR. HARTWIG: Okay. Right. Now, we've all
12 watched CSI or First 48. And I think those who do this work,
13 we understand that that's television; right? It's not always
14 things that are available in a criminal case. So in a case
15 where you're saying, oh, we wanted, you know, satellite images
16 of something and that wasn't sought by a detective so we're
17 going to hold it against the detective, that would be
18 unreasonable; would we agree? Would we all agree,
19 Miss Shargo?

20 But what if something could have been important like
21 following up on a witness who was in town or interviewing a
22 witness. If that's not done in an aggravated murder case,
23 Miss Shargo, do you think that's important?

1 JUROR NO. 3: That -- that you follow up?

2 MR. HARTWIG: Right. Or did not follow up
3 on easily available information.

4 JUROR NO. 3: Oh, easy, yes. You should
5 follow up.

6 MR. HARTWIG: Okay. And easy or just --
7 it's available. It's there. It could have been done. To
8 rule something in or rule something out. Would you agree?

9 JUROR NO. 3: (Nods head.)

10 MR. HARTWIG: And why do you think that's
11 important? And I think I'm asking an obvious question, but
12 you tell me.

13 JUROR NO. 3: Well, you have to -- in order
14 to find reasonable doubt, you have to -- you have to know. It
15 would have to come forward if somebody was available.

16 MR. HARTWIG: It would be hard for you to
17 reach a conclusion beyond a reasonable doubt without that
18 information?

19 JUROR NO. 3: If I had it?

20 MR. HARTWIG: If you had it, it would be
21 easier?

22 JUROR NO. 3: Right.

23 MR. HARTWIG: Correct? And if you didn't

1 have it, then you would be questioning why.

2 JUROR NO. 3: Because somebody's life could
3 be at stake.

4 MR. HARTWIG: Okay. Miss Bordner, do you
5 agree?

6 JUROR NO. 4: Oh, absolutely.

7 MR. HARTWIG: Okay. Let's go to this
8 example that Mr. Becker used. I thought that was good. And
9 by the way, everyone in this courtroom that's working on this
10 case understands the seriousness of the charges and the
11 gravity of it. But there will be times when there's some
12 levity, even with Your Honor and counsel and you about a joke.
13 It's okay if we smile or laugh on something like that. But we
14 all understand why we're here. Okay?

15 So the example was the wedding ring. And we had
16 Mr. Stimpert who showed his gold band and then we talked about
17 whether or not that's proof beyond a reasonable doubt he's
18 married. Okay?

19 So, Miss Adams, I'm not wearing a wedding ring;
20 correct? Is that proof beyond a reasonable doubt I'm not
21 married?

22 JUROR NO. 2: No. My husband has never
23 worn a ring.

1 MR. HARTWIG: Right. Okay. A lot of men
2 are like that. It doesn't fit right or something. In my
3 particular case, I've lost it twice in 20 years. Most
4 recently on a ski trip. Got one on back order. Okay?

5 So if somebody saw me at a bar and I'm talking to a
6 woman and I don't have a wedding ring on, right, people may
7 assume I'm not married; correct? All right. What if, then,
8 on top of that someone comes up and says, "Yeah, I heard that,
9 I heard that guy, he's not married." Okay? Is that proof
10 beyond a reasonable doubt?

11 JUROR NO. 2: No.

12 MR. HARTWIG: Okay. Before you would
13 conclude and go tell people this guy is there talking with
14 another woman, doesn't have his wedding ring on, would you
15 want more information before you go making that conclusion?

16 JUROR NO. 2: Yes.

17 MR. HARTWIG: All right. That could affect
18 my true relationship with my wife; correct? My three
19 children; right?

20 So sometimes in cases people say things or they heard
21 it from other people. All right. Would you want to know how
22 they heard it or what the tests of truthfulness are with
23 regard to witnesses?

1 JUROR NO. 2: Yes.

2 MR. HARTWIG: Okay. I think, yeah, we all
3 would on a case like this.

4 Now, there's an important concept that Mr. Becker
5 didn't touch upon that's going to come up here. Mr. Burke has
6 a constitutional right not to testify. We all do; right?
7 That means nobody can make him get on the stand and say
8 whatever they'd like him to say or anything. Does anybody
9 have a problem with that?

10 Mr. Williamson, if Mr. Burke did not get on the
11 witness stand and testify, would you be -- would you feel like
12 you want to hold that against him?

13 JUROR NO. 12: No.

14 MR. HARTWIG: All right. Because Your
15 Honor is going to explain and it's part of the law that if he
16 didn't that can't be used in any way against him. You would
17 be fine if he did not?

18 JUROR NO. 12: Right.

19 MR. HARTWIG: Okay. Now, I think with
20 everybody it's natural sometimes to say I'd like to hear two
21 sides to the story. Mr. DiTommaso, how do you feel about
22 that?

23 JUROR NO. 10: I agree with it.

1 MR. HARTWIG: You agree that people would
2 like to hear both sides? Or?

3 JUROR NO. 10: Well, yeah, I agree with
4 people want to hear both sides of the story, but I also agree
5 that it's his right if he doesn't want to.

6 MR. HARTWIG: Okay. Miss Shargo, how do
7 you feel?

8 JUROR NO. 3: Same way.

9 MR. HARTWIG: Mr. Zatvarnicky, how do you
10 feel?

11 JUROR NO. 8: I believe that the evidence
12 has to be documented properly to have an investigation so that
13 it -- so that the investigation itself speaks for the true
14 circumstances of whatever happened. It has to be followed up
15 accordingly.

16 MR. HARTWIG: Okay. And especially in your
17 job. If you pull somebody over for OVI, drunk driving, and
18 they say, "With all due respect, Trooper, I'm not answering
19 any questions," you can't hold that against them; correct?

20 JUROR NO. 8: That's correct.

21 MR. HARTWIG: So you base your
22 investigation on whatever else you have; correct?

23 JUROR NO. 8: Correct.

1 MR. HARTWIG: But personally you're in
2 agreement with that constitutional right?

3 JUROR NO. 8: Absolutely.

4 MR. HARTWIG: Okay. So from a defense
5 perspective, Mr. Becker indicated and we all understand that
6 the defense never has anything to prove; right? We can choose
7 not to call any witnesses. We could call ten witnesses if we
8 wanted or found that it was appropriate. That it's solely
9 their burden of proof; right?

10 Miss Pattinson, how do you feel about that? If we
11 presented no evidence whatsoever, would you be okay with that?

12 JUROR NO. 6: No, not really.

13 MR. HARTWIG: You would want us to present
14 evidence?

15 JUROR NO. 6: Exactly.

16 MR. HARTWIG: Okay. And if we didn't,
17 again, that would make you somehow uncomfortable or unwilling
18 to be fair and impartial?

19 JUROR NO. 6: Uh-huh.

20 MR. HARTWIG: Okay. All right.

21 Mr. Stimpert, how do you feel about that, and her response?

22 JUROR NO. 5: I would -- it doesn't matter
23 to me whether you present witnesses or not. It would depend

1 if the state proved its case beyond a reasonable doubt.

2 MR. HARTWIG: Okay. Miss Adams?

3 JUROR NO. 2: That's me.

4 MR. HARTWIG: I'm sorry. I'm getting Miss
5 Hollenbank and Miss Adams confused.

6 JUROR NO. 2: I don't know. I mean, I
7 guess if the state can prove -- sometimes I think maybe
8 hearing something from the other side would be helpful.

9 MR. HARTWIG: Okay. That's a fair answer.
10 But if the Judge says that's not required --

11 JUROR NO. 2: Right.

12 MR. HARTWIG: Could you still say, "Well, I
13 have to follow the law"?

14 JUROR NO. 2: I would have to.

15 MR. HARTWIG: Mr. Fuda, how do you feel
16 about that?

17 JUROR NO. 9: If you don't have to present
18 any evidence, I'm okay with it.

19 MR. HARTWIG: Okay. Aside from presenting
20 evidence, from a defense perspective, we have to ask state's
21 witnesses questions. We call that cross examination. Okay?
22 If I happen to be particularly tough on a certain witness
23 within the confines of the rules from Your Honor, would

1 anybody hold that against Mr. Burke?

2 Miss Bordner?

3 JUROR NO. 4: No, sir.

4 MR. HARTWIG: All right. You understand
5 that that's part of the practice?

6 JUROR NO. 4: Correct.

7 MR. HARTWIG: All right. To demand certain
8 answers, honest answers, from potential witnesses; correct?

9 JUROR NO. 4: Absolutely.

10 MR. HARTWIG: Never degrading a witness or
11 never making fun of a witness, but seeking the truth?

12 JUROR NO. 4: Absolutely.

13 MR. HARTWIG: All right. And you would not
14 hold that against my client if I or Mr. Olson happen to be
15 particularly tough?

16 JUROR NO. 4: Not at all.

17 MR. HARTWIG: Okay. You wouldn't find that
18 unprofessional or anything like that? Miss Hollenbank?

19 JUROR NO. 1: No. That's your job, I
20 believe.

21 MR. HARTWIG: Okay. Does everybody agree
22 that that would be okay?

23 Miss Pattinson, how do you feel about that?

1 JUROR NO. 6: (Nods head.)

2 MR. HARTWIG: Okay. So, in our ordinary
3 lives, I think, like I said, we all have life experiences and
4 opinions. And whether we like it or not, people judge people
5 by the way they look, by the way they act, how they're brought
6 up, even nationality, race, gender. That's just, I think,
7 natural with some people or most people in different varying
8 degrees.

9 So, Miss Adams, would you judge somebody just by the
10 way they looked?

11 JUROR NO. 2: No.

12 MR. HARTWIG: Okay. If somebody has
13 tattoos, does that indicate to you one way or another what the
14 character of that person is?

15 JUROR NO. 2: No.

16 MR. HARTWIG: No? It seems like more
17 people today, younger people, have tattoos than 50 years ago;
18 correct?

19 JUROR NO. 2: Right.

20 MR. HARTWIG: Right? And sometimes more
21 visible tattoos than we've ever seen; correct?

22 As Mr. Zatvarnicky understands, if you had to guess a
23 percentage on a young person these days, what do you think?

1 How many have tattoos?

2 JUROR NO. 8: It's very high.

3 MR. HARTWIG: It's very high; right? Do
4 you feel that having a tattoo in any way is a reason to
5 prejudge a person?

6 JUROR NO. 8: Not at all.

7 MR. HARTWIG: Okay. Now, does anybody feel
8 differently about tattoos? All right. Mr. DiTommaso?

9 JUROR NO. 10: If the tattoo has a specific
10 meaning.

11 MR. HARTWIG: Okay. Whether -- like words?

12 JUROR NO. 10: Or symbols.

13 MR. HARTWIG: Symbols. Now, do you feel
14 it's common knowledge on certain symbols that certain things
15 mean certain things?

16 JUROR NO. 10: Not common.

17 MR. HARTWIG: I'm sorry. Can you speak up?

18 JUROR NO. 10: Not common knowledge.

19 MR. HARTWIG: Not common knowledge. Do you
20 have any experience in understanding tattoo meanings?

21 JUROR NO. 10: A little bit. Not much.

22 MR. HARTWIG: Okay. Does anybody else feel
23 the same way, that there are sometimes meanings to tattoos?

1 Trooper?

2 JUROR NO. 8: Yes, sir.

3 MR. HARTWIG: You have experience in that?

4 JUROR NO. 8: I've had trainings as to
5 some, as to what some things could mean, but I'm not an expert
6 by any stretch.

7 MR. HARTWIG: Even if somebody has a tattoo
8 that has a supposed meaning, does that mean it's true?

9 JUROR NO. 8: No, it does not.

10 MR. HARTWIG: All right. And in your
11 experience, has it been that, in fact, if somebody has one and
12 it's not true?

13 JUROR NO. 8: That is correct. It often
14 doesn't reflect who the person is or anything they've ever
15 done.

16 MR. HARTWIG: Okay. I mean, some people
17 put tattoos on themselves about God or whatever and it may be
18 that they have no faith at all; correct?

19 JUROR NO. 8: Correct.

20 MR. HARTWIG: But for some reason they put
21 a tattoo on their body.

22 Okay. Miss Bordner, how do you feel about that?

23 JUROR NO. 4: Doesn't bother me at all. I

1 have younger family members, younger nieces, that have a lot
2 of tattoos.

3 MR. HARTWIG: Okay. How much defense work
4 did you do in your practice?

5 JUROR NO. 4: If I had to put a percentage
6 on it, I would say it was maybe 25 percent.

7 MR. HARTWIG: Okay. Did you handle
8 misdemeanors and felonies?

9 JUROR NO. 4: Yes, sir.

10 MR. OLSON: From the defense side, we're
11 talking?

12 JUROR NO. 4: Yes.

13 MR. OLSON: Did you also do it from the
14 state side?

15 JUROR NO. 4: No, I did not.

16 MR. HARTWIG: All right.

17 Mr. Stimpert, let me ask you a little bit about your
18 jury service. You were on a criminal trial; correct?

19 JUROR NO. 5: Yes.

20 MR. HARTWIG: Were you the foreman?

21 JUROR NO. 5: No.

22 MR. HARTWIG: It was a felony case?

23 JUROR NO. 5: (Nods head.)

1 MR. HARTWIG: Yes. You deliberated with 11
2 others and came up with a not guilty verdict?

3 JUROR NO. 5: Correct.

4 MR. HARTWIG: How was your experience?

5 JUROR NO. 5: I'm sorry?

6 MR. HARTWIG: What was your experience
7 like? Was it a good experience? Not so good?

8 JUROR NO. 5: It was a good experience.

9 MR. HARTWIG: Okay. Were there any
10 holdouts at the time, or did you reach a unanimous verdict
11 immediately or after deliberation?

12 JUROR NO. 5: There were three holdouts
13 before.

14 MR. HARTWIG: Okay. How did you resolve
15 that?

16 JUROR NO. 5: Just going through the
17 evidence.

18 MR. HARTWIG: Took your time, discussed
19 things with one another?

20 JUROR NO. 5: Correct.

21 MR. HARTWIG: Everybody stayed open-minded?

22 JUROR NO. 5: Yes.

23 MR. HARTWIG: Okay. All right. Were you

1 one of the holdouts initially?

2 JUROR NO. 5: No.

3 MR. HARTWIG: Okay. Mr. Fuda, some things
4 came up initially that you were -- you golfed with
5 Mr. Watkins?

6 JUROR NO. 9: (Nods head.)

7 MR. HARTWIG: Okay. Are you friends with
8 him?

9 JUROR NO. 9: Not really.

10 MR. HARTWIG: Okay. Where do you golf at?

11 JUROR NO. 9: Avalon. Old Avalon.

12 MR. HARTWIG: Old Avalon? Okay. Now, when
13 you say you golfed with him, do you golf in his foursome?

14 JUROR NO. 9: Well, yeah, it was a
15 scramble.

16 MR. HARTWIG: Okay. Was it one time?

17 JUROR NO. 9: Yeah. One time.

18 MR. HARTWIG: Okay. How do you know
19 Mr. Watkins?

20 JUROR NO. 9: Just I met him there.
21 Through my brother.

22 MR. HARTWIG: Is your brother friends with
23 him?

1 JUROR NO. 9: He is a commissioner, yeah,
2 so I got to meet him through him.

3 MR. HARTWIG: I see. Okay. Does he
4 socialize with him?

5 JUROR NO. 9: I don't know. I don't know
6 if he does or not.

7 MR. HARTWIG: Have you socialized with
8 Mr. Watkins?

9 JUROR NO. 9: No.

10 MR. HARTWIG: So you golfed with him one
11 time at a scramble?

12 JUROR NO. 9: One time. That was it.

13 MR. HARTWIG: Is he a good golfer?

14 JUROR NO. 9: Yeah. Decent.

15 MR. HARTWIG: How about yourself?

16 JUROR NO. 9: Yeah.

17 MR. HARTWIG: Yeah? Good.

18 Okay. Miss Hollenbank, you work for the county?

19 JUROR NO. 1: Correct.

20 MR. HARTWIG: Do you feel in any way
21 because you're paid by the county, just like Mr. Becker is,
22 that that inherently would affect your ability to be fair and
23 impartial on a case?

1 JUROR NO. 1: No. I don't work with him or
2 for his office.

3 MR. HARTWIG: Okay. But, you know, the
4 county pays you?

5 JUROR NO. 1: Correct.

6 MR. HARTWIG: Right. And so that doesn't
7 make you uncomfortable or anything like that?

8 JUROR NO. 1: No, not at all.

9 MR. HARTWIG: And, Miss Shargo, you are
10 retired from the county?

11 JUROR NO. 3: Yes.

12 MR. HARTWIG: Do you feel loyalty to the
13 county or to any friends that may still be employed?

14 JUROR NO. 3: Do I have friends that are
15 employed there?

16 MR. HARTWIG: Yes. Do you?

17 JUROR NO. 3: Yes.

18 MR. HARTWIG: Do you feel any loyalty to
19 them, being that you're retired from the county and -- you
20 wouldn't feel like you need to be on the team here with
21 Mr. Becker in any way?

22 JUROR NO. 3: Oh, no.

23 MR. HARTWIG: No? Okay.

1 Mr. Wills, let me ask you briefly. You had indicated
2 you were a victim of domestic violence?

3 JUROR NO. 11: Correct.

4 MR. HARTWIG: All right. Did that case get
5 prosecuted?

6 JUROR NO. 11: Yes.

7 MR. HARTWIG: All right. Did it go to
8 trial or end in a plea agreement?

9 JUROR NO. 11: A plea.

10 MR. HARTWIG: And how was your experience
11 as a victim in the case?

12 JUROR NO. 11: It was unpleasant because it
13 was my family.

14 MR. HARTWIG: Okay. I'm sure that was hard
15 to go through. Did it resolve like you wanted it?

16 JUROR NO. 11: Yes.

17 MR. HARTWIG: Did they include you in the
18 process?

19 JUROR NO. 11: Yes.

20 MR. HARTWIG: Listened to what you wanted?

21 JUROR NO. 11: Yes.

22 MR. HARTWIG: Mr. DiTommaso, do you have
23 family members that are police officers?

1 JUROR NO. 10: Yes.

2 MR. HARTWIG: All right. And who are they?

3 JUROR NO. 10: I have a cousin who is
4 actually a border patrol and I have another distant cousin
5 that's a state trooper.

6 MR. HARTWIG: Do you feel that the
7 testimony of a police officer would be more credible than from
8 what we call a lay person, just somebody off the street?

9 JUROR NO. 10: No.

10 MR. HARTWIG: I mean, they're trained to be
11 police officers, but you don't find that automatically they
12 are more believable than other people?

13 JUROR NO. 10: No.

14 MR. HARTWIG: Would you agree with me that
15 there are good officers and some that are not so good?

16 JUROR NO. 10: Yes.

17 MR. HARTWIG: I'm not saying like
18 personally. You know, like they're liars or something. But
19 would you agree with me that just like in any profession some
20 people do their jobs better than others?

21 JUROR NO. 10: Yes.

22 MR. HARTWIG: So if they were criticized
23 for maybe not doing the best they could do, would you hold

1 that against us?

2 JUROR NO. 10: (Shakes head.)

3 MR. HARTWIG: No? All right.

4 Would anybody hold that against us? Even, trooper,
5 would you?

6 JUROR NO. 8: I'm an internal affairs
7 officer.

8 MR. HARTWIG: Okay.

9 JUROR NO. 8: So I see all spectrums, if
10 you will. So I would hold no ill will towards you if need be,
11 if you have to. You have to do your job.

12 MR. HARTWIG: And, in fact, would you hold
13 officers to a higher standard for doing their job, saying this
14 is what you're trained to do? You should go out and do it the
15 best you can do it?

16 JUROR NO. 8: Yes, sir.

17 MR. HARTWIG: So there was an example of a
18 7-year-old who later disclosed to someone that she had been
19 raped after their parents split up. So you have a young girl
20 who makes a serious accusation against her father; right? No
21 other physical evidence. And they would ask you to make a
22 conclusion beyond a reasonable doubt that that happened.
23 Okay? That was the example.

1 Now, let me add something to that hypothetical. If
2 you knew that during that two years she was taken to
3 counseling. Okay? And the prosecutor knew that. The
4 detectives knew that. But they did not go and get the
5 counseling records. All right? Does anybody find that that
6 would be a problem before reaching a conclusion? Miss
7 Hollenbank?

8 JUROR NO. 1: That we didn't have the
9 evidence from the counselor?

10 MR. HARTWIG: Right.

11 JUROR NO. 1: Are we allowed to have that
12 evidence?

13 MR. HARTWIG: If you could. If it was
14 available.

15 JUROR NO. 1: If it was a doctor/patient
16 confidentiality --

17 MR. HARTWIG: Well, that would be up to the
18 Judge. Let's assume for the hypothetical that the Judge says
19 yes, it could have been provided.

20 JUROR NO. 1: Then it would have been nice
21 to have it.

22 MR. HARTWIG: When you say "nice to have
23 it," would it be fatal in your mind to say we don't know what

1 she would have told this counselor about her father?

2 JUROR NO. 1: It can't be fatal. I'd have
3 to hear all the other evidence.

4 MR. HARTWIG: Okay. Miss Shargo, how do
5 you feel?

6 JUROR NO. 3: I feel differently.

7 MR. HARTWIG: Tell me how.

8 JUROR NO. 3: If the Judge let the evidence
9 come in and the counselors -- no, I would feel that it should
10 have been there.

11 MR. HARTWIG: That you would have wanted to
12 have seen what she told the counselor?

13 JUROR NO. 3: Yes.

14 MR. HARTWIG: Mr. Fuda, how do you feel
15 about that?

16 JUROR NO. 9: Pretty tough. I'd have to
17 see the evidence.

18 MR. HARTWIG: But if you couldn't -- when
19 you say "see the evidence," you would hear from the 7-year-old
20 girl, and that would be it. What you wouldn't see are the
21 counseling records. So how would that make you feel?

22 JUROR NO. 9: I'd have to believe her.

23 MR. HARTWIG: You would have to believe

1 her? Because she's a 7-year-old girl?

2 JUROR NO. 9: I don't think she would lie.

3 MR. HARTWIG: All right. What if her
4 father was a state trooper, a great guy, and just never -- no
5 record at all?

6 JUROR NO. 9: That don't make no
7 difference.

8 MR. HARTWIG: You would side with the
9 little girl. Interesting. All right.

10 Mr. DiTommaso, how do you feel about that?

11 JUROR NO. 10: I would need to see the
12 records.

13 MR. HARTWIG: Miss Bordner?

14 JUROR NO. 4: Yeah. I mean, I would need
15 to see the record. I would need to see her, hear more, you
16 know, because there would be, for me, in my mind, the
17 possibility that she could have been coached, that she could
18 have, you know, overheard things and wanted to please someone
19 and wanted to speak in a certain way. It's just --

20 MR. HARTWIG: Miss Adams, how do you feel
21 about that?

22 JUROR NO. 2: I would need that evidence
23 too.

1 MR. HARTWIG: Because let's all face it.
2 The elephant in the room in a case like that is why would a
3 7-year-old girl come in and say that about her dad; right?
4 Those cases are always very difficult. But also makes it more
5 challenging if you don't have everything that could have been
6 produced. Would you agree, Mr. Wills?

7 JUROR NO. 11: Yeah.

8 MR. HARTWIG: But, Mr. Fuda, that would be
9 enough for you?

10 JUROR NO. 9: (No response).

11 MR. HARTWIG: I know this is a hard
12 hypothetical.

13 JUROR NO. 9: I'm saying it would be tough.
14 It would be tough.

15 MR. HARTWIG: Okay. I appreciate your
16 honesty.

17 So we talked a little bit about direct and
18 circumstantial evidence. And it's just easier for me to use
19 Mr. Becker's examples and then tie something into it. So --
20 well, I'll change it up a little bit. I have three kids. And
21 we've all had these stories. But let's just assume that my
22 son says he didn't eat the cookies downstairs. My oldest
23 daughter says he did. My middle daughter -- we all know

1 middle children -- she comes down, you know, and says, "I
2 heard Nick. Nick says he ate the cookies. He ate all 30 of
3 'em, dad." Okay? Would you agree with me that if my son said
4 he did and my oldest daughter said he didn't, that would be a
5 difficult conclusion to reach beyond a reasonable doubt that
6 he did it and she's not telling the truth? You're shaking
7 your head, trooper?

8 JUROR NO. 8: It would be difficult to come
9 to a definitive answer.

10 MR. HARTWIG: Okay. Now, if he had
11 chocolate all over his face, that might help you make the
12 decision; right?

13 JUROR NO. 8: Sure.

14 MR. HARTWIG: Okay. Now, if you determined
15 that my middle daughter and son don't get along at all, all
16 right, and we know that all 30 cookies weren't eaten, only
17 one, would you be tending to believe my middle daughter, Miss
18 Shargo?

19 JUROR NO. 3: Huh?

20 MR. HARTWIG: I know for a fact that 30
21 cookies weren't eaten. So what does that say about what she's
22 telling?

23 JUROR NO. 3: She's not telling the truth.

1 MR. HARTWIG: Yeah, because I know for a
2 fact that he didn't eat 30 cookies; right? Now, there's one
3 missing. So is she lying to get him in trouble?

4 Miss Adams, do you think that's what she's doing?

5 JUROR NO. 2: Maybe.

6 MR. HARTWIG: Maybe. Or maybe he did eat a
7 cookie. Right? Just one. And now she's saying he ate 30
8 because he's really gonna get in trouble. But I know that's
9 not true. So what am I going to do? So do you think that's
10 proof beyond a reasonable doubt in that hypothetical? Even
11 with a witness, a supposed witness. Trooper?

12 JUROR NO. 8: No, sir.

13 MR. HARTWIG: Okay. All right. Miss
14 Bordner, how do you feel about that?

15 JUROR NO. 4: I would think she had some
16 sort of other reason for trying to get him in trouble or
17 something like that.

18 MR. HARTWIG: Right. I'm almost done. Let
19 me just double check some things.

20 Your Honor, could I have one moment, please, with
21 co-counsel?

22 THE COURT: You may.

23 MR. HARTWIG: Thank you.

1 Ladies and Gentlemen, listen, again, I thank you for
2 your time. Is there anything I didn't touch upon or that you
3 had thoughts on but I didn't individually call it out and you
4 would want to say something about it? Does anybody want to
5 raise your hand?

6 JUROR NO. 3: I do.

7 MR. HARTWIG: Miss Shargo, thank you.

8 JUROR NO. 3: When you were talking about
9 tattoos, I know nothing about really tattoos.

10 MR. HARTWIG: Okay.

11 JUROR NO. 3: But there is one tattoo that
12 probably, if --

13 MR. HARTWIG: Can I stop you there for a
14 second? Okay. Your Honor, may we approach?

15 THE COURT: Would you approach the bench,
16 ma'am?

17 (At sidebar:)

18 THE COURT: I didn't want you to say
19 something that might taint the jury.

20 JUROR NO. 3: I was going to say --

21 MR. HARTWIG: Just keep your voice down.

22 JUROR NO. 3: Can you hear me? If
23 somebody, a witness or somebody came on that stand that had a

1 Nazi tattoo on them, I'm afraid that --

2 THE COURT: Again, I understand exactly
3 what you're saying. Anybody have a followup question? I
4 think we all agree.

5 MR. BECKER: I have no questions.

6 MR. HARTWIG: No further questions. Thank
7 you.

8 THE COURT: Thank you very much.

9 (End of sidebar discussion.)

10 MR. HARTWIG: Just a few questions, Your
11 Honor.

12 THE COURT: All right.

13 MR. HARTWIG: Miss Shargo, thank you for
14 explaining that to us.

15 Let me just ask you a couple questions. And in no
16 way meant to embarrass you or anything. These are just what
17 you had indicated. You had said that if a particular witness
18 had a Nazi symbol somewhere on their body that would bother
19 you?

20 JUROR NO. 3: Did you say would it bother
21 me?

22 MR. HARTWIG: Yes.

23 JUROR NO. 3: Yes.

1 MR. HARTWIG: Okay. And that's what you
2 were meaning about that before I stopped you?

3 JUROR NO. 3: Yes.

4 MR. HARTWIG: Okay. All right. I
5 appreciate that.

6 Is there anyone else who has any issues like that
7 that I didn't bring up that they would want to get into
8 further?

9 Does everybody here feel that they're comfortable now
10 with possibly being a juror if left on? All right.

11 Miss Pattinson? Okay. We'll get into here I think
12 in just a minute. Okay.

13 Your Honor, there will no further questions. Thank
14 you.

15 THE COURT: All right. Ladies and
16 Gentlemen, there are two different ways you might be excused
17 from the jury at this time. One is by matter of legal cause.
18 There is a reason that you shouldn't be on this jury; you're
19 related to one of the parties or you've indicated you can't
20 follow the instructions of the Court. The Court makes that
21 decision, but I allow the attorneys to suggest something I am
22 not aware of.

23 Mr. Becker, pass for cause?

1 MR. BECKER: Yes, sir, Your Honor.

2 THE COURT: Mr. Hartwig, pass for cause?

3 MR. HARTWIG: Your Honor, may we approach?

4 THE COURT: You may.

5 (At sidebar:)

6 MR. HARTWIG: Your Honor, based on the
7 responses from Juror Number 6, Miss Pattinson, we don't feel
8 that she could be fair and impartial in this case.

9 THE COURT: Mr. Becker.

10 MR. BECKER: I think the Court may want to
11 clean that up a little bit. I think it was a little bit
12 confusing.

13 THE COURT: I didn't hear very well. I
14 will ask a few questions. I will take that under
15 consideration and inquire.

16 MR. HARTWIG: Thank you, Your Honor.

17 (End of sidebar.)

18 THE COURT: Ms. Pattinson, when you
19 answered some of the questions -- and you're a very light
20 speaker. I wasn't sure that I heard all your answers. So I
21 want to make sure I'm fully aware of what your answers were.
22 Defense counsel had asked you -- my instruction in general
23 would be the state has the burden of proving the case beyond a

1 reasonable doubt. If they proved the case beyond a reasonable
2 doubt, your finding should be in favor of the state. If they
3 fail to prove beyond a reasonable doubt their case then it
4 should be a defense verdict. Is that what your testimony is?

5 JUROR NO. 6: Uh-huh, yes.

6 THE COURT: Okay. I thought you said that
7 you would have a difficult time even if the state failed to
8 prove beyond a reasonable doubt finding for the defendant; is
9 that what you said?

10 JUROR NO. 6: Right.

11 THE COURT: Okay. Thank you very much,
12 Miss Pattinson. I think I'm going to excuse you. I don't
13 think you would be able to quite follow the instructions of
14 the Court. You're free to go.

15 JUROR NO. 6: Okay.

16 THE COURT: Anita Pace.

17 (Whereupon, a discussion was held off the
18 record.)

19 THE COURT: Ms. Pace, you've heard all the
20 questions that I've asked everyone. And you've heard the
21 plaintiff and the defendant. Have you anything to offer in
22 response to any of the questions that we've asked in general?

23 JUROR NO. 6: Not that I can think of, no.

1 THE COURT: Mr. Becker, any specific
2 questions for Miss Pace?

3 MR. BECKER: Miss Pace, I think there has
4 been some discussion here, and I want to go back to an easy
5 example that I can use. And the wedding example is a good
6 example. Obviously the police have a job to do. And they can
7 go so far and talk to so many people and do so many things.
8 Just like Mr. Stimpert. You recall my wedding example about
9 whether he's married or not? You can only go so far and find
10 so many people that were at the wedding. You can only have so
11 many photographs. For instance, if the trial was Mr. Stimpert
12 being married, I'm assuming the police could go and find maybe
13 150 people that were at the wedding that were there, ask them
14 for their photographs, ask them if they had any videos, ask
15 them to write statements, but do you feel that there becomes a
16 point where you've got enough?

17 JUROR NO. 6: Yes.

18 MR. BECKER: Okay. And just like in
19 life -- and in that example -- and in hindsight it's always
20 great. We can always do more; right? That doesn't mean that
21 someone hasn't done their job. That doesn't mean that someone
22 is not being truthful; correct?

23 JUROR NO. 6: Right.

1 MR. BECKER: And that doesn't mean that the
2 state hasn't met its burden; correct?

3 JUROR NO. 6: Right.

4 MR. BECKER: Okay. Was there anything else
5 that you heard or anything that you thought -- I know you had
6 some pretrial publicity, but that has not affected your
7 ability to serve as a fair and impartial juror; correct?

8 JUROR NO. 4: Correct.

9 MR. BECKER: Okay. I want to thank you for
10 your time.

11 THE COURT: Mr. Hartwig.

12 MR. HARTWIG: Thank you, Your Honor.

13 Morning, Miss Pace. Can you hear me okay?

14 JUROR NO. 6: Yes.

15 MR. HARTWIG: Okay. Were you able to hear
16 everything that I was asking earlier?

17 JUROR NO. 6: Yes.

18 MR. HARTWIG: You didn't have any trouble
19 hearing back there?

20 JUROR NO. 6: No.

21 MR. HARTWIG: Okay. I was trying to keep
22 my voice up. Was there anything in particular that I
23 discussed that you found interesting or one way or another you

1 would have contributed to had you been sitting up here?

2 JUROR NO. 6: No.

3 MR. HARTWIG: Okay. So we talked about, at
4 least initially, presumption of innocence. And you heard
5 that, like Mr. Becker said, our client is cloaked in, right,
6 innocence? That unless and until that's removed beyond a
7 reasonable doubt that he would be found not guilty?

8 JUROR NO. 6: Correct.

9 MR. HARTWIG: Are you comfortable with that
10 concept?

11 JUROR NO. 6: Yes.

12 MR. HARTWIG: Okay. So if you had to make
13 a decision right now, how would you have to find the defendant
14 if you had to rule right now?

15 JUROR NO. 6: Right now? I don't know
16 anything about him.

17 MR. HARTWIG: Okay.

18 JUROR NO. 6: So I wouldn't have an
19 opinion.

20 MR. HARTWIG: Okay. But the Judge would
21 say he's not guilty as he sits here unless and until the state
22 can prove beyond a reasonable doubt what their charges are;
23 right?

1 JUROR NO. 6: Right.

2 MR. HARTWIG: So he's not guilty. Are you
3 comfortable with that?

4 JUROR NO. 6: Yes.

5 MR. HARTWIG: As he sits here?

6 JUROR NO. 6: Yes.

7 MR. HARTWIG: We talked about the highest
8 burden in our land, beyond a reasonable doubt.

9 JUROR NO. 6: What's that?

10 MR. HARTWIG: The burden of proof.

11 JUROR NO. 6: Yes.

12 MR. HARTWIG: Beyond a reasonable doubt.

13 JUROR NO. 6: Uh-huh.

14 MR. HARTWIG: It's the highest burden in
15 our country. And there's a reason why. And some of the
16 potential jurors had indicated because somebody's liberty is
17 at stake; correct?

18 JUROR NO. 6: Correct.

19 MR. HARTWIG: And are you comfortable with
20 that level of burden being put on the state?

21 JUROR NO. 6: Yes.

22 MR. HARTWIG: Do you think there's a good
23 reason for that?

1 JUROR NO. 6: Yes.

2 MR. HARTWIG: Okay. And you could follow
3 the law and be fair and impartial and make them do that?

4 JUROR NO. 6: Uh-huh.

5 MR. HARTWIG: Yes? Okay. And we talked
6 about our client perhaps not testifying?

7 JUROR NO. 6: Right.

8 MR. HARTWIG: If he did not, would you be
9 okay with that?

10 JUROR NO. 6: Yes.

11 MR. HARTWIG: Okay. And if the Judge
12 instructed you that that's the law, that you can't use that
13 against him, that would be okay?

14 JUROR NO. 6: Right.

15 MR. HARTWIG: Okay. And you also heard us
16 talk about that we have no burden of proof, which means we
17 don't have to present any witnesses. If we didn't -- and I'm
18 not saying we wouldn't -- but if we didn't, would you hold
19 that against us?

20 JUROR NO. 6: (No response.)

21 MR. HARTWIG: If we didn't call any
22 witnesses on our side, would you be okay with that?

23 JUROR NO. 6: (No response.)

1 MR. HARTWIG: It's okay. Go ahead.

2 JUROR NO. 6: Well, you have to have
3 witnesses.

4 MR. HARTWIG: Well, the state does, for
5 sure. We don't.

6 JUROR NO. 6: Oh, okay. I see what
7 you're --

8 MR. HARTWIG: It just happens to be the
9 rules of this process.

10 JUROR NO. 6: Yes. That would be fine.

11 MR. HARTWIG: You would be okay with that?

12 JUROR NO. 6: Yes.

13 MR. HARTWIG: You seem to have some
14 reservations. And that's okay. Because this is all new.

15 JUROR NO. 6: Right.

16 MR. HARTWIG: Do you think you could follow
17 the law and say that's okay, they don't need to prove
18 anything?

19 JUROR NO. 6: Yes.

20 MR. HARTWIG: Okay. What about the issue
21 of tattoos? Does that bother you at all?

22 JUROR NO. 6: No. My kids have 'em.

23 MR. HARTWIG: Okay. Most do; right?

1 JUROR NO. 6: Some they wish they didn't
2 have after a time period.

3 MR. HARTWIG: But you love your grandkids
4 and your kids and everybody who has them?

5 JUROR NO. 6: Oh, yeah. Oh, absolutely.

6 MR. HARTWIG: Okay. Do you think you would
7 feel comfortable sitting on this jury and deciding this case?

8 JUROR NO. 6: Yes.

9 MR. HARTWIG: Okay. Do you want to be a
10 juror?

11 JUROR NO. 6: Yes.

12 MR. HARTWIG: Okay. All right.

13 JUROR NO. 6: I think.

14 MR. HARTWIG: All right. Thank you, ma'am.

15 THE COURT: All right. Mr. Becker, pass
16 for cause?

17 MR. BECKER: Yes, pass for cause for this
18 jury, Your Honor.

19 THE COURT: Mr. Hartwig, pass for cause?

20 MR. HARTWIG: Pass for cause.

21 THE COURT: The second manner in which you
22 might be released from this jury is by a peremptory challenge.
23 Each side has a limited number of peremptory challenges. They

1 can request that a juror be excused. They don't have to give
2 the Court a reason. It's their part of the jury selection
3 process. Don't take offense if you're released by a
4 peremptory challenge.

5 Mr. Becker, does the state have a peremptory
6 challenge?

7 MR. BECKER: Yes. We would thank and
8 excuse Mrs. Bordner.

9 THE COURT: Mrs. Bordner, thank you very
10 much. You're excused. Please call back in after 4:30
11 tomorrow for additional instructions.

12 JUROR NO. 4: Thank you.

13 THE COURT: Cheryl Falatic. All right.
14 Miss Falatic, you heard all the questions I asked in general
15 and the questions from the state and defense counsel.
16 Anything that you think you have to respond to any particular
17 of those questions?

18 JUROR NO. 4: No.

19 THE COURT: And Mr. Becker and Mr. Hartwig
20 are going to be very short with the following up then.

21 Go ahead, Mr. Becker.

22 MR. BECKER: I have no questions, Your
23 Honor.

1 THE COURT: Mr. Hartwig.

2 MR. HARTWIG: Thank you, Your Honor.

3 THE COURT: Your Honor -- Miss Falatic, is
4 it your daughter that works for Trumbull Family Court?

5 JUROR NO. 4: Yes.

6 MR. HARTWIG: And what does she do?

7 JUROR NO. 4: She works in I think -- okay.
8 I think she works -- I think she works in the file room. And,
9 and see, her husband, he is a probation officer.

10 MR. HARTWIG: Okay. Was there anything
11 that made you uncomfortable about the questions that
12 Mr. Becker and I asked the jury?

13 JUROR NO. 4: No.

14 MR. HARTWIG: Would you feel comfortable
15 sitting on this jury?

16 JUROR NO. 4: I think so, yes.

17 MR. HARTWIG: Okay. Did you agree with
18 what we had indicated regarding burden of proof and all of
19 those things?

20 JUROR NO. 4: Yes.

21 MR. HARTWIG: Okay. No further questions,
22 Your Honor.

23 THE COURT: Pass for cause, Mr. Becker?

1 MR. BECKER: Yes, Your Honor.

2 THE COURT: Mr. Hartwig?

3 MR. HARTWIG: Pass for cause.

4 THE COURT: Mr. Hartwig, does defense have
5 a peremptory challenge?

6 MR. HARTWIG: We do, Your Honor. We would
7 like to thank but excuse Juror Number 10.

8 THE COURT: All right. Mr. DiTommaso,
9 thank you very much. You're excused. Please call back in
10 tomorrow after 4:30 for additional instructions.

11 Megan Smith-Vincent. Miss Smith-Vincent, you've
12 heard all the questions the Court asked and the state and
13 defense counsel?

14 Anything specific to answer to any of those
15 questions?

16 JUROR NO. 10: No.

17 THE COURT: Mr. Becker.

18 MR. BECKER: Nothing, Your Honor.

19 THE COURT: Mr. Hartwig?

20 MR. HARTWIG: Just still good morning.

21 Okay? So just briefly. You've heard us talk about a variety
22 of topics; right?

23 JUROR NO. 10: Yes, sir.

1 MR. HARTWIG: Was there anything that you
2 had a strong opinion on one way or another?

3 JUROR NO. 10: The only thing I was
4 thinking about was, I agree with her. Some tattoos have
5 symbologies that have certain meanings why people would wear
6 them.

7 MR. HARTWIG: Okay. And is that just from
8 like your general life experience, or do you have any training
9 in that?

10 JUROR NO. 10: I have no training, no, sir.
11 I have a sister that has went through court and jail and a
12 bunch of stuff and I've learned a lot of things. When she
13 spoke, different groups with tattoos like could be gang
14 related or Nazi symbols. I mean, if there were certain
15 tattoos that would have -- like I don't know how to word it
16 properly.

17 MR. HARTWIG: Would -- well, you heard
18 Mr. Zatvarnický indicate that in his experience as a trooper
19 sometimes it's true, sometimes it's not true, what people put
20 on their bodies?

21 JUROR NO. 10: People do change,
22 absolutely.

23 MR. HARTWIG: Or change, absolutely. And

1 don't get it removed. Would it influence you in some way if
2 you saw a witness with a particular tattoo or the defendant in
3 this case?

4 JUROR NO. 10: Not personally. I mean, I
5 have tattoos myself. So, I mean, I like them. So I wouldn't
6 hold anyone accountable for it.

7 MR. HARTWIG: Would you be able to
8 disregard how somebody looks as far as judging their
9 credibility as a witness or whatever they're used for?

10 JUROR NO. 10: I could. I could -- do you
11 want to reword that question? I'm sorry.

12 MR. HARTWIG: Would the fact that a person
13 has tattoos that's involved in this case, whether it is a
14 witness or the defendant, would that influence how you judge
15 the evidence in this case?

16 JUROR NO. 10: Negative.

17 MR. HARTWIG: All right. Meaning you could
18 be fair and impartial?

19 JUROR NO. 10: Absolutely.

20 MR. HARTWIG: And that would have nothing
21 to do with it?

22 JUROR NO. 10: Yes, sir.

23 MR. HARTWIG: All right. And as far as our

1 concept of proof beyond a reasonable doubt and presumption of
2 innocence, that's okay with you?

3 JUROR NO. 10: Yes.

4 MR. HARTWIG: You understand it?

5 JUROR NO. 10: Yes.

6 MR. HARTWIG: You would follow the law?

7 JUROR NO. 10: Yes.

8 MR. HARTWIG: No further questions. Thank
9 you.

10 THE COURT: Mr. Becker, pass for cause?

11 MR. BECKER: Yes, Your Honor, state would
12 pass for cause.

13 THE COURT: Mr. Hartwig, for cause?

14 MR. HARTWIG: Pass for cause.

15 THE COURT: Mr. Becker, does the state have
16 a peremptory challenge?

17 MR. BECKER: State would pass, Your Honor.

18 THE COURT: All right. Mr. Hartwig, does
19 the defense have a peremptory challenge?

20 MR. HARTWIG: One moment, Your Honor. Your
21 Honor, we would thank but excuse Juror Number 1.

22 THE COURT: Miss Hollenbank, thank you very
23 much. You're excused. Please call back after 4:30 tomorrow

1 for additional instructions.

2 Larry Ayers. Mr. Ayers, you've had a chance to
3 listen to all the questions of the Court and state counsel and
4 defense counsel. Anything jump out at you that you think you
5 need to answer?

6 JUROR NO. 1: No, sir.

7 THE COURT: All right. Mr. Becker.

8 MR. BECKER: No questions. Thank you,
9 Mr. Ayers.

10 THE COURT: Mr. Hartwig.

11 MR. HARTWIG: No questions, Your Honor.

12 THE COURT: Very well. Pass for cause,
13 Mr. Becker?

14 MR. BECKER: Yes, sir, Your Honor.

15 THE COURT: Pass for cause, Mr. Hartwig?

16 MR. HARTWIG: Pass, Your Honor.

17 THE COURT: All right. Then we're back to
18 the state. Does the state have another peremptory challenge,
19 Mr. Becker?

20 MR. BECKER: State would pass, Your Honor.

21 THE COURT: All right. Mr. Hartwig, does
22 the defense have a peremptory?

23 MR. HARTWIG: Your Honor, we would thank

1 but excuse Juror Number 9.

2 THE COURT: Mr. Zatvarnický -- or no.
3 That's 8. Mr. Fuda, you're excused. Thank you very much.
4 Please call back in after 4:30 tomorrow for additional
5 instructions.

6 Mark Smolinsky. Mr. Smolinsky. You've heard all the
7 questions of the Court --

8 JUROR NO. 9: Yes, I have.

9 THE COURT: -- and state's counsel and
10 defense counsel. Anything that jumps out at you that you
11 think you have to answer?

12 JUROR NO. 9: The only thing that I have is
13 I was the victim of a crime years ago.

14 THE COURT: All right.

15 JUROR NO. 9: And, to be honest, I think
16 that might have some influence.

17 THE COURT: We need to get into that. I
18 appreciate you bringing that up to me. Was anyone ever
19 prosecuted for it?

20 JUROR NO. 9: No.

21 THE COURT: So, again, that would be one
22 thing that, number one, you might hold it against the state
23 for not prosecuting, but you also might hold it against the

1 defendant because he's the defendant?

2 JUROR NO. 9: Exactly.

3 THE COURT: You think that you couldn't set
4 that aside and listen to the evidence in this case?

5 JUROR NO. 9: I think I would have a hard
6 time.

7 THE COURT: All right. Any questions,
8 Mr. Becker?

9 MR. BECKER: No, Your Honor.

10 THE COURT: Mr. Hartwig?

11 MR. HARTWIG: Just a few, Your Honor. So
12 Mr. Smolinsky, when you say you think you would have a hard
13 time, do you think you would be more swayed in favor of the
14 prosecution or the defense?

15 JUROR NO. 9: The prosecution.

16 MR. HARTWIG: So you would -- in favor of
17 the prosecution?

18 JUROR NO. 9: Yes.

19 MR. HARTWIG: More likely to find against a
20 defendant just because of your personal experiences?

21 JUROR NO. 9: Yes.

22 MR. HARTWIG: So despite the instructions
23 of law, despite you trying to be fair and impartial, listening

1 to other jurors, you think you could not do it?

2 JUROR NO. 9: I think I would have some
3 difficulty with it.

4 MR. HARTWIG: Okay. Have you served as a
5 juror before?

6 JUROR NO. 9: No, I haven't.

7 MR. HARTWIG: Okay. And what was it about
8 the experience that bothered you so much?

9 JUROR NO. 9: It kind of doesn't feel good
10 when a crime is committed against you and it's kind of hard to
11 forget about it.

12 MR. HARTWIG: Sure. Did you know anything
13 about the alleged perpetrator?

14 JUROR NO. 9: No.

15 MR. HARTWIG: All right. So there wasn't
16 an identification? Couldn't put the case together?

17 JUROR NO. 9: No. They never found any
18 information about any of it.

19 MR. HARTWIG: Okay. Did they try?

20 JUROR NO. 9: Yes.

21 MR. HARTWIG: All right. So you don't
22 fault the police for not trying?

23 JUROR NO. 9: No.

1 MR. HARTWIG: You're just -- based on that
2 experience, it's a tough thing to live with?

3 JUROR NO. 9: Yes. It was a traumatic
4 experience.

5 MR. HARTWIG: Thank you very much.

6 THE COURT: Mr. Smolinsky, thank you very
7 much. You're excused for cause.

8 Greg Robertshaw. Mr. Robertshaw, again, you heard
9 the questions of the Court and the state and defense counsel.
10 Anything that jumps out at you that you think you have to
11 answer?

12 JUROR NO. 9: No, sir.

13 THE COURT: Mr. Becker, any questions?

14 MR. BECKER: No, Your Honor.

15 THE COURT: Mr. Hartwig, any questions?

16 MR. HARTWIG: No questions, Your Honor.

17 THE COURT: Mr. Becker, pass for cause?

18 MR. BECKER: Yes, Your Honor.

19 THE COURT: Mr. Hartwig, for cause?

20 MR. HARTWIG: Yes.

21 THE COURT: Does the state have a
22 peremptory challenge?

23 MR. BECKER: State would pass, Your Honor.

1 THE COURT: Mr. Hartwig, does the defense
2 have a peremptory challenge?

3 MR. HARTWIG: One moment, Your Honor. Your
4 Honor, we would thank and excuse Juror Number 1, Mr. Ayers.

5 THE COURT: Mr. Ayers, thank you very much.
6 You're excused. Please call back in after 4:30 tomorrow for
7 additional instructions.

8 Todd Jones. Mr. Jones, you heard all the questions
9 of the Court and the state and defense counsel. Anything that
10 jumps out at you that you think you need to answer?

11 JUROR NO. 1: No.

12 THE COURT: Mr. Becker, any questions?

13 MR. BECKER: Yeah. Just briefly.

14 Mr. Jones, I have a few questions for you. You own
15 any firearms?

16 JUROR NO. 1: Yes.

17 MR. BECKER: What do you have?

18 JUROR NO. 1: Couple of shotguns and a .380
19 pistol.

20 MR. BECKER: Okay. And I also see you have
21 some teen-age children, looks like twins?

22 JUROR NO. 1: Yes.

23 MR. BECKER: I hope I got that right. And

1 a 16-year-old? You were able to hear some of the questions
2 that I asked about, you know, kids and sometimes -- and
3 Mr. Hartwig as well -- about trying to sort through some
4 issues with your kids?

5 JUROR NO. 1: Yes.

6 MR. BECKER: You feel you can perform that
7 duty here as a juror in this case?

8 JUROR NO. 1: Yes.

9 MR. BECKER: All right. Thank you very
10 much for your time, Mr. Jones.

11 Mr. Hartwig.

12 MR. HARTWIG: Thank you. Mr. Jones, good
13 morning. Now you heard us talk a little bit about tattoos and
14 that?

15 JUROR NO. 1: Yeah.

16 MR. HARTWIG: Right? You work as a
17 laborer?

18 JUROR NO. 1: Yes.

19 MR. HARTWIG: You work with people with
20 tattoos?

21 JUROR NO. 1: Yes.

22 MR. HARTWIG: You know anything about the
23 supposed meanings of tattoos?

1 JUROR NO. 1: Just basics. I mean, you see
2 like the people were saying earlier. I mean but --

3 MR. HARTWIG: You wouldn't judge a witness
4 or the defendant if they had a tattoo?

5 JUROR NO. 1: No, I have some myself.

6 MR. HARTWIG: You have tattoos?

7 JUROR NO. 1: Yes.

8 MR. HARTWIG: Okay. If you would learn
9 during the course of being a juror whether a witness or a
10 defendant had done something criminal in the past, would that
11 lead you to judge him differently based on future conduct or,
12 you know?

13 JUROR NO. 1: No.

14 MR. HARTWIG: So because somebody did
15 something before, are they more likely in your mind to have
16 done something again?

17 JUROR NO. 1: No. People change. I mean,
18 people do stuff when they're kids and get in trouble and then
19 never get in trouble again.

20 MR. HARTWIG: Okay. So in this case, if
21 you were a juror, you could judge the defendant, for example,
22 based on just the evidence related to this particular case?

23 JUROR NO. 1: Yes.

1 MR. HARTWIG: Wouldn't have any problem
2 with that?

3 JUROR NO. 1: No.

4 MR. HARTWIG: Wouldn't be looking on the
5 outside?

6 JUROR NO. 1: No.

7 MR. HARTWIG: Anything else that we talked
8 about that you would have jumped in and said, hey, I feel
9 strongly about this or that?

10 JUROR NO. 1: No.

11 MR. HARTWIG: Would you like to be a juror
12 on this case if you had to choose?

13 JUROR NO. 1: Yeah.

14 MR. HARTWIG: Okay. Thank you.

15 THE COURT: Mr. Becker, pass for cause?

16 MR. BECKER: Pass for cause, Your Honor.

17 THE COURT: Mr. Hartwig, pass for cause?

18 MR. HARTWIG: Pass for cause, Your Honor.

19 THE COURT: All right. Let's see. Scott
20 Hardval and Darlene Frantz, if you you'll come forward.

21 And at this time Mr. Hardval will be Alternate Number
22 1 and Ms. Frantz Alternate Number 2. This is a criminal
23 trial. In order to have a verdict, we must have a unanimous

1 verdict of 12; can't be 11, can't be 10. So every trial
2 that's going to take more than part of a day we need to have
3 alternates in case some illness or injury befalls one of the
4 other jurors. We rely on our alternates on a regular basis.
5 So your duty is the same as the other jurors; to listen to all
6 of the evidence and be ready and willing, if called upon, to
7 step in as a relief type of operation here.

8 You've heard all the questions that the Court has
9 asked throughout this process and the state and the defendant.
10 Anything that you think has to be added or responded to?
11 Mr. Hardval first.

12 ALTERNATE NUMBER 1: No, sir.

13 THE COURT: Miss Frantz, anything?

14 ALTERNATE NO. 2: The only thing that
15 bothered me was when the defendant asked, you know, would I
16 have a problem if they didn't call any witnesses.

17 THE COURT: Again, the fact is the state
18 has the burden of proving the case.

19 ALTERNATE NO. 2: Right.

20 THE COURT: The defense does not have a
21 burden. So if the state doesn't make their burden, the
22 defense doesn't have to. That doesn't mean they won't call
23 witnesses. That means they're not obligated to.

1 JUROR NO. 2: Okay.

2 THE COURT: Do you understand that? All
3 right. Very well. Any other questions?

4 ALTERNATE NO. 2: No.

5 THE COURT: Mr. Becker, you may inquire.

6 MR. BECKER: Okay. Let's start with the
7 easy one first. Mr. Hardval, I see your son is an attorney?

8 ALTERNATE NO. 1: Yes, sir.

9 MR. BECKER: Where at?

10 ALTERNATE NO. 1: Pendleton, Oregon.

11 MR. BECKER: Oregon. That's what I
12 thought. Okay. Do you know what kind of law he practices?

13 ALTERNATE NO. 1: General practice.

14 Whatever comes through his door.

15 MR. BECKER: I hear ya.

16 And, Miss Frantz, you brought up -- and I just want
17 to be sure we're clear on this. They don't have to present
18 one witness. They may get up at the end of this case on
19 Friday and I may do such a terrible job and the witnesses may
20 be so awful and the evidence so lacking that they say, "Hey,
21 you know what, we got this in the bag. Forget about it." And
22 you 12 jurors, if you're an alternate and you somehow get on
23 there, you may say, "Boy, that Becker and their case is awful.

1 They stink." And you might render a verdict in 10 or
2 15 minutes. So there is a lot of reasons they may not even
3 present evidence or testimony. So you wouldn't hold that
4 against them if they didn't; correct?

5 ALTERNATE NO. 2: No.

6 MR. BECKER: Okay. I just wanted to be
7 clear because you had mentioned that. So you feel you could
8 be a fair and impartial juror in this case; correct?

9 ALTERNATE NO. 2: Yes.

10 MR. BECKER: And I hate to tell you this,
11 but I'm gonna tell you this anyway for both of you. The
12 reasons we put the alternates so close to the witnesses and so
13 close to the action is because there's obviously a chance you
14 won't serve on this jury and you won't get to deliberate. But
15 I think the Court and probably the attorneys will speak, it's
16 been more often than not, particularly in cases such as this
17 where there's high stakes, a homicide and death involved,
18 where something -- and I hope it doesn't happen to one of our
19 regular jurors -- but sometimes something happens where they
20 might have a sick child or spouse or something at home or they
21 may themselves get sick. I know we are in terrible flu season
22 now. So that's why we put you folks here. So it can be
23 disappointing in the fact that you may get all the way through

1 the trial and not get to serve and deliberate. But it's just
2 as important that you folks pay attention, knowing that
3 there's that possibility you might not be able to get in and
4 go in the jury room to deliberate. Both of you are up for
5 that task?

6 ALTERNATE NO. 1: Yes.

7 ALTERNATE NO. 2: Yes.

8 MR. BECKER: Thank you very much for your
9 time and your service.

10 THE COURT: Mr. Hartwig.

11 MR. HARTWIG: Thank you, Your Honor.

12 Good afternoon. Mr. Hardval?

13 ALTERNATE NO. 1: Yes, sir.

14 MR. HARTWIG: Does your son do any criminal
15 defense work?

16 ALTERNATE NO. 1: What's that?

17 MR. HARTWIG: Does your son do any criminal
18 defense work?

19 ALTERNATE NO. 1: No. He's been practicing
20 for two years.

21 MR. HARTWIG: Okay. All right. I saw you
22 were -- you or your family member were the victim of a home
23 robbery?

1 ALTERNATE NO. 1: Yes.

2 MR. HARTWIG: How long ago was that?

3 ALTERNATE NO. 1: 33 years. Actually
4 married one year, so I know.

5 MR. HARTWIG: Do you have feelings about
6 that one way or another?

7 ALTERNATE NO. 1: I wish I could have got
8 my stuff back. That's it.

9 MR. HARTWIG: Was it prosecuted?

10 ALTERNATE NO. 1: No.

11 MR. HARTWIG: Never found the guy?

12 ALTERNATE NO. 1: No.

13 MR. HARTWIG: Miss Frantz, likewise, you
14 were the victim of a home robbery?

15 ALTERNATE NO. 2: Yes.

16 MR. HARTWIG: You personally?

17 ALTERNATE NO. 2: Yes.

18 MR. HARTWIG: Yes? How long ago was that?

19 ALTERNATE NO. 2: Oh, geez, 30 some years
20 ago.

21 MR. HARTWIG: Okay. And was it the same
22 experience or did they catch that guy or girl?

23 ALTERNATE NO. 2: They found out who it

1 was.

2 MR. HARTWIG: All right. And did the
3 prosecution go forward?

4 ALTERNATE NO. 2: No.

5 MR. HARTWIG: All right. Do you have
6 feelings about that then?

7 ALTERNATE NO. 2: No.

8 MR. HARTWIG: You're not frustrated --

9 ALTERNATE NO. 2: No.

10 MR. HARTWIG: -- with the police or with --
11 like we had another potential juror that said, "Hey, I can't
12 be fair and impartial because of that. I just have a bad
13 experience."

14 ALTERNATE NO. 2: No.

15 MR. HARTWIG: You could be fair and
16 impartial in the case?

17 ALTERNATE NO. 2: Yes.

18 MR. HARTWIG: Okay. You know, I respect
19 Mr. Becker as a prosecutor. He is an excellent lawyer. I
20 also respect LeBron James. Okay? Sometimes LeBron James
21 doesn't do everything he can; right? Doesn't hustle. Maybe
22 misses foul shots. Commits unnecessary fouls. And they may
23 lose a game. Doesn't mean I don't respect him anymore.

1 Likewise, the state of Ohio is not infallible. Just because
2 they bring a case, like an indictment, doesn't mean that
3 everybody is guilty. Do you agree with that?

4 ALTERNATE NO. 2: Yes.

5 MR. HARTWIG: That they have the highest
6 burden and that must be maintained for all of us.

7 ALTERNATE NO. 2: Yes.

8 MR. HARTWIG: And you're okay with that?

9 ALTERNATE NO. 2: Yes.

10 MR. HARTWIG: Thank you.

11 THE COURT: Mr. Becker, pass for cause?

12 MR. BECKER: Yes, Your Honor, we would pass
13 for cause.

14 MR. HARTWIG: Pass for cause.

15 THE COURT: Mr. Becker, peremptory as to
16 the alternates?

17 MR. BECKER: State would pass.

18 THE COURT: Mr. Hartwig?

19 MR. HARTWIG: Likewise. We'll pass.

20 THE COURT: Parties are satisfied with the
21 jury and alternates. The remaining prospective jurors, it
22 will not be necessary for you to serve in this case. You can
23 see by the nature of the selection process, it's obviously

1 necessary that we have a lot more jurors than less when we
2 start. Your service will not be required in this case. You
3 are excused, with directions to call back in after -- tomorrow
4 after 4:30 for additional instructions. Thank you very much.
5 You're excused.

6 Now, members of the jury, we swore you in before we
7 asked you any questions. Now it's necessary to swear you in
8 as the official jury in this case. If you'll please stand and
9 raise your right hand.

10 Do you swear or affirm that you will diligently
11 inquire into and carefully deliberate all matters between the
12 State of Ohio and the defendant Austin Taylor Burke? Please
13 answer, "I will."

14 ALL JURORS: I will.

15 THE COURT: Do you swear or affirm you will
16 do this to the best of your skill and understanding, without
17 bias or prejudice, so help you god? Please answer, "I will."

18 ALL JURORS: I will.

19 THE COURT: You may be seated.

20 Now, we are going to do a jury view that's scheduled
21 this afternoon so I'm going to give you some preliminary
22 instructions before we go to lunch and then we'll go to lunch
23 and then we'll do the jury view. That will have to be how we

1 have it set up.

2 Now, it is important that you be fair and attentive
3 throughout the trial. Do not discuss this case among
4 yourselves, nor with anyone else. Do not permit anyone to
5 discuss it with you or in your presence. Do not form or
6 express an opinion in this case until it is finally submitted
7 to you.

8 You will receive the opening statements, the
9 evidence, the arguments, and the law in that order. It would
10 be unfair to discuss this case among yourselves before you
11 have everything necessary for your decision. You must explain
12 this rule prohibiting discussion of this case with your family
13 and friends. When trial is over, you will then be released
14 from this instruction and at that time you may, but are not
15 required, to discuss this case and your experiences as a
16 juror. Until that moment, you must control your natural
17 desire to discuss this case both here and at home.

18 Now, the Court instructs you not to converse with the
19 attorneys, parties, or witnesses during the trial. Likewise,
20 the other participants in the trial must not converse with
21 you. If anyone should attempt to discuss this case with you,
22 report that incident immediately to the Court by reporting it
23 to my bailiff.

1 You may not investigate or attempt to obtain
2 additional information about this case outside of the
3 courtroom. Now, there's been a new twist in this. Everyone
4 has a smart phone now. You have the whole world at your
5 fingertips. We've had mistrials throughout the state because
6 people go on just to get a definition or a description. You
7 are not allowed to do that. Stay away from social media.
8 Stay away from your smart phones. Do not try to investigate
9 anything about this case. All the evidence must come from the
10 witness stand.

11 All right. Now, the procedure for trial is
12 controlled by statute. First, counsel for the state, the
13 prosecutor, outlines what he expects his evidence will be.
14 Then counsel for the defendant may state what their evidence
15 will be. These opening statements are not evidence. They are
16 a preview of the claims of each party designed to help you
17 follow the evidence and understand the case as it is
18 presented.

19 In the presentation of the evidence, the state
20 proceeds first; thereafter, the defendant may offer evidence;
21 and the state may offer rebuttal evidence. The trial itself
22 concludes with the arguments of counsel and instructions of
23 law by the Court and thereafter you will deliberate upon your

1 verdict.

2 Now, before we hear the opening statements of counsel
3 and begin to take evidence, I believe it would be helpful if
4 you were to have some preliminary instructions to follow in
5 listening to and considering the evidence which you will hear
6 in this case. Later, after you've heard all of the evidence
7 and closing arguments of counsel, I will give you further
8 instructions covering additional law which you are required to
9 follow in this case. It is the duty of the Judge to instruct
10 you on the law, and it is your duty to follow the law as I
11 give it to you both now and at the conclusion of the evidence.

12 First of all, it is your exclusive duty to decide all
13 questions of fact submitted to you. In connection with this
14 duty, you must determine the effect and value of the evidence.
15 You must not be influenced in your decision by sympathy,
16 prejudice or passion toward any party, witness, or attorney in
17 this case.

18 Now, if in these instructions or in the instructions
19 I will give you at the conclusion of the evidence any
20 principle or idea is repeated or stated in varying ways, no
21 emphasis thereon is intended and none is to be inferred by
22 you. Therefore, you must not single out any particular
23 sentence or individual point or instruction and ignore the

1 others; but, rather, you are to consider all of the
2 instructions as a whole and consider each instruction in
3 relation to the other instructions.

4 Now, the fact that I give you some of the
5 instructions now and some at the conclusion of the evidence
6 has no significance as to their relative importance, nor does
7 the order in which I give the instructions.

8 Now, the attorneys for the parties will, of course,
9 have active roles in the trial. They will make opening
10 statements to you, question witnesses, make objections, and
11 finally will argue the case as the last step before you hear
12 my final instructions and commence your deliberations.

13 Now remember, the attorneys are not witnesses. And
14 since it is your duty to decide this case solely on the
15 evidence which you see and hear in this case, you must not
16 consider as evidence any statement made by any attorney during
17 the trial. There is, of course, an exception. And that is if
18 the attorneys agree upon a fact. Such agreement, stipulation,
19 or admission of fact would be brought to your attention and
20 you may then regard that fact as being conclusively proved
21 without the necessity of further evidence as to that fact.

22 Now, if a question is asked and an objection to that
23 question is sustained, you will then not hear the answer and

1 you must not speculate as to what the answer might have been
2 or the reason for the objection. If an answer is given to a
3 question and the Court then grants a motion to strike the
4 answer, you are to completely disregard such question and
5 answer and not consider them for any purpose. A question, in
6 and of itself, is not evidence and may be considered by you
7 only as it supplies meaning to the answer.

8 Now, any fact in this case may be proven by either
9 direct or circumstantial evidence. Direct evidence means
10 exactly what that name implies. That is, evidence which
11 directly proves a fact without having to infer that fact from
12 some other fact. Direct evidence is usually the testimony
13 given by a witness who has seen or heard the facts to which he
14 or she testifies, and it includes the exhibits admitted into
15 evidence during the trial.

16 Now, circumstantial evidence, on the other hand, is
17 proof by facts -- proof of facts by direct evidence from which
18 you may infer a fact in question. The law makes no
19 distinction between direct and circumstantial evidence as to
20 the degree of proof required, and facts may be proven by
21 either type of evidence or a combination of them. Each is
22 accepted as a reasonable method of proof, and each is
23 respected for such convincing force as it may carry.

1 Now, as jurors, you have the sole and exclusive duty
2 to decide the credibility of the witnesses who will testify in
3 this case, which simply means that it is you who must decide
4 whether to believe or disbelieve a particular witness and how
5 much weight, if any, to give to the testimony of each witness.

6 In determining these questions, you will apply the
7 tests of truthfulness which you apply in your daily lives.
8 These tests include the appearance of each witness on the
9 stand; his or her manner of testifying; the reasonableness of
10 the testimony; the opportunity that witness had to see, hear,
11 or know the things concerning which he or she testified;
12 accuracy of memory; frankness or lack of it; intelligence;
13 interest and bias, if any; together with all the facts and
14 circumstances surrounding the testimony. Applying these
15 tests, you will apply to the testimony of each witness such
16 weight as you deem proper. You are not required to believe
17 the testimony of any witness simply because he or she is under
18 oath. You may believe or disbelieve all or any part of the
19 testimony of any witness. You should not decide any issue of
20 fact merely on the basis of the number of witnesses who
21 testify on each side of an issue. Rather, the final test in
22 judging evidence would be the force and weight of the
23 evidence, regardless of the number of witnesses. The

1 testimony of one witness, if believed by you, is sufficient to
2 prove any fact.

3 Also, discrepancies in a witness's testimony, or
4 between that testimony and others, does not necessarily mean
5 you should disbelieve the witness, as people commonly forget
6 facts or recollect them erroneously after the passage of time.
7 You are all certainly aware of the fact that two persons who
8 witnessed the same incident may often see or hear it
9 differently. In considering a discrepancy in a witness's
10 testimony, you should consider whether the discrepancy
11 concerns an important fact or a trivial one.

12 Now, if you conclude that a witness has willfully
13 lied in his or her testimony as to a material fact, you may
14 then distrust all of that witness's testimony, and you would
15 have the right to reject all of that witness's testimony
16 unless from all of the evidence you believe that the
17 probability of truth favors that testimony in other
18 particulars.

19 Now, this concludes my preliminary instructions.
20 Again, I may instruct you during the trial and you will
21 receive final instructions prior to your deliberations.

22 Now, the next matter on the agenda is a jury view.
23 You will be taken to various locations involved in this case.

1 You will remain together under the supervision of my bailiff
2 until you return to the courtroom. Counsel may accompany you,
3 but they may not discuss this case or demonstrate anything
4 relating to it. The bailiff may call your attention to
5 certain areas or objects previously requested by counsel.

6 Now, what you observe at the scene is not evidence.
7 The conditions may have changed since the time of the events
8 in this case. The evidence as to the physical appearance of
9 the scene must come from the witness stand. The sole purpose
10 of this view is to help you understand the evidence as it is
11 presented during the trial.

12 Now, we're going to release you to lunch now. It's
13 almost 12:30 so we'll release you until 1:30. I'm going to
14 have you come back to the petit jury room at that time. I see
15 no reason to reconvene in court unless counsel requests that,
16 but I don't hear anything from Mr. Becker or Mr. Hartwig.
17 Report down to the petit jury room. My bailiff will, at that
18 point in time, get you organized and take you on a jury view.
19 When you've completed that, you'll come back to the court and
20 we'll continue with the case.

21 Have a pleasant lunch. Back at 1:30 in the jury
22 room.

23 (Whereupon, the jury was excused for its

1 luncheon recess at 12:31 p.m.)

2 (Whereupon, the following proceedings
3 occurred in open court, out of the presence of the jury, at
4 12:32 p.m.)

5 THE COURT: Back on the record.
6 Mr. Hartwig and Mr. Olson, it's my understanding you're going
7 to waive your client to go on the jury view?

8 MR. HARTWIG: That is correct, Your Honor.

9 THE COURT: All right. And again, I'll
10 indicate to the jury when they come back that that was, you
11 know, your intention to do that; that he wasn't trying to
12 disregard or insult his presence. But that's your intention.
13 So we will not bring him back over, then, until the jury
14 returns from the jury view then.

15 MR. OLSON: Yes, Your Honor.

16 THE COURT: Keep him over there until we
17 get a hold of you.

18 (Whereupon, a luncheon recess was had
19 commencing at 12:33 p.m.)

20 (Whereupon, the jury was excused to view
21 multiple scenes, commencing at 1:40 p.m. and concluding at
22 4:56 p.m.)

23 (Whereupon, the following proceedings

1 occurred in open court at 4:56 p.m.)

2 THE COURT: That will obviously conclude
3 today's presentations. Tomorrow I have some matters I have to
4 deal with in the morning, so we will not start until 1:00. I
5 ask you to report to the petit jury room prior to 1:00. We'll
6 try to get you right up and start moving at that point in
7 time.

8 From now on until the end of the trial at any time I
9 advise you that we're going to take a break, take your break
10 and then go back down to the petit jury room so that you're
11 not interacting with any of the witnesses or parties that
12 might be up on the third floor here.

13 Now, the news media was in here today. There may be
14 some things on TV. There may be things in the paper. There
15 may be things on the internet. Again, avoid all news, because
16 we're only limited to what's going to come from the witness
17 stand here. So don't watch the news and don't read the paper
18 regarding anything that has to do with this trial.

19 So I admonish you now, and I will every time, do not
20 discuss this case among yourselves, nor with anyone else. Do
21 not form or express an opinion. Have a pleasant day. I will
22 see you tomorrow.

23 (Whereupon, the jury was excused at 4:57

1 p.m.)

2 (Whereupon, the following proceedings
3 occurred out of the presence of the jury.)

4 THE COURT: Mr. Olson, for purposes of the
5 record, it was my understanding as we proceeded that you had
6 waived the necessity of your client being present just for the
7 release of the jury today?

8 MR. OLSON: That is correct, Your Honor.

9 THE COURT: We did not bring him over, but
10 he'll be over tomorrow morning when we start again.

11 Anything further we need to deal with today,
12 Mr. Olson?

13 MR. OLSON: Nothing further, Your Honor.

14 THE COURT: Mr. Becker, anything?

15 MR. BECKER: Just, Your Honor, there was a
16 disc that I forgot to get a copy to Mr. Olson. I will have
17 that here. It's a security video from one of the locations
18 near the bike path. I don't think there's anything
19 significant on it, but we do have that. I will get that to
20 him. We just got him a fresh copy of what I believe the
21 up-to-the-minute notes of Detective Greaver. And earlier
22 today I provided defense counsel, it was a cell phone mapping,
23 but it was a changed mapping because we extracted -- all the

1 calls were basically layered on top of each other. So we've
2 extracted them out one by one so now they're about 80 to 100
3 pages. So I think with that said we have everything done and
4 we'll see you at 1:00.

5 THE COURT: 1:00 for opening statements.

6 MR. OLSON: Thank you.

7 MR. BECKER: Thank you. Your Honor.

8 (Whereupon, court was adjourned to Tuesday,
9 March 6, 2018.)

10 (Note: For further proceedings in this
11 matter, please refer to Volume II.)

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