

watch the news. I didn't read that much in detail.

Q May I ask you, sir, why you didn't think one way or the other?

A Well, you read the paper every day. You see something in there. You can't form an opinion of everything you read in the paper, everything that you see on television.

MR. BOSTICK: Nothing further.

THE COURT: Mr. Morrow, we will have you back in the courtroom and see you there in a minute or two.

MR. MORROW: Okay.

(Whereupon court reconvened.)

THE COURT: Once again, ladies and gentlemen, I apologize for the delay. Obviously, with three separate jury panels, our logistics get a little screwed up sometimes. We have now completed the portion of the voir dire examination that is required to be conducted outside the presence of the other jurors, and I think we can proceed with asking some more general questions of the entire panel. You will recall that I had asked all of you, particularly those who are not summoned into the jury box as the original and potential panel of 12, to please pay close attention to the questions so if you are called upon to replace any of the prospective members, we don't have to go back over all of the questions again and ask you all the questions individually. You can merely recount what your mental notes were that you made and what your answers would have been, and we can proceed a little bit faster that way.

Mr. Findlay, do you want to fill the prospective 12 people, please.

THE BAILIFF: Elzada Lutz.

THE COURT: She may have been excused.

MR. LANGER: She was.

THE BAILIFF: Diana L. Stegemoller. Henry Ebright, Seat No. 8, please. Linda Enoch, Seat No. 1, please. Benny Morrow, Jr., Seat No. 7, please. That completes the venire for the week of July 12. We now go to the panel of the week of July 19. Jeryl Ann Brown, please, Seat No. 9.

THE COURT: Thank you. Ladies and gentlemen, I will ask you, based on the proceedings as we have had them up to this point, whether any of you have any belief or any feeling toward any of the parties, toward any of the attorneys, or toward anyone else in the case that would make it impossible or difficult for you to act fairly and impartially both as to the Defendant and as to the State of Ohio? Very well. I take it by your silence and nods of the head that you do not.

Do any of you have any interest in the outcome of this case? Again, all potential jurors indicating that they do not.

Do any of you or have any of you ever had any previous service as a juror? Any prior jury service?

(Whereupon Mr. Morrow raised his hand.)

THE COURT: Mr. Morrow?

MR. MORROW: Once.

THE COURT: Where was that, sir?

MR. MORROW: I think the other Judge Kessler.

THE COURT: The older Judge?

MR. MORROW: Yes. That was some years ago; seven or eight years ago.

THE COURT: Was that in a civil or criminal case?

MR. MORROW: Civil.

THE COURT: Thank you. Do any of you or have any other individuals had any prior jury service?

(No hands raised.)

THE COURT: You should all understand, even though only Mr. Morrow has had experience in this area, all of you should understand that the rules applicable to civil cases are substantially different than the rules that are applicable to criminal cases. This is particularly true regarding the burden of proof which is placed upon the Plaintiff in a criminal case, that being the State of Ohio. In a civil case, we say that the Plaintiff must prove his case by a preponderance of the evidence, which is basically the greater weight of the evidence. In a criminal case, however, the Defendant is presumed to be innocent and before he may be found guilty, the State of Ohio must prove his guilt by proof beyond a reasonable doubt. If the jury has a reasonable doubt, the Defendant must be acquitted. Will all of you be able to set aside any preconceived knowledge that you may have had or preconceived idea of what the law should be in a case and, in Mr. Morrow's case, set aside any instruction you may have



received in the civil case and apply only the instructions of law that are given to you by me in this case? Will all of you be able to do that? Everyone indicating they can.

Have any of you or have any member of your family or any close friend or relative to your knowledge ever been arrested or charged with a criminal offense? By criminal offense, I mean anything other than traffic offenses.

MS. BROWN: Jeryl Ann Brown. My brother-in-law was convicted of armed robbery.

THE COURT: In this County?

MS. BROWN: Yes.

THE COURT: How long ago was that?

MS. BROWN: I think it was five years.

THE COURT: Let me ask you is there anything about that particular situation, that occurrence, that would in any way in your opinion affect your ability in this case to be a fair and impartial juror?

MS. BROWN: No, it wouldn't.

THE COURT: Would you be able to set all those facts and circumstances out of your mind entirely and concentrate solely on the evidence presented in this case to you here in this courtroom?

MS. BROWN: Yes, I would.

THE COURT: Very well.

MS. DAVIS: Same circumstances.

THE COURT: What was the relationship?



MS. DAVIS: Brother-in-law.

THE COURT: I would ask you then the same question. How long ago was that?

MS. DAVIS: He is presently under indictment, I believe.

THE COURT: Fairly recently?

MS. DAVIS: Yes.

THE COURT: Would that fact -- your name, again?

MS. DAVIS: Rise Davis.

THE COURT: Ms. Davis, would that fact in any way in your opinion affect your ability in this case to be a fair and impartial juror?

MS. DAVIS: No. This wasn't armed robbery. It was a different crime.

THE COURT: What was the nature of the crime?

MS. DAVIS: I think it is mail fraud, but I am not too sure.

THE COURT: Is it in this County?

MS. DAVIS: Yes, it is.

THE COURT: How much actual knowledge about the case do you have?

MS. DAVIS: Very little.

THE COURT: What little knowledge you do have about the case, do you feel you would be able to set that aside totally and not let any of that enter into this case in terms of determining the facts and circumstances and the evidence to be presented?

MS. DAVIS: Yes, I do.

MR. EBRIGHT: Henry Ebright. I have a half sister that I believe was charged with forgery.

THE COURT: How long ago was that?

MR. EBRIGHT: Within the last two years, I believe.

THE COURT: In this County?

MR. EBRIGHT: I believe so.

THE COURT: The case is no longer pending, I assume?

MR. EBRIGHT: No, she is out.

THE COURT: I will ask you the same question. Do you feel -- is there anything about that circumstance that you feel would in any way make it difficult or impossible for you to be a fair and impartial juror?

MR. EBRIGHT: I don't believe so because I have a very limited knowledge of it. At this point, no.

THE COURT: Whatever you know about that case or the facts in that case, you would be able to separate them totally out of your mind and pay attention to the facts in this case?

MR. EBRIGHT: Yes, sir.

THE COURT: All right.

MS. BARBEE: Little Barbee. I had a half brother that was convicted. He shot a guy.

THE COURT: How long ago was that?

MS. BARBEE: About six months ago.

THE COURT: In this County?

MS. BARBEE: Yes.

THE COURT: I assume that case is also over? It is not pending?

MS. BARBEE: No, it is not pending.

THE COURT: Let me ask you the question, also. That is, do you feel that you could separate all of that out of your mind and be a fair and impartial juror in this particular case?

MS. BARBEE: Yes.

THE COURT: Likewise, could you consider the facts in this case solely as presented in the courtroom and not in any way inject any of the facts in that particular incident in this case?

MS. BARBEE: Yes.

THE COURT: Fair enough. Anybody else? All right. Have any of you or any member of your family or any close friends or relative to your knowledge ever been the complaining witness in a criminal case or the victim of a crime?

(Diana Stegemoller raised her hand.)

THE COURT: Your name, please?

MS. STEGEMOLLER: Diana Stegemoller. My husband had a radio stolen out of his truck.

THE COURT: How long ago was that?

MS. STEGEMOLLER: Four or five years, maybe.

THE COURT: Was there any prosecution or criminal case that initiated out of that?

MS. STEGEMOLLER: Yes.



THE COURT: Was he a witness in court?

MS. STEGEMOLLER: Yes.

THE COURT: Is there anything that you can think of about that circumstance that would in any way affect your ability in this case to be a fair and impartial juror?

MS. STEGEMOLLER: No.

THE COURT: Did you go to court with him?

MS. STEGEMOLLER: No.

MR. EBRIGHT: Henry Ebright. I had my house broken into and tools and some heating equipment was stolen.

THE COURT: How long ago was this?

MR. EBRIGHT: Three and a half years ago.

THE COURT: Did you become a witness in that case?

MR. EBRIGHT: No. The case was not solved.

THE COURT: Is there anything about the facts or circumstances that surround that particular event that it would in any way affect your ability in this case to be a fair and impartial juror?

MR. EBRIGHT: At the time, it made me a little upset, of course. At this point, I don't feel it would.

THE COURT: Were you left with any impression about the investigating agencies or response that the police may have made that left any impression?

MR. EBRIGHT: No. The case and the way they handled it I was quite satisfied with.

MS. BROWN: Jeryl Ann Brown. Same circumstances.

Breaking and entering, my apartment. It was eight years ago. Of course, the case wasn't solved. Then, I was, 10 years ago, the victim of an armed robbery. I used to work at a milk store. That wasn't solved, either.

THE COURT: Was there anything about those circumstances, either one of those two events, that would in your opinion in any way affect your ability as a fair and impartial juror in this case?

MS. BROWN: No.

THE COURT: You weren't left with any impression one way or the other about anything?

MS. BROWN: Not really. They weren't serious.

MS. DAVIS: Rise Davis. I had a car stolen. It was never solved, either.

THE COURT: When was that?

MS. DAVIS: Four years ago.

THE COURT: Again, anything about that particular situation that would in any way affect your ability to be a fair and impartial juror?

MS. DAVIS: No, sir.

THE COURT: Anyone else a complaining witness or a victim of a crime? All right. Have any of you or any members of your family or any close friend or relative to your knowledge had any law enforcement training or experience or have they been or have you been a member or employed by law enforcement agencies? By law enforcement agency, I include the Police Department, of course, as well as the

Sheriff's Office, the Highway Patrol, the District Attorney's Office, the City Attorney's Office, the Attorney General, the U.S. Attorney, the FBI, Secret Service, et cetera. Your name, please?

MS. HARRIS: Joyce Harris. I had a daughter that took police training for just a couple of weeks. She left and went to Houston. I don't know why or what happened, why she didn't finish.

THE COURT: Here in Dayton?

MS. HARRIS: Yes.

THE COURT: Is there anything about the fact that your daughter was engaged in some police training that would in any way affect your ability in this case to be a fair and impartial juror?

MS. HARRIS: No. I don't know what happened.

THE COURT: Yes, ma'am.

MS. BARKER: Kim Barker. My father was an auxiliary Highway Patrolman for 20 years.

THE COURT: The fact that your father was an auxiliary Highway Patrolman, do you feel that would affect your ability in this case to be a fair and impartial juror?

MS. BARKER: No, sir.

MS. BARBEE: I have a brother-in-law that served on the Middletown police for a couple of years. I also have a brother that is a lawyer.

THE COURT: Let me ask about both of those. The fact that both of those individuals may be employed in law enforcement or have been employed in law enforcement, would that affect your ability



in this case to be a fair and impartial juror?

MS. BARBEE: No. Neither one live in this County.

MS. STEGEMOLLER: Is security guard in that, too?

THE COURT: I think we probably would throw them in there.

MS. STEGEMOLLER: My husband was a security guard at Rike's Salem Mall.

THE COURT: The same question. The fact that your husband was employed in security work, would that in any way affect your ability in this case to be a fair and impartial juror?

MS. STEGEMOLLER: No.

MR. YOUNG: William Young. My brother-in-law is a part-time patrolman for the City of Bellbrook.

THE COURT: The same question to you. Would the fact that your brother-in-law is so employed have any bearing whatsoever on your ability in this case to be a fair and impartial juror?

MR. YOUNG: No, sir.

THE COURT: Anybody else? Okay. Would all of you be able to listen to the testimony of a police officer or other law enforcement officer and measure it by the same standards that you use to test the credibility of any other witness? Would all of you be able to do that? All prospective jurors indicating that they would.

Would any of you have any difficulty or embarrassment in returning a verdict either for or against either side which had a police officer or other law enforcement officer as a witness? Any

problem on that score? All indicating they would not.

It may appear that one or more of the parties, the attorneys, or the witnesses in this case come from a particular national, racial, or religious group or may have a lifestyle that is substantially different from your own. Would any of these facts in any way affect your judgment or the weight and credibility that you give to the testimony of any witness? Any problem on that score? All right. All indicating that it would not.

It is important that I have all of your assurances that you will, without reservation, follow my instructions and my rulings on the law, and that you will apply the law to the case before you. To put that somewhat differently, whether you approve or disapprove of the Court's rulings or instructions, it is your solemn duty to accept as correct the statements of law that I give to you. You may not substitute your own idea of what you think the law ought to be. Will all of you follow the law as it is given to you by me in this case? Okay. All jurors indicating that they will. Very well.

Do any of you have any legal action pending in any court within the State of Ohio or in the United States involving the State of Ohio or this Defendant or any of the attorneys in this case? Anybody have any pending legal action? No pending legal action.

Have all of you submitted questionnaires to the court? The little questionnaires that came with your summons? Ms. Barbee, I see you shaking your head no.

MS. BARBEE: My husband opened it. I didn't know it was

attached to it.

THE COURT: I think we could probably go through that.  
Do we have one available?

THE BAILIFF: A blank one?

THE COURT: Yes.

THE BAILIFF: I have one that has been filled out.

THE COURT: Anyone else besides Ms. Barbee that didn't  
get the questionnaire? Ms. Barbee, I am not picking on you, but we  
want this information. What is your address?

MS. BARBEE: 1834 Shaftesbury.

THE COURT: Your phone number?

MS. BARBEE: 278-7102.

THE COURT: How old are you, ma'am?

MS. BARBEE: Forty-one.

THE COURT: Are you married?

MS. BARBEE: Yes.

THE COURT: How long have you lived in Montgomery County?

MS. BARBEE: Nineteen years.

THE COURT: What is your husband's name?

MS. BARBEE: Robert.

THE COURT: How old is he?

MS. BARBEE: Forty-five.

THE COURT: Is he employed?

MS. BARBEE: Yes.

THE COURT: Who is he employed by?



MS. BARBEE: General Motors.

THE COURT: General Motors?

MS. BARBEE: Yes.

THE COURT: What does he do for G.M.?

MS. BARBEE: He works on the line.

THE COURT: Do you have children?

MS. BARBEE: Yes.

THE COURT: More than one?

MS. BARBEE: Two.

THE COURT: Start with the oldest and tell the name and age, please.

MS. BARBEE: John, 21.

THE COURT: Is he employed?

MS. BARBEE: He is in the Army.

THE COURT: And the other one?

MS. BARBEE: Karen. She is 10.

THE COURT: She is at home?

MS. BARBEE: Yes.

THE COURT: Are you employed, ma'am?

MS. BARBEE: Yes.

THE COURT: Where do you work?

MS. BARBEE: Miami Valley Hospital.

THE COURT: What do you do for them?

MS. BARBEE: Attendant One, in Housekeeping.

THE COURT: Okay. I guess that pretty well covers that.

Thank you.

Ladies and gentlemen, normally, this would be the time at which I would turn the prospective jurors over to examination by counsel, and we may be able to get a little of that examination in today, but there are matters that need to be discussed during a brief recess period. I think I will give you another break in the action. We are trying to go as fast as we can in this, but sometimes this occurs. We will give you a 20-minute recess and ask that you report back in the courtroom at 4:00 o'clock.

(Whereupon a recess was had.)

(Whereupon court reconvened.)

THE COURT: Ladies and gentlemen, as the final installment for my questions to the prospective jurors, I want to ask counsel for each side to submit, and I guess they have submitted, or have you submitted to Mr. Findlay a list of witnesses? While they are doing that, I want to explain to you that during the trial of this case certain persons may be called as witnesses to testify on behalf of the parties. We are going to ask the Bailiff to read into the record the names of the prospective witnesses in this case and you should listen closely to these names. The question that will be asked of you is whether any of you have heard or are otherwise acquainted with any of these witnesses, but you should note that the parties, after the witness list is read, that the parties are not required to call all of these people and may not wish to call some of these witnesses. Further, they may later find it necessary to call other witnesses who

are not presently named. But, this is the prospective list of witnesses for each side which will be read to you at this time.

THE BAILIFF: The following is a list of potential State's witnesses: Nancy Aikers of Waynesville, Ohio; Nicholas Alter of Moraine, Ohio; Detective Baumgardner of the Crime Lab; Officer Brun of the Moraine Police Department; Brian Carterbarry of Moraine, Ohio; Pam Carter of Moraine, Ohio; Andrew Choate of Moraine, Ohio; Darrell Combs of Moraine, Ohio; Officer Adkins of the Moraine Police Department; Peggy Bond of the Moraine Civic Center; Chief Carmichael of the Moraine Police Department; Rob Chambers of the Moraine Paramedics; Lisa Collins of Moraine, Ohio; Pauline Covey of Waynesville, Ohio; Larry Dehus of the Crime Lab; Peggy Gennette of Dayton, Ohio; Michael Haynes of Moraine; Angie Hudson and Glenn Hudson of Moraine; Alice and Michael Johnson of West Carrollton, Ohio; Jack Joyce from the Coroner's Office; Detective Kenley of the Dayton Police Department; C. D. Lett of the Coroner's Office; Becky Martin of the Moraine Civic Center; James McGarvey of Moraine, Ohio; Sheila Mills, Driftwood Lane; Roy Elam, Jr. of Moraine, Ohio; Sharon Gilbert of Moraine; Hiram Gifford of Bellbrook, Ohio; John Haynes of Dayton, Ohio; Don Humrick of Moraine; Nurse E. M. Keferl of the Juvenile Detention Center; Scott Lombardo of Kettering, Ohio; Linda Madsak of Franklin, Ohio; Dave Miller of the Moraine Civic Center; Barbara Moulney of Kettering, Ohio; Dr. Schaffer of the Coroner's Office; Ernestine Shipman and James M. Shipman of Moraine, Ohio; Martha Smith of the Moraine Civic Center; Connie Stahl of the Springfield IGA; Josephine



Wampler of Waynesville, Ohio; Sgt. Wynne of the Moraine Police Department; Detective Mullins of the Moraine Police Department; Ted and Jean Ritchie of Moraine, Ohio; Bobby, Myrtle, and Michael Rowell of Moraine, Ohio; Sgt. Shaneyfelt of the Centerville Police Department; James and Joey Shipman of Moraine; Roy Smith of the Coroner's Office; Charles C. Wampler of Moraine, Ohio; Robert Wampler of Waynesville, Ohio; Mr. and Mrs. West; Ellen Purvis; Darrell Doan; Judy Tabor; Officers Arnold and Harlow; Ken White; Fairl Byrd, who appears to be from Gem City.

MR. LANGER: Trailer court.

THE COURT: Do any of you know or are any of you acquainted with any of the witnesses so named? Let's take the lady in the front. Your name?

MS. ENOCH: Linda Enoch. I am a teacher with the City of Kettering. I taught at Moraine School for nine years. This was five years ago when I had my baby and went back to another school. I haven't taught at Moraine for five years, but I was in the community teaching for nine. Ken White and the Combs boys I know.

THE COURT: Let me ask you this. Do you know these individuals from your contact with that school system five years ago?

MS. ENOCH: Yes. Some of them I had in class.

THE COURT: Has there been any continuing contact with any of them?

MS. ENOCH: No.

THE COURT: Do you feel your contact with these indi-

viduals from five years ago would in any way affect your ability to be a fair and impartial juror in this case?

MS. ENOCH: I don't think so.

THE COURT: Would your contact with these individuals in any way affect your ability in weighing and determining the credibility of these individuals as witnesses in this case?

MS. ENOCH: No, I don't think so.

THE COURT: Thank you very much.

MS. BALL: I know several. I live in the area. I am acquainted with several of the witnesses.

THE COURT: That is quite a list of witnesses. Do you recall who they were?

MS. BALL: Several of the police officers; Detective Mullins, the Combs family, Mr. Elam. There were several. They were very familiar names.

THE COURT: Your name again?

MS. BALL: It is Debra Ball on the jury list.

THE COURT: Let me ask you the question. Is your acquaintanceship with these individuals a continuing one, that is, that you are presently acquainted with them or is that acquaintanceship in the past?

MS. BALL: Some are continuing and some are in the past.

THE COURT: Well, is this the recent past?

MS. BALL: Yes, sir.

THE COURT: Would your contact with these individuals

in your opinion in any way affect your ability in this case to be a fair and impartial juror?

MS. BALL: I'm afraid that it might.

THE COURT: Do you feel that you would weigh the credibility of these witnesses differently than you might other witnesses because of your contact with these people?

MS. BALL: Yes.

THE COURT: I appreciate the answer. Does counsel have any objection?

MR. HEAD: No objection, Judge.

MR. BOSTICK: None, Your Honor.

THE COURT: We are going to excuse you, ma'am. Thank you very much for your responses to these questions. You are excused.

THE BAILIFF: Lisa J. Baker, Seat No. 10, please.

MR. STEPHAN: If it please the Court, Mr. Findlay was reading from the Prosecutor's list of witnesses. There are additional names.

THE COURT: We are going to have a few additional names read. If you will, please pay the same attention you did to the other list.

THE BAILIFF: This list represents potential Defense witnesses in this case. Sgt. Alexander of the Moraine Police Department. Mr. and Mrs. Robert Alsept of Moraine, Ohio. Officer J. J. Arnold of the Moraine Police Department. David Caley of the South Community Mental Health Center. Tim Chambers of Kettering,



Ohio. Lisa Collins of Moraine, Ohio. A Mr. Damon Graham of Moraine, Ohio. Officer Harlow of the Moraine Police Department. David Lemon of Moraine, Ohio. Brian Lewis of Kettering. John McGarvey and Gail Loftis of Moraine. James Muncy of Dayton. Detective Nicholson of the Dayton Police Department. Dr. James M. Owens of the Montgomery County Juvenile Court. Jerry Paresi of Springfield, Ohio. Jean and Ted Ritchie of Moraine. Sharon Romine of Pennsylvania. Ray Salunek of Huber Heights. Steven Williams of Dayton. The keeper of the records at the Dayton International Airport. In addition -- I am sorry. Frances Wright of the Wright-Patterson Air Force Base Retail Office.

THE COURT: Very well. Again, the same question to those additional names. Do any of you know or are you acquainted with any of those individuals?

MS. ENOCH: There was one more on the list.

THE COURT: Would your response be the same as with the other witnesses?

MS. ENOCH: Yes.

THE COURT: Your name, again?

MS. ENOCH: Linda Enoch.

THE COURT: Thank you. As you can see, we are arranged just a bit differently for this session as well as for the future sessions of voir dire examination in the court. We had not addressed other questions to you, ladies and gentlemen, here in these eight chairs and you, of course, who used to occupy one of those eight

chairs individually, but we will address you personally and individually henceforth in the procedure. There is a reason for this that will become apparent to you later on as we go through this process, but I want to ask you all now whether or not, and you, also, ma'am, whether you have heard all of the questions that have been propounded by the Court up to this point in time? Have you heard all the questions?

MS. BAKER: Yes.

THE COURT: Have you made mental notes as to what your answers to those questions would have been?

MS. BAKER: Yes.

THE COURT: The question is, would your answer to any of those questions have varied in any material way with any of the answers given by the other prospective members of this panel? Any mental notes that you made that should be talked about?

MR. WARD: Wesley Ward.

THE COURT: Mr. Ward?

MR. WARD: I am a former Deputy Sheriff. I am at the present time, through the Dayton Police Department, Security Manager at NCR.

THE COURT: You have had substantial law enforcement background, is that a fair statement?

MR. WARD: Yes, sir, and I do know some of the witnesses' names, police officers, and the Coroner's Office.

THE COURT: Mr. Ward, I will ask you, sir, whether you

feel that your law enforcement background would in any way affect your ability in this case to be a fair and impartial juror?

MR. WARD: I don't believe it would.

THE COURT: Would you be able to judge the testimony of a police officer or other law enforcement officers by the same standard of credibility that you would judge any other witness?

MR. WARD: Yes, sir.

THE COURT: Further, would you have any difficulty or embarrassment in returning a verdict either for or against any side which had a police officer or other peace officer as a witness?

MR. WARD: No, sir.

THE COURT: I guess the final question is, of those individuals that were named as prospective witnesses that you know or have had some professional acquaintance with, let me ask you that first. Is it a professional acquaintance by which you know these individuals?

MR. WARD: Yes, sir. I worked with Jack Joyce and Dave Lett at the Sheriff's Office.

THE COURT: Would the fact that you have had a prior working relationship with any of these individuals in any way affect your determination about their credibility as witnesses on the witness stand?

MR. WARD: No, sir.

THE COURT: Very well. Has anybody else made any mental notes about any of the questions we asked?



MS. NEUMAIER: Sherry Neumaier. I just bumped into a guy I knew 10 years ago in high school out in the hall who is an investigator for the Prosecutor.

THE COURT: What is his name?

MS. NEUMAIER: Don Otto.

THE COURT: Was he named as a potential witness in the case?

MS. NEUMAIER: No, but when you asked earlier about it --

THE COURT: Let me ask you the question then. Would the fact that you have realized you are acquainted with somebody who is employed by the Prosecuting Attorney's Office, would that in any way affect your ability to be a fair and impartial juror in this case?

MS. NEUMAIER: No.

THE COURT: Thank you. Anyone else? All right. With that, then, we will turn the voir dire questioning over to counsel for the State. Mr. Head?

MR. HEAD: Thank you, Judge. As His Honor mentioned, this is the part of the trial we call voir dire, V-O-I-R D-I-R-E. That is a French idiom meaning to speak or seek the truth. That is what we have been doing so far here today, and that is what we are going to continue to do. I am going to start out by stating a very obvious point, the type of case this is; aggravated murder, rape, kidnapping, abuse of a corpse. That is what I call a pretty heavy case. You are going to hear about different lifestyles than perhaps most of us have. Young teens drinking and perhaps smoking some pot.

The crime itself makes it a different lifestyle than most of us have. In addition, you have got a 16-year-old Defendant over here. His Defense attorneys are going to ask you to find him not guilty. He is 16, but he is going to be tried as an adult. There is a provision in the Ohio law that allows someone who is over 15 at the time of the commission of the offense to be brought over and tried as an adult. My first question I guess I will ask you -- I'll start with you. Because this boy is 16 years old, is that going to make it more difficult to find him guilty if we prove our case to you?

MS. ENOCH: Not if it has been already decided he can stand as an adult, if somebody made that decision.

MR. HEAD: Okay. How about anybody else? Does anybody have a problem trying a 16-year-old as an adult? There is going to be, once again, we get back to the type of case, and you are going to have to see some pictures of what happened to the 13-year-old victim, some slides from the Coroner's Office and other pictures that the detectives took at the scene. You will see blood and other things like that, and it is not going to be very pleasant. We need, both sides need jurors who can take the heat, who can sit through all of this stuff and still be fair and impartial when it comes time to decide the guilt or innocence of this Defendant. Ms. Haney, can you do that?

MS. HANEY (ENOCH): I sure will try.

THE COURT: How about everybody else? Does anybody else have any reservations we didn't explore when we did the individual

voir dire? Anybody?

MR. EBRIGHT: I may have. My brother was killed in Viet Nam, and the age at which his death occurred may create some problem. I am not sure at this point.

MR. HEAD: Mr. Ebright, let's explore that a little bit without trying to put undue pressure on you. You know halfway through you can't say, this is too heavy. I'm not going to be able to listen anymore or whatever it might be. I think all counsel will agree that what occurred was a very heinous crime. Can you look at that and figure out what happened and be able to make a rational, logical decision at the end of the case?

MR. EBRIGHT: Well, I know the circumstances behind my brother's death and maybe the death that has occurred here or we are going to discuss or find out about is entirely two different areas, but at this point I really don't know, and I wanted to bring that fact up. I feel that I can make a rational and unbiased judgment, but --

MR. HEAD: Okay. You know everybody, because we are human beings, we have feelings and sympathies. Can you put your sympathies aside both for the Defendant, who is 16 years old, and for the victim and his parents?

MR. EBRIGHT: I would probably feel more for the victim, but I think I can, yes.

MR. HEAD: Okay. The issue in the case is going to be whether or not this Defendant did it. Not that it happened.



MR. EBRIGHT: Right.

MR. HEAD: We have to show you that it happened. Understand?

MR. EBRIGHT: Right.

MR. HEAD: You can put your sympathies aside both ways?

MR. EBRIGHT: I believe I can.

MR. HEAD: Ms. Davis, what do you feel about that?

MS. DAVIS: About?

MR. HEAD: Can you put your sympathies aside and come to a logical, rational decision, not based on, number one, the fact that a 13-year-old boy was killed and how he was killed and, number two, we are trying a 16-year-old for the crime?

MS. DAVIS: Yes, I believe I can.

MR. HEAD: Ms. Harris, how about you?

MS. HARRIS: I believe I can.

MR. HEAD: Anybody else have a problem with that? I take it by your silence you don't. We will move on. We have a real live situation here, not a TV drama. During the course of this voir dire, I will probably refer to TV situations because it seems like we learn most of what we know or what we think is going on through the TV. This isn't going to be like a TV trial or a TV cop show. It is not going to be a 90-minute thing with commercial time to get a pop out of the refrigerator. Furthermore, the case isn't going to be handed to you on a silver platter like TV. TV is entertainment media. They want to keep you there, and they are going to entertain

you. We are not here to entertain you. We are here to make sure justice is done. Do you all understand that? You are the triers of the facts. You all determine what happened out there. You don't have a TV script to read from or a preview to see what it is going to be like. You have to decide and do it from what you hear from the witness stand, not from the lawyers or from the Judge or anybody else, but from the witnesses only. Okay? Once again, because it is going to be -- I am going to try to stress this again because it is important. You will have to look at the slides from the Coroner's Office and some photographs. You have got here some facts that aren't pleasant, but to understand what happened in the case you have to listen and hear and learn what the facts are. Can you all do that for me? Okay. Mr. Morrow, what do you think? Can you do that for me?

MR. MORROW: Yes.

MR. HEAD: No problem?

MR. MORROW: No problem.

MR. HEAD: Ms. Brown, how about you?

MS. BROWN: All right. I don't think I will have any trouble.

MR. HEAD: Okay. I represent the people of the State of Ohio, as you know. We have to prove that the Defendant is guilty. He is, by law, presumed to be innocent at the start of the trial. Okay? Does anybody have a particular problem with that concept that he is presumed innocent right now? He doesn't have to put on

any evidence at all. It is up to us to prove his guilt. And, along that score, he doesn't have to take the witness stand to testify. That is his Fifth Amendment Right against self-incrimination. We all have that Fifth Amendment Right. Mr. Young, how does that sit with you, the fact that he has a Fifth Amendment Right and doesn't have to take the stand?

MR. YOUNG: That is fine. That is fine with me.

MR. HEAD: You don't have any problem with that at all?

MR. YOUNG: No, sir.

MR. HEAD: Ms. Baker, how about you?

MS. BAKER: No problem.

THE COURT: We have two Bakers now.

MS. BARKER: This is Barker.

THE COURT: I am sorry.

MR. HEAD: Ms. Barker, how about you?

MS. BARKER: No problem. That is his prerogative.

MR. HEAD: Ms. Baker, we will get back to you.

MS. BAKER: I feel the same way.

MR. HEAD: That is a fundamental concept of the entire criminal justice system. Our burden of proof is called proof beyond a reasonable doubt. Have all of you heard that term before? Okay. The Judge will instruct you precisely what it means. Essentially, you have to be firmly convinced of the truth of the charges. All right? Does that sound too difficult? Do you all understand that? Okay. At the close of a TV case, unless it is one specifically



designed to be super suspenseful or whatever, you usually find out by the end of the case who did it, and you usually are convinced beyond all possible doubt, aren't you, Ms. Stegemoller?

MS. STEGEMOLLER: Not always. Sometimes I still have that question.

MR. HEAD: Okay. What do you do when you have that question?

MS. STEGEMOLLER: I weigh the sides. You know, which one I think is right. Then, usually, they show you the conclusion but, you know.

MR. HEAD: Here, they are not going to show you the conclusion. You are going to be the person making the conclusion yourself, you and the other jurors if you are selected to serve. Do you understand that?

MS. STEGEMOLLER: Yes, I do.

MR. HEAD: That is what makes it different than TV.

MS. STEGEMOLLER: Yes.

MR. HEAD: We are not required in real life to make a proof positive case. We don't have to prove our case beyond all possible doubt. Do you understand that?

MS. STEGEMOLLER: Yes.

MR. HEAD: If we put on all of our proof and at the end of it you have a doubt, does that automatically mean the Defendant is not guilty?

MS. STEGEMOLLER: No.

MR. HEAD: It has to be a reasonable doubt, doesn't it?

MS. STEGEMOLLER: That is right.

MR. HEAD: You will hear from the Court a doubt based on reason and common sense. That is pretty straightforward. Once again, I am trying not to go over things the Judge and I talked about before. I don't want to hit on areas he will be instructing you on. If you had a proof meter, and up here was beyond any possible doubt, beyond a shadow of a doubt, beyond a reasonable doubt is maybe somewhere around here, right?

MS. STEGEMOLLER: Yes.

MR. HEAD: That is all I am trying to say. Is it Doris Haines?

MS. HAINES: Yes.

MR. HEAD: I wasn't sure if I had written down the right name or not. Let's say if evidence comes in pounds and, of course, it doesn't, but let's say if it did, it would take 10 pounds to firmly convince you that was enough proof. Ten pounds, okay? If we gave you 10 pounds of evidence, that would firmly convince you of the truth of the charge, okay? If I only gave you nine and a half pounds, what would your verdict be?

MR. BOSTICK: We object, Your Honor. This is misleading and improper.

THE COURT: Sustained.

MR. HEAD: Okay. Do you understand that the burden of proof in this type of case is the same as it would be in any criminal

case, from a shoplifting case all the way to an aggravated murder case?

MS. HAINES: Yes.

MR. HEAD: Because it is an aggravated murder case, are you going to hold us to any higher standard than proof beyond a reasonable doubt, because it is a heavier case?

MS. HAINES: I don't know if I understand what you are saying.

MR. HEAD: Okay. All criminal cases, in all criminal cases, the State of Ohio has to prove the case beyond a reasonable doubt. Because this is an aggravated murder case as opposed to a shoplifting or some other kind of case, would you require us to put on more proof so you are positive beyond any possible doubt of the guilt of the Defendant?

MS. HAINES: Guilty beyond a shadow of a doubt is the same regardless, wouldn't it be?

MR. HEAD: Maybe that is where we are getting confused. I don't have to prove my case beyond a shadow of a doubt. Okay? That is what we were talking about earlier. I have to prove my case beyond a reasonable doubt.

MS. HAINES: Reasonable.

MR. HEAD: Not beyond a shadow of a doubt. Not beyond all possible doubt. Okay?

MS. HAINES: I understand, but I thought, to me, you were throwing a word in there that was not where it was supposed to be.



Voir Dire

Beyond a shadow of a doubt and beyond a reasonable doubt are not the same.

MR. HEAD: Right. Do I have to prove my case beyond a shadow of a doubt?

MS. HAINES: No.

MR. HEAD: Beyond a reasonable doubt, right?

MS. HAINES: Right.

MR. HEAD: The fact that this is a murder case instead of some other kind of case, would you make me prove my case more than just beyond a reasonable doubt?

MS. HAINES: No.

MR. HEAD: Okay. Ms. Haines, if there is a contradiction in the evidence, one person says it is day and one person says it is night, does that create a reasonable doubt just by itself? Am I confusing you?

MS. HAINES: I don't --

MR. HEAD: Let's say at the close of all the evidence --

MS. HAINES: That was the only thing.

MR. HEAD: Say there was a contradiction, that one witness said it was daytime and the other person said it was nighttime

MS. HAINES: It was 6:00 o'clock in the afternoon?

MR. HEAD: Let's say we don't know the time.

MS. HAINES: Okay.

MR. HEAD: Let's say we had a flat out conflict between two witnesses as to what they said. One witness said A and the

other witness said B. Does that, by itself, create a reasonable doubt because there is a conflict between the two witnesses?

MS. HAINES: I don't think it would.

MR. HEAD: Because you have to resolve that conflict, don't you?

MS. HAINES: Yes.

MR. HEAD: And you do that, and what I am getting to next and the reason I brought that up is to go into the area that we call credibility. Credibility means believability, and the law does not handicap you when it comes to deciding what the facts in the case are because the law says that you can determine, when you are determining the facts of the case, the credibility of the witnesses. Credibility of witnesses is using your life's experiences, reason and common sense. Would you be upset if you had to make a decision as to whether one person was telling the truth or not telling the truth?

MS. HOLTZMAN: I don't think so.

MR. HEAD: You could, by yourself and with the other jurors, arrive at a conclusion?

MS. HOLTZMAN: I think so.

MR. HEAD: How about anybody else and everybody else? Let's talk to everybody else. That is what it boils down to, the believability of all the witnesses. That is how you get at what the facts are. Okay? Now, is it Miss Barbee?

MS. BARBEE: Yes.

MR. HEAD: The fact that we are going to have maybe nine, 10 or 11 people come in who are teenagers, in fact, maybe a couple or three younger than that, the fact we are going to have kids and put them on the stand, are you going to be less likely to believe them because they are children rather than full-fledged adults?

MS. BARBEE: No.

MR. HEAD: How about anybody else? Okay. Do you understand, Ms. Barbee, that the credibility of a witness isn't based on one's intelligence? Okay? It is based on whether or not they are telling the truth. There are certain tests of truthfulness that the Court will give you and go over with you, but they are pretty much common sense, things you do in your daily lives when you determine whether someone is being truthful with you or not. You can apply those same standards in the courtroom?

MS. BARBEE: I think so.

THE COURT: How about anybody else? Ms. Barker?

MS. BARKER: I think so.

MR. HEAD: Ms. Baker?

MS. BAKER: Yes.

MR. HEAD: Let's go over here. Mr. Ward, you probably know some of this. Let's go into it again. All witnesses, whether they are cops or kids or anybody else, they are all subjected to the same test of credibility, the same test of truthfulness. Okay? That goes for experts, including the Coroner. You don't have a problem with that?



MR. WARD: No.

MR. HEAD: Anybody else? Okay. I take it by the shaking of your heads, you don't. Is it Miss Ball? You understand that if the Defendant chooses to take the stand, and he doesn't have to, he also is subjected to the same tests of truthfulness as everyone else?

MS. BALL: I would think so.

MR. HEAD: Does that make sense to you?

MS. BALL: Yes.

MR. HEAD: Ms. Baker, any problem with that concept?

MS. BAKER: No.

MR. HEAD: Mr. Bloomstrom, would it surprise you to learn that we, the State of Ohio, don't have to prove motive in this case or in any criminal case? Let me ask it this way. Don't you think that it is natural that you or any other potential juror would wonder why something happened, why somebody might have done something?

MR. BLOOMSTROM: It might be natural to wonder why, yes.

MR. HEAD: Would it upset you to learn that we don't have to tell you why; we don't have to prove to you why?

MR. BLOOMSTROM: No.

MR. HEAD: We have to prove who and where and what and how and that sort of thing.

MR. BOSTICK: Forgive me for interrupting the Prosecutor. May we approach the bench?

(Whereupon the following was had at the bench:)

MR. BOSTICK: The Defense objects to the line of questioning on voir dire of the Prosecution respecting motive, and we do so object based on State v. Lancaster, 167 Ohio St. 391, wherein it is indicated in a first degree murder case where the evidence is purely circumstantial, the identification of the killer is not shown by direct evidence and, therefore, his identity must be proved. Motive or lack thereof becomes an important question. In such a case, the trial court has a duty to instruct the jury it should take the evidence on that question in consideration. What the Prosecution is attempting to do is saying they don't have to prove motive and gives the wrong impression to the jury based upon your interpretation of this case and the facts of the case that we are here to try. Lack of a motive would be proper to be considered, which is different than what the Prosecutor is attempting to say to the jury at this time.

THE COURT: The objection at this point is overruled. However, the Court would ask counsel to make it clear that proof of motive is admissible material and relevant but is not an element of the offense.

MR. BOSTICK: In view of that, may we ask you to additionally add proof of motive or lack thereof.

THE COURT: Very well.

(Whereupon counsel returned to their respective tables.)

MR. HEAD: Mr. Bloomstrom, I think I was with you. To digress for a second, we have -- every charge has with it or in it

certain elements of the charge. In this case, aggravated murder is the purposeful killing of another, who was a living human being, during the commission of a rape offense or immediately thereafter. Those are called elements. They are to prove the killing. There was a killing. It was done purposefully. It was done in Montgomery County, and it was done during or shortly thereafter the rape offense. Those are elements. Does everybody understand that? Okay. Nowhere did I mention the word motive. Motive is not an element. Okay? This is what Defense counsel was objecting to. You can consider or take into consideration whether or not there is evidence of a motive or no evidence of a motive. Okay? You can take that into consideration. That is all part of when you are trying to figure out what the facts are. Any problem with that?

MR. BLOOMSTROM: No.

MR. HEAD: How about everybody else? Did you understand what I was saying about that? Okay. You will hear during opening statements and later on during the case and during arguments and during instructions from the Court about these different and various elements that each crime is made up of, that we have to prove to you beyond a reasonable doubt. Motive is not an element. All right? Now, based on that and what I have said, and let me ask you, Mr. Bloomstrom, if, at the close of the evidence, you are firmly convinced that the Defendant committed the acts, the crimes, and you are unclear as to what his motive may or may not have been, will you necessarily find him not guilty?



MR. BOSTICK: We object to that question, Your Honor.

THE COURT: Sustained.

MR. HEAD: Will you be able to come to a decision if, at the close of the case, you are not clear as to the motive of the perpetrator of the crime?

MR. BLOOMSTROM: Yes.

MR. HEAD: Mr. Morrow, how about you?

MR. MORROW: Yes.

MR. HEAD: I want to go back to the TV thing a second.

Let's say we are watching a show in which you, with the corroborative eye of the TV camera, see the crime as it goes down, before it happens, or as it is happening, before the police got on the scene. You see the perpetrator perhaps break off a fingernail or something and it falls to the ground. You see the cops arrive, and the detective gets there, and as they are searching the apartment where the burglary happened for clues, they go right by where the fingernail is. You are yelling, pick it up. That is going to be a big clue. Have you all done that before?

MS. ENOCH: Yes.

MR. HEAD: Columbo, in his show, he would find it, right?

MS. ENOCH: Right.

MR. HEAD: Would it surprise you to learn that not all detectives are as good as Columbo?

MS. ENOCH: No.

MR. HEAD: Would it surprise you to learn detectives by

and large are human beings that make mistakes at times?

MS. ENOCH: No, that wouldn't surprise me.

MR. HEAD: They maybe don't get all the evidence they should.

MS. ENOCH: I would hope they would, but it wouldn't surprise me if they didn't get it all.

MR. HEAD: At the close of the case, if we have given you all the evidence we can give you and that firmly convinces you of the guilt of the Defendant, but you would really want to see another piece of evidence you think the cop could have gotten, okay?

MS. ENOCH: Yes.

MR. HEAD: Will you be able to still come to a verdict on that if you are convinced he did it but yet, darn it, I wish they would have done that and I could have known for proof positive?

MS. ENOCH: If they had done that, that would have been beyond a shadow of a doubt, but we need reasonable doubt.

MR. HEAD: Ms. Neumaier, what do you think about that?

MS. NEUMAIER: I agree with you.

MR. HEAD: The same thing, if you hear some names mentioned in the trial and during the course of the trial by some of the witnesses and, at the close of all the case, you are thinking to yourself, gee, I sure wish John Doe would have testified, I guess the point I am trying to make is you can't speculate on whether John Doe could have or couldn't have testified or what he would have said had he testified or she. You have to go with the evidence as we give it

to you. Can everybody do that and not speculate on what is not in evidence? Okay. I take it by the nods of your heads you all can. You know, along that same line, Jeryl Ann Brown, there are a lot of people that believe in the new age of technology and whatnot that you can take fingerprints off a rock at the bottom of a babbling brook. Are you one of those people? Are you one of those people that think modern forensic science can do wonders with laser beams and whatnot to find trace evidence where there isn't evidence around otherwise?

MS. BROWN: Well, I would imagine it is possible, but you would have to show me.

MR. HEAD: There will be evidence in this case that fingerprints were attempted to be lifted off a couple items, perhaps, and they were unsuccessful. They couldn't find any usable prints. Once again, it goes along with the same thing. Will you speculate as to, well, because there are no prints, then the cops didn't do their job or the Prosecutor didn't prove their case on that fact alone?

MS. BROWN: No.

MR. HEAD: How about anybody else? Does anybody have a problem with that? Okay.

THE COURT: Mr. Head, if I may interrupt, the alarm that went off wasn't mine but it reminds me that we are at about the 5:00 o'clock hour. I don't want to make this procedure any more uncomfortable for any of you than it already has been today. It has been a long day for you, and I know from experience that those wooden benches are extremely uncomfortable. So, I think we may be at a



convenient stopping point for today. So that you understand, we have a scheduling problem, and the beginning of the trial is going to be a bit choppy. Every Tuesday, at least for this court, is set aside for some regular docket business, other cases that have been set for motion hearings and so on. We have some time available tomorrow morning in which I think we can conclude at least the State's portion of the voir dire examination. If you will all report to this courtroom -- wait a minute. Could we fit them now in my courtroom?

THE BAILIFF: I think so, sir.

THE COURT: We are going to take a stab at this because we want to have you come back tomorrow morning at 10:00 o'clock. We are going to move from the Cadillac courtroom which you have been in here today up to the Volkswagen courtroom, which is my normal courtroom, and it is going to be a little tight up there because it is a very small courtroom. It is on the fifth floor, Courtroom No. 9. I think perhaps some of your summonses said that originally anyway. So, if you will make a mental note if not an actual note for tomorrow at 10:00 o'clock to report to Courtroom No. 9 on the fifth floor, we will continue with the voir dire examination. We will run until approximately 11:30, at which time we will adjourn for the balance of the day. If you want to make plans for something tomorrow afternoon, you may do so. Then, we will reconvene Wednesday morning, probably earlier, say somewhere in the neighborhood of 8:30. I saw somebody raising their hand.

MS. KONICKI: Constance Konicki. I have an appointment

for the doctor at 10:15 tomorrow morning.

THE COURT: Is it something that can be postponed?

MS. KONICKI: It is an appointment with a dermatologist. It is too late to cancel now.

THE COURT: Could you call in the morning? Is it something you have been waiting quite a while for? Is it something that can be postponed by a phone call?

MS. KONICKI: I don't know if they will charge me or not. If I can call in the morning and cancel it, I will.

THE COURT: I think you can tell them you have been ordered by the Court to participate in jury duty. Maybe they will have sympathy. You can tell them to call me and I will talk to them.

MS. KONICKI: All right.

THE COURT: Thank you. Anything further? Tomorrow morning, then, 10:00 to 11:30. About 8:30 on Wednesday morning we will begin. Anything further from counsel?

MR. HEAD: No, Your Honor.

THE COURT: Before I let all of you go, I want to reread the instructions and the order of the Court that you are to abide by during the recess period. You are not to discuss this case among yourselves or to discuss it with anyone else. Do not permit anyone to discuss this case with you or to discuss it in your presence. Do not form or express any opinion on this case until it is finally submitted to you. You may explain this rule to your family and to your friends. When this trial is over, you will be released from

this instruction by the Court. At that time, you may discuss the case and your experiences as a juror, but you are, of course, not required to do so. Until that moment, you must control any desire that you have to discuss this case both here and at home. Do not talk with the attorneys, the parties, or the witnesses during the trial. Likewise, these individuals must not talk with you. If anyone does attempt to discuss the case with you, report that incident at your earliest opportunity to Mr. Findlay or Mrs. Maynard, and the Court will then be advised. Do not investigate or attempt to obtain any additional information about this case outside the courtroom. It is highly improper for anybody to do so. Again, I say it is quite likely this case will be the subject of news broadcasts this evening and news writings this afternoon and tomorrow and henceforth, I would imagine. So, I instruct you not to read, view, or listen to any account in the newspaper or on the radio or on television on the subject of this trial. Further, do not let anyone read to you or comment to you about any news account on the subject of this trial. Again, if you acquire any information on this case, please report that at your earliest opportunity to Mr. Findlay or Mrs. Maynard, and that will be conveyed to the Court. In the event any personal problems arise during the recess period, the same rule. Report those to Mr. Findlay or Mrs. Maynard, and those will be conveyed to the Court. Until 10:00 o'clock tomorrow morning, this court is in recess.

(Whereupon a recess was had.)



July 20, 1982

(Whereupon the following was had in chambers:)

THE COURT: The record should reflect that we are in chambers prior to the continuation of the voir dire examination of the jury, the Defendant's presence having been waived by counsel for the Defendant.

MR. BOSTICK: That is correct.

THE COURT: For the purpose of the Court ruling on the request under the statute to admit the testimony of two prospective witnesses in the trial in the case in chief, that being, Andrew Choate and Scott Lombardo, ages 14 and 16 respectively. The Court has considered the memorandum and the case citation in support of it and the opposing position of the request, and the Court has determined that the evidence proposed, having been presented to the Court by way of a preliminary hearing examination, is not admissible in the State's case in chief. That is not, of course, to say that it would not be admissible in other respects, but the Court finds under Rule 404, Subsection (b) and also under 2945.59 of the Ohio Revised Code that the actions or the testimony of the witnesses as stated do not suffer two problems, making them not admissible. One is the remoteness issue and the other is the quality in nature of the actions to which the individuals would testify. The Court finds that there is an insufficient connection at this point in the case, the State's case in chief, as relates to the question of motive or preparation, plan, knowledge, identity, absence of mistake, or accident with

regard to the crime charged. The Court would analogize the acts complained of in a rape situation to the question of whether an accused, if the victim was a female, would have other heterosexual advances admitted in evidence against him tending to show a proclivity toward the opposite sex. Those testimonial offerings, this Court feels, would not be admissible and, therefore, these testimonial offerings, being of no material difference, are likewise not admissible in the case in chief. Is there anything else I need to rule on?

MR. STEPHAN: If it please the Court, based on the Court's ruling, we would ask the Court to order the Prosecution to refrain in their direct examination from eliciting testimony of homosexual acts, tendencies, attractions, or other preferences of the Defendant toward the victim or any other witness or participant in this hearing.

THE COURT: Overruled.

MR. STEPHAN: Would the Court permit us to reserve our right to object at the proper time as the testimony is offered?

THE COURT: Absolutely. The questions of relevancy and materiality will always be at issue.

MR. BOSTICK: Your Honor, would the Court want to make a decision at this time or is the Court prepared to make a decision on our motion of yesterday about additional peremptory challenges?

THE COURT: Well, the Court had anticipated reserving that ruling and ruling on that at the same time it rules on change of venue, but the Court is prepared to rule on the venue motion now,



if you would like.

MR. BOSTICK: We would.

THE COURT: The motion for a change of venue is overruled. The Court is convinced that the nature of the pre-trial publicity has not been such as to taint the jury in any material way or to prohibit the ability to select a jury free from prejudicial pre-trial publicity in this County. Therefore, based on the examination of the jurors conducted individually in chambers and the responses of the jury panel in general, the motion is found to be not well-taken and is hereby overruled. In that regard, likewise, and having participated in the voir dire through the Court's voir dire and up to this point as far as the State's voir dire is concerned, this Court feels that no particular need has been demonstrated to expand the number of peremptory challenges provided under Rule 24, I believe it is, of the Ohio Rules of Criminal Procedure. Therefore, the motion for additional peremptory challenges, likewise, is overruled.

MR. HEAD: Judge, I am intending to inquire of the prospective jurors as to any preconceived notions they may have regarding one who may have homosexual tendencies vis-a-vis this case. Does your ruling prohibit that?

THE COURT: No. I think you want to do that.

(Whereupon court reconvened.)

THE COURT: My goodness, you all did fit in here, and everybody has a place to sit. Good morning, ladies and gentlemen. Welcome back to the Montgomery County Courthouse. We are going to



proceed now with the voir dire examination by the State's attorneys.

Mr. Head?

MR. HEAD: Thank you, sir. Welcome back, everybody, to the Volkswagen courtroom. We will start where I left off. We have got people seated the opposite way here, so I will try to make sure I get everybody's name right. Ms. Barbee, you indicated on a question from the Court yesterday that you had a half brother who had shot somebody?

MS. BARBEE: Yes.

MR. HEAD: Was he convicted of that?

MS. BARBEE: Yes.

MR. HEAD: Was that here in this County?

MS. BARBEE: Yes.

MR. HEAD: How recently was that? Did you say six months or something like that?

MS. BARBEE: About four to six months.

MR. HEAD: Do you happen to remember what he was convicted of, the charge he was convicted of?

MS. BARBEE: Not really, but he was sentenced.

MR. HEAD: Were you familiar with the facts of the case at all? Did you talk to him about it or other members of your family about the case?

MS. BARBEE: I talked with him once, but I didn't go to the trial.

MR. HEAD: Do you feel that he was treated fairly by the

police and the Prosecution during that whole thing?

MS. BARBEE: Well, I can't say because --

MR. HEAD: Just from what you know.

MS. BARBEE: As far as I know, he was, yes.

MR. HEAD: So, the fact that I am a Prosecutor, you are not going to hold that against me that your half brother was convicted of a crime?

MS. BARBEE: No.

MR. HEAD: And the fact that we are going to have police officers testify, you won't -- I will ask you, will you be less likely to believe them because they are police officers, knowing that your brother was arrested, your half brother was arrested by police officers?

MS. BARBEE: No.

MR. HEAD: Are you aware, Ms. Barbee, that all 12 jurors, you being one of those if you are chosen to serve, have to deliberate and sign in ink a verdict form either guilty or not guilty?

MS. BARBEE: Yes.

MR. HEAD: Does everybody else know that? Do you have a problem with that? You have to sign your name in ink on the verdict form. Does anybody have a problem with that? Okay. Ms. Brown, you indicated, I think, that your house was burglarized several years ago?

MS. BROWN: Yes.

MR. HEAD: And you were working somewhere and you were a victim of a robbery of some kind?

MS. BROWN: Right. I was working at like a Lawson's store in New Jersey.

MR. HEAD: Was anybody caught in that robbery?

MS. BROWN: No.

MR. HEAD: How about the burglary, was anybody caught?

MS. BROWN: No, neither one, no.

MR. HEAD: This is maybe not quite a related question, but did you feel the police did all they could in those two cases?

MS. BROWN: Well, in the one in the milk store I didn't get involved in it after it happened, basically. I didn't work for the company any more. I quit a couple weeks later. So, I didn't even pay any attention to that. It didn't bother me as far as that. In the burglary of the apartment, I felt they did everything they could do under the circumstances, yes.

MR. HEAD: Because we have police officers testifying here or will be having them, you are not going to not believe them perhaps just because those crimes weren't solved that involved you?

MS. BROWN: No.

MR. HEAD: You said something like they weren't really serious.

MS. BROWN: Well, I don't consider -- when I look at other people's problems, I was thinking, well, they weren't as bad as somebody else's, maybe. I don't know. I was looking at it that way.

MR. HEAD: I was just curious about that. That is why



I asked. You have already seen, Ms. Baker, that counsel will object at times, okay, and I am sure from watching TV shows you have seen that happen, too. You understand, don't you, that neither side is trying to hide anything or whatever? We are trying to make sure that both sides follow the rules, and the Court is the person who interprets what the rules and law is. Do you understand that?

MS. BAKER: Yes.

MR. HEAD: You won't hold it against either side because we object, will you?

MS. BAKER: No.

MR. HEAD: Ms. Harris, are you aware that a jury is a deliberative body? In other words, if you are chosen to serve and you go back in the jury room after the case is over, you and the other 11 members of the jury have to discuss and consider all sides of the case before arriving at a conclusion as to what the facts in the case are.

MS. HARRIS: Well, I figured this is the way it is done. I never served on a jury, so I couldn't say that I would know it.

MR. HEAD: But, you are willing to do that?

MS. HARRIS: Oh, yes.

MR. HEAD: You will listen to both sides, where everybody has a chance to talk, and hear what the facts are?

MS. HARRIS: Right.

MR. HEAD: Does anybody else have a problem with that? We don't want you going in there with any kind of preconceived ideas