



BRIEF BANK

WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE

Note: Use the navigation button  at the top of your screen to get back to the home page.

VOIR DIRE QUESTIONS

[Sample 1](#)

[Sample 2](#)

[Sample 3](#)

[Sample 4](#)

[Sample 5](#)

[Sample 6](#)

[Sample 7](#)

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR

,

Dept. No.

Defendant.

_____ /

STATE'S PROPOSED VOIR DIRE QUESTIONS

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, Nevada, and _____, Deputy District Attorney, and hereby submits this (MOTION TITLE). This (MOTION or RESPONSE) is supported by all pleadings and papers on file herewith, the attached Points and Authorities, and any oral argument this Honorable Court may hear on this Motion.

DATED this ___ day of _____, .

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
(DEPUTY)
Deputy District Attorney

The State respectfully seeks the court's permission to ask the following questions during voir dire.

1. You already know about the presumption of innocence and that if I fail to prove the defendant's guilt she is entitled to a verdict of Not Guilty. Do you also understand that if I do prove the defendant's guilt beyond a reasonable doubt the State is also entitled to its verdict-guilty?
2. Since my burden is only to prove the defendant's guilt beyond a reasonable doubt, do each of you realize that you can and may have some doubt at the end of the trial and still hold the defendant accountable by returning a guilty verdict?
3. Do any of you believe that a denial of guilt by the defendant is by itself enough make it impossible for you to vote to convict?
4. Have any of you had any law enforcement or legal training?
5. Have any of you, members of your immediate family or a close personal friend ever had an unpleasant experience with the District Attorney's Office?
6. A jury's job is to decide the guilt or innocence of a defendant. The subject of penalty or punishment is determined by the judge after a defendant is found guilty. Do you understand, as a consequence, that the subject of penalty or punishment should not be discussed or considered by you or any other juror and should not in any way affect your verdict?

Dated this _____ day of _____, .

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____

Deputy District Attorney

CODE
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P.O. Box 30083
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IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No.CR

,

Dept.No.

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RESPONSE TO MOTION FOR THE USE OF JURY QUESTIONNAIRE

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, Nevada, and _____, Deputy District Attorney, and hereby submits this (MOTION TITLE). This (MOTION or RESPONSE) is supported by all pleadings and papers on file herewith, the attached Points and Authorities, and any oral argument this Honorable Court may hear on this Motion.

DATED this ____ day of _____, .

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
(DEPUTY)
Deputy District Attorney

POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

II. STATEMENT OF THE FACTS

III. ARGUMENT

The defendant has moved for the use of a 13 page, 49 question juror questionnaire in this case. Further, the defendant relies on the Nevada Supreme Court case of Canada v. State, 113 Nev. 938, 944 P.2d 781 (1997), in arguing that this Honorable Court should give this lengthy questionnaire to each juror at some unspecified time between now and the trial on March 1, 1999.

The State contends that the two statutes governing this issue are NRS 175.031, Examination of Jurors, which states:

The court shall conduct the initial examination of prospective jurors, and defendant or his attorney and the district attorney are entitled to supplement the examination by such further inquiry as the court deems proper. Any supplemental examination must not be unreasonably restricted.

This statute makes it clear that supplemental examination of jurors is permitted, but that this Honorable Court could reasonably restrict that examination. This supplemental examination is not unlimited.

With this statute as the guideline, the Supreme Court of Nevada has held that, "(B)oth the scope of voir dire (citation omitted) and the method by which voir dire is pursued (citation omitted) are within the sound discretion of the district court." See Summers v. State, 102 Nev. 195, at 199, 718 P.2d 676, at 679 (1986). Further, the Court has held that, "a defendant must be permitted reasonable voir dire of the prospective jurors." See, Libby v. State, 109 Nev. 905, at 914, 859 P.2d 1050, at 1056 (1993).

However, the Court has provided limits on the extent of voir dire. In Hogan v. State, 103 Nev. 21, 23, 732 P.2d 422, 423 (1987), the Supreme Court of Nevada held that:

Many of Hogan's proposed questions were repetitive; others appeared aimed more at indoctrination than acquisition of information; a number dealt with

issues of law to be covered in future jury instructions, and so were excludable under Oliver v. State, 85 Nev. 418, 456 P.2d 431 (1969).

Further, the Court held in Rogers v. State, 101 Nev. 457, 705 P.2d 664 (1985), that the district court was correct in allowing the defendant's attorney to ask prospective jurors if they had served on a civil or criminal jury before, when that service took place, and whether or not they reached a verdict. However, the Court held that the district court properly restricted the defendant's attorney from asking what that verdict was. Therefore, it is clear that voir dire whether done orally or in writing can reasonably be limited by this Honorable Court.

The second statute pertaining to this issue is NRS 175.036(1) which states, "(E)ither side may challenge an individual juror for disqualification or for any cause or favor which would prevent him as a juror from adjudicating the facts fairly." The purpose of the voir dire, whether conducted orally or in writing is to glean information from a prospective juror upon which to make an informed decision as to whether or not that person could be a fair and impartial juror and whether or not the defendant is ultimately tried by a jury capable of giving a fair and impartial verdict. See generally, Aesoph v. State, 102 Nev. 316, 721 P.2d 379 (1986); Hall v. State, 89 Nev. 366, 513 P.2d 1244 (1973); and Bryant v. State, 72 Nev. 330, 305 P.2d 360 (1956).

Therefore, it is clear from the two statutes and the cases cited herein above that voir dire can be reasonably restricted, it is not unlimited, and the purpose of it is to aid the defendant, the State, and the Court in determining whether or not the prospective juror can be fair and impartial.

Additional problems arise with the use of Juror Questionnaires. There is the logistical aspect of when to give the prospective jurors these questionnaires to fill out. Should the questionnaires be mailed to the home of the prospective jurors with the instruction to return them filled out to the Court as soon as possible, or filled out and brought to court on the day trial begins? In either event, the chances of getting all questionnaires back in a timely fashion to allow counsel a meaningful review of the extensive

responses thereto is virtually nil at this point. The State respectfully contends that if this Honorable Court allows the use of this questionnaire, there will not be enough time to review these responses before trial.

CONCLUSION

Based on the statutes, legal precedents, and argument presented herein above, the State respectfully contends that the proposed Juror Questionnaire should not be used in this case. Many of the proposed questions are irrelevant to the issue of seating a fair and impartial jury; many of the questions are redundant, in that they are asked on the juror information card or by the Court or counsel during voir dire; and the logistics preclude using this questionnaire in a meaningful fashion before the trial date of _____, _____.

DATED this ____ day of _____, _____.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
Deputy District Attorney

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THE STATE OF NEVADA,

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PROPOSED VOIR DIRE QUESTIONS

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and _____, Deputy District Attorney, and hereby files the State's proposed questions for Voir Dire.

1. Does everybody understand that the law prohibits attorneys and parties from talking to jurors during the trial? Therefore, if I see you outside of the courtroom and do not talk to you, you'll promise not to be offended?
2. Have either you or your spouse ever applied to any law enforcement agency for a job?
3. Are any of you members of law enforcement or related to law enforcement officers?
4. Have any of you, or a member of your family, ever been the victim of a violent crime?
5. Do any of you have any health problems which may affect your service as a juror?
6. Do any of you have any religious affiliation or beliefs that would prevent you from serving as a juror and rendering a verdict?

7. Does any member of the prospective jury panel have any prior jury experience? Was there anything in your prior jury experience that either upset or agitated you to the extent that jury service was an unsatisfactory experience?

8. Does any member of the prospective jury panel have any problem understanding the English language?

9. Does anybody on the prospective panel require regular or frequent medication or medical care and attention?

10. Does any member of the prospective jury panel have any projects and progress at your job which would affect your ability to concentrate if you were selected to serve as a juror on this particular case?

11. Is any member of the prospective jury panel currently involved in a lawsuit as a plaintiff or defendant?

12. Have you or any member of your family ever been employed by an attorney?

13. Has any member of the jury panel ever received any formal training in law?

14. Do any of the members of the prospective jury panel have any relatives or close friends who have had any training in law?

15. Have you or any member of your family ever been enlisted in any branch of the armed forces of the United States of America?

16. Have you or your spouse ever been a member of a grand jury?

17. Have you or any member of your family or friends ever been accused in any criminal action?

18. Have you or any member of your family or any acquaintance ever been a witness in a criminal case?

19. Have you or any member of your family ever been a witness in a criminal case?

20. Have you or any member of your family or a friend ever been a victim of a crime?

21. Have you or any member of your family or acquaintance ever been arrested?

22. Is there any member of the prospective jury panel currently on a felony-deferred adjudication or probation?

23. Are you a member of any law enforcement group such as the 100 Club, Mothers Against Drunk Drivers, or Parents of Murdered Children?

24. Have you, your spouse or any member of your family or friend ever been connected with the District Attorney's Office?

25. Is anyone on the prospective panel familiar with any of the witnesses in the case?

26. Has anybody on the prospective panel ever been involved in a lawsuit involving defense counsel Dennis Widdis?

27. Have you or any member of your family, or a close personal friend, ever been associated with, or worked with, any program that was dedicated to the rehabilitation of persons convicted of a crime?

28. Do you know, or have you known, anyone who has been to the penitentiary?

29. What are your feelings in general about the criminal justice system?

30. Have you known anyone who has had a serious problem as a result of drug use?

31. Have any of you known other jurors on this panel before coming to Court?

32. Have any of you heard, or do you have any knowledge of the facts or events in this case?

33. Do all of you understand that you are not allowed to conduct any type of investigation of this case on your own?

34. Because of the nature of the charge and the evidence in this case it may be necessary for you to listen to some language or some testimony which you would ordinarily not here or use in polite conversation. Would that bother you?

35. In light of the fact that this is a murder case, is there anyone that would be unable to listen to the testimony and look at the evidence, knowing that this case involves a homicide?

36. Does the fact that the defendant in this case is a black man, by itself, have any significance to any of the jurors?

37. Is there anyone that feels that ethnicity is a factor to be considered in this case?

38. The defendant in this case is charged with the crime of Murder. This is a serious offense. Do any of you have any sympathy or pity for the defendant because he is charged with this crime? Can you put aside such feelings and judge the defendant only upon the evidence presented to you?

39. Do all of you understand that the evidence presented by the defendant is not entitled to anymore weight just because he is accused of a crime?

40. Do all of you understand that if the defendant chooses to testify in this case, that his testimony is not entitled to anymore weight than the testimony of any other witness solely because he is charged with a crime?

41. In taking the stand, the defendant will have to take an oath like every other witness who testifies. Is there anyone who believes that when the defendant takes the stand, if he does, and swears to tell the truth, that it means that he is going to tell the truth?

42. Is there anyone on the prospective jury panel that believes that the defendant's testimony is more likely to be accurate than any other witness just because he is the accused?

43. Does everyone agree that the defendant's testimony should not be given anymore weight or credibility just because he is the defendant?

44. Does everyone understand that in a trial, the jurors decide the facts, and the Judge makes the decision as to what is the applicable law. At the end of the case, the Judge will then instruct you as to the law. Do each of you agree to follow the law that is given to you by the Judge?

45. If you hear any instruction which you believe should not be the law, will you still follow it and disregard your own opinion as to what you believe the law should be?

46. Do you believe that you will have any problems or any difficulty in following the law which you do not believe should be the law?

47. Is there anyone who, if they are in disagreement with some of the laws given to them by the Court, could still not follow them?

48. Does the nature of the charge itself or the possibility that some evidence may be gruesome in nature cause any of you to feel that you would rather not sit on this case?

49. In this case, the defendant is charged with Murder. The evidence will show that he did not commit the crime by himself. The State has alleged four different theories of liability of culpability. The State has alleged that the defendant either shot the victim and caused the murder, or that the defendant conspired with other individuals to commit a robbery and that Branson Clark was killed during the course and in furtherance of the robbery, or that the defendant aided and abetted others in the commission of the robbery and murder, and finally, the State claims that the defendant is guilty of Murder by virtue of the Felony Murder Rule. The Felony Murder Rule provides that if a person is killed during the course of the commission of a felony, the person is also liable for the murder. Does everyone understand that you may find the defendant guilty under any one of the four theories alleged by the State? Do all of you understand that the jury need not be unanimous with respect to the theory of guilt, but only as to the question as to whether or not the defendant is guilty beyond a reasonable doubt of the crimes alleged in the Information? Does everyone understand that the law provides that all persons concerned in the commission of a crime who either directly and actively commit the act constituting the offense or with knowledge of the unlawful purpose of the crime aid and abet in its commission or, whether present or not, who advised and encouraged its commission are regarded by the law to be equally guilty? Does anyone have an opinion about the law which provides that one is guilty of a crime who is not the actual perpetrator if he merely advised, encouraged or assisted in the commission of the crime?

50. Would any of you have any hesitancy in following an instruction, which, as a matter of law told you that one who knowingly commits an act that promotes, encourages or aids the commission of a crime is guilty of that crime even though he did not know that the act encouraged was unlawful, was not present when the act was committed, and did not know that the act was committed?

51. Do any members of the prospective panel have any disagreement with the concept that each conspirator in a conspiracy is liable for the acts of his co-conspirators which were committed in furtherance of the object of the conspiracy, even if such acts were not originally intended, provided that these acts are the natural and probable consequence of the object of the conspiracy?

52. Would you be able to follow the rule which I just stated even if it required that you convict the defendant for crimes which were committed by another person, which the defendant did not

intend to commit, did not agree to or know were to be committed, and at whose commission he was not present?

53. Has any member of the prospective jury panel ever heard evidence described as being either direct or circumstantial?

54. Direct evidence is evidence which directly proves a fact without an inference. For example, you do not need an inference to know that I am now standing in front of you. Your view of me is direct evidence that I am in this courtroom.

Circumstantial evidence is evidence which proves a fact from which an inference of the existence of another fact may be drawn.

55. Do each of you realize that in a trial direct evidence and circumstantial evidence are entitled to equal weight? Do each of you realize that it is not necessary that facts be proved by direct evidence and that the defendant may be convicted by only circumstantial evidence? Do you feel that you could convict the defendant on only circumstantial evidence?

56. All of the defendants are not on trial in this proceeding. Do you promise that you will not speculate about the reason for the absence of any other defendants?

57. Do all of you promise to give the defendant a fair trial? Do all of you understand that the State, as well as the defendant, also has the right to a fair trial? Do all of you feel that you can be fair to both the defendant and the State of Nevada?

58. In deliberating in the jury room and applying the burden of proof, which is that the State proved the defendant guilty beyond a reasonable doubt, will you apply your common sense to determining that issue?

59. Do all of you understand that you may use your experience in every day affairs in evaluating the truthfulness of witnesses and the weight of the evidence which you will hear in the trial?

60. In this case, the defendant may take the stand and testify as to certain facts. Do you understand that if the defendant does testify, that his testimony by itself does not create a reasonable doubt?

61. Is there anyone on the jury who believes that the presentation of conflicting evidence by the defendant creates a reasonable doubt without having to evaluate the weight of that evidence?

62. Do all of you understand that a conflict in the evidence does not necessarily create a reasonable doubt?

63. Is there any reason which we have not covered in voir dire which would affect your ability to be fair and impartial to both sides?

64. Are there any questions that any of you can think of that I might have forgotten to ask which might be relevant to whether you can be a fair and impartial juror?

Dated this _____ day of _____, 1999.

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____

Deputy District Attorney

Richard A. Gammick
#001510
P.O. Box 30083
Reno, NV 89520-3083
(775) 328-3200
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
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* * *

THE STATE OF NEVADA,

Plaintiff,

v.

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Dept. No.

Defendant.

STATE'S PROPOSED VOIR DIRE

___ Good Morning Ladies and Gentlemen:

___ Name

___ Assigned to prosecute:

___ Purpose of Voir Dire:

___ Totally unbiased jury

___ Give the Defendant the right to a fair trial

___ Not meant to embarrass or satisfy idle curiosity

___ We need an impartial jury.

___ Does anyone have any problems hearing?

___ Please raise your hand if you take exception or do not agree with what I am about to ask you.

___ 1. Do you all agree that the law should be applied equally?

___ 2. If the State shows that the defendant has broken the law beyond a reasonable doubt,
would you agree that the def. should be held responsible for his or her actions?

- ____ 3. In our system of justice a person should be convicted on the facts of the case not based on sympathy, prejudice or passion---Does anyone have a problem setting aside sympathy, prejudice or passion?
- ____ 4. His/Her honor may instruct you that the possible punishment is NOT to be considered by you. Does anyone have a problem just weighing the facts and determine guilt or innocence only and NOT the possible punishment?
- ____ 5. The law in this case will come from the judge--There is Not UNWRITTEN law. After the presentation of the facts, his/her honor will instruct you on the law. All people have different conceptions of the law possibly from TV or radio--But in this case, when you retire to the jury room, do you understand that you must not rely on any preconceived notions about the law? Does anyone have any problem with following the law as the judge gives it to you?
- ____ 6. Will each of you commit yourselves to follow the law as the judge gives it to you even though you may not personally agree with it?
- ____ 7. Reasonable doubt is defined as one based on reason. It is not mere possible doubt, but is such a doubt as would govern or control a person in the more weighty affairs of life. If in the minds of the jurors, after the entire comparison and consideration of all of the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation. As a prosecutor, I am willing to accept that burden of proof. Would any one here hold the State to a higher standard than this?
Would any of you require proof beyond any doubt?
- ____ 8. Would any of you be reluctant to convict if you were convinced of the def.'s guilt beyond a reasonable doubt?
- ____ 9. Time estimate of trial, any problems with that?
- ____ 10. Recognizes that jury service is somewhat inconvenient for everyone, problems?
- ____ 11. Reasons for postponing service

- ____ 12. The fact that the prosecutor goes first does that mean anything to anyone?
- ///
- ____ 13. Victims of crime on the panel? If so, what crimes?
- ____ 14. Someone close a victim of crime?
- ____ 15. Do each of you feel confident in following written jury instructions?
- ____ 16. Does anyone believe that if a witness belongs to a certain group or association such as a police officer or a doctor, they are more or less credible because of that association?
- ____ 17. Do most of you believe that witnesses taking the stand in court are basically credible until shown to be otherwise?
- ____ 18. Do any of you know anyone else on this panel?
- ____ 19. Do any of you know me?
- ____ 20. Do any of you know the witnesses in this case? (Go down list)
- ____ 21. Do any of you know anyone in the District Attorney's office?
- ____ 22. Do any of you know the defense attorney or the defendant?
- ____ 23. Who has served on a jury before?
- ____ 24. What was the outcome? Did you reach a verdict?
- ____ 25. Is everyone here comfortable with their frame of mind sitting in judgment of this defendant?
- ____ 26. Does anyone have a belief that would prevent them from sitting in judgment of another person?
- ///
- ____ 27. Has anyone here had an adverse experience with the police department? Anyone holding a grudge against the department?
- ____ 28. Has anyone here recognized anyone out in the hall way that could be a witness in this case?
- ____ 29. Does anyone have an involvement with a company, association or corporation in this case? (Reno Hilton, Royal Sierra Extrusions, REMSA, Washoe Medical Center)

- ____ 30. If someone takes the stand in this case and you personally do not like his or her demeanor, can you still accept that person's testimony on face value?
- ____ 31. Does anyone here have small children with specific child care needs? Illnesses?
- ____ 32. Does any one here work a graveyard shift and think they wouldn't be able to stay awake?
- ____ 33. Specific questions for specific jurors based on questionnaires. (Note: as of November 24, 1999, the State has not reviewed the jury panel questionnaires and thus, has not developed specific questions for individual members of the panel.)

SPECIFIC QUESTIONS REGARDING THE CASE

- ____ 1. What does the term "battered woman" mean to you?
- ____ 2. Tell me about someone you know who you would consider to be a battered woman.
- ____ 3. What does the term "family violence" mean to you?
- ///
- ____ 4. Have you or a family member been a victim of any crime involving violence? (They may approach the bench to say it privately) (Note: Above question)
- ____ 5. Have you personally been the victim of violence by someone you knew?
- ____ 6. Often in family disputes it comes down to the victim's word alone as to what happened. How would you try to determine the truth?
- ____ 7. Why do you think a woman might say that her husband is violent and then take it back?
- ____ 8. Do you think people who are very upset necessarily show their feelings when they testify?
- ____ 9. In your own experience, how useful is it to hear from experts about such a thing is "battered woman's syndrome"?
- ____ 10. What is the responsibility, if any, of friends, family members or neighbors in cases of family violence?
- ____ 11. What do you think other people should do?
- ____ 12. How do you feel society treats men who hurt their partners?

____ 13. Have their been experiences in you life that have affected how you look at family violence issues?

____ 14. Can you name a book, or a television program or a movie that you have read or seen regarding family violence?

///

///

____ 15. In what ways, if any, do you think that emotional violence and physical violence are the same?

____ 16. What do you think is the main cause for domestic or family violence?

Dated this _____ day of _____, 1999

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____

Deputy District Attorney

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#001510
P.O. Box 30083
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DATED this ___ day of _____, .

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
(DEPUTY)
Deputy District Attorney

POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

II. STATEMENT OF THE FACTS

III. ARGUMENT

Does the nature of the charge and the possibility that you may have to consider graphic evidence cause anyone to feel that they would rather not sit on a case such as this?

2. Is there anyone among you that has had a family member or friend that has been the victim of a murder? If so, will this prevent you from being a fair and impartial juror in this case?

II

RACE

1. In this particular case, the defendant is African-American. Does that fact in and of itself, have any significance to you?

2. Do you feel that race is a factor to be considered in this case?

3. Do you all agree that people are entitled to equal justice without regard to the color of their skin?

III

LAW

1. In a trial jurors decide the facts, and the judge makes the decisions as to what is the appropriate law. At the end of the case, the judge will instruct you as to the law, these are called jury instructions. Will each of you follow the law that is given to you by the judge?

2. If you hear a jury instruction which you believe should not be the law, will you still follow it and disregard your own personal opinion as to what you believe the law should be?

3. Do you believe you will have any problems or any difficulty in following the law which you do not believe should be the law?

4. Is there anyone who, if they are in disagreement with some of the jury instructions given to you by the judge would not follow the instructions?

IV

UNAVAILABLE WITNESS

1. You agree, do you not, that it is more satisfying to see witnesses as they talk and testify rather than read or listen to what the person has said in a prior proceeding?

2. There is nothing wrong with this feeling. On occasion, however, witnesses are not always able to testify at trial. In this murder trial, the State has an unavailable witness, and his name is Henry Randall. Mr. Randall cannot be here in person to testify because he is deceased. However, the law allows his testimony from a prior proceeding to be read to you during this trial. Can each of you consider such testimony in accordance with the same rules which will likely be given to you by the judge relating to the testimony of witnesses who are actually here in person?

3. In other words, will you not minimize or give Mr. Randall's testimony less weight simply because he is not able to be here in person to testify?

V

PROSECUTION WITNESSES

1. Does anyone believe that there is a type of person who deserves to be a victim of a crime?

2. Do we all agree that each of us is entitled to the same protection under the law notwithstanding our appearance or our lifestyle?

3. In this case, we may call witnesses who may appear a little different from you or me. Will you evaluate their testimony by their statements and demeanor here in court and not judge them based upon their lifestyle?

4. You will here testimony that some of the State's witnesses had been drinking at the time they witnessed the crime. Do you have an opinion as to whether a person who had been drinking can still be a credible witness?

5. Has anyone here heard the expression that, "it takes all kinds of people to make the world go round?" What does this expression mean to you?

6. In this case, you will hear evidence of lifestyles and drinking behavior which are different from your own. Could you still be fair in evaluating the evidence even though their lifestyle and drinking patterns may be different than your own?

VI

ALCOHOL

1. Is there anyone among you who believes that alcohol should be an excuse for a person's criminal conduct?

2. Is there anyone who believes that alcohol justifies a person's actions?

VII

REASONABLE DOUBT

1. Does everyone understand that the State's burden in this case is not to prove every element beyond all doubt?

2. Does everyone understand that the only way that the State could prove this case beyond all doubt is if everyone of you were there?

3. Is there anyone who has heard that the State's burden of proof is beyond a shadow of a doubt?

4. Does everyone understand that the State's burden of proof is not beyond a shadow of a doubt?

5. Does everyone that the State's burden of proof in this case is only to prove the elements of the offense of Murder of the First Degree beyond a reasonable doubt?

6. Does everyone understand that you could still have some doubts and convict the defendant under the law, so long as the doubts are not reasonable?

VIII

ACCOUNTABILITY

1. When the State proves this case beyond a reasonable doubt that the defendant is guilty of Murder in the First Degree, will you look him in the eye and vote guilty?

2. If you find the defendant guilty of Murder in the First Degree, then you will have to determine the punishment. Punishment should not be considered by you during the guilt phase of this trial, but if you convict him of Murder in the First Degree you will then be asked to determine the punishment in the penalty phase of trial. Is there anyone who does not believe that they could be a juror in this case because they will have to determine the punishment?

In addition to the above proposed voir dire questions, the State reserves the right to ask any appropriate question that may be relevant and material based upon a juror's response and/or defense voir dire.

Dated this _____ day of _____, .

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____

Deputy District Attorney

Sample 6

No Information Available at This Time

Richard A. Gammick
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Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR

,

Dept. No.

Defendant.

_____/ **STATE'S VOIR DIRE**

QUESTIONS

COMES NOW, the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney of Washoe County, Nevada, and _____, Deputy District Attorney, and hereby submits this (MOTION TITLE). This (MOTION or RESPONSE) is supported by all pleadings and papers on file herewith, the attached Points and Authorities, and any oral argument this Honorable Court may hear on this Motion.

DATED this ____ day of _____, .

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____
(DEPUTY)
Deputy District Attorney

I. PRETRIAL PUBLICITY

1. Have any of you heard of or do you have any knowledge of the facts or events in this case? or

2. Do any of you know anything about the facts of this case other than what you have heard about in court?

3. Have you ever heard anyone discuss this case, or have you read anything in a newspaper about this case regarding the guilt or innocence of the defendant?

4. What have you heard? (Individual voir dire)

5. Will that information affect your ability to be fair and impartial in evaluating the evidence in this case?

II. REASONABLE DOUBT

1. The State is required to prove the defendant guilty beyond a reasonable doubt. The term "beyond a reasonable doubt" does not require that all doubts must be resolved in this trial and all questions answered. Will each of you impose on the State only the burden that we prove the defendant guilty beyond a reasonable doubt and not require that we prove him guilty beyond all doubt?

2. Does everyone agree that the State's burden is not beyond a shadow of a doubt?

3. The State's burden is only to prove the defendant guilty beyond a reasonable doubt.

Do you understand that a juror can have some doubt and still vote guilty?

4. The State's burden to prove the defendant's guilt beyond a reasonable doubt does not change whether the crime is a misdemeanor such as battery or murder which is charged here. Does it strike anyone on the jury as unfair that the burden of proof is the same in all criminal trials regardless of the type of crime which is being prosecuted?

5. Is there anyone on the jury who believes that the State should have the burden of proving the defendant guilty beyond all doubt or to an absolute certainty?

6. When the State proves the defendant's guilt beyond a reasonable doubt can you hold the defendant accountable and vote guilty?

III. RACE

1. In this particular case the defendant is African-American. Does this fact, by itself, have any significance to you?

2. Do you feel this is a factor to be considered in this case?

3. Do you all agree that the law should be applied equally without regard to race?

4. Likewise, because of the defendant's race will you hold the State to a higher burden than only beyond a reasonable doubt?

IV. FOLLOWING THE LAW

1. Will each of you agree to follow the law that is given to you by the judge at the end of the case?

2. If you hear an instruction which you believe should not be the law, will you still follow it and disregard your own opinion as to what you believe the law should be?

3. Do you believe you will have any problems or difficulty in following a law which you do not believe should be the law?

4. Will each of you follow the law even if you thought the law was different?

V. NATURE OF CHARGE

1. Does the nature of the charge itself or the possibility that some evidence may be gruesome in nature cause any of you to feel that you would rather not sit on this case?

2. This case is a death penalty case, is there any reason that the type of case itself would cause any of you to feel that you would rather not sit on this case?

VI. DEATH PENALTY

1. What are your feelings about the death penalty?

2. Are your feelings about the death penalty such that you could never, under any circumstances, bring back a verdict of death?

3. Are you opposed to the death penalty?

4. Would your opinion regarding the death penalty cause you to automatically vote against the death penalty no matter what evidence was presented at trial?

5. Are your feelings such that in every first degree murder case you would always vote for death?

6. In some crimes, such as kidnapping, the likelihood of death is so probable that if a death occurs during their commission, the murder is in the first degree and punishable by death, whether the killing was intentional or unintentional. What is your opinion about this law called the felony murder rule?

7. Can you return a verdict of death, when the evidence shows the killing was murder of the first degree under the felony murder rule?

8. Knowing that I am seeking a verdict of first degree murder and that when the defendant is convicted, the State will be seeking to have the defendant sentenced to death, is your opposition to the death penalty such that it will substantially impair your ability to follow the law and convict the defendant of First Degree Murder when first degree murder is proved beyond a reasonable doubt?

9. Can I assume that you cannot impose the death penalty on this defendant even where the law says the circumstances warrant such a verdict?

10. Could you follow the instructions on the law and if the aggravating circumstance(s) are not outweighed by mitigating circumstance(s) would you vote to impose the death penalty on this defendant?

VII. CIRCUMSTANTIAL EVIDENCE

1. Direct evidence is evidence which directly proves a fact. As an example, you do not need an inference to know I am standing in front of you. In other words your view of me is direct evidence that I am in this court room?

2. Do you realize that in a trial direct evidence and circumstantial evidence are entitled to the same weight?

3. Provide circumstantial evidence example for jury.

4. Could you convict the defendant based upon evidence which was direct in part and circumstantial in part?

5. Do you feel you could convict the defendant on circumstantial evidence alone?

6. This is a circumstantial case. Is there anyone who believes that the defendant cannot be convicted of Murder unless there is an eyewitness to the killing?

In addition, the State reserves the right to ask any related question if appropriate and other questions which may become relevant during Voir Dire.

Dated this _____ day of _____, .

RICHARD A. GAMMICK
District Attorney
Washoe County, Nevada

By _____

Deputy District Attorney