

Volume 21

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

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

7 VS: } & A-96-253

8 DARLIE LYNN ROUTIER } Kerr Co. Number

9

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13 STATEMENT OF FACTS

14 JURY VOIR DIRE

15 INDIVIDUAL JURORS HEARING

16 VOL. 21 OF VOLS.

17 November 8, 1996

18 Friday

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Sandra M. Halsey, CSR, Official Court Reporter
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1 C A P T I O N

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4 BE IT REMEMBERED THAT, on Friday, the 8th day of
5 November, 1996, in the Criminal District Court Number 3
6 of Dallas County, Texas, the above-styled cause came on
7 for a hearing before the Hon. Mark Tolle, Judge of the
8 Criminal District Court No. 3, of Dallas County, Texas,
9 without a jury, and the proceedings were held, in open
10 court, in the City of Kerrville, Kerr County Courthouse,
11 Kerr County, Texas, and the proceedings were had as
12 follows:

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1 A P P E A R A N C E S
2
3
4 HON. JOHN VANCE
5 Criminal District Attorney
6 Dallas County, Texas
7
8 BY: HON. TOBY L. SHOOK
9 Assistant District Attorney
10 Dallas County, Texas
11
12 AND:
13 HON. JOHN GRAU
14 Assistant District Attorney
15 Dallas County, Texas
16
17 AND:
18 HON. SHERRI WALLACE
19 Assistant District Attorney
20 Dallas County, Texas
21
22 APPEARING FOR THE STATE OF TEXAS
23
24
25
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1 ADDITIONAL APPEARANCES:
2
3 HON. DOUGLAS D. MULDER
4 Attorney at Law
5 2650 Maxus Energy Tower
6 717 N. Harwood
7 Dallas, TX 75201
8
9 AND: HON. CURTIS GLOVER
10 Attorney at Law
11 2650 Maxus Energy Tower
12 717 N. Harwood

13 Dallas, TX 75201
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15 AND: HON. RICHARD C. MOSTY
16 Attorney at Law
17 Wallace, Mosty, Machann, Jackson & Williams
18 820 Main Street, Suite 200
19 Kerrville, TX 78028
20
21 AND: HON. S. PRESTON DOUGLASS, JR.
22 Attorney at Law
23 Wallace, Mosty, Machann, Jackson & Williams
24 820 Main Street, Suite 200
25 Kerrville, TX 78028
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1
2 AND: HON. JOHN HAGLER
3 Attorney at Law
4 901 Main Street, Suite 3601
5 Dallas, TX 75202
6 ALL ATTORNEYS REPRESENTING THE
7 DEFENDANT: DARLIE ROUTIER
8 MR. HAGLER HANDLING THE APPEAL
9 AND:
10 HON. ALBERT D. PATILLO, III
11 Attorney at Law
12 820 Main Street, Suite 211
13 Kerrville, TX 78028
14 APPEARING FOR: Witness-
15 Detective Jimmy Patterson
16 only on one date in trial
17 AND:
18 HON. STEVEN J. PICKELL
19 Attorney at Law
20 620 Earl Garrett Street
21 Kerrville, TX 78028
22 APPEARING FOR: Witness
23 Officer Chris Frosch
24 only on one date in trial
25
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1 P R O C E E D I N G S
2
3 November 8th, 1996
4 Friday
5 8:30 a.m.
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7 (Whereupon, the following
8 proceedings were held in
9 open court, in the presence
10 and hearing of the
11 defendant, being
12 represented by her attorneys
13 and the representatives of
14 the State of Texas,
15 as follows:)

16

17 THE COURT: We are back on the record
18 now. Today is Friday, November 8th.

19 Your name is Nina --

20 THE PROSPECTIVE JUROR: Scharein.

21 THE COURT: Scharein.

22 S-C-H-A-R-E-I-N. This is juror number 61 on our list,
23 number 182 on the jury list.

24 And Ms. Scharein, that is your maiden
25 name, and you have your last name as Sivils, S-I-V-I-L-S;
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1 is that right?

2 THE PROSPECTIVE JUROR: Yes, I got
3 married.

4 THE COURT: You got married,
5 congratulations.

6 THE PROSPECTIVE JUROR: Thank you.

7 THE COURT: Do you wish to be
8 addressed as Nina Sivils now?

9 THE PROSPECTIVE JUROR: It doesn't
10 matter.

11 THE COURT: Okay. But that is your
12 official -- you are married.

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: That is the name you go by
15 now, Sivils?

16 THE PROSPECTIVE JUROR: Yes, I usually
17 write it as my middle name.

18 THE COURT: Okay. Well, let's change
19 it, shall we, by agreement change it to Sivils, since
20 that is your legal name now?

21 THE PROSPECTIVE JUROR: All right.

22 THE COURT: S-I-V-I-L-S. Ma'am, you
23 were not at the courthouse for any of my opening remarks,
24 were you?

25 THE PROSPECTIVE JUROR: Not at the
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1 very beginning, no, sir. I was late that day.

2 THE COURT: Okay. Well, just in

3 abundance of caution, we're going to go over the entire
4 thing I said down there again, except I am going to
5 hopefully speed it up somewhat.

6 You have been called to be a

7 prospective juror in a case styled the State of Texas
8 versus Darlie Lynn Routier.

9 Mrs. Routier is sitting right over

10 here in the olive dress. She is represented by the

11 following attorneys: From Kerrville, we have Mr. Preston
12 Douglass, and Mr. Richard Mosty, Mr. Mosty is not here
13 now. From Dallas, we have Mr. Douglas Mulder and Mr.
14 Curtis Glover. Mr. Glover is here now.

15 The State of Texas is represented --

16 present today we have two Assistant District Attorneys
17 from Dallas, Toby Shook and Sherri Wallace. And another
18 attorney, Greg Davis, who is not present in court at the
19 present time.

20 Now, Mrs. Routier is charged with the

21 capital murder offense -- with the offense of capital
22 murder. The penalty range for capital murder depends
23 upon which set of circumstances the jury would find to be
24 true. If the jury finds one set of circumstances to be
25 true, the penalty range would be life confinement in the
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1 state penitentiary, which we call the Institutional
2 Division of the Texas Department of Criminal Justice.

3 If the jury finds the second set of
4 circumstances to be true, the penalty range would be
5 death by lethal injection.

6 Now, when a trial starts in Texas, I

7 am required to tell you what the defendant's charged with
8 and the possible penalty ranges in the case that is going
9 to be tried.

10 That is in no way to infer any guilt

11 on the part of Mrs. Routier as she sits here right now.

12 She sits here right now, she is presumed to be innocent,
13 not guilty. If we were to take you and 11 others and put
14 you in a box over there, and I asked Mr. Shook if he had
15 anything, and he said, "No, I don't." And I asked the
16 defense lawyers if they had anything, and they said, "No,
17 we don't either, Judge." And we asked you how you voted,
18 you would have to vote not guilty, because you have not
19 heard anything. And the presumption of innocence alone
20 is sufficient to acquit a defendant.

21 Do you understand that?

22 THE PROSPECTIVE JUROR: Uh-huh.

23 (Witness nodding head affirmatively.)

24 THE COURT: We call that the

25 presumption of innocence. It's a presumption which may
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1 be removed by the State introducing evidence. We call
2 that the burden of proof.

3 The burden of proof in Texas is beyond

4 a reasonable doubt. Now, if you are like I am, and you
5 like to watch Perry Mason, old and new, and Murder She
6 Wrote, and all of those shows, you are going to hear
7 beyond all that, beyond a shadow of a doubt, and beyond
8 any doubt, that is not the burden in Texas. The burden
9 in Texas is beyond a reasonable doubt. Now, later on in
10 these proceedings you are going to get a detailed
11 definition of what reasonable doubt is.

12 For our purposes now, suffice it to

13 say that it means that you will listen to testimony, and
14 you will review evidence. If you feel the State has
15 proven their case, you will be able to find the defendant
16 guilty. If you feel the State has not proven their case,
17 you will be able to find the defendant not guilty.

18 If you find the defendant not guilty,

19 everybody goes home. If you find the defendant guilty,
20 then it is going to be incumbent upon you to set the
21 defendant's punishment, somewhere in the range provided
22 by law which I have just explained to you. And you will
23 do that by answering special issues which we will get
24 into later and depending upon how you answer them, the
25 defendant will receive either a life sentence or a death

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1 sentence by lethal injection.

2 Do you understand that?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: Now, a reasonable doubt

5 basically is the kind of doubt that would make a
6 reasonable person hesitate to act in the most important
7 of his own affairs.

8 It is the highest type of -- proof

9 beyond a reasonable doubt is the highest type of proof
10 there is, the highest requirement of proof in any jury
11 trial that there is, proof beyond a reasonable doubt.

12 Now, a couple other things we have to

13 tell you about.

14 First of all, Mrs. Routier is here --

15 this is an indictment. I am going to read this

16 indictment to you:

17 "True Bill of Indictment:
18 "In the name and by the authority of
19 the State of Texas, the Grand Jury of Dallas County,
20 State of Texas, duly organized at the January Term, A. D.
21 1996, of the 194th Judicial District Court of Dallas
22 County, in said Court in said State, do present that one,
23 Darlie Lynn Routier," and you spell her name D-A-R-L-I-E,
24 L-Y-N-N, R-O-U-T-I-E-R, the young lady sitting there in
25 the olive dress. "On or about the 6th day of June,
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1 A. D., 1996, in the County of Dallas in said State, did
2 unlawfully then and there intentionally and knowingly
3 cause the death of Damon Christian Routier, an
4 individual, hereinafter called deceased, by stabbing the
5 said Damon Christian Routier with a knife, and the
6 deceased was, at the time of the offense, under six years
7 of age.

8 "Against the peace and dignity of the
9 State."

10 That is signed by John Vance, Criminal
11 District Attorney of Dallas County, Texas, and by Ray
12 Paul, Sr., who is the foreman of the Grand Jury.

13 Now, this is an indictment. You will
14 receive an instruction that this indictment is no
15 evidence of guilt. The reason an indictment is no
16 evidence of guilt is because in Dallas County we have
17 four Grand Juries working all the time. Totally, they
18 issue right at twenty-five thousand felony indictments
19 per year.

20 The average Dallas County Grand Jury
21 hears 100 to 125 cases a day. And when they issue their
22 indictments there, anybody can be indicted, and many
23 people don't even know -- or some people don't know they
24 are under investigation. Any one of us in this courtroom
25 can be indicted by a Grand Jury and never know we're
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1 under investigation. I didn't know if you were aware of
2 that or not.

3 We may know we are under
4 investigation, and want to tell our story to the Grand
5 Jury. The Grand Jury does not have to listen to us. We
6 may go tell our story to the Grand Jury, and the Grand
7 Jury says there is nothing to it, and they no bill the
8 case.

9 That is not necessarily the end of the
10 case, it may be taken to a second Grand Jury or a third

11 or a fourth. The bottom line is if somebody really wants
12 you indicted, you are probably going to get indicted.

13 On the other hand, it doesn't mean --

14 it is not evidence of guilt. An indictment is nothing
15 more than a neutral piece of paper. It tells Mrs.

16 Routier what she's charged with, and tells the State what
17 they have to prove. And you can't consider this as any
18 evidence of guilt whatsoever. You are going to receive
19 an instruction to that effect. Do you understand that?

20 THE PROSPECTIVE JUROR: Uh-huh.

21 (Witness nodding head affirmatively.)

22 THE COURT: All right. Now, I want to

23 talk a little bit about opinions.

24 This case has received quite a bit of
25 publicity. That is why we are down here from Dallas.

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1 And to be a good juror, to be a qualified juror, you must
2 not have an opinion as to whether or not Mrs. Routier is
3 guilty or not guilty now, but listen to the testimony and
4 review the evidence.

5 In other words, you are a good juror,
6 or a qualified juror, if you can say you truly have no
7 opinion of the case, or if you have one, you will set it
8 aside; and any opinion you might have, just so long as it
9 does not affect your ability to render a verdict in this
10 case. Do you understand that?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Now, because if you have
13 an opinion, and have already formed an opinion as to
14 whether she is guilty or not guilty, and you can't set
15 that opinion aside, then, of course, you would not be a
16 qualified juror in this matter. Do you understand that?

17 THE PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Other items are going to
19 come up today. In this whole proceeding, you can't
20 consider when sentencing any part of the parole laws in
21 this State. We can't -- we don't handle parole at this
22 level, we have no control over it. The parole laws of
23 this State, or any other state, are set by the
24 legislature, by the Board of Pardons and Paroles, and by
25 the governor of the State.

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1 And if you don't like the parole laws,
2 which a lot of people don't, they often come yell at me,
3 and that is fine, I can take a lot of yelling at. But

4 it's like talking to that wall, because I can't do
5 anything. Get out your voter's certificate, flip it
6 over, and you look at the bottom of the certificate
7 there, and it says, you know, it gives you your state
8 legislator, your state representative, and your state
9 senator; talk to them.

10 Now, there are certain qualifications
11 that you're going to have to have.

12 Do you have any questions so far?

13 THE PROSPECTIVE JUROR: I don't think
14 so.

15 THE COURT: All right. Let me see
16 where my qualification list is here. Okay. I had it
17 right here, too.

18 Here it is.

19 All right. To be a qualified juror,
20 you have to be qualified. Now, to be a qualified juror,
21 you must be over the age of 18 years. I have to ask you
22 this question, are you over 18 years of age? I know not
23 by much.

24 THE PROSPECTIVE JUROR: No, very much.

25 THE COURT: Okay. You must reside in
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1 Kerr County. Do you reside in Kerr County?

2 THE PROSPECTIVE JUROR: Uh-huh.

3 (Witness nodding head affirmatively.)

4 THE COURT: You must also be a United
5 States citizen. You are a United States citizen?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. The next one gets a
8 chuckle. You must be of sound mind and good moral
9 character. Do you have any problems there?

10 THE PROSPECTIVE JUROR: I guess not.

11 THE COURT: Okay. Well, fine. The
12 jury selection in Dallas, there are usually two judges
13 there and one of them takes sound mind, and the other
14 takes the good character. But I think you qualify there.

15 You must be able to read and write. I
16 mean, I can tell by your questionnaire that you filled
17 out, you can read and write. You must not have served
18 more than five days as a juror in a County Court, that is
19 a six person jury, in the last three months; or on a 12
20 person jury, during the last six months. You have not
21 done that, have you?

22 THE PROSPECTIVE JUROR: Never.

23 THE COURT: Okay. You must never have
24 been convicted of a felony. Now, a felony is an offense
25 which gets you state penitentiary time, as opposed to

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1 misdemeanor, which gets Kerr County jail time.
2 THE PROSPECTIVE JUROR: I have never
3 even had a speeding ticket.
4 THE COURT: I see. Well, fine. All
5 right. You must not be under legal accusation for theft
6 or any felony. And you are not?
7 THE PROSPECTIVE JUROR: Not that I
8 know of.
9 THE COURT: Thank you. Now, those are
10 qualifications. When you meet the qualifications, you
11 are entitled to serve. But, if you were disqualified,
12 for example, we could not put you on the jury, because
13 that would cause the whole trial to have to be done over.
14 Now here are exemptions. You may
15 claim one of these exemptions, if you so desire, if you
16 have one to claim. If you are over 65 years of age, and
17 you are not over 65 years of age.
18 THE PROSPECTIVE JUROR: No.
19 THE COURT: You are born in 1959, it
20 says here.
21 If you have custody of a child under
22 10 years of age, and must leave the child without
23 adequate care. You know, that doesn't apply.
24 If you are attending -- if you are a
25 high school student, and enrolled and attending a
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1 college. That doesn't apply either.
2 THE PROSPECTIVE JUROR: No.
3 THE COURT: If you're an officer
4 employed in the legislative branch of state government.
5 THE PROSPECTIVE JUROR: No.
6 THE COURT: No. And you are the
7 primary caretaker of an invalid. That doesn't apply
8 either.
9 THE PROSPECTIVE JUROR: No.
10 THE COURT: All right. So much for
11 that.
12 Now, anything else that comes to mind?
13 MR. TOBY L. SHOOK: No, sir.
14 MR. S. PRESTON DOUGLASS, JR: No, sir.
15 THE COURT: I was trying to go over
16 some of the things they are going to go over with you,
17 too.
18 So, what is going to happen now, I am
19 going to give you an oath, and then both sides will ask

20 you some questions concerning your qualifications as a
21 juror today. Now, there are no wrong answers. This is
22 not going to be a test, and you don't get a grade.

23 Like I tell people, you can be a
24 member of the Flat Earth Society, no one is going to
25 disagree with you.

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1 It is just how you feel because we
2 have to get 12 jurors, 12 fair jurors selected to hear
3 this case.

4 If you will raise your right hand,
5 please.

6 Do you solemnly swear or affirm you
7 will true answers make to all questions propounded to
8 you, in this room or any room to which you may be sent
9 concerning your qualifications as a juror, so help you
10 God?

11

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

19

20 THE PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Well, thank you. Now,
22 what is going to happen is Mr. Shook will ask you some
23 questions, and then Mr. Mosty will ask you some
24 questions. Then we will get on with it.

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

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1 Whereupon,
2
3 NINA MARIE SCHAREIN SIVILS,
4

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

9
10 VOIR DIRE EXAMINATION

11
12 BY MR. TOBY L. SHOOK:
13 Q. Again, my name is Toby Shook, I am one

14 of the prosecutors on the case. I will be asking you
15 questions on behalf of the State. I want to go over a
16 few things you put down on your questionnaire, and then
17 we will go over some things that apply in this case, and
18 under the law that applies. Okay?

19 A. Okay.

20 Q. And like Judge Tolle informed you,
21 there is no right or wrong answers, we just want your
22 honest opinions.

23 A. Okay.

24 Q. I noticed on the very back, I don't
25 know if your situation has changed, or maybe you know
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1 about it a little more, but you said you might be moving
2 from Kerr County?

3 A. Well, we are going to move to Comfort.

4 I don't know yet if we are or not.

5 Q. Do you know when that would take
6 place?

7 A. No.

8 Q. Is Comfort --

9

10 THE COURT: Is Comfort in Kerr County?

11 THE PROSPECTIVE JUROR: No, it is in
12 Kendall County.

13 THE COURT: Thank you.

14

15 BY MR. TOBY L. SHOOK:

16 Q. So, there is a chance you might be
17 moving out of the county?

18 A. We might, yes.

19 Q. But you don't know a time that would
20 be?

21 A. No. We're just looking for a place
22 now. We're trying to move to Comfort, and we had one
23 place and then we didn't get it after all.

24 Q. Okay. So, you are actively seeking to
25 move over there, I guess?

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1 A. Uh-huh. (Witness nodding head
2 affirmatively.)

3

4 THE COURT: Ma'am, could you answer
5 yes or no? Ms. Halsey takes all of this down and we
6 can't take down uh-huhs or huh-uhs.

7 THE PROSPECTIVE JUROR: I'm sorry.

8 Okay.

9

10 BY MR. TOBY L. SHOOK:

11 Q. Have you lived in Kendall County
12 before?

13 A. Yes.

14 Q. Okay. That is what I thought.

15 A. I have got a lot of relatives over
16 there.

17

18 THE COURT REPORTER: Excuse me, what
19 was your answer? What did you just say?

20 THE PROSPECTIVE JUROR: Yes, I used to
21 live in Kendall County.

22 MS. SHERRI WALLACE: She said she had
23 a lot of relatives over there.

24 THE COURT REPORTER: Okay, thank you.

25 THE PROSPECTIVE JUROR: I am sorry.

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1 BY MR. TOBY L. SHOOK:

2 Q. Okay. That is all right. She just
3 has to get everything down and she is way over there on
4 the other side of the room, so that is why you need to
5 get close to that microphone.

6 A. Okay.

7 Q. But I guess you and your husband are
8 looking to move there though?

9 A. Yes.

10 Q. Is that as soon as you find a place?

11 A. Yes.

12 Q. So, that could be within the next two
13 weeks or month, whatever?

14 A. It could be any time. Like I said, we
15 had one place and then we didn't move after all. We
16 thought we had it.

17 Q. Okay.

18

19 THE COURT: Well, let's go off the
20 record a minute. What is real estate market like?

21

22 (Whereupon, a short
23 Discussion was held
24 Off the record, after
25 Which time the

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1 Proceedings were resumed

2 As follows:)

3

4 MR. S. PRESTON DOUGLASS, JR: Judge, I

5 mean, we wouldn't object to excusing her on that basis.

6 THE COURT: All right. Well, let's go

7 on the record then. Well, ma'am, in other words, you are

8 actively seeking a home in Comfort, Texas, which is in

9 Kendall County? And, like, if you found one this

10 weekend, you and your husband intend to move next week;

11 is that right?

12 THE PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: All right. Do both sides

14 agree to excuse the juror?

15 MR. S. PRESTON DOUGLASS, JR: Yes,

16 sir.

17 MR. TOBY L. SHOOK: Yes, sir. We can

18 agree, Judge.

19 THE COURT: All right. Thank you very

20 much. Now, we're not throwing you out, but, I mean,

21 there is something -- you have to live in Kerr County to

22 be a selected qualified juror.

23 THE PROSPECTIVE JUROR: Oh.

24 THE COURT: It's not anything against

25 you. You have to live in Kerr County.

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1 THE PROSPECTIVE JUROR: Okay.

2 THE COURT: Please don't talk about

3 this to anybody yet, because it's not over yet. It won't

4 be over until sometime in January or February or so that

5 you can talk or not talk, as you see fit.

6 I have a gag order on. I can impose

7 monetary or jail time sanctions, I'm not threatening you.

8 THE PROSPECTIVE JUROR: Yes. I heard

9 that, I know.

10 THE COURT: All right. Thank you for

11 coming, and we're sorry to take up your time.

12 THE PROSPECTIVE JUROR: Thank you.

13

14 (Whereupon, the following

15 mentioned item was

16 marked for

17 identification only

18 as Court's 11,

19 after which time the

20 proceedings were

21 resumed on the record

22 in open court, as

23 follows:)

24

25 MS. SHERRI WALLACE: We will offer
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1 Court's Number 11.

2 MR. PRESTON DOUGLASS: No objection.

3 THE COURT: Admitted.

4

5 (Whereupon, the above

6 mentioned item was

7 received in evidence

8 for record purposes

9 only, after which time,

10 the proceedings were

11 resumed on the record,

12 as follows:)

13

14 THE COURT: All right. The next juror

15 can come in, please.

16 Your name, please, sir.

17 THE PROSPECTIVE JUROR: Brandon Rowan.

18 THE COURT: All right. Number 200 on

19 the list, 69 on our list.

20 Okay. Brandon, B-R-A-N-D-O-N, Rowan,

21 R-O-W-A-N; is that correct?

22 THE PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Raise your right hand,

24 please.

25 Do you solemnly swear or affirm you

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1 will true answers make concerning all questions

2 propounded to you concerning your qualifications, so help

3 you God?

4

5 (Whereupon, the prospective

6 juror was duly sworn by the

7 Court to true answers make

8 to the questions propounded,

9 concerning qualifications, after

10 which time, the proceedings were

11 resumed as follows:)

12

13 THE PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: As you know, you have been

15 called as a potential juror in the Darlie Routier case.

16 Mrs. Routier is sitting there in the olive dress with her

17 attorney, Mr. Curtis Glover; and another attorney, Mr.

18 Preston Douglass, is in the court now, he'll be here
19 shortly.
20 The State is represented by Mr. Toby
21 Shook and Ms. Sherri Wallace, they are Assistant District
22 Attorneys from Dallas.
23 What is going to happen is, both sides
24 are going to ask you a few questions, to see if you are
25 qualified. There are no wrong answers, there won't be a
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1 test. You could be a member, like I said, of the Flat
2 Earth Society and no one is going to disagree with you
3 about anything you say down here.
4 So, just give honest answers. If you
5 can speak succinctly, give brief answers, speak loudly
6 into the microphone.
7 Ms. Halsey is taking all this down.
8 Please say yes or no, not uh-huh or huh-uh. Okay?

9 THE PROSPECTIVE JUROR: Okay.
10 THE COURT: Go ahead, Mr. Shook.
11 MR. TOBY L. SHOOK: Thank you, sir.

12
13 Whereupon,
14
15 BRANDON LAMAR ROWAN,

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

21
22 VOIR DIRE EXAMINATION
23

24 BY MR. TOBY L. SHOOK:
25 Q. Mr. Rowan, again, my name is Toby
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1 Shook, I am one of the prosecutors on the case, and I
2 will be asking you questions on behalf of the State.
3 What I want do is go over some of the
4 items here in your questionnaire, and then maybe go over
5 some of the law that might apply.
6 There are no right or wrong answers,
7 like the Judge said, everyone is different, everyone
8 comes from a different background, everyone has got
9 something different going on in their life at the time
10 they are called. Okay?
11 A. Uh-huh. (Witness nodding head

12 affirmatively.)

13 Q. And so we want to talk to you about

14 that. Some people can serve on this jury, some people
15 can't. You aren't going to hurt our feelings.

16 On the last page I noticed you wrote a

17 note for all of us to look at. Apparently, you are
18 self-employed in the lawn care business; is that right?

19 A. Uh-huh. (Witness nodding head

20 affirmatively.) Yes, sir.

21 Q. And you are a married man?

22 A. Yes, sir.

23 Q. And it looks like your wife is a

24 student; is that right?

25 A. Yes, sir.

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1 Q. Okay. You put on here that, it looks

2 like your family depends on you for all of the income,
3 and that you just started this business up. This trial
4 is slated to begin January 6th for -- we can't tell you
5 exactly how long, but our best guess is two weeks,
6 possibly three.

7 The hours Judge Tolle goes by are from

8 9:00 in the morning until 5:00 in the afternoon. You
9 wouldn't be sequestered unless you were deliberating part
10 of the case, otherwise, you would go home at 5:00

11 Obviously, though, from 9:00 to 5:00,

12 you would be ours, here listening to the testimony. Now,
13 tell us what that would do to your economic situation or
14 your work situation.

15 A. Well, I don't really know, actually.

16 Usually that is my down time anyway, and I talked to one
17 of the guys that works with me and he said that, if I did
18 have to do this, that he could take over for me.

19 Q. Okay. Well, the situation is that

20 some people are in such financial straits that if we put
21 them on a jury at a particular time, they wouldn't be
22 able to pay attention. They would be thinking about
23 their bills and what they need to do and that kind of
24 thing.

25 And other people, you know, it's

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1 hardship on everyone. And they will say, "No, I can
2 serve and give my full attention." So, you know your
3 situation best. Would you be able to come down here?

4 A. Yes, I think so.

5 Q. Okay. I noticed also that you did

6 report that you had heard something about this. I don't
7 know if it was on TV or talking to someone about the
8 case. Tell us what you heard.

9 A. I just heard that it was going to be
10 in Kerrville, that is about it. When I got my notice for
11 jury duty, my mother said, "I bet that is the case that
12 is coming from Dallas," and that is about it.

13 Q. You haven't heard any of the facts?

14 A. No.

15 Q. It looks like you grew up in
16 Kerrville; is that right?

17 A. Yes, sir.

18 Q. Okay. Let me then go over -- well,
19 let me start like this: Obviously, you know that the
20 defendant has been indicted for capital murder, and the
21 State is seeking the death penalty. So, we're going to
22 talk to every juror about how they feel about the death
23 penalty as a law. So, tell me, are you in agreement that
24 we should have a death penalty statute on the books?

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

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1 affirmatively.)

2 Q. Okay.

3 A. Yes, sir.

4 Q. Tell me, in your own words, why we
5 should have a death penalty.

6 A. I hadn't thought about that.

7 Q. Well, like I said, there is no right
8 or wrong answers. It doesn't have to be a long
9 dissertation or anything like that. Just what you think
10 the death penalty -- the purpose it serves maybe?

11 A. Well, to me it is the repeat stuff
12 that goes on and on and on, and the people that do
13 things, and they get out and do it again. They come back
14 and do it again.

15 Q. The repeat offender, that type of
16 thing?

17 A. Yeah, that type of thing. And some
18 things are so gruesome that it's reasonable to me.

19 Q. Some crimes are just so brutal that is
20 just what you have?

21 A. Right.

22 Q. Okay. Any crimes come to mind,
23 anything you have watched in the news or anything like
24 that or types of crimes you think, well, these are the
25 types of things I think should be eligible for the death
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1 penalty?

2 A. Well, not right offhand. I don't
3 watch the news that much, so I don't -- I have a hard
4 enough time just going day to day. I really don't have
5 time to think about it. I don't take the time to think
6 about it.

7 Q. Have you followed any big murder cases
8 in the news or anything like that?

9 A. Well, I used to kind of watch a little
10 bit until the O.J. trial and that kind of ruined me.

11 Q. Kind of ruined you?

12 A. Yes, sir.

13 Q. Did you have any opinions on the O.J.
14 trial?

15 A. I didn't think he did it.

16 Q. Okay. So, you thought it turned out
17 okay for him, I guess?

18 A. Well, I guess, yes.

19 Q. But they just kind of overexposed the
20 whole thing?

21 A. Yes.

22 Q. All right. Let me kind of go over how
23 the procedures work in a death penalty case. The trial
24 is divided into two parts. The first half, we have to
25 first prove the indictment in this case. What I want to
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1 do now is let you read the indictment to yourself. I
2 think it's up there. It's that paragraph, that
3 typewritten paragraph up there in the middle.

4 A. Okay.

5 Q. That sets out allegations of the
6 intentional killing of a child under the age of six. And
7 there's only certain types of cases that could be
8 eligible for the death penalty in the State of Texas,
9 that being one of them. You have told me that, you know,
10 you think there are some crimes that deserve the death
11 penalty. Now, I can't tie you down to a verdict yet,
12 because you have not heard from any witnesses or any
13 evidence yet. Is that the type of case you think might
14 be eligible for the death penalty?

15 A. Well, I don't really know, it doesn't
16 tell me enough.

17 Q. You have to hear the facts?

18 A. Yeah. I really couldn't say, that's a
19 hard thing to say.

20 Q. Okay. The procedure again is this:

21 We have to prove that indictment beyond a reasonable
22 doubt. If we do that, then we get a guilty verdict.

23 Okay? If we don't do that everyone goes home, not
24 guilty.

25 If we do obtain a guilty verdict, we
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1 go to the punishment stage. There you might hear more
2 evidence, you may not. But at the close of that, you get
3 these questions. They are "yes" or "no" questions, and I
4 will go over those in a little more detail in a moment.

5 But the first question, basically to
6 kind of summarize it is this. It asks: Has the State
7 proven that the defendant would be a continuing danger to
8 society? If we prove that answer, you write in "yes,"
9 and we move on to the next question. We have to get over
10 these hurdles to get to the death penalty; and that is
11 one of them.

12 Now, this is the last hurdle, the last
13 question, and that's the mitigating question. It's a
14 long question. Basically, it asks this: You review the
15 evidence and decide, is there anything in the record,
16 anything about the defendant that let's you know as a
17 juror, that they should get a life sentence rather than a
18 death sentence? Okay?

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

21 Q. If there is that type of evidence, you
22 can answer it "yes." If there is not, you would answer
23 it "no." But if you give a "yes" and a "no" answer, the
24 Judge has no discretion, he would sentence the defendant
25 to death. Okay? No ifs, ands, or buts about that.

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1 If it is answered any other way, the
2 Judge would sentence the defendant to life, he has no
3 choice in that either. But those are the only two
4 possible outcomes. Is that clear to you?

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

7

8 THE COURT: Is that a yes?

9 THE PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Thank you.

11

12 BY MR. TOBY L. SHOOK:

13 Q. And that outcome is decided by how the
14 jurors answer those questions. Now, if it is a death

15 sentence, and the Judge does sentence the defendant to
16 death, in Texas, the method of execution is by lethal
17 injection. Were you aware of that?

18 A. Yes, sir.

19 Q. Okay. Now, procedures in Texas for
20 lethal injection are always the same. A person is given
21 a death sentence. They wait in Huntsville, Texas, and
22 someday the Judge will actually issue an execution date.
23 And the procedures call for that at 6 p.m. on that date
24 they are taken from their cell. They are actually moved
25 there sooner.

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1 Given time that day with family and a
2 minister, but at 6:00 p.m. the guard will come to the
3 cell, walk the defendant down the hallway into the
4 execution room, where witnesses are there by law with the
5 warden to watch these proceedings.

6 Then it is put on a hospital gurney,
7 and, of course, they are strapped down, immobilized,
8 needles will be placed in the defendant's arm.

9 And after the death warrant is read, a
10 chance will be given for last words, then poisons would
11 be injected, and within ten minutes would cause the death
12 of the defendant.

13 Now, it's happened over a hundred
14 times in Texas. There are some states that have the
15 death penalty and they never invoke it. Texas leads the
16 nation in executions. So, we are talking about a very
17 real punishment.

18 Now, you told me in some cases you
19 feel the death penalty is warranted. Okay? And a lot of
20 people feel that way. But, then, it's another thing when
21 we talk about participating in this type of proceeding.

22 We get some people that think, you know, it's a necessary
23 law, but the example I give is this:

24 You know, I am from Dallas, and there
25 used to be a lot of construction going on there as far as
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1 skyscrapers and things. And I thought that was a good
2 thing because that showed progress was being made; the
3 economy was doing pretty good. But I could sit there and
4 watch those guys building the thing, walking around on
5 those I-beams, and I have a fear of heights.

6 I was glad they were building them,
7 but you couldn't get me up there doing it. You know what

8 I mean? I couldn't do it.

9 Some people feel the same way about
10 the death penalty. They believe it's a good law, and it
11 should be used in certain situations. But it's not just
12 in them for whatever reason to sit in judgment of another
13 person and answer questions where that person would be
14 executed. Their conscience wouldn't allow them or
15 whatever.

16 I need to know if you are the type of
17 person that can listen to the evidence and if we do prove
18 these questions to you, you could take pen in hand and
19 answer those questions, knowing the defendant would be
20 executed.

21 A. Yes, sir.

22 Q. Okay. Now, let me talk a little bit
23 about these special issues. Like I said, you don't get
24 to those unless the defendant was found guilty. Okay?
25 This first question, if you will read along with me as I
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1 read aloud, read to yourself:

2 "Do you find from the evidence beyond
3 a reasonable doubt that there is a probability that the
4 defendant would commit criminal acts of violence that
5 would constitute a continuing threat to society?"

6 Do you see where that question is
7 asking the jurors to predict the future? Do you think
8 you would be comfortable answering a question like that
9 if you were given enough evidence?

10 A. Yes, sir.

11 Q. Okay. And I know you probably have
12 never thought about these things, but what would be
13 important to you? The criminal background, or the facts
14 of the crime itself? What would be important to you in
15 making this decision?

16 A. All of it.

17 Q. Okay. Now, you brought up your
18 reasons for the death penalty. One of them would be a
19 person that does it again and again, the habitual
20 offender. The guy that goes into prison and gets out,
21 that type of thing. A lot of people say that. If there
22 is a criminal background, that can be brought up in that
23 portion of the trial. Okay?

24 Vice versa, if there is no criminal
25 history, obviously, that can be brought up. You see, the
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1 death penalty doesn't require that someone has been in

2 prison or committed a crime before, before it could be
3 applied. It's just a case-by-case method.

4 Some people though, would only, you
5 know, for their personal reasons, they would only apply
6 it to repeat offenders.

7 There could a situation where you are
8 called on to answer that question based solely on the
9 facts of the offense alone. A person could be a saint
10 all of their life, and then go out and commit a brutal
11 crime, capital murder. So you would have to look at the
12 facts of the offense alone.

13 Some people feel they can answer that
14 question based on the facts, and some people can't. They
15 need a criminal history, would require a criminal
16 history.

17 Tell me how you feel. Again, I am
18 kind of hampered because I can't preview the facts for
19 you.

20 Do you understand that?

21 A. Yes.

22 Q. Do you think you could answer that
23 question on the facts of the case alone? Or would you
24 require a criminal history?

25 A. I could, but it wouldn't be very easy
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1 to, you know. It wouldn't be easy anyway. I really
2 don't know how to answer that question.

3 Q. So, you are saying maybe you could?

4 A. Maybe I could. I just don't know, you
5 know, at the same time I don't know anything. So, it's
6 hard for me to answer that.

7 Q. All right. The words in this
8 sentence, they are going to be up to you and the other
9 jurors, the definitions are. The Judge isn't going to
10 provide you with any legal definitions. When we say
11 "probability," that it is a probability that the
12 defendant would commit criminal acts of violence; what
13 does that mean to you?

14 A. To do it again, I guess.

15 Q. When you say, "do it again," what do
16 you mean, commit murder again?

17 A. Yeah, murder or something, or whatever
18 it is you are looking at.

19 Q. That brings up my next point: We have
20 to prove that they would commit criminal acts of
21 violence. When you see the words "criminal acts of
22 violence," what does that mean to you?

23 A. I don't know.

24 Q. Well, again, there are no right or
25 wrong answers, what comes to mind?
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1 A. I don't know what kind of answer to
2 give you, I really don't. I just have not been thinking
3 about it, so my mind is kind of on cutting grass, you
4 know. Just violent things; such as, I guess, killing
5 people, beating people, just anything against people.

6 Q. Okay. All right. One thing I wanted
7 to get into are some of the rules that apply in a
8 criminal case. You had put down -- obviously, it's a
9 criminal case, police officers will come and testify.

10 Okay? I mean, you can't get around that. Criminal case,
11 obviously, you're going to have some police officers on
12 the stand, and you had an interesting answer about police
13 officers. I guess you have had some speeding tickets or
14 something?

15 A. Yes, sir.

16 Q. Okay. Is that locally here in this
17 county?

18 A. Yes, sir.

19 Q. Have you had any trials or just
20 written tickets or what?

21 A. No, no, just tickets.

22 Q. Okay. Well, at one point, you said,
23 "I just hadn't had any luck with police officers." What
24 did you mean by that?

25 A. Well, I just always seem to get the
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1 one that woke up in a bad mood.

2 Q. Okay. They never give you a break?

3 A. They never give me a break.

4 Q. Okay. And you also put down you were
5 aware of any cases where you felt the police took a
6 shortcut in their investigation? And you said, "Sure
7 they do, whenever they pull me over."

8 A. Yeah.

9 Q. Okay. What exactly did you mean by
10 that?

11 A. Well, there are reasons whenever I
12 speed, I speed. I don't just do it just to do it. I
13 have just always had the idea that if a guy gets out, is
14 rude to you, throw you a ticket, you know, makes you sign
15 it, and if he can find anything else he throws you three
16 or four of them, and they don't care to ask. I see cops
17 as being a big business, they make a lot of money.

18 Q. Okay.

19 A. And I expect to be treated with a
20 little bit of respect.

21 Q. Okay. And they haven't done that in
22 your situations?

23 A. No.

24 Q. How many times has this gone on, would
25 you say?

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1 A. Oh, man, several. I have had a few
2 that will lighten up on me a little bit. But, you know,
3 I have had a lot of speeding tickets. So, it's been
4 several times.

5 Q. How many would you say?

6 A. I'm sorry?

7 Q. How many tickets would you say total?

8 A. Well, like six last year, and a couple
9 this year, so --

10 Q. Okay. That is another question I
11 meant to ask you: Do you have an attorney representing
12 you on any of these?

13 A. No, no.

14 Q. But you still have your license?

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

17 Q. Okay. What are some of your excuses
18 been to these officers that they haven't listened to?

19 A. They never ask.

20 Q. Oh, they never ask, they just start
21 writing tickets?

22 A. They don't take the time to ask.

23 Q. Well, then, let me ask you this: In
24 all fairness, police officers will be called to testify.

25 A. Uh-huh. (Witness nodding head

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1 affirmatively.)

2 Q. Obviously, this case is out of Dallas
3 County, so there is not going to be any Kerr County
4 police officers, none that I anticipate at least. They
5 weren't up there in Dallas County conducting any
6 investigations.

7 However, obviously, you will see
8 police officers, some in uniform, maybe some not in
9 uniform, testifying on behalf of the State. Some people,
10 you know, they have relatives that are police officers,
11 they really have a high respect for them. Other people

12 have had some negative experiences with police officers.
13 What we need to know is this: The law
14 says you have to start out all witnesses the same. Okay?
15 You can't automatically judge one more negatively and one
16 more positively.
17 Some people feel one way or the other
18 about police officers. Some always would judge them
19 above other witnesses, even when they start out. That is
20 not fair to the defense, obviously.
21 And other people would automatically
22 judge them negatively. They can't forget what has
23 happened to them, and would start them below the other
24 witnesses. Do you understand what I am saying?
25 A. Uh-huh. (Witness nodding head)
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1 affirmatively.)
2 Q. You have had some negative experiences
3 with some police officers. How do you think that would
4 affect you as a juror?
5 A. It really wouldn't. They are just
6 doing their job which I know that, you know. But I don't
7 think it would affect anything.
8 Q. So, you don't think you would
9 automatically judge them in the negative?
10 A. No, I don't.
11 Q. Being honest with me?
12 A. Being honest, I don't.
13 Q. Okay. The other rules of law Judge
14 Tolle went over, like presumption of innocence. I'm sure
15 you could follow that, couldn't you?
16 A. Right, yes, sir.

17 Q. Okay. The defendant has a right not to
18 testify, if they don't want to. If they want to testify,
19 they can. But the Judge would inform you that if the
20 defendant chose not to testify, you couldn't hold that
21 against them in any way. Could you follow that rule of
22 law?
23 A. Yes, sir.

24 Q. Okay. In a criminal case, we have to
25 put on different forms of evidence. Okay? One of them,
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1 well, we call it direct evidence and indirect evidence.
2 Direct evidence is an eyewitness to a case. Let's say,
3 if you left the courthouse and got robbed by someone, and
4 that person was caught later and you identified them, you
5 would be the direct witness, the eyewitness; direct

6 evidence in the case. Okay?

7 Any other type of evidence is indirect

8 evidence, or what we call circumstantial evidence. I am
9 sure you have heard that term before?

10 A. Yes.

11 Q. Okay. It could be anything:

12 Fingerprints, DNA, scientific testimony, whatever,
13 anything that links the defendant is circumstantial
14 evidence.

15 Many times in a murder case, the State

16 doesn't have an eyewitness. You understand that? We
17 have to rely strictly on circumstantial evidence. The
18 law applies the evidence the same. You know, our burden
19 of proof is the same, whether it's an eyewitness or
20 circumstantial evidence. We have to prove it beyond a
21 reasonable doubt.

22 Some people, for whatever reasons,

23 don't trust circumstantial evidence. Especially in a
24 capital murder case. What I need to know is this:

25 Again, I can't preview the facts, but could you sit there
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1 and listen to circumstantial evidence, and if we proved
2 it beyond a reasonable doubt, find the defendant guilty?

3 Or would you require something more than circumstantial
4 evidence, an eyewitness of some sort?

5 A. No, I wouldn't require anything more
6 than that. If you gave me enough beyond a reasonable
7 doubt.

8 Q. Okay. Here is the other thing: You
9 probably have heard the term motive before. Right?

10 A. Yes, sir.

11 Q. The reason why a murder happens. In
12 Texas, we're not required to prove motive to get a guilty
13 verdict. You have read that indictment there and it --
14 like you say, it doesn't say a lot. It says, who
15 committed the killing and how and where and who the
16 victim was, and that is what we have to prove. We don't
17 have to prove the reason why. Okay? It might come out,
18 it might be very apparent, or it may not be. It just
19 depends on the case. But we are not required to prove
20 it.

21 Would you be able to follow that rule
22 of law?

23 A. Yes, sir.

24 MR. TOBY L. SHOOK: Okay. Could I
25 have just one moment, Judge?

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1 THE COURT: Yes.

2

3 BY MR. TOBY L. SHOOK:

4 Q. Do you have anything, any questions

5 for me? You have been up there a little while.

6 A. No.

7 Q. Anything might be important for us to

8 know about you?

9 A. No, not really.

10 Q. Okay. Well, thank you.

11

12 MR. TOBY L. SHOOK: That's all we

13 have, Judge.

14 THE COURT: Okay. Mr. Douglass.

15 MR. S. PRESTON DOUGLASS, JR: Thank

16 you, Judge.

17 THE COURT: Mr. Preston Douglass.

18 MR. S. PRESTON DOUGLASS, JR: Thank

19 you.

20

21 VOIR DIRE EXAMINATION

22

23 BY MR. S. PRESTON DOUGLASS, JR:

24 Q. Mr. Rowan, as the Judge said, my name

25 is Preston Douglass, as the Judge said, I'm from here in
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1 Kerrville and I don't think you and I have ever met, have
2 we?

3 A. No, sir.

4 Q. Did you graduate from Tivy?

5 A. Ingram.

6 Q. You are in the lawn care business; is
7 that right?

8 A. Yes, sir.

9 Q. And just started it?

10 A. Yes, sir.

11 Q. Do you have any employees or is it
12 just you?

13 A. Me and a guy that works part-time with
14 me.

15 Q. I want to start out talking about the
16 guilt/innocence phase of the trial. There's been a lot
17 of discussion made, and there always is, about the death
18 penalty. The fact of the matter is whenever you get a
19 death penalty case, it's the fact that the death penalty
20 is an available punishment seems to consume everyone's

21 thought, because a lot of people don't think about the
22 death penalty.

23 And everyone is naturally interested
24 in what people have to say about it. The fact of the
25 matter is the only sure thing in Texas is that if you're
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1 going to have a trial, that there is guaranteed to be a
2 guilt/innocence phase of the trial.

3 There is no guarantee that there is
4 going to be a punishment phase of the trial, obviously.

5 Our perspective in representing Darlie
6 Routier is much different than the perspective of the
7 attorneys representing the State. Mrs. Routier has
8 entered a plea of not guilty. She will plead not guilty
9 before that jury and she will stand behind that plea of
10 not guilty 100 percent.

11 We do not expect and are confident
12 that we will not be in a punishment phase of this trial.

13 So, I want to talk to you a little bit about the
14 guilt/innocence phase of the trial and some of those
15 concepts.

16 And, mainly talk about the concepts
17 that are fundamental rights that are guaranteed a citizen
18 accused of a crime.

19 I want to begin by talking with you
20 about the indictment. I think a copy of the indictment
21 is in front of you, and it's a piece of paper. And Judge
22 Tolle -- you might remember that Judge Tolle told you a
23 little bit about how Dallas County, the number of
24 indictments that get issued in Dallas County. Do you
25 remember any of that, when you came in two weeks ago?

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1 Vaguely?

2 A. Not very well, a little bit.

3 Q. You might remember that Judge Tolle
4 said that in Dallas County that over 25,000 people
5 receive indictments each year. And that a Grand Jury
6 which is a group of citizens, maybe 12 people or so,
7 might in any one day of their work, maybe an 8 hour
8 period, they might return that one body of people, might
9 return as many as 125 indictments against citizens.

10 Which is a high number of them, by my standards in Kerr
11 County, but that seems like a lot of indictments.

12 And Judge Tolle further said that in
13 Dallas County that many of those 125 people or 25,000
14 people that were indicted in one year, might not even

15 know that they were being investigated before they were
16 indicted. Do you remember any of that?

17 A. Yes.

18 Q. Is that starting to come back to you?

19 A. Yes.

20 Q. And, obviously, because a large number
21 of those people didn't know they were being investigated,
22 they obviously had no opportunity to come down and tell
23 their side of the story. Did any of that surprise you
24 when you heard it?

25 A. Yeah, I would think so.

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1 Q. For that reason, would you agree with
2 me that because almost necessarily only one side of the
3 story sometimes is told?

4 A. Oh, yes, sir.

5 Q. Would you agree with me that because
6 of that, the indictment is no evidence of guilt at all?

7 A. Yes, sir.

8 Q. It's really just a piece of paper.

9 And all it does is put a citizen accused on notice of
10 what they are charged with, and it gives the judge
11 jurisdiction to have a trial. It serves two purposes.
12 Tell them what they say you did, and
13 then let there be a trial. What we don't need is -- and
14 what makes a person not a good juror, and not qualified
15 to be a juror, is if someone says, "Well, I see this
16 indictment and to me that means a person is guilty." You
17 don't feel that way. Do you?

18 A. No.

19 Q. Okay. The State has a unalterable,
20 never changing, never shifting burden of proof. That
21 burden of proof stays with the attorneys representing the
22 State and in short terms it's very simple, the person who
23 does the accusing has to do the proving. Do you agree
24 with that law?

25 A. Yes, sir.

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1 Q. Does that sound fair to you?

2 A. Yes, sir.

3 Q. Probably what is more important about
4 that is, that not so much that they have the burden of
5 proof, but that also that you don't make the defendant
6 bring you any proof.

7 And let me give you, an example.

8 Let's say in the course of the trial you heard evidence.

9 Let's say, brought in 100 witnesses. And you heard
10 evidence about things, but as a reasonable person and you
11 work through things, you decided that you had a
12 reasonable doubt in your mind. There were issues that
13 they still hadn't resolved.

14 And one of the attorneys representing
15 the State, after one of their witnesses, stand up and
16 says, "Your Honor, we have rested our case." And you sit
17 there and you say, "There is still some reasonable doubt
18 in my mind." Well, the attorneys representing the
19 defendant may well stand up and say, "Well, Judge, we
20 rest our case. We don't have anything to prove and they
21 haven't proven their case."

22 Would you be able to look at the
23 State's case under a microscope and examine it to see if
24 they have excluded all reasonable doubt, without
25 requiring the defendant to prove something to you? Would
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1 you say, "Well, it's their burden of proof, and I am
2 going to make them prove it." Can you do that?

3 A. Yes.

4 Q. Let me give you an example of
5 something. My partner does this sometimes and imagines a
6 circle and that there is a beam of light coming through
7 that circle. And that beam of light is the presumption
8 of innocence. It's the State's burden throughout the
9 whole trial, to come to you and start to present
10 evidence.

11 They may present evidence which is big
12 blocks against that light or maybe little blocks. But
13 regardless of the size of the evidence or the quality of
14 the evidence, that evidence must completely obliterate
15 all light shining through that circle.

16 Such that if there is even a pin light
17 coming through the circle, that you feel like in your
18 heart of hearts is reasonable doubt, no matter how small
19 as long as there is a light coming through, the law says
20 and the oath you would take would be, that you must
21 resolve that doubt in favor of the defendant, and by your
22 oath say, "Not guilty."

23 Now, if that light coming through is
24 small, but there is a light nevertheless, and you base it
25 on your common sense and your reason, can you hold the
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1 State to that burden and say, "Not guilty"?

2 A. Yeah, I could.

3 Q. Okay. The district attorney talked to
4 you a little bit about motive, I believe?

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

7 Q. And, we're on, I don't know, our 70th
8 person, and sometimes I get to where I lose track on
9 where we are.

10

11 THE COURT: 68.

12 MR. S. PRESTON DOUGLASS, JR: 68. I
13 guess it was a close guess.

14 THE COURT: Very good. Very good.

15

16 BY MR. S. PRESTON DOUGLASS, JR:

17 Q. Thank you. And when he talked to you
18 about motive is, I believe he probably said something to
19 the effect, it's not an element they must prove; it's not
20 a hurdle they have to jump over.

21 You might see in that indictment that

22 it will say things like, up in the top portion, it says
23 that they allege a crime occurred on a certain date. You
24 may see June 6th up on there. And then it also says in
25 Dallas County, you might see that in there?

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1 A. Uh-huh. (Witness nodding head
2 affirmatively.)

3 Q. Those are hurdles that the State, for
4 want of a better word, those are elements or hurdles they
5 must prove. They must prove on or about, or they must
6 prove in Dallas County, for instance, just to show this
7 Court has jurisdiction.

8 Mr. Shook is absolutely correct, that
9 it doesn't have in that indictment the why. You don't
10 see a comma, and because of this. It doesn't say that.
11 So, he is right, it's not an element. But the point I
12 want to talk to you a little bit about is: While that is
13 not an element, motive or the absence of proof of a
14 motive, is something that a juror has every right to
15 consider in weighing the evidence. It would not be right
16 for you to say, "Well, he has not proven to me why," that
17 is not the law. But you can, as a juror, sit there and
18 say, "Well, have they brought me enough evidence to
19 convince me beyond a reasonable doubt?"

20 Let me give you an example: They may
21 bring you circumstantial evidence, and that evidence
22 might start to fit together as pieces of a puzzle, but
23 they don't quite fit to you.

24 Can you agree with me that sometimes

25 motive can be the glue that can stick some stuff
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1 together? Motive might be what explains the story.
2 They can make things fit, and
3 sometimes as a juror, you might say, "You know, I know
4 they don't have to prove to me motive, but the fact that
5 there has been no proof of motive makes me wonder. It
6 just doesn't make sense." Could you see that happening?
7 A. Yeah. I could see it because people
8 draw their own things in their mind, you know, and you
9 can't -- it would be really hard to take just exactly
10 what is shown without trying to -- I mean, to me, people
11 put things together in their mind, and that is what makes
12 each person different.

13 Q. Right. And I think what is important
14 is, you know, we sit here, we don't know what the
15 evidence is going to be. We don't have any idea. They
16 know what they are going to put on as evidence, but I am
17 saying when we talk at this part of the trial, we're not
18 able to say, "If you find A, B, and C, what's going to be
19 your verdict?"

20 That's not fair; that's not right.
21 The Judge would go crazy if we did something like that.
22 So, the point I am trying to make is, think in a
23 hypothetical situation.
24 Could you agree that in some
25 circumstances, the lack of proof of motive is something a

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1 juror can consider? And the lack of proof may raise a
2 reasonable doubt in the mind of a juror in some
3 circumstances?

4 A. Oh, yes, sir.
5 Q. Okay. You might see -- and I would
6 anticipate in this trial that if you are selected as a
7 juror, that you will see photographs that are gruesome.
8 And just laying all of our cards out on the table, I
9 would suspect that those photographs will be enlarged,
10 for whatever purpose.

11 And what concerns me sitting where I
12 am sitting is, whether or not a person that sees a
13 photograph that is distasteful and terribly disturbing
14 and says, "Well, you know, I am so mad about that
15 photograph, I am so overpowered by what I see in that
16 picture, that I don't care who did it, I am going to find
17 somebody responsible for this." And it just overpowers
18 their mind.

19 Are you the kind of person that
20 would -- your conscience would be stampeded by a picture
21 like that? Or how would you feel about it?
22 A. I don't really know. I have never
23 seen anything like that, so I don't know how I would
24 react.
25 Q. Sitting where you are, do you think it
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1 would cause you to rush to judgment, or jump to some
2 conclusion just because it's a bloody photograph?
3 A. No, I don't believe so.
4 Q. One of the last things I want to ask
5 you about, and I kind of jumped over it a little bit.
6 Because of that indictment and because of the presumption
7 of innocence, as Darlie Routier sits here right now, she
8 is presumed innocent. Do you agree with that?
9 A. Yes, sir.
10 Q. The converse of that, and what really
11 I want to get to more than anything is that you don't
12 presume her guilty, that she doesn't start out one step
13 behind the State. We're not asking for a head start,
14 we're just asking for a level playing field. Just as
15 much as you won't -- that you will presume her innocent,
16 can you give Mrs. Routier your word that you will not
17 presume her guilty before this trial starts?

18 A. Yes, sir.

19 Q. Okay.

20

21 MR. S. PRESTON DOUGLASS, JR: If I
22 could have just one second here.

23

24 BY MR. S. PRESTON DOUGLASS, JR:

25 Q. Mr. Rowan, are there any questions
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1 that you have of me?
2 A. No, sir.
3 Q. Last thing. Just as much as -- well,
4 let me just ask you this: As you sit here -- I'll just
5 summarize it this way, as you sit there, if, God forbid,
6 you were a person on trial, and you found yourself
7 sitting in a chair as a citizen accused, and someone that
8 knows what you know about yourself is up there about to
9 be a juror. And, I want you to examine your conscience
10 for a minute and think, "Would you be comfortable, if you
11 were accused, with someone with your background and your
12 experience being a juror in making a decision?" How

13 would you feel about that?

14 A. Could you repeat that?

15 Q. Would you be comfortable -- if you

16 were charged with a crime, would you be comfortable with
17 someone like yourself being a juror on your case?

18 A. Yeah, I guess.

19 Q. Do you see yourself as a fair person?

20 A. Oh, yes.

21 Q. Treat both sides equally?

22 A. Yes, sir.

23 Q. Okay. Thank you.

24

25 MR. S. PRESTON DOUGLASS, JR: That's

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1 all the questions I have.

2 THE COURT: All right. Mr. Rowan,

3 would you mind stepping outside, briefly, please. We
4 will call you back in in just a minute.

5

6 (Whereupon, the prospective

7 juror was excused from the

8 room, and the following

9 proceedings were held,

10 outside of his presence

11 as follows:)

12

13 THE COURT: Everybody ready? What

14 says the State?

15 MR. TOBY L. SHOOK: The State will

16 exercise a strike.

17 THE COURT: Would the defense have

18 accepted the juror?

19 MR. S. PRESTON DOUGLASS, JR: Yes.

20 Well, Judge, I think the way this has panned out, oh,

21 yeah, I have not heard one of these since October 28th.

22 I was gone for all the rest of them.

23 MS. SHERRI WALLACE: Strike?

24 MR. S. PRESTON DOUGLASS, JR: I had

25 not heard one since October 28.

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1 MS. SHERRI WALLACE: How did it feel?

2 THE COURT: All right. We have 95

3 people left, 96 people left on this list. I have -- on

4 the 18th we anticipate 120 more net coming in. We're

5 sending out 200 more, in fact, it was mailed out this

6 week.

7 Ms. Uecker advises me that the normal
8 attrition rate down here on exemptions alone is right at
9 40 percent, due to the superannuated ages of the
10 inhabitants of Kerr County. It being such a desirable
11 place in which to retire to. That is not -- you are a
12 former English teacher. That is not --
13 MR. S. PRESTON DOUGLASS, JR:
14 Superannuated?

15 THE COURT: Well, no, a place to
16 retire to, I sort of messed up on prepositions. In any
17 event, we should get between 100 and 120.
18 Now we are going to have some -- so I
19 would anticipate probably at least another net 100 being
20 added to our list.

21 MR. S. PRESTON DOUGLASS, JR: And we
22 have 193 right now?

23 THE COURT: We have 96 people left,
24 the way I counted them. I don't think the fellow -- I am
25 excluding the fellow who's over there in ICU. I hope he
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1 makes it. If he doesn't make it, I mean, even if he
2 survives the ICU, I don't foresee him coming in.
3 So, next Tuesday we start with Wilma
4 Baker it looks like. And we're just going to go right
5 down the list as best we can, and that is where we are.
6 All right. Well, let's bring Mr.
7 Rowan in, please. All right.

8
9

10 (Whereupon, the prospective
11 juror returned to the
12 room and the proceedings
13 were resumed as follows:)
14

15 THE COURT: Mr. Rowan, you're going to
16 be excused from any further jury service. We want to
17 thank you very much for coming, we do appreciate it.
18 THE PROSPECTIVE JUROR: Thank you.

19 THE COURT: If you could remember,
20 don't speak about this to anybody until this trial is
21 over. We anticipate the trial being over the latter part
22 of January. So say the first of February or Valentine's
23 Day, you are free to talk to anybody you want to. Prior
24 to that time, please don't. There's a gag order in
25 effect, I can impose monetary or jail sanctions. I am
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1 not threatening you, I'm just telling you what the
2 situation is. Fair enough?
3 THE PROSPECTIVE JUROR: Fair enough.
4 THE COURT: Thanks for coming and good
5 luck to you in your business.
6 That's where we are. So, I would
7 anticipate we're probably looking at another three weeks
8 to get it, I would think.
9 MR. CURTIS D. GLOVER: Do we have a
10 line-up of numbers for next week?
11 THE COURT: Well, here's where we
12 start, and it looks like we are starting -- Mr. Navarre,
13 we're starting with Wilma Baker; is that right?
14 THE CLERK: Yes, sir.
15 THE COURT: Okay. We are on Tuesday
16 the 12th. It looks like we -- I don't know how you
17 are -- it's 64 on the list, 186 on the jury list. The
18 next one is going to be 67, 197, that's Frank Walker, and
19 the next one is going to be 70, 201, Cecil McGehee.
20 All right. See you-all next week on
21 Tuesday, November 12th.

22
23 (Whereupon, the proceedings
24 Were recessed for the
25 day, to return on the
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1 next week, November 12, 1996,
2 at 8:00 a.m. at which
3 time the proceedings
4 were resumed in open
5 court, in the presence
6 of the defendant, with her
7 attorney, and the State
8 being represented by the
9 D.A., as follows:)

10
11 (These proceedings are continued to
12 the next volume in this cause.)

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1 CERTIFICATION PAGE

2 THE STATE OF TEXAS)

3 THE COUNTY OF DALLAS)

4 I, Sandra M. Halsey, was the Official Court
5 Reporter of Criminal District Court Number 3, of Dallas
6 County, Texas, do hereby certify that I reported in
7 Stenograph notes the foregoing proceedings, and that they
8 have been edited by me, or under my direction and the
9 foregoing transcript contains a full, true, complete and
10 accurate transcript of the proceedings held in this
11 matter, to the best of my knowledge.

12 I further certify that this transcript of the
13 proceedings truly and correctly reflects the exhibits, if
14 any, offered by the respective parties.

15 SUBSCRIBED AND SWORN TO, this _____ day of
16 _____, 1997.

17 _____

18 Sandra M. Day Halsey, CSR

19 Official Court Reporter

20 363RD Judicial District Court

21 Dallas County, Texas

22 Phone, (214) 653-5893

23

24 Cert. No. 308

25 Exp 12-31-98

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1 STATE OF TEXAS)

2 COUNTY OF DALLAS)

3

4 JUDGES CERTIFICATE

5

6

7

8 The above and foregoing transcript, as certified
9 by the Official Court Reporter, having been presented to
10 me, has been examined and is approved as a true and
11 correct transcript of the proceedings had in the
12 foregoing styled cause, and aforementioned cause number
13 of this case.

14

15

16

17

18 _____

19 MARK TOLLE, JUDGE

20 Criminal District Court Number 3

21 Dallas County, Texas

22

23

24

25

Sandra M. Halsey, CSR, Official Court Reporter

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