

In the
Supreme Court of the United States

KEYAIRA PORTER,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Arizona

APPENDIX TO THE BRIEF IN OPPOSITION

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TABLE OF CONTENTS

APPENDIX A

Arizona Supreme Court Order Eliminating Peremptory Strikes..... 1a

APPENDIX B

Excerpt from Voir Dire, March 27, 2018, pages 1–118..... 8a

APPENDIX C

Excerpt from Sergeant James Hermes' Direct Examination,
March 28, 2018, pages 98–115 127a

APPENDIX A

(Arizona Supreme Court Order Eliminating Peremptory Strikes)

[illegible]

A petition having been filed proposing to eliminate peremptory challenges in jury selection in criminal and civil trials, and comments having been received, upon consideration,

IT IS ORDERED that Rules 18.4 and 18.5 of the Rules of Criminal Procedure, and Rule 47(e) of the Rules of Civil Procedure, are amended in accordance with the attachment to this order, effective January 1, 2022.

IT IS FURTHER ORDERED that these amendments shall be applicable to all cases in which the first day of jury selection occurs after January 1, 2022.

DATED this 30th day of August, 2021.

/s/
ROBERT BRUTINEL
Chief Justice

TO:

Rule 28 Distribution
Peter B Swann
Paul J McMurdie
Timothy J Casey
Brian Snyder
James M Schoppmann
Charles W Gurtler Jr
William H Sandweg III
Kip Anderson
Hon John David Napper, Presiding Judge
Victor A Aronow
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Benjamin Taylor
Hon Bruce R Cohen, Judge
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Lisa M Panahi
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Andrew Jacobs
Marsha Cotton
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Cory E Tyszka
J Russell Skelton
Kent J Hammond
Nicholas Klingerman
Kenneth N Vick
Claudia E Stedman
Barry D Halpern
Brett William Johnson
Tracy Olson
David J Euchner

ATTACHMENT¹

RULES OF CRIMINAL PROCEDURE

Rule 18.4. Challenges

(a) [No change]

(b) **Challenge for Cause.** ~~On motion or on its own, the court must~~ The court, on motion or on its own, must excuse a prospective juror or jurors from service in the case if there is a reasonable ground to believe that the juror or jurors cannot render a fair and impartial verdict. A challenge for cause may be made at any time, but the court may deny a challenge if the party was not diligent in making it.

~~(c) Peremptory Challenges.~~

~~(1) Generally. The court must allow both parties the following number of peremptory challenges:~~

~~(A) 10, if the offense charged is punishable by death;~~

~~(B) 6, in all other cases tried in superior court; and~~

~~(C) two, in all cases tried in limited jurisdiction courts.~~

~~(2) If Several Defendants Are Tried Jointly. If there is more than one defendant, each defendant is allowed one-half the number of peremptory challenges allowed to one defendant. The State is not entitled to any additional peremptory challenges.~~

~~(3) Agreement Between the Parties. The parties may agree to exercise fewer than the allowable number of peremptory challenges.~~

COMMENT [No change]

Rule 18.5. Procedure for Jury Selection

(a) [No change]

(b) **Calling Jurors for Examination.** The court may call to the jury box a number of prospective jurors equal to the number to serve plus the number of alternates ~~plus the number of peremptory challenges that the parties are permitted.~~ Alternatively, and at the court's discretion, all members of the panel may be examined.

(c)-(d) [No change]

(e) **Scope of Examination.** The court must ensure the reasonable protection of the prospective jurors' privacy. Questioning must be limited to inquiries designed to elicit

¹ Additions to the text of the rule are shown by underscoring and deletions of text are shown by ~~strike-through~~.

information relevant to asserting a possible challenge for cause ~~or enabling a party to intelligently exercise the party's peremptory challenges.~~

(f) Challenge for Cause. Challenges for cause must be on the record and made out of the hearing of the prospective jurors. The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. If the court grants a challenge for cause, it must excuse the affected prospective juror. If insufficient prospective jurors remain on the list, the court must add a prospective juror from a new panel. ~~All challenges for cause must be made and decided before the court may call on the parties to exercise their peremptory challenges.~~

(g) Stipulation to Remove a Prospective Juror. The parties may stipulate to the removal of a juror. ~~**Exercise of Peremptory Challenges.** After examining the prospective jurors and completing all challenges for cause, the parties must exercise their peremptory challenges on the list of prospective jurors by alternating strikes, beginning with the State, until the peremptory challenges are exhausted or a party elects not to exercise further challenges. Failure of a party to exercise a challenge in turn operates as a waiver of the party's remaining challenges, but it does not deprive the other party of that party's full number of challenges. If the parties fail to exercise the full number of allowed challenges, the court will strike the jurors on the bottom of the list of prospective jurors until only the number to serve, plus alternates, remain.~~

(h) Selection of Jury; Alternate Jurors.

(1) *Trial Jurors.* ~~After the completion of the procedures in (g) the court has resolved any challenges for cause,~~ the prospective jurors remaining in the jury box or on the list of prospective jurors constitute the trial jurors.

(2)-(3) [No change]

(i) Deliberations in a Capital Case. [No change]

COMMENT [as amended 2022]

Rule 18.5(b). [No change to the first two paragraphs of the comment]

The struck method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Following disposition of the for cause challenges, ~~the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been taken and the court has resolved all related issues under *Batson v. Kentucky*, 476 U.S. 79 (1986), the clerk calls the first 8 or 12 names, as the law may require, remaining on the list, plus the number of alternate jurors thought necessary by the judge, who become the trial jury.~~

Rule 18.5(d). [No change to comment]

RULES OF CIVIL PROCEDURE

Rule 47. Jury Selection; Voir Dire; Challenges

(a)-(b) [No change]

(c) **Voir Dire Oath and Procedure.**

(1)-(2) [No change]

(3) *Extent of Voir Dire.*

(A) [No change]

(B) *Extent of Questioning.* Voir dire questioning of a jury panel is not limited to the grounds listed in Rule 47(d) and may include questions about any subject that might disclose a basis for the exercise of a for cause peremptory challenge.

(d) [No change]

~~(e) **Peremptory Challenges.**~~

~~(1) *Procedure.* When the voir dire is finished and the court has ruled on all challenges for cause, the clerk will give the parties a list of the remaining prospective jurors for the exercise of peremptory challenges. The parties must exercise their challenges by alternate strikes, beginning with the plaintiff, until each party's peremptory challenges are exhausted or waived. If a party fails to exercise a peremptory challenge, it waives any remaining challenges, but it does not affect the right of other parties to exercise their remaining challenges.~~

~~(2) *Number.* Each side is entitled to 4 peremptory challenges. For this rule's purposes, each action—whether a single action or two or more actions consolidated for trial—must be treated as having only two sides. If it appears that two or more parties on a side have adverse or hostile interests, the court may allow them to have additional peremptory challenges, but each side must have an equal number of peremptory challenges. If the parties on a side are unable to agree on how to allocate peremptory challenges among them, the court must determine the allocation.~~

~~(f) **(c) Alternate Jurors.**~~

~~(1)-(4) [No change]~~

~~(5) *Additional Peremptory Challenges.* In addition to the peremptory challenges otherwise allowed by law, each side is entitled to one peremptory challenge if one or two alternate jurors will be impaneled, two peremptory challenges if 3 or 4 alternate jurors will be impaneled, and 3 peremptory challenges if 5 or 6 alternate jurors will be impaneled.~~

COMMENT [as amended 2022]

**1995 Amendment to Rule 47(a) and (e)
[Formerly Rule 47(a)]**

[No change to the first two paragraphs of the comment]

The “struck” method calls for all of the jury panel members to participate in voir dire examination by the judge and counsel. Although the judge may excuse jurors for cause in the presence of the panel, challenges for cause are usually reserved until the examination of the panel has been completed and a recess taken. Following disposition of the for cause challenges, ~~the juror list is given to counsel for the exercise of their peremptory strikes. When all the peremptory strikes have been take, and all legal issues arising therefrom have been resolved,~~ the clerk calls the first eight names remaining on the list, plus the number of alternate jurors thought necessary by the judge, who shall be the trial jury.

COMMENT

**~~1961 Amendment to Rule 47(e)-
[Formerly Rule 47(a) (3)]~~**

~~[Rule 47(e) (formerly Rule 47(a)(3)] now compels the plaintiff to exercise all of his peremptory challenges prior to the defendant. The amended rule provides that the parties shall exercise their peremptory challenges alternately. Under the present rule, while the plaintiff receives the same number of peremptory challenges as the defendant, the order of exercising them resulted in an obvious inequity. The purpose of the proposed rule is to eliminate the inequity by giving both parties peremptory challenges which are not only equal in number but also in practical weight and value.~~

APPENDIX B

(Excerpt from Voir Dire, March 27, 2018, pages 1–118)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)	
)	
Appellee,	)	Court of Appeals
	)	Division One
vs.	)	No. 1 CA-CR 18-0301
)	
)	
KEYAIRA PORTER,)	
	)	Maricopa County
	)	Superior Court No.
Appellant.	)	CR2017-137407-001

Phoenix, Arizona

March 27, 2018

BEFORE: THE HONORABLE MONICA GARFINKEL
COMMISSIONER OF THE SUPERIOR COURT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL
Jury Selection
Day 1 (One)

Prepared for:
Court of Appeals

ORIGINAL

LINDA C. LOPEZ, CR, RPR
Certified Reporter
Certificate No. 50539

A P P E A R A N C E S

On Behalf of the State:

Ms. Kimberly Tirrell
Deputy County Attorney
Maricopa County Attorney's Office

On Behalf of the Defendant:

Ms. Harla Davison
Attorney at Law

I N D E X:

Opening Statements:**Page:**

Ms. Tirrell

144

Ms. Davison

147

I N D E X:**WITNESS:****PAGE:**

Ms. Christen Rope

Ms. Tirrell

154

Phoenix, Arizona
March 27, 2018

P R O C E E D I N G S:

THE COURT: Good morning. We are on the record this morning in State of Arizona versus Keyaira Porter. CR2017-137407-001.

May I have appearances, please.

MS. TIRRELL: Good morning, your Honor. Kimberly Tirrell on behalf of the State.

THE COURT: Thank you.

MS. DAVISON: Harla Davison on behalf of Ms. Porter, who is out of custody. Good morning, your Honor.

THE COURT: Thank you. Good morning.

MS. DAVISON: And I'm sorry. I have my assistant also present. His name is Jayden Hill.

THE COURT: Good morning, ma'am. Please tell me your full name and date of birth.

THE DEFENDANT: Keyaira Porter. December 15, 1989.

THE COURT: Thank you. All right. This is the time set for trial in this matter.

Before we bring the jury in, there were some issues that we needed to discuss with regards to the

1 wording of preliminary instructions.

2 We had an e-mail exchange yesterday, and
3 there were some areas of agreement and some areas of
4 disagreement.

5 I reviewed both parties' proposed versions.
6 Was there any further discussion or agreement about
7 resolving the dispute?

8 MS. TIRRELL: Your Honor, the State believes that
9 the ones that they proposed are appropriate in this
10 instance, as they are provided for in the complaint, and
11 the information lists both of these statutes in there.

12 Had the case gone to Grand Jury, those full
13 statutes would have been read. The State -- if we were to
14 put and list out all the information, all of the statutes
15 for every case, complaints and informations would be
16 longer and longer and longer. That's why the string cite
17 is provided in there.

18 THE COURT: Okay.

19 MS. DAVISON: I'm sorry.

20 THE COURT: Ms. Davison.

21 MS. DAVISON: Just to make sure I understand what
22 the State's argument is, is that -- I'm sorry, I don't
23 understand. Sorry.

24 Is it the suggestion that what my
25 recommendation was is acceptable or not acceptable?

1 MS. TIRRELL: Well the State is requesting that
2 the -- we feel that the information is necessary for the
3 jury to understand exactly the definition of an assault.
4 And that's why we requested the intentionally knowing or
5 recklessly causing any injury to another person, or
6 knowingly touching another person with the intent to
7 injure, insult, or provoke that person.

8 We think that that information is necessary
9 for the jury to understand exactly what assault means.

10 MS. DAVISON: Okay. And, your Honor, I do have
11 argument to make about that.

12 THE COURT: Okay. Because paragraph 1 was not
13 included in the information, just paragraph 2 was.

14 But I don't know -- my concern -- and I'm --
15 I don't want to read your mind, or try to do that, but
16 paragraph 2 says knowingly touching another person with
17 the intent to injure, insult, or provoke.

18 Part 1 says: Intentionally, knowingly, or
19 recklessly causing any physical injury to another person.
20 So it does change the mental state.

21 MS. DAVISON: Well, yeah. But it goes much
22 further than that.

23 Your Honor, it goes to a notice requirement.
24 The State has not issued any notice to amend the original
25 information. That needs to be done first. There's been

1 no notice to do that.

2 Further, even if they did move to amend the
3 notice, it has to be something that is a clerical issue,
4 or something non substantive such as date of offense, or a
5 particular location of an offense. And I have plenty of
6 citations to provide the Court.

7 But more particularly, your Honor, and
8 something along the lines that you just discussed, which
9 was the knowing component intentional, and et cetera.
10 There are a long line of cases that state that A(1), A(2),
11 and A(3), are all separate offenses. You cannot use one
12 to define another if you're intending on convicting on one
13 of the subsections. Each subsection is a separate
14 offense.

15 I have cases such as the *Sanders* case, which
16 was in Arizona, to provide to the Court and to the State.

17 I literally just got this research done this
18 morning, but I have that case, and a line of other cases.
19 But basically it states that each section is a separate
20 section, it's a separate offense.

21 And further, your Honor, each one has a
22 different set of consequences.

23 For example, A(1) under 1203 is less harsh
24 than A(3). A(2) is moderately harsh.

25 In other words, they're different classes of

1 offenses, which in turn have different consequences.

2 So Ms. Keyaira Porter is entitled to notice
3 if they're intending on trying to convict her of a more
4 harsher offense, as they are trying to do here, because
5 what they're trying to do is go to A(2), which is more
6 harsh than A(1), and A(3), which is more harsh than A(1),
7 versus the original A(1).

8 MS. TIRRELL: Your Honor, in order to speed
9 things up, we'll just agree that we can use the A(3) and
10 make that the only instruction given to the jury. That's
11 fine.

12 THE COURT: All right. So a person commits
13 assault by knowingly touching another person with the
14 intent to injure, insult, or provoke the person?

15 MS. TIRRELL: Yes, your Honor.

16 THE COURT: And then we're deleting the paragraph
17 that says intentionally, knowingly, or recklessly causing
18 any physical injury to another person?

19 MS. TIRRELL: Yes, your Honor.

20 MS. DAVISON: And we had -- you know, I recognize
21 this -- I stated those oppositely when I was making my
22 argument. But basically we had already agreed on taking
23 out A(2). Now we're agreeing on taking out A(1), is that
24 correct?

25 MS. TIRRELL: Yes.

1 MS. DAVISON: Okay.

2 THE COURT: Yeah. So it will read in the
3 instruction: A person commits assault by knowingly
4 touching another person with the intent to injure, insult,
5 or provoke that person.

6 MS. DAVISON: Yes.

7 MS. TIRRELL: Yes.

8 THE COURT: Okay. Now for the resisting arrest,
9 paragraph 4 was the one that there was some dispute over.
10 What I would propose is that it should read:
11 The means used by the defendant to prevent the arrest
12 involved any substantial risk of physical injury to the
13 peace officer.

14 MS. DAVISON: I believe that's acceptable.

15 If I could have just one more moment?

16 THE COURT: Sure.

17 MS. DAVISON: Sorry. And do you mind repeating
18 that one more time?

19 THE COURT: Sure.

20 So this is for defining resisting arrest.
21 So I have 1, 2, 3. And then number 4 should read: The
22 means used by the defendant to prevent the arrest involved
23 any substantial risk of physical injury to the peace
24 officer.

25 So we're striking the language either the

1 use or threat to use physical force, or, and the word
2 other.

3 MS. DAVISON: Correct.

4 THE COURT: Okay. Both parties in agreement with
5 that?

6 MS. TIRRELL: Your Honor, the State believes that
7 the way the statute is listed is the way it should be,
8 because during the resist, the State does allege she tried
9 to use -- and we believe also her -- trying to bite the
10 officer was a threat by trying to bite him.

11 So we believe that is relevant, that was
12 part of her resisting. She was trying to bite, which is
13 in fact the threat to use physical force.

14 And in this case that is how the statute is
15 listed. And it's -- each element is an "and" not an "or,"
16 as in the previous discussion we were having.

17 So we believe that leaving it to either use
18 or threat to use physical force is appropriate in this
19 instance, your Honor.

20 THE COURT: Well I'm not familiar with the facts
21 that will be presented, but based on what you just said,
22 that makes sense.

23 Ms. Davison.

24 MS. DAVISON: And one moment, I just need to
25 locate my -- I'm sorry. I had a last minute curve ball,

1 so I just need a second, please.

2 THE COURT: Sure.

3 MS. DAVISON: Do you have a hard copy of the
4 preliminary jury instructions?

5 MS. TIRRELL: I do not.

6 THE COURT: I have it. The 25.08?

7 MS. DAVISON: Yes. Thank you, judge.

8 While I do agree that items 1 through 3 are
9 ands, those needs to be included.

10 Section 4, I do still believe that as the
11 information is stated, is how it should be presented to
12 the jury. And that is without the risk of, or without the
13 information regarding use of force, or threat of use of
14 force.

15 While I recognize that the facts will come
16 out that there will be an allegation of force being used,
17 I believe that because that language is an "or" language
18 within Section 4, it allows for one or the other as a
19 showing of a means of creating -- or convicting on a
20 resisting arrest.

21 Therefore, it is our position that because
22 she has not been given notice that the State intended on
23 proceeding on the other portion of the resisting arrest,
24 that is the use of force portion, rather than the
25 injury -- which we believe that the facts will come out

1 that there was an injury that occurred, that that would be
2 impermissible for the State to be able to proceed, that
3 which Ms. Porter did not have notice of. In other words,
4 it wasn't in the original information.

5 THE COURT: Ms. Tirrell, did you want to see the
6 instruction?

7 MS. TIRRELL: No, I'm just trying to pull up the
8 information, your Honor.

9 THE COURT: Okay. Well unlike the assault
10 statute, which provides alternative ways to prove the
11 assault, and does carry different penalties, I don't think
12 the same is true with this. And I think it's -- the
13 alternative language here is just descriptive.

14 So I am going to leave it as proposed as
15 written in the instruction.

16 The other thing in my draft that I sent to
17 you, on page 10 it has indictment is not evidence -- we
18 don't have an indictment in this case. So I was either
19 going to -- I was just going to change it to charge is not
20 evidence.

21 MS. TIRRELL: That's fine with the State, your
22 Honor.

23 MS. DAVISON: That is fine.

24 THE COURT: All right. Is there anything else
25 with regards to the instructions that we need to address?

1 MS. TIRRELL: Nothing from the State, your Honor.

2 MS. DAVISON: No.

3 THE COURT: Okay. Oh, and the statement of the
4 case, the parties agree with the revised version of that?

5 MS. DAVISON: Right.

6 MS. TIRRELL: Yeah. There was just a typo in
7 there.

8 THE COURT: Because even when we went over it, we
9 all missed it. So I was reading it last night -- and
10 like, no, this doesn't make sense. Okay.

11 Okay. Any other preliminary matters before
12 we bring the jury in?

13 MS. DAVISON: If I can have one moment, please?

14 THE COURT: Sure.

15 MS. DAVISON: I'm sorry, your Honor. My client
16 just had some other questions. But we are ready to
17 proceed.

18 THE COURT: Okay. All right. Thank you.

19

20 (Whereupon, the prospective members of the
21 jury panel entered the courtroom.)

22

23 THE COURT: Please be seated.

24 Good morning, ladies and gentlemen. I
25 apologize for the delay. We had some unexpected issues

1 come up, I apologize, that caused you to wait out there in
2 the hallway. We will try to avoid that in the future, but
3 unfortunately things do occasionally come up.

4 This is the time set for trial in criminal
5 cause number, CR2017-137470-001, State of Arizona versus
6 Keyaira Porter.

7 Is the State ready to proceed?

8 MS. TIRRELL: Yes, your Honor.

9 THE COURT: Thank you.

10 Is the defense ready to proceed?

11 MS. DAVISON: We are. Thank you.

12 THE COURT: Would all of the prospective jurors
13 please stand to be sworn.

14

15 (Whereupon, the prospective members of the
16 jury panel were duly sworn by the Clerk of the Court.)

17

18 THE COURT: Thank you. Please be seated.

19 All right. Well, ladies and gentlemen, we
20 are now going to begin the jury selection process. You
21 are going to be asked some questions about yourself.

22 These questions are not designed to pry
23 unnecessarily into your personal lives or affairs, and I
24 hope that they will not.

25 But before we go any further, is there

1 anyone on the jury panel who is having trouble hearing, or
2 seeing what's going on?

3 Yes, ma'am.

4 Juror number 35.

5 PROSPECTIVE JUROR: I can't really see you, your
6 face that good. I have bad eyes.

7 THE COURT: All right. Do you normally wear
8 glasses or contacts?

9 PROSPECTIVE JUROR: No, I have cataracts on my
10 eyes.

11 THE COURT: Okay. And do you feel that your
12 vision could interfere with your ability to see exhibits,
13 or that sort of thing in the case?

14 PROSPECTIVE JUROR: I don't think so.

15 THE COURT: Okay. Thank you for telling us.

16 Is there anyone on the jury panel who is
17 having trouble understanding the English language?

18 Okay. I don't see any cards.

19 All right. So it's necessary for me and the
20 lawyers to ask you some questions. And this is to find
21 out if you have any knowledge about the case, or about any
22 of the persons who might be involved in it. To find out
23 if you have any preconceived opinions about the case,
24 which you may find difficult to lay aside, to find out if
25 you have any personal or family experiences that might

1 cause you to identify with either of the parties.

2 In other words, we ask these questions to do
3 all we can to assure that each party -- to assure each
4 party that the jurors selected to decide the case are able
5 to be fair and impartial.

6 Please do not withhold any information in
7 order to be seated on the jury. Do not be concerned with
8 whether your answers are right or wrong. This is not a
9 test. Just be honest and candid in your answers. Do not
10 be concerned with what you think that we may want to hear,
11 or what the jurors or -- excuse me -- what the lawyers may
12 want to hear from you.

13 You have each been assigned a juror number.
14 Throughout this process, I and the lawyers will be
15 referring to you by that jury number.

16 If your answer to a question asked of the
17 whole panel is no, you don't have to do anything. If your
18 answer to a question is yes, please hold up your juror
19 number. I will then call on you, and I may ask you
20 additional questions.

21 When I call on you, please state your juror
22 number before answering. The court reporter needs to hear
23 your juror number each time you answer a question.

24 If you are in the back of the courtroom,
25 please stand up while answering. The court reporter will

1 also need to hear your answers. And the acoustics in here
2 aren't very good. So people who are sitting in the back
3 may not be heard by the court reporter, and we want to be
4 able to make sure that everything that you say is heard.

5 If at any time a question is asked for which
6 you have a yes answer, and for whatever reason you prefer
7 not to answer the question in open court, please hold up
8 your juror number anyway. When I call on you, state your
9 juror number and indicate that you prefer to answer the
10 question in private.

11 At an appropriate time, counsel, the court
12 reporter, the juror, and I will discuss the matter outside
13 the presence of the other jurors.

14 To be qualified for jury service in this
15 case, you must be 18 years old, or older, a citizen of the
16 United States, a resident of Maricopa County, and not have
17 any felony convictions, unless your civil rights have been
18 restored.

19 If anyone on the jury panel does not have
20 all these qualifications, please raise your jury number
21 now?

22 Okay. So everybody is qualified. Thank
23 you. I take it by your silence there is no one that lacks
24 the qualifications. All right.

25 Before we go any further, I want to

1 introduce the staff for this division.

2 The bailiff is Katrina. And you've met
3 Katrina already. She'll usually be sitting at that desk
4 to my left. She will assist us in getting into the
5 courtroom on time, and helps with many other tasks. She
6 may also leave from time to time during trial to perform
7 some of her other duties.

8 She's also filling in as this division's
9 judicial assistant.

10 If you have an emergency and need to reach
11 my division, please contact Katrina. Her office is behind
12 this courtroom. And if you need anything during the
13 trial, she will be able to help you.

14 And before we leave for the day we will make
15 sure that you have her number in case you need to reach
16 her.

17 The court clerk is Autumn; and she's seated
18 just to my left. Among other things she keeps the
19 official record of the proceedings. She handles all of
20 the exhibits, and swears in the witnesses and jurors.

21 Seated in front of me, a little bit to my
22 right is our court reporter. Her name is Linda. And the
23 court reporter keeps the official transcript of the
24 proceedings. Her transcript is a word-for-word record of
25 the trial. So I may ask you to speak up, or restate your

1 juror number.

2 During the answers or the trial itself, if
3 someone is speaking too fast, or people are talking over
4 each other, our court reporter cannot take down everything
5 that's being said. In those situations, I will remind
6 people to slow down, or wait for a question to be
7 finished. You should never interpret this as a comment on
8 the credibility of a witness, or a lawyer.

9 Please say yes or no and avoid using
10 ugh-huh, and ugh-ughs.

11 This is all in an effort to ensure accurate
12 record of the trial proceedings.

13 My name is Monica Garfinkel. I am a
14 Maricopa County Superior Court Commissioner.

15 Does anyone know me, or anyone on my staff?

16 I don't see no cards.

17 Ms. Tirrell, would you please introduce
18 yourself and the person also seated with you -- or
19 persons. Thank you.

20 MS. TIRRELL: Good morning. My name is Kim
21 Tirrell. And I'm a Deputy County Attorney here with the
22 Maricopa County Attorney's Office.

23 And sitting with me today I have Detective
24 Josh Leon.

25 Please stand.

1 THE COURT: All right. Do any of you know
2 Ms. Tirrell or anyone associated with the Maricopa County
3 Attorney's Office or the detective?

4 All right. Thank you.

5 Ms. Davison, will you introduce yourself and
6 your client, and whoever is with you.

7 MS. DAVISON: Yes. Thank you, your Honor.

8 THE COURT: Thank you.

9 MS. DAVISON: My name is Harla Davison. And with
10 me is Keyaira Porter.

11 Keyaira, do you mind standing.

12 And then my assistant is Jayden Hill.

13 THE COURT: All right. Do any of you know
14 Ms. Davison, Mr. Hill, or Ms. Porter?

15 All right. I didn't see any cards.

16 Ladies and gentlemen --

17 MS. TIRRELL: Your Honor, if I may?

18 THE COURT: Yes.

19 MS. TIRRELL: We also have an intern here with
20 us, from the Maricopa County Attorney's Office. She will
21 be here periodically.

22 THE COURT: Okay.

23 MS. BRICKMORE: My name is Andrea Brickmore. And
24 I'm an intern with the Maricopa County Attorney's Office.

25 THE COURT: Okay. Thank you. Does anybody on

1 the jury panel know Ms. Brickmore?

2 All right. Thank you.

3 Ladies and gentlemen, jury service is an
4 important part of our system of justice, with a long and
5 distinguished tradition in American law. Jury duty is one
6 of the most important civic duties that citizens in this
7 country are called upon to perform. The justice system
8 cannot function without people willing to serve as jurors.

9 Let me tell you about the schedule that we
10 anticipate for trial.

11 We hope to finish jury selection today.
12 This case is expected to take up to three trial days,
13 including today, but not including the jury's time for
14 deliberation. We will not be in session on Friday.

15 After today our schedule will be from 10:30
16 in the morning through 4:45 in the afternoon.

17 There's a lunch break from noon to 1:30 and
18 we usually take a mid-afternoon break.

19 Does everybody understand the schedule?

20 Is there anyone with any physical condition
21 or illness that would make it difficult to sit through a
22 trial of this length?

23 Juror number 16, please stand up.

24 PROSPECTIVE JUROR: I am five months pregnant and
25 I have had blood pressure problems, it drops and it

1 spikes; sometimes I faint.

2 THE COURT: Okay. So is it difficult for you to
3 sit in one place for a while?

4 PROSPECTIVE JUROR: Yes, I get hot.

5 THE COURT: All right. Thank you, juror number
6 16.

7 Juror number 13.

8 PROSPECTIVE JUROR: Juror 13. I'm also pregnant.
9 And I'm fine as long as I'm able to snack, or I get
10 really, really sick. So as long as I'm able to have food,
11 I'm okay.

12 THE COURT: All right. Thank you for that.

13 Anyone else?

14 All right. We do know that jury service is
15 an inconvenience, and that's to everybody to one extent or
16 another. However, all qualified citizens do have an
17 obligation to serve on a jury when summoned. And I'm
18 required by law to impanel a jury.

19 It is important to this community that
20 persons such as yourselves be willing to serve on juries
21 to decide cases such as this one.

22 The law provides that a juror can be excused
23 only if his or her absence from work would tend to
24 materially, and adversely affect the public safety,
25 health, welfare or interest; or if service as a juror

1 would impose an undue hardship on the juror.

2 With respect to financial hardship jury
3 service has a cost for everyone who serves. Some people
4 miss work, and will not be paid for their time. Some
5 people work on commission and will miss out on potential
6 work. Simply missing out on income or potential income,
7 is not in and of itself an -- excuse me -- is not in and
8 of itself an undue hardship. It must have a substantial
9 adverse impact on the payment of your necessary living
10 expenses, or on those for whom you provide the principal
11 means of support. Usually a few days of service does not
12 meet the standard of undue or extreme hardship.

13 Is there anything about the anticipated
14 length of trial, or the daily trial schedule that presents
15 a significant undue hardship for you, whether it's
16 personal, business, or health?

17 And I don't need to hear again from jurors
18 number 13 or 16, unless there's something you wanted to
19 add.

20 Anybody else?

21 Okay. If you will hold up your juror cards
22 until I call your number, and then I'll come back to each
23 of you.

24 Juror number 11 -- okay. I'm just going to
25 call out the numbers right now, and then I'll come back.

1 Juror number 17.

2 23 and 39.

3 Okay. Juror number 11, yes.

4 PROSPECTIVE JUROR: I'm a charge nurse in an
5 emergency department, and it's difficult to fill my
6 position when I'm gone.

7 THE COURT: All right. So are you not scheduled
8 to work today?

9 PROSPECTIVE JUROR: Not for a couple of days, no.

10 THE COURT: When do you work again?

11 PROSPECTIVE JUROR: Thursday.

12 THE COURT: And so having two days' notice, would
13 you be able to ask somebody else to cover for you?

14 PROSPECTIVE JUROR: Possibly. But, again, if
15 they're not qualified to be in charge of the department,
16 it's difficult to fill.

17 THE COURT: So what happens when you're sick or
18 on vacation?

19 PROSPECTIVE JUROR: Sometimes my boss may have to
20 fill in. And I work nightshift, so it's difficult for her
21 to generally work nights.

22 THE COURT: So after Thursday, you work Thursday
23 until when?

24 PROSPECTIVE JUROR: Thursday until I think
25 Tuesday, so five - six days in a row.

1 THE COURT: Thursday, Friday, Saturday, Sunday,
2 Monday, Tuesday?

3 PROSPECTIVE JUROR: Ah-hum.

4 THE COURT: All right. And what are the hours?
5 You said you work nightshift?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: So -- and what are those hours?

8 PROSPECTIVE JUROR: 7 p.m. to 7 a.m.

9 THE COURT: Okay. So we're anticipating being
10 done by Thursday, and then the jury may have to come back
11 to deliberate on Monday.

12 PROSPECTIVE JUROR: Okay.

13 THE COURT: So it would probably be two days that
14 you might have to get coverage for.

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: Do you think that's something that's
17 doable?

18 PROSPECTIVE JUROR: Possibly.

19 THE COURT: All right. Thank you, juror 11.

20 Juror number 17.

21 PROSPECTIVE JUROR: I work in hotels and
22 restaurants. And I am supposed to fly to Chicago tomorrow
23 night to help with a new restaurant opening. That's kind
24 of my role within the company. So it's going to be
25 difficult for me to find a replacement, or do anything

1 different; just with the length of the trial.

2 THE COURT: Was this something that's been
3 planned for a while?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Are you meeting with people there?

6 PROSPECTIVE JUROR: Yep.

7 THE COURT: Is it something special about this
8 day or is it something that could be rescheduled for next
9 week?

10 PROSPECTIVE JUROR: It can. It starts Thursday
11 morning, and it goes to April 5th.

12 THE COURT: And what is it that's happening
13 during that time?

14 PROSPECTIVE JUROR: A restaurant is reopening.

15 And it's kind of my role within the company
16 of doing those openings and transitions. There's nobody
17 else that would be able to take the role, per se, without
18 just voiding it out in the business.

19 THE COURT: So if you were sick or on vacation,
20 what would happen?

21 PROSPECTIVE JUROR: Vacation, I couldn't
22 schedule around an opening like that. Sick, I honestly
23 possibly would still fly out there, and I would sleep in
24 and go as I could make it.

25 THE COURT: And you've already purchased the

1 ticket or the company has?

2 PROSPECTIVE JUROR: I do have one right now,
3 yeah, for Wednesday night. We're kind of working on last
4 minute, it's just the way kind of the way the schedules go
5 but, yeah.

6 THE COURT: All right. Thank you, juror number
7 17.

8 Juror number 23.

9 PROSPECTIVE JUROR: I'm a small business and I
10 have one employee. And he doesn't work if I don't work.
11 So a couple of days, I probably could handle that, but I
12 just didn't know the length of the trial at the time, so.

13 THE COURT: So now that you know our trial
14 schedule, do you think it's doable?

15 PROSPECTIVE JUROR: Yeah. I think if we were
16 done Thursday -- and even if I had to come back on Monday,
17 probably a shorter time on Monday, if you are thinking,
18 then I probably could do something like that.

19 THE COURT: Thank you, juror number 23.

20 Juror number 39.

21 PROSPECTIVE JUROR: Number 39. Tom --

22 THE COURT: You don't need to tell me your name,
23 just your number.

24 PROSPECTIVE JUROR: 39.

25 THE COURT: Thank you.

1 PROSPECTIVE JUROR: I'm self-employed. I supply
2 office supplies to businesses. I do printer repair,
3 copier repairs. I'm the only one there in the business.
4 It's been since 1989.

5 THE COURT: You don't have any employees?

6 PROSPECTIVE JUROR: I have no employees.

7 THE COURT: I'm sorry.

8 PROSPECTIVE JUROR: I have no employees.

9 THE COURT: Okay. And the same questions that I
10 was asking for 23, I believe it was. What happens if
11 you're sick or on vacation?

12 I guess you don't take vacations?

13 PROSPECTIVE JUROR: I don't take vacations.
14 Rarely am I sick. If I'm sick, I make it work. I have to
15 deliver my products to my customers.

16 THE COURT: And if you made arrangements with
17 them during the days that we weren't in trial, or before
18 we started -- because we usual don't start until 10:30.
19 So could you do your deliveries in the morning or during
20 the lunch hour?

21 PROSPECTIVE JUROR: My supplier is clear out
22 west. I can't get back in time. So I don't get here
23 until almost 10 o'clock. These are businesses, so like I
24 have 500 customers.

25 THE COURT: Okay. So based on the schedule, it

1 would be -- so what are you doing for today?

2 PROSPECTIVE JUROR: Well I'm closed down for
3 today. I check my e-mails and stuff. But today, not a
4 problem. Just a couple of days -- two or three days is a
5 problem.

6 THE COURT: Okay. So it would be today,
7 tomorrow, Thursday, and possibly Monday.

8 PROSPECTIVE JUROR: Yeah, that would be a
9 problem.

10 THE COURT: Well, thank you, juror 39.

11 All right. Anybody else?

12 Juror number 45?

13 PROSPECTIVE JUROR: Yes. Number 45. I have two
14 small children. I don't have anyone to pick them up from
15 school in the afternoon. And they don't have a school
16 bus. So dropping them off and picking them up is
17 difficult.

18 THE COURT: Okay. So what arrangements did you
19 make for today?

20 PROSPECTIVE JUROR: Today my husband dropped them
21 off, and he will be coming and taking half a day off and
22 picking them up from school.

23 THE COURT: Would he or somebody else be able to
24 do that for the short duration of the trial?

25 PROSPECTIVE JUROR: My mother-in-law is in town,

1 but she works during the day, so she can't get off. So
2 there's no one to pick them up.

3 THE COURT: How old are they?

4 PROSPECTIVE JUROR: Kindergartner, he's 5 and a
5 half, and 11 and a half, 6th grader.

6 THE COURT: And what are their school hours?

7 PROSPECTIVE JUROR: Kindergartner, he is
8 8 o'clock to 3:30. And my 11-year-old, he is 7:30 in the
9 morning until 3:30.

10 THE COURT: So you would be able to drop both of
11 them off?

12 PROSPECTIVE JUROR: Yeah. I can drop them off,
13 just the afternoon is a problem.

14 THE COURT: Okay. All right. And would your
15 husband be able to pick them up, or your mother-in-law, or
16 somebody pick them up for the few days that we'll be here?

17 PROSPECTIVE JUROR: He will have to take time
18 off. He just started a new job, like the last month, so.

19 THE COURT: All right. Thank you, juror 45.

20 PROSPECTIVE JUROR: Thank you.

21 THE COURT: All right. Would counsel please
22 approach?

23

24 (Whereupon, the following bench conference
25 was held and transcribed to the Court Reporter's ability

1 to hear whispers at the bench.)

2

3 THE COURT: All right. Any people at this point
4 that you are comfortable excusing for hardship purposes?

5 Eye cataracts, 35. He indicated that he
6 would probably be okay with it. I don't know if you are
7 planning on having many exhibits that are going to be a
8 distance away from him?

9 MS. TIRRELL: I have a problem because he
10 couldn't see your face. I don't know how bad his eyes
11 really are.

12 THE COURT: Do you want to excuse him?

13 MS. TIRRELL: I think for hardship, yes.

14 MS. DAVISON: Agree.

15 THE COURT: Okay. And then the pregnant woman.

16 MS. TIRRELL: That's fine.

17 MS. DAVISON: That's fine.

18 THE COURT: The one that needs to snack is okay.
19 Five months pregnant with high blood pressure.

20 MS. TIRRELL: We don't want her fainting in
21 court.

22 MS. DAVISON: Agree.

23 THE COURT: Number 11, a charge nurse --
24 overnight charge nurse. It sounds like he probably can,
25 but it might be challenging. Keep him for now.

1 Sorry?

2 MS. DAVISON: There's different types of nursing
3 positions, but I would say because he's in the ER, I think
4 that's a little bit more strenuous. Leave it up to your
5 discretion, but I weigh towards excusing him because of
6 the emergency.

7 THE COURT: Leave or excusing?

8 MS. DAVISON: No, excusing him.

9 MS. TIRRELL: The State doesn't have any problem
10 with that, your Honor.

11 THE COURT: Number 17, gentleman with business
12 restraints.

13 MS. TIRRELL: Tickets to go to Chicago.

14 MS. DAVISON: Agreed.

15 THE COURT: Number 23, small business owner, one
16 employee.

17 MS. TIRRELL: I think he's fine to keep.

18 MS. DAVISON: Agree.

19 THE COURT: 39 is the self-employed office supply
20 person. He says he is closed down today. No problem. No
21 other employees.

22 MS. TIRRELL: I think he should be excused for
23 hardship.

24 MS. DAVISON: Agreed.

25 THE COURT: Excuse 39.

1 And then 45, two small children.

2 MS. TIRRELL: She could be excused.

3 MS. DAVISON: Agree.

4 THE COURT: All right. Anybody else that you
5 propose to excuse at this point?

6 MS. DAVISON: No.

7 MS. TIRRELL: No, your Honor.

8 THE COURT: All right. Thank you.

9

10 (End of bench conference.)

11

12 THE COURT: All right. So from time to time we
13 take -- we have the attorneys come up to the bench so we
14 can have a quick break, instead of having to have all of
15 you leave the courtroom, and then come back in the
16 courtroom.

17 So we just wanted to address a few people
18 that we are going to excuse for hardship at this point.
19 This doesn't mean that you won't be excused later in the
20 proceeding, but the people that we are going to excuse now
21 are jurors number:

22 35, 16, 11, 17, 39, and 45.

23 So I thank you all for your service, and you
24 are excused, and you may leave now.

25

1 (Whereupon, the excused prospective members
2 of the jury panel exited the courtroom.)

3
4 THE COURT: All right. Well, let me tell you
5 briefly what this case is about.

6 The State alleges that on August 14th of
7 2017, Keyaira Porter assaulted James Hermes, who she knew
8 or had reason to know was a peace officer.

9 The State also alleges that on August 14th,
10 2017, Keyaira Porter intentionally prevented or attempted
11 to prevent James Hermes, a person reasonably known to her
12 to be a police officer, from effecting an arrest by
13 creating a substantial risk of causing physical injury to
14 him.

15 The Defendant has denied these allegations,
16 and has pled not guilty to the charges.

17 Have any of you seen, heard or read anything
18 about this case?

19 All right. I don't see any cards.

20 Have any of you, or a close friend, or
21 family member ever been involved in a case such as this?

22 All right. Juror number 28.

23 PROSPECTIVE JUROR: Juror number 28. I was
24 involved in an -- I was assaulted in July 11th, 1995.

25 THE COURT: All right. Jury number 28, is there

1 anything about that experience that would make it
2 difficult for you to be fair and impartial in this case?

3 PROSPECTIVE JUROR: I don't think so.

4 THE COURT: All right. Thank you.

5 Anyone else?

6 Juror number 26.

7 PROSPECTIVE JUROR: Juror number 26. My brother
8 is a police officer in the State. And I feel very
9 strongly in regards to assaulting police officers.

10 THE COURT: So would you be able to put your
11 strong feelings aside to judge this case based solely on
12 the evidence presented here in court?

13 PROSPECTIVE JUROR: I will say I will try my
14 hardest, because I believe in being impartial, but at the
15 same time I also understand and experience what police
16 officers go through on a daily basis. And I believe very
17 strongly that -- I feel very strongly about this subject.

18 THE COURT: Thank you, juror number 26.

19 Anyone else?

20 Is there anything about the nature of the
21 case alone that would make it difficult for any of you to
22 serve as fair and impartial jurors in this case?

23 All right. I don't see any cards.

24 I'm now going to read a list of witnesses,
25 in addition to the people that you've already met, who may

1 be called to testify during the trial. All of these
2 people may not be called to testify, but some of them
3 might be.

4 Please raise your juror number if you know,
5 or think you may know any of these people.

6 James Hermes, badge number 15901, with the
7 Mesa Police Department.

8 Joshua Leon, badge number 19440, with the
9 Mesa Police Department.

10 Christian Rope, badge number 19865, with the
11 Mesa Police Department.

12 Patrick McClusky.

13 Melissa Bate.

14 James Bate.

15 I don't -- anybody think any of these names
16 sound familiar?

17 All right. I don't see any cards.

18 Have you or any close family members ever
19 served as a law enforcement officer?

20 And we heard from juror number 26.

21 Juror number 22.

22 Okay. I'm going to get numbers down first,
23 and then I'll call you back.

24 Juror number 26.

25 23 -- please put your numbers up and then

1 put them down after I've said your number.

2 Okay. So 4, 5, 18, 19, 29.

3 I think -- juror number 28, you may have
4 your number facing you instead of me.

5 All right. Juror number 28.

6 31, 33, 41, and 43.

7 Is there anyone whose number was raised that
8 I did not call?

9 All right. Thank you.

10 Juror number 4. Yes.

11 PROSPECTIVE JUROR: My brother-in-law is a FBI --
12 no. Sorry. He's a detective in the Phoenix Police
13 Department.

14 THE COURT: And do you have another friend or
15 relative that's with the FBI?

16 PROSPECTIVE JUROR: No. Sorry. I just said it
17 wrong.

18 THE COURT: Is there anything about that
19 experience -- that relationship that would make it
20 difficult for you to be fair and impartial in this case?

21 PROSPECTIVE JUROR: I don't think so.

22 THE COURT: Thank you.

23 Juror number 5.

24 PROSPECTIVE JUROR: Number 5. My deceased
25 father-in-law was lieutenant-chief of police in Illinois

1 -- La Grange Park. And I have a brother-in-law who is a
2 retired detective; Crystal Lake, Illinois.

3 THE COURT: Anything about those relationships or
4 anything that you learned through the years with your
5 experiences with those people that would make it difficult
6 for you to be fair and impartial in this case?

7 PROSPECTIVE JUROR: I will do my best. I can't
8 say for sure.

9 THE COURT: Thank you, juror number 5.

10 Juror number 20 -- excuse me. Juror number
11 18.

12 PROSPECTIVE JUROR: My father worked in law
13 enforcement for 20 years, in Farmington, New Mexico, in
14 San Juan County, and then here in Mesa.

15 THE COURT: And is there anything about that
16 relationship that would make it difficult for you to be
17 fair and impartial in this case?

18 PROSPECTIVE JUROR: I don't think so.

19 THE COURT: Okay. Thank you, juror number 18.

20 Juror number 19.

21 PROSPECTIVE JUROR: Number 19. My daughter is a
22 probation officer and supervisor in -- a juvenile
23 probation officer and supervisor for the Maricopa County
24 Superior Court.

25 THE COURT: Is there anything that you've learned

1 from talking to your daughter, or anything about the
2 relationship, that would make it difficult for you to be
3 fair and impartial in this case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Thank you, juror number 19.

6 Juror number 23.

7 PROSPECTIVE JUROR: Number 23. My son-in-law was
8 just recently -- who is not working there anymore -- at
9 ASU police. And, no, I don't think there's anything about
10 that relationship that would cause me to not be partial.

11 THE COURT: Thank you, juror number 23.

12 Juror number 26.

13 Juror 26?

14 PROSPECTIVE JUROR: Oh, I apologize. 26. I
15 thought you said I didn't --

16 THE COURT: I'm sorry.

17 PROSPECTIVE JUROR: My brother-in-law is a police
18 officer.

19 THE COURT: That's right, I apologize.

20 Juror number 28.

21 PROSPECTIVE JUROR: Juror number 28. My nephew
22 is the under sheriff of Onondaga County in New York State.

23 THE COURT: Is he your nephew?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: And that's in New York?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Thank you.

3 And is there anything about that
4 relationship that would make it difficult for you to be
5 fair and impartial in this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Thank you.

8 Juror number 31.

9 PROSPECTIVE JUROR: Juror 31. My brother is a
10 D.O.C. officer in Colorado. And I also have a close
11 friend and neighbor that are retired sheriff's office law
12 enforcement and FBI.

13 THE COURT: Anything about those relationships
14 that would make it difficult for you to be fair and
15 impartial in this case?

16 PROSPECTIVE JUROR: I don't believe so.

17 THE COURT: Thank you.

18 Juror number 33.

19 PROSPECTIVE JUROR: Juror number 33. My dad was
20 nightshift in Compton. He's told me all kinds of stories.
21 We actually moved out of Minnesota. And he was chief of
22 police in a small town in Minnesota.

23 THE COURT: Now, based on the stories that he's
24 told you, and your relationship with him, would it make it
25 difficult for you to be fair and impartial in this case?

1 PROSPECTIVE JUROR: Not with the information so
2 far.

3 THE COURT: Thank you.

4 Juror number 41.

5 PROSPECTIVE JUROR: 41. I have a brother-in-law
6 that's a police officer in Flagstaff. And a sister-in-law
7 -- I think she manages the vehicles in Flagstaff for the
8 police officers.

9 THE COURT: Anything about your relationship with
10 your brother- and sister-in-law that would interfere with
11 your ability to be fair and impartial here?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Thank you, juror number 41.

14 And juror number 43.

15 PROSPECTIVE JUROR: 43. My dad is retired from
16 the Tempe Police Department.

17 THE COURT: Anything about your relationship with
18 your father, information that he may have told you, that
19 would make it difficult for you to be fair and impartial
20 in this case?

21 PROSPECTIVE JUROR: No, your Honor.

22 THE COURT: Thank you, juror number 43.

23 Anyone else that I missed?

24 Juror number 22.

25 PROSPECTIVE JUROR: Juror number 22. My mother

1 was a police officer. My best friend is a retired
2 Scottsdale police sergeant.

3 THE COURT: And having those relationships, would
4 that interfere with your ability to be fair and impartial
5 in this case?

6 PROSPECTIVE JUROR: I feel it would.

7 THE COURT: Okay. So you don't feel that you
8 could just listen to the evidence that was presented here,
9 and the instructions that the Court gives you, and set
10 aside those experiences?

11 Like I said, there's no right or wrong
12 answer, I'm just asking?

13 PROSPECTIVE JUROR: I do feel it would be an
14 emotional event.

15 THE COURT: Okay. Thank you, juror number 22.

16 Anyone else?

17 Jury number 29.

18 PROSPECTIVE JUROR: Juror number 29. My nephew
19 is a police officer.

20 THE COURT: And the fact that your nephew is a
21 police officer, would that interfere with your ability to
22 be fair and impartial here?

23 PROSPECTIVE JUROR: It would not.

24 THE COURT: Okay. Thank you, juror number 29.

25 Anybody else?

1 All right. Thank you.

2 Have any of you ever served as a member of a
3 grand jury, either federal, state, or county? Any grand
4 jury members?

5 Okay. Have you, or any close family members
6 ever studied or practiced law?

7 Okay. Again, I'm going to take down some
8 numbers. 3, 5, 28, and 29.

9 Okay. Juror number 3.

10 PROSPECTIVE JUROR: My husband did one year of
11 law school.

12 THE COURT: Anything about your husband's
13 experience with law school that would make you consult him
14 for legal advice versus listening to the law that you're
15 instructed on here in court?

16 PROSPECTIVE JUROR: Not if we can't share -- I
17 think --

18 THE COURT: No, you're not. Good answer.

19 So I take it from that comment, that you
20 could be fair and impartial?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Thank you, juror number 3.

23 All right. Juror number 5.

24 PROSPECTIVE JUROR: Juror number 5. I have a
25 brother-in-law who is a criminal defense attorney in

1 Illinois, and a nephew that is just starting also as an
2 attorney. I'm not sure what field yet but --

3 THE COURT: Have you had conversations with your
4 brother-in-law or nephew about the law that would make it
5 difficult for you to set those conversations aside and be
6 -- and not be able to be fair and impartial here?

7 PROSPECTIVE JUROR: I don't think so. I should
8 be fine.

9 THE COURT: Okay. Thank you, juror number 5.

10 Juror number 28.

11 PROSPECTIVE JUROR: Juror number 28. I practiced
12 law for about 20 years until 1995. I have a sister who's
13 a court magistrate in New York, and a nephew, who is a
14 lawyer in Cleveland.

15 THE COURT: Okay. So you practiced law here or
16 out of state?

17 PROSPECTIVE JUROR: In New York State and in
18 Arizona.

19 THE COURT: Did you practice criminal law?

20 PROSPECTIVE JUROR: Very little, but some when I
21 first started practicing. Mostly corporate law, though.

22 THE COURT: Okay. Anything about your legal
23 experience that would make it difficult for you to set
24 aside what you know, as a lawyer, and listen to the law
25 that's instructed to you by the Court in this case and the

1 evidence that's presented to you?

2 PROSPECTIVE JUROR: I will answer no, but I was a
3 lawyer, and we do that so --

4 THE COURT: So, juror number 28, do you think
5 that you could be fair and impartial?

6 PROSPECTIVE JUROR: I think I can.

7 THE COURT: Okay. Thank you.

8 All right. Juror number 29.

9 PROSPECTIVE JUROR: Juror number 29. My
10 brother-in-law in the east practiced law, but that's in
11 Nebraska, so. And I feel like I could be impartial.

12 THE COURT: Thank you.

13 PROSPECTIVE JUROR: You're welcome.

14 THE COURT: Did I see another number go up?

15 Juror number 14.

16 PROSPECTIVE JUROR: Yes. I don't know if you
17 said friends, but I have a friend who is an attorney for
18 the city of Mesa in the criminal department.

19 THE COURT: In the criminal department?

20 PROSPECTIVE JUROR: Ah-hum.

21 THE COURT: Okay. This case does involve police
22 from the Mesa Police Department. Would that relationship
23 or information she may have discussed with you, interfere
24 with your ability to be fair and impartial in this case?

25 PROSPECTIVE JUROR: No.

1 THE COURT: Thank you, juror number 14.

2 Juror number 41.

3 PROSPECTIVE JUROR: 41. My uncle is a
4 malpractice lawyer; medical malpractice. But, no, I
5 wouldn't be partial.

6 THE COURT: Okay. Thank you.

7 Anyone else?

8 Juror number 40.

9 PROSPECTIVE JUROR: 40. If we're doing friends,
10 I have about a dozen friends who are all lawyers, and
11 they're all defense in the criminal side. And I'm also
12 friends with the Attorney General formerly of Arizona as
13 well.

14 THE COURT: Okay. So have you had conversations
15 with your friends who are criminal defense lawyers about
16 their jobs?

17 PROSPECTIVE JUROR: Lots. We travel around
18 together; international travel. And they can't get away
19 from the lawyering talk.

20 THE COURT: Lawyers like to talk about the law.

21 So is there anything about that experience
22 that would make it hard for you to put those stories, and
23 conversations, and opinions aside to judge the facts in
24 this case?

25 PROSPECTIVE JUROR: I don't think so. If

1 anything I've learned from them is to judge objectively --
2 objectively, there we go.

3 THE COURT: All right. Thank you, juror number
4 40.

5 Anybody else?

6 Okay. Thank you.

7 Have you, or any close family members been
8 the victim of any type of crime?

9 PROSPECTIVE JUROR: Any type of crime?

10 THE COURT: Any type of crime.

11 Jurors number 1, 10, 5, 12, 13, 14, 9 -- or
12 excuse me -- 19.

13 22, 27, 28, 30, 9 -- if I already called
14 your number, you could put your number down.

15 2, 31, 34, 40.

16 Okay. Before I go to each of you
17 individually, it sounded like you had some questions about
18 that.

19 So if you were a victim of a minor crime, or
20 something that you don't think is that significant that
21 would interfere with your ability to judge this case,
22 raise your hand -- your card.

23 PROSPECTIVE JUROR: Sorry. What was the
24 question? Inability or the other way?

25 THE COURT: If you can set aside your experience

1 and be fair and impartial here?

2 PROSPECTIVE JUROR: Then don't raise?

3 THE COURT: Then raise your card if you can be
4 fair and impartial, and your experience as a victim will
5 not interfere?

6 Okay. So 1, 2, 5, 9, 12, 13, 14.

7 8, I didn't have you the first time.

8 PROSPECTIVE JUROR: It was so minor, I didn't
9 even --

10 THE COURT: Okay. Thank you.

11 8, 19, 24, 27.

12 28, 34, 31, 40, and 38.

13 So that leaves what I have is jurors 10, 22,
14 and 30.

15 Okay. So juror number 10.

16 PROSPECTIVE JUROR: Juror number 10. My daughter
17 was killed by a hit and run just a year ago.

18 THE COURT: I'm very sorry for your loss, ma'am.

19 Was anybody ever caught or arrested for
20 that?

21 PROSPECTIVE JUROR: No. She was walking to the
22 store to get a pack of cigarettes and was hit by a vehicle
23 and thrown over the bridge. She fell 30 to 40 feet down.

24 THE COURT: I'm very sorry, ma'am.

25 Did the police conduct an investigation?

1 PROSPECTIVE JUROR: Yeah. They have no evidence.
2 They didn't have nothing. There was no cameras. It was
3 where there was -- it was out of view. It was May 19th of
4 last year. A year is coming up. Her anniversary year is
5 coming in May.

6 THE COURT: Do you remember which police agency
7 was involved?

8 PROSPECTIVE JUROR: Avondale.

9 THE COURT: Do you feel like they handled the
10 investigation appropriately?

11 PROSPECTIVE JUROR: They say that there's
12 nothing, unless somebody comes forward, that there's
13 really nothing they could do. They investigated to my
14 knowledge, but they have no clues, or nothing; just that
15 the coroner -- the medical examiner said is the way she --
16 the impact of her; it was a hit and run and she was tossed
17 over -- she was hit and hit over the -- off the bridge.

18 THE COURT: And it sounds like you've been
19 dealing with quite a bit as a result of that?

20 PROSPECTIVE JUROR: Yeah.

21 THE COURT: Would you be able to set that
22 experience aside to be fair and impartial in this case?

23 PROSPECTIVE JUROR: Yeah, I think so. This
24 didn't come up unless -- except you asking about a
25 criminal -- something happening -- a family event, is what

1 brought that up. It's not connecting with this here, it's
2 just the emotional going through with the loss.

3 THE COURT: Sure. Well, I appreciate you telling
4 us about that. Thank you.

5 Juror number 22.

6 PROSPECTIVE JUROR: Juror number 22. Breaking
7 and entering in my house. My automobile has been stolen.
8 My wallet has been stolen from a cart at a grocery store.

9 THE COURT: Was anybody prosecuted for any of
10 those incidents?

11 PROSPECTIVE JUROR: No one was ever caught.

12 THE COURT: Do you recall what police agency or
13 agencies were involved?

14 PROSPECTIVE JUROR: Tempe police. Yavapai County
15 Sheriff's Department.

16 THE COURT: And how long ago was this?

17 PROSPECTIVE JUROR: My home was broken into --
18 it's been 10 years. Also my wallet, my automobile, also
19 about the same time. And my property in Yavapai County,
20 has been 15 years.

21 THE COURT: Okay. And do you feel that you were
22 treated fairly in the course of the investigation?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Is there anything about that
25 experience that would interfere with your ability to be

1 fair and impartial in this case?

2 PROSPECTIVE JUROR: I don't think so.

3 THE COURT: All right. Thank you, juror number
4 22.

5 And juror number 30.

6 PROSPECTIVE JUROR: Number 30. My current
7 fiancée was in an altercation with her ex-husband at the
8 time when I was on a work assignment in Pleasant Hill,
9 California. And she was convicted of domestic violence.

10 THE COURT: So what you know about is what she
11 told you?

12 PROSPECTIVE JUROR: Well I was actually a witness
13 to it as well. I was there.

14 THE COURT: So did she have to go to court?

15 PROSPECTIVE JUROR: Yes. She went to court three
16 times I believe.

17 THE COURT: If you recall, did she enter into a
18 guilty plea, or did she have a trial?

19 PROSPECTIVE JUROR: She entered in a guilty plea
20 after a bargain was struck.

21 THE COURT: I'm sorry. What?

22 PROSPECTIVE JUROR: After a plea bargain.

23 THE COURT: Okay. And did that -- that happened
24 here, but you were in California?

25 PROSPECTIVE JUROR: So -- no, it did not happen

1 in the State of Arizona. I was on assignment in Lawrence
2 Livermore, California.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: And it happened in Pleasant
5 Hill, California.

6 THE COURT: Do you feel that your fiancée and
7 yourself, that you were both treated fairly in the
8 processing of the case?

9 PROSPECTIVE JUROR: No, your Honor. I do not.

10 THE COURT: And what was -- what is it about that
11 situation that makes you feel that way?

12 PROSPECTIVE JUROR: So a long story short,
13 basically, my current fiancée she was entrapped by her
14 ex-husband. And he basically said that she struck him
15 violently. And even though there was no evidence or
16 pictures or anything taken at the time to prove that
17 matter, but she was still charged and convicted with that.

18 THE COURT: Would that experience make it
19 difficult for you to be fair and impartial in this case or
20 could you set that aside?

21 PROSPECTIVE JUROR: I believe it would be an
22 issue, yes.

23 THE COURT: Thank you, juror number 30.

24 Anybody else that wants to discuss their
25 experience?

1 Juror number 38.

2 PROSPECTIVE JUROR: Yeah. I was shot by an
3 individual in 1969. And that case was never investigated,
4 or they never prosecuted anybody.

5 Also, your Honor, I would like to say that
6 my last name is Porter. And I don't think I'm any
7 relation to this individual right here. But there were
8 two sets of Porters when I first come out here. The one
9 on my side and the one that lived here. I came out here
10 from Texas, but I don't think that I know this individual.

11 THE COURT: Thank you.

12 The incident that happened in 1969, when you
13 were shot, was that here in Arizona?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: And the fact that -- well, were
16 there police involved?

17 PROSPECTIVE JUROR: I guess they called the
18 police. They had taken me to the hospital. And I never
19 was contacted by any police. I don't think anybody at the
20 club reported it.

21 In other words, I don't think they -- they
22 called the police, but I don't think they said anything.
23 Nobody said nothing.

24 THE COURT: Okay. And you said it was never
25 prosecuted?

1 PROSPECTIVE JUROR: No.

2 THE COURT: Sir, is there anything about that
3 experience that would interfere with your ability to be
4 fair and impartial in this case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Thank you, juror number 38.

7 Anybody else?

8 Juror number 1.

9 PROSPECTIVE JUROR: Yes. I've owned a 7-Eleven
10 for 18 years and I have been robbed numerous times. And
11 twice policemen have come to my aid; exactly when -- one
12 officer has come across the -- when the man was pointing a
13 rifle at me, shotgun. He came across the counter and hit
14 the man and put holes in our walls, but saved my life. So
15 I'm very partial to policemen, and how they're treated.

16 THE COURT: I'm glad you had a positive
17 experience out of a negative one. But would you be able
18 to judge the evidence in this case and be fair and
19 impartial to both sides?

20 PROSPECTIVE JUROR: I personally think so.

21 THE COURT: Thank you, juror number 1.

22 Anybody else?

23 All right. Have any of you, or any close
24 family members ever been arrested, charged with, or
25 convicted of a crime, other than the ones that we've

1 already talked about?

2 Juror number 2?

3 Anybody else?

4 19, 22, 27, 31, 36, 41, 43, 44.

5 And we're talking about other than a minor
6 traffic offense.

7 So is there anything about the experience
8 that -- the relationship or any of the information that
9 you've learned that would affect your ability to be fair
10 and impartial in this case?

11 All right. So juror number 2?

12 PROSPECTIVE JUROR: Oh well --

13 THE COURT: Did you want to discuss your
14 situation?

15 PROSPECTIVE JUROR: Okay.

16 THE COURT: Did you want to discuss it outside
17 the presence of the other jurors, or do you not want to
18 discuss it?

19 PROSPECTIVE JUROR: I'm just answering your
20 question.

21 THE COURT: Okay. So you or a family member has
22 been arrested?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay. But you feel you could be fair
25 and impartial?

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: Okay. Thank you.

3 Juror number 19.

4 PROSPECTIVE JUROR: Yes. I believe I could be
5 impartial.

6 THE COURT: All right. Juror number 22.

7 PROSPECTIVE JUROR: I believe I could be
8 impartial.

9 THE COURT: Number 27.

10 PROSPECTIVE JUROR: I can be impartial.

11 THE COURT: Okay. Number 31.

12 PROSPECTIVE JUROR: I can be impartial.

13 THE COURT: 36.

14 PROSPECTIVE JUROR: I can be impartial.

15 THE COURT: 41.

16 PROSPECTIVE JUROR: I can be impartial.

17 THE COURT: 43.

18 PROSPECTIVE JUROR: I can be impartial.

19 THE COURT: And 44.

20 PROSPECTIVE JUROR: Yes, I can be impartial.

21 THE COURT: And of those of you who answered, did
22 any of those involve the Mesa Police Department?

23 Juror number 31.

24 PROSPECTIVE JUROR: Ah-hum.

25 THE COURT: Your experience has?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Okay. When did that happen?

3 PROSPECTIVE JUROR: 1995.

4 THE COURT: And did it involve you or a family
5 member?

6 PROSPECTIVE JUROR: Myself and a family member.

7 THE COURT: And did you or your family member
8 have to go to court as a result of the experience?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And did you or your family member
11 have a trial?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: And what was the result of that?

14 PROSPECTIVE JUROR: For the -- there was a plea
15 bargain struck and it was probation.

16 THE COURT: Was there anything about that
17 experience that you feel will interfere with your ability
18 in this case?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Do you feel that you or your family
21 member was treated fairly?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: Anybody else want to add anything?

24 Okay. I think some of you -- yes, juror
25 number 44?

1 PROSPECTIVE JUROR: Yes. I have a cousin who is
2 currently incarcerated for selling and using drugs. He
3 will be again released this upcoming year.

4 I also back in 2002 was arrested for a DUI
5 in Tempe. And a plea bargain was initially struck, just
6 as well, and because the State of Michigan -- I was going
7 to serve 7 and a half years prison. And they got me down
8 to two years, so I did spend two years in prison.

9 THE COURT: So do you feel that you were treated
10 fairly in that case?

11 PROSPECTIVE JUROR: I think I was held
12 accountable for my actions, yes. Absolutely, yes. I was
13 treated fairly. And I made a bad judgment so, yeah.

14 THE COURT: Okay. With your experience and your
15 cousin's experience, do you think you could set those
16 experiences aside and judge the case here based on the
17 evidence presented?

18 PROSPECTIVE JUROR: Yeah. Based off of
19 everything that's been presented so far, I do think what I
20 learn in the future I think I would be fair; be able to
21 set that aside.

22 THE COURT: Thank you, juror number 44.

23 Okay. I think some of you may have
24 commented on this with -- in response to my other
25 questions. But is there anybody who has ever served as a

1 witness in a lawsuit, either civil or criminal?

2 All right. Juror number 1.

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Number 9.

5 PROSPECTIVE JUROR: I was a witness to a murder
6 trial of an employee.

7 THE COURT: That was one of your employees at
8 7-Eleven?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And did you actually observe what
11 happened?

12 PROSPECTIVE JUROR: No, but I witnessed the
13 gentleman -- the husband had murdered his wife with a
14 friend. It's a well-known case.

15 THE COURT: And when was that?

16 PROSPECTIVE JUROR: 1975.

17 THE COURT: And do you feel that the process was
18 fair?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: Okay. And is there anything about
21 that experience that would interfere with your ability to
22 be fair and impartial here?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Thank you, juror number 1.

25 Okay. Let me get some more numbers down.

1 I have juror -- or 9's number.

2 Anybody else?

3 Any other witnesses?

4 Anybody else ever had to testify in a legal
5 case?

6 All right. Juror number 9.

7 PROSPECTIVE JUROR: I had to testify in a
8 worker's compensation case for an employee with the State
9 of South Dakota.

10 THE COURT: Anything about that experience that
11 would interfere with your ability to be impartial here?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Thank you.

14 Okay. Does anyone know any other members of
15 the jury panel?

16 PROSPECTIVE JUROR: I recognize her as a
17 colleague but we don't --

18 THE COURT: Okay. Juror number -- what is your
19 number?

20 PROSPECTIVE JUROR: I'm sorry.

21 THE COURT: All right. Juror number 13, you
22 recognize --

23 PROSPECTIVE JUROR: I recognize her from some
24 events from where I previously worked, but we don't like
25 know each other.

1 THE COURT: And that's juror number 20 you
2 recognize?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: And juror number 20, I take it from
5 your reaction that you do not recognize juror number 13?

6 PROSPECTIVE JUROR: She looks familiar, but I
7 don't remember. Sorry.

8 THE COURT: And juror number 13, you think you
9 worked together or --

10 PROSPECTIVE JUROR: She's a teacher -- a music
11 teacher, and I'm also a music teacher. We'd see each
12 other at festivals that she was in charge of.

13 PROSPECTIVE JUROR: Now I remember.

14 THE COURT: All right. Juror number 13 and 20,
15 now establishing that you have met at some time, is there
16 anything about that relationship that would make it hard
17 for you to serve together on a jury panel? Would you give
18 the other person's opinion more or less weight?

19 PROSPECTIVE JUROR: No.

20 PROSPECTIVE JUROR: No.

21 THE COURT: Anything about that relationship that
22 would interfere with your ability to listen to the
23 evidence and be fair and impartial here?

24 PROSPECTIVE JUROR: No.

25 PROSPECTIVE JUROR: No.

1 THE COURT: All right. Thank you, jurors 13 and
2 20.

3 Okay. Now in deciding the facts of this
4 case, the jury will have to evaluate the testimony of
5 witnesses. You will be directed to consider what
6 testimony to accept, and what to reject. You may accept
7 everything a witness says, or part of it, or none of it.

8 In evaluating testimony, you will be
9 directed to use the test of accuracy and truthfulness that
10 people use in determining matters of importance in every
11 day life.

12 Is there anyone on the panel who could not
13 judge the testimony of each witness by the same standards?

14 Okay. I don't see any cards.

15 For example, do any of you believe that you
16 should automatically believe or disbelieve the testimony
17 of a police officer, if for no other reason than he or she
18 is a police officer?

19 I don't see any cards.

20 Is there anyone who would be unable to
21 follow the law as I read it to you in the instructions,
22 disregarding your own notions or ideas about what the law
23 ought to be?

24 I don't see any -- I saw some movement, but
25 no cards.

1 Any cards? Okay. Thank you.

2 Do any of you, for whatever reason such as
3 philosophical or religious beliefs, feel you cannot judge
4 another person, or uncomfortable doing so?

5 I don't see any cards.

6 Juror number 15, did you have something you
7 wanted to add to that or the previous question?

8 PROSPECTIVE JUROR: Yeah. This is kind of out of
9 order I guess, maybe, but I am burning up, can I take this
10 sweatshirt off?

11 THE COURT: Do you have clothes underneath?

12 PROSPECTIVE JUROR: Yes, ma'am, I do.

13 THE COURT: Of course, you may.

14 PROSPECTIVE JUROR: Thank you. I didn't want to
15 be out of order. I'm sorry. It's hot in here. Thank
16 you.

17 THE COURT: You're welcome.

18 If you are selected to serve as a juror in
19 this case, is there anyone who would be unable or
20 unwilling to render a verdict based solely on the evidence
21 presented at trial?

22 I don't see any cards.

23 Okay. The law requires the State to prove
24 the defendant guilty beyond a reasonable doubt. The
25 defendant is presumed by law to be innocent. This means

1 that the defendant is not required to produce any kind of
2 -- excuse me -- is not required to prove innocence, or to
3 produce any evidence. This means that as the defendant
4 sits here today, before any evidence is presented, she is
5 presumed to be innocent of any and all charges brought
6 against her.

7 A defendant in a criminal case has a right
8 not to testify at trial. The exercise of that right
9 cannot be considered by the juror in determining guilt or
10 innocence.

11 Is there anyone who does not understand
12 these principles of law?

13 Is there anyone who does not agree with
14 these principles, or who does not believe they should be
15 the law?

16 Is there anyone that would believe that if
17 the defendant did not testify, that he or she may be
18 guilty?

19 Do you all understand that the defendant
20 does not have to produce any evidence, and that includes
21 not testifying?

22 Is there anyone who believes that the
23 defendant is guilty simply because she has been charged
24 with an offense?

25 Now if you had to vote right now, before any

1 evidence was presented, whether the defendant is guilty or
2 not guilty, you would have to vote that she is not guilty
3 because the State has not proven that the defendant is
4 guilty beyond a reasonable doubt.

5 In fact, at this point the State has not
6 presented any evidence, so your verdict would have to be
7 not guilty.

8 Is there anyone who does not understand or
9 agree with this?

10 I don't see any cards.

11 Okay. Now if you're selected to serve --
12 sit on this jury, you will not be allowed to do any of
13 your own research or gather any of your own information of
14 any kind about this case. You must decide the case based
15 on the evidence presented in court.

16 This means you cannot conduct any
17 independent experiments, you cannot do any computer, or
18 social media research about the case, or the people
19 involved.

20 For example, you can't Google anything. You
21 can't look up facts of the case on the Internet or look
22 into anyone involved in the case on Facebook or Twitter.
23 You can't talk about the case with anyone.

24 Do any of these rules present a problem to
25 anyone?

1 All right. Well, we're going to take a
2 short recess right now to see if there is anybody else
3 that will be able to be excused at this point. And we may
4 take our break for lunch at this point. But for now, if
5 you'll just stand close by and hopefully we'll get you
6 back in in a few minutes.

7 Yes. One moment, please.

8 Juror 21.

9 PROSPECTIVE JUROR: I just have a statement to
10 make. And I'm not going to ask to be excused, by any
11 means. But I was rear-ended like two weekends ago. And I
12 thought I'd be able -- I didn't speak up earlier because I
13 thought I'd be able to tolerate it, but I'm having a
14 little bit of back problems, and whatnot. So again, I'm
15 not going to ask to be excused, but if selected, if I
16 could sit towards the back, and then have a little bit of
17 freedom to potentially stand up here and there, if that
18 would be okay.

19 THE COURT: Okay. I'm sorry. I missed the first
20 thing that you said. You had something -- you had back
21 surgery?

22 PROSPECTIVE JUROR: No. I was rear-ended.

23 THE COURT: Oh, rear-ended.

24 PROSPECTIVE JUROR: A week and a half ago. So,
25 again, I thought I was okay. And I still am -- I think --

1 if I can sit towards the back and maybe potentially stand
2 up every now and then, great.

3 THE COURT: Okay. Thank you very much.

4 All right. So we're going to take a brief
5 recess. We will try to get you back in as soon as
6 possible.

7 Please stand for the jury.

8
9 (Whereupon, the prospective members of the
10 jury panel exited the courtroom.)

11
12 THE COURT: The record will reflect that the jury
13 panel has left the courtroom.

14 Counsel and the defendant are still present.

15 Okay. So why don't I start with
16 Ms. Tirrell.

17 MS. TIRRELL: Your Honor, I think there were four
18 jurors possibly to be excused: 5, 10, 22, and 30.

19 THE COURT: All right. 5, 10, 22, and 30.

20 Number 10 was the lady up here whose
21 daughter-in-law -- whose daughter was killed in the hit
22 and run accident.

23 Any objection to excusing number 10?

24 MS. DAVISON: No.

25 Well, I'm sorry, your Honor, I do. I'm

1 sorry. I do object to that.

2 I just had a -- my notes indicate that she
3 stated that she can be fair because it's not connected.
4 That's -- my notes indicate that she said she can be fair
5 because it's not connected. And she only got emotional
6 because she had to rethink about her daughter and the
7 incident. But because it's not -- the facts aren't even
8 close to the same, I would say that she should not be
9 stricken.

10 THE COURT: Okay. Yeah. It just seemed like she
11 was upset about the situation having to talk about it. My
12 notes indicate that the Avondale police was involved, but
13 there were no clues, so there was no prosecution. It's
14 just that it's a challenging subject for her. So I'm not
15 going to excuse her at this point.

16 Juror number 5.

17 MS. DAVISON: Your Honor, if there could be
18 reasons given by the State on that, only because -- and I
19 don't mean to put Ms. Tirrell on the spot, but it -- I
20 don't have any indication that number 5 can't be fair.

21 MS. TIRRELL: I believe she said she could not be
22 fair. She would have issues with it because her
23 father-in-law was a chief of police, and her
24 brother-in-law in Illinois, and she didn't feel that she
25 could be fair.

1 THE COURT: My notes say: Will do my best, can't
2 be sure.

3 MS. TIRRELL: Yeah.

4 MS. DAVISON: Yes. My notes do state that. I
5 don't object on that basis.

6 THE COURT: All right. So we will excuse juror
7 number 5.

8 Then juror number 22.

9 MS. TIRRELL: Your Honor, she stated that she
10 could not be fair.

11 MS. DAVISON: I have that she could be fair.

12 THE COURT: I have that she's very emotional.
13 She has had several different experiences --

14 MS. DAVISON: You know --

15 THE COURT: -- about 10 years ago.

16 MS. DAVISON: Yeah, your Honor. My notes
17 conflict. When asked about -- and if I can just express
18 -- when asked about if you or a close family, law
19 enforcement, she discussed different individuals and said
20 that it could affect her partiality. That was her
21 response there. But later when talking about victim of a
22 crime, I have that she can be fair.

23 So, perhaps, just follow up because it seems
24 like we all have differing information regarding that
25 juror.

1 THE COURT: Okay. And my notes were kind of like
2 that, that her mother was a police officer, her friend is
3 a sergeant with Scottsdale police. She's very emotional
4 about it, but then when she was talking about her
5 experiences as a victim, she felt that she could be fair.

6 All right. So you're not agreeing to strike
7 her?

8 MS. DAVISON: Correct.

9 MS. TIRRELL: Correct.

10 THE COURT: All right. And then number 30.

11 This is the gentleman who was a witness to
12 his fiancée who was arrested for domestic violence.

13 MS. DAVISON: Your Honor, he flat out stated he
14 cannot be fair. So I don't object.

15 THE COURT: I also made a note of 26. He said
16 his brother is a police officer. He feels very strongly
17 about what they go through. He would try his hardest to
18 be impartial. He understands what police go through.

19 MS. DAVISON: And that's what my notes indicate
20 and I believe -- I would request that this person be
21 struck.

22 MS. TIRRELL: Your Honor, I believe he stated he
23 is going to try very hard to be impartial. I think maybe
24 some follow-up questions would be appropriate.

25 THE COURT: All right. Ms. Davison, any others

1 that you're proposing?

2 MS. DAVISON: If I can have just a moment.

3 (Pause.)

4 MS. DAVISON: No, your Honor.

5 Did you ask me -- I'm sorry.

6 THE COURT: Yes, I did.

7 MS. DAVISON: Okay. No. No others.

8 MS. TIRRELL: Your Honor, I didn't know if we
9 wanted to address number 21's back issues from the MVA
10 that he mentioned.

11 THE COURT: Okay. He said he doesn't think it's
12 going to be a problem, he just wants to be able to stand
13 up.

14 These are very uncomfortable chairs, I'm
15 told. So I mean that's up to you, folks, if you want to
16 excuse him.

17 MS. DAVISON: I don't have a problem with that.
18 That's fine.

19 MS. TIRRELL: Yeah. We could go ahead and excuse
20 him for medical.

21 THE COURT: To excuse him. Okay.

22 MS. TIRRELL: Since those chairs are so very
23 uncomfortable, I'd hate to put him through more pain.

24 THE COURT: So 5 and 30 for cause. And 21 for
25 medical?

1 MS. TIRRELL: Yes, your Honor.

2 THE COURT: Anybody else?

3 MS. TIRRELL: Nothing from the State.

4 MS. DAVISON: None from me, your Honor.

5 THE COURT: Okay. All right. So, do you want to
6 send them for an early lunch, or do you want to start the
7 biographical questions?

8 MS. DAVISON: How do you think we're doing on
9 time?

10 THE COURT: It's 10 to 12.

11 MS. TIRRELL: Either way.

12 MS. DAVISON: An early lunch is fine, your Honor.

13 THE COURT: All right. So excuse 5, 21, and 30.

14 And ask them to come back -- can we come
15 back a little earlier?

16 MS. TIRRELL: Sure. Your Honor, if there's going
17 to be issues, 1:30 is fine.

18 THE COURT: Okay. We'll do 1:30. If there's any
19 issues that we need to address, just -- you know, if the
20 lawyers can come back a little bit earlier.

21 But at this point, I don't think there are
22 any issues, are there?

23 MS. DAVISON: No.

24 MS. TIRRELL: No.

25 THE COURT: All right. So we'll see everybody

1 back here at 1:30.

2 MS. TIRRELL: Thank you, your Honor.

3 THE COURT: Thank you.

4

5 (Recess.)

6

7 THE COURT: All right. We are back on the record
8 in CR2017-137407-001. State of Arizona versus Keyaira
9 Porter.

10 May I have appearances, please.

11 MS. TIRRELL: Yes, your Honor. Kimberly Tirrell
12 for the State. Thank you.

13 THE COURT: Thank you.

14 MS. DAVISON: Harla Davison with and on behalf of
15 Ms. Porter, who is out of custody.

16 THE COURT: Okay. Thank you.

17 And Ms. Porter?

18 THE DEFENDANT: Keyaira Porter. December 15th of
19 1989.

20 THE COURT: All right. Thank you.

21 We will note for the record that we do not
22 have any victims present.

23 Are we -- oh, I guess we do have a victim
24 present.

25 MS. TIRRELL: No, your Honor. This is the

1 State's case agent.

2 THE COURT: Oh, okay.

3 MS. TIRRELL: The victim is currently not
4 present. I'm not sure if he'll remain or not after he
5 testifies.

6 THE COURT: Okay. And has he been advised of
7 victim rights?

8 MS. TIRRELL: Yes, your Honor.

9 THE COURT: So anything else we need to address
10 before we bring the jury back in?

11 MS. TIRRELL: Nothing from the State, your Honor.

12 MS. DAVISON: No, your Honor.

13 THE COURT: All right. Thank you.

14 Did we excuse juror number 35, the gentleman
15 with the cataracts?

16 MS. TIRRELL: I believe we did, your Honor.
17 Yes.

18 (Whereupon, the prospective members of the
19 jury panel entered the courtroom.)

20

21 THE COURT: Please be seated, everybody. All
22 right. We are continuing on the record in State of
23 Arizona versus Keyaira Porter. CR2017-137407-001.

24 Welcome back, ladies and gentlemen. I hope
25 you had a nice lunch break.

1 We have a new clerk with us this afternoon.
2 It's Cheryl Lynn.

3 Cheryl Lynn, would you please stand?

4 Does anybody know, or think they know Cheryl
5 Lynn?

6 All right. Thank you.

7 Okay. Well, ladies and gentlemen, you may
8 have noticed that on the back of your number card there
9 are a series of questions.

10 So I'm going to ask each of you to take your
11 turn and go through by answering those questions.

12 When it is your turn, I'll call your juror
13 number. Please stand and answer all the questions.

14 If you, or your spouse is retired, please
15 tell us the occupation of yours -- or your occupation or
16 your spouse's occupation before you retired.

17 If you have served on a jury before, please
18 tell us the type of case that it was, such as was it a
19 civil car accident case, was it a criminal bank robbery
20 case, something like that, if you can remember. And
21 please also tell us where and when the case was tried,
22 whether there was a verdict and what it was, if you can
23 recall; and whether you served as foreperson of that jury.

24 Okay. Any questions about those
25 instructions?

1 All right. Then we'll start with juror
2 number 1. If you will please stand and answer the
3 questions on the back of your card.

4 PROSPECTIVE JUROR: Okay. Juror number 1. And
5 I'm retired. And, obviously, we've owned 7-Elevens and I
6 worked for a bank. Yes, I am married. Four children.
7 They are all old guys. My spouse, obviously, owned the
8 store with me. And I never sat on a jury before.

9 THE COURT: Thank you, juror number 1.

10 Juror number 2.

11 PROSPECTIVE JUROR: I'm juror number 2. Customer
12 service is my occupation. I'm employed by TriWest. I've
13 worked there for about a year and a half. We I guess
14 assist the veterans transitioning to local doctors. And I
15 am not married. I don't currently have a spouse or a
16 partner, and I haven't been a juror before.

17 THE COURT: Thank you, juror number 2.

18 Juror number 3.

19 PROSPECTIVE JUROR: I'm number 3. I used to be a
20 school teacher. I home schooled. I'm married. I have 10
21 kids. I have two under 18, ages 15 and 16. My spouse is
22 a doctor. He works for the V.A. He's been employed there
23 for 18 years. He does mostly internal medicine. I have
24 not served on a jury before.

25 THE COURT: Thank you.

1 Juror number 4.

2 PROSPECTIVE JUROR: I'm juror 4. I work at
3 Trader Joe's for 18 and a half years, cashier. I am
4 married with two kids, ages 12 and 15. My husband is a
5 plumber for WD Manyard for 10 years. And I have never sat
6 on a jury before.

7 THE COURT: Thank you, juror number 4.

8 Juror number 6.

9 PROSPECTIVE JUROR: Juror number 6. I'm customer
10 service for Chubb Insurance. I've been there for
11 three years. I do processing in Workmen's Comp. I am
12 married. I have two children, both are over 18. My
13 spouse is a props manager for the weather company. He has
14 been there for just over a year. And I have never been on
15 a jury before.

16 THE COURT: Thank you.

17 Juror number 7.

18 PROSPECTIVE JUROR: Juror number 7. I am an
19 operations manager. I work for Serious Integrated. I've
20 been there for 5 and a half years. Predominately,
21 purchasing is my occupation there. Not married. No
22 children. I have not sat as a juror before.

23 THE COURT: Thank you.

24 Juror number 8.

25 PROSPECTIVE JUROR: I'm juror number 8. I'm an

1 H.R. manager. I work for Intel. I have been there almost
2 19 years. I manage a team of business analysts and
3 project managers in talent acquisition. I am married. I
4 have two children, 7 and 8. My husband is a mechanical
5 engineer at Orbital ATK. He's been there almost
6 two years. And I've never been on a jury before.

7 THE COURT: Thank you.

8 Juror number 9.

9 PROSPECTIVE JUROR: Juror number 9. I'm retired.
10 Mostly accounting, with a little bit of insurance agent
11 selling. I'm single. And I've never been on a jury
12 before.

13 THE COURT: Thank you.

14 Juror number 10.

15 PROSPECTIVE JUROR: Juror number 10. The name of
16 my employer is AJ's Fine Foods. I've been there
17 seven years, cashier slash bookkeeper. I am married. I
18 have five children. They are all older than 18. My
19 employer's name -- my partner -- my husband works for --
20 is an assistant golf pro at a golf course. And he's been
21 there also seven years. And I have never been on jury
22 duty before.

23 THE COURT: Thank you, juror number 10.

24 Juror number 12.

25 PROSPECTIVE JUROR: Hi. I'm juror number 12. I

1 work in customer service. I work for Willis Towers
2 Watson. I've been there about eight months. I work with
3 people's pensions. I am married. We don't have children.
4 My husband is retired Air Force and works at ASU. He is
5 facility management there. I've never been on a jury
6 before.

7 THE COURT: Thank you, juror number 12.

8 Juror number 13.

9 PROSPECTIVE JUROR: Juror 13. I'm a stay-at-home
10 mom. I was a music teacher, and I just teach private out
11 of my home. I am married. I have three children, ages 6,
12 5 and 1. My spouse works at Burns & McDonnell. He's an
13 engineer there. And I've never sat as a juror.

14 THE COURT: Thank you.

15 Juror number 14.

16 PROSPECTIVE JUROR: I'm juror number 14. I'm a
17 veterinary pharmaceutical sales rep for Elanco Animal
18 Health. I've been there for 14 years. I am married. I
19 have two children, 4 and 6. My spouse is an investor,
20 he's self employed. He's been in that role for
21 eight years. And I've never been on a jury before.

22 THE COURT: Thank you.

23 Juror number 15.

24 PROSPECTIVE JUROR: I am juror number 15. I work
25 for Wal-Mart. I've been with them almost 19 years. My

1 wife also works at Wal-Mart. I have three kids, and
2 they're all over 18. And I have served on a civil suit
3 and that was in Tarrant, Texas, and it was in 1994.

4 THE COURT: Do you remember what type of case it
5 was?

6 PROSPECTIVE JUROR: Yes, it was. It was a hit
7 and run deal, and it went to a hung jury. So I never, you
8 know, remember exactly what happened after that.

9 THE COURT: All right. Thank you, juror number
10 15.

11 Juror number 18.

12 PROSPECTIVE JUROR: Juror number 18. I'm an
13 office clerk for Bluebell Creamery. I have been back
14 there a year. I'm a widow. I have one daughter 34. And
15 I have served on a jury twice.

16 THE COURT: And what type of cases were they?

17 PROSPECTIVE JUROR: The first one was a criminal
18 case, back in the early '90s. And the second one was
19 probably 10 years ago, another criminal case.

20 THE COURT: Do you remember the type of criminal
21 case it was?

22 PROSPECTIVE JUROR: The first one --

23 THE COURT: What the charges were?

24 PROSPECTIVE JUROR: -- it was a rape case. The
25 second one I believe was domestic violence or drugs.

1 THE COURT: And do you remember what the verdicts
2 were in either of those cases?

3 PROSPECTIVE JUROR: Guilty on both.

4 THE COURT: All right. Thank you, juror number
5 18.

6 Juror number 19.

7 PROSPECTIVE JUROR: Juror number 19. I'm a
8 foreman for an underground utility contractor, Ricor
9 Incorporated. I have been there since November of '03.
10 Do underground water and sewer utilities. I am married.
11 Two kids, both are over 18. My wife works for Target.
12 She has been there since '87. And I sat on a DUI trial,
13 mid '95, here in Phoenix, and not guilty. And I was not
14 the foreperson.

15 THE COURT: Thank you, juror number 19.

16 And juror number 18, were you the foreperson
17 in your cases?

18 PROSPECTIVE JUROR: No.

19 THE COURT: And juror number 15, were you the
20 foreperson?

21 PROSPECTIVE JUROR: No, ma'am.

22 THE COURT: Okay. Thank you.

23 Juror number 20.

24 PROSPECTIVE JUROR: Juror number 20. My
25 occupation is music education. Tempe Unified High School

1 District. I have been there 24 years. I'm divorced. I
2 sat on a jury before. The case was an officer and a
3 civilian. It was 2008 here in Phoenix. The verdict was
4 not guilty -- guilty. And I was the foreperson.

5 THE COURT: All right. So it was a criminal
6 case?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: And do you remember what the charges
9 were?

10 PROSPECTIVE JUROR: It had to do with weapons and
11 I remember it was about a sawed off shotgun; it was
12 between an officer and a young man.

13 THE COURT: Okay. And you said it was guilty?

14 PROSPECTIVE JUROR: Not guilty.

15 THE COURT: Not guilty. Okay.

16 And you were the foreperson?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Thank you, juror number 20.

19 Juror number 22.

20 PROSPECTIVE JUROR: Juror number 22. I'm
21 currently unemployed. I was previously employed as a
22 university counselor at Grand Canyon University for
23 seven years. Prior to that, 23 years at United Rentals,
24 managing equipment, administrative assistant. I am
25 married. My husband is retired; had worked as a printer

1 for 40 years. And I we do have two adult children. And I
2 have not served on a jury before.

3 THE COURT: Thank you, juror number 22.

4 Juror number 23.

5 PROSPECTIVE JUROR: Juror number 23. I'm a sheet
6 metal worker, kind of air conditioning kind of stuff.
7 Self-employed for about 18 years now. Married. Two adult
8 children. My wife was a stay-at-home mom, et cetera.
9 And, yes, I served on a jury. The guy might be out of
10 jail by now, so it was guilty. It was a criminal case, he
11 actually murdered somebody.

12 THE COURT: Okay. And were you the foreperson?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Thank you, juror number 23.

15 Juror number 24.

16 PROSPECTIVE JUROR: Juror 24. I am in
17 information technology at Universal Technical Institute.
18 I have been there 13 years. I'm an IT products manager
19 over software development and a products integration team.
20 I am married with two children, ages 4 and 7. My wife is
21 a stay-at-home mother. And I have not sat as a juror
22 before.

23 THE COURT: Thank you.

24 Juror number 25.

25 PROSPECTIVE JUROR: Juror number 25. I am

1 retired. I was a nurse for 42 years. I have three
2 children. They are all over the age of 18. I have no
3 spouse. I have sat on a jury before. It was a civil --
4 it was a civil court, but it was in a very small rural
5 town, and I was the foreperson. And I can't remember
6 when. I was sitting here thinking. And I'm thinking it
7 was mid '80s. I don't remember what it was about.

8 THE COURT: Thank you.

9 Juror number 26.

10 PROSPECTIVE JUROR: Juror number 26. I'm a
11 veterinarian, and have been for about 12 years. I am
12 married. We have two children; 10 and 7. And my husband
13 is a microbiologist with the Arizona State Department of
14 Health and Human Services. And I have not sat on a jury
15 before.

16 THE COURT: Thank you.

17 Juror number 27.

18 PROSPECTIVE JUROR: Number 27. I'm going to take
19 some liberty with these words, since you want me to be
20 honest.

21 THE COURT: Absolutely.

22 PROSPECTIVE JUROR: I don't really know what I
23 do, but I do a lot of cleaning. The name of my employer
24 is Light Force. I have been there for a long time. I
25 have known my boss for many lifetimes, I feel like. What

1 type of work do you do, I try to spread the harmony of
2 love and joy through everything that I do. I'm married
3 to life itself. Number of children, all children are my
4 children, and they are all ages. I don't have a spouse,
5 and I've never sat as a juror.

6 THE COURT: All right. Thank you. Well, I
7 appreciate your creativity. So, what I got from your
8 answer is, you do cleaning for a company called Light
9 Force. And you've been there for a long time. You are
10 not married, and you've never served as a juror?

11 PROSPECTIVE JUROR: That's correct.

12 THE COURT: Okay. Thank you.

13 Juror number 28.

14 PROSPECTIVE JUROR: Juror number 28. I work for
15 United Parcel Services; an air ramp employee. I've been
16 there for three and a half years. I also ride for Uber,
17 and that's been for two and a half years. I'm divorced.
18 And I have two adult children. And I've never served on a
19 jury.

20 THE COURT: Juror number 29.

21 PROSPECTIVE JUROR: I'm juror 29. I work for
22 Chase Bank. I'm a fraud analyst. I've been there for
23 24 years. My wife works at Intel as an administrative
24 assistant. She's been there for 22 years. We have no
25 children. And I did sit as a juror here in Maricopa

1 County probably in the late '90s. And it was a criminal
2 case, and the verdict was guilty. And I was not the
3 foreperson.

4 THE COURT: Do you remember what the subject
5 matter of the case was?

6 PROSPECTIVE JUROR: There were four charges. Two
7 were -- one was kidnapping, and one was assault on a
8 minor. There were four charges, and I don't remember the
9 other two.

10 THE COURT: All right. Thank you.

11 PROSPECTIVE JUROR: You're welcome.

12 THE COURT: Juror number 31.

13 PROSPECTIVE JUROR: I'm 31. My primary
14 occupation is education. And my secondary occupation is
15 bookkeeper and cashier. So I spend most of my days
16 working for Dysart Unified School District, and my
17 evenings and weekends working for Thunderbird Plumbing, or
18 Cricket Akchin Pavilion Casino, during concert season. I
19 have been teaching for the last 17 years. And I have been
20 a bookkeeper and cashier the last 20 years. I mainly work
21 with students in 2nd through 8th grade doing reading and
22 math intervention. I have been married. We currently
23 have two fur kids, but unfortunately no children right
24 now. All my students are my kids. So I understand that
25 feeling. My spouse is a plumber. He is self employed and

1 owns Thunderbird Plumbing. He has been doing that for
2 16 years. He does residential and commercial repairs and
3 installs. And, no, I have never sat on a jury before.

4 THE COURT: Thank you.

5 Juror number 32.

6 PROSPECTIVE JUROR: I'm juror number 32. And I
7 am a temporary employee at Kelly Services, where I have
8 been there for four months. I am married and I have two
9 children, ages 13 and 11. And my spouse has worked for
10 Wells Fargo for 16 years, where he works in the IT
11 department. And I've never served on a jury before.

12 THE COURT: Thank you.

13 Juror number 33.

14 PROSPECTIVE JUROR: Number 33. I'm chief
15 technical officer and co-founder of a company called
16 Pathwave. I've been employed there since its inception
17 two years ago. I'm a software engineer, architect, and
18 write software. I'm married. I have two children, ages 9
19 and 11. My wife is a stay-at-home mom. And I have never
20 been a juror on either a civil or a criminal case.

21 THE COURT: Thank you.

22 Juror number 34.

23 PROSPECTIVE JUROR: Juror number 34. I'm a
24 retired R.N. My husband is a retired private investigator
25 and state legislature. We have one adopted daughter. And

1 I sat on a court -- a case in California, in San Mateo
2 County. I believe it was an assault case.

3 THE COURT: All right. Thank you, juror number
4 34.

5 Oh, I'm sorry. How did the case get
6 resolved?

7 PROSPECTIVE JUROR: He was acquitted.

8 THE COURT: And were you the foreperson?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Thank you.

11 Juror number 36.

12 PROSPECTIVE JUROR: I'm juror number 36. I'm
13 currently unemployed. Previously I worked as a day
14 trader. And I'm not married. And I have never sat in a
15 jury before.

16 THE COURT: Thank you.

17 Juror number 37.

18 PROSPECTIVE JUROR: I'm juror number 37. I am a
19 teacher. I've taught for the past seven years. I am not
20 married, and I have not sat as a juror before.

21 THE COURT: Thank you.

22 Juror number 38.

23 PROSPECTIVE JUROR: I'm juror number 38. I'm
24 retired. I was self-employed since 1989. My wife is
25 retired. And I am married. I have five kids, all over

1 18. And I never sat on a jury before.

2 THE COURT: Thank you.

3 And what did you and your wife do?

4 PROSPECTIVE JUROR: We had a janitorial service.

5 THE COURT: Thank you.

6 All right. Juror number 40.

7 PROSPECTIVE JUROR: Number 40. I'm an
8 independent business and education consultant for the last
9 10 years, and basically help start new schools and
10 businesses. I am married with two children over 18. My
11 wife is currently unemployed, but spent the last 27 years
12 doing financial aid processing for the University of
13 Phoenix. And I have sat on a jury before. It was
14 criminal. It was prostitution with solicitation to an
15 undercover officer in 1988. And the verdict was guilty
16 and I was the foreperson.

17 THE COURT: Thank you.

18 Juror number 41.

19 PROSPECTIVE JUROR: I'm 41. I'm a stay-at-home
20 mom. I have been in accounts payable at NAU. I was a
21 school teacher for four years in California. And ran a
22 plants business -- silk plants business for a few years.
23 I am married. We have two children, 16 and 13. My
24 husband is an optometrist. He is self-employed. Works in
25 Yuma half the week and in Phoenix, going on 16 years. I

1 have served on a jury before, civil; two doctors. It was
2 over their practice, the splitting of it. And we awarded
3 one of them the majority, and the other -- they had to pay
4 each other. And, no, I wasn't the foreperson.

5 THE COURT: Thank you.

6 Juror number 42.

7 PROSPECTIVE JUROR: Juror number 42. Let's see.
8 My occupation is essentially an engineer. I make other
9 people's ideas work. My employer was EASA Design and
10 Engine Core. I'm not married, divorced. No children.
11 And I've never sat on a case before.

12 THE COURT: Thank you.

13 Juror number 43.

14 PROSPECTIVE JUROR: 43. I'm a senior projects
15 manager for a landscape company called Siteworks. We
16 build and maintain sports fields. I have three kids, ages
17 13, 11, and 10. I am married. My wife is a salesperson
18 for Synder Trucking. And I've never been on a jury
19 before.

20 THE COURT: Thank you.

21 And juror number 44.

22 PROSPECTIVE JUROR: I'm number 44. And I worked
23 in collections; I'm a collections specialist for over
24 25 years. Not married. No children. No spouse. And I
25 have never sat on a jury.

1 THE COURT: Thank you.

2 Okay. Well thank you, everybody, for all
3 that information.

4 Those of you who have prior jury experience,
5 is there anything about that experience that would make it
6 difficult for you to consider the facts in this case, and
7 be fair and impartial based just on your experience in
8 this case?

9 All right. I don't see any numbers.

10 All right. Ladies and gentlemen, before I
11 give counsel the opportunity to ask you some follow-up
12 questions, let me ask you one more question.

13 Sometimes by the time we get to this point,
14 jurors would have remembered additional answers to the
15 questions that I've previously asked, and they wonder if
16 they should interrupt, or if they should answer that
17 question now. So this is the opportunity for you to give
18 that answer.

19 If there's anything that you've been sitting
20 on, or thinking about, maybe I should have said, I wasn't
21 sure if it was the answer to a question you asked, now is
22 the opportunity for you to say something.

23 So if there is anything anybody would like
24 to tell me about, please raise your card?

25 Okay. Juror number 12.

1 PROSPECTIVE JUROR: I do have a nephew who was
2 convicted of a crime, and went to jail. I'd rather not
3 say what. I think it's all been dropped now. I don't
4 even know details, but I don't think that would influence
5 anything here.

6 And then also, you know, when we talked
7 earlier about if this would cause a hardship at all, I did
8 speak with my employer at lunch -- I'm a temporary
9 employee. If I'm gone for three -- you know, three days
10 -- you know, they really frown at not being at work. So
11 it could hurt my job.

12 THE COURT: All right. And that's your customer
13 service position?

14 PROSPECTIVE JUROR: Ah-hum. Right.

15 THE COURT: And did you explain to them it would
16 only be a matter of a few days?

17 PROSPECTIVE JUROR: Ah-hum. Yeah.

18 Yeah, they really don't like us missing
19 work; they think that it means that they can't count on
20 us.

21 THE COURT: All right. And do they understand
22 that this is --

23 PROSPECTIVE JUROR: Jury duty --

24 THE COURT: -- your civic duty and --

25 PROSPECTIVE JUROR: -- I would hope so.

1 THE COURT: Okay. Well, they can't fire you for
2 --

3 PROSPECTIVE JUROR: I would assume they can't.

4 THE COURT: -- jury duty, but I don't want to --
5 I appreciate your concern.

6 PROSPECTIVE JUROR: Thanks.

7 THE COURT: Anybody else?

8 Jury number 38.

9 PROSPECTIVE JUROR: I was told by one of the
10 jurors early that if you are over 70 -- 75 or 76, I think
11 you shouldn't serve on the jury.

12 THE COURT: Are you asking if you don't qualify?

13 PROSPECTIVE JUROR: Yes. I'm asking for the age
14 qualification?

15 THE COURT: Okay. I don't know if there is a top
16 limit. I know you need to be over 18. But if you feel
17 that there is something about your age, that makes you be
18 unable to serve as a juror, we could certainly discuss
19 that?

20 PROSPECTIVE JUROR: Well, I don't know. There's
21 nothing wrong with me, but I'm just saying that the age
22 limit thing --

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: I don't know if there was a
25 problem with that, so I was just asking.

1 If there is a problem with that, I probably
2 don't qualify.

3 THE COURT: Okay. Well thank you. I'll check
4 into that for you.

5 Thank you.

6 Anybody else?

7 All right. Ms. Tirrell, does the State have
8 any questions for the panel?

9 MS. TIRRELL: Yes, your Honor. Thank you.

10 Good afternoon, everyone.

11 Now is the time that we're going to ask some
12 follow-up questions. Please don't be concerned if I don't
13 ask you a question, there are just some follow-up
14 questions I'm going to ask of some of the jurors, okay.

15 Juror number 2, I note previously you
16 mentioned -- and you don't need to go into any details
17 about whom it was -- but when the judge asked about if any
18 -- you or any family member was arrested of any kind --
19 and I believe you had raised your number for that.

20 PROSPECTIVE JUROR: Yes.

21 MS. TIRRELL: What kind of situation was it?

22 PROSPECTIVE JUROR: Aggravated assault.

23 MS. TIRRELL: And was that a family member?

24 PROSPECTIVE JUROR: Yes. It was my brother.

25 Are you saying what were the charges, or

1 what were they arrested for --

2 MS. TIRRELL: Either or. I just asked if they
3 were arrested?

4 PROSPECTIVE JUROR: Oh. Yeah, aggravated assault
5 and kidnap. But he was only charged with aggravated
6 assault.

7 MS. TIRRELL: Okay. And was he prosecuted? Did
8 he go to court on it?

9 PROSPECTIVE JUROR: Yes.

10 MS. TIRRELL: Did it get resolved?

11 PROSPECTIVE JUROR: Yeah. He was found guilty
12 for aggravated assault.

13 MS. TIRRELL: And when did that occur?

14 PROSPECTIVE JUROR: 2014. Oh, wait -- I think it
15 was 2012.

16 MS. TIRRELL: And is there anything with regard
17 to that incident, how your brother was treated, or how the
18 matter was handled that causes you concern one way or
19 another about the legal system?

20 Do you believe he was treated fairly during
21 the process?

22 PROSPECTIVE JUROR: Yes.

23 MS. TIRRELL: And is there anything about that
24 experience that your family went through with your brother
25 that would influence your decision in any way in regards

1 to hearing the matter?

2 PROSPECTIVE JUROR: No.

3 MS. TIRRELL: You'd be able to listen to the
4 instructions by the judge, and follow the rules provided?

5 PROSPECTIVE JUROR: Yes, ma'am.

6 MS. TIRRELL: Thank you.

7 PROSPECTIVE JUROR: You're welcome.

8 MS. TIRRELL: Juror number 14. You stated that
9 you had some friends who practice law. What types of law
10 do they practice?

11 PROSPECTIVE JUROR: One is a family attorney, and
12 then one works for the city of Mesa.

13 MS. TIRRELL: And is there anything about your
14 friends who practice law that would influence your
15 decision one way or another in a case?

16 PROSPECTIVE JUROR: No.

17 MS. TIRRELL: Okay. And juror number 19.

18 PROSPECTIVE JUROR: Yes.

19 MS. TIRRELL: You also had answered the question
20 with regards to a family member or yourself arrested?

21 PROSPECTIVE JUROR: Yes.

22 MS. TIRRELL: What type of situation was it?

23 PROSPECTIVE JUROR: I was arrested.

24 MS. TIRRELL: And if you don't feel comfortable
25 about speaking about it, we can come back at a later time?

1 PROSPECTIVE JUROR: That's fine.

2 MS. TIRRELL: Okay. And what was the arrest for?

3 PROSPECTIVE JUROR: DUI.

4 MS. TIRRELL: And during that process, do you
5 feel like you were treated fairly?

6 PROSPECTIVE JUROR: Yeah.

7 MS. TIRRELL: And is there anything about that
8 that would make you feel one way or another in regards to
9 a criminal matter?

10 PROSPECTIVE JUROR: No.

11 MS. TIRRELL: Thank you.

12 Juror number 22, you also had stated that
13 either yourself or someone you knew had been arrested.
14 Could you expand on that a little bit?

15 PROSPECTIVE JUROR: My son served eight years for
16 breaking and entering and receiving stolen property for
17 sale.

18 MS. TIRRELL: Okay. Is there anything about that
19 process that would make you lean one way or another in the
20 case?

21 PROSPECTIVE JUROR: No.

22 MS. TIRRELL: Do you think the matter was handled
23 fairly and accurately?

24 PROSPECTIVE JUROR: I do.

25 MS. TIRRELL: Thank you, ma'am.

1 Juror number 26, I know previously you spoke
2 about having strong feelings with regards to police
3 officers, and that you would try your best to look at
4 everything in an impartial manner. After you've had a
5 chance to hear everything that's happened so far today, do
6 you feel that you would be able to listen to the
7 information provided by the Court's instructions and
8 follow those?

9 PROSPECTIVE JUROR: Yes, I do.

10 MS. TIRRELL: Okay. Thank you.

11 Juror number 27, you had previously stated
12 something that you or someone that you knew had been
13 arrested. Do you recall what type of crime that was?

14 PROSPECTIVE JUROR: I think it was a bounced
15 check.

16 MS. TIRRELL: And is there anything about what
17 transpired with that that would make you feel one way or
18 another about the law?

19 PROSPECTIVE JUROR: No, the law works.

20 MS. TIRRELL: Thank you very much for your
21 candidness. Thank you.

22 And juror number 28, you had mentioned that
23 you were assaulted.

24 PROSPECTIVE JUROR: Yeah. I was shot in 1995.

25 MS. TIRRELL: And was the person who shot you --

1 were they arrested?

2 PROSPECTIVE JUROR: They were arrested and took a
3 plea deal.

4 MS. TIRRELL: Is there anything about your
5 experience with that process that would influence your
6 decision one way or another?

7 PROSPECTIVE JUROR: No.

8 MS. TIRRELL: Okay. Thank you very much.

9 Juror number 32, you do some temporary work
10 for Kelly Services. What kind of places do you go at to
11 work at?

12 PROSPECTIVE JUROR: The only assignment that I've
13 had for four months has been Gateway Community College.

14 MS. TIRRELL: Okay. And what do you do at
15 Gateway?

16 PROSPECTIVE JUROR: I'm working on a
17 transformation initiative. And so I work with the Vice
18 President and President of the Sector Industry
19 Partnerships.

20 MS. TIRRELL: Thank you very much.

21 And juror number 36, you had also mentioned
22 that either yourself or someone you knew had been
23 arrested. What type of situation was it?

24 PROSPECTIVE JUROR: My brother was arrested for
25 impersonating a police officer.

1 MS. TIRRELL: And when did that occur?

2 PROSPECTIVE JUROR: 2008.

3 MS. TIRRELL: And is there anything about that
4 situation that occurred, that would make you lean one way
5 or another if you heard a criminal case?

6 PROSPECTIVE JUROR: Unless there is a mental
7 health issue involved, I'm not -- basically in either way.

8 MS. TIRRELL: Okay. Do you feel that your
9 brother's situation was handled accurately and correct?

10 PROSPECTIVE JUROR: In terms of the law, yes. In
11 terms of policy, probably not.

12 MS. TIRRELL: Thank you very much.

13 And juror number 40, you had stated that you
14 have multiple friends who are attorneys. Some of them are
15 criminal defense attorneys, I believe you said?

16 PROSPECTIVE JUROR: Correct.

17 MS. TIRRELL: Is there anything about -- and you
18 also stated that you guys speak a lot in regards to cases
19 they handle. Is there anything about that relationship
20 that would make you feel one way or another about a
21 matter?

22 PROSPECTIVE JUROR: No.

23 MS. TIRRELL: Okay. You'd be able to listen to
24 the judge's instructions and follow those?

25 PROSPECTIVE JUROR: Yes.

1 MS. TIRRELL: Thank you.

2 And then juror number 43.

3 PROSPECTIVE JUROR: Yes.

4 MS. TIRRELL: You had stated that someone you
5 knew or yourself had been arrested. Can you give a little
6 bit more information about that?

7 PROSPECTIVE JUROR: Yes. It was in 2007 or '8.
8 I was arrested for burglary. I made some poor choices on
9 a misunderstanding with a former employer.

10 MS. TIRRELL: And did your case get resolved?

11 PROSPECTIVE JUROR: Yeah. I spent a couple of
12 months in jail.

13 MS. TIRRELL: And is there anything about that
14 that would make you lean one way or another with regards
15 to a matter?

16 PROSPECTIVE JUROR: No.

17 MS. TIRRELL: Do you feel that you were treated
18 fairly during that case?

19 PROSPECTIVE JUROR: Yes.

20 MS. TIRRELL: Nothing else from the State.

21 Thank you, your Honor.

22 THE COURT: Thank you.

23 And juror number 38, we checked. If you are
24 75 or over, you can request to be excused, but you are not
25 disqualified.

1 Okay. Ms. Davison, does the defense have
2 any questions for the panel?

3 MS. DAVISON: Yes. Thank you, judge.

4 For juror number 26 --

5 PROSPECTIVE JUROR: Hi.

6 MS. DAVISON: Do you mind standing? It's just
7 easier for me to -- thank you very much.

8 You had discussed that you feel strongly
9 regarding assaulting officers. And you also stated that
10 you feel very strongly about the topic. Twice you used
11 very strong.

12 When you discuss that, does that mean you
13 lean more towards peace officers and your feelings toward
14 peace officers?

15 PROSPECTIVE JUROR: Absolutely.

16 MS. DAVISON: And when you mentioned about being
17 -- having officers being assaulted and that you feel
18 strongly about that, what about the other way around? So
19 you have strong feelings about officers assaulting
20 civilians?

21 PROSPECTIVE JUROR: I have not had experience
22 with that, because of the law enforcement in my family.
23 And they are -- you know, that's my only experience with
24 law enforcement officers, as kind officers that want to
25 try and protect. So, I apologize, I don't have experience

1 with that.

2 MS. DAVISON: Okay.

3 PROSPECTIVE JUROR: But I will -- I feel like the
4 way I was brought up is that when an officer says stop,
5 raise your hands, you do that no matter what you've done,
6 even if you're not guilty. You do not fight back. And to
7 assault a police officer, it's hard for me to get to that
8 -- to think of getting to that point.

9 MS. DAVISON: Okay. And more particularly the
10 tail end of my question was an officer assaulting a
11 civilian. That was -- and you said --

12 PROSPECTIVE JUROR: No, if an officer assaults a
13 civilian uncalled for, the person is doing what they said,
14 down on the ground with their hands up, absolutely that's
15 not acceptable.

16 MS. DAVISON: Okay. All right. And then number
17 -- thank you very much.

18 And then number 48.

19 Number 48, help me out, can you stand up?

20 PROSPECTIVE JUROR: There's no 48.

21 MS. DAVISON: Did I say 48, I'm sorry. No
22 wonder, you're there isn't a 48.

23 40. I can't read my own writing.

24 40. Hi. Thank you.

25 Do you mind standing for me?

1 PROSPECTIVE JUROR: Certainly.

2 MS. DAVISON: Thank you.

3 If it hurts --

4 PROSPECTIVE JUROR: No.

5 MS. DAVISON: Okay. Ms. Tirrell already spoke
6 about your friendship with other attorneys. Thank you for
7 still wanting to hang out with us, us types I mean.

8 But you mentioned criminal defense, and she
9 asked you about that. You also said an A.G. -- a former
10 A.G, did you not?

11 PROSPECTIVE JUROR: Correct.

12 MS. DAVISON: Okay. An Attorney General, to your
13 knowledge, is actually a prosecuting authority and not a
14 defense attorney?

15 PROSPECTIVE JUROR: Correct.

16 MS. DAVISON: Okay. And --

17 PROSPECTIVE JUROR: And I should -- another one
18 I helped -- Felecia Rotellini, I helped her run for office
19 as well a couple of times.

20 MS. DAVISON: And that's nice.

21 But for her -- just your familiarity with
22 her, and any other A.G., or other prosecutor, would that
23 make a difference for you or change your partiality with
24 regard to this case?

25 PROSPECTIVE JUROR: I don't believe so.

1 MS. DAVISON: Okay. Thank you very much. I
2 don't have anything further.

3 THE COURT: Thank you.

4 All right. Ladies and gentlemen, we will
5 now take a short recess to give the lawyers an opportunity
6 to complete the jury process.

7 There are many reasons why are a juror is
8 selected, or not selected, so don't take it personally if
9 you're not chosen. And only a set number of you can be on
10 the jury.

11 Place wait outside the courtroom during the
12 recess. When you're called back into the courtroom,
13 please sit in the back of the courtroom. You can sit back
14 there in any order.

15 During the recess do not talk about the case
16 amongst yourselves, or with anyone else, and hopefully we
17 can get this done in about 30 minutes.

18 Counsel, do you think that's reasonable?

19 MS. TIRRELL: Yeah.

20 MS. DAVISON: Yes, judge.

21 THE COURT: So make sure that you're ready to
22 come back here in 30 minutes. Thank you.

23

24 (Whereupon, the prospective members of the
25 jury panel exited the courtroom.)

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THE COURT: All right. Please be seated.

MS. DAVISON: Judge, before we get started, if I can, before the jurors go away, I -- on number 40, I only said about the affiliation with Rotellini, in case that person recognized me. I was at her fundraisers. And I don't know if he also was there, and maybe he would have had a recognition. I don't recognize him, I don't know him. But I merely stated that and paused for a moment to see if there was any recognition because I don't want for later there to be an issue regarding a mistrial because he realizes he knows me.

Again, I don't --

THE COURT: Do you want us to bring him back in?

MS. DAVISON: -- recall ever having --

Yeah, if you don't mind.

THE COURT: Thank you. Juror number 40, please.

Thank you, Katrina.

(Whereupon, a prospective member of the jury panel exited the courtroom.)

THE COURT: Thank you for coming back, juror number 40.

PROSPECTIVE JUROR: Certainly.

1 THE COURT: The lawyers wanted to ask you a quick
2 question.

3 MS. DAVISON: Yes, if I may?

4 THE COURT: Go ahead.

5 MS. DAVISON: Number 40, I had mentioned after
6 you had stated you had helped or tried to help
7 Ms. Rotellini get elected.

8 PROSPECTIVE JUROR: Ah-hum.

9 MS. DAVISON: Did you recognize me at any time
10 after my name was mentioned? Do you recognize me?

11 PROSPECTIVE JUROR: Not at all.

12 MS. DAVISON: Okay.

13 THE COURT: Thank you. All right.

14

15 (Whereupon, the prospective member of the
16 jury panel entered the courtroom.)

17

18 THE COURT: All right. The record will reflect
19 that the jury has -- or the jury panel has left the
20 courtroom.

21 Do we have any agreed upon strikes for
22 cause? Anything from the State?

23 MS. TIRRELL: I just didn't know about number 12,
24 your Honor, and her job being at risk.

25 MS. DAVISON: Yeah, I don't even want to chance

1 that. Although, I believe that it would be an unfair
2 employment practice to fire her. We can't confirm that's
3 not going to happen to her. And I don't want --

4 MS. TIRRELL: Yeah, I don't want that to happen.

5 THE COURT: Okay. So juror number 12 will be
6 excused?

7 MS. TIRRELL: Yes, your Honor.

8 MS. DAVISON: Yes.

9 THE COURT: Thank you.

10 MS. TIRRELL: Other than that, I don't believe
11 there was anything else from the State, your Honor.

12 MS. DAVISON: Your Honor, I would like to make a
13 motion for juror number 26. Twice she had stated that she
14 feels very strongly about assaulting police officers. It
15 appeared to me that she can't fathom a situation where an
16 innocent, kind, nice police officer can actually do wrong
17 even if it's a wrongful, reckless act. It didn't appear
18 that she could fathom that. I don't believe that she can
19 be fair and impartial.

20 THE COURT: Ms. Tirrell.

21 MS. TIRRELL: Your Honor, the State disagrees.
22 She even stated that she could, if an officer was in the
23 wrong and a person was assaulted, she agreed that that
24 would be something wrong to do. And I had previously
25 asked her during my voir dire if she could set across --

1 set those feelings aside, and she said she could.

2 THE COURT: I'm a little bit concerned because
3 she talked about the way that she was brought up,
4 basically regardless of the situation if a police officer
5 tells you to do something, you stop and don't fight back.
6 And it sounded that she had some pretty strong opinions in
7 that regard.

8 MS. TIRRELL: And, your Honor, I know that jurors
9 are supposed to rely upon some of their upbringing and
10 common sense while they're looking at the situation. It's
11 right in the jury instructions. But, again, she did state
12 that if she felt that if a person was assaulted by the
13 officer, and the officer was in a wrong, she said
14 definitely that would be something wrong.

15 THE COURT: She also said that she leans more
16 towards peace officers.

17 MS. TIRRELL: The State just renews their
18 objection to releasing this juror for cause.

19 THE COURT: Okay. Anybody else?

20 MS. TIRRELL: Nothing from the State, your Honor.

21 MS. DAVISON: One moment.

22 Nothing from me.

23 THE COURT: All right. Now, 26 was the only one
24 that the Court has concerns about. She did say that she
25 could follow the instructions. She did say several times

1 that she feels very strongly about police officers, that
2 because of her family members, that she leans more towards
3 peace officers. She does not have an experience with a
4 law enforcement officer assaulting a civilian. And when
5 pressed, she said that that's not acceptable, but she also
6 said her experience is just dealing with officers that do
7 what they're supposed to do; it was the way she was
8 brought up. And I think the specificity of what she said,
9 especially in light of the charges in this case, makes it
10 appropriate to excuse juror number 26 for cause.

11 So jurors 12 and 26 will be excused.

12 MS. TIRRELL: I have that taking us to 31?

13 THE BAILIFF: You are doing 10, correct?

14 MS. DAVISON: Right.

15 MS. TIRRELL: Yeah.

16 MS. BAILIFF: Up to and including 32.

17 THE CLERK: I have 29.

18 MS. TIRRELL: I have 31.

19 THE COURT: I am showing that we have excused 11
20 people.

21 THE CLERK: I have -- may I just say the numbers
22 that show on the juror list?

23 THE COURT: Okay.

24 THE CLERK: 5, 11, 12, 16, 17, 21, 26, 30, 35,
25 39, and 45.

1 MS. TIRRELL: Yes.

2 THE COURT: Yes.

3 THE BAILIFF: You are right.

4 MS. DAVISON: Correct.

5 THE COURT: All right. So there is 34 left and
6 we need 22.

7 THE CLERK: So that makes it up to and including
8 29, according to mine.

9 THE COURT: All right. So we can tell jurors
10 number 12 and 26 that they are excused. And then counsel
11 can do their preemptory challenges.

12 All right. We will stand at recess.

13 MS. TIRRELL: Thank you, your Honor.

14 MS. DAVISON: Thank you.

15

16 (Recess.)

17

18 THE COURT: All right. We are back on the record
19 in State of Arizona versus Keyaira Porter,
20 CR2017-137407-001.

21 The record will reflect the presence of
22 counsel, and the defendant. The jury is not in the
23 courtroom.

24 All right. Does the State pass the panel
25 for cause? I forgot to ask this earlier.

1 MS. TIRRELL: Yes, your Honor.

2 THE COURT: And does the defense pass the panel
3 for cause -- we will get into the other issues later, but
4 just the cause issue?

5 MS. DAVISON: Yes, your Honor.

6 THE COURT: Okay. Thank you.

7 Okay. And the parties have completed their
8 preemptory strikes?

9 MS. DAVISON: Yes.

10 MS. TIRRELL: Yes, your Honor.

11 THE COURT: All right. Is there anything we need
12 to address?

13 MS. DAVISON: There is, your Honor.

14 Your Honor, I would like to make a Batson
15 challenge. The purpose of my Batson challenge is that of
16 the 29 that were available to us of which to pick, three
17 were of color as noted in their questionnaires; two of
18 which were African American. Both of the African
19 Americans were stricken by the State.

20 I would request for a reason to be given and
21 for that to be a reasonable and legitimate reason to be
22 given for those strikes.

23 The third person that was of color that I
24 mentioned that was available to us -- all the rest marked
25 white on their questionnaire -- but the third one that was

1 available that was not struck was number 10.

2 Number 10 marked other and as Hispanic.
3 That individual was also attempted to be struck for cause
4 by the State on an earlier argument.

5 There was a fourth, that was number 27, that
6 marked other, and not white, not Hispanic, not African
7 American. That was number 27, who also announced that all
8 children are his children and et cetera.

9 So he did appear to be white, but I don't
10 know if his marking of his survey was another clever
11 response as we all heard him give during his responses.
12 So I'm not qualifying number 27 as an actual "other,"
13 although it's marked that way on his survey.

14 Other numbers -- 2, 20, and 10 -- did.

15 2 and 20 have both been struck by the State.
16 10 was attempted to be struck, but is still on the panel.
17 And 10 was Hispanic.

18 Thank you.

19 THE COURT: All right. Ms. Tirrell.

20 MS. TIRRELL: Yes, your Honor.

21 I'll first address with respect to juror
22 number 10. As the Court is aware, juror 10 had a lot of
23 emotional things going on with her, considering her
24 daughter had just been killed not even a year ago, which
25 is why the State had recommended her being struck for

1 cause, because she seemed to be very upset.

2 She even seemed upset later on when we were
3 going through the information background that's on the
4 back of their card; she was tearing up again. That is why
5 the State had suggested to strike her for cause, because
6 this seemed to impact her emotionally greatly.

7 With respect to juror number 2, the State
8 had struck her due to the fact that her brother was
9 convicted of a crime that is of the same nature as this
10 matter, aggravated assault, where he was found guilty.

11 She did not seem to be very sure with her
12 responses to the State whether how that impacted her or
13 not. So the State had great concerns due to her
14 impartiality based upon her brother's conviction of
15 aggravated assault, which this is an aggravated assault
16 case.

17 So the State thought it was fair and quite
18 within its right to strike someone who could possibly be
19 impartial due to their response that they gave during voir
20 dire.

21 With respect to juror number 20, the State
22 had great concerns that that juror had -- potential juror
23 had been on a criminal jury in the past which had found an
24 individual not guilty. She had also been the foreperson
25 of that jury, that caused the State also great pause for

1 consideration of having her on a jury.

2 The State looks at all of the individuals
3 without respect to what they -- information they give us.
4 And that is what the State bases their decisions on, not
5 anything to do with anyone's color or nationality.

6 And, again, with respect to number -- juror
7 number 27, the State presumes that he picked other because
8 he seems to be an individual who has different opinions of
9 what everyone is or should be.

10 Thank you, your Honor.

11 THE COURT: Thank you.

12 Ms. Davison.

13 MS. DAVISON: Your Honor, just with regard to
14 number 2, that was a person that the State did follow up
15 with. During the follow up, the State did ask about
16 whether she was treated fairly. Her response was yes.

17 The State asked whether that experience
18 would cause her to be influenced, she answered no, or at
19 least her response was she would not be influenced by that
20 experience in making a determination in this case.

21 And then when asked can she follow the
22 rules, she stated that she can.

23 So, while I recognize the State is concerned
24 about her brother being arrested and charged and found
25 guilty of an assault, which is the same situation here as

1 far as assault, she stated that he was treated fairly, she
2 won't be influenced, and she could follow the rules.

3 So because of her responses, I certainly
4 believe that their might have been other motivations. I
5 recognize this is a delicate argument to be made but,
6 regardless, I do need to make the argument, particularly
7 because now there literally is no African American jurors
8 that even remain. And I guess that's the gist of my
9 argument.

10 Thank you.

11 THE COURT: Thank you.

12 Was juror number 28 stricken?

13 MS. TIRRELL: No, your Honor.

14 THE COURT: All right. The defense has made a
15 challenge indicating that it was their belief that the
16 State exercised its challenges in a way that demonstrated
17 purposeful discrimination by striking two -- possibly
18 three minority jurors in this case.

19 And the State has articulated what it
20 believes to be race-neutral explanations for their
21 strikes.

22 The Court has reviewed the other strikes by
23 both parties in this case, as well as the Court's notes.
24 The Court does note that the State also struck jurors 19
25 and 20, who rendered not guilty verdicts in prior jury

1 cases that they were involved in. Even though juror 19
2 specifically said she could -- or that she believed that
3 she had been treated fairly in a situation that she was
4 questioned -- or he was questioned about -- excuse me.

5 Juror 20 is one of the ones that's at issue
6 here, excuse me. But juror 19 had rendered a not guilty
7 verdict and was stricken by the State.

8 Juror 25 served as a foreperson on a prior
9 jury, and juror 25 was stricken by the State.

10 The Court does find that it's reasonable
11 that the State would want to eliminate a juror that had an
12 experience where their close family member was arrested
13 for a similar charge to that which is involved in this
14 case, and to strike jurors who may be stronger
15 personalities or are willing to acquit based on the
16 evidence presented to them.

17 So the Court does find that the explanation
18 given by the State is race neutral, and the strikes will
19 be allowed for jurors 20 -- excuse me -- 2 and 20.

20 And juror number 10, the Court had even
21 expressed some concern about the juror's concern about her
22 ability to focus on this case based upon her daughter's
23 recent death, killed in a car accident.

24 So the Court does not find any
25 purposefulness discrimination as to the three identified

1 jurors.

2 All right. Anything further?

3 MS. DAVISON: No, judge.

4 MS. TIRRELL: Nothing from the State, your Honor.

5 THE COURT: All right. Thank you.

6

7 (Whereupon, the prospective members of the
8 jury panel entered the courtroom.)

9

10 THE COURT: Welcome back, everybody. Please be
11 seated. Is there room for all of you back there?

12 Katrina, it looks like a couple of our
13 jurors don't have a place to sit.

14 THE BAILIFF: This is usually pretty quick.

15 THE COURT: Okay. All right. Sorry about that.

16 The record will reflect the presence of the
17 parties, counsel, and the jury panel.

18 Before the Clerk reads the numbers of who
19 has been selected, I need to let everybody know that
20 Maricopa County Superior Court is doing an evaluation of
21 its court commissioners, and we would like to have your
22 help. We want to know about your experience at court
23 today. We're not asking you about the general legal
24 system, or about other experiences with the court.

25 The survey is short, and the results are

APPENDIX C

(Excerpt from Sergeant James Hermes' Direct Examination, March 28,
2018, at pages 98–115)

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA,)	
)	
Appellee,	)	Court of Appeals
	)	Division One
vs.	)	No. 1 CA-CR 18-0301
)	
)	
KEYAIRA PORTER,)	
	)	Maricopa County
	)	Superior Court No.
Appellant.	)	CR2017-137407-001

Phoenix, Arizona

March 28, 2018

BEFORE: THE HONORABLE MONICA GARFINKEL
COMMISSIONER OF THE SUPERIOR COURT

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

Day 2 (Two)

Prepared for:
Court of Appeals

ORIGINAL

LINDA C. LOPEZ, CR, RPR
Certified Reporter
Certificate No. 50539

1 MS. TIRRELL: Yes. Thank you, your Honor.

2 The State calls Sergeant James Hermes to the
3 stand.

4 THE COURT: If you'll please approach the clerk,
5 provide her with your full name.

6
7 (Witness sworn.)

8
9 THE COURT: Thank you. Please have a seat.

10
11 JAMES HERMES,
12 having been first duly sworn by the Clerk of the Court,
13 was examined and testified as follows:

14
15 DIRECT EXAMINATION:

16 BY MS. TIRRELL:

17 Q. Good afternoon.

18 A. Good afternoon, ma'am.

19 Q. If you could please introduce yourself to the
20 jury.

21 A. I'm Sergeant James Hermes. I supervise the
22 Street Crimes Division at the Fiesta substation.

23 Q. And, sergeant, what's your badge number?

24 A. 15901.

25 Q. And how long have you been employed with the Mesa

1 Police Department?

2 **A.** Approximately 14 years.

3 **Q.** And what are your normal, typical duties
4 currently?

5 **A.** We are a high enforcement squad. We -- at the
6 beck and call of our commander, whatever direction he
7 tells us to go, we go; whether it's a drug house problem
8 in a neighborhood, or a business. Usually, a lot of it is
9 gang activity and drug activity. We also assist other
10 units throughout the city, whether it's our criminal
11 investigations unit, or sex crimes unit, any of those, we
12 help them with surveillance and apprehensions.

13 **Q.** And during your 14 years with the Mesa Police
14 Department, have you ever undergone any training?

15 **A.** Yes, ma'am.

16 **Q.** If you could just give a brief overview of some
17 of the training you've undergone?

18 **A.** I've been to the academy, the standard academy we
19 go to -- every police officer goes to. I've been through
20 undercover school. I've been to violent offender school.
21 I've been through swat school, hostage rescue school.
22 I've been through numerous narcotic investigation classes
23 and seminars. I have been through multiple gang seminars,
24 and investigations.

25 **Q.** And as part of the training, do you receive any

1 what is called "use of force training?"

2 **A.** Yes, ma'am.

3 **Q.** And can you explain to us a little bit about what
4 that is?

5 **A.** Use of force training has evolved throughout the
6 years. Every time -- from when it started to now, it's
7 kind of evolved to make it easier to implement, I would
8 say.

9 Right now it's what is reasonable to effect
10 an arrest. Whatever at that time that officer believes is
11 the most necessary reasonable thing to do is what they're
12 allowed to do if they can obviously justify it.

13 We try to use lesser means. But when lesser
14 means do not work, we have to go up our use of force. We
15 used to have a use of force chart that would tell us to go
16 -- you know, start from pepper spray, to taser, to hands
17 on.

18 And now it's whatever is reasonable at that
19 time, is what the -- to make it safe for us and safer for
20 the person going into custody.

21 **Q.** Now, going to a little bit about why we're here
22 today. Were you working on August 14th of 2017?

23 **A.** Yes, ma'am.

24 **Q.** And were you working approximately 9 to
25 10 o'clock at night that evening?

1 **A.** Yes, ma'am.

2 **Q.** And on that date and time did you find yourself
3 in the area of 1150 West Baseline Road in Mesa, Arizona?

4 **A.** Yes, ma'am.

5 **Q.** And is that in Maricopa County?

6 **A.** Yes, ma'am.

7 **Q.** And is that in the jurisdiction of this court?

8 **A.** Yes, ma'am.

9 **Q.** And on that night, did you come into contact with
10 someone that you know now as Keyaira Porter?

11 **A.** Yes, ma'am.

12 **Q.** Do you see her in the courtroom today?

13 **A.** Yes, ma'am.

14 **Q.** Could you please describe where she's sitting,
15 and an article of clothing?

16 **A.** She's sitting behind you, in that white and pink
17 floral dress.

18 MS. TIRRELL: Your Honor, if the record could
19 reflect the witness has identified the defendant?

20 THE COURT: All right. The record will so
21 reflect that.

22 MS. TIRRELL: Thank you.

23 BY MS. TIRRELL:

24 **Q.** Now, how did you come into contact with the
25 defendant initially?

1 **A.** She was a passenger in a traffic stop.

2 **Q.** And what was your interaction with her as a
3 passenger of that traffic stop?

4 **A.** From the very beginning?

5 **Q.** From when -- I guess we are to start with the
6 vehicle was to be towed?

7 **A.** From the point where the vehicle was going to be
8 towed, we allowed her to take some of the items out of the
9 vehicle prior to it actually being hooked on the tow truck
10 and driven away.

11 **Q.** And was there anyone assisting her to remove
12 items from the vehicle?

13 **A.** Yes, ma'am. The driver's parents were there.

14 **Q.** And the three of them were moving items from the
15 vehicle?

16 **A.** Yes, ma'am.

17 **Q.** Then what transpired?

18 **A.** We allowed them to do that for -- oh, I don't
19 know exactly how long we did it. Probably 15 - 20 minutes
20 or so, we allowed them to start taking items out of the
21 vehicle. And the tow truck driver arrived. And he was
22 just standing around waiting. And knowing that he's got
23 to go to his next tow, I said, hey, we've got to cut it
24 short now, we're finished. I need you all to move away
25 from the vehicle so that tow truck driver can come in

1 safely, and not hurt anybody with the tow truck.

2 She walked up, back to the vehicle at the
3 passenger door --

4 Q. Let me stop you for a minute. When you say
5 "she," who are you referring to?

6 A. The defendant.

7 Q. Okay.

8 A. The defendant walked back up to the passenger
9 door and attempted to move more items. I said, hey, we're
10 done, you have to move now; so I'm like, so this tow truck
11 driver can do his job.

12 And she was argumentative about it saying
13 no. And I said, ma'am, you have to move. He's got to do
14 his job, we have to do our job; it's time to go.

15 And she refused to move. So I put my hand
16 on her shoulder to try guiding her away from the vehicle.
17 And then she turned around and swung and hit my arm to
18 knock it off of her. And then that's when I reached up to
19 try to grab her, to arrest her. And then she pushed me.

20 And then we were in the gravel area right
21 there. And there was a tree, and like a block wall. And
22 we lost our footing; both fell to the ground.

23 And I ended up with my arms around her back.
24 And she had to -- reached up and grabbed my right arm
25 underneath her, and was pinning it down. I couldn't get

1 my arm out based on her weight, and my weight on top of
2 it, and her hanging on to it.

3 I couldn't pull my arm out because she was
4 hanging on to it from underneath her body. When I can --
5 I was leaned over enough to look at -- I could see -- I'm
6 like, let go of my arm, you're under arrest.

7 And she just --

8 Q. Sorry. When you were at that point, was she
9 trying to do anything else?

10 A. She was swinging and flailing her arms and legs,
11 and everything. It was a struggle to try to keep her
12 pinned down.

13 Q. Okay. Please continue.

14 A. So as I'm looking at her, I'm telling her "you're
15 under arrest, let go of my arm;" so that I could get my
16 arm out to get cuffs on her. And that's when I saw she
17 tried to bite my arm she was hanging on to. And then I
18 delivered a punch to her left eye, right there. And then
19 she immediately released my arm. We were able to put arms
20 behind her and cuff her.

21 MS. TIRRELL: May I approach the witness, your
22 Honor?

23 THE COURT: Yes.

24 MS. TIRRELL: And I will hand the witness what
25 has been previously marked as Exhibit number 6.

1 BY MS. TIRRELL:

2 Q. If you could just take a look at that item
3 without showing it to anyone. Do you recognize this
4 photograph?

5 A. Yes, ma'am.

6 Q. And are you familiar with the items in that
7 photograph?

8 A. Yes, ma'am.

9 Q. Does that photograph appear to be a true and
10 accurate depiction of what it is?

11 A. Yes, ma'am.

12 Q. Okay. What is shown in the photograph?

13 A. The white vehicle in front is I believe the
14 parents' vehicle. The brown truck was the driver's
15 vehicle that the defendant came out of, the passenger
16 side. And the front end of that black truck is actually
17 my patrol vehicle.

18 MS. TIRRELL: Your Honor, at this time the State
19 moves to admit Exhibit number 6 into evidence.

20 THE COURT: Any objection?

21 MS. DAVISON: No objection.

22 THE COURT: Exhibit 6 will be admitted.

23 MS. TIRRELL: Permission to publish to the jury,
24 your Honor.

25 THE COURT: Granted.

1 BY MS. TIRRELL:

2 Q. Okay. So when you were speaking earlier about
3 the vehicle, that is the vehicle that the defendant was a
4 passenger in?

5 A. That tan pickup, yes, ma'am.

6 Q. And when you first encountered with her, where
7 was she at?

8 A. Passenger seat. Front passenger seat.

9 Q. All right. So she would be on the other side of
10 this vehicle?

11 A. Correct.

12 Q. And did at some point did she get out of the
13 vehicle?

14 A. Yes, ma'am.

15 Q. And at that point what was her demeanor like?

16 A. She was fine at that point. We were talking
17 about random things; where she was from; you know, why did
18 she move here, stuff like that. It was just casual
19 conversation.

20 Q. And then she -- did she make a phone call?

21 A. I don't remember if she made a phone call or how
22 the parents got notified. I do not recall that.

23 Q. Okay. And then you said the three of them were
24 removing items from the vehicle?

25 A. Correct.

1 **Q.** When you instructed the three to stop taking
2 items out of the vehicle, where did the two other
3 individuals, the parents go?

4 **A.** If I recall, not too far from where there are
5 from there. If they'd backed up, probably -- I don't
6 know. A couple more feet. That's about where they were.

7 **Q.** So in this --

8 **A.** Maybe by the other car.

9 **Q.** They moved closer to the white vehicle?

10 **A.** Yes, ma'am.

11 **Q.** And do you know who owned the white vehicle?

12 **A.** No, I don't recall. It was the parents'.

13 **Q.** Okay. And at that point what did the defendant
14 do?

15 **A.** From when we had our altercation?

16 **Q.** Yes. So the parents moved back closer to the
17 white vehicle?

18 **A.** That's where I believe they were when the
19 altercation took place.

20 **Q.** Okay. And where did the altercation take place
21 at in relation to the vehicle that the defendant was
22 travelling in?

23 **A.** Right at the passenger door, more towards like if
24 -- almost to the front of the hood. Because I started to
25 push -- like, you've got to move forward. And as she went

1 to the front of the -- about where the hood was, that's
2 when she swung at me.

3 Q. And previously I had asked you about use of force
4 training. What is the first level of use of force
5 training that --

6 A. Verbal commands. Just please move; you know,
7 leave the area.

8 Q. And then at some point do you raise your voice as
9 part --

10 A. You do.

11 Q. -- as part of use of force?

12 A. You do.

13 Q. And then what's the next step above voice-raised
14 commands?

15 A. You can either physically grab somebody and move
16 them. And then it pops up to like pepper spray. If they
17 refuse, then it just moves on up to you can arrest them
18 for not moving. You can -- whatever means it is. Like I
19 said, it -- whatever means to put that person in custody
20 where it's safest for me, and the actual defendant
21 themselves.

22 Q. And on this night what were you wearing?

23 A. I usually wear blue jeans. I'll wear any
24 underarm or shirt, black or whatever color it is, I don't
25 recall. And then I wear an outer carrier. And it's just

1 a huge vest with magazines, handcuffs, you name it. It's
2 got my name on it, my badge on it. On the back it says
3 "police," about yay big. I have a thigh holster, so my
4 pistol hangs on my side, just a lower off my belt. And I
5 assume one of my hats.

6 MS. TIRRELL: Your Honor, may I approach the
7 witness --

8 THE COURT: Yes.

9 MS. TIRRELL: -- with what is previously marked
10 as State's Exhibit number 3.

11 BY MS. TIRRELL:

12 Q. If you could take a moment and look through
13 those?

14 A. Yes, ma'am.

15 Q. Do you recognize the document I just handed you?

16 A. I do.

17 Q. Do those appear to be photographs of you?

18 A. Yes, ma'am.

19 Q. Do they all each appear to be true and accurate
20 photographs of you?

21 A. Yes, ma'am.

22 Q. They appear to be photographs from you from
23 August 14th, 2017?

24 A. Yes, ma'am.

25 Q. Okay. We will get to the rest of the photographs

1 in just a moment. If you could flip them over?

2 **A.** Sorry.

3 **Q.** Thank you.

4 And those photographs depict exactly what
5 you were wearing that night?

6 **A.** Yes, ma'am.

7 **Q.** Now during your altercation with the defendant,
8 just to slow that down just a little bit, if we could go
9 through it. You said that she -- you guided her away?

10 **A.** I just put my hand and said you have to move.
11 And I started to walk forward, and was just kind of like,
12 hey, you've got to keep going, and just guided her away.
13 Kind of like you would a child who wouldn't walk -- you
14 know, put their hands on their back and say we've got to
15 move, it was the same thing. It was just, hey, we have to
16 get going; that tow truck driver has a job, we have to let
17 him work.

18 **Q.** And then she turned towards you?

19 **A.** She just turned and she swung at me and miss my
20 face, but hitting my arm. And that's when I reached to
21 grab her. And then there was just like a pushing match.
22 She was trying to push me off of her. And then, like I
23 said, with all the rocks and that tree, whatever, we
24 stumbled and fell.

25 **Q.** Was she when this occurred saying anything to

1 you?

2 **A.** She was just screaming, like, typical -- she was
3 screaming, cussing.

4 **Q.** And prior to you asking her to stop, she wasn't
5 acting that way?

6 **A.** No, ma'am.

7 **Q.** So back to the tussle that -- you guys were
8 tussling with one another, in a better way -- not just a
9 good way I guess to explain it -- then what occurred?

10 **A.** Right before we hit the ground, I remember
11 falling back 'cause we went off balance. And with her
12 body weight on top of me, I hit the -- there was a cinder
13 block wall that was behind me -- and landed on that with
14 my arm, and just slid down that wall, and then landed on
15 the ground, and that's when she pinned my arm down -- or
16 my arms around her. And her weight and my weight kind of
17 pinned it. But she wouldn't let go so I could slide my
18 arm out, and then grip -- and then handcuff her. She was
19 hanging on to my right arm.

20 **Q.** And when your arm went down the wall, did you
21 sustain any injury?

22 **A.** Yes, ma'am. It was just a cut down my elbow.

23 **Q.** And do the photographs that are before you there
24 depict those?

25 **A.** Yes, ma'am.

1 MS. TIRRELL: Your Honor, at this time the State
2 moves to admit Exhibit number 3 into evidence.

3 THE COURT: Any objection?

4 MS. DAVISON: No objection.

5 THE COURT: Exhibit 3 will be admitted.

6 MS. TIRRELL: And permission to publish to the
7 jury?

8 THE COURT: Granted.

9 BY MS. TIRRELL:

10 Q. So this first one in Exhibit 3 is -- it has got
11 an A in the corner. So, sergeant, this was a picture
12 taken of you that night?

13 A. Yes, ma'am.

14 Q. And you've got your gear on?

15 A. Yes, ma'am.

16 Q. And then the next photograph in Exhibit 3, and
17 it's indicated with a B on it, this was the scraping that
18 you discussed?

19 A. Yes, ma'am.

20 Q. And this is 3C. That would be a closer version
21 --

22 A. Yes.

23 Q. -- of the scrapes that you sustained?

24 A. Yes, ma'am.

25 Q. And then this would be 3D. This is a side view

1 of your left side?

2 **A.** Yes, ma'am.

3 **Q.** This also shows the scrapes that you sustained on
4 your arm?

5 **A.** Yes, ma'am.

6 **Q.** And then this is photograph E, which is the back
7 view of you from that night?

8 **A.** Yes, ma'am.

9 **Q.** Now during that night, did you identify yourself
10 as a police officer?

11 **A.** Yes, ma'am.

12 **Q.** And you said that you were speaking with the
13 defendant for a period of time before the tow truck got
14 there?

15 **A.** Yes, ma'am.

16 **Q.** Do you know approximately how long that was?

17 **A.** I don't.

18 **Q.** Five minutes? Ten minutes?

19 **A.** No. It was probably a good 15 minutes or so. 20
20 minutes, because they were going through a -- they were
21 investigating another part during that time.

22 **Q.** And she was calm during that time?

23 **A.** Yes, ma'am.

24 **Q.** And you were wearing --

25 **A.** That same --

1 **Q.** -- gear?

2 **A.** -- gear.

3 **Q.** When you -- your arm was pinned underneath the
4 defendant, and her arms were underneath, what happened at
5 that point?

6 **A.** She tried to bite me.

7 **Q.** Did any other officers come to assist you?

8 **A.** Yes, ma'am.

9 **Q.** What officers came?

10 **A.** Detective Rope and Detective Leon.

11 **Q.** And what happened when they arrived?

12 **A.** I couldn't see exactly what they were doing
13 because I was focused on trying not to get bit, but once I
14 stopped her from biting me, then she released my arm, and
15 then we were able to get her into handcuffs.

16 **Q.** And what happened once she was in handcuffs?

17 **A.** We called paramedics.

18 **Q.** Did you notice any injuries on the defendant?

19 **A.** Yes, ma'am.

20 **Q.** What did you notice?

21 **A.** Her left eye swelled up.

22 **Q.** And that was a result of you striking her?

23 **A.** Yes, ma'am.

24 **Q.** And the strike, was that part of the use of force
25 training?

1 **A.** Yes, ma'am.

2 MS. TIRRELL: No further questions at this point.

3 Thank you, your Honor.

4 THE COURT: Thank you.

5 Ms. Davison, cross?

6 MS. DAVISON: Yes, your Honor.

7 One moment.

8

9 CROSS EXAMINATION:

10 BY MS. DAVISON:

11 **Q.** The photos that you were shown of yourself, do
12 they depict the extent of your injuries?

13 **A.** Yes, ma'am.

14 **Q.** Shows the scrape down your arm?

15 **A.** Yes, ma'am.

16 **Q.** And you said you got the scrape on your arm from
17 the wall?

18 **A.** Yes, ma'am.

19 **Q.** And that was as a result of both of you losing
20 your balance I believe you said when you fell to the
21 ground?

22 **A.** Yeah, she pushed me off my balance, and that's
23 why I hit the wall.

24 **Q.** Okay. So there was a loss of balance, yes?

25 **A.** Yes, ma'am.

C E R T I F I C A T E:

LINDA C. LOPEZ, CR, RPR, a Certified
Reporter in the State of Arizona, do hereby certify that
the foregoing pages constitute a full, true, and accurate
transcript of the proceedings had in the foregoing matter,
all done to the best of my skill and ability.

Signed and dated this 23rd day of July,
2018.

/S/

LINDA C. LOPEZ, CR, RPR
Certified Reporter
Arizona CCR No. 50539