

VOIR DIRE SCRIPT
CRIMINAL
GENERAL

Good morning. This is the time set for trial in criminal case [XXXX-XXXX] Is the State ready to proceed? Is the Defense ready to proceed?

At this time, I will ask my clerk to put all of the prospective jurors under oath.

1. Is there anyone here who has difficulty hearing me? [Provide listening devices if available.]
2. Is there anyone who has any difficulty understanding or reading the English language?

Let me explain jury selection in more detail. We are going to ask you questions to learn more information about you. At the end of jury selection, we want to make sure the people selected as trial jurors can be completely fair to both sides.¹

We all come to this courtroom with attitudes, feelings, opinions, and life experiences that may affect the way we consider the testimony of a witness or how we evaluate evidence. And sometimes our attitudes, feelings and opinions are so strong that we do not see a way to change them even after considering new information. It is okay to acknowledge and talk about this, and we need you to do so to ensure justice is served in this case.

We are not suggesting how you feel is wrong; instead, we are trying to learn whether you have any attitudes, feelings, opinions, or life experiences that are so strong that they may cause you to favor one side or the other in this case. Justice requires equality and fairness to both sides. Sometimes individuals can be fair jurors in one case, but they might enter the jury box already favoring one side or another, and that's not fair.

It may feel like we are asking you a lot of personal questions. If you do not feel comfortable answering a question asked of you in front of the rest of the jurors, let me know and we will arrange to talk to you privately.

Please do not withhold information to be seated on the jury. Do not be concerned with whether your answers are "right" or "wrong." This is not any sort of test. Just be honest and candid in your answers, and do not be concerned with what you feel the lawyers or I might want to hear from you. You have each been assigned a

¹ Objective analysis of the likelihood of a jurors' attitudes, beliefs and experiences will likely provide a more accurate picture of a juror's ability to be fair and impartial than the juror's own self-assessment and self-disclosure of bias. CITE.

juror number. Throughout this process, I and the lawyers will be referring to you by that number.

Before we go any further, I want to introduce the staff for this division. The courtroom assistant is [insert name of courtroom assistant/bailiff]. The courtroom assistant helps me here in the courtroom and assists with the jury.

This division's judicial assistant is [insert name of judicial assistant]. If you have an emergency and need to reach my division please contact [insert name of judicial assistant]. We will make sure that the seated jurors have my judicial assistant's phone number.

This division's court clerk is [insert name of division clerk]. My clerk keeps the official record of proceedings, handles all the exhibits and swears the witnesses and jurors.

Seated in front of me is the court reporter. The court reporter's name is [insert name of court reporter]. The court reporter writes down everything said in court so that we can have a word-for-word record. I can see you nod when you answer a question but my court reporter cannot write that as an answer to a question so make sure all of your answers are verbal and out loud so the record we have is clear.

[The court interpreter in this case is [insert name or names of interpreters]].

And my name is [insert name]. I am the judge presiding over this trial.

3. Does anybody know me or somebody on my staff? If you answer to the question is yes, please raise your juror card now with the number facing me.
4. [Counsel A] please introduce yourself and the persons seated at counsel table? Thank you. Do any of you know Counsel A or [insert names of people seated at counsel table]?
5. Does anyone know a person who works at the Maricopa County Attorney's Office/Attorney General's Office? [Follow up to assess whether the knowledge or relationship will cause the person to favor one side or the other; depending on the answers, the questioning may need to be conducted privately.]²
6. Does anyone know a person who works at [insert name of investigating agency]? [Follow up to assess whether the knowledge or relationship will cause the person to favor one side or the other; depending on the answers, the questioning may need to be conducted privately.]

² Delete any question that was asked in the case-specific written or online questionnaire.

7. [Counsel B] will you please introduce yourself and your client? Do any of you know [Counsel B] or [name of Defendant]? [Follow up to assess whether the knowledge or relationship will cause the person to favor one side or the other; depending on the answers, the questioning may need to be conducted privately. Any knowledge of Defendant should be conducted privately.]
8. Let me briefly tell you what this case is about:

[Read agreed upon statement of case.]
9. Have any of you ever seen, heard or read anything about this case? [Consider questioning the jurors who respond “yes” to this question privately outside the presence of the entire panel.]
10. The State alleges the events in this case took place [insert locations of crime(s)]. Do any of you live near this area now or in the past or do you frequently go to this area? If yes, do you believe your experience may cause you to favor one side?³
11. Let me tell you a bit about the schedule for the trial: This case is expected to last until XX. Daily schedule will be Monday through Thursday, from XX:00 a.m. to 4:30 or 5:00 p.m. We do not have trial on Friday because the lawyers and I are handling matters in other cases. There is a lunch break from noon until 1:30 p.m., and usually one mid-morning and one mid-afternoon break.

I know that our court schedule here is likely not convenient to anyone. Please understand State law provides that a juror can be excused from service only if their absence from work would "tend materially and adversely to affect the public safety, health, welfare or interest," or if service as a juror would impose an undue hardship on the juror.

³ Judges gather information to assess whether there is reasonable ground to believe that a juror is unable to render a fair and impartial verdict. *See* Ariz. R. Crim. P. 18.4(b). The party challenging a juror for cause has the burden to establish by a preponderance of the evidence that the juror cannot render a fair and impartial verdict. *See* Ariz. R. Crim. P. 18.5(g). Research suggests that attitudes that stem from life experience may be difficult to change. *See, e.g.*, Chenghuan Wu & David R. Shaffer, Susceptibility to Persuasive Appeals as a Function of Source Credibility and Prior Experience with the Attitude Object, 52 J. PERSONALITY & SOC. PSYCHOL. 677-88 (1987). Therefore, judges should be careful to avoid attempting to rehabilitate a juror by asking them questions to have the juror affirm they will follow the court’s instructions when the juror’s prior answers to questions demonstrates a reasonable ground to believe the juror cannot rend a fair and impartial verdict. Research indicates that “[j]udicial rehabilitation [does] not reduce the biasing impact of [jurors’] preexisting attitudes on case judgments—but did result in mock jurors reporting that they were less biased, despite judicial rehabilitation not *actually* reducing their bias.” CITE Salerno

With respect to financial hardships, jury service has a cost for everyone who serves. Some people miss work and will not be paid for their time. Some people work on commission and will miss out on potential work. Simply missing out on income or potential income is not in and of itself an undue hardship unless it will result in an inability for you to meet your monthly obligations like food and housing expenses. [insert information about the financial options available to jurors]

Is there anything about our anticipated trial schedule that presents an undue hardship for you, whether it be personal, business, or health? If so, please raise your juror card with the number facing toward me.

[Hear all the excuses and take notes. Outside presence of the jury meet with lawyers on the record and review potential strikes for hardship or cause] The following jurors have been excused: _____.]

12. To be qualified to serve as a juror you must be a resident of [insert name of County], a citizen of the United States, and you must not have been convicted of a felony unless your civil right to serve as a jury has been restored. Is there any person who lacks one or more of these qualifications? If yes, please raise your juror card now.

13. I am now going to read a list of witnesses who may be called to testify during the trial. All of these persons may not be called to testify, but any of them might be and their names may be referenced. Please raise your juror card if you know, or think you might know, any of these people.

[Read list of witnesses.]

Which witness do you think you know? [Explore relationship and whether that relationship will cause the prospective juror to favor one side. This conversation should be held outside the presence of the rest of the panel.]

14. A lot of people feel a person who is on trial must have done something wrong. Who believes someone on trial probably did something wrong?⁴

15. The law requires the State to prove that a Defendant is guilty beyond a reasonable doubt. A Defendant in a criminal case is presumed by law to be innocent until

⁴ Avoid attempting to rehabilitate jurors through leading questions to have individuals affirm they will set this belief aside. CITE Salerno article. Also take opportunities to compliment prospective jurors who provide candid information regarding bias. Judges can consider asking open ended questions to explore the juror's attitudes, opinions, and feelings. For example, judges could consider asking an open-ended follow-up question like "What caused you to raise your card to the question I just asked?"

proven guilty beyond a reasonable doubt; this means that the Defendant is not required to prove innocence.

The law does not require the Defendant to produce any evidence. I'm going to ask you this multiple choice question. The State has charged the Defendant with certain crimes and the Defendant has pled not guilty. At this point in time in which the State has produced no evidence of the Defendant's guilt, I want to ask if you believe:

- (a) The Defendant is guilty because they have been charged with a crime.
- (b) I don't know if the Defendant is guilty or not.
- (c) The Defendant is not guilty because no evidence has been presented yet.

Now, I'll ask you to raise your card as a read these three options again. How many of you believe:

- (a) The Defendant is guilty because they have been charged with a crime.
- (b) I don't know if the Defendant is guilty or not.
- (c) The Defendant is not guilty because no evidence has been presented yet.

[After cards are raised]. Remember, no evidence has been presented yet. Therefore, the Defendant is entitled to a presumption of innocence until proven guilty beyond a reasonable doubt so sitting here right now, the Defendant is not guilty. Is there anyone who does not agree with this principle of law?⁵

16. (With approval of defense counsel) The Defendant in a criminal case has a constitutional right to not testify at trial. If the Defendant decides not to testify, you cannot consider that decision in determining whether the State proved the Defendant is guilty of the crime(s) charged. If the Defendant does not testify, raise your juror card if you assume or believe that the Defendant must have done something wrong or that the Defendant is guilty of something?
17. Is there anyone who would hold the Defendant's decision to remain silent against him/her?⁶
18. I, as the judge, will instruct you on the law in this case. Sometimes people have beliefs about what they wished the law was or they believe that certain conduct should not be illegal. If you do not agree with the law as instructed by the judge,

⁵ During lawyer or party conducted questioning of jurors, liberally permit questioning of jurors regarding topics addressed by the court, including the jurors' attitudes and opinions of the presumption of innocence.

⁶ During lawyer or party conducted questioning of jurors, liberally permit questioning of jurors regarding topics addressed by the court, including the jurors' attitudes and opinions of the Defendant's right to remain silent.

please raise your juror card if you believe you will have a difficult time applying the facts to a law you disagree with?

19. In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it. In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness has any motive, bias, or prejudice; whether the witness is contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence. As a trial juror, you will be asked to consider all the evidence in light of reason, common sense, and experience.

No witness is entitled to receive greater or lesser weight or credibility just because of their job or how they look. After a witness comes into the courtroom, you, as a juror, apply the tests for determining matters of importance of everyday life and you will decide whether you believe everything a witness says, or part of what they say, or none of what they say.

Please raise your juror card if you believe you might give a witness more credibility or weight just because of their job or how they look?

20. Let's be even more specific on this point. The testimony of a law enforcement officer is not entitled to any greater or lesser importance or believability merely because the witness is a law enforcement officer. You are to consider the testimony of a police officer just as you would the testimony of any other witness. Who would be likely to believe a law enforcement officer **more or less** simply because the person is a law enforcement officer?⁷
21. Have any of you, or any members of your family or close friends, ever studied or practiced law or served as a law enforcement officer? [Ask questions regarding who the person is in connection to the juror and what type of experience or exposure the juror has to assess whether this experience or relationship will cause the juror to favor one side.]
22. Look around at one another. Do you know other members of the jury panel? [Would the fact that you know juror ___ affect your decision making on this case. In other words, would you be able to make a decision on your own, without undue influence from juror ___?]

⁷ Avoid attempting to rehabilitate jurors through leading questions to have individuals affirm they will set this belief aside. CITE Salerno article.

23. Have you, or a close relative or friend of yours, ever been arrested, charged, or convicted of any crime other than a minor traffic offense? [Ask questions regarding who the person is in connection to the juror and what type of experience or exposure the juror has to assess whether this experience could cause the juror to favor one side, e.g., Is there anything about that experience that would cause you to favor one side or the other in this case?]
24. Have you, or a close relative or friend of yours, ever been the victim of a crime? [Ask questions regarding who the person is in connection to the juror and what type of experience or exposure the juror has to assess whether this experience could cause the juror to favor one side, e.g., Is there anything about that experience that would cause you to favor one side or the other in this case?]
25. Have you, or a close relative or friend of yours, ever witnessed a crime? [Ask questions regarding who the person is in connection to the juror and what type of experience or exposure the juror has to assess whether this experience could cause the juror to favor one side, e.g., Is there anything about that experience that would cause you to favor one side or the other in this case?]
26. There are some questions on the back of your juror number that I am going to ask each of you to answer. If you or your spouse or significant other is retired, please tell us the person's job prior to retirement. If you have served on a jury before, please tell us the kind and type of case it was. For example, it a civil car accident or a criminal bank robbery, details like that, if you remember. Please also tell us whether there was a verdict, what it was, if you can recall, and whether you served as foreperson of the jury. Juror #1?
27. Let me ask a last, very broad question: Is there anything else you think the attorneys or I should know about you before selecting those jurors who will serve in this case?
28. I have asked all the questions I had planned to ask. Sometimes I find that we get to the end of the questioning and jurors have thought about additional answers they might have to questions that were asked earlier. They wonder if they should give the answers or not. Please give the answers. If you have anything in mind now that you are wondering if you should tell me about, or you wish you had said something about earlier, please tell me now. There is no better time to do it than now.
29. Questioning by the State.
30. Questioning by the Defense.
31. We will now take a short recess to complete the process of jury selection. Only [insert number of jurors that will be selected including alternates] individuals can serve as jurors in this case. Please wait outside the courtroom during this recess.

When you are called back into court, please sit at random in the back of the courtroom. During the recess, do not discuss the case or anything connected with it among yourselves or with anyone else. We estimate that this recess will be about ___ minutes, so be ready to come back into court in ___ minutes.

32. [Outside the presence of prospective jurors, on the record, address any motions to remove jurors for cause]. **Insert language regarding standard to apply request for challenge.** Does the State pass the panel for cause? Does the Defendant pass the panel for cause?
33. The clerk will now read the names of the jurors selected to try the case. As your number is called, please come forward and take a seat in the jury box as directed by the courtroom assistant. [Clerk reads the juror numbers of trial jurors.]
34. Those of you who were not selected as jurors thank you for your participation here today and for your willingness to serve on this jury. You are now excused.
35. The jury will please stand and be sworn. [Clerk administers the oath.] Thank you. Please be seated.
36. [Clerk reads the charges.] To (each) charge, Defendant has entered a plea of Not Guilty.
37. Read preliminary instructions.

OTHER QUESTIONS

38. [Defendant] has made the decision not to attend this trial. You will be given a legal instruction not to take into account the Defendant's absence from the trial in considering whether the State has proved its case beyond a reasonable doubt. Please raise your juror card if you believe you will consider the Defendant's absence from the trial in making your decision in this case.]