

A.P. 92-1815
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CLERK SUPERIOR COURT
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. CR-13057
	)	
ROBERT WAYNE MURRAY,	)	<u>JURY TRIAL</u>
ROGER WAYNE MURRAY,	)	
	)	
Defendant.	)	
_____	)	(VOIR DIRE, VOL. II)

Before the Honorable James E. Chavez, Judge

Friday, May 29, 1992

1:35 p.m.

Kingman, Arizona

Reporter's Transcript of Proceedings

Appearances:

For the State:	James J. Zack, Deputy County Attorney 315 N. Fourth Street Kingman, Arizona 86401
For Robert W. Murray:	M. Ruth O'Neill, Attorney at Law
For Roger W. Murray:	Frank E. Dickey, Jr., Gerald Gavin, Deputy Public Defenders Kingman, Arizona 86401

Reported by: Rick A. Pulver, Official Reporter

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P R O C E E D I N G S

(The following proceedings were had in chambers
outside the presence of the prospective panel.)

THE COURT: Okay. We are back on the record.
Beginning with Juror No. 71, Mr. Robertson.

(Mr. Robertson has entered chambers.)

THE COURT: You are Mr. Robertson?

MR. ROBERTSON: Yes.

THE COURT: Okay. Thanks for coming back here.
First of all, let me begin -- yesterday when I introduced
the attorneys in court, did you think you knew any of
them?

MR. ROBERTSON: No.

THE COURT: Do you know any member of the county
attorney's office?

MR. ROBERTSON: No.

THE COURT: Okay. Ms. O'Neill, do you have any
questions?

MS. O'NEILL: Mr. Robertson, when you filled out
your questionnaire yesterday, you indicated that a friend
of yours had been murdered in the past?

MR. ROBERTSON: Well, not a friend. He's an
acquaintance.

MS. O'NEILL: Would the fact that the charges in
this case involve an accusation of murder, affect your

1 ability to sit on this particular jury?

2 MR. ROBERTSON: No.

3 MS. O'NEILL: You would be able to put the situation
4 with the acquaintance out of your mind and just be able to
5 look at the facts in this case?

6 MR. ROBERTSON: Oh, yeah. It's a long time ago.

7 MS. O'NEILL: About how long ago was it?

8 MR. ROBERTSON: Oh, gosh, between 12 years.

9 MS. O'NEILL: Okay. Thank you. That's the only
10 question that I had.

11 THE COURT: Mr. Dickey, any questions?

12 MR. DICKEY: Yes, Your Honor. Mr. Robertson, you
13 indicated that, I believe, in the answer to the
14 questionnaire, that you felt that the defendants sometimes
15 have more rights than the crime victims.

16 Would you explain what you meant by that?

17 MR. ROBERTSON: Well, it just -- again, this is
18 something that is on an individual basis, that I see
19 things on television, and you can take it with a grain of
20 salt, too, you know. But, it seems to me cases like a
21 rape, say, or something like that, that the victims are
22 put through a heck of a lot of stress that I -- I don't
23 think that they should have to go through. I don't know
24 the answer to it. I -- I am just saying that it's a shame
25 that they have to go through that sort of thing.

1 MR. DICKEY: Well, do you understand that the law
2 provides that the defendants have certain rights and that
3 victims have certain rights, and that the legislature sets
4 what those -- the constitution sets what those rights
5 are?

6 MR. ROBERTSON: Oh, absolutely.

7 MR. DICKEY: And would you hold it against the
8 defendants because they have these rights that the
9 legislature and the constitution give them?

10 MR. ROBERTSON: No. No reason why I should.

11 MR. DICKEY: And do you feel that you would have any
12 trouble deciding this case on the evidence presented in
13 court, the law, and applying the law as the judge will
14 give it to you?

15 MR. ROBERTSON: It's the only way I could decide
16 it.

17 MR. DICKEY: Okay. Fine. I have no further
18 questions.

19 THE COURT: Mr. Zack?

20 MR. ZACK: No, Your Honor. I have no questions.

21 THE COURT: Anything about this case that would make
22 it difficult for you to serve as a juror?

23 MR. ROBERTSON: No. Not to my knowledge.

24 THE COURT: Okay. Thanks for coming in.

25 MR. ROBERTSON: Okay.

1 (Mr. Robertson has left chambers.)

2 THE COURT: Any challenges on No. 71?

3 MS. O'NEILL: No, Your Honor.

4 MR. DICKEY: No, Your Honor.

5 MR. ZACK: No.

6 THE COURT: That takes us to No. 77, Marjorie Finch.

7 (Ms. Finch has entered chambers.)

8 THE COURT: Hello.

9 MS. FINCH: Hello.

10 THE COURT: Sit down. I guess I am going to start
11 by asking you, do you remember in court yesterday when I
12 introduced the attorneys in this case?

13 MS. FINCH: I know that one by sight, and that one
14 by sight. That's all.

15 THE COURT: Do you know Mr. Zack?

16 MS. FINCH: I know of him because he's been here a
17 long time and I am born here.

18 THE COURT: And do you know Ms. O'Neill?

19 MS. FINCH: No.

20 THE COURT: Okay.

21 MS. FINCH: I don't think so.

22 THE COURT: And how do you know Mr. Gavin and Mr.
23 Dickey?

24 MS. FINCH: Just from seeing them.

25 THE COURT: Okay. And I am assuming you also know

1 other members of the county attorney's office besides Mr.
2 Zack?

3 MS. FINCH: I have a niece, Gayle Dean --

4 MR. ZACK: Dunn?

5 MS. FINCH: Dunn, but I haven't seen her in two
6 years.

7 THE COURT: She works for the county attorney's
8 office?

9 MR. ZACK: Yes. She's the secretary.

10 MS. FINCH: Yeah. She used to work on the police
11 force.

12 THE COURT: Anything about knowing any of these
13 people, the attorneys, or the fact that your niece works
14 for the county attorney's office --

15 MS. FINCH: No.

16 THE COURT: -- that would affect your ability to sit
17 on this case?

18 MS. FINCH: No. But, I wouldn't think they would
19 want me. My dad was a deputy sheriff in this county for
20 25 years when I was growing up.

21 THE COURT: We haven't gotten to their choices yet.

22 MS. FINCH: Oh, I see.

23 THE COURT: I'm still asking you about some of these
24 -- I guess I don't have -- let me ask you this.

25 Do you think you could be fair and impartial on

1 a case like this?

2 MS. FINCH: Yes, if -- if -- I feel it should be
3 fair, but I am very strong for law enforcement. I was
4 raised in it. I used to do secretarial work for the
5 sheriff when I was only 15 years old. Didn't have a
6 secretary, didn't have any fund allotted. He used to pay
7 me out of his pocket because I could type.

8 THE COURT: And you've heard a little bit about this
9 case on the radio?

10 MS. FINCH: Just when they announced that they had
11 apprehended the two men, because I had been sick and I
12 hadn't heard anything about it. I had an operation on my
13 arm and things like that, so I wasn't really well enough
14 to be keeping up with the news at the time. It's been a
15 year since I have been able to --

16 THE COURT: Based on what you heard, did you form
17 any opinion about the case?

18 MS. FINCH: No. I didn't know enough.

19 THE COURT: Okay. Do you think you'd be able to sit
20 and listen to the evidence in court and make a
21 determination based on the evidence you hear in court?

22 MS. FINCH: Yes. Because I've been involved with
23 things like that.

24 THE COURT: Now, you also indicated you knew some of
25 the witnesses, Dale Lent --

1 MS. FINCH: Just --

2 THE COURT: -- Jack Nelson, and Dan Bishop?

3 MS. FINCH: Yes. I have known Danny all his life
4 because I know his folks, his grandparents. With Dale
5 Lent, I know him by sight. And with -- who else did you
6 ask about? Oh, Jack.

7 THE COURT: Jack.

8 MS. FINCH: Jack. I knew him several years ago when
9 we had the cleaning plant and we used to do his uniforms
10 and things, just across the county.

11 THE COURT: Do you think you'd be able to listen to
12 the testimony of all the witnesses, including those that
13 are police officers, and judge them by the same standard?

14 MS. FINCH: Yes. I could do that.

15 THE COURT: Ms. O'Neill, do you have any questions?

16 MS. O'NEILL: Ma'am, you had indicated you are real
17 strong for law enforcement.

18 Do you have any opinion about whether a person
19 who is arrested is likely to be guilty of what they are
20 charged with?

21 MS. FINCH: No, no. From when my dad was an officer
22 I saw a lot of people arrested that were turned loose,
23 things like that. My strongest opinion is on sex
24 offenders, because my daughter's a school teacher. My
25 best friend's father molested her for years. When we

1 graduated from high school we didn't know a thing about
2 it. He had to go help pick him up, my dad. Come home one
3 day. And she was my best friend, and it really hurt to
4 think that she had to live that way three, four years, and
5 I am very strong for conviction on sex offenders, and, I
6 mean, long terms.

7 THE COURT: Any feelings you have about potential
8 offenders -- would you let me -- a person's not an
9 offender until they are convicted after trial; do you
10 agree with that?

11 MS. FINCH: Yes, right.

12 THE COURT: And do you agree -- let me take a look.
13 You were asked that in the questionnaire.

14 Do you agree that the rights that the
15 defendants have are appropriate, and do you have any
16 disagreement with those, let me ask you that?

17 MS. FINCH: No. But, if somebody's convicted, I
18 don't agree that they should be 30 years in the pen before
19 they get squashed, I really don't. I think our laws are
20 too lax in that.

21 THE COURT: Okay. Thank you. Ms. O'Neill, any
22 other questions?

23 MS. O'NEILL: Yes. Do you believe that there are
24 some crimes that the death penalty should always be
25 imposed for?

1 MS. FINCH: Yes.

2 MS. O'NEILL: What crimes would those be?

3 MS. FINCH: Depends on the crime, but -- and
4 deliberate murder, I do believe in it.

5 MS. O'NEILL: And would the fact that if there was a
6 conviction in this case that would be a possible, but not
7 the only penalty, would that affect your ability to sit on
8 the case?

9 MS. FINCH: Depends on the orders of the judge.

10 MS. O'NEILL: Yes. The sentencing would be up to
11 the judge, it wouldn't be up to you.

12 MS. FINCH: That's right.

13 MS. O'NEILL: Do you think you could handle that?

14 MS. FINCH: Yes.

15 MS. O'NEILL: You had said that you had been sick.

16 How are you feeling now? Do you think you could handle --

17 MS. FINCH: I had an operation on my arm. A mole
18 had turned out to be malignant cancer, and I just had a
19 very short time -- I was one of the lucky ones.

20 MS. O'NEILL: So, you are okay now. Well, that's
21 good.

22 MS. FINCH: Yes.

23 MS. O'NEILL: I don't have anything else, Judge.

24 THE COURT: Mr. Dickey?

25 MR. DICKEY: You indicated that Joe Cook was a

1 friend of yours.

2 Would that affect your ability to sit as a fair
3 and impartial juror?

4 MS. FINCH: No. I have known him ever since he was
5 a boy. I knew his folks better.

6 MR. DICKEY: You indicated you knew Dan Bishop and
7 Jack Nelson and Dale Lent by sight?

8 MS. FINCH: Well, I know Dan Bishop from the time
9 that he was born.

10 MR. DICKEY: Would you tend to give more favor or
11 weight to testimony of someone like Dan Bishop than you
12 would have any other witness?

13 MS. FINCH: I don't think so.

14 MR. DICKEY: Do you know Austin Cooper?

15 MS. FINCH: By -- yes, I know Austin. We used to do
16 his dry cleaning. We did everybody's dry cleaning. I
17 knew --

18 MR. DICKEY: Do you have any problem with the fact
19 that the constitution of Arizona and the United States
20 give the defendants certain rights?

21 MS. FINCH: No.

22 MR. DICKEY: And do you believe that they are
23 entitled to those rights?

24 MS. FINCH: I believe they are entitled to a fair
25 trial. If they are convicted, then it's up to the judge.

1 MR. DICKEY: Would your feelings about the death
2 penalty, would that affect your ability to sit as a fair
3 and impartial juror?

4 MS. FINCH: I don't think so.

5 MR. DICKEY: I have no further questions.

6 THE COURT: Mr. Zack?

7 MR. ZACK: No questions, Your Honor.

8 THE COURT: Okay. Thanks for coming in, and we will
9 let you know in a minute.

10 MS. FINCH: All right.

11 (Ms. Finch has left chambers.)

12 THE COURT: Challenges for cause?

13 MS. O'NEILL: Yes, Your Honor. I'd move that Mrs.
14 Finch be dismissed for cause based on her statements that
15 she is very strongly in favor of the cops or the police
16 officers; that she believes that the death penalty should
17 always be imposed for deliberate murder, as she put it,
18 and because of her acquaintance with and/or friendship
19 with the various witnesses in the case.

20 THE COURT: Mr. Dickey?

21 MR. DICKEY: I join in that motion, Your Honor.

22 THE COURT: Mr. Zack?

23 MR. ZACK: I oppose, Your Honor. While she says
24 she's strong on law enforcement, she's indicated she's
25 been around it enough, a lot of people are arrested, a lot

1 of them aren't guilty. That doesn't bear on it. The
2 defendants are entitled to their rights. Just because you
3 have a, probably a better grasp of the system, is no
4 reason to disqualify her. She certainly seems to have the
5 right attitude to -- of being impartial in a case like
6 this, even though in law enforcement she knows you are not
7 always right.

8 THE COURT: Anything else?

9 MS. O'NEILL: No.

10 THE COURT: Mr. Dickey, anything else?

11 MR. DICKEY: No, Your Honor.

12 THE COURT: I am going to deny the challenge. She
13 said she could be fair and, you know, she actually -- I
14 agree with the State, she has a better grasp of what goes
15 on than most people do.

16 At this point it will be, my understanding,
17 that if we counted right, that we have 36. Okay.

18 Do you want to recap for everybody who they
19 are?

20 THE CLERK: Charlette Evans, Allen Miller, Tina
21 Bonsang, Barbara Yancy, Barbara Alaria, David Alvarado,
22 Ruth Holgate, Carol Di Giovanni, Carol Williams, Rita
23 Dunn, Cecil Semm, Cathleen Gillespie, Andrea Marcum,
24 Peter Manderfield, Cindi Breaux. That's B-r-e-a-u-x.
25 Ellis Furchtbar, Ann Theobald, Hubert Bell, Randall

1 Briggs, Warren Ellis, Charlene Cochrum, Ronald Harshman,
2 Loretta Chase, Lorraine Anderson, Charlene Nelson,
3 Christina Pethers, Rebecca Schuerr, Cathy Holloway, Joseph
4 Azzolino, Christine Wright, Robert Bennett, Richard
5 Robertson, Richard Adams, Albert Kersch, Anthony Anderson,
6 and Marjorie Finch.

7 MS. O'NEILL: Your Honor, this morning you had
8 mentioned something about Mrs. Dunn?

9 THE COURT: Yes. I had indicated that she had
10 called my office this morning and indicated that she was
11 upset because she had not put down on her questionnaire
12 that her son, three years ago, had been charged with or
13 convicted of a drug offense, and she wanted everybody to
14 know that. And nobody seemed to have a problem with
15 that.

16 MS. O'NEILL: Okay. I couldn't remember whether you
17 had indicated you want to have her come back in or not.

18 THE COURT: I don't want to talk to her unless we --

19 MR. ZACK: We didn't talk to her at all.

20 THE COURT: Did you want to talk to her?

21 MS. O'NEILL: I don't believe so.

22 MR. GAVIN: No, Your Honor.

23 MR. ZACK: Well -- no.

24 THE COURT: Do -- okay. So everyone agrees, that's
25 36? I think what we will do, then, is go back into the

1 courtroom and have the 36 -- if you and Bob can get the 36
2 up in chairs the way they were seated yesterday, then I
3 will excuse those that remain.

4 At this point we have passed the jurors that we
5 have for cause; is that right, Ms. O'Neill?

6 MS. O'NEILL: Your Honor, I continue with the
7 objections that have been denied. With that
8 understanding, other than -- those are the only objections
9 that I have for challenge for cause.

10 THE COURT: I understand that. Mr. Dickey?

11 MR. DICKEY: Same, Your Honor.

12 THE COURT: Mr. Zack?

13 MR. ZACK: Pass the panel.

14 THE COURT: As far as I am concerned, I'm not going
15 to renew any objections that I previously denied, and we
16 will proceed with this as passing the panel. I will go
17 out and excuse those that remain that have not been
18 brought up, and you can begin your peremptories.

19 Now, we have a lot of documents here. We went
20 through 77 jurors, and I am wondering if I can destroy the
21 remainder, or if counsel is going to object to that? If I
22 should save all the originals on these questionnaires?
23 Let me throw that out as something that I would like to
24 address sometime in the future. For now, I'm going to
25 keep them all, but let me give you an opportunity to think

1 about it. We will mark it all as one exhibit. We will
2 figure out a number for it and put them in a box, but I
3 will take the information on that later.

4 MR. ZACK: Just procedurally, once we have 36 out
5 there, all the rest are excused, if -- I'm sure that
6 defense counsel -- I'd like some time to prioritize my
7 strikes before we meet back in there and do them. I guess
8 you don't have to be there for it unless we get into a
9 Batson problem, but I just want to know how we are going
10 to proceed. But, I would like some time so I can
11 prioritize.

12 THE COURT: How much time do you think that would
13 take?

14 MR. ZACK: 20 minutes.

15 THE COURT: At this point, once we get -- I will
16 advise those remaining jurors, I guess, what I intend to
17 do. I will go out, I will advise them at this point that
18 the 36 that the counsel have passed for cause, that these
19 are the 36 before we begin peremptories. I will ask the
20 panel if there's anything else we should know before we
21 proceed. If anybody raises their hand, we will come back
22 in here. If not, I will excuse the remainder of those in
23 the courtroom, and then at that time you can exercise your
24 peremptories, and I will give you plenty of time to do
25 that. I will allow the other jurors to be at recess, to

1 walk around. And I am figuring that it will take at least
2 an hour for the peremptories to be done.

3 MR. ZACK: If you could remind them that, like you
4 did yesterday, the fact that we ignore them doesn't mean
5 that we don't like them.

6 (A recess was taken from 2:00 p.m. to 2:10 p.m.)

7 (The following proceedings were had in the presence
8 of the prospective panel.)

9 THE COURT: Okay. At this point -- we are on the
10 record. Counsel are present, defendants present, and the
11 prospective jury panel is present. Those of you who are
12 seated up here in the jury boxes have been passed for
13 cause. And I have one other question to ask you.

14 Is there anything at all that you think that I
15 or the attorneys should know before we proceed with the
16 case? Just raise your hand if you have anything else you
17 want to talk about.

18 In that case, I am sure the remainder of those
19 that are seated in the courtroom will be happy to hear
20 this, but we are finished with your services. Those of
21 you who are seated in the courtroom, you are free to go.
22 I know that this has been a tedious selection process. We
23 had no idea coming into this case how long it would take
24 us to select a jury or how many jurors we would have to
25 talk to. So, we do appreciate your patience and the time

1 that you've given us today, and you are free to go.

2 Now, those of you that remain, there are 36 of
3 you. What we will be doing now is exercising peremptory
4 challenges. That will take about an hour, maybe an hour
5 and-a-half. So, ultimately we will end up with 16 jurors
6 who will serve on this case. So, basically you are still
7 with us, and it is going to be a while before we get down
8 to the last 16. During that period of time you are going
9 to be allowed -- you will be able to walk around the
10 hallways as you have been able to do. The attorneys will
11 be in the courtroom conferring, or in other parts of the
12 courthouse conferring, so they will need some privacy and
13 won't be able to -- and we will not be doing this in open
14 court, is what I'm trying to say.

15 So, during that period of time I am going to
16 remind you as I did yesterday, not to read anything about
17 the case, not to talk about the case, not to listen to the
18 radio or the TV about it. I realize over the next hour
19 and-a-half that's going to be somewhat difficult, but this
20 admonition, this instruction will apply at all times
21 during the trial. Don't talk about the case amongst
22 yourselves or with anyone else, and that includes the
23 witnesses or the attorneys. And once again, the attorneys
24 have also been instructed not talk to you. Their
25 instruction is not to talk to you at all. So, if you see

1 them in the hallway and they don't say anything to you,
2 they are not being unfriendly, they are just following the
3 Court's instruction.

4 Counsel, are we ready to proceed then?

5 MR. ZACK: Yes, Your Honor.

6 THE COURT: Okay. We are in recess once again.
7 Those of you who are impaneled, you may go in the
8 hallways, you may get coffee. We are at recess.

9 (A recess was taken from 2:15 p.m. to 3:15 p.m.)

10 (The following proceedings were had outside the
11 presence of the prospective panel.)

12 THE COURT: Please be seated. Okay. On the record
13 with counsel, both defendants. I understood counsel had
14 some discussion prior to proceeding?

15 MS. O'NEILL: Your Honor, at this time the defense
16 would object to the State's peremptory strikes of Ms.
17 Pethers and Mr. Alvarado on the grounds of Batson. The
18 State has stricken the only two Hispanic jurors which were
19 in the pool. We'd ask that the Court inquire of the State
20 for the reasons for those.

21 THE COURT: Mr. Dickey, any discussion?

22 MR. DICKEY: We join in that, Your Honor.

23 THE COURT: Mr. Zack?

24 MR. ZACK: Your Honor, first, as to Ms. Pethers, I
25 don't believe that she is a Hispanic. I don't recall

1 seeing that on her jury questionnaire, and I don't recall
2 if she appeared to talk Hispanic to me. So, I am not sure
3 that that's a showing --

4 THE COURT: I don't have the questionnaire in front
5 of me.

6 MR. DICKEY: The questionnaire did indicate that
7 she's Hispanic, Your Honor. I believe her maiden name was
8 Garcia, but her first name is Christina.

9 THE COURT: I remember she said her mother's name
10 was Garcia.

11 MR. ZACK: Right. I am not sure that's Hispanic,
12 Garcia, as opposed to Spanish, the amount I know about her
13 mother from the prosecutor. I could be wrong, I don't
14 know.

15 THE COURT: Well, of course, I can look at the
16 questionnaires. I will have to take a recess to do that.
17 But, let's assume for the time being that she is Hispanic
18 and the defense is correct.

19 MR. ZACK: Your Honor, the State recently did a
20 major drug investigation of her mother and her mother's
21 brother, if I understand, Eddie Mallon. It's a very big
22 case. Both of those defendants went to jail for a time.
23 I'm not sure of the status of Mrs. Garcia. From what Mrs.
24 Pethers said, the charge was dismissed. I believe there's
25 been some sort of negotiated deal, but I am not positive

1 about that. But, I know both those people were heavy into
2 drugs. Both of the people around them were suspected of
3 being in drugs. There's a forfeiture action proceeding
4 against Garcia, Mallon. This being the daughter, I do not
5 believe that she -- I don't want her on the jury for those
6 reasons, possible bias.

7 THE COURT: And what about Mr. Alvarado?

8 MR. ZACK: Mr. Alvarado is Hispanic, and it was a
9 close call on that strike. What I went on is, as Mr.
10 Alvarado told the Court, he knows me, I know him. Not
11 well. I'm going basically on my personal knowledge of Mr.
12 Alvarado five or six years ago. I was dating a lady who
13 was a nurse, going to various social functions, parties,
14 whatnot. I met Mr. Alvarado probably a half a dozen times
15 anyway, and I had discussions with him. The social
16 functions at these parties, my recollection of Mr.
17 Alvarado is he's a very, very nice person. He is too
18 nice. You couldn't get him to disagree with you. He
19 didn't want to hurt anybody. He is just indecisive, is my
20 recollection of him. My strike on him is solely going
21 back to my personal knowledge of meeting him numerous
22 times four or six years ago.

23 THE COURT: Any further discussions, Ms. O'Neill?

24 MS. O'NEILL: Your Honor, I think that it was clear
25 that the State did not bring out any bias against law

1 enforcement or the county attorney's office regarding Ms.
2 Pethers. She indicated she knew Bob Moon, and it looked
3 like her mother's case was dismissed. It's hard to
4 believe she harbors any bias for the county attorney's
5 office.

6 As to Mr. Alvarado, he certainly indicated in
7 individual voir dire that he could listen to all the
8 evidence and come to a decision. Perhaps he'll come to
9 the decision Mr. Zack wants him to, but he certainly
10 didn't say that he would be unable to reach a decision in
11 the case. We'd ask the Court not to find that Mr. Zack's
12 explanations are sufficient and sufficiently neutral to
13 overcome the presumption in Batson. The prosecutor has
14 stricken all members of the minority from the panel.

15 THE COURT: Mr. Dickey, any further discussion?

16 MR. DICKEY: We join in Ms. O'Neill's sentiments,
17 Your Honor.

18 THE COURT: Mr. Zack, any further discussion?

19 MR. ZACK: I believe the only reason Ms. Pethers
20 says she knew Bob Moon is because Bob Moon is prosecuting
21 her mother. I'd just add that.

22 THE COURT: Well, under Batson, of course, the real
23 question is whether the State gives valid race neutral
24 reasons for the strike, and based on the record, my own
25 opinions about those two particular jurors, I find that

1 the reasons given by the State are sufficient. It's
2 difficult to make a Batson case when you only have two
3 minorities on the jury, but even with the two I am finding
4 that the reasons are sufficient. I don't find that there
5 was any racial reasons for the strikes, and the reasons
6 given are consistent with my own assessments of those
7 particular jurors. So, the Batson objection is denied.

8 Now, I understood that, Ms. O'Neill, you had
9 wanted to bring up the Motion For Change of Venue?

10 MS. O'NEILL: Yes, Your Honor. At the time that we
11 argued the Motion For Change of Venue, it's my
12 understanding that the Court did not make a final ruling
13 on that, and I believe that for the sake of the record
14 that a final ruling needs to be made on it. We do not
15 withdraw the motion at this time. We'd ask the Court to
16 rule.

17 THE COURT: Thank you. Okay. I don't see that
18 there's any need for any further discussion on it. We
19 were able to impanel a jury. My assessment is probably
20 not real accurate, but my recollection is that there were
21 probably half the people or less that knew about the case,
22 and most of them had trouble recounting much about it.
23 So, jury selection went -- was much easier than I
24 anticipated based on the amount of media coverage. So,
25 therefore, the Motion For a Change of Venue is denied.

1 Is there anything else we need to take up
2 before we bring the jury in?

3 MS. O'NEILL: I don't believe so, Judge.

4 MR. ZACK: Just one thing. One suggestion, Your
5 Honor. Given our security and all that, perhaps the jury
6 that's actually selected, that Bob Johnson, the bailiff,
7 immediately show them where to go Monday morning,
8 physically, right afterwards so they are not wandering
9 around the courtroom. Also, perhaps if there is any
10 smokers, be given which door to smoke by if they are going
11 to, so security can avoid that area also.

12 THE COURT: Okay.

13 MR. ZACK: And I guess preferably not the back door
14 at the jury room.

15 THE COURT: They can smoke out the back door; is
16 that what you mean?

17 MR. ZACK: I think they should not.

18 THE COURT: That's normally the place they would
19 smoke.

20 A DEPUTY: The back --

21 THE COURT: What's that?

22 MR. ZACK: The back door will be where the
23 defendants come in and out of.

24 THE COURT: Yes. It's going to create some work,
25 but I am going to have the bailiff work it out with

1 security. Bob Johnson is who you need to talk to. Let's
2 bring the jury in.

3 (The following proceedings were had in the presence
4 of the prospective panel.)

5 THE COURT: The record will show the presence of the
6 prospective juror panel. The clerk will now read the
7 names of jurors who have been selected to try this case.
8 As your name is read, please come forward and be seated as
9 directed by the bailiff.

10 THE CLERK: Tina Marie Bonsang, Ruth Helen Holgate,
11 Cecil Wayne Semm, Cathleen Susan Gillespie, Peter David
12 Manderfield, Cindi Lea Breau, Ann Marie Theobald, Warren
13 Michael Ellis, Charlene Ann Cochrum, Loretta Mary Chase,
14 Charlene Marie Nelson, Joseph Azzolino, Richard Wayne
15 Robertson, Richard Ralph Adams, Albert Lincoln Kersch,
16 Anthony Allan Anderson.

17 THE COURT: The record will show 16 jurors have been
18 chosen. I am not going to reiterate what I have already
19 said about how hard it was to select a jury in this case.
20 I will tell you, those of you that remain, once again,
21 thank you for your participation. You are free to go. If
22 you are needed for further jury service, I'm sure the
23 clerk's office will let you know. Thank you. Okay.

24 Those of you which have been chosen, will you
25 please stand and be sworn?

1 (The jurors were sworn by the clerk.)

2 THE COURT: I am going to read the charges that
3 have been filed in this case. Count I alleges as
4 follows: That on or about the 14th day of May, 1991, in
5 the vicinity of Grasshopper Junction, Mohave County,
6 Arizona, said defendant, Robert Wayne Murray, committed
7 the first degree murder of Dean Morrison. Count II, on or
8 about the 14th day of May, 1990, in the vicinity of
9 Grasshopper -- I am sorry, that's 1991, in the vicinity of
10 Grasshopper Junction, Mohave County, Arizona, said
11 defendant, Robert Wayne Murray, committed the first degree
12 murder of Jacqueline L. Appelhans. Count III alleges as
13 follows: That on or about the 14th day of May, 1991, in
14 the vicinity of Grasshopper Junction, Mohave County,
15 Arizona, said defendant, Robert Wayne Murray, in the
16 course of taking any property of Dean Morrison from his
17 person or immediate presence and against his will,
18 threatened or used force against any person with the
19 intent to either coerce surrender of the property, or to
20 prevent resistance to such person taking or retaining the
21 property while said defendant or an accomplice was armed
22 with a deadly weapon or simulated deadly weapon.

23 Count IV alleges as follows: That on or about
24 the 14th day of May, 1991, in the vicinity of Grasshopper
25 Junction, Mohave County, Arizona, said defendant, Roger

1 Wayne Murray, committed the first degree murder of Dean
2 Morrison. Count V alleges that on or about 14th day of
3 May, 1991, in the vicinity of Grasshopper Junction, Mohave
4 County, Arizona, said defendant, Roger Wayne Murray,
5 committed the first degree murder of Jacqueline L.
6 Appelhans. Count VI alleges as follows: That on or about
7 the 14th day of May, 1991, in the vicinity of Grasshopper
8 Junction, Mohave County, Arizona, said defendant, Roger
9 Wayne Murray, in the course of taking any property of Dean
10 Morrison from his person or immediate presence and against
11 his will, threatened or used force against any person with
12 intent either to coerce surrender of the property, or to
13 prevent resistance to such person taking or retaining
14 property while said defendant or an accomplice was armed
15 with a deadly weapon or simulated deadly weapon.

16 To those charges the defendants have pled not
17 guilty.

18 I am now going to tell you some of the rules of
19 law you have a duty to follow when considering this case.
20 It is your duty to determine the facts. You must
21 determine the facts only from the evidence produced in
22 court. You should not guess about any fact. You must not
23 be influenced by sympathy or prejudice, or be concerned
24 with any opinion that you feel I have about the facts.
25 You are the sole judges of the facts.

1 You must find the facts from the evidence. The
2 evidence which you are to consider consists of testimony
3 of witnesses and exhibits. At times I will decide whether
4 testimony and exhibits should be admitted.

5 When an objection to a lawyer's question is
6 sustained, you are to disregard the question and you are
7 not to guess about what the answer might have been. When
8 testimony is ordered stricken from the court record, you
9 are not to consider that testimony as evidence. Do not
10 concern yourselves with these decisions. The admission of
11 evidence in court is governed by rules of law.

12 You must decide the accuracy of each witness's
13 testimony. Take into account such things as the witness's
14 ability and opportunity to observe, the witness's memory
15 and manner while testifying, any motive or prejudice the
16 witness might have, and any inconsistent statements of the
17 witness. Consider each witness's testimony in light of
18 all the evidence of the case.

19 During the trial the lawyers are permitted to
20 stipulate that certain facts exists. This means both
21 sides agree those facts do exist and are to be considered
22 by you during your deliberations at the conclusion of the
23 trial.

24 Now, I have already given you a form of an
25 admonition. An admonition is a legal term describing do's

1 and don'ts that will follow you throughout the trial and
2 will help assure a fair trial. I am going to give you a
3 more formal instruction on that now.

4 First, you should not discuss this case or
5 anything connected with it among yourselves or with anyone
6 else during the trial. To avoid even the appearance of
7 improper conduct, don't talk with any of the witnesses,
8 the lawyers, or the defendants until after the case is
9 over, even if it concerns innocent matters or those having
10 nothing to do with the case. Don't permit anyone else to
11 talk to you about the case. Please notify one of the
12 court personnel if someone tries to do so. The lawyers
13 have been given the same admonition, so don't think they
14 are being unfriendly to you. On Monday when we begin, you
15 will all be given juror badges to wear during the
16 daytime. That's so that everyone will know that you're a
17 juror and that it is improper to say anything about the
18 case within your hearing.

19 In the event this case is reported in the news
20 media, don't read, listen to, or observe any newspaper,
21 radio, or television accounts of the trial while you are
22 serving as a juror. If you should inadvertently read,
23 hear, or see something about this case in the news media,
24 bring it to my attention promptly. If portions of this
25 trial are photographed or televised, do not be concerned

1 with the cameras that would be in the courtroom. Court
2 rules do not permit the proceedings to be photographed in
3 any way so that any of you can be recognized. Don't do any
4 research or make any investigation about the case on your
5 own. Don't attempt to view or visit the locations where
6 the events in this case took place.

7 Now, there are 16 of you. At the end of this
8 case we will have 12. Now, what we are going to do on
9 Monday, we are going to begin with opening statements,
10 first with the State's opening statement, then with the
11 opening statements for each of the defendants. Then the
12 State will be required to present evidence. At the
13 conclusion of the State's case, the defendants may present
14 evidence. At the conclusion of the defendants' case, the
15 State may present rebuttal testimony. When all of that is
16 finished, we have closing arguments, first by the State,
17 then by each of the defendants, and then the State will
18 have rebuttal closing argument. After that I will
19 instruct you on the law that applies to this case. After
20 my instructions on the law, four of you will be chosen as
21 alternate jurors. So, it is incumbent upon each of you,
22 because you won't know until the end of the case who will
23 be the alternate. Each of you must pay attention to the
24 case. Now, the reason we have four alternates is because
25 of the length of this case. If someone becomes ill or has

1 a personal emergency, then we will still be able to
2 proceed with the case.

3 Now, Monday you will be provided with note pads
4 and pencils. You may take notes if you wish. If you do
5 take notes, leave them on the chairs when we take a
6 recess. The bailiff will collect them and return them to
7 you when we reconvene. Any notes that you take are for
8 your own personal use and are not to be given to or read
9 by anyone else. If you cannot hear a witness or need to
10 take a break for any reason, please feel free to raise
11 your hand and let me know. Normally we will try to begin
12 at 9:00 o'clock in the morning. We will take, normally
13 try to take a brief recess in the morning. We will break
14 for lunch at noon, and reconvene at 1:30. Normally we
15 take a brief recess in the afternoon, and we will conclude
16 by 5:00 o'clock in the evening, normally. There may be
17 occasions when that schedule differs for some reason.

18 Finally, you should not form any opinion about
19 any fact or about the outcome of this case until you have
20 heard all the evidence, the closing arguments of the
21 lawyers, and the rest of my instructions on the law. Form
22 your opinions only after you retire to deliberate and have
23 had an opportunity to discuss the case with each other in
24 the jury room at the end of the trial. Usually before a
25 recess I will not repeat the entire admonition that I have

1 just given to you. I may say, remember the admonition
2 that I gave you at the beginning of the trial. Even if I
3 forget to say that, this admonition applies at all times
4 during the trial. So even, as I said, if I forget to say
5 it, remember to abide by that admonition.

6 At this time it's 3:30, a little after 3:30 in
7 the afternoon. We are going to break for the weekend.
8 Before you leave, I'm going to recess and allow the
9 parties to leave. I am going to ask you to remain in the
10 courtroom because I want Mr. Johnson to show you where we
11 will be having court on Monday. It will not be in this
12 courtroom, it will be in Judge Pope's courtroom
13 downstairs. At least that's where we are going to start.
14 So, when we leave, let the parties leave, and then he'll
15 take you down there. I -- also, for those of you who are
16 smokers, I want Mr. Johnson to tell you how to go about
17 smoking in this case, and I will talk to him about that
18 after the recess. Okay. Thank you. We are in recess.

19 (The proceedings concluded at 3:45 p.m. on May 29,
20 1992.)

Certificate of Reporter

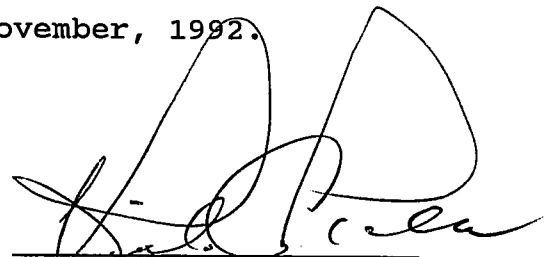
I, Rick A. Pulver, Official Reporter in the Superior Court of the State of Arizona, in and for the County of Mohave, do hereby certify that I made a shorthand record of the proceedings had in the foregoing entitled cause at the time and place hereinbefore stated;

That said record is full, true, and accurate;

That the same was thereafter transcribed under my direction; and

That the foregoing typewritten pages constitute a full, true, and accurate transcript of said record, all to the best of my knowledge and ability.

Dated this 5th day of November, 1992.



RICK A. PULVER