

EXHIBIT # 2

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO.

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS

VS.

March 7, 2008
Charleston, South Carolina

QUENTIN R. JENKINS,

Defendant.

BEFORE:

THE HONORABLE DEADRA L. JEFFERSON, Judge.

APPEARANCES:

NATHAN WILLIAMS, ESQ.
- and -
KAREN STEELE, ESQ.
ASSISTANT SOLICITORS
ATTORNEYS FOR THE STATE

WILLIAM L. RUNYON, JR., ESQ.
ATTORNEY FOR THE DEFENDANT.

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

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E-mail

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1 (The Judge enters the
2 courtroom at 10:09 a.m.)

3 **THE COURT:** Okay.
4 First things first. The
5 Department of Corrections did
6 not transport Mr. Jenkins.
7 They said they did not receive
8 my order nor did they receive
9 any fax request of the inmate
10 transfer, so he's at Kirkland
11 and they did not transport
12 him.

13 One of the jurors
14 called at 8:30 this morning to
15 say he is camping at a music
16 festival in Florida and he
17 won't be back until tonight.
18 He said his roommate received
19 the letter but did not call
20 him to tell him about it. And
21 that is Mr. Haigler.

22 At this point we only
23 have nine jurors so without
24 him that still leaves four who
25 have not arrived, for whatever

1 reason. Jack Summers, Matthew
2 Maurer, Richardine Richardson,
3 Richard Miller, John Craig,
4 Mary Smalls, Theodore Simmons,
5 Henry Smith, and Mary Mc
6 Dermott have all appeared.
7 Joseph Haigler, John
8 Harleston, Theresa Chiarito,
9 Harry Withers, and Mary Holmes
10 have not appeared, although --
11 no. The two alternates, I
12 don't know why they're even on
13 the list because they were not
14 included. So actually we're
15 not missing four jurors.
16 We're only missing three.
17 Theresa Chiarito, John
18 Harleston, and Joseph Haigler.

19 Do we know who the
20 alleged offending juror is?

21 MR. WILLIAMS: Your
22 Honor, I've reviewed the
23 questionnaires. I believe
24 it's juror three oh nine,
25 Matthew Maurer. My notes

1 indicated -- actually Miss
2 Steele's notes indicated at
3 the time of the jury selection
4 he disclosed that his wife was
5 a physical therapist at
6 M. U. S. C.

7 THE COURT: Okay.

8 MR. WILLIAMS: I
9 reviewed the other jurors and
10 I didn't see anything that
11 would be consistent with that.

12 MR. RUNYON: I agree
13 with that, Judge.

14 THE COURT: Okay. All
15 righty. I need some input
16 from you all as to how we
17 should proceed. My main
18 concern, Mr. Runyon could
19 always waive the presence of
20 his client but my main concern
21 is these three absent jurors
22 and I feel that to conduct an
23 appropriate voir dire we would
24 need all of the jurors.
25 However in part I think that

1 we should go ahead at least --
2 excuse me -- initially and
3 determine exactly the
4 substance of what was
5 disclosed in the physical
6 therapy session to Miss
7 Roumel.

8 MR. RUNYON: Judge, we
9 would have no problem with
10 putting at least, quote, the
11 Roumel end of the matter on
12 the record. And I think we're
13 all kind of in agreement and I
14 think probably Miss Roumel
15 would have the substance of
16 what her report would be. And
17 we can either do that by --
18 she's present. We can either
19 do that by having her testify
20 or simply by stipulation.

21 I think that the
22 substance of her testimony,
23 Judge, would be that she was
24 at physical therapy on the
25 Thursday morning of the, of

1 the day the case went to the
2 jury and that in the course of
3 her physical therapy treatment
4 her testimony would be that
5 she heard, overheard the
6 conversation where there was a
7 physical therapist, she
8 believes the name was Amy, I'm
9 subject to being corrected,
10 but Amy who would say that,
11 who said to that patient that,
12 that her husband was still on
13 jury duty and inquiring of the
14 patient and that he was voting
15 guilty.

16 And, and that that's
17 what she put in her e-mail.
18 The e-mail was e-mailed prior
19 to the State resting and prior
20 to the case going to the jury.
21 But it was not opened by Miss
22 Steele until the day
23 afterwards because of course
24 Miss Steele was busy and but
25 that would be I think the

1 substance of her testimony if
2 she were called to testify.

3 I don't think anyone
4 is in disagreement as to what
5 the subject of her testimony
6 would be unless my learned
7 friend over here insists on
8 not stipulating to what her
9 testimony would be.

10 I guess he won't
11 stipulate, so I guess we're
12 going to have to have some
13 testimony, Judge.

14 **THE COURT:** That would
15 be my preference in any event.

16 **MR. WILLIAMS:** Your
17 Honor, I was waiting. I don't
18 have a problem stipulating. I
19 do think what the e-mail says
20 is that he's apparently voting
21 guilty. I don't think we have
22 any evidence that says he is
23 voting guilty.

24 **THE COURT:** Well, there
25 are many layers of this, many

1 layers of this issue, one of
2 which is and the most crucial
3 for the Court is whether any,
4 whether there were premature
5 deliberations on his part, and
6 then the second layer of that
7 is whether there's pre -- if
8 there were premature
9 deliberations if they in any
10 way affected his ability to
11 remain fair and impartial and
12 render a fair and impartial
13 verdict.

14 And the next layer is
15 whether any discussions he had
16 with his wife whether he had
17 any of those with the other
18 jurors such that it infected
19 the deliberative process. The
20 remainder of that really is a
21 matter of contempt for the
22 Court, whether he followed my
23 instructions and really, quite
24 frankly, ethical issues for
25 Miss Roumel in having had the

1 conversation at all with her
2 physical therapist and then
3 reducing that to an e-mail and
4 having said that to Miss
5 Steele.

6 So there many layers
7 to it, some of which I will to
8 deal with and determine
9 whether I need Mr. Maurer, I
10 need to hear what Mr. Maurer
11 is going to say, whether he in
12 fact discussed it with his
13 wife in violation of the
14 Court's instructions and then
15 I'm going to have to deal with
16 that from a contempt
17 perspective. And then after
18 talking with him, if he says
19 to me that he had no
20 discussions with the jurors
21 then that really eliminates
22 the need to voir dire the rest
23 of the jurors. But out of an
24 abundance of caution I may
25 voir dire each juror and ask

1 them in fact whether they had
2 any conversations with Mr.
3 Maurer regarding any
4 discussions he may have had
5 with his wife about the case.
6 I haven't decided yet exactly
7 how I'm going to proceed with
8 that.

9 But I'm concerned
10 that they did not transport
11 Mr. Jenkins. I think he needs
12 to be, probably our of, from,
13 from a P. C. R. perspective he
14 needs to be present, however
15 just for judicial economy I
16 think I would prefer to
17 preserve Miss Roumel's
18 testimony and if I'm
19 mispronouncing her name, I
20 apologize, her testimony so
21 that we can at least dispose
22 of that portion of it.

23 And then I need to
24 decide what I'm going to do
25 with the balance of the jurors

1 and then I'm going to have to
2 deal with these other jurors
3 and whether I'm going to have
4 to send the sheriff to go pick
5 them up. That would take the
6 balance of the day. I could
7 send the sheriff to go get
8 them but in all likelihood
9 some of them are at work, some
10 may be, you know, I just don't
11 know why they didn't show up,
12 because the notice very
13 clearly told them that if they
14 did not appear that it would
15 be contempt and that I would
16 send the sheriff to pick them
17 up.

18 **MR. RUNYON:** Judge, to
19 the extent that we, we need to
20 preserve Miss Roumel's
21 position in the case, I would
22 have no objections to a
23 limited waiver of Mr. Jenkins
24 appearance or presence for the
25 purpose of that preservation.

1 The balance of it I don't
2 think I'm authorized.

3 THE COURT: I don't
4 think it would be wise or
5 prudent on your part to do
6 that. I think for --

7 MR. RUNYON: That's
8 correct.

9 THE COURT: -- P. C. R.
10 purposes he needs to be here.
11 Do you know what number your
12 secretary faxed the documents
13 to the Department of
14 Corrections and on what date
15 she did it?

16 MR. RUNYON: No.
17 Judge, what occurred was, was
18 the, was the order was sent to
19 your office.

20 THE COURT: It was
21 signed and --

22 MR. RUNYON: -- and it
23 was signed and then you
24 trans -- your office
25 transmitted it to Miss Reina

1 downstairs for the purpose of
2 processing the matter.

3 **THE COURT:** That might
4 be where the -- I think Miss
5 Reina probably was under the
6 impression that you all were
7 supposed to get everything
8 straight with the Department
9 of Corrections.

10 **MR. RUNYON:** And I
11 think that could have been,
12 Judge.

13 **THE COURT:** I think
14 that's where the problem came
15 in.

16 **MR. RUNYON:** That could
17 have been, Judge, because we,
18 we never received the order
19 back.

20 **THE COURT:** Really?
21 Then that means -- Miss Reina
22 is very efficient. I'm sure
23 she faxed it. It wouldn't be
24 the first time that the
25 Department of Corrections said

1 they didn't get something.

2 **MR. RUNYON:** Judge, the
3 Department of Corrections,
4 they -- I can tell you that if
5 there's a problem with his
6 transport it was at the
7 Department of Corrections end.
8 I've been through that too
9 many times and they have too
10 many layers of bureaucracy
11 that that has to go through
12 and then they also, somebody
13 up there checks the weather
14 and if they decide they don't
15 want to drive to Charleston on
16 that particular day then the
17 tire's flat or something. I
18 mean it's just a nightmare
19 getting somebody transported
20 down here.

21 But the actual
22 progress of that order went to
23 Miss Reina. Miss Reina then
24 got it -- did what she does
25 very efficiently and got it to

1 the sheriff.

2 And out of an
3 abundance of caution, Judge,
4 it's an unpublished opinion
5 but in the case of the State
6 versus Murphy Rivers they,
7 they relied upon the fact that
8 defense counsel waived the
9 argument not asking for
10 certain things. We would ask
11 that all jurors be voir direct
12 and to, to protect the record
13 we would ask that all jurors
14 be subject to voir dire on the
15 issue of the --

16 THE COURT: I'm going
17 to voir dire all of them.

18 MR. RUNYON: All right.

19 THE COURT: Because I
20 need to know whether he --
21 whether in the course of -- I
22 need to make sure that they
23 were not subject to any
24 outside influence.

25 Okay. Let's see what

1 we should do first. I think
2 what I will do is bring in the
3 jurors who have appeared so
4 that no more of their time is
5 wasted, because most of them
6 were on time and -- well, some
7 of them were on time but not
8 all of them were on time.
9 Some of them just got here.
10 And excuse them for the
11 remainder of the day. Let
12 them know that all of their
13 number has not appeared and as
14 a result that we're going to
15 have to reconvene the matter,
16 that they will be getting a
17 new notice, and what I think
18 I'll do is do it for ten days
19 out. I left my calendar
20 downstairs. I apologize.

21 Next week I have
22 non-jury. The following week,
23 which is the seventeenth, I
24 have Common Pleas. I am
25 thinking that we can do that

1 hearing on the twenty-first,
2 which would give us -- I could
3 have my secretary send the
4 notices out on Monday and we
5 could reconvene the hearing on
6 the twenty-first, and that
7 gives us more than enough time
8 to get the defendant -- to get
9 the documents processed
10 through the Department of
11 Corrections and get him
12 transported and get my jurors
13 back here. Is that acceptable
14 to everyone?

15 MR. WILLIAMS: Yes,
16 your Honor. Do you want my
17 office to do the transport
18 order? We do them more
19 routinely. May be easier.

20 THE COURT: Why don't
21 we do both.

22 MR. WILLIAMS: Okay.

23 THE COURT: We can do
24 both and that way we're
25 covered on both ends of it

1 because I spoke to the young
2 lady in inmate records and she
3 said she had a stack of things
4 but she did not have this
5 order and I said well, it's
6 been signed since this past
7 Monday, so I know it was
8 transmitted the day it was
9 signed, but for whatever
10 reason, you know. It happens,
11 it really does happen all the
12 time, unfortunately, under the
13 best of circumstances.

14 So we'll -- and I'll
15 have my office -- no. Yeah.
16 You all can do it and I'll
17 have the clerk's office do it
18 and hopefully it will work out
19 as it was supposed to.

20 Okay. Any exceptions
21 to me bringing in the jurors
22 who have arrived and who are
23 present and who -- and
24 advising them that they will
25 be getting a new notice for

1 the twenty-first due to
2 circumstances beyond our
3 control regarding the balance
4 of the jurors being present?
5 And also I'm going to instruct
6 them that they're not to
7 speculate about why they are,
8 have been reassembled, that
9 they're not to allow
10 themselves to be exposed to
11 any media coverage about the
12 case, and I also -- my
13 instruction is going to be a
14 little stronger because I'm
15 going to advise them that if
16 they violate my instructions
17 they will be held in contempt.
18 Is there any exception from
19 the State?

20 **MR. WILLIAMS:** No, your
21 Honor. I think you'd probably
22 have to order them to come
23 back.

24 **THE COURT:** I can, but
25 I'm going to send them a

1 notice because --

2 MR. WILLIAMS: Okay.

3 THE COURT: --

4 unfortunately I'm going to
5 need one if I have to send the
6 sheriff for them.

7 MR. WILLIAMS: All
8 right. Thank you.

9 THE COURT: Because I'm
10 going to have to do a bench
11 warrant which means I'm going
12 to need an order, an
13 underlying order, having
14 commanded them to appear.

15 MR. WILLIAMS: All
16 right.

17 THE COURT: Or
18 they won't go pick -- it ain't
19 the old days where I can just
20 go tell the sheriff to go pick
21 them up. Judge Fields used to
22 do it. When a juror didn't
23 show up, he'd just send the
24 sheriff to go pick them up.
25 Now you need an order.

1 Okay. Any
2 exceptions?

3 **MR. RUNYON:** No
4 exceptions to the position
5 about bringing the jury out,
6 Judge, under the circumstances
7 that is now upon us.

8 **THE COURT:** Yeah. I
9 just think it would be
10 piecemeal for me to -- and
11 then if I also run the risk if
12 I do it that way of them
13 talking to one another and I
14 don't want that happen, and I
15 have gone to great pains to
16 make sure that they are not
17 aware of the outstanding
18 motion nor the reason for why
19 they have been reassembled.

20 (The jury enters the
21 courtroom at 10:28 a. m.)

22 **THE COURT:** Good
23 morning, ladies and gentlemen.
24 We appreciate your patience.
25 I appreciate that you all have

1 abided by the Court's
2 instructions and appeared this
3 morning. Unfortunately there
4 are three of your member who
5 have not abided by my
6 instructions and have not
7 appeared this morning and as a
8 result I am going to have to
9 postpone the purposes for
10 which you have been
11 reassembled and I profusely
12 apologize. I could simply
13 send the sheriff for them but
14 I would imagine that would
15 take several hours to
16 accomplish and I do not think
17 that would be an efficient use
18 of your time.

19 The Court does not
20 mean to seem mysterious for
21 the purposes for which it has
22 reassembled you, but it is
23 necessary that the Court not
24 give any further information
25 than which has been provided.

1 This hearing is going
2 to be rescheduled for the
3 twenty-first day of March,
4 which is two Fridays from
5 today. You will receive an
6 additional notice in the mail,
7 exactly that or identical to
8 the one that you have received
9 for today's hearing.

10 In the interim it is
11 essential that you have
12 absolutely no discussion about
13 this case among yourselves or
14 with anyone else. That you
15 not speculate about the
16 purposes for which the jury
17 has been reassembled. And in
18 addition that you take extra
19 precaution not to allow
20 yourselves to be exposed to
21 any media coverage that there
22 may be about this case. That
23 includes anything that could
24 be in the newspaper,
25 television, radio, or

1 internet, and you are not to
2 do any individual or specific
3 types of research regarding
4 any potential issue or matter
5 involved in this case on the
6 internet or otherwise.

7 It is essential that
8 you abide by the Court's
9 instructions.

10 Please no walking
11 while the Court is speaking.

12 AN OFFICER: I'm sorry,
13 your Honor.

14 THE COURT: Please take
15 your seats.

16 AN OFFICER: They're
17 leaving. They've leaving,
18 your Honor. They're in the
19 wrong courtroom.

20 THE COURT: Oh, I'm
21 sorry. Go ahead. But I need
22 you to man that door for me
23 because it's distracting.

24 AN OFFICER: I'll go
25 ahead and lock the doors.

1 THE COURT: Thank you.

2 Ladies and gentlemen,
3 it is essential and I need to
4 instruct you very ardently and
5 I need you to take this
6 instruction to heart because I
7 mean it very seriously.
8 You're to have absolutely no
9 discussion among yourselves or
10 with anyone else or speculate
11 again the purposes for which
12 your number has been
13 reassembled. If anyone
14 violates that instruction I
15 need to advise you and put you
16 on notice that you will be
17 found in contempt of Court and
18 that subjects you to a
19 six-month stint in jail as
20 well as a fine of up to a
21 thousand dollars. Okay?

22 So I need you to very
23 specifically abide by that
24 instruction and take it with
25 the seriousness with which it

1 has been given.

2 Again we appreciate
3 your patience with us this
4 morning. I know that many of
5 you had other obligations and
6 I apologize profusely that you
7 all had to appear and that we
8 were not able to accomplish
9 the purposes for you have been
10 reassembled. I hope that you
11 all have a good morning. We
12 already have checks ready for
13 you to compensate you for your
14 time. I'm sorry that they
15 cannot be larger, and also the
16 bailiffs will provide you with
17 parking so that you will not
18 have to pay for your parking.

19 Mr. Brown, if you
20 could with Mr. Rueger. He let
21 me know that those checks had
22 already be done, that they are
23 available and ready, and if
24 any of you need work excuses,
25 please let Mr. Brown know and

1 we will make sure that you
2 have those before you leave
3 this morning.

4 Again -- oh. She has
5 them ready. Good girl.

6 She's going bring
7 them to Mr. Brown.

8 Again, I appreciate
9 you all being diligent and
10 abiding by the Court's
11 instructions. It is greatly
12 appreciated.

13 I hope you all have a
14 good weekend and you're
15 excused with the Court's
16 profound thanks.

17 (The jury leaves the
18 courtroom at 10:32 a.m.)

19 **THE COURT:** Miss
20 Roumel, if you would take the
21 stand, please, and raise your
22 right hand to be sworn.

23

24

25

1 ELENI MARIA ROUMEL,
2 having been called as a
3 witness, is duly sworn and
4 testifies as follows:

5 **THE COURT:** Mr.
6 Williams or Mr. Runyon, do you
7 all prefer that the Court
8 question the witness or do you
9 all want to question the
10 witness in direct and cross
11 and then have the Court ask
12 any questions? What is your
13 preference?

14 **MR. WILLIAMS:** I would
15 just as soon follow up, your
16 Honor. I do have a copy of
17 the e-mail if the Court
18 doesn't.

19 **THE COURT:** I have it.

20 **MR. WILLIAMS:** Okay. I
21 have no, no problems following
22 up if necessary.

23 **MR. RUNYON:** I have no
24 problem following up, Judge.
25 I mean I think we're in

1 agreement, but since she's on
2 the stand perhaps if she could
3 identify the e-mail so we can
4 make it an exhibit.

5 THE COURT: Bear with
6 me one second. I need to take
7 care of something.

8 (The Judge leaves the
9 courtroom for a brief period
10 and then returns.)

11 THE COURT: Do you have
12 an extra copy of the email?

13 MR. RUNYON: I have,
14 Judge.

15 THE COURT: If you
16 could give it to the court
17 reporter for me, please.

18 (Whereupon, the email
19 previously referred to is
20 received and marked as Court's
21 Exhibit No. 1 for purposes of
22 the record.)

23 THE COURT: The jurors,
24 a bunch of them have, they
25 were still out in the hallway.

1 Many of them have plans to
2 take off the twenty-first,
3 which is Good Friday. And
4 then some of them have other
5 plans the twenty-fourth, that
6 are going to take them
7 throughout the rest of the
8 month and into April and I
9 just do not want -- I'm on
10 vacation the week of the
11 thirty-first. We're in
12 chambers the week of the
13 twenty-fourth. And chambers
14 is not a problem but I have a
15 gentleman who indicates he's
16 going to take care of his
17 elderly father and he will not
18 be back for several weeks and
19 he made that commitment and I
20 don't want this hearing
21 dragging out indefinitely.
22 I'd like to take care of it.
23 So what we may well
24 have to do is reschedule it
25 for next Friday, which is the

1 --

2 MR. WILLIAMS: Fourteen
3 th, I believe.

4 THE COURT: The
5 fourteenth, and I'll just have
6 to make sure that not only are
7 the notices sent out but that
8 they're called also. They
9 were supposed to be called by
10 the clerk's office and, and
11 confirm that they received
12 their notices and their
13 appearance, but apparently
14 they're telling me that that
15 was not done. So I have to
16 make sure that that is taken
17 care of.

18 Is there any
19 exception from the State?

20 MR. WILLIAMS: No, your
21 Honor.

22 THE COURT: From the
23 defense?

24 MR. RUNYON: No, your
25 Honor.

1 MR. WILLIAMS: I can
2 give you the indictment
3 numbers, Judge.

4 THE COURT: I have
5 them. Indictment number's
6 2007-GS-10-4660, which is an
7 indictment for murder. 4661,
8 which is an indictment for
9 murder. 4662, which is
10 possession of a firearm during
11 the commission of a violent
12 crime. And 4663, which is
13 possession of a firearm during
14 the possession -- during the
15 commission of a violent crime.

16 Miss Roumel, what is
17 your relationship with Miss
18 Steele?

19 THE WITNESS: Miss
20 Steele is a friend of mine.

21 THE COURT: When you
22 say friend, quantify that for
23 me. Is she more of an
24 acquaintance or is she a close
25 friend or is she a casual

1 friend?

2 THE WITNESS: I would
3 say she's a casual friend. We
4 have lunch together
5 occasionally and I see her at
6 social events.

7 THE COURT: Did you
8 send an e-mail to Miss Steele
9 on February seventh of 2008?

10 THE WITNESS: Yes.

11 THE COURT: And what
12 was the substance of that
13 e-mail?

14 THE WITNESS: We had
15 been e-mailing along with some
16 other women about having lunch
17 and at the end of the e-mails
18 about lunch I e-mailed her
19 about a conversation that I
20 overheard while I was at
21 physical therapy session that
22 morning.

23 THE COURT: Okay. And
24 what -- when you were at
25 physical therapy that morning

1 and where was the physical
2 therapy?

3 THE WITNESS: It's at
4 the M. U. S. C. James Island
5 location which is off of Folly
6 Road.

7 THE COURT: And where
8 were you at the time of that
9 physical therapy session,
10 physically in the building?
11 Where were you located?

12 THE WITNESS:
13 There's, there's a large room
14 that all patients are in and
15 all physical therapists are in
16 for physical therapy. It's a
17 wide open room. It's large.

18 THE COURT: And what
19 were you doing at that time?

20 THE WITNESS: I was
21 doing, at the time -- at which
22 time? At the time I overheard
23 the conversation?

24 THE COURT: Yes.

25 THE WITNESS: I was

1 over doing exercises for my
2 back.

3 THE COURT: And who
4 were you doing those with?

5 THE WITNESS: My
6 physical therapist.

7 THE COURT: And who is
8 it?

9 THE WITNESS: Her name
10 is Whitney Lee.

11 THE COURT: And then
12 what happened next?

13 THE WITNESS: We were
14 doing exercises and the place
15 where we were doing exercises
16 was right next to where they,
17 I guess the physical
18 therapists have their coffee
19 and kind of almost like a
20 break room and I overheard,
21 another one of the physical
22 therapists talking about her
23 husband being on a jury.

24 THE COURT: Wait one
25 second for me, please. Some

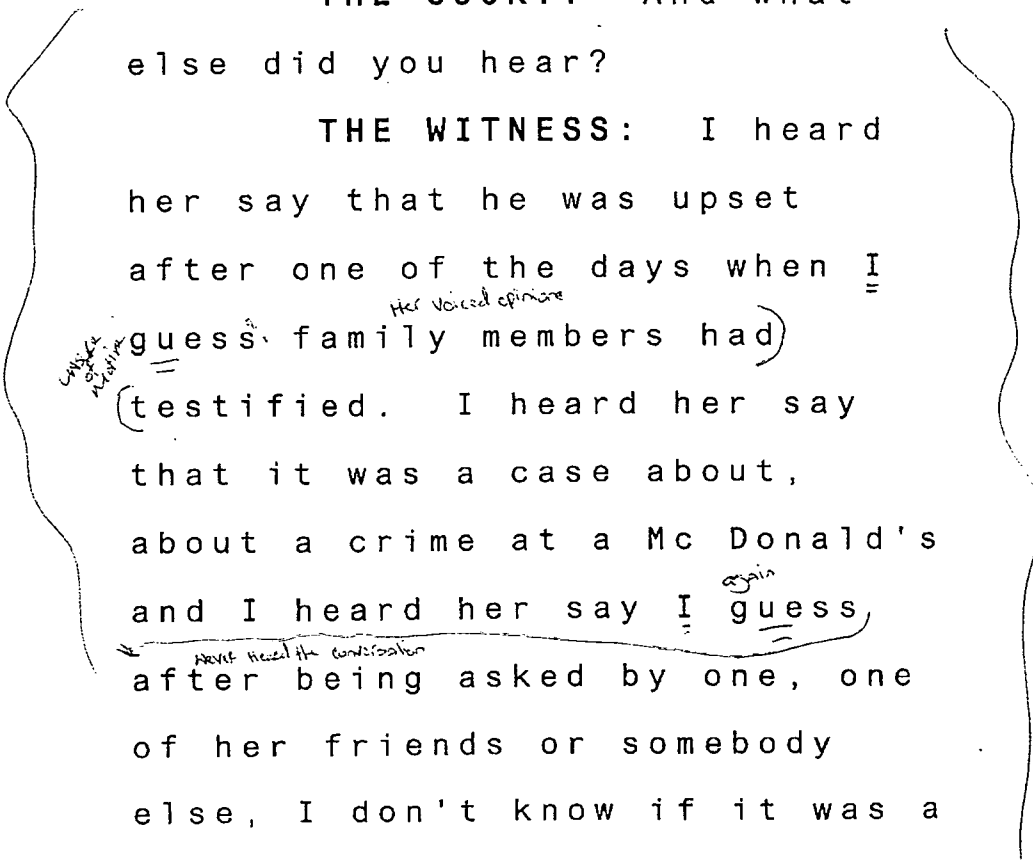
1 is coming through the door.

2 Okay. Go ahead. You
3 overheard the physical
4 therapist talking about her
5 husband being on jury duty.

6 THE WITNESS: I, I
7 believe^k that she was asked by
8 somebody^o, I don't know who^o,
9 whether her husband was done
10 with jury duty so that she was
11 still -- he was still on the
12 jury.

13 THE COURT: And what
14 else did you hear?

15 THE WITNESS: I heard
16 her say that he was upset
17 after one of the days when I
18 guess family members had
19 (testified. I heard her say
20 that it was a case about,
21 about a crime at a Mc Donald's
22 and I heard her say I guess,
23 after being asked by one, one
24 of her friends or somebody
25 else, I don't know if it was a



*longer
to
writing*

Her voiced opinion

never heard the conversation

1 patient or another physical
2 therapist, I heard her say I
3 think that he is probably
4 going to vote guilty. And I
5 think that she also said that
6 they were, were done or were
7 about to be done.

8 THE COURT: And did you
9 hear anything else?

10 THE WITNESS: Not that
11 I, not I recall.

12 THE COURT: And this --
13 when did this, what you
14 overheard, what day was that?
15 Was that the same date you
16 sent the e-mail?

17 THE WITNESS: Yes.
18 Yes, your Honor. My physical
19 therapy session is at seven
20 thirty in the morning on
21 Tuesdays and Thursdays. So it
22 would have been between seven
23 thirty and probably about
24 eight ten.

25 THE COURT: And what

1 prompted you to send the
2 e-mail to Miss Steele?

3 **THE WITNESS:** I don't
4 know, your Honor. I, you
5 know, just as a ^{! nice} ~~friend~~ ^{with} ~~to~~ ^{of} ~~to~~ ^{relationship} tell
6 her that -- I, I really don't
7 know, you know. It was more
8 as a friend to say, you know,
9 that someone thought she was
10 doing a good job.

11 **THE COURT:** So you had
12 no direct conversation with
13 this physical therapist? You
14 overheard the conversation?

15 **THE WITNESS:** I
16 overheard the conversation,
17 your Honor.

18 **THE COURT:** Was she
19 aware that you could hear her?

20 **THE WITNESS:** I'm sure.
21 Yes. She was close by. She
22 was probably the distance
23 between myself and the court
24 reporter. There were several,
25 there were several people

1 around. Probably more than --
2 probably about five people
3 around.

4 **THE COURT:** Any
5 questions from the State?

6 **MR. WILLIAMS:** Just
7 briefly, your Honor.

8 **THE COURT:** You may
9 proceed.

10

11

12

13

14

EXAMINATION BY MR.

15

WILLIAMS:

16

Q Miss Roumel, you sent

17

the e-mail that morning. Correct?

18

Around 9:30 I think the e-mail

19

shows.

20

A Whatever the e-mail

21

shows is likely when I sent it.

22

Q And you later

23

actually called Miss Steele that

24

night. Is that correct?

25

A I did.

1 Q And at that point you
 2 in fact alerted her to the e-mail,
 3 the fact that you had overheard
 4 parts of a conversation and as
 5 part of your professional duty you
 6 were telling her that it sounded
 7 like somebody was maybe engaging
 8 in some misconduct?

CAN NOT BE SURE
 Why this fellow Attorney

9 A I did. ^{Why didn't you say that to the Judge?}

10 Q So although it may
 11 not be in the e-mail that there
 12 was some concern of yours
 13 professionally, you later that day
 14 did alert her and told her about
 15 the e-mail?

16 A I did. I did that evening. ~~It was late at night~~

18 Q And at that evening
 19 it was actually late at night?

20 A It was after work.
 21 I don't -- I don't know the exact
 22 time.

23 Q And your concern at
 24 that point was that there may have
 25 been some misconduct in the trial

1 that you wanted to let her know
2 about?

3 A That was, that was
4 part of my concern. The other
5 part was, you know, I, you know,
6 wanted to let her know and also
7 apologize if my e-mail had caused
8 her any inconvenience in her, in
9 her trial.

10 Q But she wasn't aware
11 of it at that time?

12 A She had no idea.

13 Q Okay. So essentially
14 had disclosed to her through
15 e-mail and then by phone that
16 there may have been some
17 misconduct that you were aware of?

18 A Yes.

19 MR. WILLIAMS: I have
20 nothing else, your Honor.

21 THE COURT: Mr. Runyon.

22

23

24

25

1 EXAMINATION BY MR.

2 RUNYON:

3 Q Just to make it
4 absolutely clear now that the
5 physical therapy, the physical
6 layout of where you were taking
7 physical therapy was like, just
8 like a big room, like a courtroom,
9 and it has various machines and
10 table and weights and all that
11 sort of stuff in it?

12 A Yes.

13 Q And there are no
14 cubicles or curtains or anything
15 of that sort?

16 A They do have some,
17 some rooms that are closed off in
18 the back and then there's a
19 waiting room and offices, but I
20 wasn't in that part.

21 Q All right. But the
22 general area where you do the, the
23 exercise for your back and a lot
24 of other exercises, that was
25 basically like a big bull pen so

1 to speak where everybody is doing
2 their --

3 A Yes.

4 Q -- their physical
5 therapy exercises?

6 A Generally. That's
7 correct.

8 Q Right. And you and I
9 believe the e-mail itself is timed
10 at 8:48 in the morning.

11 A No. It says 9:38.

12 THE COURT: It's 9:38
13 on the top, February seventh,
14 2008.

15 MR. RUNYON: Oh, excuse
16 me. Judge, I'm, I'm still
17 catching up with modern
18 technology.

19 THE COURT: Okay.

20 MR. RUNYON: Pardon me.
21 I'm an old hand.

22 THE COURT: No problem.

23 Q And so, and of course
24 there's no question about the fact
25 you discharged your ethical duties

1 in this matter by notifying an
2 officer of the Court about what
3 you heard and later on about your
4 concerns, et cetera?

5 A I believe so.

6 Q Well, I'm not asking
7 if you believe so. I'm telling
8 you, you did that. Okay?

9 A Thank you.

10 Q All right. And, and
11 your physical therapist's name is
12 Whitney Lee?

13 A Yes.

14 MR. RUNYON: No further
15 questions of this witness,
16 your Honor.

17 THE COURT: Any further
18 questions, Mr. Williams?

19 MR. WILLIAMS: Not from
20 the State, your Honor.

21 THE COURT: Miss
22 Roumel?

23 THE WITNESS: Yes, your
24 Honor.

25 THE COURT: Your

1 colleagues have done an ardent
2 job of trying to cover you in
3 this matter. Ultimately
4 whether anything ethical or
5 unethical has transpired is my
6 decision. I have great
7 concerns about what you did as
8 an officer of the Court and as
9 a fellow lawyer I have
10 concerns because the e-mail
11 speaks for itself.

12 While your ethical
13 concerns may have arisen later
14 about juror misconduct, that
15 was not the tone of the e-mail
16 you sent. The tone of the
17 e-mail you sent was that you
18 had over -- and I didn't know
19 at the time that you overheard
20 the conversation because the
21 context of the e-mail
22 indicates that you may well
23 have had the conversation with
24 the person.

25 But now having heard

1 what you recall, reported to
2 the Court, and I think you
3 were honest when you said to
4 me just now in response to my
5 question that you sent the
6 e-mail to her because you had
7 overheard the conversation,
8 you -- there was an indication
9 that this juror might vote
10 guilty, and you wanted her to
11 know that she was doing a good
12 job and give her a heads up as
13 to what was going on in her
14 trial, and that in and of
15 itself is very troubling to me
16 and I'm not going to be
17 dishonest with you and tell
18 you that I'm not going to get
19 an ethics opinion about it,
20 because I am. And then I'm
21 going to determine what I'm
22 going to do from there. The
23 ethics rules allow me to do
24 one of two things. I can go
25 to your senior partner and

1 have a chat and see if they
2 can correct it or I can report
3 it to the disciplinary
4 council.

5 **THE WITNESS:** Your
6 Honor, may. . .

7 **THE COURT:** I think
8 sometimes -- and I'm troubled
9 by this young generation of
10 lawyers who do not understand
11 the gravity of what we do for
12 a living. We handle people's
13 lives. A trial is a very
14 serious matter. It is
15 someone's life. It is not a
16 game, and that is what
17 troubles me.

18 Now, we've had --
19 and, and I don't have a
20 problem in theory with you
21 having -- really what you
22 should have done if you had
23 concerns about juror
24 misconduct is you should have
25 contacted the Court and you

1 should have said I overheard
2 this conversation and it's
3 troubling me because it
4 indicates to me that this
5 juror may have been engaged in
6 premature deliberations; not
7 to call your friend and say
8 "atta-boy, this guy's going to
9 vote guilty. "

10 So I applaud your
11 colleagues for covering you as
12 they should. Now I don't know
13 where this road with me is
14 going to end with you but
15 think in the future it should
16 be a very valuable lesson to
17 you and to your colleagues
18 regarding how matters should
19 be handled because in a very
20 brief moment you can make a
21 decision that can have very
22 grave consequences.

23 **THE WITNESS:** I agree
24 and, your Honor, I would
25 sincerely like to apologize to

1 the Court for, for taking up
2 judicial resources and, you
3 know, for any time, and for
4 both counsel for the time that
5 it's caused them. It was not
6 my intension whatsoever to, to
7 engage in any impropriety or
8 to, to insert myself into this
9 trial at all. I really did
10 think all the -- I thought
11 that the case was essentially
12 done. I mean in hindsight I
13 deeply regret wasting the
14 Court's time.

15 THE COURT: Thank you
16 very much.

17 THE WITNESS: I'm
18 sorry, your Honor.

19 THE COURT: Thank you
20 very much, Miss Roumel. Hae a
21 good day. You're excused.

22 Okay. Is there
23 anything else we need to do
24 this morning or that we can
25 accomplish without the

1 defendant's presence?

2 MR. RUNYON: No, your
3 Honor.

4 THE COURT: And I'm
5 certain that you will share
6 this transcript or appropriate
7 portions -- well, you don't
8 have to go through the expense
9 of, of the transcript. You
10 certainly will be able to
11 convey to your client the
12 substance, the substance of
13 what took place.

14 MR. RUNYON: Judge --
15 excuse me. I'm sorry.

16 Judge, it's not part
17 of the record, the clerks's
18 minutes are not part of the,
19 quote, record.

20 THE COURT: Yeah, they
21 are. They're a part of the
22 file.

23 MR. RUNYON: Well,
24 they're a part of the file but
25 insofar as the transcript --

1 THE COURT: Well, I
2 believe they're a part of the
3 transcript.

4 MR. RUNYON: Well, just
5 out of an abundance of
6 caution, what I would like to
7 do, unless there's objection
8 is state that the, for the
9 record that the Court recessed
10 on Wednesday, February sixth
11 at 5:05, reconvened on
12 Thursday, February seventh,
13 2008 at 9:35 a.m. which puts
14 it in the time frame of a, of
15 a, and I was corrected, a 9:38
16 e-mail, which Miss Steele had
17 not opened.

18 THE COURT: I don't
19 think there's any questions
20 that Miss Steele didn't or any
21 contention that she did not
22 receive the e-mail till after
23 the trial concluded and the
24 verdict had been rendered and
25 sentence had been imposed.

1 MR. RUNYON: Well, I
2 just have a --

3 THE COURT: I don't
4 think there's any, I don't
5 think there's any, I don't
6 think there's any contention
7 about that, is there?

8 MR. RUNYON: Well, I'm
9 not suggesting there is, but
10 what I'm saying, Judge, is
11 that just for the record so
12 it's crystal clear if, if this
13 ever has to be read by someone
14 in Columbia on appeal of this
15 matter that the trial had not
16 even gone to the jury when
17 this conversation was
18 overheard.

19 THE COURT: I don't
20 think there's any question
21 about that. I think you all
22 probably can stipulate to
23 that. I don't think there's
24 any question that the
25 conversation with, that the

1 juror's wife, whatever she
2 said, was said prior to the
3 conclusion of the trial and
4 probably was said at the time
5 the Court was getting ready to
6 close and charge -- well, when
7 did we close and charge this
8 case?

9 MR. RUNYON: We closed
10 on Thursday.

11 THE COURT: On
12 Thursday. 12:21 is when --
13 well, we started closing
14 arguments that morning and the
15 Court's charge was at 12:21
16 and concluded at 12:47.

17 MR. RUNYON: Correct,
18 your Honor.

19 MR. WILLIAMS: I think
20 we were back on the record at
21 9:35, your Honor.

22 MR. RUNYON: 9:35
23 according to the minutes of
24 the honorable clerk.

25 MR. WILLIAMS: I guess

1 the only thing I'm concerned
2 about is the State could have
3 had any knowledge of --

4 THE COURT: No. I
5 don't think there's any
6 question Miss Steele did not
7 get the e-mail until after
8 everything was concluded.
9 Miss Roumel's testimony even
10 reflects that she called her
11 that night and that Miss
12 Steele had not opened her
13 e-mail apparently and so she
14 brought the e-mail to her
15 attention.

16 MR. RUNYON: And the
17 purpose of putting that time,
18 that time on the record was
19 not to question whether or not
20 the State could have known,
21 did know, or what-have-you.
22 That, that wasn't the issue.
23 It was just making sure that
24 the, the various times were on
25 the record, so that it was

1 clear that the case had not
2 gone to the jury and thus
3 we're going to probably argue
4 that, that the conversation,
5 subject to whatever we hear,
6 that the conversation with the
7 juror's wife probably occurred
8 prior to even the physical
9 therapist session that
10 morning.

11 THE COURT: Again as
12 I've emphasized, there are
13 many layers to this
14 proceeding. Whether he had a
15 conversation in violation of
16 the Court's instructions with
17 his wife may be a matter of
18 contempt that does not affect
19 the ultimate outcome of this
20 trial.

21 The issue for the
22 purposes of this hearing which
23 is very clear by case law is
24 if there's premature
25 deliberations, whether that

1 has affected the -- whether it
2 was prejudicial and whether it
3 affected the outcome of the
4 trial. In other words,
5 whether some outside influence
6 affected the jury's verdict.
7 That is the Court's inquiry or
8 the scope of the Court's
9 inquiry.

10 Okay. We will recess
11 this hearing. We'll reconvene
12 at 9:30 on the twenty-first.
13 No.

14 MR. RUNYON: No. The
15 fourteenth.

16 THE COURT: Yes. The
17 fourteenth. I'm sorry. Which
18 is this coming Friday. And
19 we -- I will endeavor -- my
20 secretary is sick today but I
21 have everything saved on the
22 computer and I will endeavor
23 to get those notices mailed
24 today. I will probably put
25 them in the mail myself to

1 make sure they get out today
2 and then I will have follow-up
3 phone calls made on Monday by
4 the clerk's staff to make sure
5 that each juror received their
6 notice and to insure their
7 attendance.

8 **MR. WILLIAMS:** We'll do
9 a transport order.

10 **THE COURT:** And also,
11 Mr. Williams, if you all could
12 go ahead and send the request
13 to transport Mr. Jenkins
14 today.

15 **MR. WILLIAMS:** Sure.

16 **THE COURT:** That would
17 be greatly appreciated.

18 Mr. Runyon, if you
19 could get your office to fax
20 over another transport order
21 for me.

22 **MR. RUNYON:** Yes, your
23 Honor.

24 **THE COURT:** I will sign
25 it. I will make sure the

1 Clerk's Office gets it and
2 then also we will make sure
3 that this transport -- I
4 will -- do you have this
5 transport request form in your
6 system, Mr. Runyon?

7 MR. RUNYON: Yes, your
8 Honor.

9 THE COURT: Can your
10 office provide this?

11 MR. RUNYON: Yes, your
12 Honor.

13 THE COURT: Can you --
14 I'm going to give you a fax
15 number that you need to fax
16 this to them at. It is eight
17 oh three eight nine six two
18 seven five zero, or two seven
19 four nine, and is of course to
20 the attention of the
21 Department of Corrections
22 request for transport, court
23 coordination section.

24 MR. RUNYON: Thank you
25 very much, your Honor.

1 **THE COURT:** You're
2 welcome. And I may just make
3 some changes to this one you
4 sent me and also fax it so
5 we'll be covered at least on
6 three bases and they should
7 not be able to tell us this
8 time that they did not
9 transport him.

10 **MR. WILLIAMS:** Judge,
11 we sometimes bring them over a
12 day early.

13 **THE COURT:** That's
14 fine.

15 **MR. WILLIAMS:** Do you
16 want to do that? You know, to
17 give us a chance to make sure
18 he's here.

19 **THE COURT:** You know,
20 that might be a good idea.

21 **MR. WILLIAMS:** We
22 generally bring people for a
23 whole week.

24 **THE COURT:** That's
25 probably a good idea although,

1 you know, sometimes if he's
2 just coming from Kirkland --
3 where's Kirkland located?

4 **MR. RUNYON:** It's in
5 Columbia, Judge..

6 **THE COURT:** They
7 usually bring them in the
8 morning and take them right
9 back.

10 **MR. WILLIAMS:** Yeah.
11 Well, I --

12 **THE COURT:** Yeah. I'll
13 leave that up to you all. He,
14 if he's just coming an hour
15 and a half away and with the
16 overcrowding situation at the
17 detention center, that's just
18 a lot for them to have process
19 somebody in for overnight and
20 then process them back out.
21 It's just easier. They should
22 be able to have him here and
23 actually what you probably
24 need to put on there is 8:30
25 instead of nine o'clock.

1 MR. WILLIAMS: Okay.

2 THE COURT: And that
3 way they'll go ahead and
4 transport him.

5 MR. WILLIAMS: Thank
6 you, your Honor.

7 THE COURT: Thank you
8 all.

9 MR. RUNYON: Thank you,
10 your Honor.

11 THE COURT: You all
12 have a good week-end.
13 Appreciate your patience.

14 (Whereupon, the
15 matter was concluded.)

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CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina on the 7th day of March, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

DATED: April 14, 2008

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter