

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

Case: 06-1591CFAWS

Appellant

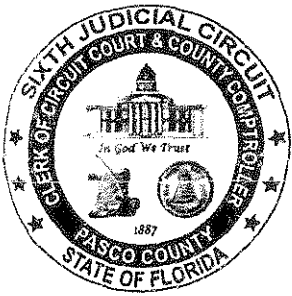
Appeal: 10-4018

VS.

State of Florida

Appellee

Supplemental  
Transcript of Record on Appeal  
Volume IVX



*Office of Paula S. O'Neil  
Clerk & Comptroller  
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 XIV PAGE 1

**SUPPLEMENTAL INDEX**

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NOVEMBER 3, 2011

PROCEEDINGS: JURY TRIAL VOLUME I HELD MAY 24, 2010

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. :

889478

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 I  
Pages 1 - 200

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

2 THE COURT: We are here this morning with  
3 regards to the case of State of Florida versus  
4 Shannon Stephen. What is our status at the present  
5 time? Is everybody ready to go?

6 MR. ROSARIO: Ready for trial, Judge. We just  
7 have some preliminary matters.

8 THE COURT: Is the Defense ready?

9 MR. FOOTE: Judge, there is one issue we need  
10 to bring up before the Court that may involve a  
11 motion to continue.

12 One of our witnesses, a critical witness for  
13 the defense, Walter Schubert was served for the  
14 trial date; however, we've been unable to locate  
15 him for days previous to the trial.

16 Our investigator and process server have been  
17 out to his house, have had no contact by telephone  
18 or by the house. We confirmed that he was served,  
19 though, for the date, we just haven't found him.

20 So I've instructed my client to ask for a  
21 continuance because we cannot find him.

22 THE COURT: Well, what is his role in this  
23 case?

24 MR. FOOTE: Judge, he is a witness that  
25 establishes that our client was a passenger in the

1 vehicle involved in the accident that left the bar  
2 that evening.

3 He essentially said he's outside on his cell  
4 phone talking when he sees Mr. Stephen and two of  
5 his friends leaving, and that Mr. Stephen is placed  
6 in his truck as a passenger, and then others go  
7 around to drive away, which is obviously critical  
8 to our case.

9 THE COURT: All right. What says the State?

10 MR. ROSARIO: I'd object to the continuance,  
11 Judge. This case is four years old and they've had  
12 plenty of time to serve this witness. There are  
13 other avenues that could be addressed as far as the  
14 way this witness would --

15 THE COURT: Apparently they've served the  
16 witness.

17 MR. ROSARIO: Right.

18 THE COURT: So we might want to be clear on  
19 that.

20 MR. ROSARIO: He's served. I don't think  
21 we've had any testimony that would actually  
22 establish that there was any need for a continuance  
23 at this point other than defense counsel saying  
24 they need it.

25 He testified at the last trial. There are



1 other avenues that could be taken. I'd object to  
2 the continuance.

3 THE COURT: Did he testify at the last trial  
4 so it would be available to read his testimony in  
5 if that became an issue?

6 MR. FOOTE: Yes, Your Honor.

7 THE COURT: So you'd be able to do that?

8 MR. FOOTE: Well, we don't have the  
9 transcript, Judge.

10 THE COURT: So I guess that would be during  
11 your case in chief, so that would be down the road  
12 a little bit?

13 MR. FOOTE: That would be correct, Judge.

14 MR. ROSARIO: It has been transcribed.

15 MR. FOOTE: No. I had checked with the clerk  
16 prior, but I didn't see any indication that that  
17 actually had been done.

18 THE COURT: Okay. Well, apparently it has.

19 THE CLERK: Mark Schubert?

20 MR. FOOTE: Not deposition; trial transcript.

21 MR. ROSARIO: I believe the trial transcript  
22 was done. Judge, I am very certain that I have a  
23 copy of it. If you give me a moment, I can find  
24 it. I'm fairly certain that I ordered it and I'm  
25 fairly certain I read it just recently.

1 THE COURT: All right. In the event that it  
2 was not, I guess there could be an expedited  
3 transcript ordered by the Defense for his testimony  
4 if you felt his testimony was critical.

5 And the State would agree, in lieu of any sort  
6 of a continuance, based upon the fact that that was  
7 trial testimony at a previous hearing -- obviously  
8 we would just not refer to his prior trial  
9 testimony. And while that's on my mind, I hope all  
10 of you have instructed your witnesses accordingly  
11 not to refer to the prior trial.

12 MR. ROSARIO: I have, Judge. I did that prior  
13 to the last trial date, so I'll have to redo it. I  
14 haven't had a chance.

15 THE COURT: Well, I think both of you will  
16 probably need to refresh all of their recollections  
17 with regard to that.

18 MR. FOOTE: Judge, I think they would agree,  
19 if we have to go down that road, to refer to it as  
20 a prior hearing.

21 THE COURT: Yes. Prior hearing, prior sworn  
22 testimony, however you want to refer to it as.

23 MR. ROSARIO: Judge, also in that vein, I have  
24 a witness who is served who I do know where he is,  
25 but he is having emotional difficulties. I may be

1 also running a motion to allow his prior sworn  
2 testimony, but that will come later.

3 THE COURT: All right. Okay. So you feel  
4 confident that that's there? If it's not, I guess  
5 we have time to get that transcribed. Was his  
6 testimony like hours and hours?

7 MR. ROSARIO: No. It was probably 30 minutes  
8 tops.

9 MR. FOOTE: Thirty to 40 minutes, Judge.

10 THE COURT: Okay. I mean we're not talking  
11 about four hours of testimony?

12 MR. FOOTE: No. It wasn't long. But from my  
13 understanding, it has to be ordered through digital  
14 court reporting, and it's like \$10, \$12 a page to  
15 get it.

16 THE COURT: Well, it's not going to be cheap  
17 to get an expedited transcript. No question about  
18 it. That's where you're going to need to decide  
19 how critical that person is to you.

20 If that person's testimony has been previously  
21 done in open court with all the ability to  
22 cross-examine and all that sort of thing, I think  
23 that that would satisfy the right to present that  
24 testimony and the right to present that witness  
25 absent some sort of case law to the contrary.

1           And like I said, that decision then becomes  
2           kind of yours as far as whether or not you wish to  
3           present that. However, Mr. Rosario is telling us  
4           that he has a high level of confidence that he not  
5           only has a recollection that that was transcribed,  
6           but that he's actually seen it.

7           MR. ROSARIO: I have, Judge. As Defense  
8           counsel knows, when I opened this up, three rings  
9           flopped opened. So it may have flopped open in  
10          transit somewhere along here. But I have a high  
11          degree of confidence that I did that.

12          THE COURT: And obviously if you have him  
13          between now and then, or if you wish to go further  
14          as far as his failure to appear, that's up to you.

15          Okay. Is there anything else we need to take  
16          up here?

17          MR. FOOTE: Judge, we've had some stipulations  
18          that we worked on over the weekend. I filed a  
19          motion for judicial notice, that the Court would  
20          take judicial notice on the use of Google Map  
21          and/or Google Earth and/or MapQuest.

22          The State I believe also intends to use some  
23          of these demonstrative aids to aid the jury with  
24          the various locations. So without the need of  
25          authenticating these items, both the State and

1 Defense would agree that the Court would take  
2 judicial notice of these tools.

3 THE COURT: Okay. What says the State?

4 MR. ROSARIO: Judge, the Google Earth, Google  
5 Map I believe is accurate, and I have no objection  
6 to that. Mr. Foote has mentioned the possibility  
7 of animation being used from Google Earth, I would  
8 like to view that before it's done.

9 THE COURT: What animation is that?

10 MR. ROSARIO: Well, evidently these days you  
11 can do street-view driving, and whatever he's  
12 using, I want to make sure it's true and accurate  
13 to the conditions of the night as opposed to --

14 THE COURT: Well, that's the difficulty.

15 MR. ROSARIO: Right. But otherwise, as far as  
16 the accuracy of the maps and overviews, I believe  
17 little has changed from the night of the offense to  
18 today.

19 MR. FOOTE: And, Judge, our anticipation of  
20 using any animation will probably be closer to  
21 either the Defense's case or closing itself, so  
22 we'll have an opportunity to show Mr. Rosario that  
23 prior.

24 THE COURT: I mean it would be demonstrative  
25 at best, and then I think obviously there's an

1 issue in closing when you use a demonstrative aid  
2 like that. I mean with the witnesses it may be one  
3 thing to use a demonstrative aid, it's another to  
4 use it in closing.

5 MR. FOOTE: Well, it's actually to aid the  
6 jury to the different locations. We would also  
7 stipulate that we're not using it for like if a  
8 building is here or not, it's being used for the  
9 actual streets. And the streets are still here,  
10 they haven't been widened, they haven't been  
11 changed at all.

12 So as far as maybe if a building is somewhere  
13 or not, this case does not involve that type of  
14 evidence where someone might have been inside of a  
15 building or if it was a bank robbery. It's just  
16 merely to show the street locations and the actual  
17 route for timing purposes and that's about it.

18 THE COURT: This is in lieu of somebody who  
19 actually has got a videotape of that?

20 MR. FOOTE: Pretty much, Judge, I think just  
21 showing the routes. There are witnesses that will  
22 come forth throughout the trial, both are State  
23 witnesses, who will testify where they saw the  
24 vehicle.

25 THE COURT: I guess we'll deal with that when

1 we come to it. Have you used that screen? I mean  
2 it's pretty cumbersome. I mean I've used it on a  
3 number of occasions, and if there's any length of  
4 travel going on, I mean that is a cumbersome  
5 process.

6 MR. FOOTE: Our staff was at the courthouse  
7 last week, everything was tested, a dry run was run  
8 through the system. Pretty much it's just showing  
9 the locations.

10 THE COURT: I know, but it's click, click,  
11 click.

12 MR. FOOTE: No. It's a continuous run. It's  
13 a continuous run.

14 THE COURT: What's a continuous run?

15 MR. FOOTE: Like we're going to illustrate  
16 like to a point A to a point B-type situation.  
17 Once it's set, unless you stop it, it's just going  
18 to go through the location and it will take you  
19 down the streets. It's going to say, "We're going  
20 on Grand. We're going on 54." There's no  
21 separation. It actually flows through.

22 And if the Court wants, prior to that time,  
23 prior to closing, the Court can view it as well.

24 THE COURT: Like I said, I'm probably going to  
25 need to see some case law that talks about that

1 sort of demonstrative aid being used in closing.

2 MR. FOOTE: That's fine.

3 Judge, finally, we just want to review a  
4 couple of the motions in limine just to clarify  
5 since we've had so many pieces to the trial.

6 Judge, we brought before the Court before to  
7 preclude the State or any of their witnesses from  
8 any and all mention to the existence of any, quote,  
9 "Apparent hair." And this goes to any hair that  
10 may have been found underneath the vehicle. The  
11 Court granted that motion before. There is no FDLE  
12 evidence, it's just a witness saying from his  
13 experience he thinks it's hair.

14 MR. ROSARIO: I have no objection to that,  
15 Judge. We didn't use it in the first trial, I'm  
16 not going to use it in this trial.

17 THE COURT: I think that was granted based  
18 upon the agreement of the parties.

19 MR. FOOTE: Likewise, Judge, I think maybe the  
20 State also agrees that there was a motion in limine  
21 with regards to the existence of human tissue  
22 allegedly observed under the vehicle, this is also  
23 by a lay witness, and it wasn't tested or anything  
24 like that.

25 MR. ROSARIO: Again, Judge, the only thing



1 that's problematic on this is it's on a videotape,  
2 as Trooper Schaub shot the video, he's mentioning  
3 these things. I know the last time we had a trial,  
4 I instructed him not to go into those areas.

5 I attempted to get the tape back. I put the  
6 tape into evidence with the motion to suppress.  
7 I'm trying to get that back if I can get the Court  
8 to allow them to release that to me to view again.

9 I want to make sure that either we turn the  
10 volume down when we play the videotape or it's an  
11 edited one where the volume isn't there.

12 THE COURT: Well, once again it will have to  
13 be an edited one with no volume on it, wouldn't it?  
14 Once again if it was moved into evidence, they'd  
15 have the opportunity to take it back. We can't  
16 have them see no volume because of what's said on  
17 it and be able to turn the volume up for the jury.

18 MR. ROSARIO: Right. And I think the one that  
19 I put into evidence -- I'm looking at the clerk,  
20 she's looking at me like she has no idea what I'm  
21 talking about.

22 THE CLERK: I have it.

23 MR. ROSARIO: If I can take the video at one  
24 point and view it and make sure that's the one that  
25 has no sound to it.

1 THE COURT: All right. Mr. Foote, any  
2 objection to that?

3 MR. FOOTE: No objection, Judge. I think the  
4 last time what we were going to do -- I don't know  
5 if this was proper or not -- but if the jury would  
6 request that, then it would be played out in the  
7 open courtroom with the bailiff.

8 THE COURT: Yes. I'm not going to do that.

9 MR. FOOTE: Okay.

10 THE COURT: They have a TV back there, they  
11 can view it.

12 MR. FOOTE: As long as there's no volume on  
13 it.

14 THE COURT: But I don't see any reason to  
15 reconvene everybody just to have them watch a  
16 video.

17 MR. ROSARIO: If the video in evidence is not  
18 redacted, I'll have to --

19 THE COURT: Just let's have no sound, right?

20 MR. ROSARIO: Correct. So I think we'll have  
21 to do something to edit it to take the sound out.

22 MR. FOOTE: Judge, our next motion in  
23 limine -- and there wasn't an agreement on this but  
24 we're renewing it -- any and all reference by the  
25 State of Florida regarding Trooper Ronald Evans'

1 military service in the trial.

2 Judge, we're renewing this motion in limine in  
3 that we see that this is an improper bolstering of  
4 a particular witness of his credibility. I think  
5 he can testify with regard to what he's going to  
6 testify to without waving the flag of his military  
7 service.

8 There was a point where he stepped out of the  
9 Florida Highway Patrol for the purposes -- I  
10 believe he was in the Reserves unit. I don't think  
11 he was actually deployed.

12 MR. ROSARIO: He was deployed.

13 MR. FOOTE: On deposition I don't think he  
14 said he went over, but we had perpetuated his  
15 testimony in case he was to go over. He went to  
16 the Midwest I believe for training but never  
17 actually went away.

18 In any event, Judge, it has to do with  
19 documents. There were some reports that are  
20 missing. Apparently, I had not heard this before  
21 but Mr. Rosario had mentioned it the last time when  
22 we did the motion in limine, that he possibly was  
23 instructed to shred these documents prior to his  
24 deployment. I didn't see any evidence of that;  
25 however, we would agree that he was unavailable for

1 a certain period of time and we would leave it  
2 that.

3 The fact to say that he had military service  
4 just tends to just add on top of his credibility  
5 where the jurors may tend to say, well, because  
6 he's a veteran or he's in the military, that he  
7 would not lie. We think that's unnecessary. He  
8 can testify, and there will be other -- and if it  
9 even comes up that he was unavailable, we don't  
10 intend to bring that up either.

11 THE COURT: So it's your position that the  
12 average person on the street believes that no one  
13 in the entire branch in the military service would  
14 ever lie?

15 MR. FOOTE: That's not my position, Judge. I  
16 think it's unnecessary.

17 THE COURT: Okay. I thought that's what you  
18 just said.

19 MR. FOOTE: No. The point of it, Judge, first  
20 of all, it's not relevant to any of the issues in  
21 this case. It's commenting on a witness which  
22 would not be allowed for any other witness, and  
23 it's almost like waving the flag that, okay, he had  
24 to go over.

25 THE COURT: Well, wouldn't that explain where

1 he was? Isn't it why I allowed it last time, I  
2 mean why there was such a gap, why he wasn't  
3 involved in the process?

4 MR. FOOTE: Judge, it really didn't come up  
5 even as an issue. In his explanation he brings  
6 that up because there was a record that was  
7 missing, and he says everything was left at the  
8 trooper station and that was that.

9 Now, when they couldn't find it -- and I don't  
10 know where that evidence comes from. The first  
11 time I actually heard it was during the last motion  
12 in limine that Mr. Rosario said that he was ordered  
13 to shred it, he never said that in deposition.

14 MR. ROSARIO: He never said that.

15 MR. FOOTE: So if in case he was told to  
16 destroy it or whatever, I don't know. The fact of  
17 the matter of it is that he would testify that he  
18 left the documents at headquarters, he had his  
19 leave of absence, and when he comes back they're  
20 not there. So we're not attributing anything to  
21 him.

22 THE COURT: Mr. Rosario.

23 MR. ROSARIO: Judge, I think it is relevant as  
24 to why there is a gap and why it's missing. I  
25 think one of the defenses that the Defense may take

1 in this case is that FHP screwed up, that this is  
2 missing, that that's missing, this is the weak part  
3 of that, and that FHP screwed up.

4 We have a completely logical situation where  
5 we have an officer who did the field sobriety  
6 exercises, the alcohol influence report, and when  
7 he got his orders to be deployed, he was deployed,  
8 and his records were lost during that time period.

9 Defense counsel during the last trial asked  
10 several questions where the officer was very  
11 hamstrung in as to what he could say. All he  
12 could really say was, "I was out. I was out,"  
13 whereas that's completely inappropriate. It's, "I  
14 had been deployed," or "I was out on military  
15 leave." That's all.

16 Were not planning on going any further than  
17 that. I'm not going to bolster any testimony. I'm  
18 not going to say he flew choppers in hot zones or  
19 anything like that. Just flat out, "I was deployed  
20 with the military and when I got back my records  
21 were gone."

22 THE COURT: Based on that representation, my  
23 prior ruling will stand.

24 MR. FOOTE: Judge, any and all mention by the  
25 State of Florida, any witness of any prior acts on

1 the part of Shannon Stephen, including but not  
2 limited to any behavior on any prior occasion, I  
3 think the Court granted that but said unless we  
4 open the door, then that should not come in.

5 THE COURT: All right. Mr. Rosario.

6 MR. ROSARIO: Judge, on this one I'm on the  
7 fence with. I did not file a notice of Williams  
8 Rule. There are several witnesses that know  
9 Mr. Stephen quite well, and said he drove drunk  
10 like this often. I know that I'm not allowed to  
11 use that.

12 I don't intend to go in that direction.  
13 However, if Defense counsel does say, have you ever  
14 seen Mr. Stephen act like this in any other manner,  
15 and opens the door, I believe the witnesses would  
16 be allowed to testify to that.

17 THE COURT: Well, I think it depends on how it  
18 proceeds. I mean you certainly have no intent to  
19 introduce that evidence in your case in chief?

20 MR. ROSARIO: That's correct.

21 THE COURT: And prior to bringing that  
22 evidence out, you'll approach the bench and bring  
23 that to the Court's attention?

24 MR. ROSARIO: Yes, I will.

25 MR. FOOTE: Well, Judge, to my recollection,

1 and for your discovery, I've heard no witness  
2 actually say that in any deposition. So we would  
3 hope that if anticipated that that would come out,  
4 we would address that outside the presence of the  
5 jury.

6 THE COURT: All right.

7 MR. FOOTE: Next, Judge, any reference to HGN,  
8 horizontal gaze nystagmus, done on Shannon Stephen  
9 by Trooper Ronald Evans, and that Trooper Evans was  
10 not a certified drug recognition expert.

11 MR. ROSARIO: Judge, there's a videotape.  
12 Fortunately this videotape does not have audio. It  
13 is of the field sobriety tasks. He is shown doing  
14 HGN, but he's not going to comment on HGN or what  
15 he believes the results of the HGN were.

16 I believe the case law is clear that it can be  
17 shown to the jury. However, I'm not going to have  
18 the jury draw any conclusions based upon any HGN  
19 expert testimony.

20 MR. FOOTE: And, Judge, we would agree on that  
21 video, some videos have sound, some don't have  
22 sound. That would be just a cumbersome task to try  
23 and redact that portion out of the video. So we  
24 would have no objection as long as there's no  
25 testimony and no audio to that effect.



1 THE COURT: All right.

2 MR. FOOTE: Judge, finally, any and all  
3 reference of photos taken prior to or during an  
4 autopsy of Joseph Swiech and Sarah Gleason at the  
5 Medical Examiner's Office, and that such photos are  
6 highly prejudicial and only serve to inflame the  
7 passion of the jury.

8 Judge, with that, the Defense would stipulate  
9 to the I.D. of the victims, that they are, indeed,  
10 the victims, and that they were killed in this  
11 accident.

12 THE COURT: All right. What says the State?

13 MR. ROSARIO: With that stipulation, Judge, I  
14 would like to have that on the record in front of  
15 the jury that they are stipulating to it. If we  
16 want to hammer what the wording would be, that  
17 would be fine with the State.

18 I do not intend to use any pictures that are  
19 overly graphic to inflame the jury. I have one  
20 picture that there is a body on the ground with a  
21 sheet over it.

22 THE COURT: We're talking about autopsy  
23 pictures.

24 MR. ROSARIO: Right. I'm not going to use any  
25 of the autopsy pictures.

1 THE COURT: Okay. So you-all will get  
2 together on that stipulation, what you wish to be  
3 read. Essentially it's regarding the  
4 identification of the listed victims, correct?

5 MR. FOOTE: Correct, Judge.

6 Judge, finally any and all reference to the  
7 defendant's medical condition, specifically that  
8 he's epileptic and suffers from a seizure disorder  
9 without medical documentation supporting such a  
10 position.

11 THE COURT: Okay.

12 MR. ROSARIO: Judge, again this one is subject  
13 to what occurs during the trial. I do not intend  
14 on using it in my case in chief. There is a jail  
15 tape of the defendant where that is discussed and  
16 he says that was not the issue for why the crash  
17 happened. So if he were to testify, that might  
18 become relevant. Otherwise, I do not intend to  
19 bring up any medical condition of epilepsy.

20 THE COURT: All right. I'm sure you agree  
21 that may be dependent upon your client's testimony,  
22 Mr. Foote?

23 MR. FOOTE: That's correct, Judge. And we've  
24 listened to the tape. That pretty much was not  
25 said, but it would be something that I guess we

1 could look over outside the presence of the jury.

2 There were no excuses or denials about  
3 anything with regard to that situation. In fact,  
4 his mother asked him, did you have a seizure? He  
5 said, no. So it wasn't like an excuse for the  
6 accident. We don't intend on bringing it up.

7 So if, in fact, that actually comes up, we  
8 would like to address the Court prior to the jury  
9 hearing the tape so that the Court can make its own  
10 conclusions about what is on the tape.

11 THE COURT: All right.

12 MR. FOOTE: Finally, Judge, the State filed a  
13 motion in limine with reference to illicit  
14 substances found in the blood or toxicology reports  
15 during the autopsy of Sarah Gleason and Joseph  
16 Swiech.

17 And according to their motion, it says,  
18 "Unless the Defense can establish fault on the part  
19 of the victim, such evidence is not relevant. It  
20 would be improper for the Defense to argue such  
21 evidence without first proffering the intended  
22 testimony for the Court to demonstrate the  
23 relevance of the evidence." They cited Johnson v.  
24 State; Trease, T-r-e-a-s-e, v. State; and Nova v.  
25 State.

1           At that time we were given the motion and the  
2 case law at the last minute. We reviewed that case  
3 law, and it appears that the State's position is  
4 that the Defense would introduce this evidence to  
5 either impeach these witnesses or smear these  
6 witnesses.

7           We found case law and we would like the Court  
8 to review that with regard to the real purpose that  
9 we would want to use that. It goes directly to an  
10 element of the crime of causation, of whether or  
11 not the substances within their systems may have  
12 contributed somehow as well to the cause of the  
13 accident.

14           In reading the cases that the State provided,  
15 they were based on rape cases where a person said  
16 they took cocaine or they're known to be drug users  
17 and that's why the person was raped, and we believe  
18 that these cases are factually distinguished from  
19 the case before us.

20           I would like to cite the Court to a Supreme  
21 Court case as well as a District Court case with  
22 regard to this very issue. If I may approach?

23           THE COURT: You may.

24           MR. FOOTE: I provided the Court and the State  
25 with two cases. First I would like you to look at

1 the Weitz case, State of Florida versus Weitz, it's  
2 a District Court of Appeal case, First District,  
3 found at 500 So.2d 657, a 1987 case.

4 Judge, that was a DUI case wherein the State  
5 sought to enter into evidence with regard to  
6 cocaine in the person's system and the defense  
7 moved to suppress such evidence.

8 Basically the argument was, and I believe the  
9 last time that we were here in court the Court  
10 opined that if we were not able to show a  
11 quantitative amount of the cocaine, then we could  
12 not show that the person was under the influence.

13 Second, the Court also stated --

14 THE COURT: I'm not sure, was it quantitative?  
15 Wasn't there some discussion as to when it was  
16 ingested?

17 MR. FOOTE: Correct. Well, no, and I may not  
18 recall correctly, but the Court said basically we  
19 couldn't show that someone saw them taking it  
20 shortly before.

21 THE COURT: Well, when it was ingested. Was  
22 it ingested a week or more? Was it ingested that  
23 night?

24 MR. FOOTE: Correct, Judge. And the case law  
25 actually says that that analysis is not necessary

1 with regard to cocaine and marijuana, although  
2 alcohol can quantitatively be measured either by  
3 retrograde extrapolation. There are scientific  
4 standards on that.

5 It's been well established with regard to  
6 cocaine and marijuana that they will heighten the  
7 effects of alcohol or impairing a person; however,  
8 there is no real standard for saying what amounts  
9 are in the system and what effects it would have.

10 So the court in Weitz as well as in Sercey  
11 were actually explaining that because those  
12 standards do not exist, if it tends to show that  
13 there was an impairment based on that, then it  
14 would be allowed.

15 In Weitz the court found that the trial court  
16 erred in finding evidence of drugs in the  
17 appellee's system inadmissible unless it can be  
18 linked quantitatively to impairment, that was a  
19 reversible error.

20 It also found that the trial court ruled that  
21 evidence of illegal drugs in appellee's system was  
22 too prejudicial to be admissible. Okay. The Court  
23 reversed on that.

24 Finally it says the jury was entitled to  
25 consider evidence tending to prove any of the

1 necessary material elements of the offense. Now,  
2 this was the State actually objecting to this,  
3 Judge, and this precaution was given towards the  
4 defendant.

5 Here we're not even talking about the  
6 defendant, we're talking about the victims of the  
7 case. We're not attempting to impeach them  
8 whatsoever or to show prior bad acts. It goes  
9 directly to impairment and to whether or not they  
10 may have contributed to the accident as well.

11 The testimony will come out that they were at  
12 Grand Boulevard, wearing dark clothing, that it's a  
13 single lane roadway, there was fighting at an  
14 original establishment that they were thrown out  
15 of, they were on their way home, and that's  
16 something that the jury should consider. It goes  
17 to weight and not admissibility.

18 Judge, with the State versus Sercey case,  
19 S-e-r-c-e-y, I may have misspoke and said it was a  
20 Supreme Court case. It's a First DCA case found at  
21 825 So.2d 959.

22 In that case, Judge, there were multiple  
23 issues that were discussed, the Frye standard and  
24 some other issues. The part that is relevant to  
25 us, it was trying to determine in a DUI

1           manslaughter case whether the testimony in evidence  
2           regarding marijuana in the defendant's system  
3           should come in.

4           It went through the Frye standard gas  
5           chromatography. We don't see that that part is  
6           relevant. However, under Footnotes (5), (6) and  
7           (7), with regard to whether or not that evidence  
8           should be considered by the jury, it cites  
9           State v. McClain. The Supreme Court resolved the  
10          apparent conflict between the Fourth District's  
11          opinion in that case and this court's decision in  
12          Weitz, which I provided to the Court.

13          It observed that evidence of even a trace  
14          amount of cocaine in the blood of the defendant  
15          charged with vehicular homicide while intoxicated  
16          would have some relevance.

17          It distinguished the unquantified amount of  
18          drugs in Weitz from the unquantifiable trace amount  
19          in McClain, and explained that this court was  
20          correct when it rejected the trial court's  
21          conclusion that it was necessary for the  
22          toxicologist to estimate the degree of impairment  
23          caused by the existence of the drugs.

24          It went forward to say in State very Tagner,  
25          T-a-g-n-e-r, the trial court's exclusion of



1 evidence of cocaine in the blood of a defendant  
2 charged with DUI manslaughter based upon its  
3 findings of quote, "No measurable effects," was  
4 reversed.

5 The appellate court held that the State's  
6 inability to show a specific measurable effect of  
7 the cocaine on the defendant did not per se render  
8 the evidence inadmissible, and that the testimony  
9 of the toxicologist established the probative value  
10 of the cocaine on the issue of, quote, "Under the  
11 influence."

12 The court observed that the experts here  
13 concede that they could not provide a quantitative  
14 range of the impairment correlated to the cocaine  
15 in the defendant's blood because this body of  
16 information does not exist in a fashion similar to  
17 the research on alcohol.

18 If the inability to quantify the degree of  
19 impairment was a basis for disallowing evidence of  
20 cocaine impairment, such evidence would necessarily  
21 be suppressed in every case.

22 So, Judge, based on that, that's the  
23 precautions that are given to a defendant, which  
24 the Court is well aware those rights of the  
25 defendant are highly protected when it comes to due

1 process.

2 In here that standard was given to the  
3 defendant. We're not even talking about the  
4 defendant, we're talking about the victims of the  
5 case, Judge.

6 And so the basis which the State relies on in  
7 its case and its motion in limine is not the basis  
8 for which the Defense seeks to enter this evidence,  
9 but it goes to the Defense's theory of what the  
10 State has to prove, that not only the defendant was  
11 driving and that he was impaired, but that he  
12 caused the death or contributed to the death of  
13 these persons.

14 And as the Court is well aware causation is a  
15 critical element that can also be defended. It's  
16 our position that the jury should be aware that  
17 there were substances within the victims' bodies  
18 that may have impaired them.

19 Dr. Thogmartin, the medical examiner, could  
20 testify to that effect. He testified to such in  
21 the last trial, as well as the toxicologist.

22 Therefore, we're asking the Court to deny the  
23 State's motion in limine with regard to the mention  
24 of these items, the victims' autopsy reports.

25 THE COURT: Mr. Rosario.

1 MR. ROSARIO: Judge, the cases the Defense  
2 cite are completely distinguishable in that both  
3 those cases go to the defendant's impairment, which  
4 is one of the first elements of the charge.

5 In this case, in the last trial, the  
6 toxicologist is on the stand, and they said, "Was  
7 anything found in Sarah Gleason's system? Yes,  
8 cocaine." And that was it. All it did was smear  
9 Sarah Gleason. There was nothing else whatsoever  
10 in the case to establish that the drugs did  
11 anything whatsoever, which is why I filed this  
12 motion.

13 There's going to be no testimony from that  
14 witness stand to say that Sarah Gleason or Joe  
15 Swiech were under the influence of illegal  
16 substances that anyone saw or observed or could  
17 tell that they were under the influence.

18 They're walking normally hand-in-hand down the  
19 side of the road. I'll probably be doing an  
20 objection to the fact that there was a disagreement  
21 at the bar and that they were thrown out of the  
22 bar. I think that's impeachment on a collateral  
23 issue.

24 They're walking down the side of the road,  
25 they're off the side of the road on Grand

1 Boulevard. Robert Bartlett is on the phone, the  
2 two of them are walking right next to him, and  
3 they're not having any difficulty walking other  
4 than normal walking in dirt, and the two of them  
5 get hit, as he hangs up phone, the two of them get  
6 hit by the vehicle as it goes by.

7 There's no testimony whatsoever that the  
8 toxicologist and the medical examiner are going to  
9 be able to testify as to whether these people were  
10 impaired by those drugs and thereby could have  
11 somehow contributed to the causation on the part of  
12 the defendant.

13 There is nothing there. It's pure  
14 speculation. It wouldn't be raised to any type of  
15 help towards relevance. It's more prejudicial than  
16 it is probative. It's not relevant in this case  
17 whatsoever.

18 If the Defense can bring in something like  
19 they were staggering into the road, maybe that  
20 would be relevant, but there is no testimony for  
21 that. And if there were, I wouldn't run the  
22 motion, but there is nothing.

23 They're walking along the side of the road,  
24 they had been drinking, I believe that is  
25 admissible, that comes out, but I don't believe any

1 illegal substances is in any way relevant.

2 MR. FOOTE: And, Judge, Mr. Rosario's  
3 recollection of the trial is a little different  
4 than mine, I guess.

5 Dr. Thogmartin, I actually asked -- I remember  
6 the actual question -- "What effect would these  
7 substances have mixed with cocaine?" And he said  
8 the level of impairment with regard to the mixture  
9 of these two substances, he said something to the  
10 effect that he didn't know what would be going on  
11 in their body, indicating that a lot would be going  
12 on with impairment.

13 THE COURT: So Dr. Thogmartin said he would  
14 not know what was going on in their body, and you  
15 interpreted that to be that it would be some sort  
16 of synergistic effect? That was your  
17 interpretation of that?

18 MR. FOOTE: Because when we got to the  
19 discussion of alcohol --

20 THE COURT: It's an easy question. That was  
21 your interpretation or did he say that?

22 MR. FOOTE: Judge, you have to understand it  
23 in context. The result of that answer was because  
24 we were talking about alcohol being a depressant  
25 and cocaine being a stimulant.

1           I said, as a result of those things, what's  
2           going on in the body? He said anything could be  
3           going on inside the body with the mixture of those  
4           two things going on at the same time. And if the  
5           Court wanted to, we can proffer that outside the  
6           presence of the jury to get a direct answer with  
7           regard to that.

8           With regard to no one seeing them, Judge, the  
9           witness that survived --

10          THE COURT: Well, I guess that issue is when  
11          was it ingested? What was ingested the week  
12          before?

13          MR. FOOTE: Judge, that goes to weight and not  
14          admissibility. The courts have reversed based on  
15          that issue.

16          THE COURT: I'm not sure that's what these  
17          cases say.

18          MR. FOOTE: Well, there's no standard to first  
19          establish when these items were ingested.  
20          Furthermore, the person that they were walking with  
21          will be able to testify that they normally smoked  
22          marijuana and they probably smoked marijuana that  
23          evening, the person walking with them.

24          THE COURT: Well, that person has no knowledge  
25          of that, correct?

1 MR. FOOTE: They were all together prior.

2 THE COURT: No, no. That person didn't say,  
3 we all smoked marijuana together? Is that person  
4 going to say that? I mean I guess what I'm getting  
5 at, it's your position that you can ask a question,  
6 gee, they normally smoked marijuana, they probably  
7 did it that evening, without any proof? It's your  
8 belief you can get that in?

9 MR. FOOTE: Judge, we're mixing apples and  
10 oranges here. The standard that Mr. Rosario was  
11 saying, if the Court agrees with this, is improper,  
12 that we have to show that they were taking these  
13 substances in order for the jury to hear that.

14 That's a strict rule, okay, of us not speaking  
15 about that evidence, which the Court says we would  
16 never ever be able to bring those items before a  
17 jury, because it's not a scientific standard,  
18 particularly with cocaine, to be able to establish  
19 when and what levels of impairment there are with  
20 the use of that substance, unlike alcohol.

21 THE COURT: But the issue is whether or not  
22 the substance itself was in their system or was it  
23 just a metabolite.

24 MR. FOOTE: The substance was in their system,  
25 Judge, and their lab reports will show that. I

1 didn't ask the question, was anything else in their  
2 system, cocaine, and sat down. We discussed it.  
3 We discussed whether it's a stimulant versus a  
4 depressant of alcohol and what effect that that  
5 would have on the body.

6 If the Court wants to hear that testimony  
7 prior to the jury hearing it, that's one issue, but  
8 to preclude it on a strict rule -- and I would ask  
9 the State to provide case law supporting its  
10 position that we have to establish first when  
11 someone saw them take it, how much they had in  
12 their system.

13 Those cases go directly to the issue  
14 of whether or not -- that's a jury question.  
15 Weight, not admissibility. And certainly the fact  
16 that he's distinguishing it from the defendant, the  
17 defendant's rights in this case, due process rights  
18 are paramount. We would argue that because those  
19 protections are there for the defendant, it would  
20 be less for a regular witness in the case.

21 THE COURT: All right. Okay. As it relates  
22 to that issue, I'm going to go ahead and review the  
23 case law provided a little closer, but for right  
24 now what I am going to do is I'll accept  
25 Mr. Foote's suggestion that prior to



1 Dr. Thogmartin's testimony or at the appropriate  
2 time during his testimony we'll do a proffer of  
3 that information.

4 MR. ROSARIO: Judge, would that also apply to  
5 the lay witness Robert Bartlett, and the person who  
6 did the analysis of the blood, which would be Jeff  
7 Hays or Robin Neuenschwander?

8 THE COURT: Robert Bartlett is the fellow  
9 walking with them?

10 MR. ROSARIO: Right.

11 THE COURT: Well, he's not going to testify  
12 they had cocaine in their system, is he?

13 MR. ROSARIO: Right. But I don't want Defense  
14 counsel asking, did you see them smoke, using  
15 cocaine that night? If they want to proffer that,  
16 and if he has that information, which I don't think  
17 he has --

18 THE COURT: Well, I mean do we have an idea of  
19 the order of these people? I'm assuming that this  
20 person's answer to that question, based on what he  
21 just said, is going to be, no.

22 MR. FOOTE: Judge, I can tell you we're not  
23 even going to ask that question of that witness. I  
24 think it speaks for itself that the autopsy reports  
25 are inconclusive, and Mr. Bartlett was under the

1 influence himself that evening.

2 Once again that adds any burden on us that we  
3 actually have to establish that. Unless there's  
4 some case law that says that we actually have to do  
5 that, I think Mr. Rosario's position is wrong as to  
6 the procedure of what we have to do.

7 We don't intend to ask Mr. Bartlett that.  
8 It's what is actually in the autopsy report and the  
9 professionals who will testify about it.

10 THE COURT: All right.

11 MR. FOOTE: Judge, finally we would invoke the  
12 rule of sequestration, instruct all witnesses not  
13 to talk about their testimony out in the hallways  
14 or comment on each other's testimony with regard to  
15 the case.

16 MR. ROSARIO: None of my witnesses have  
17 appeared yet, Judge, but I will instruct them on  
18 the rule of sequestration.

19 THE COURT: I'll instruct both lawyers to  
20 instruct all the witnesses accordingly. Although I  
21 do have a question. Shelly Stephen is listed as a  
22 witness. She is seated in the courtroom. Will she  
23 be removed from the witness list?

24 MR. FOOTE: Yes.

25 THE COURT: Well, there's also case law

1 talking about family. Is she being removed?

2 MR. ROSARIO: Removed from the witness list?  
3 I believe he said, yes.

4 MR. FOOTE: As far as our case in chief, the  
5 Defense's case, yes. Honestly, any of these  
6 witnesses are rebuttal witnesses if something comes  
7 up. We don't intend her to testify whatsoever,  
8 Judge. She's the mother of the defendant.

9 THE COURT: So it's not intended at this point  
10 in time for her to testify, or there's no reason in  
11 foreseeable rebuttal that she's going to testify;  
12 is that correct?

13 MR. FOOTE: Unless someone comes up and says  
14 something about her directly.

15 THE COURT: Well, I mean you-all have tried  
16 this case before. It's not like, you know, when  
17 you shrug your shoulders and look at them, and  
18 Mr. Foote's, like, oh, geez, how can I anticipate  
19 that?

20 This is the second time this case has been  
21 tried, so I suspect there's things you can  
22 anticipate that you didn't anticipate the first  
23 time based on the fact that it was only tried once.

24 MR. FOOTE: That's true, Judge, but in that  
25 same light certain things came out, certain

1 evidence came out which even today the Court is  
2 ruling that it's not coming in, so it changes the  
3 procedure and flow of the evidence.

4 I don't anticipate calling her. If the State  
5 requires us to remove her from the witness list in  
6 our case in chief, I'll do that. However, I don't  
7 want that to preclude if something comes up in  
8 their rebuttal case or something like that that now  
9 she cannot testify.

10 THE COURT: Well, Mr. Foote, my question was,  
11 is anything reasonably foreseeable, in other words,  
12 you know X testimony is going to come out, her  
13 testimony is going to be Y, which is, you know,  
14 once again reasonably foreseeable, and, therefore,  
15 she will probably testify? Are you representing to  
16 me as an officer of the Court that is not the case?

17 MR. FOOTE: There's nothing foreseeable,  
18 Judge, based on the previous trial that would cause  
19 me to call her as a witness.

20 THE COURT: Okay.

21 MR. FOOTE: She's not going to be a witness.

22 THE COURT: All right.

23 MR. FOOTE: Judge, finally, it's kind of I  
24 want to say an off-calendar matter but not related  
25 to this case. I have a 1:30 set in front of Judge

1 Salton, a final hearing on a violation of probation  
2 on a county court case.

3 From my understanding, Judge Salton said a  
4 final hearing is a final hearing. So I would ask  
5 the Court if it could possibly inquire of Judge  
6 Salton, if we're in the middle of jury selection or  
7 openings, that procedurally being able to handle  
8 that matter or taking a break or something at that  
9 time.

10 THE COURT: Yes. I'm not going to take a  
11 break for that. I mean this case has been set. I  
12 don't know when you-all set that.

13 MR. FOOTE: Well, it's actually a  
14 dispositional hearing and I would like to be part  
15 of it. What I'm asking is for the Court's  
16 assistance probably in letting Judge Salton know  
17 that we're here, and maybe set it into next week or  
18 something, without me having to run out of this  
19 trial and trying to take care of that matter and  
20 absent my client receiving some type of warrant or  
21 something.

22 THE COURT: Well, you know, I will certainly  
23 make an effort to mention it to Judge Salton. The  
24 difficulty will be I suspect I will be in here with  
25 you.

1 MR. FOOTE: Well, maybe you can hit the magic  
2 computer or something. We haven't been able to get  
3 through to his J.A. That is on the calendar,  
4 that's the only procedural thing that's  
5 outstanding, and, of course, I don't want to just  
6 not show up for that.

7 THE COURT: All right. Anything else?

8 MR. ROSARIO: Judge, there was one more motion  
9 in limine that we discussed last time around. In  
10 this case, as part of discovery, some of my  
11 personal emails were released.

12 MR. FOOTE: No use of emails, Judge, from  
13 Mr. Rosario.

14 MR. ROSARIO: I'm sorry?

15 MR. FOOTE: The Defense will use no emails  
16 from Mr. Rosario.

17 MR. ROSARIO: Okay.

18 MR. FOOTE: I thought you were going there.

19 MR. ROSARIO: I was going to ask that they not  
20 be used. And there may be a phrase or two that you  
21 might want to use from there, but you're not going  
22 to put them in context?

23 MR. FOOTE: That's correct.

24 MR. ROSARIO: That's fine. If they will not  
25 be using my emails directly, I have no objection to

1           that.

2           THE COURT: All right. Okay. Anything else?

3           MR. FOOTE: Judge, I guess the stipulations  
4           are the stipulations. There are numerous phone  
5           records that will be coming in from four or five  
6           witnesses.

7           I spoke with Mr. Rosario. Rather than calling  
8           the custodian of records for each one of those  
9           phone companies, we've got the proper  
10          authentication documents for that. I believe the  
11          State has agreed that those will be able to come in  
12          under the hearsay exception. They were used in the  
13          last trial and I anticipate that both sides will be  
14          using them in this trial.

15          MR. ROSARIO: Yes, Judge, I believe the phone  
16          records, I believe they have the adequate  
17          self-authentication. The only issue is that during  
18          the last trial I believe they became confusing to  
19          the jury because defense evidence was being  
20          admitted during the State's case in chief, and I'd  
21          ask that while it can be used during  
22          cross-examination of the witnesses and set up  
23          predicates through the direct examination, I think  
24          the admission of the evidence would have to wait  
25          until the Defense's case in chief.

1           MR. FOOTE: Judge, the only procedural issue  
2           with that is that the State, although they may not  
3           be calling them, there's approximately 52  
4           witnesses, and I anticipate we're going to take a  
5           full five days. In cross-examination we would like  
6           to be able to show the demonstratives with the  
7           larger version of the phone records to the jury.

8           What we would have to do is recall all of  
9           those witnesses in our case, because I'm  
10          anticipating that we would not be able to show the  
11          phone records unless the State is agreeing the  
12          actual admission be done at a later point, but that  
13          we would be allowed to show these phone records in  
14          a larger version during cross-examination. So I  
15          just want to know procedurally how do we want to do  
16          that.

17          THE COURT: Mr. Rosario.

18          MR. ROSARIO: Judicial economy, Judge. Are  
19          you going to be using your big blow-ups?

20          MR. FOOTE: Correct.

21          MR. ROSARIO: For appellate purposes, Judge,  
22          I'd like the evidence actually to be admitted  
23          during the Defense's case in chief. However,  
24          during cross-examination, I know that Mr. Foote has  
25          a large part of his cross-examination that's going



1 to require the jury to view some of these  
2 documents, so I have no objection to them being  
3 used during cross-examination.

4 THE COURT: Okay. So you can use the blow-ups  
5 and use the documents but actually introduce them  
6 in his case in chief.

7 MR. FOOTE: So we refer to them I guess as  
8 Defense exhibits or identification exhibits for the  
9 purpose of the record until they are moved in?

10 THE COURT: Well, Defense exhibit for  
11 identification, correct.

12 MR. FOOTE: That would be fine, Judge.

13 MR. ROSARIO: And, Judge, I have three very,  
14 very basics that were left, as I pointed out, that  
15 I had missed.

16 It's a motion in limine. I'd like to make  
17 sure that they aren't any and all going to be  
18 commenting on whether the State called a witness to  
19 testify or not testify. Of course, this is  
20 something probably closer to closing arguments.

21 THE COURT: Equally accessible and all that  
22 sort of thing?

23 MR. ROSARIO: Correct. That would be one of  
24 them.

25 THE COURT: Mr. Foote, you're aware of that

1 case law?

2 MR. FOOTE: If they are equally accessible? I  
3 believe that the argument is either side can say  
4 that, that they are equally accessible.

5 I don't think it precludes me in my argument  
6 from saying that. For example, if the chief  
7 homicide investigator was not called by the State,  
8 I mean it doesn't preclude us from saying that the  
9 person is there.

10 Actually if the State wants to argue that,  
11 they can. They actually have the first and the  
12 last and they can say equally available to both.

13 THE COURT: All right.

14 MR. ROSARIO: It becomes difficult if the  
15 Defense doesn't call witnesses, then I'm sort of  
16 precluded from that argument.

17 THE COURT: I think you are going to call  
18 witnesses in this case, present a case, correct?

19 MR. FOOTE: Correct, Your Honor.

20 THE COURT: All right.

21 MR. ROSARIO: Judge, any and all impeachment  
22 on witnesses on collateral matters. During the  
23 last trial, as I was reviewing documentation and  
24 transcripts that Mr. Foote had transcribed, there  
25 was a witness Carol Wallace, who he was asking

1 questions like, you wanted to hide from your  
2 husband that you were working at Ventures Bar, and  
3 I realized that upon rereading that, that was  
4 completely a collateral issue and was not relevant  
5 to the case, and that's why I filed a motion in  
6 limine to preclude him from impeaching witnesses on  
7 such matters.

8 THE COURT: Okay.

9 MR. FOOTE: Judge, as the Court is aware,  
10 there's going to be lots of evidence in this case.  
11 That evidence is going to go to the credibility of  
12 the witness as to where she was that evening, and  
13 both her and her husband are going to be witnesses  
14 in the case.

15 The issue was that they were lying to each  
16 other about where they were, they were having a  
17 difficult marriage, and then some issues came up  
18 where now this person is on the scene of the  
19 accident for four hours, changing her clothes so  
20 that she can make her husband think she was working  
21 at a nursing home or a hospital instead of a bar.

22 Some of those issues are going to be relevant  
23 with regard to her credibility and motive to lie.  
24 So without the Court making a blanket ruling, I  
25 would ask that it consider waiting until the

1 evidence actually comes out.

2 THE COURT: You're going to present case law  
3 that talks about that?

4 MR. FOOTE: Excuse me?

5 THE COURT: You're going to present case law  
6 that talks about that? That, as well as  
7 Mr. Rosario is going to be able to present case law  
8 that talks about the collateral nature?

9 MR. FOOTE: With regard to the collateral  
10 nature?

11 THE COURT: Uh-huh.

12 MR. FOOTE: Sure.

13 THE COURT: In other words, that argument that  
14 you make can be applied to any collateral matter.

15 MR. FOOTE: Well, not any collateral matter.  
16 It's a prior inconsistent statement. If a person  
17 comes in and says one thing and they come in this  
18 courtroom and say something else.

19 THE COURT: Once again, whenever there is  
20 something inconsistent, it has to be inconsistent  
21 as to a material matter at issue, meaning if  
22 someone at one point in time in a divorce three  
23 years ago made a comment or made a statement that  
24 was somehow inconsistent.

25 MR. FOOTE: That's different.

1 THE COURT: The mere fact that someone made an  
2 inconsistent statement is not admissible as to a  
3 collateral matter.

4 All collateral matters arguably could go to  
5 someone's credibility. Judge, I just need to prove  
6 that this person lied before, so that goes to their  
7 credibility here today in this case, it doesn't.

8 So the mere argument that it goes to  
9 credibility, that's the blanket argument people use  
10 to get in everything under the sun. That's why I'm  
11 specifically saying you may want to be able to --  
12 and same thing with Mr. Rosario -- you both may  
13 want to present the appropriate case law at the  
14 appropriate time for that.

15 And I think you're right, it's premature for  
16 me to attempt in a vacuum to make rulings with  
17 regards to that, but all's I'm telling you-all is,  
18 A, the credibility argument, that's the argument  
19 made in every case to get in everything about  
20 anybody at any time --

21 MR. FOOTE: I understand, Judge, but the  
22 factual scenario that the Court --

23 THE COURT: -- as opposed to bias and motive  
24 to lie or to testifying truthfully about something  
25 regarding the matters at issue. They're two

1           totally separate issues.

2           MR. FOOTE:   Okay.

3           THE COURT:  They're totally separate issues.  
4           Like I said, lying in a divorce five years ago is  
5           different than, gee, I hate the defendant in this  
6           case or I hate the listed victims in these cases,  
7           or whatever, so, therefore, I have a motive to  
8           shade my testimony.

9           MR. FOOTE:  I understand the Court's analysis,  
10          and just as a precursor, it will have to do with  
11          actual actions on the night of this offense,  
12          nothing outside of years ago or anything.  It's  
13          about the whereabouts between two witnesses to  
14          affect their ability to perceive what they're  
15          saying they're perceiving in this case on the date  
16          of offense.

17          THE COURT:  Well, like I said, I can't rule on  
18          that now.

19          MR. FOOTE:  Sure.

20          MR. ROSARIO:  And another one that you can't  
21          rule on, Judge -- and this is my last one -- is  
22          calling a witness for the primary purpose of  
23          impeaching the witness.

24          MR. FOOTE:  I agree with that one, Judge,  
25          that's improper.

1 THE COURT: All right.

2 MR. FOOTE: Judge, finally there are 911 tapes  
3 that both the State and the Defense are agreeing  
4 that would be able to come in as well as 911 call  
5 logs and CAD reports.

6 There are witnesses with each one of these  
7 documents and tapes which probably take up about  
8 four or five witnesses. I think we'd agree that  
9 these items will be able to come in since I think  
10 both sides are going to use them.

11 MR. ROSARIO: And for appellate purposes,  
12 Judge, the phone call of Robert Bartlett, it went  
13 through emergency response first and then was  
14 transferred over to the Sheriff's Office.

15 Last time around Defense counsel and I  
16 struggled between digital discs and audiotapes, and  
17 I've taken the opportunity and I've provided  
18 Defense counsel with a copy where I put them all on  
19 one disk so that we don't have to jump between  
20 machines and have all kinds of odd situations.

21 MR. FOOTE: We agree, Judge, they provided  
22 that to us, we've listened to it, it's acceptable,  
23 and it will ease the flow of evidence.

24 THE COURT: All right. Anything else?

25 MR. FOOTE: That is all for the Defense,

1 Judge.

2 THE COURT: And Mr. Rosario, did you have the  
3 citations on Trease, Nova and Johnson available?

4 MR. ROSARIO: I'm sorry, Judge?

5 THE COURT: Do you have the citations to  
6 Trease, Nova and Johnson that apparently you've  
7 cited in your Weitz claim?

8 MR. ROSARIO: Johnson is 565 So.2d, 879.  
9 Trease, T-r-e-a-s-e, versus State, that's 768 So.2d  
10 1050, that's Florida, 2000. I'm sorry. Johnson is  
11 a Fifth DCA, 1990. And Nova is 874 So.2d 1263, and  
12 that's out of the Fifth DCA, 2004.

13 THE COURT: All right. Thank you.  
14 Anything else?

15 MR. ROSARIO: No, sir.

16 MR. FOOTE: Judge, I don't know if this is the  
17 first trial I've done in front of you, at least  
18 recently. In the last trial, because of a medical  
19 condition, sometimes I have to take certain like  
20 candy or something like that, and I won't keep it  
21 on the table, but if the Court will allow it,  
22 without a break, then I can ingest some of it.

23 THE COURT: That's fine.

24 MR. ROSARIO: Fluids?

25 MR. FOOTE: Fluids, yes.



1 THE COURT: All right. Anything else?

2 MR. ROSARIO: Judge, I will need time to get  
3 that videotape back from the clerk. Are we  
4 planning on taking a break or are we going right  
5 into picking a jury?

6 THE COURT: We're going to go right into  
7 picking the jury as quick as we can. You're just  
8 going to have to do that at lunch or some other  
9 time.

10 MR. ROSARIO: Okay. Nothing else, Judge.

11 THE COURT: All right. Mr. Foote, anything  
12 else?

13 MR. FOOTE: That's all.

14 THE COURT: Thank you. So now we need to find  
15 out how close we are to getting our jury up here.

16 THE BAILIFF: She's already brought in the  
17 questionnaires.

18 THE COURT: All right.

19 MR. FOOTE: Judge, Madam Clerk said she found  
20 the trial transcript of Walter Schubert.

21 MR. ROSARIO: May I use the restroom, Judge?

22 THE COURT: I don't know what our status is.  
23 We may need to get the jury up here. Will you come  
24 and get me when we're ready, Deputy Flanagan?

25 THE BAILIFF: Yes.

1 RECESS TAKEN:

2 PROSPECTIVE JURY PRESENT:

3 THE BAILIFF: All prospective jurors present  
4 and seated.

5 THE COURT: Good morning. My name is Shawn  
6 Crane. I will be presiding over the trial.

7 First, I want to take this opportunity on  
8 behalf of all the participants to thank you all for  
9 your time and attention here with regard to our  
10 case here today.

11 The case set for trial today is the case of  
12 the State of Florida versus Shannon L. Stephen. In  
13 just a moment I am going to read through some  
14 pertinent parts of the Information for you.  
15 However, once again I need to really express our  
16 gratitude on behalf of everyone here for you-all  
17 being here, your time, your attention here today  
18 and throughout the course of the length of this  
19 trial as well.

20 This is part of the process known as voir  
21 dire. The lawyers will have an opportunity, as  
22 will the Court, to speak with you -- heck, I'm just  
23 going to stand up -- to speak with you-all with  
24 regards to your qualifications to be a juror.

25 This is going to be really our only

1 opportunity to talk back and forth with one  
2 another, and I ask you to listen carefully to their  
3 questions, as well as the Court's questions, and  
4 answer them to the best of your ability.

5 None of us will intentionally do this, but  
6 please remember if any one of us asks a question  
7 that in any way makes you feel uncomfortable to  
8 answer in front of the jury as a whole, please just  
9 let us know that. What we'll do is I'll ask you to  
10 come up to the bench here, and we'll have everyone  
11 come up here, and we'll discuss it here so you  
12 don't have to talk about it in front of everybody.  
13 Like I said, that's in the possibility that  
14 something like that could happen.

15 And I can tell you that it's not uncommon,  
16 it's just sometimes people feel uncomfortable  
17 talking about certain things in front of a group,  
18 and we'll come up and do that.

19 So we would much rather you do that and feel  
20 comfortable rather than not to do that and feel  
21 uncomfortable, because it's critically important  
22 for all of us that you also feel comfortable during  
23 this process.

24 In order for us to get started, one of the  
25 first things I'm going to need to do is I'm going

1 to need to ask you-all to please stand and raise  
2 your hands and receive the oath.

3 PROSPECTIVE JURY SWORN:

4 THE COURT: All right. You may be seated.  
5 Thank you.

6 Again, the case that is set for trial is the  
7 case of State of Florida versus Shannon Stephen.

8 The pertinent part of the Information reads as  
9 follows: Count 1, DUI manslaughter; Count 2, DUI  
10 manslaughter; Count 3, leaving the scene of a crash  
11 involving death.

12 And I will read as follows: In the name and  
13 by the authority for the State of Florida, Bernie  
14 McCabe, State Attorney for the Sixth Judicial  
15 Circuit of Florida, in and for Pasco County,  
16 prosecuting for the State of Florida, in the said  
17 county, under oath, Information makes that  
18 Shannon L. Stephen, in the County of Pasco and the  
19 State of Florida, on the 26th day of March, in the  
20 year of our Lord, 2006, in the County and State  
21 aforesaid, did unlawfully cause or contribute to  
22 causing the death of Sarah Gleason, a human being,  
23 by the operation of a motor vehicle while under the  
24 influence of alcoholic beverages or a substance  
25 controlled by Florida Statutes, Chapter 893, and

1 was affected to the extent that his normal  
2 faculties were impaired or had a blood or breath  
3 alcohol level of .08 percent or higher; contrary to  
4 Chapter 316.193(3)(c)3.a., Florida Statutes, and  
5 against the peace and dignity of the State of  
6 Florida.

7 Count 2, and the State Attorney aforesaid,  
8 under oath as aforesaid, further Information makes  
9 that Shannon L. Stephen, in the County of Pasco,  
10 State of Florida, on the 26th day of March, in the  
11 year of our Lord, 2006, in the County and State  
12 aforesaid, did unlawfully cause or contribute to  
13 causing the death of Joseph Sweish, S-w-e-i-s-h, a  
14 human being, by the operation of a motor vehicle  
15 while under the influence of alcoholic beverages or  
16 a substance controlled by Florida Statutes, Chapter  
17 893, and was affected to the extent that his normal  
18 faculties were impaired or had a blood or breath  
19 alcohol level of .08 percent or higher; contrary to  
20 Chapter 316.193, (3)(c)3.a., Florida Statutes, and  
21 against the peace and dignity of the State of  
22 Florida.

23 Count 3, and the State Attorney aforesaid,  
24 under oath as aforesaid, further information makes  
25 that Shannon L. Stephen, in the County of Pasco,

1 State of Florida, on the 26th day of March, in the  
2 year of our Lord, 2006, in the County and State  
3 aforesaid, was the driver of a motor vehicle which  
4 was involved in a crash involving the death of  
5 Sarah Gleason and/or Joseph Sweish -- and I  
6 apologize for mispronouncing that -- S-w-e-i-s-h,  
7 and the said Shannon L. Stephen did willfully fail  
8 to stop the vehicle at the scene of the crash or as  
9 close thereto as possible, or return and remain at  
10 the scene of the crash until he had fulfilled the  
11 requirement of Florida Statute 316.062, to-wit: did  
12 not give his name and address, and the registration  
13 number of the vehicle he was driving, and did not  
14 render reasonable assistance to persons injured in  
15 the crash; contrary to Chapter 316.027(1)(b),  
16 Florida Statutes, and against the peace and dignity  
17 of the State of Florida.

18 At this point in time I am going to ask the  
19 State and the Defense if they are ready to proceed.  
20 Each side will introduce themselves, indicate  
21 whether or not they are ready to proceed, and read  
22 any potential witnesses that may be called in this  
23 case.

24 Please remember that these are potential  
25 witnesses. These folks may or may not be called,

1 but in an abundance of caution they will read you a  
2 list of potential witnesses in this case.

3 Is the State ready to proceed?

4 MR. ROSARIO: Yes, Your Honor.

5 THE COURT: All right. Is the Defense ready  
6 to proceed?

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

9 THE COURT: All right. Mr. Rosario, if you  
10 would first and then followed by Mr. Foote, if you  
11 would please introduce yourselves to the jury.

12 MR. ROSARIO: My name is Eric Rosario. I am  
13 an Assistant State Attorney. I work for Bernie  
14 McCabe, State Attorney, he is the State Attorney  
15 for Pasco and Pinellas County.

16 Seated beside me is Brian Sarabia, he also  
17 works for Mr. McCabe, and we will be your  
18 prosecutors for this week.

19 The possible witnesses in this case, this is a  
20 long list, please bear with me.

21 THE COURT: And, Mr. Rosario, I apologize, let  
22 me interrupt for one second.

23 Please listen carefully to these names. The  
24 idea is whether or not you know any of the folks  
25 that he is going to announce and read. So please

1 listen carefully and pay attention to any names of  
2 potential witnesses that are read to you this  
3 morning.

4 MR. ROSARIO: These are possible witnesses.  
5 We're not saying all these witnesses will be  
6 called. We have Deputy Cary Cosimi. Roberta  
7 Penix. Trooper Leland Frye. Deputy Gary Kling,  
8 Dr. Stephen Epstein. Michael Dibenedetto. Francis  
9 Figliozzi. Corporal James Toner. Robert  
10 Neuenschwander. Corporal Mike Styers. Trooper  
11 Eric Shaw. Deputy Jason Christy. Deputy Robert  
12 Gracie. Deputy Kevin Stevenson. Sergeant Heather  
13 Glenney. Detective Paul Monaghan. John Romeo.  
14 Christina Sanders. Deputy Daniel Housel. Dr. Jon  
15 Thogmartin. Trooper Ronald Evans. Trooper Anthony  
16 Palese. John Murdoch. Marshall Deberry, he's a  
17 deputy. Trooper Adam Morris. Adam Rollins.  
18 Marvin Dalzell, he also goes by the name of Joe.  
19 Richard Scott. Deputy Jason Christy. Robert  
20 Bartlett. Joe Lopardo. Carol Wallace. Jim  
21 Ramsey. Jim Wallace. Patrick Connerty. Shawn  
22 Connerty. Evelyn Bigord. Terry Owens. Charles  
23 Brinin. Jeffrey Hays. Sharon Connerty. Beau  
24 Mayhue. Roger Riendeau, spelled R-i-e-n-d-e-a-u.  
25 Rudy Schmidt. John Falls. Bryan Farro. Jennifer



1 Setlak. Valerie Herbert. Phil Moore. Elmer Holt.  
2 Lisa Toronto. Heather Ramos. Gavin Pinchback.  
3 Youssouf Mohamed. Cory Eames. Dan Jensen.

4 Those are possible witnesses in this case.  
5 And Walter Schubert is a possible witness.

6 Thank you, Judge.

7 PROSPECTIVE JUROR LIGHTFOOT: I know someone  
8 on that.

9 THE COURT: We'll come back to you.

10 Mr. Foote, do you wish to introduce yourself  
11 and your client at this time.

12 MR. FOOTE: Good morning. My name is Kenneth  
13 Foote, I'm a local attorney here. This is Jonathan  
14 Foote, an investigator for our firm. This is  
15 Shannon Stephen.

16 I believe, Judge, there's one more witness, a  
17 Jeremy Nicholiason. Thank you.

18 THE COURT: All right. Thank you.

19 And let me start over here and then I'll move  
20 over here. Does anybody in the first row or  
21 anybody on this side of our courtroom set up here  
22 today, does anybody on this side know any of the  
23 potential witnesses whose names were read? Could  
24 you raise your hands?

25 PROSPECTIVE JURY PANEL: (No response.)

1 THE COURT: All right. I see no hands.

2 And I know this gentleman over here may know  
3 something. How about on this side of the room,  
4 anybody here know any of the potential witnesses  
5 that were read? And, sir, you're Mr. Lightfoot?

6 PROSPECTIVE JUROR LIGHTFOOT: Yes, sir.

7 THE COURT: Okay. Mr. Lightfoot, who is it  
8 that you know on that?

9 PROSPECTIVE JUROR LIGHTFOOT: Jason Christy,  
10 an officer.

11 THE COURT: All right. And how is it that you  
12 know him?

13 PROSPECTIVE JUROR LIGHTFOOT: A good family  
14 friend.

15 THE COURT: For a long period of time?

16 PROSPECTIVE JUROR LIGHTFOOT: Twelve, 13  
17 years.

18 THE COURT: Okay. And is there anything about  
19 that relationship with him -- do you see him on a  
20 daily basis? Weekly basis? Monthly basis?

21 PROSPECTIVE JUROR LIGHTFOOT: Just special  
22 occasions, birthdays, Christmas, Easter.

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

1 case?

2 And what I mean is, merely because he is  
3 listed, for instance, as a witness for the State,  
4 does that automatically give them the advantage of  
5 having him as a witness listed?

6 PROSPECTIVE JUROR LIGHTFOOT: No, sir.

7 THE COURT: And if he were to testify, will  
8 you be able to listen to his testimony? Would it  
9 make a difference that you've known him for a long  
10 time, as far as whether or not he would get more  
11 credibility or less credibility than someone you  
12 didn't know?

13 PROSPECTIVE JUROR LIGHTFOOT: I trust him, you  
14 know.

15 THE COURT: Okay. So it may make a difference  
16 to you that, in fact, you've known him for many  
17 years?

18 PROSPECTIVE JUROR LIGHTFOOT: Yeah.

19 THE COURT: Okay. And because of that  
20 relationship, would it make you feel uncomfortable  
21 trying to judge his credibility like you would  
22 anyone else's?

23 PROSPECTIVE JUROR LIGHTFOOT: It may  
24 interfere.

25 THE COURT: Okay. And as you can see -- and I

1 appreciate your candor, Mr. Lightfoot -- that there  
2 is no right or wrong answers to any of these  
3 questions that I ask. The right answer is how you  
4 feel, and I appreciate your candor.

5 So it really may make a difference to you, the  
6 fact that you have had this longstanding  
7 relationship with him, and obviously it sounds to  
8 me it's a good relationship?

9 PROSPECTIVE JUROR LIGHTFOOT: Yes.

10 THE COURT: That may make a difference in your  
11 ability to be fair and impartial certainly as it  
12 relates to his testimony, correct?

13 PROSPECTIVE JUROR LIGHTFOOT: I trust him. I  
14 trust him a lot.

15 THE COURT: Okay. Thank you very much,  
16 Mr. Lightfoot.

17 Is there anybody else on that side know any  
18 witnesses?

19 PROSPECTIVE JURY PANEL: (No response.)

20 THE COURT: Good. Seeing no hands.

21 All right. Okay. And if that witness, for  
22 instance, was not called, Mr. Lightfoot, it  
23 wouldn't make any difference to you obviously?

24 PROSPECTIVE JUROR LIGHTFOOT: No, sir.

25 THE COURT: You don't know anybody else?

1 PROSPECTIVE JUROR LIGHTFOOT: No, sir.

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

3 All right. What I'm going to do at this point  
4 in time is start over here, I'm going to go row by  
5 row with everyone, and basically what I'm going to  
6 do is ask you initially has anyone on this side on  
7 the first row ever been on a jury before, ever  
8 served on a jury before? If you have, please raise  
9 your hand.

10 PROSPECTIVE JUROR FORTON: (Indicating.)

11 THE COURT: Over here. Is it Mr. Forton?

12 PROSPECTIVE JUROR FORTON: Yes, sir.

13 THE COURT: Mr. Forton, sir, was that here in  
14 Pasco County or elsewhere?

15 PROSPECTIVE JUROR FORTON: It was here in  
16 Pasco County in the mid-'90s, I was on a grand  
17 jury.

18 THE COURT: All right. And you understand  
19 there's a difference between the jury duty that you  
20 have sitting here as a juror sitting on finding the  
21 facts of the case as opposed to a grand jury which  
22 does an investigative function?

23 PROSPECTIVE JUROR FORTON: Right.

24 THE COURT: Okay. And is there anything about  
25 that prior jury experience, that prior grand jury

1 experience that you think is going to cause you any  
2 difficulty being a fair and impartial juror here  
3 today?

4 PROSPECTIVE JUROR FORTON: No, sir.

5 THE COURT: Can you put that experience aside  
6 and just say, I can judge this case solely upon its  
7 merits of the facts as you and the rest of the jury  
8 collectively determine them to be and the laws as I  
9 instruct you?

10 PROSPECTIVE JUROR FORTON: Uh-huh.

11 THE COURT: Super. Thank you.

12 Anybody else on that row?

13 PROSPECTIVE JURY PANEL: (No response.)

14 THE COURT: No?

15 All right. How about the next row.

16 PROSPECTIVE JUROR NIGELS: (Indicating.)

17 THE COURT: All right, it looks like I've got  
18 two folks. Is it Mr. Nigels?

19 PROSPECTIVE JUROR NIGELS: Nigels.

20 THE COURT: Mr. Nigels. Here in Pasco or  
21 elsewhere?

22 PROSPECTIVE JUROR NIGELS: In Pasco.

23 THE COURT: About how long ago?

24 PROSPECTIVE JUROR NIGELS: I don't recall. A  
25 few years. Before this building was built.

1 THE COURT: All right. Do you remember if  
2 that was civil or criminal?

3 PROSPECTIVE JUROR NIGELS: Criminal.

4 THE COURT: And is there anything about that  
5 experience that's going to cause you any difficulty  
6 in being a fair and impartial juror in this case  
7 here today?

8 PROSPECTIVE JUROR NIGELS: No, sir.

9 THE COURT: In other words, you put that case  
10 totally aside and judge this case solely upon its  
11 merits or the facts that you and the jury  
12 collectively determine them to be and the law as I  
13 instruct you?

14 PROSPECTIVE JUROR NIGELS: Yes, Your Honor.

15 THE COURT: And if you had to rate that  
16 experience as being positive, negative or neutral,  
17 can you do that?

18 PROSPECTIVE JUROR NIGELS: Yes, sir.

19 THE COURT: Okay. Was it positive, negative  
20 or neutral?

21 PROSPECTIVE JUROR NIGELS: I'm not sure what  
22 you mean by positive.

23 THE COURT: Well, was it a good experience  
24 being a juror? Was it a negative experience? Or  
25 was it a neutral experience, something that you

1 felt you had to do?

2 Because remember jury duty is and it's been  
3 described by many in peacetime as being one of the  
4 highest callings we can do as citizens to make our  
5 system work and function, and it's what makes our  
6 system of justice the greatest system of justice in  
7 the world.

8 I mean we do have folks like you that will  
9 come in, act as jurors, do the difficult job of  
10 being a juror, and render decisions with regard to  
11 cases.

12 So, you know, once again, did you kind of  
13 consider that to be a positive experience, a  
14 neutral experience, or a negative experience?

15 PROSPECTIVE JUROR NIGELS: In that context,  
16 positive.

17 THE COURT: Okay. Good. And without telling  
18 me what it was, was the jury able to reach a  
19 verdict?

20 PROSPECTIVE JUROR NIGELS: Yes, it was.

21 THE COURT: Okay. Thank you very much.

22 And, sir, I apologize, I know I am going to  
23 mispronounce your last name. Mr. Kapareliotis?

24 PROSPECTIVE JUROR KAPARELIOTIS: Very good.

25 THE COURT: Okay. Sir, here in Pasco or



1 elsewhere?

2 PROSPECTIVE JUROR KAPARELIOTIS: Elsewhere.

3 THE COURT: And where else was that?

4 PROSPECTIVE JUROR KAPARELIOTIS: New York.

5 THE COURT: And how about how long ago?

6 PROSPECTIVE JUROR KAPARELIOTIS: More than six  
7 years.

8 THE COURT: All right. And was that criminal  
9 or civil?

10 PROSPECTIVE JUROR KAPARELIOTIS: Civil.

11 THE COURT: Anything about that experience  
12 that's going to cause you any difficulty being a  
13 fair and impartial juror here today?

14 PROSPECTIVE JUROR KAPARELIOTIS: No.

15 THE COURT: You can take that case, set it  
16 aside, and judge this case solely upon its merits  
17 or the facts as you and the jury collectively  
18 determine them to be and the law as I instruct you?

19 PROSPECTIVE JUROR KAPARELIOTIS: Yes.

20 THE COURT: And positive, negative, or  
21 neutral?

22 PROSPECTIVE JUROR KAPARELIOTIS: I would have  
23 to say neutral.

24 THE COURT: Okay. And without telling me what  
25 it was, was the jury able to reach a verdict?

1 PROSPECTIVE JUROR KAPARELIOTIS: The case  
2 actually settled out just as the trial was about to  
3 begin.

4 THE COURT: Oh, okay.

5 PROSPECTIVE JUROR KAPARELIOTIS: That's why I  
6 say neutral.

7 THE COURT: Oh, okay. Well, thank you.  
8 Anybody else? I know I saw a hand.

9 PROSPECTIVE JUROR ALFONSO: (Indicating.)

10 THE COURT: I did. Mr. Alfonso, here in Pasco  
11 or elsewhere?

12 PROSPECTIVE JUROR ALFONSO: Elsewhere.

13 THE COURT: About how long ago and where?

14 PROSPECTIVE JUROR ALFONSO: In 1984 in  
15 Massachusetts.

16 THE COURT: Was it criminal or civil?

17 PROSPECTIVE JUROR ALFONSO: Criminal.

18 THE COURT: Anything about that experience  
19 that's going to cause you any difficulty to being a  
20 fair and impartial juror here today?

21 PROSPECTIVE JUROR ALFONSO: No.

22 THE COURT: You can set that case totally  
23 aside and judge this case solely by its facts and  
24 the law as I instruct you?

25 PROSPECTIVE JUROR ALFONSO: Yes.

1 THE COURT: All right. Positive, negative or  
2 neutral?

3 PROSPECTIVE JUROR ALFONSO: Positive.

4 THE COURT: Great. Anybody else in that row?

5 PROSPECTIVE JURY PANEL: (No response.)

6 THE COURT: No?

7 How about the next row?

8 PROSPECTIVE JUROR ALBERGO: (Indicating.)

9 THE COURT: It looks like Ms. Albergo?

10 PROSPECTIVE JUROR ALBERGO: Yes.

11 THE COURT: Here in Pasco or elsewhere?

12 PROSPECTIVE JUROR ALBERGO: Pasco.

13 THE COURT: About how long ago?

14 PROSPECTIVE JUROR ALBERGO: Within two years.

15 THE COURT: Really?

16 PROSPECTIVE JUROR ALBERGO: Uh-huh.

17 THE COURT: Civil or criminal?

18 PROSPECTIVE JUROR ALBERGO: Criminal.

19 THE COURT: Without telling me what it was,  
20 were you able to reach a verdict?

21 PROSPECTIVE JUROR ALBERGO: I don't know. I  
22 was the alternate.

23 THE COURT: Oh, were you?

24 PROSPECTIVE JUROR ALBERGO: I couldn't go back  
25 in.

1 THE COURT: Okay. And can you take that case,  
2 put that totally aside, and judge this case solely  
3 upon the facts as you and the jury collectively  
4 determine them to be and the laws as I instruct  
5 you?

6 PROSPECTIVE JUROR ALBERGO: Yes.

7 THE COURT: All right. And would you describe  
8 that as a positive, negative, or neutral  
9 experience?

10 PROSPECTIVE JUROR ALBERGO: Neutral.

11 THE COURT: Okay. Because you didn't even get  
12 to deliberate, right?

13 PROSPECTIVE JUROR ALBERGO: Yes.

14 THE COURT: Okay. But you understand the  
15 importance of having an alternate juror, I'm sure,  
16 because it's like Murphy's Law, right? If they  
17 didn't have an alternate, most certainly they would  
18 have needed one. So you're like the insurance  
19 policy.

20 PROSPECTIVE JUROR ALBERGO: Yes.

21 THE COURT: Okay. Thank you very much.

22 How about this side, anybody over here served  
23 on any jury before? And let me go to the first row  
24 over here or kind of the fourth row. Ever served  
25 on a jury before?

1 PROSPECTIVE JURY PANEL: (Indicating  
2 negatively.)

3 THE COURT: No hands.

4 How about the next row, second or fifth row?

5 PROSPECTIVE JURY PANEL: (Indicating  
6 negatively.)

7 THE COURT: And then our last row?

8 PROSPECTIVE JURY PANEL: (Indicating  
9 negatively.)

10 THE COURT: No? All right. Thank you.

11 Has anyone here in the first row, and this  
12 goes for you, family member, friend, relative, that  
13 sort of thing, ever been the victim of a crime?  
14 Ever been the victim of a crime? Anybody in the  
15 first row.

16 PROSPECTIVE JURY PANEL: (Indicating.)

17 THE COURT: All right. We've got a few  
18 people.

19 Ms. Jones, you're first.

20 PROSPECTIVE JUROR JONES: Somebody robbed my  
21 car in front of my house while we were sleeping.

22 THE COURT: Okay. Here in Pasco or elsewhere?

23 PROSPECTIVE JUROR JONES: In Pasco.

24 THE COURT: About how long ago?

25 PROSPECTIVE JUROR JONES: Probably about two

1 years.

2 THE COURT: All right. Was there ever anyone  
3 prosecuted for that?

4 PROSPECTIVE JUROR JONES: No. They never  
5 caught them.

6 THE COURT: And was there anything about that  
7 situation that leaves you with a bad feeling  
8 towards folks accused of a crime, or defense  
9 lawyers, prosecutors, law enforcement officers,  
10 judges, anything like that?

11 PROSPECTIVE JUROR JONES: No. I think it was  
12 some young kids in the neighborhood just getting  
13 into trouble.

14 THE COURT: Okay. But that doesn't leave you  
15 with a bad feeling for anyone involved in the  
16 process or anything like that?

17 PROSPECTIVE JUROR JONES: No.

18 THE COURT: All right. Thank you.

19 And Mr. is it Ellett?

20 PROSPECTIVE JUROR ELLETT: Yes.

21 THE COURT: Mr. Ellett.

22 PROSPECTIVE JUROR ELLETT: Let's see, let's  
23 start with I was robbed in it must have been '84.  
24 Let's see, I've been assaulted, that was more like  
25 2000-something. That pretty much covers it.

1 THE COURT: Okay. And were they both in Pasco  
2 or elsewhere?

3 PROSPECTIVE JUROR ELLETT: Right here in  
4 Pasco.

5 THE COURT: All right. And was anyone ever  
6 prosecuted as a result of those or arrested?

7 PROSPECTIVE JUROR ELLETT: No.

8 THE COURT: And is there anything about those  
9 situations that leaves you with any hard feelings  
10 for law enforcement, prosecutors, judges, people  
11 charged with a crime, defense lawyers, anything  
12 like that?

13 PROSPECTIVE JUROR ELLETT: The detectives I  
14 didn't take too well to.

15 THE COURT: All right. And is there anything  
16 about that situation that you think is going to  
17 cause you difficulty being a fair and impartial  
18 juror here today?

19 PROSPECTIVE JUROR ELLETT: No. They're not  
20 involved.

21 THE COURT: All right. In other words, can  
22 you that case, set that aside, and judge this case  
23 solely upon the facts as you and the jury  
24 collectively determine them to be and the law as I  
25 instruct you?

1 PROSPECTIVE JUROR ELLETT: Yes.

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

3 Anybody else in that first row?

4 PROSPECTIVE JUROR REMMEL: (Indicating.)

5 THE COURT: Ms. is it Rimmel?

6 PROSPECTIVE JUROR REMMEL: My fiance was  
7 assaulted.

8 THE COURT: All right. Here in Pasco or  
9 elsewhere?

10 PROSPECTIVE JUROR REMMEL: Pasco.

11 THE COURT: About how long ago?

12 PROSPECTIVE JUROR REMMEL: A year ago.

13 THE COURT: And was anyone ever charged or  
14 prosecuted as a result of that?

15 PROSPECTIVE JUROR REMMEL: No.

16 THE COURT: And has that case been resolved?

17 PROSPECTIVE JUROR REMMEL: Not yet.

18 THE COURT: So that case is still pending?

19 PROSPECTIVE JUROR REMMEL: Yeah.

20 THE COURT: And are you a listed as witness in  
21 that case?

22 PROSPECTIVE JUROR REMMEL: (Indicating  
23 affirmatively.)

24 THE COURT: Yes?

25 PROSPECTIVE JUROR REMMEL: Uh-huh.



1           THE COURT: Okay. And is there anything about  
2           that situation that causes you any hard feelings  
3           towards the criminal justice system, whether it be  
4           prosecutors, defense lawyers, judges, people  
5           accused of a crime, law enforcement officer,  
6           anything like that?

7           PROSPECTIVE JUROR REMMEL: The person accused.

8           THE COURT: Okay. In that case, though,  
9           you're obviously not happy with the person accused  
10          with that?

11          PROSPECTIVE JUROR REMMEL: Right.

12          THE COURT: How about generally speaking, can  
13          you take that and put that case aside and judge  
14          this case solely upon its facts?

15          PROSPECTIVE JUROR REMMEL: Yes, but I think I  
16          should say that I'm really against alcohol like  
17          entirely.

18          THE COURT: Okay. Well, and I'll step to that  
19          in just a second. First of all, so the mere fact  
20          that you're not happy with obviously the person who  
21          assaulted your boyfriend, that does not overlap to  
22          this case here today?

23          PROSPECTIVE JUROR REMMEL: No.

24          THE COURT: Can you set that part of it at  
25          least totally aside and judge this case solely upon

1 its merits and the law as I instruct you?

2 PROSPECTIVE JUROR REMMEL: Yes.

3 THE COURT: Once again, by merits, when I tell  
4 everybody that, that means really the facts of the  
5 case as you and the jury collectively determine  
6 them to be.

7 Now, the mere fact that you are against  
8 alcohol, is that such that you believe that you  
9 cannot be a fair and impartial juror? In other  
10 words, any case at any time involving alcohol in  
11 any respect, that you feel that you cannot be fair?

12 PROSPECTIVE JUROR REMMEL: No.

13 THE COURT: Is that correct or incorrect?

14 PROSPECTIVE JUROR REMMEL: That's correct.

15 THE COURT: Okay. So even the mention of the  
16 word "alcohol" in any case, you don't believe you  
17 can serve as a juror on that case at all?

18 PROSPECTIVE JUROR REMMEL: Yes.

19 THE COURT: Okay. So by virtue of that,  
20 especially with regard to alcohol here, you do not  
21 believe you can be fair and impartial?

22 PROSPECTIVE JUROR REMMEL: No.

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

24 Anybody else in that first row, you, family  
25 member, friend, relative been the victim of a

1 crime?

2 PROSPECTIVE JURY PANEL: (Indicating  
3 negatively.)

4 THE COURT: No?  
5 How about the next row?

6 PROSPECTIVE JUROR NIGELS: (Indicating.)

7 THE COURT: Once again we'll start with  
8 Mr. Nigels. Do you want to tell us about that?

9 PROSPECTIVE JUROR NIGELS: I was mugged 30  
10 years ago in St. Petersburg.

11 THE COURT: Okay. And was anyone ever charged  
12 or arrested for that?

13 PROSPECTIVE JUROR NIGELS: No.

14 THE COURT: And is there anything about that  
15 situation that's going to cause you any difficulty  
16 being a fair and impartial juror here today?

17 PROSPECTIVE JUROR NIGELS: No.

18 THE COURT: In other words, you can put that  
19 case totally aside and judge this case solely upon  
20 its merits or the facts as you and the jury  
21 collectively determine them to be and the law as I  
22 struck you?

23 PROSPECTIVE JUROR NIGELS: I can.

24 THE COURT: Great. Thank you very much.

25 And Mr. Kapareliotis, sir, you want to tell us

1 about that?

2 PROSPECTIVE JUROR KAPARELIOTIS: About ten  
3 years ago my sister was a victim of a car accident.  
4 The other driver was talking on her cell phone, and  
5 she hit her, almost pushed the car off the top of a  
6 bridge teetering off, and she attempted to run from  
7 the scene of the accident.

8 THE COURT: Okay. And was someone ever  
9 charged as a result of that?

10 PROSPECTIVE JUROR KAPARELIOTIS: Yes.

11 THE COURT: Okay. And was that case resolved?

12 PROSPECTIVE JUROR KAPARELIOTIS: It was thrown  
13 out due to something that the officer did during  
14 the arrest that got the case thrown out.

15 THE COURT: Okay. In that situation, is there  
16 anything about that situation that would hinder you  
17 in being a fair and impartial juror in this case  
18 here today?

19 PROSPECTIVE JUROR KAPARELIOTIS: I honestly  
20 don't know how to answer that question.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR KAPARELIOTIS: Because it  
23 was a hit and run. Kind of touchy for awhile. I  
24 don't know.

25 THE COURT: Okay. And that's kind of what I'm

1 getting to. Is that something you feel, yes, I can  
2 put that aside and judge this case solely upon its  
3 merits and the facts that you hear in this case,  
4 or, no, you can't set that aside, that will be part  
5 of your decision-making process? I mean that's why  
6 we ask these questions. These are tough questions,  
7 I mean there's no question about that. You know,  
8 that's why we have to ask.

9 PROSPECTIVE JUROR KAPARELIOTIS: Right. I  
10 could definitely listen to the facts. But I won't  
11 lie, because of that, it will be a factor in the  
12 back of my mind because I had too a similar  
13 circumstance.

14 THE COURT: Okay. And so you think you would  
15 certainly at this point in time think you would  
16 have difficulty setting that aside and that won't  
17 creep into your discussions or decisions with  
18 regard to this case? You really just don't believe  
19 you can do that at this time, correct?

20 PROSPECTIVE JUROR KAPARELIOTIS: That's  
21 correct.

22 THE COURT: All right. And I thank you for  
23 your candor. Like I said that's why these are --  
24 there are no right or wrong answers, because  
25 everybody is unique and different, everybody has

1 different experiences. All right. Thank you very  
2 much, sir.

3 Anybody else in that row?

4 PROSPECTIVE JUROR ALFONSO: (Indicating.)

5 THE COURT: Mr. Alfonso.

6 PROSPECTIVE JUROR ALFONSO: Yes. My son and  
7 grandson were a victim of a DUI accident in  
8 December of 2009, resulting in a one DUI homicide  
9 and three DUI bodily injury.

10 THE COURT: Was that here in Pasco or  
11 elsewhere?

12 PROSPECTIVE JUROR ALFONSO: Pasco.

13 THE COURT: All right. And obviously it just  
14 happened recently this situation. Do you believe  
15 that's going to have an effect on your ability to  
16 be fair and impartial?

17 PROSPECTIVE JUROR ALFONSO: Absolutely.

18 THE COURT: Obviously that case is still  
19 pending, correct?

20 PROSPECTIVE JUROR ALFONSO: Yes.

21 THE COURT: All right. Thank you.

22 Anybody else in that row?

23 PROSPECTIVE JURY PANEL: (Indicating  
24 negatively.)

25 THE COURT: No?

1 How about the third row.

2 PROSPECTIVE JUROR BRANSTUTTER: (Indicating.)

3 THE COURT: All the way over on the end.

4 Ms. is it Branstutter?

5 PROSPECTIVE JUROR BRANSTUTTER: Uh-huh.

6 THE COURT: All right.

7 PROSPECTIVE JUROR BRANSTUTTER: Within myself,  
8 family and friends, there have been DUI deaths in  
9 my family, from a DUI person hitting somebody.

10 THE COURT: And about how long ago?

11 PROSPECTIVE JUROR BRANSTUTTER: Two years ago  
12 was the last one.

13 THE COURT: Was that here in Pasco? I'm  
14 sorry?

15 PROSPECTIVE JUROR BRANSTUTTER: Two years was  
16 the last one.

17 THE COURT: How many total have there been?

18 PROSPECTIVE JUROR BRANSTUTTER: Three.

19 THE COURT: And that's people in your family  
20 who have been killed?

21 PROSPECTIVE JUROR BRANSTUTTER: Yes, sir.

22 THE COURT: Okay. Do you believe that that's  
23 going to have an effect on your ability to be a  
24 fair and impartial juror?

25 PROSPECTIVE JUROR BRANSTUTTER: Yes, sir.

1 THE COURT: All right. And obviously no way  
2 you really need to set those situations aside and  
3 not consider them during this case, correct?

4 PROSPECTIVE JUROR BRANSTUTTER: Yes, sir.

5 THE COURT: All right. Thank you very much.  
6 All right. Anybody else in that row?

7 PROSPECTIVE JURY PANEL: (No response.)

8 THE COURT: All right. No hands.

9 How about over here on our first row on this  
10 side, our fourth row overall?

11 PROSPECTIVE JUROR DILLARD: (Indicating.)

12 THE COURT: We've got Ms. Dillard?

13 PROSPECTIVE JUROR DILLARD: Yes.

14 THE COURT: All right. You want to tell me  
15 about that?

16 PROSPECTIVE JUROR DILLARD: A very close  
17 family member was also killed by a DUI, and I  
18 just -- I don't think I can do it either.

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

21 PROSPECTIVE JUROR DILLARD: It was ten years  
22 ago.

23 THE COURT: Here in Pasco or elsewhere?

24 PROSPECTIVE JUROR DILLARD: Pinellas.

25 THE COURT: All right. And you just don't



1 feel you can set that aside? That would obviously  
2 creep into your deliberations?

3 PROSPECTIVE JUROR DILLARD: It does. And I  
4 don't have no tolerance for drinking and driving.

5 THE COURT: All right. Thank you.

6 And I had another hand up in that row.

7 PROSPECTIVE JUROR NICHOLS: (Indicating.)

8 THE COURT: All right. All the way over  
9 toward the end. Mr. Nichols.

10 PROSPECTIVE JUROR NICHOLS: My best friend was  
11 killed three weeks ago from a DUI.

12 THE COURT: Here in Pasco or elsewhere?

13 PROSPECTIVE JUROR NICHOLS: Right at the  
14 Pasco/Hernando line.

15 THE COURT: All right. And obviously very  
16 recent, that is something that's going to affect  
17 your ability, do you think, to be a fair and  
18 impartial juror here today?

19 PROSPECTIVE JUROR NICHOLS: Yeah.

20 THE COURT: All right. Thank you,  
21 Mr. Nichols. I'm sorry to hear about that.

22 Anybody else in that row?

23 PROSPECTIVE JUROR MIRABILE: (Indicating.)

24 THE COURT: Over there on the end. Is it  
25 Mirabile?

1 PROSPECTIVE JUROR MIRABILE: Mirabile.

2 THE COURT: Mirabile. I'm sorry. All right.  
3 Do you want to tell us about that?

4 PROSPECTIVE JUROR MIRABILE: Yeah. I had a  
5 hit and run with me and my son in the car. It was  
6 about five years ago over in Pinellas County.

7 THE COURT: All right. Was anyone charged as  
8 a result of that?

9 PROSPECTIVE JUROR MIRABILE: Nope. Never  
10 found. The plates didn't match the car from Texas.  
11 It wasn't really that big of a deal, but I intend  
12 to press charges when they find the person.

13 THE COURT: Okay. And is there anything about  
14 that situation that's going to leave you with a bad  
15 feeling, or is there anything about that situation  
16 that's going to cause you not to be a fair and  
17 impartial juror here today? Do you think that will  
18 have an effect on your ability to do that?

19 PROSPECTIVE JUROR MIRABILE: No, not at all.

20 THE COURT: Okay. You feel you can set that  
21 situation aside and judge this case solely upon its  
22 merits, the merits being the facts as you and the  
23 jury collectively determine them to be and the law  
24 as I instruct you?

25 PROSPECTIVE JUROR MIRABILE: Yes.

1 THE COURT: Great. Thank you.

2 And the next row -- oh, I'm sorry. Back to  
3 Mr. Lightfoot.

4 PROSPECTIVE JUROR LIGHTFOOT: Two years and a  
5 month ago my brother, one of my younger brothers  
6 was robbed. He ended up getting the gun out of  
7 guy's hand and shooting him and took his life. And  
8 since my brother had a bad upcoming, you know, got  
9 in a lot of trouble, the cops were kind of pressing  
10 him over it, and he ended up taking his own life  
11 over it.

12 THE COURT: All right. Once again, kind of  
13 with that other situation, you feel that's going to  
14 affect your ability to be a fair and impartial  
15 juror here on this case today?

16 PROSPECTIVE JUROR LIGHTFOOT: No, not here.

17 THE COURT: No? So you think you can set that  
18 aside and you wouldn't consider that part at all --

19 PROSPECTIVE JUROR LIGHTFOOT: (Indicating  
20 negatively.)

21 THE COURT: -- in reaching your decision in  
22 this case?

23 PROSPECTIVE JUROR LIGHTFOOT: It was in  
24 Pinellas.

25 THE COURT: Does that leave you with any bad

1 feelings towards the criminal justice system,  
2 whether they be law enforcement officers?

3 PROSPECTIVE JUROR LIGHTFOOT: Not in Pasco.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR LIGHTFOOT: In Pinellas.

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

7 How about the next row, anyone in the next  
8 row?

9 PROSPECTIVE JUROR DECHANT: (Indicating.)

10 THE COURT: All the way over on the end,  
11 Mr. DeChant?

12 PROSPECTIVE JUROR DECHANT: Yeah. A personal  
13 friend of mine some years ago was raped.

14 THE COURT: All right. And was that here in  
15 Pasco or elsewhere?

16 PROSPECTIVE JUROR DECHANT: Yep.

17 THE COURT: And about how long ago just  
18 roughly?

19 PROSPECTIVE JUROR DECHANT: Ten years ago.

20 THE COURT: All right. And were there ever  
21 any charges pressed as a result of that?

22 PROSPECTIVE JUROR DECHANT: No.

23 THE COURT: All right. Is there anything  
24 about that situation that's going to cause you any  
25 difficulty to be a fair and impartial juror here

1 today?

2 PROSPECTIVE JUROR DECHANT: No.

3 THE COURT: In other words, can you take that  
4 situation, set it aside, judge this case solely  
5 upon the facts as you and the jury collectively  
6 determine them to be and the law as I instruct you?

7 PROSPECTIVE JUROR DECHANT: Yes.

8 THE COURT: All right. Thank you.

9 Anybody else in that row?

10 PROSPECTIVE JUROR SANTORO: (Indicating.)

11 THE COURT: Is it Ms. Santoro?

12 PROSPECTIVE JUROR SANTORO: My father was  
13 involved in a DUI, hit and run, and it was a county  
14 officer's son, and no charges were ever pressed.  
15 They pretty much blamed my father even though there  
16 were paints scratches on his own car. It was kind  
17 of just washed aside.

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

20 PROSPECTIVE JUROR SANTORO: It was elsewhere.  
21 He was seriously injured, they weren't sure he was  
22 actually going to live and he did. So that was  
23 great, but it kind of needs a little question of  
24 faith, you know, sometimes.

25 THE COURT: And when you say elsewhere, was it

1 elsewhere locally here?

2 PROSPECTIVE JUROR SANTORO: No. It was  
3 Connecticut.

4 THE COURT: All right. Do you feel, like you  
5 said, that bad taste or that feeling you have, do  
6 you feel that's going to carry over into your  
7 deliberations or your considerations here today if  
8 you are selected for this jury?

9 PROSPECTIVE JUROR SANTORO: I think so,  
10 because I have numerous family members that have  
11 been arrested for DUI multiple, multiple times.  
12 They haven't seriously injured anybody yet, but it  
13 makes me wonder why they continue to give them  
14 their license back. That in and of itself I would  
15 think would kind of hinder my thoughts on this.

16 THE COURT: Okay. So based upon kind of a  
17 collection of those things, do you believe that you  
18 could not be fair and impartial in this case?

19 PROSPECTIVE JUROR SANTORO: Correct.

20 THE COURT: And that's because of these issues  
21 with your family and then the issue with your dad  
22 as well?

23 PROSPECTIVE JUROR SANTORO: Correct.

24 THE COURT: So kind of all of that combined?

25 PROSPECTIVE JUROR SANTORO: Correct.

1 THE COURT: All right.

2 Okay. Anybody else in that row?

3 PROSPECTIVE JUROR PLUMB: (Indicating.)

4 THE COURT: All right. Mr. Plumb.

5 PROSPECTIVE JUROR PLUMB: A couple years ago,  
6 while my daughter was still living with us, she got  
7 hit by someone, it was a hit and run. We don't  
8 know if it was alcohol, but the officer said it was  
9 probably an alcohol-related incident.

10 THE COURT: Was that here in Pasco or  
11 elsewhere?

12 PROSPECTIVE JUROR PLUMB: It was in Tampa.

13 THE COURT: Was anybody ever charged?

14 PROSPECTIVE JUROR PLUMB: No.

15 THE COURT: Okay. Anything about that  
16 situation that's going to cause you any difficulty  
17 being a fair and impartial juror here on this case  
18 today?

19 PROSPECTIVE JUROR PLUMB: I don't know.

20 THE COURT: And by, "I don't know", can you  
21 help me out with that a little bit?

22 PROSPECTIVE JUROR PLUMB: Well, all I can say  
23 is I will try to be impartial.

24 THE COURT: Okay. But do you believe that  
25 situation involving your daughter would creep into

1 your deliberations, or can you say that was a  
2 separate case and set that aside and judge this  
3 case on its merits and the law as I instruct you?

4 PROSPECTIVE JUROR PLUMB: I can't say.

5 THE COURT: All right. And I'm going to come  
6 back to you, I may come back to you. The lawyers  
7 will ask you about that, because we kind of need an  
8 answer. And I understand, I think so, may be the  
9 best answer you can give.

10 PROSPECTIVE JUROR PLUMB: Yeah.

11 THE COURT: But the reason we have to  
12 sometimes press about that is, and everybody needs  
13 to understand I can't -- and I say I collectively,  
14 the system can't have someone sitting back there  
15 and all of a sudden in the middle of deliberations  
16 and go, I really just can't set that aside.

17 PROSPECTIVE JUROR PLUMB: Right.

18 THE COURT: But we're already in  
19 deliberations. So, you know, we need to kind of  
20 know the best people that can and get the best  
21 answer they can at this point in time. And, see,  
22 if that's the best answer, that's the best answer.  
23 Like I said, the best answer is how you feel  
24 because that's the correct answer.

25 PROSPECTIVE JUROR PLUMB: Yeah. I want to be



1 impartial.

2 THE COURT: But you're just not sure?

3 PROSPECTIVE JUROR PLUMB: Right.

4 THE COURT: All right. Thank you very much,  
5 Mr. Plumb. I think that was it in that row.

6 Anybody in the next row?

7 PROSPECTIVE JURY PANEL: (Indicating  
8 negatively.)

9 THE COURT: The last row, I see no hands. All  
10 right. Thank you.

11 Anybody in the first row over here, been or  
12 have family members, friends, relatives in law  
13 enforcement, in the judicial system, in the legal  
14 system, anything like that? Raise your hand. All  
15 right.

16 PROSPECTIVE JUROR FORTON: (Indicating.)

17 THE COURT: We have one person.

18 Mr. Forton, can you tell me about that?

19 PROSPECTIVE JUROR FORTON: I have a friend  
20 that's a highway patrol for Pasco County.

21 THE COURT: All right. Now, you're going to  
22 hear from the highway patrol officers, as you've  
23 heard the witness list read. Is there anything  
24 about that situation or that relationship that's  
25 going to cause you any difficulty being a fair and

1 impartial juror in this case?

2 PROSPECTIVE JUROR FORTON: No.

3 THE COURT: In other words, if a highway  
4 patrol person comes in here and testifies, as if  
5 any other law enforcement officer testifies, do  
6 they automatically get more credibility merely  
7 because of their job, or would you judge their  
8 credibility as an individual as you would someone  
9 who was an architect or a teacher or a business  
10 person, or something like that?

11 PROSPECTIVE JUROR FORTON: An individual.

12 THE COURT: Judge them as an individual. All  
13 right. Merely their job doesn't give them  
14 magically more credibility or less credibility; is  
15 that correct?

16 PROSPECTIVE JUROR FORTON: I would think it  
17 would give them a little credibility, but you still  
18 have to listen to what they have to say.

19 THE COURT: All right. And that's what I  
20 guess we need to ferret out. I'm assuming you have  
21 a good relationship with this person, and it's kind  
22 of like what we talked about with Mr. Lightfoot  
23 earlier, that you have a good relationship, and the  
24 question is, can you judge the credibility of a  
25 trooper as you would the same as if someone was a

1 plumber or, like I said, a teacher, architect,  
2 business person who would come in here and testify?

3 PROSPECTIVE JUROR FORTON: Yes, sir.

4 THE COURT: So you feel you could do that?

5 PROSPECTIVE JUROR FORTON: Yep.

6 THE COURT: I mean as individuals, obviously  
7 certain individuals are -- we're all different. So  
8 I mean you've got to judge that person on an  
9 individual basis.

10 PROSPECTIVE JUROR FORTON: Yes.

11 THE COURT: All right. Thank you, Mr. Forton.  
12 How about anybody in the next row?

13 PROSPECTIVE JUROR PALMER: (Indicating.)

14 THE COURT: Okay. Ms. Palmer.

15 PROSPECTIVE JUROR PALMER: Yeah. My brother  
16 is a criminal lawyer in Houston. I'm dealing with  
17 my son. He's been in jail for DUI three times.  
18 And my brother could get him a lesser sentence, but  
19 me being the mother, I did not want that. I'm  
20 really against that.

21 At this point he has no license. I don't want  
22 him to get a license. I don't want him to go out  
23 and kill somebody.

24 And I am finding myself right here now  
25 debating. I cannot be -- I'm a mother of one of

1           them. I am -- even my brother helped him, and I  
2           told him do not, leave him in there, he needs to  
3           learn.

4           THE COURT: So your son is presently in  
5           custody?

6           PROSPECTIVE JUROR PALMER: No, he's out. That  
7           was in Houston. But I am so against it. I've been  
8           dealing with him for drugs and alcohol. He's 33,  
9           educated, everything. But you know what, I cannot  
10          do this, because I would tell them, get him in jail  
11          forever.

12          THE COURT: So is it safe to say because of  
13          your personal experience you could just not be fair  
14          and impartial?

15          PROSPECTIVE JUROR PALMER: Oh, no, no. I  
16          couldn't do it. I couldn't do it. I'm a mother of  
17          one of them, and I am so angry with him that he  
18          cannot get his life straight.

19          THE COURT: All right. Thank you, Ms. Palmer.

20          PROSPECTIVE JUROR PALMER: Thank you, sir.

21          THE COURT: Anybody else in that row?

22          PROSPECTIVE JURY PANEL: (No response.)

23          THE COURT: No?

24          Anybody in the next row?

25          PROSPECTIVE JUROR BRANSTUTTER: (Indicating.)

1 THE COURT: All right. Once again,  
2 Ms. Branstutter.

3 PROSPECTIVE JUROR BRANSTUTTER: Yes. I have  
4 friends who are Pasco and Pinellas.

5 THE COURT: Okay. And you still feel the same  
6 way about all those other things we've talked about  
7 and that sort of thing? Obviously you just don't  
8 feel that you can be fair and impartial, correct?

9 PROSPECTIVE JUROR BRANSTUTTER: No.

10 THE COURT: Thank you very much, ma'am.  
11 Anybody else in that row?

12 PROSPECTIVE JURY PANEL: (No response.)

13 THE COURT: How about in this row over here,  
14 first row over here, anybody?

15 PROSPECTIVE JUROR NICHOLS: (Indicating.)

16 THE COURT: Once again, Mr. Nichols.

17 PROSPECTIVE JUROR NICHOLS: My sister is an  
18 ex-Hillsborough County sheriff, and now she's a  
19 private investigator.

20 THE COURT: And you still have that issue we  
21 talked about before, that you just don't feel you  
22 can be fair and impartial because of the situation  
23 with your best friend three weeks ago, correct?

24 PROSPECTIVE JUROR NICHOLS: Right.

25 THE COURT: All right. Thank you very much

1 for that.

2 Mr. Lightfoot.

3 PROSPECTIVE JUROR LIGHTFOOT: Steve Sickles  
4 was working for you guys a few months ago and just  
5 left. He was a cop -- or a bailiff actually, and  
6 he just left.

7 THE COURT: All right. And once again you  
8 still have that same issue with the other law  
9 enforcement officer, and you just don't feel you  
10 can be fair and impartial as well?

11 PROSPECTIVE JUROR LIGHTFOOT: Yes, sir.

12 THE COURT: All right. Thank you,  
13 Mr. Lightfoot.

14 Anybody else in that row?

15 PROSPECTIVE JUROR LEE: (Indicating.)

16 THE COURT: Okay. Ms. Lee.

17 PROSPECTIVE JUROR LEE: My husband is a police  
18 officer in Houston.

19 THE COURT: All right. Anything about that  
20 relationship that's going to cause you any  
21 difficulty to be a fair and impartial juror here  
22 today?

23 PROSPECTIVE JUROR LEE: No, sir.

24 THE COURT: Anything about that relationship  
25 that's going to cause you to give more or less

1 credibility to someone merely because of their  
2 occupation, like a law enforcement officer, once  
3 again merely just because of their job?

4 PROSPECTIVE JUROR LEE: No.

5 THE COURT: In other words, you can judge  
6 someone who comes in as an individual?

7 PROSPECTIVE JUROR LEE: Yes.

8 THE COURT: All right. No more credibility or  
9 less credibility merely because of the law  
10 enforcement background?

11 PROSPECTIVE JUROR LEE: (Indicating  
12 negatively.)

13 THE COURT: All right. Thank you.

14 How about in the next row? Anybody in the  
15 next row?

16 PROSPECTIVE JUROR SWEET: (Indicating.)

17 THE COURT: All right. Ms. Sweet.

18 PROSPECTIVE JUROR SWEET: I have two uncles,  
19 they're retired, but they're both law enforcement.  
20 My one uncle is in Emporia, he worked for what was  
21 formerly known as the marine patrol.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR SWEET: And he's been  
24 retired for a few years now. And I have an uncle  
25 in Kentucky who's a police officer.

1 THE COURT: Anything about those relationships  
2 that would cause you not to be a fair and impartial  
3 juror here today?

4 PROSPECTIVE JUROR SWEET: No.

5 THE COURT: You can set that aside and judge  
6 the credibility of someone who comes in -- do they  
7 get more credibility or less credibility merely  
8 because they're law enforcement officers?

9 PROSPECTIVE JUROR SWEET: No. I'm neutral.

10 THE COURT: You can judge them like anyone  
11 else?

12 PROSPECTIVE JUROR SWEET: I will.

13 THE COURT: All right. Great. Thank you very  
14 much. Anybody else in that row?

15 How about our last and final row?

16 PROSPECTIVE JURY PANEL: (No response.)

17 THE COURT: I see no hands. Okay. Thank you.

18 First row, family member, friends, relative or  
19 you yourself ever been accused or charged with a  
20 crime, accused or charged with a crime?

21 Anybody in the first row?

22 PROSPECTIVE JUROR ELLETT: (Indicating.)

23 THE COURT: All right. Mr. Ellett.

24 PROSPECTIVE JUROR ELLETT: Fraud and grand  
25 theft.



1 THE COURT: All right. And who was that? Was  
2 that you or someone else?

3 PROSPECTIVE JUROR ELLETT: That was me.

4 THE COURT: All right. About how long ago?

5 PROSPECTIVE JUROR ELLETT: It must have been  
6 in the '90s.

7 THE COURT: Okay. And was that here in Pasco  
8 or elsewhere?

9 PROSPECTIVE JUROR ELLETT: That was here in  
10 Pasco.

11 THE COURT: All right. And was that case as  
12 far as you were concerned --

13 PROSPECTIVE JUROR ELLETT: It has to do with  
14 that burglary charge earlier and the deputies, et  
15 cetera.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR ELLETT: They accused me of  
18 robbing my house.

19 THE COURT: And was that case prosecuted?

20 PROSPECTIVE JUROR ELLETT: No.

21 THE COURT: And so you were never charged with  
22 that but you were accused of it?

23 PROSPECTIVE JUROR ELLETT: Yes.

24 THE COURT: All right. And is there anything  
25 about that situation that you think that's going to

1 cause you any difficulty to be a fair and impartial  
2 juror?

3 PROSPECTIVE JUROR ELLETT: No. I don't think  
4 those sheriff deputies are going to be involved.  
5 So...

6 THE COURT: I'm sorry?

7 PROSPECTIVE JUROR ELLETT: I don't think those  
8 sheriff's deputies are going to be involved.

9 THE COURT: Does that leave you with any bad  
10 feelings toward any deputies or any law enforcement  
11 officers?

12 PROSPECTIVE JUROR ELLETT: Those two  
13 particular deputies, yes.

14 THE COURT: But I mean in general?

15 PROSPECTIVE JUROR ELLETT: No.

16 THE COURT: All right. So you can take that  
17 situation, put it aside, and judge this case solely  
18 upon its merits and the law as I instruct you?

19 PROSPECTIVE JUROR ELLETT: I believe so, yeah.

20 THE COURT: Okay. You believe so or know so?  
21 Remember what we talked about earlier? And if  
22 you're not sure, that's fine. Just like when I  
23 spoke to Mr. Plumb, I mean he said, I think so, I'm  
24 just not sure. I mean if that's the answer, that's  
25 the answer. But you understand why I kind of

1 pressed you a little bit on that?

2 PROSPECTIVE JUROR ELLETT: I really have no  
3 feeling about the sheriff. So I believe I can do  
4 it.

5 THE COURT: All right. And like I said, they  
6 may come back to you and talk to you a little bit  
7 more about that in just a little bit when the  
8 lawyers have an opportunity to talk to you.

9 Anybody else in that row?

10 PROSPECTIVE JUROR SPRINGSTEEN: (Indicating.)

11 THE COURT: All right. Ms. Springsteen.

12 PROSPECTIVE JUROR SPRINGSTEEN: My husband was  
13 charged with DUI 25 years ago.

14 THE COURT: Here in Pasco or elsewhere?

15 PROSPECTIVE JUROR SPRINGSTEEN: Pasco.

16 THE COURT: Anything about that situation  
17 that's going to cause you any difficulty to be a  
18 fair and impartial juror here today?

19 PROSPECTIVE JUROR SPRINGSTEEN: No.

20 THE COURT: Do you feel that case was fairly  
21 handled?

22 PROSPECTIVE JUROR SPRINGSTEEN: Yes.

23 THE COURT: Anything about that case that  
24 leaves you with bad feelings for judges, law  
25 enforcement officers, defense lawyers, prosecutors,

1 people accused of a crime, anything like that?

2 PROSPECTIVE JUROR SPRINGSTEEN: No.

3 THE COURT: You can take that case and set it  
4 totally aside and judge this case solely upon the  
5 facts that you and the jury collectively determine  
6 them to be and the law as I instruct you?

7 PROSPECTIVE JUROR SPRINGSTEEN: Yes, sir.

8 THE COURT: All right. Thank you very much,  
9 ma'am. Anybody else?

10 How about the next row? Second row.

11 PROSPECTIVE JURY PANEL: (Indicating  
12 negatively.)

13 THE COURT: All right. No hands.

14 Third row?

15 PROSPECTIVE JUROR SHEALY: (Indicating.)

16 THE COURT: All right. All the way over at  
17 the end. Is it Shealy?

18 PROSPECTIVE JUROR SHEALY: Yes. My son was  
19 charged with DUI and possession of drugs.

20 THE COURT: Here in Pasco or elsewhere?

21 PROSPECTIVE JUROR GRINER: Elsewhere. In  
22 Georgia.

23 THE COURT: About how long ago?

24 PROSPECTIVE JUROR SHEALY: About, I don't  
25 know, ten years ago maybe.

1 THE COURT: All right. Do you feel that case  
2 was fairly handled?

3 PROSPECTIVE JUROR SHEALY: Yes.

4 THE COURT: Is there anything about that case  
5 that's going to cause you any difficulty to be a  
6 fair and impartial juror here today?

7 PROSPECTIVE JUROR SHEALY: No.

8 THE COURT: Can you put that case totally  
9 aside and judge this case solely upon its facts or  
10 the merits of this case as you and the jury  
11 collectively determine them to be and the law as I  
12 instruct you?

13 PROSPECTIVE JUROR SHEALY: Yes.

14 THE COURT: Great. Thank you so much.  
15 Anybody else in that row?

16 PROSPECTIVE JUROR ALBERGO: (Indicating.)

17 THE COURT: All right. Mr. Alberto.

18 PROSPECTIVE JUROR ALBERGO: Yes. I had a son  
19 that was arrested for driving with a suspended  
20 license. I don't know where, somewhere in the  
21 area, because he hid it from me.

22 THE COURT: Okay. And about how long ago?

23 PROSPECTIVE JUROR ALBERGO: October, I think.

24 THE COURT: Sometimes kids will do that,  
25 right?

1 PROSPECTIVE JUROR ALBERGO: He didn't tell us.

2 THE COURT: All right. See, I've got kids  
3 myself, that's why I smiled when you said that.

4 Is there anything about that situation that  
5 would cause you not to be a fair and impartial  
6 juror here today?

7 PROSPECTIVE JUROR ALBERGO: No.

8 THE COURT: Anything about that at all cause  
9 you concerns being a juror here today in that case?

10 PROSPECTIVE JUROR ALBERGO: No.

11 THE COURT: Okay. Thank you, Ms. Albergo.  
12 Anybody else?

13 PROSPECTIVE JUROR DOVER: (Indicating.)

14 THE COURT: Okay. Mr. Dover.

15 PROSPECTIVE JUROR DOVER: My wife got a DUI.

16 THE COURT: All right. Here in Pasco or  
17 elsewhere?

18 PROSPECTIVE JUROR DOVER: Here.

19 THE COURT: About how long ago?

20 PROSPECTIVE JUROR DOVER: In the last year.

21 THE COURT: Is that case still pending or has  
22 it been resolved?

23 PROSPECTIVE JUROR DOVER: It's done.

24 THE COURT: I'm sorry?

25 PROSPECTIVE JUROR DOVER: She's on probation.

1 THE COURT: Okay. Do you feel that case was  
2 fairly handled?

3 PROSPECTIVE JUROR DOVER: Yes.

4 THE COURT: Anything about that situation that  
5 leaves you with any bad feelings towards the  
6 criminal justice system, law enforcement officers,  
7 defense lawyers, prosecutors, judges, anything of  
8 the sort?

9 PROSPECTIVE JUROR DOVER: No.

10 THE COURT: Do you feel you can take that  
11 situation, set that aside, and judge this case  
12 solely upon its merits or the facts as you and the  
13 jury collectively determine them to be and the law  
14 as I instruct you?

15 PROSPECTIVE JUROR DOVER: Yes.

16 THE COURT: Thank you, Mr. Dover.

17 Anybody else?

18 PROSPECTIVE JUROR BRANSTUTTER: (Indicating.)

19 THE COURT: Once again, Ms. Branstutter.

20 PROSPECTIVE JUROR BRANSTUTTER: Drugs and  
21 domestic violence.

22 THE COURT: Okay. And we kind of talked about  
23 your situation earlier. I'm not going to go into  
24 that with you at this point in time just because of  
25 the things we talked about earlier, okay, but I

1 appreciate you bringing that to my attention.

2 How about this side? Anybody over here?

3 PROSPECTIVE JUROR GRINER: (Indicating.)

4 THE COURT: We'll start over here at the very  
5 end with Ms. is it Griner?

6 PROSPECTIVE JUROR GRINER: (Indicating.)

7 THE COURT: All right. Ms. Griner?

8 PROSPECTIVE JUROR GRINER: I had a daughter  
9 charged with DUI. Her trouble started out with  
10 petit theft, and the whole situation has made me  
11 lose confidence in our justice system.

12 THE COURT: All right.

13 PROSPECTIVE JUROR GRINER: I had my eyes  
14 opened up with her situation and I was very  
15 disappointed.

16 THE COURT: And when you say that, you say  
17 that with some conviction. I mean is that going to  
18 be such that you think it's going to affect your  
19 ability to be a fair and impartial juror?

20 PROSPECTIVE JUROR GRINER: Oh, yeah. Oh,  
21 yeah. I've discovered that justice can be bought.

22 THE COURT: Okay. And that's because of the  
23 situation involving your daughter?

24 PROSPECTIVE JUROR GRINER: Yes. Because I've  
25 known other people who have done much more serious



1 crimes and walked away. And my daughter, her first  
2 offense, and she's still dealing with the  
3 repercussions just because we could not afford to  
4 buy a good lawyer, and that's just shameful.

5 THE COURT: All right. And once again these  
6 feelings are such that obviously you feel it's  
7 going to impact your ability to be fair and  
8 impartial in this case?

9 PROSPECTIVE JUROR GRINER: Yes.

10 THE COURT: All right. Thank you.

11 All right. We're going to take a break in  
12 just one moment. I just want to finish these  
13 questions real quick.

14 Anybody else in that row?

15 PROSPECTIVE JUROR DILLARD: (Indicating.)

16 THE COURT: Ms. Dillard.

17 PROSPECTIVE JUROR DILLARD: Do you still need  
18 this based on our last conversation?

19 THE COURT: No. I think I understand kind of  
20 where you're coming from. You still feel the same  
21 way, that you just cannot be fair?

22 PROSPECTIVE JUROR DILLARD: Correct.

23 THE COURT: All right. Anybody else in that  
24 row?

25 PROSPECTIVE JUROR LIGHTFOOT: (Indicating.)

1 THE COURT: Mr. Lightfoot.

2 PROSPECTIVE JUROR LIGHTFOOT: My mom had her  
3 door kicked in about six months ago, robbed at  
4 gunpoint. My little sister, her door was kicked  
5 in, almost raped but was able to get out. This all  
6 happened within the past six months over in  
7 Holiday, right on the border of like Tarpon and  
8 holiday. They're having a lot of problems over  
9 there.

10 THE COURT: What that over, by Holiday Lakes  
11 Estates?

12 PROSPECTIVE JUROR LIGHTFOOT: That's where  
13 it's at, Holiday Lake Estates.

14 THE COURT: Okay. And you're still in the  
15 same situation we talked about earlier? You just  
16 don't feel that you can be fair and impartial with  
17 that one witness?

18 PROSPECTIVE JUROR LIGHTFOOT: Yes, sir.

19 THE COURT: All right. Anybody else in that  
20 row?

21 PROSPECTIVE JURY PANEL: (No response.)

22 THE COURT: How about the next row?

23 PROSPECTIVE JUROR COULTER: (Indicating.)

24 THE COURT: All right. On the end,  
25 Mr. Coulter?

1 PROSPECTIVE JUROR COULTER: Yes. My daughter  
2 was charged with DUI about four or five years ago.  
3 I've had numerous employees that I've dealt with,  
4 both DUI, drugs and alcohol. I have zero tolerance  
5 for either.

6 THE COURT: First of all, in your daughter's  
7 case, do you feel that case was properly handled?

8 PROSPECTIVE JUROR COULTER: Actually I believe  
9 she got off too lenient, which is what's caused her  
10 problems for the last four to five years.

11 THE COURT: Okay. And is there anything about  
12 the other situations, coupled with that, do you  
13 feel that's going to affect your ability to be a  
14 fair and impartial juror?

15 PROSPECTIVE JUROR COULTER: I've been an  
16 employer in Pasco for 30 years and trust me, I'm in  
17 construction, I've dealt with a lot of drugs and  
18 alcohol with my employees, and I see a revolving  
19 door. So I don't have a lot of faith. And these  
20 people can't handle it correctly whether they have  
21 money or they don't. I just see a lot of in and  
22 out of doors.

23 THE COURT: All right. And do you feel that  
24 you can set those feelings aside and judge this  
25 case on its merits, on its facts and determine what

1 those facts are and whether or not the State has  
2 proven their case and by the law as I instruct you?

3 PROSPECTIVE JUROR COULTER: Depending on the  
4 facts, I think I could, yes.

5 THE COURT: Okay. And once again --

6 PROSPECTIVE JUROR COULTER: I know. I know.  
7 It's really tough. I mean I've just been around it  
8 so long, and I think it's a revolving door. It's  
9 pretty tough.

10 THE COURT: Okay. All right. Now, I want you  
11 to think about that for a little bit. Like I said,  
12 we may come back. I guess we'll come back and  
13 we'll finish up in just a moment. I know there's a  
14 few of you that are asking for a restroom break at  
15 this point in time. so I'll go ahead and take that.

16 What I'm going to ask you to do is something  
17 very important. Look to your right, look to your  
18 right, see where you're sitting. When you come  
19 back you're going to sit in the same spot. So once  
20 again please remember where you are.

21 Please do not go out there and talk about the  
22 case or the charges or what you think the case is  
23 about or anything like that. You can talk about  
24 the weather, sports, the Rays, anything you want,  
25 but please do not discuss this case in any way or

1 what you believe this case is about.

2 We will be back in here -- I'll give you-all,  
3 so you-all can use the restroom, how about until  
4 11:30? That gives you about 16 minutes or so.

5 And then you'll gather outside there, Deputy  
6 Flanagan will line you up, and then bring you-all  
7 in together. So you-all are going to line up  
8 outside, he'll get you organized, and he'll get you  
9 back in here.

10 So the Court will stand in recess until 11:30  
11 by the courtroom clock.

12 THE BAILIFF: All rise.

13 PROSPECTIVE JURY ABSENT:

14 RECESS TAKEN:

15 THE COURT: During the break, it was brought  
16 to my attention the spelling of Mr. Swiech's name  
17 is misspelled. Is there any issue with regard to  
18 that that we need to address at this time? It is  
19 properly spelled S-w-i-e-c-h.

20 MR. ROSARIO: That's correct.

21 THE COURT: Well, when I read it off the jury  
22 form, it's in the Information as S-w-e-i-s-h.

23 MR. ROSARIO: We'd orally amend, Judge. I  
24 don't believe there's any prejudice with the oral  
25 amendment.

1 THE COURT: Is there any objection to that,  
2 Mr. Foote?

3 MR. FOOTE: No objection.

4 THE COURT: Mr. Rosario, do you want to come  
5 up and note that on there?

6 MR. ROSARIO: Yes, sir.

7 THE COURT: S-w-i-e-c-h. And I thank you for  
8 correcting me on that.

9 We have 12 folks in reserve, so that gives us  
10 48. I can't imagine we can't get seven people out  
11 of 48. Like I said, that leaves us 48 to get seven  
12 people. We ought to be able to get seven people  
13 out of 48. I mean that's excusing 41 people.

14 Okay. Deputy Flanagan will let us know when  
15 we're ready to return the jury.

16 THE BAILIFF: Ready.

17 THE COURT: You may return the jury.

18 THE BAILIFF: Prospective jurors entering the  
19 courtroom.

20 PROSPECTIVE JURY PRESENT:

21 THE BAILIFF: Your Honor, prospective jurors  
22 present and seated in the courtroom.

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

24 All right. I believe we ended with me over  
25 here in the row with Mr. Coulter on the end.

1           Okay. You-all remembered. Okay.

2           Ms. Santoro.

3           PROSPECTIVE JUROR SANTORO: My husband's  
4           friend is being charged presently with grand theft.  
5           It was kind of silly. The grand theft charge was a  
6           felony. It probably should have been more a  
7           misdemeanor. But that's something that's ongoing  
8           right at the moment.

9           THE COURT: And do you still have the same  
10          issues that we talked about as far as your family  
11          members and friend, that issue with your father and  
12          that sort of thing? Do you still feel that because  
13          of those issues, you cannot be fair and impartial?

14          PROSPECTIVE JUROR SANTORO: Absolutely.

15          THE COURT: All right. Thank you.

16          Anybody else in that row?

17          PROSPECTIVE JUROR LAMB: (Indicating.)

18          THE COURT: All right. Over here to Ms. Lamb.

19          PROSPECTIVE JUROR LAMB: Yes. My friend was  
20          convicted of DUI about five years ago in St. Pete.

21          THE COURT: Okay. And is there anything about  
22          that situation that's going to cause you any  
23          difficulty being a fair and impartial juror in this  
24          case here today?

25          PROSPECTIVE JUROR LAMB: No.

1 THE COURT: Do you feel, then, you can set  
2 that case totally aside and judge this case solely  
3 upon the facts as you and the jury collectively  
4 determine them to be and the law as I instruct you?

5 PROSPECTIVE JUROR LAMB: Yes, sir.

6 THE COURT: All right. And do you feel that  
7 that case was fairly handled?

8 PROSPECTIVE JUROR LAMB: I do, yes.

9 THE COURT: Did it leave you with any bad  
10 feelings from law enforcement officers, defense  
11 lawyers, prosecutors, judges, anybody in the  
12 system?

13 PROSPECTIVE JUROR LAMB: No. Not at all.

14 THE COURT: All right. Thank you.

15 All right. Anybody else in the last row? How  
16 about the last row?

17 PROSPECTIVE JUROR TYLER: (Indicating.)

18 THE COURT: All the way over in the end,  
19 Mr. Tyler.

20 PROSPECTIVE JUROR TYLER: Eighteen years ago I  
21 had a DUI.

22 THE COURT: Here in Pasco or elsewhere?

23 PROSPECTIVE JUROR TYLER: Pasco.

24 THE COURT: Do you feel like that case was  
25 fairly handled?



1 PROSPECTIVE JUROR TYLER: Yes.

2 THE COURT: Anything about that case that's  
3 going to cause you any difficulty being a fair and  
4 impartial juror here today?

5 PROSPECTIVE JUROR TYLER: No, sir.

6 THE COURT: Did it leave you with any bad  
7 feelings towards law enforcement officers,  
8 prosecutors, defense lawyers, judges, the system as  
9 a whole?

10 PROSPECTIVE JUROR TYLER: No, sir.

11 THE COURT: Can you take that case and set  
12 that case 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 you?

15 PROSPECTIVE JUROR TYLER: Yes, sir. I can.

16 THE COURT: Great. Thank you, Mr. Tyler.  
17 Anybody else in that row?

18 PROSPECTIVE JUROR SINGLETARY: (Indicating.)

19 THE COURT: Ms. Singletary.

20 PROSPECTIVE JUROR SINGLETARY: Yes. My son  
21 was charged with DUI about four years ago.

22 THE COURT: All right. Here in Pasco or  
23 elsewhere?

24 PROSPECTIVE JUROR SINGLETARY: No. And I also  
25 lived with domestic violence due to alcohol. And I

1 have absolutely no tolerance. I don't feel like I  
2 can be fair as far as judgment.

3 THE COURT: Okay. So any case anywhere, at  
4 any time where the word "alcohol" is mentioned, you  
5 don't feel you can be fair?

6 PROSPECTIVE JUROR SINGLETARY: (Indicating  
7 negatively.)

8 THE COURT: And you don't feel you can put  
9 that aside and judge the case solely upon its  
10 merits?

11 PROSPECTIVE JUROR SINGLETARY: (Indicating  
12 negatively.)

13 THE COURT: All right. Anybody else in that  
14 back row?

15 PROSPECTIVE JUROR HALL: (Indicating.)

16 THE COURT: Ms. Hall?

17 PROSPECTIVE JUROR HALL: My uncle died a  
18 couple years ago due to DUI and smashing into the  
19 side of a school bus, whether it was alcohol or any  
20 other form of intoxication. No, I don't believe I  
21 can be fair with that.

22 THE COURT: All right. And your uncle is the  
23 one actually driving the car?

24 PROSPECTIVE JUROR HALL: Yes. He was  
25 intoxicated, high on meth, and smashed into the

1 front of a school bus. But whether the substance  
2 was illegal or otherwise, you know not to be behind  
3 a vehicle. That's the bottom line. There is no  
4 factor that would change that for me.

5 THE COURT: Okay. So you don't feel you can  
6 set that aside at all?

7 PROSPECTIVE JUROR HALL: No. They put  
8 warnings on things for a reason.

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

11 PROSPECTIVE JURY PANEL: (No response.)

12 THE COURT: No?

13 Okay. Anybody in the first row over here have  
14 any kind of family issue I need to know about or  
15 any physical situation that may make it difficult  
16 for you to serve on this jury?

17 And I will tell you that this trial is  
18 expected to last the balance of the week. So  
19 keeping that in mind, is there anything along those  
20 lines that's going to cause you-all any difficulty  
21 serving here today?

22 PROSPECTIVE JURY PANEL: (Indicating  
23 negatively.)

24 THE COURT: No hands on the first row.  
25 Second row?

1 PROSPECTIVE JUROR SMUZ: (Indicating  
2 negatively.)

3 THE COURT: Third row?

4 PROSPECTIVE JUROR AMAR: (Indicating.)

5 THE COURT: All right. And we've already had  
6 a chance to talk to Ms. Branstutter.

7 And I see next to you, is it Amar?

8 PROSPECTIVE JUROR AMAR: Yes. I have a  
9 professional problem. I am a physician working at  
10 the Tampa VA with disabled veterans. I will not be  
11 able to take off, you know, from work. It will be  
12 a problem for me.

13 THE COURT: All right.

14 PROSPECTIVE JUROR AMAR: I live in Pasco, but  
15 I travel to Hillsborough every day and work there  
16 at the VA Hospital.

17 THE COURT: All right. And, Doctor, is it a  
18 problem with the VA? I mean I can't imagine the  
19 federal government wouldn't give you the time off.

20 PROSPECTIVE JUROR AMAR: Well, that's why I am  
21 here. So I could probably be here just today, but  
22 I cannot take off more than one day with my work  
23 schedule. It's been really, really, really busy  
24 and really tight.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR AMAR: Especially with the  
2 compensation and pension department, I really have  
3 to be there.

4 THE COURT: All right. So it's not  
5 necessarily that the federal government won't let  
6 you serve on a jury, it's just because of your  
7 workload?

8 PROSPECTIVE JUROR AMAR: Yes. Definitely,  
9 yes.

10 THE COURT: Okay. Thank you. And then the  
11 lawyers may get back to you a little bit more on  
12 that in a little bit.

13 Anyone else on that row?

14 PROSPECTIVE JUROR ALBERGO: (Indicating.)

15 THE COURT: Once again, Ms. Albergo.

16 PROSPECTIVE JUROR ALBERGO: I have a son  
17 that's graduating tomorrow. It's tomorrow evening,  
18 but I don't know how long we'll go.

19 THE COURT: Well, we'll certainly make sure  
20 you're there for that. Congratulations. Is that  
21 from a local school here in Pasco?

22 PROSPECTIVE JUROR ALBERGO: Tampa Catholic,  
23 Hillsborough.

24 THE COURT: Okay. All right. Anyone else?  
25 How about this first row over here?

1           And we've already had a chance to talk to  
2 Mr. Nichols. You feel the same way with that  
3 situation with your best friend?

4           PROSPECTIVE JUROR NICHOLS: Yes. I'm a single  
5 father. My son is in day-care during the day, but  
6 if something happened to him, I would have to be  
7 right there.

8           THE COURT: Okay.

9           PROSPECTIVE JUROR NICHOLS: And I can't afford  
10 to take off from work.

11          THE COURT: All right.

12          PROSPECTIVE JUROR NICHOLS: I'll end up losing  
13 my house and stuff.

14          THE COURT: Fair enough. Thank you,  
15 Mr. Nichols.

16          Anybody else in that row?

17          PROSPECTIVE JURY PANEL: (No response.)

18          THE COURT: How about the next row?

19          PROSPECTIVE JUROR DECHANT: (Indicating.)

20          THE COURT: Mr. DeChant.

21          PROSPECTIVE JUROR DECHANT: How late each day  
22 the trial would go?

23          THE COURT: That I really can't give you a  
24 great answer for. I mean certainly if someone has  
25 something to do like a graduation, we would stop in

1 time for that to be attended. But if that's not  
2 the case -- some of that just is dictated by the  
3 pace of trial, the number of witnesses, do we have  
4 one more witness we can get on short here.

5 I've been doing this a long time, and if I  
6 started telling you, oh, yeah, for sure we're going  
7 to be done at X time at this day, it will  
8 absolutely be wrong.

9 Like I said, I've been doing this a long time,  
10 I've done many, many trials, and I'd be kidding  
11 myself, I'd be kidding everybody else if I could  
12 give you an exact time for everything. I just  
13 can't.

14 And I'll tell you, I've been asked that  
15 question, like I said, as a lawyer, as a judge. I  
16 can just give you my best guess. I can tell you  
17 we're not going to go to midnight or 11:00 o'clock  
18 at night or anything like. I can tell you that's  
19 not going to happen.

20 But to say we're going to stop at 5:10 as  
21 opposed to quarter to 6:00 or 6:00 o'clock, or, you  
22 know, if something happened that we would have to  
23 stop at quarter the 5:00 as opposed to 6:30, I  
24 don't know, I can't answer that.

25 All right. Anybody else in that row?

1 PROSPECTIVE JUROR SWEET: (Indicating.)

2 THE COURT: All right. Ms. Sweet.

3 PROSPECTIVE JUROR SWEET: My husband is a  
4 full-time student, so I'm the sole income provider  
5 for our household. So my only concern is if I  
6 don't -- I work for a very small company of six  
7 people. So, you know, they can't afford to pay me  
8 for being here. And as well as if I am gone more  
9 than a day, maybe two, in essence they have to shut  
10 down and reallocate how to work. It's a small  
11 business. So just keep that out there. It would  
12 just be a hardship on, you know, the office.

13 THE COURT: And obviously we're here on  
14 important things here today.

15 PROSPECTIVE JUROR SWEET: Yeah.

16 THE COURT: And for the week. So do you feel  
17 that that's something, if you are selected, that  
18 you could give your attention to and that you could  
19 serve as a juror and fulfill that obligation? Or  
20 is that something you think you'd be distracted by?  
21 What would your feelings be on that?

22 PROSPECTIVE JUROR SWEET: Distracted by as in  
23 knowing I'm not --

24 THE COURT: Well, in other words, you're not  
25 listening to witness' testimony because you're



1 saying, oh, gee, I wonder if this is going to be  
2 covered at work?

3 PROSPECTIVE JUROR SWEET: I mean not being in  
4 that situation, I would try to put all of myself  
5 there, but I will say, you know, there might be at  
6 certain instances where, you know, I'm, like, oh,  
7 did I remember to tell -- you know, stuff like  
8 that.

9 THE COURT: Well, I think that happens to all  
10 of us.

11 PROSPECTIVE JUROR SWEET: Yeah.

12 THE COURT: But what we're looking for, it's  
13 just like you said, you know, can you listen to the  
14 witnesses, important witnesses, and listen to the  
15 questions and the cross-examination and that sort  
16 of thing, and then when the arguments come up, you  
17 would listen to the lawyers' argument, and when I  
18 give the law, you can listen to the law and apply  
19 all those things together and that sort of thing is  
20 kind of what I'm looking for.

21 PROSPECTIVE JUROR SWEET: Yes.

22 THE COURT: All right. Do you feel you can do  
23 that?

24 PROSPECTIVE JUROR SWEET: Yeah.

25 THE COURT: Okay. Great. Thank you very

1 much.

2 Anybody else in that row?

3 PROSPECTIVE JUROR COULTER: (Indicating.)

4 THE COURT: All right. Mr. Coulter.

5 PROSPECTIVE JUROR COULTER: Yes, sir. I have  
6 a seven-man crew sitting at home waiting for me to  
7 supervise them right now. So if I'm here all week,  
8 they'll be sitting at home all week.

9 THE COURT: And I mean I need some help. Like  
10 I said, we've got important business.

11 PROSPECTIVE JUROR COULTER: My business is  
12 going to be on my mind. So I don't think I can  
13 give you a hundred percent here at all, no.

14 THE COURT: Okay. So you feel you would be  
15 too distracted?

16 PROSPECTIVE JUROR COULTER: Absolutely.

17 THE COURT: Okay. Thank you. Anybody else in  
18 that row? And Ms. Santoro, we've already talked to  
19 you about your issues.

20 PROSPECTIVE JUROR PLUMB: (Indicating.)

21 THE COURT: Mr. Plumb.

22 PROSPECTIVE JUROR PLUMB: Yeah. I'm  
23 self-employed. I have a small crew that can't do  
24 the work without me. Basically I lead the crew.

25 THE COURT: I'm sorry?

1 PROSPECTIVE JUROR PLUMB: You know, I lead my  
2 crew. I've got a small contracting business, and  
3 so, yes, my mind would definitely be preoccupied,  
4 and they're going to be losing as well as me.

5 THE COURT: And I mean once again we've got  
6 important business.

7 PROSPECTIVE JUROR PLUMB: No, I want to serve.

8 THE COURT: Everybody that it would be  
9 inconvenient for, we wouldn't have anybody on the  
10 jury. Anybody that it would be inconvenient for,  
11 we wouldn't have anybody on the jury.

12 PROSPECTIVE JUROR PLUMB: No, I understand  
13 that.

14 THE COURT: So I mean that's kind of what  
15 we're looking for. And I understand everybody's  
16 situation is different, and that's why I'm asking.  
17 I mean that's why these are important questions,  
18 because it is a hardship.

19 There's no question it's a hardship being on a  
20 jury, and that sort of thing, and the importance of  
21 it obviously is what makes our country great, you  
22 know, that we do have this system.

23 PROSPECTIVE JUROR PLUMB: Yeah.

24 THE COURT: So are you telling me that it's  
25 just going to be so distracting for you that you

1 just don't feel you can be a juror on this case?  
2 And if that's the case, I mean that's your  
3 position, that's how you feel.

4 PROSPECTIVE JUROR PLUMB: Well, I don't know  
5 which would weigh more. I don't know.

6 THE COURT: These are the same questions that  
7 I just asked --

8 PROSPECTIVE JUROR PLUMB: It will  
9 definitely -- my mind is going to be in two places,  
10 that's for sure.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR PLUMB: Because I'm going to  
13 try to run these crews without me. That's all I  
14 can say.

15 THE COURT: All right. And the question then  
16 becomes, is that going to be so -- and these are  
17 the same questions I just got done asking Ms. Sweet  
18 and Mr. Coulter. Is this going to be such that the  
19 witness is testifying and you feel, gee, I'm not  
20 going to be paying attention to what the witness  
21 says, what the cross-examination is, or the direct  
22 examination is, or what the arguments of the lawyer  
23 is?

24 PROSPECTIVE JUROR PLUMB: Well, you know, if  
25 I'm going to serve, I'm going to try my very best

1 to focus, but every chance I'll get I'll probably  
2 be on the phone.

3 THE COURT: Well, I mean that's not  
4 unreasonable to say, look, I need to call, I need  
5 to make sure things are lined up at work. You can  
6 check on work and that sort of thing.

7 PROSPECTIVE JUROR PLUMB: Yeah.

8 THE COURT: Okay. Thank you, sir.  
9 Anybody in the last row?

10 PROSPECTIVE JUROR TYLER: (Indicating.)

11 THE COURT: All right. Mr. Tyler.

12 PROSPECTIVE JUROR TYLER: Out of total respect  
13 to you Judge Crane and the courts, I am the sole  
14 owner of my company, and I've got four employees,  
15 down to four employees, the economy has been very  
16 hard, and I'm the only one that brings in the sales  
17 and everything else to my company. Without me, the  
18 company is not going to have any business, and I  
19 just want to let you know that.

20 On top of that, I do have an autistic child,  
21 and it is very challenging for me at this time. I  
22 want to do my civic duty to the courts and  
23 everything, but the demands on my family and my  
24 business right now are very strained. So I do  
25 believe that it would be on my mind quite hard

1 right now at this time in my life, just to let you  
2 know that.

3 THE COURT: So once again, the same sort of  
4 question, do you think that it's going to be  
5 overwhelming? In other words, you're not going to  
6 be able to really concentrate on the testimony or  
7 the questions and the cross-examination and all  
8 that sort of thing? Or do you feel that is  
9 something you can put aside? But if it's not, I  
10 mean that's your answer, and that's fine.

11 PROSPECTIVE JUROR TYLER: Yes. I just want to  
12 be honest with you and the courts and the lawyers  
13 here. Yes, with my daughter being autistic, it  
14 would be on my mind. That's my number one priority  
15 right now.

16 THE COURT: All right. Thank you.

17 All right. I'm going to read an instruction  
18 to you that includes some very important  
19 constitutional principles. I need you to pay  
20 careful attention if you would to this because I'm  
21 going to have some questions when I'm done with  
22 regard to these constitutional principles.

23 The defendant has entered a plea of not  
24 guilty. This means you must presume or believe the  
25 defendant is innocent. The presumption stays with

1 the defendant as to each material allegation in the  
2 Information or charging document, through each  
3 stage of the trial until it has been overcome by  
4 the evidence to the exclusion of and beyond a  
5 reasonable doubt.

6 To overcome the defendant's presumption of  
7 innocence the State has the burden of proving the  
8 crime with which the defendant is charged was  
9 committed, and the defendant is the person who  
10 committed the crime. The defendant is not required  
11 to present evidence or prove anything.

12 Whenever the words "reasonable doubt" are  
13 used, you must consider the following: A  
14 reasonable doubt is not a mere possible doubt, a  
15 speculative, imaginary or forced doubt. Such a  
16 doubt must not influence you to return a verdict of  
17 not guilty if you have an abiding conviction of  
18 guilt.

19 On the other hand, if after carefully  
20 considering, comparing and weighing all the  
21 evidence, there is not an abiding conviction of  
22 guilt, or, if having a conviction, it is one which  
23 is not stable but one which wavers and vacillates,  
24 then the charge is not proved beyond every  
25 reasonable doubt, and you must find the defendant

1 not guilty because the doubt is reasonable. It is  
2 to the evidence introduced in this trial and it  
3 alone that you are to look for that proof.

4 A reasonable doubt as to the guilt of the  
5 defendant may arise from the evidence, conflict in  
6 the evidence or the lack of the evidence.

7 If you have a reasonable doubt, you should  
8 find the defendant not guilty. If you have no  
9 reasonable doubt, you should find the defendant  
10 guilty.

11 And obviously some very important  
12 constitutional principles, as I've indicated that  
13 are outlined in here, the plea of not guilty. What  
14 that means is, in every courthouse, in every  
15 courtroom, in every criminal case across our  
16 country each and every defendant is presumed to be  
17 innocent or not guilty. That presumption of  
18 innocence stays with an individual until it's been  
19 overcome by the evidence. That presumption of  
20 innocence is critical to our Constitution and  
21 critical to our justice system.

22 Does anyone in the first row disagree with  
23 that presumption of innocence, meaning, I don't  
24 think people ought to be presumed innocent, I think  
25 that it should be something different than that?



1           Does anyone in the first row disagree with  
2           that presumption of innocence? And if you do,  
3           please raise your hands.

4           PROSPECTIVE JURY PANEL: (No response.)

5           THE COURT: Seeing no hands.

6           Second row, anybody disagree with that?

7           PROSPECTIVE JURY PANEL: (No response.)

8           THE COURT: Seeing no hand.

9           Third row?

10          PROSPECTIVE JURY PANEL: (No response.)

11          THE COURT: No hands.

12          Our fourth row over here?

13          PROSPECTIVE JURY PANEL: (No response.)

14          THE COURT: Seeing no hands.

15          Fifth row?

16          PROSPECTIVE JURY PANEL: (No response.)

17          THE COURT: Seeing no hands.

18          Sixth row?

19          PROSPECTIVE JURY PANEL: (No response.)

20          THE COURT: All right. Thank you.

21                 One of the other issues is burden of proof.

22                 The burden of proof is solely upon the State in

23                 this case. The defense has no burden of proof

24                 whatsoever, none, zero. They need not present

25                 witnesses, they need not present any testimony or

1 any evidence at all, because they have no burden.

2 It is sometimes said by defense lawyers that  
3 they could, if they wish, to read a newspaper, play  
4 cards, do a crossword puzzle. And obviously that's  
5 an extreme example, and none of those things will  
6 happen here today, but that's illustrative of the  
7 fact that there is no burden on this side of the  
8 courtroom; the burden is on the State.

9 Does anyone disagree with that and disagree  
10 with that constitutional principle and think people  
11 ought to prove their innocence, they must prove  
12 that they're innocent or not guilty as opposed to  
13 the State proving it? In other words, they must  
14 present evidence, they must testify, and they must  
15 present some sort of documentation or something  
16 like that?

17 Is there anybody who disagrees with that  
18 burden of proof and that standard, in the first  
19 row?

20 PROSPECTIVE JURY PANEL: (No response.)

21 THE COURT: Seeing no hands.

22 Second row?

23 PROSPECTIVE JURY PANEL: (No response.)

24 THE COURT: Seeing no hands.

25 Third row?

1 PROSPECTIVE JURY PANEL: (No response.)

2 THE COURT: Seeing no hands.

3 First row or fourth row over here?

4 PROSPECTIVE JURY PANEL: (No response.)

5 THE COURT: Seeing no hands.

6 Fifth row?

7 PROSPECTIVE JURY PANEL: (No response.)

8 THE COURT: And finally the last row.

9 PROSPECTIVE JURY PANEL: (No response.)

10 THE COURT: All right. Thank you.

11 Now, this is where you're going to get a  
12 little exercise. How many of you have heard the  
13 phrase, "Beyond a shadow of a doubt"? Raise your  
14 hand.

15 PROSPECTIVE JURY PANEL: (Indicating.)

16 THE COURT: Everybody.

17 All right. It's great for TV, right?

18 Everything on TV is beyond a shadow of a doubt.  
19 Not so good in real life, because that's not the  
20 burden here. The burden here today is beyond a  
21 reasonable doubt as defined by this jury  
22 instruction and as you've been instructed.

23 Is there anybody in the first row that  
24 disagrees with that burden? They think it ought to  
25 be lower or thinks it ought to be higher than it is

1 now? If you do, please raise your hand.

2 PROSPECTIVE JURY PANEL: (No response.)

3 THE COURT: Seeing no hands.

4 Next row?

5 PROSPECTIVE JURY PANEL: (No response.)

6 THE COURT: Seeing no hands.

7 Next row?

8 PROSPECTIVE JURY PANEL: (No response.)

9 THE COURT: No hands.

10 Fourth row?

11 PROSPECTIVE JURY PANEL: (No response.)

12 THE COURT: No hands.

13 Fifth row?

14 PROSPECTIVE JURY PANEL: (No response.)

15 THE COURT: No hands.

16 Last row?

17 PROSPECTIVE JURY PANEL: (No response.)

18 THE COURT: No hands. Okay. Thank you.

19 All right. In just a moment I'm going to turn  
20 the questioning over to the lawyers. I then may  
21 come back to clear some things up if that does  
22 become an issue a little bit later on.

23 I want to thank you for your attention that  
24 you've given me here today. Thank you very much  
25 for that, and I would ask once again to give the

1 same attention to the lawyers.

2 So at this point, Mr. Rosario, you may  
3 inquire.

4 MR. FOOTE: May I approach, Judge?

5 THE COURT: Sure.

6 BENCH CONFERENCE:

7 MR. FOOTE: I may not have heard the Court  
8 inquire, but did the Court inquire if anyone has  
9 any special medical conditions?

10 THE COURT: It has. Any child care or special  
11 medical conditions.

12 MR. FOOTE: That's all.

13 THE COURT: I will tell you, though, that  
14 Mr. Dang, D-a-n-g --

15 MR. FOOTE: Sleeping.

16 THE COURT: I'm sorry?

17 MR. FOOTE: Sleeping.

18 THE COURT: Oh, I didn't notice that.

19 MR. FOOTE: He's been sleeping the whole time.

20 THE COURT: Well, he indicated at the last  
21 break to Deputy Flanagan he has difficulty with the  
22 English language.

23 MR. FOOTE: That's probably why he's sleeping.

24 MR. ROSARIO: I was noticing our doctor seems  
25 to be sleeping as well. I can't remember her name.

1 THE COURT: Dr. Amar?

2 MR. ROSARIO: Yes. She appeared to be  
3 sleeping.

4 MR. FOOTE: She works the night shift maybe.

5 THE COURT: So if you-all want to inquire or  
6 if you want me the inquire of Mr. Dang and about  
7 his ability with the English language.

8 MR. ROSARIO: That will be fine.

9 THE COURT: He's indicated, like I said, to  
10 Deputy Flanagan that he has not understood  
11 everything that's been going on.

12 MR. ROSARIO: That's fine if you want to.

13 THE COURT: I think you normally ask that  
14 question, don't you? Mr. Sarabia, do you normally  
15 ask that question? Do either one of you ask that  
16 question?

17 MR. ROSARIO: Well, I ask if anyone speaks  
18 English, but it depends. Mr. Foote, do you want  
19 him to ask it?

20 MR. FOOTE: Now that I asked to approach, I  
21 don't want it to be that that's the reason why I  
22 asked. So if you want to ask it, that's fine.

23 MR. ROSARIO: I would rather you inquire  
24 before we get started.

25 THE COURT: Okay. And I can couch it in a

1           circumstance that he approached Deputy Flanagan, so  
2           that will take care of your issue.

3           MR. ROSARIO:   That's fine.

4           MR. FOOTE:   I'm just going to mention that at  
5           this point, I mean it appears that the panel has a  
6           lot of problems.  Are we just going to go through  
7           this whole couple of hours of all our stuff, or is  
8           it almost apparent -- maybe it's apparent to me --  
9           we're going to have a problem with actually getting  
10          some people, or do we have to go through the  
11          whole -- just for economy.

12          THE COURT:   Oh, no, I understand what you're  
13          saying.  We've got 12 more.  We can't get seven out  
14          of 48?  We ought to be able to get seven out of 48.

15          MR. FOOTE:   Wasn't it 36?

16          THE COURT:   Well, 36, and we have 12 more  
17          downstairs.  So a total of 48.

18          MR. FOOTE:   I'm just going off the top of my  
19          observations that if we were to go, I'm sure  
20          there's going to be someone that wants to go to  
21          lunch, but I think we're going to go at least an  
22          hour and a half, two hours.

23          THE COURT:   I think that's where we're just  
24          probably going to have to go and just kind of see  
25          where we are.

1 MR. FOOTE: Okay.

2 THE COURT: In the grand scheme of things, I  
3 mean we need seven out of 48 people. I mean we  
4 ought to be able to get seven out of 48.

5 MR. ROSARIO: Right.

6 THE COURT: It's not like we're picking 12 or  
7 13 or 14. We're picking seven people.

8 MR. FOOTE: I would just like to get the fresh  
9 ones right now.

10 THE COURT: Well, the problem now is we'd  
11 start up, it would be like in the middle. You know  
12 what I mean?

13 MR. ROSARIO: Well, there's obvious  
14 challenges.

15 THE COURT: There's a number of challenges.

16 MR. FOOTE: So I guess at that point if those  
17 people start talking again, then --

18 THE COURT: I think what you need to do is, as  
19 you saw what I've done -- I mean it's up to you how  
20 you want to handle it, but as you've seen, do you  
21 still have those issues before?

22 I mean like the young man whose friend died,  
23 who got killed three weeks ago by a drunk driver,  
24 obviously after that first part, I just said, sir,  
25 I know you have that other issue. The same is true



1 for Ms. Santoro and Ms. Branstutter, they've got  
2 these issues, they haven't changed, they still feel  
3 very strongly.

4 So, you know, we can kind of move through  
5 those people a little quicker, unless both sides  
6 obviously have a fair shot at rehabilitating any of  
7 these folks, I mean that's up to you-all.

8 MR. FOOTE: I'll follow your lead.

9 THE COURT: All right. Here, let me give you  
10 these before I forget. This is the ruling I made  
11 as far as denying your motion. I just did a  
12 written order. So it's just been filed.

13 MR. FOOTE: Thank you. On the tampering?

14 THE COURT: Yes, on the tampering.

15 MR. FOOTE: Okay. Thank you.

16 OPEN COURT:

17 THE COURT: All right. One other thing I  
18 neglected to cover. Mr. Dang, you approached  
19 Deputy Flanagan during one of the breaks and said  
20 you had some difficulty understanding everything  
21 that was going on; is that correct?

22 PROSPECTIVE JUROR DANG: Yes, sir.

23 THE COURT: You indicated -- and you can  
24 certainly correct me if I'm wrong -- that you had  
25 some difficulty with the English language; is that

1 correct?

2 PROSPECTIVE JUROR DANG: Correct.

3 THE COURT: Okay. So of all the things we've  
4 been talking about, you have not understood all of  
5 them?

6 PROSPECTIVE JUROR DANG: No, I do understand  
7 some, but some of them I really don't understand  
8 for sure.

9 THE COURT: Okay. So I guess that's where I  
10 kind of leave it to you. Do you feel comfortable  
11 enough with your understanding the English language  
12 to serve as a juror on this case or that you do not  
13 feel comfortable? Because like I said, I know you  
14 approached the deputy about that.

15 PROSPECTIVE JUROR DANG: Yes, I do not feel  
16 comfortable in a jury because my English has some  
17 trouble. I am not for sure I think I can be in a  
18 jury.

19 THE COURT: All right. So you do not feel  
20 comfortable?

21 PROSPECTIVE JUROR DANG: Right.

22 THE COURT: All right. Thank you very much,  
23 sir. And I'm not sure if the lawyers will follow  
24 up with that or not.

25 Okay. Mr. Rosario, you may inquire.

1 MR. ROSARIO: Thank you, Judge.

2 Good afternoon everyone. Fortunately we all  
3 can't all have the good chairs, but the ones of you  
4 that get picked to be on the jury get to sit in  
5 these nice plush ones that we keep in here for  
6 nobody right now.

7 Wow, in my 18 years of doing this, I have  
8 never seen this many people have this many issues  
9 going into a trial. Okay. And I just want to  
10 address that right up front.

11 We all understand that it's our civic duty to  
12 be here today, right?

13 PROSPECTIVE JURY PANEL: Yes.

14 MR. ROSARIO: And we all understand that the  
15 State has got a right to a fair trial and the  
16 defendant has got a right to a fair trial, right?

17 And when you come through those doors over  
18 there, did anyone take leave of their common sense?  
19 Anybody?

20 PROSPECTIVE JURY PANEL: (Indicating  
21 negatively.)

22 MR. ROSARIO: All right. You all are supposed  
23 to keep your common sense and you're supposed to  
24 apply that to what you hear in here. Okay?

25 Now, there have been many tragedies and there

1 are also people that have many issues that have to  
2 be addressed this week. Also of very much  
3 importance is this trial has to be tried this week.

4 All right. We really do need to have seven  
5 impartial people get up there, listen to the facts  
6 that come from that witness stand, any exhibits  
7 that are placed in evidence, and apply the law.  
8 Does everybody understand that?

9 PROSPECTIVE JURY PANEL: Yes.

10 MR. ROSARIO: Now, this will be a week-long  
11 trial. Okay. And I believe it's, let's see, the  
12 second row, Mr. Lamb. Was that you?

13 PROSPECTIVE JUROR LAMB: I'm Ms. Lamb.

14 MR. ROSARIO: You're Ms. Lamb. I'm sorry.  
15 Mr. Plumb.

16 PROSPECTIVE JUROR PLUMB: Plumb, yes.

17 MR. ROSARIO: Mr. Plumb, you were mentioning  
18 you have a crew that you have to run and you'll be  
19 nervous that being here and focusing on this trial  
20 and also having your crew out.

21 PROSPECTIVE JUROR PLUMB: Yeah, you've got  
22 that right.

23 MR. ROSARIO: Real quick. Let me make another  
24 announcement. See this lady over here, she's  
25 taking everything down in a language that I still

1 haven't figured out. Okay. She can catch every  
2 word I'm saying and go as fast as I possibly can  
3 go. Unfortunately she can't hear everything. So  
4 when you answer my questions, can you speak up in a  
5 nice loud voice, okay?

6 Mr. Plumb, what type of work do you do?

7 PROSPECTIVE JUROR PLUMB: We install chemical  
8 floors, chemical type floors.

9 MR. ROSARIO: Are you a concrete guy?

10 PROSPECTIVE JUROR PLUMB: Garage floors and  
11 commercial floors.

12 MR. ROSARIO: Okay. I've seen advertisements  
13 for that and it makes the floor really hard and  
14 clean and pretty.

15 PROSPECTIVE JUROR PLUMB: Yes.

16 MR. ROSARIO: But you said that you could  
17 probably do that, you could probably supervise that  
18 or maintain that by telephone.

19 PROSPECTIVE JUROR PLUMB: Well, no, we really  
20 can't do installs without me. So all they can do  
21 is stuff other than install. They can do some  
22 things but not the whole thing.

23 MR. ROSARIO: And Mr. Coulter, you relayed you  
24 have a similar issue?

25 PROSPECTIVE JUROR COULTER: Yes, sir. I'm a

1 roofing contractor, and I do a lot of work property  
2 management companies here in Pasco. One of the  
3 reasons they hire me is because I'm on site with my  
4 crew. That's why they're not working today.

5 MR. ROSARIO: Well, with the economy the way  
6 it is, you know, I can't force anyone to think  
7 anything other than what they're going to think.  
8 The reality of it is we need a fair and balanced  
9 jury, fair and impartial.

10 How many people, when you heard that this was  
11 a DUI manslaughter said, oh, God, I don't want to  
12 be here? A couple of people. All you people who  
13 have had these personal tragedies. Okay.

14 How many people here, when you came through  
15 that door, had the mindset, well, I'm going to  
16 follow the law? Everybody? If I'm picked on this  
17 jury, whether the facts are good or whether the  
18 facts are bad, I'm going to follow the law? Does  
19 everybody agree with that?

20 PROSPECTIVE JURY PANEL: Yes.

21 MR. ROSARIO: Is there anyone that says, No,  
22 I'm not going to follow the law? No? Okay. You  
23 know, this is the dumbest case I ever heard of, I'm  
24 not following the law. Yeah, the State proved it,  
25 but I don't think that's right, anyone think

1 they're going to do that?

2 PROSPECTIVE JURY PANEL: No.

3 MR. ROSARIO: Or you know something, I'm so  
4 against alcohol, I don't care what the law is, the  
5 State didn't prove it, I'm still going to find that  
6 person guilty. Anybody?

7 PROSPECTIVE JUROR PALMER: I don't know.

8 MR. ROSARIO: You raised your hand earlier. I  
9 want to address that. You are Ms. Palmer?

10 PROSPECTIVE JUROR PALMER: Palmer, yeah.

11 MR. ROSARIO: Ms. Palmer, do you understand  
12 that the Constitution was built by a bunch of men  
13 way back in the 1700s?

14 PROSPECTIVE JUROR PALMER: I understand that.

15 MR. ROSARIO: And that Constitution has worked  
16 for over 200 years.

17 PROSPECTIVE JUROR PALMER: I understand.

18 MR. ROSARIO: And we all have our life  
19 experiences. We all have experiences that make us  
20 feel one way or the other, but in the end, when it  
21 really comes down to it, all you're going to have  
22 to do in this case is look to me to see whether I  
23 proved this case beyond and to the exclusion of a  
24 reasonable doubt.

25 The facts will be placed in front of you, the

1 Judge will give you the law, and it's a simple  
2 matter of applying the facts to the law and coming  
3 back with a verdict that is appropriate. Do you  
4 understand that?

5 PROSPECTIVE JUROR PALMER: I understand, sir.  
6 But I understand there was a killing, right? There  
7 was a death?

8 MR. ROSARIO: Two people died.

9 PROSPECTIVE JUROR PALMER: Two people died,  
10 and the guy was drunk and he was driving?

11 MR. ROSARIO: Well, that's one of the things,  
12 ma'am, you can't prejudge anything yet at this  
13 point.

14 How many people, based upon right now, upon  
15 the facts that you've heard, does everyone  
16 understand the concept not guilty? That it has to  
17 be proven beyond a reasonable doubt?

18 Right now you have no facts right now  
19 whatsoever, none. If you were to vote right now,  
20 it would be for not guilty, right?

21 PROSPECTIVE JURY PANEL: Right.

22 MR. ROSARIO: Does everybody understand that?  
23 Even though you have hard feelings for it, right  
24 now you've heard no facts. Your vote would have to  
25 be for not guilty, right?



1 PROSPECTIVE JUROR PALMER: I would have to.

2 MR. ROSARIO: Right. That's the law.

3 PROSPECTIVE JUROR AMAR: If we've been given  
4 no facts, why would we have to vote?

5 MR. ROSARIO: Well, true. If there are no  
6 facts, there's no reason to be here. But if we go  
7 into a trial and I don't prove the facts, you vote  
8 not guilty. Does everybody understand that?

9 PROSPECTIVE JUROR PALMER: But there is a  
10 death.

11 MR. ROSARIO: Those are facts that will come.  
12 That's not something we're addressing right now.  
13 Okay. The simple reality of it is, can you take  
14 those hard feelings you have towards your son and  
15 put them aside?

16 PROSPECTIVE JUROR PALMER: I don't know.

17 MR. ROSARIO: Let's talk about this level  
18 playing field. We're going to have jurors sitting  
19 over here who are going to listen to the facts in  
20 the case. Okay. We don't want anyone that is  
21 biased towards the State. Who is going to do, hey,  
22 Mr. Rosario raised his hand, so, therefore, he's  
23 guilty. And we don't want anyone prejudiced  
24 against the State. Oh, Mr. Rosario prosecuted my  
25 cousin, so, therefore, I'm not going to vote for

1 him.

2 We don't want that. We don't want either one  
3 of those extremes. Does everybody understand that?

4 Ms. Branstutter, your name is very familiar to  
5 me. Do you have a family member by the name of  
6 Travis?

7 PROSPECTIVE JUROR BRANSTUTTER: No.

8 MR. ROSARIO: I prosecuted a person by the  
9 name of Travis Branstutter for DUI manslaughter.

10 PROSPECTIVE JUROR BRANSTUTTER: No.

11 MR. ROSARIO: Would you understand that it  
12 might be inappropriate for you to be on a jury if I  
13 prosecuted your family member?

14 PROSPECTIVE JUROR BRANSTUTTER: Yes.

15 MR. ROSARIO: Real quick, looking at me and  
16 listening to me talk, have any family members been  
17 prosecuted by me?

18 PROSPECTIVE JUROR LIGHTFOOT: I believe so.

19 It's a different last name. Jordan Maniez?

20 MR. ROSARIO: Yes.

21 PROSPECTIVE JUROR LIGHTFOOT: My sister. My  
22 brother was Robbie.

23 MR. ROSARIO: Is that going to affect you're  
24 ability to be fair and impartial?

25 PROSPECTIVE JUROR LIGHTFOOT: Yeah. Probably.

1 MR. ROSARIO: Okay. That's fair.

2 Does everyone agree that that level playing  
3 field applies to both sides? Everybody?

4 PROSPECTIVE JURY PANEL: (No response.)

5 MR. ROSARIO: Does anybody not agree with  
6 that? Does anyone think, no, the State should  
7 automatically have a one-step lead on them when  
8 they take off on this race? Anybody?

9 PROSPECTIVE JURY PANEL: (No response.)

10 MR. ROSARIO: Does anything think the Defense  
11 should have a one-step lead on the State before we  
12 take off on this race? Anyone?

13 PROSPECTIVE JURY PANEL: (No response.)

14 MR. ROSARIO: Television shows, how many  
15 people watch shows like CSI? Law and Order?

16 PROSPECTIVE JURY PANEL: (Indicating.)

17 MR. ROSARIO: Does everybody understand that's  
18 television, it makes good television, but this  
19 could be the most boring experience you've ever  
20 had? Does everybody understand that?

21 PROSPECTIVE JURY PANEL: Yes.

22 MR. ROSARIO: I remember in a recent case on  
23 CSI they had a dead person, and they went and they  
24 were able to lift the fingerprint off of the eyelid  
25 or the iris of the victim. Does everyone

1 understand that that's really not what happens?  
2 Everybody?

3 PROSPECTIVE JURY PANEL: (Indicating.)

4 MR. ROSARIO: Does anybody think that CSI is a  
5 hundred percent definitely what every police agency  
6 in the United States should or does run that way?  
7 Does everybody think that?

8 PROSPECTIVE JURY PANEL: (Indicating  
9 negatively.)

10 MR. ROSARIO: Now, is anyone going to have any  
11 unrealistic expectations of me in proving a case  
12 like CSI or Matlock? Matlock is always great. He  
13 sits there in his tan suit and, you know, does all  
14 different kinds of things that makes my head spin  
15 because evidentially it's completely illegal, but  
16 it was a good show. Is anybody going to hold that  
17 standard?

18 PROSPECTIVE JURY PANEL: (Indicating  
19 negatively.)

20 MR. ROSARIO: How many people here can judge a  
21 person's credibility? Anybody? Does anybody feel  
22 they might have difficulty judging somebody's  
23 credibility?

24 The Judge is going to read to you a jury  
25 instruction -- it's kind of a long one -- of things

1 you can consider as to a person's credibility. Did  
2 the witness see and hear the things about which  
3 they testified? Did they seem to have an accurate  
4 memory? Were they honest and straightforward in  
5 answering the attorneys' questions? I kind of  
6 distill that down to what I call a yardstick of  
7 credibility.

8 How many people have been to Busch Gardens?

9 PROSPECTIVE JURY PANEL: (Indicating.)

10 MR. ROSARIO: How many people have been to  
11 Disney?

12 PROSPECTIVE JURY PANEL: (Indicating.)

13 MR. ROSARIO: How many have seen that sign  
14 that says, "You must be this tall to ride this  
15 ride"?

16 PROSPECTIVE JURY PANEL: (Indicating.)

17 MR. ROSARIO: Everybody? Has anybody not seen  
18 that?

19 PROSPECTIVE JURY PANEL: (Indicating.)

20 MR. ROSARIO: It's the same concept. When  
21 somebody gets up there and takes the stand, you see  
22 whether they measure up, and you have your own  
23 personal yardstick. This person measures up,  
24 therefore, I can accept everything that they say.  
25 This person is close, so I can accept some of but

1 not all. And this person doesn't measure up, so I  
2 don't have to accept any of their testimony. Does  
3 everybody understand that?

4 PROSPECTIVE JURY PANEL: (Indicating.)

5 MR. ROSARIO: The media, television has made  
6 it so complicated to prosecute cases, because  
7 jurors see so many things, they don't know what  
8 it's really like when you get to be in this jury  
9 and you start listening to what comes from that  
10 witness stand and apply the law that the Judge  
11 gives you.

12 And I spend a lot of time during voir dire,  
13 which means to speak the truth, it's an old  
14 expression in jury selection, to make sure that  
15 we're all on the same page.

16 Does anyone have any expectations that  
17 somebody is going to come walking through that back  
18 door and say, oh, Your Honor, I did it? Because  
19 that always happened -- I don't remember which show  
20 that was. Or L.A. Law where they all came in with  
21 their really high-priced suits and did all kinds of  
22 things, wearing gorilla suits and stuff like that.

23 I'm trying to make sure that nobody has any  
24 unreal expectations from watching television. What  
25 you're going to get is what you're seeing right

1 now. What you see is what you're getting. Is  
2 everybody okay with that?

3 PROSPECTIVE JURY PANEL: Yes.

4 MR. ROSARIO: Now, during the course of the  
5 trial there's going to be objections. Everyone has  
6 seen that on television where the defense attorney  
7 stands up or the prosecutor stands up, objection,  
8 Your Honor, this big slam and this big dramatic  
9 moment. Does everybody understand that that might  
10 not happen? It may just be objection, hearsay,  
11 Your Honor. It might be something as simple as  
12 that.

13 If an objection is sustained, do you all  
14 understand that you're not going to get to hear the  
15 answer that the witness might have given? You're  
16 not even supposed to speculate as to what the  
17 witness might have said. Does everyone understand  
18 that?

19 And if an objection is overruled, then you're  
20 going to get the chance to actually hear the  
21 witness testify to the answer to the question.  
22 Does everybody understand that?

23 PROSPECTIVE JURY PANEL: (No response.)

24 MR. ROSARIO: Now, we've heard from many of  
25 you as far as DUI and alcohol-related cases and how

1 you feel about it. The nature of this charge is  
2 very serious. I don't want to minimize it, and,  
3 you know, we've had some laughs here, but it's  
4 always very difficult to find seven jurors that  
5 will sit and listen to the facts and apply the law  
6 to them because we all have our personal  
7 experiences.

8 We have friends that were killed in DUI  
9 crashes, we have family members that were killed in  
10 DUI crashes, or were the DUI person and killed  
11 someone else, and we all feel those stages of  
12 guilt, remorse and grief. Does everybody  
13 understand that?

14 PROSPECTIVE JURY PANEL: (No response.)

15 MR. ROSARIO: But it's also necessary that we  
16 have juries that can take their feelings, put them  
17 aside, apply the facts to the law, and come to a  
18 verdict that is just and speaks the truth. Does  
19 everybody understand that?

20 PROSPECTIVE JURY PANEL: (Indicating.)

21 MR. ROSARIO: And because of the nature of  
22 this case, many of you have spoken up and said, you  
23 know, I really don't feel comfortable with it. I  
24 don't think I can be fair. And I'm at this point  
25 asking you, of the people who said that, all right,



1 is there anyone, after now listening to me a little  
2 bit, is saying, you know, that one issue was a long  
3 time ago, I can put that aside, I can be fair and  
4 impartial? Is there anyone?

5 Mr. Plumb?

6 PROSPECTIVE JUROR PLUMB: Yes. I was wavering  
7 earlier, but I know that I can do that.

8 MR. ROSARIO: You know you can be fair and  
9 apply the facts to the law?

10 PROSPECTIVE JUROR PLUMB: Yes.

11 MR. ROSARIO: Thank you. See, that is jury  
12 instruction at its finest where people actually  
13 speak the truth and they speak up, after hearing  
14 more. Because what happens is, when we come in, we  
15 immediately start saying to ourselves, whoa, okay.

16 Let me back up with a little bit of the joke.  
17 How many people, when you saw your jury summons,  
18 went, oh, great, I get to go to court? How many  
19 people?

20 PROSPECTIVE JURY PANEL: (Indicating.)

21 MR. ROSARIO: I joke about it to a certain  
22 degree, but if you think about it, from the very,  
23 very minute that you get that jury summons your  
24 brain is thinking, I don't want to go there, I'm  
25 wasting a day of my life, a day of work, you know,

1 I have my kids I've got to take care of. From the  
2 very beginning the deck is stacked against me to  
3 try to get a jury. Does everybody understand that?

4 PROSPECTIVE JURY PANEL: (Indicating.)

5 MR. ROSARIO: And what we're looking for are  
6 those people who, you know, you may have had some  
7 harsh experiences in the past, but to be able just  
8 to say, okay, look, this is my civic duty, I can  
9 set that aside, I can be fair and impartial, I know  
10 I can.

11 Yes, it's going to be difficult for you  
12 because if you've been here all week and you have  
13 to listen to that Rosario guy blabbing on for all  
14 day, but, you know, this is what needs to be done.  
15 Does everyone understand what I'm trying to get at?

16 PROSPECTIVE JURY PANEL: (Indicating.)

17 MR. ROSARIO: And the Judge discussed with you  
18 beyond a shadow of a doubt, and that's a huge  
19 standard. No one can get past a shadow of a doubt.  
20 Does everybody understand that it's got to be a  
21 reasonable doubt?

22 Now, the Judge is going to give you a jury  
23 instruction on that; but it's a reasonable doubt.  
24 Some television shows again, possible doubt,  
25 speculative doubt, imaginary doubt. It's actually

1 a reasonable doubt. Does everybody understand  
2 that? Does anyone have any problem with that?  
3 Anybody at all?

4 PROSPECTIVE JURY PANEL: (No response.)

5 MR. ROSARIO: Does anybody know what I'm  
6 talking about?

7 PROSPECTIVE JURY PANEL: (Indicating.)

8 MR. ROSARIO: Now, several of you mentioned  
9 that you've been on a jury before. Let me see a  
10 raise of hands of who's been on a jury before.

11 PROSPECTIVE JUROR NIGELS: (Indicating.)

12 MR. ROSARIO: On the second row, that's  
13 Mr. Nigels?

14 PROSPECTIVE JUROR NIGELS: Yes.

15 MR. ROSARIO: And Mr. Nigels, were you able to  
16 reach a verdict or did that case settle?

17 PROSPECTIVE JUROR NIGELS: Yes.

18 MR. ROSARIO: And the Judge asked you whether  
19 that was a good experience, a bad experience or a  
20 neutral experience.

21 PROSPECTIVE JUROR NIGELS: I said positive.

22 MR. ROSARIO: After you get to hear all the  
23 facts and the law on the case, you-all are going to  
24 funnel back through that door back there in this  
25 tiny little room and you're going to discuss

1           whether the case has been proven beyond and to the  
2           exclusion of a reasonable doubt. Does everybody  
3           understand that?

4                   PROSPECTIVE JURY PANEL: (Indicating.)

5           MR. ROSARIO: And you're going to discuss what  
6           you heard and the evidence and you're going to  
7           apply the facts to the law. Does everybody  
8           understand that?

9                   PROSPECTIVE JURY PANEL: (Indicating.)

10          MR. ROSARIO: Now, funny things happen back in  
11          jury rooms. You hear yelling, you hear screaming,  
12          you hear laughing, you hear silence. Any number of  
13          things can come out of there.

14                 The last thing we want to have is somebody who  
15          was on a jury in the past who had a bad experience  
16          and we're just going to stick them back in there  
17          for another experience. We don't want to do that  
18          either. Did anyone have a bad experience?

19                   PROSPECTIVE JURY PANEL: (Indicating  
20          negatively.)

21          MR. ROSARIO: I think everyone said neutral or  
22          positive.

23                 Anyone here who was a foreman of the jury?  
24          When you go back there, you're going to elect a  
25          foreperson. It could be a man or woman. That

1 person is going to be responsible for taking the  
2 votes of everyone, making sure you come to a  
3 unanimous conclusion or decision, and then you'll  
4 be the one responsible for signing the verdict  
5 form. Does everybody understand that for whoever  
6 the foreperson is?

7 PROSPECTIVE JURY PANEL: (Indicating.)

8 MR. ROSARIO: Has anyone ever been a  
9 foreperson?

10 PROSPECTIVE JURY PANEL: (Indicating  
11 negatively.)

12 MR. ROSARIO: Now, I believe it was  
13 Mr. Lightfoot, you stated you had friends that are  
14 in law enforcement?

15 PROSPECTIVE JUROR LIGHTFOOT: Yeah.

16 MR. ROSARIO: Do they ever discuss their work  
17 with you?

18 PROSPECTIVE JUROR LIGHTFOOT: Yes.

19 MR. ROSARIO: And do you think based upon  
20 that, you can be fair and impartial?

21 PROSPECTIVE JUROR LIGHTFOOT: That has nothing  
22 to do with this case.

23 MR. ROSARIO: Okay. Is there anyone else  
24 who's got friends or family members who are in law  
25 enforcement where they've discussed what they do

1 for a living with you, you know, particular cases  
2 or things like that that sticks in your head, and  
3 you say, hey, you know, not all police officers are  
4 good or all police officers are great? Anybody?

5 PROSPECTIVE JUROR NICHOLS: (Indicating.)

6 MR. ROSARIO: Mr. Nichols.

7 PROSPECTIVE JUROR NICHOLS: My sister is an  
8 ex-Hillsborough County sheriff. She married her  
9 boss, which was a lieutenant, that ended up being a  
10 dirty cop, and got them both fired. They got  
11 divorced and everything since then. But, you know,  
12 she used to always call me. She still calls me.  
13 She's a private investigator now.

14 MR. ROSARIO: Well, that's why I asked you a  
15 little bit earlier about judging credibility. Does  
16 everybody understand that police officers have good  
17 days and bad days? Everybody?

18 PROSPECTIVE JURY PANEL: (Indicating.)

19 MR. ROSARIO: Does everyone have an  
20 expectation that a police officer is going to be  
21 like a vacuum and pick up every little piece of  
22 evidence like Sherlock Holmes? Or do you think  
23 that, you know, they may miss some things here and  
24 there because there's a lot to do?

25 PROSPECTIVE JURY PANEL: (Indicating.)

1 MR. ROSARIO: Or you may have a police officer  
2 who is dirty, and you'd be able to judge his  
3 credibility. Does anybody think they have that  
4 experience? I know, Mr. Nichols, you stated you  
5 might be able to tell that.

6 All witnesses, no matter who they are, if  
7 you're picked on this jury, let's treat them all  
8 equally, correct?

9 PROSPECTIVE JURY PANEL: (Indicating.)

10 MR. ROSARIO: You're going to judge their  
11 credibility, put that yardstick of credibility up  
12 on them, and then you're going to come back and  
13 say, I can believe this guy or I can't believe this  
14 guy, or I can believe this girl or I can't believe  
15 this girl. Is everybody okay with that? Does  
16 anybody have problems with that?

17 PROSPECTIVE JURY PANEL: (No response.)

18 MR. ROSARIO: Who here has had a traffic  
19 ticket?

20 PROSPECTIVE JURY PANEL: (Indicating.)

21 MR. ROSARIO: How many people here have fought  
22 that traffic ticket?

23 PROSPECTIVE JUROR NICHOLS: (Indicating.)

24 MR. ROSARIO: Mr. Nichols. Did you have a  
25 positive result?

1 PROSPECTIVE JUROR NICHOLS: Actually, no.  
2 Well, I do a lot of off-dirting. I got caught in  
3 the woods with a suspended a license driving a  
4 truck across the middle of the lake.

5 The officer gave me a trespassing warning and  
6 a ticket for driving on a suspended with knowledge,  
7 and told me to drive off knowing that I had been  
8 drinking, too.

9 MR. ROSARIO: Oh, my.

10 PROSPECTIVE JUROR NICHOLS: Yeah. And he told  
11 me to drive off the property. So when I came to  
12 court, and everything, to appear for the driving on  
13 suspended with knowledge, I get to court and the  
14 judge does the whole plea.

15 I pleaded not guilty, and I explained to him  
16 what happened and everything, and he still --  
17 because at that time I had got my license back by  
18 the time I went to court, and he suspended my  
19 license for six months. That was my only offense  
20 on a suspended license.

21 MR. ROSARIO: Are you going to blame Judge  
22 Crane for that because he's a judge too?

23 PROSPECTIVE JUROR NICHOLS: No. I mean it was  
24 suspended for child support, and then I got it  
25 back, and then he suspends it because I got caught



1 driving on a suspended in the woods on private  
2 property.

3 MR. ROSARIO: Has anyone else taken a traffic  
4 ticket to court?

5 PROSPECTIVE JUROR ELLETT: (Indicating.)

6 MR. ROSARIO: Mr. Ellett.

7 PROSPECTIVE JUROR ELLETT: Yes. It was a  
8 non-valid driver's license, and I beat it by  
9 getting a driver's license.

10 MR. ROSARIO: So the judge was lenient with  
11 you and dismissed it because you got a license  
12 afterwards?

13 PROSPECTIVE JUROR ELLETT: Well, I was in the  
14 service and I was in Colorado. I had a Florida  
15 license that expired and I got a Colorado license.

16 MR. ROSARIO: Okay. Has anyone here ever been  
17 stopped because the police suspected that you might  
18 be DUI? Anybody?

19 PROSPECTIVE JUROR NICHOLS: (Indicating.)

20 MR. ROSARIO: Mr. Nichols, that's fine.

21 PROSPECTIVE JUROR HALL: (Indicating.)

22 MR. ROSARIO: Ms. Hall, did you raise your  
23 hand?

24 PROSPECTIVE JUROR HALL: (Indicating.)

25 MR. ROSARIO: Were you given field sobriety

1 tasks?

2 PROSPECTIVE JUROR HALL: Yeah.

3 MR. ROSARIO: Do you feel you were treated  
4 fairly?

5 PROSPECTIVE JUROR HALL: Yeah. Well, I mean  
6 he obviously pulled me over because I was a young  
7 kid in a beat-up car. So that's hard to say,  
8 because profiling is useful, I mean there's reasons  
9 behind it, but at the same time just because I'm a  
10 young kid that can't afford a Lexus doesn't mean  
11 that I'm doing anything wrong.

12 MR. ROSARIO: Did you get a DUI out of that?

13 PROSPECTIVE JUROR HALL: No.

14 MR. ROSARIO: So they pulled you over, they  
15 thought you might have been drinking alcoholic  
16 beverages, they did field sobriety tasks on you,  
17 and they let you go?

18 PROSPECTIVE JUROR HALL: (Indicating.)

19 MR. ROSARIO: Is that a yes?

20 PROSPECTIVE JUROR HALL: Yes.

21 THE COURT: She has to take that down.

22 Has anyone else that's been stopped and  
23 suspected of DUI?

24 PROSPECTIVE JUROR ELLETT: (Indicating.)

25 PROSPECTIVE JUROR SCHWANKE: (Indicating.)

1 MR. ROSARIO: Mr. Ellett?

2 PROSPECTIVE JUROR ELLETT: Yes. I was driving  
3 a cab, and I pulled out of the parking lot, and the  
4 cop stopped me.

5 MR. ROSARIO: Okay. Were you given field  
6 sobriety private tasks?

7 PROSPECTIVE JUROR ELLETT: No.

8 MR. ROSARIO: Were you treated fairly by the  
9 police officer afterwards?

10 PROSPECTIVE JUROR ELLETT: Well, as soon as he  
11 realized I was a cab and I was probably looking at  
12 my dispatch, he let me go. Because I didn't even  
13 cross the line.

14 MR. ROSARIO: Okay.

15 PROSPECTIVE JUROR ELLETT: I just weaved  
16 within the lane.

17 MR. ROSARIO: Mr. Schwanke, you raised your  
18 hand?

19 PROSPECTIVE JUROR SCHWANKE: Yes. I've been  
20 pulled over twice, given field sobriety tests twice  
21 but never was arrested, charged or anything.

22 MR. ROSARIO: Okay. All right. Do you feel  
23 as if you were treated fairly by the police?

24 PROSPECTIVE JUROR SCHWANKE: Yes.

25 THE COURT: Someone in the second row raised

1 their hand. Anyone in the second row?

2 PROSPECTIVE JUROR SHEALY: (Indicating.)

3 MR. ROSARIO: Third row. I'm sorry.

4 Ms. Shealy?

5 PROSPECTIVE JUROR SHEALY: I got pulled over  
6 for a DUI. I'd been out to a party with some  
7 friends, and I was the one driving, and somebody  
8 knocked over a beer on the floorboard, but I wasn't  
9 drinking.

10 MR. ROSARIO: Okay.

11 PROSPECTIVE JUROR SHEALY: I was the  
12 designated driver, and they made me do a blood test  
13 and let me go.

14 MR. ROSARIO: And they let you go?

15 PROSPECTIVE JUROR SHEALY: Yes.

16 MR. ROSARIO: Anyone else on this side that's  
17 been stopped?

18 PROSPECTIVE JURY PANEL: (No response.)

19 MR. ROSARIO: Anyone here have a job or a  
20 connection that's in connection with the liquor  
21 industry?

22 PROSPECTIVE JUROR HALL: (Indicating.)

23 MR. ROSARIO: Ms. Hall, you worked over at  
24 that club?

25 PROSPECTIVE JUROR HALL: Which? I worked at a

1 few.

2 MR. ROSARIO: You worked at a few?

3 PROSPECTIVE JUROR HALL: Yes.

4 MR. ROSARIO: Okay. I ask this question a lot  
5 of times because years back I had a bartender or  
6 someone like that, and it could be a simple DUI  
7 case or something related like that, and the  
8 bartenders would feel as if they'd have to justify  
9 or some of the people like the liquor distributors  
10 have to justify, I'm going to find him not guilty  
11 because that's my industry. You know, it's  
12 inappropriate that they did that, but that has  
13 happened.

14 Do you feel as if because you had some type of  
15 ties to the liquor industry, that that would affect  
16 your ability to --

17 PROSPECTIVE JUROR HALL: No, absolutely not.  
18 No, no, if you're drinking, you should not be  
19 behind a vehicle. That's the bottom line. I mean  
20 it's right there on the bottle, "Do not operate a  
21 motor vehicle," et cetera.

22 MR. ROSARIO: Well, again, what I'm looking  
23 for are people that are tilted one way or the other  
24 as far as that scale.

25 PROSPECTIVE JUROR HALL: No, I'm one way, all

1 the way to the other side.

2 MR. ROSARIO: Well, if there's no evidence of  
3 any alcohol in this case, you could be fair and  
4 impartial, can't you?

5 PROSPECTIVE JUROR HALL: Well, DUI, what is  
6 that?

7 MR. ROSARIO: No alcohol, no drugs, something  
8 like that. If I don't prove that he was impaired  
9 by alcohol or drugs, the verdict is not guilty,  
10 correct?

11 PROSPECTIVE JUROR HALL: He still slaughtered  
12 two people.

13 MR. ROSARIO: The charge is DUI manslaughter.  
14 If I don't prove that he was under the influence of  
15 alcohol to the extent his normal faculties were  
16 impaired or under the influence of drugs, if I  
17 don't prove an element of the crime, your verdict  
18 should be not guilty, correct?

19 PROSPECTIVE JUROR HALL: Were they --

20 MR. ROSARIO: What you're doing is you're  
21 debating the facts. You know you're here for a DUI  
22 manslaughter. I'm saying theoretically what if I  
23 don't prove an element of the charge, your verdict  
24 would be not guilty, correct?

25 PROSPECTIVE JUROR HALL: Are these two people

1 still dead?

2 MR. ROSARIO: It doesn't matter. If I don't  
3 prove one element of the crime.

4 PROSPECTIVE JUROR HALL: The one element, yes,  
5 but what about the others?

6 MR. ROSARIO: You can't convict somebody if I  
7 don't prove all of them. Do you understand that?

8 PROSPECTIVE JUROR HALL: No.

9 MR. ROSARIO: Does everybody understand that?  
10 Let's say the crime is dropping this pen on the  
11 floor, that's the crime. Okay. And I come in and  
12 I prove that I had the pen in my hand, but I never  
13 dropped the pen on the floor. You can't find me  
14 guilty, right?

15 PROSPECTIVE JUROR HALL: Correct.

16 MR. ROSARIO: Same concept. However, if I do  
17 prove every element beyond and to the exclusion of  
18 a reasonable doubt, you all should come back with a  
19 verdict of?

20 PROSPECTIVE JURY PANEL: Guilty.

21 MR. ROSARIO: Guilty. Correct, everyone?

22 Does everyone here drive an automobile?

23 PROSPECTIVE JUROR SPRINGSTEEN: (Indicating.)

24 MR. ROSARIO: I'm sorry. In the front row I  
25 have Ms. Springsteen raising her hand.

1 PROSPECTIVE JUROR SPRINGSTEEN: Yes. In  
2 answer to your previous question, I volunteer as a  
3 bar manager at the VFW.

4 MR. ROSARIO: Okay. The Veterans of Foreign  
5 Wars.

6 PROSPECTIVE JUROR SPRINGSTEEN: Uh-huh.

7 MR. ROSARIO: The fact that you do that, is  
8 that going to give you any pressure to vote not  
9 guilty because you work with liquor?

10 PROSPECTIVE JUROR SPRINGSTEEN: (Indicating  
11 negatively.)

12 MR. ROSARIO: All right. Or pressure because  
13 you work with liquor, I should guilty?

14 PROSPECTIVE JUROR SPRINGSTEEN: I don't  
15 bartend there, I just do the books.

16 MR. ROSARIO: Does everyone here drive an  
17 automobile?

18 PROSPECTIVE JURY PANEL: Yes.

19 MR. ROSARIO: Does anyone not drive? How  
20 about we do the opposite. Is there anyone who is  
21 a nondriver?

22 PROSPECTIVE JURY PANEL: (No response)

23 MR. ROSARIO: Is everyone here a registered  
24 voter? Do we have anyone who is not a registered  
25 voter? Oh, I got a sheepish little smile over here



1 from Ms. Mirabile?

2 PROSPECTIVE JUROR MIRABILE: Yes.

3 MR. ROSARIO: You don't vote?

4 PROSPECTIVE JUROR MIRABILE: No. I just never  
5 have.

6 MR. ROSARIO: You don't like politicians or  
7 the politics of it?

8 PROSPECTIVE JUROR MIRABILE: If you want to  
9 know, I have to honestly say I never paid attention  
10 to it. So to turn around and pass judgment or to  
11 make an educational decision as to who I'm going to  
12 vote for when I don't know all the facts -- and I  
13 never did really pay attention to it until recent  
14 in the last year or so. I don't know, to vote for  
15 someone and I don't know why I'm voting for them, I  
16 don't think that's fair.

17 MR. ROSARIO: Well, let's apply that to being  
18 a juror. Let's say you're up here, are you going  
19 to focus on what comes from that witness stand and  
20 the evidence that's put in and apply the law to it?

21 PROSPECTIVE JUROR MIRABILE: Yeah.

22 MR. ROSARIO: It's a very similar concept as  
23 to voting. Anyone else here who doesn't vote?

24 PROSPECTIVE JUROR FREEMAN: (Indicating.)

25 MR. ROSARIO: All the way back in the third

1 row, Mr. Freeman; is that correct?

2 PROSPECTIVE JUROR FREEMAN: That's correct.

3 MR. ROSARIO: You don't vote, sir? Do you  
4 feel comfortable relating a reason why you don't  
5 vote?

6 PROSPECTIVE JUROR FREEMAN: I never have. I'm  
7 too old to start, I guess.

8 MR. ROSARIO: Do you feel as if the system is  
9 corrupt and my vote is not worth anything?

10 PROSPECTIVE JUROR FREEMAN: No. I feel that  
11 if I don't vote for anybody, I can't complain about  
12 it.

13 MR. ROSARIO: So you don't complain about any  
14 of the politicians right now?

15 PROSPECTIVE JUROR FREEMAN: No.

16 MR. ROSARIO: If you were to be picked as a  
17 juror on this case, do you feel as if you'll be  
18 able to come to a decision one way or the other?

19 PROSPECTIVE JUROR FREEMAN: Yes.

20 MR. ROSARIO: And apply your common sense?

21 PROSPECTIVE JUROR FREEMAN: Right.

22 MR. ROSARIO: Take the facts, apply the law,  
23 and come up with a verdict that speaks the truth,  
24 can you do that?

25 PROSPECTIVE JUROR FREEMAN: Yes.

1 MR. ROSARIO: So everyone said they drive  
2 automobiles; is that correct?

3 PROSPECTIVE JURY PANEL: (Indicating.)

4 MR. ROSARIO: We have no nondrivers, correct?

5 PROSPECTIVE JURY PANEL: (No response.)

6 MR. ROSARIO: How many people here drive late  
7 at night or have driven late at night?

8 PROSPECTIVE JURY PANEL: (Indicating.)

9 MR. ROSARIO: Is that everyone? How about if  
10 I turn it around. Who has never driven at  
11 1:00 o'clock in the morning?

12 PROSPECTIVE JUROR DILLARD: (Indicating.)

13 MR. ROSARIO: Ms. Dillard, you don't think  
14 you've ever driven at 1:00 o'clock in the morning?

15 PROSPECTIVE JUROR DILLARD: No. At 1:00  
16 o'clock in the morning I'm with my husband and he  
17 drives.

18 MR. ROSARIO: So you've been in a vehicle  
19 while somebody has been driving at 1:00 o'clock in  
20 the morning.

21 PROSPECTIVE JUROR DILLARD: Sleeping.

22 MR. ROSARIO: Of those people that drive late  
23 after having a day out there, how many people have  
24 gotten what I call the nods?

25 PROSPECTIVE JURY PANEL: (Indicating.)

1 MR. ROSARIO: Is that everyone? Anyone this  
2 morning coming to the courtroom, did anyone get the  
3 nods coming in and need their coffee?

4 PROSPECTIVE JURY PANEL: (No response.)

5 MR. ROSARIO: Did anyone not get the nods?  
6 Does anyone not understand what I'm talking about?

7 PROSPECTIVE JURY PANEL: (No response.)

8 MR. ROSARIO: So everyone understands the  
9 whole concept of the nods? That's such a legal  
10 term. Does anyone driving at night and get the  
11 nods ever drift within a lane or out of a lane  
12 while they're driving? Anybody?

13 PROSPECTIVE JUROR ELLETT: (Indicating.)

14 PROSPECTIVE JUROR SCHWANKE: (Indicating.)

15 PROSPECTIVE JUROR STEPHENSON: (Indicating.)

16 PROSPECTIVE JUROR FORTON: (Indicating.)

17 MR. ROSARIO: I've got a couple here. I've  
18 got Mr. Ellett, Mr. Schwanke, Mr. Stephenson,  
19 Mr. Forton. None of you people have ever drifted  
20 out of your own lane?

21 PROSPECTIVE JUROR SHEALY: Yeah, I ran off the  
22 road.

23 MR. ROSARIO: You ran off the road?

24 PROSPECTIVE JUROR SHEALY: And it scared me  
25 awake, though.

1 MR. ROSARIO: When you got the nods and you  
2 ran off the road, it scared you awake, right?

3 PROSPECTIVE JUROR SHEALY: Uh-huh.

4 MR. ROSARIO: Does anyone else have that  
5 similar situation?

6 PROSPECTIVE JUROR LIGHTFOOT: (Indicating.)

7 PROSPECTIVE JUROR NICHOLS: (Indicating.)

8 MR. ROSARIO: I got my two talkers over here,  
9 Mr. Nichols and Mr. Lightfoot. Anyone else run off  
10 the road a little bit?

11 PROSPECTIVE JURY PANEL: (No response.)

12 MR. ROSARIO: Has anyone here ever driven  
13 State Road 54, between Little Road and U.S. 19 late  
14 at night? Let's say 10:00 on?

15 PROSPECTIVE JURY PANEL: (Indicating.)

16 MR. ROSARIO: Everybody? Let me reverse it.  
17 Who has not driven State Road 54, between Little  
18 Road and U.S. 19 at nighttime?

19 PROSPECTIVE JUROR FREEMAN: (Indicating.)

20 PROSPECTIVE JUROR ALBERGO: (Indicating.)

21 MR. ROSARIO: Mr. Freeman, you've never driven  
22 State Road 54, down towards U.S. 19?

23 PROSPECTIVE JUROR FREEMAN: No.

24 MR. ROSARIO: Ms. Albergo, you either?

25 PROSPECTIVE JUROR ALBERGO: Not at night.

1 MR. ROSARIO: How about Old 54, from Little  
2 Road? Old 54 where it meets up to 54, how many  
3 people have driven that?

4 PROSPECTIVE JURY PANEL: (Indicating.)

5 MR. ROSARIO: How many people have not driven  
6 that?

7 PROSPECTIVE JUROR LAMB: (Indicating.)

8 MR. ROSARIO: That would be Ms. --

9 PROSPECTIVE JUROR LAMB: Lamb.

10 MR. ROSARIO: Ms. Lamb. That's right. You're  
11 right next to Mr. Plumb.

12 State Road 54, between Little Road and U.S.  
13 19, would everybody agree at nighttime sometimes  
14 there's some dark areas there?

15 PROSPECTIVE JURY PANEL: Yes.

16 MR. ROSARIO: Would everyone also agree there  
17 are also some lit areas?

18 PROSPECTIVE JURY PANEL: Yes.

19 MR. ROSARIO: Could somebody tell me one area  
20 that is well lit on 54 between Little Road and  
21 Grand?

22 PROSPECTIVE JUROR MIRABILE: By the Dairy  
23 Queen.

24 MR. ROSARIO: By the Dairy Queen, correct.  
25 That's at Rowan?

1 PROSPECTIVE JUROR MIRABILE: Yes.

2 MR. ROSARIO: How about down there next to  
3 Grand Boulevard?

4 PROSPECTIVE JUROR MIRABILE: Yes, the  
5 Winn-Dixie.

6 MR. ROSARIO: The Winn-Dixie, right.  
7 How about a little bit closer right down at  
8 U.S. 19, right as you get to U.S. 19?

9 PROSPECTIVE JUROR BRANSTUTTER: Yeah, it's  
10 dark.

11 PROSPECTIVE JUROR MIRABILE: Yeah, it's very  
12 dark.

13 MR. ROSARIO: How many people here frequent  
14 local bars or establishments like that? Get a soft  
15 drink maybe at Chili's on Friday or something like  
16 that?

17 PROSPECTIVE JUROR LEE: (Indicating.)

18 MR. ROSARIO: Ms. Lee, what bars do you  
19 usually go to?

20 PROSPECTIVE JUROR LEE: My husband and I go to  
21 a couple of local bars, because I live off 54.

22 MR. ROSARIO: Okay. So you probably go  
23 Buffalo Wild Wings, they have things there.

24 PROSPECTIVE JUROR LEE: Yes. Stuff like that.

25 MR. ROSARIO: How about down on Main Street up

1 in New Port Richey?

2 PROSPECTIVE JUROR LEE: No.

3 MR. ROSARIO: Is there anybody else that  
4 frequents local bars in the area?

5 PROSPECTIVE JUROR FORTON: (Indicating.)

6 MR. ROSARIO: Mr. Forton.

7 PROSPECTIVE JUROR FORTON: Bar/restaurant.

8 MR. ROSARIO: How about I speak about the bars  
9 off of Main Street, just off of Grand Boulevard.  
10 How many people have been to those bars?

11 PROSPECTIVE JUROR ELLETT: (Indicating.)

12 MR. ROSARIO: Mr. Ellett, what's the name of  
13 one of those bars?

14 PROSPECTIVE JUROR ELLETT: Well, it used to be  
15 a Wagon Wheel, but I forget what it is now.

16 MR. ROSARIO: Okay.

17 PROSPECTIVE JUROR FORTON: But I didn't really  
18 partake in their service, I was driving a cab.

19 PROSPECTIVE JUROR SCHWANKE: (Indicating.)

20 MR. ROSARIO: Okay. I can't get your name  
21 right. Can you pronounce it?

22 PROSPECTIVE JUROR SCHWANKE: Schwanke. The  
23 Reef.

24 MR. ROSARIO: The Reef.

25 PROSPECTIVE JUROR SCHWANKE: I think The



1 Boulevard or something. A couple of bars there.

2 MR. ROSARIO: Does anybody else go to any of  
3 the bars down near Main Street?

4 PROSPECTIVE JUROR NICHOLS: I don't know them  
5 by name. I've been in many of them down there.

6 PROSPECTIVE JUROR BRANSTUTTER: I live by  
7 them. There's the Reef, Fitzgerald, The Boulevard,  
8 and Downtown Lounge.

9 PROSPECTIVE JUROR DECHANT: The Village Pub.

10 PROSPECTIVE JUROR BRANSTUTTER: Yes.

11 MR. ROSARIO: One little problem is when we  
12 start doing that, I need you guys to announce who  
13 you are when you say something. That was Ms. --

14 PROSPECTIVE JUROR BRANSTUTTER: Branstutter.

15 MR. ROSARIO: And Mr. DeChant.

16 PROSPECTIVE JUROR DECHANT: DeChant.

17 MR. ROSARIO: Let me go on to another issue.  
18 How many people have driven down Grand Boulevard?

19 PROSPECTIVE JURY PANEL: (Indicating.)

20 MR. ROSARIO: Does everybody know where the  
21 hospital is there?

22 PROSPECTIVE JURY PANEL: (Indicating.)

23 MR. ROSARIO: Then you go down, you go past  
24 Trouble Creek, you go down to 54, and there's  
25 Club 54 there, and then if you keep going, you can

1 end up down even further towards Holiday. Has  
2 anybody driven Grand Boulevard?

3 PROSPECTIVE JUROR ALBERGO: (Indicating  
4 negatively.)

5 MR. ROSARIO: I've got a negative coming from  
6 Ms. Albergo. Where are you from, Ms. Albergo?

7 PROSPECTIVE JUROR ALBERGO: I live in Odessa.  
8 I come from that side.

9 MR. ROSARIO: Little Road, it's the one right  
10 out here in front of the courthouse. Down the way,  
11 just off of Old County Road 54, there's a shopping  
12 center. Does everybody know that shopping center?  
13 There's a Lifestyle which I think is in there now,  
14 all right, and there's a bar that sits there.

15 PROSPECTIVE JUROR JONES: Molly Malone's.

16 MR. ROSARIO: Molly Malone's. It used to be  
17 called Sevens. Does anyone ever frequent Sevens,  
18 the bar?

19 PROSPECTIVE JUROR JONES: I was there a couple  
20 of times.

21 MR. ROSARIO: I apologize. I'm fighting a  
22 postnasal drip here. May I take a sip of water.

23 Anyone here that does not drink alcoholic  
24 beverages? We have some hands up. Let me start  
25 the same way the Judge did and go around.

1 Ms. Rummel, do you feel comfortable relating  
2 the reason why you don't drink?

3 PROSPECTIVE JUROR REMMEL: My entire family  
4 are all alcoholics.

5 MR. ROSARIO: All alcoholics?

6 PROSPECTIVE JUROR REMMEL: Yes.

7 MR. ROSARIO: So you've seen people who were  
8 under the influence of alcoholic beverages?

9 PROSPECTIVE JUROR REMMEL: Yes.

10 MR. ROSARIO: Blood shot, glassy eyes,  
11 sometimes slurred speech. Are all drunks the same?

12 PROSPECTIVE JUROR REMMEL: No.

13 MR. ROSARIO: Some could actually stand  
14 completely still that are three sheets to the wind  
15 and others are falling down?

16 PROSPECTIVE JUROR REMMEL: Yes.

17 MR. ROSARIO: So you don't drink because of  
18 that?

19 PROSPECTIVE JUROR REMMEL: Right.

20 MR. ROSARIO: Who else raised their hand in  
21 that front row, anyone?

22 PROSPECTIVE JURY PANEL: (No response.)

23 PROSPECTIVE JUROR PALMER: (Indicating.)

24 MR. ROSARIO: In that second row, Ms. Palmer,  
25 your hand keeps coming up.

1 PROSPECTIVE JUROR PALMER: I don't. I choose  
2 not to. I don't like -- I have. I don't like the  
3 feeling that you get.

4 MR. ROSARIO: Right. I particularly hate the  
5 hangover the next day.

6 PROSPECTIVE JUROR PALMER: I don't like to be  
7 at that point that you don't know exactly what's  
8 going on. I choose not to.

9 MR. ROSARIO: Who else in that second row?

10 PROSPECTIVE JURY PANEL: (Indicating  
11 negatively.)

12 MR. ROSARIO: Everyone drinks alcoholic  
13 beverages in the second row. Okay. Everyone has  
14 Bud Light. Has anyone ever tried that new Miller  
15 64?

16 PROSPECTIVE JURY PANEL: (No response.)

17 MR. ROSARIO: The third row, who does not  
18 drink alcoholic beverages?

19 PROSPECTIVE JUROR AMAR: (Indicating.)

20 MR. ROSARIO: Dr. Amar?

21 PROSPECTIVE JUROR AMAR: Yes.

22 MR. ROSARIO: Do you want to relate why?

23 PROSPECTIVE JUROR AMAR: I don't drink. And I  
24 really strongly believe that, you know, I don't see  
25 any reason why people should drink to relax.

1 That's my own personal feelings.

2 MR. ROSARIO: Well, it's not against the  
3 law --

4 PROSPECTIVE JUROR AMAR: I understand.

5 MR. ROSARIO: -- to drink an alcoholic  
6 beverage.

7 PROSPECTIVE JUROR AMAR: Right.

8 MR. ROSARIO: And it's not against the law to  
9 drink an alcoholic beverage and drive an  
10 automobile, it's only against the law when you're  
11 under the influence of that alcoholic beverage to  
12 the extent that your normal faculties are impaired.  
13 Do you understand that?

14 PROSPECTIVE JUROR AMAR: Yes, I do. It's my  
15 personal feeling that one doesn't need to drink to  
16 relax.

17 MR. ROSARIO: Okay. Did I finish with that  
18 side?

19 PROSPECTIVE JURY PANEL: Yes.

20 MR. ROSARIO: On this side, how many people  
21 here do not drink alcoholic beverages? Let's start  
22 in the front row. That's going to be Ms. Dillard.  
23 Ms. Dillard, is the reason you don't drink what  
24 you've related before or is it some other reason?

25 PROSPECTIVE JUROR DILLARD: It's just that I

1 don't see any reason for drinking that makes a  
2 person do something that they really don't want to  
3 do.

4 MR. ROSARIO: Who else raised their hand?  
5 Ms. Griner.

6 PROSPECTIVE JUROR GRINER: I have no tolerance  
7 for it. It puts me to sleep.

8 MR. ROSARIO: Okay. Thus going back to the  
9 nods?

10 PROSPECTIVE JUROR GRINER: Yes.

11 MR. ROSARIO: Going to back to the next row  
12 back. Mr. Coulter, did you raise your hand?

13 PROSPECTIVE JUROR COULTER: Yes, sir.

14 MR. ROSARIO: Do you feel comfortable relating  
15 why?

16 PROSPECTIVE JUROR COULTER: Well, all the way  
17 back when I was in college, I was a bouncer, so I  
18 got to see the stupid side of it. To be in  
19 business, I've watched my men do stupid things.  
20 And then from a personal experience, my own family.

21 MR. ROSARIO: Okay. Ms. Santoro.

22 PROSPECTIVE JUROR SANTORO: Yes. I've always  
23 been a designated driver, and I don't have  
24 tolerance for people who do drive after they've  
25 been drinking.

1 MR. ROSARIO: Okay. Anyone else in that third  
2 row?

3 PROSPECTIVE JUROR DECHANT: (Indicating.)

4 MR. ROSARIO: Mr. DeChant.

5 PROSPECTIVE JUROR DECHANT: I need to be  
6 clear-headed, and alcohol tends to make that a  
7 little more difficult.

8 MR. ROSARIO: Mr. DeChant, I've come past you  
9 twice already. Do you have family over in the  
10 Wesley Chapel area, maybe a son that's a fireman?

11 PROSPECTIVE JUROR DECHANT: No. He has the  
12 same name as me.

13 MR. ROSARIO: Right.

14 PROSPECTIVE JUROR DECHANT: Every so often  
15 people ask me about that guy.

16 MR. ROSARIO: Well, and you didn't happen to  
17 have a brother that's very, very tall who worked in  
18 the State Attorney's Office, Mike DeChant?

19 PROSPECTIVE JUROR DECHANT: (Indicating  
20 negatively.)

21 MR. ROSARIO: Thank you. Going to that last  
22 row, anyone who doesn't drink alcoholic beverages?

23 PROSPECTIVE JUROR SINGLETARY: (Indicating.)

24 MR. ROSARIO: That's Ms. Singletary?

25 PROSPECTIVE JUROR SINGLETARY: Yes.

1 MR. ROSARIO: All right. Do you feel  
2 comfortable relating --

3 PROSPECTIVE JUROR SINGLETARY: I just don't  
4 have any tolerance for it. I lived with an  
5 alcoholic for 20 years.

6 MR. ROSARIO: So you know living with an  
7 alcoholic, that there are certain signs of  
8 impairment that alcohol can give?

9 PROSPECTIVE JUROR SINGLETARY: Yeah.

10 MR. ROSARIO: I want to go back over to this  
11 side real quick. Mr. Dover. Where's Mr. Dover?  
12 There you are. Mr. Dover, have you been paying  
13 close attention to what's been going on here today?

14 PROSPECTIVE JUROR DOVER: Somewhat.

15 MR. ROSARIO: Because I've noticed a couple of  
16 times that your eyes were closed. Were you just  
17 collecting your thoughts or were you sleeping?

18 PROSPECTIVE JUROR DOVER: No, I wasn't  
19 sleeping, no.

20 MR. ROSARIO: So you've heard everything I've  
21 said?

22 PROSPECTIVE JUROR DOVER: Yes.

23 MR. ROSARIO: I also noticed much, much  
24 earlier, Dr. Amar, you had your eyes closed.

25 PROSPECTIVE JUROR AMAR: I'm fine. I was



1           okay.

2           MR. ROSARIO: Do you work the night shift?

3           PROSPECTIVE JUROR AMAR: No, no. I said I'm  
4 fine. I was okay.

5           MR. ROSARIO: Mr. Kapareliotis, for a second  
6 there, you had that far off look. Are you okay?

7           PROSPECTIVE JUROR DOVER: Jesus Christ.

8           MR. ROSARIO: I'm sorry. Mr. Dover? I hope  
9 not to offend. It's just that these are things  
10 that people notice and are brought to my attention.  
11 Is that going to affect your ability to be fair and  
12 impartial with my case?

13          PROSPECTIVE JUROR DOVER: No.

14          MR. ROSARIO: Mr. -- how do you pronounce your  
15 name, Kapareliotis?

16          PROSPECTIVE JUROR KAPARELIOTIS: Kapareliotis.

17          MR. ROSARIO: I'm looking at Mr. Alfonso,  
18 that's why he keeps looking at me like he's not  
19 talking to me.

20                 It's been a long weekend. We've been at this  
21 now for several hours. Unfortunately that's the  
22 way this goes. If anyone has any difficulty with,  
23 you know, the nods, because you get them, okay,  
24 please feel free to raise your hand and say, may I  
25 stand up or stretch or something like that, because

1 it's very important that everyone be able to hear  
2 all the questions and provide the information to  
3 myself, defense counsel, and the Court.

4 PROSPECTIVE JUROR DOVER: Uh-huh.

5 MR. ROSARIO: Does anyone need to stand up  
6 right now and take a little stretch? Anybody?

7 PROSPECTIVE JURY PANEL: (No response.)

8 MR. ROSARIO: Has anyone here been to Chasco  
9 Fiesta?

10 PROSPECTIVE JUROR JONES: (Indicating.)

11 PROSPECTIVE JUROR ELLETT: (Indicating.)

12 PROSPECTIVE JUROR SCHWANKE: (Indicating.)

13 PROSPECTIVE JUROR FORTON: (Indicating.)

14 MR. ROSARIO: Okay. In the front row we have  
15 Ms. Jones, Mr. Ellett, Mr. Schwanke.

16 PROSPECTIVE JUROR SCHWANKE: Schwanke.

17 MR. ROSARIO: Please don't hold that against  
18 me.

19 Mr. Forton. In the second row we have who?

20 PROSPECTIVE JUROR NIGELS: (Indicating.)

21 MR. ROSARIO: No one has been to Chasco  
22 Fiesta? Oh, we have Mr. Nigels. You've been to  
23 Chasco Fiesta?

24 PROSPECTIVE JUROR NIGELS: The parades. Are  
25 you talking about the parade?

1 MR. ROSARIO: The parade? The party that goes  
2 on with it?

3 PROSPECTIVE JUROR NIGELS: None of the  
4 nighttime activities.

5 MR. ROSARIO: Not the nighttime activities,  
6 just the parade?

7 PROSPECTIVE JUROR NIGELS: (Indicating.)

8 MR. ROSARIO: Okay. In the front row, did you  
9 all take part in the nighttime party and stuff like  
10 that, or did you just go to the parade?

11 PROSPECTIVE JUROR ELLETT: No. I went to the  
12 whole thing.

13 MR. ROSARIO: You went to the whole thing,  
14 Mr. Ellett?

15 PROSPECTIVE JUROR ELLETT: Uh-huh.

16 MR. ROSARIO: Okay. That's fine. That's what  
17 it's for.

18 PROSPECTIVE JUROR JONES: I took my kids to  
19 the parade and to the art show one time.

20 MR. ROSARIO: Okay. I notice you put down as  
21 an artist. What type of art?

22 PROSPECTIVE JUROR JONES: Copper sculpture.

23 MR. ROSARIO: Copper sculpture?

24 PROSPECTIVE JUROR JONES: Uh-huh.

25 MR. ROSARIO: Okay. So are you used to

1 looking at things from a different angle?

2 PROSPECTIVE JUROR JONES: I've learned how to  
3 take things in bits and pieces as opposed to  
4 looking at the whole picture.

5 MR. ROSARIO: Okay. And you connect the dots?

6 PROSPECTIVE JUROR JONES: Yes.

7 MR. ROSARIO: In the third row, Chasco Fiesta,  
8 anybody that's been to the parade itself? Anybody  
9 in the third row?

10 PROSPECTIVE JURY PANEL: (No response.)

11 MR. ROSARIO: How about after, the night scene  
12 afterwards? Anybody?

13 PROSPECTIVE JURY PANEL: (No response.)

14 MR. ROSARIO: How about in the front row on  
15 the right.

16 PROSPECTIVE JUROR LEE: (Indicating.)

17 PROSPECTIVE JUROR LIGHTFOOT: (Indicating.)

18 PROSPECTIVE JUROR NICHOLS: (Indicating.)

19 MR. ROSARIO: We have Mr. Lee, Mr. Lightfoot  
20 and Mr. Nichols. Anyone on the second row to the  
21 right?

22 PROSPECTIVE JUROR COULTER: (Indicating.)

23 MR. ROSARIO: We have Mr. Coulter. And anyone  
24 else?

25 PROSPECTIVE JUROR DECHANT: (Indicating.)

1 PROSPECTIVE JUROR PLUMB: (Indicating.)

2 MR. ROSARIO: And Mr. DeChant and Mr. Plumb.  
3 Is that for the parade itself or is that for the  
4 parade and the after party?

5 PROSPECTIVE JUROR PLUMB: Just the daytime.

6 PROSPECTIVE JUROR NICHOLS: Everything.

7 MR. ROSARIO: Everything. Mr. Plumb.

8 PROSPECTIVE JUROR PLUMB: Just the daytime  
9 stuff.

10 MR. ROSARIO: How about my fourth row, anyone?

11 PROSPECTIVE JUROR TYLER: (Indicating.)

12 PROSPECTIVE JUROR FEELEY: (Indicating.)

13 MR. ROSARIO: Okay. In the fourth row I have  
14 Mr. Tyler. And is that Ms. Feeley, did you raise  
15 your hand?

16 PROSPECTIVE JUROR FEELEY: Uh-huh.

17 MR. ROSARIO: Anyone there who went to the  
18 Chasco Fiesta partake in alcoholic beverages? Let  
19 me just see a raise of hands. How many people had  
20 alcoholic beverages when they went there?

21 PROSPECTIVE JURY PANEL: (Indicating.)

22 MR. ROSARIO: Okay. Just a few of you.

23 Let me ask the next question. Does everybody  
24 know what I'm talking about when I say Chasco  
25 Fiesta?

1 PROSPECTIVE JUROR SWEET: No.

2 MR. ROSARIO: I got a no head shake from  
3 Ms. Sweet.

4 PROSPECTIVE JUROR SWEET: I don't know even  
5 know what it is.

6 MR. ROSARIO: I'm sorry?

7 PROSPECTIVE JUROR SWEET: I don't know what  
8 you're talking about, fiesta.

9 MR. ROSARIO: Chasco Fiesta is a big party  
10 held over in New Port Richey every year where  
11 there's a parade, and all the bars are open, and  
12 there's specials, and there's alcohol that's  
13 consumed, and sometimes there's some trouble from  
14 it and sometimes there's not.

15 How about over here, everyone know about  
16 Chasco Fiesta? How about Guavaween down in Ybor  
17 City? Or what's that one with the pirates?

18 PROSPECTIVE JUROR JONES: Gasparilla.

19 MR. ROSARIO: Gasparilla. Chasco Fiesta is  
20 like a minor version of Gasparilla. Does everybody  
21 understand that?

22 PROSPECTIVE JURY PANEL: (Indicating.)

23 MR. ROSARIO: This offense occurred at Chasco  
24 Fiesta back in 2006. Does anyone have any memories  
25 of reading any newspaper articles or anything like

1 that from Chasco Fiesta back in 2006?

2 PROSPECTIVE JUROR BRANSTUTTER: Somebody got  
3 shot.

4 MR. ROSARIO: That was actually 2008.

5 PROSPECTIVE JUROR ALFONSO: (Indicating.)

6 MR. ROSARIO: Mr. Alfonso.

7 PROSPECTIVE JUROR ALFONSO: Yes.

8 MR. ROSARIO: Did you read the articles?

9 PROSPECTIVE JUROR ALFONSO: I read an article.  
10 I'm not sure it's the same one, though.

11 MR. ROSARIO: Can you put that aside and just  
12 listen to the facts that are given to you from the  
13 witness stand and the evidence and apply the law  
14 the Judge gives you?

15 PROSPECTIVE JUROR ALFONSO: Uh-huh.

16 MR. ROSARIO: Anyone else?

17 PROSPECTIVE JURY PANEL: (No response.)

18 MR. ROSARIO: Has anyone been to a bar and had  
19 too much to drink?

20 PROSPECTIVE JURY PANEL: (Indicating.)

21 MR. ROSARIO: Okay. Has anyone ever called  
22 for a ride? Anybody?

23 PROSPECTIVE JUROR JONES: I called a cab.

24 MR. ROSARIO: Okay. Has anyone walked home,  
25 where you happened to live close enough, you can

1 walk home? Anybody?

2 PROSPECTIVE JURY PANEL: (No response.)

3 MR. ROSARIO: You all knew you had too much to  
4 drink, instead of driving, you decided to walk  
5 home, correct? Anybody that's walked home?

6 PROSPECTIVE JURY PANEL: (No response.)

7 MR. ROSARIO: Or how about called a cab? Oh,  
8 I've had too much, I better call a cab or get  
9 somebody to come and pick me up? Anybody?  
10 Anybody over here that's done that?

11 PROSPECTIVE JUROR JONES: Yeah. I'm usually  
12 the designated driver and decided to drink.

13 MR. ROSARIO: Somebody else over here said  
14 they were the designated driver many times.

15 PROSPECTIVE JUROR DILLARD: I did.

16 MR. ROSARIO: Now, Ms. Rimmel, I think you  
17 stated that you had family members that had  
18 problems with alcoholic beverages, alcohol?

19 PROSPECTIVE JUROR REMMEL: Uh-huh. Yes.

20 MR. ROSARIO: Have you ever been in the car  
21 with that person after they've been drinking too  
22 much alcohol?

23 PROSPECTIVE JUROR REMMEL: No.

24 MR. ROSARIO: Who else over here stated they  
25 had a friend or family member who was an alcoholic?



1 PROSPECTIVE JUROR DILLARD: I have multiple.

2 MR. ROSARIO: I'm sorry?

3 PROSPECTIVE JUROR DILLARD: I have multiple.

4 MR. ROSARIO: You have multiple. Well, I'm  
5 just wondering if you've ever ridden in the car  
6 after that person had been drinking?

7 PROSPECTIVE JUROR DILLARD: (Indicating.)

8 MR. ROSARIO: No?

9 PROSPECTIVE JUROR DILLARD: I would never ride  
10 with them sober.

11 MR. ROSARIO: Okay. Has anyone here been with  
12 somebody who's had a little bit too much to drink  
13 and they're driving the vehicle?

14 PROSPECTIVE JUROR JONES: Yeah, I have.

15 MR. ROSARIO: Have you ever tried to take the  
16 keys from that person and not be successful?  
17 Mr. Lightfoot, have you struggled with a person to  
18 get the keys away from them?

19 PROSPECTIVE JUROR LIGHTFOOT: No. I actually  
20 gave up after awhile.

21 MR. FOOTE: Judge, may we approach?

22 BENCH CONFERENCE:

23 MR. FOOTE: It's an objection about the facts  
24 of the case. It looks like for about a half an  
25 hour we've been going into pretty much what the

1 State's case is. I didn't really have a problem  
2 with it, but now we're actually getting into actual  
3 facts, allegations regarding taking the keys,  
4 getting in the car.

5 We're actually going through the whole case  
6 with each of the jurors to see if they've actually  
7 been through these things. I think it's skirting  
8 along the lines of the facts of the case and not  
9 really getting into whether or not they can be fair  
10 and impartial jurors.

11 THE COURT: All right.

12 MR. ROSARIO: Judge, actually I just need to  
13 know what my people have out there as far as in the  
14 way of experience. That was as close as I was  
15 going to get to the rest of my facts in the case.  
16 I am going to ask them if they've ever seen signs  
17 of impairment or things like that. That's where I  
18 was going next.

19 MR. FOOTE: We named the full route from  
20 Little to Grand, we named the actual bar, Sevens,  
21 locations.

22 THE COURT: I understand. And there was not  
23 an objection at that point in time. I probably  
24 would have sustained that objection.

25 As far as you're looking at moving on from

1 this line of questioning?

2 MR. ROSARIO: Yes.

3 THE COURT: So based upon that, the objection  
4 is noted for the record. And I think the point is  
5 well made as far as the actual bar, the actual  
6 streets, and that sort of thing.

7 MR. FOOTE: A little bit is fine, but I didn't  
8 know if we were going to go through the whole  
9 thing.

10 THE COURT: I agree, you can certainly touch  
11 on some of these issues without making it a feature  
12 of the voir dire process. I think the objection is  
13 well taken, and it's noted. But you've indicated  
14 you're moving on, correct?

15 MR. ROSARIO: Yes, sir. That's correct.

16

17 (CONTINUATION IN VOLUME II.)

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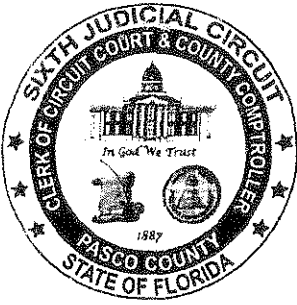
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Office of Paula S. O'Neil  
Clerk & Comptroller  
Pasco County, Florida

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

