



23131552

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY, FLORIDA

CASE NO: 05-2012-CF-035337-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON LEE BRADLEY

Defendant.

ORIGINAL
JUL 25 P 12:24
SCOTT ELLIS
FILED IN T.V.C. - 01
CLERK OF CIR. CT.
BREVARD CO. FL.

VOLUME I OF VIII

TRANSCRIPT OF DIGITALLY RECORDED JURY SELECTION

JUDGE: HONORABLE MORGAN REINMAN

DATE TAKEN: February 24, 25, 26, 27, and
March 6, 7, 10, 11, 13, 14, and
17, 2014

PLACE: Moore Justice Center
2825 Judge Fran Jamieson Way
Viera, Florida 32940

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17
18 ALSO PRESENT: BRANDON LEE BRADLEY, Defendant
19
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21
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P R O C E E D I N G S

1
2 THE COURT: Please rise for the jury.

3 (Thereupon, the venire of Jurors 1 through 53 was
4 escorted into the courtroom by the court deputy and
5 the proceedings were had as follows:)

6 THE COURT: You can be seated as you come in. We
7 actually stand for you. Okay. Please be seated.
8 Good morning, ladies and gentlemen. Welcome to the
9 Brevard County Courthouse. My name is Morgan Laura
10 Reinman, and I am one of the Circuit Court judges in
11 the 18th Circuit, and I am the judge presiding over
12 the jury trials in this courtroom. Specifically, let
13 me welcome you to the Criminal Division of the Circuit
14 Court. I realize that you are here involuntarily, and
15 perhaps you would rather be anyplace else right now,
16 but please know that all of us here appreciate your
17 coming to serve. For our system of justice to work,
18 it is essential that citizens like yourself be willing
19 to come and work with us. Juries are one of the
20 things that separate us from other countries, where
21 people don't have the privilege of having juries
22 determine the outcome of cases. Service on a jury
23 panel affords you an opportunity to be part -- to be a
24 part of the administration of justice by which the
25 legal affairs and liberties of your fellow men and

1 women are determined and protected.

2 The Court realizes that service on a jury panel
3 is not always convenient. I will make every effort to
4 see that your time is not wasted. The estimated
5 length of this trial is approximately five weeks,
6 starting February 24th, 2014, through March the 28th,
7 2014. This is an estimate, but I must admit that
8 cases can take less time, it could take less than five
9 weeks, or the case could take more than five weeks.

10 Let me pause here to say that most criminal
11 trials in this circuit are over in just a couple of
12 days. It is rare for one to go past even a week.
13 Every now and then, one comes along which requires me,
14 as the judge, to recruit and draft members of this
15 community to be jurors to hear a case of some length.
16 This happens to be one of those cases. Simply put, we
17 need your help. We recognize that serving on a jury
18 for five weeks or so can present a hardship for some
19 of you, and I will give you a chance to tell me if
20 there are things in your life that you think could
21 keep you from serving. Some of those, we may be able
22 to work around. But please understand that your
23 definition of a hardship may not meet the legal
24 definition of a hardship, and I am required to follow
25 what the law says.

1 Having said that, to the extent that we can
2 accommodate your concerns, we will try to do so.
3 Obviously, this is an important case. We would like
4 to have all of you volunteer for service. But please
5 understand if that is not possible, you may have to be
6 drafted even though it could prove to be inconvenient.
7 Let me give you some examples of hardships: If you
8 are scheduled for surgery, that could be a good
9 excuse; if you are seriously ill or have a medical or
10 mental condition, that could keep you from serving as
11 a juror; if you are the sole caretaker of a mentally
12 or physically disabled relative, that might be good
13 grounds; if you are going to be evicted from your home
14 or go seriously in debt if you miss five weeks of
15 work, and your employer won't pay you for that, we'll
16 listen to those sorts of issues. However, the fact
17 that you and your boss feel that you are indispensable
18 to your job may not be enough. We're going to have to
19 hear the facts a little bit more and make a decision
20 on a case-by-case basis. Basically, the reason for
21 being excused has to border on severe.

22 There will be no court on March the 3rd, 4th, and
23 5th, and March the 24th and March the 25th. The hours
24 that we generally work are from 9:00 a.m. to 5:00 p.m.
25 We break every one and a half to two hours, and we

1 take an hour to an hour and a half break for lunch.

2 Now, I'm going to ask many questions during this
3 process, as well as the attorneys will ask you many
4 questions. So please wait until you hear -- you may
5 have a question in your mind and say, I want to tell
6 the judge this, but please wait until you hear the
7 question for the answer that you want to give.

8 Because I assure you, at the end I'm going to say, is
9 there anything I've missed and anything you want to
10 tell me, so you'll have an opportunity to be heard.

11 But on this question, I am going to go row by
12 row, and can we start by Number 1 and go to Number 53.
13 So the first question I'm going to ask is, does the
14 schedule as I have explained it to you present a great
15 hardship for any of you? Now, I'm going to go row by
16 row, and if the answer to that is yes, I would ask you
17 to raise your hand.

18 Okay, the first row, does that schedule present a
19 hardship for any of you? Okay. I see a hand, Number
20 7. And I hate to put you on the spot, but you're
21 going to be the first one to start. Sir, can you tell
22 me if that schedule is a hardship for you?

23 (Thereupon, voir dire selection was had which was
24 not requested to be transcribed.)

25 THE COURT: Okay. At this time I would like to

1 take a few moments to point out some of the court
2 personnel that you will be seeing throughout the trial
3 and what their duties are. I will also give you an
4 idea about what you are here to do. First of all, I
5 am the judge. You may hear people occasionally refer
6 to me as the Court. My job is to maintain order and
7 decide how to apply the rules of law to the trial. I
8 will also explain various rules to you that you will
9 need to know in order to do your job as the jury. It
10 is my job to remain neutral on the issues of this
11 case.

12 First I'd like to point out the staff attorney.
13 The staff attorney serves as the attorney for the
14 judge and performs specific assignments by the Court,
15 such as researching legal issues and drafting Court
16 orders. We have the court deputies. The court
17 deputies are in charge of security in the courthouse,
18 and are also responsible for maintaining order in the
19 courtroom and enforcing the Court's orders. They also
20 have the charge and care of the jurors during the term
21 of this trial. If any of you have a personal problem,
22 or some other matter which you feel needs to be
23 brought to the Court's attention, or to the attention
24 of anyone involved in this trial, the proper person
25 for you to speak to about that would be one of the

1 court deputies. However, the court deputy cannot
2 answer any of your questions about the case, only I
3 can do that. The deputy clerk of court serves as the
4 Court's secretary in these proceedings and performs
5 several important functions for the Court, including
6 preparing all necessary paperwork associated with this
7 trial, and the numbering and handling of any exhibits
8 involved in this trial.

9 Now, do any of you know me, the judge, or any of
10 the court personnel that I have mentioned? And I'll
11 go over here, if you do, raise your hand. Okay, I see
12 a hand in the back. Number 22, yes, ma'am?

13 JUROR NUMBER 22: I think I went to high school
14 with you.

15 THE COURT: I'll have to look at your name. Yes,
16 I do -- I saw your name previously, I wasn't sure --
17 yes, we did go to high school. Just so everyone
18 knows, I think you're a year older than me. Just
19 needed to point that out. Okay. Number 22, do you
20 think that would in any way affect your ability to
21 serve on this jury?

22 JUROR NUMBER 22: No, ma'am, I do not.

23 THE COURT: I think I've seen you a few times
24 over the -- we graduated -- I graduated '79, you
25 graduated '78, so that's been a while, but we don't

1 socialize together.

2 JUROR NUMBER 22: We do not.

3 THE COURT: Okay. Just wanted to make sure that
4 they knew that. Okay. Anyone else? Number 37, yes,
5 ma'am?

6 JUROR NUMBER 37: I'm a court reporter, and I've
7 been in your court.

8 THE COURT: Okay. So you've been in my
9 courtroom, have you been a court reporter for any of
10 the attorneys in these matters?

11 JUROR NUMBER 37: They look familiar, and Kepler
12 (phonetic) used to have his office where we had our
13 offices.

14 THE COURT: Okay. Do you think that -- obviously
15 you're familiar with some court proceedings, do you
16 think that would in any way affect your ability to be
17 fair and impartial in this case?

18 JUROR NUMBER 37: I've been a reporter for a long
19 time, and I'm -- in felony court also --

20 THE COURT: Specifically, who do you work for, so
21 they know that?

22 JUROR NUMBER 37: Well, I just went to [REDACTED]
23 [REDACTED] for, like, 30 years.
24 We just merged.

25 THE COURT: Okay. Now, when I asked you, do you

1 think that would in any way affect your ability to be
2 fair and impartial, you responded that you've seen
3 criminal trials and been in criminal trials, but do
4 you think that would in any way affect -- what we ask
5 you to do as a juror, we ask you to base your opinion
6 on the evidence that you hear by way of witnesses and
7 by way of exhibits and follow the instructions that I
8 give you as to the law. That's really your job as a
9 juror. Do you think you could do that, or do you
10 think that you might have some biases or prejudice --
11 and I use those words, they're kind of strong words, I
12 don't mean them to sound that strong -- because of
13 your past experience? Do you think -- one of the
14 questions I'm going to ask later, do you think you
15 have any biases for or against the State?

16 JUROR NUMBER 37: No.

17 THE COURT: Do you have biases for or against the
18 defense?

19 JUROR NUMBER 37: I don't think so. You know,
20 I've been doing this so long, in jury charges, I've
21 been in the system, I'm part of the system. So I
22 don't know. I'd like to think I could be fair.

23 THE COURT: Okay. All right. I think I got
24 everyone on the left side, anyone on the right side
25 know me or any of the court personnel that I've

1 pointed out? No response. Okay.

2 Now, the attorneys to whom I will introduce you
3 to have the job of representing their clients; that
4 is, they speak for their client here at the trial.
5 They have taken oaths as attorneys to do their best in
6 following the rules of their profession. Now,
7 Mr. McMasters, would counsel for the State please
8 stand and introduce himself, and everyone at your
9 table.

10 MR. MCMASTERS: Jim McMasters and Tom Brown from
11 the State Attorney's Office.

12 THE COURT: Okay. And, Mr. Moore, would counsel
13 for the defendant please stand and introduce himself
14 and everyone at the defense table, including your
15 client.

16 MR. MOORE: I'm Randy Moore, this is Mike Pirolo,
17 this is Brandon Bradley, Mark Lanning, and this is
18 Brooke Butler, and we're representing Mr. Bradley.

19 THE COURT: Thank you. Now, do any of you know
20 the attorneys in this matter or the defendant? And
21 I'll start here, if you do, raise your hand. Okay, no
22 one. On the left side, if you do, raise your hand.
23 And the right side. Okay, Number 47?

24 JUROR NUMBER 47: I don't know if this means
25 anything, but he looks familiar, but I don't know

1 where. Does that mean anything?

2 THE COURT: Okay. Mr. Pirolo?

3 JUROR NUMBER 47: Yes. I don't know where. I
4 don't know. But I thought I'd just put it out there.

5 THE COURT: Can you tell -- what do you do? Do
6 you work?

7 JUROR NUMBER 47: No.

8 THE COURT: I'm trying to think how you might
9 know him.

10 JUROR NUMBER 47: I don't know. I used to work
11 part time at a Dollar Tree in Melbourne, but I don't
12 -- I don't foresee this guy going there, but --

13 THE COURT: Do you think that that -- if at any
14 time you remember how you may know him, if you'll
15 bring that to our attention, because you may be
16 outside and all of a sudden say, oh, I remember that.
17 So if you'll bring that to our attention. But at this
18 time, do you think that would in any way affect your
19 ability to serve -- to be fair and impartial as this
20 juror?

21 JUROR NUMBER 47: No.

22 THE COURT: Okay. All right. Anyone else? Last
23 but not least is the jury, which we will begin to
24 select in a few moments from among all of you. The
25 jury's job will be to decide what the facts are and

1 what the facts mean. Jurors should be as neutral as
2 possible at this point, and have no fixed opinion
3 about the case. At the end of the trial, the jury
4 will give me a written verdict. A verdict is simply
5 the jury's answers to my questions about the case.

6 The last thing I want to do before we begin to
7 select the jury is to explain to you how the selection
8 process works. Jury selection is the part of the case
9 where the parties and their attorneys have an
10 opportunity to get to know a little bit about you in
11 order to help them come to their own conclusions about
12 your ability to be fair and impartial, so that they
13 can decide who they think should be the jurors in this
14 case. How we go about this is as follows: First,
15 I'll ask some general questions, which I have begun to
16 do. Then, each of the attorneys will have more
17 specific questions that they will ask of you. After
18 they have asked all their questions, I will meet with
19 them, and they will tell me their choices for jurors.
20 Each side can ask that I exclude a person from serving
21 on a jury if they can give me a reason to believe that
22 he or she may be unable to be fair and impartial.
23 That is what is called a challenge for cause. The
24 attorneys also have a certain number of what are
25 called peremptory challenges, by which they may

1 exclude a person from the jury without giving a
2 reason.

3 By this process of elimination, the remaining
4 persons are selected as the jury. The questions that
5 will be asked during this process are not intended to
6 embarrass you or unnecessarily pry into your personal
7 affairs, but it is important that the defendant and
8 the attorneys know enough about you to make this
9 important decision. If a question is asked that you
10 would prefer not to answer in front of the other
11 jurors, please let me know, and we will address you
12 privately, and you can give your answer just in front
13 of the attorneys, the defendant, me, and the court
14 personnel. There are no right or wrong answers to the
15 questions that will be asked of you. The only thing I
16 ask is that you answer the questions as frankly and
17 honestly and as completely as you can. You have taken
18 an oath to answer all questions truthfully and
19 completely, and you must do so. Remaining silent when
20 you have information you should disclose is a
21 violation of that oath as well. If a juror violates
22 this oath, it not only may result in having to try the
23 case all over again, but may also result in civil and
24 criminal penalties against a juror personally. So,
25 again, it is very important that you be as honest and

1 complete with your answers as you possibly can. If
2 you don't understand a question, please raise your
3 hand and ask for an explanation or clarification.

4 In sum, this is a process to assist the attorneys
5 to select a fair and impartial jury. All the
6 questions they ask you are for this purpose. If, for
7 any reason, you do not think you could be a fair and
8 impartial juror in this case, you must tell us. Now,
9 from this group we are going to select 12 jurors and 3
10 alternates, a total of 15 individuals in this case.
11 Obviously, most of you will not be selected. Please
12 don't take this as an insult or any negative
13 reflection on you. It's a matter of selecting jurors
14 who can be fair and impartial in this particular case
15 and with whom both sides can be comfortable.

16 The case set for trial on this date is the State
17 of Florida versus Brandon Lee Bradley. It's case
18 number 05-2012-CF-035337. In just a few minutes, I am
19 going to read to you the charges in this case. The
20 charges are what brings us to court, but not evidence
21 in the case. It is not to be considered as such. The
22 evidence will be presented during the course of this
23 trial.

24 At this time I will read the charges. Count one,
25 first degree premeditated murder of a law enforcement

1 officer with firearm. In the County of Brevard, State
2 of Florida, on March the 6th, 2012, Brandon Lee
3 Bradley did unlawfully kill a human being, Deputy
4 Barbara Pill, a law enforcement officer engaged in the
5 lawful performance of a legal duty, by shooting Deputy
6 Barbara Pill with a firearm, and said killing was
7 perpetrated by Brandon Lee Bradley from a premeditated
8 design to effect the death of Deputy Barbara Pill; and
9 during the commission of this offense, Brandon Lee
10 Bradley actually possessed a firearm, and further
11 during the commission of said felony, Brandon Lee
12 Bradley discharged said firearm, and as the result of
13 the discharge, did inflict death upon any person.

14 Count two, robbery. In the County of Brevard,
15 State of Florida, on March the 6th, 2012, Brandon Lee
16 Bradley did take money or other property valued at
17 \$300 or more from the person or custody of another,
18 Andrew Jordan, Mohammad Malik, with the intent to
19 permanently or temporarily deprive said person of said
20 property. In the course of the taking, did use force,
21 violence, assault, or putting in fear.

22 Count three, fleeing or attempting to elude, high
23 speed or wanton disregard. In the County of Brevard,
24 State of Florida, on March the 6th, 2012, Brandon Lee
25 Bradley did willfully flee or attempt to elude a law

1 enforcement officer in an authorized law enforcement
2 patrol vehicle, with agency insignia and other
3 jurisdictional markings prominently displayed on the
4 vehicle, with siren and lights activated; and during
5 the course of the fleeing or attempted eluding, did
6 drive at high speed or in any manner which
7 demonstrated a wanton disregard for the safety of
8 persons or property.

9 Count four, resisting an officer with violence.
10 In the County of Brevard, State of Florida, on March
11 the 6th, 2012, Brandon Lee Bradley did knowingly and
12 willfully resist, obstruct, or oppose an officer, or
13 officers, Deputy Barbara Pill, of the Brevard County
14 Sheriff's Office, in the execution of legal process,
15 or the lawful execution of a legal duty, by offering
16 or doing violence to the person of said officer, or
17 officers.

18 Okay. I am now going to read a list of potential
19 witnesses who may be called to testify in this trial.
20 Please listen carefully to the names and see if you
21 recognize any of them. Also, please understand that
22 often many more names are listed as potential
23 witnesses than are actually called at the trial. Now,
24 before I do that, I need to ask, you have heard the
25 name of the decedent in this case, did any of you know

1 the decedent during her lifetime? Anyone over here,
2 if you did know the decedent, raise your hand. Number
3 13, yes, sir?

4 JUROR NUMBER 13: I know her son.

5 THE COURT: Okay. And which son is that?

6 JUROR NUMBER 13: Jeremy.

7 THE COURT: And how do you know Jeremy?

8 JUROR NUMBER 13: [REDACTED]

9 [REDACTED]
10 THE COURT: Okay. [REDACTED]

11 [REDACTED] And how long
12 -- so how long ago was that?

13 JUROR NUMBER 13: Ten years.

14 THE COURT: Okay. And as a result of that, did
15 you meet his mother?

16 JUROR NUMBER 13: I don't think so.

17 THE COURT: Okay. Now, do you think that the
18 fact that you know -- I mean, have you socialized with
19 Jeremy in the last ten years?

20 JUROR NUMBER 13: No.

21 THE COURT: Do you think that that would affect
22 your ability to be fair and impartial in this case?

23 JUROR NUMBER 13: I could be fair.

24 THE COURT: Okay. Remember what I asked you to
25 do, your job is to listen to the witnesses that come

1 -- listen to the evidence by way of witnesses on the
2 witness stand, the exhibits that are introduced, and
3 the law as I instruct you, and base your verdict on
4 those things. Can you do that?

5 JUROR NUMBER 13: I can be fair.

6 THE COURT: Okay. All right. Anyone else?
7 Number 17, yes, sir?

8 JUROR NUMBER 17: I didn't know Barbara, I
9 retired from the same company that her husband did
10 work for.

11 THE COURT: Okay.

12 JUROR NUMBER 17: I didn't know him well enough
13 other than being facial recognition, I would remember
14 that face. We had a retirement breakfast about six
15 months ago, and I didn't even know what his name was
16 so I didn't speak to him, I don't think, and wasn't
17 informed until after the meeting that that's who it
18 was.

19 THE COURT: So you worked in the same company
20 as --

21 JUROR NUMBER 17: Worked at the same company, did
22 not work at the same location. I'm not even sure what
23 his job was.

24 THE COURT: Okay. So you never -- I assume from
25 that, you've never socialized with him?

1 JUROR NUMBER 17: No.

2 THE COURT: Okay. Or with his wife?

3 JUROR NUMBER 17: No.

4 THE COURT: Now, do you think that as a result of
5 having that information, or having that experience,
6 that that would in any way affect your ability to be
7 fair and impartial in this case?

8 JUROR NUMBER 17: No.

9 THE COURT: Okay. All right. Anyone else?
10 Anyone on the left side? I see a hand. Number 24?

11 JUROR NUMBER 24: I'm a neighbor of the decedent.

12 THE COURT: Okay. And how close a neighbor?

13 JUROR NUMBER 24: [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 THE COURT: Okay. Did you socialize with them on
17 occasion?

18 JUROR NUMBER 24: No.

19 THE COURT: Okay. You just know that they're
20 your neighbors?

21 JUROR NUMBER 24: Right.

22 THE COURT: Do you think that that -- I hear you
23 that you might have seen them every once in a while in
24 the neighborhood.

25 JUROR NUMBER 24: Still see the father and son a

1 lot.

2 THE COURT: Okay. But you didn't do anything
3 with them socially?

4 JUROR NUMBER 24: No.

5 THE COURT: Do you think that would in any way
6 affect your ability to be fair and impartial in this
7 case?

8 JUROR NUMBER 24: Well, I don't know, because I
9 did used to wave at her every day, so
10 (unintelligible).

11 THE COURT: They -- I mean, do you think they
12 would recognize you as well?

13 JUROR NUMBER 24: Probably.

14 THE COURT: Okay. Some people say, I can't be
15 fair and impartial based on that experience.

16 JUROR NUMBER 24: Yeah. I feel the same way.

17 THE COURT: So you say that that -- because you
18 know them as neighbors, that that would affect your
19 ability to be fair and impartial?

20 JUROR NUMBER 24: Because of just the manners,
21 the lack of manners.

22 THE COURT: You think it might be difficult to go
23 back in the neighborhood depending on what happened
24 with the verdict?

25 JUROR NUMBER 24: No.

1 THE COURT: Okay. I'm trying to get you to tell
2 me why you think --

3 JUROR NUMBER 24: Oh, no. I'm sure I could be
4 impartial, but I'm not 100 percent.

5 THE COURT: Okay. Anyone else on the left side?
6 Did I miss anyone? Anyone on the right side? I see
7 no hands on the right. All right. At this time I am
8 going to read the potential witnesses to you. This
9 list is rather extensive. You have to be patient with
10 me, I've practiced these names, but I don't know how
11 good I'm going to be with some of them. So listen
12 carefully, and if you recognize anyone, I'm going to
13 ask you in the end if you know anyone. The list is:
14 Susan Adams; Daniel Allen; Danny Roger Allen; Officer
15 Ryan S. Allen, with the Melbourne Police Department;
16 Officer Jennifer Amneus, with the Melbourne Police
17 Department; Timothy L. Barker, II; Timothy L. Barker,
18 Sr.; Sergeant Brian Barnes, Melbourne Police
19 Department; Lieutenant Bruce L. Barnett, Brevard
20 County Sheriff's Office; Leanne Bennett; Agent Harry
21 Bermudez, with the Brevard County Sheriff's Office;
22 Stephanie Betcher; Stephanie Bertolli; Tammy Elizabeth
23 Brown; Lisa Michelle Bryant; Agent Marlon D. Buggs;
24 Officer Johnny R. Bynum, Melbourne Police Department;
25 Kathleen Carper; Agent Craig Carson, Brevard County

1 Sheriff's Office; Catherine Carswell; Regina Carey;
2 Sergeant Dennis P. Casey, Brevard County Sheriff's
3 Office; Sergeant Michael P. Casey, Brevard County
4 Sheriff's Office; Virginia M. Casey, Brevard County
5 Sheriff's Office; Deputy Brad A. Cervi, Brevard County
6 Sheriff's Office; Officer Nicole Chapman, Melbourne
7 Police Department; Officer Kevin Cincimino, Melbourne
8 Police Department; Sergeant Marc Claycomb, Melbourne
9 Police Department; Deputy Margaret Cline, Brevard
10 County Sheriff's Office; Andrew Colbert, Melbourne
11 Fire Department; Officer Charles Colon, Probation and
12 Parole; Officer Lisa Connors, Brevard County Sheriff's
13 Office; Deputy Brett Cook, Brevard County Sheriff's
14 Office; Officer Chad Cooper, Melbourne Police
15 Department; Tech Stephanie Cooper, Brevard County
16 Sheriff's Office; Lieutenant John A. Coppola, Brevard
17 County Sheriff's Office; Analyst Corey R. Crumbley,
18 Florida Department of Law Enforcement; Officer Daniel
19 Desormier, Melbourne Police Department; Arthur
20 Dievers, III; Jeffery Jamie Dieguez, Sr.; Corporal
21 Jason C. Diogo, Brevard County Sheriff's Office;
22 Deputy Bruce Downey, Brevard County Sheriff's Office;
23 Agent Frances H. Dufresne, Brevard County Sheriff's
24 Office; Raven Durousseau, R.N.; Officer Scott Dwyer,
25 Melbourne Police Department; Keri Ellison; Officer

1 Joseph Escher, Melbourne Police Department; Donna
2 Ewing; Officer Edward Ferguson, Melbourne Police
3 Department; Deputy Stephen J. Fernez, Brevard County
4 Sheriff's Office; Lieutenant Alexander A. Fishback,
5 IV, Brevard County Sheriff's Office; Deputy Travis
6 Fitzgerald, Brevard County Sheriff's Office; Sergeant
7 Frank B. Flake, doesn't say who he's with; Edward T.
8 Flynn; Eric Theodore Flynn; Mark Allen Foster; Lisa
9 Fortner; Bryon Scott Fox; Larry James Galvin, Jr.;
10 Deputy Kirk M. Geweniger, Brevard County Sheriff's
11 Office; Terry Wayne Gibbs; Dr. Bruce Goldberger;
12 Lieutenant Jeffery Todd Goodyear, Brevard County
13 Sheriff's Office; Detective Jack Gordon, Melbourne
14 Police Department; Martha Gray; Michael Paul Gregg;
15 Casey Greene; Agent Brian Guilford, Brevard County
16 Sheriff's Office; Officer Greg Guillette, Palm Bay
17 Police Department; Jamie Lee Hammond; Deputy John
18 Hannigan, Brevard County Sheriff's Office; Paula C.
19 Hansen; Richard Thomas Hansen; Officer Roy Havener,
20 Melbourne Police Department; Ben Hay, Melbourne Fire
21 Department; Officer Juanita J. Hazelett, Melbourne
22 Police Department; Cherlyn Henley; Deputy Christopher
23 L. Hendrix, Brevard County Sheriff's Office; Dr. Mark
24 Herbst; James Terry Henson, III; Hope Henson; Jeffery
25 Scott Herring; Officer Dennis Higgins, Melbourne

1 Police Department; Vernice Hobbs; Deputy Jessie Harold
2 Holton, Brevard County Sheriff's Office; Officer Cyril
3 Hopping, Melbourne Police Department; Dennis Horn;
4 Richard Huckabee, Medical Examiner's Office; Emilie
5 Jill Huff; Russell C. Huff; Jeffery Humphries, Brevard
6 County Fire Rescue; Dyan James, Melbourne Fire
7 Department; Officer Robert Johnson; Caroline Jones;
8 Andrew J. Jordan; Yves Joseph; Tsvetomila Kaneva;
9 Officer James Kemper, Melbourne Police Department;
10 Andria Michelle Kerchner; Pamela T. Kerchner; Richard
11 Kerchner; SRO Wolfgang M. Kermer, Brevard County
12 Sheriff's Office; Shirley King; King Reporting
13 Service; Officer Brent Kleeberg, Melbourne Police
14 Department; Corporal Joseph Klingler, Polk County
15 Correctional Facility; Officer Howard Koff, Melbourne
16 Police Department; Officer Jeff Koeberl, Melbourne
17 Police Department; Isma Porsue (phonetic); Deputy
18 Jeffrey R. Krull, Brevard County Sheriff's Office;
19 Leslie Ann Lamb; Officer Charles Landmesser, Melbourne
20 Police Department; Officer Blake Lanza, Melbourne
21 Police Department; Corporal Terrance D. Laufenberg,
22 Brevard County Sheriff's Office; Shane Letch,
23 Melbourne Fire Department; Julie Ann Long; Lieutenant
24 Gary Loos, Melbourne Police Department; Officer Jesus
25 Lopez, Melbourne Police Department; Perry J. Lopreato;

1 Trista Lowman; Mohammad H. Malik; Jeffrey Markham,
2 Melbourne Fire Department; Amy Mark; Robert William
3 Marks; Agent Joseph E. Martin, Jr., Brevard County
4 Sheriff's Office; Julie Martin; Agent Kevin McCann,
5 Bureau of Alcohol, Tobacco, and Firearms; Gina McCray;
6 Brandon DeShawn McDade; Officer Ian McDaniels,
7 Melbourne Police Department; Dave McGuinness; Deputy
8 Linda S. McLoughlin, Brevard County Sheriff's Office;
9 Vanessa A. Mcnerney; Officer Kristen Meadows,
10 Melbourne Police Department; William Leonard Metzger;
11 Officer Derek S. Middendorf, Melbourne Police
12 Department; CTS Jennifer Miller, Brevard County
13 Sheriff's Office; Officer Stephen Minich, Alliance
14 Police Department; Robert Gregory Miranda; Christopher
15 Montesano; Deputy Stephanie A. Moore, Brevard County
16 Sheriff's Office; Thomas Morrisette, Melbourne Fire
17 Department; Brianna C. Morton; Thomas Bryan Murphy,
18 Jr.; Keith Nelson; Detective Rory W. Nelson, Melbourne
19 Police Department; Tony Nelson; Sergeant Dennis
20 Nichols, Melbourne Police Department; Officer James
21 O'Brien, Melbourne Police Department; Agent Daniel
22 Ogden, Brevard County Sheriff's Office; Dr. Jacqueline
23 Olander; Officer Andrew Ortez, Melbourne Police
24 Department; Sergeant Darryl Osborne, Brevard County
25 Sheriff's Office; Amanda Paige Ozburn; Officer Kevin

1 Palmier, Melbourne Police Department; Mina Patel;
2 Jeffery Louis Patterson; Larry Pearson, Melbourne Fire
3 Department; Deputy Terry Pelton, Brevard County
4 Sheriff's Office; Miguel Angel Perez, Melbourne Fire
5 Rescue; Jeremy Pill, Brevard County Sheriff's Office;
6 Steven Pill; Mary Patricia Pittman; Officer Greg
7 Pugeseck, Melbourne Police Department; Lieutenant Renee
8 Purden, Melbourne Police Department; Dr. Sajid Qaisar,
9 Office of the Medical Examiner; Officer Jefferey A.
10 Rau, Melbourne Police Department; Deputy Angel Ready,
11 Brevard County Sheriff's Office; Agent Donald N.
12 Reynolds, Brevard County Sheriff's Office; Agent
13 Gregory Richter, Brevard County Sheriff's Office;
14 Deputy Bonnie Rink, Melbourne Police Department;
15 Sergeant Sean Riordan, Melbourne Police Department;
16 Agent Allie Roberts, Brevard County Sheriff's Office;
17 Ashley Roberts; Agent Kevin Roberts, Brevard County
18 Sheriff's Office; Deputy Paul Roman, Brevard County
19 Sheriff's Office; Officer Robin Romano, Melbourne
20 Police Department; Andrew Russell; Tech Michael Ryle,
21 Brevard County Sheriff's Office; Deputy Christopher
22 Sands, Brevard County Sheriff's Office; Sergeant Carl
23 Sangeleer, Brevard County Sheriff's Office; Corporal
24 Christopher Sauro, Brevard County Sheriff's Office;
25 Agent Carl Rick F. Schmitt, Jr., Brevard County

1 Sheriff's Office; Detective Michael Schneider,
2 Melbourne Police Department; Jason Seaton; Eric D.
3 Sellers; Officer Trevor Shaffer, Melbourne Police
4 Department; Officer Howard Shelton, Brevard County
5 Sheriff's Office; Amanda Lacey Shetrone; Deputy
6 Kenneth Shields, Brevard County Sheriff's Office; Gary
7 Dale Shrewsbury, Jr.; Officer Amy Siewert, Florida
8 Department of Law Enforcement; Deputy Wayne Simock,
9 Brevard County Sheriff's Office; Sergeant Clifton
10 Daniel Singleton, Brevard County Sheriff's Office;
11 Dr. Susan Skolly; Gregory Bernard Smith, Jr.; Officer
12 Brian Smith, Melbourne Police Department; SRO Stan
13 Smith, Melbourne Police Department; Agent Michael
14 Spadafora, Brevard County Sheriff's Office; Deputy
15 Michelle Stafford, Brevard County Sheriff's Office;
16 Deputy Aja Stake, Brevard County Sheriff's Office;
17 Officer James Starr, Brevard County Sheriff's Office;
18 Agent Brian Stoll, Brevard County Sheriff's Office;
19 Agent Ron Streiff, Melbourne Police Department;
20 Michael Sudlow, Brevard County Fire Rescue; Linda
21 Sullivan; Anthony Gus Summerford; Basia Taylor;
22 Tiffany Therese Taylor; Deputy Michael Thomas, Brevard
23 County Sheriff's Office; Deputy Albert Tolley, Brevard
24 County Sheriff's Office; Sergeant Cheryl Trainer,
25 Melbourne Police Department; Lisa Troescher; Deputy

1 James Troup, Brevard County Sheriff's Office; Bartel
2 Turk, M.D.; Wilson Martin Valentin; Corporal Victor
3 Velez, Brevard County Sheriff's Office; Jamie Lee
4 Vigliotti; SRO Cheryl Wallschlager (phonetic), Brevard
5 County Sheriff's Office; Deputy Robert Walters,
6 Melbourne Police Department; Gerard Joseph Weber, Sr.;
7 Officer Christopher M. Weber, Melbourne Police
8 Department; Susan Wesley; Janet White; Officer Mark
9 Whitright, Melbourne Police Department; Andrew David
10 Whittle; Alecia L. Williams; Officer William Williams,
11 Melbourne Police Department; Dale Elaine Woodby;
12 Dr. Joseph Wu; Sergeant Randy Young, Brevard County
13 Sheriff's Office; Dr. Patricia Zapf; Paul Louis
14 Zarpaylic; Andrea Ziarno, Brevard County Fire Rescue
15 Station. Okay.

16 MR. PIROLO: Judge, may we approach briefly?

17 THE COURT: Yes, you may.

18 (Thereupon, a benchside conference was had before
19 the Court, out of the hearing of any other parties in
20 the courtroom as follows:)

21 THE COURT: All right. How bad did I mess that
22 up?

23 MR. PIROLO: Excellent job by the Court. You
24 missed one though.

25 THE COURT: I did?

1 MR. PIROLO: Page 13.

2 THE COURT: How could I miss one?

3 MR. PIROLO: I think you looked at the care of --

4 THE COURT: Oh, I didn't do the care of.

5 MR. PIROLO: Karen Vanderveen, at Wuesthoff.

6 THE COURT: Actually, I did a horrible job, but
7 at least I got through it. That wasn't easy. Okay.
8 I'll add that. Anything else?

9 MR. PIROLO: No.

10 THE COURT: Okay. Thank you.

11 (Thereupon, the benchside conference was
12 concluded and the proceedings were had as follows:)

13 THE COURT: Okay. I need to add one more. Karen
14 Vanderveen, with Wuesthoff. Okay. Now that that's
15 over, that's the hardest thing I had to do this
16 morning. Are any of you related by blood or by
17 marriage to any of the potential witnesses, or do you
18 know any of them through any business or social
19 relationships? And I know I named a lot, so let's
20 start with that.

21 (Thereupon, voir dire selection was had which was
22 not requested to be transcribed.)

23 THE COURT: Now, do any of you on the panel today
24 know each other? Anyone know each other? (No
25 response). Okay. We are going to take a break for

1 lunch in a little bit, but I'm just trying to get you
2 to a certain point before we break for lunch, so I
3 hope everyone's okay. As you have heard, the
4 defendant is charged with murder in the first degree.
5 Murder in the first degree is punishable by life in
6 prison without parole, or death. Now, because the
7 death penalty may become an issue in this case, I want
8 to tell you how it is tried. If the jury returns a
9 verdict of guilty of murder in the first degree in
10 this case, the jury will reconvene for the purposes of
11 rendering an advisory recommendation as to which
12 sentence, death or life imprisonment, should be
13 imposed. At this hearing, evidence of aggravating and
14 mitigating circumstances will be presented for you to
15 consider; then both the State and the defendant will
16 have an opportunity to present argument for and
17 against the death penalty.

18 Following those arguments, I will give you
19 written instructions on the law that you are to apply
20 in weighing those circumstances in making your
21 recommendation. The final determination of which
22 sentence should be imposed is my responsibility;
23 however, under the law, I must give your
24 recommendation great weight. Many people have strong
25 feelings about the death penalty, both for it and

1 against it. The fact that you may have such feelings
2 does not disqualify you to serve as a juror, as long
3 as you are able to put those feelings aside and apply
4 the law as I instruct you. In other words, you must
5 be willing to be bound by your oath as a juror to obey
6 the laws of this state in making your recommendation.
7 If the jury returns a verdict of murder in the first
8 degree in this case, you will be asked to then weigh
9 the aggravating and mitigating circumstances
10 presented, listen to the arguments of the attorneys,
11 apply the law as I instruct you, and fairly consider
12 both possible penalties before making your penalty
13 recommendation.

14 After lunch, we will be questioning you
15 individually about this issue. Let me say at this
16 time that the fact that I am talking about the death
17 penalty is not to be taken by you as any indication
18 one way or the other as to whether or not this is a
19 case which justifies a death penalty. I am discussing
20 it because it is a possibility, you are not to
21 presuppose anything. As you may have noticed, there
22 are cameras in the courtroom. The media, including
23 cameras, will be allowed in the courtroom during these
24 proceedings. However, the media is not entitled to
25 your names or personal information, nor can they film

1 or take pictures of any juror. You may also have
2 noticed that you have been given a number to wear on
3 the outside of your clothing. The number is actually
4 the number of seat you are occupying. I want to be
5 certain that we are recording the answers that you
6 give us, and the number is acting as a cross-reference
7 of your name and will assist us in creating an
8 accurate record.

9 Now, this brings me to the next issue, which is
10 your knowledge of this case. If you have any prior
11 knowledge about this case, you will be asked to put
12 aside anything that you have learned about this case,
13 serve with an open mind, and reach a verdict based
14 only on the law and the evidence presented at the
15 trial. This is another issue that we will question
16 you about individually.

17 Now, if I could have the attorneys come forward.

18 (Thereupon, voir dire selection was had which was
19 not requested to be transcribed.)

20 THE COURT: Okay. Before we break, there's
21 further instructions that I'm going to read to you.
22 As I explained to you before, there's the first part
23 of the trial, which we refer to as the guilt phase,
24 where you make a decision as a jury as to whether the
25 defendant is guilty of not guilty of the charges that

1 will be presented to you. The second phase is the
2 penalty phase, and that's what I discussed with you
3 with regard -- if we get to the penalty phase -- with
4 regard to the recommendations for the Court. This
5 pertains to the penalty phase.

6 Any evidence and argument at the penalty, if we
7 were to reach it, is presented in order that you may
8 determine, first, whether sufficient aggravating
9 circumstances exist that would justify the imposition
10 of the death penalty; and, second, whether sufficient
11 mitigating circumstances exist that outweigh any
12 aggravating circumstances found to exist. At the
13 conclusion of the taking of the evidence, and any
14 argument of counsel, you will be instructed on the
15 factors in aggravation and mitigation that you may
16 consider. It will be helpful for you to be familiar
17 with some definitions and rules initially.

18 An aggravating circumstance is a standard to
19 guide the jury in making the choice between the
20 alternative recommendations of life imprisonment
21 without the possibility of parole, or death. It is a
22 statutorily enumerated circumstance which increases
23 the gravity of a crime or the harm to a victim. An
24 aggravating circumstance must be proved beyond a
25 reasonable doubt before it may be considered by you in

1 arriving at your recommendation. In order to even
2 consider the death penalty as a possible penalty, you
3 must first determine that sufficient aggravating
4 circumstances have been proven. The State has the
5 burden to prove each aggravating circumstance beyond a
6 reasonable doubt. A reasonable doubt is not a mere
7 possible doubt, a speculative, imaginary, or forced
8 doubt. Such a doubt must not influence you to
9 disregard an aggravating circumstance if you have an
10 abiding conviction that it exists. On the other hand,
11 if after carefully considering, comparing, and
12 weighing all the evidence, you do not have an abiding
13 conviction that the aggravating circumstance exists,
14 or if having a conviction, it is one which is not
15 stable, but one which waivers and vacillates, then the
16 aggravating circumstance has not been proved beyond
17 every reasonable doubt, and you must not consider it
18 in rendering an advisory sentence to the Court. It is
19 to the evidence introduced in this proceeding, and to
20 it alone, that you look for that proof. A reasonable
21 doubt as to the existence of an aggravating
22 circumstance may arise from the evidence, conflict in
23 the evidence, or the lack of evidence. If you have a
24 reasonable doubt as to the existence of an aggravating
25 circumstance, you should find that it does not exist.

1 However, if you have no reasonable doubt, you should
2 find that the aggravating circumstance does exist, and
3 give it whatever weight you determine it should
4 receive.

5 A mitigating circumstance is not limited to the
6 facts surrounding the crime. It can be anything in
7 the life of the defendant which might indicate that
8 the death penalty is not appropriate for the
9 defendant. In other words, a mitigating circumstance
10 may include any aspect of the defendant's character,
11 background, or life, or any circumstance of the
12 offense that reasonably may indicate that the death
13 penalty is not an appropriate sentence in this case.
14 A mitigating circumstance need not be proved beyond a
15 reasonable doubt by the defendant. A mitigating
16 circumstance need only be proved by the greater weight
17 of the evidence, which means evidence which more
18 likely than not tends to prove the existence of a
19 mitigating circumstance. If you determine by the
20 greater weight of the evidence that a mitigating
21 circumstance exists, you may consider it established
22 and give that evidence such weight as you determine it
23 should receive in reaching your conclusion as to the
24 sentence to be imposed.

25 If a penalty phase is required, then at the

1 conclusion of the taking of the evidence, and after
2 argument of counsel, you will be instructed on the
3 factors in aggravation and mitigation that you may
4 consider. The sentence that you recommend to the
5 Court must be based upon the facts as you find them
6 from the evidence and the law. If after weighing the
7 aggravating and mitigating circumstances, you
8 determine that sufficient aggravating circumstances
9 exist, and that the mitigating circumstances do not
10 outweigh the aggravating circumstances, or in the
11 absence of mitigating circumstances, that the
12 aggravating circumstances alone are sufficient, you
13 may recommend a sentence of death be imposed rather
14 than a sentence of life without the possibility of
15 parole. Regardless of your findings in this respect,
16 however, you are neither compelled nor required to
17 recommend a sentence of death.

18 If, on the other hand, you determine that no
19 aggravating circumstances are found to exist, or that
20 the aggravating circumstances are outweighed by the
21 mitigating circumstances, or in the absence of
22 mitigating circumstances, that the aggravating factors
23 alone are not sufficient, you must recommend
24 imposition of a sentence of life in prison without the
25 possibility of parole rather than a death sentence.

1 Now, I do want to tell you that all definitions that I
2 have talked about and will talk about will be given to
3 you in written form at the end of the case.

4 Okay. Having said that, we need to break for
5 lunch, we're going to take an hour and a half. But
6 there are some rules that govern your service as a
7 juror. During this break, you must continue to abide
8 by the rules governing your service as a juror.
9 Specifically, do not discuss this case among
10 yourselves. You can talk to each other, you just
11 cannot talk about the case. Do not discuss this case
12 with anyone else, or allow anyone to discuss it in
13 your presence. Do not speak to the lawyers, the
14 parties, or the witnesses about anything. You must
15 avoid reading newspaper headlines and articles
16 relating to this trial or its participants. Avoid
17 seeing or hearing television, radio, or Internet
18 comments about this trial, should there be any. Do
19 not conduct any research yourself regarding any
20 matters concerning this case. Now, I am going to talk
21 to you more in detail about that, but that's your
22 rules as a juror regarding this case.

23 Now, we're going to break. It's -- I'm going to
24 say it's ten til, I'm going to ask you -- actually,
25 I'm going to ask you to be downstairs at 1:15. Once

1 everyone is downstairs -- I can't bring you up until
2 everyone is downstairs. So we'll be in recess until
3 1:15, and report to the jury assembly room. Thank
4 you.

5 THE COURT DEPUTY: All rise.

6 (Thereupon, the venire was escorted out of the
7 courtroom by the court deputy; thereafter, voir dire
8 selection was had which was not requested to be
9 transcribed.)

10 THE COURT: Okay. We can bring in Juror
11 Number 1. And with all due respect, you don't have to
12 stand when they enter and exit the room, or else
13 you'll be standing and sitting, standing and sitting.

14 (Thereupon, Juror Number 1 was escorted into the
15 courtroom by the court deputy and the proceedings were
16 had as follows:)

17 THE COURT: Okay. Ma'am, good afternoon. As I
18 spoke of earlier, this is the portion of the jury
19 selection process where I'm going to ask you some
20 questions individually, and then each of the -- the
21 State and the defense will each have an opportunity to
22 follow up with questions. And if you don't understand
23 any question, just ask me and I'll try to rephrase it.

24 JUROR NUMBER 1: Okay.

25 THE COURT: I'm going to start with a hard

1 question, the first question is, what are your views
2 about the death penalty? If you have a view about the
3 death penalty.

4 JUROR NUMBER 1: I do not have a view about the
5 death penalty.

6 THE COURT: So you're not, what people would say,
7 for the death penalty, or against the death penalty?

8 JUROR NUMBER 1: I don't know at this time.

9 THE COURT: Okay. I'll ask you a follow-up
10 question. If I instructed you that you are to
11 consider the death penalty as a possible penalty, will
12 you be able to follow my instructions and consider the
13 penalty of death?

14 JUROR NUMBER 1: Yes, ma'am.

15 THE COURT: Okay. If I instructed you that you
16 are to consider life imprisonment as a penalty, will
17 you be able to follow my instructions and consider
18 life in imprisonment?

19 JUROR NUMBER 1: Yes, ma'am.

20 THE COURT: Okay. Now I'm going to ask about
21 your knowledge of the case. Do you know anything
22 about this case, either from your own personal
23 knowledge, rumor, by discussion with anyone else, or
24 from the media, radio, television, Internet,
25 electronic device, or newspaper?

1 JUROR NUMBER 1: Nothing.

2 THE COURT: So you have no knowledge about the
3 case?

4 JUROR NUMBER 1: I've lived in the state of
5 Florida for a little over two years, so -- I mean, I
6 know that doesn't explain anything, but I do not know
7 anything about this case.

8 THE COURT: You haven't seen anything on the
9 television or news programs or things of that nature?

10 JUROR NUMBER 1: No, I have not seen anything.

11 THE COURT: Okay. All right. Then I'll open it
12 up to questions by the State.

13 MR. BROWN: Good afternoon. Were you able to
14 hear the Court when she spoke to the panel as a whole
15 concerning the process of the death penalty?

16 JUROR NUMBER 1: Yes.

17 MR. BROWN: Okay. Let me just cover that a
18 little bit with you. Obviously, if you're selected as
19 a juror, the death penalty comes into play if you
20 return a verdict for first degree murder. Do you
21 understand that?

22 JUROR NUMBER 1: Yes, I do.

23 MR. BROWN: If it's a verdict of either not
24 guilty or of a lesser-included offense, it doesn't
25 come into play.

1 JUROR NUMBER 1: Okay.

2 MR. BROWN: And the next thing is, if the verdict
3 is first degree murder, ultimately, the jury will make
4 a sentencing recommendation to the Court, either life
5 in prison without parole, or the death penalty. Do
6 you understand that?

7 JUROR NUMBER 1: I do.

8 MR. BROWN: And the Court obviously -- well, it's
9 a recommendation, the Court's going to give it great
10 weight, so it's obviously very important and very
11 critical to the process, that recommendation. Do you
12 understand that?

13 JUROR NUMBER 1: I do.

14 MR. BROWN: And the way you arrive at that is a
15 multistep process. The first process is, you look at
16 whether the State has proven -- and the Court will
17 give a list to you -- one or more aggravating
18 circumstances, and whether the State's proven those
19 beyond any reasonable doubt. Obviously, if the State
20 hasn't proven any, then your recommendation would be
21 life. Do you understand that?

22 JUROR NUMBER 1: I do.

23 MR. BROWN: If the State's proven one or more,
24 you look at those and decide, and ask yourself, do --
25 does either that one, or the multitude of them,

1 justify the death penalty? If they don't by
2 themselves justify the death penalty, then your
3 recommendation would be life. And if they do justify,
4 you go to the next phase, look at the mitigation
5 evidence that's been provided. And there's a burden
6 of proof for that, by the greater weight of the
7 evidence. Do you understand that?

8 JUROR NUMBER 1: I do.

9 MR. BROWN: And then you take that mitigation
10 that's been proven to you, and you compare it and
11 weigh it to the aggravators. Do you understand thus
12 far?

13 JUROR NUMBER 1: Yes, I do.

14 MR. BROWN: And then you compare and weigh those
15 and ask yourself, does the mitigation outweigh the
16 aggravators? If it outweighs, then you're going to
17 return a verdict of life; if the aggravators outweigh
18 the mitigators, in that circumstance -- and that you
19 feel they justify the death penalty, then you have the
20 option of voting for death. Do you understand?

21 JUROR NUMBER 1: I do.

22 MR. BROWN: You're never required to, but that's
23 how you get to the position of having that option as a
24 juror to determine whether or not to make a vote for
25 death, a recommendation of death. Do you understand

1 that process?

2 JUROR NUMBER 1: I do understand.

3 MR. BROWN: How do you feel about that process?

4 JUROR NUMBER 1: There's still things to learn,
5 it seems like, and I want the best for the whole case
6 and, obviously, a fair trial. I do understand it goes
7 (unintelligible), but the death penalty and all that,
8 I don't fully understand.

9 MR. BROWN: You indicated earlier to the Court's
10 question that you don't have an opinion as to death
11 penalty. Have you ever had discussions with anybody
12 about it, read any articles about it?

13 JUROR NUMBER 1: With this case?

14 MR. BROWN: No, just the death penalty in
15 general.

16 JUROR NUMBER 1: No. When somebody's guilty,
17 they need to pay their -- they've got to do their
18 time, they're going to do what they're supposed to do.
19 I feel strongly about that.

20 MR. BROWN: Do you have any issues about being
21 asked to make a decision of voting for either the
22 recommendation of life, or death?

23 JUROR NUMBER 1: No.

24 MR. BROWN: You feel you're able to do that?

25 JUROR NUMBER 1: Yes.

1 MR. BROWN: If you feel that it's justified, can
2 you return a death penalty verdict, death penalty
3 recommendation?

4 JUROR NUMBER 1: Can you explain that?

5 MR. BROWN: If you feel that it's justified,
6 you've looked at the aggravators, looked at the
7 mitigators -- assuming that it's a verdict of first
8 degree murder, looked at the aggravators and
9 mitigators, and you feel that the death recommendation
10 is justified and is the appropriate recommendation,
11 can you do that?

12 JUROR NUMBER 1: Yes, I would.

13 MR. BROWN: Would the potential of -- if you're
14 selected as a juror, would the potential of having a
15 death sentencing recommendation, that potential of
16 having to consider life or death, do you think that
17 would affect your verdict at all on returning a
18 verdict of first degree murder versus a lesser?

19 JUROR NUMBER 1: I don't know.

20 MR. BROWN: Can you expand on that a little bit,
21 please?

22 JUROR NUMBER 1: No. I'm sorry.

23 MR. BROWN: Okay. You understand, obviously, as
24 I talked earlier, if you return a verdict for
25 something less than first, then you don't have to

1 consider -- there's no sentencing phase, there's no
2 recommendation to the Court for sentencing. Do you
3 understand that?

4 JUROR NUMBER 1: Yes.

5 MR. BROWN: So I guess my question to you is,
6 knowing that if you return a verdict for first degree,
7 that you're going to have to make that decision,
8 you're going to have to deal with that issue, do you
9 think that would affect you at all in deciding whether
10 to return a verdict of first degree murder, a lesser
11 of second degree murder, or some other lesser charge?

12 JUROR NUMBER 1: No, it wouldn't affect it.

13 MR. BROWN: And, overall, how do you feel about
14 sitting on a jury that has the potential of
15 recommending the death penalty?

16 JUROR NUMBER 1: Well, this is for the community,
17 and I feel it needs to be fair.

18 MR. BROWN: Your Honor, I have no further
19 questions. Thank you.

20 THE COURT: Okay. Thank you. Questions by the
21 defense? Hold on just a minute, questions by the
22 defense.

23 MR. MOORE: Yes.

24 THE COURT: Juror Number 1 thought she was done,
25 so she was moving.

1 MR. MOORE: Wishful thinking. Juror Number 1,
2 you indicated that if a person does the crime, they
3 should do the time, that you feel strongly about that.
4 Do you feel that there -- I'm talking about first
5 degree murder -- let me make sure we understand what
6 we're talking about here. We're not talking about the
7 death penalty in the abstract, we're talking about the
8 potential death of Mr. Bradley, that gentleman seated
9 at the table with us, and the process potentially
10 leading to that. And so do you think that there are
11 types of homicides that are set apart from other types
12 of homicides, where death would be more appropriate
13 for certain types of homicides?

14 JUROR NUMBER 1: No.

15 MR. MOORE: What about homicides involving the
16 death of a child, for example?

17 JUROR NUMBER 1: (Unintelligible).

18 MR. MOORE: Ma'am?

19 JUROR NUMBER 1: (Unintelligible).

20 MR. MOORE: All right. And so in making that
21 decision about what to recommend then, what sort of
22 factors for you -- we're talking about aggravating
23 circumstances, mitigating circumstances -- what sort
24 of factors would you consider mitigating? By
25 mitigating, I mean something that suggests that life

1 without parole is the appropriate sentence.

2 Aggravating circumstances suggest that death is the
3 appropriate sentence, mitigating circumstances suggest
4 that life without parole is the appropriate
5 circumstance. In your mind, what sort of
6 circumstances would be mitigating? In other words,
7 that would support a life recommendation, or life
8 sentence. Can you think of any factors?

9 JUROR NUMBER 1: No.

10 MR. MOORE: Do you understand that life -- a life
11 sentence means life without parole, and the only way a
12 person who's sentenced to life without parole leaves
13 prison is through death, the person dies in prison?
14 Do you understand that?

15 JUROR NUMBER 1: I do.

16 MR. MOORE: There is no early release, there's no
17 good time, no gain time. The person dies in prison,
18 that's what life without parole means. Do you
19 understand that?

20 JUROR NUMBER 1: I do.

21 MR. MOORE: Have you ever discussed the death
22 penalty with anybody before today?

23 JUROR NUMBER 1: No.

24 MR. MOORE: Do you belong to a church?

25 JUROR NUMBER 1: No.

1 MR. MOORE: Do you have any questions about, or
2 do you question in any way, well, the lawyer's saying
3 that life without parole means that the person dies in
4 prison. Do you question that at all, or do you accept
5 that? Because that is the law.

6 JUROR NUMBER 1: I do accept that.

7 MR. MOORE: And when we're talking about a
8 sentencing recommendation to which the judge has to
9 give great weight, do you understand that it's not
10 just a suggestion to the judge, it's essential, the
11 judge cannot make a decision of life or death without
12 the jury's recommendation? Do you understand that?

13 JUROR NUMBER 1: I do understand that.

14 MR. MOORE: All right. And that would be like an
15 airline pilot flying from New York City to Paris,
16 France. Now, the pilot's in the pilot's seat, he's
17 got control of the plane, but without certain things,
18 like a co-captain and GPS and maps and being able to
19 look out of the cockpit, he's not going to get there.
20 Do you understand -- so the comparison is the same,
21 the judge will not be able to get to the decision
22 about what sentence to impose without your
23 recommendation. It is just as essential as what I
24 just described to you. Do you accept that?

25 JUROR NUMBER 1: I do accept that.

1 THE COURT: Juror Number 1, I'm going to ask you
2 just to make sure you speak up.

3 JUROR NUMBER 1: Okay.

4 THE COURT: There is a microphone kind of right
5 next to you, but we've got to make sure you're being
6 heard. Thanks.

7 MR. MOORE: Do you understand, ma'am, that -- and
8 you've indicated you do, but this all new to you, and
9 we don't want to make any assumptions -- as part of
10 this process, which could lead to Mr. Bradley being
11 sentenced to death, or sentenced to life, that you
12 will be asked to consider and find aggravating
13 circumstances, and if you do, then go to the next
14 step, which is to decide if there are mitigating
15 circumstances, and then to compare the two; but no
16 matter what you decide as a result of that balancing,
17 do you understand that you are never obligated to vote
18 for death? Do you understand that?

19 JUROR NUMBER 1: I do understand that.

20 MR. MOORE: It's not an obligation.

21 JUROR NUMBER 1: I do understand that.

22 MR. MOORE: You could find multiple, several,
23 aggravating circumstances and potentially -- I'm not
24 saying you will, we're talking hypothetically, and I
25 think you understand what I mean by it.

1 JUROR NUMBER 1: I do.

2 MR. MOORE: Just in the abstract, you can find no
3 mitigating circumstances, and then one can say, well,
4 the aggravating circumstances vastly outweighed the
5 mitigating, or there are none, but life still seems to
6 be the appropriate sentence, and that is how I will
7 vote. That's how you can vote. Do you understand?

8 JUROR NUMBER 1: I do understand.

9 MR. MOORE: There are different burdens of
10 proving aggravating circumstances, and those have to
11 be proven beyond a reasonable doubt. The judge did
12 give you a brief instruction on what the burden of
13 proof of reasonable doubt means, I think you heard her
14 say.

15 JUROR NUMBER 1: Yes.

16 MR. MOORE: The burden for proving mitigating
17 circumstances is much less, it's a reasonably
18 convinced standard. Do you understand that?

19 JUROR NUMBER 1: I do understand that.

20 MR. MOORE: Okay. And do you understand -- you
21 probably don't, let me explain. Aggravating
22 circumstances are limited, mitigating circumstances
23 are not. They could have anything to do with the
24 background, life, circumstances of the offense,
25 background of the defendant, any of those things can

1 generate mitigating circumstances. It's wherever you
2 find them. Do you understand?

3 JUROR NUMBER 1: I do understand.

4 MR. MOORE: Okay. Let me ask this: Let's say,
5 hypothetically -- and I'm going to list aggravating
6 circumstances. Now, we're talking hypothetically
7 here.

8 JUROR NUMBER 1: Yes.

9 MR. MOORE: What if you were to find Mr. Bradley
10 guilty of first degree murder, the jury finds
11 unanimously a conviction of premeditated first degree
12 murder. And then the jury is asked to deliberate on
13 what the sentencing recommendation should be. What if
14 the jurors find these following aggravating
15 circumstances, and I'm going to list them: The
16 defendant was previously convicted of a felony
17 involving the use of threat or violence to another
18 person.

19 MR. BROWN: Judge, I'm going to object at this
20 point. Can we approach?

21 THE COURT: Yes, you may.

22 (Thereupon, a benchside conference was had before
23 the Court, out of the hearing of any other parties
24 present in the courtroom as follows:)

25 MR. BROWN: Judge, we would object to the list of

1 specific aggravators to get the juror's reaction, how
2 she would weigh those and evaluate those. It's trying
3 the case, it's improper, and it's just like facts to
4 the case.

5 MR. MOORE: Well, I notice that when we're
6 talking about hypothetically him being convicted of
7 first degree murder, which is what he's charged with,
8 there weren't any objections about that. We're not
9 trying the case, the State has listed six aggravating
10 circumstances; and I don't think there's any question
11 that if any one of these veniremen said, you know, if
12 there were six aggravating circumstances, there is no
13 way I could consider mitigating circumstances, there's
14 no question that that person would be stricken for
15 cause. And so we cannot know that unless they are
16 asked. I'm not trying the case, I'm merely listing
17 aggravating circumstances the State's already listed
18 that it intends to prove.

19 MR. BROWN: Judge, he's going to list the six
20 aggravators to the jurors, ask them their reaction to
21 that, how they weigh that, without --

22 MR. MOORE: No. No. That's incorrect. You're
23 putting words in my mouth. I'm not going to ask that
24 question. What I'm going to ask is, if the State
25 proves those, then can you go to the next step, are

1 you open to considering the mitigating circumstances,
2 or not? Very simply. I'm not asking them to weigh
3 it, I'm not asking them to prejudge, I'm saying
4 because the State's listed six, and they intend to try
5 to prove them, if those are proven, can you even
6 continue in the process, can you consider mitigating
7 evidence? If they say no, then they have no business
8 being on the jury, they cannot follow the law. That
9 is the law.

10 MR. BROWN: Judge, by listing the specific ones
11 that we're trying to prove in this case, he's trying
12 the facts of the case. Just like in a typical jury
13 selection, you start listing facts in the case, and
14 try to gauge a juror's reaction to that, you can't
15 give facts specifically.

16 MR. MOORE: Then, Your Honor, how can we discuss
17 realistically a penalty phase unless we assume, for
18 example, that he's convicted of first degree murder?
19 That's exactly the same process. Exactly.

20 THE COURT: That's a different question. You can
21 assume that for purposes of this, but you -- my
22 understanding is that -- from what I understood you
23 were starting to do was list the specific aggravators,
24 so I'm going to sustain the objection. So the
25 objection's sustained.

1 MR. MOORE: Your Honor, could we be heard further
2 on that? I mean, what if, Your Honor, a -- what if
3 she were to say right now, well, I don't need to hear
4 anything else, if there are six aggravating
5 circumstances, the victim is a police officer, if this
6 person was on probation, if this person had a prior
7 felony conviction, there's no way I could consider
8 mitigating circumstances, that person would have to be
9 stricken. Would have to be.

10 THE COURT: You can -- what I'm concerned about
11 is that you're talking about the facts of the case.
12 The case would have to prove that -- the State would
13 have to prove the aggravating circumstances. If you
14 want to talk about how many, you need a certain
15 number, do you need this, then that's okay; but when
16 you start talking about the specifics of the
17 aggravators, just like if the defense started talking
18 about anything with regard to facts specific as to
19 mitigators, that would be sustainable as well. I
20 mean, I understand what you're trying to get, if
21 there's specific numbers, but once you start talking
22 about the specific aggravators, then that's
23 sustainable.

24 MR. MOORE: But it has no meaning to them at this
25 point, unless they know what the aggravating

1 circumstances are. I'm not arguing the case, I'm just
2 asking if you find that, hypothetically. I'm not
3 saying you will, but if you do, then can you take the
4 next step? And if they can't, then they can't follow
5 the law, and they shouldn't be on the jury. And,
6 also, Judge, I'm going to, I intend to, discuss
7 mitigating circumstances, and ask them if they can
8 follow those; and, you know, if we can't do that, then
9 we can't have a meaningful voir dire.

10 THE COURT: Okay. You can talk in general terms,
11 like you have, but when you get into the facts,
12 specific facts, that's where it's sustainable. So the
13 Court's ruling stands.

14 MR. MOORE: So what can I ask as it relates to
15 aggravating circumstances?

16 THE COURT: I'm not going to answer that,
17 Mr. Moore. I'm not going to answer that. Okay.
18 Thank you.

19 (Thereupon, the benchside conference was
20 concluded and the proceedings were had as follows:)

21 MR. MOORE: May I proceed?

22 THE COURT: Yes, you may.

23 MR. MOORE: All right. Suppose, hypothetically,
24 the State proves a number, let's say six, aggravating
25 circumstances. You don't know what they are, but you

1 have an idea about this abstract concept of
2 aggravating circumstances, would you -- and we're
3 assuming, hypothetically, that Mr. Bradley was found
4 guilty of premeditated first degree murder of a police
5 officer, and then the State is able to prove six
6 aggravating circumstances, would you then be able to
7 take the next step and consider whether or not there
8 exists mitigating circumstances?

9 JUROR NUMBER 1: Yes.

10 MR. MOORE: Would you be able to do that?

11 JUROR NUMBER 1: Yes.

12 MR. MOORE: Do you understand that the State has
13 the right to present what's called victim impact
14 evidence; that is, the impact the victim had on the
15 community, on friends, on family, on her profession.
16 But that's not an aggravating circumstance, do you
17 understand that?

18 JUROR NUMBER 1: Yes.

19 MR. MOORE: It's just designed to demonstrate the
20 uniqueness of the victim. Can you entertain in your
21 thought process that while that can be compelling,
22 that it is not considered an aggravating circumstance?
23 It does not tip the scale one way or the other, like
24 an aggravating circumstance or like a mitigating
25 circumstance.

1 JUROR NUMBER 1: I understand.

2 MR. MOORE: Okay. Let me ask about this concept
3 of mental illness, is that -- have you ever worked in
4 the field of mental health, or do you know anybody
5 who's ever worked in that field?

6 JUROR NUMBER 1: No.

7 MR. MOORE: Do you -- has anybody that you're
8 close to, whether a friend or family member, ever
9 experienced mental illness?

10 JUROR NUMBER 1: A very distant family member in
11 Massachusetts.

12 MR. MOORE: Do you know anything about mental
13 health professionals, psychologists, psychiatrists?

14 JUROR NUMBER 1: I'm a hairdresser, so I have all
15 types of clients coming in; and some are happier, some
16 are not. Some come in, and when they leave, I feel my
17 duty is to make them feel good and lift their spirits
18 at the same time I'm doing their hair. So I'm not
19 saying I know much, but I know just a little bit about
20 psychology.

21 MR. MOORE: What do you think about the work that
22 -- given what you know -- the work that mental health
23 professionals do, psychologists and psychiatrists? In
24 other words, do you think that they can be helpful?

25 JUROR NUMBER 1: Very helpful. Very helpful.

1 MR. MOORE: Okay. If you heard testimony from a
2 psychologist or psychiatrist, would you be open to it,
3 would you listen to it?

4 JUROR NUMBER 1: Absolutely.

5 MR. MOORE: Or would you not want to hear that in
6 making this very important, most important decision
7 you can make?

8 JUROR NUMBER 1: It's better to have an open
9 mind, so I would consider it.

10 MR. MOORE: How about brain damage or brain
11 impairment, is that anything that you have had
12 experience with, in that you've known somebody close
13 to you, a friend or a relative, who has experienced
14 brain damage?

15 JUROR NUMBER 1: I have a daughter that's 20, and
16 she's lived with her father for five years; and I sent
17 her up there because she was getting into very bad
18 trouble, so I sent her there (unintelligible). She
19 lived with me, and this is in North Carolina. Well,
20 she, six months prior -- after she moved there, about
21 six months, she was hanging out with some lady in the
22 apartment building, a 50-year-old lady that liked to
23 do (unintelligible), and allowed my daughter to snort
24 up all these bad pills; and my daughter was in a
25 psychiatric hospital for 12 days. So there may be a

1 chance that -- she looks fine, she's a very happy
2 girl, but deep down -- she's about to turn 21, so I
3 don't know that there's much, or any, brain damage.
4 That's the best I can explain that.

5 MR. MOORE: Okay. As far as brain impairment or
6 brain damage is concerned, is that something that you
7 could, or could not, consider as mitigating?

8 JUROR NUMBER 1: Would you explain yourself?

9 MR. MOORE: Yes. Now, we're talking about on the
10 mitigation side, the reasons that we would offer as to
11 why a life without parole sentence might be the
12 appropriate sentence. And if you were instructed and
13 presented evidence of brain damage or brain
14 impairment, is that something that you could consider
15 to be mitigating, or not?

16 JUROR NUMBER 1: I could consider that.

17 MR. MOORE: You mentioned the problem that your
18 daughter had with drugs. How about drug addiction or
19 drug abuse, is that something that you would be open
20 to considering, or not, to be a mitigating
21 circumstance?

22 JUROR NUMBER 1: I would consider it. I would
23 listen to what needs to be heard, if I'm saying it
24 right.

25 MR. MOORE: You're saying it the way you're

1 saying it, and you're making sense. Just listening to
2 what you're saying.

3 JUROR NUMBER 1: Say that question again, please.

4 MR. MOORE: Right. But I think you've answered
5 it. We're talking about potential mitigating
6 circumstances, and would you, or would you not, if
7 presented with testimony and evidence of drug abuse,
8 drug use, would those matters be something that you
9 could, or could not, consider to be mitigating
10 circumstances. In other words, suggesting another
11 reason why life without parole might be an appropriate
12 sentence.

13 JUROR NUMBER 1: You mean, like, if a person was
14 on drugs and did a --

15 MR. MOORE: Well, I can't get into specifics any
16 more than that. We're just talking about the concept
17 of drug use, drug abuse, and whether you, as you sit
18 here, could or could not consider that to be
19 mitigating. In a first degree murder case --

20 JUROR NUMBER 1: I could consider it.

21 MR. MOORE: You could?

22 JUROR NUMBER 1: I could consider it, yes.

23 MR. MOORE: How about physical or emotional
24 abuse, is that an area, a factor, are those
25 circumstances that you could consider, take into

1 consideration, or not, as potentially mitigating
2 circumstances?

3 JUROR NUMBER 1: I could take that into
4 consideration.

5 MR. MOORE: Now, do you understand that as a
6 juror in a penalty phase proceeding, you have certain
7 rights? You have the right to vote what you think is
8 the right vote. The vote does not have to be
9 unanimous. In other words, all the jurors don't have
10 to get together and agree one way or the other, each
11 is entitled to his or her own vote. Do you understand
12 that?

13 JUROR NUMBER 1: I do understand.

14 MR. MOORE: Do you understand you have the right
15 to have your vote, your views, respected? Do you
16 understand that?

17 JUROR NUMBER 1: Yes, I do.

18 MR. MOORE: Which carries with it a
19 responsibility for listening to and respecting the
20 views and votes of other people. So far, are you
21 comfortable with that?

22 JUROR NUMBER 1: Yes.

23 MR. MOORE: Okay. And regardless of what the
24 other members of the jury say and opine and think, you
25 have the right to vote as to what you believe is the

1 right verdict. In other words, you don't -- you
2 cannot be brow beaten, you cannot be intimidated, you
3 have the right to vote what you think is, in your
4 conscience --

5 JUROR NUMBER 1: I agree.

6 MR. MOORE: You understand?

7 JUROR NUMBER 1: I understand.

8 MR. MOORE: Wherever that balancing leads you,
9 that is the vote that you have the right to give.

10 JUROR NUMBER 1: I do understand.

11 MR. MOORE: Your Honor, I'd ask for a minute
12 before I proceed.

13 THE COURT: Yes, you may.

14 MR. MOORE: Ma'am, you're Juror Number 1, you can
15 call me -- I'll give you a number. Okay. You
16 mentioned the importance of a fair trial, what do you
17 consider to be a fair trial?

18 JUROR NUMBER 1: Justice served.

19 MR. MOORE: What is -- I'll ask you, what is your
20 definition, your concept, of justice served?

21 JUROR NUMBER 1: Knowing all the facts, and don't
22 come up with an answer until you know everything
23 that's going on.

24 MR. MOORE: Can you keep an open mind -- you
25 don't know anything other than what you've heard in

1 this courtroom today.

2 JUROR NUMBER 1: Correct.

3 MR. MOORE: You're shooting in the dark,
4 basically. That's good. That's good that you haven't
5 prejudged. But you believe, as you sit here, that you
6 can keep an open mind until you actually go back to
7 deliberate? That means you've heard and sat through a
8 lengthy trial, weeks, and the judge instructs you on
9 the law, and then you go back and deliberate; and,
10 even then, you've got an open mind, you keep that open
11 mind. In other words, do you feel any concern that at
12 some point before you get to that point where you go
13 back to deliberate that you might have the tendency to
14 judge and say, it's all over as far as you're
15 concerned? That's -- you know, that's hard to answer
16 in the abstract, but I'm asking if you think you can
17 keep -- in other words, provide a fair trial by
18 keeping an open mind until it's time to make up your
19 mind, which would be at the very end of the trial.

20 JUROR NUMBER 1: I feel we have somebody's life
21 on the line, and it needs to be -- I have to have an
22 open mind until the very end. That's only fair.

23 MR. MOORE: Yes, ma'am. The law requires that.
24 And you said it was important to the community also.
25 Did I hear you say that?

1 JUROR NUMBER 1: Yes.

2 MR. MOORE: Explain to me what you meant by that.

3 JUROR NUMBER 1: This is my second time ever to
4 be a juror, so to help out with the community, I feel
5 it's part of our job to help with situations like
6 this.

7 MR. MOORE: Well, how would you be helping the
8 community?

9 JUROR NUMBER 1: I guess I wouldn't be helping --

10 MR. MOORE: Ma'am?

11 JUROR NUMBER 1: I would not be helping the
12 community.

13 MR. MOORE: I'm not saying that. I'm just asking
14 what you meant by it, is all. Do you agree that
15 anybody charged with a crime has the right to have a
16 jury of its peers?

17 JUROR NUMBER 1: Say that again?

18 MR. MOORE: Anybody charged with a wrongdoing,
19 who goes to trial, has the right to have a jury of its
20 peers; that is, people from all walks of life,
21 religion, economic, political views, represented on
22 the jury, or as much as possible? Do you believe that
23 anybody charged with a crime has the right to have
24 that kind of jury?

25 JUROR NUMBER 1: Yes, I do.

1 MR. MOORE: Okay. And do you agree that as
2 citizens, we all have the responsibility, when called,
3 to serve as jurors?

4 JUROR NUMBER 1: Yes.

5 MR. MOORE: All right. So in that sense, you're
6 helping the community. Is that the sense that you
7 were --

8 JUROR NUMBER 1: That's what I meant.

9 MR. MOORE: All right. What if -- now that you
10 know that the person who died in this case is a police
11 officer, would you feel that your sense of community
12 obligates you to somehow -- your vote to be influenced
13 by that? The fact that the person was a police
14 officer --

15 MR. BROWN: Judge, I'm going to object. Can we
16 approach?

17 THE COURT: Yes, you may.

18 (Thereupon, a benchside conference was had before
19 the Court, out of the hearing of any other parties
20 present in the courtroom as follows:)

21 MR. BROWN: Judge, I'm going to object, because
22 that is a specific aggravator, and I don't think I can
23 get up and say, this is a law officer that was
24 murdered, at this time can you tell me that that
25 should influence your recommendation of life or death.

1 So it's improper.

2 MR. MOORE: I'll qualify that by putting in the
3 context of the guilt phase, because at that point, it
4 is not a factor, it's purely guilt or innocence at
5 that phase, so I'll put it in the context of the guilt
6 phase, guilt or innocence phase.

7 THE COURT: And I understand it was that you were
8 following up on your question, and of her comment
9 about sense of community. So the objection's
10 overruled.

11 (Thereupon, the benchside conference was
12 concluded and the proceedings were had as follows:)

13 MR. MOORE: Okay. So what I'm asking is if the
14 status of Deputy Pill as a deputy police officer would
15 be a factor for you as being responsible for the
16 community, or serving the community?

17 JUROR NUMBER 1: I don't have an answer to that.

18 MR. MOORE: Well, as far as determining guilt or
19 innocence, the first part of the trial, would the fact
20 that Deputy Pill was a police officer, would that be a
21 factor that would persuade you to vote one way or the
22 other, as to guilt or innocence, do you think? Is
23 that a -- am I not making it clear?

24 JUROR NUMBER 1: You're making it very clear. We
25 have police officers, and they help to serve and

1 protect us; and I just don't understand how anybody
2 could hurt a police officer when they're there to
3 protect us.

4 MR. MOORE: If the Court instructed you in the
5 law on the elements, and that is, there are various
6 parts of the charge of first degree murder that the
7 State has to prove, it has to prove each part beyond a
8 reasonable doubt; and once you're instructed on those,
9 then -- and after you've heard all the evidence, then
10 you vote guilty or not guilty. Do you understand?

11 JUROR NUMBER 1: I understand.

12 MR. MOORE: One of those factors will not include
13 the fact that Deputy Pill was a police officer. Do
14 you understand?

15 JUROR NUMBER 1: I do understand.

16 MR. MOORE: Would that, however, be in your
17 thinking, and perhaps nudging you one way or the
18 other, even though the judge will not instruct you
19 that that is not a factor, it's not an element in the
20 charge of first degree murder?

21 JUROR NUMBER 1: It's heavy, what you're saying.
22 But it is what it is.

23 MR. MOORE: Well, you're talking about a death
24 penalty case, so it all falls into that category.

25 JUROR NUMBER 1: True. She was a person.

1 MR. MOORE: Person, yes. A police officer as
2 well. What I'm asking is for you to try to imagine if
3 that is going to be a factor that will contribute to
4 your verdict of guilty or not guilty, that she was a
5 police officer. As opposed to a milk man, or a postal
6 worker, or a lawyer, or a doctor. Will her profession
7 be a factor for you in deciding guilt or innocence?

8 JUROR NUMBER 1: I don't know.

9 MR. MOORE: Do you think it could be?

10 JUROR NUMBER 1: I don't know what to say right
11 now.

12 MR. MOORE: I'm not trying to mislead you or
13 confuse you.

14 JUROR NUMBER 1: No, you're not.

15 MR. MOORE: Okay. It sounds like you may have
16 some doubts about that, about whether the status of
17 the deputy as a law enforcement officer, it might
18 affect your verdict as to guilt or innocence.
19 Whatever your answer is, it's not a right or wrong,
20 it's whatever it is.

21 JUROR NUMBER 1: I mean, it was still a person,
22 who was a police officer. And I don't know all the
23 facts.

24 MR. MOORE: Okay. Do you have doubts about
25 whether you could put aside the status of Deputy Pill

1 as a police officer in deciding guilt or innocence?

2 JUROR NUMBER 1: Yes, I could.

3 MR. MOORE: You could, or do you have doubts?

4 JUROR NUMBER 1: I wouldn't have any doubts.

5 Thank you for explaining it to me.

6 MR. MOORE: I'm glad to. No more questions.

7 THE COURT: Okay. Thank you. Thank you, Juror
8 Number 1. We're going to have you step outside, and
9 while you're outside, you must continue to abide by
10 your rules governing your service as a juror. Do not
11 specifically speak about the case, and don't talk to
12 anyone else about the case, or allow them to talk to
13 you in their presence, and do not read anything or
14 conduct any individual research about the matter.

15 JUROR NUMBER 1: Okay.

16 THE COURT: Okay. Thank you. Okay. We'll bring
17 in Juror Number 2.

18 (Thereupon, Juror Number 1 was escorted out of
19 the courtroom by the court deputy; thereafter, voir
20 dire selection was had which was not requested to be
21 transcribed.)

22 THE COURT: I'm going to bring in -- let's do 1
23 and 2 first, let's just have them step in. Thank you.
24 Number 1 and Number 2. And I'm just going to talk to
25 them in the doorway, so you all can remain seated.

1 (Thereupon, Juror Number 1 and Juror Number 2
2 were escorted into the courtroom by the court deputy
3 and the proceedings were had as follows:)

4 THE COURT: Okay. Jurors Number 1 and 2, this
5 process is taking longer than we expected, so we do
6 not want you to have to wait. So what I'm going to
7 have you do is, I'm going to release you for today.
8 I'm going to ask you to call -- you're still a part of
9 this panel, and I'm going to ask you to call in
10 Wednesday after 5:00 p.m, and then we'll give you
11 further instructions as to when you'll need to report
12 next. You will have to report again, but we're just
13 not sure the date and the time, it depends on how long
14 this process takes. While you are on this break, you
15 must abide by the rules governing your service as a
16 juror. Specifically, do not discuss this case among
17 yourselves, do not discuss this case with anyone else,
18 or allow anyone to discuss it in your presence. Do
19 not speak to the lawyers, the parties, or the
20 witnesses about anything. You must avoid reading
21 newspaper headlines and articles related to this trial
22 or its participants. Avoid seeing or hearing
23 television, radio, or Internet comments about this
24 case, should there be any. Do not conduct any
25 research yourself regarding any matters concerning

1 this case. Now, for your family and friends, or
2 significant others, you can say, I'm at the courthouse
3 serving, potentially, jury service. You can say where
4 you're at and the time, but you can't say why and what
5 it's about. I just give you that information because
6 some people say, well, what am I supposed to tell
7 other people? That's what you tell other people, I'm
8 here serving as a juror, I have to be at the
9 courthouse at this time, I expect to be done at this
10 time. So that's the information you can give out, you
11 can't give out any specifics with regard to the case
12 or the nature of the case that you're here for. Any
13 questions or concerns?

14 JUROR NUMBER 1: No.

15 JUROR NUMBER 2: No.

16 THE COURT: So call back that number that you
17 had. If there's any confusion about where you call,
18 the court deputies can help you with that. But call
19 that number, and you'll call back Wednesday after 5:00
20 p.m. You are going to come back, it's just a matter
21 of when that will be. But I don't want you to have to
22 sit outside any longer and wait.

23 JUROR NUMBER 1: Would you think that would be
24 Thursday by any chance?

25 THE COURT: It may be Thursday, it may be Friday,

1 or -- remember we don't have court on Monday, Tuesday,
2 Wednesday, the 3rd, 4th, and 5th, so it may even be
3 until March the 6th.

4 JUROR NUMBER 1: Okay. Thank you.

5 THE COURT: Okay. But it'll be one of those
6 days. It'll be -- the latest it'll be is March the
7 6th. Thank you.

8 (Thereupon, Juror Number 1 and Juror Number 2
9 were escorted out of the courtroom by the court
10 deputy; thereafter, voir dire selection was had which
11 was not requested to be transcribed.)

12 THE COURT: Okay. We can bring in Juror
13 Number 5.

14 (Thereupon, Juror Number 5 was escorted into the
15 courtroom by the court deputy and the proceedings were
16 had as follows:)

17 THE COURT: Okay. Sir, we're going to have you
18 come in and be seated. First of all, I want to thank
19 you for being here, and I want to thank you for your
20 patience. I'm going to ask you -- I'm going to ask
21 you some questions with regard to your views about the
22 death penalty, and then I'm going to ask you some
23 questions about the knowledge of this case; and then
24 the State will be able to ask you questions, and then
25 the defense will be able to ask you questions. The

1 first question I'm going to have is, what are your
2 general views about the death penalty?

3 JUROR NUMBER 5: I don't disagree with it, if
4 it's warranted.

5 THE COURT: Okay. Would you -- a lot of people
6 consider themselves for or against, how would you
7 characterize yourself?

8 JUROR NUMBER 5: Probably for it.

9 THE COURT: Okay. If we -- if there is a guilty
10 verdict on count one, which is the premeditated first
11 degree murder charge, then we go into a second phase
12 of this trial; and in that phase, as a jury member,
13 you would be called upon to reach a verdict -- I mean
14 to make a recommendation to the Court of either the
15 death penalty, or the penalty of life in prison
16 without the possibility of parole. Those would be the
17 options. If you are for the death penalty, are you of
18 the opinion that death is the only appropriate penalty
19 for murder in the first degree, and is that opinion so
20 strong that you could not consider life in prison as a
21 penalty under any circumstances?

22 JUROR NUMBER 5: No.

23 THE COURT: Okay. So you would consider the
24 possibility of life in prison without the possibility
25 of parole as a possible penalty?

1 JUROR NUMBER 5: Yes.

2 THE COURT: Okay. Now I ask you, do you know
3 anything about this case, either from your own
4 personal knowledge, rumor, by discussion with anyone
5 else, or from the media, radio, television, Internet,
6 electronic device, or newspaper?

7 JUROR NUMBER 5: Mine would be just -- I probably
8 know three things about the whole thing, and it comes
9 from the TV.

10 THE COURT: Okay. And what information do you
11 believe that you know about the case?

12 JUROR NUMBER 5: When it first happened, I knew
13 that there was an officer involved. When you stood up
14 here and said earlier about the theft, I had no idea
15 about that. Or a robbery, I think you said. And then
16 the next thing I heard on the news was there was two
17 separate trials, they separated the two --

18 THE COURT: Okay. You said that you would have
19 learned that from watching television?

20 JUROR NUMBER 5: The news.

21 THE COURT: Based on what you say you know about
22 the case, can you set aside anything that you have
23 learned about this case, serve with an open mind, and
24 reach a verdict based only on the law and the evidence
25 presented at this trial?

1 JUROR NUMBER 5: Yeah.

2 THE COURT: You could do that? You've got to
3 answer yes or no.

4 JUROR NUMBER 5: Yes.

5 THE COURT: We're being recorded, so they've got
6 to be verbal. All right. Questions by the State.

7 MR. BROWN: Thank you, Your Honor. Juror Number
8 5, good afternoon. Let me first just cover the topic
9 of the news and what you've heard. You would agree
10 that sometimes, even though they may make their best
11 efforts, the media sometimes gets things wrong.

12 JUROR NUMBER 5: All the time.

13 MR. BROWN: So given that, can you assure us that
14 you're going to base your verdicts on the facts and
15 evidence that you're going to hear and see in the
16 courtroom?

17 JUROR NUMBER 5: Yes, sir.

18 MR. BROWN: And if you hear anything that you
19 think, well, this may be contrary to what I have heard
20 on the radio or heard on the TV two years ago, you're
21 going to ignore that, base it what you hear in the
22 courtroom.

23 JUROR NUMBER 5: Yes, sir.

24 MR. BROWN: Thank you. Now, concerning the issue
25 of the death penalty, I want to go through the

1 process. The Court, this morning, went through it
2 with you all, but she threw an awful lot at you guys
3 in a couple hour period. So the first issue is,
4 first, if you're selected as a juror, you're going to
5 go back to that jury room, and you're going to have to
6 decide if the defendant is guilty, and if so, what is
7 he guilty of. If you return a verdict of -- that he's
8 guilty of first degree murder, then, and only then, do
9 you proceed to the next step of making a sentencing
10 recommendation to the Court. Do you understand that?

11 JUROR NUMBER 5: Yes.

12 MR. BROWN: So if you come back with a lesser
13 than first degree murder, second degree murder, or
14 something else, then you don't get to phase two. Do
15 you understand?

16 JUROR NUMBER 5: Yes.

17 MR. BROWN: Now, if you come back with that first
18 degree murder charge, then you come back and we have
19 what we call a sentencing phase, or sentencing trial.
20 And at that trial, evidence will be presented and,
21 ultimately, you have to make a recommendation to the
22 Court. We call it a recommendation, but, keep in
23 mind, the Court's going to give it great weight. So
24 you understand the importance of that?

25 JUROR NUMBER 5: Yes.

1 MR. BROWN: Now, the first step is, the State, we
2 would present to you what are known as aggravating
3 circumstances. And the judge, ultimately, would
4 instruct you in that penalty portion of the trial, she
5 would instruct you on what those aggravating
6 circumstances are. And then you have to decide
7 whether or not the State has proven that beyond any
8 reasonable doubt. One, two, three, whatever the
9 number is that's there.

10 If we've proven at least one aggravating
11 circumstance to you, you look at those, either the
12 one, or the group, whatever number that you've found
13 that we've proven, and you examine those, you weigh
14 those, and you say, do these justify the death
15 penalty? If you look at the aggravators and say,
16 these don't justify the death penalty, then you return
17 a life recommendation. Agreed?

18 JUROR NUMBER 5: Agreed.

19 MR. BROWN: If you find that those aggravating
20 circumstances justify the death penalty, you then go
21 to phase two. The second part of that is the
22 presentation of the mitigation evidence, and that gets
23 presented to you, and you have to examine that. As
24 the Court told you, it can basically be about the
25 defendant, the defendant's background, history, things

1 of that nature. It's a different burden of proof.
2 Aggravators have to be proven beyond a reasonable
3 doubt, mitigators have to be proven to the greater
4 weight of the evidence. So you look at the mitigation
5 evidence and you say, okay, this is what's been
6 presented to me, what's been proven? If something
7 hasn't been proven, obviously, you disregard it.
8 Right?

9 JUROR NUMBER 5: Right.

10 MR. BROWN: If you find that the following
11 mitigators have been proven, one mitigator, two
12 mitigators, whatever has been presented that's been
13 proven, do you understand you then consider that?

14 JUROR NUMBER 5: Yes.

15 MR. BROWN: You compare and weigh it with the
16 aggravators. And that's the job that you have to do,
17 you, as a juror, and every juror as a whole. You
18 weigh the two and determine which weighs more. Do the
19 mitigators outweigh the aggravators? If you find the
20 mitigation evidence, the mitigators, outweigh the
21 aggravators, then you return a life recommendation.
22 If you find the aggravators outweigh the mitigators,
23 at that point is when you can return a death
24 recommendation. Do you understand?

25 JUROR NUMBER 5: Yes.

1 MR. BROWN: In other words, the aggravation --
2 the mitigation doesn't outweigh the aggravators that
3 you already found justify the death penalty. If you
4 find the aggravators do outweigh the mitigators,
5 you're still not obligated to return a verdict of
6 death. That gives you the situation when you can
7 recommend the death penalty. Do you understand?

8 JUROR NUMBER 5: Yes.

9 MR. BROWN: The Court's not going to tell you,
10 under the following set of circumstances, you have to
11 return a death verdict, a death recommendation.

12 JUROR NUMBER 5: Right.

13 MR. BROWN: It's up to you to look at it, weigh
14 the aggravators, weigh the mitigators, and recommend
15 what you feel is the appropriate sentence. Do you
16 understand?

17 JUROR NUMBER 5: Yes, I do.

18 MR. BROWN: Knowing that's the process, how do
19 you feel about it?

20 JUROR NUMBER 5: Little confused on the way --
21 layman's terms would have been better.

22 MR. BROWN: Okay.

23 JUROR NUMBER 5: But I would still have to say
24 the same thing, I believe in the death penalty, but,
25 you know, under certain circumstances, or what the

1 circumstances might be of a lesser --

2 MR. BROWN: So you understand, simply because
3 there's a first degree murder, obviously something
4 less than first degree, death penalty's off the table.

5 JUROR NUMBER 5: Okay.

6 MR. BROWN: First degree murder doesn't
7 automatically mean a death recommendation, right?

8 JUROR NUMBER 5: Right.

9 MR. BROWN: Okay. You're going to look to see
10 whether we've proven -- it's the term we use, and
11 there may be better terms, but it's the term I have to
12 use because it's in the instructions -- aggravating
13 circumstances. We have to prove those, which will
14 take you above just having the first degree murder,
15 having proven any of these aggravators, and do those
16 justify the death penalty? Right?

17 JUROR NUMBER 5: Yes.

18 MR. BROWN: Are you good with that?

19 JUROR NUMBER 5: Yes.

20 MR. BROWN: Okay. Same thing now with the
21 mitigation evidence, you'll get whatever has been
22 proven and consider that. Do you understand?

23 JUROR NUMBER 5: Yes.

24 MR. BROWN: Okay. You determine how much weight
25 you will give. You can give something great weight,

1 or you can give it little weight. You determine how
2 much weight -- you consider everything, and you
3 determine how much weight, the importance, of that
4 evidence in arriving at your decision.

5 Can you assure everybody that you'll follow the
6 procedure that's set forth?

7 JUROR NUMBER 5: Yes, sir.

8 MR. BROWN: You're not going in and saying, I'm
9 going to automatically give the death penalty?

10 JUROR NUMBER 5: Right.

11 MR. BROWN: You're not going to say, I'm going to
12 automatically do a life recommendation?

13 JUROR NUMBER 5: Yes, sir.

14 MR. BROWN: Follow the procedure, see if we've
15 proven the aggravators, hold us to our burden, do that
16 weighing that the judge talks about, and make what you
17 feel is the appropriate recommendation.

18 JUROR NUMBER 5: Yes, sir.

19 MR. BROWN: Now, you know that to get to the
20 death penalty decision that it has to be a first
21 degree verdict.

22 JUROR NUMBER 5: Yes, sir.

23 MR. BROWN: If he's convicted of second, or
24 something else, there's no death penalty
25 recommendation. Would knowing that you can avoid

1 having to make that decision by returning a lesser
2 verdict, would that affect your deliberation at all?

3 JUROR NUMBER 5: No.

4 MR. BROWN: You would return the verdict for
5 what's been proven?

6 JUROR NUMBER 5: I would.

7 MR. BROWN: Is there anything in your background,
8 feelings, your moral beliefs that causes you any
9 concern, any hesitancy, about sitting on a jury that
10 may consider the death penalty?

11 JUROR NUMBER 5: No.

12 MR. BROWN: Can you make that decision? Can you
13 return a recommendation of death?

14 JUROR NUMBER 5: Yes, sir.

15 MR. BROWN: Thank you. Nothing further, Your
16 Honor.

17 THE COURT: Thank you. Questions by the defense?

18 MR. MOORE: Yes. Had you given thought to what
19 your position was on the death penalty before you came
20 in here today?

21 JUROR NUMBER 5: In conversation with family and
22 friends of -- yes, that's what I believe.

23 MR. MOORE: What would be the reasons that you
24 think -- that there are in support of the death
25 penalty, for you? Why do you think we should have the

1 death penalty?

2 JUROR NUMBER 5: Well, this may sound stupid, but
3 an eye for an eye. That's why circumstances, of
4 course -- you know, it's easy from the outside looking
5 in to say an eye for eye, but you have to weigh the
6 evidence, I guess.

7 MR. MOORE: On a scale from 1 to 10, where would
8 you put yourself, with 10 being the most strongly held
9 support for the death penalty, 1 being the other end.

10 JUROR NUMBER 5: 6 or 7, maybe even 8.

11 MR. MOORE: Okay. So you're saying an eye for an
12 eye, but in certain circumstances?

13 JUROR NUMBER 5: Yes.

14 MR. MOORE: What would be an argument against the
15 death penalty?

16 JUROR NUMBER 5: Mine is, and I've said this to
17 everybody I've ever talked to, it would be age.
18 Trying a juvenile as an adult, (unintelligible), age
19 would be -- making them pay like that for a youthful
20 decision, that would be about --

21 MR. MOORE: Can you think of other circumstances
22 that might mitigate against the death penalty?

23 JUROR NUMBER 5: Against the death penalty?

24 MR. MOORE: Yeah. Besides age. Age is,
25 essentially, a mitigating factor. And what I mean by

1 mitigating factor is, it suggests that the sentence of
2 life without parole might be more appropriate, and you
3 listed age as one of the things that might support
4 that. Can you think of any other circumstances that
5 might support a sentence of life without parole?

6 JUROR NUMBER 5: Children, having a child.

7 MR. MOORE: How so?

8 JUROR NUMBER 5: Me being a father, I think there
9 would come a time in my son's life where he would want
10 to see me, you know. And if they gave you death, he
11 would never have that chance to even say hello or, you
12 know, come back and say, I forgive you, or whatever it
13 may be.

14 MR. MOORE: Do you believe that we are the sum
15 total of our experiences in life? Do you believe that
16 whatever we experience in life affects us and makes us
17 who we are?

18 JUROR NUMBER 5: Yes, sir.

19 MR. MOORE: And how would those sorts of life
20 experiences perhaps affect whatever the appropriate
21 sentence might be? Do you follow what I'm saying?
22 Are there things about a person's life that you might
23 consider in deciding what's an appropriate sentence,
24 life or death?

25 JUROR NUMBER 5: You mean like habits?

1 MR. MOORE: Whatever comes to mind, whatever -- I
2 know this is all new to you, and there's no right or
3 wrong answer, but I'm just trying to get at what your
4 thinking is, because you did acknowledge that, you
5 know, "eye for an eye, but." What you meant is that
6 you would consider, but I take the mitigating
7 circumstances, and I just wondered what might be
8 mitigating for you.

9 JUROR NUMBER 5: (Unintelligible) under the
10 influence, might have been drunk driving. And --

11 MR. MOORE: All right. Do you think --

12 JUROR NUMBER 5: Choices in general. Drinking
13 and driving, you chose to get behind the wheel knowing
14 that you've been drinking.

15 MR. MOORE: Would you consider mental illness, if
16 proven, would you potentially consider that to be a
17 mitigating circumstance, or mitigating factor, which
18 might support a life sentence to be more appropriate?

19 JUROR NUMBER 5: Yes, I would.

20 MR. MOORE: And let me ask this, do you
21 understand that life without parole means -- well, you
22 tell me, what do you think that means?

23 JUROR NUMBER 5: (Unintelligible).

24 MR. MOORE: You die in prison.

25 JUROR NUMBER 5: Yeah.

1 MR. MOORE: Do you accept that?

2 JUROR NUMBER 5: Yes.

3 MR. MOORE: Do you understand there's no early
4 release, the only way out is death?

5 JUROR NUMBER 5: Right.

6 MR. MOORE: So those are the choices if the jury
7 found Mr. Bradley guilty of first degree premeditated
8 murder. Not saying they will, but if they did, those
9 would be the two choices, life without parole, or a
10 death sentence. How about brain damage or brain
11 impairment, if proven, would that be a mitigating
12 circumstance that you would consider, be open to
13 considering?

14 JUROR NUMBER 5: Would that be like mental
15 illness?

16 MR. MOORE: Would it be like mental illness?

17 JUROR NUMBER 5: Right.

18 MR. MOORE: Well, if you found that there were
19 two different categories, okay, on the one hand,
20 you've got illness, you've got over here, you've got
21 -- maybe it's not just the way someone thinks, but
22 maybe there's something wrong with the brain, itself,
23 you know, brain damage. Is that something that you
24 would be open to considering as a mitigating
25 circumstance?

1 JUROR NUMBER 5: Yes, sir.

2 MR. MOORE: Any doubt about that? Well, let me
3 ask this: What is your concept of mental health
4 professionals, psychologists, psychiatrists, do you
5 think they help people?

6 JUROR NUMBER 5: Yes.

7 MR. MOORE: How do they help?

8 JUROR NUMBER 5: Figuring out different ways to
9 deal with different things. Some people deal with
10 them one way, psychiatrists say, well, that doesn't
11 work for you, why don't you try this way.

12 MR. MOORE: Do you -- there are certain
13 professions that I'm guessing you would respect, like
14 doctors, for example? Maybe a physician, you look up
15 to them as knowing how to heal people? Would that be
16 a correct assumption, that you would respect a
17 doctor's opinion?

18 JUROR NUMBER 5: Pretty sure a doctor's opinion
19 (unintelligible).

20 MR. MOORE: All right. I'm just asking, but now
21 I'm getting around to psychologists and psychiatrists,
22 mental health professionals. Is that a profession you
23 recognize as a legitimate profession?

24 JUROR NUMBER 5: Yes, it is.

25 MR. MOORE: Would you -- if offered, would you

1 want to hear testimony from a psychologist or a
2 psychiatrist in this case, if it were offered to you?
3 Would you want to listen to that, would you consider
4 that?

5 JUROR NUMBER 5: Yes. You have to consider
6 everything.

7 MR. MOORE: Well, but not everybody's willing to
8 do that, that's why I'm asking that here. If you say
9 you are, I take you at your word; but if you say
10 you're not, that's just more information I have about
11 you. How about drug use or drug addiction, is that --
12 if there was evidence offered of that, proof offered
13 of that, is that something you would be open to
14 considering as a mitigating circumstance?

15 JUROR NUMBER 5: Yes. I thought that drug
16 addiction wasn't a defense.

17 MR. MOORE: Well, some would say, but we're not
18 going to debate that. Do you think drug addiction is
19 a choice?

20 JUROR NUMBER 5: Drug abuse is a choice;
21 addiction, sometimes no, I guess. From personal
22 experience, I know one person that can't away from it,
23 and then another person (unintelligible).

24 MR. MOORE: Your friend who couldn't get away
25 from it -- was that a friend, or just an acquaintance?

1 JUROR NUMBER 5: I don't consider him as a friend
2 anymore, just kind of ran over a lot of people.

3 MR. MOORE: Ran over? Took advantage of?

4 JUROR NUMBER 5: Took advantage of, yeah.

5 MR. MOORE: And you apparently witnessed a
6 struggle with a drug addiction in that person?

7 JUROR NUMBER 5: Yes.

8 MR. MOORE: Did you believe that struggle was a
9 choice?

10 JUROR NUMBER 5: Not with that person, no.

11 MR. MOORE: So you recognize that for some people
12 it may not be a choice?

13 JUROR NUMBER 5: Different personalities.

14 MR. MOORE: How about mental illness, do you
15 think that's a choice?

16 JUROR NUMBER 5: No.

17 MR. MOORE: Do you know anybody who's ever
18 suffered from mental illness?

19 JUROR NUMBER 5: My grandmother had Alzheimer's.
20 That's about it.

21 MR. MOORE: Were you close to your grandmother?

22 JUROR NUMBER 5: Oh, yeah.

23 MR. MOORE: If the -- in the field of medicine,
24 there are what are called neuroimaging technologies,
25 and that's just another way of looking at the inside

1 of the body and trying to figure out how it works,
2 like an x-ray, in a way, but different. One of them
3 is called an MRI, have you ever heard of that?

4 JUROR NUMBER 5: Yes, sir.

5 MR. MOORE: Okay. I'm not asking you to give me
6 a dissertation on it, but do you have an idea of how
7 it works?

8 JUROR NUMBER 5: Magnet.

9 MR. MOORE: Yes. So you do. Have you ever had
10 one?

11 JUROR NUMBER 5: Yes.

12 MR. MOORE: How about a PET scan, have you ever
13 had one of those or heard about that?

14 JUROR NUMBER 5: Yes, sir.

15 MR. MOORE: So we're talking about the category
16 of neuroimaging, is that information that, if it were
17 offered to you, that you would be open to considering
18 as mitigating circumstances in this case?

19 JUROR NUMBER 5: Yes.

20 MR. MOORE: If the Court read this instruction to
21 you, would you be open to accepting this instruction,
22 if the Court said about the murder, if it were found
23 to be a murder, "the capital felony was committed
24 while the defendant was under the influence of extreme
25 mental or emotional disturbance." Is that an

1 instruction that you could follow, without saying, you
2 know, where it would lead you in terms of trying to
3 decide if it's a mitigating circumstance or not. You
4 follow me?

5 JUROR NUMBER 5: I don't follow that question.

6 MR. MOORE: Okay. We're talking about mitigating
7 circumstances, and if the Court read this instruction
8 to you, would you be open to considering this as a
9 potential mitigating circumstance? Let me read it
10 again: "The capital felony was committed while the
11 defendant was under the influence of extreme mental or
12 emotional disturbance." Is that something that you
13 could consider in trying to decide if it's a
14 mitigating circumstance or not?

15 JUROR NUMBER 5: I could consider that.

16 MR. MOORE: How about this, "the capacity of the
17 defendant to appreciate the criminality of his conduct
18 or to conform his conduct to the requirements of the
19 law was substantially impaired." Would you be able to
20 consider that as a potential mitigating circumstance?

21 JUROR NUMBER 5: Yes.

22 MR. MOORE: Did you get it? I mean, it's kind
23 of --

24 JUROR NUMBER 5: It's a lot of big words.

25 MR. MOORE: It is, I know. Let me run through it

1 again, because I'm throwing a lot at you.

2 JUROR NUMBER 5: It kind of sounded like the
3 really big words on the first sentence. They both
4 sounded the same

5 MR. MOORE: Well, all right, let me read it
6 again. I'm glad you asked, because some people would
7 just sit and say, yeah, whatever, you know; but you're
8 asking me what that means, which means you're thinking
9 about it. That's good. "The capacity of the
10 defendant to appreciate," that is his ability to
11 understand, "the criminality of his conduct or to
12 conform his conduct to the requirements of the law was
13 substantially impaired."

14 JUROR NUMBER 5: So, basically, he didn't --

15 MR. MOORE: Understands the law.

16 JUROR NUMBER 5: -- understand what he did?

17 MR. MOORE: An ability to conform to the law, to
18 do what the law requires, and that that, potentially,
19 was substantially impaired, for whatever reason. Do
20 you understand?

21 JUROR NUMBER 5: Yes.

22 MR. MOORE: Is that a potential mitigating
23 circumstance that you could consider?

24 JUROR NUMBER 5: Yes.

25 MR. MOORE: Do you belong to a church?

1 JUROR NUMBER 5: No, sir.

2 MR. MOORE: Do you understand that life -- well,
3 we already talked about that, life without parole
4 means just that. You got that. Do you understand
5 that -- what does it mean to you when the judge said
6 that she must give great weight to your verdict, or
7 your penalty, if we get there? She did explain that,
8 and what does that mean to you?

9 JUROR NUMBER 5: It will help her along a little
10 bit with her decision-making.

11 MR. MOORE: Well, okay, yes. But how about it
12 helps her a lot, how about she can't impose a sentence
13 without your verdict. I mean, that's how strongly
14 that instruction is taken, that's what that means.
15 It's like a pilot trying to fly to France, could he do
16 it by himself, without GPS, without a co-pilot,
17 without maps? No.

18 JUROR NUMBER 5: Right.

19 MR. MOORE: But he has the ability to fly a
20 plane. The judge knows the law, but she can't impose
21 a sentence without your recommendation, it's that
22 critical, it's that important. She has to give great
23 weight to it, that's what that means. Do you accept
24 that?

25 JUROR NUMBER 5: Yes.

1 MR. MOORE: Can you think of crimes, of types of
2 first degree murders that are so egregious, so bad,
3 that they're set apart and are the types that should
4 receive the death penalty?

5 JUROR NUMBER 5: Yes.

6 MR. MOORE: What kinds are those?

7 JUROR NUMBER 5: Anything with children. Or the
8 elderly, for that matter, that are like children and
9 can't take care of themselves. That would be the two
10 people right off the top of my head.

11 MR. MOORE: If the victim's a police officer, is
12 that one where you'd automatically say, well, that
13 deserves death?

14 JUROR NUMBER 5: No.

15 MR. MOORE: Then you could engage in the process
16 that we've been talking about, where you look at
17 aggravating circumstances, well, okay, so you maybe
18 find some; and then you look for mitigating
19 circumstances. So you're saying that even though the
20 victim might have been a police officer, you would be
21 able to engage in that process, where you try to find
22 aggravating circumstances, and then try to find --
23 open to finding mitigating circumstances? You're
24 saying you could do that?

25 JUROR NUMBER 5: Yeah, I'm open to hear

1 everything.

2 MR. MOORE: Now, we're talking numbers here, and
3 this is very difficult because I can't be specific
4 about what an aggravating circumstance is, what it
5 means. All I can say is, if, for example,
6 hypothetically, you find guilt of first degree
7 premeditated murder, and the Court instructs you on
8 six aggravating circumstances, and all those are
9 found, you're convinced beyond a reasonable doubt,
10 would you then be open to considering mitigating
11 circumstances? Or is it a red light for you, that's
12 as much as you need to hear, you're ready to vote at
13 that point?

14 JUROR NUMBER 5: No, the mitigating circumstances
15 would have to be read.

16 MR. MOORE: Well, what I'm asking is, if there
17 were a large number that you found of aggravating
18 circumstances, would you be able to then engage in the
19 next part of this process, which is to ask yourself if
20 there are mitigating circumstances, and give them
21 whatever weight you think that you ought to give them?
22 Do you understand what I'm saying?

23 JUROR NUMBER 5: Yes.

24 MR. MOORE: You'd continue with the process, you
25 wouldn't just stop there?

1 JUROR NUMBER 5: Right. Yes.

2 MR. MOORE: Do you agree that you would do that?

3 JUROR NUMBER 5: Yes.

4 MR. MOORE: Do you understand as a juror in a
5 penalty phase proceeding that you have -- you have
6 rights. You have the right to your own vote as to
7 what you think the appropriate verdict should be, and
8 the jury does not have to vote unanimously. At the
9 guilt part of the trial, the jury has to unanimously
10 agree, all for guilt, or all for innocence, or not
11 guilty. But in the penalty phase, everybody's got the
12 right to have their own vote, it doesn't have to be
13 unanimous; and whatever your vote is, you have the
14 right to stick to that vote. Do you understand?

15 JUROR NUMBER 5: Yes.

16 MR. MOORE: And to have your vote respected.
17 That means you have to respect the opinions of other
18 people, you can't try to beat them down, you can't try
19 to -- you engage in the mutual sharing of ideas, but
20 everybody's entitled to their own opinion, their own
21 vote. Do you understand?

22 JUROR NUMBER 5: Yes.

23 MR. MOORE: And do you understand that regardless
24 of what the weighing process is, and what the end
25 result of that is when you compare aggravating

1 circumstances to mitigating circumstances, you are
2 never required to vote for death? Do you understand
3 that?

4 JUROR NUMBER 5: Yes, sir.

5 MR. MOORE: Do you accept that?

6 JUROR NUMBER 5: Yes, sir.

7 MR. MOORE: What do you think is a harsher
8 sentence, the death penalty, or life without parole in
9 prison?

10 MR. BROWN: Objection. May we approach?

11 THE COURT: Yes, you may. Bench conference.

12 (Thereupon, a benchside conference was had before
13 the Court, out of the hearing of any other parties
14 present in the courtroom as follows:)

15 MR. BROWN: Judge, I think that's an improper
16 question, you're certainly not going to get evidence
17 on that, and I think it's an improper question to ask
18 as to their ability to be a juror.

19 THE COURT: Okay. Response from the defense?

20 MR. MOORE: It sure has everything to do with
21 what their decision is, and I would certainly want to
22 know that as to what a juror considers the relative
23 severity of the penalties involved. I mean, why would
24 we not get into that? How does that invade the
25 province of the jury? I mean, I need to know, you

1 know, given those are the choices, what they think
2 about those two choices. They can't -- they're not
3 operating in the dark, we're not either. I'm making
4 choices about who's going to be on the jury and who
5 isn't, and that's a valid -- that information informs
6 my decision.

7 THE COURT: I'm having a tough one with that
8 question. I haven't heard that question asked in this
9 type of proceeding.

10 MR. MOORE: You may not know, you know, but you
11 ought to be given the opportunity to weigh in on that,
12 because he's being asked to make that decision.

13 THE COURT: Yeah, but -- I don't see where that
14 pertains to the question here. I mean, that's not
15 weighing aggravating or mitigating -- it's not
16 supposed to be part of their thought process, and I
17 don't want them to get into that being part of their
18 thought process when they get into deliberations.

19 MR. MOORE: Well, they understand the Court has
20 the final say, and they're instructed that mitigating
21 circumstances can come from the circumstances of the
22 case, and that is certainly a circumstance of the
23 case. He could find that it's mitigating to sentence
24 him to death, I don't know, if he considers prison
25 worse than death row, in which case, that's a

1 circumstance that's related to the case.

2 THE COURT: I'm going to sustain the objection,
3 because that is not -- I can't see where that's part
4 of their thought process. If the aggravators outweigh
5 the mitigators, then they're supposed to consider
6 death, but they never have to consider death if the --
7 if the mitigators outweigh the aggravators, they're
8 supposed to consider life. So I'm going to sustain
9 the objection.

10 (Thereupon, the benchside conference was
11 concluded and the proceedings were had as follows:)

12 MR. MOORE: Would you have any -- knowing what
13 you know at this point -- difficulty sitting as a
14 juror in this case?

15 JUROR NUMBER 5: No, sir.

16 MR. MOORE: Nothing further.

17 THE COURT: Okay. Thank you. Juror Number 5,
18 what we're going to have you do is, we're going to
19 release you for the day. I'm going to have you call
20 back -- and we're going to send you downstairs and
21 they're going to give you some instructions about how
22 to call back -- between 1:00 and 5:00 on Wednesday.
23 You won't be here tomorrow, you won't be here
24 Wednesday. You may have to be back Thursday, Friday,
25 or possibly as late as a week from Thursday, because

1 we have no court on Monday, Tuesday, Wednesday. But
2 if you call back between 1:00 and 5:00 on Wednesday,
3 we'll be able to give you more instructions about when
4 to report back. You are still being considered as a
5 part of this panel, you have not been released. You
6 will have to report back, it will just be a matter of
7 when. I don't want you to have to sit out there and
8 wait for two days while we're questioning other
9 people, so I'm going to give you this opportunity to
10 be on recess until that time.

11 Now, during this recess, you must continue to
12 abide by your rules governing your service as a juror.
13 Specifically, do not discuss this case with anyone
14 else. Do not discuss it with -- do not allow anyone
15 to discuss it in your presence. Do not speak to the
16 lawyers, the parties, or the witnesses about anything.
17 You must avoid reading newspaper headlines and/or
18 articles related to this trial or its participants.
19 Avoid seeing or hearing television, radio, or Internet
20 comments about this trial, should there be any. Do
21 not conduct any research yourself regarding this case
22 or any of its participants.

23 Okay. If you'll report downstairs, talk to one
24 of the clerks in the jury assembly room, and they'll
25 give you the phone number that you're supposed to call

1 back to know when to report back. Thank you, sir.

2 (Thereupon, Juror Number 5 was escorted out of
3 the courtroom by the court deputy; thereafter, voir
4 dire selection was had which was not requested to be
5 transcribed. Following voir dire, court was in recess
6 for the day 2/24/14; thereafter, court was reconvened
7 on 2/25/14 and the proceedings were had as follows:)

8 THE COURT: I can bring Mr. Bradley out now, or I
9 can wait until we have the jury.

10 MR. MOORE: Now is good.

11 THE COURT: We can go ahead and bring him out.

12 (Thereupon, the defendant was escorted into the
13 courtroom by the court deputy and the proceedings were
14 had as follows:)

15 THE COURT: Okay. We can go on the record in the
16 case of the State of Florida versus Brandon Lee
17 Bradley. At this point I'm just waiting for them to
18 bring the jury up and tell me when they're ready.
19 Once the jury's up, we'll continue with questioning
20 individually, we're on number 14. Any preliminary
21 matters I need to address on behalf of the State?

22 MR. BROWN: No, Your Honor.

23 THE COURT: Any preliminary matters on behalf of
24 the defense?

25 MR. MOORE: Yes. I'd ask the Court to revisit my

1 request to discuss potential aggravating circumstances
2 during voir dire. And I have a couple cases for the
3 Court.

4 THE COURT: Okay.

5 MR. MOORE: Your Honor, they are --

6 THE COURT: With all due respect, your microphone
7 is not on.

8 MR. MOORE: Can I talk from here and be heard?

9 THE COURT: I can't -- I used to be able to tell
10 if you were being picked up, but they changed my
11 screen and I can't tell. If you stand there, you'll
12 be picked up.

13 MR. MOORE: All right. First case is Gerald's
14 versus State, 111 So.3d 778, a 2012 case. Language
15 is, that I'm getting at -- it would be -- we had to do
16 this in two parts, so it'll be toward the end, it says
17 2 of 8, but it's headnote 50. And in -- in Gerald's,
18 the defendant objected to the State discussing
19 potential aggravating circumstances specifically, and
20 the Florida Supreme Court -- and the way the State put
21 it was, "I anticipate those possibly could be some of
22 the aggravating circumstances," and the one that was
23 discussed specifically was to avoid arrest. This is
24 during voir dire. And the Court goes on in page --
25 headnote 51, 52, 53, "where a juror's attitude about a

1 particular legal doctrine is essential to a
2 determination of whether challenges for cause or
3 peremptory challenges are to be made, it is well
4 settled that the scope of voir dire properly includes
5 questions about references to the legal doctrine, even
6 if stated in the form of hypothetical questions." And
7 the Court goes on to say that that question, in the
8 abstract, even if they haven't specifically identified
9 it, that potential aggravating circumstance was
10 designed to explore the juror's attitude about that
11 legal doctrine, which was the avoid arrest aggravating
12 circumstance. And the Court said that that is an
13 appropriate subject for voir dire.

14 Second case is Wyatt versus State, 78 So.3d 512,
15 a 2011 case. And the language that I'd ask the Court
16 to consider is page 16 of this printed opinion, it's
17 actually page 534 of the of the reporter, and it says,
18 "if during voir dire, the State discusses that
19 sometimes the murder occurs to eliminate a witness,"
20 and it says, "the Court held the State can discuss
21 possible aggravating circumstances in the abstract
22 when the State believes the evidence would support
23 such factors."

24 Back up to the Gerald's case, the State didn't
25 just talk about one aggravating circumstance, it

1 talked about -- it talked about, on headnote 50, the
2 State described the aggravators of flight after a
3 robbery or burglary and avoiding arrest. Defense
4 counsel objected, and the trial court held a sidebar.
5 At sidebar, the Court instructed the State that it
6 could only comment on the applicable aggravating and
7 mitigating circumstances the evidence would show. The
8 State then commented during voir dire on three other
9 aggravating circumstances, putting pecuniary gain,
10 HAC, CCP, noting that, "I anticipate they possibly
11 could be some of the aggravating circumstances." And
12 the State followed these comments with a discussion of
13 mitigating circumstances, noting that these
14 encompassed any aspect of the defendant or his life.
15 So it discussed both, the State did.

16 And the Court held that as long as that is within
17 context of exploring the attitudes of jurors toward
18 those legal concepts, which aggravating circumstances
19 are, then it's permissible. So we would ask the Court
20 to follow the holdings of these two Supreme Court
21 decisions and permit us to inquire about the attitudes
22 of jurors towards those principles of law, and whether
23 they could then engage in the full range of
24 decision-making that they're required to engage in the
25 penalty phase process, in which they are then required

1 to go on and consider mitigating circumstances. And
2 there was a limiting instruction given by the Court
3 that these may not be found, these aggravating
4 circumstances. So the Florida Supreme Court says it's
5 appropriate.

6 THE COURT: Okay. Response from the State?

7 MR. BROWN: Judge, what I would point out,
8 looking at Gerald's, I think they're quite specific in
9 the limited portion where the State went into. At
10 what I would point out is that the standard on review
11 is an abuse of discretion. The State did not tell the
12 jury that these were the aggravating -- I'm reading
13 from the opinion, I have it as page 308, as Mr. Moore
14 pointed out. Page number eight, is more accurate.
15 But what is listed as 807 in the opinion, page 807.
16 It said the State commented that these aggravators
17 could possibly be some of the aggravating
18 circumstances that the Court will give you.
19 Furthermore, the State did not ask the jurors what
20 they thought about these aggravators, and the State
21 did not identify any facts in the case.

22 Well, if they're specifically pointing out, they
23 can't ask them what they think of the aggravators.
24 It's merely just to throw some idea out and say, okay,
25 if you weigh these types of things. So if you can't

1 ask them what they think, and they're clearly
2 cautioning about that, because there's no other reason
3 to put that in there, then what's the point of even
4 bringing up aggravators; and the issue I have in this
5 case, if we're going to bring up potential
6 aggravators, then we ought to be able to bring up all
7 the potential aggravators. And I'm certain the minute
8 I do that, they're going to jump up and scream,
9 because amongst the aggravators that we have here are
10 serving an active sentence and prior violent felony.
11 So, you know, are we just going to start piecemealing
12 a few aggravators that they wish to talk about, trying
13 to get jurors to comment on their feelings towards.
14 And if you're not asking them to comment and get their
15 opinion on the aggravator, then there's no point in
16 asking the question.

17 So that's the issue that I have, and I think
18 that's what they pointed out here, and all this simply
19 is, is that they didn't reverse because that limited
20 line of questioning was done.

21 MR. MOORE: As long as we identify the objection
22 for what it is, it's an attempt to keep us from
23 identifying jurors who can't take the next step after
24 they find these aggravating circumstances. It's not
25 an argument -- if we're making an argument that helps

1 the State, that's not an argument. You know, those
2 are facts that this jury is going to hear, that the
3 victim is a police officer, that the defendant was on
4 probation, that there's a prior violent felony,
5 fleeing from a robbery. Those are facts that the
6 jury's going to hear. So there's nothing
7 argumentative about it. We're not asking them what
8 they think about it, we're asking them,
9 hypothetically, those are aggravating circumstances,
10 can you consider mitigating circumstances if those are
11 the aggravating circumstances. We're not asking them
12 their opinions about those aggravating circumstances.
13 It's entirely within the context of exploring their
14 attitudes towards these inevitable legal concepts,
15 which are these aggravating circumstances. I mean,
16 there's no question that the juror's going to hear
17 about this, and so it's not an argument. And if it
18 is, if it benefits the State, then we're waiving any
19 objection. I tried to get into it, but the State
20 objected. I didn't object, I tried to get into it, I
21 was stopped.

22 THE COURT: Mr. Moore, what about Mr. Brown's
23 argument that, you know, if you want to talk about
24 aggravators, then they can talk about the aggravators
25 that they want to talk about, including -- Mr. Brown

1 brought up the fact that the defendant was a convicted
2 felon, and what was the other one?

3 MR. BROWN: Prior violent felony, as well as
4 active sentence.

5 THE COURT: What about those aggravators?

6 MR. MOORE: They're all listed in the Gerald's
7 case as being appropriate topics for discussion in
8 voir dire. You know, we're getting at whether the
9 jurors can follow the law in the penalty phase.

10 THE COURT: You know, what these cases say is
11 that the State can discuss possible aggravating
12 circumstances in the abstract.

13 MR. MOORE: And it identifies, it quotes, where
14 the prosecutor identified as CCP, HAC, avoid arrest,
15 specifically. And in the abstract -- not saying,
16 we're going to prove this, but, in the abstract, these
17 are potential aggravating circumstances. Just like
18 we're talking about first degree murder, we're not
19 conceding that there's going to be a conviction for
20 first degree murder, but we have to discuss it in the
21 abstract and say, well, what if he's found guilty of
22 first degree murder? Can you then do what you're
23 required to do in the penalty phase? I mean, there's
24 no difference there. It's the same argument. We're
25 assuming that -- we're not assuming anything, we're

1 saying, hypothetically, if there is a conviction in
2 this case for first degree murder, can you take the
3 next step and go to the penalty phase? I may not be
4 on the record.

5 What I'm saying is, all of this voir dire is in
6 the abstract, all of it's put in terms of
7 hypotheticals, and the State didn't have any problem
8 with us bringing up the fact that there's a video of a
9 shooting, that the victim is a police officer, that
10 there could be a conviction for robbery, there could
11 be a conviction for first degree murder. I mean, all
12 of those things have not been objected to because they
13 are facts in this case. So what we have to do is deal
14 with this hypothetically, we have to deal with it in
15 the abstract. And the Gerald's case talks specifically
16 about a prosecutor specifically listing potential
17 aggravating circumstances, with a limiting instruction
18 by the Court, saying that, you know, you may not hear
19 evidence of these, these may not be proven. But for
20 purposes of voir dire, we have to discuss them,
21 because there could be people on the jury that, once
22 they hear the aggravating circumstances, which they're
23 going to hear if we get to the penalty phase, would
24 say, you know, if I'd known that, there is no way I
25 would consider any mitigating circumstances. And if

1 that's the case, they shouldn't be on the jury,
2 because they can't follow the law. That's what voir
3 dire is designed to disclose and uncover. That's why
4 we have to get into it in the abstract, with a
5 limiting instruction.

6 THE COURT: All right. I'm going to take a few
7 moments and review these cases. I may do some
8 additional research, so we'll be in recess for a few
9 moments. Thank you.

10 (Thereupon, a recess was taken in the
11 proceedings.)

12 THE COURT: Okay. I'm addressing this question
13 to the State -- oh, sorry. We'll wait until
14 Mr. Bradley gets seated and in the courtroom.

15 (Thereupon, the defendant was escorted into the
16 courtroom by the court deputy and the proceedings were
17 had as follows:)

18 THE COURT: Okay. I don't know all the facts of
19 the case, and I don't know the State's trial strategy,
20 so I'm addressing this question to the State. In the
21 guilt phase, is the State going to attempt to
22 introduce prior record and that the defendant is on
23 probation? In the guilt phase. I didn't hear a
24 motion in limine in respect to that, and --

25 MR. MCMASTERS: Judge, I don't believe the State

1 intends to introduce evidence that he was on probation
2 during the guilt phase portion. We do intend to
3 introduce warrants that were issued for his arrest
4 prior to March 6, 2012, three of which are probation
5 warrants; but I don't think you can tell that from the
6 redacted versions of the warrants that I'm preparing.
7 With respect to his prior criminal history, that will
8 depend, in part, on whether or not Mr. Bradley takes
9 the stand and/or he intends to require the State to
10 include portions of his recorded confession, which
11 contain exculpatory time statements, in which case the
12 State would submit that we would be allowed to
13 introduce his prior criminal history for impeachment
14 purposes.

15 THE COURT: This is my concern with regard to
16 aggravating circumstances, if the defense wants to
17 discuss hypothetically specific aggravating
18 circumstances with potential jurors, it's not
19 appropriate -- I mean, they would, I assume, pick and
20 choose which ones they would want to discuss and then,
21 with all due respect, that should allow -- thereafter,
22 or before, the State should be able to discuss what
23 aggravating circumstances with potential jurors they
24 want to discuss, and aggravating circumstances that
25 the State may want to discuss has to do with -- it

1 wouldn't be fair to limit which aggravating
2 circumstances. They may want to discuss prior record
3 and that he's on probation, and that would be
4 prejudicial -- could be prejudicial to potential
5 jurors for them to even -- I mean, I could still give
6 the curative instruction, but we're still in the guilt
7 phase of this trial and, potentially, could prejudice
8 the jurors against the defendant with regard to the
9 guilt phase. And that's my concern with allowing more
10 specifics, and hypotheticals that talk about specific
11 facts, with the potential jurors.

12 MR. MOORE: Judge, there are six the State's
13 identified, and we intend to discuss all six.

14 THE COURT: But, Mr. Moore, with all due respect,
15 I hear you saying that, but two of those would be
16 something that could -- I mean, if they know that he
17 has a record and they know he's on probation,
18 potentially, that could affect the potential jurors'
19 opinions in the guilt phase.

20 MR. MOORE: It could cause them to admit that if
21 they hear that, they can't even entertain evidence or
22 consider evidence of mitigation. That's what we're
23 getting at. Voir dire is a time to uncover these
24 people who can't -- once they hear what they're going
25 to hear in the actual penalty phase, which is

1 inevitable, which is the six of the aggravating
2 circumstances that they've identified. They may be
3 unable to follow the law and then consider mitigating
4 circumstances.

5 THE COURT: Okay. Those are two things,
6 specifically, that, unless the door's opened by the
7 defense, the State's not going to be allowed to
8 discuss. That shouldn't even be planted in the jury's
9 mind at this point. So it would -- if I allow you to
10 get into more specifics than what the Court's previous
11 ruling is, it could prejudice the jury in the guilt
12 phase. I don't think that was what was -- what's
13 intended to happen in jury selection, so the Court's
14 prior ruling will remain.

15 MR. MOORE: Well, just for -- I understand the
16 Court's ruling --

17 THE COURT: If you'll come up -- you know, you
18 have your mic off. I just want to make sure
19 everything's on the record, with all do respect. Your
20 mic is off from the moment you walk in until the
21 moment you leave. That's what you all requested.

22 MR. MOORE: But the point I want to make is, if
23 there's a prejudicial impact, it gets waived when we
24 bring it up. It's ours to waive, so there's that
25 rule. And then the other provisions would be the

1 Article 1, Sections 9, 12, 16, 17, 22, 23, of the
2 Florida Constitution and Federal Constitution
3 Amendments 5, 6, and 13, and 14, of the Federal
4 Constitution. So those would be the grounds for my
5 motion. And 8, Amendment 8.

6 THE COURT: I hear your response to that would --
7 that you would waive that -- at some point the Court
8 has to make a decision in order to proceed to have a
9 trial that's fair to the defendant. You know, with
10 all due respect, if they learn that in the guilt
11 phase, you know, normally that evidence would be
12 excluded. My concern is, do I have to accept his
13 waiver of that? Mr. Brown?

14 MR. BROWN: Judge, I don't believe there's any
15 requirement that you accept the waiver, and everything
16 defense does in this case -- if we do obtain a death
17 penalty, everything defense counsel does is going to
18 be looked at post-conviction, so even their waiver,
19 and because of issues (unintelligible) trial strategy;
20 and, clearly, I don't think there's any valid or
21 viable trial strategy, or I can't off-hand think of
22 any, to support that, to bring up to the jury in jury
23 selection that not only does he have a prior criminal
24 history, but it's a prior violent felony. So I think
25 if that's brought up, you're potentially prejudicing

1 and tainting the entire panel, or every juror that
2 that's brought up to. I don't think the cases stand
3 for that proposition, the ones he cited, and so that's
4 why we've been objection. I think we're -- if we go
5 down that slope, once we're down it, there's no coming
6 back. So if the Court were to accept that defense
7 counsel waiver, I want a very -- I would ask the Court
8 for a very extensive inquiry of the defendant, that he
9 agrees with that. But our position is, I don't
10 believe at this point that it's a safe route to go by
11 taking the waiver, I think the Court's prior decision
12 is correct, and I don't think we need to change that.

13 THE COURT: All right. I'm going to maintain the
14 Court's prior ruling. Okay. Any other preliminary
15 matters that we need to address?

16 MR. BROWN: Nothing from the State, Your Honor.

17 THE COURT: Mr. Moore, anything else from the
18 defense?

19 MR. MOORE: No, Your Honor.

20 THE COURT: Is the jury up? Okay. Any reason
21 why I shouldn't bring in juror number 14? Okay.
22 We'll go ahead and do that at this time.

23 (Thereupon, Juror Number 14 was escorted into the
24 courtroom by the court deputy and the proceedings were
25 had as follows:)

1 THE COURT: Okay, sir, if you'll have a seat.
2 I'm going to ask you a few questions, and then the
3 State's going to be able to ask you a few questions,
4 and then the defense is going to be able to ask you a
5 few questions. The first thing I'm going to ask you
6 is, have you read anything about this case or talked
7 to anyone about this case? Okay. I've got to make
8 sure you answer out loud. If you look right to your
9 left, there's a mic right by you, and so I've got to
10 make sure you're being picked up on the mic. Okay.
11 Sir, what are your views about the death penalty?

12 JUROR NUMBER 14: I don't really -- I believe in
13 justice.

14 THE COURT: Okay. If you were to categorize
15 yourself, would you say that you're for the death
16 penalty, or against the death penalty?

17 JUROR NUMBER 14: I'm not for it, I'm not against
18 it. Like I said, you know, you do the crime, you
19 know, whatever the court system says

20 THE COURT: Okay. Let me talk to you a little
21 bit further about it. In the event the defendant is
22 found guilty of count one, which is premeditated
23 murder in the first degree, then the jury would come
24 back and they would be asked to make a recommendation
25 to the Court of either death, or life in prison

1 without parole. So if you were chosen, you would be
2 asked to make that recommendation to the Court. So if
3 I instruct you that as part of your duties, that you
4 are to consider the death penalty as a possible
5 penalty, would you be able to follow that instruction?

6 JUROR NUMBER 14: Yes, I would. .

7 THE COURT: Okay. And if I were to instruct you
8 that you were also to consider life in prison without
9 the possibility of parole as a possible penalty, would
10 you be able to follow that instruction?

11 JUROR NUMBER 14: Yes, I would.

12 THE COURT: Sir, have you -- do you know anything
13 about this case, either from your own personal
14 knowledge, rumor, or by discussion with anyone else,
15 or from the media, radio, television, Internet,
16 electronic device, or newspaper?

17 JUROR NUMBER 14: Not really. I don't really
18 listen to the news. I heard something about it
19 vaguely when it first came out, about the deputy. And
20 I don't really -- I don't listen to the news a whole
21 bunch.

22 THE COURT: Okay. If you were to -- so you say
23 you heard something closer to the date of the event?

24 JUROR NUMBER 14: Yeah. .

25 THE COURT: And how would you have learned

1 -- acquired that information?

2 JUROR NUMBER 14: People talking.

3 THE COURT: Okay. People talking. It wouldn't
4 have been from, like, the media or the television?

5 JUROR NUMBER 14: I don't listen to the news. I
6 really don't.

7 THE COURT: Okay. Do you think that you could
8 set aside anything that you may have learned about
9 this case, serve with an open mind, and reach a
10 verdict based only on the law and the evidence
11 presented at this trial?

12 JUROR NUMBER 14: Yes.

13 THE COURT: Okay. All right. Questions by the
14 State.

15 MR. BROWN: Thank you, Your Honor. Juror Number
16 14 good morning.

17 JUROR NUMBER 14: Good morning.

18 MR. BROWN: Let me start with the death penalty
19 topic. You indicated, according to my notes, that
20 you're not for or against. Could you, depending on
21 the circumstances, could you recommend a death
22 sentence?

23 JUROR NUMBER 14: Yes, I could.

24 MR. BROWN: Okay. The way the process works --
25 the Court went over this yesterday morning, we all

1 realize she threw a lot of information at you in a
2 short period of time. First thing is, for the death
3 penalty to come up for consideration, the verdict has
4 to be guilty of first degree murder. If it's guilty
5 of lesser, such as second degree murder or some other
6 lesser charge, the death penalty's off the table. Do
7 you understand?

8 JUROR NUMBER 14: Yes, sir.

9 MR. BROWN: Now, if the jury returns a verdict of
10 first degree murder, the next phase is, evidence would
11 be presented towards you that is considered, and what
12 the Court will define as aggravating circumstances.
13 The Court will give you a list of the potential
14 aggravating circumstances in this case that you can
15 consider if proven to support the death penalty, or to
16 recommend that. We have to prove -- the State has to
17 prove those beyond a reasonable doubt. So the first
18 thing is, if the State fails to prove any aggravating
19 circumstances, then there are none, and your
20 recommendation would be life. If you find that
21 State's proven at least one, or more, then you look at
22 those aggravating circumstances and ask yourself, do
23 those aggravating circumstances justify the death
24 penalty. If your answer is no, of course your
25 recommendation would be life, agreed?

1 JUROR NUMBER 14: Agreed.

2 MR. BROWN: If your answer is, yes, they do, then
3 you go to the next step, considering the evidence
4 that's been presented, which is the mitigation, or the
5 mitigating evidence. As the Court talked about,
6 that's basically evidence concerning the defendant,
7 his background, things about him. Do you understand
8 that?

9 JUROR NUMBER 14: Yes, sir.

10 MR. BROWN: The burden for the mitigation
11 evidence is a lesser burden. It has to be shown by
12 the greater weight of the evidence. So what you do is
13 you look at the mitigation, some of it hasn't been
14 proven and, of course, you disregard that. You take
15 the sum total of what's been proven to you, and you
16 understand everything that's been proven, you need to
17 consider. Fair enough?

18 JUROR NUMBER 14: Yes, sir.

19 MR. BROWN: Then the Court's going to talk to
20 you, tell you about a weighing process. You have to
21 decide between the aggravators and mitigators, how
22 much weight you are going to give to each one. It's
23 like in a normal daily basis when you have to make a
24 decision, you look at all the facts before you, right?

25 JUROR NUMBER 14: Right.

1 MR. BROWN: And you decide these facts are
2 important, I'm going to give them great weight, these
3 other things, these aren't very important at all, I'm
4 going to give them little weight. That's what you do
5 as a juror, that weighing process. And the question
6 is, you have to ask yourself, do the mitigators, the
7 mitigating evidence, outweigh the aggravators. If you
8 find that they outweigh the aggravators, then your
9 recommendation would be life. If you find they do not
10 outweigh those aggravating circumstances, then you're
11 in a position where you can legally recommend to the
12 Court the death penalty. Understand that?

13 JUROR NUMBER 14: Yes, sir.

14 MR. BROWN: The Court's going to tell you you're
15 not obligated, she's never going to tell you, if you
16 find A, B, C, then you must return a recommendation of
17 death. So you have to find that we've proven the
18 aggravating circumstances, they justify the death
19 penalty, mitigation doesn't outweigh that. And then,
20 when you get to that point, then you have to decide
21 that is a sentence that you feel is the appropriate
22 sentence, and you recommend that. Fair enough?

23 JUROR NUMBER 14: Yes, sir.

24 MR. BROWN: Okay. So any -- in your own mind,
25 your own background, your own makeup, any hesitation,

1 any concern about being put in the position where you
2 may have to recommend or may recommend the death
3 penalty?

4 JUROR NUMBER 14: No, sir.

5 MR. BROWN: You feel comfortable in your ability
6 to do that?

7 JUROR NUMBER 14: Yes, sir.

8 MR. BROWN: Do you come in here today with any
9 notions or ideas of, well, the State better actually
10 have A, B, or C for me to recommend the death penalty,
11 otherwise I'm never going to do that?

12 JUROR NUMBER 14: No.

13 MR. BROWN: And if you feel the death penalty is
14 justified, can you recommend it?

15 JUROR NUMBER 14: Yes.

16 MR. BROWN: And then, one other topic just to
17 cover. As we talked about earlier, if the verdict is
18 less than first degree, the death penalty's off the
19 table. Knowing that fact, you're sitting back there
20 saying, well, if I return a verdict of only second
21 degree murder, I never have to get to that next step
22 of deciding a life or death recommendation. Knowing
23 that that's the way to bypass being faced with that
24 decision, would you let that affect your verdict at
25 all?

1 JUROR NUMBER 14: No.

2 MR. BROWN: You're going to return the verdict of
3 guilty for whatever charge has been proven?

4 JUROR NUMBER 14: Yes, sir.

5 MR. BROWN: Thank you. I have no further
6 questions, Your Honor.

7 THE COURT: Questions by the defense.

8 MR. MOORE: Good morning. Had you -- looking
9 back, do you think you had given any thought on where
10 you stand on the position of -- what your position
11 might be on the death penalty before you walked in the
12 courtroom today?

13 JUROR NUMBER 14: No.

14 MR. MOORE: Had you ever discussed it with other
15 people that have come up in casual conversation in
16 your life time, that you recall?

17 JUROR NUMBER 14: No.

18 MR. MOORE: Now that you've taken the position
19 that you could impose a death sentence -- let me ask
20 this, could you impose a sentence of life without
21 parole, could you recommend that sentence to the
22 Court?

23 JUROR NUMBER 14: Life sentence without parole,
24 I --

25 MR. MOORE: Well, the State Attorney asked if you

1 could vote for death, and you said yes. Now I'm
2 asking if you could vote for life without parole, so
3 what would be your answer to that?

4 JUROR NUMBER 14: If the evidence showed that,
5 yes.

6 MR. MOORE: If I asked you to put yourself on a
7 scale from 1 to 10, where a 10 is the strongest
8 support for the death penalty, and 1 is the weakest
9 support for the death penalty, where do you think you
10 would fall an that continuum?

11 JUROR NUMBER 14: Can you ask me that again?

12 MR. MOORE: Yes, sir. A 1 to 10 scale, 10 is the
13 strongest support possible for the death penalty
14 -- we're talking about where your position is, how you
15 feel about the death penalty -- and 0 is no support
16 for the death penalty, you're against it.

17 JUROR NUMBER 14: I'd probably be in the middle,
18 pretty much.

19 MR. MOORE: Could you put a number on that?

20 JUROR NUMBER 14: I would say 7.

21 MR. MOORE: Can you think of types of first
22 degree murder, and we're talking about first degree
23 premeditated murder, that are more deserving of the
24 death penalty than others?

25 JUROR NUMBER 14: No, sir.

1 MR. MOORE: How about -- you can't think of a
2 type of homicide involving a certain type of victim,
3 perhaps, number of victims, that might be more
4 deserving of the death penalty?

5 JUROR NUMBER 14: Not necessarily.

6 MR. MOORE: Can you think of matters that might
7 -- let me explain a little bit more about aggravating
8 and mitigating circumstances. I know this is new to
9 you, but in aggravating circumstances, something that
10 the jury has to find is one of those. You don't know
11 what those are, you haven't been instructed; but the
12 Court will give you instructions, I expect, on at
13 least one aggravating circumstance, maybe more. The
14 jury has to find at least one beyond a reasonable
15 doubt before you can vote for the death penalty. If
16 you find no aggravating circumstances, then you can't
17 go for death. So aggravating circumstances, that
18 suggests a death penalty might be a more appropriate
19 sentence. Mitigating circumstances suggest life
20 without parole might be a more appropriate sentence.

21 Can you think of circumstances in one's life that
22 might mitigate, that might make the more appropriate
23 sentence be a life sentence? Can you think of things
24 that might mitigate a first degree murder conviction?
25 Say, well, you know, if I know that, then I think

1 maybe a life sentence is more appropriate. I know
2 that about the defendant, about his background.

3 JUROR NUMBER 14: I can't say.

4 MR. MOORE: You can't say? Okay. Do you
5 understand that life without parole means that the
6 defendant sentenced to life without parole never gets
7 out of prison alive? Do you question that in any way?
8 Do you think, well, they might get an early release,
9 he might get parole. Do you think along those lines,
10 or do you accept life without parole means that a
11 person dies in prison?

12 JUROR NUMBER 14: It depends on the person and
13 how they act.

14 MR. MOORE: Well, let me just explain. The crime
15 under discussion is first degree murder, crime of
16 first degree murder, premeditated murder, and if a
17 person is convicted of that, then the jury is asked to
18 decide whether to recommend to the Court a sentence of
19 life without parole or the death penalty. That's the
20 crime we're talking about.

21 JUROR NUMBER 14: But I'm still looking as if the
22 crime was committed, right?

23 MR. MOORE: Yes, you are. You're looking at the
24 two only possible sentencing choices that the jury has
25 to make if the person's found guilty of first degree

1 murder. We may not get there. But we have to talk
2 about this to find out what your attitudes are about
3 it. So I don't want you to get the impression that,
4 yeah, we all expect to get there, because we have to
5 find out -- it's like wearing a seatbelt, you get in
6 the car, you don't expect to get in a wreck, but you
7 better have your seatbelt on if you do, so you've got
8 to take that precaution. That's what we're doing. So
9 the point I'm getting at is, if I tell you that life
10 without parole means just that, that a person
11 sentenced to life without parole will die in prison,
12 you accept that. Or do you question that?

13 JUROR NUMBER 14: I would question it.

14 MR. MOORE: What part?

15 JUROR NUMBER 14: Like I was saying, that person
16 may not necessarily need to -- or may need to be
17 paroled. It may be his first time, or her first time.
18 Or they might say that that person is not as bad as
19 another person.

20 MR. MOORE: Well, those are factors that the
21 Court would take into consideration in imposing a
22 sentence. Once the sentence is imposed, and if the
23 sentence is life without parole, that means that
24 person will never get out of prison alive. I'm
25 telling you. Do you accept that, or do you still

1 think, well, I don't know if I believe that or not.

2 JUROR NUMBER 14: I accept that.

3 MR. MOORE: It's important that you do. I don't
4 -- you know, I have to take you at your word, we all
5 do. And I'm not -- can't go behind what you say, but
6 when I tell you that life without parole means just
7 that, I need to know whether you accept that or not.
8 Do you accept that?

9 JUROR NUMBER 14: Yes.

10 MR. MOORE: Do you understand that the Court must
11 give great weight to the jury's sentencing
12 recommendation? Do you understand that? If they
13 recommend death, the Court has to give great weight to
14 that. Do you remember the judge instructing you about
15 that?

16 JUROR NUMBER 14: Yes.

17 MR. MOORE: Now, that would be like -- I mean, a
18 Court cannot impose a sentence without your
19 recommendation. Can't do it. Do you understand that?
20 What I'm getting at is the significance of it, the
21 importance of it. I don't want you to think for one
22 second that, you know, if you -- if the jury votes for
23 death, the judge will do the right thing and just kind
24 of ignore that. She won't do that. She has to give
25 it great weight. Do you understand that? Do you

1 accept that?

2 JUROR NUMBER 14: Yes.

3 MR. MOORE: Do you belong to a church?

4 JUROR NUMBER 14: Yes.

5 MR. MOORE: Do you know what the views that your
6 church holds with respect to the death penalty?

7 JUROR NUMBER 14: No.

8 MR. MOORE: You understand that there is a
9 difference --

10 THE COURT: You know what, I didn't hear the
11 answer to that, so if I didn't hear it, it might not
12 have been on the record.

13 MR. MOORE: The question was, if you know the
14 views of your church on the death penalty; what would
15 your answer be?

16 JUROR NUMBER 14: I said no. .

17 THE COURT: Okay. I just didn't hear that at
18 all. I just wanted to make sure it was on the record.
19 Go ahead.

20 MR. MOORE: It was explained to you that an
21 aggravating circumstance has to be proven beyond a
22 reasonable doubt and that a mitigating circumstance
23 must be proven by the greater weight of the evidence,
24 where you must be reasonably convinced. And do you
25 understand that the burden of proof for the

1 aggravating circumstances is significantly higher than
2 for a mitigating circumstances?

3 JUROR NUMBER 14: Yes.

4 MR. MOORE: Aggravating circumstances are
5 limited. The Court will read those that the Court
6 feels are applicable in this case. Mitigating
7 circumstances are not limited. They're unlimited.
8 They can have anything to do with defendant
9 backgrounds, circumstances of the case. In fact,
10 matters that the jury considers mitigating, maybe the
11 lawyers didn't even think of. You can consider those
12 as well. Do you understand that mitigating
13 circumstances are unlimited?

14 JUROR NUMBER 14: Yes.

15 MR. MOORE: Do you agree that people are the
16 product sum total of their life experiences, that what
17 we experience in life can shape the person we turn out
18 to be, the way we think, the way we feel?

19 JUROR NUMBER 14: Do I agree with that?

20 MR. MOORE: Or not. Yes. Do you agree or
21 disagree?

22 JUROR NUMBER 14: I disagree.

23 MR. MOORE: Disagree. And so you believe that
24 -- what do you believe with respect to that?

25 JUROR NUMBER 14: (Inaudible). I mean, I make my

1 own choices in my own life. (Inaudible).

2 MR. MOORE: Okay. Well, do you see that --

3 JUROR NUMBER 14: I'm not like my father.

4 MR. MOORE: Sir?

5 JUROR NUMBER 14: I said I'm not like my father,
6 I'm not like my mother. I'm totally different. If
7 that's what you're asking me.

8 MR. MOORE: Well, what would the reason for those
9 differences be, in your mind?

10 JUROR NUMBER 14: What was what?

11 MR. MOORE: The reason you're different, as you
12 pointed out, from your parents.

13 JUROR NUMBER 14: (Inaudible).

14 MR. MOORE: Okay. Do you think one of those
15 differences might be -- of course you're different
16 people -- but might be the environment that they grew
17 up in, the times that they grew up in, that might have
18 an effect on who they turned out to be?

19 JUROR NUMBER 14: (Inaudible).

20 MR. MOORE: Okay. Do you feel that the
21 environment that you grew up in, what you describe as
22 a rough life, might have an effect on your attitude?

23 JUROR NUMBER 14: No.

24 MR. MOORE: Well, let me ask this about potential
25 mitigating circumstances and see if you would be

1 willing to consider these circumstances as mitigating,
2 not telling me that you wouldn't definitely one way or
3 the other, and I'm going to list some. So I'd ask you
4 to tell me what you think about a mental illness , is
5 that -- if you heard evidence of mental illness, is
6 that a factor that you would consider as being
7 mitigating?

8 JUROR NUMBER 14: Yes.

9 MR. MOORE: Do you think people choose their
10 mental health?

11 JUROR NUMBER 14: No.

12 MR. MOORE: How about brain damage or brain
13 injury, is that a circumstance, if you heard evidence
14 of that, that you would consider as mitigating,
15 potentially? Not committing to, yeah, I would, or,
16 no, I wouldn't, but is it something --

17 JUROR NUMBER 14: Brain damage in (inaudible).

18 MR. MOORE: Brain damage from any source, any
19 cause. If you heard evidence of brain damage, brain
20 injury, is that something that you would be open to
21 considering as potentially mitigating?

22 JUROR NUMBER 14: (Inaudible).

23 MR. MOORE: How about drug addiction, drug abuse,
24 is that something that you would be open to
25 considering as potentially mitigating?

1 JUROR NUMBER 14: I would be open to considering,
2 but a drug is a choice.

3 MR. MOORE: Do you believe that drug addiction is
4 a choice, people choose whether to be addicted or not?

5 JUROR NUMBER 14: I believe it's choice when you
6 start taking drugs.

7 MR. MOORE: Starting to take drugs is one thing,
8 but what I'm talking about is a person down the road,
9 person gets addicted. Now, of course, people choose
10 to take drugs, drink alcohol, but at some point, some
11 people become addicted.

12 JUROR NUMBER 14: I believe you have the choice
13 to go and get help.

14 MR. MOORE: Excuse me?

15 JUROR NUMBER 14: I also believe you have the
16 choice to go and get help.

17 MR. MOORE: Get help indeed. Do you feel that
18 some people struggle with addiction more than others?

19 JUROR NUMBER 14: Yes, I do.

20 MR. MOORE: So your position on whether people
21 who are addicted can choose to become unaddicted?

22 JUROR NUMBER 14: Yeah, I do.

23 MR. MOORE: Do you?

24 JUROR NUMBER 14: Yes, I do.

25 MR. MOORE: But bottom line is, is that drug

1 addiction, drug abuse, is that something you'd be
2 willing to consider, be open to considering as
3 potentially mitigating?

4 JUROR NUMBER 14: Yeah.

5 MR. MOORE: All right. Let me ask about what's
6 called victim impact evidence. You've heard concepts
7 of aggravating circumstances, and the other concept of
8 mitigating circumstances; and those, as we have
9 discussed, suggest what an appropriate sentence might
10 be. Now, there's another type of evidence that you
11 might hear in this case, will hear, it's called impact
12 evidence. Let me read this instruction and ask if you
13 understand it and accept it and can follow it. Does
14 the Court want me to identify where this is or can I
15 just read it? It's a standard instruction.

16 THE COURT: You can just read it.

17 MR. MOORE: All right. "You have heard evidence
18 about the impact of this homicide on the, one, family;
19 two, friends; three, community, of Deputy Pill. This
20 evidence was presented to show the victim's uniqueness
21 as an individual and the result of loss of Deputy
22 Pill's life. However, you may not consider this
23 evidence as an aggravating circumstance. The
24 recommendation of the Court must be based on the
25 aggravating circumstances and the mitigating

1 circumstances upon which you have been instructed."

2 So what that instruction tells you is you can consider
3 uniqueness of Deputy Pill, but you cannot use that
4 evidence in determining which is the appropriate
5 sentence. It's not an aggravating circumstance, in
6 other words. Do you understand that?

7 JUROR NUMBER 14: Yes.

8 MR. MOORE: Do you accept that?

9 JUROR NUMBER 14: Yes.

10 MR. MOORE: If the Court read this instruction to
11 you, relating to mitigating circumstances, is this an
12 instruction that you could follow, and would you be
13 open to considering this as mitigating circumstances.
14 He's the instruction: "Capital felony was committed
15 while the defendant was under the influence of extreme
16 mental or emotional disturbance." Is that an
17 instruction that you could follow? Would you consider
18 that, be open to considering that as a potential
19 mitigating circumstance?

20 JUROR NUMBER 14: I'd be willing to consider it,
21 I guess.

22 MR. MOORE: You'd be willing to consider it. The
23 other one is, "the capacity of the defendant to
24 appreciate the criminality of his conduct or to
25 conform his conduct to the requirements of the law was

1 substantially impaired."

2 JUROR NUMBER 14: Read that again.

3 MR. MOORE: Sure. "The capacity of the defendant
4 to appreciate the criminality of his conduct or to
5 conform his conduct to the requirements of the law was
6 substantially impaired."

7 JUROR NUMBER 14: I don't really understand what
8 you're saying.

9 MR. MOORE: Let me read it again. I know this is
10 all new to you, and I don't expect you to grasp this
11 and understand it like people who have been dealing
12 with this for a long time, like us. And so here's the
13 instruction, it's a potential mitigating circumstance.
14 I'm asking, first of all, most importantly, if you
15 understand it; and then, equally important, that you
16 would be able to follow it, or not, whatever your
17 position is. It's this: "The capacity of the
18 defendant to appreciate the criminality of his
19 conduct," to understand the criminal nature of his
20 conduct, "or to conform his conduct to the
21 requirements of the law," that is, can behave in a
22 legal way, "was substantially impaired." Is that
23 something you could consider, potentially, as
24 mitigating?

25 JUROR NUMBER 14: Are you saying that the person

1 didn't know what he was doing, or -- I don't
2 understand what you're saying.

3 MR. MOORE: Well, I can't yet at this point try
4 to explain this instruction. I'm limited. We're
5 limited.

6 JUROR NUMBER 14: I don't understand what you're
7 saying.

8 MR. MOORE: Okay. So that's an instruction
9 that's -- one you don't feel comfortable with?

10 JUROR NUMBER 14: I guess you could say that.

11 MR. MOORE: Your Honor, may I have a moment?

12 THE COURT: Yes, you may.

13 MR. MOORE: We are talking a little bit about the
14 category of mitigating circumstances. Do you view
15 those as explanations for conduct, for actions, or do
16 you view those as excuses? How would you view those?

17 JUROR NUMBER 14: Can't really say.

18 MR. MOORE: Do you understand what I'm asking
19 you?

20 JUROR NUMBER 14: Yes, sir.

21 MR. MOORE: So your best answer at this point
22 would be, you can't really say which it would be at
23 this point. You think you might consider them
24 excuses, like, I don't care what you've got to say
25 about that, it's just a big excuse, or would it help

1 you understand the defendant better, those types of
2 mitigating circumstances, and help you arrive at what
3 you described as a fair -- you know, having justice
4 done?

5 JUROR NUMBER 14: (Unintelligible) understand the
6 person (unintelligible).

7 MR. MOORE: Okay. So you would not necessarily
8 consider that type of evidence as an excuse, but you
9 would -- I'm asking you, I don't want to put words in
10 your mouth. I want you to tell me what you think.

11 JUROR NUMBER 14: Like I said, I can't really
12 say.

13 MR. MOORE: All right. Let me get to the media
14 part of it. You said that you heard about a deputy
15 being shot around the time of -- what -- do you read
16 the newspaper at all?

17 JUROR NUMBER 14: No, I don't read the newspaper.

18 MR. MOORE: How about online?

19 JUROR NUMBER 14: I don't read the news. I don't
20 like news. It just doesn't tell the truth.

21 MR. MOORE: All right. What do you recall when
22 you say you heard about a deputy being shot at the
23 time of -- what do you recall? What do you think you
24 knew? What do you think you heard?

25 JUROR NUMBER 14: A deputy got shot in Palm Bay.

1 (Unintelligible) and really, it just (unintelligible).
2 I did watch the funeral.

3 MR. MOORE: You watched the funeral. With a lot
4 of things on the news and, as you pointed out, there's
5 a lot of bad news, so you tend to avoid it, not pay
6 attention to it, what drew your attention to that
7 funeral?

8 JUROR NUMBER 14: Well, I watch a lot of movies
9 on television (unintelligible) I watch programs. Some
10 things you just don't pass up. You just don't put it
11 to the side. When you hear a law enforcement
12 (unintelligible).

13 MR. MOORE: Did you have any particular thoughts
14 when you made the connection, when you came into the
15 courtroom and realized that was this case?

16 JUROR NUMBER 14: No. I had no idea.

17 MR. MOORE: Well, I mean, when you did, when you
18 finally figured that out, when that moment came, did
19 you any particular reaction?

20 JUROR NUMBER 14: I realized what it was when the
21 judge (unintelligible).

22 MR. MOORE: No further questions.

23 THE COURT: Okay. Juror Number 14, what I'm
24 going to ask you to do is you're going to be excused
25 for today and tomorrow. We're going to have you go

1 downstairs, and they're going to give you a phone
2 number, and you're going to call that phone number, if
3 you can, between 1:00 and 5:00 on Wednesday; and then
4 they're going to tell you when to report back. You
5 are still being considered as a juror for this panel,
6 you will have to come back, we just don't know the
7 date. We don't know how much time it's taking and
8 when the next part of the jury selection will be. You
9 will be coming back, I anticipate, Thursday, Friday;
10 we don't have court the following week Monday,
11 Tuesday, and Wednesday, so it wouldn't -- it might
12 even be the next Thursday. But they'll give you that
13 date and time when you call in on Wednesday.

14 During this recess, you must abide by your rules
15 governing your service as a juror. Do not discuss
16 this case with anyone else or allow anyone else to
17 discuss it in your presence. Do not speak to the
18 lawyers, the parties, or the witnesses about the case.
19 Do not read newspaper headlines or articles related to
20 this trial or its participants, avoid seeing
21 television, radio, or Internet comments about the
22 trial, should there be any, and do not conduct any
23 research yourself about this trial or its
24 participants. You can tell your loved ones, friends,
25 family, loved ones, that you are coming to the Viera

1 Courthouse, that you are being considered as a
2 potential juror. You can give the where you're going
3 and what time, but you can't talk about what case it
4 is and what the circumstances of the case are. Once
5 these proceedings are concluded, then you'll be able
6 to talk to whoever you wish with regard to that
7 information. It's while this process is going on.

8 Okay. What I'll do is I'll have you -- you're
9 released at this time. If you'll go downstairs,
10 they'll give you further information, and you'll be
11 free for the day. Thank you.

12 (Thereupon, Juror Number 14 was escorted out of
13 the courtroom by the court deputy; thereafter, Juror
14 Number 15 was escorted into the courtroom by the court
15 deputy and the proceedings were had as follows:)

16 THE COURT: Okay. Juror Number 15, the first
17 thing I want to do is thank you for being here, and
18 thank you for your patience. What's going to happen
19 here is I'm going to ask you a few questions, then the
20 State will have an opportunity to ask you some
21 questions, and then the defense will have an
22 opportunity to ask you some questions. The first
23 question I'm -- well, first of all, I want to ask you,
24 have you talked to anyone about this case?

25 JUROR NUMBER 15: No.

1 THE COURT: Have you read anything about this
2 -- since I released you, have you heard or seen any
3 television, Internet, or radio comments about this
4 case?

5 JUROR NUMBER 15: I heard on the radio this
6 morning, just as I turned it on, talking about
7 continuing with jury selection today. That was it.

8 THE COURT: Okay. Did you listen to it, or once
9 you knew it was about this case, did you turn it off?

10 JUROR NUMBER 15: Turned to another station.

11 THE COURT: Okay. Did they say anything specific
12 about the case other than jury selection was
13 continuing?

14 JUROR NUMBER 15: No.

15 THE COURT: Have you discussed this case among
16 yourselves, or with anyone else, or allowed anyone to
17 discuss it in your presence?

18 JUROR NUMBER 15: No.

19 THE COURT: Okay. The first question I'm going
20 to ask you is, what are your views about the death
21 penalty?

22 JUROR NUMBER 15: Prior to this, I would say that
23 I was in support of the death penalty; but having it
24 be a personal situation now, more specific, real, I'm
25 not so sure anymore.

1 THE COURT: Okay. In this case, if there is a
2 guilty verdict on count one -- count one is the
3 premeditated murder of the first degree, that's the
4 first phase of the trial. If there's a guilty
5 verdict, we go to the second phase. At that time, as
6 a juror, you would be asked to make a recommendation
7 to the Court of death, or life in prison without
8 parole. Now, are you of the opinion that death is the
9 only appropriate penalty for murder in the first
10 degree?

11 JUROR NUMBER 15: No.

12 THE COURT: Okay. And so would you consider life
13 in prison without the possibility of parole as a
14 penalty, depending on circumstances?

15 JUROR NUMBER 15: Yes.

16 THE COURT: Okay. And this all assumes there's a
17 conviction on the murder in the first degree.

18 JUROR NUMBER 15: Okay.

19 THE COURT: If I instruct you that you are to
20 consider life in prison as a penalty, would you be
21 able to follow that instruction?

22 JUROR NUMBER 15: Yes.

23 THE COURT: And if I also instructed you that you
24 had to consider death as a penalty, would you be able
25 to follow that instruction?

1 JUROR NUMBER 15: Yes. (Unintelligible).

2 THE COURT: Okay. Obviously, it's an important
3 decision. Do you know anything about this case,
4 either from your own personal knowledge, rumor, by
5 discussion with anyone else, or from the media,
6 television, radio, Internet, electronic device, or
7 newspaper?

8 JUROR NUMBER 15: Yes. I remember seeing news
9 coverage when it occurred originally.

10 THE COURT: Okay.

11 JUROR NUMBER 15: And mention of it here or
12 there. But very little other than that.

13 THE COURT: Okay. What would the source of that
14 information be?

15 JUROR NUMBER 15: The local news.

16 THE COURT: It would have been local news on the
17 television?

18 JUROR NUMBER 15: Yes.

19 THE COURT: And I also heard you say radio.

20 JUROR NUMBER 15: Well, that was just this
21 morning. I don't really listen to news radio.

22 THE COURT: Can you set aside anything that you
23 may have heard and learned about this case, serve with
24 an open mind, and reach a verdict based only on the
25 law and the evidence presented in this trial?

1 JUROR NUMBER 15: Yes.

2 THE COURT: All right. Now we'll have questions
3 by the State.

4 MR. BROWN: Thank you, Your Honor. Juror Number
5 15, good morning. You indicated in response to the
6 judge's question that prior to this you were in
7 support of the death penalty -- what I wrote down is
8 you said, now you're not so sure. Can you expand on
9 that a little bit for me, please?

10 JUROR NUMBER 15: It's easy to come to a
11 conclusion when it's not personal. I don't know that
12 I could live with myself knowing that I had a hand in
13 someone's life being taken.

14 MR. BROWN: Okay. And that's part of the reason
15 why we ask these questions, and I appreciate your
16 honesty, and that's what we're trying to do. It is a
17 hard thing that we ask of our jurors, to serve in any
18 case, much less a case of this magnitude. So we
19 appreciate the fact that you came in. Knowing that if
20 there's a conviction of first degree murder, that you
21 are going to have to make a recommendation --
22 obviously you're troubled by that, correct?

23 JUROR NUMBER 15: Yes.

24 MR. BROWN: Do you feel you're in a situation
25 that you just, regardless of what the evidence may be,

1 and what's there, that you would be unable to make a
2 recommendation of death?

3 JUROR NUMBER 15: I just don't know if I could do
4 it.

5 MR. BROWN: You have a reasonable doubt about
6 your ability to do that?

7 JUROR NUMBER 15: Yes.

8 MR. BROWN: Judge, I have no further questions.

9 THE COURT: Okay. Questions by the defense.

10 MR. MOORE: Do you agree that all life is sacred,
11 Deputy Pill's life, Brandon Bradley's, and that
12 everybody who's charged with a crime, even first
13 degree murder, has the right to have a jury of its
14 peers.

15 JUROR NUMBER 15: Yes.

16 MR. MOORE: You know what I mean when I say jury
17 of peers, that means all walks of life, political
18 persuasion, different races, socioeconomic
19 backgrounds, all that, as much as possible to be
20 represented on a jury; and judges and lawyers often
21 have strong feelings and opinions about matters that
22 they have to set aside to carry out their
23 responsibilities, to accept that. Do you accept that
24 in order to assure the right to a jury of peers, the
25 citizens, all of the citizens that serve on a jury,

1 should serve on a jury if they can? And the judge
2 might receive a recommendation from a jury and
3 disagree with it, personally, but feel legally
4 compelled to impose a particular sentence, and must
5 follow the law, despite his or her personal beliefs.

6 Similarly, you understand that you may have
7 feelings, and you do have strong feelings about the
8 death penalty, that if you're instructed to set those
9 feelings aside and reach a verdict, vote for not only
10 guilt and innocence but, if guilt is found for first
11 degree murder, to vote as to what is the appropriate
12 sentence, that you, despite your personal feelings,
13 that you must follow the law and vote based upon what
14 the law says that vote should be.

15 Could you follow that instruction?

16 JUROR NUMBER 15: I would try.

17 MR. MOORE: Do you have doubts about your ability
18 to follow that instruction?

19 JUROR NUMBER 15: I believe I should do my duty,
20 I guess, as a citizen.

21 MR. MOORE: And if that duty meant following the
22 law, the instructions, to a point where maybe,
23 personally, you don't agree, but legally you think
24 it's the right thing, could you do that? Could you
25 follow that?

1 JUROR NUMBER 15: (Unintelligible).

2 MR. MOORE: Yes, ma'am, it should be.

3 JUROR NUMBER 15: (Unintelligible) attempt to
4 separate those two.

5 MR. MOORE: You said you could attempt to keep
6 those separate.

7 JUROR NUMBER 15: Attempt, yes.

8 MR. MOORE: And what's your best guess as to
9 whether you could successfully keep those two
10 separate?

11 JUROR NUMBER 15: I've never been in this
12 situation, I have absolutely no idea.

13 MR. MOORE: Okay. No further questions.

14 THE COURT: Thank you.

15 MR. BROWN: Judge, can we approach?

16 THE COURT: Yes, you may.

17 (Thereupon, a benchside conference was had before
18 the Court, out of the hearing of any other parties
19 present in the courtroom as follows:)

20 MR. BROWN: Judge, obviously I don't know, I'm
21 hoping I'm following the procedure you want to follow,
22 but this would be a challenge for cause.

23 THE COURT: You're appropriate.

24 MR. BROWN: Okay. Thank you. At this time the
25 State would move for a challenge for cause on this

1 juror.

2 THE COURT: Response from the defense.

3 MR. MOORE: We'd object. As difficult as it is,
4 and it should be, I mean, she's upset, she's dabbing
5 her eyes, but still says she would make her best
6 effort to follow the law, and despite her personal
7 feelings, try to keep those separate from her
8 deliberations.

9 MR. BROWN: Judge, what she said was in response
10 to defense's question was, it would be difficult to
11 separate the two, she could attempt. She couldn't
12 even tell him that she could do it. She said --
13 Court's question -- she said she's not so sure anymore
14 about the death penalty. I talked to her about it and
15 she says, I don't think I can do that. I asked her,
16 do you have a reasonable doubt about your ability to
17 vote for the death penalty, and she said yes. She's
18 clearly upset, she's crying, she's got a tissue. The
19 standard is -- one case, Johnson versus State, 969
20 So.2d 938, "persistent equivocation by a potential
21 juror on whether she can set aside biases supplies the
22 reasonable doubt for you to sustain a challenge for
23 cause," and that was concerning a death penalty. "If
24 a juror states it would not impose a death penalty
25 except in a case of mass murder or genocide, the Court

1 properly excused the juror for cause," that's Miller
2 versus State, 42 So.3d 204. So it's clear that
3 reasonable doubt about their ability to follow the law
4 and impose the death penalty if the aggravators are
5 there and it's justified. She clearly said that. She
6 doesn't meet the standard.

7 MR. MOORE: She didn't draw that line, that case
8 is inapplicable. She didn't say that only in rare
9 cases that she identified would she impose it. She
10 said she would try, it would be very difficult for her
11 to do, she can't say for sure, but she would attempt
12 to follow the law, she would try to keep them
13 separate, which is all we can ask of any juror.

14 MR. BROWN: When she was asked point blank if she
15 could impose it, she said, I don't think I can. I
16 asked if she had reasonable doubt about her ability to
17 do that, and she said yes. That's the standard.

18 THE COURT: Okay. The Court's going to strike
19 Juror Number 15, and that will be for cause.

20 (Thereupon, the benchside conference was
21 concluded and the proceedings were had as follows:)

22 THE COURT: Okay. Juror Number 15, I am going to
23 release you from service on this trial. What I'm
24 going to ask you to do is to go downstairs, report to
25 the jury assembly room, tell them that you have been

1 released from Judge Reinman's courtroom, they'll
2 probably take your badge and you'll be on your way.
3 Thank you.

4 (Thereupon, Juror Number 15 was escorted out of
5 the courtroom by the court deputy; thereafter, Juror
6 Number 16 was escorted into the courtroom by the court
7 deputy and the proceedings were had as follows:)

8 THE COURT: All right. Thank you for your
9 patience, and thank you for being here. What's going
10 to happen this morning is I'm going to ask you a few
11 questions, and then the State's going to ask you some
12 questions, and then the defense is going to ask you
13 some questions. The first thing I'm going to ask you
14 is have -- yesterday I made an announcement about not
15 discussing this case, so have you been exposed to any
16 newspaper headlines or articles related to this trial
17 or its participants?

18 JUROR NUMBER 16: No.

19 THE COURT: Have you seen television, Internet,
20 or radio comments about this trial?

21 JUROR NUMBER 16: No.

22 THE COURT: Okay. Has anyone -- have you
23 conducted or been exposed to any research regarding
24 any matters about this case?

25 JUROR NUMBER 16: No.

1 THE COURT: And have you discussed this case with
2 anyone outside or allowed anyone to discuss it in your
3 presence?

4 JUROR NUMBER 16: No.

5 THE COURT: Okay. Juror Number 16, what are your
6 views about the death penalty?

7 JUROR NUMBER 16: It's complicated. The
8 Innocence Project has freed a number of people off of
9 death row, so obviously mistakes can be made. But I
10 think if it's -- if there's overwhelming evidence,
11 then I do support the death penalty. But it has to
12 be, like, super, super tight.

13 THE COURT: Okay. So what I think I heard you
14 say is under some circumstances you would support it.

15 JUROR NUMBER 16: Yes.

16 THE COURT: In this trial, what you will be asked
17 to do is if there is a conviction on count one, count
18 one is the premeditated murder of the first degree,
19 then the jury would be asked to make a recommendation
20 to the Court of death, or life in prison without the
21 possibility of parole. If I instruct you that you are
22 to consider life in prison without the possibility of
23 parole, would you be able to follow that instruction?

24 JUROR NUMBER 16: Yes.

25 THE COURT: And if I instruct you that you are

1 also to consider death as a possible penalty, would
2 you be able to follow that instruction?

3 JUROR NUMBER 16: I think so, yes.

4 THE COURT: Okay. You said, "I think so,"
5 whenever you say that, you're going to get more
6 questions from the State and the defense.

7 JUROR NUMBER 16: Okay. Yes.

8 THE COURT: Okay. I'm just warning you. Do you
9 know anything about this case from either your own
10 personal knowledge, rumor, or by discussion with
11 anyone else, or from the media, radio, television,
12 Internet, electronic device, or newspaper?

13 JUROR NUMBER 16: I knew about it when it
14 happened, because it was all over the news. And there
15 was a procession through Melbourne. That's what I
16 know of it.

17 THE COURT: Okay. And that would be you learned
18 -- you know that a death of a police officer occurred,
19 and about the funeral.

20 JUROR NUMBER 16: Yes.

21 THE COURT: And that would have been at the time
22 that those events occurred?

23 JUROR NUMBER 16: Right.

24 THE COURT: So do you know anything more recent?

25 JUROR NUMBER 16: No. Not at all.

1 THE COURT: And you would have gained that
2 information from television?

3 JUROR NUMBER 16: Yeah, it was on the news. It
4 was on the local news.

5 THE COURT: Okay. Can you set aside anything
6 that you may have learned about this case, serve with
7 an open mind, and reach a verdict based only on the
8 law and the evidence presented at the trial?

9 JUROR NUMBER 16: Yes.

10 THE COURT: All right. Questions by the State.

11 MR. BROWN: Thank you, Your Honor. Juror Number
12 16, good morning. You used the term when you answered
13 the Court's question, if "overwhelming evidence" was
14 presented, you would support the death penalty, it has
15 to be super tight.

16 JUROR NUMBER 16: Yeah.

17 MR. BROWN: The burden -- to even consider the
18 death penalty, the verdict in this case would have to
19 be guilty of first degree murder. Do you understand
20 that?

21 JUROR NUMBER 16: Yes.

22 MR. BROWN: Now, the standard of proof to get to
23 that point is, there are certain elements in first
24 degree murder, and the State of Florida has to prove
25 those elements beyond and to the exclusion of every

1 reasonable doubt.

2 JUROR NUMBER 16: Right.

3 MR. BROWN: Okay. Do you recall hearing the
4 Court talk a little bit about reasonable doubt?

5 JUROR NUMBER 16: I don't remember all that.

6 MR. BROWN: Okay. She -- in talking about
7 reasonable doubt yesterday, she mentioned reasonable
8 doubt's not a possible doubt, speculative, forced, or
9 imaginary doubt. So you have a difference between a
10 reasonable doubt, as to whether the State of Florida's
11 proven the elements of the crime versus what would be
12 a possible doubt, or speculative doubt.

13 MR. MOORE: Judge, may we approach?

14 THE COURT: Yes, you may.

15 (Thereupon, a benchside conference was had before
16 the Court, out of the hearing of any other parties
17 present in the courtroom as follows:)

18 MR. MOORE: Your Honor, he may not remember, but
19 rather than piecemeal the instruction, I'd ask that
20 the whole -- I mean, that the instruction be read, the
21 standard instruction, and that be guide for the juror.

22 THE COURT: Okay. Well, I haven't given --
23 because I was going to give that -- I haven't given
24 the standard instruction with regard to the guilt
25 phase. The only thing -- and that is part of what I

1 intend to give at a later point. What I gave was the
2 instruction that you requested with regard to the
3 penalty phase, and it only related to reasonable doubt
4 with regard to aggravating circumstances.

5 MR. BROWN: But it did talk about reasonable
6 doubt, so --

7 MR. MOORE: You know, the Court did instruct --
8 and it was taken from the standard and the context of
9 the penalty phase, but since we are discussing it, and
10 since he's asking about it -- and maybe he wasn't
11 listening when the Court read it yesterday, I'd ask
12 that the standard instruction be read on reasonable
13 doubt, so he can know exactly what that means, instead
14 of piecemealing it. That's my request.

15 THE COURT: With all due respect, we're supposed
16 to be questioning everyone with regard to the death
17 penalty. Because you're going to have another
18 opportunity to question him with regard to reasonable
19 doubt in the guilt phase, because I haven't even
20 gotten to that yet.

21 MR. MOORE: But we're there now. I mean, he's
22 asking about it. You know, I don't remember it and --

23 THE COURT: I think Mr. Brown asked him about it.

24 MR. BROWN: Judge, I'm there because -- I
25 basically want to make sure he understands what

1 reasonable doubt is because I want to make sure he is
2 not going to apply a higher standard of proof, which
3 is a valid discussion for --

4 THE COURT: Okay. Proof in the guilt phase, or
5 proof in the penalty phase?

6 MR. BROWN: Well, but he said it would have to be
7 super tight and overwhelming, and I just want to make
8 sure that he's not going to hold us to a higher
9 standard of proof because the death penalty is there.

10 MR. MOORE: I agree with all of that. I just
11 want the standard read.

12 THE COURT: Okay. I'll read reasonable doubt,
13 but I just -- my only question is -- this is my
14 concern, yesterday, with a few people, we got off into
15 questioning that I would consider -- that could happen
16 in a whole, that would make this process go much
17 faster, as opposed to questioning each individual
18 juror. I want to limit the questions to knowledge of
19 the case and death penalty. Because you're also --
20 I've told you, you're going to have another chance to
21 question the whole panel with regard to other issues.
22 If we get too far astray with this witness, we can't
23 be -- you know, at some point we have to get to the
24 trial. So if we get too astray with this witness,
25 which I would consider questions you could ask the

1 whole panel as a whole, as opposed to just this
2 witness, I'm going to limit that. Because we really
3 need to -- the purpose -- I granted the request to do
4 this individually, but it would go much faster if some
5 of these questions were done in a panel setting as
6 opposed to an individual. So I will give that
7 instruction, but I'm going to ask you to -- I mean, I
8 want to focus on the death penalty and the knowledge
9 of the case. Because you're going to have another
10 opportunity about reasonable doubt.

11 (Thereupon, the benchside conference was
12 concluded and the proceedings were had as follows:)

13 THE COURT: Juror Number 16, I'm going to read to
14 you the instruction with regard to reasonable doubt.
15 A reasonable doubt is not a mere possible doubt, a
16 speculative, imaginary, or forced doubt. Such a doubt
17 must not influence you to -- well, this is the
18 aggravating one. With all due respect, I don't have
19 my instructions with me on the other part at this
20 time. I didn't think we were getting to that.
21 Mr. McMasters, can you give me the number?

22 MR. MCMASTERS: Just one moment, Judge.

23 THE COURT: Let's see who can find it faster.
24 It's 3.7. Okay. I'm going to read it again. A
25 reasonable doubt is not a mere possible doubt, a

1 speculative, imaginary, or forced doubt. Such a doubt
2 must not influence you to return a verdict of not
3 guilty if you have an abiding conviction of guilt. On
4 the other hand, if after carefully considering,
5 comparing, and weighing all the evidence, there is not
6 an abiding conviction of guilt, or if having a
7 conviction, it is one which is not stable, but one
8 which waivers and vacillates, then the charge is not
9 proved beyond every reasonable doubt, and you must
10 find the defendant not guilty because the doubt is
11 reasonable. It is to the evidence introduced in this
12 trial, and to it alone, that you are to look for that
13 proof. A reasonable doubt as to the guilt may arise
14 from the evidence, conflict in the evidence, or the
15 lack of evidence. If you have a reasonable doubt, you
16 should find the defendant not guilty; if you have no
17 reasonable doubt, you should find the defendant
18 guilty. Okay. Thank you, sir.

19 MR. BROWN: Juror Number 16, you heard the
20 Court's instruction on that.

21 JUROR NUMBER 16: Correct.

22 MR. BROWN: And you kind of see reasonable doubt
23 versus what would be a possible doubt or speculative
24 doubt.

25 JUROR NUMBER 16: Right.

1 MR. BROWN: Now, you used the term "overwhelming
2 evidence," "would have to be super tight."

3 JUROR NUMBER 16: Correct.

4 MR. BROWN: Do you view that as being above and
5 beyond what would be the State's standard in order to
6 return a verdict of guilty of first degree murder?

7 JUROR NUMBER 16: Well, it's -- as the statement
8 that she read indicates, it would be that sum of the
9 evidence leads to the logical conclusion of whether
10 there's guilt or innocence. And so if it's very
11 difficult to exactly prove everything, but there --
12 eventually you get to a point where you have to say
13 that the sum of the weight of the evidence is so great
14 that you have to find them guilty. Or, you know,
15 let's say that the evidence is conflicting, you know,
16 yeah, it seems like it's pretty solid, but there's
17 just parts that don't come together.

18 MR. BROWN: All right.

19 JUROR NUMBER 16: So it has to be a very complete
20 picture of the event that occurred and the actions of
21 the people involved in it. So that's my explanation.

22 MR. BROWN: Okay. Let me go a little bit further
23 into the process, and then I'll come back to this
24 issue. As we talked about, I mentioned it to you just
25 a few minutes ago, the only way you get to the death

1 penalty consideration is if there is a verdict of
2 first degree murder. If there's a verdict for,
3 obviously, not guilty, that wouldn't be considered, or
4 if it's for lesser-included crimes, such as second
5 degree murder or something else, then the death
6 penalty's off the table.

7 JUROR NUMBER 16: Okay.

8 MR. BROWN: If you're on the jury, the jury
9 returns a verdict of first degree murder, then you
10 would come back and consider two possible sentences
11 and make a recommendation to the Court, life without
12 parole, or the death penalty. The first step in that
13 is -- the evidence will be presented to you, the first
14 step in that is to look at and analyze what are all
15 the aggravating circumstances, which we'll have a list
16 for you, it may be one, it may be more than one, of
17 aggravating circumstances that this case may justify
18 the imposition of the death penalty. You have to look
19 to see if the State's proven those beyond any
20 reasonable doubt. The same standard for the guilt
21 phase applies to the State's proof of aggravators. If
22 we haven't proven any, then of course if there's no
23 aggravating factors, your recommendation has to be
24 life in prison. If the State's proven at least one,
25 one may be enough, we may prove more than one, it may

1 only be one, if we've proven them, at least one, then
2 you look at that aggravating circumstance, or
3 aggravating circumstances, if there's more than one,
4 and say, do these justify the imposition of the death
5 penalty. Are you with me so far?

6 JUROR NUMBER 16: Yes.

7 MR. BROWN: If the answer there is no, that would
8 force you back to the recommendation has to be life
9 without parole. If the answer is yes, take the next
10 step, look at mitigators. And the mitigators that are
11 provided to you, as the Court mentioned yesterday, are
12 based on the defendant's background, things about him.
13 And you have to look at if those were proven. Now,
14 that proof is a lower standard, it's by the greater
15 weight of the evidence. You look at the mitigators,
16 if some of that has not been proven to your
17 satisfaction to the greater weight of the evidence,
18 obviously you discard those, you don't consider them.
19 All the mitigation that's been presented to you that
20 was proven to you, you consider. Then you go through,
21 and the Court will tell you about a weighing process.

22 JUROR NUMBER 16: Okay.

23 MR. BROWN: And it's just like any other type of
24 decision that you're going to make in your life,
25 you're going to look at all the factors, you consider

1 them.

2 JUROR NUMBER 16: Sure.

3 MR. BROWN: Some factors you may give great
4 weight to, others you look at and consider and say,
5 I'm going to give these little weight. That's the
6 process you have to go through. You weigh the
7 aggravators, you weigh the mitigators, and you weigh
8 them against each other. If the mitigators outweigh
9 the aggravating circumstances, then your
10 recommendation would be a life recommendation. If you
11 find the mitigators do not outweigh the aggravators,
12 then you're in a position where legally you could
13 recommend to the Court a sentence of the death
14 penalty. Now, the Court's going to tell you, you're
15 not required at that point to do it, she's never going
16 to tell you, if you find A, B, and C, you must
17 recommend the death penalty. You get there by finding
18 the aggravators, weighing against the mitigators, if
19 the mitigators don't outweigh, then if you feel it's a
20 justified sentence, you can recommend that. Okay?

21 JUROR NUMBER 16: Okay.

22 MR. BROWN: How do you feel about that process?

23 JUROR NUMBER 16: I think I can do that.

24 MR. BROWN: Okay.

25 JUROR NUMBER 16: Used a lot of words to get

1 there, but --

2 MR. BROWN: Right. That's the thing, you don't
3 come in here knowing what the process is, most people
4 don't know the process. That's why I go through it
5 step by step, make sure you understand it, before we
6 throw you in there and say, okay, now do it.

7 JUROR NUMBER 16: Right.

8 MR. BROWN: So we want to make sure you
9 understand and you're comfortable with the process.
10 Now, back to that whole burden of proof. That beyond
11 a reasonable doubt applies to the guilt phase, and it
12 applies to the penalty phase to the aggravators. And
13 different people use different adjectives on what they
14 think the burden of proof ought to be, or what the
15 laws are in a criminal courtroom. People may be
16 meaning the same thing, or they may be meaning
17 something higher, something greater. And I guess my
18 question to you is, when you use the terms
19 "overwhelming," and "would have to be super tight,"
20 are you going to apply a higher standard to the State
21 than proof beyond a reasonable doubt?

22 JUROR NUMBER 16: It means I have to be
23 convinced. I have to be, you know -- there has to be
24 a minimum of conflict. My training is -- I'm an
25 engineer, so I tend to be very logical about things

1 that I do and decisions I make and the process that I
2 go by. So it's difficult for some people, but it
3 seems to work well for me.

4 MR. BROWN: All right. Well, you can see -- you
5 understood the standard the Court gave you?

6 JUROR NUMBER 16: Yes.

7 MR. BROWN: Okay. Beyond a reasonable doubt.

8 JUROR NUMBER 16: Right.

9 MR. BROWN: In your mind, is that a standard
10 you're comfortable with?

11 JUROR NUMBER 16: Yes.

12 MR. BROWN: Okay. When it gets to the point, if
13 you've returned a verdict of first degree and you're
14 considering the death penalty, is that a standard
15 you're comfortable with applying in regards to the
16 death penalty?

17 JUROR NUMBER 16: Yes.

18 MR. BROWN: Okay. Can you assure us that you're
19 not going to apply the higher standard, if there is
20 one?

21 JUROR NUMBER 16: Yes. I can't think of one that
22 I would apply other than what's been stated.

23 MR. BROWN: Okay. Now, if you sit on the jury,
24 you return the verdict of first degree murder, found
25 the aggravating circumstances, you found the

1 mitigation does not outweigh those, can you recommend
2 a sentence of the death penalty to the Court?

3 JUROR NUMBER 16: Yes.

4 MR. BROWN: And there's one other aspect I just
5 want to cover. I talked about earlier, if the verdict
6 of guilt is for something less than first degree
7 murder, obviously you would never have to consider the
8 death penalty. Knowing that, would that fact, that,
9 hey, if I don't return first, I can avoid having to
10 make that decision, would that affect your
11 deliberation and your verdict at all?

12 JUROR NUMBER 16: I don't think so. No.

13 MR. BROWN: Okay. There's a reason why the Court
14 mentioned about the saying "I don't think," we have to
15 be certain on these, and some people, that's a term of
16 language that's used, other people use it to express
17 they're unsure. Okay. So you would agree that the
18 issue of sentencing with respect to the death penalty
19 possibly being there would not affect your
20 deliberation at all in the guilt phase?

21 JUROR NUMBER 16: It would not.

22 MR. BROWN: Okay. You would return the verdict
23 for whatever proof -- if we proved first degree, you
24 would return first degree?

25 JUROR NUMBER 16: Yes.

1 MR. BROWN: Thank you, sir. No further
2 questions, Your Honor.

3 THE COURT: Thank you. Questions by the defense.

4 MR. MOORE: Sir, did you have an opinion about
5 the death penalty, where you stood with respect to the
6 death penalty, before you set foot in this courtroom?

7 JUROR NUMBER 16: Sure. Yes. As I mentioned,
8 it's complicated. I'm basically for it; but I also
9 see the other side, that people have been on death row
10 that are innocent.

11 MR. MOORE: How long would you say you've been
12 for it?

13 JUROR NUMBER 16: It's not something I think
14 about every day, you know. Four or five years.

15 MR. MOORE: Okay. Can you think -- what are
16 reasons that you'd give in support of the death
17 penalty?

18 JUROR NUMBER 16: Reasons that I could give in
19 support of the death penalty. Premeditated murder, I
20 guess. An eye for an eye kind of thing.

21 MR. MOORE: Well, the death penalty isn't even a
22 consideration unless there is proof, a conviction, for
23 a premeditated murder. That's a given. So, you know,
24 we're talking about this whole step after that, what
25 happens if that happens, conviction for first degree

1 premeditated murder, then we get into this whole issue
2 of, are there aggravating circumstances, are there
3 mitigating circumstances, weighing, balancing. But as
4 a policy matter, can you think of reasons why the
5 death penalty is on the book, in this country. In
6 this state, let me put it that way.

7 JUROR NUMBER 16: The reasons why the death
8 penalty is on the book in this State?

9 MR. MOORE: Yes.

10 JUROR NUMBER 16: Well, it's a law. You know, so
11 you're saying what's the reason --

12 MR. MOORE: What's the reason for the law?

13 JUROR NUMBER 16: -- for the law?

14 MR. MOORE: Why do we have the death penalty
15 here, and not in other places?

16 JUROR NUMBER 16: I think that it's probably an
17 accepted form of justice, that's been approved by the
18 voters.

19 MR. MOORE: Right. On the other side of the
20 coin, could you list or think of reasons why we,
21 perhaps, should not have the death penalty, or against
22 the death penalty?

23 JUROR NUMBER 16: So that -- on the opposite
24 side, it would be that in some cases a defendant's
25 poorly represented, or the evidence does not, you know

1 -- the evidence does not make sense but because of
2 their representation, they are convicted. Or just
3 because of their mental state, they're convicted. So
4 there's -- I guess that would fall under the
5 mitigating situation, right, to me.

6 MR. MOORE: Okay. All right. So you're an
7 engineer, you're probably more comfortable crunching
8 numbers than thinking in those terms.

9 JUROR NUMBER 16: Pretty much.

10 MR. MOORE: So if you put yourself on a continuum
11 of 0 to 10, 0 being against the death penalty, 10
12 being as strongly in support of it as you could be,
13 what number would you give yourself?

14 JUROR NUMBER 16: 6 or 7.

15 MR. MOORE: Can you think of types of homicide
16 that stand out as being more -- where the death
17 penalty is more warranted as opposed to others?

18 JUROR NUMBER 16: Yes. As a father, death of a
19 child, you know, through someone's carelessness or
20 willful intent.

21 JUROR NUMBER 16: Would that be -- a homicide
22 involving the death of a child, which obviously we
23 don't have here, is that one where there would be an
24 automatic, in your mind, vote for a death sentence?

25 JUROR NUMBER 16: Well, nothing's automatic for

1 me. I don't think -- I try and deliberate on things.
2 Automatic means it's a knee-jerk reaction, a reflex.
3 It wouldn't be my first approach.

4 MR. MOORE: How about a homicide involving the
5 death of a police officer, which is what's charged in
6 this case?

7 JUROR NUMBER 16: Right.

8 MR. MOORE: And so what I'm getting at is, are
9 there cases where you might be less receptive to
10 considering mitigating circumstances, like the death
11 of a child, or -- what I'm asking point blank is, is
12 this one of those cases, involving the death of a
13 police officer, where you may be less receptive to
14 considering mitigating circumstances, because of the
15 nature of the homicide, the victim?

16 JUROR NUMBER 16: Yeah. Yeah, that's possible.
17 It's possible. I do have friends that are police
18 officers.

19 MR. MOORE: Would that affect -- well, would that
20 affect, you think -- if you're sitting on the jury
21 during the penalty phase, would that affect how you
22 might -- how willing you might be to vote for death?

23 JUROR NUMBER 16: Well, I think my decision would
24 be based upon weighing of the evidence, weighing out
25 the circumstances. I think that the -- my

1 predisposition has to do with the people that I know;
2 but once the evidence is in front of you and the facts
3 are there, then you -- it's a different sphere.

4 MR. MOORE: It is. That's my point. And we have
5 -- the Court will instruct you, and I think she has,
6 or at some point, if you sit on the jury, that you
7 have to limit your verdict, whether in the
8 guilt/innocence phase or the penalty phase, to exactly
9 and only what's presented in the courtroom, facts and
10 circumstances in the courtroom, the law to apply to
11 those. So we have that sphere, as you put it, but
12 outside the courtroom we have this other sphere, and
13 that includes the circumstance of you knowing a lot of
14 police officers.

15 JUROR NUMBER 16: Sure.

16 MR. MOORE: And so is that a factor that's going
17 to affect your deliberations in here?

18 JUROR NUMBER 16: No. I don't think so. I think
19 I'm pretty capable of weighing the evidence that's
20 presented.

21 MR. MOORE: Are there any concerns or doubts in
22 your mind about your ability to keep those spheres
23 separate on that issue? I mean, this is the time to
24 look and decide.

25 JUROR NUMBER 16: I would say that I would be

1 able to weigh the evidence and not have my -- and not
2 have my personal opinions influence it.

3 MR. MOORE: What does life without parole mean to
4 you? You understand what the two choices are, if
5 there's a conviction of first degree premeditated
6 murder, you've got death on one hand, and you've got
7 life without parole. What does that concept mean to
8 you, life without parole?

9 JUROR NUMBER 16: I'm not really sure what that
10 means. I mean, at face value it means you're in
11 prison with no possibility of parole

12 MR. MOORE: Would you accept if I tell you that
13 that's exactly what it means, that if a person is
14 sentenced to life without parole, they will die in
15 prison, there is no early out, there's no probation,
16 there's no parole, there is no early release, there's
17 death in prison. Would you accept that?

18 JUROR NUMBER 16: I would accept that, yeah.

19 MR. MOORE: Can you think of matters -- we're
20 talking about mitigating circumstances, does that
21 trigger any thoughts in your mind about what type of
22 circumstances would mitigate, that is, suggest that
23 life without parole is the appropriate sentence? Are
24 there any mitigating circumstances that occur to you
25 that might mitigate a first degree murder?

1 JUROR NUMBER 16: Yeah. One that comes to my
2 mind immediately is mental capacity. If somebody is
3 mentally not aware of what they did, or was not
4 capable of understanding what they did.

5 MR. MOORE: In the field of mental health, do you
6 believe that mental illness is a choice?

7 JUROR NUMBER 16: No.

8 MR. MOORE: And so then if you were to hear
9 evidence of mental illness or a mental condition, is
10 that something -- those circumstances something you
11 would potentially consider as mitigating?
12 Considering, not saying which way you would go.

13 JUROR NUMBER 16: Yes.

14 MR. MOORE: Okay. And then if you were to hear
15 testimony from a psychologist or a psychiatrist about
16 an evaluation, is that something that you would be
17 open to listening to and considering?

18 JUROR NUMBER 16: Yes.

19 MR. MOORE: How about evidence if it were
20 presented to you of brain damage or brain injury, is
21 that --

22 JUROR NUMBER 16: I think that would fall under
23 the same category, right, mental capacity?

24 MR. MOORE: Well, not necessarily, I mean --

25 JUROR NUMBER 16: Well, it -- okay.

1 (Unintelligible).

2 MR. MOORE: Well, you're welcome to question
3 anything I say, and the whole idea is for you to
4 understand, and I'm taking a position, and I'm not
5 disagreeing with yours. We're talking about a
6 category of potential mitigating circumstances, that
7 being in the mental health field, mental illness.
8 Would you accept that there may be another category
9 that might be distinguishable from that?

10 JUROR NUMBER 16: Yes. I accept that brain
11 damage would be another category that would fall
12 within the scope of mental capacity.

13 MR. MOORE: Have you heard of a neuroimaging
14 technique called an MRI?

15 JUROR NUMBER 16: Sure.

16 MR. MOORE: PET scan?

17 JUROR NUMBER 16: Yep.

18 MR. MOORE: Is that evidence, if it were
19 presented to you, that you would consider in deciding
20 whether it might be mitigating, or not?

21 JUROR NUMBER 16: I suspect -- I imagine you
22 would have somebody to interpret it. I'm not
23 qualified to interpret the results.

24 MR. MOORE: Assuming yes, qualified experts. Is
25 that something you'd be open to considering?

1 JUROR NUMBER 16: Yes.

2 MR. MOORE: What about drug abuse or drug
3 addiction -- well, first of all, do you believe that
4 drug addiction is a choice?

5 JUROR NUMBER 16: No.

6 MR. MOORE: If evidence were presented of drug
7 abuse or drug addiction, is that an area which you
8 would at least be open to considering as potentially
9 mitigating?

10 JUROR NUMBER 16: I think I'm less likely to give
11 that the same weight.

12 MR. MOORE: Well, we're not -- I'm not asking you
13 to predict what weight you would give it, but it's
14 just like a red light, green light, yes, I would
15 consider it, I'm not saying where that would lead me,
16 or, no, I wouldn't consider it.

17 JUROR NUMBER 16: Okay. So then I would say no,
18 that's something I wouldn't really consider to be
19 mitigating.

20 MR. MOORE: Do you feel that some people have
21 struggles with addiction?

22 JUROR NUMBER 16: Yes.

23 MR. MOORE: So do you believe that anybody, even
24 if they struggle with addiction, could choose not to
25 be addicted?

1 JUROR NUMBER 16: I think it's very difficult.
2 Addiction is very difficult. So to choose to not be
3 addicted is -- I don't believe they -- I believe they
4 can make the choice to try, but I've seen -- I've seen
5 it first-hand, so I understand it, it's very difficult
6 for the person that's going through it.

7 MR. MOORE: What have you seen first hand, what's
8 been your experience with it?

9 JUROR NUMBER 16: My father was an alcoholic. So
10 a lot of the basis of my opinions come from that. I
11 saw how difficult it was for him.

12 MR. MOORE: I'm going to ask you about -- we've
13 talked about aggravating circumstances, generally
14 speaking, you don't know what they are yet, you don't
15 know what that means other than it suggests that a
16 sentence of death may be more appropriate as opposed
17 to mitigating circumstances, which suggests a life
18 without parole sentence might be more appropriate.
19 There's another category of evidence that you will
20 hear, it's called victim impact evidence. It's not an
21 aggravating circumstance. Do you accept that? Let me
22 read this instruction and then we'll talk about it.

23 JUROR NUMBER 16: Yeah.

24 MR. MOORE: The Court will instruct you as
25 follows: "You have heard evidence about the impact of

1 this homicide on the, one, family; two, friends; and,
2 three, community of Deputy Pill. This evidence was
3 presented to show the victim's uniqueness as an
4 individual and the result of loss by Deputy Pill's
5 death. However, you may not consider this evidence as
6 aggravating circumstances. You recommendation to the
7 Court must be based on the aggravating circumstances
8 and the mitigating circumstances upon which you have
9 been instructed. "

10 JUROR NUMBER 16: I understand the instruction.

11 MR. MOORE: So can you follow that instruction
12 and accept that and hear that, as the State's entitled
13 to present it, and that it does not push the scale one
14 way or the other as far as sentencing?

15 JUROR NUMBER 16: Yes, I can follow that.

16 MR. MOORE: Do you understand that regardless of
17 how many aggravating circumstances are presented and
18 how many you find and, you know, how many mitigating
19 circumstances are presented and how many you find, and
20 regardless of the outcome of the weighing process
21 -- you can find every aggravating circumstance in the
22 book and no mitigating circumstances, not saying
23 that's going to happen but, hypothetically, if that
24 were the case, you're never required to vote for
25 death. Do you understand that?

1 JUROR NUMBER 16: Yes, I understand that.

2 MR. MOORE: All right. You accept that?

3 JUROR NUMBER 16: Yes.

4 MR. MOORE: Do you understand that as a juror you
5 have the right to have your views respected and
6 accepted by the other members of the jury?

7 JUROR NUMBER 16: Yes.

8 MR. MOORE: And that you then, in turn, must
9 respect their right to their opinion. Because in the
10 guilt and innocence phase, the verdict of guilty or
11 not guilty of whatever the crime charged is, first
12 degree murder, it has to be unanimous by the jury,
13 that finding does, by the jury. But in the penalty
14 phase, each juror's entitled to his own opinion.

15 JUROR NUMBER 16: I see.

16 MR. MOORE: So it does not have to be unanimous.
17 Do you understand?

18 JUROR NUMBER 16: Yeah, I didn't know that.

19 MR. MOORE: Now you know. So you don't have to
20 agree with others, you have the right to your opinion,
21 they have the right to theirs.

22 JUROR NUMBER 16: Okay.

23 MR. MOORE: Can I have a moment, Judge?

24 THE COURT: Yes, you may.

25 MR. MOORE: In talking about this reasonable

1 doubt standard, it applies to the guilt and innocence
2 phase and the penalty phase. Guilt or innocence, the
3 guilt must be proven of the crimes charged, if it can
4 be, beyond a reasonable doubt. Then we move to the
5 penalty phase, if we get there, and then the guilt of
6 the aggravating circumstances each must be proven
7 beyond a reasonable doubt. Now, the guilt and
8 innocence phase, if Mr. Bradley is found guilty of
9 first degree premeditated murder of a police officer,
10 then are you at that point open to at least moving to
11 the next phase, which is the sentencing phase, and
12 considering a sentence of life without parole?
13 Because at that point you've found guilt --

14 JUROR NUMBER 16: It's hard to say, because, you
15 know, as you've instructed me, if there's aggravating
16 circumstances and mitigating circumstances, and so --

17 MR. MOORE: Are you open to considering life
18 without parole?

19 JUROR NUMBER 16: I think so, yes. I said I
20 think so again, but yes.

21 MR. MOORE: You think so as in, you have doubts?

22 JUROR NUMBER 16: So you're saying -- you said to
23 me if there's a conviction of first degree
24 premeditated murder, then there's going to be three
25 other types of evidence, aggravating circumstances,

1 mitigating circumstances, and that third one you
2 mentioned, which is --

3 MR. MOORE: Well, those among others, yeah.

4 JUROR NUMBER 16: So then you say, well, you're
5 going to weigh these out and you're going to decide
6 whether death is appropriate or not, and I think I've
7 said I'll do that. And on the other side, you know,
8 if I weigh these out and I don't think death is
9 appropriate, then I think I'll do that as well, I'll
10 not vote for death, if it's not appropriate.

11 MR. MOORE: You're open to considering that
12 option of life without parole, I think is what you're
13 saying.

14 JUROR NUMBER 16: Yeah, considering. I'm not
15 absolute about anything yet.

16 MR. MOORE: All right. No further questions.

17 THE COURT: Okay. Juror Number 16, we are going
18 to -- you're still being considered as a juror for
19 this panel, but I'm going to let you recess. We're
20 going to have you -- you are going to have to come
21 back, but it's not going to be today or tomorrow. I'm
22 going to have you -- you're going to go downstairs,
23 they're going to give you a phone number to call, and
24 you're going to call back on Wednesday between 1:00
25 and 5:00, and they're going to tell you when to

1 return. It may be Thursday, it may be Friday, it may
2 even be next week, but next week we're not having
3 court on Monday, Tuesday, Wednesday. So if it was
4 next week, it would be next Thursday; but they'll give
5 you that information when you call. During this
6 recess, you must continue to abide by your rules
7 governing your service as a juror; specifically, do
8 not discuss this case with anyone, avoid reading
9 newspaper headlines and articles relating to this
10 trial or its participants, avoid seeing television,
11 radio, or Internet comments about the case, and do not
12 conduct any independent research regarding this trial
13 or any of its participants.

14 JUROR NUMBER 16: Okay.

15 THE COURT: Okay. So you're released until that
16 time. Thank you, sir.

17 (Thereupon, Juror Number 16 was escorted out of
18 the courtroom by the court deputy and the proceedings
19 were had as follows

20 THE COURT: Okay. In just a few moments we're
21 going to take a short break. What I'm going to do is,
22 Jurors 21 through 53, I'm going to instruct my
23 deputies to have them come back at 1:15. So I'm going
24 to allow them a recess until 1:15. So keep jurors 17,
25 18, 19, and 20 here. I do have a panel that was

1 qualified this morning, those are scheduled to come
2 back. Unless I hear something else, I'll probably
3 release that panel. Any questions of concerns? I
4 have other panels available for each day. I have
5 another panel tomorrow, I have another panel Thursday,
6 and I have another panel Friday. I don't know, I've
7 talked to the juror's clerk, if we can get this panel
8 back, and I'm not sure if we'd be able to do that.
9 I'm not sure we need that, we may -- I mean, we may
10 not need this panel, we may need other panels. It
11 appears, based on what's happening, if the ratio
12 continues, I want to try to get anywhere between 41
13 and 53 at the end for questioning, general
14 questioning, and that's my goal, 41 to 53 at the end.
15 I think we can do that with another -- depending on --
16 we'll know by the end of this panel better, but I
17 think we can do that with one other panel; however, it
18 may take a third panel, but I don't think we're going
19 to need five panels. So unless I hear something else,
20 I'm going to go ahead and release the panel from
21 today. Any questions or concerns?

22 MR. BROWN: I think that's good, Judge.

23 THE COURT: Okay. We'll take a ten-minute
24 recess, and we'll be back in ten minutes. Thank you.

25 (Thereupon, a recess was taken in the

1 proceedings.)

2 THE COURT: Okay. We can bring out Mr. Bradley.

3 (Thereupon, the defendant was escorted into the
4 courtroom by the court deputy and the proceedings were
5 had as follows:)

6 THE COURT: Unless I hear something else -- any
7 preliminary matters before I bring in Juror Number 17?
8 Okay. We'll bring in Juror Number 17.

9 (Thereupon, Juror Number 17 was escorted into the
10 courtroom by the court deputy and the proceedings were
11 had as follows:)

12 THE COURT: Okay. Juror Number 17, first, I want
13 to thank you for being here and thank you for your
14 patience in this process. Yesterday I gave some
15 instructions, so I just need to ask you some questions
16 about that. Have you read or been exposed to reading
17 any newspaper headlines or articles related to this
18 trial or its participants?

19 JUROR NUMBER 17: No.

20 THE COURT: And have you seen television or radio
21 or Internet comments about this trial?

22 JUROR NUMBER 17: When I turned the television on
23 to the news station, I think they had a picture, so I
24 immediately changed the channel.

25 THE COURT: Okay. And have you discussed this

1 case with anyone, including other jurors or anyone
2 else?

3 JUROR NUMBER 17: No.

4 THE COURT: For purposes of your questioning at
5 this time, I'm going to talk to you about -- I'm going
6 to ask you some questions, and then the State will
7 have an opportunity to ask you questions, and the
8 defense will have an opportunity to ask you questions.
9 The first question I'm going to ask you is what are
10 your views about the death penalty?

11 JUROR NUMBER 17: I guess I thought about it
12 because I anticipated that question with this trial.
13 It's something that I never was either for or against.
14 I realize the states have laws; and, as you were
15 saying yesterday (unintelligible). I mean, I think if
16 that's what the decision would be, then that's what it
17 would have to be.

18 THE COURT: Okay. Let me tell you how the
19 process would work. First, we try the case on the
20 charges. In the event there is a guilty verdict on
21 count one, which is the first degree premeditated
22 murder count, then the trial would proceed into a
23 second phase, which we call the penalty phase. The
24 first phase is the guilt phase, the second phase is
25 the penalty phase. At that time, the jury would be

1 required to make a recommendation to the judge, to me,
2 of a sentence of either of death, or life in prison
3 without the possibility of parole. So if I instruct
4 you that you would have to consider both of those as
5 possible penalties, would you be able to do that?

6 JUROR NUMBER 17: Yes.

7 THE COURT: Okay. And is it your opinion that
8 death is the only appropriate penalty for murder of
9 the first degree?

10 JUROR NUMBER 17: I don't think it would be.

11 THE COURT: I take it from your answers that you
12 don't have a lot of information about this area?

13 JUROR NUMBER 17: As far as being involved in
14 anything where the death penalties involved in a
15 trial, no.

16 THE COURT: Okay. When I asked you that
17 question, you said, "I don't think it would be."

18 JUROR NUMBER 17: Well, it's because I haven't
19 actually experienced it before, so I imagine I
20 wouldn't have any problem doing that if it would be
21 necessary.

22 THE COURT: Okay. In this case, prior to
23 yesterday, do you know anything about the case from
24 either your own personal knowledge, rumor, by
25 discussion with anyone else, or from media,

1 television, radio, Internet, or electronic device, or
2 newspapers?

3 JUROR NUMBER 17: Just from a couple years ago
4 when it happened.

5 THE COURT: Okay. So you say at the time of the
6 death, you heard some information about it from the
7 news?

8 JUROR NUMBER 17: Uh-huh.

9 THE COURT: What information do you believe you
10 know about the case?

11 JUROR NUMBER 17: The only thing I remember, and
12 the only reason I remember is (unintelligible) it had
13 something to do with a robbery and that she had been
14 shot (unintelligible). I don't know any of the
15 details.

16 THE COURT: Okay. And you learned that from
17 watching television?

18 JUROR NUMBER 17: Yeah.

19 THE COURT: Okay. What you would be asked to do
20 is set aside anything that you have learned about this
21 case, serve with an open mind, and reach a verdict
22 based only on the law and the evidence presented at
23 the trial. Can you do that?

24 JUROR NUMBER 17: Yes. I've done it.

25 THE COURT: Because you've served as a juror

1 before?

2 JUROR NUMBER 17: Uh-huh.

3 THE COURT: All right. Questions by the State.

4 MR. BROWN: Thank you, Your Honor. Juror Number
5 17, good morning. Let me start with the death penalty
6 and let me kind of go through the procedure and
7 process with you a little bit. The Court talked about
8 this yesterday morning, but she did throw a lot at you
9 guys in a short period of time, so let me just go
10 through the process, make sure you understand it,
11 okay? Obviously, in order to consider the death
12 penalty, get to that point, the verdict has to be for
13 first degree murder. Do you understand that?

14 JUROR NUMBER 17: Uh-huh.

15 MR. BROWN: If the jury returns either a not
16 guilty verdict, in which case you wouldn't worry about
17 sentencing at all, or a guilty verdict for a
18 lesser-included, such as second degree murder or
19 something else, then the death penalty's off the
20 table. Do you understand that?

21 JUROR NUMBER 17: Yeah.

22 MR. BROWN: If the verdict comes back first
23 degree, you hear all the evidence then for the penalty
24 phase, the Court would give you the instructions, and
25 you'd go back to deliberate. The first step that you

1 have to do in that deliberation is, you look at what
2 are called aggravating circumstances. The Court will
3 give you an aggravating circumstance, maybe one, maybe
4 more than one, maybe a list, and you have to go
5 through and analyze those. First, did the State prove
6 those? The State has to prove the aggravating
7 circumstances beyond and to the exclusion of every
8 reasonable doubt, just like the guilt. If you find
9 the State didn't prove any, and there are no
10 aggravating circumstances, then your verdict has to be
11 a life recommendation. Do you understand that?

12 JUROR NUMBER 17: Yeah.

13 MR. BROWN: If you find the State proved at least
14 one aggravating circumstance, then you look at that
15 aggravating factor and ask yourself, does this
16 identify the death penalty? If the answer is no, then
17 your recommendation is life. If you look at either
18 the aggravating factor, or factors, depending on how
19 many were proven, and you say, does this justify the
20 death penalty? And the only factors that you look at
21 are those aggravators, do these, or does this, justify
22 the death penalty, then you go to the next step.
23 That's where we talked about mitigators or mitigating
24 evidence. As the Court told you yesterday, that's
25 evidence concerning the defendant, his background,

1 things of that nature. Those have to be proven, but
2 it's a lower standard, it's to the greater weight of
3 the evidence. So if you hear some evidence come in, as
4 far as mitigation, a portion of it's not proven to
5 you, you just disregard that. Take the mitigation
6 evidence that's been proven to you and consider that.
7 You consider all of it that's been proven, both the
8 aggravators and the mitigators. Do you accept that?

9 JUROR NUMBER 17: Yes.

10 MR. BROWN: Now, just like any other decision you
11 make in life, there's a weighing process. When you
12 have to make a decision in life, you look at all the
13 factors involved, right?

14 JUROR NUMBER 17: Uh-huh.

15 MR. BROWN: Some of them you may look at and say,
16 this is really important, I give this a great weight;
17 you may look at other factors and say, this really
18 isn't that much of a factor, I'm giving this little
19 weight. That's what you do with the aggravators and
20 the mitigators, you have to weigh those. And you
21 weigh the mitigation versus the aggravating factors.
22 If the mitigation outweighs the aggravators, then your
23 recommendation would be life; if you find that the
24 mitigation does not outweigh the aggravators, then at
25 that point you're in a position where you legally can

1 recommend to the Court the sentence of the death
2 penalty.

3 Now, the Court is not going to tell you -- in
4 fact, she is specifically going to tell you, you're
5 not obligated to recommend death. Okay? You go
6 through the process, find the aggravators, weigh that
7 with the mitigation, find the mitigators do not
8 outweigh the aggravators, then you're in a position
9 now to make a recommendation. The Court's not going
10 to say, if you find A, B, and C, you have to recommend
11 death. It's just a position where, if you find those,
12 you can recommend death. So you have to look at the
13 evidence, look at the aggravators, mitigators, do the
14 weighing process, and come to the conclusion that you
15 feel if the death penalty is justified and it's the
16 appropriate penalty. Do you understand that?

17 JUROR NUMBER 17: Yes.

18 MR. BROWN: Okay. How do you feel about that
19 system?

20 JUROR NUMBER 17: As far as what?

21 MR. BROWN: As far as going through that process,
22 the weighing thing, what are your thoughts on that?

23 JUROR NUMBER 17: It's something I've come close
24 to doing before. Going through a trial, is it
25 something you look forward, probably not; but are you

1 going to do it, yeah.

2 MR. BROWN: Can you -- if you feel that it's
3 justified, can you recommend the death penalty?

4 JUROR NUMBER 17: I could, if it's justified.

5 MR. BROWN: Have you come in with any
6 preconceived notion or thoughts that, well, you know,
7 unless the State has either A or B, whatever it may
8 be, don't have either of those couple of things, then
9 there's no way I'm going to recommend the death
10 penalty?

11 JUROR NUMBER 17: No.

12 MR. BROWN: Okay. You understand that the
13 Court's going to give you the list of aggravating
14 factors, and that's what you're going to look at to
15 justify the death penalty.

16 JUROR NUMBER 17: Yeah.

17 MR. BROWN: Can you follow those?

18 JUROR NUMBER 17: Yes.

19 MR. BROWN: Is there anything in your background,
20 your moral beliefs, your religious beliefs, family
21 history, whatever it may be, just your personal or
22 philosophical beliefs, that causes you any concern
23 about recommending the death penalty?

24 JUROR NUMBER 17: (Unintelligible).

25 MR. BROWN: Do you feel comfortable in your

1 ability to make that decision?

2 JUROR NUMBER 17: Yes.

3 MR. BROWN: The only other topic I do wish to
4 cover is, I mentioned it earlier, if a verdict is
5 returned of less than first degree murder, the death
6 penalty's off the table. You're not faced with having
7 to make that recommendation to the Court. So I just
8 want to make sure and cover this, knowing that,
9 sitting back there, if you're selected as a juror,
10 you're back there in the guilt phase, you think, you
11 know, if I just vote second, I won't have to face that
12 decision, won't have to come back and address the
13 death penalty. Do you think that in any way would
14 affect your verdict?

15 JUROR NUMBER 17: No.

16 MR. BROWN: So you would assure us that you would
17 return a verdict for the crime that's been charged?

18 JUROR NUMBER 17: Yes.

19 MR. BROWN: Thank you. Nothing further, Your
20 Honor.

21 THE COURT: Questions by the defense.

22 MR. MOORE: Yes, ma'am. One of the things you
23 remember hearing on the news was that the shooting,
24 according to the news report you listened to, happened
25 on John Rodes Boulevard. Did you -- have you been by

1 the location where you think the shooting may have
2 occurred?

3 JUROR NUMBER 17: I don't know exactly where it
4 occurred, but I'm on John Rodes Boulevard fairly
5 often.

6 MR. MOORE: All right. So you have driven by it
7 without the knowledge that's where the shooting
8 occurred?

9 JUROR NUMBER 17: I don't know exactly where.

10 MR. MOORE: Had you ever before -- well, let me
11 stay on that. Can you think of any other facts, or
12 not facts, news accounts that you associate with this
13 case that you read in the paper, read online, seen on
14 TV?

15 JUROR NUMBER 17: The only thing I heard was,
16 like, two years ago, something to do with robbery at a
17 hotel or something.

18 MR. MOORE: Did you watch any funeral services or
19 were you a part of any memorial services or anything
20 like that?

21 JUROR NUMBER 17: No.

22 MR. MOORE: On the subject of the death penalty,
23 have you ever in your life taken a position on the
24 death penalty? Have you ever had a position where you
25 thought you knew where you stood on that? That's

1 different from the position you are taking today,
2 which is you're not saying you're for it or against
3 it.

4 JUROR NUMBER 17: Well, as I said before
5 (unintelligible).

6 MR. MOORE: And you understand, there are no
7 right or wrong answers in here. I want to make that
8 clear. I mean, we're not grading you, we're just
9 trying to figure out what your thoughts are. And
10 also, we're not talking about death penalty in the
11 abstract, we're talking about a process that will
12 result in a death sentence being imposed and carried
13 out on Brandon Bradley. And so, just so we're clear
14 on what we're talking about here.

15 If you had to put yourself -- I'm asking you to
16 do this -- on a continuum of your support for the
17 death penalty, or lack thereof, let's say with 10
18 being the strongest support you can have for the death
19 penalty and 0 being you're against it, or at least no
20 support, could you put a number on where you would be
21 in terms of your feelings about the death penalty?

22 JUROR NUMBER 17: I'd have to be somewhere in the
23 middle, around 5. I don't really pay that much
24 attention to how much it's actually imposed.
25 (Unintelligible) and I'm not against it.

1 MR. MOORE: What would be one of those seldom
2 cases; in other words, can you think of homicides that
3 are set apart because of the nature of the homicide as
4 being especially deserving of the death penalty?

5 JUROR NUMBER 17: I haven't really given that any
6 thought.

7 MR. MOORE: I'm asking you to reflect on that for
8 a moment.

9 JUROR NUMBER 17: As he (indicating) stated about
10 the mitigating circumstances, what happened in his
11 life, life experiences, and if there's anything else
12 that caused him to do whatever he did
13 (unintelligible). It's kind of hard to say, so --

14 MR. MOORE: That's our discussion in here, it's
15 hypothetical.

16 JUROR NUMBER 17: And, you know, as far as the
17 mitigating circumstances (unintelligible).

18 MR. MOORE: Well, the subject I'd like to focus
19 on just a minute here is, are there any types of
20 homicide where you think -- and you can easily think
21 of a number of high profile cases involving deaths or
22 multiple deaths over the last decade or two -- where
23 you found out about that, whatever you heard through
24 the news, and you thought, yep, I think death is very
25 fitting in that case. Can you think of cases like

1 that, without saying what they are?

2 JUROR NUMBER 17: I can think of cases, but I
3 didn't think they should have had the death penalty.

4 MR. MOORE: Okay. So are you saying that there
5 is no homicide, in your thinking, that automatically
6 deserves the death penalty?

7 JUROR NUMBER 17: Not that I can think of.

8 MR. MOORE: You mentioned that you almost came
9 close in a previous case that you were in to voting,
10 was that a death penalty case?

11 JUROR NUMBER 17: No. Well, it was a death
12 penalty case before (unintelligible).

13 MR. MOORE: I see. So it was a first degree
14 murder?

15 JUROR NUMBER 17: Yes.

16 MR. MOORE: Without the death penalty.

17 JUROR NUMBER 17: Right.

18 MR. MOORE: Can you think of circumstances that
19 would mitigate, that is, suggest that a life without
20 parole sentence might be the proper sentence? Can you
21 think of a circumstance, or circumstances, and you
22 touched on some of those, that would suggest that an
23 appropriate sentence might be life without parole?

24 JUROR NUMBER 17: Yeah.

25 MR. MOORE: What would come to your mind as

1 something you might consider mitigating?

2 JUROR NUMBER 17: (Unintelligible) childhood. It
3 could be something that, you know, (unintelligible).

4 MR. MOORE: Do you recognize --

5 MR. LANNING: Sir, you speak very soft, could you
6 speak up a little more?

7 JUROR NUMBER 17: Okay. Sorry.

8 MR. MOORE: Do you recognize, do you agree, that
9 people are a sum total of their experiences in life,
10 what they've experienced, what they've been exposed
11 to, and can shape a person as the person grows and
12 develops and matures?

13 JUROR NUMBER 17: Yes.

14 MR. MOORE: All right. Would you take those
15 factors, whatever they are -- and, again, we're
16 talking in the abstract here -- would you consider
17 those factors as part of -- let's say the defendant's
18 background, the history of the defendant, those sorts
19 of things, in deciding what an appropriate sentence
20 might be?

21 JUROR NUMBER 17: Yeah, I would.

22 MR. MOORE: How about the subject of mental
23 health, mental illness, do you think mental illness is
24 a choice?

25 JUROR NUMBER 17: A choice?

1 MR. MOORE: Yeah.

2 JUROR NUMBER 17: No.

3 MR. MOORE: So you recognize that people may wind
4 up with some mental disabilities that they haven't
5 chosen for themselves?

6 JUROR NUMBER 17: Yeah.

7 MR. MOORE: If you heard evidence from, let's
8 say, mental health experts on that topic, is that
9 something you'd be open to considering as potentially
10 mitigating?

11 JUROR NUMBER 17: I would think so, yes.

12 MR. MOORE: How about evidence of brain injury or
13 brain damage, if evidence of that were presented to
14 you, is that something, potentially, you would
15 consider as mitigating?

16 JUROR NUMBER 17: Yes.

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(CONTINUED TO VOLUME II)