

REPORTER'S RECORD

VOLUME 2 OF 5 VOLUMES

TRIAL COURT CAUSE NO. 32004

COURT OF APPEALS NO. 12-15-00280-CR

STATE OF TEXAS) IN THE DISTRICT COURT
VS.))
RICHARD GROSS) ANDERSON COUNTY, TEXAS
) 87TH JUDICIAL DISTRICT

JURY TRIAL

COPY

The following proceedings came on for the hearing in
The above-entitled and numbered cause on the 13TH day
of July, 2015, before the Honorable Deborah Oakes Evans, Judge
presiding, held in Palestine, Anderson County, Texas:

Proceedings reported by computerized stenotype machine.

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1 THE COURT: Okay. Ladies and Gentlemen, what we're
2 going to do is Ms. Staples is going to have to seat you in a
3 specific order and she's going to call your name. When your
4 name is called if you'll come forward and take a seat all the way
5 to my right which will be your I guess -- I don't know, my right
6 which is this area over here. And it's -- how many --

7 CLERK: Okay.

8 THE COURT: One through 8 and then we'll skip across
9 the aisle and then we'll go 9 through 16. And the Bailiff will
10 assist you but if you'll listen carefully for your
11 name to be called that would be helpful. You may proceed when
12 you're ready, Ms. Staples.

13 CLERK: If I mispronounce your name, please forgive.
14 Please and also, you just correct me and also if you have a name
15 changed please also feel free to let me know that. As your name
16 is called please come forward. (Names called)

17 THE COURT: Just to give you an idea about what you're
18 going to be hearing today -- again, I'm Judge Evans, and I'll be
19 presiding over the trial this week. It's going to be a short
20 trial this week.

21 What we're going to do this morning is we're going to
22 get our jury picked and that will take about -- you'll be
23 finished by lunch. Now, whether lunch means noon or 12:30 it
24 depends, we have to take your cards, copy them and it takes a
25 little bit longer. You won't be sitting in here listening to us

1 talk for three and a half hours uninterrupted. So don't worry
2 about that. You'll be here by approximately by lunch time today.

3 If you're selected for the jury, then you'll come back
4 tomorrow and we anticipate that the trial is only going to take
5 one day. So it's a short trial. It won't take much of your
6 time, but obviously, it's an important trial to the parties that
7 are involved.

8 And it's going to be a criminal case, you're going to
9 be hearing a matter involving an alleged crime. And I believe
10 that on punishment that if there is punishment it's to the Court,
11 correct?

12 STATE: That is correct, Your Honor.

13 THE COURT: Okay. So Ladies and Gentlemen you won't be
14 called upon to decide what punishment if any is assessed.

15 The only thing that you'll be called upon to do is
16 determine the guilt or innocence of the person that's on trial.

17 So at this time I'll go ahead and swear you in and then
18 if I find my jurors I'll go ahead to try and make that up. If
19 you'll stand please and raise your right hand. Do you and each
20 of you solemnly swear or affirm that you will make true answers
21 to such questions that me be propounded to you by the court or
22 under its directions concerning your service or qualifications as
23 a juror?

24 VENIRE PERSON: I do.

25 THE COURT: Okay. You may be seated. Texas law

1 requires that each of you must possess certain qualifications to
2 sit on a criminal jury in the state of Texas.

3 There's also certain excuses and exemptions that some
4 of you may wish to claim. Please listen carefully to the
5 qualifications, the excuses and exemptions.

6 If you believe that you're not qualified or that you
7 have some reason that you can -- that is a particular hardship to
8 serve on the jury this week or something of that sort, then I'll
9 give you an opportunity here in a few minutes to come up and let
10 me know. So now you don't have to answer out loud, if you'll
11 just listen and I'll let you come up and tell me one on one if
12 you think any of these reasons apply.

13 It's very important that you answer these questions
14 truthfully. If you do not, and I or one of the attorneys later
15 discovers that fact it will be jury misconduct and it may be
16 necessary to try the case again with another set of jurors and
17 then all of our time will have been wasted.

18 First of all, you must be a qualified voter in this
19 county and state under the constitution and laws of the state.
20 And by that, I mean you don't have to have actually gone down to
21 register to vote, but you must be able to do so if you so desire.

22 You must not have been convicted of theft or any
23 felony. You must not be under indictment or legal accusation or
24 deferred adjudication for theft or any felony.

25 You must not be presently insane, you must 18 years of

1 age or older.

2 You must be a citizen of Texas and a resident of this
3 county, which is Anderson county. The reason that's important
4 particularly now is we pull your driver's license as well
5 sometimes people aren't good about changing their driver's
6 license address and they've moved.

7 If you don't live in this County anymore you need to
8 come up and let me know.

9 You must be of sound mind and good moral character.
10 You must be able to read and write the English language.

11 And you must not have served as a juror for six days in
12 the preceding three months in county court or six days in the
13 preceding six months in District court.

14 Each of these qualifications -- if you're disqualified
15 that you not serve on the jury, I also want you to come up in a
16 few minutes when I give you the chance and tell me if you've
17 recently served on a Grand Jury here in the county of Anderson
18 within -- y'all tell me when the indictment was just off the top
19 of your head -- if not I can --

20 STATE: No, Your Honor, I think January 2015.

21 THE COURT: So within the end of 2014, the first of
22 2015, if you served on a Grand Jury here you need to come and let
23 me know.

24 There's also certain exemptions that some of you may
25 wish to claim.

1 As I mentioned, exemptions are different from
2 disqualifications in that you can you claim your exemptions or
3 not. You don't have to, that's up to you.

4 If you don't want to, we'd love to have you, but if you
5 want to that's your choice.

6 For example, if you're over 70 years of age, you're
7 exempt from jury service.

8 You're also exempt from jury service if you have legal
9 custody of a child or children under the age of 12, and jury
10 service would necessitate leaving that child or children without
11 adequate supervision.

12 If you're a student in a public or private secondary
13 school, if you're enrolled and in actual attendance at a
14 institution of higher education.

15 If you're an officer or employee of the Senate, the
16 House of Representatives or any department, commission, board
17 office, or other agency in the Legislative branch of state
18 government.

19 If you're the primary caretaker of a person who's
20 unable to care for him or herself -- not including healthcare
21 workers. By that I mean, let's say you have the responsibility
22 for taking care of an elderly relative and without your
23 assistance that person wouldn't have anybody to take care of
24 them, then you would be exemption you might wish to claim today.

25 And finally, for obvious reasons, you're exempt if

1 you're a member of the United States military serving on acting
2 duty and deployed to a location away from your home station.

3 So these are all exemptions you can claim if you wish.

4 There's also certain excuses that some of you may have
5 that make serving on a jury a particular hardship this week, if
6 you have a doctor's appointment that's important and you can't
7 reschedule it; or you have prepaid vacation plans that you have
8 going on you need to, let me know. I'm not going to know unless
9 you tell me.

10 The only time that I can take your excuses is here in a
11 few minutes when I give the opportunity to come up and tell me.
12 What happens every time I have a jury is they tell my Bailiff out
13 in the hall after we've gone through that process, I can't excuse
14 you then.

15 And so you need to let me know even if you think that
16 I'm going to accept the excuse or not, I'm not going to know
17 about it, if you don't tell me.

18 So those of you that are disqualified, have an excuse
19 that you wish to claim or have an exemption that you wish to
20 claim if you'll line up in the center hall -- not center hall,
21 center aisle and I'll bring you up here one at a time. Good
22 morning.

23 VENIRE PERSON: Hello. I am taking vacation.

24 THE COURT: Juror Number 9 is excused. If I excuse you
25 now or later on today, they have your excuses in case you need

1 them for work downstairs in the district clerk's office. That's
2 one flight of stairs and one elevator ride down.

3 So you're excused and you're free to go. And that's
4 Number 9. You can go out this door if you want to. 16's
5 excused. You can go out this way. Yes, sir. 37's excused. If
6 you want you can go out this way. Number 60 is excused. You can
7 go out there. Wait just a second. 92's excused. Good morning.
8 198's excused. Good morning. 189's excused. 225 excused.
9 Thank you, ma'am. 22's excused. Yes, sir.

10 VENIRE PERSON: I've got tickets to go on vacation.

11 THE COURT: Enjoy your vacation.

12 VENIRE PERSON: I have got a daughter that I take care
13 of.

14 THE COURT: I'll excuse you -- 76 is excused. I hope
15 she'll be okay. Number 76. 98's excused.

16 VENIRE PERSON: I never changed my driver's license.

17 THE COURT: 34 is excused. 212 is excused. 198 is
18 excused. 172 is excused.

19 Okay. Ladies and Gentlemen, what we're going to do
20 right now is I want you to make sure your card is filled in, and
21 then I want you to hand your card in to the Bailiff.

22 Once you hand your card in don't leave the courtroom --
23 one of y'all go wait outside the door -- one of y'all go wait
24 outside.

25 Once you hand your card into the Bailiff, they're going

1 to make copies of it.

2 Y'all are on recess this is break for y'all it takes a
3 while for them to recopy them -- so I usually give you about 45
4 minutes.

5 So let's say return into the courtroom at 10:15 or you
6 can wait in the courtroom.

7 If you want to go smoke, if you want to do whatever you
8 want to do, but be back in this courtroom at 10:15.

9 We're going to seat you in a different order, so seat
10 yourself at the back when you come back in. Okay. Hand your card
11 in you're excused until 10:15.

12 (Venire panel out)

13 (Outside presence of the venire panel)

14 STATE: I've had numerous amendments to the indictment
15 and we need to make sure that it's correct.

16 Because I think that the last one that I did -- yeah
17 see, I forgot to change the language in the order. So the order
18 language needs to reflect the motion language. Caused bodily
19 injury to Donald Myer -- it's Myers or Myer?

20 MR. CARGILL: Myers.

21 STATE: Myers. By biting Donald Myers and the
22 Defendant knew that Donald Myers was a public servant to wit:
23 Anderson County Sheriff's Deputy and that Donald Myers was
24 lawfully discharged in an official duty to wit: effectuating
25 arrest or detention of said Defendant.

1 THE COURT: Is it -- where is that not the original --

2 STATE: No, ma'am.

3 MR. CARGILL: No.

4 THE COURT: Did --

5 MR. CARGILL: It's changed several times.

6 THE COURT: But it is going to be --

7 STATE: It needs to be changed on the face of the
8 indictment.

9 THE COURT: It needs to be changed on the actual face
10 of the indictment -- what I want -- is there going to be any
11 objection to that?

12 MR.CARGILL: No.

13 THE COURT: What I want you to do is I want you to do
14 it, then I'll initial it.

15 STATE: Yes, ma'am.

16 THE COURT: Because I'm -- I'm -- it's going to be
17 easier than me trying to flip back and forth. I forgot this --
18 this -- is that it?

19 STATE: Yes, ma'am.

20 THE COURT: Wow, that's -- I can't trying to flip to
21 the first page. That is it.

22 (Venire panel in courtroom.)

23 Ms. Staples is going to call your name again. We'll be
24 seating you in a different order, so if you'll listen carefully
25 for your name.

1 CLERK: If you will, as your name is called, please
2 come forward.

3 (Venire panel names called)

4 THE COURT: Welcome back to the courtroom, Ladies and
5 Gentlemen.

6 Before we begin, I want to tell you thank you for your
7 jury service here today. I don't spend a lot of time talking to
8 you about how much we appreciated you. I figure you got other
9 things you'd rather be doing with your time and it's somewhat
10 singing to the choir, because you know how important it is, or
11 you wouldn't be here.

12 The jury system as you think of in America, it may not
13 be perfect, but it is the best system of the world. And it does
14 not work unless you have regular citizens of Anderson County that
15 show up and do their duty.

16 I know there's other things you'd rather be doing today
17 -- probably just about anything.

18 But it's important process, it's important to the
19 people that are here before you today. I appreciate your
20 courtesy and patience this morning. What we're about to begin
21 right now is the phase of the trial -- it's known as the Voir
22 Dire phase of the trial. This is a French term and it means to
23 see and to tell.

24 It's during this phase of the trial, and only during
25 this phase of the trial that you can directly communicate with

1 the attorneys in this case.

2 The purpose of the Voir Dire is to determine whether
3 any of you have feelings or beliefs that would in any way prevent
4 you from being a fair and impartial juror in this case.

5 It might be that you could be a great juror in another
6 case but for some reason you might not be the best juror to sit
7 on this case.

8 Let's say one of the parties is kin to -- it's your
9 brother or your sister -- I guess that could be good or bad
10 depending on the relationship, but you'd probably have an opinion
11 and we want you to come in here without any opinion as to the
12 facts of the case, because we'll get all that information.

13 If you're asked a question that you think may embarrass
14 you or put you on the spot in front of the panel, simply advise
15 the attorneys that you wish to answer it in front of the Court
16 and we'll bring you up at a later time.

17 Nobody's trying to embarrass you or pry into your
18 personal affairs. So if you're asked something, and don't think
19 in this type of case you're going to be, but if you are simply
20 advise the attorneys and we'll take it up.

21 Before we begin Voir Dire, let me go over some
22 preliminary instructions with you. If you're chosen for the jury
23 you'll be given other instructions as the case goes on. First of
24 all, don't mingle with or talk with the lawyers, the witnesses,
25 the parties, or any other person who might be connected with or

1 interested in this case. They have to follow these instructions,
2 you'll understand it when you do so as well. That means until
3 you're excused from the jury. Do not accept or give to any of
4 these persons any favors however slight -- such as coke or
5 refreshment.

6 Don't discuss anything about this case or mention it to
7 anyone whatsoever including your wife or husband. Don't mention
8 to any one or in your hearing until you're discharged from the
9 case. If someone attempts to talk to you about the case, please
10 advise the Court at once. Just don't talk about the facts of the
11 case until you're excused from the jury panel.

12 During the Voir Dire process, the attorneys in this
13 case are going to direct questions to you. My court reporter who
14 is sitting here in the front, Ms. Waldrip, has probably the
15 hardest job in the courtroom because she has to take down
16 everything we say. And it includes you all out there as well.
17 And so if you're asked a question you want to answer out loud --
18 like "yes"" or "no", rather than shaking or nodding your head
19 then that will help Ms. Waldrip there.

20 You're also given numbers, we have to keep track of who
21 you are. And so if you're called upon to answer a question, if
22 you'll hold your number up until they notice your number and then
23 they'll call upon you at that time.

24 Those of you towards the back, if you've ever sat on a
25 jury panel before, you'll understand you're really not selected

1 you're deselected.

2 In other words, if you talk and you say something they
3 think you probably not be the best juror for them. You are not
4 selected as a juror.

5 The way it works is, those of you in the first couple
6 of rows have a lot more -- you're in the zone so to speak.

7 Those of you towards the back are less likely to be
8 reached, so if they don't direct questions to you personally,
9 don't get your feelings hurt, just sit and listen quietly and
10 they'll call upon you if they need to. Just so it will be real
11 efficient use of everybody's time.

12 The case that we're going to try this week is the State
13 of Texas vs. Richard Gross, Cause Number 32004. Mr. Gross is
14 charged with assault of a public servant. The attorneys in this
15 case are going to be Ms. Allyson Mitchell, who is the elected
16 District Attorney.

17 STATE: Good morning.

18 THE COURT: And she's going to be assisted by Mr. Brian
19 Evans.

20 STATE: Good morning.

21 THE COURT: Mr. Gross is sitting over here to my left.
22 Mr. Gross, would you please stand up.

23 This is Mr. Richard Gross, and he's represented by Mark
24 Cargill also here in Anderson County.

25 So that's the people that you're going to be hearing

1 from today.

2 MR. CARGILL: Good morning.

3 THE COURT: But before we begin, I need to give a
4 couple of instructions to you on trial and how it works.
5 Thereafter, you'll just respond to the attorneys.

6 First of all, Mr. Gross sits here today is presumed to
7 be an innocent man. All persons that appear for a trial in the
8 state of Texas are presumed to be innocent.

9 The fact that he may have been arrested or indicted or
10 other words charged with the offense gives rise to no inference
11 of guilt at his trial.

12 The State is required to prove the Defendant's guilt
13 beyond a reasonable doubt. The Defendant in this case, Mr.
14 Gross, as well as every person here has certain constitutional
15 protections.

16 One of those would be that he has the right to remain
17 silent and not give testimony that's his right -- that's his
18 right -- that's your right -- he has that right. You're not to --
19 and I don't know if he's going to or not -- that's his decision
20 with his attorney, not ours.

21 Failure to testify cannot be taken as evidence of guilt
22 or considered for any reason.

23 Normally, I would go over the range of punishment in
24 this case with you, you're not going to be called upon to decide
25 the punishment.

1 You have one job and one job only, that's to decide
2 guilt or innocence -- or guilt or not guilty. The punishment
3 will be determined by the court at a later time. There's no need
4 for you to be concerned about that.

5 So throughout the trial, now and throughout the trial
6 the State always gets to go first and that's how the system
7 works, and they have the burden of proof.

8 Then the Defense gets to go so in this case.

9 I'm going to turn it over to the State. And the State
10 may proceed whenever you're set up and ready.

11 STATES VOIR DIRE

12 STATE: Thank you, Your Honor. Good morning. Thank
13 y'all for being here. I agree with the Judge, as well as Mr.
14 Cargill, I'm sure he would agree with me, we can't do our job and
15 Mr. Richard Gross can't have his due process without your
16 presence here today. We're lucky enough to live in a country
17 that people are presumed innocent until proven guilty.

18 And the only way that we're able to present evidence
19 and to prove that is by having a jury to consider it. So thank
20 you so much for being here.

21 As the Judge told you, I am Allyson Mitchell, I am your
22 criminal district attorney, I've been on the job for six months
23 and a few days, and I absolutely love it.

24 And I thank you for giving me the opportunity to be
25 here and to seek justice or what I believe to be justice in our

1 county.

2 I know a little about your so I'll tell you a little
3 bit about myself. I'm 40 years old and no I'm not lying, come
4 October I'll have to say I'm 41 or 40 plus 1. I'm single, I
5 accept blind dates, set ups with nephews, cousins, whoever. And
6 I was born and raised here in Palestine. I'm a 1993 Palestine
7 High School graduate. So Neches, Cayuga, Elkhart, don't hold it
8 against me. Back in the '90's, we all got along real well.

9 I'm going to be assisted today by Mr. Brian Evans.
10 Brian is a misdemeanor attorney in my office. He has been a
11 prosecutor for six months and a few days. And so I like it when
12 I have people in my office that don't have as much experience as
13 say me or some of our other fellow prosecutors to help with the
14 cases.

15 My mom always taught me the best way is to be exposed
16 to something to learn from it. So you're going to be hearing
17 from Brian some during this trial as well. Alicia up here is
18 our paralegal. She's actually the brains of this operation,
19 without her we wouldn't know where we're supposed to be. And if
20 she's the brain, Anisha Thompson, she's our enforcer, she's our
21 investigator -- so she definitely keeps us all in line. Judge
22 Evans introduced you to Mark Cargill. Does anyone on the right
23 side know Mr. Mark Cargill?

24 VENIRE PERSON: This side?

25 STATE: Yes, ma'am. My right. I did go to class in

1 high school, but I think this is right. Yes, ma'am. Number 5,
2 Mrs. Cruz, how do you know Mr. Cargill?

3 VENIRE PERSON: He's my attorney.

4 STATE: He's your attorney?

5 VENIRE PERSON: Yes, ma'am.

6 STATE: All right. Knowing the fact that he is
7 representing the Defendant, Richard Gross, in this trial --
8 obviously, Mr. Gross have a difference of opinions about what
9 happened in his case and knowing that Mark represents him would
10 you be able to sit and fairly listen to all the evidence?

11 VENIRE PERSON: Yes, ma'am.

12 STATE: So you wouldn't hold -- you wouldn't give a
13 little favoritism towards Mark; would you?

14 VENIRE PERSON: No.

15 STATE: I wouldn't ever either, so I'm glad to hear
16 that. All right. Second row, Number 23. Yes, ma'am. Ms.
17 Phillips?

18 VENIRE PERSON: Yes, our boys played together, I've
19 known him for a long time.

20 STATE: Would that you hold that against the state that
21 you know Mr. Cargill that you have a -- I guess a friendly
22 relationship with him, I would say. Would you be able to keep us
23 in the same playing field?

24 VENIRE PERSON: Probably.

25 STATE: I'm like the Mafia.

1 VENIRE PERSON: Yes.

2 STATE: Yes. All right. An unfortunately, probably
3 and maybe and sort of they don't work in the court of law -- it's
4 yes or no. We're always like the enforcers of the Mafia, we put
5 your feet in concrete, but I won't throw you in the Trinity
6 River. I throw you in the splash pad at Ramey park. But I have
7 to have commitments, so thank you, Ms. Phillips.

8 Anybody else on the second row -- anybody else on the
9 first row, didn't miss anybody else?

10 Third row, right side? Fourth? Yes, ma'am, you're
11 Number 38; aren't you -- 53 -- Ms. Bailey?

12 VENIRE PERSON: Yes.

13 STATE: How do you know Mr. Cargill?

14 VENIRE PERSON: I've taught three of his sons.

15 STATE: Okay. Would that hold -- would that make you
16 favor him over the state -- would he start with a leg up?

17 VENIRE PERSON: No.

18 STATE: Okay. Thank you so much. Anybody else on the
19 right side?

20 Boy, you people on the back row, y'all just take a
21 break. Y'all relax back there. You people in the front row,
22 sweat.

23 Left side, who knows Mr. Cargill on the left side? All
24 right. Mr. Munoz, Number 41, how do you know Mr. Cargill?

25 VENIRE PERSON: He's my attorney.

1 STATE: Would you hold that against me that Mr.
2 Cargill's your attorney. Would you think that everything he says
3 or question he asks is higher to you than anything I would ask or
4 say?

5 VENIRE PERSON: No, ma'am.

6 STATE: Thank you. Number 58, yes, Ms. Gold?

7 VENIRE PERSON: I taught his sons.

8 STATE: Same question you've heard everybody -- would
9 you be able to be fair and impartial? Anybody else on the left
10 side? All right. Did I miss anybody? Mark, you're pretty
11 popular.

12 Does anybody know Richard Gross, right side? Does
13 anybody know Mr. Gross on the right side? On the left side?
14 Yes, Number 26?

15 VENIRE PERSON: I'm a jailer.

16 STATE: Okay. Let's just stop it there, we'll get to
17 you. Okay. Thank you. Anybody else? Okay.

18 Now, the Judge told you that Mr. Gross stands before
19 you innocent until proven guilty, right? So how many people in
20 here know -- well, let me back up. So that means he has a right
21 not to testify. The whole burden is on Brian and I to show y'all
22 what we believe Mr. Gross did.

23 And we do that through evidence. Now, Mr. Gross does
24 not have to say one single solitary word. Mr. Cargill doesn't
25 have to ask any questions, but of course, my experience with Mr.

1 Cargill is that he likes to ask questions, so I doubt that would
2 be the case here. But they have to say anything at all. Let's
3 see here, Ms. Molder, Number 12, why do you think somebody might
4 not want to testify?

5 VENIRE PERSON: Me?

6 STATE: Yes, ma'am.

7 VENIRE PERSON: Well, they might be nervous and say
8 something.

9 STATE: Okay.

10 VENIRE PERSON: In words, that mean one thing but they
11 said another and that's not what they meant.

12 STATE: Words stuck in their mouth. How about Ms.
13 Booker, Number 3 -- why do you think someone might not testify?

14 VENIRE PERSON: (Can't hear)

15 STATE: I can't hear you.

16 VENIRE PERSON: At the advice of the attorney.

17 STATE: At the advice of an attorney, sure, that's
18 another reason.

19 How about -- let's see here -- Ms. Hoffman, Number --
20 what are you Number 31?

21 VENIRE PERSON: I think they'd incriminate themselves
22 or being knowledgeable about the system.

23 STATE: So they think it will incriminate themselves or
24 be knowledgeable of what?

25 VENIRE PERSON: Not knowledgeable.

1 STATE: Not knowledgeable.

2 VENIRE PERSON: About certain questions they might be
3 asked by the attorneys.

4 STATE: Okay. So we asked three different people and
5 came up with three reasons.

6 Because there's several reasons why people don't
7 testify.

8 Now, our constitution says they don't have to, but you
9 personally are you going to require Mr. Gross to testify? Right
10 side?

11 First row, second, third? There's so many of you.
12 Left side?

13 Now, how many people are going to sit here and say you
14 know I know he has a right not to testify but I sure would like
15 to hear what he has to say?

16 Anybody on the right side? It's human curiosity,
17 right, Ms. Phillips? Human curiosity. But we have to set aside
18 our own curiosity and just listen to the evidence. All right.
19 Can everybody agree with me on that? Great. Thank you.

20 Judge Evans is the Judge that presides over the trial.
21 But you as jurors, the 12 that are picked, y'all are actually
22 judges too. Because you're the judges of credibility of the
23 evidence that's presented to you.

24 Well, what type of evidence -- we'll have evidence come
25 from the witness stand right here through witnesses. You'll have

1 evidence in the form of photographs, records -- so you'll have
2 live testimony, possibly videos, you know depending on the type
3 of the cases.

4 But that's what evidence and your sole job is to
5 determine the credibility of that evidence to find whether or not
6 a crime was committed beyond reasonable doubt.

7 You can observe and listen to all the evidence given to
8 you, including people's demeanors in the courtroom. What is
9 beyond reasonable doubt? Well, the legislature in their infinite
10 wisdom have taken away any sort of definition of reasonable
11 doubt. But what it basically means is you can have some doubt --
12 you just have to believe beyond a reasonable doubt that he in
13 fact committed the crime.

14 It's not whether it's a perfect case, it's not -- it's
15 whether you can consider the evidence to be proveable beyond
16 reasonable doubt. Does anybody believe that we should have to
17 prove a case 100 percent to you? Right side? Y'all are sure a
18 lively group. I know it's Monday. Right side? Left side?
19 We've all seen a lot of TV -- you've heard beyond reasonable
20 doubt before; haven't you?

21 Where are my TDCJ boys? We got some people in there
22 that got found beyond a reasonable doubt; didn't we? 2000. So
23 it's not an unattainable burden. We call it the burden of proof.
24 Don't get me wrong, but it's not unattainable. You know if we
25 had to prove it to 100 percent, we'd never have any jury trials.

1 You'd actually be a witness, and even then your story might
2 differ a little bit from somebody else's story; wouldn't it? You
3 all see things differently but you all have the common idea of
4 what happened. Okay.

5 Let's talk about what he's been charged with. He's
6 been charged with assault on a public servant -- basically, what
7 that means, a person assaulted a public servant that was
8 performing his or her duty as a public servant.

9 So what do we have to prove? We have to prove the
10 date. We believe this happened on November 19, 2014. We have to
11 show he intentionally, knowingly or recklessly -- now there's
12 fancy definitions for what those are. But they're pretty common
13 sense. Intent -- conscious, objective or desire to cause a
14 result. Knowing -- aware that the circumstances exist. Reckless
15 -- aware of but consciously disregards a substantial and
16 unjustifiable risk that the result will occur.

17 So Mr. Wright -- if I held this out to you, then what
18 you do what with it? Well, everybody could see that I was trying
19 to give Mr. Wright my pen, correct? And then I knew that I was
20 doing it.

21 Now, has anybody seen anybody be reckless before? You
22 know you're aware that -- your kids are playing with Nerf guns or
23 something and there's a crowded room and another kid gets hit.
24 Well they're being reckless in how they're shooting their Nerf
25 guns. My nephews have lots of swollen eyes from Nerf guns. So

1 that's -- everybody knows that. Well, how do you determine that?
2 Well, clearly you're not going to be in the mind of the person
3 that's doing it. So you look at their behavior and their
4 actions. You can infer from their actions. You know an assault
5 in of itself is usually a result oriented crime. So you have to
6 look at the nature of their conduct.

7 Bodily injury, we have to prove bodily injury. Mr.
8 Hill, Number 2, you think I forgot about you on the first row?
9 What do you believe bodily injury to be?

10 VENIRE PERSON: Harming someone.

11 STATE: Harming someone? Okay. Ms -- is it -- no,
12 that's the wrong list. You're Ms. Thompson. Ms. Thompson what
13 do you believe bodily injury to be?

14 VENIRE PERSON: Injury to the body.

15 STATE: Okay. Injury to the body. Our legislature
16 says it's physical pain, illness or any impairment -- you have to
17 -- I get tongue tied now and then, so I apologize.

18 Physical pain, illness or any impairment of physical
19 condition.

20 Mrs. Yarborough, can you think of an example of what
21 bodily injury might be?

22 VENIRE PERSON: Broke their arm.

23 STATE: Broke their arm -- you think that would hurt?

24 VENIRE PERSON: Yes.

25 STATE: I mean, I think the number one question is does

1 it hurt. Let's see here, Mr. Westfall, have you ever been
2 punched in the face?

3 VENIRE PERSON: Yes.

4 STATE: I have too. Did it hurt?

5 VENIRE PERSON: Yes.

6 STATE: It did; didn't it? Did it leave a mark?

7 VENIRE PERSON: Not too bad.

8 STATE: Not to bad. Who here has ever been slapped in
9 the face -- oh, I got slapped as a child. Apparently, I've got a
10 mouth. My friend, back there in the background could probably
11 tell you that. It didn't always leave a mark, but it hurt --
12 they sting; don't they? That's actually bodily injury too. If
13 somebody's has stitches or staples, you know -- we know that any
14 injury occurred. If someone told you this hurt, would you -- and
15 the evidence shows that yeah, that probably did hurt -- that's
16 the kind of thing that you would have to consider bodily injury
17 for that person.

18 And we have to show to you that the injury happened in
19 the commission of an assault. Well, what does the commission of
20 the assault mean? That the injury was caused by something. So
21 Mr. Willingham -- no Mr. Westfall, you said you got hit in the
22 face before. What hit you in the face? A fist?

23 VENIRE PERSON: Yes.

24 STATE: Okay. How about you Mr. Willingham, ever been
25 struck or injured in anyway?

1 VENIRE PERSON: Yes.

2 STATE: By what?

3 VENIRE PERSON: A pipe.

4 STATE: A pipe? You work in the oilfield?

5 VENIRE PERSON: No.

6 STATE: Oh, that sounds like that hurts.

7 VENIRE PERSON: It did.

8 STATE: My cousin worked -- my family has been in the
9 oilfield business here for many decades and my cousin had a pipe
10 come back and knock all his teeth out. So he's having to hear
11 something with -- oh, it's bad -- everything we hear something
12 with a pipe it just chills me on the spot.

13 Let's see here -- anybody been kicked before? My
14 brother used to kick the snot out of me. How about we said slap,
15 has anybody been head butted before -- head butted by your
16 children -- whether they admit to you or not -- that hurts too;
17 doesn't it?

18 Has anybody been bitten before? Anybody bites? We
19 probably all did in preschool; didn't we? Can those cause pain?
20 Yeah, they can. So injuries can be from anywhere. You know, it
21 could be a knife, it could be a gun, it could be a fist, a foot,
22 a mouth or a head. It can be many things.

23 The victim -- we have to prove that the victim was a
24 public servant. Well, what's a public servant? Who are my
25 teachers? Y'all are public servants. Did y'all know that?

1 Y'all probably did. TDCJ, y'all are public servants. I'm a
2 public servant, the Judge is a public servant. People that
3 basically the public interest or are protective of the law.
4 Well, how can we tell in this case? Well, we've alleged that the
5 victim is an Anderson County Sheriff's Deputy. So he's going to
6 have on his uniform and have on his badge. So we have to prove
7 to you that he's an Anderson County Sheriff's Deputy. And we
8 have to prove to you that the deputy was discharging his official
9 duty as a public servant.

10 Well, what type of duty -- I know that someone has been
11 -- a Sergeant police in Dallas -- who is that? Number 55. Okay.
12 Mrs. Franklin, what type of duties does your husband have as a
13 peace officer -- police officer?

14 VENIRE PERSON: He works all the pawn shops.

15 STATE: Yes.

16 VENIRE PERSON:

17 STATE: Okay. That's kind of cool. But before has he
18 worked the streets?

19 VENIRE PERSON: Yes.

20 STATE: Has he arrested someone?

21 VENIRE PERSON: Yes.

22 STATE: Has he detained someone?

23 VENIRE PERSON: Yes.

24 STATE: Has he investigated crimes before?

25 VENIRE PERSON:

1 STATE: He's not an investigator, right?

2 VENIRE PERSON:

3 STATE: Okay. But other police officers you know they
4 investigate crimes. You know it's just like we would think what
5 their normal work would be. Of course, my normal job is to stand
6 up here and bore y'all to death with my incessant talking.

7 Now, part of his job is to go out and police our
8 community.

9 Now if the witnesses in our case or the victim as we
10 allege is Don Myers, Sr. He is an Anderson County Sheriff's
11 Deputy and Deputy Taylor right there -- Number 26 is shaking his
12 head. So I know that you know him. Anybody else know Deputy Don
13 Myers? Number 7, yes, sir. Mr. Willingham?

14 VENIRE PERSON: I used to work at the Sheriff's Office.

15 STATE: You did?

16 VENIRE PERSON: At the jail.

17 STATE: Okay. So do you know anything about this case?

18 VENIRE PERSON: No, I don't.

19 STATE: Okay. Being a former worker at the Sheriff's
20 Office -- did you leave on good terms?

21 VENIRE PERSON: Yes.

22 STATE: Okay. Sorry. I have to ask. Would the fact
23 that you worked at the Sheriff's Office and this is clearly a
24 case that involves the Sheriff's office would you be able to be
25 fair and impartial to Mr. Gross and listen to all the evidence?

1 VENIRE PERSON: Yes.

2 STATE: Okay. Thank you. Anybody else? Yes, ma'am.
3 Number 5, Ms. Cruz?

4 VENIRE PERSON: I know him at the school when he worked
5 for the DARE.

6 STATE: At school the DARE -- okay -- would that affect
7 your ability to sit on this jury?

8 VENIRE PERSON:

9 STATE: Thank you so much, Ms. Cruz. Yes, sir. Number
10 4, Mr. Waldrip?

11 VENIRE PERSON: I used to work here as the IT Director
12 and I knew him.

13 STATE: Okay. Would that affect your ability to sit as
14 a fair and impartial juror?

15 VENIRE PERSON: No.

16 STATE: Thank you. Anybody else on the first row?
17 Second row, right side? Third row? Fourth? Anybody in the
18 peanut gallery in the back? No? All right. Let's -- yes, sir,
19 Mr. Wright?

20 VENIRE PERSON: I know his family.

21 STATE: Would that affect your ability to sit as a
22 juror to be fair and impartial to Mr. Gross?

23 VENIRE PERSON: No, ma'am.

24 STATE: Thank you. Anybody else on the first row?
25 Second row? Yes, Number 26 -- Number 25, yes, sir, you do? You

1 are Mr. Fagan, correct?

2 VENIRE PERSON:

3 STATE: How do you know --

4 VENIRE PERSON: I have them called out a few time on my
5 brother and stuff. Arrested one time.

6 STATE: Is your brother, James?

7 VENIRE PERSON: Yes.

8 STATE: Okay. We know each other.

9 VENIRE PERSON:

10 STATE: Would that affect your ability to sit as a
11 juror in this case?

12 VENIRE PERSON: No, ma'am.

13 STATE: Okay. Anybody else on the second row? Third?
14 Fourth? Fifth? Okay. Oh, yes, Number 82. You are definitely
15 safe, but how do you know him?

16 VENIRE PERSON: I go to church --

17 STATE: And by some strange reason if you ended up on
18 the first row would that affect your ability to sit as a juror?

19 VENIRE PERSON: No.

20 STATE: Would that affect your ability to sit as a
21 juror?

22 VENIRE PERSON: No.

23 STATE: Thank you so much. And we also plan on calling
24 Mike Mitchell. Mike is not related to me but I think he has a
25 great last name. Anybody know Mike Mitchell -- on the right

1 side? Yes. Yes, ma'am, Ms. Denmon, how do you know Mike?

2 VENIRE PERSON: I graduated with him.

3 STATE: Would you hold that against him if he
4 testified? Would you hold him in a higher light than any of the
5 other people testifying or the other evidence?

6 VENIRE PERSON: No.

7 STATE: Yeah, Thank you so much. Anybody else? Yes,
8 sir. Number -- what number are you -- you're Number 66 -- there
9 we go -- Mr. Bales or Bates?

10 VENIRE PERSON: Harris.

11 STATE: Oh. I thought -- Harris -- that's Mr. Bales
12 next door. How do you know Mike?

13 VENIRE PERSON: We worked together at the Sheriff's
14 office.

15 STATE: Would that affect your ability if you were
16 selected as a juror to sit fairly --

17 VENIRE PERSON: No.

18 STATE: Thank you. Anybody else on the right side?
19 Left side? Mike Mitchell? Nobody knows Mike? Okay. That's
20 good.

21 I'm also going to call Trooper Len Hubert. Who's been
22 pulled over by Len? I have. Who's gotten a ticket from Len? I
23 have. Anybody else? No, I'm the only -- he must target me.
24 Anybody know Len Hubert? Yes, sir. Number 7, Mr. Willingham?

25 VENIRE PERSON: Well, I'm a volunteer fire department,

1 he's been on a couple of wrecks that I was on.

2 STATE: Would that affect your ability to sit as a
3 juror?

4 VENIRE PERSON: No, ma'am.

5 STATE: Anybody else -- yes, sir, Mr --

6 VENIRE PERSON: Our sons are classmates.

7 STATE: All right. Would that affect your ability to
8 sit as a juror?

9 VENIRE PERSON: No.

10 STATE: Mr. Waldrip?

11 VENIRE PERSON: As IT Director I worked with him a
12 little bit.

13 STATE: Would that affect your ability to sit as a
14 juror?

15 VENIRE PERSON: No.

16 STATE: Anybody else on the right side? Left side?
17 76, yes, sir. Mr. Miller?

18 VENIRE PERSON: He's a friend.

19 STATE: Would that affect your ability to sit as a
20 juror if you made it on the jury to be fair and impartial? No?
21 Anybody else on the left side? Yes, ma'am. Ms. Johnson?

22 VENIRE PERSON: He's my mom's neighbor.

23 STATE: Your mom's neighbor?

24 VENIRE PERSON: Yes.

25 STATE: Would that affect your ability to sit as a

1 juror you could listen to him testify and not hold him -- his
2 testimony outweigh anybody else?

3 VENIRE PERSON: Yes.

4 STATE: Thank you, so much. Anybody else? All right.
5 Ms. Cruz, you're a TDCJ officer, correct?

6 VENIRE PERSON: Employee.

7 STATE: You're an employee?

8 VENIRE PERSON: Administrative.

9 STATE: You're administrative. Does anybody work out
10 in the unit itself on the runs on the floor? Nobody? Who said
11 Houston? Okay. Number 45. So you worked out at TDCJ. Were
12 there certain things that you knew as a TDCJ correctional officer
13 that you had to be aware of your surroundings?

14 VENIRE PERSON: Yes.

15 STATE: Did you assume some of the risk when you became
16 a correctional officer?

17 VENIRE PERSON: Yes, ma'am.

18 STATE: And if you were injured in the line of your job
19 would you think that person should be held accountable?

20 VENIRE PERSON: Yes, ma'am.

21 STATE: Even though you were a correctional officer and
22 you knew the risks of your job?

23 VENIRE PERSON: Yes, ma'am.

24 STATE: Does everybody see what I'm asking him? Does
25 anybody disagree with me? You know just because you're a

1 correctional officer does that mean if someone hits you or does
2 something to you that they should be excused from that behavior
3 just because that person's a correctional officer or a peace
4 officer? Should we all be held accountable for our actions? We
5 all should, right?

6 And I think it's fair to say that our officers assume
7 certain risks; do they not? Their jobs are inherently dangerous
8 by itself. But just because they assume the risk doesn't mean
9 that people shouldn't be held accountable; does it? Mr. Ruiz?
10 Does it?

11 VENIRE PERSON: No.

12 STATE: No? Anybody disagree with me? You can. I
13 promise you people disagree with me all day long. Okay. Let's
14 talk about use of force. When I say use of force, Mr. Williams,
15 what do you think I mean by that?

16 VENIRE PERSON: Get violent.

17 STATE: You get violent. Okay. Can you think of
18 certain situations where violence might have to occur?

19 VENIRE PERSON: Yeah, when somebody's trying to -- if
20 you're a peace officer and somebody's trying to take you down you
21 got to take them down and put them in cuffs --

22 STATE: Okay.

23 VENIRE PERSON: Take them down.

24 STATE: And let's see here, Mrs. Brewer. If you --
25 when I say use of force what do you think that means?

1 VENIRE PERSON: I agree with what he said.

2 STATE: Okay. Do you -- let's see here -- Ms. Tidlow,
3 do you believe that with the use of force that maybe you should
4 try to do things to prevent it from happening if possible?

5 VENIRE PERSON: If someone is using their force against
6 who?

7 STATE: Before a police officer or a correctional
8 officer decides to use force to stop a situation, do you think
9 attempts should be made to try to settle it before any other type
10 of force is used?

11 VENIRE PERSON: Yes.

12 STATE: You do?

13 VENIRE PERSON: Yes.

14 STATE: Okay. And what types of ways can that happen?

15 VENIRE PERSON: Try to talk them down.

16 STATE: Try to talk them down? And Ms. Womack, do you
17 agree with Ms. Tidlow?

18 VENIRE PERSON: Yes.

19 STATE: So talking them down might be a good
20 opportunity? And Mr. Bryant, what happens when they don't
21 listen?

22 VENIRE PERSON: Got to use the force.

23 STATE: Got to use the force. Okay. So there comes a
24 point that sometimes you have to use force. What types of ways
25 -- when I say use of force, what types of force comes to mind?

1 VENIRE PERSON: Just trying to restrain them.

2 STATE: Trying to restrain them. And Mr. Dukes, did
3 you ever -- whoa that chair is moving -- any tear gas when you
4 were in TDCJ?

5 VENIRE PERSON: Not tear gas.

6 STATE: Just gas, gas?

7 VENIRE PERSON: Yes.

8 STATE: Okay. So gassing someone would be a way to try
9 to gain control of them; would it not? And Mrs. Sandler, how
10 about tasers?

11 VENIRE PERSON: Yes.

12 STATE: We see a lot of tasers in the news today; don't
13 we? Is that one way to gain control of someone?

14 VENIRE PERSON: Yes.

15 STATE: One of them? What's another way? What's
16 another way -- do you know of another way?

17 VENIRE PERSON: Firearms.

18 STATE: I'm sorry, I couldn't hear you?

19 VENIRE PERSON: Firearms.

20 STATE: Firearms, yeah, but that would only be the
21 extreme situation? Yeah, if a weapon was pulled on the officer
22 themselves. How about -- let's see here -- Ms. Reed, what's
23 another way that could be a use of force -- what would the force
24 part be?

25 VENIRE PERSON: Trying to find out if they are lying.

1 STATE: What do you mean?

2 VENIRE PERSON: If they are saying something --

3 STATE: Okay. Okay. What about tackling them or
4 trying to get them restrained -- is that another way?

5 VENIRE PERSON: Yes.

6 STATE: Why do we have to use use of force sometimes?
7 Mr. Holland? Why do you think we have to use force sometimes in
8 these situations?

9 VENIRE PERSON: If they don't listen to your initial
10 warning.

11 STATE: Sometimes it just results -- Mr. Porter, do you
12 agree -- Number 49?

13 VENIRE PERSON: Yes.

14 STATE: Does anybody have a family member who is ever
15 been arrested for assault? I do. My cousin went to prison, I
16 wish he was still there. Okay. Mr. Dukes, you have Number 20 --
17 no, what number are you -- Mrs. Ellis? You have?

18 VENIRE PERSON: Yes.

19 STATE: Okay. Anybody else? Number 21, Ms. Tidlow, 84
20 -- anybody else? Yes, ma'am. And you're Ms -- you are --You
21 have?

22 VENIRE PERSON: Yes.

23 STATE: Okay. See I got two lists there's so many of
24 y'all. Would the fact that y'all have a family member you know
25 that's been arrested for assault would that affect your ability

1 to sit as jurors on this case knowing that this is an assault
2 case? Can you put your personal experiences behind?

3 VENIRE PERSON: Yes, ma'am.

4 STATE: Ms. Ellis?

5 VENIRE PERSON: Yes.

6 STATE: And Ms. Wise?

7 VENIRE PERSON: Yes.

8 STATE: Anybody else on the jury have that situation?
9 Yes, oh, Ms. Tidlow, I forgot. I'm sorry. Would you be able to
10 set that aside?

11 VENIRE PERSON: Yes, ma'am.

12 STATE: Thank you. Has anyone ever had a family member
13 be incarcerated in TDCJ? I told you I had a -- can you set aside
14 your personal experiences with that family member and just look
15 at the facts for Mr. Gross and the evidence in his case? Does
16 anybody -- Ms. Thompson, your husband is a preacher, correct?
17 Where's he a preacher at?

18 VENIRE PERSON: St. James Baptist Church.

19 STATE: St. James Baptist Church. We have God's law
20 and we have man's law; do we not?

21 VENIRE PERSON: Yes.

22 STATE: Are you able to separate the two?

23 VENIRE PERSON: Well, they sort of --

24 STATE: They go together a little bit; don't they?

25 VENIRE PERSON: Yes.

1 STATE: Okay. All right. But are you able to sit in
2 judgment of another person based off of man's laws?

3 VENIRE PERSON: I don't want to judge someone, because
4 I can't stand in judgment but if presented with evidence then--

5 STATE: Yeah. Because the judging I'm talking about is
6 whether they broke the law or not. And could we have society
7 without law?

8 VENIRE PERSON: No.

9 STATE: Okay. So --

10 VENIRE PERSON: Well--

11 STATE: It'd be kind of crazy; wouldn't it?

12 VENIRE PERSON: Yes.

13 STATE: So when we have people that break our laws is
14 it right to punish them?

15 VENIRE PERSON: Every one should be held accountable.

16 STATE: Everyone should be held accountable. Did
17 everybody hear what the conversation that Ms. Thompson and I had?
18 Does anybody believe I'm sorry, Allyson, I've listened to you go
19 on and on but I just cannot sit listen to facts and evidence and
20 tell someone they're guilty or not guilty of committing a crime?
21 It happens. It's okay. Anybody? Awesome.

22 Now I'm going to sit down, because I know the Judge is
23 staring at me -- is she staring at me? Yeah. I kind of figured
24 she was.

25 THE COURT: You have a time limit just cause they all

1 talk and talk and talk --

2 STATE: So is there anything that I haven't asked you
3 that you want to tell me or want to say? Right side? Left side?

4 You know -- and here's another example, I'll give
5 actually it's stolen from Mr. Evans here, you know, you get ready
6 to come to jury duty and you can't find your purse and you're
7 running around trying to find your purse and your kid is you know
8 -- made a mess in the kitchen, you have to clean it up.

9 You find your purse, you find your car keys, you come
10 outside and your vehicle is not there. Somebody stole it. You
11 call your husband to come back and get you -- you get a ride to
12 the courthouse, you run into the courtroom and you sit down on
13 the bench and the Judge says, Ladies and Gentlemen, thank you for
14 being here today the case we're going to try is theft of a
15 vehicle.

16 Do you think that you would be a good juror at that
17 time -- on that case?

18 VENIRE PERSON: No.

19 STATE: The State might think you'd be awesome, but we
20 want to be fair too. So does anybody feel that way about assault
21 cases? Okay. Great.

22 Well thank y'all very much. I certainly do appreciate
23 it. And I look forward to working the trial with you.

24 THE COURT: Mr. Cargill, when you're ready.

25

DEFENSE VOIR DIRE

1
2 MR. CARGILL: Thank you, Your Honor, Counsel. Let me
3 reintroduce myself again. I'm Mark Cargill and I am a defense
4 attorney and I represent Mr. Gross.

5 And Mr. Gross is from the Elkhart area here in Anderson
6 County. And I represent Mr. Gross in this charge of assault
7 against a public servant.

8 I usually like to start off by asking a couple of group
9 questions, so I'm going to ask the whole entire group -- who
10 knows for a fact right now that Mr. Gross is not guilty? Let's
11 see -- we got a few out there. Yes, they've all listened to what
12 the Judge and the District Attorney's office has already said
13 and they -- everybody's card should be indicated yes, we know
14 he's not guilty.

15 How do we know that? We know that because in order to
16 be found guilty in the state of Texas is that the State has to
17 prove on the day of trial each and every element beyond a
18 reasonable doubt. That's exactly the definition that's going to
19 be given to you at the end in what's called a charge.

20 And I know attorneys use these different words,
21 terminology but a charge is simply the jury's instructions. So
22 in the jury's instructions it's going to list two jobs.

23 Job Number 1 it's going to say you're the sole judge of
24 the credibility of the witnesses and the other evidence and the
25 weight that should be put on that evidence. That's job Number 1.

1 Job Number 2 that you take that evidence and you apply
2 it to the law that the Judge gives you in the charge and the law
3 will follow did the State prove each and every element beyond a
4 reasonable doubt? If so, the instructions will say you must find
5 Mr. Gross guilty. Then in the reverse it says, that if the State
6 did not prove each and every element beyond a reasonable doubt,
7 you must find Mr. Gross, not guilty. So those are the only two
8 jobs the jurors have.

9 First job, judging the weight and the credibility of
10 the witnesses. What I want to do is make sure that everyone is
11 at least up to the job of being a juror.

12 So let's ask this. Anybody on this side have an issue
13 with having to sit here and then go back there and listen
14 carefully, intently and recall the testimony and the witnesses
15 that are presented in the witness stand or documents that are
16 presented before and judge the credibility.

17 And that means you can believe some of what's said, all
18 of what's said or none of what's said. And you do that by using
19 your common sense, by looking at the mannerisms of the witness,
20 by looking at the facts together and the circumstances. Looking
21 maybe at either the bias or prejudices that the witness may have
22 against a certain person or for a certain person.

23 Does anybody on this side not willing to follow that
24 first job or that first duty -- no, I don't want to sit there and
25 try to be a truth teller or see who's telling the truth or put

1 things together or judge the credibility of anybody or any
2 testimony?

3 Anyone on this side not willing to do that first job?
4 Because you got to be willing to do both jobs.

5 Anybody on this side saying no, I'm not up to that.
6 That's not -- I'm not going to sign up for that -- I can't do
7 that -- I'm not a judge of deciding an individual or deciding the
8 credibility of documents that are presented? Anybody on this
9 side say, no, I'm not ready-- Okay. It appears everybody is
10 signed up, ready and willing for Job Number 1 of a juror.

11 Job Number 2 -- these are the only two jobs you have in
12 this trial. Job Number 2, it's a little more complex, so I'll
13 break it down. The job goes where you must find that the State
14 has proven each and every element beyond a reasonable doubt.

15 Well, element -- that's another one of those words that
16 attorneys use and the law uses that doesn't always necessarily
17 have a common meaning.

18 And I like to use an example to show what we mean by
19 elements. Mrs. Brewer, have you made a cake by scratch before?

20 VENIRE PERSON: Yes.

21 MR. CARGILL: Okay. Let's say we're making a cake by
22 scratch. Okay. And you're calling out the ingredients and I'm
23 over here in this imaginary pantry over here. Okay. And you
24 tell me that you need I don't know a cup and a half of sugar and
25 a teaspoon of salt.

1 And I go over here to the pantry and I look and you
2 know what the sugar is way up there. And I'm not as tall as my
3 opponent here, obviously. So I would want to go get a ladder,
4 but the salt is real convenient. So I just give you a cup and a
5 half of salt and a teaspoon of salt. Don't give you any sugar.
6 You going to want to eat that cake? No. Nobody's going to want
7 to eat that cake. Why? The recipe wasn't followed.

8 And that's basically exactly what we're talking about.
9 The legislature says, okay, here's the laws. And in those laws
10 there's ingredients in which are called elements in the charge --
11 or we call them elements.

12 And that's basically all it is. And just like the cake
13 you have to have this one, this one, this one, this one, this
14 one, this one, this one -- what if you leave out an ingredient,
15 Ms. Brewer -- does this recipe turn out?

16 VENIRE PERSON: No.

17 MR. CARGILL: No, it doesn't. Same thing.

18 In order to convict somebody the state wants to convict
19 somebody they get to decide what charge they're going to make and
20 then the legislature says, if you're going to make that charge
21 you must have this, this, this, this, this, this and this.
22 That's simple. So that's what they mean by each and every
23 element.

24 Now, let's talk about how much we have to have. Cause
25 like in the cake example you have to have a cup of this and pinch

1 of that and a teaspoon of this -- but in criminal law, there's
2 only one level that you have to have. And that is each element
3 must be proven beyond a reasonable doubt.

4 Well, let's talk about that burden -- let's talk about
5 beyond a reasonable doubt. Let's see -- the best way I think to
6 explain anything is an example.

7 So we're going to look at an example when we talk about
8 beyond reasonable doubt. Let's say that the wall all the way
9 over here -- that's zero percent -- no evidence at all. Nothing.
10 Zero. Let's see that wall over there -- all the way up against
11 the wall is 100 percent sure. And you know the State does not
12 have to prove a case 100 percent. And why do you think that is,
13 why do you think the State doesn't have to prove it 100 percent?

14 VENIRE PERSON: Probably because you can't prove a
15 hundred percent.

16 MR. CARGILL: That's right. That's what the
17 legislature thinks. You can't prove something 100 percent unless
18 -- for you to know something 100 percent would you have to see it
19 with your own eyes?

20 VENIRE PERSON: Pretty much.

21 MR. CARGILL: Right. And most people agree with you.
22 If you saw with your own eyes can you sit on the jury? No.
23 That's why the requirement is not to prove it 100 percent. But
24 as the State agrees the burden is very significant.

25 Well, let's talk about that. Let's go with, Mr.

1 Willingham, let's say that we decide we want to sue you for a
2 million dollars. Okay. Somebody has decided they think that you
3 should have to pay them a million dollars. Okay. No matter how
4 long it takes.

5 Now, if we were to come into Court and there was a jury
6 trial do you think there would have to be a lot of evidence in
7 order for the jury to say, yeah, Mr. Willingham needs to pay that
8 million dollars over there?

9 VENIRE PERSON: Yes.

10 MR. CARGILL: And he says yes. And the legislature
11 agrees. If you look at the scale like we said, zero to 100
12 percent. And let's say -- right here -- this microphone is here
13 is 50 percent, well, the legislature has to be a preponderance of
14 evidence. That means it more likely occurred than not.

15 So it's over that 50 percent level because they have to
16 show that whatever you owe that million dollars for more likely
17 occurred than not. And that's the lowest burden that jury gets
18 to hear.

19 That's not the burden in this case, but that's the
20 burden in order to get a million dollars from somebody. Let's
21 talk about the next burden so we can find out how high beyond a
22 reasonable doubt is.

23 Let's talk about clear and convincing. Let's see --
24 Mrs. Yarborough, let's say -- you get selected unfortunately,
25 and you went home because -- let's say you had the day because

1 you had to show up for jury duty and you're making a cake because
2 I talk about cakes. And you're there with your child and you
3 hear a knock on the door.

4 And as you approach the door somebody opens the door
5 real quick and hands you a paper, tells your child you're coming
6 with me. And they say you're no longer fit to be that child's
7 mother -- the State's raising the child. Now, in a case like
8 that would you agree with the legislature when they say that's a
9 lot more important than taking a million dollars from somebody?

10 VENIRE PERSON: Yes.

11 MR. CARGILL: Okay. And everybody agrees. And the
12 legislature says, yes, because in a case of that significance
13 it's not did it more than likely occur than not it is clear and
14 convincing evidence.

15 And so if we're looking at our spectrum and you have
16 more convincing than not and then you have clear and convincing
17 evidence in order to be able to take someone's child away from
18 them involuntarily and terminate their parental rights, you must
19 have clear and convincing evidence.

20 Then the legislature says oh, yes, there's another
21 burden. And that burden is not did it more likely occur than
22 not, that burden is not clear and convincing. That burden is
23 beyond a reasonable doubt. And that's the significance and the
24 level and the amount of proof that the State is looking at on
25 proving each and every example -- each and every element.

1 Does everybody understand that example? Is everybody
2 on this side willing to follow the law and say yes, I'm going to
3 hold the State to the burden -- not did it more likely occur than
4 not in my mind after hearing the testimony. Not am I clearly
5 convinced or that there's clear and convincing evidence but it's
6 beyond a reasonable doubt.

7 Anybody on this side have an issue with that? Oh
8 that's too great of a burden -- that's too much to have to prove
9 in order to get a conviction? Anybody? And believe it or not we
10 see hands like that all the time. And that's not an issue.

11 Anybody on this side that says, you know what I think
12 that's too great of a burden. You mean that's not -- did it more
13 likely occur than not?

14 Do you mean it's more than clear and convincing and
15 yes, the legislature says it has to be beyond a reasonable doubt.
16 Does anybody on this side have an issue with beyond a reasonable
17 doubt on each and every element? Okay.

18 Just to nail that clear -- Ms. Brewer, again, what if
19 you had all the ingredients or all the elements they're all
20 present but -- and you had all but one was proven beyond a
21 reasonable doubt? One of them didn't quite get there beyond a
22 reasonable doubt. What would the law require you to do?

23 VENIRE PERSON: Find him not guilty.

24 MR. CARGILL: Find him not guilty. That's correct.

25 Are you willing to follow the law? Is everybody else willing to

1 follow the law if there's one missing element -- one ingredient
2 that doesn't quite get to the beyond reasonable doubt standard --
3 is everyone on this side willing to follow the law and say not
4 guilty?

5 Because the words in the charge will say you must find
6 him not guilty -- not if you want to -- not if you think he's a
7 good guy -- not in any case -- it's just you must find him not
8 guilty if they don't meet each and every element beyond a
9 reasonable doubt.

10 Anybody on this side say no, that's too high of a
11 burden? Anybody on this side say, well, just one element you
12 mean -- just one portion, one ingredient to the level beyond a
13 reasonable doubt.

14 Does anybody over here say that's too high a burden,
15 that's too much for the State to prove? All right. Now, when we
16 talk about the State's burden and their proof, Ms. Mitchell was
17 exactly right she said it was the State's burden.

18 That means on the day of trial of course we'll be faced
19 over here and Mr. Gross and I put our heads down and I don't ask
20 not one question, we don't say one thing, we don't present one
21 document, one witness, one comment, but the State does not prove
22 the case beyond a reasonable doubt, what do you have to do, Ms.
23 Thompson?

24 VENIRE PERSON: Find them not guilty.

25 MR. CARGILL: Got to find him not guilty. Does anybody

1 on this side say or think in the back of their mind well, yeah, I
2 know that's the law but if I were on trial I would testify and if
3 somebody doesn't testify that puts a problem in my mind and I'm
4 going to consider it?

5 Because I know it's easier to answer the questions out
6 here and then it gets more difficult if you have the same issues
7 sitting in this jury box. But let me tell you when you go back
8 there to the jury room and you take your jury duty seriously it
9 is a very difficult job.

10 Anybody on this first row in their own minds and in
11 their own hearts say, well, I don't know, if someone doesn't
12 testify I'm going to hold it against them?

13 Anybody? Second row? Anybody on this side? Anyone?
14 Anybody on this first row have an issue says, you know what, I
15 know the law says not to do it, but in my own my mind, to be
16 honest with myself if someone doesn't testify I'm going to hold
17 it against them or I'm going to consider some purpose?

18 Anybody on this first row? Second row? Anyone?
19 Anyone on this side? Now, when we have a case everyone is
20 supposed to start off on an even position. That means whatever
21 witnesses are on the same -- even as Mr. Gross, the one who sits
22 here, that's charged with the crime. For instance, if you see a
23 law enforcement officer and as they walk through that door and
24 they come up and they have their uniform on you already know
25 they're a law enforcement officer as they make their way. Is

1 there anybody on this side that say, you know what either my
2 relationship with law enforcement or my respect for the law
3 enforcement I'm going to hold that person with a higher
4 credibility even before they testify simply because of their
5 position as a law enforcement officer?

6 Does anybody on this side have that mindset? I used to
7 have that mindset as well. Ms. Ellis?

8 VENIRE PERSON: Yes.

9 MR. CARGILL: So are you saying because of the position
10 of an individual as a law enforcement officer that would
11 automatically put credibility and put them above another witness
12 simply because of their position?

13 VENIRE PERSON: In my mind the way I was raised.

14 MR. CARGILL: Okay.

15 THE COURT: I couldn't hear what she said.

16 MR. CARGILL: She said in my mind, the way I was
17 raised, yes.

18 THE COURT: What's your number?

19 MR. CARGILL: Number 40.

20 THE COURT: Okay.

21 MR. CARGILL: Anybody else on this side? Yes, ma'am.
22 Juror Number 21, and that's Ms. Tidlow?

23 VENIRE PERSON: Yes.

24 MR. CARGILL: Anyone else? Okay. I can't quite get
25 used to calling Ms. Phillips.

1 VENIRE PERSON: I know.

2 MR. CARGILL: So I'll learn.

3 VENIRE PERSON: Okay.

4 MR. CARGILL: Anybody else? Okay. Thank you. Anybody
5 on this side that says, okay -- and that's understandable you
6 being a deputy. Anyone else? Anyone else on this side? All
7 right.

8 Anyone have a either just I don't know how else to put
9 this but they just love the DA's office -- that Ms. Mitchell
10 cannot do any wrong -- Mr. Evans is the greatest guy in the world
11 and because they're prosecuting this case and because they're the
12 attorneys on that side I am -- I don't even have to listen to
13 anything else. Ms. Mitchell just show up and just say Ms.
14 Mitchell and I'll vote for her.

15 I know that there was a program called Boston Legal a
16 couple of years back and this guy used to go up there and he'd
17 just say Danny Crane. And you know, he thought he'd win the
18 case. Does anybody have that mindset to the point to where you
19 know hey, okay.

20 VENIRE PERSON: Yes.

21 MR. CARGILL: Okay. Well, she is glad she probably put
22 you on her next campaign list. Get ready for the photographs
23 that's going to be in the pamphlets. Anybody else? Okay.

24 Anybody on this side that says, you know, believe it or
25 not she's not -- usually we have two or three that say you know

1 what, I'm sorry, I worked one million hours on her campaign and
2 that's you know -- anybody on this side? We're just trying to
3 accomplish the same thing that is to have somebody that's going
4 to be open minded for this particular type of jury.

5 Last thing to cover, I have one last topic to cover and
6 then a follow up question. And my last topic to cover is the
7 last topic she covered. Is there anybody on this side that has
8 an issue with assault and if you need to approach the bench we
9 can but has an issue with assault where they or family member or
10 close friend was the alleged victim and something like that plays
11 in your mind where you can't set that aside.

12 Anyone on this side? Okay. Anyone on this side have a
13 family member or themselves or a close friend where you just
14 couldn't set that assault aside in your own mind when you're
15 judging the facts and the credibility of this particular case?
16 Anybody? Okay.

17 Like I promised last question, did Ms. Mitchell or
18 myself or the Judge say something that caused you some type of
19 confusion where you might have needed to answer a question a
20 different way or we need to know hey -- hey -- hey, you need to
21 know this -- why didn't y'all ask this before we have a
22 selection. Is there anybody else?

23 Last chance -- anybody over here. Last chance --
24 anybody over here -- yes, sir?

25 VENIRE PERSON: I know him.

1 MR. CARGILL: Okay. You know my client?

2 VENIRE PERSON: Yes.

3 MR. CARGILL: Knowing my client would you be able to
4 separate that relationship or do you think that's going to be a
5 weighty factor in your decision process?

6 VENIRE PERSON: I would not be able to separate it.

7 THE COURT: What was his answer?

8 MR. CARGILL: Would not be able to separate that --
9 that's Juror Number 15. And if -- believe it or not we sometimes
10 go all the way to the end of Voir Dire and we have somebody raise
11 their hand because it's a question like that and the best
12 example I've had that is when wasn't going to be just a one day
13 trial like this one, it was going to be a long trial and they
14 didn't raise their card.

15 And we went through the first day of jury trial and
16 then they -- Judge said okay, be back tomorrow at 8:30, this lady
17 raised her hand and said my husband's having open heart surgery
18 tomorrow. She didn't bother to mention that in Voir Dire. So
19 anything please, anyone at all? Anything? Anything out there
20 at all? Going once, going twice? Yes, ma'am.

21 VENIRE PERSON: I have friend visiting from California
22 and he has to go to the airport in Dallas.

23 MR. CARGILL: Okay. Do you know what day that is?

24 VENIRE PERSON: It should be tomorrow around 3.

25 MR. CARGILL: Okay. Now, if -- if we've gone through

1 the testimony and we're sitting there and you're thinking about
2 other -- picking up your cousin, is that going to be an issue or
3 can someone else pick him up?

4 VENIRE PERSON: Not that I know of.

5 MR. CARGILL: Not that you know of?

6 THE COURT: No.

7 MR. CARGILL: Okay. Anyone else? All right. I'm
8 going to look forward to working with 12 of you. Thank you.

9 THE COURT: What Mr. Cargill didn't say is it's more
10 than likely if they ask if somebody knows something that knows
11 somebody, the attorneys if they say -- I've actually had where
12 somebody raised their hand and the defense attorney was their
13 divorce lawyer. And I said would you hold that against him. And
14 he said well, he represented my wife in 1963 in a divorce and I
15 wouldn't trust a thing the man had to say. So --

16 We're going to take a recess. I've got to take some
17 matters up here. We're going to take a recess to enable them to
18 make their strikes. So y'all are on recess. That means I need
19 you back in the courtroom at about -- let's say ten til noon.
20 You can stay in the courtroom or out whatever you want to do,
21 y'all are on break. Return to the courtroom.

22 (Jury panel not present)

23 CHALLENGES FOR CAUSE

24 THE COURT: For cause? You ready?

25 STATE: Yes.

1 MR. CARGILL: Yes. This one is 32.

2 THE COURT: 32 stricken.

3 STATE: Number 5.

4 MR. CARGILL: And number 8.

5 STATE: Yes.

6 THE COURT: Let's go through my notes, again.

7 THE STATE: The State has no motions for cause, Your
8 Honor.

9 THE COURT: Is there a motion --

10 MR. CARGILL: 15 for the Defense, Your Honor.

11 THE COURT: Granted.

12 MR. CARGILL: 21.

13 THE COURT: Granted. Stricken for cause.

14 MR. CARGILL: 26, based on the comments they made in
15 Voir Dire.

16 THE COURT: That is the Jailer, right?

17 MR. CARGILL: Yes.

18 THE COURT: 26 stricken for cause.

19 MR. CARGILL: And 40.

20 THE COURT: I don't know if we are going to get to 40,
21 but granted. I don't know if you want to excuse her, the one
22 that has to pick up her cousin.

23 STATE: I would strike her.

24 THE COURT: 24 stricken for cause.

25 MR. CARGILL: 23.

1 THE COURT: Number 23 stricken for cause as well. That
2 will get us up to 37. I am going to give you an extra strike
3 zone. 39,40,41 are in the alternate strake zone.

4 MR. CARGLL: So one alternate?

5 THE COURT: Yes.

6 (End of challenges for cause)

7 (Jury panel present in courtroom)

8 THE COURT: Ladies and Gentlemen, the District Clerk is
9 now going to call the names and those of you who are selected for
10 the jury.

11 If your name is called, if you'll come forward and take
12 your place in the jury box, it doesn't matter where you sit, but
13 to make it better for the people coming in if you can move all
14 the way to the end.

15 I am seating an alternate and that alternate and only
16 that person will have a designated seat. So you can go ahead and
17 call those names at this time.

18 CLERK: Charles Ackley, Jr., Ronald Hill, Carolyn
19 Booker, Austin Harrison Willingham, Wesley Williams, Jose Ruiz,
20 Brooke Johnson, Ebbie Burnitt, Christopher Bryant, Carla Womack,
21 Audy Porter, Mike Slover, Effie Sue Denman, alternate.

22 (Jury seated)

23 THE COURT: Are you going to be okay sitting in the
24 jury box --

25 VENIRE PERSON: If it only lasts one day, I'll be all

1 right. I'm good.

2 THE COURT: Okay. I can get you a better chair if you
3 need one.

4 VENIRE PERSON: I'm fine.

5 CLERK: Are you okay with that?

6 THE COURT: If we need to, we'll get him something --
7 Okay.

8 From the State is there any objection to the jury panel
9 as it's presently constituted and seated?

10 STATE: No, Your Honor.

11 THE COURT: From the Defense?

12 MR. CARGILL: No, Your Honor.

13 THE COURT: Okay. Ladies and Gentlemen that were chosen
14 for the Jury, if you'll stand please and raise your right hand.

15 Do you and each of you solemnly swear or affirm that in
16 the case of the state of Texas against the Defendant you will a
17 true verdict render according to the law and evidence so help you
18 God?

19 JURORS: Yes.

20 THE COURT: You may be seated. Ladies and Gentlemen of
21 the venire panel, I want to thank you so much for your time and
22 service this morning.

23 As I mentioned to you before, if you need a jury excuse
24 for work then you can go downstairs and get that and you are
25 excused with the Court's thanks. As soon as they kind of clear

1 out what I'm going to do is instruct y'all and excuse you for
2 lunch.

3 (Venire panel excused)

4 THE COURT: Okay. Ladies and Gentlemen as long as you
5 can hear me, I'm going to go ahead and start instructing you.

6 By the oath that you've just taken as jurors, you've
7 become officials of this Court and active participants in the
8 public administration of justice.

9 If you at any time you cannot clearly hear the
10 proceedings, please do not hesitate to tell it to me or any
11 member of the Court's staff. No one may discuss this case with
12 you during your service as a juror.

13 Likewise, don't feel offended if the attorneys in this
14 case do not communicate directly with you. To maintain the
15 integrity of the jury system, the law prohibits them from
16 speaking with you until you're released from this duty on this
17 case.

18 If someone does contact you or attempts to contact you,
19 please report that fact to the Bailiff at once. Do not discuss
20 the evidence in this case with your fellow jurors until you are
21 instructed to deliberate or with your spouse, significant other
22 or your friends until you are discharged from jury service.

23 You're not permitted to read any newspaper articles
24 about this trial, or watch any television that mentions the
25 trial, which I don't anticipate or listen to any radio reports

1 that discuss the trial.

2 You may take notes during the trial if you wish, those
3 notes if you choose to take them are for your purposes only. You
4 may not show them to your fellow jurors or mention in the jury
5 room that your notes are indicative of some matter. They may be
6 used only to refresh your own personal memory of what you've
7 recorded.

8 Turn off your phones and electronic devices while
9 you're in the courtroom.

10 While you're in the courtroom and while you're
11 deliberating, do not communicate with anyone through any
12 electronic devices, for example, do not communicate with anyone
13 through a phone, text message, email message, blog or social
14 networking sites while you're in here or you're deliberating in
15 the jury room until you're excused from the case, do not
16 communicate anything but the facts of the case on any type of
17 electronic communication as well.

18 Okay. Don't go to any of the locations referred by the
19 witnesses in this case or perform any type of individual
20 investigation of the facts of the case.

21 You will receive all of the evidence here in the
22 courtroom. Don't look in books, encyclopedias or dictionaries or
23 go to the library or try to review courthouse records in order to
24 obtain information over and above what is presented to you during
25 the trial.

1 Please listen carefully to the testimony in this case,
2 no testimony will be read back to you unless you disagree about a
3 specific statement made by a witness during the trial.

4 The lawyers in this case may choose to give opening
5 statements. If they do so these statements are not evidence,
6 they're merely to help you understand the nature of the case and
7 the evidence they anticipate they will present.

8 The evidence you may consider will consist of the
9 testimony of witnesses either in person or through written
10 transcripts of the testimony called depositions. Evidence may
11 also be presented in the form of physical objects or documents
12 called Exhibits.

13 During the trial the attorneys may make objections to
14 the evidence, this is a necessary procedure during the trial.
15 When an objection is made the Court must rule upon it.

16 There may be times when I will send you to the jury
17 room to allow the parties to argue before me in the courtroom.
18 You must not concern yourself with the objections or the Court's
19 rulings. You must not consider any testimony or Exhibits to
20 which an objection was sustained or that I instruct you to
21 disregard.

22 Some testimony or Exhibits may be introduced for a
23 limited purpose, if that's so I'll instruct you to consider that
24 only for that limited purpose and you must do so under your oath.

25 Each of you must determine the facts as you see them.

1 To do so you must evaluate the credibility of each witness and
2 decide the weight and the value to be given to their testimony.

3 In considering the weight and value of the testimony of
4 witness you may consider the person's appearance, attitude,
5 behavior, the person's interest in the outcome of the case, his
6 or her relationship to the Defendant or with the State of Texas,
7 the inclination of the witness to tell the truth, the probability
8 or the improbability of the witness's statements, the reasonable
9 inferences from those statements, and all other factors you feel
10 will help you in giving that testimony the degree of credibility
11 it deserves.

12 The trial is going to proceed as follows, the
13 prosecutor will make an opening statement, the Defense attorney
14 may do so as well.

15 The prosecutor will then offer evidence through
16 witnesses, the Defense attorney may cross examine each witness.

17 Thereafter, when the prosecution has finished
18 presenting the state's case, the defense attorney may or may not
19 present evidence. This is so because the Defendant is never
20 required to prove his innocence.

21 Thereafter, there may be rebuttal evidence at the
22 conclusion of all of the evidence I'll read to you the Court's
23 charge and each side will present closing arguments. It's at
24 that point that you're allowed to deliberate.

25 Some housekeeping matters from this point on, you're

1 not allowed to come into the courtroom by yourself, you'll report
2 to the jury room and I'll get the Bailiff to show you where that
3 is in a second.

4 You'll report to the jury room and she'll bring you in
5 as a group. It tends to be either too cold or too hot in the
6 courtroom so we tend to keep it too cold out of preference.

7 So if you're very cold natured, you might bring a
8 sweater or a jacket or something that you can use if you need to,
9 because I have a bad addiction to drinking coke -- coca cola then
10 I'll allow you to drink while you're in the jury box. By that, I
11 mean non-alcoholic beverages. So you may bring in a drink --

12 STATE: You said a drink.

13 THE COURT: Well, I did that I say -- I sit up here and
14 drink and somebody went on the record and said you better make it
15 clear for the record that you're not drinking alcohol and then
16 you better make sure the jury understands they can't bring any
17 alcohol in here, you can bring in a drink to make yourself more
18 comfortable.

19 MR CARGILL: A beverage.

20 THE COURT: A beverage of your choice. So you may
21 bring one in and that will be fine with the Court.

22 So and today you probably sat longer than you will
23 during the trial. I try to give you frequent breaks, and if I
24 notice you becoming uncomfortable, I'll try to break at that
25 time.

1 So at this time the State present the indictment and
2 then I'll excuse the jury. So Mr. Gross, if you'll stand,
3 please.

4 (Indictment read)

5 STATE: May it please the Court, in the name and by
6 authority of the state of Texas, the grand jurors for the county
7 of Anderson, state of Texas do select and duly selected,
8 impaneled and sworn and organized as such as of January term
9 A.D., 2015 to said Court that Richard Gross on or about the 19th
10 day of November A.D., 2014 and before the presentment of this
11 indictment in said county and state did then and there
12 intentionally, knowingly or recklessly cause bodily injury to Don
13 Myers by biting Don Myers. And the Defendant knew that Don Myers
14 was a public servant to wit: Anderson County Sheriff's Deputy and
15 that Don Myers was lawfully discharging an official duty to wit:
16 effectuating arrest or detention of said Defendant against the
17 peace and dignity of the state.

18 THE COURT: How do you plead, Mr. Gross?

19 THE DEFENDANT: Not guilty.

20 THE COURT: Okay. Ladies and Gentlemen at this time
21 I'm going to excuse you for the day.

22 You're to report back in the morning about 8:45/8:50,
23 we'll start at 9 o'clock. And when you report in the morning,
24 you're to report to the jury room.

25 When you step down, the Bailiff is going to take you

1 and show you where the jury room and how to report in the
2 morning. So I'll see you back in the morning.

3 It won't be as big of a problem trying to find a
4 parking place tomorrow because the rest of the jury will have
5 cleared out.

6 So I'll see y'all in the morning. Have a good
7 evening.

8 (Jury exits) (outside presence of Jury)

9 Okay. Do y'all need anything before we recess today?

10 STATE: Your Honor, as far as trial tomorrow we have
11 three witnesses. We have a videotape that we anticipate
12 producing to the jury. There were some parts that I felt that
13 would probably become questionable as they're -- prejudicial and
14 I went ahead and took the liberty -- the choice to take them out.

15 THE COURT: Okay.

16 STATE: So the video has been redacted to the points
17 that I told Mr. Cargill I would and I'm going to be emailing him
18 the jury charge this afternoon.

19 THE COURT: Okay. That would be great. And as y'all
20 can see I have a number of jurors that have trouble getting in
21 and out of the box so if we can get that video stuff done before
22 I bring them in then you know -- making them leave and --

23 STATE: It won't be until right before lunch or right
24 after lunch.

25 THE COURT: It doesn't matter when you have it ready,

1 if y'all can agree on that it will make it easier. So --

2 Mr. CARGILL: Your Honor, I'm going to want that
3 video --

4 THE COURT: Okay. Then you're on a conference call
5 with me at 1:15, right?

6 MR. CARGILL: That is correct.

7 THE COURT: Okay. Thank you. Y'all are excused.

8 (End of day proceedings)

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REPORTERS RECORD

VOLUME 2 OF 5 VOLUMES
TRIAL COURT CAUSE NO. 32004
COURT OF APPEALS CAUSE NO. 12-15-00280-CR

STATE OF TEXAS) IN THE DISTRICT COURT
VS.)
RICHARD GROSS) ANDERSON COUNTY, TEXAS
) 87TH JUDICIAL DISTRICT

I, Susan A. Waldrip, Official Court Reporter in and for the 87th District of Anderson County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of al portions of evidence and other proceedings requested in writing by Counsel for the parties to be included in this volume of the Reporter's Record, in the above styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporters Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporters Record is \$355 and was/will be paid by Anderson County, Texas.

/s/ Susan A. Waldrip.

Texas CSR 3377, Exp. 12/31/2016.
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