

VOIR DIRE

Introduction

Q: (**Stock Opening**) May it please the Court. Your Honor, may I approach the jury?

Q: (**Stock Greeting**) (Establish eye contact with the panel) Opposing counsel, ladies and gentlemen of the jury, good morning (or good afternoon). (Don't say "morning" if it's afternoon.)

Q: I want to tell you how important it is that you pay close attention --- will all of you promise to do that? There is a little story that says how important it is for each juror to fulfill their individual responsibility and it goes like this: The residents of a small Spanish village determined to acknowledge their local priest by each bringing a bottle of wine to the parish house and pouring it into the priest's empty wine barrel. The priest was delighted and asked all the parishioners to join him in a glass of wine from the now full barrel. But when the tap was opened, only water came out. You see, each of the villagers had brought a wine bottle filled with water, thinking that all the others would bring wine and that one bottle of water wouldn't be noticed. Everyone wound up *relying on someone else to fulfill the commitment*. I suppose the point of the story from the standpoint of this case is that each of you have to bring your undiluted attention to the job of sitting in judgment of another person. May we have your individual commitment to listen carefully and place close attention to all the evidence?

My name is _____ and (walk over to defendant and put hands on his shoulders) I represent _____. Do any of you know any of the parties or their representatives or their associates?

I have practiced law in _____ --- This is my client ---

_____ and he works at _____ and has a wife named _____ who works at _____ and he has _____ number of children, names & ages & attend school at _____. Do you know them?

The Judge and State's Attorney have already explained we are looking for the perfect juror through this selection process. Although it's called selection it is more/less juror elimination. I like to think of it kind of like the dating game. I talk to you, you talk to me and then I try to decide if you are the appropriate juror for this case. I think it's most like dating because in my experiences in dating often people just say what their date wants to hear so that things move to that 'next level'. I think often times people come down from the jury commissioner's office looking to say all the right things to become a juror in a trial, and that's exactly what I don't want. As soon as I figure that out you're eliminated. So with that in mind please talk to me, be honest because there are no right or wrong answers. I will not embarrass you, I just need your cooperation to help me figure if you could be the right juror for this case. Some people through no fault of their own may not be the right fit and we're trying to see if you can be fair and impartial to and the State. Now I will warn you that I do not follow any order in talking to you, I kind of jump around. Remember if this is a dating or courtship process I need your feedback to help decide if you are the right person for this relationship.

Q: (Fronting Your Theme) This case is about (*state your theme in ten key words*). I'd like to ask you how you feel about that. (Begin the discussion of your theme with individual jurors.)

Q: (Fronting the Major Issues of the Case) There are (*state the number*) central issues on which this case will turn. I'd like to briefly focus on them in order to determine your feelings. (Discuss the focal issues, no more than three.)

Q: (Juror's Feeling About Being Called for Service) I'm wondering what it must be like to be in your position. Can you share your feelings about being called down here for jury service?

(Juror's Self-Revelation)

RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

If you were seated where is seated here today what would you expect from your attorney?

Would you expect your attorney to defend you aggressively? Why?

Would you expect him to question witnesses aggressively? Including police officers?

You would expect your attorney to be prepared and thorough?

If you were sitting where my client is you wouldn't expect your attorney to rush through your case?

I ask that because being an attorney I am very sensitive to the lawyer jokes.

Because the funny thing about it is that many of the traits that people joke

about are traits that they want if they needed an attorney. They want

someone aggressive, who will fight viciously for their liberty and will not

backdown.

If you were seated where my client is what would expect from your jurors?

You would expect them to be honest and fair?

You would expect them to listen actively and participate?

CASE BACKGROUND (DRUG CASE, SELF-DEFENSE, ROBBERY/BAD ID, ETC)

If you were seated where my client is would you want a person such as yourself on your jury? Why?

Do you want to sit on this jury? why?

CREDIBILITY

Have you ever had to resolve a dispute among two people? Children?

What kind of things do you consider in your evaluation process?

How do you judge who is telling you the truth? Demeanor? Body language?

Appearance?

Do you consider or factor in a person's race or how they look? Why not?

What about occupation or employment status? Why not?

You rely on your prior experiences with the parties? Realize you won't know any of these parties?

How do you weigh/factor in each party's interest and motive?

Can you think of some reasons why a person might lie? Under oath?

Do you think everyone takes their oath to tell the truth as serious as you?

Do you think that some people lie comfortably?

Now how would your evaluation process change if you knew one of the parties was a experienced professional witness?

Would you agree most of our police officers are trained well to do their jobs?

They're trained to investigate and arrest people?

Do you think they are trained to testify in court? Trained how to answer/avoid questions and appear credible while doing so.

Will you give police officers more credibility than lay witnesses just because of their appearance?

You work hard and do the best job you can at work?

You want to be right or correct on the job as much as possible?

Because that reflects on you?

Would you agree that a police officer's work is his investigation, arrest and testimony?

And you would agree that a police officer wants to always be right because he doesn't want to have the reputation of always arresting the wrong guy?

A lot of times you will hear from the State that these officers don't have any reason to come in here and fabricate or lie or anything like that. I disagree with that because often times the officer has invested time and work into the

case and does not want to do all the work only to find out he was wrong?

Agree/disagree?

Would you agree that in many of these situations an officer may be honestly mistaken but wrong? Should that matter?

PRESUMPTION OF INNOCENCE

When you are driving down the highway and you see someone on the side shoulder pulled over by police w/lights and flashers on what do you think?

The reason I ask is because it is very easy to overlook the presumption of innocence. Often times I read the paper or watch the news and see someone arrested for D.U.I. and I say “how can they be that stupid” and just like that I have taken away there presumption of innocence.

The law presumes my client innocent. Do any of you feel like he must have done something or he wouldn't be here?

You have heard before about someone being picked up, questioned, falsely accused and charged because of a past criminal record?

How do you think that happens when we have a presumption of innocence?

You think sometimes people act off feelings/instincts instead of evidence or facts?

Falsely accused

Have you ever had an experience in your life where you were falsely accused of something?

How did you feel about the accusations? (Indifferent, Angry, Helpless, Frustrated)

Would you say that the way you felt correlated to the seriousness of the false allegation?

Did people believe you based on your word when you said you didn't do it?

Were you ever able to get the incident resolved? How?

Have you ever falsely accused someone?

Didn't know that you were wrong?

Didn't have bad intentions or motive just was mistaken?

Is it sometime embarrassing to admit your mistake when it had an adverse effect on someone else?

Have you heard or read about anyone being falsely accused of a crime recently?

Let me draw this scenario for you. You work for John Doe's corner store.

You are the single employee charged with closing the store. You count out the register and deposit the money into the safe, lock door and leave. The

next day manager calls you asking what happened to last night's drop because it's not in the safe. How do you prove a negative, that you didn't steal the money?

Do you expect me to prove anything to you?

BURDEN OF PROOF

What would you say is the most important thing in your life? Family?

You would agree that in order for the state to legally take your family or children from you what they must prove should be held to very a high standard. It is but the standard proof beyond a reasonable doubt is even higher so although it's not proof beyond a shadow of a doubt or any doubt it is a higher than any other standard in our system of law and it requires more certainty than required for the state to take your children. What do you think of that?

State must prove every essential element beyond a reasonable doubt. Can't assume or speculate.

Do you think it's fair that the defendant doesn't have to prove himself innocent?

If we finished the voir dire right now and impaneled you 12 jurors and the began the trial. The State attorney stood up and said " State rest" and we

did the same after you went back to deliberate what would your verdict be?

What would you do if you thought Mr. was guilty but the state

hadn't proven it beyond a reasonable doubt?

Will you carefully inspect the facts to see if there is reasonable doubt?

Would you consider yourself to be a person that pays attention to detail?

If some other juror points out an area where there is a reasonable doubt, will you listen to his or her interpretation?

Reasonable doubt will be defined to you by the court; however, I would like your assurance that should the evidence presented to you create any sort of reasonable doubt in your mind as to the Defendant's guilt, will you resolve that doubt in his favor?

If after all the evidence had been presented, there was certain aspects of the State's case that did not entirely satisfy you, how do you think you would react?

If after all the evidence had been presented, there was certain aspects of the Defendant's case that did not entirely satisfy you, how do you think you would react?

If there is conflicting testimony in this case by the state's witness, would you take this into consideration on the question of reasonable doubt?

If the state's witness makes an error or misstatement, or if his or her memory is faulty in some aspect of this case, will you take that into consideration in applying the standard of reasonable doubt?

If the defense in this case shows you many areas where you can find reasonable doubt and you agree that there is some reasonable doubt that is justified by the evidence, what will your verdict be?

RIGHT NOT TO TESTIFY

Can you think of any reason why a falsely accused person may not testify at trial? Attorney's advice, not articulate speaker, afraid of speaking in public, pressure, embarrassed about his past, fear.

You know you have a constitutional right not to testify?

If Mr. doesn't testify you can't speculate as to why? The judge will tell you that? Do you think you can do that?

You won't hold it against Mr. if I advise him not to testify?

You realize that I may advise Mr. not to testify because the state has failed to prove their case?

How reliable would you consider the Mr. testimony?

GUNS

Do you own a gun?

Have you ever owned a gun?

Can you think of reasons why a person may own a gun? Collection, protection self/family/property , hunting, etc.

Do you think guns are a problem?

Do you think that people that carry guns are looking for a problems?

EYEWITNESS IDENTIFICATION

Have you ever thought you saw someone you knew and then realized you were mistaken?

Why do you think that happened?

What kinds can make a person believe they saw someone or something they did not really see? Distance, Bad vision, poor lighting, focus on something else (gun), someone suggest it is them, dressed similiarly, only looked for short time, expecting to see that person there, people look alike, stress of moment.

Have you ever heard of people who are eyewitnesses to a crime being mistaken about the identity of the person there?

Have you ever heard of an innocent person being convicted and sent to prison based on the mistaken eyewitness testimony? What did you hear

What things will be important to you in deciding whether the eyewitness may

be mistaken?

More Voir Dire Questions

Does each member of the jury panel understand that the fact that a person has been charged or accused of a crime has no bearing whatsoever on the issue of whether the person is guilty of the offense charged?

Have any of you ever served as a juror in a trial setting?

If yes:

- A. When did you serve? How many times?
- B. Was your service in a criminal or civil case?
- C. Without stating the verdict, please state whether the jury deliberated and reached a verdict?
- D. Has your experience as a juror influenced your opinion of this case in any way?
- E. Will you be able to judge the facts of this case fairly and impartially based on the evidence presented to you without reference to your past participation as a juror?
- F. Do you feel that your participation as a juror at another time would in any way impair your ability to serve as fair and impartial juror in the trial of this case?

Do you want to serve on this jury? Why?

Are there any personal or business problems that would cause stress or form any distraction(s) from your duties as a juror?

Would any member of the jury panel tend to believe the testimony of a government agent rather than the testimony of a defendant or any other private citizen solely because the agent is a government employee or a law enforcement officer?

Does every member of the jury panel understand that our jury system in this country is the only protection that a citizen has against him or her government and its law enforcement agents?

The law of the United States provides that a defendant does not have to testify in any criminal case. Our law further provides that if a defendant fails to testify you may not consider that for any purpose in deciding whether the defendant is guilty. Is there any

member of the jury panel who, because of personal feelings or otherwise, would not be able to follow the law?

Is there any member of the jury panel that feels that if a defendant does not testify then it is some indication that the defendant might be guilty?

Does each member of the jury panel understand that an attorney, whether the prosecuting attorney or the defense attorney, has a legal duty to object to evidence he feels should not be legally admitted before the Court or the jury? In other words, lawyers have a duty to object to evidence that shouldn't be admitted?

Does each member of the jury panel understand that you cannot consider the fact that objections were made to certain evidence, regardless of the court's ruling, as any indication of a defendant's guilt?

Are you aware that you shall be required to take an oath?

How do you feel about oaths?

Does the fact that the defendant is charged with an offense give you the impression that he did something wrong?

Have you ever read or studied any law?

Have you ever belonged to a group that sought to change current laws?

What do you think of the Constitution of the United States?

Do you feel competent to read the law and make a determination of what the law actually says rather than what someone else tells you that it says?

How do you feel about not being able to decide for yourself what the law says rather than being bound by oath to what someone else says?

If you were allowed to read and study the law in the light of the evidence and testimony given at this trial do you think that you could make honest, logical conclusions about the law, the facts, guilt and/or the insufficient evidence of guilt without being told how to decide the meanings of the law?

Would the fact that some police officers may testify in this case cause you to feel that you would owe some kind of apology to them if you found that there was not sufficient evidence presented beyond a reasonable doubt and you had a reasonable doubt?

**DUTY TO DETERMINE VERDICT BASED ON INDIVIDUAL CONSCIENCE
AND NOT MAJORITY VOTE --- NO COMPROMISE VERDICTS**

Does each member of the jury panel understand that the verdict in this case must be unanimous and it is not a situation where the majority wins?

Will each member of the jury panel vote your own personal individual vote in this case regardless of the feelings of the other jurors?

If you came to the conclusion that the Government had not proven the guilt of the defendant beyond a reasonable doubt and yet you found the majority of the jurors believe that the defendant is guilty, would you change your verdict because you happened to be in the minority?

Would the fact that you were in the minority influence your vote in any way?

Would you change your verdict vote simply because it was taking a long time to reach an agreement?

Would you change your verdict vote if you were the only one on the jury who held your point of view?

Would you change your verdict vote in order to go along with the majority of the jurors?

Have you, or has any member of your family ever had an experience with the government authorities in which you believe you or them were treated unfairly?

PRESUMPTION OF INNOCENCE

Is there any member of the jury panel that thinks that just because _____ sits here charged with a crime that he is more guilty than any other person in this court room or anyone else?

Does each member of this jury panel understand that if you were called on to vote for guilty or not guilty at this time that you would have to vote not guilty because of the presumption of innocence?

Does each member of this jury panel understand that a defendant is not required to prove that he is innocent?

Is there any member of this jury panel who feels that a defendant may be found guilty solely because it is shown that a defendant has associated with others people?

The law of the United States provides that the government has the burden of proving each and every allegation in the charges/information beyond a reasonable doubt.

Is there anyone on the jury panel who does not agree with our law placing the burden of proof of every allegation in the charges/information on the government beyond a reasonable doubt to such an extent that they would not be able to comply with that law?

Have any members of this jury panel formed any conclusions in your minds as to the guilt of this defendant which would take the presumption of innocence away?

Do any members of the jury panel think that the defendant is guilty of the crime with which he is charged at this time simply because charges or an information has been filed naming this defendant?

Do each of you understand that the information is not evidence of guilt in this case and cannot be considered by you as evidence of guilt?

Does any member of this panel fee that the defendant must be guilty of something or he would not be on trial?

Have any of you read or heard anything about this defendant or this case which would prejudice you from being a fair and impartial juror in this case?

Do any of you have any bias or prejudice against any of the defendants a this time?

Will each of you wait until all the evidence is in before making up your mind about this case?

Do you understand that the comments of the prosecutor and defendant attorneys are not evidence in this case?

Do you understand that before you can find any defendant guilty of the offense charged, the government must prove each and every element of the offense charged beyond a reasonable doubt?

Do each of you understand that the presumption of innocence applies to each and every element of the crimes charged?

Reasonable doubt means very simply a doubt founded in reason. To put it in perspective, it is sometimes helpful to compare it with the burden of proof in civil cases. In civil litigation, the Plaintiff, or the party bringing the suit, has the burden of proving his/her case by the preponderance of the evidence, or very simply, whoever has the most evidence wins the case.

In a criminal case the burden is much higher, because if you, as a juror, have a reasonable doubt of Defendant's guilt, regardless of the preponderance of evidence, you must find the defendant NOT GUILTY. Is there anyone who would not hold the government to its burden of proving its case beyond a reasonable doubt?

Is there anyone on this jury who believes that the defendant must prove that he is innocent of this crime?

Is there anyone on this jury who believes this case is only a question of either the defendant is innocent or the defendant is guilty ---- OR LET ME EXPLAIN IT ---- THIS WAY: Is there anyone on this jury that would not be able to follow the law which places the burden on the Government to prove that the defendant is guilty beyond a reasonable doubt AND does not require the defendant to prove his innocence?

Is there anyone on this jury who believes this defendant must prove he is innocent beyond a reasonable doubt?

Do all of you feel that if you are selected to sit as a juror in this case, you would be unwilling or unable for any reason to render a verdict based solely on the facts and documents in evidence, without consideration or sympathy or bias, and on the law as the court instructs you, disregarding any other ideas, notions, or beliefs about the law that you may have encountered?

Does anyone have any other matter which you feel should be called to the Court's attention which may have some bearing on your qualifications as a juror or which you feel might prevent you from rendering a fair and impartial verdict for each defendant in each charge filed base solely upon the evidence and the court's instructions as to the law?

The judge will instruct you on the law. Will you promise to follow the judge's instructions even if they do not seem to fit within your own beliefs, or the way in which you conduct your daily affairs?

Can you give a fair evaluation to this case if you have not heard both sides of the story because the defendant chooses to exercise his constitutional right to remain silent? The

judge will instruct you that my client does not have to take the stand. He may or he may not.

Isn't it true that there are many reasons that have nothing to do with guilt or innocence that may explain why the defendant chooses not to testify---- such as a fear of public speaking, or maybe he is following the advise of his lawyer or medical problems such as heart problems, or even maybe protecting someone else..... Isn't it true that merely because a defendant does not testify does not mean they are automatically guilty? Do you think that he has something to hide under those circumstances? If my client remained silent or refused to answer in the face of any criminal accusation, would that imply guilt to you?

Realizing how important this case is to my client, is there any reason why you think you would be more comfortable sitting on another jury rather than this one?

Search your own heart. Is there anything there which will lead you to believe that you have not told me anything that I should know about before I make my decision on whether to request the judge to make you part of this jury?