

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR PASCO COUNTY  
CASE NO. 2014CF5586CFAXWS

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STATE OF FLORIDA, :  
 :  
 Plaintiff, :  
 -VS- :  
 :  
 ADAM MATOS, :  
 :  
 Defendant. :

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PROCEEDINGS: MOTIONS  
BEFORE: HONORABLE MARY M. HANDSEL  
Circuit Judge  
DATE: October 27th, 2017  
PLACE TAKEN: Pasco County Government Center  
7530 Little Road  
New Port Richey, FL 34654  
REPORTED BY: Maria A. Fortner, RPR  
Notary Public  
State of Florida at Large

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## A P P E A R A N C E S

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3 APPEARING ON BEHALF OF  
4 THE STATE OF FLORIDA:

5 BRYAN SARABIA, ASSISTANT STATE ATTORNEY  
6 CHRISTOPHER LABRUZZO, ASSISTANT STATE ATTORNEY  
7 Office of Bernie McCabe, State Attorney  
8 Sixth Judicial Circuit, Pasco County  
9 7530 Little Road  
10 New Port Richey, Fl 34655

11 APPEARING ON BEHALF OF  
12 THE DEFENDANT, ADAM MATOS:

13 DEAN LIVERMORE, ASSISTANT PUBLIC DEFENDER  
14 NICHOLAS MICHAÏLOS, ASSISTANT PUBLIC DEFENDER  
15 DILLON VIZCARRA, ASSISTANT PUBLIC DEFENDER  
16 WILLIAM PURA, ASSISTANT PUBLIC DEFENDER  
17 Office of Bob Dillinger, Public Defender  
18 Sixth Judicial Circuit, Pasco County  
19 7530 Little Road  
20 New Port Richey, Fl 34655  
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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: You may be seated.

3 All right. We're here on our last hopefully  
4 pretrial for Mr. Matos. Case Number 14-5586CF.  
5 We're set to begin the jury trial on Monday.

6 State, are you ready?

7 MR. LABRUZZO: Yes, Your Honor.

8 THE COURT: All right. Defense, are you going  
9 to be ready on Monday?

10 MR. LIVERMORE: I think so. You're never  
11 totally ready.

12 THE COURT: Right. I know. Well, the only  
13 reason, there was the issue of the subpoenas not  
14 going out timely. I believe that's been resolved.

15 State, correct?

16 MR. LABRUZZO: Mr. Sarabia is going to give  
17 you the best most up-to-date. As far as I'm aware  
18 it has been, but I'm going to defer to him.

19 THE COURT: All right. He's talking with  
20 someone there.

21 And just for the record, Mr. Matos is present  
22 with his attorneys, and the State is here.

23 The Defense was aware or was made aware of the  
24 issue with the subpoenas? Yes or no?

25 MR. LIVERMORE: Yes. I heard about it

1           yesterday, yes.

2           THE COURT: All right.

3           MR. SARABIA: And, Judge, I would note in this  
4 courtroom on this record I had put on the record  
5 multiple times that we are only making sure that  
6 the witnesses we want are subpoenaed and if their  
7 witnesses --

8           THE COURT: We haven't gotten there.

9           MR. SARABIA: All right.

10          THE COURT: I'm going to go there, I promise.  
11 But I just want to make sure for the State's  
12 purposes the witnesses that you need to call, that  
13 you want to call, that you believe you're going to  
14 call, all of your subpoenas have either been served  
15 or the people have agreed to appear without a  
16 subpoena.

17          MR. SARABIA: Correct.

18          THE COURT: We don't have any subpoena issues  
19 on your witnesses. So you're good?

20          MR. SARABIA: Yes.

21          THE COURT: Okay. So, however, because of the  
22 way we have it set up in the Sixth Circuit, we have  
23 an agreement between the State and the Defense and  
24 the Court also agrees to it, that any subpoena  
25 that's served by the State is a reciprocal subpoena

1 and that will be held so the Defense can call those  
2 witnesses, if necessary, without issuing your own  
3 subpoenas. It saves the taxpayers of our circuit  
4 money.

5 So because the way it occurred in this case,  
6 is there anyone that the Defense needs to make sure  
7 a subpoena is served to? Because what happened was  
8 because of the subpoenas not going out in a timely  
9 fashion, my understanding is that the State gave  
10 the Sheriff's Office, or whoever, a list of their  
11 most critical witnesses and they made sure that  
12 those people were served. Do I have that correct?

13 MR. SARABIA: Yes, Judge.

14 THE COURT: And they're trying to serve  
15 everybody else, but those were the ones that no  
16 matter what, you wanted to get served, and they  
17 were done by yesterday.

18 MR. SARABIA: Yes, Judge.

19 THE COURT: Okay. So is there anyone on the  
20 State's witness list that the Defense needs to make  
21 sure a subpoena was served to so that they can be  
22 held on standby for this trial? Defense?

23 MR. MICHAÏLOS: Judge, I've already talked to  
24 Mr. Sarabia on the phone. I gave him names of some  
25 officers.

1           MR. SARABIA: He indicated Detective McInnes.  
2 I've confirmed with Detective McInnes is going to  
3 be available, and Detective Pelletier I'm told was  
4 also available.

5           THE COURT: Okay.

6           MR. MICHAÏLOS: My concern that I related to  
7 Mr. Sarabia on the phone is if something were to  
8 happen at trial; for instance, something we can't  
9 foresee, a witness takes the stand, testifies  
10 differently than what we anticipated -- and there's  
11 so many witnesses in this case, so it's hard to  
12 pinpoint each and every one and which was  
13 interviewed by which law enforcement officer -- and  
14 then we as the Defense would like to call that  
15 officer for impeachment purposes in our case and  
16 chief, and that person is not subpoenaed or not  
17 available, that's something that would be  
18 unanticipated.

19           THE COURT: Well, that would happen no matter  
20 if the subpoenas went out timely or untimely,  
21 because the problem is is that they're only going  
22 to confirm, i.e., call the witnesses that they  
23 believe they need to make sure that they're  
24 available.

25           From what I understand the Sheriff's Office

1 took service, even though it wouldn't be under the  
2 rules timely, for every single one of their law  
3 enforcement officers. Do I have that correct?

4 MR. SARABIA: Yes, Judge.

5 THE COURT: The rule says they have to have  
6 service five days before trial. They waived that  
7 requirement and they were assured that any deputy  
8 who's on the witness list, that subpoena they  
9 accepted, correct?

10 MR. SARABIA: Correct.

11 THE COURT: And you haven't had any indication  
12 that any of those witnesses are unavailable?

13 MR. SARABIA: We knew in advance when we set  
14 this date that there were some specific dates  
15 within the time period certain law enforcement  
16 officers we were going to have issues with.

17 THE COURT: Okay.

18 MR. SARABIA: Those have not been a problem  
19 for us. Lieutenant Ross I know in particular he is  
20 not available, I think, after the 13th; Detective  
21 Cougill is not available on the 9th, things of that  
22 nature.

23 THE COURT: Okay.

24 MR. SARABIA: But all the other witnesses,  
25 yes, there's some period of time in which we

1 believe that all of them are available.

2 THE COURT: Okay. And therein lies the issue.  
3 I think in any trial with this many subpoenas, the  
4 State sends out the subpoenas and they serve and  
5 confirm the people that they want to call.

6 At this point, because you can't give us any  
7 specific witnesses other than the two we just  
8 issued, we'll do the best we can; but that has  
9 nothing to do with the timelessness of the  
10 subpoenas, if that makes sense to you.

11 I mean, if we would have sent them out on  
12 time, you would have the same issues that you have  
13 whether we sent them out on the right day or the  
14 wrong day. But the Sheriff's Office did accept all  
15 of the subpoenas for their law enforcement officers  
16 even though it was less than five days to the start  
17 of the trial.

18 MR. MICHAÏLOS: Okay. I didn't understand it.  
19 Sort of like a technicality.

20 THE COURT: Correct.

21 MR. MICHAÏLOS: I thought perhaps a number of  
22 them weren't served. So, yeah, that makes it  
23 better.

24 THE COURT: No. The only technicality would  
25 be that the rule requires, because we've changed



1 the way service --

2 MR. MICHAÏLOS: But they're waiving that. But  
3 they're waiving that.

4 THE COURT: They waived that.

5 MR. MICHAÏLOS: Okay.

6 THE COURT: They accepted service for all of  
7 their deputies even though there's less than five  
8 days to the trial date, correct?

9 MR. SARABIA: Correct.

10 THE COURT: Okay. And I believe that was an  
11 agreement between the Clerk, the State Attorney and  
12 the Sheriff, Sheriff Nocco.

13 And they just informed me -- I have no  
14 personal knowledge of this. They just called me  
15 and told me this, that they went out yesterday at  
16 6:30 in the morning I believe it was -- members of  
17 State Attorney's Office, the Sheriff's Office,  
18 deputies, civil division -- and served all of the  
19 subpoenas that were civil in nature, not law  
20 enforcement subpoenas.

21 All the other ones that were law enforcement  
22 subpoenas, at least to the Sheriff's Office, they  
23 accepted service and agreed that they would accept  
24 service even though it was less than five days to  
25 the trial date. So that's the best I can say.

1           So for the two that you mentioned, State, any  
2 issue with them, their time? Are they available  
3 throughout the time of the trial, the two that  
4 Mr. Michailos gave you?

5           MR. SARABIA: My understanding is definitely  
6 on Detective McInnes. I'll have to confirm that  
7 there are no problem dates with Detective  
8 Pelletier.

9           THE COURT: Okay.

10          MR. SARABIA: Because Detective McInnes, I  
11 guess, I confirmed that since I talked to defense  
12 counsel. Detective Pelletier I had confirmed a  
13 while ago.

14          THE COURT: Okay. That they were available  
15 for when you thought you needed them?

16          MR. SARABIA: Right.

17          THE COURT: So if you can just call. And by  
18 my understanding, and I've heard this from both  
19 sides kind of on the side, that the State believes  
20 that their last witnesses availability and when  
21 they will testify is November 15th.

22          MR. SARABIA: Correct.

23          THE COURT: So the State will have their last  
24 witness to testify on November 15th. So the  
25 Defense should be ready with any of their witnesses

1 or any of their evidence starting on the 15th. So  
2 given that timeframe, does the Defense believe that  
3 they're ready? Was there any of those subpoenas  
4 that were yours? That was my problem, the  
5 Defense's. Did you have any of your own subpoenas?

6 MR. MICHAÏLOS: No, Judge. Any subpoenas we  
7 would have had, I think we served personally from  
8 our office.

9 THE COURT: Okay. All right. So will you be  
10 ready with your witnesses starting on the 15th, if  
11 you have any? I'm not making you call any. I'm  
12 just saying if you had some, will they be ready on  
13 the 15th?

14 MR. MICHAÏLOS: They will be, Judge.

15 And just for the record, Judge, obviously  
16 there's never a point where attorneys feel they're  
17 a hundred percent ready for trial, we did have  
18 previous motions to continue in this case. I know  
19 Mr. Dillon [sic] had asked for a five-month  
20 extension. I thought that was maybe -- we didn't  
21 need that much time, but I clearly thought we  
22 needed more than the continuance you did give us.  
23 And for the record, you denied our continuance but  
24 granted Hurricane Irma's continuance.

25 THE COURT: And that was brilliant.

1 MR. MICHAÏLOS: Okay.

2 THE COURT: That was a brilliant move on my  
3 part.

4 MR. MICHAÏLOS: Right. So we're doing  
5 everything possible to be as ready as can be.  
6 We're not going to have any problems as far as  
7 calling witnesses on those dates.

8 THE COURT: Okay.

9 MR. MICHAÏLOS: But I just don't want to put  
10 on the record that --

11 THE COURT: You're waiving any argument you  
12 have that you're not ready?

13 MR. MICHAÏLOS: Yes.

14 THE COURT: Okay.

15 MR. MICHAÏLOS: Yes. Thank you.

16 THE COURT: I'm not saying that you're giving  
17 up your previous request. I've denied it. The  
18 hurricane facilitated a continuance and we're ready  
19 on the 30th.

20 I haven't heard any new reason for a  
21 continuance, but I'm more concerned that your  
22 witnesses who you believe you might call -- I'm not  
23 making you call any. You don't have to do  
24 anything. You're the defense and you can sit there  
25 and read the newspaper and do nothing. But if

1 perhaps you were going to call some witnesses, I  
2 wanted to make sure that the timeframe that would  
3 be time for your case would be the 15th and later,  
4 that that was okay with any witnesses that you  
5 might have?

6 MR. MICHAIILOS: It is, Judge.

7 THE COURT: Okay. Mr. Livermore?

8 MR. LIVERMORE: Well, I'm concentrating on  
9 penalty, and I have witnesses ready for the 20th --

10 THE COURT: Okay.

11 MR. LIVERMORE: -- is what I was told was the  
12 date. I just wanted to make sure.

13 THE COURT: That hasn't changed.

14 MR. LIVERMORE: Because we've got people  
15 flying in from other places.

16 THE COURT: I do not intend to make anyone go  
17 forward with any of their witnesses penalty  
18 phase-wise before the 20th. We had all agreed that  
19 that would pretty much be the start. Unless for  
20 any reason we finish on the 16th, and on the 17th  
21 the State's ready with their penalty phase  
22 witnesses, maybe we'd move it up.

23 MR. LIVERMORE: I understand.

24 THE COURT: But normally we need a day for  
25 doctors to talk to people.

1 MR. LIVERMORE: There aren't going to be any.

2 THE COURT: Okay. So they're not going to  
3 call any doctors.

4 So are you calling doctors?

5 MR. LABRUZZO: Dr. Palma, if we decide to call  
6 him.

7 THE COURT: Okay. Dr. Palma is coming in the  
8 beginning of the case. And you might call --

9 MR. LABRUZZO: He could also testify in the  
10 penalty phase.

11 THE COURT: I understand. So I mean if we get  
12 to the point where we can move forward with penalty  
13 phase, I'm not going to make you accelerate when it  
14 is that your witnesses are available. I'm not  
15 going to say either call somebody or sit down, you  
16 know, rest. We're not going to have any of that.  
17 Don't worry about that.

18 State?

19 MR. LABRUZZO: Judge, since we're talking  
20 about timeframe -- and during the preparation of  
21 witnesses, the State's done the best job that I  
22 think that we can as to gauging when we're calling  
23 witnesses -- I would say at the beginning of this  
24 case we anticipated November 2nd, which is the  
25 Thursday, next Thursday, as far as the first day of

1 actual testimony, assuming a three-day jury  
2 selection.

3 Now, as the conversations between the State  
4 and the Defense and the Court have developed over  
5 time, maybe three days was a bit aggressive. I'm  
6 thinking maybe we'll be able to do it in a little  
7 bit shorter than the time set. That being said,  
8 we've prepared a number of our witnesses to be  
9 ready on the 2nd for the first day of testimony.

10 THE COURT: So what you're saying is the  
11 1st might be an off day?

12 MR. LABRUZZO: Well, I'm not saying that.  
13 Well, there could be opening statements, there  
14 could be other things that could be maybe  
15 accomplished on that day, but the large bulk of  
16 witnesses that we started to create this timeline  
17 of people to come in, we've all anticipated the 2nd  
18 as being really the date that we would start.

19 MR. SARABIA: Is the Court going to work with  
20 us on timing?

21 THE COURT: Yes.

22 MR. SARABIA: Okay.

23 THE COURT: Yes. I will work with you on  
24 timing. I don't have anything else to do. It's  
25 not like if I don't make you do something, I can do

1 something else. So I completely understand in a  
2 trial that has this many witnesses and this many  
3 victims and this many things going on, that there  
4 may be days that the jury gets a short day, which  
5 they will probably thank me for.

6 So I have no problem if Wednesday is one of  
7 those short days. I would hope that it is, because  
8 they will be here a long time on Monday and a long  
9 time on Tuesday if we get it in on Monday and  
10 Tuesday. So Wednesday if we only did opening  
11 statements starting at 11:00 or after lunch or  
12 something like that where they're only here a  
13 couple hours on that day, I think they would like  
14 that. So I don't have any problem with that.

15 It's going to be a long time for the jurors to  
16 get selected. Jury selection is going to take as  
17 much time as it takes, and the people who get  
18 selected will probably be the people that were here  
19 that started on Monday.

20 There's probably going to be some people in  
21 the jury that come at 8:00 on Monday morning, and  
22 so that means that's been a long two days where I'm  
23 not going to let them have their cell phone and  
24 they're not going to be able to surf the -- you  
25 know, they're going to need a day off probably.



1           MR. SARABIA: In that regard, I want to check  
2 with the Court, I'm anticipating testimony on the  
3 2nd, which is Thursday; and the 3rd, which is  
4 Friday; and then the following week I think is the  
5 6th, 7th, 8th and 9th, that's Monday, Tuesday,  
6 Wednesday, Thursday. Not Friday because it's  
7 Veterans Day. And then come back the following  
8 Monday, Tuesday and Wednesday.

9           THE COURT: Right.

10          MR. SARABIA: I think that since we have to  
11 finish on Wednesday, we should definitely have time  
12 that all of our testimony will be done by then.

13          THE COURT: Okay. So given that timeframe  
14 that we just went over, you believe that you can  
15 get it in in that timeframe?

16          MR. SARABIA: Yes. I think we may have some  
17 dead time in there.

18          THE COURT: That's fine.

19          Mr. Michailos.

20          MR. MICHAIILOS: You had said something about  
21 Fridays off, Judge. Is that just Veterans Day?  
22 Are we on for Friday of next week?

23          THE COURT: Right now we are scheduled to have  
24 trial on the 3rd. The 3rd is the day that we are  
25 going.

1 MR. MICHAIILOS: Okay.

2 THE COURT: The 10th is Veterans Day, it's  
3 closed, so we won't be there. And then the 17th  
4 I'm using as a flex day.

5 MR. MICHAIILOS: Okay.

6 THE COURT: The Bench and Bar conference is  
7 that day down in St. Pete. So I actually left that  
8 day as a deliberation day for the jury. As you all  
9 both well know, once the jury starts to deliberate,  
10 they cannot break. So I would have to, you know,  
11 find hotels for them. So what I intend to do is  
12 not start deliberations in the afternoon.

13 So let's say we finish on the 16th. I would  
14 send them home, bring them back on the 17th, and  
15 instruct them on the 17th to begin deliberations.  
16 Same thing on penalty phase. I will bring them  
17 back in the morning, instruct them -- and we're  
18 going to need some time to go over that. That's a  
19 whole other issue. We're going to need a day  
20 anyway to go over jury instructions -- and then  
21 have them begin to deliberate as early as in  
22 midmorning as I can get so to try to stop the issue  
23 of having to, you know, put them up in a hotel.

24 MR. LABRUZZO: Judge, the Court's not asking,  
25 but the State would put on the record now that we

1 would waive any sequestration of the jury both  
2 guilt or penalty phase.

3 THE COURT: Defense?

4 MR. LABRUZZO: That's something obviously that  
5 they would need to think about. But as far as the  
6 State's concerned, we'd waive any issues, any  
7 request to sequester the jury during the guilt  
8 deliberations or penalty deliberations.

9 THE COURT: I think in guilt, you both can  
10 waive. I think in penalty phase, you can't waive;  
11 but I'll research that issue.

12 MR. LIVERMORE: I just don't know the answer  
13 to that.

14 THE COURT: I'll research it. I think in the  
15 guilt phase, you can waive it. But I don't think  
16 in the penalty phase, you can waive it. But I'll  
17 look. I'll go double-check that.

18 MR. LABRUZZO: Okay.

19 THE COURT: One, I will find the answer out;  
20 and then, two, of course, you guys keep waive, and  
21 then if you all wanted to waive, it would have to  
22 be on the record with your client's approval, of  
23 course. But, you know, I really find that if you  
24 give people a whole day, they can usually work  
25 through their issues. If you try to throw them out

1 at 4:00 in the afternoon, they tend to have a much  
2 harder time trying to resolve any issues of the  
3 jury.

4 But I'm just saying I will do that so that  
5 even if you did waive sequestration, I would try to  
6 get them to have their decision and not have to  
7 send them home and come back, because that causes  
8 issues and people could talk to them or contact  
9 them. Even though I tell them not to do that,  
10 sometimes they don't have any, you know, control  
11 over that. So if they leave, it always causes  
12 issues just to make a decision.

13 Mr. Sarabia.

14 MR. SARABIA: The only other thing that I can  
15 think of to address is the motion regarding the  
16 child witness.

17 THE COURT: Okay.

18 MR. SARABIA: At this point we do not intend  
19 to call him. Although, I think he did remarkably  
20 well in the deposition and is much more  
21 communicative, there are challenges in the way that  
22 he communicates that I don't think would be easy to  
23 deal with at this stage, and we made the decision  
24 we are not going to call him. So I think that that  
25 will settle that issue.

1           THE COURT: So at this point, because the  
2 State is indicating they are not calling the child  
3 witness, I will not rule on that. If for any  
4 reason the State decides that they will call the  
5 child witness, then we would have to take the time  
6 in order for me to hear that motion. It is still  
7 in the court file and it doesn't become important  
8 until you're going to put the witness on the stand.

9           So if you're not going to put the witness on  
10 the stand at this point, there's no reason for me  
11 to have a big hearing and get into what happened at  
12 the second deposition and the testimony and those  
13 kinds of things. So right now we'll just table  
14 that motion, and unless the State changes their  
15 mind and tells me they are going to call the child,  
16 it's a moot point. Okay?

17          MR. MICHAÏLOS: Can I bring something up  
18 related to that? It's sort of a side issue, but  
19 it's related to the child.

20          THE COURT: Sure.

21          MR. MICHAÏLOS: And I have had discussions  
22 with Mr. Sarabia, so I'm confident that he's in  
23 agreement with this, but I just want to put it on  
24 the record so there's no misunderstanding.

25          In the beginning of the investigation of this

1 case CPI was involved trying to place the child  
2 with relatives, and at one point they conducted a  
3 medical examination; and attempted to do a forensic  
4 interview, which was not successful, obviously.

5 But during the times of that interview, the  
6 child was observed playing with toys, and several  
7 different unprofessional conclusions were drawn by  
8 some of these people with regard to how the child  
9 was playing with certain dolls and maybe he'd seen  
10 something and was acting that out.

11 I think that's clearly inadmissible, because  
12 we have no interpreter that could interpret such  
13 toy play, and I think it be prejudicial. I think  
14 we're in agreement with that, but I just want to  
15 put that on the record. I would think that no CPI  
16 is going to come here and testify as to the child,  
17 you know, hitting mommy doll or daddy doll and  
18 uttering certain things.

19 THE COURT: Well, that would be child hearsay.

20 MR. MICHAÏLOS: Right. Right.

21 THE COURT: And they haven't done any motion  
22 to --

23 MR. SARABIA: We do not intend to do any of  
24 that.

25 THE COURT: Okay.

1           MR. SARABIA: We're not going to call the  
2 witnesses from CPT who interviewed the child, nor  
3 do we intend to reference any of that.

4           THE COURT: Okay.

5           MR. SARABIA: Other than the fact that there  
6 was a child and that he did exist and was present,  
7 I doubt we will list the --

8           THE COURT: Or what he did or what he didn't  
9 do, what he said, none of that's coming in?

10          MR. SARABIA: Correct.

11          THE COURT: And in this particular case the  
12 child is found with the defendant when the  
13 defendant is arrested, correct?

14          MR. SARABIA: Correct.

15          THE COURT: So that particular fact I would  
16 assume might come out?

17          MR. MICHAÏLOS: Right.

18          THE COURT: But anything that he did or said,  
19 that's not coming out, correct?

20          MR. SARABIA: Correct.

21          THE COURT: Okay. All right. Anything else  
22 about that?

23          MR. SARABIA: Nothing else about that.

24          THE COURT: Did everybody receive a copy of my  
25 memo about what we're going to do on Monday the

1 30th and Tuesday the 31st in reference to the jury?  
2 Did everybody get that? State, did you get that?

3 MR. MICHAÏLOS: Yes.

4 MR. SARABIA: We did receive a copy.

5 THE COURT: All right.

6 MR. SARABIA: I think we left it in our  
7 office.

8 THE COURT: A little change in that is that  
9 Dr. O'Neil has asked to be the person who swears  
10 the jury on the 30th when they are brought up to  
11 Courtroom 3-B. So Dr. O'Neil will come in, she'll  
12 swear the jury. During the swearing part of the  
13 jury, they're asked five specific questions.

14 Now, I'll note this is exactly what is  
15 normally done every day here when jurors come in.  
16 The only difference is I'm taking a hundred of them  
17 into a room as opposed to them being with the whole  
18 group downstairs. So there's nothing that's  
19 different than would normally be done with jurors  
20 in any case. I'm just taking a hundred of them  
21 out, doing the same thing, just in a different  
22 room.

23 But the questions that are asked are:

24 "Are you over 18?

25 Are you a citizen of the United States?



1           Are you a resident currently of Pasco County?  
2           Do you have a driver's license or a Florida ID  
3 card?"

4           Those are the four things that you have to  
5 have to even sit as a juror.

6           Then also is asked:

7           "Are you presently under prosecution for a  
8 crime anywhere?"

9           Have you ever been convicted of bribery,  
10 forgery, perjury, or larceny?"

11           Probably it will tell them that includes grand  
12 theft.

13           "Have you ever been convicted of a felony?  
14 And if you have 'yes,' have your civil rights been  
15 restored? And if you don't know, raise your hand."

16           "Are you the governor?" I think I know what  
17 he looks like, but I'm just saying.

18           "The lieutenant governor?" I'm not so sure  
19 what he looks like.

20           "A member of the governor's cabinet?"

21           "The Clerk of the circuit court?" Since  
22 she'll be asking this question, I'm sure it's not  
23 her.

24           "Or a judge, or currently a grand juror, or  
25 any other elected official?"

1           So we're going to ask that.

2           "Have you ever been determined to be mentally  
3 incapacitated?"

4           So those are the questions that are going to  
5 be asked to the panel that are brought up, the  
6 hundred.

7           What I intend to do is if anyone gives an  
8 answer to any of those questions that might make  
9 them not qualified to sit, I'm going to  
10 immediately, before they fill out the additional  
11 questionnaire, which we're going to get to in a  
12 minute, bring them over here and resolve that fact.

13           Because there's no reason to sit over there  
14 and fill out a questionnaire if they're not a  
15 resident of Pasco County, if they're 17, if they're  
16 a convicted felon. They're not eligible to sit as  
17 a juror, so there's no reason to even go forward.

18           Does anyone have a problem with that?

19           MR. LABRUZZO: No, Your Honor. Not from the  
20 State.

21           THE COURT: Okay. So they will be immediately  
22 brought over if I feel, based on their answers,  
23 they would be unqualified to even be examined as a  
24 juror in this case.

25           So that's the only change in my memo, because

1 I went over that we were going to, you know, take  
2 the regular questionnaire and we were going to do  
3 the supplemental questionnaire.

4 But when the Clerk went ahead and showed me  
5 the questions that they normally ask, they said:  
6 We're still going to ask these questions. I didn't  
7 realize they asked these questions. So I wanted to  
8 add that to what I was going to do and let you know  
9 that we were going to bring them over right away.

10 I'm not going to excuse any of the hundred  
11 jurors that are brought up unless they are brought  
12 over here and it's on the record in front of  
13 everybody. Okay? So even if I think, oh, yep,  
14 they're not qualified, I'm going to bring them over  
15 here.

16 You guys are going to have a list of a  
17 hundreds names. They're not going to be in any  
18 specific alphabetical order as far as I know.  
19 There's just going to be a list of the hundred  
20 people that are in that room. They're not in any  
21 seating order over there. They're literally just a  
22 hundred people. So you can just mark through that  
23 person before we even start to lower your group.

24 Then immediately after they are sworn in,  
25 their original questionnaire that they give to the

1 Clerk will come to you just like normal. Okay? So  
2 you can already start working on questionnaires,  
3 the normal questionnaires.

4 Then they are going to be given the  
5 supplemental questionnaire, if we have one, which  
6 we're going to talk about in a minute -- you all  
7 got one -- and they're going to be told to start  
8 working on that.

9 They're going to have 30 minutes to finish  
10 that, but if they finish sooner, just raise their  
11 hand. As soon as ten are gathered, Pauline will  
12 come in and start making copies of them and bring  
13 them to you. So you're going to get them in groups  
14 of ten to be brought over to you. If at any time,  
15 as we bring either the original questionnaires or  
16 the supplemental questionnaires, someone wants to  
17 speak to one of the jurors, I need to know their  
18 name and I will bring them over immediately.

19 MR. LIVERMORE: Based on the answers to the  
20 questions.

21 THE COURT: Based on the answers to the  
22 questions.

23 So if you see it and they say, you know, I'm a  
24 Jehovah's witness, I can't sit in judgment and I  
25 could never find for the death penalty, bring them

1 over right away. We don't have to wait until  
2 everybody is done.

3 So either from the original questionnaire or  
4 the supplemental questionnaire, you immediately see  
5 an issue, we'll bring that person over right away  
6 to see if we need to keep them. And that way we  
7 try to move it in a little bit quicker fashion than  
8 waiting for a hundred people to finish it and then  
9 you guys look at a hundred questionnaires. If we  
10 can just keep moving along.

11 And I know I have quite a few Assistant State  
12 Attorneys on this case and I have quite a few  
13 Assistant Public Defenders on this case, so I'm  
14 going to ask that not everyone has to be involved  
15 in this. We're going to have people that that's  
16 their job. I mean, we're not going to have to have  
17 conferences going on on either side to make  
18 decisions? Yes? No?

19 MR. LABRUZZO: We will work our best, Judge,  
20 to limit the amount of conversations. We have a  
21 number of people that are going to be assisting us  
22 in the courtroom.

23 THE COURT: Right.

24 MR. LABRUZZO: We've made arrangements for  
25 that.

1           THE COURT: I see. We've got a lot of people  
2 over there; we've got a lot of people over here.  
3 So I'm just saying that if you can't decide, wait  
4 until we bring them all over. Okay? I'm not going  
5 to stop you from asking questions when the whole  
6 panel gets here, nor am I going to stop you from  
7 asking to approach the bench with any one juror  
8 when they get over here. Okay?

9           I think we're all going to kind of see the  
10 questions that need to be addressed right away and  
11 we'll be moving along as quickly as possible. But,  
12 again, we don't have to answer every single  
13 question before we bring the panel over here. You  
14 still can approach the bench, if you guys are going  
15 back and forth on that one, just approach. It's  
16 not a problem.

17           I'm just trying to stop from having each  
18 individual juror come up to the bench. When we  
19 bring the jurors over to speak to you as a whole,  
20 I'm going to have them sit in the second row over  
21 there; the defendant will be here (indicating). So  
22 the good thing about the way we're doing it is the  
23 defendant will be present for the individual voir  
24 dire of the juror. Okay?

25           But once we get everybody in here, if we come

1 to the bench, I don't know what we're going to do  
2 about the defendant. I don't know if you guys want  
3 to waive his presence. We'll have to figure  
4 something out there.

5 MR. MICHAÏLOS: We will. We'll discuss that.

6 THE COURT: Okay. I have clipboards, I have  
7 pens for the jurors, I have all that.

8 I have been told that there is going to be a  
9 pool camera in the courtroom and we're going to lay  
10 some cable down this afternoon for that pool  
11 camera, and I believe we're going to keep it where  
12 I normally keep it, which is over there in that  
13 corner over there.

14 There is supposedly some group that's going to  
15 live stream the trial from the pool camera. So  
16 there's not more than one camera. We're going to  
17 have one camera. Whatever they want to do with the  
18 feed that comes from that camera is none of my  
19 business. The pool camera is my pool camera and  
20 it's going to be run just like a normal pool  
21 camera.

22 I believe that we may have people from the  
23 St. Pete Times here. I haven't had any indication  
24 of whether they issued to have a camera person  
25 here, you know, whether they want to take pictures.

1 I haven't heard from them yet, but I do normally  
2 allow them to have one person take pictures if they  
3 want, but they're usually pretty discreet and sit  
4 in the front row.

5 Based on the memo that I have filed in this  
6 case and provided to both of you, does anybody have  
7 a problem with the way the jurors are going to be  
8 handled in the first hundred group? State, any  
9 problems?

10 MR. LABRUZZO: And, I'm sorry, Judge. Can you  
11 repeat that first part.

12 THE COURT: Do you have any problem with my  
13 memo?

14 MR. LABRUZZO: No, Judge.

15 THE COURT: Okay. Anything you see that, oh,  
16 I don't want that to happen or that's not going to  
17 work?

18 MR. LABRUZZO: No. The only thing that I  
19 would add -- and I know we previously discussed it  
20 when you mentioned that we were going to use a  
21 document like this, I just ask that it be filed in  
22 the court file.

23 THE COURT: It's already filed.

24 MR. LABRUZZO: Perfect.

25 THE COURT: So, Defense, any problems with the



1 memo that I laid out on how we're going to do the  
2 first hundred and then the reserve?

3 MR. LIVERMORE: Subject to my motion for  
4 individual, no.

5 THE COURT: Okay.

6 MR. LIVERMORE: I understand. And we'll do  
7 our best, Judge.

8 THE COURT: Okay. So in this memo we talk  
9 about these supplemental questionnaires. So we're  
10 moving on. I don't have that. Have you all gotten  
11 together and come up with what you believe we're  
12 going to do?

13 MR. LIVERMORE: Judge, not quite. Not quite.

14 MR. LABRUZZO: And it's kind of the State's  
15 issue. Mr. Livermore dropped off a copy from the  
16 front desk to my office. I've expressed my  
17 objections and ready to kind of, you know, lay  
18 those out on the record.

19 THE COURT: Okay. Can I have a copy?

20 MR. LIVERMORE: What I did was, I did one that  
21 has a lot of the questions on the Clerk's  
22 questionnaire.

23 THE COURT: Okay.

24 MR. LIVERMORE: And then I did one that  
25 doesn't have the questions.

1           THE COURT: I'd rather have the one that  
2 doesn't.

3           MR. LIVERMORE: Okay.

4           THE COURT: Because you're going to have the  
5 original one.

6           MR. LIVERMORE: Right. I got a copy from the  
7 Clerk yesterday.

8           THE COURT: And I will tell you, we had a  
9 hearing on a questionnaire on another case that I  
10 have pending that's coming up for trial, and the  
11 one thing that we put in the heading of that  
12 questionnaire that I think you might like that's  
13 not here is date of birth.

14           We do not ask them for their date of birth on  
15 the regular questionnaire, because all we ask them  
16 is how old they are. So in my past life as a State  
17 Attorney, I was constantly trying to do math to try  
18 to figure out if this person was the person based  
19 on their age. If we just ask for their date of  
20 birth, it makes running the person so much easier.

21           MR. LABRUZZO: I didn't get a chance to  
22 express that; but as far as an addition to this  
23 question, the State would be asking that we include  
24 the date of birth of the prospective juror.

25           MR. LIVERMORE: We do have all their date of

1 births, though, on the list. Yeah, we do.

2 MR. LABRUZZO: Yes. It's on the list. So now  
3 you can cross-reference 700 to that.

4 THE COURT: Right.

5 MR. LIVERMORE: All right.

6 MR. LABRUZZO: If you want to just look at it.

7 THE COURT: Well, how about we put the date of  
8 birth and we make sure we're talking about the same  
9 person?

10 MR. LIVERMORE: Yes.

11 THE COURT: So any problem with that? We can  
12 add date of birth in there?

13 MR. LIVERMORE: Yes.

14 THE COURT: Okay. So, State, do you have it  
15 in front of you now, their proposed sample  
16 questionnaire?

17 MR. LABRUZZO: I do. Yes, Judge. And we're  
18 working off the one with the least amount of  
19 questions?

20 THE COURT: Correct, yes.

21 MR. LABRUZZO: Got it.

22 THE COURT: So what is it that you have an  
23 issue with?

24 MR. LABRUZZO: Judge, we would object to  
25 question Number 7: Do you have strong feelings

1 about the criminal justice system? If so, what are  
2 they?

3 THE COURT: Yes. Why are we asking that  
4 question? I don't even know if they know what the  
5 criminal justice system is.

6 MR. LIVERMORE: We have the sovereign citizens  
7 and others and it just helps ferret those folks  
8 out.

9 THE COURT: I think if they were a sovereign  
10 citizen, they won't respond to my request for them  
11 to arrive here at the courthouse, because, you  
12 know, I'm not a meaningful person to them.

13 MR. LIVERMORE: Yes. I understand.

14 THE COURT: I agree. We'll take that out.  
15 You know, that's really not necessary.

16 What's the next one?

17 MR. LABRUZZO: Judge, the State would object  
18 to question Number 9, and it may dovetail into the  
19 other motion in limine that's been filed. But the  
20 question states: "You may be expected in the  
21 course of this trial to view photographs of the  
22 deceased victims which are unpleasant. How do you  
23 feel about this?"

24 THE COURT: I'm okay with that question. I  
25 mean, what I expect is people to write, you know, I

1           might faint at the sight of blood or something. I  
2           think everybody is going to say, well, I don't want  
3           to do that.

4           I don't think anybody wants to do that. And I  
5           think that's a question you can follow up with,  
6           that they understand they're going to have to do  
7           that. What are you trying to get at with the  
8           question?

9           MR. LIVERMORE: If somebody is going to have a  
10          strong opinion before they even see it, and I'm  
11          just trying to ferret it out.

12          THE COURT: Well, I don't know. What's a  
13          strong opinion? Of course you're going to have a  
14          strong opinion. I have a strong opinion. I don't  
15          like looking at pictures with people with blood.

16          MR. SARABIA: None of us like that.

17          THE COURT: So the real question should be --  
18          I don't have a problem with the statement: That  
19          you may be expected in the course of the trial to  
20          view photographs of the deceased victims, period.  
21          Because we all understand they're going to be  
22          unpleasant. There's no reason reiterating what we  
23          all know.

24          I'm trying to think of the question that would  
25          normally come out.

1 MR. SARABIA: This is also a question that's  
2 easy to address in voir dire.

3 THE COURT: Yeah. That's really one we can go  
4 over in a group.

5 MR. SARABIA: And frequently asked.

6 THE COURT: We don't need this for individual  
7 voir dire. I think everybody is going to agree. I  
8 expect somebody is going to ask this question?

9 MR. LABRUZZO: It's on my list of questions to  
10 ask.

11 THE COURT: Okay. So it's going to get asked  
12 and I'm not sure we need that in advance.

13 Okay. What other one do you have a problem  
14 with?

15 MR. LABRUZZO: Judge, the next objection would  
16 be as to Number 15. My objection is not that we're  
17 asking the question about the amount of time, it's,  
18 I guess, the way it's phrased.

19 Mr. Sarabia had a suggestion, and his  
20 suggestion was: Do you have any scheduling  
21 conflicts that would prevent you from serving as a  
22 juror between October the 30th and November the  
23 22nd, 2017?

24 THE COURT: I have no problem with the way  
25 this is worded other than I like the dates in there

1           only because a lot of people don't think in terms  
2           of dates. So how about, the trial in this case may  
3           last for four weeks, and put from  
4           October 30th through November 22nd, right?

5           MR. LABRUZZO: I think that was the date that  
6           we gave.

7           THE COURT: And we're putting in "may," it may  
8           last that long.

9           MR. LABRUZZO: Right.

10          THE COURT: And, "Would you be able to serve  
11          on this trial and give it your full attention?" I  
12          have no problem. Why don't we just put the dates  
13          in there.

14          MR. LIVERMORE: That's fine.

15          THE COURT: This question is helpful for us  
16          because people are going to say they can't, and  
17          we're going to ask them questions and they may end  
18          up still being able to.

19          MR. LABRUZZO: That's why I'm not really  
20          objecting to the substance of it. I just wanted to  
21          put in some different language, but I agree with  
22          the Court.

23          THE COURT: The question is fine if we can  
24          just put in from 10/30 to 11/22.

25          MR. SARABIA: And one difficulty there, Judge,

1 is that does straddle Veterans Day. There may be  
2 people who have plans on Veterans Day.

3 THE COURT: Right.

4 MR. SARABIA: And may not realize it.

5 THE COURT: Right.

6 MR. SARABIA: Okay.

7 THE COURT: And we're going to say, what's  
8 your problem? And they're going to say, you know,  
9 I'm a veteran and I'm going to be in the parade.

10 MR. SARABIA: Okay.

11 THE COURT: That's okay. That day is off.

12 MR. SARABIA: So them answering, no, isn't  
13 that we're not going to talk to them, it's just  
14 that we know there's an issue.

15 THE COURT: Correct. And the other issue is a  
16 lot of people probably are going to say, I have  
17 kids and I need to get them to school or I need to  
18 do this and I need to do that.

19 I'm already going to tell them, "You're not  
20 going to get here until 9:30, and we'll be out of  
21 here by 6:00." And so this is an easy way, instead  
22 of having to do it in front of the whole group,  
23 bringing people over and getting down to is there  
24 one day that you have a doctor's appointment that's  
25 in the morning, or this or that and the other



1 thing, and we can work through that in a quicker  
2 manner than normally.

3 So I don't have any problem. We're probably  
4 going to have people say, no, because I have this  
5 date this thing, and we'll figure out with all of  
6 us here whether that fits into our schedule or if  
7 that doesn't fit into our schedule. So if we can  
8 just put in, between October 30th to November 22nd,  
9 and we'll move on from there.

10 MR. LIVERMORE: In light of what you had said  
11 earlier, I imagine we can probably strike  
12 Number 14, because that's kind of the same question  
13 there.

14 THE COURT: Right. Exactly. We're going to  
15 ask them before that.

16 MR. LIVERMORE: Right.

17 MR. LABRUZZO: Judge, my next comment would be  
18 on Question 16. I'm okay with the language, with  
19 the addition of the intersection of Hatteras and  
20 Old Dixie Highway.

21 For some reason I feel like when we talk about  
22 street names people may remember, oh, I remember  
23 being on that street and something happening. They  
24 may not realize that's Hudson or maybe that's  
25 another part of the county.

1           MR. LIVERMORE: That's fine. I don't have any  
2 problem with that.

3           THE COURT: And where would you put it?

4           MR. LABRUZZO: I would just say: Having  
5 occurred between August the 28th, 2014 and  
6 September the 1st, 2014, near the intersection of  
7 Hatteras Drive and Old Dixie Highway, Hudson,  
8 Florida.

9           THE COURT: Mr. Livermore, can you get that  
10 in?

11           MR. LIVERMORE: That raises an issue. In an  
12 earlier conversation you had indicated that you  
13 were going to task your JA doing the final one, but  
14 if that's not the case --

15           THE COURT: No. She can, as long as you send  
16 her -- if you send her a digital copy as soon as we  
17 leave --

18           MR. LIVERMORE: Okay.

19           THE COURT: -- you send it in an email, she  
20 will put in these changes. Not a problem.

21           MR. LIVERMORE: Because I wasn't taking that  
22 detailed of notes.

23           THE COURT: Well, that's no problem. I can  
24 put it in. It's Hatteras Drive and Old Dixie  
25 Highway, Hudson, Florida?

1 MR. LABRUZZO: Yes, Your Honor.

2 THE COURT: Okay. I got it.

3 MR. LABRUZZO: The next comment or objection  
4 by the State is Question 17: Did you form any  
5 opinions about the case? Then please explain.

6 My only objection is isn't that why we're  
7 having them fill out the first questions, to bring  
8 them in to ask them this?

9 THE COURT: Right. We'll take 17 out.

10 MR. LIVERMORE: I have no problem with that.

11 THE COURT: That kind of just wastes our time.  
12 If they say, yes, to 16, they're coming over and  
13 they're going to explain to us all this.

14 MR. LIVERMORE: Right.

15 THE COURT: No reason sitting there writing a  
16 book on that one. Got it.

17 MR. LIVERMORE: No problem.

18 THE COURT: And same thing with tell us in as  
19 much detail as possible -- oh, this is the death  
20 penalty question.

21 Okay. Go ahead. State?

22 MR. LABRUZZO: Judge, again, I don't have an  
23 objection conceptually to asking a question about,  
24 "What are your feelings about the death penalty?  
25 Please explain." So if this is the language that

1 the Defense is requesting, I'm good.

2 THE COURT: Okay. But I will tell you, I had  
3 the same question in the other questionnaire I  
4 have. That's why I'm making a timeframe, because  
5 this question alone may cause people to, like,  
6 write on the back of your questionnaire. And I  
7 understand, once they get to that, you're going to  
8 want to question them anyway.

9 MR. LIVERMORE: Well, a solution to that would  
10 be Number 21. I know they're objecting to 21.  
11 That's the old State Attorney, 1 to 10.

12 THE COURT: Why are you objecting to 21?

13 MR. LABRUZZO: I'm objecting to 21, because I  
14 believe that's a question that's most properly  
15 explained and asked during a discussion about what  
16 the law is. The Court is going to give them  
17 preliminary instructions about what the procedure  
18 is during the death penalty phase. And this  
19 question just kind of -- yeah, exactly. So, you  
20 know, they're making a decision or coming up with  
21 their opinions without understanding what the law  
22 is.

23 THE COURT: Well, and I completely understand  
24 that.

25 MR. LABRUZZO: Right.

1           THE COURT:  However, the idea of this question  
2           is you talk to people who circle 1 or they circle  
3           10.

4           MR. LABRUZZO:  Right.

5           THE COURT:  You're going to go over this  
6           question again.  Just because we ask this question  
7           does not mean you don't get to ask the question  
8           again.

9           MR. LABRUZZO:  And I understand that.  I just  
10          put a lot of weight into the instructions that the  
11          Court is going to give beforehand.

12          When people are sitting down, you know, early  
13          in the morning or coming up with these opinions, it  
14          may not be an opinion or something that would be  
15          accurate once they have an understanding of what  
16          the law is or have an opportunity to come to some  
17          sort of agreement.

18          So the question is going to get asked  
19          regardless if it's in here or not.  The State's  
20          preference is that it would be asked and explained  
21          during a question and answer session or questioned  
22          by the State.  Putting it in here, it just doesn't  
23          give the State or the Defense an opportunity to  
24          understand why they came to that.

25          Because if someone says, oh, I put 1 because I

1 was completely mistaken, I was totally wrong about  
2 what the question was, then we now have this  
3 inconsistency that we're going to have to rectify  
4 during a questionnaire, when then the -- I'm sure  
5 either side, both State or Defense, depending on  
6 what the number they give, if they say that they're  
7 wrong about it, will open up to, well, Judge, you  
8 can't rehabilitate yourself from a 1 or a 10.

9 And if the person who answered the question  
10 and was under the mistaken beliefs or given an  
11 inappropriate opinion because they didn't  
12 understand the question, then we have to explore,  
13 well, what did you really mean? Did you understand  
14 all this? You know, having understood all this,  
15 does it change your mind?

16 I just see there to be a lot of ambiguity with  
17 some of the jurors when it comes to trying to come  
18 down. So when someone easily put in 10, and then  
19 when it is explained to them or they have time to  
20 think about it will say, oh, no, I'm really a 5.

21 Well, one of the sides are not going to be  
22 happy with that, even though their true  
23 understanding of how they feel of the death penalty  
24 may actually be a number other than what they put  
25 down. That's just my take on it.

1 THE COURT: Okay.

2 MR. LIVERMORE: What it does is give us their  
3 preconceived notions and that's as important as  
4 what happens after it gets explained.

5 THE COURT: I'm going to let the question  
6 stand, because I agree with the Defense. When you  
7 say they put a lot of weight into my instruction,  
8 first of all, I can tell you that my instruction is  
9 not going to cause somebody to go from a 10 to a 5  
10 automatically.

11 Now, you explaining the instruction to them,  
12 they may say, oh, yes, I understand what you're  
13 saying; that, you know, what I'm saying is if I  
14 think all the mitigators or aggravators are there  
15 and there's no mitigators, I would be a 10; but I'm  
16 going to listen to the instructions and I'm going  
17 to follow the law, and if that makes me a 5, then  
18 that makes me a 5.

19 I don't believe that you can strike someone  
20 just because they're a 10, because they wrote down  
21 10. I mean, I've done lots of jury trials and lots  
22 of penalty phase trials where someone says they're  
23 a 1, and the Defense spends almost the entire time  
24 getting them to a 2, and then you can't strike  
25 them.

1           Because if they go to a 2, they'll say, well,  
2           you know, I guess if you killed little baby cats  
3           and stabbed everybody in the world and killed my  
4           mother, I would maybe think about giving some  
5           death. Oh, I make myself a 2, now you can't strike  
6           them because it's not a never. So it goes both  
7           ways.

8           MR. LABRUZZO: It does, Judge. But I would  
9           disagree with the Court. If someone were to circle  
10          10 or 1, that is an automatic cause challenge.

11          You would say if someone votes automatically  
12          for death, that is not a cause challenge?

13          THE COURT: Not unless they're staying at 10  
14          when you question them.

15          MR. LABRUZZO: I just want to get that on the  
16          record that if someone's an automatic for death,  
17          that's not a cause challenge?

18          THE COURT: Hold on. Stop right there.  
19          That's not what they're saying. They're saying if  
20          they circle 10 on this piece of paper, that's not  
21          an automatic cause challenge.

22          If they come in here and say under every  
23          circumstance a hundred percent of the time I would  
24          impose death no matter what, they're going to cause  
25          challenge them. And if the person says never,



1 ever, ever will I ever impose death, if you put me  
2 on this trial, I don't care what you show me, I'm  
3 never imposing death, you're going to cause  
4 challenge them.

5 But after questioning, if you get somebody to  
6 go more towards the middle because they understand  
7 the law and what they're looking at, then they can  
8 say, well, I guess if the judge told me that and  
9 based on what she says and based on what you say, I  
10 could possibly, then you're going to have to bump  
11 them for some other reason.

12 MR. LABRUZZO: And I understand, Judge. We've  
13 obviously spent a number of minutes debating what  
14 the question says, and therein lies the problem the  
15 State has. What all the things that someone could  
16 consider in trying to answer this question is  
17 something I think is better done through  
18 questioning of the jurors in the panel.

19 THE COURT: But the problem is you're going to  
20 ask this question later, right?

21 MR. LABRUZZO: I am.

22 THE COURT: Yes.

23 MR. LABRUZZO: But it's a differently phrased  
24 question, one that is also in light of the law that  
25 the Court is going to be instructing them on. And

1 I'm going to respect the Court's ruling.

2 My next objection would be as to the actual  
3 language that's being used in here. We're talking  
4 about, and just for the record: "How would you  
5 rate your feelings, position, beliefs and  
6 opinions?" Which I think is ambiguous as to what  
7 we're actually asking for, because we don't know  
8 what we're asking for about the death penalty on a  
9 scale of 1 to 10, where 1 means the death penalty  
10 is never appropriate and 10 means the death penalty  
11 is always appropriate.

12 My objection would be as to rate your  
13 feelings, position, beliefs, opinions. So if we're  
14 going to pick one and that's what I'm limited to, I  
15 would just ask to say, "What is your opinion about  
16 the death penalty?" and then ask them -- maybe it  
17 should say something, "In light of your opinions on  
18 the death penalty, please rate on a scale of 1 to  
19 10 where you fall, where 1 means that the death  
20 penalty is never appropriate and 10 means that the  
21 death penalty is always appropriate.

22 MR. LIVERMORE: I put the four options in  
23 there because I wasn't sure which ones.

24 MR. LABRUZZO: No, I understand. I'm not  
25 trying to say you guys were trying to suggest all

1 of them.

2 MR. LIVERMORE: An "opinion" is fine. I have  
3 no problem with that.

4 THE COURT: Okay. You've said a lot, and I'm  
5 not exactly sure what you want the question to say.  
6 You're kind of speaking, you know, off the top of  
7 your head. So I have to type this up and my JA has  
8 to type this up. So what is it that you would like  
9 it to say?

10 MR. LABRUZZO: If we're going to have the  
11 question, I would like it to say, "Based on your  
12 opinions about the death penalty, please rate from  
13 a scale of 1 to 10 the following: 1 meaning the  
14 death penalty is never appropriate and 10 means the  
15 death penalty is always appropriate".

16 THE COURT: So 21 would read: Based on your  
17 opinions of the death penalty, on a scale of 1 to  
18 10, where 1 means the death penalty is never  
19 appropriate and 10 means the death penalty is  
20 always appropriate, where do you fall? Where would  
21 you rate?

22 MR. LABRUZZO: "Where would you rate?" That's  
23 fine.

24 THE COURT: Okay. And anything else? Any  
25 other questions the State's requesting that aren't

1 in here?

2 MR. LABRUZZO: No, Judge. No, Judge.

3 THE COURT: All right. So the changes that I  
4 have of the proposed sample questionnaire, on the  
5 top it will go: Name, date of birth, juror number.  
6 It will go 1 through 6.

7 And then Number 7 will be: Do you have any  
8 experience? That question.

9 Then Number 8 will be: Are you an expectant  
10 mother?

11 9 will be: Have you reported as a juror  
12 within the past year?

13 10 is: Are you a person 70 years or older?

14 MR. LIVERMORE: Oops. I missed the "you".

15 THE COURT: "Are you." Got it.

16 11: Are you responsible?

17 12: The trial in this case may last for three  
18 weeks, October 30th through November 22nd. Would  
19 you be able to serve?

20 And then Number 13 will be: "The defendant,  
21 Adam Matos, has been charged with four counts of  
22 first-degree murder, which is alleged to have  
23 occurred between August 27th, 2014, and  
24 September 1st of 2014, near the intersection of  
25 Hatteras Drive and Old Dixie Highway, Hudson,

1 Florida. Have you seen, heard, or read anything  
2 about State versus Adam Matos? If, yes, please  
3 explain."

4 That's the way we want it, right?

5 MR. LABRUZZO: Yes, Judge.

6 THE COURT: Then 14 will be: Please tell us  
7 as much detail as possible.

8 15: Have you held this view?

9 Go ahead.

10 MR. LIVERMORE: Instead of what is now 18, I  
11 thought we were doing 21.

12 THE COURT: Oh, okay. We're taking out 18.

13 MR. LIVERMORE: Right.

14 THE COURT: But do we want 19 to be behind 21?

15 MR. LIVERMORE: Yes.

16 THE COURT: So 21 will be 14.

17 Then 15 will be: Have you held this view?

18 And 16: And have your views on the death  
19 penalty changed?

20 Are we okay with that?

21 MR. LIVERMORE: Yes, ma'am. I didn't know  
22 about that last paragraph. That's been on some of  
23 them.

24 THE COURT: All right. "The last paragraph  
25 reads: You should not ask for anyone's help in

1 completing the questionnaire unless you need help  
2 reading the question or writing your answer. The  
3 answers must be your own. You should not talk to  
4 anyone about anything pertaining to your jury duty  
5 from this point until the completion of the trial,  
6 in which you will serve if you are selected".

7 Anybody have a problem with that? That sounds  
8 good to me.

9 MR. LIVERMORE: Okay. I didn't know whether  
10 you wanted to add that or not.

11 THE COURT: I'm going to tell them that about  
12 15 times. One more time doesn't hurt. If you'd  
13 like me to put something about cell phones in there  
14 for the 20th time, I'll tell that too.

15 MR. LIVERMORE: I think that probably covers  
16 it.

17 THE COURT: I'm going to say, "If anybody  
18 breaks the cell phone rule, I'm taking them all".  
19 So I'm going to be using a little peer pressure on  
20 the cell phone issues. So I'm going to let them  
21 keep them only because a hundred cell phones starts  
22 to be a little bit of a liability to the people  
23 that have to hold them.

24 MR. LIVERMORE: I've seen the grimace on them.

25 THE COURT: Yes. But I'm going to tell them

1 when they're in the jury box, I'm going to have  
2 their cell phone anyway, so they should get used to  
3 not having it anyway. So that's the other thing.

4 So if the Public Defender can have their staff  
5 email over this questionnaire as soon as possible,  
6 Pauline will make the changes, she will send you  
7 back when it's going to be done, and she's making  
8 the copies.

9 MR. LIVERMORE: Okay.

10 THE COURT: Okay?

11 MR. LIVERMORE: So we need to email her?

12 THE COURT: Yes. Email it over. And she can  
13 make the changes and then she can send it up to our  
14 printer so that she can get them printed. It looks  
15 like it's probably going to make two pages, which I  
16 really like. And then she'll attach them to the  
17 clipboard so that when they arrive they'll be all  
18 ready.

19 Again, when she gets ten, she's going to take  
20 those, she's making two copies for either side, and  
21 I get the original. So I'll have the original of  
22 what the person said, and both sides will have two  
23 copies. I know you have a lot of people. If you  
24 want extra copies, you're just going to have to go  
25 make copies yourself.

1           The clerk has asked if there's any way that  
2 when we begin the trial, the State Attorney could  
3 have a list at least daily of the evidence they  
4 intend to put in so that they can prepare their  
5 evidence list and make sure that, you know,  
6 everything is labeled correctly and so it comes in.

7           They may have dropped someone's name like  
8 Halkitis, that he always gave the list. I'm not  
9 making you live up to that expectation. But if  
10 daily, at least, if you have a list of what  
11 evidence you think you're going to put in, if you  
12 could give them a list with the numbers that you  
13 intend to make those individual pieces of evidence,  
14 it will go a lot easier.

15           The website that was on the Internet has been  
16 changed to reflect daily updates from the trial.  
17 So we moved it to another part, so when they open  
18 up the Clerk's website, State v. Matos isn't the  
19 first thing they see. And if they put it in and  
20 they go to the online site for this trial, it's  
21 going to begin with the jury instructions that we  
22 get.

23           All the stuff that was on there has been  
24 moved. It's still available to the people in the  
25 community, it's still available to anyone in the



1 press, but it takes at least four clicks to get  
2 there. I made it a little more difficult. That's  
3 the best I could do, because it is a public record.  
4 So at least we'll be able to do that.

5 All right. Other than those issues, State, is  
6 there anything else we need to discuss now?

7 MR. SARABIA: A couple things we want to put  
8 on the record, Judge.

9 Our blood spatter expert that we formerly had  
10 on the witness list or I guess still do, Jerry  
11 Findley, will be unable to testify due to health  
12 issues. It came up since our last date.

13 We have replaced him with Anna Cox. The  
14 Defense has done a deposition. But I wanted to put  
15 that on the record. She is a newer witness. But  
16 that all has gone through and we do anticipate  
17 calling her.

18 We also anticipate calling the records  
19 custodians from Wells Fargo and from Sprint,  
20 although they have not given us the names of the  
21 person they are sending yet. So I wanted to put  
22 that on the record as well.

23 THE COURT: Okay. Any problems with that,  
24 Defense?

25 MR. MICHAÏLOS: Judge, real briefly. With

1 regard to the clerk's request of the list of  
2 evidence -- and I know the State's not required to  
3 do this, but we have been pretty cooperative and  
4 amicable, especially myself and Mr. Sarabia -- we  
5 were wondering, because there's 300 witnesses and  
6 we're going to have binders spread all over the  
7 place, and every time the State calls a witnesses,  
8 you're probably going to hear a lot of clicking and  
9 clacking and file review, if the State could be  
10 kind enough to maybe daily give us an idea of what  
11 witnesses will be called, that would be great. I  
12 know that it would not be binding on them, but I  
13 think it would make our lives much easier with  
14 regard to that.

15 MR. SARABIA: I'll try to work with  
16 Mr. Michailos on that.

17 THE COURT: All right.

18 MR. SARABIA: I have asked the Defense  
19 multiple times in the past few months for both  
20 trial dates. There are three witnesses in Kansas  
21 that we may or may not need, depending on how the  
22 Defense intends to proceed. They know who I'm  
23 talking about.

24 It would be easier for them and for us to  
25 schedule them in advance if we know that we are

1 going to need them. If the Defense believes that  
2 they are going to go that route, I would appreciate  
3 some indication ahead of time, because otherwise we  
4 could be scheduling flights and have another day  
5 where we're trying to figure out when to put on  
6 testimony.

7 THE COURT: Okay. Any problem with that?

8 MR. VIZCARRA: Judge, we have been discussing  
9 that, and we don't know at this point for sure  
10 which way we're going to go. So, you know, if he  
11 feels like he needs them, I would say that to make  
12 those plans.

13 I understand they're in Kansas. What I don't  
14 want to do is give false information and then trip  
15 up the State. That's not my intention. So in an  
16 abundance of caution, I would advise them to  
17 prepare accordingly.

18 I don't know. Like I said, some of these  
19 things are going to be consultation with the client  
20 and there are decisions based on how the case is  
21 going.

22 THE COURT: When will we have to call the  
23 Kansas people? Would it be rebuttal?

24 MR. SARABIA: Most likely I would expect it  
25 during rebuttal.

1           THE COURT: So we wouldn't really need to know  
2 until -- the tickets are going to be about the same  
3 cost because you're going to have to buy  
4 nonrefundable tickets if you buy them now or you  
5 buy them then. So why don't you just put the  
6 people on standby. We could also possibly talk  
7 about Skyping them in and not flying them in.

8           MR. SARABIA: And they are willing to fly. I  
9 just want to try and be as considerate to them as  
10 possible. I don't want to get them a ticket and  
11 then tell them, oh, we're not going to --

12           THE COURT: Tell them they wouldn't come until  
13 after the 15th, somewhere between the 15th and the  
14 22nd. How about that? That's the best I can do.

15           And, again, if we needed to, you know, finish  
16 up a day and have them fly in overnight. They're  
17 coming in from Kansas. It's about a  
18 five-and-a-half-hour flight.

19           Mr. Michailos?

20           MR. MICHAIILOS: With regard to the Sprint and  
21 Wells Fargo records, we've been agreeable with the  
22 State. We don't see there's any real reason to  
23 bring custodian of records in when under the law  
24 records could be authenticated and the State has  
25 given us notice for that.

1 THE COURT: You're good with stipulating that  
2 they don't need to bring a custodian in?

3 MR. MICHAIILOS: Yes. But just for  
4 clarification, my understanding is the phone  
5 records just deal with input times, times when  
6 calls were made and received, and ingoing and  
7 outgoing; that there's no actual voicemails or  
8 audible audiotapes of any conversations or any text  
9 messages.

10 THE COURT: We're just talking about tower  
11 records, right? State?

12 MR. SARABIA: Not even tower records; but,  
13 yes. Mr. Michailos is correct. The records that  
14 we would be trying to introduce through Sprint  
15 would be, yes, call logs.

16 THE COURT: Dates, times and numbers? Dates,  
17 times, numbers? Dates, times, numbers?

18 MR. SARABIA: Correct.

19 THE COURT: No audio whatsoever?

20 MR. SARABIA: Correct.

21 MR. MICHAIILOS: And I thought so, because  
22 Mr. Sarabia has given us a heads up and the audio  
23 he wants to introduce. But we'd hate to have a  
24 surprise like that. So I'm not aware of any audio.

25 THE COURT: So they're waiving custodian as

1 long as it's just the records, the physical paper  
2 records that we're talking about.

3 Does anybody think you have any biohazard  
4 material?

5 MR. SARABIA: Yes.

6 THE COURT: Okay. And how about weapons?

7 MR. SARABIA: Yes.

8 THE COURT: What are we doing on those?

9 MR. LABRUZZO: Well, as far as the firearms  
10 that we intend on using, they're so rusted because  
11 they were in the water, that we would not be taking  
12 them out of the packaging that they're in.

13 THE COURT: Okay. Are they boxed in with the  
14 zip ties?

15 MR. LABRUZZO: I can't see into the box well  
16 enough to say if they're zip-tied or not. I don't  
17 believe there's a zip tie.

18 MR. SARABIA: No, no, no. Those are the other  
19 weapons. Those are the other weapons.

20 MR. LABRUZZO: I understand.

21 MR. SARABIA: The ones that we're going to  
22 admit, I don't think that's the case.

23 MR. LABRUZZO: No. I understand.

24 MR. SARABIA: They're like just regular in a  
25 box.

1 MR. LABRUZZO: They're not?

2 MR. SARABIA: No.

3 MR. LABRUZZO: Well, there are a number of  
4 pieces of evidence that are --

5 MR. SARABIA: There are weapons. We hope to  
6 deal with them the same way we deal with weapons in  
7 any trial.

8 THE COURT: Give them the weapons but not the  
9 ammo.

10 MR. SARABIA: Correct.

11 THE COURT: Give them the ammo but not the  
12 weapons.

13 MR. LABRUZZO: Correct.

14 MR. SARABIA: I don't know that we will be  
15 admitting any ammunition.

16 THE COURT: Deputy Cleaver, do you think you  
17 can handle that?

18 THE BAILIFF: Yes, Your Honor.

19 THE COURT: He's got that. And the biohazard  
20 stuff is going to stay in the bag or are we going  
21 to pull it out and put it back?

22 MR. LABRUZZO: Well, if it's opened, it will  
23 be put back in the bag.

24 THE COURT: Okay.

25 MR. LABRUZZO: Nothing is going to stay out.

1           MR. SARABIA: We're just talking about blood,  
2 right? Maybe not.

3           MR. LABRUZZO: Not just blood. I don't feel  
4 comfortable telling the Court --

5           MR. SARABIA: We'll need an expert to tell us  
6 that.

7           MR. LABRUZZO: An expert will tell us what  
8 exactly is on there.

9           THE COURT: Okay.

10          MR. LABRUZZO: But it will be very limited.

11          THE COURT: So we might need an extra plastic  
12 bag to put it in the bag.

13          MR. LABRUZZO: We have plastic bags. We've  
14 got it all packed.

15          THE COURT: Okay. So we can take it out of  
16 the plastic bag and then out of the regular bag,  
17 because I assume they're in evidence bags?

18          MR. LABRUZZO: Yes.

19          THE COURT: And then we can put it back in the  
20 regular bag and back in the plastic bag?

21          MR. LABRUZZO: Yes.

22          THE COURT: And we'll have lots and lots of  
23 gloves?

24          MR. LABRUZZO: Sure.

25          THE COURT: Good. Okay.



1           MR. LABRUZZO: We have specifically limited  
2 the amount of items of concern.

3           THE COURT: Okay. All right. As long as we  
4 just make sure we have gloves and they're in  
5 plastic bags, then we should be fine.

6           MR. LABRUZZO: Correct.

7           Judge, Defense filed Motion in Limine Number  
8 Two. I will let them argue it, but I want to make  
9 sure we address it.

10          THE COURT: Motion in Limine Number Two? Is  
11 it about the pictures?

12          MR. LABRUZZO: Yes.

13          MR. VIZCARRA: It is, Judge.

14          THE COURT: Okay.

15          MR. VIZCARRA: There's two sets of photographs  
16 that I've been given. I did ask the State if they  
17 had any more, to please provide them. I appreciate  
18 giving us that ahead of time.

19          Bottom line, Judge, I did file a motion in  
20 limine to exclude or edit the gruesome and  
21 inflammatory photographs that were provided. I  
22 didn't provide a lot of case law, Judge, just the  
23 one case, and it's C-z-u-b-a-k, *Czubak v. State*,  
24 570 So.2d 925. If I can approach very briefly and  
25 give that to you.

1 THE COURT: You may.

2 MR. VIZCARRA: I have given a copy to the  
3 State.

4 Your Honor, there are 56 photographs that I've  
5 been given from the Medical Examiner's Office, and  
6 I have filed objections to those that I thought  
7 should be excluded or otherwise edited. I don't  
8 know if you want to go through them, but the  
9 corresponding numbers on each one of them are  
10 indicated on my motion.

11 Judge, bottom line, first the Court has to  
12 find that they're relevant; secondly, that the  
13 relevance of the photographs do not outweigh unfair  
14 prejudice to the defendant.

15 In the *Czubak* case, Judge, which is a  
16 *Zephyrhills* --

17 THE COURT: Well, Counsel, let me stop you  
18 right there. I am not going to hear motions in  
19 limine about these photographs until after we pick  
20 the jury. We had a half an hour today. I didn't  
21 even know we had a motion in limine.

22 So you guys get together, decide if you're  
23 going to put those in. If you're going to put  
24 those in, I'll hear the motion about the  
25 photographs after we pick the jury. So we don't

1 need to be arguing about photographs today. We've  
2 got lots of other stuff. We've got to pick a jury  
3 first.

4 So hold off on that. And the State can look  
5 through what your motion is, and after we pick the  
6 jury, before we start with photographs being  
7 entered, I'll make sure that we have a big hearing  
8 on all the photographs. My understanding is the  
9 State's going to put everything on the Almo onto a  
10 screen, correct?

11 MR. LABRUZZO: Yes, Judge. We're waiting on a  
12 piece. Our plan, just for Defense, we will have  
13 the Almo set up over here. We'll have the big TV  
14 that will be able to be rolled out so that we can  
15 use it. It is easier than doing boards, because  
16 there would have been probably 70 boards. So we're  
17 going to use the Almo for projecting the TV, on the  
18 small TV. It will show on both the TV up there and  
19 the TV that will be down here.

20 THE COURT: Okay. And that may have an effect  
21 on my decision on what is overly gruesome. Because  
22 if we're going to blow up a pretty gruesome picture  
23 to 72 inches, it might be a lot more gruesome than  
24 regular. I'm not saying we can't.

25 MR. LABRUZZO: Right.

1           THE COURT: I'm saying I have to make a  
2 decision on not only the photograph, but the  
3 display of the photograph. If it's a certain type  
4 of photograph, I may only let you show it there and  
5 not --

6           MR. VIZCARRA: Judge, would it assist you to  
7 have a copy of the photographs beforehand or you  
8 just want to wait for that as well?

9           THE COURT: No. No. I expect that the State  
10 knows what photographs you're talking about.

11          MR. LABRUZZO: I do.

12          THE COURT: I want to bring them in.

13          MR. VIZCARRA: Okay.

14          THE COURT: My problem is, one, I don't even  
15 know that the State's going to introduce those  
16 photographs. They may agree with you on every one.  
17 If not, they can bring the actual photograph that  
18 they're going to show the actual jury and that's  
19 the photograph I want to talk about.

20          MR. LABRUZZO: Sure.

21          THE COURT: I don't want to talk about  
22 something that's on the DVD. I don't want to talk  
23 about something that's printed on this piece of  
24 paper.

25          I want to see the picture that we're going to

1 show the jury and then we'll make a decision,  
2 because I've seen too many bad colorings and then  
3 we end up the picture is completely different than  
4 the motion or what's on that disk.

5 So all motions in limine reference photographs  
6 we will address before they're shown to the jury.

7 Okay?

8 MR. LABRUZZO: Yes, Judge.

9 THE COURT: Anything else?

10 MR. LIVERMORE: I have one issue, Judge.

11 THE COURT: Sure.

12 MR. LIVERMORE: I've been talking to Chris,  
13 whoever is -- and I can't pronounce his last name.

14 THE COURT: My IT guy?

15 MR. LIVERMORE: Yes.

16 THE COURT: Okay.

17 MR. LIVERMORE: About Skype testimony.

18 THE COURT: Okay.

19 MR. LIVERMORE: He says he needs an order from  
20 the Judge.

21 THE COURT: Sure.

22 MR. LIVERMORE: Can I send an order?

23 THE COURT: Yes.

24 MR. LIVERMORE: Or do we need to do a motion?

25 THE COURT: State, who are you going to have

1 Skyped in as testimony?

2 MR. LIVERMORE: This is strictly penalty.

3 THE COURT: Right.

4 MR. LIVERMORE: Family members in  
5 Pennsylvania.

6 THE COURT: Right. You don't have any problem  
7 with that, do you?

8 MR. LABRUZZO: No, Judge.

9 THE COURT: Okay.

10 MR. LABRUZZO: No objection.

11 THE COURT: Yes. So just send me an order.

12 That's what I thought. You said you were  
13 doing mostly penalty phase. So when you raised  
14 that, I assumed you meant some mitigation that you  
15 want people to testify and not have to spend all  
16 the money to fly them down or the inconvenience of  
17 knowing which day that they're going to testify.

18 So as far as I'm concerned, as long as they're  
19 live and we can cross-examine them on both sides,  
20 Skype is fine with me. So whatever actual order he  
21 needs, just send it on over and I'll sign it.

22 MR. LIVERMORE: Okay.

23 THE COURT: State, attached to this case law  
24 was Defense's request for special instruction, the  
25 admissions of photos. When am I going to read this

1 special instruction?

2 MR. VIZCARRA: Judge, contemporaneous with the  
3 photographs being admitted, you know, if you do  
4 decide to admit some of the photographs that are  
5 gruesome and inflammatory in nature.

6 THE COURT: Okay. State, look at their  
7 requested special instruction.

8 MR. LABRUZZO: I'm reading that right now,  
9 Your Honor.

10 THE COURT: We'll talk about that when I talk  
11 about whether I'm going to admit the photographs.

12 I have one more thing. Mr. LaBruzzo, you said  
13 about the death penalty, blah, blah, blah, because  
14 the instruction that I will read them. I don't  
15 normally read them any special instructions, even  
16 in a death case, before I pick the jury. I mean, I  
17 read them the normal ones, but there's an  
18 instruction that you feel that I should read to the  
19 jury before --

20 MR. LABRUZZO: Well, Judge, I think it is --

21 THE COURT: I mean, I've been known to read  
22 reasonable doubt instructions as we go along or  
23 this instruction or that instruction, but I don't  
24 normally read an instruction -- I mean, if I'm  
25 asked, then I will consider it, but I haven't been

1           asked.

2           MR. LABRUZZO: I understand.

3           THE COURT: It was in my mind. It was, like,  
4           in the back of my mind. And finally I'm, like, and  
5           so I looked through my instructions again. I was  
6           pretty confident of that. Is there an instruction  
7           you're going to want me to read?

8           MR. LABRUZZO: And, Judge, forgive me. It's  
9           maybe just because of the last trial that I was in.

10          It was my recollection that the Court  
11          explained to the potential jurors about the second  
12          proceeding, a penalty phase where there would be at  
13          least the discussion of the aggravator, the  
14          sufficiency, the eligibility, and then a verdict as  
15          it relates to what the nature of that proceeding  
16          was.

17          If there is not, if the Court doesn't -- I  
18          mean, I can tell you that I plan on addressing it,  
19          but I don't want to get caught in a situation where  
20          I'm instructing them on the law, because I believe  
21          that's the Court's province to instruct on that.

22          Maybe I can talk to Mr. Pura about how he  
23          feels about that.

24          THE COURT: Mr. Pura? I mean, I looked  
25          through all the instructions. I didn't go back to



1 my office where I have my death penalty book, but I  
2 don't remember there being an instruction I give  
3 before jury selection, but there might be.

4 I will find what I can find and have it. I  
5 mean, we're going to have some time while they're  
6 filling out the questionnaire to talk about what  
7 I'm going to say to them when they come over.

8 So I will re-research the issue, and if  
9 there's an instruction that I find or there's an  
10 instruction that either one of you would like me to  
11 read, I'd be happy to, but I need both sides to  
12 agree on it.

13 MR. LABRUZZO: Okay. That's fine. I'll talk  
14 to Mr. Pura about it.

15 THE COURT: I mean, I know you were just in a  
16 murder case in Clearwater, and I'm trying to figure  
17 out if the judge read an instruction that was  
18 requested of them or they believed that it was an  
19 instruction that was required of them.

20 MR. LABRUZZO: I don't think it was requested  
21 or required. I think that Judge Bulone instructed  
22 as to what the nature of that penalty phase would  
23 be about.

24 THE COURT: Okay.

25 MR. LABRUZZO: And in doing so says that the

1 State has the burden of proving beyond a reasonable  
2 doubt that there's an existence of one or more  
3 aggravators.

4 THE COURT: So he basically read the  
5 closing --

6 MR. LABRUZZO: The preliminary instruction.

7 THE COURT: The preliminary instruction for  
8 the second phase in jury selection.

9 MR. LABRUZZO: Yes.

10 THE COURT: Okay. Again, if there's anybody  
11 who wants me to read any of the instructions before  
12 we begin the questioning of the panel and they  
13 think that would be helpful, I have no problem  
14 doing that.

15 Like I said, I don't always read the  
16 reasonable doubt instruction, but if questions  
17 start up that I think people are starting to get  
18 confused or they look like they're being confused,  
19 I'll read it.

20 Mr. Pura, how do you feel about that?

21 MR. PURA: I agree with you, Judge. That's  
22 fine.

23 This might be the right time to ask this: The  
24 Defense would ask the Court to consider allowing  
25 Mr. Michailos, when it comes down to the Defense's

1           portion of the voir dire, to address the jury and  
2           ask them any follow-up questions on the subjects  
3           that you would have already asked them about,  
4           reasonable doubt, presumption of innocence, and  
5           those things -- because you both are going to ask  
6           them a bunch of questions, I don't expect that of  
7           the whole panel being a lengthy process -- and then  
8           allow me to step up as the second person, besides  
9           Mr. Michailos, to step up and ask follow-up  
10          opinions about their views on the death penalty.

11           THE COURT: That's fine. I don't have any  
12          problem. The State can do the same thing. If they  
13          want to use two different persons to ask guilt  
14          phase and penalty phase questions, that's fine.  
15          Then you can watch him while he asks some questions  
16          to try to get a feel for them, that's fine. I  
17          mean, I don't have a problem with either side  
18          having two different people ask two different  
19          specific-type questions, that's not a problem.

20           State, you don't have any problem with that,  
21          do you?

22           MR. LABRUZZO: No, Judge.

23           THE COURT: I don't know if the State is going  
24          to do that, but that's regularly done by the  
25          Defense anyway. So that's not a problem.

1           Anything else?

2           All right. I'll look over some instructions  
3 that I might give the jury. If I do see some that  
4 I think would be helpful for them, I'll bring them  
5 on Monday and we'll, of course, talk about them.  
6 I'm not going to give them anything we don't all  
7 agree to. Okay?

8           MR. LABRUZZO: Yes, ma'am.

9           THE COURT: All right. We'll see you all on  
10 Monday.

11           Oh, just so you know, the defendant is going  
12 to be brought over at 8:00, I think. So I don't  
13 know what you're doing for clothes, but we won't  
14 need him until we get the first set of jurors over.

15           It could be pretty quick if we get some of the  
16 people answering some of those questions, like they  
17 stand up and say, I'm not answering this because I  
18 can't stay here the whole time and I'm not even  
19 bothering. You know, I might bring those over  
20 right away.

21           MR. LIVERMORE: We've been contacted by the  
22 Sheriff's Office. They have a bunch of clothes  
23 we're going to maybe try and work out some of that  
24 right now.

25           THE COURT: Okay. No problem. I think Deputy

1 Cleaver is going to be here Monday, right?

2 THE BAILIFF: Yes, Your Honor.

3 THE COURT: And he's going to be in charge of  
4 the courtroom on Monday. So just get with him, and  
5 he's going to be your point person, and he'll talk  
6 to whoever he needs to talk to. Okay? All right.  
7 We're good.

8 MR. MICHAÏLOS: So what time do we have to be  
9 here Monday?

10 THE COURT: 8:30.

11 MR. MICHAÏLOS: And if the deputies can't have  
12 him dressed out at 8:30, that's not -- he doesn't  
13 have to be dressed out at 8:30.

14 MR. LIVERMORE: Right.

15 THE COURT: Once we say everybody is ready for  
16 trial, I'll send him back to dress out. But I just  
17 wanted his stuff here. Not like, oh, we've got to  
18 go downstairs, and then we're going to figure out  
19 what we're going to get him, because we may have  
20 jurors ready by 9:00 to come in and talk.

21 (HEARING CONCLUDED.)

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## 1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA )

4 COUNTY OF PASCO )

5

6 I, MARIA FORTNER, Registered Professional  
7 Reporter for the Sixth Judicial Circuit, do certify that  
8 I was authorized to and did stenographically report the  
9 foregoing proceedings and that the transcript is a true  
10 record.

11 DATED this 10th day of April, 2018.

12

13 /S MARIA A. FORTNER  
14 MARIA A. FORTNER  
Registered Professional Reporter

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