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Division III
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NO. 36018-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

MANUEL ENRIQUE VERDUZCO,

Appellant.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii-iii
I. <u>ASSIGNMENTS OF ERROR</u>	1
A. <u>ISSUES PRESENTED BY ASSIGNMENTS OF ERROR</u>	1
B. <u>ANSWERS TO ASSIGNMENTS OF ERROR</u>	1
II. <u>STATEMENT OF THE CASE</u>	1
III. <u>ARGUMENT</u>	2
Issue 1. There was no actual bias demonstrated by juror 57. His initial statements were later followed up and during that questioning by defendant’s trial counsel this juror clearly indicated he could and would be fair to the defendant. Appellant has failed to meet his burden; the actions of the trial court should be upheld.....	2
Issue 2. Counsel was not ineffective, proper inquiry was made.....	15
IV. <u>CONCLUSION</u>	24
APPENDIX A	

TABLE OF AUTHORITIES

PAGE

Cases

State v. McFarland, 127 Wn.2d at 336 (citing State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994)) 23

State v. Beard, 74 Wn.2d 335, 444 P.2d 651 (1968) 18

State v. Colbert, 17 Wn. App. 658, 564 P.2d 1182 (1977)..... 18

State v. Grier, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011) 11, 12, 19, 20

State v. Irby , 187 Wn.App. 183, 347 P.3d 1103 (2015)), review denied, 184 Wn.2d 1036, 379 P.3d 953 (2016)..... 2, 4

State v. Jackson, 150 Wn.2d 251, 76 P.3d 217 (2003) 2

State v. Kylo, 166 Wn.2d 856, 215 P.3d 177 (2009)..... 12

State v. Phillips, 431 P.3d 1056, 1064 (2018) 3, 6, 11, 12, 23

State v. Renfro, 96 Wn.2d 902, 639 P.2d 737 (1982)..... 18

State v. Saintcalle, 178 Wn.2d 34, 309 P.3d 326 (2013) (Gonzalez, J. concurring) (quoting State v. Davis, 141 Wn.2d 798, 824-26, 10 P.3d 977 (2000)) (alteration in original) 14

State v. Sorenson, 6 Wn.App. 269, 492 P.2d 233 (1972) 19

State v. Sutherby, 165 Wn.2d 870, 204 P.3d 916 (2009) 19

State v. Thomas, 71 Wn.2d at 472, 429 P.2d at 233 19

Supreme Court Case

Bruton v. United States, 391 U.S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620 (1968)..... 14

Irvin v. Dowd, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961) ... 2, 14, 24

<u>McMann v. Richardson</u> , 397 U.S. 759, & n.14, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970).....	20
<u>Patton v. Yount</u> , 467 U.S. 1025, 1032 (1984).....	9, 10
<u>Sheppard v. Maxwell</u> , 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966)	2
<u>Strickland v. Washington</u> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).....	11, 20, 21, 23

Federal Court

<u>Hughes v. United States</u> , 258 F.3d 453, (6th Cir. 2001).....	5, 8, 13, 14, 24
<u>Nguyen v. Reynolds</u> , 131 F.3d 1340, 1349 (10th Cir. 1997) (citing <u>Teague v. Scott</u> , 60 F.3d 1167, 1172 (5th Cir. 1995)).....	5, 8

Rules and Statutes

RAP 10.3(b)	1
RCW 4.44.170(2).....	3
RCW 4.44.190	3

I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant makes two assignments of error. These are as follows;

1. Manuel Verduzco did not receive a trial by a fair and impartial jury.
2. Defense counsel rendered constitutionally ineffective assistance of counsel in failing to ensure Verduzco received a trial by a fair and impartial jury.

B. ANSWERS TO ASSIGNMENTS OF ERROR.

1. The Appellant was not denied a fair trial by an impartial jury. The selection process conducted by the two attorneys representing this defendant resulted in empaneling of a fair and impartial jury.
2. Defense counsels jury selection was not ineffective. The questioning conducted fully vetted the pool and specifically juror 57

II. STATEMENT OF THE CASE

The substantive and procedural facts have been set forth in appellant's brief, to address this very limited issue and therefore, pursuant to RAP 10.3(b); the State shall not set forth an additional facts section.

The State shall refer to specific sections of the record as needed within the body of this brief. For ease of review the voir dire has been included in Appendix A.

III. ARGUMENT

Issue 1. Juror 57 did not express actual bias and further, any possible bias expressed in his initial questioning was cured by his later agreement to questions posed by Verduzco's trial attorneys regarding his ability to be fair and impartial.

“When a juror makes an unqualified statement expressing actual bias, seating the juror is a manifest constitutional error.” State v. Irby , 187 Wn.App. 183, 188, 347 P.3d 1103 (2015)), review denied, 184 Wn.2d 1036, 379 P.3d 953 (2016). Juror 57's initial statement does not meet this standard and the later questioning by Mr. Mazzone clarifies that the State's position is correct.

Due process requires that the accused receive a trial by an impartial jury free from outside influences, including prejudicial publicity. Sheppard v. Maxwell, 384 U.S. 333, 362, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966). A presumption of juror prejudice may arise, based on a totality of circumstances...*The focus is whether the jurors at the trial had such fixed opinions that they could not judge impartially the guilt of the defendant.* State v. Jackson, 150 Wn.2d 251, 269, 76 P.3d 217 (2003). (Emphasis added) “It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.” Irvin v. Dowd, 366 U.S. 717, 723, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961).

Verduzco claims that juror 57 expressed or possessed actual bias.

The law regarding how to challenge a juror for actual bias is defined by RCW 4.44.190 *Challenge for actual bias*.

A challenge for actual bias may be taken for the cause mentioned in RCW 4.44.170(2). But on the trial of such challenge, although it should appear that the juror challenged has formed or expressed an opinion upon what he or she may have heard or read, such opinion shall not of itself be sufficient to sustain the challenge, but the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially.

During questioning after he had asked for numerous jurors to be struck at 395 Mazzone asked juror 5 about their understanding of the what a juror's duty was, 5 had excellent answers regarding listening to the facts and apply the law to those facts. Mazzone then asked the entire panel "[h]ow many people agree with that?" The juror now challenged was physically still seated in the courtroom and clearly did not disagree with that sentiment. The State is well aware that general questions are not a substitute for specific questions when there is a claim of bias, "... questions directed to the group cannot substitute for individual questioning of a juror who has expressed actual bias." State v. Phillips, 431 P.3d 1056, 1064 (2018)

This is the question and answer that Verduzco, for the first time on appeal, states is the basis for this appeal:

MR. MAZZONE: Who else had their hand up?

Juror No. 57, what can you tell us about what we've been talking about?

JUROR NO. 57: I'm probably from the old school RP 385 as well.

MR. MAZZONE: Which is what?

JUROR NO. 57: I just feel that if he did the shooting he's going to have to pay the time. This insanity stuff, I had a grandson who pulled that crap in school. He wanted out of school. Now he's 20, 21. He wished he hadn't done that because he can't get a gun. How he sold that leaves me in doubt of a lot.

MR. MAZZONE: Could you make room for the possibility that there may be a situation in which somebody is actually insane?

JUROR NO. 57: Today I couldn't tell you that.

MR. MAZZONE: But as far as this case goes, what I'm hearing from you is that your mind is made up.

JUROR NO. 57: At this point. (Emphasis added.) RP 388

With qualifying comments, “[t]oday I couldn’t tell you that” and “[a]t this point” this statement is not an "unqualified statement[s] expressing actual bias." State v. Irby, 187 Wn.App. 183, 188, 347 P.3d 1103 (2015), review denied, 184 Wn.2d 1036, 379 P.3d 953 (2016).

Mr. Mazzone immediately goes into a very specific discussion of “[h]ow many people believe that the defense of insanity is bogus?” Again juror 57 was still seated, and again there would appear to have been no negative response from that juror. RP 395 The one issue that was primarily raised by 57 was with regard to the defense of insanity and in this section of voir dire, this extremely experienced trial attorney who was

physically in the room with these jurors, who was able to not read their words but see them as they answered, to hear the manner and method of those responses to get those subtle cues that cannot be found in the written word, that attorney knowing 57's previous ambiguous answers left 57 in the pool, and at the end of the day neither he nor Mr. Connick, another extremely skilled, experienced attorney, both of whom were appointed to this case because of their skill set, both of these attorneys **never** moved to strike 57, not during initial questioning nor later when the final process occurred. RP 395-9

Hughes v. United States, 258 F.3d 453, 457 (6th Cir. 2001):

Counsel is also accorded particular deference when conducting voir dire. An attorney's actions during voir dire are considered to be matters of trial strategy. Nguyen v. Reynolds, 131 F.3d 1340, 1349 (10th Cir. 1997) (citing Teague v. Scott, 60 F.3d 1167, 1172 (5th Cir. 1995)). A strategic decision cannot be the basis for a claim of ineffective assistance unless counsel's decision is shown to be so ill-chosen that it permeates the entire trial with obvious unfairness. *Id.*

The State would also note that throughout this multiple year long process, through a trial that spanned weeks, that involved very complicated issues that were addressed by experts, that involved nearly two dozen witnesses, the only issue that Verduzco could find on appeal was regarding juror 57 and only in this instance were these two trial attorneys "ineffective."

“Irby also demonstrates the distinction between a juror that says they cannot be fair, without redemption, and a juror that only expresses reservations. When the juror has expressed reservations but agrees they can set those aside to be fair and impartial, it is within the trial court’s discretion to allow that juror to remain. State v. Phillips, 431 P.3d 1056 (2018)”

Verduzco fails to include in his brief the portion of the voir dire where his own attorney elicits a response from a group of jurors and 57 specifically is noted as agreeing, which rehabilitates juror 57. When Mr. Mazzone queries juror 63, who had grave doubts about the use of an insanity defense but now agreed with Mr. Mazzone at the end of his questioning that they could listen to what was said the following occurred:

JUROR NO. 63: I just feel like the insanity plea, it doesn't really -- he knew what he was doing at the time. Now that he's gotten caught, it's kind of like a way out. That's how I feel about the insanity plea. That's just the way I've always felt.

MR. MAZZONE: Is your mind made up about that?

JUROR NO. 63: No. I'll sit and listen to all the scientific reasoning and all that. I'll attend.

MR. MAZZONE: Is it possible that you may change your opinion?

JUROR NO. 63: It's possible.

MR. MAZZONE: You're willing to at least consider what's being said?

JUROR NO. 63: Yeah, I'll listen.

MR. MAZZONE: What is it that really inside of yourself, what is it that really bothers you?

JUROR NO. 63: It just feels like he got caught.

This is the only reasonable explanation that he won't get in as much trouble.

MR. MAZZONE: If I'm hearing you right, it's like this insanity thing to me, I've got serious reservations about it. I recognize that there may be some instances where it may be true.

JUROR NO. 63: Yeah.

MR. MAZZONE: I'm willing to listen to people that know more than myself about that before I really can let you know what I'm going to do about whether I feel that he's really guilty or not. Is that what I'm hearing from you?

JUROR NO. 63: Yeah.

MR. MAZZONE: So how many people agree with Juror No. 63? Juror No. 33, Juror No. 5, No. 21, 26, 43, 67, 89 and No. 12.

MR. CONNICK: You went too fast.

MR. MAZZONE: Let's have the hands up so we can get it down. We have No. 5, No. 33, No. 21, No. 26, No. 43, No. 63, No. 56 and 67, 89 and 57. Did I get everybody? (Emphasis added) RP 401-2 (Emphasis added.)

Verduzco challenges only juror 57. Jurors 5, 26, 43 and 56 also responded as did 57 to this long and very specific question asked by Mr. Mazzone. These four other jurors acknowledge that they agree with juror 63 regarding their ability to be fair and impartial, "Juror No. 33, Juror No. 5, No. 21, 26, 43, 67, 89 and No. 12...Let's have the hands up so we can get it down. We have No. 5, No. 33, No. 21, No. 26, No. 43, No. 63, No. 56 and 67, 89 and 57, and they too were seated on the jury.

Carol Hamilton is Juror No. 1.

Kerry Turley will be Juror No. 2.

Nichole McQuiston will be No. 3.

Birtie Sires, No. 4.

MR. CONNICK: Can you do them by number.

THE COURT: It's Nos. 5, 11, 13, 14.

No. 18, Bryce Duehn, Juror No. 5.
No. 20, William Steele will be No. 6.
No. 26, Mary Johnson, will be No. 7.
No. 38, Roger Berg, will be Juror No. 8.
No. 40, Lisa Hagreeen, will be No. 9.
Juror 43, Eva Lindstrand, will be No. 10.
Juror 45, Elizabeth Dodd, will be No. 11.
No. 46, James Elliott, will be No. 12.
No. 54, Barbara Skjelstad, will be No. 13.
Buddy Meier, No. 56, will be No. 14.
Norman Cleveringa, No. 57, will be Juror No. 15.
RP 422.

“Counsel is also accorded particular deference when conducting voir dire. An attorney's actions during voir dire are considered to be matters of trial strategy. Nguyen v. Reynolds, 131 F.3d 1340, 1349 (10th Cir. 1997) (citing Teague v. Scott, 60 F.3d 1167, 1172 (5th Cir. 1995)). A strategic decision cannot be the basis for a claim of ineffective assistance unless counsel's decision is shown to be so ill-chosen that it permeates the entire trial with obvious unfairness. Id.” Hughes, 258 F.3d 457.

Clearly if four other members of the pool who responded to this very question were kept on the panel by the defense, after full and complete vetting by defendant's two highly skilled attorneys, this was planned, it was a tactic, there was method to these actions. Further, the fact that juror 57 remained on this panel was not due to some ineffectiveness on the part of these attorneys.

Mr. Mazzone ended this portion of the defendant's voir dire with this question:

MR. MAZZONE: Okay. Let's be clear. My job at the moment is to select jurors that are going to be fair. It's not a liability contest. It's not asking trick questions. It's not wanting you to divulge your innermost secrets. I just want a jury that will consider the evidence and be fair about what they hear and the mindset that they come into trial with. I'm going to get another around in a little bit. My last question for this round is this: **How many people, regardless of the reason, believe that they cannot be fair? Anybody?**

All right. I'll stop right there for now, your Honor.
RP 410

There is literally no response to this question. The juror now challenged was still seated in the pool. This juror has been completely honest and forthcoming to all of the parties at this juncture, there is absolutely no reason to assume he wasn't continuing that when this final can you be fair question was posed to the pool.

A juror's express doubt as to her own impartiality on voir dire does not necessarily entail a finding of actual bias. The Supreme Court has upheld the impaneling of jurors who had doubted, or disclaimed outright, their own impartiality on voir dire. In Patton v. Yount, 467 U.S. 1025, 1032 (1984), the Supreme Court found that the trial court did not commit "manifest error" when finding jury members to be impartial. Eight of the fourteen jurors in question, due to pretrial publicity, "admitted that at some time [prior to trial] they had formed an opinion as to [defendant's] guilt." Patton, 467 U.S. at 1029-30. One of the impaneled jurors "stated at voir dire that he would have required evidence to change his mind about [defendant's] guilt." *Id.* at 1030-1031,

104 S.Ct. 2885. *Id* at 458

It is very important to note that Verduzco had two attorneys. The statement above is actual evidence that these two attorneys were working together during voir dire and that one was asking the questions and the other was noting the responses. That Mr. Connick was unable to literally “...get it down” clearly meaning write down the numbers of those who responded to the question put to them by Mr. Mazzone. The defendant had down in writing that juror 57 had agreed to this general inquiry regarding the ability to sit fairly on Verduzco’s trial.

These two defense attorneys rehabilitated this juror, if that was even necessary.

Mr. Mazzone is allowed one more period of time for voir dire at the end of that questioning, which primarily just addressed the ability of all to be fair, he asked the following and again there was not one single response from the panel, a panel still containing juror 57:

MR. MAZZONE: This is how this works. Right now, if one of you or any of you were to tell me that, look, there's something about me that will not enable me to be fair, I can do something about it. Once you're in that box, I can't.

My last question to all of you is this: Is there any reason, any reason whatsoever, that you feel makes you an unfair juror for this case? I don't want to know what the reason is. If there's such a reason, can you just raise your hand and let me know? I promise I won't ask you what that reason is.

Anybody? Juror No. 16, Juror No. 76.
Thank you for your candor. Anybody else?
Thank you for your time. RP 416

The questioning set forth above is not the general to the pool with the standard “no response” comment from the trial court or the attorney. This was a specific response with the number of those in the record.

To believe that juror 57 remained on this panel as some hidden conspirator harboring prejudice of a level to taint the final verdict is absurd. The facts are, both parties’ goal was to ferrate out those who should not remain on the panel and give this defendant a fair trial. The days of the State finding some method to stack a jury or in this instance the belief that Mr. Mazzone and Mr. Connick successfully removed all of the jurors they did but just by sheer incompetence left 57 on the pool is also absurd.

State v. Phillips, 431 P.3d 1056, 1065 (2018) addressed a claim of ineffectiveness, “[i]n addition to guaranteeing an impartial jury, the Sixth and Fourteenth Amendments of the United States Constitution and article I, section 22 of the Washington Constitution guarantee the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 685-86, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); State v. Grier, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011). Strickland set forth the standard under the Sixth Amendment for reversal of criminal convictions based on ineffective

assistance of counsel. Grier, 171 Wn.2d at 32, 246 P.3d 1260. The first prong requires determining whether counsel was deficient. In evaluating whether counsel is deficient, we look to whether counsel's conduct could be characterized as a legitimate trial strategy. Grier, 171 Wn.2d at 33, 246 P.3d 1260. "When counsel's conduct can be characterized as legitimate trial strategy or tactics, performance is not deficient." State v. Kyлло, 166 Wn.2d 856, 863, 215 P.3d 177 (2009).

Philips goes on to state, "...the record is clear that defense counsel was alert to the possibility of biased jurors. Defense counsel actively questioned juror I(57)..." Trial counsel actively questioned this group of venireman who expressed a similar distrust of the insanity defense "...including questioning whether, despite (these) juror('s) concerns, the juror('s) would follow the court's instructions and base his decision on the evidence presented. As a result, defense counsel did not challenge juror (57) This suggests that defense counsel observed something during voir dire that led counsel to believe juror 10 could be fair." Id at 1065.

In Verduzco's trial at the end of voir dire, his attorneys asked for and was granted time to consider who was left on the panel. The court and the parties confirmed who was still physically on the panel, juror 57 was stated by the court to be still a member of the pool. RP 418-9

The parties discuss the panel, it is clear that the defense knows

what they are doing and who is still there. When the court indicates that “According to my math here, if everybody uses all of their peremptories, we're going to have seven people left.” Mr. Mazzone’s response is “We're going to get back there pretty close.” He then goes on to address another juror’s family needs regarding a specific doctor’s appointment, RP 419, this trial litigator was clearly on top of who was still in the panel. Mr. Mazzone and Mr. Connick knew who was on the panel, their actions were not ineffective.

After the break the parties exercise challenges and at the end they have a sidebar conference where the attorneys and the court agree on who was left on the panel. At no time did the defense indicate they were not comfortable with juror 57, they did not move for additional peremptory challenges, they did not challenge this juror for cause and the panel was accepted. RP 420-21.

Hughes again:

Under the Sixth Amendment, the longstanding Supreme Court standard for juror impartiality is as follows:

To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. Irvin v. Dowd, 366 U.S. 717, 723

(1961) (citations omitted). Hughes, 353 F.3rd 459

As was stated nearly 50 years ago “[a] defendant charged with a crime is constitutionally entitled to a fair trial, but not necessarily to a perfect trial.” Bruton v. United States, 391 U.S. 123, 20 L. Ed. 2d 476, 88 S. Ct. 1620 (1968).

“The underlying goal of the jury selection process is ‘to discover bias in prospective jurors’ and ‘to remove prospective jurors who will not be able to follow instructions on the law,’ and thus, to ensure an impartial jury, a fair trial, and the appearance of fairness.” State v. Saintcalle, 178 Wn.2d 34, 76, 309 P.3d 326 (2013) (Gonzalez, J. concurring) (quoting State v. Davis, 141 Wn.2d 798, 824-26, 10 P.3d 977 (2000)) (alteration in original). “One primary purpose of the voir dire process is to determine whether prospective jurors harbor ‘actual bias’ and are thus unqualified to serve in the case.” Saintcalle, 178 Wn.2d at 77-78 (Gonzalez, J. concurring). This aspect of voir dire is intended to determine whether a juror can “set aside personal beliefs, opinions, or values insofar as is necessary to follow the law and decide the case fairly;” “adjudicate disputed factual issues based solely on the evidence that is allowed and presented at trial;” and “be free from the undue influence of any special relationships or personal interests (even if such relationships or interests do not qualify as implied bias).” *Id.*

Issue 2. Trial counsel was ineffective.

As indicated above the fact that numerous jurors who were on the final panel responded to trial counsel query about the insanity defense, including 57, makes it clear that there was a plan in place. These two trial litigators obviously felt that agreement with juror 63's response that they could and would be fair and impartial laid to rest any previous issues. These two attorneys would not have taken such care in their questioning to leave someone they believed would be biased towards their client.

Mr. Mazzone asked for a show of hands for jurors who did **not** want to sit on this jury, juror 57 and 43 were two of those responding. RP 381. Juror number 43 has not been challenged in this appeal nor has Verduzco label his attorney ineffective for leaving this juror on the panel.

Juror 43 stated on their questionnaire that people with mental illness should "...not e released to the general public." And in response to voir dire further stated, "...I think that there's a place for people with mental illness. For them to get the help they need would not be in the general population. It would be where they get that help, wherever that might be." This juror was another who was rehabilitated by Mr. Mazzone.

Thereafter, Mr. Mazzone had a lengthy discussion with juror No. 12. RP This more specific discussion was about the insanity defense. Juror 12's position was that the defendant was guilty of shooting two

people and stated in response to the question “[y]ou believe that insanity as a defense for you is just not going to carry the day?” This is a portion of that lengthy discussion:

MR. MAZZONE: You feel uncomfortable. If I'm understanding you correctly, you feel uncomfortable because, based on everything that you've been exposed to about this case, you believe that he's guilty?

JUROR NO. 12: Well, yes. I know he did it. He shot people, yes.

MR. MAZZONE: You believe that insanity as a defense for you is just not going to carry the day?

JUROR NO. 12: I don't know what the court's explanation for insanity is. I don't know. It doesn't seem like that would carry water for me.

MR. MAZZONE: Let me ask you this: Do you think it would be fair to have you sit as a juror on this case?

JUROR NO. 12: Yeah. I would listen to the evidence and that. I'm willing to do that.

MR. MAZZONE: Is it possible that you may change your mind?

JUROR NO. 12: It's a possibility, yes.

MR. MAZZONE: As you sit here right now, lots of things would have to become true in order for you to change your mind.

JUROR NO. 12: Yes.

MR. MAZZONE: How many people feel like Juror No. 12? Juror No. 29, Juror No. 21, Juror No. 16, Juror No. 56, Juror No. 43, Juror No. 47, Juror No. 63.

RP 398-401 (Emphasis added)

These jurors were stating that they would be hard pressed to believe that anyone could be found not guilty using the “insanity defense.” Juror 56 was one who agreed with this sentiment, once again this juror has not been challenged here.

The position and statements of juror 56 are no different or unequivocal than the statements made by juror 57, who is the only juror Verduzco has challenged. Verduzco has not challenged these other jurors because they, like juror 57, were not biased and to address all of them would have made it clear to this court that the actions of Mr. Mazzone and Mr. Connick were not deficient but were a well thought out process that resulted in the seating of these jurors.

Juror 57's statements were equivocal and clearly allowed for room to change:

MR. MAZZONE: Could you make room for the possibility that there may be a situation in which somebody is actually insane?

JUROR NO. 57: Today I couldn't tell you that.

MR. MAZZONE: But as far as this case goes, what I'm hearing from you is that your mind is made up.

JUROR NO. 57: At this point. RP 388 (Emphasis added.)

And once again Mr. Mazzone rehabilitated jurors 43, 56 and 57:

JUROR NO. 63: I just feel like the insanity plea, it doesn't really -- he knew what he was doing at the time. Now that he's gotten caught, it's kind of like a way out. That's how I feel about the insanity plea. That's just the way I've always felt.

MR. MAZZONE: Is your mind made up about that?

JUROR NO. 63: No. I'll sit and listen to all the scientific reasoning and all that. I'll attend.

MR. MAZZONE: Is it possible that you may change your opinion?

JUROR NO. 63: It's possible.

MR. MAZZONE: You're willing to at least consider what's being said?

JUROR NO. 63: Yeah, I'll listen.

MR. MAZZONE: What is it that really inside of yourself, what is it that really bothers you?

JUROR NO. 63: It just feels like he got caught.

This is the only reasonable explanation that he won't get in as much trouble.

MR. MAZZONE: If I'm hearing you right, it's like this insanity thing to me, I've got serious reservations about it. I recognize that there may be some instances where it may be true.

JUROR NO. 63: **Yeah.**

MR. MAZZONE: I'm willing to listen to people that know more than myself about that before I really can let you know what I'm going to do about whether I feel that he's really guilty or not. Is that what I'm hearing from you?

JUROR NO. 63: **Yeah.**

MR. MAZZONE: So how many people agree with Juror No. 63? Juror No. 33, Juror No. 5, No. 21, 26, 43, 67, 89 and No. 12.

MR. CONNICK: You went too fast.

MR. MAZZONE: **Let's have the hands up so we can get it down.** We have No. 5, No. 33, No. 21, No. 26, No. 43, No. 63, No. 56 and 67, 89 and **57**. Did I get everybody? (Emphasis added) RP 401-2 (Emphasis added.)

State v. Renfro, 96 Wn.2d 902, 909, 639 P.2d 737 (1982) “While it is easy in retrospect to find fault with tactics and strategies that failed to gain an acquittal, the failure of what initially appeared to be a valid approach does not render the action of trial counsel reversible error.” As was stated in State v. Colbert, 17 Wn. App. 658, 664, 564 P.2d 1182 (1977):

The defendant is entitled to a fair and unbiased trial. State v. Beard, 74 Wn.2d 335, 444 P.2d 651 (1968). He is not entitled to a perfect trial. A perfect trial is always sought but seldom, if ever, attained. To suggest that a

perfect trial is a normal expectation is to suggest that a judge, two attorneys, 12 jurors and innumerable witnesses, all of various ages and talents are omnipotent, not subject to human error and apparently possessing iron stomachs unaffected by repulsive testimony.

As was stated by this court in State v. Sorenson, 6 Wn.App. 269, 272, 492 P.2d 233 (1972) “We have examined the entire record and find the claimed error to be without merit. As the court observed in State v. Thomas, Supra, 71 Wn.2d at 472, 429 P.2d at 233, '(s)ome defendants are, in fact, guilty and no amount of forensic skill is going to bring about an acquittal.’”

The general law regarding claims of ineffective assistance of counsel is a mixed question of law and fact that this court will review de novo. State v. Sutherby, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To establish a claim of ineffective assistance of counsel Verduzco must show that (1) defense counsel’s performance was deficient and (2) the deficient performance prejudiced the defense. State v. Grier, 171 Wn.2d 17, 33-34, 246 P.3d 1260 (2011). A failure to satisfy either prong is fatal to an ineffective assistance of counsel claim. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 784 (1984).

Verduzco’s claim fails to meet his burden with regard to either of the two prongs of the test set out above. There is no doubt that his trial counsel’s actions were tactical, were strategic. The Sixth Amendment

guarantees a criminal defendant the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771 & n.14, 90 S. Ct. 1441, 25 L. Ed. 2d 763 (1970) This court will presume that defense counsel's performance was reasonable. Grier, 171 Wn.2d at 33. Performance is deficient if it falls below an objective standard of reasonableness. Grier, 171 Wn.2d at 33. Counsel's conduct is not deficient when it can be characterized as legitimate trial strategy or tactics. Grier, 171 Wn.2d at 33. Deficient performance occurs if "counsel's representation fell below an objective standard of reasonableness." Strickland v. Washington, 466 U.S. 668, 688, 104 S. Ct. 2052, 80 L. Ed. 2d 784 (1984). This standard requires "reasonableness under prevailing professional norms" and "in light of all the circumstances." Id. at 688, 690. Verduzco must overcome a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. To do so, the defendant must show counsel's performance cannot be explained as a sound defense strategy. Id.

Prejudice occurs if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability of a different result exists where counsel's deficient performance "undermine[s] confidence in the outcome." Id. The defendant "need not show that counsel's deficient

conduct more likely than not altered the outcome in the case." Id. at 693. Instead, the defendant "has ... the burden of showing that the decision reached would reasonably likely have been different absent the errors." Id. at 696. This standard requires evaluating the totality of the record. Id. at 695.

Jury selection is an intimate process. The actual questioning of substance witnesses, introduction or exclusion of exhibits and the process of the actual trial are in many ways not as intimate and nuanced as jury selection. And at the same time this process is not as well recorded as the more "mechanical portion of the trial. The court would not consider review of many of the facets of this process which bring a trial litigator to the conclusion that they will keep or excuse a juror.

This portion of the "practice" of law has many components which are based on the trial litigators contact and actual interaction with these jurors which is not and cannot be recorded or memorialized as a portion of the record, this is "gut feel" and experience based on the back and forth between all counsel and the court throughout this process. One of the foundations of this process is the preemptory strike which many times is done less for some "factual" reason, those are generally done for cause, but on the gut feel of the lawyer or lawyers who have been a part of the process.

Clearly what occurred here was a vigorous and detailed voir dire, while only briefly memorialized there can be no doubt that the records, notes, which were being taken by Mr. Connick were reviewed by both of Verduzco's attorneys before the final strikes were done.

MR. MAZZONE: I think Mr. Connick has something.

MR. CONNICK: Judge, when we finish our session, we would ask for a little time for the defense team to meet on our jury picks.

THE COURT: You lost me.

MR. CONNICK: We need a little time to get together on our jury picks once we're done with voir dire.

THE COURT: That's fine. We can have them go next door for a little bit or do it with them present.

MR. CONNICK: If we could take a break at that time, like a half hour. RP 380

...

THE COURT: All right. Do you still want your break?

MR. MAZZONE: Yes.

THE COURT: We're going to take a little bit of a recess so the attorneys can contemplate the exercise of peremptory challenges. RP 416

These two attorneys had a huge challenge in this case. The shooter was known to the employees who were witnesses and those who were killed. He was on video surveillance cameras, he had been to the business the day before acting in an unusual manner, he confessed, witnesses identified him as the shooter, the weapon which was used to kill these two women was found in the defendant's residence and the acts of murder were not some random, spur of the moment act, they were thought

out and the actual acts were done basically at point blank range and when one person did not die after the first shot the defendant went back and “finished the job.”

Verduzco’s attorneys mounted a defense based on their intimate knowledge of this defendant, their training, experience and most importantly their lengthy hands on familiarity with this case. This makes second guessing the voir dire by the appellant after conviction or by this court on review a risky matter. "Judicial scrutiny of counsel's performance must be highly deferential" and "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Strickland, infra, 466 U.S. at 689 (quoting Michel v. Louisiana, 350 U.S. 91, 101, 76 S. Ct. 158, 100 L. Ed. 83 (1955)). Tactical decisions cannot form the basis for a claim of ineffective assistance of counsel. McFarland, 127 Wn.2d at 336 (citing State v. Garrett, 124 Wn.2d 504, 520, 881 P.2d 185 (1994)).

State v. Phillips, 431 P.3d 1056, 1063 (2018) “We recognized this statement as a clear indicator of bias that was never neutralized by further questioning. "At no time did Juror 11 express confidence in her ability to deliberate fairly or to follow the judge’s instructions regarding the

presumption of innocence."

It is the State's position that juror 57's statements were not "...an express admission of bias" he qualified his belief regarding the insanity defense. And even if there was some sort of bias, Mr. Mazzone neutralized that in his later questioning. Hughes 248 F.3d at 560 "Under the Sixth Amendment, the longstanding Supreme Court standard for juror impartiality is as follows:

To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. Irvin v. Dowd 366 U.S. 717, 723 (1961) (citations omitted).

IV. CONCLUSION

The selection of a jury is a portion of the trial process that is based on the ability of a trial litigator or here two very experienced trial litigators, (attorneys who were brought into the case from Seattle because of the type of case this was) which is often times a "gut feeling" about the person in the pool. That feeling is based on the very intimate nature of the process, an intimacy that does not translate very well nor completely into the transcript that is produced for appeal. The process was changed decades ago to a more interactive process which allowed the litigators on both sides to have a more complete feeling regarding the people who were

being tasked with this very important job.

That interaction allows the litigators to see and hear and for lack of a better word feel the ideas, actions and attitudes of these jurors. The body language of a person being questioned will not make it into this record, the tone, speech pattern and inflection of the answers and statements does not translate into or is not preserved by the written word. This court is well aware that the same words in a response can have completely opposite meaning based on tone and inflection and the person making the response. An identical benign statement from one person can be turned into pure sarcasm by another person. The attorney standing in the courtroom listening and watching these jurors will know if that response is heartfelt or sarcastic. The black and white words of a verbatim report of proceedings will not.

The courts of review in this state have set a very high standard which must be met before this court will overturn the actions of this nature. The defendant has a burden to meet and the presumption is that the attorney's actions were effective and in the best interests of his client.

Verduzco has not met his burden. Juror 57's statements were honest and forthright. He was not unequivocal in his initial statements, he qualified them. And later in response to a question regarding his ability to be fair and impartial, albeit a question posed to another juror, he raised his

hand and indicated that he too could be an impartial juror.

There was no error in this case. This appeal should be denied.

Respectfully submitted this 28th day of May 2018,

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APPENDIX A

No. 57.

JURY SELECTION

RP 358

JUROR NO. 57: My name is Norm Cleveringa. I'm a retired crop consultant. My wife is also retired. We've been retired about 15 years. We have eleven grandchildren from 28 to 14, one about every year.

I like to hunt a little bit, fish a little bit and vacation quite a lot. I have been a witness in court.

RP 358-9

...

MR. MAZZONE: Thank you, your Honor.

Good afternoon. As you've already been told, my name is Pete Mazzone. I along with Peter Connick represent Manuel Verduzco in this case.

You know by now the charge is two counts of aggravated murder. **The defense is a defense of insanity.** You were asked some questions by the prosecuting attorney in this case, Mr. Brian Aaron, and I want to follow up on that.

I don't have much time. I'm going to go slow however.

I'm going to pick up on that question where you were asked how many people do not want to sit on this case, and I want a show of hands. **How many people do not want to sit on this**

case?

No. 1, No. 3. You can put your hand down after I call

JURY SELECTION

381

the number. No. 10, No. 14, 16, 20, 21, 27, 29, 38, 43, 50,
57, 63, 76, 79, 83, 85, 92 and 95. Did I get everybody?

**THE COURT: Let me just interject. Whether you
want to sit on this case or not is irrelevant to whether
you're going to sit on this case.**

MR. MAZZONE: No. 95, I think you told us early on
when you were asked that the reason why you didn't want to
sit on the case was because you believe that Mr. Verduzco is
already guilty, right?

JUROR NO. 95: Right.

MR. MAZZONE: You have your opinion about it, and
you will maintain your opinion regardless of what
instructions are given to you. Am I paraphrasing that
accurately?

JUROR NO. 95: Pretty close, yes.

MR. MAZZONE: What part is not exactly right?

**JUROR NO. 95: That you're stating that I might
change my mind. No, I probably won't.**

MR. MAZZONE: And you know that going in?

JUROR NO. 95: I know that going in.

MR. MAZZONE: How many people feel like No. 95?

No. 1, No. 3, No. 27, No. 92, No. 57 and No. 12.

All right. No. 1, tell me, what is it that you feel that is similar to No. 95?

JUROR NO. 1: I don't think you're going to

JURY SELECTION

382

convince me that these acts were committed because the defendant was insane at the time that they happened. I don't see how you're going to convince me of that. I'm of the old school that if you did the crime you do the time; be responsible for your actions.

MR. MAZZONE: What if the judge told you that the law may require that you come to that conclusion if the evidence is presented?

JUROR NO. 1: I'm definitely willing to listen to the judge and make a decision after he gives me his -- I don't know how the law reads. I'm kind of in the dark as far as answering that question.

MR. MAZZONE: No. 95, what do you think about that?

JUROR NO. 95: About his answer?

MR. MAZZONE: Yeah.

JUROR NO. 95: The judge is going to try to persuade us -- not really persuade us. That's your guys' job. He's going to tell us what the law is. It's up to us

to figure out in our opinion what we stand for.

MR. MAZZONE: What I'm hearing from you, at least what I thought I heard from you, that it's overwhelmingly unlikely that my opinion will change.

JUROR NO. 95: Correct. I'm with Juror No. 1 where you do the crime and you do the time. You pull the

JURY SELECTION

383

trigger, and so you're the one.

MR. MAZZONE: Juror No. 3, what about you?

JUROR NO. 3: I feel that they pretty much spoke what's on my mind about that. I thought about it over lunch a lot. I mean, you kill two people, obviously you're insane. Pleading insanity shouldn't be like a bailout kinda.

MR. MAZZONE: What if the law that was read to you comes to that conclusion?

JUROR NO. 3: There's nothing I can do about the law. It's just how I feel about it personally.

MR. MAZZONE: So it would be unlikely for you to change your opinion?

JUROR NO. 3: Yeah. I mean, I'd probably speak for everyone here thinking like everybody knows he's guilty.

MR. MAZZONE: Juror No. 95, is that how you feel like what No. 3 is expressing?

JUROR NO. 95: Yes.

MR. MAZZONE: Who else was it that raised their hand? Juror No. 92, tell us, what is your opinion on this whole thing?

JUROR NO. 92: At the time the crime occurred, I had a storefront front about a block away, and I saw that when it happened. I was on my way to go open my little jewelry store. I took it personally.

JURY SELECTION

384

I also live three blocks from there, and I've discussed this in detail with a lot of my neighbors. I'm pretty prejudiced to the fact that he's guilty. I doubt if I'll change my mind.

MR. MAZZONE: So you believe that you cannot keep an open mind?

JUROR NO. 92: I try to have an open mind. When you see it happen in front of you in your neighborhood, you take an interest. Then after you take an interest, you kind of justify your reasons. That was two years ago. I try to be open minded.

MR. MAZZONE: As you sit here, you cannot presume him innocent is what I'm saying.

JUROR NO. 92: No, I can't.

MR. MAZZONE: Juror No. 95, same for you?

JUROR NO. 95: Same for me. No, he's not innocent, no.

MR. MAZZONE: Juror No. 1.

JUROR NO. 1: Not innocent.

MR. MAZZONE: Juror No. 3.

JUROR NO. 3: I agree with them.

MR. MAZZONE: Who else had their hand up?

Juror No. 57, what can you tell us about what we've been talking about?

JUROR NO. 57: I'm probably from the old school

JURY SELECTION

385

as well.

MR. MAZZONE: Which is what?

JUROR NO. 57: I just feel that if he did the shooting he's going to have to pay the time. This insanity stuff, I had a grandson who pulled that crap in school. He wanted out of school. Now he's 20, 21. He wished he hadn't done that because he can't get a gun. How he sold that leaves me in doubt of a lot.

MR. MAZZONE: Could you make room for the possibility that there may be a situation in which somebody is actually insane?

JUROR NO. 57: Today I couldn't tell you that.

MR. MAZZONE: But as far as this case goes, what

I'm hearing from you is that your mind is made up.

JUROR NO. 57: At this point.

MR. MAZZONE: Juror No. 95, do you agree with that?

JUROR NO. 95: Yes, I do. I don't think there's -- his statements at the scene of the crime were apparently insane statements. So how are we supposed to trust those statements to today's statements?

You brought those questions up earlier. Well, you didn't. The other gentleman did. If you hear two statements from the same person and they're different, how does that make you feel? Well, do we know if the statements

JURY SELECTION

386

he gives us today are sane or insane? We don't know. We don't know what kind of state he's in now.

So, no. If he pulled the trigger, he pulled the trigger.

MR. MAZZONE: And it's overwhelmingly unlikely that you would change your mind about that?

JUROR NO. 95: I will not change my mind on that.

MR. MAZZONE: I would thank and excuse Juror No. 95, your Honor.

THE COURT: Mr. Aaron, do you wish to be heard?

MR. AARON: No, your Honor.

THE COURT: All right. Let me just clarify at least from my own mind. Mr. Rogers, you understand that the function of the jury is to find the facts. I define what the law is. Then the jury applies the facts to the law and reaches a verdict.

Are you telling me that your predisposition in this matter is going to overwhelm me giving you what the law is?

JUROR NO. 95: Yes, your Honor.

THE COURT: Okay. I'm going to go ahead and excuse No. 95.

MR. MAZZONE: Juror No. 92, are you in agreement with Juror No. 95?

JUROR NO. 92: Yes, I am.

MR. MAZZONE: Your Honor, I would ask that the

JURY SELECTION

387

court thank and excuse Juror No. 92.

THE COURT: Do you wish to be heard, Mr. Aaron?

MR. AARON: Your Honor, I would ask the court to make the same inquiry.

THE COURT: Mr. Giles, you understand that the function of the jury is to find the facts. I define what the law is. The jury finds the facts, applies the law to the facts and reaches a verdict on that basis.

If I tell you that this is what the defense of insanity

consists of legally, are you telling me that you're going to be unable to apply the law to the facts and be fair and impartial in that regard?

JUROR NO. 92: I would have a hard time doing that. I'm a constitutionalist . I believe in justice. It's my experience that the mental health field is not exactly factual all the way through. I have a hard time believing.

THE COURT: Okay. Are you confident that you could not be fair and impartial?

JUROR NO. 92: Yeah. I saw the blood.

THE COURT: And your shop is just around the corner there next to the police department, across the street?

JUROR NO. 92: It was at the time, yes.

THE COURT: I think I'd be inclined to excuse No. 92 as well. I'll excuse you from service on this case.

JURY SELECTION

388

MR. MAZZONE: Juror No. 1, how do you feel about the position that Juror No. 95 and Juror No. 92 have taken? Is it similar or dissimilar?

JUROR NO. 1: Like I told you before, I don't know how the law reads when it comes to a plea of insanity.

MR. CONNICK: I'm sorry. I cannot hear.

MR. AARON: I said I don't know how the law reads

with a plea of insanity. So it's kind of hard for me to say yes or no.

In my feelings, he obviously did the crime. Like I just said a little while ago, I don't think you're going to convince me he did it because he was insane. I think he did it because he did it.

MR. MAZZONE: And it's overwhelmingly unlikely that you would change your mind?

JUROR NO. 1: I think it is.

MR. MAZZONE: Your Honor, I would ask that the court thank and excuse Juror No. 1.

THE COURT: Mr. Aaron, do you wish to be heard?

MR. AARON: Yes, your Honor.

Mr. Cowden, you just commented prior to that statement that you don't know the law with regard to insanity as a defense.

JUROR NO. 1: I don't think anybody on this side of the rail does.

JURY SELECTION

389

MR. AARON: I'd say that's a pretty fair statement.

JUROR NO. 1: Yeah.

MR. AARON: Now, if I asked you isn't it your job to listen to the evidence that comes out in this courtroom,

not what you've heard outside the courtroom but listen only to the evidence that was presented inside this courtroom and then listen to the judge's instructions on how the law applies to the facts, would you be able to do that?

JUROR NO. 1: Sure, I would.

MR. AARON: Would you be able to do that fairly?

JUROR NO. 1: Yes, I can do it fairly.

MR. AARON: Thank you.

JUROR NO. 1: I'd be surprised if they convinced me he was insane, but we'll see.

MR. AARON: But you're willing to make room for that?

JUROR NO. 1: Oh, yeah.

MR. AARON: Thank you.

THE COURT: I'm going to deny the challenge at this point.

MR. MAZZONE: Juror No. 3, what about your position?

JUROR NO. 3: I would say I'm in the same boat as 95 and 92 and Juror No. 1. You're not going to convince me.

JURY SELECTION

389

I mean, obviously anybody that murders somebody is insane somewhat in the head, but they're not -- a plea for insanity, I think, is a bailout, kind of a coward move in

my mind.

MR. MAZZONE: And it's overwhelmingly unlikely you would change your mind?

JUROR NO. 3: Absolutely.

MR. MAZZONE: Regardless of anything?

JUROR NO. 3: I'd look at the evidence, but it's

-- I just --MR. MAZZONE: It's futile?

JUROR NO. 3: Yeah.

MR. MAZZONE: Your Honor, I would ask that the court thank and excuse Juror No. 3.

THE COURT: Mr. Aaron.

MR. AARON: Thank you, your Honor.

MR. AARON: Mr. Wallace, I have the same questions that I had for Mr. Cowden. Everybody in this courtroom has heard something about this case one way or the other prior to coming in here.

JUROR NO. 3: Yeah.

MR. AARON: Okay. You heard the judge when he instructed you earlier today that the evidence you're going to hear, the story you'll hear, the evidence is what you hear from this courtroom.

JURY SELECTION

390

JUROR NO. 3: Mm-hmm.

MR. AARON: Setting aside what you hear from the

outside of this courtroom, just what you hear in this courtroom, would you be able to take the judge's instructions that he gives after the evidence is presented, the weeks of evidence we put on here, apply the judge's instructions to the facts that you will determine and come up with a decision?

JUROR NO. 3: Yes, I could, but I don't see how it's going to change me. Guilty is guilty. I mean, he killed two people cold blooded pretty much.

MR. AARON: Understood. You just said that you didn't know the instruction on insanity. Fair enough?

JUROR NO. 3: I mean, the law for insanity, technically I don't know what it means. The mass shooters on the news, a lot of them claim insanity. Like I believe the Colorado shooter six years ago, I believe, claimed insanity. I just think it's a cowardly bailout move.

MR. AARON: But you'd still be willing to listen to the judge's instruction and apply it to the evidence you hear in this courtroom?

JUROR NO. 3: I'd listen to the judge's instructions. I don't think I'd be able to change my mind off of that.

MR. AARON: That's all I've, your Honor.

JURY SELECTION

392

THE COURT: Mr. Wallace, I'm going to excuse you from service on this case.

MR. MAZZONE: All right. How many people disagree with the idea that if somebody has killed someone then they're guilty regardless of anything? How many people disagree with that? Nobody disagrees with that.

JUROR NO. 10: I think –

THE COURT: They don't understand the question.

MR. MAZZONE: Let me rephrase it. Maybe than wasn't artfully phrased.

How many people believe that if we are going to have a trial that it should be fair one? All right. Just about everyone.

How many people believe it doesn't matter if we have a trial, whether it's fair or unfair? We just do it because that's what people are supposed to get, get a trial. Let's give them one and whether it's fair or it unfair it doesn't matter. Anybody believe that?

All right. If the trial is supposed to be fair, how many people believe that we should listen to the evidence that's presented before we do anything?

How many people disagree with that? All right.

Juror No. 1, if it is true that we should listen to everything before we do anything, if the trial is going to be fair, how does that square with your opinion that you're

JURY SELECTION

394

going into it already biased?

JUROR NO. 1: Well, I would repeat myself. I do not know how the law reads. I do know that the defendant committed the crimes. I do not know what -- I'll call it a hole in the law, for lack of a better word, how that would allow an insanity plea. I'm willing to listen to the evidence. Like I said three or four times, I don't think you're going to convince me that insanity was a reason for this person to do that.

MR. MAZZONE: You would be willing to listen to the evidence?

JUROR NO. 1: Oh, yes.

MR. MAZZONE: Ultimately it's not going to make a difference to you.

JUROR NO. 1: I don't know how it would.

MR. MAZZONE: Your Honor, I would renew my objection.

THE COURT: I'm inclined to excuse No. 1 at this point.

MR. MAZZONE: Thank you.

THE COURT: I'm going to excuse you from service on this case.

JUROR NO. 1: Thank you.

MR. MAZZONE: With those of you that said they want to sit on this case, can I see those hands.

JURY SELECTION

394

That's No. 5, No. 13, No. 39, No. 33, No. 52, No. 40, No. 45, 46, 61, 88 and 89.

All right. No. 5, why do you want to sit on this case?

JUROR NO. 5: I think once in a great while anyone who's called to serve should fulfill that commitment, if you want to call it that. Because I think that, it keeps the whole system strong for everyone.

MR. MAZZONE: Do you think it's important if you sit on the case that you need to be fair?

JUROR NO. 5: I absolutely do.

MR. MAZZONE: You listen to the facts that everybody talks about when they take the stand, and you need to listen to the judge as the judge gives you the law?

JUROR NO. 5: Yes, both of those things.

MR. MAZZONE: Only then you make a decision about what you think the right verdict is, right?

JUROR NO. 5: Yes.

MR. MAZZONE: How many people agree with that?

All right. Let's change that a little bit. **How many people believe that the defense of insanity is bogus? It's one of these things that, yeah, maybe lawyers might like to**

talk about it in court, but it doesn't really exist. It's

just a copout and an excuse. How many people believe that?

Juror No. 27, you believe that?

JUROR NO. 27: (Nods head affirmatively.)

JURY SELECTION

395

MR. MAZZONE: Tell me about it.

JUROR NO. 27: I don't know.

THE COURT: Could you stand up, sir.

JUROR NO. 27: Well, I just think, you know, it's an excuse, a copout. If he got acquitted, he might go back and do the same thing all over again.

MR. MAZZONE: Can you envision a situation where someone might actually be insane?

JUROR NO. 27: Yeah, I think so.

MR. MAZZONE: Would it matter to you if experts came in and talked about that in order for you to be able to make your decision?

JUROR NO. 27: I suppose. I've never been in this kind of thing before.

MR. MAZZONE: It's kind of hard because you've never been exposed to it before.

JUROR NO. 27: Yeah.

MR. MAZZONE: Can you keep an open mind and listen to everything first before you decide anything?

JUROR NO. 27: Well, I suppose I would be willing to. I don't think it would change my mind any.

MR. MAZZONE: You don't think it would change your mind any. What's your mind? What is it about the idea that you have that wouldn't change regardless?

JUROR NO. 27: I don't know. It was a pretty

JURY SELECTION

396

hideous crime. Sometimes I just don't believe that insanity holds water.

MR. MAZZONE: Is it the kind of belief that you hold so strongly that you're not willing to consider the evidence?

JUROR NO. 27: Well, no, I don't think so.

MR. MAZZONE: You don't think you can?

JUROR NO. 27: No.

MR. MAZZONE: What if the judge said, look, Juror No. 27 -- I can't remember everybody's name.

JUROR NO. 27: That's all right.

MR. MAZZONE: What if the judge said, look Juror No. 27, as the judge I'm telling you that you have to follow the law. If the evidence comes out as such, the result has to be this. Can you follow that given your preconceived ideas and notions that you have?

JUROR NO. 27: Yeah, I suppose I can.

MR. MAZZONE: So you can.

JUROR NO. 27: I still -- the bottom line is I still don't think I could.

MR. MAZZONE: You can or you can't? That's really a very important question that we're asking.

JUROR NO. 27: I don't think I can.

MR. MAZZONE: You don't think you can?

JUROR NO. 27: No.

JURY SELECTION

397

MR. MAZZONE: As you sit here, you believe no matter what you hear you cannot change your mind?

JUROR NO. 27: Right.

MR. MAZZONE: In fact, you believe that he's guilty.

JUROR NO. 27: Yes.

MR. MAZZONE: Your Honor, I would thank and excuse Juror No. 27.

THE COURT: Mr. Aaron.

MR. AARON: No objection, your Honor.

THE COURT: I'm going to go ahead and excuse you from service on this case.

MR. MAZZONE: Juror No. 12, what do you believe about this whole issue?

JUROR NO. 12: Well, I believe he shot two people.

There's the question about the insanity plea because I think anybody that commits a crime has a moment of insanity. As far as saying that's the cause of it, I don't know that I can.

MR. MAZZONE: Well, let's break that down. You believe that anybody that commits a crime has at least to some extent be mentally ill. Am I saying that right?

JUROR NO. 12: I think to some degree, yes.

MR. MAZZONE: The second part of your answer says they're still responsible for their actions and should not

JURY SELECTION

398

be excused. Can you elaborate on that.

JUROR NO. 12: I think a person makes a decision to do what they do. I think they're responsible for that. Now, insanity can be just like a moment. I don't know. I don't know about insanity pleas in this particular place, in this particular case.

MR. MAZZONE: Why do you feel that?

JUROR NO. 12: Because I think he knew what he was doing.

MR. MAZZONE: Why do you believe that before you've heard anything?

JUROR NO. 12: I have -- I saw it on TV and read the newspaper about it and everything. Just what was

reported, it sounds like it was something he knew what he was doing.

MR. MAZZONE: You know a lot about the case.

JUROR NO. 12: Somewhat.

MR. MAZZONE: You've been following the case?

JUROR NO. 12: Not recently.

MR. MAZZONE: But did you?

JUROR NO. 12: I did, yes.

MR. MAZZONE: It was all those things about the case that you were exposed to that led you to conclude what you have shared with us?

JUROR NO. 12: Pretty much.

JURY SELECTION

399

MR. MAZZONE: Now, as you come here to court and face the possibility of being a juror on the case, do you feel uncomfortable with that?

JUROR NO. 12: Yes.

MR. MAZZONE: You feel uncomfortable. If I'm understanding you correctly, you feel uncomfortable because, based on everything that you've been exposed to about this case, you believe that he's guilty?

JUROR NO. 12: Well, yes. I know he did it. He shot people, yes.

MR. MAZZONE: You believe that insanity as a

defense for you is just not going to carry the day?

JUROR NO. 12: I don't know what the court's explanation for insanity is. I don't know. It doesn't seem like that would carry water for me.

MR. MAZZONE: Let me ask you this: Do you think it would be fair to have you sit as a juror on this case?

JUROR NO. 12: Yeah. I would listen to the evidence and that. I'm willing to do that.

MR. MAZZONE: Is it possible that you may change your mind?

JUROR NO. 12: It's a possibility, yes.

MR. MAZZONE: As you sit here right now, lots of things would have to become true in order for you to change your mind.

JURY SELECTION

400

JUROR NO. 12: Yes.

MR. MAZZONE: How many people feel like Juror No. 12? Juror No. 29, Juror No. 21, Juror No. 16, Juror No. 56, Juror No. 43, Juror No. 47, Juror No. 63.

Juror No. 63, tell me, what is it about what we've been talking about that's bothering you?

JUROR NO. 63: I just feel like the insanity plea, it doesn't really -- he knew what he was doing at the time. Now that he's gotten caught, it's kind of like a way out.

That's how I feel about the insanity plea. That's just the way I've always felt.

MR. MAZZONE: Is your mind made up about that?

JUROR NO. 63: No. I'll sit and listen to all the scientific reasoning and all that. I'll attend.

MR. MAZZONE: Is it possible that you may change your opinion?

JUROR NO. 63: It's possible.

MR. MAZZONE: You're willing to at least consider what's being said?

JUROR NO. 63: Yeah, I'll listen.

MR. MAZZONE: What is it that really inside of yourself, what is it that really bothers you?

JUROR NO. 63: It just feels like he got caught.

This is the only reasonable explanation that he won't get in as much trouble.

JURY SELECTION

401

MR. MAZZONE: If I'm hearing you right, it's like this insanity thing to me, I've got serious reservations about it. I recognize that there may be some instances where it may be true.

JUROR NO. 63: Yeah.

MR. MAZZONE: I'm willing to listen to people that

know more than myself about that before I really can let you

know what I'm going to do about whether I feel that he's really guilty or not. Is that what I'm hearing from you?

JUROR NO. 63: Yeah.

MR. MAZZONE: So how many people agree with Juror No. 63? Juror No. 33, Juror No. 5, No. 21, 26, 43, 67, 89 and No. 12.

MR. CONNICK: You went too fast.

MR. MAZZONE: Let's have the hands up so we can get it down. We have No. 5, No. 33, No. 21, No. 26, No. 43, No. 63, No. 56 and 67, 89 and 57. Did I get everybody? All right. Now, how many people have a relatively open mind about insanity as a defense?

All right. No. 39, let's start with you. What can you tell me about your open mindedness about that issue?

JUROR NO. 39: Well, I just think that there are many factors to consider, what the person was going through, their state of mind at that time. I mean, there's a lot of different factors that you have to consider to be able to

JURY SELECTION

402

say, okay, this person, you know, did have insanity at that period of time. You'd also have to consider like his

history throughout time. Has there been other issues, mental health issues, previous to the crimes?

MR. MAZZONE: No. 63, assuming that those kinds of things were presented to you, is that something that may make you pay attention?

JUROR NO. 63: Yeah, I will listen.

MR. MAZZONE: No. 52, tell me about your position on this.

JUROR NO. 52: Well, I kind of agree 39. I really don't have any opinion as to his guilt. I don't read the papers. I don't watch the news.

MR. MAZZONE: So if I'm hearing you correctly, you know, I don't know much about this at all. I'm here to be a juror. I know what my obligations are. I want to hear everything, and only then consider what I'm going to do.

JUROR NO. 52: Well, I can be fair.

MR. MAZZONE: I believe you can.

Who else had their hand up on this particular last question? No. 40, tell me about your position.

JUROR NO. 40: Well, I agree with 39 and 52. I think if you're a juror you should come in with an open mind. I think you should listen to all the evidence in front of you.

JURY SELECTION

403

In terms of an insanity plea, I think that there have been proven cases in the past where somebody has been insane by whatever the standard of the law is.

MR. MAZZONE: What about this idea that, you know, in order for us to get at that issue, the issue of insanity in particular, we necessarily have to hear from a lot of people with Ph.D.'s and M.D.'s and that kind of thing? How do you feel about that?

JUROR NO. 40: Well, I work for Virginia Mason Memorial Hospital here in Yakima. So I've worked with medical professionals for the past 20 years. I understand they're highly educated individuals who continue their education throughout their career to become certified all the time. So I think that they are credible.

MR. MAZZONE: And it may be, if they come in here and testify, they may know a little bit of something about what they speak of.

JUROR NO. 40: They should, yes.

MR. MAZZONE: How many people agree with Juror No. 40? Lots.

Juror No. 45, what can you tell me about the issue of insanity and the issue of Ph.D.'s and M.D.'s and all this stuff we may have to hear?

JUROR NO. 45: I've also worked at Memorial Hospital. I worked in the outpatient psychiatric office.

JURY SELECTION

404

I'm very aware of mental illness as being a real diagnosis.

I think one of the very first things that we heard when we came in here was a person is innocent until proven guilty. So I firmly believe we have to have an open mind and we need to listen to all the facts first.

MR. MAZZONE: Juror No. 63, how about that? Juror No. 45 is saying that one of the things that I heard when we first walked in is a person is presumed innocent. That may change. It can only change if and after you listen to all the evidence and you may come to some other conclusion. What I was hearing from you was, well, wait a minute. I'm coming in here and I'm thinking he's already not innocent. Now you have to convince me the other way around. What do you think about that?

JUROR NO. 63: Well, I don't really know about the professionals, mental illness and all this and that. I just figured it's just the best for his best results to say that.

MR. MAZZONE: Can you explain that, for his best results.

JUROR NO. 63: Like he got caught. He got in trouble. If he wasn't insane at the time, then he'd get in

a lot more trouble. If he says --MR. MAZZONE: So that's what you have inside of

yourself.

JUROR NO. 63: I'll listen to all the

JURY SELECTION

405

professionals and everything and see what's going on.

MR. MAZZONE: You're thinking to yourself, I may be wrong about what I'm thinking. I'm just thinking that right now, but I may be wrong. It might be better to hear everything. Is that what I'm hearing?

JUROR NO. 63: Yeah.

MR. MAZZONE: All right. How many people here believe that they simply have heard too much about this case to be fair in the first place?

No. 29, please explain to us.

JUROR NO. 29: Well, I remember back when it happened. There was a lot of news media on it. There was a lot of paper and talk about it, a lot of talk in the community.

What I remember, if I remember it correctly, it was a robbery that in my opinion had gone bad. So we ended up with a couple of innocent ladies murdered. So I've got that in my mind.

I've got him guilty at this point, no matter if it's

insane or whatever terminology you want to use. It's like the old devil and the angel on the shoulders. I mean, I've got myself so worked up I feel ill.

MR. MAZZONE: I understand.

JUROR NO. 29: But I have served on juries before, and I want to give the gentleman the benefit of the doubt.

JURY SELECTION

406

So I want to hear the evidence. I don't know anything about the insane part either.

I'm fighting back and forth. I didn't sleep last night, like I said earlier. So that's where I'm at. I'm having a real hard time even paying attention right now because I'm thinking this and thinking that. My mind –

MR. MAZZONE: Is racing.

JUROR NO. 29: Yes. With that being said, I think I know too much about it whether it's true or not. None of it may be even true.

MR. MAZZONE: The important thing is, all that you know about it, is it going to interfere with your ability to be fair? That's really at the heart of the issue. What can you tell me about that?

JUROR NO. 29: Well, I would like to think in my mind right now, in talking about you, I would like to think I would be impartial. I'm coming to the side where I don't

know if I can be impartial.

MR. MAZZONE: What's at the root of that? What is it about what you're thinking inside yourself that tells you, you know, I just don't think I could be impartial? What is it?

JUROR NO. 29: I guess it's just the knowledge that I've heard about it, about the case.

MR. MAZZONE: Do you feel inside yourself that you
JURY SELECTION

407

will simply not be able to change your mind regardless?

JUROR NO. 29: I'm unsure of that. I can't say one way or the other.

MR. MAZZONE: What about the issue of this fact that you're having a hard time paying attention? What's that all about.

JUROR NO. 29: I think it's just the fact that my stomach and I'm feeling lightheaded. I don't know if that will change as time goes on. I do take medication for anxiety. I did take some this morning. I can tell it's starting to wearing off. That's just where I'm at.

MR. MAZZONE: You understand that it's going to be extremely important for you to pay attention if you sit on the jury?

JUROR NO. 29: Yes.

MR. MAZZONE: Do you think you can do that?

JUROR NO. 29: I can't answer that.

MR. MAZZONE: Would you rather be excused because of that?

JUROR NO. 29: Well, I'd hate to be excused because of that reason. I can't answer that reason for you.

MR. MAZZONE: Would you rather be excused for another reason?

JUROR NO. 29: No. If I was to be excused it would be for that reason.

JURY SELECTION

408

MR. MAZZONE: For the reason you know too much or you're too anxious?

JUROR NO. 29: I think both of them.

MR. MAZZONE: Your Honor, I would ask the court to thank and excuse Juror No. 29.

THE COURT: Mr. Aaron, do you have anything?

MR. AARON: No. Thank you.

THE COURT: Let me just ask. Let me understand.

Because of whatever you've read in the paper or viewed on the television news, are you able to set that aside and determine the facts of this case from the evidence that's introduced in this courtroom?

JUROR NO. 29: I would like to believe I could,

your Honor. I'm unsure if I could.

THE COURT: As far as your anxiety is concerned, do you think that's going to interfere with your ability to absorb and consider the evidence in the case?

JUROR NO. 29: It has in the last two days. It has, sir.

THE COURT: All right. I'm inclined to go ahead and excuse No. 29. I'll go ahead and excuse you from service on this case.

MR. MAZZONE: How much time do I have left in this first round, your Honor?

THE COURT: I gave you some extra time because of JURY SELECTION

409

the challenges for cause. I'll give you until 2:30, another five minutes.

MR. MAZZONE: Okay. Let's be clear. My job at the moment is to select jurors that are going to be fair. It's not a liability contest. It's not asking trick questions. It's not wanting you to divulge your innermost secrets. I just want a jury that will consider the evidence and be fair about what they hear and the mindset that they come into trial with.

I'm going to get another around in a little bit. My last question for this round is this: How many people,

regardless of the reason, believe that they cannot be fair?

Anybody?

All right. I'll stop right there for now, your Honor.

THE COURT: Mr. Aaron, do you have further inquiry?

MR. AARON: No. Thank you, your Honor.

THE COURT: Mr. Mazzone, you're back up again.

MR. MAZZONE: Good.

THE COURT: How much time do you think you need?

MR. MAZZONE: At most a half hour, your Honor.

THE COURT: Another half hour. All right.

MR. MAZZONE: Let's see. Juror No. 18, do you remember being asked a series of questions about inconsistent statements? Do you remember that?

JURY SELECTION

410

JUROR NO. 18: Mm-hmm.

MR. MAZZONE: All right. Now, suppose I asked you to tell me when was the first time you fell off your bike without training wheels and got hurt. Could you tell me?

JUROR NO. 18: I fell off a tricycle my brother was towing down the hill. I got pretty scraped up.

MR. MAZZONE: When was that?

JUROR NO. 18: I was a kid. I couldn't tell you exactly.

MR. MAZZONE: Could you give me a ballpark figure?

JUROR NO. 18: I was probably five.

MR. MAZZONE: Suppose that somebody asked you six months from now that same exact question and you said, I suppose I was about six. What do you think about your inconsistency?

JUROR NO. 18: It's a long time ago. It's hard to be that accurate.

MR. MAZZONE: Is there anything that should raise red flags in our minds about that inconsistency?

JUROR NO. 18: Well, considering my age, no.

MR. MAZZONE: Juror No. 42, I think you were the one that was asked a question about inconsistencies . You said, well, inconsistency should raise red flags, right?

JUROR NO. 42: They can.

MR. MAZZONE: Right, they can. But that depends

JURY SELECTION

411

on the nature of the inconsistency, doesn't it?

JUROR NO. 42: Certainly.

MR. MAZZONE: It most certainly does. If I was to ask you -- are you a married woman?

JUROR NO. 42: I'm single.

MR. MAZZONE: Do you have any kids?

JUROR NO. 42: No, I don't.

MR. MAZZONE: If I was to ask you your mother's birthday, do you know your mother's birthday?

JUROR NO. 42: I could forget it.

MR. MAZZONE: You couldn't forget it, right?

JUROR NO. 42: I could.

MR. MAZZONE: There must be something in your life that stands out that you remember that day?

JUROR NO. 42: I do remember dates.

MR. MAZZONE: So there are some things that are very important, right?

JUROR NO. 42: Mm-hmm.

MR. MAZZONE: There are some things, even though they're important, if they happened a long time ago you may be inconsistent about it, right? You may say, jeez, I remember that happened when I was 18. Maybe six months from now, I remember that happened when I was 19. Should that raise red flags similar to what I asked Juror No. 18?

JUROR NO. 42: Perhaps not. Perhaps it's human

JURY SELECTION

412

nature that individuals would have discrepancies. To the extent that they have discrepancies and the purpose for which they have discrepancies should be considered.

MR. MAZZONE: Sure. It goes more to what No. 5 said.

Juror No. 5, you said there may be many reasons why people might be inconsistent, right?

JUROR NO. 5: Yes.

MR. MAZZONE: And you still hold that belief, don't you?

JUROR NO. 5: Yes, I do.

MR. MAZZONE: One reason, for example, could be something that happened a long, long time ago?

JUROR NO. 5: One reason.

MR. MAZZONE: You may say one time it happened at night and the other time it happened in the afternoon, that it happened on this date or that date, right?

JUROR NO. 5: (Nods head affirmatively.)

MR. MAZZONE: Should the fact that you're inconsistent raise red flags if it's something that happened a long time ago?

JUROR NO. 5: It depends on how -- if it was something extremely serious in your life, I would wonder why one was inconsistent. I could give an example. Maybe a real, close loved one passed away when you were really young

JURY SELECTION

413

and someone asks you, you know, where did that -- where were you? Where did you live? Where did it happen? If you can't remember that or you say it was in Kentucky but then

you say it was in Texas and then you say it was in Wisconsin, I don't know about that. But the example of the bicycle --MR. MAZZONE: So it sounds like what you're saying to me, look, I'd have to take the context and the circumstances into account before I could tell you whether we should have red flags not have read flags.

JUROR NO. 5: Fair.

MR. MAZZONE: I mean, you could have four drinks. You might say something a little bit slightly different. We would probably want to take that into account.

JUROR NO. 5: True.

MR. MAZZONE: How many people agree with that? Inconsistencies in and of themselves are meaningless unless we have the context and the circumstances. How many people disagree with that? An inconsistency, no matter what they are, red flag. Anybody?

All right. I want to now go back and just have a frank discussion with a couple of you.

Juror No. 12, as we've been sitting here, I've been trying to stress the fact that we need to have jurors that are fair. We need to have jurors that don't have

JURY SELECTION

414

preconceived ideas. We need to have jurors that at least have an open mind to what all of the evidence is going to

show. All right. Can you do that?

JUROR NO. 12: I think so.

MR. MAZZONE: You think so.

Juror No. 63, can you do that?

JUROR NO. 63: (Nods head affirmatively.)

MR. MAZZONE: You think you can do that?

JUROR NO. 63: (Nods head affirmatively.)

MR. MAZZONE: Let me see my list here.

MR. MAZZONE: Is Juror No. 83 still here?

Juror No. 83, what about you?

JUROR NO. 83: You've asked a lot of questions.

Which one are you referring to?

MR. MAZZONE: Well, the question is whether or not you can simply be fair.

JUROR NO. 83: Yes.

MR. MAZZONE: All right. Because some of your answers, particularly regarding insanity as a defense, indicate to some extent at least that that may not be the case, and I just want to be sure.

JUROR NO. 83: Sure.

MR. MAZZONE: So my question is a very simple one.

Can you be fair?

JUROR NO. 83: Yes.

JURY SELECTION

415

MR. MAZZONE: Can you consider everything that will be presented before you do anything?

JUROR NO. 83: Mm-hmm.

MR. MAZZONE: All right. Juror No. 63, I think you've already told me you can. Does that still stand?

JUROR NO. 63: Yes.

MR. MAZZONE: This is how this works. Right now, if one of you or any of you were to tell me that, look, there's something about me that will not enable me to be fair, I can do something about it. Once you're in that box, I can't.

My last question to all of you is this: Is there any reason, any reason whatsoever, that you feel makes you an unfair juror for this case? I don't want to know what the reason is. If there's such a reason, can you just raise your hand and let me know. I promise I won't ask you what that reason is. Anybody? Juror No. 16, Juror No. 76.

Thank you for your candor. Anybody else?

Thank you for your time.

THE COURT: All right. Do you still want your break?

MR. MAZZONE: Yes.

THE COURT: We're going to take a little bit of a recess so the attorneys can contemplate the exercise of peremptory challenges. In order to not make you sit here

JURY SELECTION

416

and be stared at, which is the usual practice, I'm going to have the bailiff take you next door where you can be not so much under observation. You can use the restroom.

It should just be a few minutes. We'll have you brought back, and the attorneys will exercise their peremptory challenges, and we'll have a jury picked. So go ahead with the bailiff next door.

(The prospective jurors left the courtroom.)

THE COURT: All right. The jury panel has left the courtroom. Do you want to consult with the clerk about who's left?

MR. MAZZONE: I do. That's what we're trying to do, yes.

THE COURT: Come right down here by the clerk and the court reporter.

The ones we have left are No. 5, 6, 7, 10, 11, 12, 13, 14; 16, 18, 20, 21, 26, 33,

MR. MAZZONE: How about No. 27?

THE COURT: The Toys-R-Us guy.

MR. MAZZONE: Oh, yeah.

THE COURT: No. 26, 33, 38, 39, 40, 42, 43, 44, 45, 46; 50, 52, 54, 56, 57, 61, 63, 65, 67, 71, 75, 76, 79, 83, 85, 86, 88, 89, and that's it.

MR. MAZZONE: That's it.

THE COURT: My practice is if you pass then you're

JURY SELECTION

417

passing as to the 12 people that are in the box at that time. You can't go back and ding one of the 12.

MR. MAZZONE: Okay.

THE COURT: Then each of you will have an extra peremptory for each alternate.

MR. MAZZONE: Are you going to sit the first 12 in the box right away?

THE COURT: Now, the imaginary box.

MR. MAZZONE: All right.

MR. AARON: That's nine total.

THE COURT: Yes. The first six can only be used as to the first 12.

MR. CONNICK: Judge, they're set up sequentially.

If you ding someone from the box, I assume the next person takes that place, whatever the order is, correct?

THE COURT: Yeah. Although they're not moving into the box.

MR. CONNICK: Yes.

THE COURT: So when you pass, whoever is the first 12, you're stuck with them.

Mr. Connick: That's who you're with.

My question is when you ding someone, that has to be a person that's in the box.

THE COURT: You can ding anybody.

MR. CONNICK: That's what confuses me. I can go

JURY SELECTION

418

out to 90 even though they will never make it into the box?

THE COURT: No. 90 is gone but 89.

MR. CONNICK: Yes.

THE COURT: You can if you want to.

According to my math here, if everybody uses all of their peremptories, we're going to have seven people left.

MR. MAZZONE: All right. We're going to get back there pretty close.

THE COURT: Yeah.

MR. MAZZONE: All right.

MR. AARON: Your Honor, for scheduling purposes, did you want to proceed to a 3.5 today or wait until tomorrow?

THE COURT: How long is it going to take?

MR. CONNICK: A half hour.

THE COURT: Let's try to do it this afternoon.

MR. AARON: Okay.

THE COURT: Let Mandy know when you're ready and I'll come back out. We'll bring the jurors back in.

(Recess.)

MR. MAZZONE: I remember Juror No. 10 kept saying over and over about taking his wife to the doctor. He doesn't know what the date is going to be. We're going to have the people. I think you might consider that because he doesn't know.

JURY SELECTION

419

THE COURT: He's the one who has the appointment.

MR. MAZZONE: It's up to you.

THE COURT: Mr. Aaron, do you care?

MR. AARON: Actually, your Honor, I prefer that he remain.

THE COURT: That's fine. Let's bring them in.

(The prospective jurors entered the courtroom.)

THE COURT: Folks, the attorneys are going to exercise their peremptory challenges, which involves handing a piece of paper back and forth. It will only take a few minutes. Then we'll tell you who has been selected to as a juror on this case.

(Peremptory challenges occurred as follows:

Plaintiff's peremptory challenge No. 1:

Juror No. 21, Deborah Selam.

Defendant's peremptory challenge No. 1:

Juror No. 6, Larry Watts.

Plaintiff's peremptory challenge No. 2:

Juror No. 33, Ron Ramsey.

Defendant's peremptory challenge No. 2:

Juror No. 7, Martin Holsinger.

Plaintiff's peremptory challenge No. 3:

Juror No. 39, Norma Martinez.

Defendant's peremptory challenge No. 3:

Juror No. 10, Bernard Griswold.

Plaintiff's peremptory challenge No. 4:

Juror No. 42, Marchal Tyler.)

MR. AARON: Excuse me.

MR. MAZZONE: Wait a minute. That was a mistake.

(Peremptory challenges continued:

Defendant's peremptory challenge No. 4:

Juror No. 12, Rebecca faith.

Plaintiff's peremptory challenge No. 5:

Juror No. 44, Brandi Smith.

JURY SELECTION

420

Defendant's peremptory challenge No. 5:

Juror No. 16, Jutare Evans.

Plaintiff's peremptory challenge No. 6:

Juror No. 71, Cathy Campbell.

Defendant's peremptory challenge No. 6:

Juror No. 50, Lynette Packard.

Plaintiff's alternate challenge No. 1: Pass.

Defendant's alternate challenge No. 1:

Juror No. 63, Raymond Martin.

Plaintiff's alternate challenge No. 2: Pass.

Defendant's alternate challenge No. 2:

Juror No. 52, Gloria Eddy.

Plaintiff's alternate challenge No. 3: Pass.

Defendant's alternate challenge No. 3:

Juror No. 76, James Greable.)

THE COURT: Counsel, let's huddle up here by the court reporter. Bring your sheet there.

(The following occurred at sidebar.)

THE COURT: The people that I have are Nos. 5, 11, 13, 14, 18, 20, 26, 38, 40, 43, 45, 46, 54, 56, 57.

MR. MAZZONE: No. 45, 46

THE COURT: Nos. 45, 46, 54, 56, 57.

MR. AARON: We're good.

THE COURT: One more thing, which is what we're told we have to do now. Are there any Batson challenges?

MR. AARON: Not on behalf of the state.

MR. MAZZONE: No.

THE COURT: All right.

(End of sidebar.)

THE COURT: Folks, we've finished the jury selection process. I'm going to call out the names of the

JURY SELECTION

421

folks who will be sitting as jurors in this case. I would ask you to go to where the bailiff is, and he will take the number you're wearing and give you a new number and have a seat in the jury box.

Carol Hamilton is Juror No. 1.

Kerry Turley will be Juror No. 2.

Nichole McQuiston will be No. 3.

Birtie Sires, No. 4.

MR. CONNICK: Can you do them by number.

THE COURT: It's Nos. 5, 11, 13, 14.

No. 18, Bryce Duehn, Juror No. 5.

No. 20, William Steele will be No. 6.

No. 26, Mary Johnson, will be No. 7.

No. 38, Roger Berg, will be Juror No. 8.

No. 40, Lisa Hagreen, will be No. 9.

Juror 43, Eva Lindstrand, will be No. 10.

Juror 45, Elizabeth Dodd, will be No. 11.

No. 46, James Elliott, will be No. 12.

No. 54, Barbara Skjelstad, will be No. 13.

Buddy Meier, No. 56, will be No. 14.

Norman Cleveringa, No. 57, will be Juror No. 15.

For the rest of you, I would like to thank you for your time and attention over the last couple days. The jury

selection process can be tedious at times. It's also a very important part of the trial process. Again, thank you for

JURY SELECTION

422

your time and attention.

I'm going to go ahead and excuse you from the last two days of your jury service. You don't have to call in tonight. Give your badges to the bailiff as you head out the door.

(The remaining prospective jurors left the courtroom.)

RP 381-422

(Emphasis added.)

DECLARATION OF SERVICE

I, David B. Trefry, state that on May 28, 2019, I emailed a copy, of the Respondent's Brief to: Dana M Nelson - Nielsen Broman & Koch PLLC at Sloanej@nwattorney.net

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 28th day of May, 2019 at Spokane, Washington.

s/ David B. Trefry
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YAKIMA COUNTY PROSECUTORS OFFICE

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