

Office of Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida

ON APPEAL TO THE DISTRICT COURT OF APPEALS OF FLORIDA
SECOND DISTRICT

Shannon Stephen

Appellant

VS.

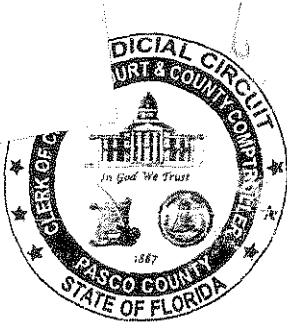
State of Florida

Appellee

Case: 06-1591CFAWS

Appeal: 10-4018

Supplemental
Transcript of Record on Appeal
Volume XV



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Pasco County, Florida*

ON APPEAL TO THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

Shannon Stephen,
Appellant,

vs.

State of Florida,
Appellee.

FIRST SUPPLEMENTAL

Transcript of Record in the case of State of Florida, Plaintiff(s) vs. Shannon Stephen, Defendant(s). Circuit Criminal Number(s) 06-1591CFAWS in the Circuit Court of the Sixth Circuit in and for the County of Pasco, State of Florida, prepared for use on appeal to the District Court of Appeals, Second District.

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SHANNON STEPHEN
VS.
STATE OF FLORIDA
CT.CR.NO. 06-1591
APPEAL NO. 10-4018
VOLUME XV PAGE 1

SUPPLEMENTAL INDEX

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DATE OF FILING

KIND OF INSTRUMENT

NOVEMBER 3, 2011

PROCEEDINGS: JURY TRIAL VOLUME II HELD MAY 24, 2010

201-416

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY
CASE NO. CRC06-01591CFAWS-3

STATE OF FLORIDA, :
 :
 Plaintiff, :
-VS- :
 :
 SHANNON L. STEPHEN, :
 :
 Defendant. :

889475

PROCEEDINGS: JURY TRIAL
BEFORE: HONORABLE SHAWN CRANE
Circuit Judge
Sixth Judicial Circuit
DATE: May 24, 2010
PLACE TAKEN: Pasco County Government Center
7530 Little Road
New Port Richey, FL 34654
REPORTED BY: Maria A. Fortner, RPR
Notary Public
State of Florida at Large
Volume II
Pages 201 - 416

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2011 NOV -3 PM 4:11

FILED FOR RECORD
PASCO COUNTY, FLORIDA

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1 P-R-O-C-E-E-D-I-N-G-S

2 OPEN COURT:

3 MR. ROSARIO: In my attempt to go green,
4 I've gone with these and fortunately they don't
5 sip so easily. So I'm sorry.

6 Of the people who drink alcoholic
7 beverages, has anyone noticed signs of
8 impairment of people that have been drinking?
9 Anybody?

10 PROSPECTIVE JUROR SWEET: (Indicating.)

11 MR. ROSARIO: Ms. Sweet, what's one that
12 you've seen?

13 PROSPECTIVE JUROR SWEET: Well, slurring
14 their speech.

15 MR. ROSARIO: Okay.

16 PROSPECTIVE JUROR SWEET: They can't
17 really -- even just sitting, they kind of have
18 problems, they can't really focus at all.

19 MR. ROSARIO: Mr. Lightfoot?

20 PROSPECTIVE JUROR LIGHTFOOT: Same deal.
21 You know, unsteady, slurred speech, vision
22 impaired, the usual.

23 MR. ROSARIO: Has anybody ever seen --

24 PROSPECTIVE JUROR JONES: (Indicating.)

25 MR. ROSARIO: Yes. Ms. Jones.

1 PROSPECTIVE JUROR JONES: Their personality
2 changes.

3 MR. ROSARIO: They become what?

4 PROSPECTIVE JUROR JONES: Some people get
5 really funny and some people get really nasty.

6 MR. ROSARIO: Some become lovers? Some
7 become fighters?

8 PROSPECTIVE JUROR NIGELS: Yeah. Uh-huh.

9 MR. ROSARIO: Does everybody agree with
10 that?

11 PROSPECTIVE JURY PANEL: (Indicating.)

12 MR. ROSARIO: That every person is affected
13 by alcohol slightly differently? Does everyone
14 agree with that?

15 PROSPECTIVE JURY PANEL: (Indicating.)

16 MR. ROSARIO: Do you ever see people get
17 sleepy?

18 PROSPECTIVE JUROR JONES: Oh, yeah.

19 MR. ROSARIO: Who said they fall asleep?

20 PROSPECTIVE JUROR GRINER: (Indicating.)

21 MR. ROSARIO: And I believe you said you
22 lose attention?

23 PROSPECTIVE JUROR GRINER: Uh-huh.

24 MR. ROSARIO: Is there anyone here that
25 thinks that you can't tell whether somebody is

1 under the influence of alcoholic beverages
2 simply by looking at them and being close to
3 them? Does anyone feel that you just can't
4 tell?

5 PROSPECTIVE JUROR JONES: It depends on the
6 person.

7 MR. ROSARIO: Right. It depends on the
8 person.

9 PROSPECTIVE JUROR JONES: It really depends
10 on the person.

11 MR. ROSARIO: But if you're trained to look
12 for things, do you think it might be a little
13 easier for you?

14 PROSPECTIVE JUROR JONES: Once you get to
15 know the person, you can tell. So, yeah.

16 MR. ROSARIO: I know several of you have
17 talked about doing field sobriety tests and
18 being allowed to go, but how many people have
19 seen that person on the side of the road and
20 touch their finger to their nose? How many
21 people have seen that driving down the road?

22 PROSPECTIVE JURY PANEL: (No response.)

23 MR. ROSARIO: I'm almost done. I just want
24 you to know that.

25 How many people here have a cell phone?

1 PROSPECTIVE JURY PANEL: (Indicating.)

2 MR. ROSARIO: Let me change it around. Who
3 doesn't have a cell phone?

4 PROSPECTIVE JUROR HALL: (Indicating.)

5 MR. ROSARIO: Ms. Hall, you don't have a
6 cell phone?

7 PROSPECTIVE JUROR HALL: No, sir. I've got
8 too many court fees to pay for.

9 MR. ROSARIO: Too many court fees?

10 PROSPECTIVE JUROR HALL: I don't even want
11 to get into that.

12 MR. ROSARIO: Okay. I thought with Verizon
13 you pay a ton of fees, but you get good
14 coverage. With T-Mobile, you get this, you get
15 that. There's a lot of people that go through
16 that.

17 PROSPECTIVE JUROR HALL: You know what,
18 once I have the means to do so, that's at the
19 top of my list, but until then I've got other
20 things more important to take care of.

21 MR. ROSARIO: Have you ever owned a cell
22 phone?

23 PROSPECTIVE JUROR HALL: Yes.

24 MR. ROSARIO: So everyone here has owned a
25 cell phone in their life? Yes?

1 PROSPECTIVE JURY PANEL: (Indicating.)

2 MR. ROSARIO: Has anyone used it while
3 driving down the road? Everybody?

4 PROSPECTIVE JURY PANEL: Yes.

5 MR. ROSARIO: Has anyone called somebody
6 and the phone went right to voice mail?
7 Anybody?

8 PROSPECTIVE JURY PANEL: (Indicating.)

9 MR. ROSARIO: Did anybody, when it went
10 right to voice mail, just hang up and dial
11 again? How many people have done that?

12 PROSPECTIVE JURY PANEL: (No response.)

13 MR. ROSARIO: How many people here use a
14 Bluetooth?

15 PROSPECTIVE JUROR MIRABILE: (Indicating.)

16 MR. ROSARIO: Ms. Mirabile, you use a
17 Bluetooth?

18 PROSPECTIVE JUROR MIRABILE: Yes.

19 MR. ROSARIO: When you don't use your
20 Bluetooth and you use your phone as a regular
21 phone, do you ever punch in all the numbers and
22 forget to press send?

23 PROSPECTIVE JUROR MIRABILE: Yeah.

24 Actually I always punch in the numbers. I know
25 that sounds crazy. I never use the shortcut.

1 MR. ROSARIO: Does everyone understand that
2 if you punch in the phone numbers on a cell
3 phone, if you don't press send, nothing happens?

4 PROSPECTIVE JURY PANEL: (Indicating.)

5 MR. ROSARIO: How many people has that
6 happened to? One? Two? A couple?

7 It happens to me all the time, because I'm
8 a Bluetooth guy, and when I'm regularly using my
9 phone, I punch in the number and put it to my
10 ear, and I'm, like, and then I've got to realize
11 you've got to press send.

12 Cell phones are not like regular landline
13 phones. Does everybody agree with me on that?

14 PROSPECTIVE JURY PANEL: (Indicating.)

15 MR. ROSARIO: When you pick up a landline
16 phone, you get a dial tone, right?

17 PROSPECTIVE JURY PANEL: (Indicating.)

18 MR. ROSARIO: Who has Sprint?

19 PROSPECTIVE JUROR REMMEL: (Indicating.)

20 MR. ROSARIO: That's Ms. Rimmel.

21 PROSPECTIVE JUROR ALFONSO: (Indicating.)

22 MR. ROSARIO: Mr. Alfonso.

23 PROSPECTIVE JUROR PALMER: (Indicating.)

24 MR. ROSARIO: Ms. Palmer.

25 PROSPECTIVE JUROR PALMER: Yes, sir.

1 MR. ROSARIO: Anyone in that next row back?

2 PROSPECTIVE JURY PANEL: (No response.)

3 MR. ROSARIO: No? How about over on this
4 side?

5 PROSPECTIVE JUROR COULTER: (Indicating.)

6 MR. ROSARIO: Mr. Coulter has Sprint.

7 Who has Verizon?

8 PROSPECTIVE JUROR JONES: (Indicating.)

9 PROSPECTIVE JUROR SPRINGSTEEN:

10 (Indicating.)

11 PROSPECTIVE JUROR FORTON: (Indicating.)

12 PROSPECTIVE JUROR STEPHENSON: (Indicating.)

13 PROSPECTIVE JUROR DANG: (Indicating.)

14 PROSPECTIVE JUROR NIGELS: (Indicating.)

15 MR. ROSARIO: Okay. We have Ms. Jones.

16 Ms. Springsteen, Mr. Forton, Mr. Stephenson,

17 Mr. Dang, Mr. Nigels.

18 PROSPECTIVE JUROR NIGELS: Uh-huh. Nigels.

19 PROSPECTIVE JUROR AMAR: (Indicating.)

20 MR. ROSARIO: Dr. Amar.

21 PROSPECTIVE JUROR FREEMAN: (Indicating.)

22 MR. ROSARIO: Mr. Freeman.

23 PROSPECTIVE JUROR DILLARD: (Indicating.)

24 PROSPECTIVE JUROR PLUMB: (Indicating.)

25 PROSPECTIVE JUROR LAMB: (Indicating.)

1 MR. ROSARIO: Over on this side, we have
2 Ms. Dillard, Mr. Plumb, Ms. Lamb.

3 How many people have Metro PCS?

4 PROSPECTIVE JUROR SCHWANKE: (Indicating.)

5 MR. ROSARIO: Mr. Schwanke.

6 PROSPECTIVE JUROR SCHWANKE: Schwanke.

7 MR. ROSARIO: It's funny, my son watches
8 Jimmy Neutron and there's Twonkies. So I'm
9 going to think of it that way.

10 Did I say T-Mobile?

11 PROSPECTIVE JUROR LIGHTFOOT: (Indicating.)

12 PROSPECTIVE JUROR BRANSTUTTER:

13 (Indicating.)

14 PROSPECTIVE JUROR DOVER: (Indicating.)

15 PROSPECTIVE JUROR SHEALY: (Indicating.)

16 MR. ROSARIO: Mr. Lightfoot,
17 Ms. Branstutter, Mr. Dover, and Ms. Shealy.

18 How many people here have seen their cell
19 phone bill?

20 PROSPECTIVE JURY PANEL: (Indicating.)

21 MR. ROSARIO: I've recently gone to all
22 electronic. I don't see mine very much anymore,
23 but have everyone seen theirs?

24 PROSPECTIVE JURY PANEL: (Indicating.)

25 MR. ROSARIO: How many have gone all

1 electronic?

2 PROSPECTIVE JURY PANEL: (Indicating.)

3 MR. ROSARIO: A couple of people. Has
4 anyone ever disputed a cell phone bill?

5 PROSPECTIVE JUROR LEE: Uh-huh.

6 MR. ROSARIO: That would be Ms. Lee.

7 Anyone else?

8 PROSPECTIVE JUROR NICHOLS: (Indicating.)

9 PROSPECTIVE JUROR COULTER: (Indicating.)

10 PROSPECTIVE JUROR SANTORO: (Indicating.)

11 PROSPECTIVE JUROR PLUMB: (Indicating.)

12 PROSPECTIVE JUROR JONES: (Indicating.)

13 PROSPECTIVE JUROR SHEALY: (Indicating.)

14 MR. ROSARIO: Mr. Nichols, Mr. Coulter,

15 Ms. Santoro, Mr. Plumb, Ms. Jones, and

16 Ms. Shealy.

17 Why did you dispute bills? Let's start
18 with you, Ms. Lee.

19 PROSPECTIVE JUROR LEE: Just whenever we
20 had added the texting and things, there was
21 other things that were added, and so we would
22 call. We had to keep on top of it because there
23 were charges that were on there that were not
24 legitimate.

25 MR. ROSARIO: Right. Mr. Nichols.

1 PROSPECTIVE JUROR NICHOLS: I got Cingular.
2 I had two phones put on one. I had everything,
3 including web, text, the whole nine yards. My
4 bill was supposed to be like \$90 each phone.
5 You know, the first month the bill came in \$872.

6 MR. ROSARIO: Well, cell phone people might
7 be testifying in this case, and I want to make
8 sure anyone who has hard feelings for their cell
9 phone companies, you understand that you have to
10 be fair and impartial?

11 PROSPECTIVE JUROR NICHOLS: Yes.

12 MR. ROSARIO: Okay. Has anyone over here
13 ever disputed a cell phone bill?

14 PROSPECTIVE JUROR JONES: (Indicating.)

15 MR. ROSARIO: Same type of reason?

16 PROSPECTIVE JUROR JONES: Actually I was
17 traveling out-of-state, at the time I had
18 Alltel, and it was a Florida plan. And I called
19 before we left and switched it to, you know,
20 something you could use out-of-state, and the
21 person I spoke to didn't put it through, and I
22 called and they fixed it all.

23 MR. ROSARIO: Okay. Now, in this case
24 there's going to be direct evidence and
25 circumstantial evidence. Okay. Direct evidence

1 is a witness coming on and saying, I saw that
2 happen. Does everybody understand that?

3 PROSPECTIVE JURY PANEL: (Indicating.)

4 MR. ROSARIO: And circumstantial evidence
5 is where you put facts together you make
6 rational deductions from one to the other to
7 come to a conclusion that this fact exists.
8 Does everyone understand that?

9 PROSPECTIVE JURY PANEL: (Indicating.)

10 MR. ROSARIO: Does anyone have a problem
11 with that?

12 PROSPECTIVE JURY PANEL: (Indicating.)

13 MR. ROSARIO: Has anyone here ever seen
14 snow?

15 PROSPECTIVE JUROR JONES: Yes.

16 MR. ROSARIO: How many people lived up
17 North before they moved down here?

18 PROSPECTIVE JUROR GRINER: (Indicating.)

19 MR. ROSARIO: Let me go with Mr. Griner
20 right here. Where did you live up North?

21 PROSPECTIVE JUROR GRINER: Indiana.

22 MR. ROSARIO: Indiana. Was there ever a
23 time in Indiana when you went to bed, and it was
24 a cold knight, all right, but you looked outside
25 and everything was normal, and then the next

1 morning when you woke up, there was this white
2 substance all over the ground? Did you see it
3 snow?

4 PROSPECTIVE JUROR GRINER: That night?

5 MR. ROSARIO: That night.

6 PROSPECTIVE JUROR GRINER: Oh, no, not
7 unless I happened to be awake.

8 MR. ROSARIO: So since you didn't see it
9 snow, you have to link together circumstantially
10 that it snowed?

11 PROSPECTIVE JUROR GRINER: Yeah.

12 MR. ROSARIO: Does everybody understand
13 that? That's that easy way to explain
14 circumstantial evidence. You don't have to see
15 something, but when you put one factor together
16 with another, with another, you can come to a
17 reasonable conclusion that overnight it snowed.
18 Does everybody agree with that?

19 PROSPECTIVE JURY PANEL: (Indicating.)

20 MR. ROSARIO: Any questions with that?

21 PROSPECTIVE JURY PANEL: (No response.)

22 MR. ROSARIO: May I have one moment? Thank
23 you.

24 THE COURT: All right.

25 MR. FOOTE: May I approach, Judge?

1 THE COURT: Yes.

2 BENCH CONFERENCE:

3 MR. FOOTE: Are we going to take a break,
4 give them a break? I'm going to definitely be
5 going at least an hour straight through.

6 THE COURT: I think I may kind of give them
7 like 20 minutes to use the restroom and stretch,
8 grab a drink if they want to, and then come
9 back. We're not going to take an hour or an
10 hour and a half.

11 MR. FOOTE: Oh, that's fine.

12 THE COURT: Because we have other jurors
13 downstairs.

14 MR. FOOTE: I understand.

15 OPEN COURT:

16 THE COURT: All right. Members of the
17 jury, what we're going to do right now is we're
18 going to take a break. It's not going to be a
19 full lunch hour kind of break, but I'm going to
20 ask you to take about 20 minutes, if you would,
21 to give you a chance to stretch and use the
22 restroom, if you need to grab a quick snack, if
23 you need to, at the snack bar. I'm going to ask
24 you to come back in about 20 minutes or so.

25 And just to let you know, we have other

1 folks, in the event that we aren't able to
2 select a jury from this panel, we have another
3 group of folks waiting, so that's why we're on
4 kind of an expedited basis, because they're
5 waiting to come up too like you-all did. So we
6 have to kind of move the process a little longer
7 than perhaps anyone of us would like.

8 That's just the reality of the situation in
9 which we find ourselves, but I think it's
10 important to give you some time to stretch, and
11 like I say, relax for a little bit and use the
12 restroom and that sort of thing.

13 So what I'm going to do is I'm going to ask
14 you to do the same procedure you did last time,
15 look to your right, look to your left, see where
16 you're sitting.

17 You will meet outside the courtroom with
18 Deputy Flanagan, and he will escort you in. So
19 we'll see you back in about 20 minutes.

20 RECESS TAKEN:

21 OPEN COURT:

22 MR. ROSARIO: Before we bring the jury
23 back, can I petition the Court to release the
24 evidence that was given in the motion to
25 suppress the videotape. I am going to have to

1 make another copy without audio.

2 THE COURT: Yes, I think you had no
3 disagreement with that. Do you agree with that,
4 Mr. Foote?

5 MR. FOOTE: We could set it for a hearing.
6 No, I don't care. No objection.

7 MR. ROSARIO: Madam Clerk said she needs a
8 court order.

9 THE CLERK: That's what I was told
10 downstairs.

11 THE COURT: Okay. Well, maybe someone can
12 generate an order and I'll sign it.

13 Ms. Branstutter apparently has some health
14 issues, and I asked anybody if they had any
15 health issues and she didn't speak up.

16 MR. FOOTE: Well, that's why I was
17 surprised, because usually you get about six or
18 seven of those and I didn't hear anything.

19 THE COURT: No, I asked. I said health
20 issues, child care issues, work issues. I think
21 maybe what happened was the work issues just
22 kind of took precedence and everybody kind of
23 forgot perhaps the other things, but she didn't
24 indicate anything at that time but apparently
25 now she has got rheumatoid arthritis and has

1 indicated that she's in a great deal of pain.

2 MR. ROSARIO: I have no objection to
3 striking her for cause at this point, she
4 doesn't have to come back.

5 MR. FOOTE: Does the Court want to
6 reclarify that prior to me beginning?

7 THE COURT: I will do that again just in an
8 abundance of caution. But as far as she goes,
9 any objection, fellows? She's also the person
10 who, you know all the things she's said.

11 MR. FOOTE: She would be for cause anyway.

12 THE COURT: I think she was pretty adamant
13 about that. Half the time she's been visited
14 about that, if nothing else I think perhaps was
15 more adamant each time.

16 MR. FOOTE: Sure. And, Judge, also I did
17 go downstairs to Judge Salton, and I met with
18 the bailiff, and Mr. Hammond is supposed to be
19 asking for a reset. It is a VOP final hearing.

20 THE COURT: Well, I had talked to Judge
21 Salton as you requested earlier.

22 MR. FOOTE: Okay. Thank you.

23 THE COURT: He knows where you are.

24 MR. FOOTE: Okay.

25 THE COURT: Okay. Is there anything else

1 we need to take up before we return the jury?

2 MR. FOOTE: No, Judge.

3 THE BAILIFF: Bring them in, Judge?

4 THE COURT: Yes, please.

5 THE BAILIFF: The prospective jury is now
6 entering the courtroom, Your Honor.

7 THE COURT: Thank you.

8 PROSPECTIVE JURY PRESENT:

9 THE BAILIFF: Prospective jurors are all
10 present and seated in the courtroom, Your Honor.

11 THE COURT: All right. Thank you very
12 much.

13 Ms. Branstutter, we have had the
14 opportunity, and I've had the opportunity to
15 discuss with the bailiffs your situation, and
16 also with the lawyers about your situation, and
17 based upon that, you may be excused at this
18 time. All right.

19 PROSPECTIVE JUROR BRANSTUTTER: Thank you.

20 THE COURT: All right. And before the
21 Defense has their opportunity to continue with
22 the voir dire process, once again I thank
23 you-all for your attention. I know it's been a
24 long morning and I'm working you into the
25 afternoon.

1 I need to once again ask anyone, does
2 anyone have any physical or health issues that
3 we need to know about at this time? I ask that
4 in relation to job and health and child care or
5 anything else. Is there anything that I need to
6 know? Anybody, raise their hand.

7 PROSPECTIVE JUROR SANTORO: (Indicating.)

8 THE COURT: All right. And, Ms. Santoro,
9 we've already talked to you about your
10 situation.

11 PROSPECTIVE JUROR SANTORO: Yes. As far as
12 the job goes.

13 THE COURT: Right. I think we've already
14 talked about your situation, and that hasn't
15 changed as far as all those other issues,
16 correct?

17 PROSPECTIVE JUROR SANTORO: Correct.

18 THE COURT: Okay. At this point in time
19 you still believe that you cannot be fair and
20 impartial, correct?

21 PROSPECTIVE JUROR SANTORO: Yes.

22 THE COURT: Mr. Foote, you may inquire.

23 MR. FOOTE: Thank you, Your Honor. Good
24 afternoon, ladies and gentlemen. My name is
25 Kenneth Foote, as I introduced myself before,

1 and I represent Shannon Stephen.

2 Procedurally the Defense usually goes last
3 on everything, and so thank you for your
4 attention, and I'd just ask you to pay attention
5 to some of the questions.

6 Once again, as the Judge said, there is no
7 right answer, there is no wrong answer, but we
8 would appreciate your honest answer, whatever it
9 might be.

10 If there's some issues that we've already
11 gone over, the Judge or the State Attorney has
12 gone over, I'm going to try not to repeat some
13 of those things, but I would ask you to speak in
14 a loud and clear voice.

15 Now, obviously we know that we're here for
16 a DUI manslaughter case. And when people,
17 whether it be any type of DUI case, they hear
18 about alcohol. normally when they come in to
19 jury selection, people have a different opinion
20 on alcohol.

21 Meaning this: How many people go out to
22 dinner and have a glass of wine with dinner, or
23 beer? By a show of hands.

24 PROSPECTIVE JURY PANEL: (Indicating.)

25 MR. FOOTE: How many people, after having

1 that, knew a spouse or friend or whoever, has
2 you drive your vehicle after dinner?

3 PROSPECTIVE JURY PANEL: (Indicating.)

4 MR. FOOTE: Okay. Now, it's important to
5 know that it is not illegal to have a glass of
6 wine or a beer and drive your vehicle. All
7 right. And a lot of time in everyday life, when
8 you're at the courthouse, people know that.

9 They go out, they have a drink, don't think
10 about it, they judge whether or not they're okay
11 to drive or not, or you have a designated driver
12 that will usually take that person home.

13 So it's very important to understand that
14 because you have some alcohol with dinner or
15 whatever and you drive your vehicle, that is not
16 against the law.

17 Does anyone disagree with that or have a
18 question about it?

19 PROSPECTIVE JURY PANEL: (No response.)

20 MR. FOOTE: Okay. Now, there is a law with
21 regard to consuming alcohol or controlled
22 substances, the amount that you have in your
23 system, so that's when we heard about breath
24 tests and different things, blood tests.

25 And the Judge will explain all that to you

1 later, but I just want you to understand,
2 because some will have a strict opinion, as we
3 hear a couple, no alcohol whatsoever, and we
4 just want to make sure that those people can be
5 fair when it comes to, if you heard someone had
6 a drink, that that doesn't mean they're guilty
7 of anything, they actually had to have violated
8 the law, which Judge Crane will give you if
9 you're selected on the jury. Does everyone
10 understand that?

11 PROSPECTIVE JURY PANEL: (Indicating.)

12 MR. FOOTE: Yes?

13 Okay. The second thing, we want you to
14 keep an open mind. And when I say that, when
15 you come in for jury selection, you come in
16 through the door, first thing people look around
17 and see where everyone is.

18 They know where the court reporter is, they
19 can tell who the bailiff is, and there's
20 obviously the Judge. But then you would want to
21 know if it's a criminal case, who's the person
22 that's charged with something, and then what did
23 they do, what did they do.

24 Did anyone think about that when they came
25 in, I wonder what he did? A show of hands. I

1 wonder what he did? Did anyone not think about
2 that at all?

3 PROSPECTIVE JUROR SCHWANKE: (Indicating.)

4 MR. FOOTE: Okay. Mr. Schwanke?

5 PROSPECTIVE JUROR SCHWANKE: Schwanke, yes.

6 MR. FOOTE: You thought that or you didn't
7 think about, I wonder what he did?

8 PROSPECTIVE JUROR SCHWANKE: Well, I had no
9 idea that it was going to be a DUI case or
10 anything like that. When I came in, I had no
11 thoughts ahead of time.

12 MR. FOOTE: Did you know it was a criminal
13 case?

14 PROSPECTIVE JUROR SCHWANKE: Yes.

15 MR. FOOTE: Mr. Alfonso, did you think that
16 or not think that?

17 PROSPECTIVE JUROR ALFONSO: I didn't think
18 it at all.

19 PROSPECTIVE JUROR DECHANT: I didn't
20 either.

21 MR. FOOTE: Mr. DeChant.

22 All right. Now, for the people that did,
23 there's no right or wrong answer. We're talking
24 about human nature, what people normally do. We
25 want you to be normal, whatever that is. A

1 bunch of different people from different places.
2 Okay?

3 Why I bring that up is because it goes to
4 the burden of proof in this case and how
5 criminal cases work. If you walked in and
6 thought, I wonder what he did, automatically and
7 subliminally you think he did something, he did
8 something. And some people think, well, if he
9 didn't do anything, he wouldn't be sitting here.
10 You heard that too. If he didn't do anything,
11 he wouldn't be here.

12 Now, you heard the Judge earlier say that
13 there is a presumption of innocence, and that's
14 under our Constitution. If you're charged with
15 something, or someone accuses you of something,
16 at that point you have a presumption of
17 innocence, which means you're not guilty.

18 The State asked the question, if you were
19 to go back there right now and render a verdict,
20 after hearing no evidence, what would your
21 verdict have to be? Not guilty.

22 Does anybody disagree with that? They
23 think, well, because we're here, something must
24 have happened?

25 Ms. Hall, what do you think about that, the

1 fact that we're here, he had to have done
2 something? Stephanie Hall?

3 PROSPECTIVE JUROR HALL: Yes. I'm not
4 quite sure I was selected, but, all right, I can
5 see both sides of human nature.

6 MR. FOOTE: Okay. I'm just asking as a
7 general question. Before you were saying two
8 people are dead, so you were trying to answer
9 the State's question about, he said something
10 about if you don't prove all the elements, and
11 you said, well, how?

12 PROSPECTIVE JUROR HALL: Well, I mean he
13 said all the elements. Whether somebody was
14 drinking or not, whether a DUI was proven or
15 not, two people are still dead, so it's still
16 vehicular manslaughter. Whether or not the DUI
17 was added on to it, what I didn't understand --
18 I thought he was trying to tell me that if there
19 was no DUI, there was no nothing. That's the
20 way that I took it the first time.

21 MR. FOOTE: In a criminal case the Judge is
22 going to read you the law at the end of the
23 trial, okay, if you're one of the jurors, he'll
24 read the law at the end. And he's going to say
25 something like, before you can find the

1 defendant guilty, okay, first you're going to
2 find two things: One, that a crime was
3 committed; and that the defendant was the one
4 that committed the crime. Does that make sense?

5 PROSPECTIVE JUROR HALL: Uh-huh.

6 MR. FOOTE: First you've got to find out if
7 there was a crime, and then did the defendant
8 commit that crime. The other things he's going
9 to tell you is the actual law in this particular
10 case. Okay. Does that make sense?

11 You know, you have to prove the person was
12 driving. Then you have to prove that the person
13 was under the influence of alcohol at a certain
14 level. Then you have to prove that the person
15 killed a person.

16 So those are the elements that the State
17 was talking about. You can say they're like
18 building blocks, A, B, C, D. Before you can
19 find the defendant guilty, the State has to
20 prove all of those things. Okay?

21 So if we say that the table starts off
22 blank, there's nothing on the table, no
23 evidence, we already agreed that if you had a
24 verdict now, it would be not guilty.

25 Throughout the trial the State is going to

1 bring evidence, those building blocks, there's
2 A, here's B, there's C, and if they reach D,
3 then your verdict should be guilty.

4 If one of those is missing, they've proved
5 A, C and D, but the B is missing, what should
6 your verdict be then? Ms. Hall, what do you
7 think? If one of those are missing, they
8 haven't proved all their elements?

9 PROSPECTIVE JUROR HALL: I just don't think
10 my personal opinion should be put into it.

11 MR. FOOTE: Sure. You could be on my jury.
12 Tell me honestly what you think. If the Judge
13 tells you that they have to prove all of those
14 things and there's one missing, are you going to
15 say, oh, it doesn't matter, I'll just fill it in
16 myself?

17 PROSPECTIVE JUROR HALL: No, but I'd want
18 to.

19 MR. FOOTE: Okay. Well, why? Tell me why.

20 PROSPECTIVE JUROR HALL: Well, because if
21 you've got three out of four, you get a
22 75 percent, and just because you don't have the
23 whole evidence of it there, so the whole absence
24 of evidence isn't evidence? That's nonsense.

25 MR. FOOTE: You were saying if there was 75

1 percent. Would that be enough for you?

2 PROSPECTIVE JUROR HALL: Like I said,
3 that's a good percentage. It's likely. It's
4 possibly probable. I mean if they were there
5 for all the other events and just happened to
6 sneak out the door for that one instance, then I
7 would want to believe that, yeah, that
8 75 percent make me lean in that direction.

9 MR. FOOTE: Okay. Does anyone else agree
10 with that, that 75 percent is good enough?

11 PROSPECTIVE JUROR STEPHENSON: No.

12 PROSPECTIVE JUROR REMMEL: No.

13 MR. FOOTE: Like you said, you would want
14 to lean.

15 PROSPECTIVE JUROR HALL: Lean, yes. I
16 would kind of agree with it, but I would want to
17 lean.

18 MR. FOOTE: Okay. If the Judge were to
19 tell you that that's not good enough, that the
20 State has to prove all the elements beyond and
21 to the exclusion of every reasonable doubt, and
22 if one of those was missing, would you kind of
23 still lean anyway, they got it close enough?

24 PROSPECTIVE JUROR HALL: It depends on the
25 circumstances, I think. It really does.

1 MR. FOOTE: Okay. It depends on the
2 circumstances. Now, if the Judge were to tell
3 you that that is the law, whether you like it or
4 not, would you be able to follow that law?

5 PROSPECTIVE JUROR NICHOLS: Well, of
6 course, I would have to.

7 MR. FOOTE: Okay. Anybody have any
8 thoughts on that, the 75 percent idea?
9 Mr. Nichols, any thoughts on that?

10 PROSPECTIVE JUROR NICHOLS: I thought what
11 I was saying basically if you have three out of
12 the four, you know, that basically states, like,
13 he is guilty, you know, depending on what, you
14 know, the B part that's missing is.

15 I mean, yes, if he was found guilty of
16 drinking and driving, and he was behind the
17 wheel, but you missed one certain factor in it,
18 then, you know -- I mean, one small step, if
19 somebody seen him get behind the wheel or
20 something, something small like that, you know,
21 then I would have to lean towards it.

22 But at the same time, if it was the
23 opposite, you know, if wasn't under the -- you
24 know, over the legal limit, then it really
25 depends on -- you'd have to hear that evidence

1 before you get --

2 MR. FOOTE: Right. And the difficulty
3 about this thing that we're doing now is we're
4 not allowed to tell you all the details right
5 now because then you would be answering the
6 questions. So we're trying to get general
7 ideas. It's a weird process how we do this, but
8 we're asking general ideas of whether or not you
9 can follow the law.

10 If the Judge were to tell you, okay, that
11 75 percent is not enough, you've got to hit all
12 those elements before the State gets a
13 conviction in this case, and you're going, oh,
14 it's closed, maybe I'll just give him that
15 conviction, and the Judge says, no, they have to
16 prove each and every element of the crime, would
17 you hold him to that burden or would you give
18 him a break and cut out B?

19 PROSPECTIVE JURY PANEL: (No response.)

20 MR. FOOTE: Does everybody understand where
21 we're going with that?

22 Mr. Stephenson, we haven't heard from you.
23 What do you think about that? If our
24 Constitution says that a person is accused of a
25 crime, they're presumed to be innocent until the

1 State and only the State -- they've accused him
2 of something, now they've got to prove it, and
3 in order to prove something, they tell you, for
4 whatever crime it is, let's say it's A, B, C and
5 D, then you can find him guilty. If B is
6 missing --

7 MR. ROSARIO: Judge, may we approach?

8 THE COURT: You may.

9 BENCH CONFERENCE:

10 MR. ROSARIO: Judge, from what I'm looking
11 at and the way they're reacting is Mr. Foote is
12 leaving out the phrase, "They've got to prove
13 each element beyond a reasonable doubt." If he
14 puts that in there, I think this would go more
15 smoothly. If he's saying it's got to be proved,
16 I can prove it by direct evidence or
17 circumstantial evidence, and that's what I think
18 they're fighting over.

19 MR. FOOTE: Beyond a reasonable doubt?

20 Sure. That's fine.

21 THE COURT: Okay.

22 OPEN COURT:

23 MR. FOOTE: Mr. Stephenson, we were with
24 you. We were talking about A, B, C and D, if
25 the Judge tells you the State must prove each

1 one of those beyond and to the exclusion of
2 every reasonable doubt, and one of those pieces
3 are missing, would you tend to go ahead and
4 lean, and say, well, they've got three out of
5 four, that's good enough? Or would you require
6 and hold the State to their burden and make them
7 prove what they're supposed to prove?

8 PROSPECTIVE JUROR STEPHENSON: Mr. Rosario
9 said earlier that there was going to be some
10 circumstantial evidence. So if B doesn't
11 support C and D, then you could not find him
12 guilty if the circumstantial evidence didn't
13 support the rest of his case.

14 MR. FOOTE: Okay. Anyone else? Any
15 thoughts on that?

16 PROSPECTIVE JURY PANEL: (No response.)

17 MR. FOOTE: Okay. And this is very
18 important, because sometimes people react out of
19 emotion. As we said, this is a very serious
20 case and two people lost their lives, and so we
21 want to make sure that people don't just come in
22 with either anger or sympathy for someone and
23 say, whoever is sitting in that chair, guilty.

24 Mr. Forton, would you want that same type
25 of attention to your case if you were charged

1 with something, or would you want people to just
2 go, hey, I don't even like the way that sounds,
3 he should be guilty, and they haven't even asked
4 one question?

5 PROSPECTIVE JUROR FORTON: Yeah, I would
6 want my fair chance.

7 MR. FOOTE: You would want your fair day in
8 court to make the State prove their burden; is
9 that correct?

10 PROSPECTIVE JUROR FORTON: Uh-huh.

11 MR. FOOTE: Would everyone agree with that?

12 PROSPECTIVE JURY PANEL: (Indicating.)

13 MR. FOOTE: It's a little different when
14 you're sitting on that side, and for whatever
15 reason, but here we are today on this particular
16 case. If you were on the other side, would you
17 want that jury to be as fair as they can and
18 have an open mind until they hear all of the
19 evidence? Mr. DeChant.

20 PROSPECTIVE JUROR DECHANT: Yes.

21 MR. FOOTE: Okay. Now, we were talking
22 about alcohol, drinking and not drinking, for
23 whatever reason. Some people have personal
24 reasons, they could be religious reasons, they
25 could have been, I stopped drinking, I have

1 family members that have drank alcohol. Some
2 say they were the designated driver. Okay. Who
3 were the designated drivers that they don't
4 drink and drive?

5 PROSPECTIVE JUROR DILLARD: (Indicating.)

6 PROSPECTIVE JUROR JONES: (Indicating.)

7 MR. FOOTE: Have you ever been the
8 designated driver driving those friends home and
9 they've just had way too much, and you're
10 driving and you're listening to them in the car?

11 PROSPECTIVE JUROR JONES: Uh-huh.

12 MR. FOOTE: Some amusing things that you
13 might hear?

14 PROSPECTIVE JUROR JONES: Sometimes it's
15 amusing, sometimes it's, oh, God, get me out of
16 here.

17 MR. FOOTE: Right. It's like you're doing
18 a job, but you know you're doing something good
19 because they're not driving, is that correct,
20 Ms. Santoro?

21 PROSPECTIVE JUROR SANTORO: Yes.

22 MR. FOOTE: Okay. Any of those people just
23 ever fall asleep in your car and then you've got
24 to wake them up once they get to the house?

25 PROSPECTIVE JUROR JONES: No.

1 MR. FOOTE: Anyone ever drive anyone and
2 they kind of like after awhile pass out, Ms.
3 Santoro?

4 PROSPECTIVE JUROR SANTORO: Uh-huh.

5 MR. FOOTE: Okay, we're here, and now
6 you've got to not only drive them, you've got to
7 safely get them in the house. Has anyone ever
8 been that person? You might have had a little
9 bit to much to drink? And then the next day you
10 say, well, girl, you were having a good time
11 last night, you were looking at that guy, you
12 were dancing on the table, you had an umbrella
13 on your head, and you don't even remember it,
14 but you go, oh, my, God; but you're glad that
15 your friends got you home, right?

16 Okay. So as it was brought up by the
17 State, when people have alcohol, they react in
18 different ways. Some mean, some nice, okay, but
19 there are people that sometimes, if you're being
20 driven home, if you pass out, you don't remember
21 what's going on.

22 Now, has anyone ever, besides being driven
23 home, has drank so much, that you don't remember
24 what happened? By a show of hands. One, two,
25 three, four, five, six.

1 PROSPECTIVE JUROR JONES: (Indicating.)

2 PROSPECTIVE JUROR NICHOLS: (Indicating.)

3 PROSPECTIVE JUROR MIRABILE: (Indicating.)

4 PROSPECTIVE JUROR ALBERGO: (Indicating.)

5 PROSPECTIVE JUROR SHEALY: (Indicating.)

6 MR. FOOTE: And you relied on what people
7 told you the next day, Ms. Shealy?

8 PROSPECTIVE JUROR SHEALY: Yeah. I didn't
9 believe what they said.

10 MR. FOOTE: Right. Okay. Now, with regard
11 to what we're saying, this is an accusation.
12 Has anyone ever been accused of doing something
13 you really didn't do -- I'm not talking about a
14 crime -- either by your husband, your wife, your
15 boyfriend, your girlfriend, your mother, your
16 father, your teacher, your boss, and you know
17 you didn't do it?

18 PROSPECTIVE JUROR SHEALY: Yes.

19 MR. FOOTE: Isn't that a bad feeling?

20 PROSPECTIVE JUROR SHEALY: (Indicating.)

21 MR. FOOTE: Okay. And has it ever come out
22 then that you had to prove that, okay, I didn't
23 do it, or it came out later and the person gave
24 you an apology or something like that?

25 PROSPECTIVE JUROR NICHOLS: I never got an

1 apology.

2 MR. FOOTE: You never got an apology?

3 Mr. Nichols, what were the circumstances?

4 PROSPECTIVE JUROR NICHOLS: Oh, my buddy
5 ended up having some stuff stolen from his
6 house. Well, I was the last one at his house.
7 We all left together. Well, he kept accusing me
8 of stealing it. He found it two doors down a
9 week later at his neighbor's house.

10 MR. FOOTE: So you were blamed because you
11 were the last one?

12 PROSPECTIVE JUROR NICHOLS: Yeah. I was
13 the last one to pull out of his yard.

14 MR. FOOTE: Does that mean you actually
15 took it?

16 PROSPECTIVE JUROR NICHOLS: No.

17 MR. FOOTE: You just happened to be the
18 last person there?

19 PROSPECTIVE JUROR NICHOLS: Yeah.

20 MR. FOOTE: The last man standing?

21 PROSPECTIVE JUROR NICHOLS: Yeah.

22 MR. FOOTE: Anyone in a similar situation
23 like that, where you just happened to be in the
24 wrong place, the wrong time, and they said,
25 well, it must be you, you did it?

1 PROSPECTIVE JURY PANEL: (No response.)

2 MR. FOOTE: Now, because this is an
3 accusation, this is a criminal accusation -- and
4 how that happens, the police arrests you, it can
5 be whatever they want to arrest you on -- the
6 State Attorney's Office actually charges people
7 in criminal charges.

8 If you're from up North, you're familiar
9 with the word "indictment", that's the formal
10 charge. Down here that's called the
11 Information. That's what Judge Crane read
12 earlier when he said two counts of DUI
13 manslaughter and one leaving the scene with
14 death. That's the document that says that's
15 what the State Attorney is charging in this
16 case.

17 How many people know that that's only an
18 accusation? That document is not evidence, it's
19 just an accusation. Does anyone disagree with
20 that?

21 PROSPECTIVE JURY PANEL: (Indicating.)

22 MR. FOOTE: Okay. Now, the State talked to
23 you about TV shows, particularly CSI, where they
24 have some miraculous shows where they can solve
25 murders in 45 minutes with commercials from

1 beginning to end. That never happens. That
2 never happens. Okay?

3 He was asking you about holding him to a
4 burden with getting certain evidence from here
5 and testing it at a lab down there, but we are
6 aware that there are certain types of
7 evidentiary techniques and technology that we do
8 have, like DNA. We have DNA. That's not a TV
9 show. We do that every day.

10 What about fingerprints? We have
11 fingerprints. Okay. So that's not CSI
12 material, that's basic things. Hair, videos,
13 those are things that we use today in criminal
14 cases. All right. So that's not high
15 technology.

16 So if you're picked, and I'm
17 cross-examining someone and asking about videos
18 or fingerprints or something like that, are you
19 going to just discount that saying, well, that's
20 for TV, or we accept that those are normal
21 things that we use every day? Okay.

22 When you came in, and the Judge read the
23 charging document, the Information, and you
24 heard that two people got killed, who got angry,
25 angry, angry? Mr. Nichols? Ms. Lee, tell me

1 why.

2 PROSPECTIVE JUROR LEE: Well, I didn't
3 think it was going to be anything like that. I
4 didn't know what type of case it was going to be
5 until you said somebody was killed, I just kind
6 of felt sad, more angry.

7 MR. FOOTE: Okay. It's tragic that any of
8 us have to be there.

9 PROSPECTIVE JUROR LEE: Right.

10 MR. FOOTE: Does that affect your ability
11 to be fair and impartial? Because there are two
12 people that lost their lives, are you going to
13 hold that either against the State or the
14 Defense?

15 PROSPECTIVE JUROR LEE: No.

16 MR. FOOTE: Mr. Nichols?

17 PROSPECTIVE JUROR NICHOLS: Like I was
18 saying earlier, my best friend and his
19 girlfriend just died three weeks ago. He was
20 drinking and driving, and lost control of the
21 car and killed both of them. I mean I just
22 talked to him before that and I told him not to
23 drive. So, you know, to me it's -- I don't
24 know, it's hard for me to actually put really
25 into words how I feel about it.

1 MR. FOOTE: Sure. Okay. Ms. Dillard, you
2 had raised your hand as well with regard to when
3 you came in and you heard the actual charge and
4 two people had died? What were your emotions
5 there? Were you angry?

6 PROSPECTIVE JUROR DILLARD: Well, no, it
7 just brings back your personal experiences.

8 MR. FOOTE: Sure.

9 PROSPECTIVE JUROR DILLARD: I can't imagine
10 a reason why someone would drink and get behind
11 the wheel. There's no excuse for it. There's
12 not.

13 MR. FOOTE: Okay. Mr. Forton, did you
14 raise your hand as well with regard to when you
15 heard the charge that two people had passed
16 away? Were you angry?

17 PROSPECTIVE JUROR FORTON: I was kind of
18 upset. If it's a DUI charge, it was
19 unnecessary. It didn't have to happen.

20 MR. FOOTE: Sure. Okay. Now, with that,
21 would you hold that against the Defense because
22 someone has been accused of doing it? Our
23 position is he has entered a not guilty plea,
24 that he did not do this. Okay. And because of
25 the seriousness of the charge and because it

1 makes you possibly angry or upset, will you hold
2 that against my client without hearing any
3 proof, Mr. Forton?

4 PROSPECTIVE JUROR FORTON: You have to hear
5 all the evidence.

6 MR. FOOTE: Well, correct, you have to hear
7 the evidence.

8 Mr. Freeman, what do you think about that,
9 because of the seriousness of the charge, he
10 happens to be sitting here, so it must be him?

11 PROSPECTIVE JUROR FREEMAN: No.

12 MR. FOOTE: Would you agree to hear the
13 evidence and hear all of the evidence entered
14 in?

15 PROSPECTIVE JUROR FREEMAN: All of the
16 evidence.

17 MR. FOOTE: Okay. The State also asked you
18 about cell phone bills and different companies
19 and things like that. And some people said,
20 hey, they would have to call in to the phone
21 company because there were inaccuracies on their
22 phone bills, okay, and a number of people raised
23 their hands and said, yes, the phone bill was
24 incorrect. Has anyone ever called because they
25 charged you too little?

1 PROSPECTIVE JURY PANEL: (No response.)

2 MR. FOOTE: Nobody? You know you made a
3 call on a certain day and that call is not on
4 there, and you said, hey, Verizon, I know I
5 called my mother in California, you forgot to
6 charge me; has anyone done that?

7 PROSPECTIVE JURY PANEL: (No response.)

8 MR. FOOTE: Okay. But we agree that there
9 have been inaccuracies on phone bills before?

10 PROSPECTIVE JURY PANEL: (Indicating.)

11 MR. FOOTE: And that's what makes you call
12 in and complain? Who had the \$800 phone bill?

13 PROSPECTIVE JUROR NICHOLS: (Indicating.)

14 MR. FOOTE: Mr. Nichols, this \$800 phone
15 bill, you were pretty surprised when you had got
16 that bill?

17 PROSPECTIVE JUROR NICHOLS: Oh, yeah.

18 MR. FOOTE: Okay. And you were obviously
19 on the phone with them?

20 PROSPECTIVE JUROR NICHOLS: Oh, yeah.

21 MR. FOOTE: Okay.

22 PROSPECTIVE JUROR NICHOLS: I made them
23 turn it off and I switched carriers.

24 MR. FOOTE: Now, with regard to the cell
25 phones, the State asked you a question, well,

1 have you ever pressed all the buttons to dial a
2 number but didn't press send, and I think a
3 couple of people raised their hand.

4 Has anyone ever had a full conversation,
5 even though you didn't press send, you had just
6 been talking on the phone? If you didn't press
7 send, so there's no one on the phone, have you
8 ever had a full conversation?

9 PROSPECTIVE JUROR JONES: No.

10 MR. FOOTE: At some point you realize
11 there's nobody on this phone and then you looked
12 at it and pressed send, correct?

13 PROSPECTIVE JURY PANEL: (Indicating.)

14 MR. FOOTE: I just want to make sure if
15 there is anyone that had a full conversation
16 without pressing send, that we would need to
17 know.

18 Okay. Now, I touched on this a little bit,
19 how many people have ever put together a jigsaw
20 puzzle, either as small or as an adult?

21 There's some that are about this tall, 20
22 pieces. Have you ever seen a 1000-piece puzzle
23 or a 5000-piece puzzle?

24 PROSPECTIVE JURY PANEL: (Indicating.)

25 MR. FOOTE: All right. When you put those

1 puzzles together, after a while you can kind of
2 get a general idea of what the thing is. But if
3 there are pieces missing, do you just frame it
4 and hang it on your wall, or do you try to find
5 that one piece that was missing if you're going
6 to hang it as artwork? Ms. Jones, if you're
7 going to use it as artwork?

8 PROSPECTIVE JUROR JONES: You, of course,
9 try and find the missing piece to complete it.

10 MR. FOOTE: Correct. And you spoke earlier
11 that you do copper-type-of-work.

12 PROSPECTIVE JUROR JONES: Copper sculpture.

13 MR. FOOTE: And that you kind of look at
14 details and connect the dots-type thing?

15 PROSPECTIVE JUROR JONES: Uh-huh.

16 MR. FOOTE: Now, in a criminal case there
17 is no substituting. If a piece is missing, that
18 picture is not complete. We don't do it like we
19 do a jigsaw puzzle at home, well, if it looks
20 like a mountain, a fisherman, I think that's
21 good enough. You wouldn't frame it, you
22 wouldn't hang it, because it's --

23 MR. ROSARIO: Judge, I'm going to object
24 and ask to approach.

25 THE COURT: You may.

1 BENCH CONFERENCE:

2 MR. ROSARIO: It's a mischaracterization of
3 the law, Judge. It can be circumstantial
4 evidence. If there's a piece missing that
5 somebody actually saw Ted Bundy kill that person
6 but they have enough circumstantial to prove it,
7 they need to find him guilty. It's a
8 mischaracterization. It's misleading to the
9 jury.

10 MR. FOOTE: Circumstantial evidence is
11 still evidence in either way, and it will be an
12 element that the Judge will instruct, that Your
13 Honor will instruct at the end of the trial.

14 The jurors will determine whether or not
15 they have any enough direct or circumstantial
16 evidence to meet that particular element.

17 I believe Mr. Rosario's objection in this
18 is saying that we don't have to prove all of our
19 elements, and that would be incorrect. The
20 method of proof could be direct or
21 circumstantial.

22 THE COURT: Well, the difficulty is,
23 though, the way that you posed it, it needs to
24 be clear that it relates to elements of the
25 crime as opposed to all facts.

1 MR. FOOTE: Okay.

2 THE COURT: They have to prove that
3 somebody had both sneakers on.

4 MR. FOOTE: That's fair enough. That's
5 fair.

6 OPEN COURT:

7 MR. FOOTE: Just so we're clear, okay, when
8 I'm giving my puzzle analogy that the pieces are
9 missing, why that applies here is I'm talking
10 about the elements of a crime.

11 So if the Judge were to tell you that the
12 State has to prove these certain things that we
13 talk about, and one of those things are missing,
14 although it might be good enough for your puzzle
15 on your wall, it's not good enough here in the
16 courtroom. Does everyone agree with that?

17 PROSPECTIVE JUROR JONES: Uh-huh.

18 MR. FOOTE: Ms. Jones, do you agree with
19 that?

20 PROSPECTIVE JUROR JONES: Uh-huh.

21 MR. FOOTE: All right. Has everyone heard
22 the phrase, "Things are not always as they
23 seem"? "Things are not always as they seem."
24 Has anyone not heard that phrase? "Things are
25 not always as they seem."

1 Just to give you an example, there was a
2 commercial a few years back -- I don't think
3 they run it anymore -- it was an insurance
4 commercial, but the scene was that there was a
5 night flight, a redeye going across the country,
6 and it was at night. And if you've flown on an
7 airplane on a redeye, they usually turn the
8 lights down so people can go to sleep. Well,
9 you know that there are three people in a row,
10 one person is the window person, the middle, and
11 the aisle. Have you ever been the window person
12 that had to go to the bathroom at 3:00 in the
13 morning and everyone is sleeping? And what do
14 you try to do? You try to get up, you try to
15 climb over those tight seats. Okay, but in the
16 commercial the person is climbing over, they get
17 to the middle person, turbulence hits, and the
18 young lady falls on top of the guy straddling
19 him. The captain turns on the lights, of
20 course, because you have to fasten your
21 seatbelts, you've got turbulence, and everybody
22 looks around and sees this guy sitting
23 straddling this lady. What is the first thing
24 that's in your mind? What are they doing?
25 Okay. They must be doing something in the

1 middle of the night. But is that the case?
2 Turbulence, it made him fall down, and sometimes
3 our minds jump to conclusions and things are not
4 always as they seem. Do you agree with that,
5 Mr. DeChant?

6 PROSPECTIVE JUROR DECHANT: I do.

7 MR. FOOTE: Okay. The State gave the
8 analogy -- someone is from Indiana with the
9 snow.

10 PROSPECTIVE JUROR GRINER: (Indicating.)

11 MR. FOOTE: Okay. Now, let's say you live
12 a mile away from this town, town A and town B.
13 You live in town B, you turn on the TV and it
14 said there was snow in town A last night, and
15 you look outside and there's no snow on your car
16 or on your lawn. Is it possible that it could
17 snow a mile away but not in your town?

18 PROSPECTIVE JUROR MIRABILE: Yeah, it could
19 happen.

20 MR. FOOTE: It could happen. We definitely
21 know it happens in Florida. Okay. The other
22 thing with snow is that it doesn't have to fall
23 from the sky. You can be on a ski resort, and
24 you go to bed, and there's no snow, and the
25 machines are working all night to pump that snow

1 on the mountain so can you go skiing; that
2 happens as well.

3 So there are other explanations. Okay.
4 You can't automatically assume snow is falling
5 from the sky. Can we agree with that, that
6 there are other explanations that can explain
7 certain type of facts? Mr. Ellett, what do you
8 think about that?

9 PROSPECTIVE JUROR ELLETT: Sure.

10 MR. FOOTE: Just because you see, you know,
11 the car is wet outside, does that mean it
12 necessarily rained?

13 PROSPECTIVE JUROR ELLETT: No.

14 MR. FOOTE: The sprinklers could have come
15 on, your windshield is wet, the street is wet,
16 but it doesn't necessarily means it rained,
17 right?

18 PROSPECTIVE JUROR ELLETT: Right.

19 MR. FOOTE: Does everyone agree with that?

20 PROSPECTIVE JURY PANEL: (No response.)

21 MR. FOOTE: Now, the Judge touched on this
22 also, he said, you know what, the Defense
23 doesn't have to actually prove anything. We
24 don't have to disprove anything or prove
25 anything. That burden rests at this table with

1 these prosecutors.

2 And as an extreme, he said we could
3 actually play cards, not ask one question, not
4 call one witness, not talk about any evidence.
5 Okay. Under our current system of justice,
6 that's our laws in every criminal court across
7 this country.

8 Now, whether or not that happens or not, of
9 course, it will be hard not to have a lawyer not
10 talking. But if we get up and ask a question,
11 you understand that the Defense does not have to
12 prove or disprove anything. Does everyone agree
13 with that?

14 PROSPECTIVE JURY PANEL: (Indicating.)

15 MR. FOOTE: Okay. Does anyone disagree
16 with that?

17 PROSPECTIVE JURY PANEL: (No response.)

18 MR. FOOTE: Now, there's a saying that I
19 want to hear both sides of the story, then I'll
20 make my decision. Has everyone heard that
21 before, both sides?

22 PROSPECTIVE JUROR SCHWANKE: (Indicating.)

23 MR. FOOTE: Who wants to hear both sides of
24 the story if you were to be selected on this
25 jury? Before I render a verdict, I want to hear

1 both sides before I render my verdict?

2 Mr. Tyler, would you want to hear both sides of
3 the story?

4 PROSPECTIVE JUROR TYLER: Yes, I would.

5 MR. FOOTE: Now, it's human nature to say,
6 I want to hear both sides of the story, but if
7 the Judge says that that defendant has the right
8 to remain silent and does not have to prove
9 anything, would you hold that against the
10 Defense?

11 PROSPECTIVE JUROR TYLER: I would do what
12 the law says to do. I would follow the law.

13 MR. FOOTE: Would it be hard for you?
14 Would it influence your verdict about how you
15 look at the facts? Well, I wish he would have
16 got up and said something, since he didn't, I'm
17 just going to have to go along with what they
18 said?

19 PROSPECTIVE JUROR TYLER: I would have to
20 trust in the system that it is right and believe
21 in it and weigh my decision that way.

22 MR. DEFENSE: Okay. Does anyone else feel
23 that way, that they would want to hear both
24 sides of the story? Mr. Meja, I haven't heard
25 from you.

1 PROSPECTIVE JUROR MEJA: I would want to
2 hear both sides of the story.

3 MR. FOOTE: You would want to hear both
4 sides of the story?

5 PROSPECTIVE JUROR MEJA: (Indicating.)

6 MR. FOOTE: What if Judge Crane said that's
7 not the law?

8 PROSPECTIVE JUROR MEJA: Well, you can't
9 judge a person just on one side of the story.

10 MR. FOOTE: Would you have difficulty, if
11 you were on the jury, if you heard nothing from
12 the Defense side, you only heard from one side,
13 would that affect how you would made your
14 decision?

15 PROSPECTIVE JUROR MEJA: Yes, sir.

16 MR. FOOTE: If the Judge told you that that
17 was the law and you have to do it, would you be
18 able to if you were on the jury?

19 PROSPECTIVE JUROR MEJA: I wouldn't agree
20 with it, but that's what the law says.

21 MR. FOOTE: Okay. Well, that's different.
22 There are a lot of laws that we think are crazy,
23 okay, but we elect certain people to go to the
24 legislature and we vote on certain laws. But
25 here the Judge tells you what the law is, would

1 you have any difficulty in following that
2 particular law?

3 PROSPECTIVE JUROR MEJA: The law is the
4 law. There's no ifs or buts about it.

5 MR. FOOTE: Okay. And you would not hold
6 that against the Defense? Let's say you don't
7 hear a word from us, are you going to say, they
8 should have got up and said something?

9 PROSPECTIVE JUROR MEJA: Should have, yeah,
10 but the law says it was avoided for whatever
11 reasons. Like I said, there's a hundred
12 percent, you take five percent out of that, it
13 just doesn't return.

14 MR. FOOTE: Okay. Does anyone else think
15 like that with regard to the Judge telling you,
16 look, they don't have to say anything?

17 You are only to look to the evidence that
18 was brought out by the State Attorney's Office.
19 If they didn't bring out all the evidence, then
20 your verdict should be not guilty.

21 If they met their burden and proved each
22 one of those building blocks, those elements
23 that I talked about, beyond a reasonable doubt,
24 then your verdict should be guilty.

25 Regardless of whether you hear anything

1 from this side or not, because the Judge will
2 actually tell you that they don't have to say
3 anything, would you be able to do that,
4 honestly?

5 PROSPECTIVE JUROR MEJA: Well, what happens
6 if the evidence is that he would be guilty?

7 MR. FOOTE: Excuse me?

8 PROSPECTIVE JUROR MEJA: If he couldn't
9 saying anything else he did, but the Judge said
10 what he had to say, it could be guilty or not
11 guilty.

12 MR. FOOTE: Okay. And what we're trying to
13 find out that even though -- the last thing we
14 want is someone on the jury who goes, you know
15 what, I thought I could do this, but, no, they
16 should have said something, so I'm going to go
17 ahead with guilty, when the Judge tells you that
18 that's not the law if you have a right to remain
19 silent.

20 We see that on TV all the time, the cops'
21 part. But that goes all the way to a trial, a
22 person in this country never has to defend
23 themselves against a crime.

24 PROSPECTIVE JUROR LEE: That person would
25 have to decide that the other part is good

1 enough, is a hundred percent. If they don't
2 want to give their side, then they're happy with
3 the other percent, whatever that might be.

4 They're not giving their thoughts on anything.

5 MR. FOOTE: Okay. Well, let's just talk
6 about testifying. Okay. The defendant never
7 has to testify in a case, never has to testify.
8 You're never made to get up and prove your
9 innocence in the United States.

10 That may be across the water in another
11 country, in this country we're afforded that
12 right to remain silent. If you said I did
13 something, you prove it.

14 PROSPECTIVE JUROR NICHOLS: Well, if you're
15 innocent, you would have no reason to not say
16 anything.

17 PROSPECTIVE JUROR LEE: I mean it's
18 something against you, it seems to me that if
19 you don't say anything in your defense, that
20 you're kind of agreeing with whatever they're
21 saying. So if we're listening to the story,
22 then we have to take that as a hundred percent
23 of the story since you're not giving us any part
24 of your story.

25 MR. FOOTE: Okay. Well, let's say I do get

1 up and I cross-examine some police officers and
2 some toxicologists and some lay witnesses, and
3 my client doesn't testify, are you going to say,
4 I know Mr. Foote, he asked questions and kind of
5 pointed out some inconsistencies, but I wanted
6 to hear from him? Could you be fair if you
7 didn't hear from the defendant?

8 PROSPECTIVE JUROR LEE: I think I could be
9 fair, because I think it would depend on
10 everything as a whole. But, you know, just like
11 I said, if they get up and speak about your side
12 of it, you're agreeing -- I mean I understand
13 you don't have to, but that seems that if you
14 don't, then you're agreeing with the other story
15 and you're not standing up for yourself.

16 MR. FOOTE: Okay. Well, what are some of
17 the reasons why? That right up there next to
18 the Judge is the witness stand. Some of the
19 reasons why you wouldn't want to go over
20 there -- Ms. Jones, if I asked you right now to
21 walk over there, sit down and tell us about a
22 first sexual experience, would you be
23 comfortable doing that right here and right now?

24 PROSPECTIVE JUROR JONES: No. And I think
25 maybe a reason a defendant wouldn't want to go

1 up there was he knew something that would
2 implicate someone else that maybe he didn't want
3 to implicate. I think you just have to
4 basically go to the facts that are presented to
5 you during the trial and make your decision from
6 there.

7 MR. FOOTE: Okay. Well, I'm talking about
8 reasons why a person wouldn't want to get up.
9 It's kind of a little difficult now but this
10 always reminds me, when I do this, of school.

11 Do you remember in school when you know you
12 weren't prepared, and you just don't like
13 talking in public, and you hope the teacher
14 wouldn't see you by looking down. Could someone
15 be nervous and not want to go up there?

16 PROSPECTIVE JUROR LEE: Yeah, they could be
17 nervous and not want to. But I'm just saying
18 like about yourself.

19 MR. FOOTE: Well, it's easier when you --

20 PROSPECTIVE JUROR LEE: Yeah, I know, and I
21 understand that.

22 MR. FOOTE: But what I'm saying is could
23 there be other reasons why a person chooses not
24 to testify, not that they're hiding something?

25 PROSPECTIVE JUROR LEE: Uh-huh.

1 MR. FOOTE: Like, oh, someone saw me
2 scratch my head, they think that means guilty.
3 Someone watched some TV show, if he looked to
4 the left, that means he's lying. Who knows what
5 people think, and so you get nervous and don't
6 want to come up there.

7 PROSPECTIVE JUROR LEE: I understand that
8 part. I mean I do. I think whenever you're
9 given that, then you would just have to go with
10 the ten percent.

11 MR. FOOTE: And that's what it is. Maybe
12 the evidence is not strong enough. Why get up
13 at all?

14 PROSPECTIVE JUROR LEE: I mean that part B
15 that may be not part of the whole evidence, it
16 may not be much anyway.

17 MR. FOOTE: Well, and so based on that, and
18 what I'm trying to get at is, if you don't hear
19 from the defendant, are you going to say he
20 should have gotten up and said something,
21 therefore, he must be hiding something? Would
22 you hold that against him if the Judge tells you
23 that you're not supposed to?

24 PROSPECTIVE JUROR LEE: No.

25 MR. FOOTE: That's what I want to find out.

1 Mr. Nigels.

2 PROSPECTIVE JUROR NIGELS: Yes.

3 MR. FOOTE: Do you agree with that? If the
4 Judge tells you, hey, he doesn't have to get up,
5 and you go, he's hiding something, he didn't
6 testify, he must be hiding something, I'm going
7 to hold that against him?

8 PROSPECTIVE JUROR NIGELS: No.

9 MR. FOOTE: Does anybody else disagree with
10 that, disagree with that or have any thoughts
11 about that?

12 PROSPECTIVE JURY PANEL: (No response.)

13 MR. FOOTE: The State also asked you about
14 law enforcement officers. Some of you know law
15 enforcement and some of you have law enforcement
16 in your family, and you said that sometimes you
17 have bad days. Of course everybody has bad days
18 no matter what job you do. Okay. But do we
19 agree that we're going to hold those people to
20 the standard of doing their job and not say,
21 well, I had a bad day, I forgot to do this, I
22 didn't want to do that, but I'll bring this case
23 to court anyway? Is having a bad day a good
24 enough excuse, Mr. Stephenson?

25 PROSPECTIVE JUROR STEPHENSON: Absolutely

1 not.

2 MR. FOOTE: It's serious because two people
3 lost their lives and serious because there's a
4 person on trial. And so would we agree to hold,
5 whoever comes to the stand, to the level of
6 their job and their professionalism?

7 So having a bad day is not good enough. Is
8 it good enough for you in this courtroom, a
9 person not having a good day and saying, well, I
10 forgot, I was just having a bad day?

11 PROSPECTIVE JUROR STEPHENSON: No.

12 MR. FOOTE: Does anyone disagree with that,
13 especially those who have law enforcement
14 friends or family? Are you going to cut them a
15 break because they might have had a bad day or
16 because you know law enforcement officers?

17 PROSPECTIVE JURY PANEL: (No response.)

18 MR. FOOTE: Does everyone agree that they
19 would hold them to same standard as anyone else?
20 Does anybody disagree with that, by a show of
21 hands?

22 PROSPECTIVE JURY PANEL: (No response.)

23 MR. FOOTE: Somewhat like TV -- it won't be
24 like TV, but there's cross-examination. When
25 one side calls their witness, the other side

1 gets to cross-examine.

2 That sometimes get a little heated, okay,
3 because we're getting into things that either
4 were done or done wrong, or whatever, and it
5 gets a little heated.

6 Is anyone going to get upset if I get up
7 and start cross-examining an officer in a shiny
8 uniform, Mr. Nichols, why is he bothering that
9 officer?

10 PROSPECTIVE JUROR NICHOLS: I don't know.

11 MR. FOOTE: You don't know if you would get
12 upset with me if I did my job and cross-examined
13 that officer?

14 PROSPECTIVE JUROR NICHOLS: If you
15 cross-examine him and you make your point and if
16 you're doing your job, then that's what you're
17 supposed to do. I mean I've been on the stand
18 before, I've been cross-examined before, so I
19 know how hard it is.

20 MR. FOOTE: When we're here for a serious
21 case like this, and someone either dropped the
22 ball or didn't do this or didn't do that, and I
23 get in their face and say, wait a minute, you
24 were supposed to do this and you didn't do it,
25 is anyone going to say, whoa, he's being mean to

1 that officer, he's a police officer? Is anyone
2 going to hold that against me if I do my job and
3 cross-examine the State's witnesses?

4 PROSPECTIVE JUROR HALL: No.

5 THE COURT: Members of the jury, perhaps
6 this would be a good time for me to interject
7 that no one will be approaching witnesses and
8 then getting right up on them and yelling at
9 them like they do on TV. That's TV, that is not
10 real life. Rest assured that will not happen in
11 this courtroom.

12 MR. FOOTE: Okay. And finally -- we're
13 almost done -- with regard to we hear things
14 about DNA evidence and being sure, and maybe I
15 don't need all the evidence, if they get it
16 close enough with regard to the elements, that's
17 enough.

18 We've heard about recent cases where people
19 are released after 27 years in prison and the
20 DNA says that wasn't the person. They didn't
21 have that technology back then, but today it
22 shows that that wasn't the person.

23 There's a saying that, does everyone agree,
24 that it's better to let ten guilty people go
25 than one innocent person be convicted? Has

1 anyone heard that phrase? It's better to let
2 ten guilty go than the one person who's really
3 innocent to sit 5, 10, 15, 20 years in prison?

4 PROSPECTIVE JUROR ELLETT: I've heard it.

5 MR. FOOTE: You've heard that?

6 PROSPECTIVE JUROR ELLETT: Uh-huh. It
7 never works, but I've heard it.

8 MR. FOOTE: Excuse me?

9 PROSPECTIVE JUROR ELLETT: It never works,
10 but I've heard it. Too many innocent people end
11 up in jail.

12 MR. FOOTE: Okay. And basically what we
13 want you to do is hold the State to their
14 burden. If they're supposed to prove certain
15 things, as jurors you don't fill in the blanks.

16 If they haven't met their burden, it's a
17 not guilty. If they have met their burden, then
18 it's a guilty. That's basically what we want
19 you to do if you're selected to be on the jury.

20 The last thing that I'm going to ask you is
21 this: You've heard that the trial will probably
22 take this whole week, and the weekend is coming
23 into a holiday weekend, Memorial Day weekend,
24 does anyone have any special plans or things
25 that they're going to be thinking of, if they've

1 got to catch an airplane or to receive people
2 from out of town and do something special
3 because it is a holiday weekend?

4 PROSPECTIVE JURY PANEL: (No response.)

5 MR. FOOTE: Okay. Let me qualify it with
6 this: We never know, and the Judge will agree,
7 that we don't know how long it takes if you're
8 back there in the deliberation room. No one
9 knocks on the door and says, okay, 5:00 p.m.,
10 what's your verdict? You're in there until you
11 decide what your verdict is.

12 So if it is 8:00, 9:00 o'clock at night on
13 a Friday night, Memorial Day weekend, Ms.
14 Shealy, and you don't think the State has proven
15 their case, and you're, like, it's not guilty,
16 and four or five other people are beating you
17 over the head saying, look, the barbecue is
18 ready tomorrow, would you just change your mind
19 so we can get out of here, are you going to
20 change your mind?

21 PROSPECTIVE JUROR SHEALY: No. Not if I
22 feel they're not guilty.

23 MR. FOOTE: Mr. Stephenson, you've got your
24 position, you don't feel that they've met their
25 burden, are you going to cave in with four or

1 five other people that are saying it's late,
2 let's get out of here?

3 PROSPECTIVE JUROR STEPHENSON: No, sir.

4 MR. FOOTE: That's how serious the case is,
5 and that's how we want you to be, fair and
6 impartial, be open-minded, listen to everything,
7 and then render your verdict. Okay?

8 This is actually the last time we get to
9 actually talk to you and have you answer any
10 questions. Are there any general questions that
11 we have not covered? Is there something on your
12 mind that we can answer? If not, thank you for
13 your time and your attention.

14 That's all I have, Judge.

15 THE COURT: Thank you. Members of the
16 jury, I'm going to ask you once again to look to
17 the left, look to the right, and see where
18 you're sitting. Remember the admonition I gave
19 you earlier about not talking about the case.
20 Please step outside with Deputy Flanagan.

21 These lawyers will have the opportunity to
22 select the jury that will hear this case. If
23 you are not selected, remember please do not
24 take that personally.

25 These very same lawyers may use you as a

1 juror next week, next month, next year, but for
2 right now they would have decided that this
3 would not be the best case for you to sit on.

4 So once again please don't take it
5 personally, but they will be selecting the jury
6 coming up here. I'm just going to ask you to
7 step outside the courtroom, and it should take
8 probably about 10 to 15 minutes.

9 JURY ABSENT:

10 THE BAILIFF: Your Honor, all prospective
11 jurors are out of the courtroom.

12 THE COURT: All right. Thank you very
13 much. And the record should reflect that
14 throughout the course of this proceeding
15 Mr. Stephen has, indeed, been present, and has
16 been present for the entire morning, for the
17 motions and all the other activity with regard
18 to this case.

19 Mr. Foote, are we almost done?

20 MR. FOOTE: A couple of minutes, Judge.
21 Ready, Your Honor.

22 THE COURT: Mr. Stephen, sir, you need to
23 please stand and raise your right hand.

24 DEFENDANT SWORN:

25 THE COURT: State your name for the record.

1 DEFENDANT STEPHEN: Shannon Leland Stephen.

2 THE COURT: Mr. Stephen, you've been
3 present throughout the entire morning, through
4 all of the motions, as well as the selection of
5 this jury; is that correct?

6 DEFENDANT STEPHEN: Yes.

7 THE COURT: And you've had the opportunity
8 now to consult with your lawyer for a bit over
9 15 minutes with regard to the selection of this
10 jury; is that correct?

11 DEFENDANT STEPHEN: Yes.

12 THE COURT: And have you had ample time to
13 discuss that with your lawyer?

14 DEFENDANT STEPHEN: Yes, sir.

15 THE COURT: Prior to us starting here
16 today, you also had the opportunity to discuss
17 with your lawyer your options as it relates to
18 whether or not you would go to trial here today
19 or discuss with the State some sort of
20 negotiations; is that correct?

21 DEFENDANT STEPHEN: Yes.

22 THE COURT: And you've had sufficient time
23 to do that, correct?

24 DEFENDANT STEPHEN: Correct.

25 THE COURT: And you have indicated to your

1 lawyer that you wish to go to trial and not
2 enter into any negotiations with the State; is
3 that correct?

4 DEFENDANT STEPHEN: Yes.

5 THE COURT: You understand the importance
6 in us having this discussion is, you know, it's
7 like insurance, you're planning for the worst
8 and hoping for the best? Meaning, if things
9 don't work out your way people have a tendency,
10 if they do, indeed, wind up getting sentenced to
11 an extended period of time in the Department of
12 Corrections, of writing letters and filing
13 motions and all of that sort of thing,
14 indicating that perhaps their lawyer wasn't
15 candid with them, or they had no idea what the
16 possible minimum and maximum penalties would be,
17 or the fact that they could even possibly be
18 convicted.

19 With regard to all of those issues, you've
20 had ample time to discuss those issues with your
21 lawyer, correct?

22 DEFENDANT STEPHEN: Yes.

23 THE COURT: And you, for instance, have had
24 ample time to discuss with your lawyer whether
25 or not you wish to, for instance, have a trial

1 today, whether or not you wish to -- and later
2 on I'm going to ask you about testifying, and
3 that sort of thing, correct?

4 DEFENDANT STEPHEN: Correct.

5 THE COURT: And once again you do not need
6 any more time to do that, correct?

7 DEFENDANT STEPHEN: Correct.

8 MR. FOOTE: Judge, just to clarify for the
9 record -- the Court mentioned about
10 negotiations -- there has been no formal
11 recommendation from the State.

12 THE COURT: Well, normally the
13 recommendation comes from -- the offer is made
14 from the Defense, that's why I asked that
15 question.

16 MR. FOOTE: Well, we basically didn't even
17 have, I guess, a score sheet. We talked a
18 little bit before trial just before we started
19 jury selection, and Mr. Rosario calculated some
20 numbers that are there, and it came to --

21 MR. ROSARIO: 24.75 years.

22 MR. FOOTE: I conveyed the 24.75 years to
23 Mr. Stephen, and if that is the minimum they can
24 take on a change of plea, then he does reject
25 that.

1 THE COURT: Okay. And that's correct, sir,
2 correct?

3 DEFENDANT STEPHEN: Yes.

4 THE COURT: All right. And you did not
5 feel it appropriate to respond with any
6 counteroffer, correct?

7 DEFENDANT STEPHEN: Correct.

8 THE COURT: All right. And once again all
9 of this is important. I've actually had this
10 conversation with folks. Unfortunately for them
11 things didn't go their way, they've actually
12 stood at that very podium and said, no one told
13 me such as that, no one told me I could get this
14 much time in prison, no one told me that this
15 was a possibility that I might be convicted, the
16 whole time me knowing that I have had this
17 conversation, and your lawyer's had that
18 conversation with you as well, correct?

19 DEFENDANT STEPHEN: Correct.

20 THE COURT: All right. Let's go ahead and
21 begin. You may resume your seat, sir. Let's go
22 ahead and begin the jury selection process.

23 As far as the peremptory challenges, we
24 have three charges, two second-degrees -- three
25 second-degrees, and that brings a total of 18

1 challenges. Are both sides in agreement with
2 that?

3 MR. FOOTE: Correct.

4 MR. ROSARIO: Yes, Judge.

5 THE COURT: All right. Starting in the
6 first row, what we'll do initially is we'll
7 start with any challenges for cause. Are there
8 any challenges for cause in the first row?

9 MR. ROSARIO: Judge, I believe
10 Mr. Schwanke, whose name I have completely
11 destroyed throughout the entire voir dire,
12 stated he could not be fair.

13 THE COURT: All right. What says the
14 Defense?

15 MR. FOOTE: Judge, I don't recall
16 Mr. Schwanke saying too much of anything about
17 being unfair.

18 THE COURT: Mr. Rosario, do you want to
19 elaborate on that a little bit. I'm not sure I
20 recall him saying that either.

21 MR. ROSARIO: I have a note here that there
22 was something, he was against the State and that
23 given the facts that were presented that he
24 couldn't be fair. That's just the note I have
25 written down, Judge. If no one else sees it,

1 then I'll withdraw the cause.

2 THE COURT: All right. Anyone else in the
3 first row for cause?

4 MR. ROSARIO: No, sir.

5 MR. FOOTE: Ms. Rempel.

6 THE COURT: All right. Does the State have
7 any objection as to Ms. Rempel?

8 MR. ROSARIO: I don't remember her stating
9 anything about how she couldn't be fair.

10 MR. FOOTE: Judge, her fiance was
11 assaulted, she was a victim, zero tolerance for
12 alcohol.

13 THE COURT: Yes. She was not a victim, he
14 was a victim. She's a witness in the case. The
15 case is presently pending.

16 MR. FOOTE: Correct.

17 THE COURT: But she is, nonetheless,
18 absolutely against alcohol, cannot be fair in
19 any case that involves alcohol, the mention of
20 alcohol, the use of alcohol, has alcohol in the
21 title of it. I think that cause is well taken.
22 I'll grant that.

23 Anyone else on the first row?

24 MR. ROSARIO: That's it.

25 MR. FOOTE: First, you mean first row, left

1 side?

2 THE COURT: Well, yes, remember it's one,
3 two, three, four, five, six.

4 MR. FOOTE: So are you doing both sides at
5 one time?

6 MR. ROSARIO: One, two, three, and then
7 four five, six.

8 THE COURT: Yes. So actually that's four,
9 five and six over there.

10 Row two, any challenges for cause?

11 MR. ROSARIO: I believe Dung Dang, Judge,
12 stated he would not feel comfortable in
13 deliberations.

14 THE COURT: Correct. Any objection to
15 that?

16 MR. FOOTE: No objection.

17 THE COURT: I agree with the parties. I
18 think it's well taken as well that Mr. Dang will
19 be removed for cause.

20 Anyone else?

21 MR. FOOTE: Mr. Alfonso.

22 THE COURT: All right. Grounds?

23 MR. FOOTE: Pretty much he has something
24 pending right now. I'm just trying to read.

25 THE COURT: I believe he indicated that he

1 had a family member that was a victim of a DUI
2 driver or DUI charge of some nature and he did
3 not believe he could be fair. That's what my
4 notes indicate.

5 MR. ROSARIO: Judge, it was the son and
6 grandson that were involved and I believe one
7 death.

8 THE COURT: Correct.

9 MR. ROSARIO: The Defense is moving for
10 cause, I don't think I have anything to stop
11 that.

12 THE COURT: Okay. That will be granted for
13 cause by agreement of the parties. I think it's
14 well taken as well.

15 MR. FOOTE: Forgive me, Judge, the seating,
16 the numbers, are we going one, two, three, four,
17 five, six?

18 THE COURT: Correct.

19 MR. FOOTE: Or one, two, three, seven,
20 eight, nine.

21 THE COURT: One, two, three, four, five,
22 six.

23 MR. FOOTE: Right.

24 THE COURT: Seven, eight, nine, 10, 11, 12,
25 et cetera.

1 MR. FOOTE: Okay. I understand. Juror
2 number 10, Vasilios Kapareliotis.

3 THE COURT: Okay. Grounds?

4 MR. FOOTE: He was the victim of an
5 assault, leaving the scene. His sister --

6 THE COURT: It was actually his sister who
7 was struck. What says the State?

8 MR. ROSARIO: Judge, I don't think there
9 was any language that prohibits him from
10 testifying. His sister was run off the road,
11 but I didn't hear anything that would be cause.

12 THE COURT: He indicated that because of
13 the case with his sister, he did not think he
14 could be fair, that she had been pushed to the
15 edge of a bridge, almost got pushed off, the
16 person tried to leave the scene, then they had
17 to be caught by the drivers, and because of
18 that, he didn't feel he could be fair. That's
19 my recollection, and you-all correct me if I'm
20 wrong.

21 MR. FOOTE: That's my recollection, Judge.

22 THE COURT: All right. I think that
23 challenge is well taken. I'll go ahead and
24 grant that.

25 Anybody else?

1 MR. FOOTE: Ms. Palmer.

2 THE COURT: All right. What says the State
3 to Ms. Palmer?

4 MR. ROSARIO: She said she can't be fair,
5 Judge.

6 THE COURT: Correct. People who do this
7 sort of thing ought to be put in jail forever I
8 think was her statement, she could not be fair.

9 All right. How about the next row, the
10 third row? Ms. Branstutter has already been
11 removed by agreement of the parties for cause,
12 that being the juror in the 18th spot, juror
13 number 47 in the 18th spot.

14 MR. FOOTE: Judge, I would challenge
15 Mr. Dover, who was pretty much sleeping through
16 most of Mr. Rosario's and off and on in my
17 presentation. Actually, I think he got a little
18 upset with Mr. Rosario. He said something to
19 him, or said, Jesus Christ, or something like
20 that. He had a little bit of an attitude with
21 that. So he wasn't really paying attention at
22 that point, so I don't know whether he could be
23 fair and impartial.

24 THE COURT: All right. What says the State
25 to Mr. Dover?

1 MR. ROSARIO: Judge, while he may have been
2 upset with me, he didn't give me any answers
3 that said that he was sleeping or he was having
4 any difficulties, so I would object to the
5 cause.

6 THE COURT: Well, I guess what the
7 difficulty with this fellow is he indicates,
8 although he was sitting with his eyes closed,
9 that he was not sleeping. He specifically
10 stated that on the record. So I guess the issue
11 is, can someone sit there and listen with their
12 eyes closed?

13 MR. FOOTE: Well, Judge, I would make this
14 observation, that once Mr. Dover was called, he
15 didn't even look up. The juror next to him
16 elbowed him, and then he looked up. So I just
17 want to put that on the record that's the
18 observation.

19 THE COURT: I didn't notice that.

20 MR. ROSARIO: I didn't see that.

21 THE COURT: Yeah, I didn't see that either.
22 You meant when Mr. Rosario called on him?

23 MR. FOOTE: Yes. He didn't just say, yes.

24 THE COURT: Because his eyes were open
25 after we talked at the bench.

1 MR. ROSARIO: Right.

2 THE COURT: And then went back because,
3 that's one thing I made note of is the fact that
4 he was no longer sitting with his eyes closed.
5 As a matter of fact, he was looking down and he
6 had his eyes open at least when he was on his
7 way down looking down and sitting there from
8 what I saw. He actually, at that point in time,
9 had his eyes open. And actually I saw that his
10 eyes were closed prior to that.

11 MR. FOOTE: Well, when we originally came
12 up, I tried to indicate to Deputy Flanagan just
13 to observe him at the point before we even came
14 out, because he was out of it. I just want to
15 make that observation.

16 THE COURT: And, then, like I said, that's
17 kind of difficult. I can't say he had his eyes
18 closed. Did anyone hear any noises that would
19 indicate -- I mean the problem is it's hard not
20 to take him at his word that he said that he was
21 not sleeping and that he only had his eyes
22 closed.

23 MR. FOOTE: That's fine. Ms. Albergo was
24 the one I think that actually elbowed him to
25 wake him up.

1 THE COURT: I didn't see that. Did you not
2 see that?

3 MR. ROSARIO: I did not see it. I didn't
4 even know -- I couldn't tell from where I'm
5 sitting that he had his eyes closed.

6 THE COURT: No, he had his eyes closed for
7 a period of time. Deputy Flanagan, did you see
8 her elbow him?

9 THE BAILIFF: Judge, I didn't see her elbow
10 him, because I couldn't see her from here, but I
11 did see him kind of shake his head like he was
12 out of it. You know, he was kind of like
13 shaking his head trying to get himself together.

14 THE COURT: I did see that he had his eyes
15 closed for a period of time.

16 THE BAILIFF: Mr. Foote brought to it my
17 attention, and then I watched him for about five
18 minutes, and that's when I got up and brought it
19 to your attention.

20 THE COURT: All right. Well, in an
21 abundance of caution, I'll grant that challenge
22 for cause based upon that information.

23 MR. FOOTE: Dr. Amar.

24 THE COURT: What says the State to
25 Dr. Amar?

1 MR. ROSARIO: Judge, while she stated that
2 she had to be at the hospital, I don't believe
3 there was a grounds other than work.

4 MR. FOOTE: She also said she had zero
5 tolerance for alcohol, you know, she doesn't use
6 alcohol.

7 MR. ROSARIO: She said she doesn't drink,
8 why would you need it to relax, but I don't
9 think that's zero tolerance or it rises to the
10 level of cause.

11 THE COURT: Well, that's the difficult part
12 with her testimony. She indicated that she did
13 have other obligations, and she was rather
14 emphatic about that, and obligations to veterans
15 in our community.

16 All right. That one is a little tougher.
17 But she sure does have obligations to veterans.
18 She never indicated that she couldn't pay
19 attention, and I'm not sure she was asked that.
20 Mr. Foote, do you recall whether she was asked
21 that?

22 MR. FOOTE: I don't think anyone asked that
23 particular question.

24 THE COURT: I think she was saying that she
25 had work obligations, but I don't know if she

1 ever said that she just couldn't.

2 MR. FOOTE: I just believe that she
3 answered I think, Mr. Rosario, that she didn't
4 work the night shift.

5 THE COURT: Correct.

6 MR. FOOTE: Or something like that. But I
7 don't think anyone asked her the question about
8 paying attention.

9 THE COURT: I don't think so. But she did
10 say she had work obligations but never said she
11 could not pay attention. And I don't recall her
12 saying that she couldn't be fair about the
13 alcohol, I know she said she did not drink.

14 MR. FOOTE: She doesn't see why people need
15 it to relax.

16 THE COURT: Right. I'm going to deny that
17 for cause just because if you take that
18 statement, I don't see why people need that to
19 relax and I'm very busy at work, while certainly
20 I think we need to be sensitive to her
21 obligations, I think we also need to understand
22 that she --

23 MR. FOOTE: Judge, the other issue is that
24 she did indicate that she's a physician and that
25 five days away from patients --

1 THE COURT: Well, I know.

2 MR. FOOTE: I thought that was the best
3 reason out of any of the others.

4 THE COURT: Well, and that's what I mean.
5 I think there's something to be said for that.
6 But when I step back and say, okay, does that
7 mean she can't be fair and impartial, it doesn't
8 really mean that, and that's the point noted by
9 Mr. Rosario.

10 Like I said, I mean at first blush you do
11 say she has these obligations to our veterans,
12 it's certainly something that we need to be
13 aware of, but nobody ever followed up with,
14 well, would those obligations be such that they
15 would preoccupy you so you couldn't listen to
16 the testimony?

17 Because there is no testimony with regard
18 to that, and I understand your point, but I
19 think the argument is that that never came out
20 by the State. I'm going to deny that request.
21 You know, there were other people that clearly
22 said they would be preoccupied; she just never
23 said that.

24 Okay. Next row.

25 MR. ROSARIO: Starting with Griner, Judge?

1 THE COURT: Correct.

2 MR. ROSARIO: I think Theresa Dillard said
3 that she could not be fair, Judge.

4 THE COURT: Any objection from the State?

5 MR. ROSARIO: From the Defense?

6 MR. FOOTE: Defense, no.

7 THE COURT: I'm sorry. From the Defense?

8 MR. FOOTE: No. I agree for Ms. Dillard.

9 THE COURT: Okay. By agreement of the
10 parties, Ms. Dillard would be removed for cause.

11 MR. FOOTE: Judge, I would step back to
12 Ms. Griner, who made a number of statements
13 which cause my client a little concern with
14 regard to, it depends how much you spend on a
15 good lawyer, people get off, no alcohol.

16 THE COURT: All right. What says the State
17 to Ms. Griner?

18 MR. ROSARIO: I would be objecting to
19 cause, Judge. I don't think any of those are
20 grounds for cause. While she was disappointed
21 in the legal justice system doesn't say that she
22 can't be fair and impartial.

23 THE COURT: All right. Well, I think
24 actually she did indicate at one point in time
25 that she did not feel she could be fair because

1 of that prior experience.

2 MR. ROSARIO: That's fine, Judge.

3 THE COURT: Or had no faith in the system.

4 So I'm going to grant that one for cause.

5 Anybody else in that row?

6 MR. FOOTE: Mr. Lightfoot.

7 THE COURT: Any objection from the State?

8 MR. ROSARIO: No.

9 THE COURT: All right. Anybody else in
10 that row?

11 MR. FOOTE: Mr. Nichols.

12 THE COURT: Any objection with the State?

13 MR. ROSARIO: No.

14 THE COURT: All right. How about the next
15 row?

16 MR. FOOTE: Mr. Coulter.

17 THE COURT: What says the State?

18 MR. ROSARIO: I'd object to it, Judge.

19 Basically it's work that's causing him to be
20 distracted.

21 MR. FOOTE: Judge, he stated he cannot be a
22 hundred percent, business on his mind, he's too
23 distracted. Depending on the facts, quote, "He
24 think he can be fair." Zero tolerance for
25 alcohol. Doesn't drink alcohol. There was

1 something about I think a domestic battery that
2 was pending or something like that.

3 THE COURT: Yes. That's actually noted in
4 his jury questionnaire, but you never discussed
5 that; but I think the questionnaire indicated
6 that he has charges pending against him
7 presently.

8 MR. ROSARIO: That's correct.

9 THE COURT: All right. So, State, once
10 again any objection to Mr. Coulter?

11 MR. ROSARIO: No, Judge.

12 THE COURT: He'll be removed for cause by
13 agreement of the parties.

14 Anybody else in that row?

15 MR. FOOTE: Ms. Santoro.

16 THE COURT: Okay. What says the State?

17 MR. ROSARIO: She said she could not be
18 fair.

19 THE COURT: She said she had multiple
20 family members had been victims of DUIs and DUI
21 deaths. Any objection from the State?

22 MR. ROSARIO: On Santoro, no, Judge.

23 THE COURT: Okay. By agreement of the
24 parties, Ms. Santoro will be removed for cause.

25 Anybody else in that row?

1 MR. FOOTE: Judge, I believe Mr. Plumb, but
2 I think he may have been rehabilitated.

3 MR. ROSARIO: He rehabilitated himself and
4 said he could be fair.

5 THE COURT: I think you're right, Mr.
6 Foote. I think he did actually, after thinking
7 about it, thought he could be fair.

8 MR. FOOTE: And just for the record, I
9 think his daughter was a victim of a hit and
10 run, that's what he indicated.

11 THE COURT: Yes, but I think he indicated
12 that it would not have an effect on him. I
13 think the issue really kind of began with his
14 job I think at one point in time.

15 MR. FOOTE: I agree.

16 THE COURT: Okay. Anybody else in that
17 row?

18 MR. FOOTE: No, Your Honor.

19 THE COURT: How about the next row?

20 MR. FOOTE: Tiffany Hall.

21 THE COURT: What says the State?

22 MR. ROSARIO: No objection.

23 THE COURT: Anybody else in that row? By
24 agreement of the parties Ms. Hall will be
25 removed for cause. Anybody else in that row?

1 MR. FOOTE: Ms. Singletary.

2 THE COURT: What says the State?

3 MR. ROSARIO: She said she cannot be fair.

4 THE COURT: All right. By agreement of the
5 parties, Ms. Singletary will be removed for
6 cause.

7 Anybody else in that row?

8 MR. FOOTE: Mr. Tyler.

9 THE COURT: What says the State?

10 MR. ROSARIO: I didn't jot any notes down
11 that Mr. Tyler said he can't be fair.

12 THE COURT: Remember Mr. Tyler told me
13 that, with all due respect to the Court and for
14 myself, he has an autistic daughter, he would be
15 preoccupied because of work, and that he would
16 absolutely not be able to pay attention. He was
17 very nice about it, but he was also pretty firm
18 that no matter what, he could not pay attention
19 because of the issues with his daughter and the
20 economy and his business.

21 MR. ROSARIO: Unfortunately that was very
22 early in the voir dire, and that's when everyone
23 was trying to jump ship as far as I could tell,
24 but I don't think I ever got a chance to get any
25 rehabilitation from him.

1 THE COURT: All right. On Mr. Tyler, the
2 Defense's motion will be granted for cause.

3 MR. FOOTE: Judge, if we can back up on
4 Mr. Meja. We went back and forth with him.
5 He's the one that wanted to hear both sides,
6 although he said if you tell him that that's
7 what he has to do, but he wants to hear both
8 sides of the story when we went to that
9 exchange.

10 THE COURT: All right. What says the State
11 to Mr. Meja?

12 MR. ROSARIO: I'd object. I don't think he
13 said anything that would be level of cause. The
14 questions being presented to him were ambiguous
15 at times, but he always said if the law is given
16 to me, I'll follow the law.

17 THE COURT: Well, I think he did indicate
18 that. I think he indicated he would like to
19 hear from him, but that if the judge instructed
20 him on the law, that he would follow it, and
21 that he could, indeed, follow it.

22 And I think contextually, you know, there
23 was some questions that came forth, that it's
24 human nature to want to hear both sides, who
25 wants to hear both sides, and he was one of the

1 ones that said, yeah, he would like to hear both
2 sides.

3 So I think he kind of stepped back and
4 indicated that he could follow the law if he was
5 instructed by the Judge, because I think he made
6 some statement like, well, you got to, I mean
7 that's all you can do is follow the law, or
8 something like.

9 MR. FOOTE: Okay.

10 THE COURT: So it will be denied.

11 MR. FOOTE: That's all we have for cause.

12 THE COURT: Okay. Anyone else from the
13 State?

14 MR. ROSARIO: No, sir.

15 THE COURT: All right. Let's start. State
16 goes first, one through seven. Number four has
17 been removed for cause. So it's one, two,
18 three, five, six, seven.

19 MR. ROSARIO: I have no challenges at this
20 time, Judge.

21 THE COURT: What says the State to one
22 through seven?

23 MR. ROSARIO: I have no challenges at this
24 time.

25 THE COURT: Okay. I'm sorry. What says

1 the Defense, one through seven?

2 MR. FOOTE: You're slipping. The Court
3 does permit back-strikes?

4 THE COURT: Uh-huh. Yes, I do. Obviously
5 until the jury is selected.

6 MR. FOOTE: Defense accepts.

7 THE COURT: All right. What says the State
8 to one, two, three, five, six, seven?

9 MR. ROSARIO: The State would back-strike
10 Mr. Ellett.

11 THE COURT: All right. Mr. Ellett is
12 removed by the State. That brings on
13 Mr. Nigels. What says the Defense?

14 MR. FOOTE: One second. May I have one
15 moment?

16 THE COURT: You may.

17 MR. FOOTE: We end off with Mr. Nigels?

18 THE COURT: Correct. It's one, three,
19 five, six, seven and 11.

20 MR. FOOTE: Defense accepts.

21 THE COURT: What says the State to one,
22 three, five, six, seven and 11?

23 MR. ROSARIO: State would strike
24 Mr. Schwanke.

25 THE COURT: Who?

1 MR. ROSARIO: Schwanke.

2 THE COURT: Number three?

3 MR. ROSARIO: Yes.

4 THE COURT: That brings on number 13,
5 Shealy.

6 What says the Defense to one, five, six,
7 seven, 11, 13?

8 MR. FOOTE: Judge, if I may have a moment
9 to explain the back-strike procedure to my
10 client.

11 THE COURT: You may.

12 MR. FOOTE: Defense would accept, Judge.

13 THE COURT: What says the State?

14 MR. ROSARIO: May I have a moment, Judge?
15 I'll accept, Judge.

16 THE COURT: Mr. Foote, the State has
17 accepted one, five, six, seven, 11, 13; Jones,
18 Springsteen, Forton, Stephenson, Nigels, Shealy.

19 MR. FOOTE: The Defense would strike juror
20 number six, Jeffrey Forton.

21 THE COURT: All right. That brings on
22 Freeman, Daniel Freeman. What says the State?

23 MR. ROSARIO: I'd strike Freeman, Judge.

24 THE COURT: That brings on Albergo.
25 What says the Defense?

1 MR. FOOTE: The Defense would strike juror
2 number 11, Scott Nigels.

3 THE COURT: That brings on Lee.
4 What says the State?

5 MR. ROSARIO: Would that bring on Amar,
6 Judge, Dr. Amar?

7 THE COURT: Oh, I'm sorry. I apologize.
8 Dr. Amar.

9 MR. ROSARIO: I'd accept at this point,
10 Judge.

11 THE COURT: What says the Defense? One,
12 five, seven, 13, 15, 17.

13 MR. FOOTE: Judge, Defense would strike
14 juror number five, Diane Springsteen.

15 THE COURT: That brings on Lee.

16 What says the State? One, seven, 13, 15,
17 17 and 21.

18 MR. ROSARIO: I'd accept.

19 THE COURT: Okay. What says the Defense?

20 MR. FOOTE: Judge, Defense would strike
21 juror number 21, Ellen Lee.

22 THE COURT: That brings on Mirabile.

23 What says the State?

24 MR. ROSARIO: Judge, the State would strike
25 Dr. Amar.

1 THE COURT: All right. That brings on
2 Plumb.

3 MR. FOOTE: The Defense would strike juror
4 number 27, Mark Plumb.

5 THE COURT: That brings on Lamb.

6 What says the State? One, seven, 13, 15,
7 24, 28. What says the State?

8 MR. ROSARIO: May I have a moment, Judge?
9 Judge, I would strike Ms. Albergo.

10 THE COURT: That brings on Ms. Sweet.
11 What says the Defense?

12 MR. FOOTE: The Defense would accept.

13 THE COURT: Defense accepts.

14 What says the State? One, seven, 13, 24,
15 28, 29. Jones, Stephenson, Shealy, Mirabile,
16 Lamb and Sweet.

17 MR. ROSARIO: May I have a moment, Judge?

18 THE COURT: You may.

19 MR. ROSARIO: May I have another moment,
20 Judge?

21 THE COURT: You may.

22 MR. ROSARIO: I'd strike Ms. Sweet.

23 THE COURT: That brings on Mr. DeChant.

24 What says the Defense?

25 MR. FOOTE: The Defense accepts.

1 THE COURT: What says the State?

2 MR. ROSARIO: I would strike Mr. DeChant.

3 THE COURT: That brings on Mr. Meja. What
4 says the Defense?

5 MR. FOOTE: The Defense accepts.

6 MR. ROSARIO: State accepts.

7 THE COURT: Back to you, Defense.

8 MR. FOOTE: Defense strikes juror number
9 31, Jose Meja.

10 THE COURT: That brings on Mr. McCoy.
11 What says the State?

12 MR. ROSARIO: The State accepts.

13 THE COURT: What says the Defense?

14 MR. FOOTE: Defense would strike juror
15 number 24, Nicole Mirabile.

16 THE COURT: What says the State?

17 MR. ROSARIO: State accepts.

18 THE COURT: What says the Defense?

19 MR. FOOTE: Defense would strike juror
20 number 33, Cathleen Feeley.

21 THE COURT: All right. We're out of
22 jurors. So are we going to bring up the next
23 group of 12 and talk to them for a while.

24 So I guess procedurally how we will do this
25 is, I will ask those five people to -- admonish

1 them not to talk about the case, ask them to
2 remain, however, they can certainly go get
3 something to eat if they would like to.

4 I'm sure I'm going to have to give them
5 probably at least an hour because it will take
6 at least an hour to voir dire the rest of these
7 people, and we'll bring them back and start up
8 with these folks.

9 MR. FOOTE: Judge, are we going to be
10 permitted to eat something?

11 THE COURT: We need to power through. We
12 need to kind of move forward. We've got 12
13 folks down there waiting to get going. It's 20
14 to 4:00 as it is now, by the time we get done
15 with those folks, it's probably going to be well
16 after 5:00 o'clock.

17 MR. FOOTE: I have to eat something even if
18 it's 15 minutes. We've been going since 8:30
19 straight through.

20 THE COURT: Well, it's probably going to
21 take at least 15 minutes to get those folks up
22 here.

23 MR. FOOTE: That will be fine.

24 THE COURT: So that's what we will do. Any
25 objection to that procedure?

1 MR. ROSARIO: No, sir. The only question I
2 have, Judge, is I have about five witnesses that
3 I was planning to call today. I don't think
4 that we're actually going to get to witnesses
5 today at this point. I don't know what the
6 Court wants to do.

7 THE COURT: I think it's going to take us a
8 while to go through these other 12 folks. Let's
9 see where we are. I think it's best if we can
10 get the jury and get openings in. You know,
11 that's probably going to put us probably after
12 6:00.

13 I mean you-all wish to be heard on that?
14 I'll give you an opportunity for some input
15 certainly.

16 MR. FOOTE: I have no objection I mean to
17 his witnesses. I believe it's going to run to
18 the point where I don't think we're going to put
19 on witnesses. With this selection, I don't know
20 how many are coming up.

21 THE COURT: You've got a dozen coming up.

22 MR. FOOTE: I have no objection to him
23 releasing witnesses at this point.

24 MR. ROSARIO: Since it's going to take 15
25 minutes for him to go get something, may I

1 respond in 15 minutes?

2 THE COURT: I'm sorry?

3 MR. ROSARIO: May I respond in 15 minutes
4 as to what I'm going to do with my witnesses?

5 THE COURT: Sure. I think that it's
6 probably pretty realistic to say that we're
7 probably not going to get on a certain amount of
8 the lengthy testimony today, probably none at
9 all.

10 Well, actually they can't leave yet. We've
11 got to bring those other people in.

12 THE BAILIFF: Are we going to put them in
13 the box?

14 THE COURT: I guess we can put them in the
15 tentative jury box. I will send them back down
16 to the jury room and instruct them not to talk
17 about the case and tell them they can go out and
18 get something to eat.

19 MR. FOOTE: Judge, may I ask, then,
20 procedurally with back-strikes, since they are
21 still part of the pool, are we just going to go
22 from the new one?

23 THE COURT: Just the new ones. I'm going
24 to let those people eat. I'll have to bring
25 them in eventually after that. Is there any

1 objection from the Defense to that procedure?

2 MR. FOOTE: Well, the original ones are
3 part of the back-strike.

4 THE COURT: Do you want approach the bench?

5 BENCH CONFERENCE:

6 MR. FOOTE: I think I answered my own
7 question.

8 THE COURT: They haven't obviously been
9 sworn yet. So they are kind of the general
10 pool, but they haven't been stricken yet either.
11 So they're still in consideration, they just
12 don't have to be in the room, because you've
13 already questioned them.

14 MR. FOOTE: I understand. Thank you.

15 THE COURT: And once again there is no
16 objection on either side to that procedure? And
17 once again I will admonish them not to talk
18 about the case. Now, I'll let them get
19 something to eat if they want to. I mean if
20 they don't want to, they don't have to.

21 MR. FOOTE: That's fine.

22 THE COURT: Any objection from the State?

23 MR. ROSARIO: No.

24 THE COURT: So I guess what I'll do is I
25 will put them in the box, release everybody

1 else, give them the admonition, then let them
2 go, and then we'll take our 20 minutes.

3 MR. FOOTE: Are they going to know why
4 they're in the box?

5 THE COURT: Well, they're going to know
6 they're potential jurors, I'll tell them that.

7 OPEN COURT:

8 PROSPECTIVE JURY PRESENT:

9 THE BAILIFF: Your Honor, all prospective
10 jurors seated in the courtroom.

11 THE COURT: All right. Thank you.

12 Members of the jury, once again we are
13 still in the middle of this process. What I'm
14 going to do is I'm going to call a few names,
15 ask those folks to proceed over to Deputy
16 Flanagan. Those names that have not been
17 called, you will leave here with our heartfelt
18 thanks.

19 Once again please do not take it personally
20 if you are not selected. We appreciate the hard
21 work and effort you've put in here today. And
22 the folks who step across will still be
23 potential jurors in this case.

24 So if I could ask Ms. Jones to step over to
25 Deputy Flanagan, Mr. Stephenson, Ms. Shealy,

1 Ms. Lamb, Mr. McCoy.

2 Once again the rest of you leave with our
3 heartfelt thanks. Thank you for your hard work
4 and dedication to this process today, and have a
5 great day. Thank you so much.

6 You've got to go back down to the jury room
7 to what, collect their paperwork and everything?

8 THE BAILIFF: Yes.

9 THE COURT: Go back down to the jury room
10 just so you can get your paperwork for today.

11 PROSPECTIVE JURY ABSENT:

12 THE COURT: Okay. Folks, you are still
13 potential jurors in this case. So what I'm
14 going to need to ask you to do is -- and we have
15 to bring up a whole another group of folks, and
16 we've got to start where we did early this
17 morning. So I'm going to ask you to step to the
18 central jury room if you want, you can step out
19 if you-all want to step and get something to
20 eat, but I'm going to ask you to be back into
21 the courthouse a little bit before 5:00 o'clock,
22 check into that central jury room, and then at
23 that point in time we may have a little better
24 idea of where we are in this selection process.

25 Like I said, we're going to bring up

1 another dozen or so folks and begin this process
2 again. So if you-all want to relax, like I
3 said, grab something to eat, you're going to
4 have about an hour. Like I said I'd like you to
5 get back in right around 5:00. They won't lock
6 the doors or anything?

7 THE BAILIFF: Yes. They lock at five.

8 THE COURT: They do?

9 THE BAILIFF: Yes, sir.

10 THE COURT: Can I ask you to get back in a
11 little bit before 5:00, so they don't
12 automatically lock you out.

13 THE BAILIFF: As long as they have their
14 jury badges, I'll make sure the guy down front
15 let's them back in.

16 THE COURT: Okay. And we will see you
17 then. Please remember do not discuss this case,
18 do not talk about the case, what you believe the
19 case is about amongst yourselves. Do not
20 discuss why somebody might have been picked or
21 not picked or anything.

22 Please, you can discuss anything, but
23 please do not discuss anything about this case.
24 You can talk about the weather, the sports or
25 whatever, but the conversation about this is

1 kind of off limits, okay? Does everybody
2 understand?

3 PROSPECTIVE JURY PANEL: (Indicating
4 affirmatively.)

5 THE COURT: Great. Thank you so much for
6 your patience, and Deputy Flanagan will escort
7 you out.

8 PROSPECTIVE JURY ABSENT:

9 THE BAILIFF: Your Honor, jurors are out of
10 hearing of the Court.

11 THE COURT: Court will stand in recess for
12 20 minutes by the courtroom clock.

13 RECESS TAKEN:

14 MR. ROSARIO: Judge, I do have an issue to
15 address. Judge, when you say 18 peremptories, I
16 was confused by that. Usually it's six in
17 criminal cases.

18 THE COURT: Per charge.

19 MR. ROSARIO: Per charge, right. But
20 normally it is six. Are you using judicial
21 discretion to allow the 18?

22 THE COURT: Well, you said it's normally
23 six. I'm not sure where you're getting normally
24 it's six from.

25 MR. ROSARIO: My understanding of the rule

1 is that when the cases are put together in the
2 one Information, there's only six peremptories.

3 THE COURT: I'd like to see that.

4 MR. FOOTE: It's 3.350. However, it says
5 it's within the Court's discretion, although if
6 consolidated it can go up to the maximum number.

7 THE COURT: But I'm not sure it said -- and
8 maybe I'm wrong -- that the presumptive number
9 is six. I mean if it does, then we can stand at
10 six. It matters not to me.

11 MR. ROSARIO: Well, the problem is
12 Mr. Foote is at eight and I'm at seven.

13 MR. FOOTE: And, Judge, if there was a
14 problem with whatever -- I know with the last
15 panel I think there was -- we would be asking
16 the Court to exercise its discretion to go up to
17 the amount that were there.

18 So the Rule 3.350(c), Criminal Rules of
19 Procedure says that if the Indictment is put
20 together, then you're entitled to the number
21 that would be permissible in a single case.
22 However, in the interest of justice, the judge
23 will use its judicial discretion in extenuating
24 circumstances to grant additional challenges up
25 to the maximum based on the number of charges

1 with the case.

2 MR. ROSARIO: And with that being the case,
3 Judge, what I would be doing is, since we have
4 only 12 jurors left, I'd have to ask the Court
5 to evaluate the extenuating circumstances if we
6 were to give any additional peremptories beyond
7 what we have already used.

8 THE COURT: Well, I mean that's the issue.
9 Do you wish to be heard with regard to that?
10 That's why I specifically mentioned it and no
11 one objected to that. Where do we go from here?
12 Do you want to set a number of ten? Do you want
13 to set a number of 12?

14 MR. FOOTE: Judge, I'm going to ask the
15 Court not make a preliminary ruling.

16 THE COURT: Well, I've already said 18. So
17 we're stuck with 18, unless there's an
18 agreement. I'm not sure Mr. Rosario wants to
19 try and get this case moving today or not. I
20 mean if you think you have grounds to strike
21 more, I cannot reduce it from the 18 we've
22 previously discussed.

23 MR. FOOTE: I won't know that, Judge, until
24 they come in. And in selecting the first half,
25 it was based on the Court's previous ruling as

1 the number of strikes. So strategically we were
2 doing that in our selection. So now to go
3 backwards, what we would say right now, as soon
4 as we bring these up, unless they're cause
5 challenges --

6 THE COURT: Well, then that's what we've
7 got to do. I mean that is what was agreed upon
8 earlier and everybody agreed, okay, we'll do 18.
9 The problem is now to go back and say, okay, now
10 we really need six, you can't do that because
11 you've both used in excess of six. That's why I
12 specifically mentioned that number.

13 You know, I really did not foresee both
14 sides using that many, but that would be my
15 fault because apparently -- I don't know,
16 perhaps I should not have given you all that
17 leeway that I've given you, and that is
18 certainly a lesson to be learned, I guess.

19 I thought that certainly out of the first
20 group and certainly out of 48 jurors, that we
21 would be able to get seven people that both
22 sides could agree upon. Perhaps I'm wrong about
23 that. I would certainly have thought, based
24 upon my experience, that that should not have
25 been that difficult of a proposition.

1 MR. FOOTE: Well, Judge, based on the panel
2 that we had, from our observations and speaking
3 with my client, we're very uncomfortable with
4 just the panel itself, with the statements that
5 were made and the number of people. There was a
6 high number of cause challenges that were there
7 as well.

8 But given the fact that because it was the
9 three charges, let's see what the other panel
10 would be. If we would have been limited in
11 that, obviously our strategy in choosing those
12 jurors would have been different. That's all.

13 THE COURT: Anything else?

14 MR. ROSARIO: If the Defense is willing to
15 agree to three final challenges on this 12
16 panel, that's what I would be asking for.

17 MR. FOOTE: Judge, then I'm going to ask
18 that we stay with the Court's previous ruling.

19 THE COURT: Like I said, it really depends
20 upon if there's really a desire to get this case
21 tried or not today.

22 All right. Let's bring these folks in.

23 THE BAILIFF: Your Honor, the prospective
24 jurors are entering the courtroom.

25 PROSPECTIVE JURY PRESENT:

1 THE BAILIFF: Your Honor, the prospective
2 jurors are present and seated in the courtroom.

3 THE COURT: Thank you very much.

4 First and foremost, members of the
5 prospective jury, let me take this opportunity,
6 first of all, to introduce myself. My name is
7 Shawn Crane, and I will be presiding over the
8 trial in this case.

9 I would like to take this opportunity to
10 thank you-all for your patience here today. We
11 know it's been a long day for you-all and
12 you-all have been waiting.

13 We have been in the process of jury
14 selection with regard to the case of the State
15 of Florida versus Shannon Stephen. And in order
16 for us to proceed further, I need to first of
17 all ask you all if you would please stand and
18 raise your right hands.

19 PROSPECTIVE JURY SWORN:

20 THE COURT: Please be seated. You are here
21 today with regard to the State of Florida versus
22 Shannon Stephen.

23 This is a three-count Information. The
24 first count is DUI manslaughter. The second
25 count is DUI manslaughter. The third count is

1 leaving the scene of a crash involving death.

2 In pertinent part, the Information reads as
3 follows: In the name and by the authority for
4 the State of Florida, Bernie McCabe, State
5 Attorney for the Sixth Judicial Circuit of
6 Florida, in and for Pasco County, prosecuting
7 for the State of Florida, in the said county,
8 under oath, Information makes that Shannon L.
9 Stephen, in the County of Pasco and the State of
10 Florida, on the 26th day of March, in the year
11 of our Lord, 2006, in the County and State
12 aforesaid, did unlawfully cause or contribute to
13 causing the death of Sarah Gleason, a human
14 being, by the operation of a motor vehicle while
15 under the influence of alcoholic beverages or a
16 substance controlled by Florida Statutes,
17 Chapter 893, and was affected to the extent that
18 his normal faculties were impaired or had a
19 blood or breath alcohol level of .08 percent or
20 higher; contrary to Chapter 316.193(3)(c)3.a.,
21 Florida Statutes, and against the peace and
22 dignity of the State of Florida.

23 Count 2, and the State Attorney aforesaid,
24 under oath as aforesaid, further Information
25 makes that Shannon L. Stephen, in the County of

1 Pasco, State of Florida, on the 26th day of
2 March, in the year of our Lord, 2006, in the
3 County and State aforesaid, did unlawfully cause
4 or contribute to causing the death of Joseph
5 Swiech, a human being, by the operation of a
6 motor vehicle while under the influence of
7 alcoholic beverages or a substance controlled by
8 Florida Statute, Chapter 893, and was affected
9 to the extent that his normal faculties were
10 impaired or had a blood or breath alcohol level
11 of .08 percent or higher; contrary to Chapter
12 316.193, (3) (c) 3.a., Florida Statutes, and
13 against the peace and dignity of the State of
14 Florida.

15 Count 3, and the State Attorney aforesaid,
16 under oath as aforesaid, further information
17 makes that Shannon L. Stephen, in the County of
18 Pasco, State of Florida, on the 26th day of
19 March, in the year of our Lord, 2006, in the
20 County and State aforesaid, was the driver of a
21 motor vehicle which was involved in a crash
22 involving the death of Sarah Gleason and/or
23 Joseph Sweish, and the said Shannon L. Stephen
24 did willfully fail to stop the vehicle at the
25 scene of the crash or as close thereto as

1 possible, or return and remain at the scene of
2 the crash until he had fulfilled the requirement
3 of Florida Statute 316.062, to-wit: did not give
4 his name and address, and the registration
5 number of the vehicle he was driving, and did
6 not render reasonable assistance to persons
7 injured in the crash; contrary to Chapter
8 316.027(1)(b), Florida Statutes, and against the
9 peace and dignity of the State of Florida.

10 In just a moment I am going to ask both
11 sides if they are prepared to proceed. They
12 will introduce themselves and read the potential
13 witness list. Remember this list is of
14 potential witnesses. These witnesses may or may
15 not be called, but it's critically important for
16 you to understand that the witnesses are
17 important because we need to know if you know
18 any of these folks.

19 So please keep that in mind as those
20 witness lists are read to you. Also please keep
21 in mind that the charging document, the
22 information that I've just read to you is not
23 evidence and is not proof of any guilt, but is
24 merely the document that brings us here to court
25 here today. So please keep that in mind as

1 well.

2 Is the State ready to proceed?

3 MR. ROSARIO: Yes, Your Honor.

4 THE COURT: Okay. Is the Defense ready to
5 proceed?

6 MR. FOOTE: The Defense is ready to
7 proceed, Your Honor.

8 THE COURT: Mr. Rosario, please introduce
9 yourself and read your potential witnesses and
10 Mr. Foote will follow.

11 MR. ROSARIO: Good afternoon, ladies and
12 gentlemen. My name is Eric Rosario. I'm the
13 prosecutor in this case. This is Brian Sarabia,
14 he is my coach here on this case.

15 The potential witnesses in this case, this
16 does not necessarily mean we'll actually be
17 calling all these witnesses, but they are
18 potentials: Deputy Cary Cosimi. Roberta Penix.
19 Trooper Leland Frye. Deputy Gary Kling. Dr.
20 Stephen Epstein. Michael Dibenedetto. Francis
21 Figliozzi. Corporal James Toner. Robert
22 Neuenschwander. Corporal Michael Styers.
23 Trooper Eric Shaw. Deputy Jason Christy.
24 Deputy Robert Gracie. Deputy Kevin Stevenson.
25 Sergeant Heather Glenney. Detective Paul

1 Monaghan. John Romeo. Christina Sanders.
2 Daniel Housel. Dr. Jon Thogmartin. Trooper
3 Ronald Evans. Trooper Anthony Palese. John
4 Murdoch. Deputy Marshall Deberry. Trooper Adam
5 Morris. EMT Adam Rollins. Marvin Joe Dalzell.
6 Richard Scott. Deputy Jason Christy. Robert
7 Bartlett. Joe Lopardo. Carol Wallace. Jim
8 Ramsey. Jim Wallace. Patrick Connerty. Shawn
9 Connerty. Evelyn Bigord. Terry Owens. Charles
10 Brinin. Jeffrey Hays. Sharon Connerty. Beau
11 Mayhue. Roger Riendeau, spelled
12 R-i-e-n-d-e-a-u. Rudy Schmidt. John Falls.
13 Bryan Farro. Jennifer Setlak. Valerie Herbert.
14 Phil Moore. Elmer Holt. Lisa Toronto. Heather
15 Ramos. Gavin Pinchback. Youssouf Mohamed.
16 Cory Eames. Dan Jensen.

17 THE COURT: All right. Thank you.

18 Mr. Foote.

19 MR. FOOTE: Good afternoon. My name is
20 Kenneth Foote. I'm a local attorney. I
21 represent Shannon Stephen. John Foote is an
22 investigator from my firm. The only one other
23 witness will be Walter Schubert. His name is
24 Walter Schubert. Thank you.

25 THE COURT: All right. Does anyone here

1 know any of these potential witnesses whose
2 names you just heard read? Can you please raise
3 your right hand.

4 PROSPECTIVE JURY PANEL: (No response.)

5 THE COURT: All right. Thank you. Seeing
6 no hands.

7 I'll start with the first row. Has anyone
8 here in the first row ever been on jury duty or
9 served on a jury before? Anyone on the first
10 row? Let me get my seating chart here.

11 PROSPECTIVE JURY PANEL: (No response.)

12 THE COURT: All right. No hands. No jury
13 service? Thanks a lot.

14 Next row, anybody serve on a jury before?

15 PROSPECTIVE JURY PANEL: (No response.)

16 THE COURT: Okay. All the way on the end,
17 Ms. Gilzow?

18 PROSPECTIVE JUROR GILZOW: Yes, sir.

19 THE COURT: Did you serve on a jury before?

20 PROSPECTIVE JUROR GILZOW: Yes, sir.

21 THE COURT: Okay. Was that here in Pasco
22 or elsewhere?

23 PROSPECTIVE JUROR GILZOW: It was in New
24 Jersey.

25 THE COURT: Okay. About how long ago?

1 PROSPECTIVE JUROR GILZOW: Seven years ago.

2 THE COURT: Do you recall if it was civil
3 or criminal?

4 PROSPECTIVE JUROR GILZOW: It was a
5 malpractice suit.

6 THE COURT: Okay. That would be civil.
7 And did you actually serve on that jury? Did
8 you go back and deliberate?

9 PROSPECTIVE JUROR GILZOW: Yes.

10 THE COURT: Without telling me what
11 happened, did the jury reach a verdict?

12 PROSPECTIVE JUROR GILZOW: Yes.

13 THE COURT: And would you consider that to
14 be a good experience, a positive experience, a
15 negative experience or a neutral experience?

16 PROSPECTIVE JUROR GILZOW: A positive
17 experience.

18 THE COURT: All right. And is there
19 anything about that case that would cause you
20 any difficulty to be a fair and impartial juror
21 in this case here today?

22 PROSPECTIVE JUROR GILZOW: No.

23 THE COURT: All right. Do you feel you can
24 put that case totally aside and base your
25 decision in this case solely upon the merits or

1 the facts of this case as you and the jury
2 collectively determine them to be and the law as
3 I instruct you?

4 PROSPECTIVE JUROR GILZOW: Yes, sir.

5 THE COURT: Excellent. Thank you very
6 much.

7 All right. Anybody in the first row, this
8 goes for you or a family member or a friend.
9 Ever been the victim of a crime? Ever been the
10 victim of a crime? Anybody in the first row?

11 PROSPECTIVE JUROR LEMAY: (Indicating.)

12 THE COURT: Over in the end, Ms. Lemay.

13 PROSPECTIVE JUROR LEMAY: Yes.

14 THE COURT: Do you want to tell me about
15 that?

16 PROSPECTIVE JUROR LEMAY: It was theft. I
17 had a small business in Connecticut and it was a
18 theft.

19 THE COURT: And was anyone ever prosecuted
20 as a result of that?

21 PROSPECTIVE JUROR LEMAY: No.

22 THE COURT: And is there anything about
23 that situation that would cause you any hard
24 feelings toward the criminal justice system or
25 toward law enforcement officers or prosecutors

1 or defense lawyers or people accused of a crime,
2 that sort of thing?

3 PROSPECTIVE JUROR LEMAY: No.

4 THE COURT: All right. Do you feel you can
5 take that case, put it totally aside, judge your
6 decision in this case solely upon the facts as
7 you and the jury collectively determine them to
8 be and the law as I instruct you?

9 PROSPECTIVE JUROR LEMAY: Yes, I do.

10 THE COURT: Great. Thank you very much.

11 Are there some other people that had their
12 hands up as well?

13 PROSPECTIVE JUROR BROWN: (Indicating.)

14 THE COURT: Ms. Brown, you had your hand up
15 as well?

16 PROSPECTIVE JUROR BROWN: Yes. My
17 daughter's house, when she was in college, was
18 broken into and things were stolen.

19 THE COURT: Okay. About how long ago would
20 that have been?

21 PROSPECTIVE JUROR BROWN: Probably 15 years
22 ago.

23 THE COURT: Okay. Anything about that
24 situation that's going to cause you any
25 difficulty here today?

1 PROSPECTIVE JUROR BROWN: (Indicating.)

2 THE COURT: I'm sorry. You have to answer
3 out loud.

4 PROSPECTIVE JUROR BROWN: Oh, I'm sorry.
5 No.

6 THE COURT: See, our court reporter there
7 has to take down what you say.

8 PROSPECTIVE JUROR BROWN: That's right.

9 THE COURT: And if you shake your head,
10 there is nothing to take down.

11 All right. So you can take that case, put
12 it totally aside, and judge this case solely
13 upon the facts as you and the jury collectively
14 determine them to be and the law as I instruct
15 you?

16 PROSPECTIVE JUROR BROWN: Yes, sir.

17 THE COURT: And is there anything about
18 that case that leaves you with any bad feelings
19 towards law enforcement, prosecutors, defense
20 lawyers, people accused of a crime, judges,
21 anything like that?

22 PROSPECTIVE JUROR BROWN: No, sir.

23 THE COURT: Great. Who else had their hand
24 up?

25 PROSPECTIVE JUROR SHAMBAUGHT: (Indicating.)

1 THE COURT: All right. Is it
2 Ms. Shambaught?

3 PROSPECTIVE JUROR SHAMBAUGHT: Yes.

4 THE COURT: All right. Ms. Shambaught?

5 PROSPECTIVE JUROR SHAMBAUGHT: I also
6 wanted to say about jury. I did get selected to
7 go to jury duty, but I was dismissed. That was
8 years ago.

9 THE COURT: All right. Thank you.

10 PROSPECTIVE JUROR SHAMBAUGHT: And as far
11 as a crime, my garage was broken into and some
12 things were stolen. The person was caught and
13 charged and did go to jail, but I wasn't a part
14 of any of that.

15 THE COURT: All right. And was that case
16 handled fairly or to your satisfaction?

17 PROSPECTIVE JUROR SHAMBAUGHT: Yes.

18 THE COURT: Was that here in Pasco or
19 elsewhere?

20 PROSPECTIVE JUROR SHAMBAUGHT: It was in
21 Pinellas.

22 THE COURT: Okay. Is there anything about
23 that case that would cause you any difficulty
24 being a fair and impartial juror in this case?

25 PROSPECTIVE JUROR SHAMBAUGHT: No.

1 THE COURT: Do you have bad feelings toward
2 prosecutors, law enforcement, defense attorneys,
3 people accused of a crime, judges, anything?

4 PROSPECTIVE JUROR SHAMBAUGHT: No.

5 THE COURT: Can you put that case totally
6 aside and judge your decision in this case solely
7 upon the merits of this case and the facts as
8 you and the jury collectively determine them to
9 be and the law as I instruct you?

10 PROSPECTIVE JUROR SHAMBAUGHT: Yes.

11 THE COURT: Good. Thank you so much.
12 Anybody else in that row?

13 PROSPECTIVE JUROR AVERY: (Indicating.)

14 THE COURT: All right. Mr. Avery.

15 PROSPECTIVE JUROR AVERY: My daughter was
16 involved in a battery. She was a victim of
17 that. This past year in Pasco, but I'm not too
18 sure of the outcome of it.

19 THE COURT: All right. Were there charges
20 brought; do you know?

21 PROSPECTIVE JUROR AVERY: Yeah, against
22 some individual, but I don't know the name or
23 anything.

24 THE COURT: Okay. And was that case
25 handled satisfactorily to the best of your

1 knowledge?

2 PROSPECTIVE JUROR AVERY: I don't even know
3 if it's been resolved yet.

4 THE COURT: All right. So is there
5 anything about that case that would cause you
6 any bad feelings toward law enforcement, defense
7 lawyers, prosecutors, people accused of crimes,
8 judges, anybody in the criminal justice system?

9 PROSPECTIVE JUROR AVERY: No, sir.

10 THE COURT: All right. Can you take that
11 case and put it totally aside and judge this
12 case solely upon the facts as you and the jury
13 collectively determine them to be and the law as
14 I instruct you?

15 PROSPECTIVE JUROR AVERY: Yes, sir.

16 THE COURT: All right. Thank you.

17 Anybody else in that row? Ms. Gause, did
18 you have your hand up or not?

19 PROSPECTIVE JUROR GAUSE: No.

20 THE COURT: All right. How about the next
21 row?

22 PROSPECTIVE JUROR SMITH: (Indicating.)

23 THE COURT: All right. Mr. Smith.

24 PROSPECTIVE JUROR SMITH: I was involved
25 actually on two different occasions of hit and

1 run. One was on the Courtney Campbell Causeway
2 in 2007, never got caught, never found him. The
3 other one was in 2006 at Applebee's, she was
4 caught and prosecuted.

5 THE COURT: So actually your vehicle has
6 been hit twice?

7 PROSPECTIVE JUROR SMITH: Yeah. I was on a
8 motorcycle.

9 THE COURT: Oh, you were on a motorcycle.
10 okay.

11 PROSPECTIVE JUROR SMITH: One in a car, one
12 on a motorcycle. She put me up on the hood. It
13 took for about two and a half months for
14 everything to come through.

15 THE COURT: All right. And do you feel
16 that those cases were collectively, both of them
17 handled fairly?

18 PROSPECTIVE JUROR SMITH: Yeah.

19 THE COURT: Is there anything about those
20 cases that you think are going to cause you any
21 difficulty being a fair and impartial juror here
22 today?

23 PROSPECTIVE JUROR SMITH: No.

24 THE COURT: Does that leave you with any
25 bad feelings towards law enforcement officers,

1 prosecutors, defense lawyers, people accused of
2 a crime, anything like that?

3 PROSPECTIVE JUROR SMITH: No.

4 THE COURT: Can you take and put those two
5 cases out of your mind and say, I'm going to
6 judge this case solely upon the facts as you and
7 the jury collectively determine them to be and
8 the law as I instruct you?

9 PROSPECTIVE JUROR SMITH: Yeah.

10 THE COURT: All right. Thank you.

11 Anybody else?

12 PROSPECTIVE JUROR WATSON: (Indicating.)

13 THE COURT: Ms. Watson, I think you had
14 your hand up as well?

15 PROSPECTIVE JUROR WATSON: Yes.

16 THE COURT: All right. Do you want to tell
17 us about that?

18 PROSPECTIVE JUROR WATSON: Several years
19 ago, 15, 20 years ago I had a stolen and a
20 burglary.

21 THE COURT: Here in Pasco or elsewhere?

22 PROSPECTIVE JUROR WATSON: No. In New
23 York.

24 THE COURT: Okay. Were those cases ever
25 charged? Was anybody ever charged in those

1 cases?

2 PROSPECTIVE JUROR WATSON: No, they
3 weren't.

4 THE COURT: Is there anything about those
5 cases that leaves you with any hard feelings
6 toward law enforcement officers, prosecutors,
7 defense lawyers, people accused of a crime, the
8 criminal justice system as a whole, anything
9 like that that we should be concerned with?

10 PROSPECTIVE JUROR WATSON: No.

11 THE COURT: Can you put those cases totally
12 out of your mind and judge this case solely upon
13 its facts, the facts as you and the rest of the
14 jury collectively determine them to be and the
15 law as I instruct you?

16 PROSPECTIVE JUROR WATSON: Yes.

17 THE COURT: Great. Thank you.
18 Anybody else in that row?

19 PROSPECTIVE JUROR LANTZ: (Indicating.)

20 THE COURT: Ms. Lantz.

21 PROSPECTIVE JUROR LANTZ: Yes. My brother
22 was killed by a drunk driver.

23 THE COURT: Here in Pasco or elsewhere?

24 PROSPECTIVE JUROR LANTZ: Hillsborough
25 County.

1 THE COURT: Okay. About how long ago?

2 PROSPECTIVE JUROR LANTZ: Thirteen years.

3 THE COURT: And obviously you've heard the
4 nature of this charge. Do you feel that you're
5 going to be able to separate --

6 PROSPECTIVE JUROR LANTZ: It was a drunk
7 driving. Actually he was more -- it was drugs
8 while driving. He was under the influence of
9 drugs and alcohol.

10 THE COURT: Okay. So is do you think
11 you're going to be able to set that case aside
12 and judge this case solely upon its merits, the
13 facts as you and the jury collectively determine
14 them to be and the law as I instruct you?

15 PROSPECTIVE JUROR LANTZ: I would say, no.
16 I'm just going to be honest.

17 THE COURT: That's okay. That's what we
18 want. Remember, there are no right or wrong
19 answers, and I should have explained that
20 earlier, to these questions. The right answer
21 is how you feel. And I appreciate that.

22 So the issue with your brother, you think
23 that is such that that would obviously cause you
24 some difficulty being fair and impartial in this
25 case?

1 PROSPECTIVE JUROR LANTZ: Right. The guy
2 has never been charged with it. He was charged
3 for something that happened earlier that
4 evening. So he's facing my brother if he gets
5 caught, after he's released. So he's not even
6 serving time for him yet.

7 THE COURT: Okay. All right. So Ms.
8 Lantz, you just don't feel that you can be fair
9 and impartial; is that correct?

10 PROSPECTIVE JUROR LANTZ: No. I don't feel
11 like I could be.

12 THE COURT: All right. Thank you.

13 PROSPECTIVE JUROR DECKER: (Indicating.)

14 THE COURT: Ms. Decker.

15 PROSPECTIVE JUROR DECKER: My brother was
16 convicted of a DUI manslaughter this year.

17 THE COURT: This year? Here in Pasco or
18 elsewhere?

19 PROSPECTIVE JUROR DECKER: Yes. Pasco.

20 THE COURT: All right. And do you think
21 that case was handled fairly?

22 PROSPECTIVE JUROR DECKER: No.

23 THE COURT: All right. Same questions
24 asked of Ms. Lantz, do you think that that is
25 going to affect your ability to be a fair and

1 impartial juror?

2 PROSPECTIVE JUROR DECKER: Yes, sir.

3 THE COURT: And so once again you don't
4 feel you can put that case aside and judge this
5 case solely upon the facts as you and the jury
6 collectively determine them to be and the law as
7 I instruct you?

8 PROSPECTIVE JUROR DECKER: No.

9 THE COURT: Okay. So once again you just
10 don't feel you can be fair and impartial; is
11 that correct?

12 PROSPECTIVE JUROR DECKER: No. Sorry.

13 THE COURT: All right. Thank you.

14 PROSPECTIVE JUROR SMITH: (Indicating.)

15 MR. FOOTE: Judge, there's another hand.

16 THE COURT: Oh, I'm sorry. Yes, Mr. Smith.

17 PROSPECTIVE JUROR SMITH: I misunderstood
18 the question. I thought it was directly towards
19 us. In 2006, I lost my best friend due to a hit
20 and run, a drunk driver on Racetrack Road.

21 THE COURT: Okay. And once again is that a
22 situation you feel you're going to be able to
23 set aside?

24 PROSPECTIVE JUROR SMITH: I'm pretty biased
25 on it, to be honest.

1 THE COURT: Okay. So you don't feel you
2 can set that aside?

3 PROSPECTIVE JUROR SMITH: No, sir.

4 THE COURT: And so do you feel that you
5 could not be fair and impartial on this case
6 here today?

7 PROSPECTIVE JUROR SMITH: I guess I'd have
8 to deal with facts.

9 THE COURT: Well, and that's the critical
10 part of that. I mean no one is saying, gee,
11 you've got to condone the sort of conduct that
12 leads to these sorts of charges.

13 The issues is whether or not you can listen
14 to the facts on this case, determine whether or
15 not those facts, when the law is applied, that
16 there is proof beyond and to the exclusion of a
17 reasonable doubt that a crime has been
18 committed, and this is the person that committed
19 the crime.

20 So, you know, this is not some sort of
21 discussion about whether it is good or bad to
22 drink and drive and that sort of thing but
23 rather has the case been proven based upon the
24 facts and the evidence and the law presented.

25 So that's kind of what it's about. So I

1 mean if you feel that you can set that aside,
2 that's fine. If you feel that you cannot set it
3 aside, that's fine. Remember, there are no
4 right or wrong answers to any of these
5 questions.

6 PROSPECTIVE JUROR SMITH: Probably not.

7 THE COURT: Okay. Thank you. Anybody?
8 Anything else?

9 PROSPECTIVE JURY PANEL: (No response.)

10 THE COURT: Okay. In the first row, has a
11 family member, a friend or you have been in law
12 enforcement or in the judicial system, in the
13 legal system, anything like that?

14 PROSPECTIVE JUROR BROWN: (Indicating.)

15 THE COURT: Ms. Brown.

16 PROSPECTIVE JUROR BROWN: My brother is in
17 the Highway Patrol in Missouri.

18 THE COURT: Okay. And is there anything
19 about that relationship that's going to cause
20 you not to be fair and impartial?

21 PROSPECTIVE JUROR BROWN: No. He works --
22 in Missouri they have -- he's not a regular
23 officer. He oversees the vehicle inspection
24 station. So he's not a patrol officer.

25 THE COURT: Okay. So he does, like you

1 said, motor vehicle inspections and that sort of
2 thing?

3 PROSPECTIVE JUROR BROWN: (Indicating
4 affirmatively.)

5 THE COURT: Yes?

6 PROSPECTIVE JUROR BROWN: Yes.

7 THE COURT: Okay. Is there anything about
8 that relationship that you think is going to
9 cause you any trouble being fair and impartial
10 here today?

11 PROSPECTIVE JUROR BROWN: No.

12 THE COURT: And what I mean by that is,
13 let's say a law enforcement officer is called to
14 testify, can you judge them like you would
15 anyone else, whether the person is a teacher,
16 architect, sales person, business person?

17 PROSPECTIVE JUROR BROWN: Yes.

18 THE COURT: You can judge them as an
19 individual?

20 PROSPECTIVE JUROR BROWN: Yes.

21 THE COURT: In other words, merely because
22 they wear a uniform, they don't get more points
23 of credibility or less points of credibility
24 merely because of the uniform, correct?

25 PROSPECTIVE JUROR BROWN: That's right.

1 THE COURT: Okay. Great. Thank you.

2 Is there anybody in that first row?

3 PROSPECTIVE JURY PANEL: (No response.)

4 THE COURT: No?

5 Anybody in the second row, a family member,
6 friends, law enforcement?

7 PROSPECTIVE JUROR SMITH: (Indicating.)

8 THE COURT: Once again, Mr. Smith.

9 PROSPECTIVE JUROR SMITH: My father is a
10 captain for Resnick County Sheriff's Department
11 in upstate New York.

12 THE COURT: Okay. Well, we heard you talk
13 about your other issues, you still just really
14 don't feel you can be fair and impartial because
15 of the issue with your best friend?

16 PROSPECTIVE JUROR SMITH: I have to live
17 with it. It's tattooed to me. You know, it's
18 in my head all the time.

19 THE COURT: Okay. And that's fair. Like I
20 said, please, no one is in any way criticizing
21 you for that. I'm just reflecting back. So I'm
22 not going to continue with that other question
23 about your dad just because I know you said,
24 with all the cases, this is probably not the one
25 for me.

1 PROSPECTIVE JUROR SMITH: Okay.

2 THE COURT: Okay. So I just want to let
3 you know why. I wasn't trying to ignore you,
4 but I just wanted to let you know why I wasn't
5 following up with that.

6 PROSPECTIVE JUROR SMITH: That's okay.
7 Understood. Thank you.

8 THE COURT: All right. Anybody else in the
9 first row?

10 PROSPECTIVE JUROR WATSON: (Indicating.)

11 MR. FOOTE: Judge, Ms. Watson.

12 THE COURT: Oh, Ms. Watson. I'm sorry.
13 You've got to go up a little higher.

14 PROSPECTIVE JUROR WATSON: I'm sorry. I
15 didn't know if it was relevant. I worked for a
16 judge many years ago and was a paralegal, and
17 then I wrote legislation for the senate in New
18 York.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR WATSON: I didn't know if
21 that pertained to --

22 THE COURT: No. I appreciate that, and I
23 appreciate that information. Is there anything
24 about that experience that's going to cause you
25 any difficulty you think being fair and

1 impartial on this case here today?

2 PROSPECTIVE JUROR WATSON: No.

3 THE COURT: I mean do you feel that with
4 all this experience you can say, look, I know
5 what the law is in New York but here I've got to
6 set it aside and listen to the law as instructed
7 by the Court, and apply the facts as you and the
8 jury collectively determine them to be, apply
9 the laws to those facts, and make your decision?

10 PROSPECTIVE JUROR WATSON: Yes.

11 THE COURT: So you feel you can do that?

12 PROSPECTIVE JUROR WATSON: Yes.

13 THE COURT: Good. Thank you.

14 Anyone in the first row, a family member, a
15 friend, or you yourself have ever been charged
16 or accused of a crime? Charged or accused of a
17 crime?

18 PROSPECTIVE JURY PANEL: (No response.)

19 THE COURT: All right. No hands in the
20 first row.

21 Second row?

22 PROSPECTIVE JURY PANEL: (No response.)

23 THE COURT: All right. No hands.

24 Excellent.

25 Is there anything that I need to know? Any

1 personal situation? This trial is going to last
2 about a week. It's going to last the balance of
3 the week. Is there anything I need to know,
4 health problems, job-related issues, day care
5 issues that I need to know about kind of going
6 into the selection process that you all need to
7 make me aware of?

8 PROSPECTIVE JUROR AVERY: (Indicating.)

9 THE COURT: All right. Mr. Avery.

10 PROSPECTIVE JUROR AVERY: If it's going to
11 be a week, if I'm not at work, I've got three
12 workers that can't work.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR AVERY: So they're out of
15 work if I'm not there.

16 THE COURT: All right. And what kind of
17 work do you do?

18 PROSPECTIVE JUROR AVERY: Injection
19 molding, plastics.

20 THE COURT: Okay. And they can't do
21 anything?

22 PROSPECTIVE JUROR AVERY: No. There's
23 nobody else there capable.

24 THE COURT: Well, what happens if you go on
25 vacation? Do you ever go on vacation?

1 PROSPECTIVE JUROR AVERY: I haven't had a
2 vacation since 2008.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR AVERY: Since the economy
5 slowed down, you know, we've cut back and
6 everything.

7 THE COURT: All right. And how about if
8 you call in sick, what do you do then?

9 PROSPECTIVE JUROR AVERY: They don't work.

10 THE COURT: If you have a like the flu and
11 you're sick for a week, the company shuts down?

12 PROSPECTIVE JUROR AVERY: I go to work
13 sick, believe it or not, yeah.

14 THE COURT: All right. And have you
15 already received a deferment or not?

16 PROSPECTIVE JUROR AVERY: I don't know.
17 What's that?

18 THE COURT: In other words, did you get
19 summonsed for jury duty and send in a request
20 and put it off?

21 PROSPECTIVE JUROR AVERY: No, no.

22 THE COURT: All right. Okay. Thank you,
23 Mr. Avery.

24 Anybody else have a situation that I need
25 to know about?

1 PROSPECTIVE JUROR SHAMBAUGHT: (Indicating.)

2 THE COURT: Ms. Shambaught.

3 PROSPECTIVE JUROR SHAMBAUGHT: I forgot to
4 mention, it was so long ago. I was 18 and I
5 sold beer to minor unbeknownst to me.

6 THE COURT: Okay. Anything about that
7 situation that's going to cause you any problem
8 being fair and impartial?

9 PROSPECTIVE JUROR SHAMBAUGHT: No.

10 THE COURT: I know that was only a couple
11 of years ago, but anything about that --

12 PROSPECTIVE JUROR SHAMBAUGHT: Oh, yeah.
13 Thank you.

14 THE COURT: That's going cause to you any
15 difficulty here today?

16 PROSPECTIVE JUROR SHAMBAUGHT: No.

17 THE COURT: In other words, you can put
18 that cause totally aside, judge this case solely
19 upon its facts and the law as I instruct you?

20 PROSPECTIVE JUROR SHAMBAUGHT: Yes.

21 THE COURT: Super. Thank you.
22 Anybody else?

23 PROSPECTIVE JUROR DECKER: (Indicating.)

24 THE COURT: All right. Ms. Decker.

25 PROSPECTIVE JUROR DECKER: I'm also

1 self-employed and have two other employees that
2 wouldn't be working if I'm not working. We work
3 out of town.

4 THE COURT: All right. So once again you
5 still have this feeling that you still can't be
6 fair and impartial, but even if you could, you
7 would have this job obligation, correct?

8 PROSPECTIVE JUROR DECKER: Yes.

9 THE COURT: All right. And once again,
10 same sort of questions, they can't do anything
11 without you being there?

12 PROSPECTIVE JUROR DECKER: Right. I drive.
13 I take us there and bring us all back.

14 THE COURT: Okay. And what kind of work do
15 you do?

16 PROSPECTIVE JUROR DECKER: We do pinstripes
17 or vehicles.

18 THE COURT: All right. Thank you. Anyone
19 else?

20 PROSPECTIVE JUROR SMITH: (Indicating.)

21 THE COURT: Mr. Smith.

22 PROSPECTIVE JUROR SMITH: Sorry.

23 THE COURT: That's all right.

24 PROSPECTIVE JUROR SMITH: I'm
25 self-employed. I run an autographics business.

1 I don't have any employees, but I am a sole
2 provider for a house. That's all.

3 THE COURT: By autographics, do you do
4 pinstriping?

5 PROSPECTIVE JUROR SMITH: Absolutely.
6 Competition over here. I do sheriff's vehicles
7 too.

8 THE COURT: Okay. Well, thank you very
9 much. I guess I can corner the pinstriping
10 market for a while here. Okay. Thank you very
11 much.

12 Is there anything else that anybody wants
13 to tell me or that I need to know?

14 PROSPECTIVE JURY PANEL: (No response.)

15 THE COURT: Great. In just a moment what I
16 am going to do is I'm going to read to you some
17 very important constitutional principles. This
18 is the jury instruction for a plea of not
19 guilty, reasonable doubt, and burden of proof.

20 Please listen carefully, because I'm going
21 to ask you about these. These are fundamental
22 constitutional principles that apply in every
23 courtroom in our country today, and in every
24 criminal case, in every courtroom, these
25 principles apply. So please listen carefully to

1 this.

2 The defendant has entered a plea of not
3 guilty. This means you must presume or believe
4 the defendant is innocent. The presumption
5 stays with the defendant as to each material
6 allegation in the Information, through each
7 stage of the trial, unless and until it has been
8 overcome by the evidence to exclusion of and
9 beyond a reasonable doubt.

10 To overcome the defendant's presumption of
11 innocence, the State has the burden of proving
12 the crime with which the defendant is charged
13 was committed, and the defendant is the person
14 who committed the crime.

15 The defendant is not required to present
16 evidence or prove anything. Whenever the words
17 "reasonable doubt" are used, you must consider
18 the following: A reasonable doubt is not a mere
19 possible doubt, a speculative, imaginary or
20 forced doubt. Such a doubt must not influence
21 you to return a verdict of not guilty if you
22 have an abiding conviction of guilt.

23 On the other hand, if after carefully,
24 considering, comparing and weighing all the
25 evidence, there is not an abiding conviction of

1 guilt, or if having a conviction, it is one
2 which is not stable, but one which wavers and
3 vacillates, then the charge is not proven beyond
4 every reasonable doubt and you must find the
5 defendant not guilty because the doubt is
6 reasonable.

7 It is to the evidence introduced in this
8 trial and it alone that you are to look for that
9 proof. A reasonable doubt as to the guilt of
10 the defendant may arise from the evidence, a
11 conflict in the evidence, or the lack of
12 evidence.

13 If you have a reasonable doubt, you should
14 find the defendant not guilty. If you have no
15 reasonable doubt, you should find the defendant
16 guilty.

17 All right. Some very important
18 constitutional principles. One, the presumption
19 of innocence. Remember, every defendant in
20 every courtroom, regardless of the charge, the
21 evidence, whatever, is presumed to be innocent.

22 Does anyone in the first row have a
23 disagreement with that fundamental
24 constitutional principle? I mean that is part
25 of our Constitution. Does anyone have a

1 disagreement with that and can't apply that here
2 today? If you do, please raise your hand.

3 PROSPECTIVE JURY PANEL: (No response.)

4 THE COURT: Seeing no hands.

5 How about the second row, does anybody
6 disagree with that?

7 PROSPECTIVE JURY PANEL: (No response.)

8 THE COURT: Once again seeing no hands.

9 Thank you.

10 The second one is the burden of proof. The
11 burden of proof is on the State. There is no
12 burden -- and once again this is in every
13 criminal case -- there is no burden whatsoever
14 on the Defense.

15 It's often been said by criminal defense
16 lawyers they can sit there and play cards, read
17 the newspaper, read a crossword puzzle. And
18 that's really just to illustrate. Of course,
19 none of those things happen, but it's just to
20 illustrate that they have no burden whatsoever,
21 zero.

22 There is no requirement they present
23 evidence. There's no requirement that the
24 defendant, Mr. Stephen, testify or take the
25 witness stand. There is no requirement that any

1 of those things happen because the burden is on
2 the State.

3 Is there anybody in the first row that
4 disagrees with that constitutional principle and
5 believes it should be different or feels that
6 they cannot apply that law? If you do, please
7 raise your hand.

8 PROSPECTIVE JURY PANEL: (No response.)

9 THE COURT: Seeing no hands.

10 Second row?

11 PROSPECTIVE JURY PANEL: (No response.)

12 THE COURT: Once again seeing no hands.

13 Thank you.

14 All right. Now, this is one where you can
15 all raise your hands. How many of you have
16 heard the phrase, beyond a shadow of a doubt,
17 raise your hand.

18 PROSPECTIVE JURY PANEL: (Indicating.)

19 THE COURT: All hands should be up. Right?
20 Everybody has heard that? Beyond a shadow of a
21 doubt. Well, that's good for TV, not so good in
22 real life. The burden here is beyond a
23 reasonable doubt, and that's as this instruction
24 illustrates.

25 So that being the burden, is there anybody

1 in the first row that disagrees with that and
2 thinks this burden ought to be higher or the
3 burden ought to be lower and cannot apply this
4 constitutional principle? Anybody in the first
5 row disagree with that? Please raise your hand.

6 PROSPECTIVE JURY PANEL: (No response.)

7 THE COURT: Seeing no hands.

8 Is there anybody in the second row?

9 PROSPECTIVE JURY PANEL: (No response.)

10 THE COURT: All right. Seeing no hands
11 once again. Thank you very much.

12 In just a moment what I am going to do is
13 I'm going to turn the questioning over to both
14 the State and the Defense. I thank you for your
15 attention here today. I thank you for your
16 candor. I ask you to extend the same to them,
17 which I'm sure you will do.

18 When they're done, if I have any follow-up
19 questions, I'll follow up with you and ask those
20 questions. But please once again give them the
21 same attention you've given me, and I appreciate
22 it very much. Thank you.

23 State.

24 MR. ROSARIO: Good afternoon, ladies and
25 gentlemen. We've been going all day.

1 There are three of you here that already
2 have personal involvement with DUI manslaughter,
3 and I thank you for your attention during this
4 time period, and I'm going to address you guys
5 first just briefly.

6 Mr. Smith, I understand your loss; however,
7 we do need a jury in this case. You don't know
8 any of the facts in this case. The testimony
9 will come from that witness stand, evidence will
10 be put in, you'll get to look at it as a juror.

11 Do you think you can take your personal
12 experiences and put them aside and give the
13 State and the Defense a fair trial, an even
14 playing field, and say, okay, I'll take my
15 personal experience aside, this is what the law
16 is, this is what the facts are, Mr. Rosario
17 proved this case beyond a reasonable doubt, he
18 is guilty; Mr. Rosario did not prove this case
19 beyond a reasonable doubt, he's not guilty; can
20 you do that?

21 PROSPECTIVE JUROR SMITH: Honestly, I don't
22 feel like I should be the judge of somebody's
23 future because I believe I do have a bias in me
24 on that.

25 MR. ROSARIO: You would be biased towards

1 the State in that situation, since your friend
2 was killed, or against it?

3 PROSPECTIVE JUROR SMITH: Honestly, yes. I
4 don't feel comfortable with ever putting
5 somebody's future in my hands. If it were a
6 different case, I'd be here.

7 MR. ROSARIO: Ms. Lantz, do you feel as if
8 you can put aside your feelings, even though it
9 was your brother, and give the State and the
10 Defense a fair trial?

11 PROSPECTIVE JUROR LANTZ: No.

12 THE COURT: Ms. Decker, do you feel you can
13 put aside your experiences and give the State
14 and the Defense a fair trial?

15 PROSPECTIVE JUROR DECKER: No, I do not.

16 MR. ROSARIO: For everyone else involved in
17 this case, how many people here have already sat
18 through a jury selection? Any of you?

19 PROSPECTIVE JURY PANEL: (No response.)

20 MR. ROSARIO: I heard all of you have been
21 sitting downstairs in the room watching the
22 television and reading the really old magazines.
23 So you haven't gotten to see other lawyers do
24 this process?

25 PROSPECTIVE JURY PANEL: (Indicating

1 negatively.)

2 MR. ROSARIO: All right.

3 THE COURT: Excuse me, Mr. Rosario. Just
4 so you know, we have been working up here all
5 day. Don't think that we just kept you down
6 there all afternoon for nothing.

7 As you saw a group of people leave when you
8 all came up, so rest assured we weren't just
9 holding you down there for no reason.

10 MR. ROSARIO: Has there been anyone here
11 that's ever fought a traffic ticket?

12 PROSPECTIVE JUROR SMITH: (Indicating.)

13 MR. ROSARIO: Mr. Smith.

14 PROSPECTIVE JUROR SMITH: Yes.

15 MR. ROSARIO: Has everyone here ever gotten
16 a traffic ticket?

17 PROSPECTIVE JURY PANEL: (Indicating.)

18 MR. ROSARIO: Has anyone not gotten a
19 traffic ticket?

20 PROSPECTIVE JUROR BROWN: (Indicating.)

21 PROSPECTIVE JUROR GILZOW: (Indicating.)

22 MR. ROSARIO: Wow, we've got some bookends
23 here. We've got Ms. Brown and Ms. Gilzow.
24 Okay. But nobody has actually gone to court and
25 disputed the charge?

1 PROSPECTIVE JURY PANEL: (Indicating
2 negatively.)

3 MR. ROSARIO: Has anyone here ever been
4 stopped for DUI?

5 PROSPECTIVE JURY PANEL: (No response.)

6 MR. ROSARIO: No? Has anyone been driving
7 down the road and see somebody on the sideline
8 having to walk that line? Anyone see that?
9 Anybody?

10 PROSPECTIVE JURY PANEL: (Indicating.)

11 MR. ROSARIO: Anybody who's been driving
12 down the road and hasn't seen somebody?

13 PROSPECTIVE JUROR PIERCE: (Indicating.)

14 MR. ROSARIO: That's Mr. Pierce?

15 PROSPECTIVE JUROR PIERCE: Yes.

16 MR. ROSARIO: Has everyone seen people who
17 were under the influence of alcoholic beverages
18 to the extent their normal faculties were
19 impaired?

20 PROSPECTIVE JURY PANEL: Yes.

21 MR. ROSARIO: Has everyone seen somebody
22 who's drunk?

23 PROSPECTIVE JURY PANEL: (Indicating
24 affirmatively.)

25 MR. ROSARIO: Would everyone agree that all

1 drunks act exactly the same?

2 PROSPECTIVE JURY PANEL: (Indicating
3 negatively.)

4 MR. ROSARIO: Okay. Somebody who is
5 intoxicated or impaired could act differently?
6 There could be a lover. There could be a
7 fighter. There could be the belligerent. There
8 could be the sleeper. Does everybody agree with
9 that?

10 PROSPECTIVE JURY PANEL: (Indicating
11 affirmatively.)

12 MR. ROSARIO: Has everyone seen somebody
13 who's had a little bit too much to drink?

14 PROSPECTIVE JURY PANEL: (Indicating
15 affirmatively.)

16 MR. ROSARIO: Anyone who's not seen that?

17 PROSPECTIVE JURY PANEL: (No response.)

18 MR. ROSARIO: Has everyone seen the
19 bloodshot eyes sometimes they get, the slurred
20 speech, unsteady balance? Everybody has seen
21 that?

22 PROSPECTIVE JURY PANEL: (Indicating
23 affirmatively.)

24 MR. ROSARIO: Is anyone here a nondrinker?
25 Doesn't drink alcohol?

1 PROSPECTIVE JUROR LEMAY: (Indicating.)

2 MR. ROSARIO: Ms. Lemay, you don't drink?

3 PROSPECTIVE JUROR LEMAY: No.

4 MR. ROSARIO: And do you feel comfortable
5 relating the reason why you don't?

6 PROSPECTIVE JUROR LEMAY: I just don't
7 choose to. Yeah, I don't like it.

8 MR. ROSARIO: Okay. Today we've heard
9 every type of explanation, alcoholic family
10 members, taste, you know, just never took to it.
11 Like the Judge said, the answer is all we're
12 looking for. Thank you very much.

13 So everyone here has had social drinks?
14 You've had that one drink, that two drinks.
15 Have you ever got to that point where you
16 started to feel, oh, okay, I'm starting to feel
17 this Margarita, it's really tipping?

18 PROSPECTIVE JUROR LANTZ: Yes.

19 MR. ROSARIO: Everyone has had that?

20 PROSPECTIVE JURY PANEL: (Indicating
21 affirmatively.)

22 MR. ROSARIO: Okay. Chasco Fiesta, how
23 many people have attended Chasco Fiesta? Just a
24 couple of you. Does everyone here know what
25 Chasco Fiesta is?

1 PROSPECTIVE JUROR LEMAY: No.

2 PROSPECTIVE JUROR SMITH: Yes.

3 MR. ROSARIO: Ms. Lemay.

4 PROSPECTIVE JUROR LEMAY: I've never been
5 there.

6 MR. ROSARIO: Have you ever heard of
7 Gasparilla?

8 PROSPECTIVE JUROR LEMAY: Yes.

9 MR. ROSARIO: It's very similar to
10 Gasparilla. It's over here in the New Port
11 Richey area. It's every March of every year.
12 It's a little parade, and some kids go out, and
13 the fire department goes out, and then
14 afterwards all the bars are open, and there's
15 lots of drinking and drinking specials. Does
16 everyone agree with me that's what happens?

17 PROSPECTIVE JURY PANEL: (Indicating
18 affirmatively.)

19 MR. ROSARIO: Okay. Is everyone here
20 acquainted with the bars up on Main Street and
21 Grand Boulevard?

22 PROSPECTIVE JUROR LANTZ: I was a bartender
23 for Cocktails.

24 MR. ROSARIO: Because you were a bartender,
25 and this is a DUI case, is that going to tilt

1 the balance one way or the other because, you
2 know, I need to justify the liquor industry?

3 PROSPECTIVE JUROR LANTZ: No. I would be
4 completely fine with that.

5 MR. ROSARIO: Okay. How many people here
6 do not drive an automobile? A nondriver?

7 PROSPECTIVE JURY PANEL: (Indicating.)

8 MR. ROSARIO: So everyone here drives
9 vehicles?

10 PROSPECTIVE JURY PANEL: (Indicating.)

11 MR. ROSARIO: Does everyone drive vehicles
12 at nighttime?

13 PROSPECTIVE JURY PANEL: (Indicating
14 affirmatively.)

15 MR. ROSARIO: How many people here have
16 been driving down the road and got the nods?

17 PROSPECTIVE JURY PANEL: (Indicating.)

18 MR. ROSARIO: That's a lot of hands. Has
19 anyone maybe run off the road a little bit and
20 wake yourself up?

21 PROSPECTIVE JUROR SMITH: (Indicating.)

22 PROSPECTIVE JUROR AVERY: (Indicating.)

23 MR. ROSARIO: Mr. Smith. Mr. Avery. Okay.
24 In the morning, when you're going to work,
25 sometimes you need the coffee to keep you going.

1 You get little nods there too?

2 Who here has driven State Road 54, between
3 Little Road and U.S. 19, at nighttime?

4 PROSPECTIVE JURY PANEL: (Indicating.)

5 MR. ROSARIO: Everyone except for
6 Ms. Lemay.

7 PROSPECTIVE JUROR LEMAY: I'm never on that
8 end.

9 MR. ROSARIO: Okay. Where do you live?

10 PROSPECTIVE JUROR LEMAY: Port Richey by
11 52.

12 MR. ROSARIO: Okay. The people who have
13 driven 54, would you agree that there are some
14 dark areas out there?

15 PROSPECTIVE JURY PANEL: (Indicating
16 affirmatively.)

17 MR. ROSARIO: Would you also agree that
18 there are some very well lit areas?

19 PROSPECTIVE JURY PANEL: (Indicating
20 affirmatively.)

21 MR. ROSARIO: Right around Rowan Road,
22 Grand Boulevard.

23 PROSPECTIVE JURY PANEL: (Indicating.)

24 MR. FOOTE: May we approach, Judge?

25 THE COURT: You may.

1 BENCH CONFERENCE:

2 MR. FOOTE: Judge, once again I'm going to
3 make the same objection if we're going to go
4 down the same line of questioning, with going
5 down the route. It wasn't too bad this time,
6 but now we're highlighting particular areas,
7 that Grand and 54 is well lit and the other
8 places are dark.

9 This is where the majority of the ending
10 portion of this case is at, at Grand and 54, and
11 I think suggesting that, well, it's well lit to
12 these people is improper, and it's directly on
13 the facts of the case.

14 THE COURT: State, response?

15 MR. ROSARIO: Judge, I need to know whether
16 these witnesses have had any experiences in that
17 area to know whether they can relate to some of
18 my witnesses.

19 THE COURT: Well, I think you can ask that,
20 I think you can ask if they've driven in that
21 area.

22 MR. ROSARIO: Right. And that's what I was
23 asking is do you know whether it's well lit or
24 not well lit. That's the direction I was going
25 in.

1 THE COURT: Well, I think your questions
2 are, this part is well lit, this part isn't.

3 MR. FOOTE: Correct.

4 THE COURT: You know, once again general
5 questions is there familiarity with an area is
6 fine. Specifics, this area is well lit, this is
7 not, I'll sustain the objection as to that.

8 MR. FOOTE: Thank you, Judge.

9 MR. ROSARIO: Thank you.

10 OPEN COURT:

11 MR. ROSARIO: I believe we left off with
12 roadways. Is anyone familiar with the area of
13 Old 54?

14 PROSPECTIVE JURY PANEL: Yes.

15 MR. ROSARIO: Is everyone aware how it T's
16 into 54?

17 PROSPECTIVE JURY PANEL: (Indicating
18 affirmatively.)

19 MR. ROSARIO: Okay. Has anyone driven that
20 at night?

21 PROSPECTIVE JUROR DECKER: Yes. It's a
22 little confusing when you first get up to it.

23 MR. ROSARIO: Has anyone here ever been to
24 a bar and had a little bit too much to drink and
25 decided to walk home?

1 PROSPECTIVE JUROR GILZOW: Yes.

2 PROSPECTIVE JUROR GAUSE: (Indicating.)

3 MR. ROSARIO: How about call a cab?

4 PROSPECTIVE JUROR GILZOW: Yes.

5 PROSPECTIVE JUROR GAUSE: (Indicating.)

6 MR. ROSARIO: All right. Or call for a
7 ride?

8 PROSPECTIVE JUROR GILZOW: Yes.

9 PROSPECTIVE JUROR GAUSE: (Indicating.)

10 MR. ROSARIO: I keep getting a shake of the
11 head here from Ms. Gause?

12 PROSPECTIVE JUROR GAUSE: Yes.

13 MR. ROSARIO: Okay. And it's a smiling
14 shake. I just need to know.

15 PROSPECTIVE JUROR GAUSE: I'm more of a
16 social drinker. I'll have one drink if I go out
17 with my daughters, but I always make sure that
18 by the time I leave I'm able to drive a car. I
19 don't want to get into a car drunk and be
20 responsible for killing somebody.

21 MR. ROSARIO: And that's fair, and I
22 understand. But if someone had been drinking,
23 would you think it would be responsible for them
24 to call a cab, call for a ride, maybe walk home
25 as opposed to drive drunk?

1 PROSPECTIVE JUROR GAUSE: That's what they
2 have Zingo for.

3 MR. ROSARIO: How many people here have a
4 cell phone?

5 PROSPECTIVE JURY PANEL: (Indicating.)

6 MR. ROSARIO: You all know that you're not
7 going to be allowed to use it back there in the
8 jury pool room, right?

9 PROSPECTIVE JURY PANEL: (Indicating.)

10 MR. ROSARIO: Mr. Pierce, you didn't raise
11 your hand. You don't have a cell phone?

12 PROSPECTIVE JUROR PIERCE: No, sir.

13 MR. ROSARIO: Have you ever used a cell
14 phone?

15 PROSPECTIVE JUROR PIERCE: Yes, I have.

16 MR. ROSARIO: Would you all agree with me
17 that cell phones are different than landline
18 phones?

19 PROSPECTIVE JUROR PIERCE: Yes.

20 MR. ROSARIO: When you pick up a cell phone
21 and you dial, say, my home phone number, if I
22 dialed it, one, two, three, four, six, seven,
23 eight, nine, would I have to do anything to make
24 the cell phone work?

25 PROSPECTIVE JUROR PIERCE: Yes.

1 PROSPECTIVE JUROR SHAMBAUGHT: Send.

2 MR. ROSARIO: You have to press what?

3 PROSPECTIVE JUROR SHAMBAUGHT: Send.

4 MR. ROSARIO: Send. Okay. So if I forgot
5 to press send, would the phone work?

6 PROSPECTIVE JUROR SHAMBAUGHT: No.

7 MR. ROSARIO: Has everyone seen somebody
8 who's under the influence of alcoholic
9 beverages? I think I've already covered that
10 area. Has anyone ever seen somebody that became
11 forgetful?

12 PROSPECTIVE JUROR GAUSE: Yes.

13 MR. ROSARIO: Has anyone seen somebody
14 become disoriented?

15 PROSPECTIVE JUROR GAUSE: Yes.

16 MR. ROSARIO: So we've all seen different
17 types of signs of impairment from intoxicated
18 people; is that correct?

19 PROSPECTIVE JUROR GILZOW: Yes.

20 MR. ROSARIO: Now, in this case there's
21 going to be direct evidence and there's going to
22 be circumstantial evidence as to how we prove
23 this case, there's going to be both.

24 There's going to be direct evidence, people
25 saw X happen, okay, that is direct evidence.

1 Circumstantial evidence is where someone may not
2 have actually seen X happen, but when you place
3 the other factors that we know to exist in line,
4 it makes a clear picture that this factor did
5 exist. Does everybody understand that?

6 PROSPECTIVE JURY PANEL: (Indicating.)

7 MR. ROSARIO: A classic example is nobody
8 saw Ted Bundy actually kill someone. However,
9 the factors that led up to it showed Ted Bundy
10 did it, and, therefore, he was found guilty of
11 murdering those people. Does everyone
12 understand that?

13 PROSPECTIVE JURY PANEL: Yes.

14 MR. ROSARIO: If you put it in that
15 context, sometimes you don't actually have the
16 direct evidence and you get the classic example
17 of circumstantial evidence.

18 And I used this earlier, and I'm going to
19 use it again. Who lived up North before they
20 came down here?

21 PROSPECTIVE JURY PANEL: (Indicating.)

22 MR. ROSARIO: Who lived in Ohio. Let's
23 see, Ms. Gizlow.

24 PROSPECTIVE JUROR GILZOW: New Jersey.

25 MR. ROSARIO: Okay. Have you ever seen it

1 snow?

2 PROSPECTIVE JUROR GILZOW: Yes.

3 MR. ROSARIO: Now, one night you go to bed,
4 and it's cold out but there's no snow on the
5 ground, okay, and you look out right before you
6 go to bed.

7 The next morning you wake up and there's
8 this white powdery substance that you know is
9 snow on the ground. You didn't see it snow, but
10 did it snow last night? It's a reasonable
11 deduction to believe that it snowed last night.

12 You can go to crazy hypotheticals, oh, no,
13 somebody with a snowmaker came by and blew it
14 onto my house.

15 MR. FOOTE: Objection. Judge, may I
16 approach?

17 THE COURT: You may.

18 BENCH CONFERENCE:

19 MR. FOOTE: Judge, at this point obviously
20 that hypothetical was given out before and we
21 countered that, but the labeling of the crazy
22 hypothetical as something as impossible, I would
23 object is improper.

24 THE COURT: All right. Response as to
25 characterization as in crazy hypothetical?

1 MR. ROSARIO: Well, Judge, I don't think
2 it's inappropriate for me to say that it's a
3 crazy hypothetical, somebody with a snowblower
4 went by and blew it on there. I'll rephrase it
5 to a highly unlikely scenario.

6 THE COURT: Well, you can rephrase it, but
7 I'll sustain it as to the form of the crazy
8 hypothetical.

9 MR. ROSARIO: Yes, sir.

10 MR. FOOTE: Thank you, Judge.

11 OPEN COURT:

12 MR. ROSARIO: In circumstantial evidence
13 you take the facts that exists and you connect
14 the dots, and you make logical deductions going
15 from one step to the next to get to the proof
16 that that factor actually existed.

17 Some people may suggest some far-reaching
18 possibilities as to why there's snow in your
19 yard, but when you look at it, you know that it
20 snowed. Do you agree with me on that?

21 PROSPECTIVE JUROR GILZOW: (Indicating.)

22 MR. ROSARIO: Does everybody agree with me
23 on that?

24 PROSPECTIVE JURY PANEL: (Indicating
25 affirmatively.)

1 MR. ROSARIO: I mean snow by any other
2 nature is snow. And you can reach for another
3 example or another reason, but when you look at
4 it, you make the logical conclusion that it
5 snowed. Does everybody understand that?

6 PROSPECTIVE JURY PANEL: (Indicating.)

7 MR. ROSARIO: Does anybody have any
8 questions for me?

9 PROSPECTIVE JURY PANEL: (No response.)

10 MR. ROSARIO: All right. Thank you.

11 THE COURT: Mr. Foote.

12 MR. FOOTE: Thank you, Your Honor.

13 Let me start off with an example the State
14 was giving you. The point being is, has
15 everyone heard the phrase, "Things are not
16 always as they seem"? Have you heard that
17 before?

18 PROSPECTIVE JURY PANEL: (Indicating.)

19 MR. FOOTE: And there can be many
20 explanations as to why you have a particular
21 result. It's not only one thing that is
22 possible.

23 For example, if you have ever gone skiing
24 and you've gone to bed in your chalet, and you
25 wake up in the morning and there is snow, does

1 that mean that it necessarily snowed? Or were
2 the workers working all night blowing that snow
3 up there so that you can ski?

4 That is ice, that is snow, okay, did it
5 necessarily come from the sky? So there are
6 different explanations as to how things can
7 happen. Things are not always as they seem.

8 Okay. A few years back there was a
9 commercial with regard to an insurance company
10 with a young lady flying on an overnight flight.
11 I don't know, has anyone ever taken a redeye
12 flight overnight anywhere?

13 At nighttime the night flights they turn
14 off the lights except for little dim ones so
15 that people can go to sleep. How many people
16 have ever sat in a window seat and had to climb
17 over everyone to get to the bathroom?

18 In this commercial, it was a night flight,
19 and the person by the window seat, the young
20 lady had to get up and use the restroom, and
21 everyone was sleeping.

22 She tried to tiptoe and climb over the
23 middle person and tried to climb over the aisle
24 person, but as she got to the middle person, the
25 plane hit turbulence and she fell and straddled

1 the gentleman right there.

2 And, of course, the captain turns on the
3 light so they can say put on your seatbelts, and
4 everyone wakes up, and what they see is this
5 lady straddling this man in the middle seat.

6 The first thing that comes to their mind is
7 something hanky-panky is going on, okay, because
8 human nature kind of jumps to conclusions.
9 However, there is a logical explanation as to
10 why that young lady was like that, turbulence.
11 So things are not always as they seem. Do we
12 agree with that, that there could be possible
13 explanations?

14 I want to touch on something that the Judge
15 said. Judge Crane said that there are a couple
16 of things that happen in a criminal case. The
17 State of Florida, the prosecutors, they have the
18 burden of proving that a person is guilty of a
19 crime.

20 In the United States of America, in our
21 Constitution, a person accused of a crime has a
22 right to remain silent, number one; and he's
23 presumed to be innocent until the State
24 overcomes that innocence with evidence.

25 So, for example, if right now you were

1 asked to give your verdict in this case, what
2 would your verdict have to be? As you sit here
3 right now.

4 PROSPECTIVE JUROR SHAMBAUGHT: Not guilty.

5 MR. FOOTE: Not guilty. Why? Because
6 you've heard no evidence to overcome the
7 innocence of the person charged. Does everyone
8 agree with that?

9 PROSPECTIVE JUROR PIERCE: Yes.

10 MR. FOOTE: Okay. Also, if you look behind
11 His Honor, there's a seal there. We always see
12 the lady with the scales whenever we talk about
13 courts and things like that, and that's to
14 symbolize the weighing of the evidence.

15 In a civil case, like an auto case or a
16 medical malpractice or a slip and fall, both
17 sides have to put evidence in, and then the jury
18 gets to tip those scales. Whoever tips it more,
19 they win, whether that be the person suing or
20 the person defending the matter.

21 However in a criminal case she's only
22 holding one scale. The Defense has to put no
23 evidence on on that side of the scale. That
24 scale has to be filled with evidence by the
25 State. Does everyone understand that?

1 PROSPECTIVE JUROR LEMAY: (Indicating.)

2 MR. FOOTE: So pretty much, as Judge Crane
3 said, the Defense can theoretically sit there
4 and play Solitaire, not ask a question, not call
5 a witness, and that cannot be held against the
6 Defense. Does everyone agree with that?

7 PROSPECTIVE JURY PANEL: (No response.)

8 MR. FOOTE: Yes?

9 PROSPECTIVE JURY PANEL: Yes.

10 MR. FOOTE: Does anyone disagree with that?
11 Does anybody want to hear both sides of the
12 story, I want to hear both sides of the story
13 before I can make an honest decision in this
14 case? Ms. Brown, what do you think?

15 PROSPECTIVE JUROR BROWN: Nothing. I agree
16 with you.

17 MR. FOOTE: You agree with that?

18 PROSPECTIVE JUROR BROWN: No, with what you
19 said, that you don't have to prove it.

20 MR. FOOTE: Sure. Now, human nature says,
21 well, I want to hear both sides.

22 PROSPECTIVE JUROR BROWN: But it's your
23 right not to have to say that.

24 MR. FOOTE: Excuse me?

25 PROSPECTIVE JUROR BROWN: It's your right

1 not to have to say that.

2 MR. FOOTE: Right. There's a
3 constitutional right. But sometimes people go,
4 well, I wonder why he didn't say anything? If
5 he's not guilty, he'd get up and tell us he's
6 not guilty. Does anyone have that thought?

7 PROSPECTIVE JURY PANEL: (Indicating.)

8 MR. FOOTE: Okay. I mean honestly you want
9 to know, hey, look, if he's saying he's not
10 guilty, why didn't he tell us that? Do you
11 agree with that?

12 PROSPECTIVE JUROR GAUSE: (Indicating
13 affirmatively.)

14 MR. FOOTE: Now, because the Judge will
15 instruct you on the law, he tells you, look, if
16 you're ever picked on this jury, and you haven't
17 heard anything from the defendant or even the
18 attorney, they haven't put on any evidence, are
19 you going to hold that against the Defense, if
20 the Judge told you're not supposed to even
21 consider that? Would you hold that against the
22 Defense, Mr. Decillis?

23 PROSPECTIVE JUROR DECILLIS: Decillis.

24 MR. FOOTE: Would you hold that against the
25 Defense? I know human nature says, I want to

1 hear both sides, but the Judge says you're not
2 supposed to consider that, don't hold that
3 against the Defense, did the State prove their
4 case. Would you be able to follow the law and
5 do that?

6 PROSPECTIVE JUROR DECILLIS: I don't know.
7 I feel like if you've got nothing to hide, you
8 hide nothing, so you would get up on the stand
9 and prove it, you know, say something.

10 MR. FOOTE: Okay.

11 PROSPECTIVE JUROR LANTZ: I believe if the
12 Judge says it's not needed, I don't feel that
13 there would be a purpose for it. I mean if it
14 goes against him or it goes for him either way.

15 MR. FOOTE: Right. And that goes along the
16 lines of that if the State has to prove
17 everything, and they haven't proven everything,
18 then is there any need for anyone to get up and
19 say anything? If they haven't done their job,
20 that may be a reason why a person decides not to
21 testify. Would you agree with that,
22 Mr. Decillis?

23 PROSPECTIVE JUROR DECILLIS: I would agree.

24 MR. FOOTE: Okay. And that could be a
25 reason. Another reason is, whoever testifies in

1 this case is going to go all the way over there
2 where that microphone is, and they have to sit
3 over there and talk.

4 How many would be comfortable right now if
5 I asked you to get up there, all the way over
6 there and tell us some of your deepest, darkest
7 secrets? That would be uncomfortable, right?

8 PROSPECTIVE JUROR GAUSE: Yes.

9 MR. FOOTE: It's almost a little
10 uncomfortable here talking right now. You don't
11 know who I am. We don't know each other. It's
12 a little uncomfortable. Would that be reason
13 why a person decides not get up there, I'm just
14 nervous?

15 PROSPECTIVE JURY PANEL: Yes.

16 MR. FOOTE: What if I look like I'm guilty
17 by scratching and shaking. Could that also be a
18 reason?

19 PROSPECTIVE JUROR SMITH: Misconceptions.

20 MR. FOOTE: Misconceptions. People have
21 misconceptions. Certain TV show. You know, if
22 you look up to the left, that means you're
23 lying. If you look to your right, if you
24 scratch your face, oh, I saw it, he's hiding
25 something.

1 People hear some of those things, and there
2 are various reasons, but the good thing about
3 our Constitution and our system of justice, as
4 Judge Crane will tell you, is that is not to be
5 considered if the defendant does not take the
6 stand.

7 Does everyone agree with that?

8 PROSPECTIVE JURY PANEL: (No response.)

9 MR. FOOTE: Would you be able to follow the
10 law, Mrs. Decillis, if the Judge told you that?
11 Or would it be in the back of your mind, like,
12 why didn't this guy get up?

13 PROSPECTIVE JUROR DECILLIS: You said it.
14 Sorry. That's the truth, yeah.

15 MR. FOOTE: Okay.

16 PROSPECTIVE JUROR DECILLIS: It would be in
17 the back of my mind why? If he's innocent, he
18 would get up there and testify and say, hey,
19 listen, I didn't do this.

20 MR. FOOTE: Okay. Thank you for your
21 honesty.

22 Is there anyone else that feels like, look,
23 I know the Judge told me I'm not supposed to
24 consider it, but I don't know? Anyone else?

25 PROSPECTIVE JURY PANEL: (No response.)

1 MR. FOOTE: Okay. Now, with regard to the
2 law, if you're picked to be on the jury, the
3 Judge will read the jury instructions and the
4 law to you at the end of the case. Okay. And
5 he will tell you what the State has to prove in
6 order to secure a conviction in the case, all
7 right, and those are called the elements of the
8 crime, the elements of the crime.

9 So they might say, for example, if it was a
10 theft case or whatever, the person had to go in
11 the store, they had to take the property, they
12 had to leave the store. Those are the three
13 things.

14 Now, if the State proves two of those but
15 leaves one out, they just didn't prove that the
16 person left the store with the property, what
17 should your verdict be?

18 PROSPECTIVE JUROR GILZOW: Not guilty.

19 MR. FOOTE: Not guilty. Because they have
20 the burden of proving each and every element
21 beyond and to the exclusion of every reasonable
22 doubt, okay, the elements of the crime.

23 And the Judge will read those if you're
24 picked to be on the jury. Would everyone agree
25 to hold the State to their burden? If they

1 prove one, two three but one is missing, would
2 you say, hey, they got it close, I'm just going
3 to do the conviction, something is missing but
4 I'm just going to go ahead? Would you do that
5 or would you follow the law and hold them --

6 MR. ROSARIO: I'm going to object and ask
7 to approach.

8 THE COURT: Okay. You may.

9 BENCH CONFERENCE:

10 MR. ROSARIO: Judge, again it's a
11 mischaracterization of the facts. If a fact is
12 missing, that doesn't --

13 THE COURT: I think he said that.

14 MR. FOOTE: Correct.

15 THE COURT: He said there's three elements,
16 if one element is missing, they haven't proved
17 one element --

18 MR. ROSARIO: Right. That is his first
19 statement. His second statement that he was
20 finishing, if something is missing -- not have
21 an element is missing, he said if something is
22 missing, and that's what I do object to.

23 MR. FOOTE: I remember the Court's prior
24 ruling, and it was in the context of speaking
25 about elements.

1 THE COURT: You just slipped the second
2 time. You know what to correct.

3 MR. FOOTE: Okay.

4 OPEN COURT:

5 MR. FOOTE: We were talking about the
6 elements of the charge. The Judge will tell
7 you, in order to find the defendant guilty, the
8 State must prove, for example, A, B, C, D, these
9 are the four elements that they must prove
10 before you can find the defendant guilty.

11 And my question to you is that if you hear
12 okay, they've proved A, B, C, but D is missing,
13 that last element is missing, would you hold the
14 State to their burden and say, look, you didn't
15 prove it all the way, and follow the law, and
16 that would be finding the defendant not guilty
17 because the case has not been proven? Does
18 anyone have a problem with that concept?

19 PROSPECTIVE JURY PANEL: (Indicating
20 negatively.)

21 MR. FOOTE: Okay. This is a serious crime.
22 It's a serious accusation. Two people died.
23 Okay. Two people died. And the Judge is also
24 going to tell you that you're to keep an open
25 mind and a clear mind, not to use sympathy or

1 anger to make your decision.

2 Is everyone able to do that? Outside of
3 the people that have already spoken to the Judge
4 about your personal situations, is everyone able
5 to go ahead and do that?

6 You say, look, two people died, I don't
7 know who did it, he's sitting in the chair,
8 let's convict him? Are you able to do that and
9 keep an open mind and listen to the facts and
10 the evidence until the end?

11 PROSPECTIVE JURY PANEL: (Indicating.)

12 MR. FOOTE: Okay. Does anyone have
13 difficulty in going that, outside of the three
14 individuals?

15 PROSPECTIVE JURY PANEL: (No response.)

16 MR. FOOTE: Okay. Now, prior to hearing
17 that this case involved a death and a DUI, when
18 you walked in, how many people thought to
19 yourselves as you walked in -- you knew it was a
20 criminal case -- I wonder what that person did?
21 I wonder what he did?

22 PROSPECTIVE JUROR ELLETT: Yeah.

23 MR. FOOTE: Anybody else?

24 PROSPECTIVE JURY PANEL: (No response.)

25 MR. FOOTE: Now, you should understand that

1 this is just an accusation. As the Judge read
2 the charging document -- up North they call it
3 the Indictment; down here it's called the
4 Information. But as he read what the
5 accusations are, that is not evidence. That's
6 what the prosecutors are saying happened and
7 they're saying that this person did it.

8 Now, Mr. Stephen entered a plea of not
9 guilty, and as we spoke before, he's presumed to
10 be innocent until they prove each and every
11 element of that crime beyond a reasonable doubt.

12 Do you understand that that is just an
13 accusation and that they must prove it? Does
14 everyone understand that?

15 PROSPECTIVE JURY PANEL: (Indicating.)

16 MR. FOOTE: Okay. Does anyone just not
17 agree with that? Is anyone thinking, well, if
18 he's sitting here, something must have happened,
19 he must have did something? Is anyone thinking
20 of that?

21 PROSPECTIVE JURY PANEL: (No response.)

22 MR. FOOTE: Okay. The State asked you
23 about cell phones and whether everyone has a
24 cell phone, and, of course, we know you have to
25 put your number in, and then you press send to

1 activate the phone.

2 Does anyone have any preprogrammed numbers
3 where you don't even have to dial all the
4 numbers, you press one button and it calls wife,
5 child, friend for one button?

6 PROSPECTIVE JURY PANEL: (Indicating
7 affirmatively.)

8 MR. FOOTE: Okay. Has anyone ever pressed
9 the seven digits, or whatever digits, pressed
10 the whole number in and didn't press send but
11 then had a full conversation to an empty phone?

12 PROSPECTIVE JUROR DECKER: You started
13 talking and you didn't realize it.

14 MR. FOOTE: You didn't realize that nobody
15 was on the other end?

16 PROSPECTIVE JUROR DECKER: That's right.

17 MR. FOOTE: Okay. You realized you didn't
18 press send?

19 PROSPECTIVE JUROR DECKER: Yes.

20 MR. FOOTE: Okay. You heard a long list of
21 witnesses that are going to be possibly coming
22 forward in this case. Some of them are law
23 enforcement officers, some might do other
24 things, some might just be lay persons that may
25 have observed something.

1 Some of you know law enforcement.
2 Mr. Smith's father is a sheriff up in New York.
3 Is anyone going to hold the testimony of an
4 officer, if you are picked, on a higher standard
5 than a regular person?

6 For example, say a state trooper walks in
7 with his nice shiny uniform, and because they're
8 sitting there and they say, oh, this happened,
9 are you going to believe that trooper more than
10 a regular person just because they're a law
11 enforcement officer?

12 Are you going to give their testimony a
13 little more weight because they're wearing a
14 badge? Anybody?

15 PROSPECTIVE JURY PANEL: (Indicating.)

16 MR. FOOTE: Would you hold them to the same
17 standard as everyone else, you know, if they say
18 something that doesn't sound right or they
19 didn't do something?

20 Pretty much will you get upset with me when
21 I do my job and cross-examine the person and
22 say, hey, why is he reaming into that officer
23 pretty good, he's an officer, he shouldn't do
24 that?

25 Is anyone going to be upset with me when I

1 do my job to ask them did they do everything
2 they were supposed to do? Ms. Brown?

3 PROSPECTIVE JUROR BROWN: That's what you
4 should do.

5 MR. FOOTE: Okay. Does everyone agree with
6 that?

7 PROSPECTIVE JURY PANEL: (Indicating.)

8 MR. FOOTE: Okay. Has anyone here ever
9 been accused of doing something that you really
10 didn't do? Not a crime necessarily, but your
11 husband, your wife, your parents when you were
12 younger, your boss, someone said, hey, you did
13 it, and you know you didn't do it. Okay. Has
14 anyone been accused of things like that?

15 PROSPECTIVE JURY PANEL: (No response.)

16 MR. FOOTE: Remember how that was? Not
17 something small but something big. Maybe you
18 were supposed to go and make a deposit at the
19 bank, and someone said, oh, I'll get it for you,
20 but you're the last person that the boss knew
21 had it, so now it had to be you, it had to be
22 you, it had to be you?

23 Or you're at the job and there's records
24 you're supposed to keep, you did your job and
25 signed, now the next person is supposed to come

1 and sign and they didn't do it, so whose
2 signature is the last one? Yours. So they come
3 to you. Has that ever happened?

4 PROSPECTIVE JUROR BROWN: Uh-huh.

5 MR. FOOTE: Where you're accused of doing
6 something that you know you didn't do?

7 PROSPECTIVE JURY PANEL: (No response.)

8 MR. FOOTE: Okay. Now, as you heard that
9 this trial will probably take the better part of
10 the entire week, and we're coming up on Memorial
11 Day weekend. Does anyone have any special
12 plans? Are you going anywhere? Are people
13 coming in that you're worried about, I hope it's
14 over Friday at 5:00 o'clock because I'm going to
15 start that barbecue? Does anybody have any
16 special plans or things that you have to do?

17 PROSPECTIVE JUROR SHAMBAUGHT: Well, I'm
18 supposed to go out of town Saturday and Sunday.

19 MR. FOOTE: Okay. Is that by air flight or
20 reservations?

21 PROSPECTIVE JUROR SHAMBAUGHT: No. Driving
22 to Ocala.

23 MR. FOOTE: Okay. And is that
24 Ms. Shambaught?

25 PROSPECTIVE JUROR SHAMBAUGHT: Yes.

1 MR. FOOTE: Okay. Anybody else?

2 PROSPECTIVE JUROR DECKER: I'm going out of
3 town.

4 MR. FOOTE: You are going out of town?

5 PROSPECTIVE JUROR DECKER: Uh-huh.

6 PROSPECTIVE JUROR GILZOW: (Indicating.)

7 MR. FOOTE: Ms. Gilzow?

8 PROSPECTIVE JUROR GILZOW: I have family
9 coming in, my husband's family.

10 MR. FOOTE: Your husband's family is coming
11 in?

12 PROSPECTIVE JUROR GILZOW: Uh-huh.

13 MR. FOOTE: Well, you might want to stay
14 longer. Would you be able to at least go
15 through to Friday?

16 Why I'm asking that is that the trial, we
17 can kind of control what we do about witnesses,
18 but if you're selected to be on the jury and we
19 give you the case to deliberate, there is no
20 time limit on that.

21 No one knocks on the door and says, okay,
22 you're done, what's your verdict? You guys are
23 back there doing your thing until you reach a
24 verdict. Does everyone understand that?

25 PROSPECTIVE JUROR PIERCE: Uh-huh.

1 MR. FOOTE: Ms. Watson.

2 PROSPECTIVE JUROR WATSON: Yes.

3 MR. FOOTE: So if you're back there, six or
4 seven of you guys are back there, and you're
5 deliberating, you sat here for five days.

6 PROSPECTIVE JUROR WATSON: Uh-huh.

7 MR. FOOTE: And you don't believe the State
8 has proven this case beyond and to the exclusion
9 of every reasonable doubt, but all your other
10 fellow jurors said he's guilty, let's get this
11 show on the road, it's getting late, we need to
12 get home to that barbecue, change your mind and
13 say he's guilty and let's get out of here, will
14 you stand your ground to what you see and
15 believe what the evidence is, or are you going
16 to get swayed by the others?

17 PROSPECTIVE JUROR STEPHENSON: I'll try to
18 think I would do what's right.

19 MR. FOOTE: Okay.

20 PROSPECTIVE JUROR WATSON: You know, I'd
21 like to think --

22 THE COURT: And, Ms. Watson, I need to
23 probably clarify that. What you would be asked
24 to do is listen to the other people, you would
25 be asked to listen and consider their points of

1 view, weigh them as it relates to the evidence
2 and the law, and then to make your own decision.

3 That's what the instruction from the Court
4 would be with regard to that issue if the jury
5 was in a situation where they were deadlocked
6 and couldn't make a decision.

7 So keep that in mind, that you would be
8 specifically requested by the Court to listen to
9 the other points of view, consider the other
10 points of view, and to then make a decision
11 based upon your own feeling as far as what you
12 feel the evidence and the law requires to be a
13 just result.

14 PROSPECTIVE JUROR WATSON: Okay.

15 MR. FOOTE: Correct. I mean you're going
16 to deliberate back and forth inside and you
17 listen to each other's opinion. In fact, as the
18 Judge will explain, one of you will be elected
19 as a foreperson, and you'll run it like a
20 meeting.

21 My question is whether or not if you have a
22 position, you've listened to the other
23 positions, and you're pretty sure about what you
24 either heard or didn't hear, and you're, like, I
25 don't think that they've met that burden, are

1 you going to let the others just change your
2 mind just because of either timing or we've been
3 here long enough? Ms. Gause?

4 PROSPECTIVE JUROR GAUSE: I would listen to
5 everything that's being said, and then, you
6 know, I would take that all into consideration.

7 MR. FOOTE: And then make your own
8 decision?

9 PROSPECTIVE JUROR GAUSE: And make my
10 decision, yeah.

11 MR. FOOTE: And would everyone agree to do
12 that as well?

13 PROSPECTIVE JURY PANEL: (No response.)

14 MR. FOOTE: Okay. All right. My final
15 question, with regard to those of you who say
16 you do consume an alcoholic beverage maybe with
17 dinner, or something like that, a glass of wine,
18 how many people go out to like Carrabba's or
19 somewhere and have a glass of wine with dinner
20 and drive home, who drives home?

21 PROSPECTIVE JURY PANEL: (Indicating.)

22 MR. FOOTE: Okay. Do you understand that
23 it's not against the law to drink a glass of
24 alcohol and drive a vehicle? Does everyone
25 understand that?

1 PROSPECTIVE JUROR BROWN: Uh-huh.

2 MR. FOOTE: Although we hear don't drink
3 and drive, there is a level, as the State was
4 asking you, you get to this level and you know,
5 hey, I've had too much or you should do
6 something else, like call a cab or walk.

7 Has anyone ever been out with a designated
8 driver or you've been the designated driver?

9 PROSPECTIVE JURY PANEL: (No response.)

10 MR. FOOTE: Or who has had a designated
11 driver?

12 PROSPECTIVE JURY PANEL: (Indicating.)

13 MR. FOOTE: Okay. Both sides. We'll
14 switch it off. It's not fun being the
15 designated driver. If you were the designated
16 driver, had you ever been in a vehicle and
17 you're driving with friends who pretty much had
18 a good night home, and you're driving, and
19 you're listening to them, you hear some
20 interesting things, correct? They're having a
21 great time.

22 Has anyone ever just had someone just pass
23 out in the car? They've had so much, and then
24 you have to wake them up and say, okay, honey,
25 we're home, get out. Has anyone ever done that?

1 PROSPECTIVE JURY PANEL: (No response.)

2 MR. FOOTE: How many of you have been the
3 person that had to be woken up and they said,
4 you're home?

5 PROSPECTIVE JURY PANEL: (No response.)

6 MR. FOOTE: All right. Thank you. That's
7 all the questions I have.

8 THE COURT: All right. Mr. Avery, sir, you
9 mentioned your work. Is that situation with
10 your work going to be such that it's going to be
11 heavy on your mind? In other words, if you're
12 here all week, that that's going to be something
13 that's going to be preoccupying you --

14 PROSPECTIVE JUROR AVERY: Yeah.

15 THE COURT: -- and you wouldn't be able to
16 concentrate or listen to the testimony and that
17 sort of thing? Or is it something you can put
18 aside and focus and concentrate on the evidence
19 and the testimony?

20 PROSPECTIVE JUROR AVERY: Well, like I say,
21 the people I work for live week to week, and for
22 them to be out of work for a week and not get
23 paid, it will be pretty rough on them, so that
24 would play on my mind pretty heavy.

25 THE COURT: Okay. So once again do you

1 feel that's something that would be a sufficient
2 amount of distraction that you couldn't give a
3 hundred percent attention to what's going on
4 here in court and listen and that sort of thing?

5 PROSPECTIVE JUROR AVERY: Right.

6 THE COURT: All right. And, Ms.
7 Shambaught, even though you've got some things
8 that are planned for Saturday and Sunday, I mean
9 this may not impact on those, but is that
10 something that you would be worried about, or
11 can you give your attention to this trial and be
12 a fair and impartial juror?

13 PROSPECTIVE JUROR SHAMBAUGHT: I would be
14 worried about that.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR SHAMBAUGHT: I just need
17 to say something, though, about hardships. I
18 have my grandson most of the time. I would just
19 have to make sure that somebody can take him to
20 school and back this week and all. It would
21 take me a phone call.

22 THE COURT: Okay. Do you feel that's
23 something you feel comfortable that you're
24 probably going to be able to do that?

25 PROSPECTIVE JUROR SHAMBAUGHT: I am about

1 95 percent sure I can do that.

2 THE COURT: Okay. Thank you.

3 Ms. Gilzow, as far as the family coming in,
4 is that something that's going to preoccupy you
5 and worry about, or can you give a hundred
6 percent attention to this trial?

7 PROSPECTIVE JUROR GILZOW: No. It wouldn't
8 bother me.

9 THE COURT: I'm sorry?

10 PROSPECTIVE JUROR GILZOW: No.

11 THE COURT: It wouldn't bother you?

12 PROSPECTIVE JUROR GILZOW: No.

13 THE COURT: Okay. So you can give a
14 hundred percent attention to the trial?

15 PROSPECTIVE JUROR GILZOW: Yes.

16 THE COURT: Great. Thank you very much.

17 All right. What I'm going to ask you-all
18 to do is look to your right and look to your
19 left because that's where you're seated. I'm
20 going to ask you to step outside, and it's
21 probably going to be anywhere from five to ten
22 minutes or so.

23 PROSPECTIVE JUROR BROWN: (Indicating.)

24 THE COURT: Yes, Ms. Brown.

25 PROSPECTIVE JUROR BROWN: One thing I just

1 need to clarify. When you read off a list of
2 witnesses, I'm not sure because it's been --
3 I've taught for quite a while in the district,
4 and I think I recognize one name but I'm not
5 sure.

6 MR. ROSARIO: Which name?

7 PROSPECTIVE JUROR BROWN: Robert Gracie, I
8 think.

9 MR. ROSARIO: Corporal Robert Gracie?

10 PROSPECTIVE JUROR BROWN: Or corporal. I
11 mean I don't know. It would have been a long
12 time ago. He would have been in third grade.
13 So I don't know if he's a corporal. I wouldn't
14 have a clue.

15 THE COURT: Well, third grade, that was a
16 while ago.

17 PROSPECTIVE JUROR BROWN: It would have
18 been a while ago.

19 THE COURT: All right. And if it was
20 someone you taught in third grade, would that
21 make any difference on your ability to be a fair
22 and impartial juror?

23 PROSPECTIVE JUROR BROWN: No, but I just
24 felt I needed to say that.

25 THE COURT: Well, believe me, we appreciate

1 that. No offense to you or that individual, but
2 I suspect that was quite a while ago.

3 PROSPECTIVE JUROR BROWN: No, it was a
4 while ago.

5 THE COURT: So look to your right and look
6 to your left. Do not talk about the case. Do
7 not go out there and talk about what you think
8 the case is about, might be about, may not be
9 about, anything like that. All right.

10 PROSPECTIVE JUROR SHAMBAUGHT: (Indicating.)

11 THE COURT: Yes.

12 PROSPECTIVE JUROR SHAMBAUGHT: I'm sorry.
13 I've just been trying to figure this out since I
14 got in here. I feel like I know this gentleman
15 and I don't know why or where.

16 THE COURT: Okay. Mr. Stephen, do you feel
17 like you know her?

18 DEFENDANT STEPHEN: No.

19 PROSPECTIVE JUROR SHAMBAUGHT: Seeing him.
20 And I don't think as a friend or anything, maybe
21 as a service person or something like that. Not
22 personally.

23 THE COURT: Is that something that you
24 think might affect your ability to be a fair and
25 impartial juror?

1 PROSPECTIVE JUROR SHAMBAUGHT: I don't
2 know. I can't stop thinking about it. Where do
3 I know him from?

4 THE COURT: All right. Do you think that's
5 something you can set aside and say, look, I may
6 have know him, I may have met him or seen him at
7 one of my local -- maybe he works at the gas
8 station I go at or grocery store?

9 PROSPECTIVE JUROR SHAMBAUGHT: Yeah, it
10 could be that.

11 THE COURT: Like I said, I'm just thinking
12 of service things like you mentioned.

13 PROSPECTIVE JUROR SHAMBAUGHT: Uh-huh.

14 THE COURT: Do you feel that that's
15 something that it's going to affect your ability
16 to be fair and impartial here?

17 PROSPECTIVE JUROR SHAMBAUGHT: I don't
18 think so. I just hope it doesn't like come to
19 me all of a sudden, oh, I know, and hope it
20 doesn't matter.

21 THE COURT: Well, let's say it is the
22 person who waited on you or worked on some part
23 of your car --

24 PROSPECTIVE JUROR SHAMBAUGHT: That won't
25 matter.

1 THE COURT: -- or something like, would
2 that make a difference?

3 PROSPECTIVE JUROR SHAMBAUGHT: That won't
4 matter, no.

5 THE COURT: Okay. So you can put that
6 aside --

7 PROSPECTIVE JUROR SHAMBAUGHT: Yes.

8 THE COURT: -- and say, I can judge this
9 case on the facts and on the law as the Judge
10 instructs me?

11 PROSPECTIVE JUROR SHAMBAUGHT: Yes.

12 THE COURT: All right. Thank you very
13 much.

14 All right. Once again remember where
15 you're seated, step out, and don't talk about
16 the case, what you think the case might or might
17 not be about. You can talk about the weather,
18 sports, anything else. We'll see you back in
19 about ten minutes.

20 PROSPECTIVE JURY ABSENT:

21 THE BAILIFF: Your Honor, the prospective
22 jurors are out of hearing of the Court.

23 THE COURT: Thank you.

24 MR. ROSARIO: I'm ready, Judge.

25 THE COURT: Okay. Mr. Foote, are you

1 ready?

2 MR. FOOTE: Yes, sir.

3 THE COURT: All right. Once again the
4 record needs to reflect that Mr. Stephen has
5 been present throughout the entire proceeding.
6 And Mr. Stephen, you've had the opportunity to
7 consult with your lawyer with regard to the
8 selection of this jury; is that correct?

9 DEFENDANT STEPHEN: Yes.

10 THE COURT: And you are still under oath,
11 correct?

12 DEFENDANT STEPHEN: Yes.

13 THE COURT: All right. Thank you.

14 As to the first row, any challenges for
15 cause?

16 MR. ROSARIO: Judge, I think for cause,
17 it's clear Mr. Smith, Ms. Lantz and Ms. Decker
18 are gone.

19 MR. FOOTE: I agree with that, Judge. I
20 don't see anyone for cause in the first row.

21 THE COURT: All right. We will remove
22 Mr. Smith by agreement of the parties, Ms. Lantz
23 by the agreement of the parties, and Ms. Decker
24 by agreement of the parties. I think they're
25 all well taken.

1 Okay. That leaves us with the first row.
2 And I apologize, who was the last strike?

3 MR. ROSARIO: I think that was Mr. Foote.

4 THE COURT: I think it was Mr. Foote
5 striking Ms. Feeley.

6 So it is now to the State with Ms. Brown as
7 the sixth juror.

8 MR. ROSARIO: I have no strikes, Judge.

9 THE COURT: What says the Defense?

10 MR. FOOTE: Judge, we would back-strike
11 Ms. Lamb -- I don't have the number -- from the
12 old panel.

13 THE COURT: All right.

14 THE BAILIFF: She's number 28.

15 THE COURT: Twenty-eight. Okay. Well,
16 actually for the first row I guess the question
17 becomes is Mr. Avery is a challenge or not?
18 Neither of you believe he's a challenge for
19 cause based upon his testimony?

20 MR. FOOTE: He seemed like he was having
21 some difficulty with regard to the job.

22 THE COURT: Well, he told me he couldn't
23 concentrate, he couldn't give it a hundred
24 percent. I was waiting for one of you to do it.
25 You didn't, so I asked the questions.

1 We weren't sure about Dr. Amar last time,
2 so I asked those specific questions, and he said
3 he couldn't give it a hundred percent, and he
4 would be preoccupied and worried about the
5 people who live hand-to-mouth, or whatever he
6 said.

7 MR. FOOTE: I just didn't say anything
8 because the doctor couldn't be -- whatever. I
9 believe it to be a problem with him, but I will
10 excuse him.

11 THE COURT: All right. Well, and that's
12 okay if either of you believe it's for cause, I
13 mean that's up to you-all.

14 MR. ROSARIO: I'd rather not use a cause on
15 him, Judge.

16 THE COURT: All right. And do you agree
17 with that? Mr. Foote, do you agree or disagree
18 with that?

19 MR. FOOTE: Judge, I would move him for
20 cause.

21 THE COURT: Yeah, I think he said that.
22 I'm going to request. I mean I specifically
23 asked the questions that we had the last time
24 and he answered them exactly that way, that he
25 would be preoccupied and not able to concentrate

1 on the proceedings.

2 All right. That brings on Ms. Shambaught.

3 MR. ROSARIO: I have no peremptories,
4 Judge.

5 THE COURT: What says the Defense? In
6 other words, you accept?

7 MR. ROSARIO: Yes, I accept.

8 THE COURT: What says the Defense?

9 MR. FOOTE: Judge, the Defense would strike
10 Russell McCoy on the previous panel. I forgot
11 the number.

12 THE BAILIFF: He's number 32 on the seating
13 chart, he's juror number four.

14 THE COURT: All right. That brings on
15 Mr. Pierce.

16 MR. ROSARIO: I have no peremptory, Judge.

17 THE COURT: Do you accept Jones,
18 Stephenson, Shealy, Brown, Shambaught and
19 Pierce?

20 MR. ROSARIO: Yes, Judge.

21 THE COURT: All right. What says the
22 Defense?

23 MR. FOOTE: Judge, we would strike juror
24 number four on this panel, Ray Pierce.

25 THE COURT: That brings on Ms. Gause.

1 MR. ROSARIO: I have no peremptory, Judge.

2 THE COURT: Ms. Gause they accept. What
3 says the Defense?

4 MR. FOOTE: May I have a moment, Judge?

5 THE COURT: You may.

6 MR. FOOTE: Judge, the Defense would accept
7 that panel.

8 THE COURT: What says the State?

9 MR. ROSARIO: I'd accept.

10 THE COURT: What say the Defense?

11 MR. FOOTE: The Defense accepts that panel.

12 THE COURT: Okay. So our panel will be
13 Jones, Stephenson, Shealy, Brown, Shambaught and
14 Gause, correct?

15 MR. FOOTE: That's correct, Judge.

16 THE COURT: And each side will get one
17 challenge for -- do you want to have one
18 alternate or two?

19 MR. FOOTE: Just to be safe.

20 MR. ROSARIO: Safe with two but...

21 THE COURT: I guess let's go with one
22 alternate. That means there will be just one
23 challenge per side for the alternate.

24 So we'll go with one alternate, although I
25 would like to go with two, but I don't think our

1 numbers are going to work out.

2 Ms. Lemay is the alternate. The last
3 peremptory was by the Defense, so that goes to
4 the State. Once again each side has one
5 challenge per alternate.

6 MR. ROSARIO: I'd strike Ms. Lemay, Judge.

7 THE COURT: So the State uses their
8 peremptory on Ms. Lemay. What says the Defense
9 to Ms. Watson?

10 MR. FOOTE: Judge, the Defense would accept
11 Ms. Watson as the alternate juror.

12 THE COURT: Ms. Watson is the alternate,
13 then.

14 All right. Then what I'll do is we'll
15 bring these people back in, I'll excuse the ones
16 that need to be excused, keeping Brown,
17 Shambaught and Gause, and we'll bring in --

18 THE CLERK: Watson.

19 THE COURT: And Watson, correct. Thank
20 you. Is there any objection to bringing in both
21 groups, and then I'll seat them as if they were
22 all here at one time, and then excuse everybody
23 else?

24 MR. FOOTE: That's fine, Judge.

25 MR. ROSARIO: That's fine.

1 THE COURT: That way we won't be kind of
2 like bringing in that one group and then
3 excusing some part of them. So let's do that.
4 Can we bring in that other group.

5 MR. ROSARIO: Judge, are we in a situation
6 where we are going to be doing openings or are
7 we just going to swear them and go?

8 MR. FOOTE: Judge, I would like to do
9 openings tomorrow if we could. Having a lead on
10 that potential witness that I had a problem
11 with, I would like to jump on it.

12 THE COURT: Well, how long do you expect
13 all your openings to be? Are they fairly long?

14 MR. ROSARIO: Mine is short.

15 MR. FOOTE: We're already 6:00 and we had a
16 fresh start at 8:30.

17 THE COURT: Well, correct, if we can get
18 rolling at 8:30. I'm going to ask the jury to
19 be back 8:15, so we can hit the ground running
20 at 8:30. Any objection to that process or
21 procedure, or whatever, Mr. Rosario, to swear
22 them tonight and then start with openings
23 tomorrow morning?

24 MR. ROSARIO: That's fine. Swear them
25 tonight and do openings tomorrow morning. The

1 other side of it is, I only see one next of kin
2 family here, and I'd like the other next of kin
3 family to be present for openings tomorrow.

4 THE COURT: And Mr. Stephen, you have been
5 present throughout the course of this process
6 with your lawyer. You've had ample time to
7 consult with your lawyer with regard to the
8 selection of this jury; is that correct?

9 DEFENDANT STEPHEN: That's correct.

10 THE COURT: And do you need any more
11 tomorrow to consult with your lawyer with regard
12 to the selection of this jury?

13 DEFENDANT STEPHEN: No, Judge.

14 THE COURT: Are you satisfied with the
15 selection process as well as the jury that has
16 been selected and has been sworn to hear your
17 case?

18 DEFENDANT STEPHEN: Yes.

19 THE BAILIFF: I think you do have a couple
20 of cases in the morning. I just wanted to make
21 you aware of it.

22 THE CLERK: You have two motions in the
23 morning.

24 THE COURT: If it's only two cases, we can
25 handle them. I have no idea how they were

1 added. Like I said, I was supposed to be off.
2 They better not be motions to suppress.

3 THE CLERK: Wednesday there's one and
4 Thursday there's four cases, and Friday there's
5 none so far.

6 THE BAILIFF: These people coming back in,
7 do you want them mixed?

8 THE COURT: They can be mixed.

9 THE BAILIFF: They can sit wherever they
10 want to sit?

11 THE COURT: They can sit wherever they
12 want.

13 PROSPECTIVE JURY PRESENT:

14 THE COURT: You can sit anywhere. Go ahead
15 and sit. I've changed how we're going to do it.
16 I changed midstream on you-all, so I apologize.
17 It doesn't matter. And I apologize, I told you
18 it mattered and now it does.

19 THE BAILIFF: Your Honor, the prospective
20 jurors are present and seated in the courtroom.

21 THE COURT: First and foremost, on behalf
22 of all of the participants -- you-all have been
23 very patient. As you know, we've been doing
24 this since 8:30 this morning, it's now 6:00
25 o'clock. So you-all have been very patient with

1 us and we can't thank you enough.

2 This is, amazingly enough as you've seen,
3 not a process that occurs like on TV where the
4 whole thing is done in 40 minutes, absent
5 commercials, an hour with commercials start to
6 finish. So it is what it is. And I want to
7 thank you very much for your patience and time
8 here today.

9 For those of you who are not selected,
10 please remember do not take it personal. It's
11 nothing against you personally. These very same
12 lawyers may accept you as a juror next week,
13 next month, next year, but for whatever reason
14 these lawyers felt that this was not the best
15 case for you to be on. So once again you will
16 leave here with our thanks, but please
17 understand do not take it personal if you were
18 not selected.

19 When I call your name I'm going to ask you
20 to step across and go to Deputy Flanagan, he
21 will then give you your seat. And then when
22 we're done with that process, the rest of you
23 will be obviously excused for the day.

24 Now, do they need to step downstairs and
25 get any paperwork or anything?

1 THE BAILIFF: They just need to go
2 downstairs to take out anything that they need
3 to get out of the jury pool room.

4 THE COURT: Okay. Thank you.

5 All right. So I'm going to ask Ms. Jones,
6 if you would, to step cross to Deputy Flanagan,
7 thank you. Mr. Stephenson. Ms. Shealy.
8 Ms. Brown. Ms. Shambaught. Ms. Gause.
9 Ms. Watson.

10 All right. State and Defense, did I get
11 that right? Did I go through those correctly?

12 MR. FOOTE: I believe so, Judge.

13 THE COURT: Yes?

14 MR. ROSARIO: Yes.

15 THE COURT: All right. The rest of you may
16 be excused with our heartfelt thanks. Have a
17 great day. And once again thank you so much for
18 your patience.

19 THE BAILIFF: Your Honor, the jury is
20 present and seated.

21 THE COURT: Members of the jury, if you
22 would please stand and raise your right hand.

23 JURY SWORN:

24 THE COURT: Please be seated.

25 Members of the jury, you have been selected

1 and sworn as the jury to try the case of the
2 State of Florida versus Shannon Stephen.

3 This is a criminal case. Mr. Stephen is
4 charged with the crimes of DUI manslaughter, two
5 counts; and the leaving the scene of an accident
6 involving death. The definition of the elements
7 of these crimes will be explained to you later.

8 It is your solemn responsibility to
9 determine if the State has proven its accusation
10 beyond a reasonable doubt against Mr. Stephen.
11 Your verdict must be based solely on the
12 evidence or lack of evidence and the law. The
13 Information or charging document is not evidence
14 and it is not to be considered by you as any
15 proof of guilt.

16 It is the Judge's responsibility to decide
17 which laws apply to this case and to explain
18 those laws to you. It is your responsibility to
19 decide what the facts of this case may be and to
20 apply the law to those facts. Thus, the
21 province of the jury and the province of the
22 Court are well defined and they do not overlap.
23 This is one of the fundamental principles of our
24 system of justice.

25 Before proceeding further it will be

1 helpful if you understand how a trial is
2 conducted. At the beginning of the trial the
3 attorneys will have an opportunity if they wish
4 to make an opening statement. The opening
5 statement gives the attorneys a chance to tell
6 you what evidence they believe will be presented
7 during the trial. What the lawyers say is not
8 evidence and you are not to consider it as such.

9 Following the opening statements witnesses
10 will be called to testify under oath. They will
11 be examined and cross-examined by the attorneys.
12 Documents and other exhibits may also be
13 produced as evidence.

14 After the evidence has been presented the
15 attorneys will have the opportunity to make
16 their final argument. Following the arguments
17 by the attorneys, the Court will instruct you on
18 the law regarding the case. After the
19 instructions are given, you will then retire to
20 consider or deliberate your verdict.

21 You should not form any definite or fixed
22 opinions on the merits of the case until you
23 have heard all the evidence, the arguments of
24 the lawyers, and the instructions on the law by
25 the Judge. Until that time you should not

1 discuss the case amongst yourselves.

2 During the course of the trial the Court
3 may take recesses, during which you will be
4 permitted to separate and go about your personal
5 affairs. During these recesses you will not
6 discuss the case with anyone, nor permit anyone
7 to say anything to you or in your presence about
8 the case.

9 If anyone attempts to say anything to you
10 or in your presence about the case, tell them
11 that you're on the jury trying the case and ask
12 them to stop. If they persist, leave them at
13 once and immediately report the matter to the
14 bailiff who will then advise me.

15 The case must be tried by you only on the
16 evidence presented during the trial, in your
17 presence, and in the presence of the defendant,
18 the attorneys and the Judge. Jurors must not
19 conduct any investigation of their own.

20 Accordingly, you must not visit any of the
21 places described in the evidence, and you must
22 not read nor listen to any reports about the
23 case. Further, you must not discuss the case
24 with any person, and you must not speak with the
25 attorneys, the witnesses or the defendant about

1 any subject until your deliberations are
2 finished.

3 In every criminal proceeding a defendant
4 has the absolute right to remain silent. At no
5 time is it the duty of a defendant to prove his
6 or her innocence. From the exercise of a
7 defendant's right to remain silent, a jury is
8 not permitted to draw any inference of guilt,
9 and the fact that a defendant did not take the
10 witness stand must not influence your verdict in
11 any matter whatsoever.

12 The attorneys are trained in the rules of
13 evidence and trial procedure and it is their
14 duty to make all objections they feel are
15 proper. When an objection is made, you should
16 not speculate on the reason why it is made.
17 Likewise, when an objection is sustained or
18 upheld by me, you must not speculate on what
19 might have occurred had the objection not been
20 sustained or what a witness might have said had
21 he or she been permitted to answer.

22 Members of the jury, you have access to a
23 lot of things that people historically did not,
24 and specifically what I'm referring to is the
25 Internet. Please remember that during the

1 course of this trial you are not to go on the
2 Internet and do any research with regard to any
3 facet of this case, any of the witnesses, the
4 charges, the defendant, the lawyers, the judge,
5 anybody.

6 You cannot go on the Internet about this
7 case. You cannot ask other people and talk to
8 other people about this case. For instance,
9 when you go home tonight there may be someone
10 who comes up to you and says, tell me what
11 you're doing, tell me all about the case. You
12 can't do that. Tell them that Judge Crane is a
13 pretty surly guy and just told you you just
14 couldn't do it, and under no circumstances is
15 that appropriate.

16 After it's over, you can talk to whomever
17 you would like to talk about it, but for right
18 now you must remember you cannot talk about the
19 case. You can tell them you're on a case, that
20 the case is going to take the rest of the week
21 and that sort of thing, but you cannot talk
22 factually about the case. Please remember that.

23 And once again please do not go on the
24 Internet, do any research. I'm going to ask you
25 to refrain from reading our local newspapers

1 because there may be some reports about this
2 case and that.

3 So once again please do not read the local
4 sections of your newspaper. You can save them
5 up and read them at the end of the week, that's
6 fine, but remember please do not do that.

7 I mean it has been reported that there was
8 a jury a while back in which out of the 12
9 jurors on a federal jury, eight of the jurors
10 accessed the Internet and did research about a
11 case. So eight of those jurors did not listen
12 to the admonition of the Court but rather went
13 online and then caused that case to be mistried,
14 and it was a case that took several months to
15 try. So please do not do that in this case.

16 When you go back into the jury room, before
17 deliberations start and even during
18 deliberations, I'm going to ask you to turn off
19 your phone, your wireless devices, your PDAs,
20 turn all those things off.

21 And if you feel that that's a problem, I
22 can take them all from you each time you come
23 into court. Now, I'm sure you don't want me to
24 do that, right? Can you all assure me that when
25 you go back and deliberate, you're not going to

1 be calling people and asking them questions and
2 things like that?

3 Now, you can step out certainly during the
4 course of the trial when we take a break for
5 lunch or whatever, if you're using the restroom,
6 if you need to call friends or family or
7 something like that, you can certainly do that.

8 But remember don't talk to them about the
9 case, but if you need to just talk to them about
10 the regular things you-all talk about, that's
11 fine. But please remember during deliberations
12 you can't even do that, okay. Any questions
13 about that?

14 JURY PANEL: (Indicating negatively.)

15 THE COURT: All right. During the course
16 of our breaks, you may run into some of the
17 lawyers or some of the participants in this
18 trial. They cannot talk to you, they cannot
19 have any interaction. Please remember that. So
20 when you run into them in the elevator, in the
21 hallway or in the cafeteria and they ignore you
22 and act as if you don't exist, they're not being
23 rude. They're merely following the instructions
24 by the Court. They must ignore and have no
25 contact.

1 I can tell you, as a practicing lawyer, it
2 was very uncomfortable to run into jurors, or
3 I'd get in the elevator all by myself and then
4 three jurors would get in, and I'd spend the
5 entire elevator ride looking at the tops of my
6 shoes because, you know, I didn't want to make
7 contact, I didn't want to talk because that's
8 what the court instructed.

9 So please remember that none of these
10 people are attempting to be in any way rude to
11 you, but they're just following the rules. So
12 please keep that in mind as well.

13 We are going to take our break for the
14 evening. In other words, you all get to go home
15 at this point in time. You have been sworn as
16 the jury, so please keep that in mind, do not
17 talk to anyone.

18 What we will do is we will see you back
19 here tomorrow morning. I'd like you to be back
20 if you can at about 8:15. Our goal is to
21 actually hit the ground running and start up at
22 8:30.

23 Can they report down to the central jury
24 room?

25 THE BAILIFF: Yes, sir.

1 THE COURT: All right. So you can report
2 down to the central jury room, which is where
3 you came in today. Report down there like said
4 somewhere between 8:00 and 8:15 would be great.
5 Our goal is, as I said, to start at 8:30, and
6 start with our opening statements.

7 Is there anything else from the State or
8 the Defense that I need to cover with these
9 folks at this point in time that I neglected to
10 cover?

11 MR. ROSARIO: No, sir.

12 MR. FOOTE: No, Your Honor.

13 THE COURT: Once again thank you for your
14 attention, thank you very much for your
15 patience, but as you'll soon see these trials,
16 whether it's this trial or any other trial I've
17 ever done in my life, they never go like TV,
18 they're never done in an hour with commercials.
19 So I'm going to ask you in advance to be
20 patient.

21 This is a government building. As you can
22 probably tell already, I think they shut the
23 air-conditioning off, so that's why it seems
24 kind of stuffy in here. I apologize for that.
25 Tomorrow morning you may come in at 8:30, and it

1 may be ten below. So just keep that in mind
2 with regard to what you bring.

3 I know some of you had sweaters now because
4 it was probably cool this morning or whatever,
5 you can certainly do that. If you want to bring
6 reading material or a magazine or a book, you
7 may certainly do that. Please don't bring like
8 True Detective or something like that in, but
9 you got the idea.

10 You can bring in something that may help
11 pass the time during our breaks. If I tell you
12 a break is going to be ten minutes, invariably
13 it's 15, as hard as we try. So just keep that
14 in mind that you can bring something like that
15 may help you pass the time.

16 Once again thank you for your attention and
17 your patience. We will see you here tomorrow
18 down in the central jury room. Do not come to
19 the courtroom. Go down to the central jury room
20 tomorrow between 8:00 and 8:15. All right.
21 Thank you very much. We'll see you then. You
22 can follow the deputy, he'll escort you out.

23 MR. ROSARIO: May Defense counsel and I
24 approach?

25 THE COURT: You may.

1 BENCH CONFERENCE:

2 MR. ROSARIO: Judge, that's something we
3 scratched out.

4 THE COURT: This is an order to have the
5 videotape turned over to the State.

6 MR. FOOTE: This has been put into evidence
7 already. Is it still in evidence?

8 MR. ROSARIO: No. You know the motion to
9 suppress?

10 MR. FOOTE: Yes.

11 MR. ROSARIO: I put the videotape in.

12 MR. FOOTE: Is that the only thing?

13 MR. ROSARIO: Yes. It's the only one I
14 want.

15 MR. FOOTE: Is there anything else?

16 MR. ROSARIO: Some pictures.

17 MR. FOOTE: Are we assuming that that's
18 still in evidence?

19 MR. ROSARIO: No, no, no. You're going to
20 have to reintroduce them at the trial tomorrow.

21 THE COURT: Everything will have to be
22 reintroduced.

23 MR. FOOTE: But we have to get an order to
24 get it out to get it reintroduced?

25 THE COURT: Correct. And just so you know,

1 the order is really for the clerk's benefit,
2 because remember they're a custodian of the
3 record, they're custodian of it. Once they have
4 it, they have it.

5 MR. SARABIA: Your Honor, he can admit
6 stuff that's in evidence now without taking
7 possession of it.

8 THE COURT: Our clerk just indicated that
9 she was told that anything they wish to
10 reintroduce from things that were previously
11 introduced, she can do it from there. In other
12 words --

13 MR. FOOTE: Walk over.

14 THE COURT: Correct. We just do it again.

15 MR. FOOTE: Do we have a list of what's
16 already in?

17 THE CLERK: Uh-huh.

18 THE COURT: So she can probably provide
19 that. The only reason this is, Madam Clerk,
20 correct, is because it has to be removed from
21 you, from the courtroom, so you need that order?

22 THE CLERK: Correct. He wants to take this
23 with him, so I needed an order.

24 MR. FOOTE: No objection on that.

25 MR. ROSARIO: Is the 28th Friday?

1 MR. SARABIA: Today is the 24th.

2 MR. ROSARIO: I understand that. Is the
3 28th Friday?

4 THE CLERK: Yes.

5 MR. FOOTE: Okay. So we probably will need
6 a list I guess of what you already have so we're
7 not running around looking for it.

8 THE COURT: Okay. Just so I'm clear,
9 Mr. Foote, you have no objection to this,
10 correct?

11 MR. FOOTE: No.

12 THE COURT: I have no objection.

13 MR. ROSARIO: I'll return it tomorrow.

14 THE COURT: And one other thing I need --
15 Madam Court Reporter -- any objection to the
16 instructions or the admonitions given to this
17 jury?

18 MR. ROSARIO: No, sir.

19 MR. FOOTE: No, Judge.

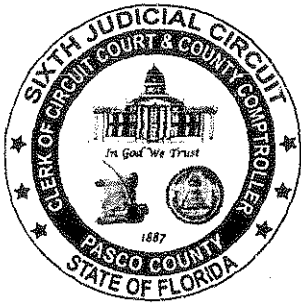
20 THE COURT: All right. Thank you. I think
21 we're done.

22

23 (PROCEEDINGS CONTINUED IN VOLUME III.)

24

25



Office of Paula S. O'Neil
Clerk & Comptroller
Pasco County, Florida

STATE OF FLORIDA }
 }
COUNTY OF PASCO }

I, Paula S. O'Neil, Clerk & Comptroller of Circuit Court for the County of Pasco, State of Florida, do hereby certify that the foregoing pages 328-1444 & 1-1085 & 1-1735, inclusive, contain a correct Supplemental Transcript of the Record in the case of State Of Florida, Plaintiff(s) vs. Shannon Stephen, Defendant(s), being Case Number(s) 06-1591, Circuit Criminal, and a true and correct recital and copy of all such papers and proceedings in said cause as appears from the records and files of my office that have been directed to be included in the record by the directions furnished to me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 4 day of February, 2013.

By: Brenda M. B. el
Deputy Clerk

