

1 THE COURT: This is state of South Carolina
2 versus Quinton R. Jenkins and the indictment numbers
3 are as follows. You all have to bear with me, I'm
4 sorry, my allergies are giving me some issues this
5 morning.

6 Indictment numbers 2007-GS-10-4660, murder;
7 2661, murder; 4662, possession of a firearm during the
8 commission of a violent crime; and 4663, possession of
9 a firearm during the commission of a violent crime.

10 Mr. Jenkins had a trial before this
11 Court beginning on February 4th, of 2008, concluding
12 on -- I believe we finished this trial on Thursday,
13 which would have been February the 7th.

14 The jury deliberated from 12:48 to 3:02.
15 During the course of deliberations it appears that the
16 jury had one question which the Court answered,
17 appears at 1:20. The jury then rendered its verdicts
18 of guilty on each of the offenses, and the defendant
19 was sentenced by the Court.

20 Thereupon Ms. Steele of the solicitor's office
21 -- whereupon the solicitor's office disclosed to the
22 Court, as well as Mr. Runyon, an e-mail that Ms.
23 Steele received from a friend of her's, friend slash
24 -- I think more that I mischaracterized it -- more of
25 an acquaintance, a professional relationship from a

1 Ms. Eleni Rumel, spelled E-L-E-N-I, Rumel, R-U-M-E-L
2 dated February 8th at 8:56. Well, that's when which
3 Ms. Steele sent it to me, I apologize. The e-mail is
4 dated Thursday, February 7th, 2008 at 9:38 a.m. and
5 apparently Ms. Rumel, Ms. Steele, Ms. Gordon had been
6 trying to arrange having lunch, as well as Ms.
7 Schachte and a few other professional acquaintances,
8 it appears were trying to arrange a lunch outing.

9 And in the course of that Ms. Rumel sent an
10 e-mail to Ms. Steele indicating, hey, I was at
11 physical therapy today, and one of the therapist's
12 husband is on your jury, he is apparently voting
13 guilty, see you tomorrow, exclamation point, signed
14 with an E, I assume for Eleni.

15 That e-mail has already been marked as a
16 court's exhibit and I would imagine it has already
17 been made a part of the Court's file. I sent my clerk
18 downstairs to get the file so that I can make sure
19 that has been done.

20 We convened this hearing originally -- and
21 subsequent to that -- and again as I indicated, Ms.
22 Steele disclosed both that e-mail to the Court and I
23 assume both to Mr. Runyon because on February 8th the
24 Court received a motion for new trial filed by Mr.
25 Runyon on behalf of his client. The basis for that

1 motion being a juror, prior to being charged and sent
2 to the deliberations, announced his vote for a verdict
3 of guilty in this case.

4 We subsequently, the Court scheduled a hearing
5 in this matter on March 7th, at which time there was a
6 little snafu with the department of corrections, and
7 actually the clerk's office has now acknowledged that
8 my order, which was signed to transport Mr. Jenkins,
9 was not acted upon by their office. So it apparently
10 sat in a stack of other papers and they did not fax it
11 over to the department of corrections and they
12 apologized for that and it happens. And with the
13 volume of paperwork that they deal with that does not
14 surprise me.

15 But in any event, what we did with the consent
16 of counsel is we went ahead and did a voir dire
17 basically of Ms. Rume1, we took her testimony,
18 regarding what in fact took place at her physical
19 therapy appointment on the date referred to in the
20 e-mail.

21 And the e-mail gives the impression that maybe
22 she had a conversation, but subsequent to her
23 testimony again on March 7th, both parties had the
24 opportunity to question her, it appears that she
25 considers Ms. Steele a casual friend, they have lunch

1 occasionally, some social events, she attends physical
2 therapy at the Medical University at the James Island
3 location.

4 That they were in a large room for physical
5 therapy. It is a wide open room. While she was doing
6 her exercises that there is a physical therapist
7 coffee break room that is near where she was
8 exercising, very close proximity, between the hours of
9 7:30 a.m., and 8:10 a.m.

10 And she overheard a physical therapist talking
11 about her husband being on a jury, and that she heard
12 her say he was upset after having heard one of the
13 family members testify, that it was regarding a crime
14 at McDonald's, and she heard her say in response to a
15 question, I think that he is probably going to vote
16 guilty.

17 And that she wanted to give her friend
18 basically an at-a-boy about her performance in the
19 trial. She said there were at least five other people
20 who could hear the conversation. And then she again
21 called her that night to see if she had received the
22 e-mail.

23 We then adjourned the hearing. Also, I
24 neglected to point this out, we were missing three
25 jurors who did not comply with their notices regarding

1 their appearance at the hearing. I believe I
2 documented those for the record. I know we were
3 missing Mr. Haigler, Number 119. And I believe we
4 were missing Ms. Chiarito and Ms. Richardson I
5 think but I need to look back and make sure instead of
6 going from my memory and I apologize.

7 Mr. Haigler was absent, Mr. Harleston and Ms.
8 Chiarito were the missing jurors; number 119, 226 and
9 number 58. The Court could have at that time in its
10 discretion issued bench warrant and had the sheriff's
11 department pick these missing jurors up because the
12 notice very clearly indicated to them that they were
13 being summonsed to appear, and failure to appear would
14 subject them be taken into custody of the sheriff's
15 department.

16 But in light of the torrential rains on that
17 day, and the fact that we had already had the jurors
18 waiting while we ascertained Mr. Jenkins' location,
19 and knowing it would have probably taken several hours
20 to marshal these jurors it did not make sense to do
21 that. So we recessed with consent of the parties the
22 hearing.

23 We also determined during the course of that
24 hearing that through a deduction, you all agreed that
25 you all determined that the offending juror was Mr.

1 Matthew Maurer, is that correct, Number 309?

2 MR. WILLIAMS: Yes, Your Honor.

3 THE COURT: How we will proceed this morning is
4 that I will question Mr. Maurer to determine if in
5 fact he had a conversation with his wife regarding
6 this trial, what the substance of those conversations
7 were, and then I will question each individual juror
8 as to whether they were exposed to any conversations
9 with Mr. Maurer that were outside of the evidence in
10 this case.

11 And as to whether they engaged in any premature
12 deliberations, which I really don't think is an issue,
13 but out of an abundance of caution I'm going to ask
14 that question.

15 Is there any exception to the Court proceeding
16 in this way from the state?

17 MR. WILLIAMS: No, Your Honor.

18 THE COURT: From the defense?

19 MR. RUNYON: No, Your Honor.

20 THE COURT: And the jurors are here for
21 purposes of the record, it should be noted that the
22 bailiffs were -- they were strictly advised in their
23 notice that they were not to have any discussions
24 about this case among themselves or with anyone else,
25 and that they were not to speculate about the purposes

1 for which they were being reassembled.

2 And they were also strictly instructed that
3 they were not to make any attempts to contact anyone
4 else or among themselves. I think I will probably
5 have copies of those notices made a part of the
6 record, as well all the Court's order to reassemble
7 the jury.

8 Is there any exception from the state?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense.

11 MR. RUNYON: No, Your Honor.

12 THE COURT: Okay. I may ask them also if they
13 complied with the Court's notice that they not have
14 any discussion about this among themselves or anyone
15 else. Is there any exception from the state?

16 MR. WILLIAMS: No, Your Honor.

17 THE COURT: From the defense?

18 MR. RUNYON: No, Your Honor.

19 THE COURT: Bear with me one moment.

20 Please bring in Juror Number 309, Matthew
21 Maurer.

22 (Whereupon, the juror enters the courtroom.)

23 THE COURT: Mr. Maurer, how are you?

24 A JUROR: Good. How are you?

25 THE COURT: Fine. If you could state your full

1 name for the record.

2 A JUROR: Matthew Maurer.

3 THE COURT: Maurer, I was mispronouncing your
4 name.

5 A JUROR: That's okay.

6 THE COURT: Mr. Maurer, what does your wife do
7 for a living?

8 A JUROR: She is a physical therapist at the
9 Medical University of South Carolina.

10 THE COURT: And what location does she work at?

11 A JUROR: The James Island Ellis Oaks. Right
12 at the base of -- by the Lowes and James Island. The
13 base of the connector.

14 THE COURT: Now, Mr. Maurer, did you have any
15 dis -- let me ask another question before I get ahead
16 of myself, I apologize.

17 Sir, did you receive a notice to appear today
18 regarding the reassembling of the jury?

19 A JUROR: .

20 THE COURT: Okay. And, sir, that notice
21 instructed you not to have any contact with anyone or
22 to discuss the purposes for which the jury was being
23 reassembled; is that correct?

24 A JUROR: Yes, that's correct.

25 THE COURT: And did you comply with the Court's

1 instructions?

2 A JUROR: Yes, I did. I am assuming you mean
3 jurors?

4 THE COURT: Yes, sir, or anyone else?

5 A JUROR: No. No. I just the only thing I
6 have said is I told my wife I have to be in court, and
7 I told my boss I have to be in court on Friday.

8 THE COURT: Okay. Now, Mr. Maurer, prior to
9 and during -- during the course of the Court's -- of
10 the trial of this matter, you were instructed not to
11 have any discussions regarding this case among
12 yourselves or with anyone else; is that correct?

13 A JUROR: That's correct.

14 THE COURT: Sir, did you have in any
15 discussions with your wife regarding this case?

16 A JUROR: No. No. Not regarding details.

17 THE COURT: Tell me what discussions did you
18 have with your wife?

19 A JUROR: That we were just in court. ^{Lie}

20 THE COURT: Did you tell her anything else?

21 A JUROR: No.

22 THE COURT: Did you ever evidence to her any
23 indication that you were upset about any of the
24 proceedings that were going on in court? ✓

25 A JUROR: The only thing I said to her was some

from the bloody picture Arouse and Inflamed Passions or Emotion of guilt
1 of the images we were seeing are disturbing. I did
2 not go into detail about any of the images.

3 THE COURT: Did you at any time tell her how
4 you intended to vote regarding the guilt or innocence
5 of the defendant?

6 A JUROR: Absolutely not.

7 THE COURT: Did you give her any indication of
8 how you were feeling about this case?

9 A JUROR: No. No. I did not -- I'm sorry.
10 Except for again that the images we were seeing were
11 disturbing. She had asked me why I was kind of quiet
12 and I said that, you know, it hasn't been easy, the
13 last few days haven't been easy.

14 THE COURT: Sir, would it surprise you if
15 someone had reported to the Court that they overheard
16 your wife speaking at work indicating that she thought
17 you might vote guilty on this case, and that you were
18 on a trial that involved a murder that took place at
19 the McDonald's?

20 A JUROR: Yes, it would.

21 THE COURT: Sir, if you would step outside for
22 me with the bailiff, and don't go back in the jury
23 room yet. And if you would stand out there for me for
24 a moment.

25 (Whereupon, the juror exits the courtroom.)

Quoted

1 THE COURT: Are there any further questions
2 from the state?

3 MR. WILLIAMS: No, Your Honor.

4 THE COURT: From the defense?

5 MR. RUNYON: Yes, Your Honor. I would ask the
6 Court to inquire along the lines, without specific
7 question, along the line of did he discuss with the
8 jury prior to the case going to the jury.

9 THE COURT: I asked him that. I asked if he
10 had premature deliberations, did he have any
11 deliberations prior to the Court -- I could ask it a
12 little differently.

13 MR. RUNYON: I'm just out of an abundance of
14 caution.

15 THE COURT: I thought I covered it by asking,
16 if they complied. I asked, I instructed you not to
17 discuss the case among yourselves or with anyone else,
18 did you comply with that instruction and he said yes.

19 But I will ask it a different way, I guess.
20 Any exception from the state?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Please bring in Mr. Maurer back in.
23 (Whereupon, the juror enters the courtroom.)

24 THE COURT: Mr. Maurer, prior to the Court
25 releasing the jury to deliberate, did you have any

1 discussions with any of the other jurors regarding any
2 discussions you may have had with your wife.

3 A JUROR: Prior to -- can you repeat that so
4 I'm clear.

5 THE COURT: That was a long question.

6 A JUROR: Just so I'm clear.

7 THE COURT: I'm trying to determine if there
8 was premature deliberation. In other words, if there
9 was any discussion about the case before I told the
10 jury they could deliberate.

11 A JUROR: Absolutely not.

12 THE COURT: So my question is, did you discuss
13 among your fellow jurors anything about this case
14 prior to being instructed that you could deliberate?

15 A JUROR: Absolutely not.

16 THE COURT: And did you have any discussions
17 with any of the jurors about any of the conversations
18 you had with your wife?

19 A JUROR: No, I did not.

20 THE COURT: Okay. I'm going to send you back
21 to the jury room, but please do not discuss anything
22 that we have discussed here with your fellow jurors.

23 A JUROR: Okay, I will.

24 THE COURT: Thank you.

25 (Whereupon, the juror exits the courtroom.)

1 THE COURT: Are there any additional -- was
2 that sufficient follow-up, Mr. Runyon?

3 MR. RUNYON: I think it was sufficient, Judge.

4 THE COURT: All right. We will now go through
5 the balance of the list starting with number one,
6 number 264. And my questioning of them however will
7 not be as extensive as it was of Mr. Maurer because it
8 isn't necessary.

9 I will ask them if they had any discussions
10 prior, among themselves, about the case prior to
11 deliberations. And if they had any discussions with
12 Mr. Maurer about any -- if they had any discussions
13 with Mr. Maurer whatsoever regarding the case. I
14 think that would cover it.

15 Is there any exception from the state?

16 MR. WILLIAMS: No, Your Honor.

17 THE COURT: From the defense?

18 MR. RUNYON: No, Your Honor.

19 THE COURT: Please bring in Mr. Summers.

20 (Whereupon, the jurors enter the courtroom.)

21 THE COURT: Mr. Summers, how are you this
22 morning?

23 A JUROR: Fine, thank you.

24 THE COURT: We appreciate you being here. Mr.
25 Summers, did you receive the Court's notice to appear?

1 A JUROR: Yes.

2 THE COURT: And did you follow the Court's
3 instructions and not have any discussions or contact
4 regarding this case with anyone else or with your
5 fellow jurors?

6 A JUROR: No contact.

7 THE COURT: Okay. Sir, you of course sat on
8 this jury. I'm just going to confine my questions to
9 that period of time that you sat on the jury. The
10 Court instructed during the course of deliberations
11 that you were not to discuss the case among yourselves
12 or with anyone else. I need to know, did you comply
13 with that instruction?

14 A JUROR: .

15 THE COURT: Did you have any discussions
16 regarding this case before your deliberations in this
17 matter with Mr. Maurer?

18 A JUROR: No, ma'am.

19 THE COURT: Did you have any exposure to any
20 facts outside the evidence of this case prior to your
21 deliberations?

22 A JUROR: No.

23 THE COURT: Did you in any way deliberate
24 regarding this case prior to being released by the
25 Court to deliberate? In other words, did you engage

1 in any premature deliberations regarding this case?

2 A JUROR: No, ma'am.

3 THE COURT: Okay. Sir, if you would stand
4 right outside the door for me with Mr. Gaddes or Mr.
5 Brown.

6 (Whereupon, the juror exits the courtroom.)

7 THE COURT: Are there any additional questions
8 from the state?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense?

11 MR. RUNYON: Judge, I think you may have
12 covered it generally, but I would ask the Court to
13 consider inquiring of the juror as to whether or not
14 he recalls any facts brought into the actual
15 deliberations that were outside of the evidence.

16 THE COURT: I asked that question. I asked him
17 if he was exposed to any facts outside of the evidence
18 prior to deliberation.

19 MR. RUNYON: Prior to deliberation.

20 THE COURT: I think actually were you exposed
21 -- I will ask the court reporter to read that question
22 back to me. Can you read that question back to me?

23 (Whereupon, the court reporter reads back the
24 question.)

25 THE COURT: You want me to ask if it was during

1 deliberations?

2 MR. RUNYON: Judge, out of an abundance of
3 caution.

4 THE COURT: I don't have any problem with that.
5 State have any problem with that?

6 MR. WILLIAMS: No, Your Honor.

7 THE COURT: Please bring in the juror.

8 (Whereupon, the juror enter the courtroom.).

9 THE COURT: Sir, did you have any exposure to
10 any facts outside of the evidence either before or
11 during the jury's deliberations?

12 A JUROR: No, ma'am.

13 THE COURT: Okay, thank you. Sir, if you would
14 go back to the jury room. Please do not discuss
15 anything I have discussed with you among your fellow
16 jurors.

17 A JUROR: Okay.

18 (Whereupon, the juror exits the courtroom.)

19 THE COURT: Number 119, Joseph Haigler.

20 (Whereupon, the juror enters the courtroom.).

21 THE COURT: Mr. Haigler, how are you doing this
22 morning?

23 A JUROR: Doing well.

24 THE COURT: Sir, did you receive the Court's
25 notice to appear regarding the reassembling of the

1 jury?

2 A JUROR: No, I actually -- what happened --

3 THE COURT: Not the first time, the second
4 time?

5 A JUROR: The second time, yes.

6 THE COURT: Okay. And, sir, did you comply
7 with the Court's instructions that you have no
8 discussion about this case or contact among yourselves
9 or with anyone else.

10 A JUROR: Yes, ma'am?

11 THE COURT: Sir, did you have any discussions
12 during the course of these -- before the deliberations
13 of this case with juror Mr. Maurer?

14 A JUROR: No, ma'am.

15 THE COURT: Did you have any exposure to any
16 facts outside the evidence of this case either before
17 or during jury deliberations?

18 A JUROR: No, ma'am.

19 THE COURT: Sir, the Court instructed that you
20 were not to have any premature deliberation about this
21 case. Did you engage in any premature deliberations?
22 In other words did you deliberate or talk with anyone
23 else about this case or with your fellow jurors before
24 being released to deliberate by with the Court?

25 A JUROR: No, ma'am.

1 THE COURT: Sir, if you would step right
2 outside the door for me with Mr. Gaddes.

3 (Whereupon, the juror exits the courtroom.)

4 THE COURT: Any further questions from the
5 state?

6 MR. WILLIAMS: No, Your Honor.

7 THE COURT: From the defense?

8 MR. RUNYON: No, Your Honor. I think we've got
9 the questions down.

10 THE COURT: Yeah, it's a science. Please bring
11 in Mr. Haigler.

12 (Whereupon, the juror enters the courtroom.)

13 THE COURT: Mr. Haigler, I'm going to send you
14 back to the jury room. Please do not discuss anything
15 that I have discussed with you among your fellow
16 jurors.

17 A JUROR: Yes, ma'am.

18 THE COURT: Thank you, sir.

19 (Whereupon, the juror exits the courtroom.)

20 THE COURT: Mr. Harleston. Number 226.

21 MR. WILLIAMS: Your Honor, I believe 226 is Ms.
22 Ratliff.

23 (Whereupon, the juror enters the courtroom.).

24 THE COURT: I need to go by my list. Wait a
25 minute.

1 Ma'am, state your name for the record.

2 A JUROR: Karen Ratliff.

3 THE COURT: Ms. Ratliff, how are you doing this
4 morning?

5 A JUROR: Good.

6 THE COURT: Appreciate you being here. Ms.
7 Ratliff, you received the notice to reassemble the
8 jury, correct?

9 A JUROR: Yes.

10 THE COURT: Ma'am, did you comply with the
11 Court's instruction by having no discussion or contact
12 with your fellow jurors or with anyone else regarding
13 this matter?

14 A JUROR: During the trial you mean?

15 THE COURT: No, after you received the Court's
16 notice which instructed you not to have any
17 discussions.

18 A JUROR: No.

19 THE COURT: Okay, meaning you did not have any
20 discussions?

21 A JUROR: I did not have any discussions.

22 THE COURT: Did you have any contact with your
23 fellow jurors?

24 A JUROR: No.

25 THE COURT: During the course of the trial,

1 ma'am, the Court instructed that you were not to have
2 any prior deliberations regarding the case before you
3 were released to deliberate. Did you comply with
4 those instructions? In other words, I'm trying to
5 determine if the jury had any premature deliberations.

6 Did you discuss this matter with any of your
7 fellow jurors prior to being released to deliberate?

8 A JUROR: We did not discuss matters of guilty
9 or innocence. We might have commented on the court
10 proceedings.

11 THE COURT: Did you discuss anything regarding
12 this -- when I say this case I'm talking about did you
13 all deliberate in any manner?

14 A JUROR: No.

15 THE COURT: Did you discuss any of the evidence
16 that was being presented among yourselves?

17 A JUROR: No.

18 THE COURT: And did you have any discussions
19 that would -- in other words, deliberations are when
20 you are to begin to discuss the case and you apply the
21 law to those facts and rendered verdicts. And I'm
22 trying to determine whether the jury had any of those
23 kind of discussions prior to being released by the
24 Court to do so?

25 A JUROR: Not to my knowledge. It was more

1 just comments on how the case was proceeding.

2 THE COURT: Meaning?

3 A JUROR: Just that it was going slow, let's
4 say or there were so many witnesses being presented or
5 whatever.

6 THE COURT: Okay. Did you have any discussions
7 about this case with Mr. Maurer?

8 A JUROR: No.

9 THE COURT: Before deliberations?

10 A JUROR: No.

11 THE COURT: Okay. Have you had -- did you have
12 any exposure to any facts outside of the evidence of
13 this case either before or during deliberations?

14 A JUROR: No.

15 THE COURT: Did you deliberate prior to being
16 released by the Court to do so?

17 A JUROR: No.

18 THE COURT: If you would step right outside the
19 door for me with Mr. Gaddes.

20 (Whereupon, the juror exits the courtroom.)

21 THE COURT: Any further questions from the
22 state?

23 MR. WILLIAMS: No, Your Honor.

24 THE COURT: From the defense?

25 MR. RUNYON: No, Your Honor.

1 THE COURT: Please bring in the juror.

2 (Whereupon, the juror enters the courtroom.)

3 THE COURT: I'm going to send you back to the
4 jury room. Please don't discuss anything that we have
5 discussed during the course of this questioning.

6 A JUROR: Uh-hum.

7 THE COURT: Thank you.

8 (Whereupon, the juror exits the courtroom.)

9 THE COURT: Bring in Ms. Chiarito, Number 58.

10 (Whereupon, the juror enters the courtroom.)

11 THE COURT: Ms. Chiarito, how are you doing
12 this morning?

13 A JUROR: Nervous.

14 THE COURT: Don't be, take a deep breath. Am I
15 pronouncing your name correctly?

16 A JUROR: Yes, ma'am.

17 THE COURT: Did you receive the Court's notice
18 to appear today?

19 A JUROR: Today? After my boyfriend checked
20 it, I have problems seeing the mail, so.

21 THE COURT: No, for this -- apparently you got
22 it because you are here today, correct?

23 A JUROR: I got called.

24 THE COURT: Okay, the clerk's office called
25 you?

1 A JUROR: Yes, ma'am.

2 THE COURT: Ma'am, did you discuss -- the Court
3 instructed that you were not to discuss this matter
4 among your fellow jurors or with anyone else prior to
5 appearing today. Did you comply with that
6 instruction?

7 A JUROR: Yes, ma'am.

8 THE COURT: Prior to being released to
9 deliberate in this case, did you have any
10 deliberations with your fellow jurors prior to the
11 Court allowing you to deliberate?

12 A JUROR: No.

13 THE COURT: Did you have any discussions about
14 the this case with Mr. Maurer?

15 A JUROR: Who is that?

16 THE COURT: That is -- well, if you don't know
17 him by name. I guess what I'm trying to determine is
18 did you and Mr. Maurer have any discussions about the
19 case prior to deliberations?

20 A JUROR: No, ma'am.

21 THE COURT: Did you have any exposure to any
22 facts outside of the evidence of this case either
23 before or during deliberations?

24 A JUROR: No, ma'am.

25 THE COURT: And did you deliberate in any way

1 about this case prior to being instructed by the Court
2 to deliberate?

3 A JUROR: No, ma'am.

4 THE COURT: If you would go with the bailiffs
5 for me and stand right outside the door.

6 (Whereupon, the juror exits the courtroom.)

7 THE COURT: Any further questions from the
8 state?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense?

11 MR. RUNYON: No, Your Honor.

12 THE COURT: Please bring in Ms. Chiarito. Also
13 get Ms. Richardson.

14 (Whereupon, the juror enters the courtroom.)

15 THE COURT: Ms. Chiarito, we thank you. I'm
16 going to send you back to the jury room. Please don't
17 discuss anything I have discussed with you with your
18 fellow jurors.

19 A JUROR: Yes, ma'am.

20 THE COURT: Thank you.

21 (Whereupon, the juror exits the courtroom.)

22 (Whereupon, the juror enters the courtroom.)

23 THE COURT: Ms. Richardson, how are you doing
24 this morning?

25 A JUROR: Fine.

1 THE COURT: We appreciate you coming. I just
2 have a few questions for you.

3 Ma'am, you received the Court's notice to
4 appear?

5 A JUROR: .

6 THE COURT: And Did you comply with the Court's
7 instruction not to have any discussion or contact with
8 your fellow jurors or third parties regarding this
9 matter?

10 A JUROR: Yes.

11 THE COURT: Ma'am, did you have any prior
12 deliberations about this case prior to the Court
13 allowing you to deliberate?

14 A JUROR: No.

15 THE COURT: Did you have any discussions with
16 Mr. Maurer regarding this case prior to deliberations?

17 A JUROR: No.

18 THE COURT: Did you have any exposure to any
19 fact outside of the evidence of this case either
20 before or during deliberations?

21 A JUROR: No.

22 THE COURT: And, ma'am, again did you
23 deliberate about this case prior to being released by
24 the Court to deliberate? In other words, before I
25 told you all you could start deliberating, did you

1 have any discussions with your fellow jurors or with
2 anyone else about this case?

3 A JUROR: No.

4 THE COURT: If you would stand right outside
5 the door for me with Mr. Gaddes.

6 (Whereupon, the juror exits the courtroom.)

7 THE COURT: Any further questions from the
8 state?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense?

11 MR. RUNYON: No, Your Honor.

12 THE COURT: Bear with me one second.

13 (Whereupon, the juror enters the courtroom.)

14 THE COURT: Ms. Richardson, I'm going to send
15 you back to the jury room. Please don't discuss
16 anything I have discussed with you with your fellow
17 jurors.

18 A JUROR: Okay.

19 THE COURT: Thank you. We appreciate your
20 patience.

21 (Whereupon, the juror exits the courtroom.)

22 THE COURT: Richard Miller.

23 (Whereupon, the juror enters the courtroom.)

24 THE COURT: Mr. Miller, how are you doing this
25 morning?

1 A JUROR: I'm fine, thank you.

2 THE COURT: Sir, did you comply with the
3 Court's notice to appear which instructed you not to
4 discuss or have any contact with your fellow jurors or
5 anyone else regarding the reassembling of the jury?

6 A JUROR: Yes.

7 THE COURT: And, sir, the Court instructed that
8 you were not to have any deliberation about this case
9 prior to it being given to the jury for deliberation.
10 Did you comply with that instruction?

11 A JUROR: Yes.

12 THE COURT: Did you have any discussions about
13 this case with Mr. Maurer prior to deliberations?

14 A JUROR: I'm sorry, the name?

15 THE COURT: Mr. Maurer?

16 A JUROR: No.

17 THE COURT: Okay. Did you have any exposure to
18 any facts outside of the evidence of this case either
19 before or during deliberations?

20 A JUROR: No.

21 THE COURT: Sir, again did you deliberate about
22 this case prior to being released by the Court to
23 deliberate?

24 A JUROR: No.

25 THE COURT: If you would stand right outside

1 the door for me with Mr. Gaddes.

2 (Whereupon, the juror exits the courtroom.)

3 THE COURT: Any further questions from the
4 state?

5 MR. WILLIAMS: No, Your Honor.

6 THE COURT: From the defense?

7 MR. RUNYON: No, Your Honor.

8 THE COURT: Please bring in the juror. Also
9 get Mr. John Craig, Number 68.

10 (Whereupon, the juror enters the courtroom.)

11 THE COURT: Sir, I'm going to send you back to
12 the jury room. Please don't discuss any of the
13 questions that I have discussed with you with your
14 fellow jurors. Thank you, we appreciate your
15 patience.

16 (Whereupon, the juror exits the courtroom.)

17 (Whereupon, the juror enters the courtroom.)

18 THE COURT: Mr. Craig, how are you doing this
19 morning?

20 A JUROR: Hey, good.

21 THE COURT: Sir, we appreciate you being here.
22 Did you comply with the Court's instructions in your
23 notice that you have no discussion or contact with
24 your fellow jurors or with anyone else regarding the
25 purposes for which this jury is being reassembled?

1 A JUROR: Yes, I did.

2 THE COURT: And, sir, did you have any
3 discussions with Mr. Maurer regarding this case prior
4 to deliberations?

5 A JUROR: Who is that?

6 THE COURT: Mr. Maurer. Tall, sandy brown
7 hair?

8 A JUROR: I did not have discussions with
9 anyone.

10 THE COURT: Matthew Maurer?

11 A JUROR: No, ma'am.

12 THE COURT: Okay. Sir, did you have any
13 exposure, did you have any exposure to any facts
14 outside of the evidence in this case either before or
15 during deliberations?

16 A JUROR: No, I was not aware of the case.

17 THE COURT: Okay.

18 A JUROR: And before or --

19 THE COURT: What I'm trying to determine is did
20 you discuss this case with anyone, either jurors or
21 anyone else, prior to deliberating?

22 A JUROR: No, I did not.

23 THE COURT: And did you have any discussions
24 with anyone else -- well, you would have discussions
25 during deliberations.

1 Sir, did you deliberate regarding this case
2 prior to being released by the Court to deliberate?
3 In other words, did you discuss this case among
4 yourselves or with any third parties prior to the
5 Court instructing you to deliberate?

6 A JUROR: No. We were instructed pretty
7 vehemently not to so I definitely did not.

8 THE COURT: Thank you very much. Sir, please
9 stand outside the door for me with Mr. Gaddes for a
10 moment.

11 (Whereupon, the juror exits the courtroom.)

12 THE COURT: Any further questions from the
13 state?

14 MR. WILLIAMS: No, Your Honor.

15 THE COURT: From the defense?

16 MR. RUNYON: No, Your Honor.

17 THE COURT: Please bring the juror back in for
18 me. Get Ms. Mary Smalls.

19 (Whereupon, the juror enters the courtroom.)

20 THE COURT: Sir, I'm going to send you back to
21 the jury room but I'm going to ask that you not
22 discuss these questions with your fellow jurors. We
23 thank you for your patience.

24 A JUROR: Okay, thank you.

25 (Whereupon, the juror exits the courtroom.)

1 (Whereupon, the juror enters the courtroom.)

2 THE COURT: Ms. Smalls, how are you doing this
3 morning?

4 A JUROR: Just fine, thank you.

5 THE COURT: Thank you for being here. You
6 received the Court's notice to appear, correct?

7 A JUROR: Yes.

8 THE COURT: And did you comply with the Court's
9 instructions and refrain from any discussion or
10 contact with your fellow jurors or third parties
11 regarding the purposes for which you had to be here
12 this morning?

13 A JUROR: That's correct.

14 THE COURT: Ma'am, prior to deliberations in
15 this case, did you have any discussions about this
16 case with Mr. Maurer?

17 A JUROR: No.

18 THE COURT: Did you have any exposure to any
19 facts outside of the evidence in this case either
20 before or during deliberations?

21 A JUROR: No, I didn't.

22 THE COURT: And, ma'am, the Court instructed
23 that the jury was not to deliberate before they were
24 instructed to. Did you deliberate in any way
25 regarding this case prior to being released by the

1 Court to deliberate?

2 A JUROR: No.

3 THE COURT: If you would stand right outside
4 the door for me with Mr. Gaddes.

5 (Whereupon, the juror exits the courtroom.)

6 THE COURT: Anything further from the state?

7 MR. WILLIAMS: No, Your Honor.

8 THE COURT: From the defense?

9 MR. RUNYON: No, Your Honor.

10 THE COURT: Okay. Bring in Ms. Smalls. Get
11 Theodore Simmons.

12 (Whereupon, the juror enters the courtroom.)

13 THE COURT: Ma'am, I'm going to send you back
14 to the jury room, but please don't discuss any of
15 these questions with your fellow jurors. We
16 appreciate your patience.

17 A JUROR: Thank you.

18 THE COURT: Thank you.

19 (Whereupon, the juror exits the courtroom.)

20 (Whereupon, the juror enters the courtroom.).

21 THE COURT: Mr. Simmons, how are you doing this
22 morning?

23 A JUROR: Fine.

24 THE COURT: Sir, did you receive the Court's
25 notice to appear this morning?

1 A JUROR: Yes, ma'am.

2 THE COURT: Did you comply with the Court's
3 instruction that you have no discussion or contact
4 with your fellow jurors or with anyone else regarding
5 why you had to be here this morning?

6 A JUROR: No, ma'am.

7 THE COURT: Meaning you complied with my
8 instructions?

9 A JUROR: Yes, ma'am.

10 THE COURT: Sir, did you have any discussions
11 with Mr. Maurer, Matthew Maurer, prior to
12 deliberations in this case?

13 A JUROR: No, ma'am.

14 THE COURT: Did you have any exposure to any
15 facts outside the evidence in this case either before
16 or during the course of trial?

17 A JUROR: No, ma'am.

18 THE COURT: Okay. And did you have any
19 exposure to any facts outside of the evidence in this
20 case during -- either before or during deliberations?

21 A JUROR: No, ma'am.

22 THE COURT: Sir, you were instructed not to
23 deliberate about this case prior to being instructed
24 by the Court to deliberate. Did you have any
25 premature deliberations in this case?

1 A JUROR: No, ma'am.

2 THE COURT: If you stand right outside the door
3 for me with Mr. Gaddes.

4 (Whereupon, the juror exits the courtroom.)

5 THE COURT: Any further questions from the
6 state?

7 MR. WILLIAMS: No, Your Honor?

8 THE COURT: From the defense?

9 MR. RUNYON: No, Your Honor.

10 THE COURT: Please bring in the juror and get
11 Mr. Henry Smith.

12 (Whereupon, the juror enters the courtroom.)

13 THE COURT: Sir, I'm going to send you back to
14 the jury room. Please don't discuss any of the
15 questions that I have asked you with your fellow
16 jurors.

17 A JUROR: All right.

18 THE COURT: Thank you, sir.

19 (Whereupon, the juror exits the courtroom.)

20 (Whereupon, the juror enters the courtroom.)

21 THE COURT: Mr. Smith, how are you doing this
22 morning?

23 A JUROR: Good. How are you?

24 THE COURT: Appreciate you being here. Sir,
25 you received the Court's notice to appear here this

1 morning, correct?

2 A JUROR: Correct.

3 THE COURT: Sir, did you comply with the
4 Court's instruction that you not have any discussion
5 or contact with your fellow jurors or any third
6 parties regarding the purpose for which you had to be
7 here this morning?

8 A JUROR: Yes, ma'am.

9 THE COURT: Sir, did you have any discussions
10 about this case prior to deliberations with Mr.
11 Matthew Maurer?

12 A JUROR: No, ma'am.

13 THE COURT: And, sir, were you exposed to any
14 facts outside of the evidence of this case either
15 before or during deliberations?

16 A JUROR: No, ma'am.

17 THE COURT: Sir, the Court instructed that the
18 jury was not to deliberate prior to being instructed
19 by the Court to do so. Did you deliberate in any way
20 with your fellow jurors or with anyone else prior to
21 being instructed by the Court to deliberate?

22 A JUROR: No, ma'am.

23 THE COURT: Sir, if you would stand right
24 outside the door for me with Mr. Gaddes.

25 (Whereupon, the juror exits the courtroom.)

1 THE COURT: Any questions from the state?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: From the defense?

4 MR. RUNYON: No, Your Honor.

5 THE COURT: Please bring in the juror, then get
6 Mary McDermott.

7 (Whereupon, the juror enters the courtroom.)

8 THE COURT: Sir, I'm going to send you back to
9 the jury room. Please don't discuss any of these
10 questions with your fellow jurors and again we thank
11 you for your patience.

12 A JUROR: Yes, ma'am.

13 (Whereupon, the juror exits the courtroom.)

14 (Whereupon, the juror enters the courtroom.).

15 THE COURT: Ms. McDermott, how are you this
16 morning?

17 A JUROR: Fine.

18 THE COURT: We appreciate you being here. You
19 received your notice to appear this morning, correct?

20 A JUROR: Yes, I did.

21 THE COURT: And did you comply with the Court's
22 instruction that you not have any discussion or
23 contact among your fellow jurors or with any third
24 parties regarding be required to be here this morning?

25 A JUROR: Yes, ma'am, other than telling my



1 boss I had to be here.

2 THE COURT: Oh, of course. Yes, ma'am, we
3 understand that. Ma'am, prior to deliberations in
4 this case, did you have any discussions about this
5 case with Mr. Matthew Maurer?

6 A JUROR: I'm not sure which one, he's one of
7 the jurors. I'm not sure of all their names.

8 THE COURT: He is a younger gentleman, sandy
9 brown hair.

10 A JUROR: I did not have a discussion with him
11 personally, no.

12 THE COURT: Okay. Did you have any exposure to
13 any facts outside of the evidence either before or
14 during deliberations in this case?

15 A JUROR: No.

16 THE COURT: And you were instructed not to
17 deliberate prior to the Court's instructing you to.
18 Did you have any deliberations about this case prior
19 to being released by the Court to deliberate?

20 A JUROR: Not to deliberate. I mean there was
21 general just conversation but not discussion.

22 THE COURT: Was it general conversation about
23 the case or was it general conversation about life and
24 general things?

25 A JUROR: That's mostly what it was about, but

1 there probably was something said, I couldn't remember
2 because I tried to not listen.

3 THE COURT: Something said in what regard?

4 A JUROR: There was a question about, you know
5 -- I don't know exactly what was said. It was like
6 where the location was about the McDonald's, but that
7 was the only thing I can really remember.

8 THE COURT: Was that before or during
9 deliberation?

10 A JUROR: I think that was really during
11 deliberation. I don't remember discussing the case.

12 THE COURT: My questions are confined to before
13 deliberations, not during deliberations.

14 A JUROR: I do not recall discussing the case.

15 THE COURT: Before?

16 A JUROR: Before deliberation.

17 THE COURT: I just need to be clear with that.

18 A JUROR: I'm sorry.

19 THE COURT: That's okay. It's easy to get
20 confused. And again I want to be clear, did you have
21 any discussion or deliberation about this case prior
22 to being instructed by the court to deliberate?

23 A JUROR: To deliberate, no.

24 THE COURT: If you would step outside the door
25 for me with Mr. Gaddes.

1 (Whereupon, the juror exits the courtroom.)

2 THE COURT: Any further questions from the
3 state?

4 MR. WILLIAMS: No, Your Honor.

5 THE COURT: From the defense?

6 MR. RUNYON: No, Your Honor.

7 THE COURT: Please bring in Ms. McDermott.

8 (Whereupon, the juror enters the courtroom.).

9 THE COURT: Ma'am, I'm going to send you back
10 to the jury room. I'm going to ask you have no
11 discussion about the questions that the Court has
12 asked you among your fellow jurors.

13 A JUROR: Okay.

14 THE COURT: We thank you for your patience.

15 A JUROR: Thank you.

16 (Whereupon, the juror exits the courtroom.).

17 THE COURT: That's all twelve. All right. Is
18 there anything further inquiry that need to be made of
19 any of the jurors from the state?

20 MR. WILLIAMS: No, Your Honor.

21 THE COURT: From the defense?

22 MR. RUNYON: No, Your Honor.

23 THE COURT: Okay. Are we ready to hear
24 argument on the motion? I'm going to keep the jurors
25 for a moment until we conclude the matter.

1 MR. RUNYON: I think so, Your Honor.

2 THE COURT: Okay. I'll be glad to hear any
3 argument on the motion.

4 MR. RUNYON: Your Honor, not to breeze through
5 the law, so to speak, but the law on the issue in this
6 state is pretty clear. Almost anything a juror does
7 can be considered, quote, misconduct. That sounds
8 kind of terrible, but it's not necessarily -- doesn't
9 have to be something horrible like trying to take a
10 bribe or something of that sort.

11 One of the cases, State versus Harris, which
12 was decided by our state Supreme Court back in 2000.
13 There a juror read a definition in Black's Law
14 dictionary.

15 THE COURT: The Court said it didn't influence
16 them because it merely confirmed the Court's
17 instruction.

18 MR. RUNYON: That's correct, Your Honor, that's
19 what the Supreme Court ultimately said. And the trial
20 judge, Judge Keesley, reached that discussion, I mean
21 reached that decision. And the Supreme Court said,
22 yes, this is misconduct, but it didn't affect the
23 outcome, it didn't prejudice the deliberations, et
24 cetera.

25 So, that's really the test. In other words, I

1 believe one of the jurors characterized your
2 instructions to the jury about discussing things as
3 vehemently instructing. I don't think the Court was
4 ever vehement with the jury, but that's a pretty good
5 way of saying you --

6 THE COURT: Emphasized it.

7 MR. RUNYON: You emphasized it, that's correct,
8 Judge. What we have heard is a factual question. Ms.
9 Rumel faxed this -- or e-mailed this e-mail to Ms.
10 Steele. Ms. Rumel is not going to make that stuff up.
11 It wasn't made up. She heard something and she put it
12 down.

13 And Mr. Maurer's wife does work there. And I
14 think the statement was that, pretty clear to
15 everyone, that he was going to be voting for guilty.

16 THE COURT: That's not actually what she said. If
17 we look at -- and I think the record needs to be
18 accurate. I think that her testimony was that she
19 said, overheard her say, in response to a question, I
20 think that he is probably going to vote guilty, which
21 is really conditional in its nature. She didn't say,
22 my husband said he's going to vote guilty, which is a
23 whole different story.

24 But, even if he said that, that still doesn't
25 necessarily rise to the level of juror misconduct. If

1 it rises to the level of misconduct, I don't know that
2 it meets the second prong of the test.

3 MR. RUNYON: Well, that's what I was getting
4 ready to say. I don't mean to argue over semantics.

5 THE COURT: I know.

6 MR. RUNYON: The simple facts is is I said a
7 lot of things jurors do can be misconduct, the
8 question is is does it meet the second prong of the
9 test.

10 Judge, what we have here is we have a situation
11 where a juror discussed something with his wife. He
12 explained that he was upset by some of the images he
13 saw, et cetera, et cetera. And he explained it by
14 saying his wife said why are you so quiet, and he
15 proceeded to explain why he was so quiet, based on
16 what he had seen in court, things of that sort.

17 Needless to say, it appears that the result of
18 that conversation is he led his wife to believe, at
19 least, to reach a conclusion that he was probably
20 going to be voting for guilty.

21 THE COURT: Well, you know, marriage is a funny
22 thing.

23 MR. RUNYON: I know, I have been at it for 40
24 years.

25 THE COURT: When you live with somebody, I'm

1 not certain he said anything that led her to that
2 conclusion, whether she read his affect, his body
3 language, I'm not certain.

4 MR. RUNYON: I understand, Judge. Like I said
5 I have been at it for 40 years. I still don't
6 understand it.

7 But the simple fact is, and you know when you
8 are talking about this subject, it sounds so severe,
9 juror misconduct, like people are doing something that
10 is horrible, stealing cars, what have you. Well
11 that's not it.

12 He went home, and he had some discussion, he
13 had some discussion about the case, and whether it was
14 wifely intuition, wifely conclusion, she reached a
15 conclusion which she apparently announced, in
16 conditional terms, at her place of employment which
17 Ms. Rumel apparently overheard.

18 I think what we have got, Judge, is a juror who
19 reached a conclusion. And when this case went to the
20 jury we had 11 jurors. Reached a verdict prior to --
21 reached verdict on Wednesday. The case wasn't
22 completed until Thursday. And the case went to the
23 jury on Thursday.

24 So I think what we have here, Judge --

25 THE COURT: Actually. Ms. Rumel went to

1 therapy on Thursday.

2 MR. RUNYON: That's right, Thursday morning.
3 So assuming the timing is, Judge, is that she went to
4 therapy on Thursday morning. Wife across the room.
5 says either -- however you want to interpret it, she
6 says what she says. Ms. Rumel then comes back to her
7 office and e-mails Ms. Steele.

8 So that we are crystalized that at early in the
9 morning the statement was made, prior to the case,
10 prior to the state resting, prior to anybody resting,
11 prior to any arguments.

12 So, sometime between the close of business on
13 Wednesday and let's say 7 o'clock the next morning Mr.
14 Maurer said what he said that led his wife to either
15 believe that or infer that he was going to be voting
16 guilty and the statement apparently was made.

17 We think that it meets the first prong of the
18 test of, quote, juror misconduct because I will say
19 for this hearing and during the trial this Court was
20 extremely explicit, like I said I wouldn't use the
21 word vehement, but extremely explicitly in
22 instructions to the jury about what they should do,
23 could do and couldn't do in discussing this with
24 anyone.

25 As a matter of fact, Judge, my recollection --

1 I don't have the transcript, this young lady up here
2 Ms. Meyer will ultimately probably be printing it --
3 you even gave, as I recall, an example of, you are
4 going to go home, and your family is going to ask you
5 if you're on a jury, what kind of jury, et cetera,
6 just don't discuss it. Tell them you can't discuss it
7 with them. That was your example to the jury, you
8 used an example of a family setting. And he did.

9 Now the question is, is did it affect
10 deliberations? The second prong of the test. I think
11 -- I don't want to just assume that we met the first
12 prong has been met, but I think in broad terms, and
13 under the Rimmer case, United States versus Rimmer,
14 there are several other cases, we -- the first prong
15 of the test is probably met.

16 The second prong is what is important. And,
17 so, did he go into the deliberations and say X, Y, and
18 Z? Did he say something prior to deliberations? It
19 was interesting the Ms. Ratliff said that the jury did
20 discuss how the case was proceeding, the number of
21 witnesses, things of that sort. And it's interesting
22 that when you talk to the jurors it's like talking to
23 witnesses at an intersection accident, it depends on
24 where they're sitting and what they recall.

25 But the simple fact is, Judge, when they

1 started deliberating, we have a prima facia showing,
2 or inference, that Mr. Maurer had already reached the
3 verdict prior to it being going to him. And we think
4 that that affects this defendant's right to have 12
5 dispassionate jurors openly discuss the matter --

6 THE COURT: You're saying that a juror is
7 precluded from formulating an opinion as they listen
8 to the evidence, I don't think the law supports that.
9 Juror, as they listen, they formulate opinions, they
10 are just not supposed to discuss them with anybody.

11 MR. RUNYON: They're not supposed to discuss
12 them, and I don't think they're supposed to reach the
13 final conclusion until the jury gets the case.

14 And I think a clear inference here is that Mr.
15 Maurer, once again with all his wifely intuition or
16 what have you, Mr. Maurer at least conveyed to his
17 wife in some fashion, through wife, through marital
18 telecommunications or what have you, that he was,
19 quote, going to be voting guilty. In other words, he
20 already decided, that's fine, I understand how things
21 like that can happen. And I'm not suggesting you
22 don't think about things.

23 Judge, for lack of a better expression I'm the
24 only person I think in the courtroom who sat on a
25 jury. And it was an extremely enlightening

1 experience. In was November of 1999. what goes on in
2 the jury room is extremely interesting. And I think
3 every lawyer should sit on a jury just to understand
4 how it really works.

5 And of course the witnesses come up, you think
6 about this, you're leaning this direction, you are
7 leaning that direction, but you really don't decide
8 until you sit down and after the judge gives you the
9 instructions you go in the room.

10 Now, I just think that we have met the first
11 prong. And the second prong is met in that we had 11
12 people deliberating, Judge, when they couldn't really
13 deliberate. And 11 people who went into the jury room
14 and said, okay, now what is this whole deal about?
15 what are we going to decide? They had one question.
16 And Mr. Maurer had already decided. He had reached
17 his verdict prior to the time he could.
18 And, frankly, I'm not sure how the Court wants to
19 interpret it, how the wife could have reached the
20 conclusion she did, but the simple fact is he more or
21 less announced it.

22 And I think that we were entitled -- and I
23 would also say, Judge, that the law is very clear that
24 unless you clearly have circumstances where a juror
25 would come in here and say, oh yeah, Mr. Maurer was

1 talking to us on Wednesday evening or Wednesday
2 afternoon and he had already made up his mind and we
3 have got to find this guy guilty and what have you, to
4 affected the jury, unless you have that clear-cut kind
5 of testimony, it's really addressed to the sound
6 discretion of the trial court.

7 And it's a little different from Judge
8 Keesley's decision at trial because he could very
9 clearly see when the definitions that the juror had
10 read in Black's Law Dictionary were in keeping with
11 his instructions. And the interest thing there too
12 was, and it's completely understandable, you know,
13 it's not like she brought the Black's Law Dictionary
14 with her. She read it the night before when they came
15 back to deliberations, a three-day deliberation. So
16 it's clearly understandable.

17 But the simple fact, judge, is here Mr. Maurer
18 did affect the deliberations. He just was ready to go
19 in there and find him guilty even before he got the
20 evidence, heard arguments or got the instruction from
21 the Court. We think Mr. Jenkins should be entitled to
22 a new trial.

23 Admittedly it's a fairly narrow problem, and
24 I'm not suggesting that Mr. Maurer is an evil man or
25 anything of that sort. But, as a practical matter,

1 the way this thing got started is not -- it didn't
2 come out of some juror saying something, it came out
3 of someone sending an e-mail who had no reason to,
4 quote, lie.

5 And I don't think she's lying. I think she
6 heard it and she's kind of reporting it in an offhand
7 fashion. So therefore we would ask the Court to
8 seriously consider granting to the defendant a new
9 trial. Setting aside the verdict and granting a new
10 trial.

11 THE COURT: Anything from the state?

12 MR. WILLIAMS: I will be quick, Your Honor.
13 Your Honor, I think more importantly than speculating
14 is we have clear -- we have some clear evidence in
15 front of us. And all we have and all the evidence
16 here is -- first of all speculation by Ms. Rumel, and
17 it sounds like speculation by the person at physical
18 therapy.

19 What Ms. Rumel testified to was that people
20 were sort of pushing the juror's wife, asking her
21 questions, saying what's going on, what's this about.
22 And it sounds like she was trying to draw conclusions
23 to answer questions or to discuss the case. But
24 certainly everything that she testified to sounded
25 like speculation.

1 There wasn't anything that was ever said that
2 the juror actually said he was going to do one thing
3 or another. In fact, some of what we did have was
4 speculation by the juror's wife, meaning that he
5 appeared to be upset, he seemed to be having a hard
6 time, and certainly that's consistent with what Ms.
7 Rumel says in her e-mail which is he's apparently
8 voting guilty.

9 So I don't think there is anything on this
10 record that shows that this juror had actually made up
11 his mind. In fact everything seemed to show that
12 people were trying to interpret his behavior and
13 speculate as to what they thought he was going to do.
14 And that's certainly corroborated by what he said,
15 that he had talked about what had happened, meaning
16 that it was a hard day, but he certainly never told
17 anybody what he intended to do, in fact he had not
18 made up his mind himself.

19 And, Your Honor, looking at what the law says,
20 it's a very high burden to start getting inside what
21 the jurors were doing during deliberations. There has
22 to be on one level of that first hurdle so to speak
23 some kind of outside influence.

24 And what Mr. Runyon talks about, a juror going
25 and reading a book, is certainly a juror taking

1 something from outside their deliberation, from
2 outside the evidence, and taking that into the jury
3 room with them. That's nothing close to what we have
4 here.

5 If we have anything it's possibly misconduct,
6 and when I say misconduct I mean of the premature
7 deliberation type. There has been absolutely no
8 allegation there's any kind of external influence in
9 this case, that anybody took information from outside,
10 or that this juror talked to his wife and got
11 information back from her.

12 If anything, it sounds like he could have
13 possibly prematurely deliberated, and I think that's
14 merely speculation. I understand, Your Honor, and I
15 believe that whenever there is some allegation that we
16 have to go through this process to be sure that that
17 did not happen, but everything we have heard during
18 this inquiry is that it didn't happen.

19 So I don't see any basis in fact or in the
20 record that would suggest that anything was done
21 improper. And I think that Mr. Maurer was simply
22 being candid when he said, my wife asked me a question
23 and I answered it. And it sounds like he answered it
24 in really the best way possible. I suppose he could
25 have said, I can't talk about it. But he simply said

1 he was upset based on some images. And I think
2 that's -- we've certainly protected the integrity of
3 the Court and integrity of the process, but there is
4 nothing here that would require a new trial.

5 THE COURT: Anything further, Mr. Runyon?

6 MR. RUNYON: No, Your Honor. We have made our
7 presentation.

8 THE COURT: If you all will bear with me a
9 moment, we will be at ease for about ten minutes.

10 (Whereupon, a recess was taken.)

11 THE COURT: I have listened intently to the
12 arguments of counsel, and we had the ability to
13 question each juror regarding this matter.

14 And I have taken the benefit of argument as
15 well as the inquiry of each of the jurors I will say
16 initially that this is a serious matter. Whenever
17 allegations of juror misconduct are raised, they're
18 serious because they affect the integrity of the
19 process which of course is paramount in this Court's
20 mind regarding the fairness and impartiality of any
21 verdict rendered, and the fairness and impartiality of
22 the process.

23 And I think it was best summed up by one of the
24 jurors who indicated that my instructions were
25 vehement, I think indicating that I was very serious

1 in those instructions and very stern. And I think
2 sometimes jurors wonder why you say things to them
3 over and over and over again. And I think probably
4 now having a point of reference they now understand
5 why you make those statements over and over and over
6 again, understanding of course the seriousness and
7 breadth of the process.

8 The case law is very clear that the trial court
9 has broad discretion in assessing allegations of juror
10 misconduct. The court is also equally clear that if
11 juror misconduct does not affect the impartiality of
12 the jury, it is not the type of misconduct which will
13 affect the verdict.

14 The decision to grant or deny a motion for new
15 trial based on juror misconduct is within the trial
16 Court's discretion. And accordingly the Court's
17 decision will not be disturbed absent an abuse of that
18 discretion which amounts to an error of law.

19 where the allegations of improper influence
20 potentially affect a fundamental fairness, of course
21 the Court may accept juror testimony to ensure due
22 process.

23 And we have had limited testimony to some
24 extent in terms of, and that was by consent of the
25 parties, with the questioning of the witnesses and

1 more particularly that of juror number 309, Mr.
2 Maurer, because it is those allegations that bring
3 this matter before the Court regarding any statements
4 his wife may have made during the course in her work
5 environment and being overheard by Ms. Rumel.

6 We have had many cases on juror misconduct in
7 the last year, that being the Pitman case, the Vestry
8 and Church Wardens of the Church of the Holy Cross
9 versus Orkin Exterminating, and those predecessors of
10 those cases, State versus Matthew Scott Harris. But
11 the case law really is very much the same.

12 And what has been raised before this Court is
13 -- would be in the nature of what would be considered
14 an external influence, that being a juror allegedly
15 discussing the case with someone else or prematurely
16 deliberating.

17 And I have looked at the Pitman case, which
18 really is very much factually like this case, there
19 was an allegation that a juror not only discussed the
20 case with his wife, but brought it into the
21 deliberations and discussed it with the other jurors.
22 And in addition to that, went to a bar and discussed
23 it with the bartender, and allegedly told the
24 bartender that he thought Mr. Pitman was guilty.

25 And I cannot think of more analogous factual

1 situation than that to this case. Because it's very
2 much the same, the allegations that he discussed the
3 matter with his wife, and she then reported that to
4 someone else. In the Pitman case the allegation was
5 that the juror had discussed the case with his wife,
6 and she indicated she thought Mr. Pitman was not
7 guilty.

8 The juror testified on inquiry that he never
9 disclosed to his wife his positions, or his position
10 about the case or his thought process about the case.
11 But during deliberations he said to the other jurors,
12 my wife does not agree with me, thereby implying that
13 she did not agree with whatever his vote was going to
14 be in the deliberations.

15 It then apparently came to the attention of a
16 reporter and another juror that this particular juror
17 had a discussion about the case with a bartender, and
18 indicated to the bartender that he thought that Mr.
19 Pitman -- or that he was going to vote that Mr. Pitman
20 was guilty, which I think goes even a step further
21 than what we have experienced in this case.
22 And the Supreme Court was really quite clear in
23 indicating that whenever a motion for a new trial is
24 based on juror misconduct due to an external
25 influence, with the allegations being the discussion

1 of the case with other parties, and even an indication
2 of how you may be leaning to vote.

3 The only difference in this case is that he
4 talked to a bartender. Well, there was some
5 allegation he talked to the bartender before
6 deliberations began, the bartender really couldn't
7 remember the timeline. He testified that the
8 discussions took place after deliberations began.

9 I don't know that it's necessarily crucial, at
10 least in terms of this Court's analysis of the facts
11 of this case, but the burden is on the defendant to
12 show prejudice. And that prejudice, as I understand
13 the case law, would be to show that there was an
14 external influence that affected the jury's
15 deliberations.

16 The testimony that I have before me that I will
17 give the most weight to would be that of Mr. Maurer.
18 Because everything else, what Ms. Rumel said, she
19 overheard in a thirdhand conversation, she was not a
20 party to the conversation. And the testimony that I
21 have from Mr. Maurer is that prior to deliberations he
22 did not discuss the case in any way, that he discussed
23 with his wife -- I'm looking for my notes, I
24 apologize. I wrote them down on my note sheet.

25 He acknowledges that his wife works as a

1 physical therapist at Medical University James Island
2 Ellis Oaks location. That he told his wife simply
3 that he was on jury duty. He did not give her any
4 details. He did however share with her that he had
5 seen images that were disturbing to him, although he
6 did not give her any details about the images.

7 And I don't think I'm mischaracterizing it when
8 he strongly said he did not indicate to her how he was
9 going to vote. And that he denied any indication
10 about how he was going to vote on the case. That his
11 wife, in response to an inquiry from his wife as to
12 why have you been so quiet the last few days, he
13 responded to her, this just has not been easy. He
14 said he would be surprised if someone had reported to
15 the court that his wife made these comments.

16 Now the Court in giving its direction to the
17 comments allegedly made by his wife by Ms. Rumel were
18 that she heard her say, he was upset, which
19 corroborates his statement to his wife that it was
20 disturbing to him, my words disturbing not his. That
21 the last few days had in fact been -- haven't been
22 easy. And that she heard her say in response to a
23 question, I think he -- I think that he is probably
24 going to vote guilty.

25 I think that my opinion about this would be

1 different if she had said to her in response to the
2 question, my husband told me he's going to vote
3 guilty. I think that's a very different statement
4 than, I think that he is probably going to vote
5 guilty. which indicates to me several layers of
6 things, one of which is that her comments to some
7 extent were speculation or conjecture on her part.
8 And it required her to surmise, or at least to give
9 her opinion, her impressions of her husband, and the
10 contingent term probably, which is conditional. It
11 does not say that he definitely was going to do
12 something.

13 But I think in large part the statement on her
14 part was rank speculation. And while it concerns me
15 regarding the integrity of the process, I do not think
16 it rises to the level of the type of external
17 influence that the Court would target as affecting the
18 jury deliberations as a whole.

19 But it still does not alleviate me of all --
20 it's troubling whenever, and it's troubling to the
21 public I think when someone makes a statement like
22 this, because it affects the entire process.

23 I do not want Mr. Runyon or his client to
24 perceive that the Court in any way does not understand
25 the seriousness of this, or diminishes in any way the

1 seriousness of this. And I think, based on my
2 comments I made to Ms. Rumel last week, the Court was
3 very troubled by the incidents as they evolved, and
4 I'm still troubled by it, frankly.

5 But in any event, what I have to consider is,
6 one, was there misconduct; and Two, when we are
7 talking about external influences as we are here, did
8 that conduct rise to the level of prejudice. That
9 being whether the misconduct, due to an external
10 influence, undermined the verdict, and was in some way
11 influenced by the verdict.

12 we look at the factors enumerated in Pitman,
13 one was the number of jurors exposed. well, upon
14 inquiry of the other jurors, none of them were
15 exposed. The weight of the evidence properly before
16 the jury. There certainly was evidence beyond a
17 reasonable doubt to support the jury's verdict.

18 And the third prong which is the likelihood
19 that curative measures would be effected in reducing
20 prejudice, that would not be applicable in this
21 situation because the trial was concluded and there
22 was not -- if it had been raised, however, prior to
23 the verdict, the Court certainly could have given a
24 curative instruction, but that is not factually how
25 this case evolved. So that factor could not be

1 properly considered by the Court.

2 The next prong or consideration for the Court
3 is if the juror misconduct affected the impartiality
4 of the jury. Or in terms of the case law, was the
5 juror misconduct -- as they say, juror misconduct does
6 not affect the impartiality of the jury if it is not
7 the type of misconduct which would affect the verdict.

8 If some of the jurors had indicated to me that
9 they had had discussions with Mr. Maurer, that he had
10 in some way had an in-depth discussion with his wife
11 that affected his impartiality, and that that in term
12 affected their impartiality. Mr. Maurer in and of
13 himself is only one juror. There are 12 jurors that
14 must reach consensus and reach a unanimous verdict.

15 The Court has not heard anything up to this
16 point that has affected these other 11 jurors in terms
17 of their ability to deliberate and their ability to
18 reach a fair and impartial verdict.

19 In response to the inquiry, the jurors advised the
20 Court that they did not engage in any preliminary
21 discussions about the case, that the only comments, at
22 least from Ms. Ratliff, the other jurors denied any
23 other discussions, that they just commented on the
24 process of the trial. In other words, there were a
25 lot of witnesses and things were moving slow, which is

1 typical in a trial.

2 They all denied having any discussions with Mr.
3 Maurer. Frankly, what I found interesting is that
4 most of them did not know who he was. They said, who
5 is that? So they must not have known him. If you had
6 discussions with someone you certainly would remember
7 who they were outside of deliberations.

8 And each advised the Court in answer that they
9 did not have any exposure to any facts outside of the
10 evidence in the case either before or during
11 deliberations. And that each also answered that they
12 did not prematurely deliberate regarding the cause.

13 So even if I were to take the allegations by
14 Ms. Rumel -- well, let me state that another way.
15 Even if I were to take the statement that she said as
16 true, it is still speculative. It does not indicate
17 an intent or fixed opinion on the part of the juror to
18 have been predisposed or to already have made a
19 decision.

20 As we know, at least I know even with me, I may
21 be predisposed to something before coming to court as
22 a result of study, but as the lawyers argue and talk
23 to me I change my mind all the time. And I don't
24 think there is any indication in the record that Mr.
25 Maurer did not fully engage in deliberations, did not

1 have a full and fair exchange with the other jurors
2 during the course of deliberations, and thus become a
3 part of the jury's verdict in this matter.

4 And again, as I indicated, the most analogous
5 case in terms of facts is the Pitman decision, where
6 the gentleman discussed it with his wife and with the
7 bartender. And the court indicated by its decision
8 that there was no evidence in the record that the
9 behavior had risen to the level of affecting the
10 impartiality of the jury, and it did not affect the
11 verdict.

12 And there is no evidence in the record that the
13 -- that Mr. Jenkins experienced any prejudicial
14 effects from any potential comments that were made, or
15 that the comment prejudicially affected the jury's
16 verdict, or affected Mr. Maurer's decision to vote
17 guilty in this case.

18 Therefore the motion for a new trial is denied.

19 MR. RUNYON: Thank you, Your Honor.

20 THE COURT: Thank you. I appreciate your all's
21 patience in allowing me to -- and that decision is
22 based on State versus Pitman, found at 373 S.C. 5 --
23 527, 647 S.E.2d 144 which is a 2007 Supreme Court
24 decision.

25 The Vestry and Church wardens at the Church of

1 the Holy Cross versus Orkin Exterminating which is
2 found at 373 S.C. 200, 644 S.E.2d 735 which is a 2007
3 Court of Appeals decision.

4 And state versus Matthew Scott Harris which is
5 found at 340 S.C. 59, which is 530 S.E.2d. 626, and
6 that is a 2000 Supreme Court decision.

7 As well as State versus Aldrich, which is found
8 at 333 S.C. 307, 509 S.E.2d 811, which is a 1999
9 Supreme Court decision.

10 Thank you all very much.

11 MR. RUNYON: Thank you, Your Honor

12 (Whereupon, the proceedings in this matter
13 before the Court were adjourned.)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
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 record of all the proceedings had and
evidence introduced in the trial of the captioned
case, relative to appeal, in the Circuit Court for
Charleston County, South Carolina, on the 14th day of
March, 2008.

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

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter