

Volume 22

1 IN THE CRIMINAL DISTRICT COURT NO. 3
2 DALLAS COUNTY, TEXAS

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6 THE STATE OF TEXAS } NO. F-96-39973-J

7 VS: } & A-96-253

8 DARLIE LYNN ROUTIER } Kerr Co. Number

9

10

11

12

13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 22 OF VOLS.

17 November 12, 1996

18 Tuesday

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22

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Sandra M. Halsey, CSR, Official Court Reporter

2386

1 C A P T I O N

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3

4 BE IT REMEMBERED THAT, on Tuesday, the 12th day of

5 November, 1996, in the Criminal District Court Number 3

6 of Dallas County, Texas, the above-styled cause came on

7 for a hearing before the Hon. Mark Tolle, Judge of the

8 Criminal District Court No. 3, of Dallas County, Texas,

9 without a jury, and the proceedings were held, in open

10 court, in the City of Kerrville, Kerr County Courthouse,

11 Kerr County, Texas, and the proceedings were had as

12 follows:

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2387

1 A P P E A R A N C E S

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3

4 HON. JOHN VANCE
5 Criminal District Attorney
6 Dallas County, Texas

7

8 BY: HON. TOBY L. SHOOK
9 Assistant District Attorney
10 Dallas County, Texas

11

12 AND:

13 HON. JOHN GRAU
14 Assistant District Attorney
15 Dallas County, Texas

16

17 AND:

18 HON. SHERRI WALLACE
19 Assistant District Attorney
20 Dallas County, Texas

21

22 APPEARING FOR THE STATE OF TEXAS

23

24

25

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2388

1 ADDITIONAL APPEARANCES:

2

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9 AND: HON. CURTIS GLOVER

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15 AND: HON. RICHARD C. MOSTY
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21 AND: HON. S. PRESTON DOUGLASS, JR.
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Sandra M. Halsey, CSR, Official Court Reporter
2389

1
2 AND: HON. JOHN HAGLER
3 Attorney at Law
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6 ALL ATTORNEYS REPRESENTING THE
7 DEFENDANT: DARLIE ROUTIER
8 MR. HAGLER HANDLING THE APPEAL
9 AND:
10 HON. ALBERT D. PATILLO, III
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14 APPEARING FOR: Witness-
15 Detective Jimmy Patterson
16 only on one date in trial
17 AND:
18 HON. STEVEN J. PICKELL
19 Attorney at Law
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23 Officer Chris Frosch
24 only on one date in trial
25
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2390

1 P R O C E E D I N G S
2
3 November 12th, 1996
4 Tuesday
5 8:30 a.m.
6
7 (Whereupon, the following

8 proceedings were held in
9 open court, in the presence
10 and hearing of the
11 defendant, being
12 represented by her attorneys
13 and the representatives of
14 the State of Texas,
15 as follows:)

16
17 THE COURT: All right. This is
18 Tuesday, the 12th of November of 1996, and we're
19 continuing with jury selection for the Darlie Lynn
20 Routier case. All parties to the trial are present. And
21 we have Mr. Frank Sidney Walker, W-A-L-K-E-R. That is
22 your name, sir?

23 THE PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: If you will raise your
25 right hand, please.

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2391

1 Do you solemnly swear or affirm you
2 will true answers make to all the questions propounded to
3 you concerning your qualifications as a juror in this
4 case, so help you God?

5 THE PROSPECTIVE JUROR: I do.

6

7 (Whereupon, the prospective
8 juror was duly sworn by the
9 Court to true answers make
10 to the questions propounded,
11 concerning qualifications, after
12 which time, the proceedings were
13 resumed as follows:)

14

15 THE COURT: You are here as a
16 potential juror in the Darlie Routier matter. Mrs.
17 Routier is sitting there in the burgundy dress.
18 Her attorney who is present now, is
19 Mr. Preston Douglass, he is from Kerrville, assisted by
20 Richard Mosty from Kerrville, Doug Mulder and Curtis
21 Glover are from Dallas. They will be along shortly.
22 The State of Texas is represented by
23 two Assistant District Attorneys from Dallas, Toby Shook
24 and Sherri Wallace.

25 Both sides are going to ask you some
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2392

1 questions here. There are no wrong answers. We just

2 want you to tell it like you really feel about things.

3 Ms. Wallace. Okay. Go ahead.

4

5 Whereupon,

6

7 FRANK SIDNEY WALKER,

8

9 was called as a prospective juror, for the purpose of
10 voir dire, having been first duly sworn by the Court to
11 speak the truth, the whole truth, and nothing but the
12 true, testified in open court, as follows:

13

14 VOIR DIRE EXAMINATION

15

16 BY MS. SHERRI WALLACE:

17 Q. Good morning. Thank you for coming
18 down.

19 A. No problem.

20 Q. Let me tell you how this works, and we
21 are going to get through it together. Okay? I am going
22 to be asking you some questions.

23 I'll talk to you a little bit about
24 your questionnaire, and the death penalty, and general
25 principles of law that apply to all criminal cases. Then
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2393

1 the defense attorney will have an opportunity to do the
2 same thing and ask you some questions.

3 As the Judge said, there are no right
4 or wrong answers, just let us know how you feel. And
5 thank you for taking the time to fill out your
6 questionnaire, it has been a big help to us.

7 Before we get started, do you have any
8 questions for me?

9 A. I believe the Judge had mentioned
10 earlier that if there was something we wanted to
11 highlight, write it in the top corner and I forgot to.

12 We have our major stock show in January.

13 Q. Okay. When does that run?

14 A. Kerr County Stock Show, I think this
15 year, is the 15th through the 18th, or something like
16 that, Wednesday through Saturday.

17

18 THE COURT: You realize I cannot
19 excuse you for any work requirement.

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: In other words, that is
22 not an excuse. I'm sorry.

23 THE PROSPECTIVE JUROR: No, no.

24 THE COURT: Okay. Fine. Thank you.

25

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2394

1 BY MS. SHERRI WALLACE:

2 Q. You just wanted to let us to know?

3 A. Right. I have children that are, you

4 know, heavily involved in it.

5 Q. Sure. What our schedule is going to

6 be, Mr. Walker, is we're starting this trial January the

7 6th, and we don't know how long it is going to take.

8 Quite a bit of it depends on how long the jury

9 deliberates. There are things that are out of our

10 control.

11 A. Uh-huh. (Witness nodding head

12 affirmatively.)

13 Q. But we don't expect it to go longer

14 than two weeks. Now, that second week, of course, gets

15 into your stock show, but it could be that it is shorter

16 than that.

17 So, it may be that it might not

18 infringe on your time, and it may. But thanks for

19 letting us know that, and we will certainly take that

20 into consideration. We appreciate it.

21 Anything about your questionnaire,

22 anything that you have thought about you want to change?

23 Are you comfortable with it all?

24 A. No.

25 Q. Okay. Fair enough. It says here that

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2395

1 you are in favor of the death penalty. Can you tell me a

2 little bit about that?

3 A. Basically, I just believe that if

4 anyone does the crime, you know, then they deserve the

5 punishment. We can sit and judge, you know, but yet they

6 are going to be judged by a higher power anyway.

7 Q. Knowing that they are going to be

8 judged by a higher power; tell me what you mean by that

9 Mr. Walker.

10 A. By God.

11 Q. Okay. But, do you still believe that

12 the jury system and the judging that we do here on earth

13 is appropriate?

14 A. Yes, I do.

15 Q. Okay. Let me let you know up front.

16 You see that woman sitting over there in the burgundy

17 dress, there in the middle at the counsel table?

18 A. Uh-huh. (Witness nodding head
19 affirmatively.)

20 Q. It is our goal and desire to see that
21 she is executed.

22 A. Uh-huh. (Witness nodding head
23 affirmatively.)

24 Q. We believe we have the type of case
25 and the quality of evidence to do that. Do you have any
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2396

1 problem in participating in that process?

2 A. Well, if the facts are presented to
3 where it proves it without a doubt, no.

4 Q. Okay. That's all we're looking for,
5 thank you. Let me ask you one other thing about your
6 questionnaire. It said: I trust the criminal justice
7 system in Texas. And you said that you disagreed. Can
8 you tell me a little bit about what your thinking is
9 there.

10 A. Well, I disagreed. I believe what my
11 answer was on that was that there are so many times that,
12 you know, of course, you can't believe what you hear and
13 see on the news all the time.

14 And it just seems like so many times
15 that a layman sitting in his den or his living room feels
16 like, hey, you know, this person, yes, did it; or maybe,
17 no, they didn't do it.

18 But, yet, seeing the news stories
19 flash, you wonder, how the verdict came out like it did.

20 Q. Yeah. So, is it fair to say that by
21 saying you distrust the criminal justice system, maybe
22 you distrust the slant the news puts on it?

23 A. Well, I do believe the news media
24 is -- can sway it, any issue, one way or the other very
25 heavily, yes.

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2397

1 Q. Okay. That is -- that brings me to a
2 point that you said that you have heard about the case
3 from the TV news. And one of the reasons we're in
4 Kerrville is this case has received substantial press.
5 And we need 12 jurors who will wait
6 until they hear the evidence in the courtroom and decide
7 the case based on the evidence in the courtroom and not
8 something from the TV or the newspaper. Could you do
9 that?

10 A. Well, all I know is like I said, just

11 what I have heard on the news and that is it. I don't
12 subscribe to the local paper and I don't bother with it.
13 Q. Okay. So, you wouldn't base any
14 verdict on what you have heard in the news, would you?
15 A. No, because they don't have it on the
16 new anymore.
17 Q. Okay. It has kind of played out?
18 A. Yeah.
19 Q. Do you remember what you heard?
20 A. Oh, gosh, a woman was arrested in
21 Dallas for the possible murder of her kids, that's all I
22 remember. You know, I mean, it was one of those passing
23 things that didn't happen in the local area, so I don't
24 remember.
25 Q. You didn't pay that much attention?
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2398

1 A. No.
2 Q. All right. Fair enough.
3 Let me tell you a little bit about how
4 the death penalty and the system works here, and then ask
5 you some questions a little bit about that.
6 There are two phases of the trial.
7 The first phase -- I don't remember, have you ever served
8 on a criminal jury?
9 A. No.
10 Q. The first phase is the guilt/innocence
11 phase. That is where the State must prove to you beyond
12 a reasonable doubt that the defendant did the crime.
13 A. Right.
14 Q. And the jury says guilty or not
15 guilty.
16 A. Right.
17 Q. If it's not guilty, obviously we all
18 go home. If it's guilty, then we go to the second phase,
19 or the punishment phase of the trial. In the punishment
20 phase you may hear different types of evidence, and you
21 may not. You may hear about the defendant's background
22 and character, or it may be that you just have the crime
23 to go on.
24 A. Uh-huh. (Witness nodding head
25 affirmatively.)
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2399

1 Q. In that phase it used to be that the
2 jury wrote life or death in a blank, and it was very
3 simple and very clear-cut. The legislature changed that,
4 and they have given the jury two questions to answer.

5 If those questions are answered in a
6 certain way, then the Judge writes death or life,
7 depending on how the questions are answered. He is not
8 given any choice. It's just merely, you know, how the
9 questions are answered, he interprets the result.

10 Do you follow me so far?

11 A. Uh-huh. (Witness nodding head
12 affirmatively.)

13 Q. The two questions are over here. The
14 first one is: "Do you find from the evidence beyond a
15 reasonable doubt that there is a probability that the
16 defendant would commit criminal acts of violence that
17 would constitute a continuing threat to society?"

18 Now, we didn't write these. These
19 were written by the legislature, but what that basically
20 says is, we have to prove to you that there is a
21 probability that the defendant would be a continuing or a
22 future danger, just to kind of summarize it.

23 Now, on your questionnaire you wrote,
24 that you believe the death penalty is appropriate in all
25 capital murder cases. And certainly the death penalty is

Sandra M. Halsey, CSR, Official Court Reporter
2400

1 appropriate in all capital murder cases, depending on the
2 evidence.

3 What I mean by that, Mr. Walker, is
4 this first question can't automatically be answered
5 "yes." You can't automatically say, "The defendant did
6 this horrible capital murder, so without thinking, I am
7 going to automatically say she will probably -- or the
8 defendant will probably be a continuing threat." Okay?

9 What you have to promise the Court is
10 that you will revisit the issue. You may not get any
11 more evidence, but you have to kind of go through the
12 evidence in your mind again, and you can't have a
13 knee-jerk reaction. Say if one -- you know, that a
14 guilty equals a "yes." You follow me?

15 A. Uh-huh. (Witness nodding head
16 affirmatively.)

17 Q. Okay. So, another way to say that is,
18 you know when the Judge told you, oh, I guess it's been
19 what, three or four weeks ago now, that you must presume
20 the defendant innocent.

21 That means if you voted right now, you
22 would have to find her not guilty. The same goes for
23 this first question: You have to presume that this first
24 question be answered "no."

25 And once we prove to you beyond a
Sandra M. Halsey, CSR, Official Court Reporter

1 reasonable doubt that she will be a future danger, then
2 you can change your answer to "yes."
3 Now, you said here: If you are in
4 favor of the death penalty in some cases, do you agree
5 that a life sentence rather than the death penalty would
6 be appropriate under the proper circumstances? And you
7 said, "no." And that is kind of fine to have that
8 feeling, that, well, if they committed a death penalty
9 crime, they ought to get the death penalty.
10 Kind of like you said, sitting in the
11 your living room. But as a juror, we have to follow the
12 law and look at all the evidence.
13 A. Uh-huh. (Witness nodding head
14 affirmatively.)
15 Q. Let me give you a hypo that I heard
16 once that kind of brought this home to me. It says: "Do
17 you find from the evidence beyond a reasonable doubt that
18 there is a probability that the defendant will be a
19 future danger?" Okay?
20 Let's say I go to a bank and I rob a
21 bank. I want some money. And I decide, "While I'm in
22 there, I'm going to kill everybody, because I don't want
23 any witnesses." So, I kill everybody in line, including
24 a woman and a little baby in a carriage, and then I kill
25 the teller. Shoot them all, and then I leave out of the
Sandra M. Halsey, CSR, Official Court Reporter
2402

1 bank.
2 And if I told you about that crime, me
3 killing 10 people, including the baby and a bank teller,
4 a security guard, you think, "That person needs the death
5 penalty."
6 But if you look at it a little bit
7 further, you see right before the teller was killed, she
8 hit a button underneath her counter to call the police.
9 And the police were on the way and I didn't hear them.
10 So, I go out of the bank and the police car runs me over,
11 and I become a quadriplegic. Okay?
12 Now, I know that it's far-fetched
13 example, and it's silly, but I use it to bring home this
14 point: You don't really know the facts until you hear
15 all the evidence.
16 What we need is a commitment from you
17 that you will wait until you hear all the evidence before
18 you make up your mind whether or not death or life is
19 appropriate in this case.
20 It might be after you hear the

21 evidence, even though I am a quadriplegic, you decide
22 that I am as mean as a snake, and I am a continuing
23 threat to society and I ought to die.
24 But it may be that you said, "Well,
25 she can't do anything with her nose or her ears. So, I
Sandra M. Halsey, CSR, Official Court Reporter
2403

1 will save her life and let her live." See where I am
2 coming from?

3 A. Right.

4 Q. Could you do that? Could you wait to
5 hear all of the evidence and make us prove that question
6 to you?

7 A. Yes.

8 Q. Okay. Now, the flip side of that,
9 that I kind of touched on a little bit ago was, could you
10 convict -- we asked you this question in here. It says:
11 Do you believe that there are some crimes which call for
12 the death penalty solely because of their facts and
13 circumstances, regardless of whether or not the guilty
14 person has committed prior violent acts?

15 The way I like -- and you said, "Yes,
16 if the person is proven guilty."

17 The way I kind of ask -- like to ask
18 it is: Can you -- you don't have to imagine a set
19 circumstances, but is your mind open to the possibility
20 that just on the facts of the crime alone that you could
21 consider somebody a future danger?

22 A. Given all the facts, yes.

23 Q. Sure. And I'm not looking for a
24 commitment from you right now. As a matter of fact, I
25 appreciate that you are open-minded and want to hear all
Sandra M. Halsey, CSR, Official Court Reporter
2404

1 of the facts, that is exactly what we're looking for, Mr.
2 Walker.

3 As I told you, here in Texas, it's not
4 automatic. The death penalty scheme is something that a
5 jury decides what cases are appropriate. And the types
6 of cases that qualify for the death penalty here in Texas
7 are: Murder of a child under the age of six, which is
8 what's on trial here; killing of a police officer or a
9 fireman or a prison guard in the line of duty; a killing
10 coupled with another felony, like a robbery, like my
11 example about going into the bank; or killing during the
12 course of a rape or kidnapping; or murder for hire, if I
13 hire a hit man to go kill somebody, I am eligible for the
14 death penalty, and so is the hit man, the person that

15 kills for money; and if you kill two or more people,
16 those are the types of crimes that are eligible for the
17 death penalty.

18 Is there anything about that list that
19 you would change or add to, if it were your decision?

20 A. I don't believe so.

21 Q. Does that feel like a pretty fair list
22 to you?

23 A. Yes.

24 Q. Okay. And the case that we're on
25 trial for, killing of a child under the age of six, is
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2405

1 that something you think that would qualify for the death
2 penalty?

3 A. If the circumstances are there, yes,
4 the proof.

5 Q. Fair enough. Let me tell you, I think
6 in front of you, Mr. Walker, is an indictment. Do you
7 see that?

8 A. Yes.

9 Q. Okay. Do you see the typewritten
10 portion there kind of in the middle of the page, if you
11 would read that and let me know when you are finished.

12 A. Yes.

13 Q. Okay. That is what we must prove to
14 this jury beyond a reasonable doubt. That is our -- the
15 elements of the crime that we must convince the jury that
16 the defendant has committed. Okay?

17 A. Uh-huh. (Witness nodding head
18 affirmatively.)

19 Q. Okay. We can do that several
20 different ways. We have to prove beyond a reasonable
21 doubt, but it doesn't matter what type of evidence we
22 use. And let me tell you where I am going with this. In
23 a murder case, or actually in any case, we can present
24 direct evidence or indirect, what's called circumstantial
25 evidence.

Sandra M. Halsey, CSR, Official Court Reporter
2406

1 Direct evidence would be an
2 eyewitness, "I saw John kill Sue." And that is direct
3 evidence.

4 But very often in a murder case, we
5 won't have an eyewitness, because the defendant has the
6 control over how many witnesses there are to the crime.

7 Do you follow me?

8 A. Uh-huh. (Witness nodding head

9 affirmatively.)

10 Q. And in a murder case the eyewitness is
11 dead, and you know the defendant doesn't have to testify.
12 We can't call her to the stand, and you can't use that
13 against her.

14

15 MR. RICHARD C. MOSTY: Your Honor, I
16 am going to object to this whole series where it's
17 talking about specific facts and referring to the
18 defendant as her. None of it is couched in an
19 appropriate case, or if the facts warrant.

20 THE COURT: Sustained. Rephrase the
21 questions.

22

23 BY MS. SHERRI WALLACE:

24 Q. No defendant has to testify. Okay?

25 And in many murder cases the eyewitness is dead. So, in
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2407

1 those types of cases we must look to other types of
2 evidence. And indirect, or sometimes what you hear
3 called circumstantial evidence is everything else other
4 than an eyewitness. It's fingerprints, DNA, statements
5 by the defendant, fibers, blood spatters, everything
6 else. Okay?

7 And, what I would like to know from
8 you is if we convince you beyond a reasonable doubt by
9 circumstantial evidence alone, would you be able to
10 return a verdict of guilty in a capital murder case?

11 A. You would have to convince me 100
12 percent.

13 Q. Okay. Let me talk to you a little bit
14 about that. Our burden is beyond a reasonable doubt.
15 It's a high burden and we gladly accept it.

16 That is the burden in every criminal
17 case; traffic ticket, rape, every criminal case, capital
18 murder, beyond a reasonable doubt.

19 Now, on TV in something, you know, in
20 Hollywood you will see beyond a shadow of a doubt, or 100
21 percent certainty, or all that sort of things. And
22 really, that is not our burden. One hundred percent
23 certainty would be you would have to see it for yourself,
24 and if you saw it for yourself, you couldn't be a juror.

25 Okay? You would be a witness. So we are happy to accept
Sandra M. Halsey, CSR, Official Court Reporter

2408

1 our burden of beyond any reasonable doubt, but that is

2 not the same thing as 100 percent certainty.
3 Could you hold us to our burden and
4 nothing more?
5 A. Now, you are saying that you could not
6 prove to me that 100 percent, under a reasonable doubt?
7
8 THE COURT: They have to prove the
9 case beyond a reasonable doubt.
10 THE PROSPECTIVE JUROR: Right.
11 THE COURT: Now, reasonable doubt, you
12 will get a definition as to what it is.
13 THE PROSPECTIVE JUROR: Right.
14 THE COURT: But they have to prove
15 their case beyond a reasonable doubt. The State does the
16 accusing, they always have to do the proving. It never
17 shifts to the defense, I think that is the point being
18 made.
19 THE PROSPECTIVE JUROR: Okay.
20 THE COURT: And, of course, all of
21 these questions assume from both sides that you believe
22 whatever evidence they are talking about.
23 THE PROSPECTIVE JUROR: Right, okay.
24
25
Sandra M. Halsey, CSR, Official Court Reporter
2409

1 BY MS. SHERRI WALLACE:
2 Q. Mr. Walker, the only reason I say that
3 is, yeah, we believe that we have the type of case that
4 we can convince you beyond a reasonable doubt that she is
5 guilty. But, what I want to know, when you say 100
6 percent certainty, that is not terms I am used to
7 hearing, and so, I just kind of want to know what you
8 mean by that?
9 A. Well, okay. Being a juror, in a case
10 like this, okay, if I am going to have to sit there and
11 vote the outcome of a life, then I want to know 100
12 percent myself I am voting the right yes or the right no.
13 Q. All right. You want to be sure?
14 A. Right.
15 Q. Fair enough, no problem then. But
16 could you be sure having circumstantial evidence alone,
17 if you believe the evidence beyond a reasonable doubt?
18 A. Since there is no witness, and all
19 we're going on is, I guess, what you all are calling
20 circumstantial, I guess I could. You know, I can't
21 promise you.
22 Q. I'm not asking you if you can
23 guarantee me a guilty.

24 A. Oh, yeah.

25 Q. I'm just asking you, if we have got
Sandra M. Halsey, CSR, Official Court Reporter
2410

1 the evidence, if you believe it beyond a reasonable
2 doubt, then you would find her guilty?

3 A. If I believed it, yes.

4 Q. Fair enough. Now, the other thing, on
5 that indictment is everything that we have to prove to
6 the jury. But what we don't have to prove to the jury is
7 motive. Okay?

8 Now, you know, you see these TV crimes
9 and all this stuff and you think, "I wonder why they did
10 it." You know it's kind of interesting to know the
11 motive.

12 But in Texas it's not required for us
13 to prove the motive, and there is a good reason for that.

14 As you know, the defendant does not
15 have to testify. So, it may be after you hear the trial,
16 hear the evidence, that the motive becomes clear as a
17 bell to you, what the motive is.

18 Or it may be that it's one of several,
19 and you are not really sure which, or it may be, as in
20 some crimes, I have jurors come back and say, "Why did
21 they do it?" It may be you just don't ever know, some
22 crimes you just can't understand.

23 We have the burden of proof, but we
24 don't have the burden of proof with regards to motive.
25 If you believed that the defendant committed the crime,
Sandra M. Halsey, CSR, Official Court Reporter
2411

1 and you believed that beyond a reasonable doubt, but you
2 didn't know why, could you still return a verdict of
3 guilty?

4 A. Well, there's a lot of things in life
5 that we don't know why and won't ever find out.

6 Q. Fair enough. And you could do that?

7 A. I assume I can, yes.

8 Q. Okay. Thank you. Now, once we get
9 through the guilt phase and the defendant is found
10 guilty, that is when we go to these questions in the
11 second phase. Okay? We talked a little bit about that
12 first question, and I want to ask you some questions
13 about that.

14 And let me tell you where I am coming
15 from on this. The Judge is going to give you many
16 definitions, and, you know, describe what words mean and
17 all that stuff, in legal terms. But for this question,

18 you are not going to get a single definition.
19 So, what I want to know from you is,
20 what these words mean to you, because you are going to be
21 the one putting meaning on it.
22 "Probability." Do you find from the
23 evidence beyond a reasonable doubt that there is a
24 probability? Mr. Walker, what does probability mean to
25 you?
Sandra M. Halsey, CSR, Official Court Reporter
2412

1 A. Probability is something that -- or is
2 a word that, it doesn't matter if it's adult, child, I
3 mean, you know, that somebody might do something again.
4 Q. Okay.
5 A. It's going to happen again.
6 Q. More likely than not, it's going to
7 happen again?
8 A. Right.
9 Q. Okay. That the defendant would commit
10 "criminal acts of violence"; what is the phrase, criminal
11 acts of violence, what do you think of when you hear
12 that?
13 A. Criminal acts of violence. Well, you
14 hear it all the time.
15 Q. Like I said, there is no right or
16 wrong, just whatever you think of.
17 A. Well, my definition would be then that
18 the defendant would do it again, you know, to another
19 adult, to anybody else.
20 Q. Okay. When you say, "Do it again," do
21 another murder again?
22 A. Well, not necessarily murder.
23 Q. Okay. Some people I hear say any harm
24 or injury to another person, that would be a criminal act
25 of violence. Would you agree with that definition?
Sandra M. Halsey, CSR, Official Court Reporter
2413

1 A. Any --
2 Q. Harm or injury.
3
4 MR. RICHARD C. MOSTY: Your Honor, I
5 think that improperly asks for a commitment on the behalf
6 of the juror.
7 THE COURT: Sustained. Let's move on.
8
9 BY MS. SHERRI WALLACE:
10 Q. Would it be fair, or what would you
11 say other than murder would fit in your definition of

12 that?

13

14 MR. RICHARD C. MOSTY: I think that is
15 the same question, it is asking him to define and
16 prejudge.

17 THE COURT: Sustained, I think he has
18 demonstrated that he understands what that means.
19

20 BY MS. SHERRI WALLACE:

21 Q. "Society." That is the other word I
22 wanted to ask you about, Mr. Walker. Would society, in
23 your mind, include people that work in the prison, prison
24 guards, chaplains, psychiatrists, psychologists, inmates,
25 relatives visiting inmates, everybody; would society
Sandra M. Halsey, CSR, Official Court Reporter
2414

1 include prison personnel to you?

2 A. Yes, because no matter where you work
3 you are part of society.

4 Q. Okay. Fair enough. If that question
5 is answered "yes," then you go to the next question. If
6 that question is answered "no," it's a life sentence.
7 Okay? But if it's answered "yes," you go to the next
8 question.

9 The next question is: "Taking into
10 consideration all of the evidence, including the
11 circumstances of the offense, the defendant's character
12 and background, and the personal moral culpability of the
13 defendant, is there a sufficient mitigating circumstance
14 or circumstances to warrant that a sentence of life
15 imprisonment, rather than a death sentence, be imposed?"
16 And that is a lot of words to
17 basically say this: After you have heard everything, if
18 you decide based on what you heard that life is the right
19 sentence instead of death, could you follow your gut and
20 your heart and give her a life sentence? Give the
21 defendant a life sentence?

22 A. Yes, probably.

23 Q. Okay. Now, with this question, let me
24 explain that you don't have to have to sit there right
25 and think of anything that you would find mitigating.

Sandra M. Halsey, CSR, Official Court Reporter
2415

1 Okay? It may be that you hear five million capital
2 murder cases, and never hear something that you think is
3 sufficient to, in effect, change your verdict from death
4 to life. Okay?

5 But this is a sort of a safety net

6 where if there is something out there, that even though
7 the defendant has committed capital murder, and even
8 though the defendant is a continuing threat to society,
9 you still, in your heart, not some other juror, but you
10 believe that the right thing to do is to give her a life
11 sentence? And that is what you said you could do. Keep
12 an open mind to that. Okay?

13 A. Uh-huh. (Witness nodding head
14 affirmatively.)

15 Q. Is there anything that comes to your
16 mind that is mitigating, that is something that would
17 lessen somebody's blame --

18

19 MR. RICHARD C. MOSTY: Your Honor, I
20 think again that asks for a commitment in a vacuum, when
21 this juror hasn't heard any facts about what he thinks
22 might be --

23 THE COURT: I'll sustain the
24 objection. Let's move on.

25

Sandra M. Halsey, CSR, Official Court Reporter
2416

1 BY MS. SHERRI WALLACE:

2 Q. Let me give you some examples of what
3 some people think is mitigating, and what some people
4 think isn't, and see how it cuts with you. Okay?

5

6 MR. RICHARD C. MOSTY: Your Honor,
7 I'll go ahead and peremptorily object to that. When she
8 says, "How does it cut with you," is going to ask for a
9 commitment from this juror in a vacuum.

10 MR. TOBY L. SHOOK: Judge, that is
11 asking how they feel about it, just like we ask people
12 how they feel about the death penalty. We just want
13 to --

14 THE COURT: All four are up here now.

15 What are you going to say?

16 MR. S. PRESTON DOUGLASS, JR: I just
17 think that it's easier if we say, "Can you consider the
18 following as possible types of mitigating evidence?"

19 THE COURT: I think that would be
20 fine. Mr. Glover, do you have any comments?

21 MR. CURTIS GLOVER: I like what he
22 said, Judge.

23 THE COURT: Okay. Let's get a laundry
24 list out. Could you consider the following as mitigating
25 circumstances or evidence? I think that would be more --

Sandra M. Halsey, CSR, Official Court Reporter

1 MR. RICHARD C. MOSTY: And I think
2 too, it should be, "In a proper case, if the evidence
3 warranted."

4 THE COURT: All of this assumes that
5 in a proper case, it assumes you believe whatever
6 evidence they are talking about. You understand that?

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: All it assumes that. If
9 somebody comes in and tells you, "There's ice on the
10 Guadalupe River on the Fourth of July," you say, he's a
11 nut and we will forget about him. You have to believe
12 the testimony and the evidence you hear, and all this
13 assumes in a proper case.

14 They are just cutting it down. So,
15 you just give a laundry list and see how he reacts.

16 MS. SHERRI WALLACE: Thank you, your
17 Honor.

18

19 BY MS. SHERRI WALLACE:

20 Q. How would you feel about age?

21

22 MR. RICHARD C. MOSTY: Your Honor, how
23 do you feel about age? That is asking for a commitment.

24 THE COURT: That is a very sensitive
25 question to the Court, but it's quite all right. I feel
Sandra M. Halsey, CSR, Official Court Reporter

2418

1 pretty good about it.

2 Let's don't ask for commitments.

3 MS. SHERRI WALLACE: Judge, I'm not
4 asking for commitments.

5 THE COURT: Well, could you say,
6 "Could you consider age," Why don't we just say, "Could
7 you consider bang, bang, bang." Let's get it on.

8

9 BY MS. SHERRI WALLACE:

10 Q. Would age be something that you would
11 consider as young age, youthful age, as mitigating?

12 A. Are you talking about the victim?

13 Q. The defendant.

14 A. The defendant. Youthful age.

15 Q. A young person.

16 A. Well, I don't know why age would even
17 come into account.

18 Q. Fair enough. What about a background
19 that grew up poor? How would that play with you?

20 A. I don't think it would sway me,

21 everybody has a chance to succeed.
22 Q. Okay. What about past abuse; like in
23 childhood, physical or sexual abuse?
24 A. Definitely from what I know about
25 things like that that go on, or are brought to light now,
Sandra M. Halsey, CSR, Official Court Reporter
2419

1 a lot of times the people are victims themselves, and
2 they might not know any different because that is the way
3 they were raised.

4 Q. That is something you would just wait
5 and hear the evidence on?

6 A. Right.

7 Q. Fair enough. Any questions for me so
8 far, Mr. Walker?

9 A. No.

10 Q. Okay. In order for the defendant to
11 die, this question must be answered "no." Okay? So you
12 have got to have a guilty and then a "yes" and then a
13 "no."

14 That after you have heard everything,
15 there isn't anything mitigating to warrant a life
16 sentence. Okay? Fair enough?

17 A. Yes.

18 Q. Okay. Now, I want to talk to you a
19 little bit about some general principles of law. The
20 Judge touched on these when he talked with you several
21 weeks ago. And I want to kind of go over them, quickly,
22 if I could again.

23 I mentioned already that the defendant
24 is presumed innocent, and if you voted right now, you
25 would have to find the defendant not guilty. Could you
Sandra M. Halsey, CSR, Official Court Reporter
2420

1 follow that aspect of the law?

2 A. Yes.

3 Q. Additionally, the Judge told you
4 several weeks ago that the indictment that is before you
5 there is no evidence of guilt. We still have to prove to
6 you beyond a reasonable doubt she did the indictment
7 (sic).

8 All that is is a piece of paper that
9 explains what we have to prove to the jury. Could you
10 follow that law?

11 A. Yes.

12 Q. Okay. The defendant has an absolute
13 right not to testify, and you cannot hold that against
14 her. Can you follow that law?

15 A. Yes.

16 Q. In this case, we have talked about
17 types of evidence, and I anticipate you will hear from
18 police officers.

19 Now, all witnesses must start out on
20 the same plane, must be treated equally from the
21 beginning. Okay? Then, after you hear from them, you
22 may give one witness more credibility or you may believe
23 them, and one witness, you may think that you don't
24 believe a word that comes out of their mouth.

25 But the key there is, you have to wait
Sandra M. Halsey, CSR, Official Court Reporter
2421

1 and hear from the witnesses, and that sounds pretty
2 simple. Well, of course, you can't know whether somebody
3 is telling the truth unless you hear from them.

4 But sometimes I have heard another
5 defense attorney say a question like this: Would you
6 believe a police officer simply because he is a police
7 officer? And really, that is kind of a trick question.
8 Because, well, yeah, you would like to
9 think you could believe a police officer, but you must
10 wait until you hear from which officer or which person or
11 which witness.

12 Could you follow that part of the law?

13 A. Yes, I think what you're asking me is
14 there again, to keep an open mind.

15 Q. You are exactly right, Mr. Walker,
16 that's all we're looking for.

17 The defense attorneys and the
18 defendant don't have to prove anything. The burden of
19 proof is here. And if they wanted to, they could play
20 tic-tac-toe. All they have to do is show up. Could you
21 hold us to our burden and not look to them for anything?

22 A. Well, that's a trick question, because
23 you have to prove it. I understand the way the law
24 works.

25 Q. Yes, sir.

Sandra M. Halsey, CSR, Official Court Reporter
2422

1 A. And I would respect them more if they
2 did show up.

3 Q. Well, they will be there. And let me
4 tell you, I told you we're seeking the death penalty.
5 And they are going to fight us every step of the way.
6 Okay? But that is not really what I am asking here.

7 The law requires a juror to not -- you
8 know, it's human nature to want to hear both sides of the

9 story.
10 A. Uh-huh. (Witness nodding head
11 affirmatively.)
12 Q. But that is not how it is in the
13 courtroom. In the courtroom here is where the story
14 comes from. Now, they may put on evidence, but they
15 don't have to.
16 A. Right.
17 Q. And the key there is that you won't
18 hold them or make them put on any evidence.
19 A. Okay. I see what you are asking.
20 Yes.
21 Q. Okay. So, can you look to this table
22 to prove the case, and not look to that table to prove
23 anything?
24 A. Right.
25 Q. Okay. In this case and in many murder
Sandra M. Halsey, CSR, Official Court Reporter
2423

1 cases, you will see gory, gruesome photographs. They are
2 part of the evidence in this case.
3 And can you consider those for what
4 they are, which is part of the evidence and wait until
5 you hear all of the evidence?
6 A. Uh-huh. (Witness nodding head
7 affirmatively.)
8 Q. Okay. Additionally, the Judge will
9 instruct you when we get to the punishment phase that you
10 may not consider parole for any purpose. There is a good
11 reason for that. The Boards (sic) of Pardons and Paroles
12 changes all the time with every governor, sometimes more
13 often than that, and they have the exclusive control over
14 parole. The Judge doesn't have anything to do with it.
15 We don't have anything to do with it, the jury doesn't
16 have anything to do with it.
17 So, because of that, you must not
18 consider it. You must assume that a life sentence is a
19 life sentence.
20 Can you follow that law, Mr. Walker?
21 A. Yeah, if it's the law, yes.
22 Q. Okay. That is all the questions I
23 have for you. Do you have anything for me?
24 A. No, ma'am.
25 Q. All right. Thank you so much for
Sandra M. Halsey, CSR, Official Court Reporter
2424

1 spending some time with me.
2

3 THE COURT: Thank you Ms. Wallace.

4 Mr. Douglass.

5

6 VOIR DIRE EXAMINATION

7

8 BY MR. S. PRESTON DOUGLASS, JR:

9 Q. Mr. Walker, good morning.

10 A. Yes, sir.

11 Q. You have been up there quite a while

12 and I can give you some good news. The bad news is I

13 have got to do some talking, but the good news is that a

14 lot of the area has been covered. And while I will go

15 over a couple of things again, I'm not going to take as

16 long and I think that I will try not to waste any of your

17 time unnecessarily.

18 But one thing that is important, of

19 course, is from where I sit, from where we sit over here

20 representing Darlie Routier, our perspective in this case

21 is absolutely 100 percent different from the attorneys

22 representing the State.

23 A. Yes, sir.

24 Q. In a death penalty case, it always

25 seems that the way the individual questioning of people

Sandra M. Halsey, CSR, Official Court Reporter

2425

1 who will perhaps be on the jury -- the way it seems like

2 that always goes is immediately when you start talking

3 about the death penalty. And I think the reason for that

4 is pretty obvious, not many people think about the death

5 penalty or talk about the death penalty. And everybody

6 involved in this process is interested in what someone's

7 opinion about that is.

8 Mrs. Routier, however, has entered a

9 plea of not guilty. She will plead not guilty before the

10 jury that sits and hears this case, and she is going to

11 stand behind that plea of not guilty 100 percent and not

12 waver.

13 Because of that, our focus and our

14 interest in this trial is on the guilt/innocence phase of

15 the trial. The only thing we know for sure in Texas is

16 that when we have trials, there is going to be a

17 guilt/innocence phase. We don't know that there is going

18 to be a punishment phase.

19 A. Uh-huh. (Witness nodding head

20 affirmatively.)

21 Q. It's our intention for there not to be

22 a punishment phase in this case. So, for the few minutes

23 I am going to get to talk to you, I want to talk first

24 about that. I will talk about punishment a little bit

25 just because I don't have another chance to talk to you
Sandra M. Halsey, CSR, Official Court Reporter
2426

1 about it, but my emphasis and what I want to talk to you
2 about, is that first phase.
3 With respect to the indictment. There
4 was a little bit of interest placed on the indictment
5 when you first came in and it's sitting there in front of
6 you.
7 Would you agree with me, and maybe you
8 remember this, now it's three weeks ago, Judge Tolle
9 started out his instructions to you talking about the
10 presumption of innocence and also talking to you about
11 the indictment. And he said everyone in his court and
12 every court is presumed innocent until proven guilty and
13 that is a right he protects.
14 Along those lines, it is necessary
15 that people don't start out presuming someone guilty.
16 That is the opposite, obviously.
17 And in that regards, that is where an
18 indictment becomes important from my perspective. You
19 probably remember Judge Tolle saying that in Dallas
20 County over 25,000 people are indicted each year, by
21 Dallas County Grand Jurors.
22 And he also said, that any one Grand
23 Jury of 12 or so people sitting in one maybe eight hour
24 period, that that one group of people may return 125
25 indictments against people up there in Dallas.
Sandra M. Halsey, CSR, Official Court Reporter
2427

1 Do you remember him talking about
2 that?
3 A. I remember the 25,000 figure, yes.
4 Q. Do you remember him -- do you remember
5 the Court telling you that in that situation many of
6 those 25,000 people never knew they were being
7 investigated, and because they didn't know they were
8 being investigated, they didn't have a chance to come
9 tell their side of the story. Did that surprise you at
10 all that someone could be indicted and never really even
11 know or have the opportunity to come down and say what is
12 on their mind?
13 A. Yes.
14 Q. Because of that -- can you agree with
15 me that because that Grand Jury may have only gotten part
16 of the story, and because that Grand Jury may have had an
17 incredible backlog that day, or for whatever reason, that
18 an indictment is nothing more than a piece of paper that

19 tells someone what they have been accused of and gives
20 our Judge jurisdiction to have a trial. And that you
21 can't place any other weight on that indictment. Does
22 that sound fair to you?

23 A. No, I believe that is exactly what the
24 paper is.

25 Q. Okay. So, are you the kind of person
Sandra M. Halsey, CSR, Official Court Reporter
2428

1 to say, "Well, I know there is an indictment, but I am
2 not going to put any weight on that because that is not
3 proof of anything."

4 Are you okay with that?

5 A. Uh-huh. (Witness nodding head
6 affirmatively.)

7 Q. All right. The presumption of
8 innocence and I talked a little earlier, what we're
9 really more concerned about is that you don't presume her
10 guilty. We're not asking for any head start. We're just
11 asking to be able to start on the same -- out of the same
12 blocks, and at the same time as they do.

13 Are you in agreement that we would
14 have no system at all if someone had to be presumed
15 guilty to begin with, and then had to prove themselves
16 innocent?

17 A. Yeah, that would be pretty barbaric.

18 Q. Okay. It would be back to the witch
19 trials is what it would be.

20 A. Yes.

21 Q. The burden of proof is absolutely 100
22 percent on the attorneys who represent the State. In a
23 trial, it could well happen that the attorneys
24 representing the State put on a number of witnesses, and
25 we get to cross-examine those witnesses.

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2429

1 And the defense lawyers might
2 determine in a trial that after hearing all of the
3 evidence in the case, and after getting to question the
4 State's witnesses, that there is no reason to put on any
5 evidence.

6 The State has failed in its burden of
7 proof.

8 And you might hear in a case that the
9 district attorney might stand up and say, "We don't have
10 any more witnesses. We rest our case." And then the
11 defense lawyers might stand up and say, "Well, we rest
12 our case also."

13 Them thinking that they didn't prove
14 what they needed to prove. In that situation, a jury is
15 required by their oath to look only at the State's case
16 very carefully, and not say, "Well, I think they should
17 have put on some evidence. I think the defense lawyers
18 should have brought me some witnesses."
19 Are you okay that if the State puts on
20 witnesses and that is all there is, that you will look --
21

22 THE COURT: Excuse me, go ahead. I
23 didn't mean to interrupt you.

24

25

Sandra M. Halsey, CSR, Official Court Reporter
2430

1 BY MR. S. PRESTON DOUGLASS, JR:

2 Q. Thank you. Just to paraphrase back
3 again, if the State only puts on its witnesses, are you
4 willing to look at the State's case under a microscope
5 and examine it to see that all reasonable doubt is
6 excluded?

7 Or do you feel that you would require
8 the defendant to prove to you something in a criminal
9 case?

10 A. I don't think I could require the
11 defendant to prove anything because it's the State's
12 burden.

13 Q. Okay. Fair enough. Then that burden,
14 and we just talked a little bit about that, that burden
15 is reasonable doubt. And I think I saw -- have you
16 served on a jury before?

17 A. No, sir.

18 Q. I seem to have seen somewhere in your
19 questionnaire that you may have been involved in a
20 lawsuit regarding some restrictions or something, back
21 some time ago.

22 A. Yes.

23 Q. If that case had gone to trial, the
24 plaintiff in that case would have had the burden of
25 proving their case by a preponderance of the evidence.

Sandra M. Halsey, CSR, Official Court Reporter
2431

1 In a civil case that is just 51 percent. That is the
2 very -- you know one grain of sand on the scales more
3 than the other side is enough?

4 A. Uh-huh. (Witness nodding head
5 affirmatively.)

6 Q. Up from a preponderance is a burden of

7 proof that we call clear and convincing evidence. Clear
8 and convincing evidence is between reasonable doubt and
9 preponderance; and clear and convincing evidence is a
10 level of proof, such as you have got to have in a court
11 case to take a child away from a mother.
12 And so, if you're going to go into a
13 custody trial, and you say that that child needs to be
14 taken away from his or her mother, you have to prove
15 those facts by clear and convincing evidence.
16 Even higher than that is what is
17 called proof beyond a reasonable doubt. And it's by far
18 the highest proof; higher than that to take a child away
19 from a mom. And there is a long definition of it, but
20 sometimes they say it's proof of such a convincing
21 character, it's so convincing to a juror, that that juror
22 would not hesitate to rely upon that proof in their most
23 important affairs.
24 You will get to read that definition
25 if you are a juror, but it's a high level of proof.
Sandra M. Halsey, CSR, Official Court Reporter
2432

1 And I want to use an example: Imagine
2 if I draw this circle and coming out of this circle is a
3 beam of light. And imagine that beam of light is the
4 presumption of innocence.
5 Well, it's the State's burden to
6 completely blacken out that beam of light coming out of
7 this circle.
8 The State may bring you eyewitness
9 testimony, they might bring you circumstantial evidence,
10 but whatever they bring and depending on whatever weight
11 you put on that evidence, whether it's small pieces of
12 evidence or big pieces of evidence, and how it persuades
13 you, that whole circle needs to be completely blackened
14 out.
15 Such even that -- that even if there
16 is one little pin light coming out of that circle, and
17 that light represents to you a doubt that is based on
18 reason, you say to yourself, "I have got a doubt, I
19 thought this doubt out, I believe it's based on reason."
20 No matter how small it is, if the rest of this is black
21 and there is one beam of light, would you agree that that
22 reasonable doubt alone is sufficient to say, "I have to
23 acquit the defendant"?
24 A. Well, reasonable doubt, like I told
25 them, I have to have 100 percent.
Sandra M. Halsey, CSR, Official Court Reporter
2433

1 Q. Okay. All right. One of the things
2 that is always concerning to me sitting where I am
3 sitting is that just as we did today, they get to speak
4 to you first. Now, that is because they have the burden.
5 As the Judge says, "The people that do
6 the accusing, have to do the proving." And that is the
7 way it is.
8 But what that means is they can put on
9 all of their case first, and we don't get to put on
10 witnesses in the middle. So, what that means is, and
11 where that concerns me is, some people say, well, what
12 they hear first is what sticks in their mind, and they
13 make their mind up quick, based on what they hear first.
14 Are you the kind of person who can
15 keep an open mind and listen to all of the evidence
16 before you make a decision?

17 A. I hope I am.

18 Q. What worries you sometimes, when I sit
19 here, not about you but about everybody, is that I
20 don't -- what sticks with someone first is just what kind
21 of rattles around in their mind, and I can assure you,
22 you are not going to hear anything nice about a defendant
23 in the first part of a trial, never.
24 I mean, you know that. And keeping in
25 mind that they are not going to say a single thing nice,
Sandra M. Halsey, CSR, Official Court Reporter
2434

1 but that you have to look at the evidence knowing it's
2 their case, and that they get to go first, are you the
3 kind of person that can weigh it all, keep an open mind
4 through all the evidence and not make a decision until
5 the Judge says, "Okay. Now it's time to make a
6 decision."

7 A. Like I said, I hope I can.

8 Q. Okay. We will talk to you a little
9 bit about --

10

11 MR. S. PRESTON DOUGLASS, JR: I can
12 continue, right?

13 THE COURT: Oh, by all means, yes.

14 Please do so.

15

16 BY MR. S. PRESTON DOUGLASS, JR:

17 Q. I want to talk to you a little bit
18 about motive. Ms. Wallace was right, in that indictment
19 it doesn't say that there is a crime charged and it
20 doesn't say that the State has to prove why, that is
21 correct.

22 What the State's attorneys are

23 referring to is, for instance, imagine if in proving
24 their case they have to clear hurdles, and those hurdles
25 are proof. Different hurdles they have got to prove.
Sandra M. Halsey, CSR, Official Court Reporter
2435

1 In the indictment up in the top part
2 that's not typed, you will see that it alleges a date.
3 It says on or about June 6th up there. And you also see
4 it might say in Dallas County, on there a little further
5 down that line. Those are what are called elements, or
6 hurdles, they don't call them hurdles, but I call them
7 hurdles. They are elements of what the State has to
8 prove.
9 For instance, the State must prove
10 beyond a reasonable doubt that this crime occurred in
11 Dallas County so they have jurisdiction over the thing.
12 Motive is not a hurdle; motive is not an element.
13 However, I would submit to you that
14 motive is something a juror can consider when they
15 deliberate. What I mean by that is you can't say, "Well,
16 they didn't prove motive, so I automatically vote not
17 guilty." What that does mean is you can sit as a
18 qualified juror, take an oath and say, "Okay. What is
19 all the evidence in this case? Well, they have brought
20 me evidence of fingerprints, they have brought me
21 evidence of blood spatter, different things, but they
22 have not brought me a motive. They have not pieced this
23 evidence together, and because of that lack of motive,
24 this doesn't make sense. This piece doesn't fit with
25 this piece over here."
Sandra M. Halsey, CSR, Official Court Reporter
2436

1 The point I'm trying to make, I'm not
2 making it very well, is would you agree with me that
3 while motive may not be something they have to clear like
4 a hurdle, in considering a case, an absence of proof of
5 motive, the absence of an explanation of why, may be
6 enough to cause you to have a reasonable doubt. Could
7 you see where that might happen?
8
9 MS. SHERRI WALLACE: Your Honor, I
10 would object to the attempt to commit the juror on if
11 there is no motive. He may have reasonable doubt.
12 If we prove the elements of the case,
13 that's all that is required.
14 MR. S. PRESTON DOUGLASS, JR: I'm not
15 asking him to commit, I'm asking him to consider could he
16 imagine a situation where absence of proof of motive

17 might lead to a reasonable doubt.
18 THE COURT: All right. Well, I'll
19 sustain -- I'll overrule the objection. I'll go ahead
20 and let him ask that question. Do you understand the
21 question?
22 THE PROSPECTIVE JUROR: I believe I
23 do, yes, sir.
24 THE COURT: Okay. Well, they do get
25 convoluted when they ask these questions on both sides.
Sandra M. Halsey, CSR, Official Court Reporter
2437

1 But anyway, go ahead. See if you can
2 answer it.
3 MR. S. PRESTON DOUGLASS, JR: Let me
4 just rephrase it.
5
6 BY MR. S. PRESTON DOUGLASS, JR:
7 Q. If there is an absence of proof of
8 motive, and I can't ask you, we don't have any facts. I
9 can't ask you to say, "Yes, that means something to me."
10 But I'm asking in a hypothetical case, you are able to
11 consider motive. Nobody says you can't consider it.
12 And what I am asking you is: Is if
13 there is an absence of proof of motive, could you see
14 that that might create a reasonable doubt in your mind?
15 A. Well, it could.
16 Q. What I mean is, let's say you have got
17 a jigsaw puzzle.
18
19 THE COURT: Well, I think he has
20 answered your question.
21 MR. S. PRESTON DOUGLASS, JR: I think
22 he wants me to move on.
23
24 BY MR. S. PRESTON DOUGLASS, JR:
25 Q. In listening to the evidence, the
Sandra M. Halsey, CSR, Official Court Reporter
2438

1 Judge will instruct you by the Charge that you, as a
2 juror, are the sole judges of the believability and the
3 credibility of the witnesses. You are the only one that
4 can say how much you believe a witness.
5 You might decide that a witness or a
6 piece of evidence, whether it is scientific evidence or
7 something, you might decide that some of that evidence
8 means a lot to you; you might decide it means nothing to
9 you. You might trust part of it, and discount part of
10 it. But nobody can tell you how you do that.

11 A. Right.

12 Q. Along those lines, no one can tell

13 you, as a juror, how to vote. When you get back in the

14 jury room, it's not a democracy. It's your vote, and

15 your vote can't be taken from you.

16 Are you the kind of guy that in a

17 serious case, obviously with lots at stake, if you found

18 yourself in the minority on some issue, are you the kind

19 of person that can stand by your conviction and not be

20 swayed just because you may be on the short end of the

21 stick?

22 A. Well, I hope I can. I have been there

23 before. Not in a jury situation, but you face that a lot

24 of times in life.

25 Q. And do you believe that you could

Sandra M. Halsey, CSR, Official Court Reporter

2439

1 stand up for what you believe and just tell it the way

2 you see it?

3 A. Yes.

4 Q. All right. Ms. Wallace talked a

5 little bit about photographs. And I want to touch on

6 that just very briefly. There is no question in my mind

7 that you -- that one thing that you will not have a doubt

8 about is that there has been a horrible crime. No

9 question about that.

10 And I don't believe there has been a

11 single murder case ever that doesn't have photographs

12 associated with it. Some photographs, obviously, are

13 going to be a little more gruesome than others. And it

14 always seems that these photographs get blown up, for

15 whatever reason.

16 Sitting where I sit, the concern that

17 I have is that someone might look at those photographs

18 and simply because they are distasteful, and simply

19 because they are just terrible to look at, that a person

20 says, "It makes me so mad, I am going to find anybody

21 guilty. You know, I don't care who is in front of me. I

22 am just going to find the person guilty because these are

23 terrible pictures."

24 Do you think you can judge a

25 photograph for what it is and not be so stampeded by the

Sandra M. Halsey, CSR, Official Court Reporter

2440

1 photographs that you become overwhelmed to where you

2 can't think with your common sense?

3 A. Well, yes. The photographs are --

4 that is what they are, they're photographs. It didn't

5 say who did it.

6 Q. Okay. I want to talk a little bit

7 about the punishment issues. And the question -- there

8 is a question -- an answer that you gave in your

9 questionnaire to one question that I think misleads

10 people in this questionnaire.

11 It's just not written the way I would

12 write it. It doesn't mean I would write it better, it

13 just means that it's kind of confusing.

14 And that is there was a question that

15 seemed to indicate that you always believe, in a death

16 penalty case, that the death penalty ought to be

17 assessed, and under no circumstances could life be

18 considered. And I think the question kind of asks it

19 backwards.

20 And it makes people say, "Oh, yeah,

21 you know, that's always going to be death." And you

22 heard Ms. Wallace talk to you earlier that we have

23 questions that have to be answered before a death penalty

24 can be assessed.

25 And I just want to ask you again, do

Sandra M. Halsey, CSR, Official Court Reporter

2441

1 you believe that in appropriate circumstances, with

2 appropriate evidence, that those questions can be

3 answered in such a way that a life sentence is

4 appropriate?

5 A. I believe they could in a -- in the

6 appropriate situation.

7 Q. It's kind of hard sitting here because

8 we can't talk to you about facts, and I can't make a

9 commitment. And that is what we have been arguing about,

10 is all this commitment stuff.

11 All I'm saying is: Do you agree that

12 a life sentence can be appropriate and should be

13 considered in a death penalty case? That that is a --

14 that is a valid choice for a juror to have?

15 A. There should be a choice. But it

16 shouldn't be --

17 Q. It shouldn't be automatic?

18 A. Right.

19 Q. Okay. I just want to ask you some

20 questions about these two questions.

21 This one, the first special issue, the

22 burden of proof, is on the State. It does not shift to

23 the defendant, and they must prove it again beyond a

24 reasonable doubt.

25 And they must prove that beyond a

Sandra M. Halsey, CSR, Official Court Reporter

1 reasonable doubt that there is a probability, more likely
2 than not -- would you agree with me that proving beyond a
3 reasonable doubt, that in the future, more likely than
4 not, a person would be a future danger, that that's a
5 heavy burden on the State?

6 A. Well, yes.

7 Q. Okay. Then you come to the second
8 question, and there is no burden of proof. This question
9 I've heard said, that in a way the burden of proof in
10 this question is on the jury, because it's their burden
11 to sift through this question. And people have called
12 this the safety net question, people have said this is
13 the last chance to stop the train type of question.

14 But, would you -- basically the idea
15 is when you get to this question, it's an opportunity to
16 stop and consider the background of the defendant, you
17 know, their character and their history; and if you
18 decide, "Well, there is a good reason, even though the
19 person is a future danger, there is a good reason to give
20 this person a life sentence."

21 Could you consider this question, from
22 a personal background and say, "I'm going to look at
23 this, and I'm going to consider it with an open mind."
24 Could you do that?

25 A. I think you have to.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. I have one last question. This is
2 pretty silly; what kind of projects do your kids have
3 this year?

4 A. Hogs, four of them.

5

6 THE COURT: Sir, what kind?

7 THE PROSPECTIVE JUROR: Hogs.

8 THE COURT: What kind of hogs?

9 THE PROSPECTIVE JUROR: Oh, no, I just

10 said four.

11 THE COURT: Oh, four. Okay.

12

13 BY MR. S. PRESTON DOUGLASS, JR:

14 Q. It's possible that should we decide to
15 put on evidence, and I don't have any reason to believe
16 we wouldn't, but should we decide to put on evidence,
17 it's possible that the State takes a week to put on their
18 evidence in a hypothetical case, and we take a week.
19 And what I have heard is, well, our
20 week maybe to put on evidence hits right in the middle of

21 the stock show. And, I guess I'm just asking, it's a
22 silly question, but would you be able to listen to both
23 sides of the case fairly, even though it runs right into
24 the time of year of the stock show. Could you do that?

25 A. Well, that is not a silly question,
Sandra M. Halsey, CSR, Official Court Reporter
2444

1 because I think you knew what the answer would be.
2 Everybody's human. As far as if you have got kids,
3 children, at a stock show or any kind of event, and you
4 have got this monetary value walking around out there,
5 you know, human nature, where is your mind or thoughts
6 going to be.

7 You might be focused. Let's say, all
8 right, let's say here is the trial, but your mind is
9 going to wander.

10 You know, did they wash the hog, are
11 they ready to go. You know what I am saying. That is
12 human nature for your mind to wander, I'm afraid.

13 Q. But would you be able to be a juror
14 and say, "I can listen to the evidence," knowing there is
15 stuff going on out there at the ag. barn?

16 A. Well, I can listen to the evidence,
17 but I am not going to guarantee my mind won't wander.
18 That my kids are out there at the ag. barn. No.

19 Q. Well, Mr. Walker, I can tell you, I
20 have sat in this room, and if I told you that I have
21 thought of nothing but about what is going on in this
22 trial 100 percent of the time, I think I would be lying
23 to you.

24 A. Yeah.

25
Sandra M. Halsey, CSR, Official Court Reporter
2445

1 THE COURT: A wandering mind is not
2 unusual in these situations.

3 THE PROSPECTIVE JUROR: Oh, yeah,
4 yeah.

5 MR. RICHARD C. MOSTY: Especially over
6 here.

7

8 BY MR. S. PRESTON DOUGLASS, JR:

9 Q. I guess the fair way to say it is:

10 Are you going to be able to listen to what is going on in
11 the trial, and not just be so distracted that somebody is
12 sitting there and you can't even tell them what is going
13 on. That you will be able to listen to the evidence and
14 consider evidence?

15 A. Well, I think I answered a while ago.
16 I could listen, but like the Judge says, your mind is
17 going to wander.
18 Q. Okay.
19
20 THE COURT: Is that it?
21 MR. S. PRESTON DOUGLASS, JR: That's
22 all I have, I appreciate your time very much.
23 THE COURT: Can you step out briefly,
24 please.
25 THE PROSPECTIVE JUROR: Yes, sir.
Sandra M. Halsey, CSR, Official Court Reporter
2446

1
2 (Whereupon, the prospective
3 juror was excused from the
4 room, and the following
5 proceedings were held,
6 outside of his presence
7 as follows:)
8
9 THE COURT: Are you all ready? Are
10 you ready?
11 MR. S. PRESTON DOUGLASS, JR: Yes,
12 sir.
13 THE COURT: What says the State?
14 MS. SHERRI WALLACE: The State will
15 accept the juror.
16 MR. S. PRESTON DOUGLASS, JR: We'll
17 accept the juror.
18 THE COURT: Have Mr. Walker come in,
19 please.
20
21 (Whereupon, the prospective
22 juror returned to the
23 room and the proceedings
24 were resumed as follows:)
25
Sandra M. Halsey, CSR, Official Court Reporter
2447

1 THE COURT: Mr. Walker, you have been
2 accepted as a juror by both sides.
3 So, the trial is scheduled to start on
4 the 6th of January. Mr. Navarre back there will be
5 calling you to give you the exact time and place and all
6 that.
7 Between now and then, I know you are
8 going to tell your wife about it, but, you know, please,

9 don't go tell everybody else that you have been accepted
10 as a juror, things will be a lot easier that way. Don't
11 talk to anybody about the case.
12 We have a gag order in effect. And,
13 please, caution your wife not to do that, too. We have a
14 gag order in effect, I can impose monetary penalties or
15 Kerr County jail time.
16 I'm not threatening you, but I just
17 have to tell you the gag order is there. We will start
18 this trial promptly on the 6th of January, and we will
19 get it done as soon as we can.
20 So, we will see you then.
21 Congratulations and thank you.
22 THE JUROR: Thank you.
23 THE COURT: We will take a brief
24 break.
25
Sandra M. Halsey, CSR, Official Court Reporter
2448

1 (Whereupon, a short
2 recess was taken,
3 after which time,
4 the proceedings were
5 resumed on the record,
6 in the presence and
7 hearing of the defendant
8 as follows:)
9
10 THE COURT: All right. Thank you.
11 This is juror number 64 on our list,
12 186 on the juror list, Wilma Baker. That is your name,
13 ma'am?
14 THE PROSPECTIVE JUROR: Yes, sir.
15 THE COURT: If you will raise your
16 right hand, please, ma'am.
17 Do you solemnly swear or affirm you
18 will true answers make to all the questions propounded to
19 you concerning your qualifications as a juror, so help
20 you God?
21 THE PROSPECTIVE JUROR: I do.
22
23 (Whereupon, the prospective
24 juror was duly sworn by the
25 Court to true answers make
Sandra M. Halsey, CSR, Official Court Reporter
2449

1 to the questions propounded,
2 concerning qualifications, after

3 which time, the proceedings were
4 resumed as follows:)

5

6 THE COURT: All right. Thank you, Ms.
7 Baker, you have been called to be a potential juror in
8 the Darlie Routier matter. Mrs. Routier is the
9 defendant, she is sitting there in the middle in the
10 burgundy dress, with her attorneys, Curtis Glover from
11 Dallas, Richard Mosty and Preston Douglass from
12 Kerrville.
13 And the State today is represented by
14 two Assistant District Attorneys from Dallas, Toby Shook
15 and Sherri Wallace. They are going to be asking you some
16 questions now. There are no wrong answers, you just
17 answer exactly like it is.
18 What you could do is sort of slide up
19 here, and make sure you speak into this microphone. They
20 are going to ask you to read that indictment in a few
21 minutes, and you read the typewritten print in the middle
22 right there, when you get there. Okay?
23 I know you will say yes or no all of
24 the time so Ms. Halsey can take all of this down, because
25 we can't take down nods, or uh-huhs or huh-uhs. Okay?
Sandra M. Halsey, CSR, Official Court Reporter
2450

1 THE PROSPECTIVE JUROR: Okay.

2 THE COURT: All right. Mr. Shook.

3 MR. TOBY L. SHOOK: Thank you, Judge.

4

5 Whereupon,

6

7 WILMA LOU BAKER,

8

9 was called as a prospective juror, for the purpose of
10 voir dire, having been first duly sworn by the Court to
11 speak the truth, the whole truth, and nothing but the
12 true, testified in open court, as follows:

13

14 VOIR DIRE EXAMINATION

15

16 BY MR. TOBY L. SHOOK:

17 Q. Ms. Baker, again, my name is Toby
18 Shook, and I am one of the prosecutors on the case, and I
19 will be asking you questions on behalf of the State.
20 And as Judge Tolle informed you, there
21 aren't any right or wrong answers, we just want your
22 honest opinions. Okay?

23 A. Okay.

24 Q. I am going to start out by asking you

25 a couple of things from your questionnaire.
Sandra M. Halsey, CSR, Official Court Reporter
2451

1 Like most people, you have heard a
2 little bit about this case?

3 A. Yes.

4 Q. Okay. Tell me a little bit about what
5 you know about the case. And I believe you said you read
6 something in Texas Monthly; is that right?

7 A. Yes. Uh-huh. (Witness nodding head
8 affirmatively.)

9 Q. Tell me what you have read about the
10 case.

11 A. Well, according to the article, it
12 must have been about after midnight one night. This
13 young woman and her two sons were down in the living
14 room. Husband and a third child was upstairs sleeping.
15 And she claimed that an intruder came into the house and
16 stabbed the two boys while she was sleeping; and woke her
17 up and then she struggled with the intruder, in which she
18 got some wounds.

19 And then the intruder supposedly
20 escaped through -- I think it was a maybe a utility
21 window or something like that.

22 And, of course, the article was
23 comparing this case with the case of another woman, who
24 had lived in the suburbs, I think, her name was Candy
25 something or other.

Sandra M. Halsey, CSR, Official Court Reporter
2452

1 Q. Oh, Montgomery?

2 A. Yes. Thank you. It was comparing, I
3 guess, the situation of being a suburban wife, and what
4 it does to you mentally and so forth.

5 Q. Okay. Obviously, a lot of jurors have
6 read something about it. I mean, it's recently moved
7 here because of a lot of publicity, and getting moved
8 here, there is still more publicity. And, of course, you
9 have heard it looks like statewide or national
10 circulation magazine.

11 A. Right.

12 Q. Ms. Baker, at the very last of the
13 questionnaire, you wrote a comment and you said, "I
14 really feel this young lady is guilty." Now, is that
15 based on what you read from this article?

16 A. Yes. Also, I'm wondering why if this
17 happened, I think the normal thing to do would be to call
18 the husband down or scream for help from up above, and I

19 don't understand why that wasn't done.
20 Q. Again, your questionnaire, is that
21 based on something --
22 A. -- in that article, yes.
23 Q. Like I said, there are jurors that
24 have read things, and people form opinions on what they
25 read.
Sandra M. Halsey, CSR, Official Court Reporter
2453

1 A. Right.
2 Q. Good things, bad things, and it's all
3 right to form opinions. But here is what we need to know
4 and you can best tell us. Has a conclusion of guilt
5 entered into your mind so that it would affect your
6 verdict?
7 Or is this something that -- in other
8 words, is it that you have reached such a conclusion that
9 it is going to affect your verdict? Or is this something
10 you can put out of your mind and just wait until the
11 evidence is in? It doesn't matter one way or the other
12 and only you can answer this.
13 A. Yeah, but it's hard to say.
14
15 THE COURT: We understand that.
16 THE PROSPECTIVE JUROR: I can't really
17 say yes or no to that, I don't know.
18
19 BY MR. TOBY L. SHOOK:
20 Q. Well, are you thinking it's going to
21 influence your verdict?
22 A. I'm thinking it will, yes.
23 Q. Because obviously, we can't, you
24 know -- and it would be only fair to the defense, they
25 can't have people on the jury that are going to --
Sandra M. Halsey, CSR, Official Court Reporter
2454

1 A. I understand, I understand.
2 Q. So, if that is what you are telling
3 me, that is fine. If it is something you can assure us
4 all you can't, that's fine, too. But only you can tell
5 us.
6 A. Like I said, it's hard for me to say.
7 I would have to hear other evidence before I could say.
8
9 THE COURT: Well, you may want to go
10 on, Mr. Shook, just go ahead for a while and see what
11 happens.
12

13 BY MR. TOBY L. SHOOK:

14 Q. Okay. My point is this is: What you
15 would have to be able to tell the Court is, "I will put
16 everything I have read out of my mind and just wait for
17 the evidence to come in," then decide. Now, I don't
18 know, maybe the evidence will come in like you heard, it
19 may not. You probably know, you have been around a
20 while, that you have read something and then it not turn
21 out that way.

22 A. This is true.

23 Q. It didn't take long to read something
24 and then figure out.

25 A. This is true.

Sandra M. Halsey, CSR, Official Court Reporter
2455

1 Q. An example would be Richard Jewell. A
2 couple of weeks ago, remember that is the guy that was
3 accused in the newspapers of the bombing during the
4 Olympics?

5 A. All right. Yes.

6 Q. And, you know, that went on for about
7 three months, and then it comes out a couple of weeks ago
8 that, in fact, the FBI says he is cleared. But he was
9 pretty well tried and convicted in the press.

10 A. Right.

11 Q. His life is ruined, as he says. That
12 is why we can't have jurors coming in and making their
13 decisions on what they read in the press. Okay?

14 A. Yes.

15 Q. But, obviously, people form their
16 opinions, they are only human. And you can form an
17 opinion on what you read, you know, you can read some
18 facts and go, "You know, if those are the facts, that
19 sounds bad." Or if those are the facts of the situation,
20 that person sounds guilty.

21 But we have to have jurors that can
22 wait, and go with that -- I know stuff has been written,
23 but I have to wait and listen to the evidence. Okay?
24 And that is where we're coming from on
25 this.

Sandra M. Halsey, CSR, Official Court Reporter
2456

1 Obviously, we're going to have -- when
2 you mention, "Well, yeah." And like I said, from what
3 you have read, you said, "Well, that sounds bad."

4 A. Yes.

5 Q. But what we need to know is if you are
6 going to be able to leave that outside, and then wait for

7 the evidence to come in and make your decisions? Or is
8 that something you have reached a conclusion that it
9 is --

10 A. Well, how can I say? I don't really
11 know, I would will try.

12

13 MR. RICHARD C. MOSTY: Your Honor, I
14 think the proper inquiry, and I think she has answered
15 it, really, is, the question is, "May that opinion
16 influence her?"

17 THE COURT: Is that going to influence
18 your verdict? Or is your mind open and you can follow
19 the law?

20 MR. RICHARD C. MOSTY: I think the
21 correct question is, may it influence, isn't that how
22 it's written? That the opinion formed may influence her
23 verdict.

24 THE COURT: Would it influence your
25 verdict?

Sandra M. Halsey, CSR, Official Court Reporter
2457

1 THE PROSPECTIVE JUROR: It may
2 influence my verdict.

3 MR. RICHARD C. MOSTY: Well, Your
4 Honor, I think at this point then she --

5 THE COURT: All right. Well, thank
6 you very much for coming, you're going to be excused.

7 Thank you. Don't talk about the case, ma'am, to anyone
8 yet because we still have gag order on.

9 THE PROSPECTIVE JUROR: All right.

10 THE COURT: Thank you very much.

11 MR. TOBY L. SHOOK: Thank you, Ms.
12 Baker.

13 THE COURT: Thank you, ma'am,
14 appreciate your coming.

15 All right. Before we start this, Mr.

16 Wolfe, do you have a theft conviction at any time in your
17 career?

18 THE PROSPECTIVE JUROR: No, sir.

19 THE COURT: You have not. Where do we
20 see it?

21 MR. CURTIS GLOVER: Assault, Judge.

22 THE COURT: Assault, excuse me. That
23 was felony assault?

24 THE PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: When was this?

Sandra M. Halsey, CSR, Official Court Reporter
2458

1 THE PROSPECTIVE JUROR: In '87.
2 THE COURT: Where was this?
3 THE PROSPECTIVE JUROR: State of
4 Washington.
5 THE COURT: All right. We're on the
6 record. This is juror number 214 on the jury list,
7 number 74 on our list; Daniel H. W-O-L-F-E.
8 Can you raise your hand please, sir?
9 Do you solemnly swear or affirm you
10 will true answers make to all the questions propounded to
11 you concerning your qualifications as a juror, so help
12 you God?
13 THE PROSPECTIVE JUROR: I do.
14
15 (Whereupon, the prospective
16 juror was duly sworn by the
17 Court to true answers make
18 to the questions propounded,
19 concerning qualifications, after
20 which time, the proceedings were
21 resumed as follows:)
22
23
24
25
Sandra M. Halsey, CSR, Official Court Reporter
2459

1 Whereupon,
2
3 DANIEL H. WOLFE,
4
5 was called as a potential juror, for the State of Texas,
6 having been first duly sworn by the Court, to speak the
7 truth, the whole truth, and nothing but the truth, was
8 examined and testified in open court, as follows:
9
10 THE COURT: Fine. You are here today
11 as a potential juror in the Darlie Routier matter.
12 Mrs. Routier is the defendant, the
13 young lady there in the burgundy dress. She is
14 represented by her attorneys, Curtis Glover, Richard
15 Mosty and Preston Douglass.
16 The State by Assistant District
17 Attorneys, Toby Shook and Sherri Wallace.
18 To be a qualified juror you must never
19 have had a felony conviction. I believe the record shows
20 you do have a felony assault conviction; is that correct,
21 sir?
22 THE PROSPECTIVE JUROR: That is true.

23 THE COURT: And, where did this occur?
24 THE PROSPECTIVE JUROR: In the State
25 of Washington.
Sandra M. Halsey, CSR, Official Court Reporter
2460

1 THE COURT: And when did it occur?
2 THE PROSPECTIVE JUROR: In '87.
3 THE COURT: I assume -- did you plead
4 guilty or were you found guilty, or what?
5 THE PROSPECTIVE JUROR: I went to
6 trial and was found guilty.
7 THE COURT: By a jury?
8 THE PROSPECTIVE JUROR: Yes, sir.
9 THE COURT: What was the sentence?
10 THE PROSPECTIVE JUROR: 101 days in
11 the Walla Walla State Penitentiary.
12 THE COURT: Okay. You served the
13 time?
14 THE PROSPECTIVE JUROR: Yes, sir.
15 THE COURT: You got out and you are
16 down here now?
17 THE PROSPECTIVE JUROR: Yes, sir.
18 THE COURT: All right. Thank you very
19 much. I am going to hold the juror disqualified. It's
20 under our law, we can't do that.
21 So, thank you very much for coming.
22 And we're glad that you got out, and apparently you're on
23 the right path.
24 THE PROSPECTIVE JUROR: I own my
25 business now and I am doing much better.
Sandra M. Halsey, CSR, Official Court Reporter
2461

1 THE COURT: I know. Well, listen,
2 thank you very much for coming. Congratulations and we
3 admire you for doing that.
4 MS. SHERRI WALLACE: Judge, we only
5 have one more person for this morning. Would you like me
6 to ask Mr. Navarre to bring up some people from the
7 afternoon?
8 THE COURT: You bet. If they can do
9 it, we might as well do it.
10 Okay. Who is our next juror?
11 THE BAILIFF: Llewellyn Dilbeck.
12 THE COURT: Okay. This is Llewellyn
13 Dilbeck, juror number 218, 75 on our list. All right.
14 THE PROSPECTIVE JUROR: Do I need to
15 give this to you?
16 THE COURT: Well, let's see what we

17 have here. Okay. This is juror number 75 on our list,
18 number 218 on the jury list. This is Llewellyn,
19 L-L-E-W-E-L-L-Y-N, Dilbeck, D-I-L-B-E-C-K. That is your
20 name, ma'am?
21 THE PROSPECTIVE JUROR: Yes, sir.
22 THE COURT: Raise your right hand,
23 please.
24 Do you solemnly swear or affirm you
25 will true answers make to all the questions propounded to
Sandra M. Halsey, CSR, Official Court Reporter
2462

1 you concerning your qualifications as a juror, so help
2 you God?

3

4 (Whereupon, the prospective
5 juror was duly sworn by the
6 Court to true answers make
7 to the questions propounded,
8 concerning qualifications, after
9 which time, the proceedings were
10 resumed as follows:)

11

12 THE PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: All right. You are here

14 today as a potential juror in the Darlie Routier matter.

15 Mrs. Routier is the young lady there

16 in the burgundy dress, she is the defendant.

17 She is represented by her attorneys

18 Curtis Glover, Preston Douglass, and Richard Mosty. The

19 State is represented by Assistant District Attorneys,

20 Toby Shook and Sherri Wallace.

21 There are no wrong answers down here,

22 will you please answer the questions as they are

23 propounded to you.

24

25

Sandra M. Halsey, CSR, Official Court Reporter

2463

1 Whereupon,

2

3 LLEWELLYN B. DILBECK,

4

5 was called as a prospective juror, for the purpose of

6 voir dire, having been first duly sworn by the Court to

7 speak the truth, the whole truth, and nothing but the

8 true, testified in open court, as follows:

9

10 THE COURT: We have a letter from Dr.

11 T. R. Boyce, who is with the Guadalupe Physicians Group,
12 here in Kerrville. He states that this lady suffers from
13 episodes of tachycardia for which she takes medication on
14 a regular basis. Her tachycardia is significantly
15 affected by nervous stress, other diagnosis include
16 menopause and varicose veins.
17 He believes that patient is likely to
18 have serious cardiac response to anxiety and stress in
19 being a juror, and suggests she be excused.
20 Now, what is your medical condition,
21 ma'am?
22 THE PROSPECTIVE JUROR: I'm sorry.
23 I'm not sure what you mean.
24 THE COURT: Well, I mean are you --
25 the thing about it is, if you are selected, both sides
Sandra M. Halsey, CSR, Official Court Reporter

2464

1 are going to ask you some questions. If you are selected
2 as a juror, we're going to start the trial on the 6th of
3 January.
4 THE PROSPECTIVE JUROR: Yes, sir.
5 THE COURT: The trial is going to
6 last, depending on the weather, two to three weeks.
7 Normally, it would last two weeks, but we have never been
8 down here in Kerrville in the wintertime, but if it ices
9 up like it does in Dallas, it may last three. Now, we're
10 not talking about three seven-day weeks, we are talking
11 about three -- five regular working days per week.
12 Is that going to be a problem to you
13 medically or not?
14 THE PROSPECTIVE JUROR: Well, the
15 stress of it has already been a problem to me. Just the
16 thoughts of it, of having to see the photos, and hear
17 what happened has really been very stressful to me.
18 That is the reason I went to the
19 doctor. It was already causing heart palpitations and
20 nightmares.
21 THE COURT: Both sides excuse the
22 juror?
23 MR. TOBY L. SHOOK: Yes, sir, we can
24 agree.
25 MR. S. PRESTON DOUGLASS, JR: Yes,
Sandra M. Halsey, CSR, Official Court Reporter
2465

1 sir.
2 THE COURT: All right. Thank you for
3 coming, ma'am.

4 We are going to put this in as Court's
5 Exhibit whatever the number is.
6 MR. CURTIS GLOVER: Your Honor, she
7 had every base covered. She was opposed to the death
8 penalty, she had an opinion, and medically she couldn't
9 do it, and she might think of some more before we were
10 done.
11 MR. TOBY L. SHOOK: I bet she would
12 have.
13 THE COURT: Anybody else out there?
14 MS. SHERRI WALLACE: Mark this as the
15 next exhibit.
16 THE COURT: That is Court Exhibit
17 whatever-the-next-one is.
18
19 (Whereupon, the following
20 mentioned item was
21 marked for
22 identification only
23 as Court's No. 12,
24 after which time the
25 proceedings were
Sandra M. Halsey, CSR, Official Court Reporter
2466

1 resumed on the record
2 in open court, as
3 follows:)
4
5 THE COURT: All right. That will be
6 received in evidence for the record only.
7
8 (Whereupon, the items
9 Heretofore mentioned
10 Were received in evidence
11 As Court's Exb. No. 12
12 For record purposes only,
13 After which time, the
14 Proceedings were resumed
15 As follows:)
16
17 THE COURT: Let's take a very short
18 recess.
19
20 (Whereupon, a short
21 recess was taken,
22 after which time,
23 the proceedings were
24 resumed on the record,
25 in the presence and

Sandra M. Halsey, CSR, Official Court Reporter
2467

1 hearing of the defendant

2 as follows:)

3

4 THE COURT: Bring the next potential

5 juror in, please.

6

7 (Whereupon, the next

8 potential juror was

9 brought into the courtroom,

10 and the proceedings were

11 resumed as follows:)

12

13 THE COURT: All right. This is Ms.

14 Way.

15 Ms. Way, how are you, ma'am?

16 THE PROSPECTIVE JUROR: Pretty good.

17 How are you?

18 THE COURT: All right. Is Rina your

19 correct pronunciation?

20 THE PROSPECTIVE JUROR: Uh-huh.

21 (Witness nodding head affirmatively.)

22 THE COURT: Rina, R-I-N-A, Marie Way,

23 W-A-Y. Number 245 on the jury list, number 80 on our

24 list.

25 Ms. Way, if you will raise your right

Sandra M. Halsey, CSR, Official Court Reporter

2468

1 hand, please.

2 Do you solemnly swear or affirm that

3 you will true answers make to all questions propounded to

4 you concerning your qualifications as a juror, so help

5 you God?

6

7 (Whereupon, the prospective

8 juror was duly sworn by the

9 Court to true answers make

10 to the questions propounded,

11 concerning qualifications, after

12 which time, the proceedings were

13 resumed as follows:)

14

15 THE PROSPECTIVE JUROR: I do.

16 THE COURT: You are here today as a

17 potential juror in the Darlie Routier matter.

18 Mrs. Routier is the young lady in the

19 burgundy dress, she is the defendant in today's case.

20 She is represented by her attorneys,
21 Mr. Curtis Glover who is from Dallas, and her Kerrville
22 attorneys are Preston Douglass and Richard Mosty.
23 The State is represented by two Dallas
24 County Assistant District Attorneys, Toby Shook and
25 Sherri Wallace.
Sandra M. Halsey, CSR, Official Court Reporter
2469

1 They are going to ask you some
2 questions, there are no wrong answers, just tell it like
3 you feel. Okay?
4 THE PROSPECTIVE JUROR: Okay.
5 THE COURT: And if you could say yes
6 or no to everything and not uh-huh or huh-uh or nod,
7 because Ms. Halsey is taking all this down, and she can't
8 do that. And speaking of that, the mike is back here and
9 you can pull it up a little bit if you want to.
10 THE PROSPECTIVE JUROR: Okay.
11 THE COURT: All right. Mr. Shook, I
12 assume Mr. Shook.
13 MR. TOBY L. SHOOK: Yes, Judge. Thank
14 you, Judge.
15
16 Whereupon,
17
18 RINA MARIE WAY,
19
20 was called as a prospective juror, for the purpose of
21 voir dire, having been first duly sworn by the Court to
22 speak the truth, the whole truth, and nothing but the
23 true, testified in open court, as follows:
24
25
Sandra M. Halsey, CSR, Official Court Reporter
2470

1 VOIR DIRE EXAMINATION

2
3 BY MR. TOBY L. SHOOK:
4 Q. Ms. Way, again, my name is Toby Shook,
5 I am one of the prosecutors on the case and I will be
6 asking you questions on behalf of the State.
7 A. Okay.
8 Q. Like the Judge said, there are no
9 right or wrong answers, we just want your honest
10 opinions. Okay?
11 A. Okay.
12 Q. What I will do is go over a few things
13 that are here on your questionnaire and then we will talk

14 a little bit about the death penalty as a law and then
15 some of the rules that apply to this case. All right?

16 A. Okay.

17 Q. It looks like you are were on one jury
18 before.

19 A. Yes.

20 Q. Some type of traffic case?

21 A. There was an older man fighting a
22 traffic ticket.

23 Q. Okay.

24 A. And it came out kind of funny.

25 Q. Okay. Tell me a little bit, how did
Sandra M. Halsey, CSR, Official Court Reporter
2471

1 it come out?

2 A. We ended up fining him a dollar, we
3 felt bad for him.

4 Q. Okay. But he was guilty?

5 A. But he was guilty, yeah.

6 Q. Was it a criminal case? Just a
7 traffic ticket?

8 A. Just a traffic ticket.

9 Q. Okay. A dollar fine.

10 A. Yes.

11 Q. Did he represent himself?

12 A. Uh-huh. (Witness nodding head
13 affirmatively.)

14 Q. Okay. So, it wasn't a lawyer
15 representing him?

16 A. No.

17 Q. Okay. It looks like you are employed
18 as a hair stylist; is that right?

19 A. Yes.

20 Q. And you work in Ingram?

21 A. No, I work in the mall.

22 Q. Okay. You work in the mall and live
23 in Ingram; is that right?

24 A. Yes.

25 Q. You have worked there about, how long,
Sandra M. Halsey, CSR, Official Court Reporter
2472

1 two years it looks like?

2 A. No, about two months.

3 Q. Oh, two months.

4 A. Yeah, I just started September 1st.

5 Q. Where did you work before that?

6 A. I went to G & M Beauty College.

7 Q. Okay. This is your first job here?

8 A. Yes.
9 Q. Have you been employed before the
10 beauty college?
11 A. Uh-huh. (Witness nodding head
12 affirmatively.)
13 Q. What type of work did you do then?
14 A. I was -- I worked at the Thistlewood
15 Horse Farms. And I just worked with the horses.
16 Q. Okay. And I think you state in here,
17 that you do love horses, that is one of your hobbies; is
18 that right?
19 A. Yeah.
20 Q. Do you own any horses?
21 A. I did, I sold him, too expensive.
22 Q. They can be expensive. And it looks
23 like you've lived in several different cities, but all in
24 Texas; is that right?
25 A. Uh-huh. (Witness nodding head
Sandra M. Halsey, CSR, Official Court Reporter
2473

1 affirmatively.)
2 Q. Okay. Where are you originally from?
3 A. El Paso.
4 Q. How long did you live there?
5 A. Nine years.
6 Q. All right. And your parents live in,
7 is it Beeville?
8 A. Yes.
9 Q. Your father, he is a hair stylist
10 there?
11 A. He was, he is not anymore. He drives
12 a bus.
13 Q. Okay.
14 A. School bus.
15 Q. And your mother is a college
16 professor?
17 A. Uh-huh. (Witness nodding head
18 affirmatively.)
19 Q. What college does she teach?
20 A. Bee County College.
21 Q. What does she teach there?
22 A. She teaches just about everything;
23 accounting, computers, math, all of that.
24 Q. Okay. And what brought you to Ingram?
25 A. I went to work at Camp Stewart one
Sandra M. Halsey, CSR, Official Court Reporter
2474

1 summer and I ended up staying there.

2 Q. Okay. And I see you have two
3 children?
4 A. Uh-huh. (Witness nodding head
5 affirmatively.)
6 Q. Let me kind of just go over how we
7 think the trial will go. It's going to start January
8 6th, that is our projected date.
9 We can't tell you how long it will
10 last, but our best guess is about two weeks. Judge Tolle
11 goes from 9:00 in the morning until 5:00 in the evening.
12 Okay?
13 A. Uh-huh. (Witness nodding head
14 affirmatively.)
15 Q. You can go home at night at 5:00
16 unless you are in deliberations, then you would be
17 sequestered. It's not going to be like O.J. -- not going
18 to be spread out for months.
19 A. Right, good.
20 Q. About two weeks.
21 A. Okay.
22 Q. Now, you do have two young children.
23 A. Uh-huh. (Witness nodding head
24 affirmatively.)
25 Q. I don't know exactly -- what are your
Sandra M. Halsey, CSR, Official Court Reporter
2475

1 working hours?
2 A. Mine normally are 9:00 to 5:00. I
3 work one night 1:00 to 8:00, but it's no big deal, my
4 husband comes home.
5 Q. All right. You are well aware that
6 if -- you know, that if your minor children couldn't be
7 taken care of, you could take an exemption?
8 A. Right.
9 Q. I take it that you're settled?
10 A. No, that won't be a problem for me.
11 Q. Okay. And your husband, how is he
12 employed?
13 A. He is a carpenter with Texas Hill
14 Country Homes.
15 Q. Okay. All right. I don't think you
16 know any of the Dallas attorneys, do you?
17 A. No.
18 Q. There have been two Kerrville
19 attorneys also employed, Mr. Douglass and Mr. Mosty here.
20 Do you know either one of those?
21 A. Nope.
22 Q. And I believe you were in a car
23 accident that employed an attorney once; is that right?

24 A. Right. Ken Zysko.
25 Q. Is he a local attorney?
Sandra M. Halsey, CSR, Official Court Reporter
2476

1 A. Yeah.
2 Q. Okay. Did that go to trial?
3
4 THE COURT: That's Z-Y-S-K-O, isn't
5 it?
6 THE PROSPECTIVE JUROR: Yeah.
7 THE COURT: All right. Thank you.
8
9 BY MR. TOBY L. SHOOK:
10 Q. Or was that case just settled out of
11 court?
12 A. Yes, it was out of court. We didn't
13 go to court.
14 Q. All right. Well, let me then move to
15 the area about the death penalty. You know from being
16 down on that big panel that this is a death penalty case?
17 A. Uh-huh. (Witness nodding head
18 affirmatively.)
19 Q. I think you checked off that you
20 haven't read anything about this case; is that right?
21 A. Huh-uh. (Witness shaking head
22 negatively.)
23 Q. Okay. So, you don't know anything
24 about the facts?
25 A. No, nothing.
Sandra M. Halsey, CSR, Official Court Reporter
2477

1 Q. All right. It's a case in which the
2 State is actively seeking the death penalty. So, we want
3 to talk to each juror about how they feel about the death
4 penalty as a law and the purpose that they think it
5 holds.
6 Let me ask you that: First of all, do
7 you believe in the death penalty as a law?
8 A. Yes, sir.
9 Q. Tell me in your own words why you
10 believe in the death penalty or what purpose you feel it
11 serves in our society.
12 A. Well, I feel like if it suits the
13 crime, you ought to pay for it. That is just the way it
14 should be.
15 Q. Have you always felt that way?
16 A. Uh-huh. (Witness nodding head
17 affirmatively.)

18 Q. Okay.

19

20 THE COURT: Is that a yes, ma'am?

21 THE PROSPECTIVE JUROR: Yes, sorry.

22 Yes, I'm sorry.

23 THE COURT: Thank you.

24

25

Sandra M. Halsey, CSR, Official Court Reporter

2478

1 BY MR. TOBY L. SHOOK:

2 Q. You also have said that you follow

3 criminal cases or they intrigue you?

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. Do you follow those in the news much?

7 A. No, I have UPN-35, I don't get the

8 news. That's it, that is all I get.

9 Q. What types of crimes -- I know we

10 don't expect you to be thinking about these things that

11 much, but you say, if the crime fits it. What types of

12 crimes come to mind do you think are eligible for the

13 death penalty?

14 A. Well, if you kill somebody, you

15 deserve to die, that is just the way it should be.

16 Q. Murder cases?

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. Okay. Any other cases other than

20 murder cases?

21 A. No, not really.

22 Q. Okay. Well, let me ask you this: Is

23 the death penalty as a punishment, is that a subject you

24 have discussed with any close friends, family?

25 A. No.

Sandra M. Halsey, CSR, Official Court Reporter

2479

1 Q. Or relatives?

2 A. No.

3 Q. Just the way you have always felt?

4 A. Just the way I have always felt.

5 Q. Have there been any cases that you

6 have watched in the press or in the news that, you know,

7 you think that is a death penalty case, or that is not a

8 death penalty case?

9 A. No, not really.

10 Q. Okay. Let me ask you this also: You

11 gave us a lot of information here, so I want to go over

12 just a couple more things. As regards to the criminal
13 justice system, one of the statements we asked is the
14 biggest problem in the criminal justice system is, and
15 you wrote: That we sometimes don't make the right
16 decisions on cases, although nobody is perfect. What did
17 you mean by that exactly?

18 A. Well, I just feel like, well, I mean,
19 I think the system is good, but we don't usually use it,
20 sometimes we don't use it the way we should.

21 Q. And what do you mean?

22 A. We don't make the right decisions
23 because, it's kind of hard to explain. Well, I don't
24 know, it's little just kind of -- people need to get more
25 into the case, I mean, and make it -- make the right

Sandra M. Halsey, CSR, Official Court Reporter
2480

1 decision and a lot of times we don't make the right
2 decision.

3 Q. Do you have any examples about cases
4 you are thinking of --

5 A. No.

6 Q. -- where the right decision wasn't
7 made?

8 A. No, not really.

9 Q. Anything come to your mind?

10 A. Huh-uh. (Witness shaking head
11 negatively.)

12 Q. Okay. You have also put down that
13 Brad Way, is that your husband?

14 A. Yes.

15 Q. He had a DWI it looks like?

16 A. Two.

17 Q. Okay. And got probation?

18 A. Uh-huh. (Witness nodding head
19 affirmatively.)

20 Q. How long ago was that?

21 A. Four years -- well, five years,
22 because it was right before we got married.

23 Q. Okay. So that happened before you
24 married him?

25 A. Right.

Sandra M. Halsey, CSR, Official Court Reporter
2481

1 Q. But you knew him?

2 A. Right. No, I didn't know him.

3 Q. You didn't know him at the time?

4 A. No.

5 Q. Okay.

6 A. He was on probation when we met.
7 Q. Was that locally?
8 A. Uh-huh. (Witness nodding head
9 affirmatively.)
10 Q. And did he get all that behind him?
11 A. Yes, it's all over.
12 Q. You don't even know who he uses as an
13 attorney, do you?
14 A. No, I don't think he has an attorney.
15 Q. Okay. But do you think from what
16 little you know about it, was he treated fairly by the
17 criminal justice system?
18 A. Yes, I think he was.
19 Q. Okay. In Texas there is only certain
20 types of crimes in which the death penalty can be used.
21 Not just any murder case, for instance. But it has to be
22 murder plus something else. Okay?
23 We have brutal murderers tried all the
24 time, but they can't be tried for the death penalty. I
25 could get mad right here while we're sitting and take a
Sandra M. Halsey, CSR, Official Court Reporter
2482

1 gun out and shoot Ms. Wallace in the head and it wouldn't
2 be a death penalty case. I might get life, but it
3 wouldn't be a death penalty case.
4 For the death penalty, you have to
5 have an aggravating fact. For instance, murder during a
6 felony. You probably heard of the situation where
7 someone might rob a bank, or rob a grocery store, or a
8 7-Eleven, shoots the teller, shoots the clerk during the
9 robbery, that could be a death penalty case.
10 Someone comes into your house, breaks
11 in, murders you, breaking into the house with a murder,
12 that is a death penalty case, or could be a death penalty
13 case, depending on the facts.
14 Murder during a rape, or a kidnapping,
15 those are cases. Also, murder of a police officer or
16 fireman while on duty. Mass murder or the serial
17 murder-type situation, all fall in those categories.
18 Murder for hire, a guy that does it
19 for money, or a person that pays someone money to kill
20 someone fall under the death penalty statute. And the
21 murder of a child under the age of six.
22 In fact, the indictment is in front of
23 you. Do you see that piece of paper?
24 A. Uh-huh. (Witness nodding head
25 affirmatively.)
Sandra M. Halsey, CSR, Official Court Reporter

1 Q. Read that to yourself for a moment,
2 and let me know when you are finished.

3 A. Okay.

4

5 THE COURT: They just want you to read
6 the typed portion, ma'am.

7 THE PROSPECTIVE JUROR: Down at the
8 bottom.

9

10 BY MR. TOBY L. SHOOK:

11 Q. Now, we can't commit you to any facts.

12 That is kind of the difficult thing about this part of
13 the process, we're just talking in hypotheticals.

14 Does that type of case, murder of a
15 child under the age of six, do you think that is the type
16 of crime that could be eligible for the death penalty?

17 A. Uh-huh. (Witness nodding head
18 affirmatively.)

19 Q. Under the proper facts?

20 A. Yeah, yes.

21 Q. All right. Again, it would just
22 depend on the facts in this case?

23 A. Right.

24 Q. Okay. You had said you followed some
25 cases and I mentioned O.J. Simpson, did you follow that
Sandra M. Halsey, CSR, Official Court Reporter

2484

1 case at all?

2 A. Yes, a little bit, but not much.

3 Q. Did you draw any opinions or
4 conclusions about that case?

5 A. Well, in the middle, yeah. But then
6 by the end I was kind of lost because I didn't get to see
7 it all, but in the middle I did.

8 Q. What was your thought in the middle?

9 A. I thought he was guilty.

10 Q. Okay. And then you were so saturated
11 you got --

12 A. It got too long.

13 Q. All right. What about the Susan Smith
14 case. Do you remember that case?

15 A. Huh-uh. (Witness shaking head
16 negatively.)

17 Q. Okay. Like I said, there are only
18 certain types of crimes that are eligible for the death
19 penalty.

20 Now, the procedure is this: You know

21 a little bit of this, because you have sat on -- even
22 though it was just a traffic case, the procedures are
23 much the same. You have the guilt/innocence stage where
24 we have to prove that indictment beyond a reasonable
25 doubt.

Sandra M. Halsey, CSR, Official Court Reporter
2485

1 I suppose that was done in your
2 traffic case, proved the case beyond a reasonable doubt.
3 If we don't do that, everyone goes home. Okay? If we do
4 do that, the trial is not over, we go to the punishment
5 stage. That is the second part.
6 Now, in a capital case you get
7 questions. Okay? You may hear more evidence in the
8 punishment stage, you may not.
9 But at the close of the evidence,
10 however long or short it may be, you get these questions
11 to answer. They are "yes" or "no" questions, and I will
12 go over these in more detail in a minute.
13 But that first question, to summarize
14 it, is this: The State has to prove whether the
15 defendant would be a continuing danger to society. Okay?
16 Now, if we get a "yes" answer to that,
17 you go to the next question. If it's a "no" answer, you
18 can stop there.
19 But a "yes" answer to that, you go to
20 this last question, which is the longer one, and we call
21 it the mitigation question. What that question does is
22 allows the jurors to review all of the evidence.
23 All the evidence surrounding the
24 murder itself, and any additional information they have
25 about the defendant's background and character.
Sandra M. Halsey, CSR, Official Court Reporter
2486

1 What they decide is this: Is there,
2 what they call, mitigating evidence? Which is going to
3 be up to you. That tells you that the defendant should
4 get a life sentence rather than a death sentence. If
5 there is that type of evidence, you will answer the
6 question "yes."
7 If there is not that type of evidence,
8 you will answer it "no." The point of it is this: You
9 don't sit back there and write death or life in as far as
10 the punishment goes.
11 A. Right.
12 Q. But the Judge will sentence the
13 defendant to death or life by how these questions are
14 answered. A "yes" and a "no" answers equal death, the

15 Judge has no discretion.
16 Any other combination will equal, the
17 Judge will sentence the defendant to life. But those are
18 the only two possible outcomes. Is that clear to you?
19 A. Right.
20 Q. Okay. Are you aware of the method of
21 execution in Texas?
22 A. Injection?
23 Q. Lethal injection. It used to be by
24 electrocution.
25 A. Right.
Sandra M. Halsey, CSR, Official Court Reporter
2487

1 Q. In a case where a defendant has been
2 found guilty, and these questions have been answered
3 "yes" and "no," then as I told you, the Judge has no
4 discretion but to sentence the defendant to death. Our
5 method of execution is by lethal injection.
6 Those procedures call for some day, no
7 one could ever tell you when, but some day the Judge
8 would actually give an execution date. The defendant
9 would be moved to a new location where the executions
10 take place, each and every time.
11 The procedures call for them to have
12 time with their family, maybe a minister. But after 6:00
13 p.m. the guards come to the cell, take the defendant down
14 the hallway, place the defendant on a hospital gurney,
15 but literally strap the defendant down, immobilize them.
16 There are witnesses there. Needles are placed in the
17 arms and a poison is soon injected. Same method every
18 time.
19 The point of it is this: I'm not
20 trying to be morbid, but it's an actual punishment in
21 Texas, you know?
22 A. Right.
23 Q. You hear about some states have the
24 death penalty, they never invoke it. Texas, you will
25 read many times in the paper about an execution that
Sandra M. Halsey, CSR, Official Court Reporter
2488

1 occurred the day before.
2 It's happened in more than -- about
3 104 times so far, people have been executed in Texas
4 since the death penalty has been reinstated. We lead
5 the nation by far. I'm not trying to brag about it.
6 A. No, no.
7 Q. It's one thing to talk about the death
8 penalty in a philosophical sense, and it's another thing

9 to talk about it where it's actually going to be invoked.

10 A. Right.

11 Q. Now, like I said, I can't commit you

12 to any facts. But what I need to know is this: Are you

13 the type of person that can listen to the evidence, and

14 if we do prove these things to you beyond a reasonable

15 doubt, can you answer these questions in a way that will

16 result in this defendant's execution?

17 A. If I have to.

18 Q. Okay. You are not volunteering for

19 the job?

20 A. Huh?

21 Q. You're not volunteering for the job?

22 A. No, but if I have to, I will.

23 Q. But if you are put on, you could do

24 it?

25 A. Yes.

Sandra M. Halsey, CSR, Official Court Reporter

2489

1 Q. All right. Fair enough.

2 Let me go over a couple of things that

3 might -- that we talk about with jurors. Again, we can't

4 get into the facts, but as you know and from sitting on a

5 jury before, the State has to prove the case.

6 We put on evidence. I take it from

7 your case a police officer testified about this

8 traffic -- was it a speeding ticket?

9 A. Yes.

10 Q. Right. Okay. Probably talked about

11 radar, that sort of thing.

12 A. Uh-huh. (Witness nodding head

13 affirmatively.)

14 Q. He is an eyewitness to the case.

15 Okay? Just like if you left the courthouse today and you

16 were robbed by someone, let's say someone took your

17 purse, and that person was caught and you identified

18 them, you would be the eyewitness to that case.

19 That is what we call direct evidence.

20 Officer would come up, "This is what I saw." He saw the

21 whole crime.

22 Now the other type of evidence that

23 comes up in criminal cases is circumstantial evidence, or

24 indirect evidence. You have heard the term

25 circumstantial evidence?

Sandra M. Halsey, CSR, Official Court Reporter

2490

1 A. Uh-huh. (Witness nodding head

2 affirmatively.)

3 Q. Circumstantial evidence is any
4 evidence other than an eyewitness to the crime. Okay?
5 Fingerprints, crime scene, DNA, hair, fiber, things the
6 defendant said, anything, virtually anything that can
7 link the defendant to the crime; using your common sense,
8 that is the main thing, other than an eyewitness. Okay?
9 Now, the law says this: That whether
10 you use an eyewitness or circumstantial evidence, the
11 State still has to prove its case beyond a reasonable
12 doubt. All right?

13 A. Right.

14 Q. There is no greater burden if you only
15 have circumstantial evidence. Now, many times often in a
16 murder case you can see where the State may only have
17 circumstantial evidence.

18 You may have only a dead victim and
19 someone you have accused of the crime. No eyewitness to
20 the crime, obviously.

21 So, the State has to rely on
22 circumstantial evidence. What I need to know is: Could
23 you, as a juror, listen to circumstantial evidence and if
24 it was proven to you beyond a reasonable doubt find the
25 defendant guilty solely on circumstantial evidence?

Sandra M. Halsey, CSR, Official Court Reporter
2491

1 A. Yes, sir.

2 Q. Okay. Here is another area that may
3 or may not come up.

4 We talk about motive. You have heard
5 that word?

6 A. Uh-huh. (Witness nodding head
7 affirmatively.)

8 Q. The motive, the reason for crime.

9 A. Uh-huh. (Witness nodding head
10 affirmatively.)

11 Q. Everyone wants to know the motive,
12 obviously, you want to know why a murder was committed,
13 or any crime. In Texas, however, we're not required, as
14 one of our elements, one of our goals we have to get over
15 to get a conviction, we don't have to prove motive.

16 Okay? It's not a requirement under law.

17 The reason for that, I mean, is this:

18 I mean, it may be an impossible goal. It may become very
19 apparent after all the evidence is on what the motive is
20 to everybody. It may not be apparent at all.

21 You know, I gave the example,
22 suddenly, I just pull out a gun and kill poor Ms. Wallace
23 for no reason. And, you know, I may never tell anyone
24 why I did it. People might have their opinions, but no

25 one is going to really know. It doesn't make her any
Sandra M. Halsey, CSR, Official Court Reporter
2492

1 less dead.
2 The fact that there are eight more
3 witnesses here that saw me do it, do it in a vicious way,
4 but no one may really know the motive. It could be what
5 the press often calls a senseless, vicious crime. Okay?
6 Or it could be a situation where
7 everyone has their own idea what the motive is, or it
8 could be four or five motives out there.
9 Do you understand what I am saying?
10 A. Uh-huh. (Witness nodding head
11 affirmatively.)
12 Q. But we're not required to prove
13 motive. Do you understand that?
14 A. Right.
15 Q. Do you think that's -- could you
16 follow the law in that regard and not require the
17 State --
18 A. Yes.
19 Q. It might come out and it might not.
20 Or, like I said, you might have a good idea, but it's not
21 an element we have to prove.
22 A. Right.
23 Q. Okay. Let's go to some of these
24 punishment issues, these two punishment questions.
25 Now, as I said before, you don't get
Sandra M. Halsey, CSR, Official Court Reporter
2493

1 to these unless the defendant is found guilty. Okay?
2 A. Right.
3 Q. If it's not guilty, we all leave.
4 Okay? If it's a guilty verdict, you don't just
5 automatically sentence the defendant to death or life
6 either.
7 Like I said, you may hear additional
8 evidence. You can hear evidence, if it exists, about the
9 defendant's background, maybe a long criminal history,
10 bad character evidence, things like that.
11 You may hear from psychologists,
12 psychiatrists, who knows.
13 On the other hand, you may not hear
14 any criminal evidence. You may not hear anything about
15 bad background. You may hear good character references.
16 It just depends on each case. Okay?
17 A. Yes.
18 Q. This first question, and I will read

19 it aloud if you will just read it along with me to
20 yourself.
21 "Do you find from the evidence beyond
22 a reasonable doubt that there is a probability that the
23 defendant would commit criminal acts of violence that
24 would constitute a continuing threat to society?"
25 Do you see where that question is
Sandra M. Halsey, CSR, Official Court Reporter
2494

1 asking the jurors to make a prediction on how the
2 defendant would behave in the future?
3 A. Yes.
4 Q. Okay. Again, that is just going to
5 depend on the evidence in the case. You might get a long
6 criminal background, you may get nothing. The law
7 doesn't require that a person have been to the
8 penitentiary or committed a lot of criminal acts to be
9 eligible for the death penalty. Okay?
10 You may have just the facts of the
11 case alone to answer that question from. Again, I can't
12 commit you to the facts or anything like that. Do you
13 think you could get enough information from a murder
14 itself to enable you to answer that question "yes"?
15 A. Probably, yes.
16 Q. Okay. As regards to the brutality,
17 and things of that nature?
18 A. Yeah.
19 Q. Okay. Now, the words that are in this
20 question, you are not going to get legal definitions on.
21 There will be other legal definitions given to you by
22 Judge Tolle in the Court's charge.
23 But as to these two questions, the
24 words and their meanings will be left up to you and the
25 other jurors. Okay?
Sandra M. Halsey, CSR, Official Court Reporter
2495

1 A. Okay.
2 Q. So let me go over that. First of all,
3 let me tell you this though: This question starts off
4 with a "no" answer, the State has to prove it beyond a
5 reasonable doubt, that it should be answered "yes."
6 Okay?
7 A. Okay.
8 Q. Just like this person starts out with
9 the presumption of innocence. We have to prove that it's
10 a probability that the defendant would commit criminal
11 acts of violence. Okay?
12 A. Okay.

13 Q. "Probability." What does that word
14 mean to you in that context?
15 A. That it could happen.
16 Q. Okay. Would you agree that it could
17 be more likely than not?
18 A. Right, more likely than not.
19 Q. You understand that it doesn't mean
20 that it's a certainty that it would happen. We could
21 never prove something is a certainty.
22 A. Yes.
23 Q. We have to prove the defendant would
24 "commit criminal acts of violence." What comes to mind
25 when we talk about criminal acts of violence.
Sandra M. Halsey, CSR, Official Court Reporter
2496

1 A. Bodily injury and things like that.
2 Q. Okay. We are not required to prove
3 that they would commit murder again, although I think
4 murder obviously falls in that, that wording.
5 A. Uh-huh. (Witness nodding head
6 affirmatively.)
7 Q. But just commit criminal acts of
8 violence. Does that seem fair to you?
9 A. Uh-huh. (Witness nodding head
10 affirmatively.)
11 Q. Okay. And "society," what does that
12 mean to you?
13 A. All of us.
14 Q. Okay.
15 A. Everybody out there in the world is
16 society.
17 Q. Every person in the world?
18 A. Uh-huh. (Witness nodding head
19 affirmatively.)
20 Q. Would that even include people in
21 prison?
22 A. Uh-huh. (Witness nodding head
23 affirmatively.)
24 Q. Okay. Prisoners, guards?
25
Sandra M. Halsey, CSR, Official Court Reporter
2497

1 THE COURT: You are saying yes, ma'am?
2 THE PROSPECTIVE JUROR: Yes. I'm
3 sorry.
4 THE COURT: Thank you.
5
6

7 BY MR. TOBY L. SHOOK:

8 Q. That's all right. A lot of jurors
9 come in and do that. We're used to uh-huh and an huh-uh.

10 A. Uh-huh. (Witness nodding head
11 affirmatively.)

12 Q. Like I said, Ms. Halsey has to get
13 everything down.

14 Let me go to this last question. It's
15 what we call the mitigation question. Let me tell you,
16 none of us thought of how to write this thing. It gets
17 kind of long. Okay?

18 A. Okay.

19 Q. It says: "Taking into consideration
20 all of the evidence, including the circumstances of the
21 offense, the defendant's character and background, and
22 the personal moral culpability of the defendant, is there
23 a sufficient mitigating circumstance or circumstances to
24 warrant that a sentence of life imprisonment rather than
25 a death sentence be imposed?"

Sandra M. Halsey, CSR, Official Court Reporter
2498

1 Again, this is the last question you
2 get to, and there is no burden of proof here on either
3 side. The defense doesn't have to prove it to you, and
4 the State doesn't.

5 This is kind of what we call a safety
6 net, or safety valve. Another person has described it as
7 kind of a last stop, it's a way to stop the train at the
8 last minute.

9 You don't get to this question unless
10 you have found the defendant guilty beyond a reasonable
11 doubt. And you don't get to it unless you have found
12 they will be a continuing danger to society.

13 But then you review all of the
14 evidence, all of the background, and then decide, well,
15 is there sufficient mitigating evidence where I think
16 this person should get a life sentence rather than a
17 death sentence.

18 Does that sound like a fair question
19 to have in a death penalty case?

20 A. Yes, it does.

21 Q. Now, here is the thing: We cannot
22 tell you what mitigating evidence is. That will be up to
23 you and the other jurors. Okay? And what might be
24 mitigating to one juror may not be mitigating to the
25 others. Okay? And as you sit there, you don't have to

Sandra M. Halsey, CSR, Official Court Reporter
2499

1 think what mitigating evidence is.
2 I doubt it has ever entered your mind
3 before, most jurors don't sit around thinking about what
4 would be mitigating evidence. Okay? But you just have
5 to be able to assure the Court you can keep your mind
6 open to that type of evidence.
7 Can you do that?
8 A. Uh-huh. (Witness nodding head
9 affirmatively.) Yes.
10 Q. Okay. Well, one of the things I
11 talked about, like I said, you don't have to agree on it.
12 Let me give you just an example: Let's say, you had a
13 capital murder defendant that maybe went to Harvard and
14 got his Ph.D. in business.
15 One juror might think that is
16 mitigating. They say, "Well, you know, that person has
17 done something with their life." One juror might say,
18 "No, that is aggravating. Someone that smart shouldn't
19 commit capital murder."
20 You see, they don't have to agree, and
21 people look at every issue differently. It's just going
22 to be up to each juror.
23 I can't commit you to any fact, but
24 let me just go over a couple of things. See how they hit
25 you one way or the other. And like I said, you don't to
Sandra M. Halsey, CSR, Official Court Reporter
2500

1 agree with any of this. Sometimes you might have a
2 capital murder defendant that commits murder at a young
3 age.
4 I'm not talking about a 10 year old or
5 an 11 year old, someone that is legally an adult, but
6 very young. Some people view that as mitigating. Other
7 people say, "No, even though they are young, they still
8 had choices they made and should be held accountable."
9 Does that hit you one way or the other?
10 A. Well, I believe they made the wrong
11 choice.
12 Q. Okay. Sometimes you might hear a
13 capital murder case where the defendant commits capital
14 murder under the influence of drugs or alcohol. Okay?
15 And I'm not talking about someone
16 tricking them or they go out and get drunk, get high.
17 That is not legal defense in Texas. Okay?
18 But some people might view it as
19 mitigating, other people view it as aggravating.
20 A. It's aggravating.
21 Q. Okay. Sometimes you may hear evidence
22 in a capital case where the defendant may have grown up

23 in a poor neighborhood, you know, didn't have any
24 opportunities. Some people will say, "You know, that
25 could be mitigating."

Sandra M. Halsey, CSR, Official Court Reporter
2501

1 And other people say, "A lot of people
2 have had that experience and they don't go around killing
3 people."

4 A. Well, I believe that -- well, to an
5 extent you would have to look at their side, but --

6 Q. Okay. You would be open to it at
7 least?

8 A. Yeah.

9 Q. All right. Another area sometimes
10 that comes up is maybe the person was abused, physically
11 abused maybe as a child, maybe they were sexually abused,
12 mentally abused.

13 Some people view that as mitigating.

14 Other people say, "Well, no. You still -- that has
15 happened a lot."

16 A. It's the same thing, you would have to
17 look at their side.

18 Q. Okay. So your mind is open to that
19 type of thing?

20 A. Uh-huh. (Witness nodding head
21 affirmatively.)

22 Q. And that is the whole point of this,
23 is if your mind is open to it.

24 A. Uh-huh. (Witness nodding head
25 affirmatively.)

Sandra M. Halsey, CSR, Official Court Reporter
2502

1 Q. You might hear what you consider
2 mitigating evidence, but it doesn't reach the level of
3 where you think a life sentence should be imposed.

4 People say, "That is mitigating, but, still, in mind,
5 that is still a 'no' answer." Do you understand?

6 A. Right.

7 Q. Okay. Some of the other areas I want
8 to get into are rules that apply in all criminal cases.

9 Since you sat on a jury, well, since you have grown up in
10 this country, you have heard of these before, and Judge
11 Tolle went over them. The presumption of innocence.

12 A. Uh-huh. (Witness nodding head
13 affirmatively.)

14 Q. The defendant is presumed to innocent
15 when the trial starts and that is a presumption the State
16 has to overcome. Can you follow that rule of law?

17 A. Yes, sir.

18 Q. That was the same in your traffic case
19 as it is here, there is no difference. You understand
20 that?

21 A. Yes, sir.

22 Q. The State has the burden of proof in
23 every case. We have to prove our case beyond a
24 reasonable doubt. All right? Could you follow that rule
25 of law?

Sandra M. Halsey, CSR, Official Court Reporter
2503

1 A. Yes, sir.

2 Q. Okay. That burden of proof never
3 leaves this table. What I mean by that is this: You can
4 see there are attorneys over here, very good attorneys.
5 Under the law, and this is just a far out example, you
6 know, their only requirement really is to show up.
7 They could sit there and do crossword
8 puzzles if they wanted to, play tiddlywinks, whatever.
9 They don't have to do anything because they are under no
10 obligation to prove the defendant's innocence to you.

11 Okay?

12 The State has to do the proving in
13 this case. Now, I'm sure they are going to make
14 objections and ask questions and they can put on
15 witnesses and certainly make arguments. Okay?

16 A. Okay.

17 Q. But my point is this: This burden
18 never shifts to them. You know? If we put on evidence,
19 you can't go, "Okay. What have you got?" You know, that
20 type of thing?

21 A. Right.

22 Q. If we don't prove our case beyond a
23 reasonable doubt and they don't say a word, you have got
24 to find the defendant not guilty. Okay?

25 A. Okay.

Sandra M. Halsey, CSR, Official Court Reporter
2504

1 Q. The Judge told you that the defendant,
2 like any defendant, has an absolute right not to testify,
3 if you don't want to. If you want to testify, no one can
4 stop you.

5 However, if you choose not to testify,
6 the Judge would instruct you and the other jurors that
7 you can't hold that against the defendant in any way.

8 A. Right.

9 Q. Can you follow that rule of law?

10 A. Yes, yes.

11 Q. Also, police officers, obviously
12 testify in criminal cases. The law says that you have to
13 start them off on the same foot. Okay?
14 You cannot start them ahead of the
15 other witnesses, just because they are police officers,
16 or behind them. You know, some people have real good
17 experiences with them, some people have bad experiences.
18 You have to start them out on the same foot.
19 Can you follow that rule of law?
20 A. Yes, sir.
21 Q. The Judge will also instruct you that
22 from time to time, we read here about our parole laws.
23 Okay? It makes the news. It makes people mad sometimes.
24 The Judge will instruct that you cannot consider parole
25 in any way. We, at this level, have no control over the
Sandra M. Halsey, CSR, Official Court Reporter
2505

1 parole board. Okay?
2 Obviously, the lawyers don't and Judge
3 Tolle doesn't and the jury won't. So, those are issues
4 you just can't consider in your deliberations.
5 Can you follow that rule of law?
6 A. Yeah, yes.
7 Q. Okay. Obviously, Ms. Way, in any
8 murder case, photographs will be introduced. And as you
9 can imagine, in a murder case, they are not going to be
10 photographs you really want to look at. I think they
11 will be very gory photographs.
12 Obviously, you need to look at them
13 for various reasons, to show the crime scene or maybe
14 prove a certain point, circumstantial evidence, anything.
15 But we can't have jurors that would say, "Oh, my God. A
16 bad crime occurred, let's hang the defendant." Do you
17 understand?
18 A. Right.
19 Q. You just can't have a negative
20 reaction.
21 A. Right.
22 Q. And just want to go hang someone?
23 A. Right.
24 Q. But you would just have to look at
25 those with an open mind. Could you do that?
Sandra M. Halsey, CSR, Official Court Reporter
2506

1 A. Yes, sir.
2 Q. Okay. The bottom line is, you have to
3 listen to all the evidence and let it all come in and
4 then make a decision. Because you find someone guilty of

5 a capital murder, or murder of a child, you don't
6 automatically answer the questions in a way that results
7 in their death.

8 A. Right.

9 Q. You have to get all the background
10 information and things like that, that kind of thing.

11 A. Right.

12 Q. Have you known any police officers
13 ever, personally?

14 A. Well, my uncle was a police officer in
15 El Paso. I didn't put it down because he is not anymore,
16 he is retired, but he was a police officer.

17 Q. Did you talk to him much about his
18 cases or anything like that?

19 A. No, I was too young.

20 Q. All right. Oh, regarding your prior
21 jury service, we checked -- we have three statements and
22 you checked them all.

23 I can tell pretty easily when a person
24 is telling a lie. When I make up my mind, I rarely
25 change it. I always follow my own ideas rather than I do
Sandra M. Halsey, CSR, Official Court Reporter
2507

1 what others expect.

2 Do you get that from your jury
3 service? Or is that just, you think, your personality?

4 A. That is just the way I am.

5 Q. Okay.

6 A. It had nothing to with that, I didn't
7 even think about being a juror at all.

8 Q. Okay. That is just how you feel. As
9 far as you can tell pretty easily, when a person is
10 telling a lie, what is important to you? I mean, is it
11 just something the way they say it?

12 A. That and you can tell when a person is
13 nervous and you can tell when they are nervous for a
14 reason. I mean, you can just tell.

15 Q. Okay.

16 A. Sometimes, not all the time.

17 Q. Okay. Well, sure. Everyone's
18 fallible. I mean, some liars are better than others.

19 A. Right.

20 Q. "I always follow my own ideas rather
21 than I do what others expect." Okay?

22 A. Uh-huh. (Witness nodding head
23 affirmatively.)

24 Q. Would you say you are a pretty
25 opinionated person?

Sandra M. Halsey, CSR, Official Court Reporter

1 A. Yeah.

2 Q. You don't have any trouble expressing
3 those opinions?

4 A. No.

5 Q. Okay. Are you open to other people's
6 arguments ever?

7 A. Yes.

8 Q. Okay. Do you have any questions over
9 anything we have gone over?

10 A. No, sir.

11 Q. Okay. Well, you have been very
12 cooperative and I appreciate the attention you have given
13 me, and I appreciate you coming in early today.

14

15 MR. TOBY L. SHOOK: And that's all I
16 have, Judge.

17 THE COURT: Thank you, Mr. Shook. Mr.
18 Mosty.

19

20 VOIR DIRE EXAMINATION

21

22 BY MR. RICHARD C. MOSTY:

23 Q. Ms. Way, my name is Richard Mosty and
24 represent Darlie Routier here to my left. Preston
25 Douglass had to go to another hearing. He's --
Sandra M. Halsey, CSR, Official Court Reporter
2509

1 A. Oh, he's not there.

2 Q. He's missing from this blue chair
3 here. And this is Curtis Glover, down on the end, from
4 Dallas.

5 A. Hi.

6 Q. Just kind of I wanted to ask you a few
7 questions about some of your questionnaire stuff. And
8 then I want to focus, really, if you noticed Mr. Shook
9 started off talking about the penalty phase and the death
10 penalty.

11 And it seems like that is sort of the
12 way capital cases go, or when the death penalty is
13 involved. That seems the way they go. And I want to
14 completely flip that, because I want you to understand
15 thoroughly that our focus is on the beginning of this
16 trial.

17 And that is the presumption of
18 innocence. The law says that this lady is innocent. The
19 law says that the State must prove her guilty. The law
20 says that you will indulge every inference of reasonable

21 doubt in her favor. And all of those are things that the
22 law requires of us.

23 So, I want to just start by saying
24 there, that I am at a different place, because we're
25 going to enter a plea of not guilty. And we expect that
Sandra M. Halsey, CSR, Official Court Reporter
2510

1 when the jury hears all of this they are going to say, "I
2 have got reasonable doubts here and I have got reasonable
3 doubts there, and I am voting not guilty."

4 A. Yes, sir.

5 Q. Who -- your husband works for Texas
6 Hill Country Homes?

7 A. Yes.

8 Q. Who owns Texas Hill Country Homes?

9 A. Johnny Cox and Molly Maresh.

10 Q. Okay. And how long has he been with
11 them?

12 A. A year and half, two years, something
13 like that, off and on for a while.

14 Q. Did you meet him after you ended up
15 here after your Camp Stewart experiences?

16 A. Yes.

17 Q. What did you do out at Camp Stewart?

18 A. I was horseback instructor.

19 Q. How many years were you out there with
20 the Ragsdales?

21 A. Just the one summer.

22 Q. Just one the summer?

23 A. Uh-huh. (Witness nodding head
24 affirmatively.)

25 Q. And by that time, you were in college?
Sandra M. Halsey, CSR, Official Court Reporter
2511

1 A. Yeah, I had already had one year of
2 college.

3 Q. What did you study at, Bee -- Bee
4 County College?

5 A. Uh-huh. (Witness nodding head
6 affirmatively.)

7 Q. What did you study?

8 A. Drama, I was drama major.

9 Q. Okay. And what interrupted your
10 studies? Marriage?

11 A. No, I failed two classes. So, I lost
12 my scholarship. So, I ended up coming up here to work
13 and then I didn't go back.

14 Q. Okay. Where did your husband grow up?

15 A. In Ingram.

16 Q. Okay. He is from around here?

17 A. Uh-huh. (Witness nodding head

18 affirmatively.)

19 Q. And, I notice you all go to Dale Way's

20 Church. Are you all related somehow?

21 A. Yes, he is Brad's second cousin.

22 Q. Okay. And I guess that is how you

23 ended up out of the Catholic Church, and over at Dale's?

24 A. Yes.

25 Q. Okay. Let me talk -- and I want to

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2512

1 reemphasize to you a lot of things that Judge Tolle has

2 said. And I want to reemphasize sort of my introductory

3 comments about what the law says and what the law

4 requires of any juror, and what the law provides to any

5 defendant, whether it's Darlie or anybody else. And what

6 the law provided to the guy that you had in the traffic

7 court.

8 A. Okay.

9 Q. And in some instances, traffic court

10 is a little bit different, because in traffic court the

11 way someone ends up in court is an officer, in all

12 likelihood, saw what he thought was a violation and wrote

13 a ticket. So, he is the complaining witness and by

14 virtue of that ticket, y'all arrived over there to try

15 the case.

16 And a felony case, in the State of

17 Texas, is different. It comes about or it is initiated

18 by an indictment. Judge Tolle said at the beginning on

19 October 21st, that in Dallas County there are 25,000

20 indictments handed out every year. Hundreds on any

21 particular day, and of that any number of those people

22 might not even know that their case is being presented to

23 a Grand Jury, or that they are even under consideration.

24 They don't have the opportunity to appear, and it may

25 just be some police officer reading from some report that

Sandra M. Halsey, CSR, Official Court Reporter

2513

1 returns a true bill of indictment.

2 So, it's completely different than the

3 traffic ticket instance. And the law says that a jury

4 can draw no inference from that at all. Does that seem

5 okay to you? Does that seem fair?

6 A. Yes, it does.

7 Q. Here is what -- we don't ask for any

8 head start. We don't ask for anything. We just ask that

9 we start off on even footing.

10 Is that okay?

11 A. That's fair.

12 Q. Is that all right? And you don't have

13 any problem whatsoever giving us that equal start?

14 A. No, sir.

15 Q. All right. Have you heard anything

16 about the case at all?

17 A. No, sir.

18 Q. Know any of the facts or what the

19 facts are supposed to be?

20 A. No. I don't read the paper, I read

21 the comics. And I don't have news on my TV, so I don't

22 know anything.

23 Q. So there is nothing in your mind right

24 now that interferes with that fair start?

25 A. No, sir.

Sandra M. Halsey, CSR, Official Court Reporter

2514

1 Q. Okay. The law also says, as a part of

2 what happens here, the State goes first. The law says

3 that those who do the accusing have got to do the

4 proving, and it gives the State the ability to go first.

5 And that is how they went first today, and throughout

6 this trial the State will always go first. And in most

7 instances, they will have the opportunity to wrap up even

8 after. For instance, in argument, after the defendant

9 argues.

10 You know, and if I was writing the

11 rules, that is not the way I would have written them.

12 Because I would like to get out there and say, "I want

13 you to hear, you know, my first impression of where we're

14 coming from, and what we think the facts are, and what

15 the law is." But I don't get that chance.

16 So, what I have got to do, is I have

17 got to rely upon jurors who will sit in a jury box here

18 or wherever and say, "I'm not drawing any conclusions

19 until I have heard everything." Is that all right?

20 A. Yes, sir.

21 Q. See, does that seem fair to you?

22 A. Yes.

23 Q. If you were sitting where Darlie is

24 sitting?

25 A. It would seem very fair.

Sandra M. Halsey, CSR, Official Court Reporter

2515

1 Q. You would say, "By golly, I need those

2 people."

3 A. Yes.

4 Q. Those are the people I need on my
5 jury?

6 A. That's right.

7 Q. Okay. The law also says, and all of
8 these intertwine, that right now Darlie Routier is
9 presumed innocent. She sits clouded -- is cloaked with a
10 protection and a veil, an envelope of innocence around
11 her.

12 And if you were sitting where Darlie
13 is, you would like that shield around you too, wouldn't
14 you?

15 A. Yes, sir.

16 Q. And it seems only fair?

17 A. Yes, sir.

18 Q. Okay. Now, there is a lot of
19 discussion about reasonable doubt, and you are going to
20 hear a lot of talk about that from us. Because the law
21 says, the law requires that if you have a reasonable
22 doubt, that you give it to Darlie.

23 And the law doesn't say that, "Well,
24 you know, maybe the State sort of has the best of this.
25 I have got some doubts, and I think I might give that
Sandra M. Halsey, CSR, Official Court Reporter
2516

1 doubt to the State."

2 A. Right.

3 Q. The law says no, reasonable doubt
4 stays over here, always.

5 A. Okay.

6 Q. And every one of them belongs to the
7 defendant, in every criminal case.

8 A. That's right.

9 Q. And that is the way you would like it
10 if you were sitting where we are?

11 A. Yes, sir.

12 Q. All right. And if there is just one
13 reasonable doubt, or if there is ten reasonable doubts,
14 or if there are 100, all of them belong over here. But
15 it only takes one reasonable doubt for a jury to say to
16 the State, "You didn't meet your burden of proof. It's
17 your burden. You did the accusing. You didn't do the
18 proving. I am finding this person not guilty."
19 We have described reasonable doubt at
20 various times, for instance, as a beam of light. That is
21 a round circle beam of light that is shining that creates
22 doubt. And the State's obligation is to bring you
23 evidence that blackens that light, to where you can't see
24 a pin hole of reasonable doubt through that light.

25 And they have talked about that they
Sandra M. Halsey, CSR, Official Court Reporter
2517

1 might bring circumstantial evidence. They have pointed
2 out correctly that motive is not a part of their required
3 proof.

4 But when the State brings you

5 circumstantial evidence, they have got to bring you bits
6 and pieces of black tape that blacken out that light.

7 And it might be that motive never becomes apparent. But

8 it also might have been in Mr. Shook's example that we

9 found out that he had taken out a million dollar

10 insurance policy on Ms. Wallace.

11 A. Right.

12 Q. And that motive didn't come from Mr.

13 Shook, but it came from other evidence.

14 A. Right.

15 Q. And, of course, his example was where

16 you had a bunch of eyewitnesses, but could you imagine

17 that there might be some circumstance where there's bits

18 and pieces of evidence, but there is just no tying

19 together factor. There is just no glue that holds those

20 bits and pieces of evidence together, and that might be

21 lack of motive.

22 A. Right.

23 Q. There is just no explanation for this,

24 and, therefore, I think there is reasonable doubt. Could

25 you imagine that that could be the case?

Sandra M. Halsey, CSR, Official Court Reporter

2518

1 A. Yes.

2 Q. All right. So, when the State proves,

3 or tries to prove, through circumstantial evidence, they

4 have got to obliterate any light, any hint of light of

5 reasonable doubt from that beam of light, and through all

6 sorts of little -- you know, they might stick little

7 pieces of black paper up on that light.

8 But the lack of motive might have them

9 fall off, and all of a sudden there is that ray of light

10 again.

11 A. Right.

12 Q. And in that instance, you know that

13 every one of those doubts belong to Darlie Routier.

14 A. Right.

15 Q. Okay. This is the only time I get to

16 talk to you one-on-one.

17 A. Okay.

18 Q. Also, the only time you really get to

19 ask questions. So, take this chance. Take this
20 opportunity if there is something at any point that you
21 think you need to talk about.
22 So, the law requires that I talk to
23 you about punishment and the death penalty, even though I
24 don't want to, and even though I never expect this trial
25 is ever going to get to that stage. But I am required to
Sandra M. Halsey, CSR, Official Court Reporter
2519

1 do that.
2 And, Mr. Shook explained to you that
3 there are essentially two types or two degrees of murder
4 in Texas. We don't call them first degree murder, it's
5 called either capital murder or murder in the State of
6 Texas.
7 But murder is intentionally and
8 knowingly taking the life of another individual without
9 justification, and justification means self-defense.
10 If you kill someone in self-defense,
11 then you are justified in taking that life and you are
12 not going to be convicted of murder.
13 A murder carries a maximum sentence of
14 life imprisonment. Capital murder, on the other hand, is
15 one of -- is a murder committed with the additional
16 aggravating circumstance, whether it be a robbery or a
17 rape or a police officer or more than one victim or
18 whatever it is.
19 And Mr. Shook went through, I think
20 all of those maybe, or at least some of them with you.
21 And it is only in those circumstances that a death
22 penalty is even possible.
23 Now, what is important to any
24 defendant in that case, is that if a jury finds the
25 defendant guilty of capital murder, that the jury not be
Sandra M. Halsey, CSR, Official Court Reporter
2520

1 automatically predisposed to say, "The only sentence here
2 is death. It is the only thing I am going to consider."
3 Because, you know, you can imagine all of the different
4 types of crimes there might be.
5 A lot of people say that the crime
6 should fit the punishment, and I agree with that. People
7 also say that the punishment should fit the defendant.
8 And do you agree that it should do both?
9 A. Yeah.
10 Q. Okay. You know, and that is really
11 what these questions are set up to do.
12 A. Uh-huh. (Witness nodding head

13 affirmatively.)

14 Q. They are set up, and again, you only
15 get there once you find a defendant guilty, and they are
16 set up that at that point you consider all the evidence.
17 And the first part of the evidence you have got is the
18 crime itself. And you may have a additional evidence
19 that is given to you in that second phase.
20 But the point of it is that at that
21 point the jury needs to go out and say, "All right, we
22 have done part of our job. That is, we found beyond a
23 reasonable doubt that this defendant is guilty," if that
24 is what the evidence shows. "Now, let's rethink this
25 same evidence, and any additional evidence, and let's
Sandra M. Halsey, CSR, Official Court Reporter
2521

1 answer these questions with an open mind. And without
2 any leaning that I am going to give a death penalty or I
3 am going to give a life penalty. But what is the
4 evidence? What has the evidence shown me? And then I
5 will make my decision, along with the 11 others."
6 Is that all right with you?

7 A. Uh-huh. (Witness nodding head
8 affirmatively.) Yes.

9 Q. And can you keep open to, you know,
10 whether the evidence leads you to a life sentence or the
11 evidence would lead you to a death sentence, that will
12 just be whatever the evidence is?

13 A. Yes, sir.

14 Q. In whatever case that you may be
15 serving on?

16 A. That sounds fair to me.

17 Q. Okay. And every time -- I want to
18 reemphasize that I am just talking about a hypothetical
19 case, and I have to talk to you in terms of
20 abstractually, of how a case, a particular case may play
21 out. And I agree with you, it seems only fair that a
22 jury, and particularly -- I mean, what more important
23 decision might you ever be called upon to do in your
24 life, making a decision about another person?

25 About number 1, is that person guilty
Sandra M. Halsey, CSR, Official Court Reporter
2522

1 of capital murder? It's hard for me to imagine a more
2 important decision, that an outsider would have to make.

3 A. Right.

4 Q. Sometimes we make those kinds of
5 decisions about our own life, or our elderly father's
6 life, or something like that. But a stranger, that is an

7 awesome decision. And then, beyond that, what is going
8 to be the punishment of that person if I find them
9 guilty.

10 Is there anything that has been
11 covered by either Mr. Shook or myself that you need
12 further clarification on, that you think maybe we're
13 unclear on that you need to bring out? Or anything?

14 A. Not really.

15 Q. Anything that you think you need to
16 talk about?

17 A. Huh-uh. (Witness shaking head
18 negatively.)

19 Q. Okay. Sitting there right now, are
20 you just sitting square in the middle?

21 A. Yes, sir.

22 Q. Ready to hear the evidence?

23 A. Yes, sir.

24 Q. Ready to exercise your good judgment?

25 A. Sure.

Sandra M. Halsey, CSR, Official Court Reporter
2523

1 Q. Based on the evidence? Are you a
2 little nervous sitting down there?

3 A. Yes, all the eyes are over here.

4 Q. I thought sort of by the way you were
5 acting that maybe you were a little nervous.

6 A. Yes.

7 Q. And I heard on the radio that the
8 greatest fear that any people have in life is public
9 speaking.

10 A. Uh-huh. (Witness nodding head
11 affirmatively.)

12 Q. And in a manner, you are even worse,
13 you are having to "publicly speak," but in response to
14 questions. So, I think that is a really stressful thing.

15 A. Yes, it is.

16 Q. And I really appreciate your candid
17 answers and your thoughtfulness.

18

19 MR. RICHARD C. MOSTY: Let me have
20 just a moment, your Honor.

21 THE COURT: All right. Thank you very
22 much, we appreciate that.

23 MR. RICHARD C. MOSTY: I'm -- I will
24 pass the witness.

25 THE COURT: But I wasn't talking to
Sandra M. Halsey, CSR, Official Court Reporter
2524

1 you, I was talking to the gentleman back there. He runs
2 the -- knows how to turn the heat on and off.

3 MR. RICHARD C. MOSTY: I'll pass the
4 witness.

5 THE COURT: I wasn't addressing my
6 remarks to you. Can you step outside briefly.

7 THE PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: All right. But don't run
9 off, we will call you back in.

10 THE PROSPECTIVE JUROR: Yes, sir.

11

12 (Whereupon, the prospective

13 juror was excused from the

14 room, and the following

15 proceedings were held,

16 outside of her presence

17 as follows:)

18

19 THE COURT: Is this the last one

20 before lunch? All right.

21 THE CLERK: This is the last one.

22 THE COURT: Ready? What says the

23 State?

24 MR. TOBY L. SHOOK: The State will

25 accept the juror.

Sandra M. Halsey, CSR, Official Court Reporter

2525

1 THE COURT: What says the defense?

2 MR. RICHARD C. MOSTY: That is accept?

3 I wanted to make sure that I heard that right.

4 We will accept the juror.

5 THE COURT: All right. Will you have

6 Ms. Way --

7 MR. RICHARD C. MOSTY: I think that is

8 my first juror, Your Honor.

9 THE COURT: We duly note that. The

10 Court also notes that as regards fear, none of the

11 participants in this proceeding have any fear of

12 speaking.

13

14 (Whereupon, the prospective

15 juror returned to the

16 room and the proceedings

17 were resumed as follows:)

18

19 THE JUROR: Can I go?

20 THE COURT: Ma'am, you have been

21 accepted as a juror in this case.

22 THE JUROR: Okay.

23 THE COURT: This trial is going to
24 start on January the 6th.
25 Mr. Navarre, back there, will call you
Sandra M. Halsey, CSR, Official Court Reporter
2526

1 to give you the exact time to be in the Courthouse and
2 tell you where to meet and things like that.
3 We understand that you will speak to
4 your husband about this.
5 THE JUROR: Right.
6 THE COURT: Now, that is fine. Please
7 don't talk to anybody else about it.
8 THE JUROR: Right.
9 THE COURT: Particularly members of
10 the press. When this trial is over, you may talk or not
11 talk to anyone as you see fit.
12 THE JUROR: Yes, sir.
13 THE COURT: But mum is the word now
14 until the trial starts.
15 THE JUROR: Right.
16 THE COURT: If you can tell your
17 husband to do that, too. You will find things will go a
18 lot better for all of you if nobody knows that you have
19 been selected as a juror.
20 They might say, "What happened down
21 there?"
22 You just say, "They just asked me a
23 bunch of questions."
24 THE JUROR: Right.
25 THE COURT: You will be back here
Sandra M. Halsey, CSR, Official Court Reporter
2527

1 then. And so, we do have a gag order on and I can impose
2 monetary sanctions or Kerr County Jail time for
3 violations. I'm not threatening you, please understand
4 that, but I just wanted to warn you of that. So, we will
5 see your down here on the 6th of January.
6 THE JUROR: Okay.
7 THE COURT: Not here, but we're at the
8 regular courthouse.
9 THE JUROR: Right, where we were the
10 first time.
11 THE COURT: Yes. We will be calling
12 you to tell you when to come and where to go.
13 THE JUROR: Okay. Thank you.
14 THE COURT: Thanks a bunch. We
15 appreciate it. All right. A wonderful day.
16 Mr. Navarre, do we have anybody coming

17 this afternoon so far?
18 MR. NAVARRE: Pardon?
19 THE COURT: Do we have anybody coming
20 this afternoon?
21 MR. NAVARRE: Four.
22 THE COURT: Four.
23 MR. RICHARD C. MOSTY: Did you move
24 one up from yesterday?
25 MR. NAVARRE: Yes, sir. You mean from
Sandra M. Halsey, CSR, Official Court Reporter
2528

1 tomorrow?
2 MR. RICHARD C. MOSTY: Yes.
3 THE COURT: All right.

4
5 (Whereupon, a short
6 recess was taken, after
7 which time, the
8 proceedings were
9 resumed in open court,
10 in the presence and
11 hearing of the
12 Defendant, being
13 represented by her
14 Attorneys,
15 as follows:)

16
17 THE COURT: This is Raul Navarro,
18 juror number 232 on the juror's list, number 76 on ours.
19 Mr. Navarro, come on up here, please.
20 Have a seat right there.
21 This is Raul, R-A-U-L, Navarro,
22 N-A-V-A-R-R-O. Is that your name, sir?
23 THE PROSPECTIVE JUROR: Yes, sir.
24 THE COURT: Fine. Just for the
25 record, you do read, write and speak the English
Sandra M. Halsey, CSR, Official Court Reporter
2529

1 language? And you do not need a Spanish interpreter for
2 these proceedings; is that correct?
3 THE PROSPECTIVE JUROR: Yes, sir.
4 THE COURT: Will you raise your right
5 hand?
6 Do you solemnly swear or affirm you
7 will true answers make to all the questions propounded to
8 you concerning your qualifications as a juror in this
9 case, so help you God?
10 THE PROSPECTIVE JUROR: I do.

11
12 (Whereupon, the prospective
13 juror was duly sworn by the
14 Court to true answers make
15 to the questions propounded,
16 concerning qualifications, after
17 which time, the proceedings were
18 resumed as follows:)

19
20 THE COURT: All right. Thank you.
21 Mr. Navarro, you are a potential juror in the Darlie
22 Routier matter. Mrs. Routier is the defendant, she is
23 sitting right here in the burgundy dress to your far
24 right. She is represented by her attorneys, Curtis
25 Glover and Preston Douglass. Mr. Glover is from Dallas
Sandra M. Halsey, CSR, Official Court Reporter
2530

1 and Mr. Douglass is from Kerrville.
2 The State today is represented by 2
3 Dallas County Assistant District Attorneys, Toby Shook
4 and Sherri Wallace.
5 We want you to be calm. There are no
6 wrong answers down here, there won't be a test, you won't
7 receive a grade. We just have to find if you can be an
8 impartial juror in this case.

9 So, Mr. Shook.
10 MR. TOBY L. SHOOK: Thank you, Judge.

11
12 Whereupon,
13
14 RAUL NAVARRO,
15
16 was called as a prospective juror, for the purpose of
17 voir dire, having been first duly sworn by the Court to
18 speak the truth, the whole truth, and nothing but the
19 true, testified in open court, as follows:

20
21 VOIR DIRE EXAMINATION

22
23 BY MR. TOBY L. SHOOK:
24 Q. As the Judge told you, my name is Toby
25 Shook, I am one of the prosecutors on the case. I am
Sandra M. Halsey, CSR, Official Court Reporter
2531

1 going to talk to you on behalf of the State, and go over
2 just a couple of things here in the questionnaire, and
3 then some of the law that applies in this case.
4 Just like he said, there are no right

5 or wrong answers at all, we just want your honest
6 opinions.
7 Most jurors have put down, as you did
8 on your questionnaire, that you have read a little bit or
9 heard something about the case.
10 A. Uh-huh. (Witness nodding head
11 affirmatively.)
12 THE COURT: Can you say yes or no, Ms.
13 Halsey is taking all this down and we can't get down
14 uh-huhs and huh-uhs.
15 THE PROSPECTIVE JUROR: Okay.
16
17 BY MR. TOBY L. SHOOK:
18 Q. Tell me a little bit about what you
19 heard.
20 A. Just it's a big case coming down from
21 Dallas about a lady accused of killing infants.
22 Q. You don't know anything about the
23 facts?
24 A. No.
25 Q. Okay. Good. Some people read a lot,
Sandra M. Halsey, CSR, Official Court Reporter
2532

1 and some people don't read much. The point of that is,
2 we obviously have to have jurors -- to be qualified as a
3 juror you have got to wait and listen to the evidence as
4 it comes to you in the courtroom. Do you understand
5 that?
6 A. Yes, sir.
7 Q. You can't form opinions on what you
8 have read in the newspaper or seen on TV.
9 A. Right.
10 Q. I take it though from your answer you
11 have not formed any opinions or anything like that, have
12 you?
13 A. No.
14 Q. You haven't heard any facts or formed
15 any opinions?
16 A. I haven't heard much about it lately.
17 Q. Okay. And I think you understand the
18 reason for that. You might have seen on the news a
19 couple weeks ago this Richard Jewell guy?
20 That guy in Atlanta that was accused
21 of the bombing by the press down at the Olympics?
22 A. Well, I didn't read too much about it.
23 I am more into reading the sports and stuff like that.
24 Q. That's where I usually look at to see
25 how the basketball team is doing over there. But anyway,
Sandra M. Halsey, CSR, Official Court Reporter

1 he was accused of it, at least in the press, and then
2 they come to find out he didn't have anything to do with
3 it.

4 That is why we don't try people from
5 the newspaper, but in court. I see that have you been on
6 a jury before; is that right?

7 A. Yes, sir.

8 Q. That was a murder case?

9 A. Yes, sir.

10 Q. Was that here in Kerr County?

11 A. Yes, sir.

12 Q. How long ago was that?

13 A. About two years ago.

14 Q. Okay. Let me ask you: You don't know
15 any of the Dallas attorneys, obviously, do you?

16 A. No.

17 Q. None of us or the Dallas defense
18 attorneys?

19 A. No.

20 Q. There are two Kerrville attorneys?

21 A. I don't them either.

22 Q. Mr. Douglass and Mr. Mosty. Well, Mr.

23 Mosty is not here, but you don't know either one of them?

24 A. No.

25 Q. Okay. This murder case, you sat on
Sandra M. Halsey, CSR, Official Court Reporter

2534

1 the jury, and it looks like the punishment was life; is
2 that right?

3 A. Yes.

4 Q. Did the jury assess the punishment or
5 did the Judge?

6 A. The jury.

7 Q. Okay. How long was that trial?

8 A. Four days.

9 Q. Okay. And kind of give us a summary
10 of what went on in that trial. What type of murder case
11 was it?

12 A. Live-in lover accused of -- or found
13 guilty of stabbing his girlfriend.

14 Q. Okay.

15 A. I guess.

16 Q. Okay. And, y'all heard all the
17 evidence?

18 A. Yes.

19 Q. Found the defendant guilty, and then
20 did you hear more punishment evidence?

21 A. All we heard is evidence, and
22 pictures, and saw pictures.
23 Q. Okay. And then y'all decided, I
24 guess, from your deliberations that a life sentence was
25 appropriate in that particular case?
Sandra M. Halsey, CSR, Official Court Reporter
2535

1 A. Right.
2 Q. Okay. Most of our jurors haven't been
3 on a jury before, so we have to kind of go through the
4 rules. So, a lot of stuff I will go over will be stuff
5 you have already experienced. Okay?
6 A. Right.
7 Q. Because the same rules apply in every
8 case.
9 A. Okay.
10 Q. Just because you have sat on one jury
11 doesn't make you not eligible to sit on another one.
12 A. Well, he was a Mexican national and it
13 was hard for them to translate. So, I knew what they
14 were saying, but --
15 Q. So, you had heads up on everything?
16 A. Yes. I knew what the questions were
17 in Spanish and English, but he didn't.
18 Q. Okay. The defendant didn't?
19 A. Right.
20 Q. Okay. Did you think it was a pretty
21 fair process all the way through?
22 A. Not really.
23 Q. Because of that translation problem?
24 A. Yes, they lost something.
25 Q. So, what the translator was saying to
Sandra M. Halsey, CSR, Official Court Reporter
2536

1 him, you could tell wasn't an accurate translation?
2 A. Right, his attorney would ask him a
3 question and she would change it, a word here or there.
4 Q. Okay. Which could make a big
5 difference?
6 A. Right, to him it could have.
7 Q. Yeah. But, all in all, did you think
8 a life sentence was still appropriate?
9 A. Yes.
10 Q. Okay. Now, let me talk to you a bit.
11 Let's see, it looks like you are a driver and salesman
12 for Budweiser. Right?
13 A. I used to be.
14 Q. Okay. Oh, now you are at Carson's, is

15 it?
16 A. Miller Lite.
17 Q. Miller Lite.
18 A. Carson Distributing.
19 Q. Okay. That's right. Same type stuff?
20 A. Same thing.
21 Q. And you grew up in this area?
22 A. No, I lived here for about eight
23 years.
24 Q. Where are you from originally?
25 A. Uvalde.
Sandra M. Halsey, CSR, Official Court Reporter
2537

1 Q. What brought you to this area?
2 A. Budweiser.
3 Q. Did they?
4 A. Yes.
5 Q. Do you like it here?
6 A. Yeah, it's nice.
7 Q. Okay. Let me go over just a couple of
8 things as far as what you feel about the death penalty.
9 Obviously, you know that the State is seeking the death
10 penalty in this type of case.
11 So, we want to talk to every juror
12 about how they personally feel about it as a law. Do you
13 agree with it that we should have it as the law?
14 A. Yes, sir.
15 Q. Okay. What purpose do you think it
16 serves?
17 A. Well, I just, you know, I feel that
18 you should do unto others as they do unto you, kind of
19 deal.
20 Q. Okay. Sometimes it's just the just
21 result.
22 A. Right.
23 Q. In some type cases. Do you think it's
24 a penalty that should be incurred in every case or just
25 depending on the facts of each case?
Sandra M. Halsey, CSR, Official Court Reporter
2538

1 A. Facts, and making sure that they are
2 guilty.
3 Q. Sure.
4 A. You know.
5 Q. Okay.
6 A. I don't want to punish somebody and
7 then later find out that something happened that was --
8 Q. Something you would really want to

9 sure about?

10 A. Right, so I can live comfortably.

11 Q. Okay. Have you ever been against the

12 death penalty at all?

13 A. No.

14 Q. Okay. Let me tell you this: Every

15 murder case in Texas obviously isn't a death penalty

16 case. We can have some bad murderers and they get life

17 sentences just like the jury you sat on.

18 That was a killing, like you said, a

19 live-in lover type situation.

20 A. Uh-huh. (Witness nodding head

21 affirmatively.) Yes.

22 Q. That is not a death penalty in Texas.

23 Obviously, he was not tried for the death penalty, but

24 you can get a life sentence for that.

25 A. Right.

Sandra M. Halsey, CSR, Official Court Reporter

2539

1 Q. You have to have a murder plus

2 something else in Texas to be eligible for the death

3 penalty. Okay? It's got to be something else.

4 I'm going to give you a couple of

5 examples: Murder during the course of a felony. You

6 have probably seen a situation where a guy goes and robs

7 a liquor store, robs a grocery store, kills the clerk

8 during the robbery? That could be a death penalty case.

9 Or someone breaks into your house at night or day and

10 kills someone in the home, during the break-in, that

11 could be a death penalty case because it was during a

12 burglary; or murder during a rape or kidnapping, all of

13 those are death penalty-type cases.

14 Murder of a police officer while he is

15 on duty could be a death penalty case, or a fireman, or

16 murder for hire, like a hit man situation, a mass

17 murderer could also be under the death penalty statute,

18 as well as the murder of a child under the age six.

19 A. Uh-huh. (Witness nodding head

20 affirmatively.)

21 Q. In fact, the indictment for this case

22 is there before you, I think. That piece of paper, that

23 typewritten portion. Read that to yourself.

24 A. Okay.

25 Q. Mr. Navarro, that is the allegation of

Sandra M. Halsey, CSR, Official Court Reporter

2540

1 the intentional killing of a child under the age of six.

2 I can't commit you to your verdict, obviously, because
3 you have not heard from any witnesses.
4 But what I need to know is this: Is
5 that the type of case you feel might be appropriate for
6 the death penalty, depending on the facts?
7 A. That is going to be presented to me?
8 Q. Yes, I mean, is that the type of case?
9 Again, I can't commit to your verdict because you haven't
10 heard from any witnesses, but just that type of murder.
11 Is that the type in your mind that you
12 think, "Well, this might be a death penalty case,"
13 depending on the facts?
14 A. Yes, sir.
15 Q. Okay. In Texas, the way a capital
16 murder case works is somewhat similar to the way your
17 murder case worked, especially in the first part.
18 We have to prove that indictment
19 beyond a reasonable doubt. Just like in the murder case
20 you sat on the State had to prove its indictment beyond a
21 reasonable doubt.
22 Obviously, if we don't do that,
23 everyone goes home. If we do do that, entitled to a
24 verdict of guilt. But the case isn't over then. We have
25 a punishment stage we go to, and the punishment stage is
Sandra M. Halsey, CSR, Official Court Reporter
2541

1 a little bit different in a capital murder trial.
2 You may hear additional evidence. And
3 you can do that like in a murder trial that you sat on
4 also, I don't know if they did or not. But you can hear
5 background evidence, you know, if there is prior criminal
6 history, bad character evidence. Also, you can hear, you
7 know, if there is no criminal history and good character
8 evidence; just background evidence, things of that
9 nature.
10 At the close of that evidence though,
11 you get these questions. And this is what makes the
12 difference between the two trials.
13 In a regular murder case, you just,
14 after you hear all the evidence, decide what is the
15 appropriate punishment in terms of years. Okay?
16 A. Uh-huh. (Witness nodding head
17 affirmatively.)
18 Q. But in this case, you just answer
19 questions. And I'll go over these questions here in more
20 detail in a moment, but that first question is a "yes" or
21 "no" question the State has to prove.
22 And basically, what it asks is this:
23 Is there a probability the defendant will be a continuing

24 danger to society? Will they continue to be a threat to
25 society?

Sandra M. Halsey, CSR, Official Court Reporter
2542

1 If you answer that "yes," you go on to
2 that next question. And the next question basically says
3 this: You look at all the evidence, and if you see
4 something, what we call mitigating evidence, some
5 evidence that tells you in your mind or your heart or
6 both, that you think the defendant should get a life
7 sentence rather than a death sentence, you can answer the
8 question that way. Now, if you don't see that evidence,
9 you would answer it "no."

10 The point of it is this: If you
11 answer that first question "yes" and that second question
12 "no," a "yes" and a "no," that will equal a death
13 sentence. You don't write death in, or anything like
14 that, but the Judge would sentence the defendant to death
15 on a "yes" and "no" answer.

16 Now, if they are answered any other
17 way, they will get a life sentence. But those are the
18 two choices, the two possible outcomes in a capital case.
19 Is that clear to you?

20 A. Yes, sir.

21 Q. All depending on how you answer these
22 questions. Do you know the method of execution in Texas?

23 A. Needle.

24 Q. That's right. And you probably know
25 from reading the papers that that punishment is actually
Sandra M. Halsey, CSR, Official Court Reporter

2543

1 carried out in Texas?

2 A. Yes.

3 Q. We have got some states that don't
4 ever do it, but Texas leads the nation in executions,
5 lethal injection. Usually they do average about 17
6 executions a year.

7 So, it's one thing for us to sit
8 around and talk about it philosophically, but in Texas it
9 is a real punishment. What I need to know is this: And
10 you have sat on a jury before, so you know it would be
11 kind of tough to make these decisions.

12 But I want to know if you could sit
13 and listen to evidence, and if we do prove these
14 questions to you, if you found the defendant guilty
15 first, and if we do prove these questions to you that
16 they should be answered "yes" and "no," could you
17 actually answer them that way knowing that the defendant

18 would be executed someday?

19 A. Yes, sir.

20 Q. Okay. Fair enough. Let me go over a

21 couple of things. One is the type of evidence that will

22 come in. And, again, you will be an old hat at this

23 because you have sat through a criminal trial before.

24 Okay?

25 Obviously, it usually comes in through

Sandra M. Halsey, CSR, Official Court Reporter

2544

1 witnesses, and as you said, photographs. We have what we

2 call direct evidence or indirect evidence. Was there, in

3 the murder case you sat on, was there an eyewitness to

4 the case?

5 A. No.

6 Q. Okay. What type of evidence was there

7 of his guilt? Was there a confession or anything like

8 that?

9 A There was a confession and just the

10 pictures.

11 Q. Okay.

12 A. And just how he could have stabbed

13 her, no other way.

14 Q. Okay. That then was what we call

15 circumstantial evidence. Right?

16 A. Uh-huh. (Witness nodding head

17 affirmatively.)

18 Q. If you have got an eyewitness to it,

19 that is direct evidence.

20 A. Right.

21 Q. Any other evidence is circumstantial

22 evidence, evidence that links the defendant to the crime.

23 Maybe how the murder occurred, like you said --

24 A. Right.

25 Q. -- is one thing that shows that he

Sandra M. Halsey, CSR, Official Court Reporter

2545

1 committed the murder, that type of thing. It could be

2 anything. The crime scene itself, fingerprints,

3 whatever. But it's any other type of evidence.

4 And as your understanding is,

5 obviously, in a murder case, a lot of times the State

6 doesn't have an eyewitness. So, we have to rely on

7 circumstantial evidence. You have done it before.

8 You have convicted someone, I guess,

9 solely on circumstantial evidence?

10 A. Yes, sir.

11 Q. And if we prove that to you beyond a

12 reasonable doubt you could do that in this case?
13 A. Yes.
14 Q. If we proved it to you?
15 A. If you proved it.
16 Q. Okay. Another thing that comes up
17 sometimes is motive, the reason for the killing.
18 That might be very apparent. I don't
19 know in your case, was there a motive proven at all? Was
20 it just a fight?
21 A. There was a motive.
22 Q. Was it a real clear one?
23 A. Well, they made it sound -- it
24 wasn't -- she wasn't on trial, because she was not there.
25 But they made it a motive, why he did.
Sandra M. Halsey, CSR, Official Court Reporter
2546

1 Q. Okay. Okay. Sometimes the motive
2 might be real clear.
3 A. Right.
4 Q. Other times you may not know what the
5 motive is because it could be locked away in the
6 defendant's mind. Other times it may not be so clear,
7 everyone might have their own opinion what the motive is.
8 I mean, they don't have any doubt
9 about who was killed and who did the killing, but
10 everyone might have their own opinion as to what the true
11 motive was. But the point is this: The law does not
12 require the State to prove motive. Okay?
13 A. Okay.
14 Q. To get a person guilty.
15 A. Right.
16 Q. We just have to prove those elements
17 that are there in the indictment.
18 A. Uh-huh. (Witness nodding head
19 affirmatively.)
20 Q. Can you follow that law?
21 A. Yes, sir.
22 Q. Okay. Let me talk a little bit about
23 these punishment questions. Because they are -- you
24 didn't get these in your murder case, so it's a little
25 bit different.
Sandra M. Halsey, CSR, Official Court Reporter
2547

1 Again, you wouldn't get to these
2 unless you found the defendant guilty. Okay?
3 A. Okay.
4 Q. But there is no automatic answers to
5 these questions, Mr. Navarro. You know? If we needed

6 automatic answers, we wouldn't even ask you these
7 questions.

8 Obviously, in y'all's case, you
9 didn't -- once you found the man guilty, you didn't just
10 go back there and give him a life sentence. Y'all went
11 back there, heard maybe some additional evidence, and
12 then deliberated about it. Right?

13 A. Yes, sir.

14 Q. How long were your deliberations; do
15 you recall?

16 A. About an hour and a half.

17 Q. Okay. So, you didn't just go back
18 there and write life, y'all talked about it.

19 A. We talked about it.

20 Q. Looked at all the evidence, and did
21 what you thought was fair. Right?

22 A. Right, and asked for more evidence.

23 Q. Okay. Asked for more evidence from
24 the court?

25 A. Uh-huh. (Witness nodding head
Sandra M. Halsey, CSR, Official Court Reporter
2548

1 affirmatively.)

2 Q. That is what the law contemplates you
3 do. You keep your mind open and reexamine the issue
4 here. Just because you found someone guilty of capital
5 murder, you don't just go write in death.
6 You look at all the evidence. You
7 might hear additional evidence in the punishment phase.
8 Okay?

9 A. Okay.

10 Q. Then you get this question: And this
11 question starts out with a "no" answer. Okay? Just like
12 you start out the trial where someone is presumed to be
13 innocent.

14 It starts out "no," and we have to
15 prove it beyond a reasonable doubt it should be answered
16 "yes." If you will just read along silently while I read
17 aloud.

18 "Do you find from the evidence beyond
19 a reasonable doubt that there is a probability that the
20 defendant would commit criminal acts of violence that
21 would constitute a continuing threat to society?"

22 You see where that question is asking
23 you and the other jurors to predict how the defendant
24 will be behave in the future. And you do that just based
25 on the evidence of the murder itself and any other
Sandra M. Halsey, CSR, Official Court Reporter

1 background evidence.

2 Do you feel you could answer that

3 question "yes" if you were given enough facts and data
4 and information?

5 A. Yes, sir.

6 Q. Okay. Now, there is no requirement

7 under the law if someone has been in the pen or someone
8 has had a long criminal history for you to be able to
9 answer that question. They very well might have.

10 It could be another situation where

11 you have only the facts of the case alone surrounding the
12 murder to answer that question "yes." And, again, we
13 can't tie you down or commit you to a certain set of
14 facts.

15 But do you think you could answer that

16 question "yes," based on the facts of the case alone?

17 A. Yes, sir.

18 Q. Okay. Now, you probably remember from

19 the trial the Judge gave you what is called the Court's
20 Charge. It's a legal document that has instructions and
21 legal definitions?

22 A. Yes.

23 Q. You will get that again in this case.

24 Except one difference is, as to these two questions, you
25 won't get definitions as to what these words mean. That
Sandra M. Halsey, CSR, Official Court Reporter
2550

1 will be up to you and the other jurors. Okay?

2 A. Okay.

3 Q. Just let me go over a couple of the

4 words: "Probability." We have to prove there is a
5 probability that the defendant would commit criminal acts
6 of violence. When we use the word probability, what does
7 that mean to you?

8 A. Taking a chance.

9 Q. Okay. Kind of like gambling?

10 A. Gambling, yeah.

11 Q. Okay. In this case, as far as

12 probability where they would commit criminal acts of
13 violence, would the words "more likely than not," does
14 that mean probability to you, more likely than not that
15 they would commit criminal acts of violence?

16 A. Yes.

17 Q. Okay. Like I said, it would be up to

18 you and the other jurors. But what we don't have to
19 prove is that it's a certainty. Do you understand? We
20 could never prove a certainty.

21 A. I understand.
22 Q. Okay. We have to prove that the
23 defendant would "commit criminal acts of violence." What
24 would criminal acts of violence mean to you?
25 A. Breaking probation, burglary, rob,
Sandra M. Halsey, CSR, Official Court Reporter
2551

1 rape, whatever.
2 Q. All right. Any type of violent
3 offense; murder, rape, burglary, like you said?
4 A. Yeah.
5 Q. Okay. Fair enough.
6 Then "society," what does that mean to
7 you?
8 A. People.
9 Q. Anyone and everyone?
10 A. Yes, sir.
11 Q. Would it include people down in the
12 prison system; prisoners, guards, people that work there,
13 visitors?
14 A. I think that is their society, yeah.
15 Q. Okay. Again, the point of this
16 question is: The State has to prove it to you, and what
17 you have to do is wait until all of the evidence is in in
18 the punishment stage.
19 Then, just like you did in your
20 previous trial, discuss all the evidence, and then decide
21 has the State proven this question to me beyond a
22 reasonable doubt.
23 And if they have, then you answer it
24 "yes." But it is not one where you have found him
25 guilty, and say I will just answer it "yes." You
Sandra M. Halsey, CSR, Official Court Reporter
2552

1 understand that?
2 A. Yes, sir.
3 Q. All right. Now, if you do answer that
4 question "yes," like I said, you go to this last
5 question. The thing about this question is neither side
6 has to prove this to you, neither side has the burden of
7 proof. You just kind of look at it all. It is kind
8 lengthy.
9 It asks: "Taking into consideration
10 all of the evidence including the circumstances of the
11 offense, the defendant's character and background, the
12 personal moral culpability of the defendant, is there a
13 sufficient mitigating circumstance or circumstances to
14 warrant that a sentence of life imprisonment rather than

15 a death sentence be imposed?"

16 Like I said, it gets kind of lengthy.

17 This is the mitigating question, as we call it. Or I

18 kind of call it the safety net question. What it says

19 is: Can you keep your mind open and look at all the

20 evidence; the murder itself and any background evidence

21 you have on the defendant? And even though you found

22 them guilty, even though you find they are a continuing

23 danger, is there something in their background that let's

24 you know that they should get a life sentence, rather

25 than a death sentence?

Sandra M. Halsey, CSR, Official Court Reporter

2553

1 Is it the fair thing to do, in other

2 words?

3 A. Yes.

4 Q. Okay. Does that sound like a fair

5 question?

6 A. Yes, sir.

7 Q. Okay. It's a way to spare the

8 defendant's life, really. You have to do it based on the

9 evidence.

10 A. Right.

11 Q. Now, the thing about this question is,

12 what is mitigating will be up to you and the other

13 jurors. We can't tell you, and it can be up to you

14 alone. You can disagree with the other jurors. You just

15 have to be able to assure the Court that you will keep

16 your mind open to this type evidence. Can you do that?

17 A. Yes, sir.

18 Q. Okay. Like I said, it's going to be

19 up to you. Now, we talked to a lot of jurors, and I want

20 to go over a few things some people have said in the

21 past. You don't have to agree with any of them, and you

22 don't have to sit there and think what mitigating

23 evidence would be. Okay?

24 Like I said, you don't even have to

25 agree. An example: You might hear evidence, where a

Sandra M. Halsey, CSR, Official Court Reporter

2554

1 defendant, maybe he has a college degree in physics,

2 maybe he is a doctor in physics or something, from

3 Harvard or Yale.

4 A. Uh-huh. (Witness nodding head

5 affirmatively.)

6 Q. One juror will say, "You know, in my

7 mind that is mitigating because he has done something

8 constructive with his life. He is a very intelligent
9 person."

10 Another juror will say, "Actually,
11 that is aggravating. Someone that smart shouldn't get
12 themselves in this type situation."

13 So, it can cut both ways.

14 Sometimes, you may hear of -- in a
15 capital murder case, a person who commits a crime under
16 the influence of drugs or alcohol. I'm talking about
17 voluntarily taking them.

18 A. Uh-huh. (Witness nodding head
19 affirmatively.)

20 Q. And just get drunk and get high and go
21 commit the offense. In Texas that is no legal defense,
22 you know, you are still held responsible for your acts.
23 But some people might view that as mitigating when it
24 gets into punishment, and other people view it as
25 aggravating. Does it fall either way with you?

Sandra M. Halsey, CSR, Official Court Reporter
2555

1 A. Well, they are responsible for their
2 actions.

3 Q. Okay. Fair enough. Sometimes you
4 hear evidence of a defendant's background, you know.
5 Maybe they were physically beaten when they were young,
6 or maybe sexually abused when they were young. Some
7 people view that as possibly mitigating evidence. And
8 other people say, "No." Other people tell us, "Well, I
9 will just have to wait and hear it." Does it cut one way
10 or the other with you?

11 A. No.

12 Q. Okay. Your mind is open to it?

13 A. Yes, sir.

14 Q. Okay. And that is what it is, we
15 can't require you to think of anything as long as your
16 mind is open to it.

17 A. Right.

18 Q. And, again, you are not walking the
19 defendant out the door, it's still a life sentence, you
20 know.

21 A. Okay.

22 Q. You have given someone a life sentence
23 before, I'm sure, you know, that is a harsh punishment in
24 itself.

25 A. Yes, sir.

Sandra M. Halsey, CSR, Official Court Reporter
2556

1 Q. Obviously. But that is the question

2 you have to keep your mind open to and that is the last
3 thing you get to.
4 Now, let me go over some of the rules
5 that apply in this case. And like I started out, this
6 will be kind of old hat, because these same exact rules
7 applied in your other case that you sat as a juror on.
8 The presumption of innocence; the
9 defendant starts out with that presumption of innocence,
10 and we have to overcome that presumption. But as we
11 start the trial, she is presumed to be innocent.
12 That is how all criminal trials start
13 out. That is how the defendant in your case started out.
14 Then the State puts on the evidence and overcomes that
15 presumption.
16 Would you follow that law and presume
17 the defendant to be innocent in this case?
18 A. Yes, sir.
19 Q. Okay. That means that the fact that
20 the defendant has been indicted and arrested is no
21 evidence of the defendant's guilt.
22 A. Right.
23 Q. Like Judge Tolle said, that indictment
24 that you read, it is just a piece of paper. Okay?
25 A. Okay.
Sandra M. Halsey, CSR, Official Court Reporter
2557

1 Q. The fact that we're even going through
2 this process is no evidence. You have to wait for the
3 witnesses to testify and then you make your decision.
4 Could you follow that rule of law?
5 A. Yes, sir.
6 Q. Okay. Fair enough. The defendant has
7 a right not to testify in every case. If you want to
8 testify, you can, no one can stop you.
9 But if you choose not to, the jurors
10 can't hold that against you. The defendant in your case,
11 did he take the stand and testify at all?
12 A. Yes, sir.
13 Q. Okay. He exercised his right to
14 testify?
15 A. Yes.
16 Q. Now, if he had not, the Judge would
17 have instructed you that you can't use that as evidence
18 against him. Okay?
19 A. Okay.
20 Q. You know, it's just something that you
21 can't consider. Could you follow that rule of law?
22 A. Yes, sir.
23 Q. Okay. Do you understand that that is

24 a cornerstone of the Constitution?
25 A. Uh-huh. (Witness nodding head
Sandra M. Halsey, CSR, Official Court Reporter
2558

1 affirmatively.) Yes, sir.
2 Q. You might want to hear from the
3 defendant, but if they don't testify, you can't use it as
4 evidence against them. Do you recognize that?
5 A. Yes, sir.
6 Q. Does that seem like a fair law to you?
7 A. It's the individual's right.
8 Q. Okay. Some people are bothered by
9 that. But other people say, "That is the law and I think
10 it's a good law and I abide by it." How do you feel
11 about it?
12 A. Well, I would -- I don't know, I don't
13 know. I just it's their right. I can't be thinking for
14 them.
15 Q. Okay. So it's okay with you? You
16 have no objection to that?
17 A. Yes, sir.
18 Q. All right. Fair enough. The Judge,
19 I'm sure, instructed you in that other case as Judge
20 Tolle will in this case, that you hear about parole laws
21 and early release.
22 Now, those change all the time. We
23 have no control over those, so you can't consider those
24 when you are going into your deliberations. Okay?
25 You just have to make your decisions
Sandra M. Halsey, CSR, Official Court Reporter

2559

1 based on the evidence. Can you follow that law?
2 A. Yes, sir.
3 Q. All right. You have to start all
4 witnesses out the same. Obviously, in any criminal case
5 you have, police officers will testify. Some people have
6 had negative experiences with police officers, and they
7 wouldn't necessarily believe them.
8 Other people have had very positive
9 experiences. But if you did have a positive
10 experience -- you can't start them ahead of the other
11 jurors (sic). Okay?
12 A. Okay.
13 Q. The point is, you have to start all
14 witnesses out the same. And, then as you sit over here
15 as a juror, you judge their credibility. Could you do
16 that?

17 A. Yes, sir.

18 Q. Okay. You would start them all the

19 same and then wait and judge their credibility when they
20 testify?

21 A. Yes, sir.

22 Q. Okay. Oh, I was going to ask you

23 this: You know someone, it looks like, they had a

24 robbery charge on them and did some time; is that right?

25 A. Yes, sir.

Sandra M. Halsey, CSR, Official Court Reporter

2560

1 Q. Eddie Rodriguez?

2 A. Yes, sir.

3 Q. How did you know him?

4 A. Grew up together.

5 Q. Okay. Did you know anything about his

6 case at all?

7 A. No, I was out of the state at the

8 time.

9 Q. Okay. And, the O.J. Simpson case, it

10 looks like you put down, we had a note on there, where

11 the police may not have done a thorough job of

12 investigating. You put down O.J. Simpson.

13 Did you follow the O.J. Simpson case

14 very --

15 A. I tried, but not really. Once it got

16 too long, I just gave up.

17 Q. It went on for months and months.

18 A. A year, yeah.

19 Q. Did you draw any conclusions about the

20 case? Have any opinions about anything?

21 A. At first I thought he was innocent,

22 but then later on, no.

23 Q. After you heard the evidence?

24 A. Evidence, and I just thought the cops

25 didn't do their job out there. Not here, but out there.

Sandra M. Halsey, CSR, Official Court Reporter

2561

1 Q. You thought he committed the offense,

2 but the police just didn't do a thorough investigation?

3 A. Right.

4 Q. Okay. Oh, as far as the time goes,

5 this kind of goes into O.J. Simpson. This trial will not

6 be lasting like the O.J. Simpson one. It won't go on for

7 months. Your case, I think, probably went rather

8 quickly. You said four days you were down here?

9 A. Yes, four days. Yeah.

10 Q. This case is set to go January the

11 6th. And we can't tell you how long it will last, but we
12 don't think it will be more than two weeks. There is a
13 possibility it might be longer, but that is the best
14 guess we can give you. But it might be shorter. Okay?

15 A. Okay.

16 Q. But Judge Tolle's schedule is from
17 9:00 to 5:00 and you go home at night. The only time you
18 would be sequestered is if y'all were up late
19 deliberating for some reason, you know, into the evening
20 hours. Then you might be sequestered. Otherwise, you
21 could go home. Okay?

22 A. Okay.

23 Q. That presents -- obviously, it is an
24 inconvenience to anybody.

25 A. Well, yes, since I started this new
Sandra M. Halsey, CSR, Official Court Reporter
2562

1 job, yeah.

2 Q. But -- all right.

3 A. That would be okay.

4 Q. Fair enough. Do you have any
5 questions over anything we have gone over?

6 A. No, sir.

7 Q. I know this is kind of like a review
8 for you since you have been on a murder case.

9 A. Yes.

10 Q. In that case, I guess you waited for
11 all of the evidence to come in?

12 A. Yes, sir.

13 Q. That is where you made your decisions?

14 A. Yes, sir.

15 Q. And that is what we're expecting with
16 this case.

17 A. Right.

18 Q. All right. Appreciate your patience.

19 A. Yes, sir.

20 Q. Okay.

21

22 THE COURT: Pass the witness?

23 MR. TOBY L. SHOOK: Pass the witness.

24 THE COURT: Mr. Glover.

25 MR. CURTIS GLOVER: Yes, sir.

Sandra M. Halsey, CSR, Official Court Reporter
2563

1 THE COURT: All right. Thank you.

2

3 VOIR DIRE EXAMINATION

4

5 BY MR. CURTIS GLOVER:

6 Q. Mr. Navarro, you are probably the most
7 well informed prospective juror we have had, having sat
8 on a major criminal case. You seem to understand
9 everything that is going on.
10 Let me just kind of go over some of
11 the same principles. The lawyers are big about doing
12 that. You heard from the lawyers in the previous case
13 you were in, as well as from the prosecutor in this one.
14 Now, you will here it again from me.
15 So, just kind of bear with us and I will talk to you here
16 in just a few minutes and we'll decide what we're going
17 to do.
18 It's just like everybody else told you
19 that has talked with you, as she sits there now, she is
20 presumed innocent. And the law just sometimes plays lip
21 service to that word, "presumed to be."
22 And people come in here and they kind
23 of give us a hint that maybe they can't presume that,
24 simply because they heard news reports. And something
25 they have heard seemed rather forceful to them.
Sandra M. Halsey, CSR, Official Court Reporter
2564

1 So, they just pay lip service, and
2 they say, "Yes, I could follow the law." And it
3 sometimes makes me wonder what is in their heart of
4 hearts when they say that to us. You know?
5 Are they just saying, "You know, I
6 will tell that guy that I will follow the law and presume
7 her to be innocent, but I know something I have heard in
8 the past really gnaws at my mind and deep inside of my
9 mind and my heart of hearts I feel like she is not,
10 simply because of what I have read in the newspaper or
11 heard on the television or on the radio."
12 You've indicated that you read
13 something here in the newspaper about this case.
14 A. Yes, the San Antonio paper.
15 Q. It was in the San Antonio paper?
16 Okay.
17 What do you recall that you read?
18 A. Just that she was from Dallas or a
19 suburb of Dallas.
20 Q. Okay.
21 A. And two children were involved, that
22 is about it.
23 Q. Okay. Do you remember anything in
24 particular about the facts?
25 A. The facts?
Sandra M. Halsey, CSR, Official Court Reporter

1 Q. Yeah.

2 A. No. I was just curious what happened

3 to the husband, that's all, when I read the article. I

4 only read it once and threw the paper away. I usually go

5 to the sports section, so --

6 Q. Do you just take the San Antonio

7 paper?

8 A. Yes, sir.

9 Q. You didn't read anything here in the

10 local paper about it when it came here to Kerrville?

11 A. No, I don't buy the Kerrville paper.

12 Q. A lot of people don't.

13

14 THE COURT: That won't go beyond us.

15

16 BY MR. CURTIS GLOVER:

17 Q. One lady said don't tell anybody, but

18 I don't read the Kerrville newspaper.

19 Anyway, what I want to get with you on

20 is whether or not there is anything in your mind that

21 might be deep set in your mind that you need to share

22 with us?

23 A. No. I read that article, I guess,

24 about two weeks before I was called to serve.

25 Q. Okay. Do you recall whether or not

Sandra M. Halsey, CSR, Official Court Reporter

2566

1 you discussed that -- this is kind of an unusual

2 situation that you read about there. Did you discuss it

3 with your wife or any coworkers?

4 A. Well, I didn't know too much about it

5 so we talked about it, yes.

6 Q. You did talk about it with your wife?

7 A. Yes.

8 Q. Okay. What did she say?

9 A. She said here is the article and this

10 is what they say, and that is it.

11 Q. Okay. I kind of feel like what you

12 told you us here that you will presume her to be

13 innocent.

14 And you, having sat on a case before,

15 you can certainly appreciate that.

16 A. Yes, sir.

17 Q. The importance of your presuming that.

18 A. Yes, sir.

19 Q. It's just like that indictment that is

20 sitting there before you and everybody has talked with

21 you about that. It's simply a piece of paper which has
22 an allegation on it.
23 That a Grand Jury, which meets in
24 secret, and they meet here the same way they do in Dallas
25 County or Harris County or Uvalde, or wherever Grand
Sandra M. Halsey, CSR, Official Court Reporter
2567

1 Juries happen to meet in counties, they meet in secret
2 and the matter is conducted by the district attorney.
3 And they can hear something read from a piece of paper
4 from the police department, or from a complainant, or
5 whoever.
6 They can take two hours to return an
7 indictment or they can take 30 seconds to return an
8 indictment. Can you appreciate that?
9 A. Well, yes.
10 Q. I mean, you know, if you heard in a
11 case that somebody had heard something for 30 seconds and
12 they base a decision to return an indictment based on
13 that, then, perhaps, they didn't hear enough. Can you
14 appreciate that?
15 A. Yes, sir.
16 Q. Okay. People get indicted all of the
17 time and don't even know they are going to get indicted.
18 Didn't even know they were being investigated?
19 A. Right, I understand.
20 Q. Does that kind of bring home to you
21 the unimportance of that document and that you shouldn't
22 consider that as any evidence of guilt at all?
23 A. I understand.
24 Q. Okay. Can you assure her that you
25 will not do that? Consider that as any evidence of guilt
Sandra M. Halsey, CSR, Official Court Reporter
2568

1 in this case?
2 A. No, this is not evidence.
3 Q. Okay. You have been there and you
4 know that is not evidence?
5 A. No, it's not.
6 Q. Okay. It just simply tells the
7 district attorney what he hopes to attempt to prove, and
8 it tells her what she is charged with?
9 A. Right.
10 Q. That is exactly what it is and nothing
11 more and nothing less?
12 A. Correct.
13 Q. Okay. Going along with the
14 proposition that she is presumed to be innocent, is her

15 right to remain silent, and sometimes I don't know that
16 people fully understand that.
17 They will say, "Well, if the
18 Constitution says she has a right to remain silent, then,
19 by golly, I will follow the law, and give her that right
20 and if she doesn't testify I won't hold it against her,
21 simply because the law says that."
22 There is nothing in the law that says
23 you have to agree with any of it. You can say, "Hey, I
24 don't agree with any given amendment to the Constitution
25 or any aspect of the Bill of Rights."
Sandra M. Halsey, CSR, Official Court Reporter
2569

1 You as a citizen in a democracy can
2 say, "Hey, I disagree with that."
3 There is nothing in the law that says
4 you have to agree with the law. You understand?
5 A. That you have to agree with the law?
6 Q. You don't have to agree with it, but
7 you have to follow it.
8 A. You have to follow it, yes.
9 Q. You have to follow it, yes, but you
10 don't have to agree with it. If you come into this
11 courtroom and you say, "Hey, I disagree with that aspect
12 of the law," that is perfectly fine.
13 You have a right to do that here
14 today. And a lot of folks disagree with the law that
15 says -- a lot of people, Mr. Navarro, disagree with the
16 right of a person to remain silent.
17 They say, "Hey, if somebody is down
18 here charged with a crime, they ought to jump on that
19 witness stand and tell us their side of it."
20 And they will say, "I disagree with
21 that." That's fine.
22 But to sit on a criminal case, you
23 have to agree with that proposition and that right.
24 A. I understand.
25 Q. Now again, it's just like I used that
Sandra M. Halsey, CSR, Official Court Reporter
2570

1 term a while ago, I said, you know a lot of people come
2 in and they pay lip service to these things.
3 But deep in their mind and their heart
4 of hearts they don't really agree with that. And let's
5 talk about why that law is there.
6 It's just with the same proposition
7 that they told you that the burden of proof in this case
8 is over there. Those that do the accusing have to do the

9 proving.
10 Nothing wrong with that, is there?
11 A. No, sir.
12 Q. And along with that same proposition,
13 there is nothing required from this side of this
14 courtroom at all under the law.
15 It was the same way in the case that
16 you had before.
17 A. Right.
18 Q. And you have indicated that the
19 defendant took the witness stand in that case and
20 apparently explained this, that, or the other, and may
21 have brought other witnesses along in his behalf.
22 A. Right.
23 Q. And that is all well and good, a
24 person certainly has that right to do that. But you
25 couldn't look for them for any kind of proof.
Sandra M. Halsey, CSR, Official Court Reporter
2571

1 But once, of course, if they got on
2 the witness stand and they told their side, then they are
3 taken like any other witness.
4 But, the fact that they can remain
5 silent and there is nothing that you can look to from
6 this side of the courtroom, goes along with that same
7 proposition that the burden of proof is over there.
8 So, you can't look to this side for
9 anything. That ties right in with her right to remain
10 silent, if she so elects, or any defendant for that
11 matter.
12 And you didn't have that proposition
13 in your case because the defendant did testify.
14 And I don't know whether the defendant
15 in this case will testify; will or won't.
16 That is a decision her lawyers make on
17 down the trail somewhere.
18 A. Okay.
19 Q. But in the eventuality that a person
20 doesn't, the law says you cannot consider that. You
21 can't even discuss it. You didn't get that in your other
22 case.
23 The Judge didn't tell you that,
24 because the defendant obviously testified.
25 But if it should occur in this case,
Sandra M. Halsey, CSR, Official Court Reporter
2572

1 Judge Tolle would say to you and the rest of the jurors,
2 you are not to discuss that, you are not to mention it,

3 allude to it, in any manner.
4 The fact that that person chose to
5 exercise their right to remain silent. The reason for
6 that is, she has no burden. She has no burden to do
7 anything.
8 The burden is over there for them to
9 prove her guilt beyond a reasonable doubt. And you
10 understand that, also? You got that?
11 A. Yes, sir, I understand that.
12 Q. Okay. Well, will you hold them to
13 that burden, Mr. Navarro?
14 A. Yes, sir.
15 Q. Okay. Again, the credibility, and you
16 saw that before, the credibility of the witnesses, those
17 that testify, it's up to the jury to determine who is or
18 who is not telling the truth.
19 Disregard a portion of what they say,
20 you can believe all of what they say, or you can
21 disregard all of it and say, "I don't believe it." You
22 understand that?
23 A. Yes, sir.
24 Q. And that strictly is function a jury's
25 to do that. You understand that?
Sandra M. Halsey, CSR, Official Court Reporter
2573

1 A. Yes, sir.
2 Q. Along with this -- those very same
3 propositions of the presumption of her innocence and the
4 burden of proof on their side of the table, as well as
5 your valuing and judging the credibility, goes to another
6 aspect of judging the credibility of a particular
7 witness. The law says that all witnesses should be equal
8 in the eyes of the jury, and they can judge their
9 credibility.
10 But let me ask you this question: In
11 the event that a police officer should testify in this
12 case, and a person who was a non-police officer should
13 testify, and they testified essentially about the very
14 same subject matter.
15 The police officer said one thing, and
16 the other witness, the non-police officer, sometimes we
17 refer to those folks as civilian witnesses, testified
18 diametrically opposed to the police officer.
19 And you felt it was critical to your
20 deliberations that you make a decision as to which one of
21 them was telling the truth.
22 Would you have a tendency to believe
23 the police officer strictly because he was a police
24 officer and for that reason alone?

25 A. No, sir.
Sandra M. Halsey, CSR, Official Court Reporter
2574

1 Q. You would give the same --
2 A. Equal opportunity to both.

3 Q. Okay. I believe you will. Can you
4 think of any reason, Mr. Navarro, why you wouldn't be a
5 fair juror in this case?

6 A. Why I wouldn't?

7 Q. Why you would not?

8 A. No.

9 Q. You can appreciate the concern that is
10 going on in this case?

11 A. Yes, sir.

12 Q. Okay.

13

14 MR. CURTIS GLOVER: We will pass the
15 witness.

16 THE COURT: Could you step outside
17 briefly, please. We will be calling you back in in just
18 a minute.

19 THE PROSPECTIVE JUROR: Sure.

20

21 (Whereupon, the prospective

22 juror was excused from the

23 room, and the following

24 proceedings were held,

25 outside of her presence

Sandra M. Halsey, CSR, Official Court Reporter
2575

1 as follows:)

2

3 THE COURT: All right. Mr. Shook.

4 MR. TOBY L. SHOOK: We will accept the
5 juror.

6 THE COURT: Mr. Glover.

7 MR. CURTIS GLOVER: We will strike the
8 juror.

9 THE COURT: What a surprise. Bring

10 Mr. Navarro in, please.

11

12 (Whereupon, the prospective

13 juror returned to the

14 room and the proceedings

15 were resumed as follows:)

16

17 THE COURT: Mr. Navarro, we want to

18 thank you very much for coming, you are going to be
19 excused from further requirements down here.
20 If you remember, if you could please
21 give us the favor of not speaking about this case until
22 it's over. It will be over the latter part of January or
23 the first part of February.
24 THE PROSPECTIVE JUROR: Okay.
25 THE COURT: We have a gag order in
Sandra M. Halsey, CSR, Official Court Reporter
2576

1 effect. I can impose monetary sanctions or Kerr County
2 jail time, I'm not threatening, I'm just telling you what
3 is on the books there.
4 If you could please just keep this to
5 yourself until after the trial is over, then you are free
6 to talk or not talk to anybody as you see fit. Fair
7 enough?
8 THE PROSPECTIVE JUROR: Fair with me.
9 THE COURT: Thanks a bunch. I really
10 appreciate your coming.
11 THE PROSPECTIVE JUROR: Thank you.
12 THE COURT: Okay. Next juror.
13 THE CLERK: Ready for the next one?
14 THE COURT: Ready. That's Patricia
15 Adair. Ms. Adair, come on in, please.
16 MR. CURTIS GLOVER: What number is Ms.
17 Adair?
18 THE COURT: Ms. Adair is 235 on the
19 jury list, 77 on our list. You are Patricia Adair,
20 spelled, A-D-A-I-R-E; is that right, ma'am?
21 THE PROSPECTIVE JUROR: No, it's
22 A-D-A-I-R.
23 THE COURT: Okay. There's no E on it.
24 All right. Number 77 on our list. Thank you. If you
25 will raise your right hand, please, ma'am.
Sandra M. Halsey, CSR, Official Court Reporter
2577

1 Do you solemnly swear or affirm you
2 will true answers make to all the questions propounded to
3 you concerning your qualifications as a juror, so help
4 you God?
5
6 (Whereupon, the prospective
7 juror was duly sworn by the
8 Court to true answers make
9 to the questions propounded,
10 concerning qualifications, after
11 which time, the proceedings were

12 resumed as follows:)

13

14 THE PROSPECTIVE JUROR: Yes, I will.

15 THE COURT: Thank you, ma'am. Ms.

16 Adair, you are a potential juror in the Darlie Routier

17 trial, which will commence here in January.

18 Mrs. Routier is the young lady there

19 in the burgundy dress next to her attorney, Mr. Curtis

20 Glover.

21 She has another attorney representing,

22 Mr. Preston Douglass. He is out of the room right now,

23 he will be right back in.

24 The State is represented by two Dallas

25 County Assistant District Attorneys, Mr. Toby Shook and

Sandra M. Halsey, CSR, Official Court Reporter

2578

1 Ms. Sherri Wallace.

2 If you are nervous now, I want you to

3 relax, and you are going to be asked questions by both

4 sides. There are no wrong answers, there won't be a

5 test.

6 THE PROSPECTIVE JUROR: All right.

7 THE COURT: We just have to see how

8 you feel about certain issues. And if you could when you

9 answer questions, speak into the microphone and say -- I

10 know you will say yes and no as opposed to uh-huh and

11 huh-uh, because Ms. Halsey is taking all this down.

12 So who will begin for the State? Mr.

13 Shook.

14 MR. TOBY L. SHOOK: I will.

15

16

17 Whereupon,

18

19 PATRICIA SOWLES ADAIR,

20

21 was called as a prospective juror, for the purpose of

22 voir dire, having been first duly sworn by the Court to

23 speak the truth, the whole truth, and nothing but the

24 true, testified in open court, as follows:

25

Sandra M. Halsey, CSR, Official Court Reporter

2579

1 VOIR DIRE EXAMINATION

2

3 BY MR. TOBY L. SHOOK:

4 Q. Ms. Adair, my name is Toby Shook, and

5 I am one of the prosecutors for the State and I will be

6 asking you questions this afternoon.

7 And as Judge Tolle informed you, there

8 are no right or wrong answers. We just want your honest
9 opinions. Okay?

10 A. Okay.

11 Q. I want to go a little bit over your

12 background information here on your questionnaire and

13 then go over a little bit into your opinions about the

14 death penalty and the laws and go over some of the

15 procedures that apply in this case.

16 A. Okay.

17 Q. I don't believe you have ever been a

18 juror before; is that right?

19 A. No, I haven't.

20 Q. We usually talk to jurors in a group,

21 but since this is a death penalty case, we talk to every

22 juror individually. Again, we don't mean to put you up

23 there on trial, but that is the procedure that is called

24 for.

25 A. Right.

Sandra M. Halsey, CSR, Official Court Reporter

2580

1 Q. And if you have any questions at any

2 time, you feel free to ask.

3 A. Okay.

4 Q. Okay. I see by your questionnaire

5 that you are originally from Michigan; is that right?

6 A. Yes, that's right.

7 Q. And you lived there for --

8 A. I was born and raised there.

9 Q. You were born and raised there?

10 A. Yes.

11 Q. And lived there until -- how old were

12 you when you moved out of Michigan?

13 A. Well, the first time I left Michigan I

14 was 18. I was an Army wife.

15 Q. Okay. And then you came and lived

16 here in Kerrville the last five years?

17 A. Yes.

18 Q. Okay. How was it you come to

19 Kerrville?

20 A. Well, my parents lived in Brady, and

21 my children grew up and I had to shovel snow and Texas

22 sounded a lot warmer.

23 Q. Okay. So you moved down here because

24 of the nicer climate?

25 A. Yes.

Sandra M. Halsey, CSR, Official Court Reporter

1 Q. And you are currently married to --
2 your husband is originally from Arizona, Donald Adair.
3 A. Yes.
4 Q. Did you meet him here?
5 A. No, no, we have been married almost 25
6 years, and I met him in Michigan.
7 Q. Okay.
8 A. He was born in Arizona, but raised in
9 Michigan also.
10 Q. I guess he liked the warmer weather
11 too?
12 A. Yes.
13 Q. So, you both decided to come down
14 here?
15 A. Right.
16 Q. All right. Now, in Michigan you were
17 a firefighter for some years and a paramedic, an
18 ambulance attendant?
19 A. Well, I was not a paramedic, I was an
20 ambulance attendant, and that is similar to a first level
21 paramedic here in Texas.
22 Q. Tell me the difference. What were
23 your duties?
24 A. Well, at the company that I worked
25 for, had -- we didn't have paramedics, we had EMTs, EMT
Sandra M. Halsey, CSR, Official Court Reporter
2582

1 specialists, and ambulance attendants.
2 And an ambulance attendant was trained
3 to do everything except IVs, medications, and the EMT was
4 our leader. I mean, he was the one that made the
5 decisions, we did what we were told.
6 Q. Okay. And you did that for seven
7 years?
8 A. Seven years.
9 Q. Okay. So, I guess you saw a lot
10 through that job?
11 A. Yes.
12 Q. And also as a firefighter, what were
13 your duties as a firefighter?
14 A. Everything. We worked on pumpers,
15 hose, ventilation in the houses, rescue.
16 Q. So you did everything?
17 A. Yes.
18 Q. As far as putting out fires and
19 rescuing people?
20 A. Right.

21 Q. Okay. Why did you decide to get out
22 of that line of work?

23 A. Well, one, I am an asthmatic. And
24 after that many years it was -- the smoke and all the
25 inhalation was beginning to bother me a lot, and I had
Sandra M. Halsey, CSR, Official Court Reporter
2583

1 done it for almost 10 years.

2 And it was just time to let some of
3 the younger ones do it. We moved down here, and when I
4 got down here I thought about rejoining, because I had
5 quit just shortly before leaving for Texas.

6 But when I got to Boerne, it was an
7 all male fire department, and the fire chief patted me on
8 the head, literally, and told me I should be at home
9 taking care of my husband.

10 And I thought, "Well, no. I'm not
11 going to fight this." I did that once 10 years ago and
12 I'm not going do it again.

13 And so that is basically what I did, I
14 thought it was just time to give it up.

15 Q. Did you enjoy your work there?

16 A. Oh, I loved it. I loved it.

17 Q. Were you ever called to testify as a
18 witness in any case?

19 A. No, no.

20 Q. All right. And it looks like you work
21 at home, you work, is it you work with Wal-Mart now out
22 of the house?

23 A. Well, I was a Wal-Mart Associate, I
24 was just terminated due to some health problems I had.

25 And I have acute Achilles tendonitis
Sandra M. Halsey, CSR, Official Court Reporter
2584

1 in my feet. So I can't be on the floor eight hours a
2 day.

3 Q. I see.

4 A. Sitting is no problem. But the type
5 of work I did at Wal-Mart, I just can't do anymore.

6 Q. So, what do you do at home?

7 A. Well, I work with my computer a lot.
8 I do resumes for people. I do a lot of crafts, babysit.

9 Q. A little bit of everything?

10 A. Yeah, I have to keep busy.

11 Q. And I see your husband is retired and
12 disabled?

13 A. Yes.

14 Q. Does he do anything in his retirement

15 or is he able to?

16 A. Well, he just went through open heart

17 surgery in June.

18 Q. Oh.

19 A. So he right now is not doing too much.

20 He is doing well. You know, he has been puttering around

21 the house, things like that, taking care of himself. But

22 as far as being able to work, not yet.

23 Q. You said on your questionnaire that

24 you had -- let me ask you this before we get off him.

25 What did he do before?

Sandra M. Halsey, CSR, Official Court Reporter

2585

1 A. Well, he worked for the Austin State

2 Schools, works with mental retardation. And he did that

3 in Michigan and here in Texas.

4 Q. Okay. Is he going to go back to that

5 or does it look like he is going to retire?

6 A. No, it looks like he is out of the

7 work force. He lost 40 percent of the usage of his

8 heart.

9 Q. Wow. So, I would imagine that would

10 make it hard to be as active, obviously.

11 A. Yes, because he was a fireman also. I

12 mean, we were a pair.

13 Q. Okay. That is how you met, I take it?

14 A. No, that was -- well, it's only been

15 four years or five years since we have been out of fire

16 fighting.

17 Q. Okay. I see on your questionnaire

18 that you read something about the case or saw something

19 on TV it looks like.

20 A. Right. I had heard that there was a

21 case being transferred in Dallas to here and that was

22 about it.

23 Q. You didn't hear anything about the

24 facts of the case at all?

25 A. No, unless it hits CNN news a lot, I

Sandra M. Halsey, CSR, Official Court Reporter

2586

1 don't watch much of the local news, because it's

2 depressing.

3 Q. Yes.

4 A. And I don't get the newspapers. So,

5 basically, what I heard -- what they told us in court in

6 October when we first came in was just about all that I

7 had heard or knew about it.

8 Q. Okay. So you haven't formed any

9 opinions?

10 A. No, sir, I have not.

11 Q. You haven't discussed it with anyone?

12 A. No.

13 Q. Okay. Let me get into one other area

14 here from your questionnaire, then I will move on to some

15 areas about the death penalty.

16 You had two areas here: One was, I

17 think it was either a son-in-law or is he an

18 ex-son-in-law now, had a case of some sort?

19 A. Well, it's my son-in-law. He lives in

20 Austin.

21 Q. Okay. Matt Trotter? Yeah.

22 A. Yeah.

23 Q. In '94 he had a drug sale case?

24 A. From what I understand that is what it

25 was, yes. He was living in Kerr County at the time and

Sandra M. Halsey, CSR, Official Court Reporter

2587

1 they did a drug sweep, I guess, and he was one of the

2 ones involved in it.

3 As far as what the ins and outs of the

4 case were, what his charges actually were or anything

5 like that, I don't know.

6 Q. You are not familiar with the details?

7 A. I'm not familiar with the details. I

8 know basically, you know, what my daughter told me.

9 Q. Okay.

10 A. He got probation, 10 years probation

11 and a fine. I do know that he had turned himself in once

12 he found that the police were looking for him, he turned

13 himself in to the police.

14 Of course, what my daughter told me

15 and what may have been, you know, family and kids, they

16 may not have told me everything, or they may have told me

17 the truth.

18 But he was supposed to have been with

19 somebody that did a drug deal. I know during that sweep

20 a lot of people went to jail and a lot of people went to

21 prison and he went on parole or probation.

22 Q. Probation. Okay. As far as what you

23 know, you think he was treated fairly?

24 A. Oh, yeah, I think so.

25 Q. All right. You don't know any of the

Sandra M. Halsey, CSR, Official Court Reporter

2588

1 Dallas attorneys involved in the case from the State or

2 the defense, do you?

3 A. No, I wouldn't even drive to Dallas if
4 I had to. It's a big city.
5 Q. There are two Kerrville attorneys that
6 have been employed also on the case.
7 Mr. Douglass here and Mr. Mosty, he
8 was introduced at the big panel. Do you either one of
9 them?

10 A. No, I don't.

11 Q. Okay. You also put down a shoplifting
12 charge involving probation for Donald Adair.

13 A. Yes, that is my husband.

14 Q. Tell me a little bit about that.

15 A. Well, from what I understand, I was
16 visiting in Michigan at the time with my sister. And, he
17 had gone into Gibson's and was -- had gone in to pick up
18 some cigarettes, and wandered around the store.

19 If you have ever been in Gibson's, it
20 is one of those stores that you love to investigate.

21 Q. Uh-huh. (Attorney nodding head
22 affirmatively.)

23 A. And walked out and says that he just
24 flat forgot that he had the cigarettes. And he got
25 arrested, probation. Well, I'm not sure, he had to be
Sandra M. Halsey, CSR, Official Court Reporter
2589

1 arrested. But, I mean, he didn't go to jail or anything
2 like that.

3 Q. They didn't --

4 A. No. But that is what the extent of it
5 was.

6 Q. It was just over a package of
7 cigarettes?

8 A. Just over a package of cigarettes.

9 Q. Okay. Anything about that cause you
10 any problems, the way he was treated? Do you think he
11 was treated fairly?

12 A. Well, I think he was treated pretty
13 fairly. I mean, they must hear a lot of -- "I forgot I
14 was holding it" or "I didn't know where -- I was not
15 aware that I still had it."

16 So, they reacted the way they felt was
17 proper and my husband is very careful now, of course, he
18 doesn't smoke cigarettes anymore.

19 But he's much more cautious and aware
20 if he is carrying something and wandering.

21 Q. As far as him taking care of the case,
22 did you discuss him getting probation or he decided he
23 just didn't want to fight it or --

24 A. It was pretty much taken care of by

25 the time I came back from Michigan.
Sandra M. Halsey, CSR, Official Court Reporter
2590

1 Q. Oh, really?

2 A. Yeah. He just said that he took the
3 probation, that it would cost us more to fight it, and
4 just to do it that way.

5 Q. Okay.

6 A. And then once he went in for the
7 surgery, they ended up dropping the probation and all of
8 that, because he couldn't go back to work.

9 Q. Okay. Let me ask you a little bit
10 about the death penalty.

11 You haven't been on a jury before.

12 You know though from the general voir dire that,
13 obviously, the defendant is charged with capital murder?

14 A. Yes.

15 Q. And the State is actively seeking the
16 death penalty?

17 A. Yes.

18 Q. Tell me, first of all, do you agree
19 that as a law, we should have the death penalty?

20 A. I believe that if they are proven that
21 they are guilty, then, I think, in some cases, yes,
22 should have the death penalty.

23 Q. What types of crimes, in your own
24 opinion, do you think are appropriate for the death
25 penalty?

Sandra M. Halsey, CSR, Official Court Reporter
2591

1 A. Well, a violent murder, definitely. I
2 would say that would have to be it, the taking of
3 somebody else's life violently, and with the intention to
4 do that.

5 Q. Okay. You have probably been to some
6 murder scenes, I guess, as your days as a fireman?

7 A. Yes, I have been to a couple.

8 Q. But you're talking about a violent,
9 deliberate-type of murder situation?

10 A. Yes, I think so. You know, I mean, I
11 have got --

12 (Loud beep noise interruption.)

13 Q. We may have to call on your training
14 here as a firefighter. Everything seems to be fine.

15 A. No, I have children and a daughter
16 and --

17 (Loud beep noise interruption.)

18 A. If my daughter was raped and beaten by

19 some man, I would probably want him dead.

20 Q. Right.

21 A. And, so, I would say a lot just

22 depended on the circumstances, but definitely murder.

23 People should not take the lives of other people, and

24 then walk away from it.

25 Q. Let me ask you: Have you given a lot

Sandra M. Halsey, CSR, Official Court Reporter

2592

1 of thought to the death penalty as a law, really?

2 A. Well, since all of this started, I

3 have given it a lot more thought. And, I see the need

4 for it. As you have seen in my questionnaire there,

5 before any of this came up, I got hooked on John Grisham,

6 and he did a book, I'm not even sure what the title was,

7 but it involved --

8 Q. The Chamber.

9 A. The Chamber, right. And that got me

10 started thinking a lot on our death penalty. And, if

11 someone had asked me 30 years ago if I would have agreed

12 to something of the death penalty, I probably would have

13 said no because it was not humane. Whether, you know,

14 death is humane or not. I mean, do you see what I am

15 trying to say?

16 Q. Yes, I can.

17 A. But, I think it is something in our

18 society that is needed.

19 Q. The more you have seen over the years

20 you think now it is a law that is needed?

21 A. Yes, I do, because we're an

22 out-of-control world, and something has to make people

23 stand up and take notice.

24 Q. Have you discussed your views,

25 obviously, when you get called down on a case like is,

Sandra M. Halsey, CSR, Official Court Reporter

2593

1 like you said, you think about it more?

2 A. Right.

3 Q. Have you discussed your views with

4 your husband or friends or family members at all?

5 A. Well, I wanted to, but I don't know if

6 it's from watching too much TV or anything, but once

7 you're a prospective juror, you are not supposed to

8 discuss the case or things like that. So, my mirror and

9 I have had quite a few conversations.

10 Q. Okay.

11 A. But not with my family.

12 Q. Okay. But you are still satisfied in

13 your own personal beliefs that, yes, it's a necessary law
14 in certain cases?

15 A. Yes, it is. You know, I would have to
16 believe, and this is something I really questioned myself
17 a lot on was: This is a woman, this involves children,
18 and would I be able to condemn her to death? Would I be
19 able to find a guilty verdict? And I think that is the
20 thing I have thought on the most. And I have come to the
21 conclusion that if the evidence showed me that, yes, this
22 person was guilty, I could do that.

23 Q. Okay. That was going to be one of
24 my -- you kind of preempted some of my questions.

25 A. All right.

Sandra M. Halsey, CSR, Official Court Reporter
2594

1 Q. Because first of all, when you
2 think -- and, obviously, we can't get into the facts of
3 the case.

4 A. Right.

5 Q. You know that?

6 A. Right.

7 Q. So, we are kind of hamstrung a little
8 bit, you might say, because the lawyers can ask you
9 questions, but we can only deal in hypothetical
10 situations where we can't commit you to the facts, and
11 can't preview facts.

12 But it's obvious in this case the
13 defendant is a woman.

14 A. Uh-huh. (Witness nodding head
15 affirmatively.)

16 Q. When we think of capital murder, the
17 first thoughts that comes to mind generally are men.

18 A. Right.

19 Q. That is usually who is charged with
20 them, and some jurors have objections over that.
21 Obviously, the law doesn't distinguish between the two,
22 but some people might have objections.

23 You are telling me, though, in
24 reflecting on it, you feel that if the evidence is
25 there --

Sandra M. Halsey, CSR, Official Court Reporter
2595

1 A. -- if the evidence is there, if the
2 evidence is not shown to me, I couldn't, in my right
3 mind, do that.

4 Q. Right.

5 A. But if the evidence shows me that the
6 person -- and I come to the conclusion that I have to

7 look at it as the person, not the male, not the female.

8 Q. Right.

9 A. If the person is guilty, then, yes, I

10 could.

11 Q. Okay. You know that -- I don't know

12 if you do know that. Obviously, the method of execution

13 in Texas is by lethal injection. Were you aware of that?

14 A. I am aware of that.

15 Q. And the procedure, well, the procedure

16 of the way the trial is going to go is this: Let me kind

17 of preview it real quick for you.

18 A. Right.

19 Q. The indictment itself. Why don't you

20 take a look at that?

21 It's a piece of paper sitting there

22 and just the typewritten portion. Read that to yourself.

23 A. Okay.

24 Q. That is the allegations we have to

25 prove.

Sandra M. Halsey, CSR, Official Court Reporter

2596

1 A. Uh-huh. (Witness nodding head

2 affirmatively.)

3 Q. Now, if we don't get there, if we

4 don't prove that beyond a reasonable doubt, everyone goes

5 home, not guilty.

6 A. Right.

7 Q. If we do prove that, then we move to

8 these punishment issues. Okay?

9 A. Okay.

10 Q. You might hear more evidence.

11 Basically, the first question is this: The State has to

12 prove to you in the punishment stage that the defendant

13 would be a continuing danger to society, based on the

14 facts of the case and anything else you might hear.

15 If we get a "yes" answer to that, you

16 go to the second question. That is what we call the

17 mitigation question, where the jurors review the entire

18 case and if they feel there is sufficient mitigating

19 evidence that the defendant should get a life sentence,

20 they will answer the question that way. If they don't,

21 they will answer it "no."

22 A "yes" and a "no" though equals

23 death. You don't write death down, but Judge Tolle would

24 sentence the defendant to death based on those answers,

25 any other answers, equals life. Those are the two

Sandra M. Halsey, CSR, Official Court Reporter

2597

1 possible outcomes, based on how you answer those
2 questions.
3 A. Right.
4 Q. Like I said, can't preview the case,
5 but it sounds to me like you have done some reflection on
6 it.
7 A. Well, I figured I had to. I don't
8 consider myself a cold, uncaring person.
9 Q. Uh-huh. (Attorney nodding head
10 affirmatively.)
11 A. And, if the facts of the case show
12 guilt, and show death penalty, I would probably have a
13 hard time dealing with that for a while afterwards,
14 because, I mean, it's not an easy decision no matter how
15 you look at it.
16 Q. Sure.
17 A. But then you have to put yourself in
18 the other shoes too, that, you know, it could happen to
19 you and your family.
20 Q. Right.
21 A. And you would have to deal with it.
22 But as far as coming into court with a preconceived idea
23 of what I would vote or --
24 Q. Right.
25 A. I would have to have it proven to me.
Sandra M. Halsey, CSR, Official Court Reporter
2598

1 Q. Sure.
2 A. You know.
3 Q. And that is what we fully expect from
4 all our jurors. You do realize that in Texas executions
5 do take place?
6 A. Yes.
7 Q. Some states have it and never enact
8 that penalty, Texas does. We have had over 100
9 executions. And especially, again, we can't preview the
10 facts, but as best as you know yourself, if it's proven
11 to you, you could answer these questions in a way knowing
12 that the defendant would be executed someday?
13 A. Right.
14 Q. Now, let me get into a couple things
15 here. First of all, if you sat on a jury you would hear
16 evidence.
17 A. Okay.
18 Q. Obviously, the State has to prove the
19 case. We have the burden of proof. Evidence comes in
20 two ways, or what we will describe as either direct
21 evidence and indirect evidence.
22 Direct evidence is an eyewitness to a

23 case. If you left the courthouse today and were robbed
24 of your purse, let's say, getting into your car.
25 The police apprehended that person and
Sandra M. Halsey, CSR, Official Court Reporter
2599

1 you identified him, you would be the direct evidence in
2 the trial. You are the eyewitness.

3 A. Okay.

4 Q. Any other evidence is indirect
5 evidence or circumstantial evidence. Okay?

6 A. Yes.

7 Q. And it's anything that connects the
8 defendant to the crime. Okay? When we talk about
9 circumstantial evidence we always make the argument of
10 using your common sense, obviously.

11 That includes: Fingerprints, DNA
12 testimony, hair, fiber, the crime scene itself, what you
13 can get from that, if that proves the case in any way;
14 things said by the defendant before, during, or after;
15 anything --

16 A. Uh-huh. (Witness nodding head
17 affirmatively.)

18 Q. -- that links the defendant to the
19 crime.

20 Now, in a murder case, obviously, many
21 times you have the victim and the person that committed
22 the murder, or the person accused of committing the
23 murder. There is no eyewitness.

24 So, the State has to rely on
25 circumstantial evidence to prove its case. The burden of
Sandra M. Halsey, CSR, Official Court Reporter
2600

1 proof is the same.
2 If you have an eyewitness or
3 circumstantial evidence, beyond a reasonable doubt.

4 A. Right.

5 Q. What I need to know is, if we prove
6 our case using solely circumstantial evidence, if we
7 prove that beyond a reasonable doubt, would you be able
8 to vote guilty?

9 A. If you was able to prove it beyond a
10 reasonable doubt, yes.

11 Q. All right. Secondly, you probably
12 heard of the term "motive" before, especially in relation
13 to a murder case?

14 A. Right.

15 Q. The reason the killing happened.

16 A. Right.

17 Q. Sometimes, when the evidence comes in,
18 the motive is very apparent. Other times, it's not
19 apparent at all, you know. I could, for instance, right
20 now pull out a gun and shoot Ms. Wallace, kill her. And
21 give no reason for that whatsoever, it might be locked
22 away in my mind.
23 The fact that she is dead, you know,
24 doesn't change that. The fact that all of these
25 witnesses saw me do it, it doesn't change that. But the
Sandra M. Halsey, CSR, Official Court Reporter
2601

1 reason may never be known.
2 It could be what the press calls a
3 senseless killing.
4 Or it may come out at trial, well,
5 everyone may have their own opinion of the motive. There
6 could be several possible motives out there and everyone
7 has their own opinion.
8 The point of it is this: The law does
9 not require the State to prove motive to get a guilty
10 verdict. You notice in that indictment you read, there
11 is no part of the indictment that says, this is why the
12 crime occurred?

13 A. Right.

14 Q. It may come out, it may not. But it's
15 not part of our elements we have to prove. Could you
16 follow the law on that regard?

17 A. Yes, I could.

18 Q. Okay. I want to touch again on these
19 questions. Again, you wouldn't get to these unless you
20 found the defendant guilty, and then you would get to
21 these questions.

22 And this first question is presumed to
23 be answered "no," and we have to overcome that
24 presumption. Just like a defendant is presumed to be
25 innocent. Okay?

Sandra M. Halsey, CSR, Official Court Reporter
2602

1 A. Okay.

2 Q. We do that through the facts of the
3 case itself and any other evidence that may have come out
4 in the punishment stage. When we reach the punishment
5 stage, you might hear, you know, a bad background, maybe
6 a criminal conviction back here as evidence, or the exact
7 opposite.

8 You might hear all good things and no
9 criminal background. There is no requirement that
10 someone have to have committed criminal acts before or

11 been to prison before they can be prosecuted for a
12 capital murder.

13 In fact, it may be a situation that
14 they have no criminal history at all. Again, I can't get
15 into the facts.

16 But, let me ask you: If you were on a
17 jury, would you be able to answer this first question
18 "yes," based solely on the facts of the offense alone,
19 depending on what the facts were, of course?

20 A. It would have to depend on the facts.

21 I mean, I couldn't really say "yes" or "no" at this
22 moment, because it would depend on what I heard in court.

23 Q. Okay. But your mind is open?

24 A. Yes.

25 Q. Okay. And you sat there and read the
Sandra M. Halsey, CSR, Official Court Reporter
2603

1 question. You see where it calls for a "yes" or "no"
2 answer?

3 A. Uh-huh. (Witness nodding head
4 affirmatively.)

5 Q. And it's the question that asks the
6 jurors to predict how a defendant will behave in the
7 future?

8 A. Right.

9 Q. Do you think you could answer that
10 given enough evidence and information?

11 A. Given the right evidence and
12 information, I could answer that, "yes."

13 Q. Okay. The words in this sentence and
14 in the next question will be left up to you. Well, the
15 definitions will be left up to you and the other jurors.
16 Okay?

17 A. Okay.

18 Q. In other parts of the trial, Judge
19 Tolle will provide you with plenty of legal definitions,
20 but the legislature has decided that as to these
21 particular questions, the definition is left up to the
22 jurors.

23 So, let me go over a couple of these
24 words.

25 A. Okay.

Sandra M. Halsey, CSR, Official Court Reporter
2604

1 Q. "Probability," we have to prove that
2 it is a probability the defendant would commit criminal
3 acts of violence.

4 When we use the word probability in

5 that context, what does it mean to you?

6 A. That they would probably go out and do
7 this again.

8 Q. Okay.

9 A. Or some type of criminal activity
10 again, not necessarily murder.

11 Q. Okay. Yeah, it doesn't say murder.

12 Although we have had a few jurors that say that we would
13 have to prove that to them. But obviously, murder would
14 be included in criminal acts of violence.

15 A. Right.

16 Q. But, it could be other crimes too.

17 Probability. A lot of jurors tell us that means more
18 likely than not, or something like that.

19 A. Yes, that they would probably do it
20 again.

21 Q. Do you understand we don't have to
22 prove that it is a certainty that they would?

23 A. Right, it's a probability.

24 Q. Okay. Does that seem a fair question
25 to you the way it is asked?

Sandra M. Halsey, CSR, Official Court Reporter
2605

1 A. Yes, it does.

2 Q. All right. Again, if you answered
3 "yes" to that question, you move on to the second
4 question. And this is the lengthy one.

5 I'll read that aloud: "Taking into
6 consideration all of the evidence, including the
7 circumstances of the offense, and the defendant's
8 character and background, and the personal, moral
9 culpability of the defendant, is there a sufficient
10 mitigating circumstance or circumstances to warrant that
11 a sentence of life imprisonment rather than a death
12 sentence be imposed?" It is kind of lengthy, it's what
13 we call the mitigating question.

14 It allows the jurors -- first of all,
15 let me say this: Neither side has the burden of proof on
16 this last question. It's something you look at as a
17 juror.

18 You look at all of this, it says the
19 evidence and the circumstances, the defendant's
20 character, and decide, is there mitigating evidence in
21 which I believe a life sentence should be imposed rather
22 than a death sentence?

23 A. Right.

24 Q. As far as what mitigating evidence is,
25 it will be up to you and the other jurors. We can't tell

Sandra M. Halsey, CSR, Official Court Reporter

1 you what it is you. You don't have to sit there and
2 conjure up facts thinking what mitigating evidence is.
3 You have to be able to tell the Judge you can keep your
4 mind open to that type of evidence. Would you be able to
5 do that?

6 A. Yes, I would.

7 Q. Okay. Like I said, you don't have to
8 think of it, and you don't have to agree with the other
9 jurors. Let me give you an example: You could have a
10 capital murder defendant who, let's say, went to Harvard,
11 had a Ph.D. in physics.

12 One juror might say, "In my mind that
13 is mitigating evidence, he has done something
14 constructive with his life. He is a very intelligent
15 person."

16 Another juror might say, "If he is
17 that smart, he shouldn't get into trouble."

18 A. Right.

19 Q. So, they hold it against him. So, it
20 could cut either way.

21 Let me go over a few things that may
22 or may not come up and see how they strike you.

23 A. Okay.

24 Q. Sometimes people commit capital murder
25 under the influence of drugs or alcohol. I'm talking
Sandra M. Halsey, CSR, Official Court Reporter

2607

1 about voluntarily taking them.
2 Go out and get drunk and get high and
3 commit capital murder. In Texas that is no legal
4 defense.

5 A. No, it shouldn't be anywhere.

6 Q. Right, some people view it as
7 mitigating. You know, like I said, other people view it
8 as highly aggravating. Does it cut one way or the other
9 with you?

10 A. Yeah, it does. I don't believe that
11 alcohol or drugs are an excuse for any kind of criminal
12 activity.

13 Q. Okay.

14 A. It's an excuse.

15 Q. Fair enough. Now, sometimes you might
16 hear evidence of a person coming from a bad economic
17 background, maybe they are very poor, didn't have a lot
18 of opportunities.

19 Some people view that as mitigating

20 evidence. Other people say, no, there's people that grew

21 up in that situation plenty of times and they are not
22 going to commit murder.

23 Does it cut one way or the other with
24 you?

25 A. No.

Sandra M. Halsey, CSR, Official Court Reporter
2608

1 Q. Sometimes you may hear evidence about
2 maybe in their childhood being abused, physically,
3 perhaps sexually, mentally.

4 Some people view that as mitigating
5 evidence. Others tell us, no.

6 Again, you are responsible for your
7 own actions.

8 A. Now, there I would tend to differ.

9 That could be considered mitigating evidence, because it
10 affects the mind. It affects the child.

11 Q. Okay.

12 A. And the child grows, and I think that
13 could have. Again, depending on the evidence.

14 Q. Depending on the evidence?

15 A. Yes.

16 Q. You are not saying in every situation?

17 A. Oh, no. Every situation is different.

18 There are no two anything alike.

19 Q. Okay. I think you see where we're
20 coming from with this question?

21 A. Yes, I do.

22 Q. There does have to be some evidence,
23 you just can't say, "Well, I think I will spare the
24 defendant's life, give them life."

25 A. Right, there has to be a reason.

Sandra M. Halsey, CSR, Official Court Reporter
2609

1 Q. Right. And, you know, you can see
2 mitigating evidence and it may not rise to the level
3 where you think a life sentence could be imposed. We can
4 probably think in mitigating circumstances for anything
5 we do, just not -- might not -- may not be very good
6 mitigating circumstances.

7 A. Right.

8 Q. It has to reach that level where you
9 think a life sentence should be imposed. Could you do
10 that?

11 A. I could do that.

12 Q. Okay. Let me go over some of the
13 rules that apply in each case. The presumption of
14 innocence Judge Tolle told you about.

15 Every defendant starts out with that
16 presumption. I take it you could follow that rule?
17 A. Oh, I could follow that with no
18 problem.
19 Q. The State has the burden of proof. We
20 have to prove this case beyond a reasonable doubt, and
21 the burden of proof never leaves this table.
22 Could you follow that rule and require
23 the State to prove this to you beyond a reasonable doubt?
24 A. Oh, yes.
25 Q. Okay. And that also means that the
Sandra M. Halsey, CSR, Official Court Reporter
2610

1 defense is under no obligation to prove the defendant's
2 innocence to you.
3 A. I understand that.
4 Q. You understand that? Okay. The
5 defendant's right not to testify. If a person wants to
6 testify in their trial they can, no one can stop them.
7 However, if they choose not to, then
8 the Judge would instruct you that you can't hold that
9 against them.
10 A. I wouldn't. No offense to you
11 lawyers, but you can really twist a lot of things around.
12 Q. Right.
13 A. And, you know, it would almost be a
14 safety factor if you decide not to, but that doesn't mean
15 that you're guilty because you are not going stand up and
16 say something.
17 Q. Well, that's the point of the law,
18 right there.
19 A. Right.
20 Q. And also, Judge Tolle told you that in
21 the indictment -- you read the indictment, obviously, and
22 that is no evidence of anyone's guilt.
23 A. Right.
24 Q. It's just a piece of paper. You have
25 to wait for the witnesses to testify. Could you follow
Sandra M. Halsey, CSR, Official Court Reporter
2611

1 that rule of law?
2 A. Yes, I could.
3 Q. Judge Tolle would also give you an
4 instruction that, you know, whatever you have read or
5 heard or seen on TV about the parole laws, you can't
6 consider that.
7 A. About the what?
8 Q. Parole laws. Early release becomes an

9 issue sometimes.

10 A. Oh, no, that wouldn't affect anything.

11 Q. You haven't heard anything about

12 any --

13 A. No.

14 Q. Good. Well, if you do hear anything

15 about that, you can't consider it. Because we have no

16 control over that situation. Okay?

17 A. Right.

18 Q. You just have to base your verdicts on

19 the evidence.

20 A. Right.

21 Q. As you sit as a juror, you have to

22 judge all witnesses the same, as far as they begin. You

23 are going to judge them each differently once they

24 testify, obviously.

25 Obviously, in a criminal case many

Sandra M. Halsey, CSR, Official Court Reporter

2612

1 times we have police officers who testify. Some people

2 respect police officers a lot.

3 But just because you respect police

4 officers or there is good police officers, you can't

5 automatically start them out ahead of other witnesses.

6 Do you understand?

7 A. I understand.

8 Q. There are good and bad police

9 officers. Also, if you have had a negative experience

10 with police officers, you know you can't start them out

11 behind the other witnesses?

12 A. Right.

13 Q. It works both ways. Do you think you

14 could be fair and start all the witnesses out the same?

15 A. I think so, yes.

16 Q. Okay. As a firefighter and ambulance

17 attendant and paramedic and everything else you have

18 done, have you worked with police officers much?

19 A. We did a lot on fire scenes. And

20 then, you know, the fire department and the police

21 department work hand-in-hand.

22 Now, here I notice they are more

23 combined.

24 Q. Oh, okay.

25 A. But in Michigan, they weren't. And --

Sandra M. Halsey, CSR, Official Court Reporter

2613

1 but we worked with a lot of police officers.

2 Q. Did you get along well with the police

3 officers? Work well with them?
4 A. Oh, yeah.
5 Q. Okay. Which department were you with
6 up there in Michigan?
7 A. I was with the Bangor Fire and
8 Ambulance Service, out of Bangor, Michigan.
9 Q. Bangor, Michigan. I actually know a
10 fireman from Michigan, but I don't know which town he's
11 from. He's down in Dallas now, he has a moving company.
12 He was there about 25 years.
13 Judge Tolle has told you -- well, I
14 don't know, I think he said something about the trial is
15 scheduled to begin January 6th.
16 A. Uh-huh. (Witness nodding head
17 affirmatively.)
18 Q. It will not last like the O.J. Simpson
19 case.
20 A. Okay.
21 Q. It will go two weeks, from 9:00 to
22 5:00, you will go home at night, unless you are in
23 deliberations. Would that cause you any problems?
24 A. No problem at all.
25 Q. All right.
Sandra M. Halsey, CSR, Official Court Reporter
2614

1
2 MR. TOBY L. SHOOK: That's all the
3 questions I have then, Judge.
4 Unless you have some questions over
5 anything we have gone over, Ms. Adair?
6 THE PROSPECTIVE JUROR: No.
7 MR. TOBY L. SHOOK: Okay. Well, then
8 I appreciate your patience.
9 THE COURT: Thank you, Mr. Shook. Mr.
10 Douglass.
11 MR. S. PRESTON DOUGLASS, JR.: Yes.
12 Thank you, Your Honor.
13
14 VOIR DIRE EXAMINATION
15
16 BY MR. S. PRESTON DOUGLASS, JR.:
17 Q. Ms. Adair, the good news is that my
18 questions are not going to take a whole lot of time. The
19 bad news is, there are some more questions.
20 You have been very nice. You filled
21 out your questionnaire very fully and it's a big help.
22 And believe it or not, although this
23 process takes a while, if it wasn't for that
24 questionnaire, as much time as you have put into it, it

25 would take us a lot longer to go through this.
Sandra M. Halsey, CSR, Official Court Reporter
2615

1 A. I understand that.

2 Q. As you might suppose, our perspective
3 in this case is dramatically different from that of the
4 attorneys representing the State of Texas.
5 And for that reason, I want to talk to
6 you a little bit about the law and the process and your
7 opinions, because some of the areas that we're concerned
8 about don't touch on the same areas that the attorneys
9 representing the State are concerned about.
10 Let me just tell you up front what I
11 mean by that.

12 Darlie Routier has entered a plea of
13 not guilty to the charges that the attorneys for the
14 State have brought against her. She will enter a plea of
15 not guilty in front of the jury that sits and hears this
16 case, and she will stand behind that plea of not guilty
17 wholeheartedly, unwavering.

18 In Texas, we know that if there is
19 going to be a trial, we know there is going to be a trial
20 about the guilt or innocence.

21 There is no mandatory punishment
22 trial. If you have a trial on guilt/innocence, and a
23 person is acquitted, obviously, you are not going to talk
24 about punishment.

25 A. Right.

Sandra M. Halsey, CSR, Official Court Reporter
2616

1 Q. It is our expectation, and we believe
2 and we're confident, that this case will not go to a
3 punishment hearing. Along those lines, I want to talk to
4 you about your feelings about the guilt/innocence phase
5 of the trial.

6 Contrary to what a lot of people
7 think, when a jury gets selected, people think that you
8 actually get picked. And they think that one side or the
9 other likes you, and they say we want Miss "X" as a
10 juror. That is not the way it happens.
11 What happens is, is that it's a
12 process of elimination. Both sides have a certain number
13 of what is called challenges or strikes that they can
14 use, and they exercise those strikes.

15 Have you ever heard about that kind of
16 system?

17 A. I read it in John Grisham's book.

18 Q. Right. So, when you --

19 A. He is pretty thorough in his writing.
20 Q. Right. Which one of those books --
21 you said, I noticed in your questionnaire you said you
22 read them all. Which one did you like the most?
23 A. Well, I can't really say. The one I
24 liked the least was The Chamber, but it was such a
25 descriptive book, you know.
Sandra M. Halsey, CSR, Official Court Reporter
2617

1 I had a hard time with that one. But,
2 otherwise, I just kind of put them all up there pretty
3 much equal.
4 Q. Okay. Did you read the last one?
5 A. Not yet. I'm going to get that one on
6 tape and listen to it.
7 Q. All right. Anyway, the way our system
8 works, and I heard this said one time in a DWI trial,
9 that if you were on trial for DWI, the State may very
10 well want six highway patrolmen to be the jurors in the
11 case.
12 A. Right.
13 Q. And the defendant would very much want
14 six of his buddies to be jurors. And, obviously, that is
15 not the way it shakes out.
16 A. No.
17 Q. So, what ends up happening is that if
18 you imagine this pencil is straight up and down neutral,
19 you end up finding, when they say fair and impartial
20 people, I think that also means people that don't have a
21 preconceived leaning or notion towards one side or the
22 other. In other words, everybody ought to start out on
23 the same level playing field in fairness. Okay?
24 A. Right.
25 Q. Perhaps most important with that is
Sandra M. Halsey, CSR, Official Court Reporter
2618

1 the presumption of innocence. And it's real easy for us
2 to sit here and talk about the presumption of innocence
3 when you haven't heard any facts, and the trial hasn't
4 started.
5 And some people say, "Oh, I believe in
6 that, no problem." But, I guess what it comes down to
7 is, who are the people most willing to vigorously protect
8 that right, to a presumption of innocence?
9 Who are the people who just don't
10 believe that it is something you kind of toss around and
11 say, "Oh, I can do that"?
12 Who are the people who really think

13 that that means something and that it means something
14 that is worth standing up for? And along those lines, I
15 guess I wonder, what are your opinions about it?
16 What do you think about it?
17 A. Well, I guess it would be a way to
18 show you how I feel about it. I knew that if I didn't
19 want to be on this jury, and I'm not saying that I do
20 want to be, it's not a want or not want thing, you know.
21 But if I flat didn't want to do it, I
22 could have come in here and said all sorts of things that
23 would have -- you would thrown me out the door, and said,
24 "No, we don't want the likes of you." But I am not that
25 kind of a person.
Sandra M. Halsey, CSR, Official Court Reporter
2619

1 Q. We have seen those people.
2 A. Yes, I imagine you have. And I have
3 had quite a few people tell me that, "Well, if you don't
4 want to be in there, go in there and tell them everybody
5 should hang." And these kind of remarks.
6 But I wasn't brought up that way.
7 And, I could no more come in here and lie and say, "Yes,
8 she is guilty. No, she is not. I have a preconceived
9 idea. No, I don't."
10 What I say is what I feel. And, that
11 is why I am sitting here and answering as honestly as I
12 can answer.
13 Q. Okay. And I appreciate that. Really,
14 the converse of the presumption of innocence is really
15 that you don't presume a defendant guilty.
16 A. No.
17 Q. That you don't start off from the
18 beginning saying, "Well, they're here. All these people
19 are here. There is an attorney here. There's Judges
20 here. This person has got to be guilty."
21 A. Well, no. As far as I see, this
22 person, people are saying that she did this.
23 They are saying that she did not --
24 she is saying she did not, and the truth is going to have
25 to come out in court.
Sandra M. Halsey, CSR, Official Court Reporter
2620

1 Q. Okay. What is really important to me
2 is that we don't start a little bit behind. That we just
3 start off even.
4 A. Right.
5 Q. Okay. And in sitting here, do I
6 understand you to be saying that you believe strongly and

7 would vigorously protect the presumption of innocence if
8 you were a juror in this case?

9 A. Yes, you have to. I mean, it's simple
10 logic. You can't condemn somebody before you have heard
11 evidence. And if you do condemn them, you are prejudging
12 them and prejudging is wrong. It's just wrong.

13 Q. All right. That is very fair. In
14 terms of the burden of proof, Mr. Shook said it correctly
15 and he acknowledged that that burden of proof doesn't
16 shift from his table.

17 There is no obligation or duty on
18 behalf of the people representing a defendant to come
19 prove anything. Are you okay with that?

20 Do you feel like that is a good law
21 and one that you can follow?

22 A. I don't think that you have to prove
23 that you are innocent. If somebody is saying that you
24 did something wrong, they have to prove that you did
25 wrong.

Sandra M. Halsey, CSR, Official Court Reporter
2621

1 Q. Okay. Let me take that one step
2 further. You might hear evidence in a case and you know
3 that the State has to prove their case beyond a
4 reasonable doubt, that is the highest burden we have.
5 And as an example, you might say -- well, you might hear
6 witnesses from the State.

7 And I am going to use just a quick
8 example: Imagine that this circle that I have drawn has
9 a bright, shining light coming out of it. Maybe like a
10 headlight on a car or something. And imagine that that
11 light that is beaming out of this circle is the
12 presumption of innocence.

13 For a while, just follow along with
14 me, if I confuse you, stop me.

15 In the course of a trial, the State
16 may bring you different kinds of evidence. They may
17 bring you eyewitnesses, they may bring you
18 scientific-type evidence, like fingerprints or things
19 like that, and that evidence may start to persuade you of
20 something.

21 Some of it you may think has more
22 weight than others. It persuades you more. It starts to
23 maybe blacken out that light with the presumption of
24 innocence coming through.

25 But in order for a person to be
Sandra M. Halsey, CSR, Official Court Reporter
2622

1 convicted that has been charged with a crime, it takes
2 that light to be completely blackened out so there is not
3 one ray of light coming through, representing the
4 presumption of innocence.
5 So, in order for the State to meet its
6 burden, regardless of the amount of evidence that
7 persuades you, it must persuade you that there is not one
8 reasonable doubt of ray of light shining through and it
9 is completely darkened out, such that if there is even a
10 pin light of reasonable doubt, a pin light of doubt that
11 you base on reason, no matter how slight, that you would
12 give that benefit of that reasonable doubt to the
13 defendant.
14 Now does that make sense to you? Do
15 you agree with that?
16 A. That makes sense to me and I would
17 have to look at it that way because I would still have to
18 live with myself.
19 If I thought that there was a
20 reasonable doubt, and others on the jury did not, I'm not
21 going to say, "Okay, fine. You guys all think that way.
22 We will go ahead and do it." Because I have to go home
23 and live with myself.
24 Q. Right. And along those lines, I want
25 to ask you something, imagine that you are here during a
Sandra M. Halsey, CSR, Official Court Reporter
2623

1 trial and you say, "Well, the State, they proved this and
2 this. They got three good points. And the defense, they
3 brought up three points that to me may mean reasonable
4 doubt."
5 Well, they got three, they got three.
6 It doesn't work that way. If the defense has one point
7 which raises a reasonable doubt in your mind, it doesn't
8 matter what the State has brought up, as long as they
9 haven't resolved all of those reasonable doubts, the
10 proper verdict under your oath would be a not guilty.
11 Regardless of -- as long as they have one reasonable
12 doubt hanging out there. Do you agree with that?
13 A. I agree with that.
14 Q. Okay. When it comes to the burden of
15 proof, it could very well happen and it happens a lot I
16 believe, that the State will present a case and say they
17 bring 50 witnesses. And the people representing the
18 person charged with the crime can ask questions.
19 The defense lawyers can ask questions
20 of the State's witnesses. And you may go through the
21 whole case and say, "They brought a lot of people. They
22 got a lot of people with credentials that sat up there

23 and said things." But in the back of your mind you say,
24 "You know, I'm not convinced. You know, there is still
25 this and this and this," let's say. Three points that
Sandra M. Halsey, CSR, Official Court Reporter
2624

1 they can't resolve. And that creates a doubt in my mind,
2 a reasonable doubt. And the State finishes what they
3 call their case in chief and they rest.
4 And you are probably familiar from a
5 lot of novels that the State at some point, the State's
6 attorney is going to stand up and say, "We rest our case,
7 Judge."

8 And at that time it becomes the option
9 of the defense to put on a case should they choose to do
10 so.

11 A. Uh-huh. (Witness nodding head
12 affirmatively.)

13 Q. And at many trials the people
14 representing the citizen accused say, "Well, they haven't
15 proven their case. We don't have anything to put on."
16 They have failed in their burden of proof.

17 Now, could you as a juror say to
18 yourself, "Well, the defendant did not put on any case,"
19 and only look at the State's case very closely to
20 determine if they met their burden of proof?

21 A. Well, if the defense didn't put on a
22 case and the State had given us what evidence they had,
23 we would have no choice but to look at that proof and
24 decide whether that was enough to prove guilt.

25 Q. As a juror would you be sitting there
Sandra M. Halsey, CSR, Official Court Reporter
2625

1 saying, "Well, you know, I really wish the defendant had
2 put something on, so I am going to hold it a little bit
3 against that defendant because they didn't bring me any
4 evidence"?

5 A. No. I wouldn't hold it against them.
6 I would probably say I wish they had, but I wouldn't hold
7 that against them.

8 Q. Let me ask you this: If a defendant
9 didn't bring you any evidence, would it affect your
10 deliberations?

11 A. If the defense did not bring any
12 evidence at all?

13 Q. Right. If the State rests its case
14 and then all of a sudden the defense lawyers didn't put
15 on any evidence, would it be something that you would
16 have a hard time getting out of your mind to the point

17 that you think it would affect your deliberations?

18 A. That is a tough one. I don't -- I

19 believe what we would have to do is work with what we

20 had. And whether it would -- I would wonder why they

21 didn't put on something to at least maybe give a

22 mitigating circumstance to what happened, but I don't

23 think I would let it influence me as far as saying,

24 "Well, because they didn't, she is guilty."

25 Q. In talking about how a person -- and

Sandra M. Halsey, CSR, Official Court Reporter

2626

1 this is very difficult because we don't have any facts.

2 We can't say, "Well, what do you think of this, this,

3 this, and prove it to you." That is improper.

4 A. Right.

5 Q. I guess what I am wondering is is you

6 seem to rationalize through what you would have to do.

7 And you say, "Well, I couldn't consider it. And I would

8 only have to look at what they've proved to me and what

9 they didn't prove to me."

10 I guess the step in my mind, and what

11 I am wondering is, would that lingering question in your

12 mind as to why they didn't do this or why they didn't do

13 that, talking about the defense lawyers, would that be a

14 lingering question that would somehow make you lean

15 against the defendant?

16 A. No, I don't think so. I think it

17 would be curious and it would, I would be nuts if the

18 defendant didn't put anything on and why they didn't say

19 anything. I would want to know the whys of why they

20 didn't. But as far as influencing a decision, it would

21 still depend on the evidence.

22 Q. Do you feel like that you would want a

23 defendant to prove something to you?

24 A. No. I think probably it would be more

25 of wanting to know a little bit about the defendant.

Sandra M. Halsey, CSR, Official Court Reporter

2627

1 Q. Okay. Now, let me ask you. I may

2 have skipped a little bit --

3 A. I mean, there's two sides to a story

4 here. I mean, I'm not saying that the defendant needs to

5 say, "I didn't do this and I can prove that I didn't do

6 this." But any normal person is going to wonder a little

7 bit about the person that is charged, curiosity alone

8 would do that.

9 What would make a person even -- and

10 why would they think a person would do something like

11 this. But not hearing it or not hearing anything about
12 this person, that is not what we're being asked to judge.
13 What we're being asked to judge is,
14 the prosecutor is saying, "This is what we have that says
15 that she did this. This is what we have to judge, is
16 that enough or is that not enough?"
17 Q. With respect to a defendant who elects
18 not to testify, there is really three groups of people,
19 and you talked about this a little bit.
20 There is one group that says, "You
21 know, if I was called upon and if I was charged with a
22 crime, I would get up there every time and say my side of
23 the story."
24 There are some people who say, "You
25 know, I don't know if I would do that or not. That is
Sandra M. Halsey, CSR, Official Court Reporter
2628

1 why I hired a lawyer. If my lawyer told me, 'I don't
2 think you need to get up there. They have not proven a
3 thing.'"
4 Then in that situation you might say, "I
5 will do whatever my lawyer tells me to make things
6 right."
7 A third group of people might say,
8 "There is no way I am going to get on that stand. I
9 know, I have watched these lawyers, they can make
10 whatever I say -- I'm not trained in this kind of stuff.
11 They can twist me around and make me look like I am lying
12 when I am not."
13 A. Right.
14 Q. Now, can you identify with those three
15 groups of people?
16 A. Yeah. I can identify with that, and I
17 can understand why someone may not take the stand in
18 their defense, and that wouldn't influence my way of
19 thinking whether she did or she didn't take the stand.
20 Q. I guess I am wondering, in the final
21 analysis, if you look at it and you say to yourself, "I
22 heard evidence, but I didn't hear anything from a
23 defendant about him or herself, I didn't hear anything
24 about it."
25 Would you be able to put that out of
Sandra M. Halsey, CSR, Official Court Reporter
2629

1 your mind or would that have a lingering feel in your
2 mind such that it might cause you to vote one way or the
3 other?
4 A. I don't believe it would leave a

5 lingering thought. We are here to judge evidence and
6 evidence is what we have to judge.

7 Q. Okay. Well, let me tell you: In this
8 case we will put on evidence. I don't think that is
9 going to be an issue.

10 A. Uh-huh. (Witness nodding head
11 affirmatively.)

12 Q. But the point is: With every intent
13 to put on evidence, with every intent to bring you
14 evidence in this case, there may come the point that the
15 State so miserably fails in its proof that you might have
16 to judge it just based on what the State did or did not
17 prove.

18 And all I need from you is a
19 commitment that if that is the case, that you will look
20 only at the State's case and judge it very closely to see
21 if they excluded all reasonable doubt.

22 Can you do that?

23 A. I can do that.

24 Q. Okay. Let me ask you a little bit
25 about motive for a second. If in a case, you -- and I
Sandra M. Halsey, CSR, Official Court Reporter
2630

1 believe and would submit to you that a qualified juror
2 can consider motive in trying to arrive at their
3 decision. Now, motive is not something that the State
4 has to prove to you beyond a reasonable doubt.

5 However, motive might be something
6 that as a juror you consider and you say, "You know,
7 there is some different pieces to this puzzle, but they
8 don't fit together."

9 And I would submit to you that many
10 times motive is the glue that glues these pieces together
11 that tell you maybe why something happened. Or maybe
12 explain why one piece of evidence relates to another
13 piece of evidence.

14 Can you agree that in some situations
15 if the State fails to prove motive, there is no proof of
16 motive, that that might raise a question in your mind and
17 that question in your mind might equate to reasonable
18 doubt?

19 A. I don't really know how to answer
20 that, because if motive does not have to be proven by the
21 prosecutor, the lack of it shouldn't affect our decision.
22 If they show a motive, then it just has to be taken into
23 consideration and added to the information.

24 Q. All right. And it's very difficult at
25 the outset to judge anything because we don't have any
Sandra M. Halsey, CSR, Official Court Reporter

2631

1 facts.

2 A. Right, I know.

3 Q. But I guess what I am wondering is

4 could you conceive of a situation where there might be

5 different points of evidence that are all over here, but

6 they don't seem to mesh and they just don't seem to

7 interrelate and they just don't seem to make sense.

8 And as a juror, you have the right to

9 think, "Well, does this all fit together? Does this make

10 sense what they are trying to prove?" It's right.

11 Motive is not an element, it is not a

12 hurdle they have got to clear. But in certain situations

13 the absence of proof of why may cause you to wonder about

14 some of the evidence. I'm not saying that it in and of

15 itself.

16 A. Right.

17 Q. What I am saying is that it my cause

18 you to have some questions about other issues. And all

19 I'm asking you is: Could you consider a lack of motive

20 in saying, "Well, that doesn't make sense to me, because

21 it doesn't make sense it means that this evidence over

22 here may not make sense to me."

23 A. There is a reasonable doubt.

24 Q. Okay. And all I'm saying is: Could

25 you consider that if this just doesn't make sense that

Sandra M. Halsey, CSR, Official Court Reporter

2632

1 that might be a reasonable doubt?

2 A. If the evidence that is shown to me

3 doesn't make sense, yes, it could create a reasonable

4 doubt.

5 Q. Okay. One thing on my mind that I

6 think with your past history, it's probably a silly

7 question, but there is not a single murder case that I

8 have ever been involved in that pictures didn't come into

9 evidence.

10 And as a matter of course the pictures

11 are never very pleasing to look at, they are horrible.

12 A. Right.

13 Q. And they always seem to be blown up,

14 it's just inevitable, for whatever reason. But the point

15 I want to ask you is: Would you based on the mere fact

16 that the pictures are terrible to look at and horrible,

17 would that cause you to leave your common senses at the

18 door or cause you to rush to judgment in some way just

19 because of the way the pictures look?

20 A. No.

21 Q. Okay. I want to talk to you a little
22 bit about these issues on punishment.
23 The main reason I do that is we don't
24 ever get a chance to talk again. And that might be a
25 welcome appeal to you.
Sandra M. Halsey, CSR, Official Court Reporter
2633

1 A. Uh-huh. (Witness nodding head
2 affirmatively.)
3 Q. But the bottom line is the law -- that
4 I have an opportunity and I am required to talk to you
5 about these special issues.
6 First off, could you consider evidence
7 of mitigation, if you have already found someone guilty
8 of capital murder and then you believe that they are a
9 future danger to society, can you, when you get to that
10 last question, can you keep an open mind and say, "Well,
11 even though the person has been convicted of capital
12 murder, and even though I believe they may be a future
13 danger to society, probably be a future danger to
14 society, can you still consider mitigating circumstances
15 to where you would be open to considering a life
16 sentence?

17 A. Yes. Yes. And like I say, I couldn't
18 say that I would do it on this case and not on that case,
19 it depends on the evidence that is presented.
20 Before you sentence somebody to death
21 you have to look at everything. I mean, that is a giant
22 step. It's one that if it had to be taken could be
23 taken, but it would have to have a lot of looking and a
24 lot of searching.
25 Q. And, it's really kind of a crazy way
Sandra M. Halsey, CSR, Official Court Reporter
2634

1 we try to do it where we throw out different types of
2 "mitigating evidence," because mitigating evidence could
3 take every kind of form possible.

4 A. Right.

5 Q. So, I'm not going to try to say,
6 "Could you believe this or could you believe that,"
7 because I just want to know, could you say, "Well,
8 anything could be mitigating under the proper
9 circumstance and I am going to keep an open mind to
10 anything that they bring to me that might convince me.
11 Some might not convince me, but some might, and I am
12 going to be willing to listen to anything."

13 A. There are some things that could
14 convince me of mitigating circumstances and then there

15 are some that would not.

16 Q. Right. Certainly.

17 A. I don't believe somebody that is going

18 to go and get high on crack or cocaine or something and

19 then just go out and blast somebody away for the fun of

20 it, that is not a mitigating circumstance.

21 Q. Right. The fact that that person

22 chooses to be messed up is no excuse?

23 A. Right. But then on the other hand, if

24 someone was to rape and beat my daughter and I went and

25 did mayhem on somebody, that could be a mitigating

Sandra M. Halsey, CSR, Official Court Reporter

2635

1 circumstance. I mean, it depends on what is presented.

2 Q. Right. I see your point. Also, when

3 you are on a jury, the jury does not have to agree on

4 what the mitigating circumstance is.

5 Let's say everybody in that room says,

6 "Well, we have heard the evidence and we believe there is

7 mitigation. No question about it." Can you see a

8 situation where it does not -- you don't have to agree?

9 I might say, "Well, I think the person got a real bad

10 background and history, had a terrible stepfather who

11 abused him or her, and I can't go for a death penalty in

12 this situation."

13 Somebody else might say, "Well, I

14 don't agree with that. But I believe that this person

15 has turned their life around in the last couple of months

16 and I go for that."

17 Can you agree that the jury doesn't

18 have to agree on one mitigating circumstance, it just --

19 it could be different circumstances to each individual

20 juror?

21 A. Yes, I understand that.

22 Q. You touched on one thing I want to hit

23 on last and that is: That you are not going to go back

24 in the jury room and just because a bunch of people feel

25 different than you, you are going to change your mind

Sandra M. Halsey, CSR, Official Court Reporter

2636

1 about something?

2 A. No. Raising 10 kids, I mean, my paper

3 shows that I have four, and I myself have four, and my

4 husband has six and we have kind of raised them

5 altogether. And I have learned to become a very

6 opinionated person. If I believe in something, that is

7 what I am going to believe in.

8 Things have to be proven to me. I'm

9 not going to stand back and just let people walk all over
10 me because they have maybe a stronger personality than I
11 do.

12 Q. Okay. Do you have any questions?

13 A. Especially this.

14 Q. Okay. Well, this is very serious.

15 A. Yes.

16 Q. Do you have any questions that you
17 want to ask me?

18 A. I think the one thing that I am
19 puzzled about and actually either lawyer or the Judge
20 could probably answer this.

21 Q. Well, if it's a hard question, I might
22 take you up on that.

23 A. Well, I don't think it's that hard.

24 But is it in this type of a trial, is it everyone on the
25 jury has to find a guilty verdict or is it only 10 out of
Sandra M. Halsey, CSR, Official Court Reporter
2637

1 12?

2

3 THE COURT: I'll answer that. It's
4 all 12, unanimous, ma'am.

5 THE PROSPECTIVE JUROR: Okay. That is
6 the only thing I wasn't sure of.

7

8 BY MR. S. PRESTON DOUGLASS, JR:

9 Q. Does that raise any issues you want to
10 talk about?

11 A. No, I just didn't know.

12 Q. All right. That is a fair question.

13 Had you said you had ever -- had you ever served on a
14 jury before?

15 A. No.

16 Q. Okay. Did you ever serve on a Grand
17 Jury before?

18 A. No. I think that would scare me more.

19 Q. All right. The last thing I'm just
20 going to ask you is: If you, God forbid, were put in a
21 situation where you were on trial for something, would
22 you be satisfied with a juror like yourself knowing what
23 you know about yourself?

24 A. Yes, I think I would.

25 Q. Okay. That's all I have.
Sandra M. Halsey, CSR, Official Court Reporter
2638

1 Thank you.

2

3 THE COURT: Thank you, ma'am. If
4 could step outside briefly, please.
5 Don't run away. We will call you back
6 in a minute.
7 THE PROSPECTIVE JUROR: Okay.
8
9 (Whereupon, the prospective
10 juror was excused from the
11 room, and the following
12 proceedings were held,
13 outside of his presence
14 as follows:)
15
16 THE COURT: What says the State?
17 MR. TOBY L. SHOOK: The State will
18 accept the juror.
19 THE COURT: What says the defense?
20 MR. S. PRESTON DOUGLASS, JR: We'll
21 exercise a challenge.
22 THE COURT: Okay. Thank you.
23 All right. Let's have Ms. Adair come
24 back in, please.
25
Sandra M. Halsey, CSR, Official Court Reporter

2639

1 (Whereupon, the prospective
2 juror returned to the
3 room and the proceedings
4 were resumed as follows:)
5
6 THE COURT: Ms. Adair, we thank you
7 very much for coming and your candor, you are going to be
8 excused from further jury service.
9 THE PROSPECTIVE JUROR: All right.
10 Thank you.
11 THE COURT: If you could not please
12 talk about this case until it's over. I do have a gag
13 order in effect which I can impose monetary fines or Kerr
14 County Jail time.
15 I am not threatening you, I just have
16 to tell you about it. When the case is over you may talk
17 or not talk as you see fit.
18 THE PROSPECTIVE JUROR: All right.
19 THE COURT: Thank you.
20 THE PROSPECTIVE JUROR: You're
21 welcome.
22 THE COURT: All right. Let's take a
23 brief break for right now.

24
25 (Whereupon, a short
Sandra M. Halsey, CSR, Official Court Reporter
2640

1 recess was taken,
2 after which time,
3 the proceedings were
4 resumed on the record,
5 in the presence and
6 hearing of the defendant
7 as follows:)

8
9 THE COURT: All right, let's bring the
10 next juror in, please.

11
12 (Whereupon, the next juror
13 was brought into the
14 Courtroom, and the proceedings
15 were resumed as follows:)

16
17 THE COURT: Ms. Jenschke, if you will
18 have a seat right here, please ma'am. All right. This
19 is Helen Jenschke, J-E-N-S-C-H-K-E. Am I pronouncing
20 your name right, ma'am?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: All right. She is number
23 242 on the master list, number 79 on our list. Ms.
24 Jenschke, if you will raise your right hand, please.

25 Do you solemnly swear or affirm that
Sandra M. Halsey, CSR, Official Court Reporter
2641

1 you will true answers make to all questions propounded to
2 you concerning your qualifications as a juror, so help
3 you God?

4
5 (Whereupon, the prospective
6 juror was duly sworn by the
7 Court to true answers make
8 to the questions propounded,
9 concerning qualifications, after
10 which time, the proceedings were
11 resumed as follows:)

12
13 THE PROSPECTIVE JUROR: I do.

14 THE COURT: Thank you, ma'am. Ms.
15 Jenschke, you are a potential juror in the Darlie Routier
16 matter.

17 Mrs. Routier is the defendant in this

18 case, she is sitting right there in the burgundy dress to
19 your right.
20 She is represented by her attorneys,
21 Curtis Glover from Dallas, and Preston Douglass from
22 Kerrville.
23 The State is represented by two
24 Assistant District Attorneys from Dallas today, Toby
25 Shook and Sherri Wallace. They are going to be asking
Sandra M. Halsey, CSR, Official Court Reporter
2642

1 you some questions now.
2 If you are a little nervous, please
3 relax. Nobody is trying to trick you or anything, and
4 there are no wrong answers down here.
5 You are not going to have a test, so
6 you are not going to be graded on it. They just have to
7 know how you feel about certain issues, so please speak
8 your mind freely.
9 THE COURT: Mr. Shook.
10 MR. TOBY L. SHOOK: Thank you, Judge.

11
12 Whereupon,
13
14 HELEN JENSCHKE,
15
16 was called as a prospective juror, for the purpose of
17 voir dire, having been first duly sworn by the Court to
18 speak the truth, the whole truth, and nothing but the
19 true, testified in open court, as follows:

20
21 VOIR DIRE EXAMINATION
22
23 BY MR. TOBY L. SHOOK:
24 Q. Again, my name is Toby Shook and I
25 will be asking you questions on behalf of the State. As
Sandra M. Halsey, CSR, Official Court Reporter
2643

1 Judge Tolle has informed you, we don't have any right or
2 wrong answers, we just want your opinions. Okay?
3 A. Okay.
4 Q. I want to go over some of the things
5 that are here in your questionnaire, then we'll talk a
6 little about the law that might apply to those things.
7 Have you ever been down on a jury
8 before?
9 A. No.
10 Q. Usually we talk to the jurors kind of
11 in a group, but since it is a capital murder case, we

12 talk to each juror individually.
13 A. Uh-huh. (Witness nodding head
14 affirmatively.)
15 Q. Again, this allows you an opportunity
16 if you have any questions for us, you can ask.
17 It says here on your questionnaire
18 that you did see or heard some of the details about the
19 case on TV and I think you read something in the
20 newspaper; is that right?
21 A. Yes.
22 Q. Can you tell us what you have read or
23 what you saw on TV?
24 A. Oh, really not that much. Just more
25 or less, heard, you know, what happened and all.
Sandra M. Halsey, CSR, Official Court Reporter
2644

1 Q. Okay. Was it when the case was moved
2 here? I know they had some item on TV.
3 A. Uh-huh. (Witness nodding head
4 affirmatively.)
5 Q. Okay. Let me ask you this: Have you
6 formed any opinions over anything you have read?
7 A. Well, not really, no.
8 Q. Okay. And that is important to us,
9 obviously.
10 A. Uh-huh. (Witness nodding head
11 affirmatively.)
12 Q. Because if you are going to be a
13 qualified juror on the case, we have to be sure you will
14 listen to the evidence as it comes in and not have formed
15 an opinion in your mind over anything you might have read
16 or heard on TV.
17 A. Right.
18 Q. A lot of people obviously have seen
19 some things, some people form opinions, some people
20 don't. So, are you telling us then you have not formed
21 any opinions?
22 A. No.
23 Q. Okay. You put on your questionnaire
24 that, as far as you having to be out of town, it looks
25 like your brother has some medical problems; is that
Sandra M. Halsey, CSR, Official Court Reporter
2645

1 right?
2 A. Yes.
3 Q. Tell us a little bit about that
4 situation.
5 A. Well, a few weeks ago, just shortly

6 before that, he had fallen off of a ladder a year ago and
7 then a year later he had -- had, you know, he had all
8 these pins and bolts and screws and stuff put in his leg,
9 but it was bothering him so much he had to get those out.
10 So, he got those out a few weeks ago
11 and then exactly two weeks after that he -- well, he got
12 a headache starting that very same day when he had this
13 surgery done to get all, you know, the bolts and all that
14 out.

15 He started this terrible headache and
16 exactly two weeks on the day from that thing discovered
17 that he had a brain tumor and they did surgery on it.

18 He is like paralyzed on his left side
19 now, 55 years old.

20 Q. Where does he live?

21 A. Dallas -- Arlington.

22 Q. Okay. And if his situation gets worse
23 obviously you will go there?

24 A. Oh, yes, I would. Uh-huh. (Witness
25 nodding head affirmatively.)

Sandra M. Halsey, CSR, Official Court Reporter
2646

1 Q. But you don't know anything more about
2 his condition now?

3 A. Oh, he was in rehab. He's, oh, I
4 think going to leave rehab and go for radiation
5 treatments for the next four weeks.

6 Q. Okay.

7 A. And five times a week is all I know
8 now. The other day, I mean, I talked to him the other
9 day.

10 Q. Let me ask you: You are from Harper,
11 Texas? Is that where you were born?

12 A. Yes.

13 Q. How long have you lived in this area?

14 A. I lived in Harper until I got married
15 and then lived over here, lived over here in Kerrville,
16 oh, 30, 40, 42 years.

17 Q. Okay. And, let me ask you this:

18 There is one area I want to get into before I get into
19 your views about the death penalty.

20 That is an area of law that the Judge
21 talked about, we had it in the questionnaire, about a
22 defendant's right not to testify. And I think the way
23 the Judge explained it, you know, in every criminal trial
24 if a person wants to testify, they can.

25 However, if they choose not to testify

Sandra M. Halsey, CSR, Official Court Reporter

1 and exercise their Fifth Amendment right, the jurors
2 can't hold that against them. And then part of the
3 questionnaire when we talk about that, about a person,
4 the Constitution says the accused doesn't have to testify
5 in their own behalf, and we asked you how you feel
6 because that is important to us, you said, "I think they
7 should testify," and a lot of people feel that way.

8 What we need to know is: Could you
9 follow that particular rule, that, you know, that you
10 wouldn't use that as evidence against the defendant if
11 they chose not to testify? Or would you use that as
12 evidence against them?

13 A. Well, no, no, I just --

14 Q. Okay. You just would want to hear the
15 whole story?

16 A. Well, I would say so.

17 Q. Okay. Fair enough. A lot of people
18 feel that way, but you wouldn't have any trouble
19 following the law?

20 A. No.

21 Q. Okay. Tell me how you feel about the
22 death penalty in your own -- and again, I'm just looking
23 for your own opinions. Do you think it is a law we
24 should have in this State?

25 A. Ask that question again.

Sandra M. Halsey, CSR, Official Court Reporter
2648

1 Q. Do you think we should have the death
2 penalty as a law in this State?

3 A. Well --

4 Q. In other words, are you in favor of
5 the death penalty as a law?

6 A. Well, it just depends on what -- I
7 guess how serious or how -- I don't know.

8 Q. Okay. Why do you think we should have
9 the death penalty in some circumstances?

10 A. Why?

11 Q. Yes. Why do you think that is a just
12 punishment or, I mean, why do you think we should have
13 the death penalty?

14 A. Oh, well, I wouldn't suggest having it
15 for everything, you know, I mean for every --

16 Q. Let me ask you this: What kind of
17 crimes do you think would be appropriate for the death
18 penalty? What types of crimes do you think that that is
19 a just punishment for?

20 A. Oh, that is a hard thing to answer. I

21 would say, I mean, if it's something that really -- a
22 really serious, you know, offense, I would --
23 Q. Okay.
24 A. It's just depending on how. But
25 there -- I mean, but nobody knows -- nobody knows until
Sandra M. Halsey, CSR, Official Court Reporter
2649

1 after the trial, whether or not, you know, it is like
2 that or not.
3 Q. Okay. You circled: I believe the
4 death penalty is appropriate in all capital murder cases.
5 I mean, let me look at it this way: Do you think it is
6 appropriate in murder cases, if someone intentionally
7 takes the life of another?
8 A. Well, it just depends on --
9 Q. Would it just depend on the
10 circumstances of that case?
11 A. I would say so, yes.
12 Q. Have you followed any cases in the
13 newspaper that you think, you know, this kind of case is
14 what I think should be a capital murder case?
15 A. No.
16 Q. Or anything like that?
17 A. No.
18 Q. You ever come across a case that you
19 think, "Well, this is a death-penalty type of case"?
20 A. Well, no, not really. Take the O.J.
21 Simpson one, for example.
22 Q. Uh-huh. (Attorney nodding head
23 affirmatively.)
24 A. Well, I mean, I still wouldn't say
25 that necessarily it would have to be murder. I mean, you
Sandra M. Halsey, CSR, Official Court Reporter
2650

1 know, you say he would have to have the chair for that,
2 you know, but still, I mean, if you find him guilty, you
3 find him guilty.
4 Q. Right.
5 A. And he should pay for something you
6 know.
7 Q. Because of the type of murder it is?
8 A. Yes.
9 Q. The O.J. Simpson case, I guess we just
10 couldn't help watching some of that because we just saw
11 it any time you turned on the TV, it was on.
12 What were your opinions on that case?
13 A. I didn't watch that much of it, but my
14 opinion on it is I think that he was guilty.

15 Q. Okay. That type -- and obviously from
16 what little you know, that was a brutal killing?

17 A. Yes.

18 Q. Two people. Is that the type of
19 killing you are talking about that might be appropriate
20 for the death penalty case?

21 A. Well, not to let them loose like they
22 did him anyway, you know. I mean, somebody should serve
23 some time or something for it.

24 Q. Okay. Okay.

25 A. I just feel like the reason why I
Sandra M. Halsey, CSR, Official Court Reporter
2651

1 I guess I think he was really is if he wouldn't have, he
2 wouldn't have gotten into his Bronco and driven off with
3 all of this good stuff, you know.

4 I think he would have checked it out
5 and wanted to know who did this, you know.

6 Q. Sure.

7 A. That is my opinion.

8 Q. And that's all we're looking for is
9 your opinion on these things.

10 There are only certain types of crimes
11 that come into our death penalty statute. It has to be a
12 murder case plus something else. Okay?

13 You can have a brutal murder and it
14 not be in the capital murder statute. You can get life
15 in prison. Let's say I come down and say I had a gun and
16 for whatever reason put it right up to Ms. Wallace's head
17 and shot her.

18 It's a brutal killing, can't get the
19 death penalty for that. You could get life in prison.

20 To have the death penalty you have a
21 murder plus something else, like murder during a felony.

22 Where a person, you may have read about the situation
23 where like a guy goes into a convenience store, and robs
24 it, and kills the clerk. Or a bank robber comes in and
25 robs the bank and kills the clerk, and the teller. That

Sandra M. Halsey, CSR, Official Court Reporter
2652

1 could fall under our statute, that is a murder during a
2 felony.

3 Or someone that comes into someone's
4 home, breaks in and kills the homeowner, that could be
5 the statute. Someone that kills someone during a rape or
6 a kidnapping, those fall under the statute. Or the
7 murder of a police officer who is on duty or a fireman
8 who is on duty.

9 A. Uh-huh. (Witness nodding head
10 affirmatively.)
11 Q. The murder, someone that does it just
12 for money, like a hit man situation. Or in this
13 particular case for instance, the murder of a child under
14 the age of six. In fact, let me let you pause and look
15 at the indictment in this case which is on that piece of
16 paper in front of you.
17 You see that paragraph, that
18 typewritten portion?
19 Take a moment and read that to
20 yourself.
21
22 THE COURT: We're talking about that
23 one right there, yes, ma'am.
24 THE PROSPECTIVE JUROR: Okay.
25 MR. TOBY L. SHOOK: If we could
Sandra M. Halsey, CSR, Official Court Reporter
2653

1 approach the bench for a second, your Honor?
2 THE COURT: All right.
3
4 (Whereupon, a short
5 Discussion was held
6 Off the record, after
7 Which time the
8 Proceedings were resumed
9 As follows:)
10
11 THE COURT: Ma'am, would it be
12 difficult for you to watch this trial, be on this jury,
13 if something happened to your brother or anything?
14 THE PROSPECTIVE JUROR: Would it be
15 what?
16 THE COURT: Difficult for you to be on
17 this jury were your brother to get sicker?
18 THE PROSPECTIVE JUROR: Well, if
19 something would -- well, I mean, if he died I would
20 definitely want to be at the funeral.
21 THE COURT: Well, he is in danger of
22 death; do you think he could be?
23 THE PROSPECTIVE JUROR: Well, when he
24 went to the hospital, the day he went to the emergency
25 room he had like -- if they wouldn't have done surgery,
Sandra M. Halsey, CSR, Official Court Reporter

2654

1 he would have had two days to live, yes.

2 THE COURT: All right. Both sides
3 agree to excuse this juror? Both sides agree?
4 MR. TOBY L. SHOOK: We will agree to
5 it, Your Honor.
6 MR. S. PRESTON DOUGLASS, JR: Yes.
7 THE COURT: All right. Thank you,
8 ma'am. We are not going to keep you down here then.
9 Thank you very much.
10 Ma'am, if you could remember there is
11 a gag order in effect, please don't say anything about
12 these proceedings to anybody until the trial is over.
13 Fair enough?
14 THE PROSPECTIVE JUROR: Yes.
15 THE COURT: All right. Thank you.
16 Who's next?
17
18 (Whereupon, the following
19 mentioned item was
20 marked for
21 identification only
22 as Court's Exhibit 13,
23 after which time the
24 proceedings were
25 resumed on the record
Sandra M. Halsey, CSR, Official Court Reporter
2655

1 in open court, as
2 follows:)
3
4 MS. SHERRI WALLACE: I will offer
5 Court's Exhibit No. 13.
6 THE COURT: Admitted for the record
7 only.
8
9 (Whereupon, the above
10 mentioned item was
11 received in evidence
12 for record purposes
13 only, after which time,
14 the proceedings were
15 resumed on the record,
16 as follows:)
17
18 THE COURT: Who's next? Erec Lemond,
19 bring him in.
20 If you would have a seat right here,
21 please. All right. This is Erec, E-R-E-C. Is that how
22 you spell it, sir?
23 THE PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Lemond, L-E-M-O-N-D, 255
25 on the jury list, number 84 on our list.
Sandra M. Halsey, CSR, Official Court Reporter
2656

1 All right. Sir, if you will raise
2 your right hand, please.
3 Do you solemnly swear or affirm that
4 you will true answers make to all questions propounded to
5 you concerning your qualifications as a juror, so help
6 you God?

7
8 (Whereupon, the prospective
9 juror was duly sworn by the
10 Court to true answers make
11 to the questions propounded,
12 concerning qualifications, after
13 which time, the proceedings were
14 resumed as follows:)

15
16 THE PROSPECTIVE JUROR: I do.
17 THE COURT: All right. If you could
18 lean up, put your hand -- lean up and speak into this
19 microphone loudly. You will have to slide up into it.
20 You are a potential juror in the
21 Darlie Routier case. Mrs. Routier is the defendant, she
22 is the young lady sitting here in the burgundy dress.
23 She is represented by her attorneys,
24 Mr. Curtis Glover and Mr. Preston Douglass. Mr. Glover
25 is from Dallas, Mr. Douglass is from Kerrville.
Sandra M. Halsey, CSR, Official Court Reporter
2657

1 The State is represented by two Dallas
2 County District Attorneys, Mr. Toby Shook and Sherri
3 Wallace. You are going to be asked some questions, there
4 are no wrong answers.
5 We just ask that you give candid
6 answers to the questions asked you. Fair enough?

7 THE PROSPECTIVE JUROR: Yes, sir.
8 THE COURT: All right. Now, you are
9 going to have to speak up louder now because Ms. Halsey
10 is taking all this down.
11 Go ahead, please, Mr. Shook.
12 MS. SHERRI WALLACE: It will be me.
13 THE COURT: Ms. Wallace, whoever.

14
15
16 Whereupon,
17

18 EREC HENSLER LEMOND,

19

20 was called as a prospective juror, for the purpose of
21 voir dire, having been first duly sworn by the Court to
22 speak the truth, the whole truth, and nothing but the
23 true, testified in open court, as follows:

24

25

Sandra M. Halsey, CSR, Official Court Reporter
2658

1 VOIR DIRE EXAMINATION

2

3 BY MS. SHERRI WALLACE:

4 Q. Good afternoon. I see from your
5 questionnaire that you say that you believe that the
6 defendant is guilty?

7 A. Yes.

8 Q. Okay. Can you tell me how you have
9 reached that conclusion?

10 A. Well, I have heard a lot about it in
11 the press.

12 Q. Okay. So you read a lot about it?

13 A. I have heard about it from my parents.

14 Q. Have you formed an opinion in the
15 case?

16 A. Not really.

17 Q. Okay. Well, you think she is guilty?

18 A. Partially and partially not.

19 Q. Can you tell me a little bit about
20 that?

21 A. Well, I been hearing a lot about it.

22 I'm not sure exactly which way it would go, whether she
23 did it or not.

24 Q. Okay. What have you heard?

25 A. That she claimed that somebody came in
Sandra M. Halsey, CSR, Official Court Reporter
2659

1 there and tried to rape her and killed her kids and she
2 claims she didn't do it.

3 Q. What conversations have you had with
4 your parents?

5 A. They mentioned that they had seen it
6 in the papers.

7 Q. Okay. Do you know if they -- what
8 they think about it?

9 A. They think she is guilty.

10 Q. Okay. And, you said you partially

11 think she is guilty and partially not. Is that what you

12 said?

13 A. Uh-huh. (Witness nodding head

14 affirmatively.)

15 Q. Can you tell me a little bit about

16 where you are coming from there?

17 A. I'm just going to base it on what my

18 folks have said.

19 Q. Okay. What have you heard that makes

20 you think she is not guilty?

21 A. Well, I wouldn't know.

22 Q. Okay. Anything about what you have

23 heard that would or could influence or affect your

24 verdict in this case?

25 A. No.

Sandra M. Halsey, CSR, Official Court Reporter

2660

1 Q. Okay. So you have an open mind at

2 this point?

3 A. Yes.

4 Q. Okay. Let me talk to you a little bit

5 more about your questionnaire and if anything comes up

6 and you have any questions of me, just let me know.

7 Okay?

8 A. Okay.

9 Q. First off, do you know any of the

10 lawyers in this case, any of the local attorneys?

11 A. No, I do not.

12 Q. Okay. Mr. Preston Douglass is here

13 and Mr. Richard Mosty, I think you saw him a few weeks

14 ago?

15 A. Yes.

16 Q. Okay. But you don't know them?

17 A. No, I do not.

18 Q. You don't any of the other people from

19 Dallas?

20 A. No, I do not.

21 Q. Okay. In your questionnaire you said

22 a lot of things Mr. Lemond that I want to ask you about.

23 You said that you believe that the death penalty is

24 appropriate in all capital murder cases?

25 A. Yes, I do.

Sandra M. Halsey, CSR, Official Court Reporter

2661

1 Q. All right. So, do you believe that if

2 someone commits a capital murder then they should receive

3 the death penalty?

4 A. Yes, I do.

5 Q. Okay. Is that pretty much automatic
6 in your mind?

7 A. That is definite.

8 Q. Absolutely?

9 A. Yes.

10 Q. All right. Would you consider a life
11 sentence in a death penalty case?

12 A. No, I would not. If they are guilty
13 they should get the electric chair.

14 Q. Okay. You also said that if a
15 district attorney tries a person for capital murder the
16 person is probably guilty, and you said you strongly
17 agree.

18 So, as you sit right now, do you
19 pretty much think she is already guilty, because, I mean,
20 we're trying her for capital murder. It's our goal to
21 see that she is executed.

22 We believe we have the type of case
23 and the quality of evidence to do that. Now, knowing
24 where we're coming from, can you presume her innocent or
25 do you already kind of think she maybe did it?

Sandra M. Halsey, CSR, Official Court Reporter
2662

1 A. Well, I think maybe she did it, and I
2 don't know, I'm not sure.

3 Q. Okay. So, you are sort of leaning?

4 A. Yes.

5 Q. Leaning guilty, but not sure yet? Is
6 that a fair way to sum it up?

7 A. Yes.

8 Q. Okay. You also said that if a person
9 is accused of capital murder she should have to prove her
10 innocence and you strongly agree.

11 Can you tell me a little bit about
12 what you are meaning there?

13 A. No, I can't.

14 Q. Okay. In other words, would you want
15 to hear from the defendant?

16 A. Yes, I would.

17 Q. Okay. So, the Judge is going to tell
18 you that the law is that the defendant has an absolute
19 right not to testify.

20 A. Yes.

21 Q. But it's kind of human nature to want
22 to hear both sides of the story.

23 A. Yes.

24 Q. What I want to know is where you fit
25 in that? Would you want to hear both sides of the story

Sandra M. Halsey, CSR, Official Court Reporter

1 and want to hear it?
2 A. Yes, I do. I want to hear both sides.
3 Q. Okay. Could you set aside your desire
4 or your want to hear both sides of the story and follow
5 the law that you couldn't consider if she didn't testify?
6 A. Yes, I could.
7 Q. Okay. You would want to hear from
8 them, but you would not have to?
9 A. Right.
10 Q. Okay.
11
12 MR. TOBY L. SHOOK: All right, Judge.
13 THE COURT: Keep going. You want to
14 pass the witness?
15 MR. TOBY L. SHOOK: Well, we want to
16 pass him on that one issue that has been brought up.
17 THE COURT: Well, I'll ask you this
18 right now. I'm going to tell you that these people don't
19 have to do one thing here. Do you understand that?
20 All they have got to do is be here.
21 They are here.
22 This young lady does not have to
23 testify at all. And if she elects not to testify, you
24 can't hold that against her.
25 Do you understand that?
Sandra M. Halsey, CSR, Official Court Reporter
2664

1 THE PROSPECTIVE JUROR: Yes, sir.
2 THE COURT: Can you follow that law?
3 THE PROSPECTIVE JUROR: Yes, sir.
4 THE COURT: Anything other questions?
5 Anything you want to ask on that issue, please do so.
6 All right.
7 Well, the reason we are asking this
8 and boring in on it is because in your questionnaire you
9 filled out, you said you would require her to testify.
10 And I'm telling you she doesn't have to.
11 In fact, that whole side, they don't
12 have to put on one bit of evidence at all. When the
13 State rests their case, that can be the end of it. They
14 don't have to say a thing.
15 And you may be aching to know what
16 they have over there, they may not say a thing.
17 Could you still find the defendant not
18 guilty if you thought the State failed to prove their
19 case and the defense doesn't say anything?
20 THE PROSPECTIVE JUROR: Well, I don't

21 know.

22 MR. CURTIS GLOVER: Do you want me to?

23

24

25

Sandra M. Halsey, CSR, Official Court Reporter

2665

1 VOIR DIRE EXAMINATION

2

3 BY MR. CURTIS GLOVER:

4 Q. Mr. Lemond, I have your questionnaire.

5 You remember being in court that day and you answered

6 some questions on a document?

7 A. Yes, sir.

8 Q. You'll recognize your handwriting,

9 won't you?

10 A. Yes, sir.

11 Q. Okay. Let me show you page 12 right

12 there. You said, in answer to this question: "Do you

13 know for any reason why you could not sit as a juror for

14 this trial, be absolutely fair to the defendant and the

15 State and render a verdict based solely upon the evidence

16 presented to you?"

17 "Yes, I believe the defendant is guilty."

18 Are you telling the Judge here today under

19 oath that you believe that the defendant is guilty?

20 A. I'm not sure.

21 Q. Okay. Well, can you tell us why you

22 said that? Do you know?

23 A. No.

24 Q. You don't know why you said that?

25 A. No.

Sandra M. Halsey, CSR, Official Court Reporter

2666

1 Q. Okay. I will show you page 3 of your

2 questionnaire.

3 It says: "If a person is accused of

4 capital murder, she should have to prove her innocence."

5 And you said here, "strongly agree."

6 Are you telling the Judge, now you

7 answered these under oath. Do you remember the Judge

8 giving you an oath there that first day we were there?

9 A. Yes, sir.

10 Q. Do you agree that you answered under

11 oath at that time that you strongly agree?

12 A. Yes.

13 Q. Do you feel that way today?

14 A. Yes, sir.

15 Q. Are you saying yes?

16 A. Yes, sir.

17 Q. Okay.

18

19 THE COURT: Do you want to submit the

20 juror for cause?

21 MR. CURTIS GLOVER: Yes, sir.

22 THE COURT: All right. Motion for

23 cause granted. We thank you, Mr. Lemond, we appreciate

24 your coming, you will be excused from further jury

25 service.

Sandra M. Halsey, CSR, Official Court Reporter

2667

1 Please do not discuss what went on

2 here today with anybody, the trial is not over yet. I do

3 have a gag order in effect, and I can impose monetary

4 penalties or Kerr County Jail time.

5 I'm not threatening you, of course. I

6 just have to tell you what the situation is. So, if you

7 can keep it all to yourself until after the trial is over

8 in late January we would appreciate it.

9 Thank you for coming.

10 THE PROSPECTIVE JUROR: All right.

11

12 (Whereupon, a short

13 discussion was held

14 at the side of the

15 bench, between the Court

16 and the attorneys for

17 both sides in the case,

18 off the record,

19 after which time,

20 the proceedings were

21 resumed on the record,

22 as follows:)

23

24 THE COURT: All right. Let's put this

25 on the record. I have in my possession notice of motion,

Sandra M. Halsey, CSR, Official Court Reporter

2668

1 notice of possible conflict of interest, by Gregory

2 Davis, an Assistant District Attorney from Dallas, asking

3 me to ascertain whether or not Mr. Mulder has any

4 conflict of interest in this case.

5 And, I believe that the record will

6 reflect that I have already asked these same questions of

7 Mr. Mulder when we first started and that Mrs. Routier

8 knowingly and willingly waived any conflict of interest.

9 Is that not so, Mrs. Routier?
10 THE DEFENDANT: Yes, yes, sir.
11 THE COURT: And that I believe that
12 your husband, Darin Routier, also knowingly and
13 intentionally waived any conflict of interest.
14 THE DEFENDANT: Yes, he did.
15 THE COURT: I think that was all in
16 the record. Was it not?
17 THE DEFENDANT: It was asked to us at
18 the beginning when we changed.
19 THE COURT: That is my recollection of
20 things.
21 THE DEFENDANT: Yes, sir.
22 THE COURT: We did that the first day
23 here, didn't we?
24 MR. TOBY L. SHOOK: I think so.
25 THE DEFENDANT: We did it that day,
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2669

1 but you had asked me when I was changing attorneys.
2 THE COURT: Yes, ma'am. But I mean in
3 Kerrville, we did it right then and there.
4 THE DEFENDANT: Yes.
5 THE COURT: As I recall it, it was the
6 first day before the jury, change of venue and all that,
7 before we got into the jury selection.
8 MS. SHERRI WALLACE: Judge, I think
9 there is some new evidence and Greg just wanted to make
10 real sure. There is some new evidence.
11 THE COURT: Well, I will tell you what
12 I will do. We will have the hearing when this jury is
13 picked. We will have a hearing all over and I will ask
14 Mrs. Routier again and I will ask Mr. Routier again. I'm
15 sure we will see what the questions are.
16 THE DEFENDANT: I know you have to go
17 through that procedure, but the questions will be --
18 THE COURT: Well, I feel I will not be
19 surprised at the same answers. Thank you. But we will
20 do it after we get this jury picked.
21 THE DEFENDANT: Yes, sir.
22 THE COURT: All right.
23
24 (Whereupon, the
25 Proceedings were
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2670

1 Recessed for the day,
2 To be resumed the

3 Following day, in
4 Open court, as follows:)

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Sandra M. Halsey, CSR, Official Court Reporter
2671

1 CERTIFICATION PAGE

2 THE STATE OF TEXAS)

3 THE COUNTY OF DALLAS)

4 I, Sandra M. Halsey, was the Official Court
5 Reporter of Criminal District Court Number 3, of Dallas
6 County, Texas, do hereby certify that I reported in
7 Stenograph notes the foregoing proceedings, and that they
8 have been edited by me, or under my direction and the
9 foregoing transcript contains a full, true, complete and
10 accurate transcript of the proceedings held in this
11 matter, to the best of my knowledge.

12 I further certify that this transcript of the
13 proceedings truly and correctly reflects the exhibits, if
14 any, offered by the respective parties.

15 SUBSCRIBED AND SWORN TO, this _____ day of
16 _____, 1997.

17 _____

18 Sandra M. Day Halsey, CSR

19 Official Court Reporter

20 363RD Judicial District Court

21 Dallas County, Texas

22 Phone, (214) 653-5893

23

24 Cert. No. 308

25 Exp 12-31-98
Sandra M. Halsey, CSR, Official Court Reporter
2672

1 STATE OF TEXAS)
2 COUNTY OF DALLAS)
3
4 JUDGES CERTIFICATE

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6
7

8 The above and foregoing transcript, as certified
9 by the Official Court Reporter, having been presented to
10 me, has been examined and is approved as a true and
11 correct transcript of the proceedings had in the
12 foregoing styled cause, and aforementioned cause number
13 of this case.

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20 _____
21 MARK TOLLE, JUDGE
22 Criminal District Court Number 3
23 Dallas County, Texas

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Sandra M. Halsey, CSR, Official Court Reporter
2673