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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF GENERAL SESSIONS

The Honorable Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

AUG 10 2016

Case No. (s) 2012-GC-07-2246 & 2012- GS-07-2247

SC Court of Appeals

State of South Carolina

Respondent,

v.

Walter Tucker,

Appellant.

RECORD ON APPEAL
VOLUME 1 OF 5

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INDEX

VOLUME I

ORDER DENYING MOTION FOR NEW TRIAL.....	3-5
NOTICE OF APPEAL AND PROOF OF SERVICE.....	6-8
MOTION IN LIMINE.....	9-10
NOTICE OF MOTION AND MOTION TO RECONSIDER ADMISSIBILITY OF KHIAMBER BIGELOW 404(B) EVIDENCE	11-15
NOTICE OF MOTION AND MOTION FOR NEW TRIAL PURSUANT TO SCR 29 (A).....	16-17
AMENDED MOTION FOR NEW TRIAL BASED ON JUROR MISCONDUCT; MOTION FOR CONTINUANCE; MOTION FOR HEARING FOR JUROR MISCONDUCT INQUIRY	18-33
TRIAL TRANSCRIPTS.....	34-198

VOLUME II.....

TRIAL TRANSCRIPTS	199-389
-------------------------	---------

VOLUME III.....

TRIAL TRANSCRIPTS	390-556
-------------------------	---------

VOLUME IV.....

TRIAL TRANSCRIPTS	557-689
-------------------------	---------

VOLUME V

TRANSCRIPT OF MOTION FOR NEW TRIAL HEARING	690-734
CHARGES	735-739
JUROR AFFIDAVITS.....	740-745
CHATHAM COUNTY DISMISSAL	746-747

State of South Carolina
OFFICE OF THE SOLICITOR
FOURTEENTH JUDICIAL CIRCUIT

0 0003

ALLENDALE, BEAUFORT
COLLETON, HAMPTON AND
JASPER COUNTIES



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SOLICITOR

October 29, 2015

Robert E. Ferguson, Jr., Esquire
Post Office Box 845
Beaufort, South Carolina 29901

Derek M. Wright, Esquire
50 Hurt Plaza, Ste 802
Atlanta, Georgia 30303

Re: State vs. Walter Tucker
2012-GS-07-2246
2012-GS-07-2247

Dear Sirs:

Enclosed is a clocked copy of Judge Goldsmith's Order Denying Motion for New Trial in the above-reference matters.

Should you need anything further, please do not hesitate to contact our office.

Sincerely,

Linda Delahunty
Executive Assistant to Solicitor Stone

LD:

Enclosures

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
THE STATE)
vs.)
Walter Tucker,)
Defendant)

IN THE COURT OF GENERAL SESSIONS
Ind. Nos. 2012-GS-07-2246- MURDER
2012-GS-07-2247- AR

Order Denying Motion for New Trial

2015 OCT 28 AM 9:06
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter having come before the Court upon Defendant's Motion for New Trial, the Court finds as follows:

Defendant's motion for a New Trial is based on an allegation of juror misconduct as to juror Jessica Masanto. Defendant was tried and convicted of Murder and Attempted Armed Robbery in Beaufort County on or about April 16, 2015. The Defendant along with others set up a fake drug deal with the victims in this case to rob the victims. During the robbery Quantize Greer was killed. Prior to Defendant Tucker's trial Antonio Brewer, an eyewitness, was killed. During the trial the jury was told that Mr. Brewer was deceased and unavailable to testify.

In support of his motion, Defendant submitted an affidavit from Quornisha Jones as well as two brief social media contacts purported to be between Ms. Jones and Ms. Masanto. In her affidavit, Ms. Jones claims that she and Ms. Masanto are friends and that Ms. Masanto approached her after the Trial and asked "what have you gotten yourself into?" Ms. Jones then claimed that Ms. Masanto was friends with Antonio Brewer and that she blamed Defendant Tucker for Mr. Brewer's death. One of the social media contacts alleged occurred well before the jury trial. The other contact allegedly occurred after Ms. Masanto was contacted by investigators with the Solicitor's office which occurred after Defense counsel disclosed this issue to the Solicitor's office and to the Court on or about October 2, 2015. Ms. Masanto requested that Ms. Jones call her on or about October 6, 2015, which was after the investigator contacted Ms. Masanto, but before Ms. Masanto executed her affidavit. The Defendant argues that Ms. Masanto intentionally concealed information about her knowledge and relationship to Ms. Jones and Mr. Brewer, and that this constituted juror misconduct which would warrant a new trial. Defendant argued that a prima facie issue had been established by the competing affidavits and requested that the Court conduct an evidentiary hearing at which time Ms. Jones, Ms. Masanto, or other evidence could be presented to fully litigate the issue. The Court declined to set the matter down for a hearing over Defendant's objection, and decided to proceed only on affidavits.

The State argues that Ms. Jones was listed as a potential witness in the case. Further, that Ms. Jones did not have any first hand knowledge of Defendant Tucker and was not called

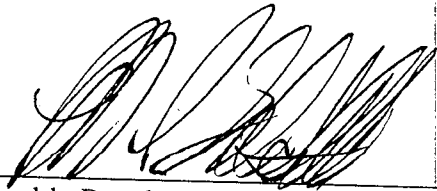
as a witness. The State submitted an affidavit from Ms. Masanto which stated that she was not personal friends with either Quornisha Jones or Antonio Brewer. Further that she had not had any discussions about the case with Ms. Jones or Mr. Brewer. Finally, that she had not had any conversations wherein she blamed Defendant Tucker for Antonio Brewer's Death.

While no transcript was available, the Court believes that during the Defendant's trial, the Court inquired of all jurors including Ms. Masanto if they were connected by blood or marriage or had a close personal friendship with any of the potential witnesses in the case.

Based on the affidavits submitted by both the State and the Defendant, as well as the arguments of counsel and the applicable law, this Court finds no credible evidence that Ms. Masanto was related by blood or marriage or had a close personal relationship with Ms. Jones, Mr. Brewer or any other potential witness in the case. The Court further finds no credible evidence that Ms. Masanto concealed any information from the Court during this trial. The Defendant's Motion for a New Trial is therefore respectfully DENIED.

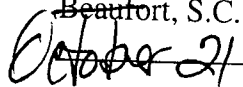
Further, all other grounds or errors raised by Defendant at trial, raised during the directed verdict at trial, raised at the end of the trial, or otherwise raised in Defendant's Motion for New Trial are hereby DENIED.

IT IS SO ORDERED.



The Honorable Brooks P. Goldsmith
S.C. Circuit Court Judge

Beaufort, S.C.

 October 21, 2015

LAW OFFICE OF ROBERT E. FERGUSON, JR., LLC
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November 10, 2015

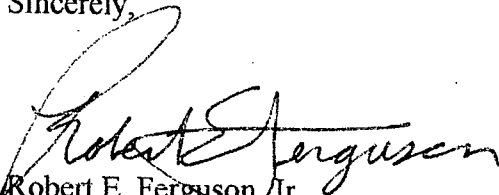
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: *State of South Carolina, Respondent, v. Walter Tucker, Appellant,*
Case No(s): 2012-GS-07-2246 & 2012-GS-07-2247

Dear Madam Clerk,

Enclosed please find for filing a Notice of Appeal and Proof of Service in the above referenced case. Please file the original and return a filed copy to my office in the self-addressed stamped envelope provided herein. Please let me know if you have any questions or concerns. Thank you for your time and consideration.

Sincerely,


Robert E. Ferguson, Jr.

Enclosures

Cc: Beaufort County Clerk of Court (w/ enclosures)
The Honorable Isaac McDuffie Stone, III (w/ enclosures)
Derek M. Wright, Esquire (w/ enclosures)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No.(s) 2012-GS-07-2246 & 2012-GS-07-2247

The State,

Respondent,

v.

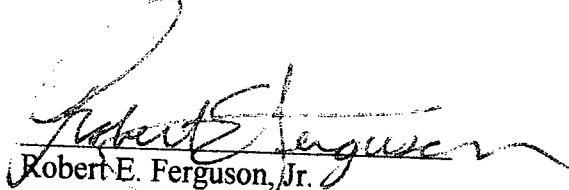
Walter Tucker,

Appellant.

NOTICE OF APPEAL

The Appellant, Walter Tucker, appeals the jury verdict, conviction, sentencing and denial of Motion for New Trial in the above captioned cases. The sentences were imposed by the Honorable Brooks P. Goldsmith on April 16, 2015. A timely Motion for New Trial was filed on April 24, 2015. An Amended Motion for New Trial was filed on October 12, 2015, and a hearing was conducted on that date. On November 2, 2015, Defendant received written notice of entry of the order denying Defendant's Motion for New Trial.

November 10 2015


Robert E. Ferguson, Jr.
Post Office Box 845
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(843) 521-0141
Attorney for Appellant

Other Counsel of Record:
The Honorable Isaac McDuffie Stone, III
Solicitor of the 14th Judicial Circuit
Post Office Box 1880
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Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

The Honorable Brooks P. Goldsmith, Circuit Court Judge

Case No.(s) 2012-GS-07-2246 & 2014-GS-07-2247

The State,

Respondent,

v.

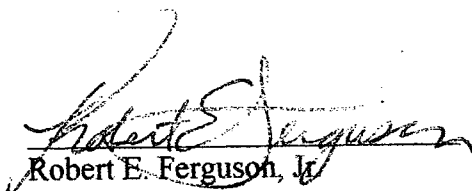
Walter Tucker,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on November 10, 2015, addressed to the Other Counsel of Record, The Honorable Isaac McDuffie Stone, III, Solicitor of the 14th Judicial Circuit, Post Office Box 1880, Bluffton, South Carolina 29910.

November 10, 2015


Robert E. Ferguson, Jr.
Post Office Box 845
Beaufort, South Carolina 29901
(843) 521-0141
Attorney for Appellant

Other Counsel of Record:
The Honorable Isaac McDuffie Stone, III
Solicitor of the 14th Judicial Circuit
Post Office Box 1880
Bluffton, South Carolina 29910
(843) 255-5880
Attorney for Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
)

STATE OF SOUTH CAROLINA,)
 Plaintiff,)
)

VS.)
)
)

WALTER TREVOY TUCKER,)
 Defendant.)
)

IN THE COURT OF GENERAL SESSIONS
 Indictment No(s): 2012-GS-07-2246, 2247, 2248

MOTION IN LIMINE

COMES NOW WALTER TUCKER, the defendant in the above-styled case, by and through the undersigned counsel, and states that the following matters must be heard by the Court prior to trial:

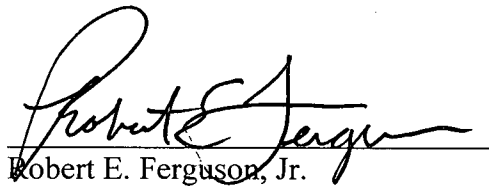
Defendant requests that the following matters be precluded from trial:

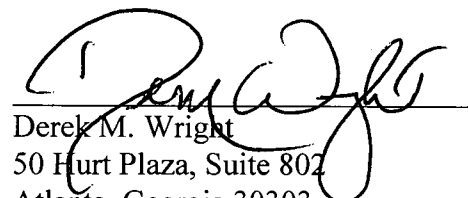
1. Any and all prior convictions, prior bad acts of the Defendant, or any evidence which would constitute 404(b) evidence, including but not limited to evidence regarding an incident which is alleged to have occurred in Savannah;
2. Any evidence as to the alleged gang affiliation of the Defendant;
3. Any in-court identification by any witness that has not identified or attempted to identify Defendant prior to trial;
4. Any evidence which was not disclosed to the Defendant prior to trial;
5. Any hearsay evidence from a declarant that has not testified at trial or which is not admissible under the rules of evidence;
6. Any alleged statements of codefendants during the pendency of an alleged conspiracy and any alleged statement of a codefendant which violate Bruton.
7. Any hearsay evidence, prior trial testimony, or alleged statements of Antonio

Brewer;

8. Any reference to the death of Antonio Brewer;
9. Any statements of the Defendant, unless or until, the voluntariness of such statements have been established and such statements are established as admissible under rules of evidence 404(b) and 403.
10. Any reference to Derek M. Wright being an attorney who practice is out of Atlanta, Georgia.

Respectfully submitted,


Robert E. Ferguson, Jr.
Post Office Box 845
Beaufort, South Carolina 29901


Derek M. Wright
50 Hurt Plaza, Suite 802
Atlanta, Georgia 30303

, 2015
Beaufort, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS
Indictment No(s).: 2012-GS-07-2246, 2247, 2248

STATE OF SOUTH CAROLINA,)
Plaintiff,)

VS.)

NOTICE OF MOTION AND MOTION TO
RECONSIDER ADMISSIBILITY OF
KHIAMBER BIGELOW 404(B) EVIDENCE

WALTER TREVOY TUCKER,)
Defendant.)

COMES NOW WALTER TUCKER, Defendant herein, by and through the undersigned counsel, and files the above styled motion and shows the Court as follows:

1.

The State proffered on April 13, 2015 that it intended to introduce certain evidence under Rule 404(B) through the testimony of Khiamber Bigelow.

2.

The State specifically stated as follows:

- a. That Khiamber Bigelow would testify that she heard the Defendant plan to kill the codefendant Travis Polite.
- b. That the Defendant hired or arranged for a person named Savage to kill the codefendant Travis Polite.
- c. That Savage is a killer with the word Savage tattooed across his chest.
- d. That the Defendant provided Savage with a gun to kill the codefendant Travis Polite.
- e. That the gun was hidden in the gear shift of a rental car.
- f. That Savage was stopped in the vehicle, the vehicle was impounded, and that the gun was discovered.
- g. That Savage was on his way to kill the codefendant.

- h. That the rental vehicle had rear end damage. In fact, the State intimidated that the vehicle was associated with Savage and this rear end damage was a way to identify Savage's vehicle.
- i. The State vehemently argued that all of this things were true and were not "coincidence".

3.

The Court, based on these representations by the State, denied Defendant's Motion in Limine to Exclude such evidence.

4.

Prior the hearing, the Defense believed that the State was not seeking to introduce Savannah evidence except as to the alleged "spontaneous utterance" of the Defendant. The Court ruled for the Defendant and excluded same. The Defense did not expect the State next to move to introduce this additional evidence. Accordingly, immediately after the hearing the Defense time stamped the entirety of the interview with Khiamber Bigelow.

5.

As a result, the Defense contends that the representations of the State were wholly inaccurate and misrepresent the testimony of Khiamber Bigelow. Specifically, a review of the interview reveals the following:

Statements to Savannah police:

- a. Bigelow stated that the Defendant talked about killing "a codefendant" but "did not know his name" or which codefendant or who the codefendant was. (4:58:13).
- b. Bigelow also stated the Defendant was going to send someone but did not know who. (4:48:44).
- c. Again Bigelow stated she does not know the name of the codefendant. (4:58:53).
- d. Bigelow stated the Defendant stated that the codefendant is trying to connect him with the person who did the murder. (5:01:15).
- e. Bigelow stated that the Defendant did not know where the codefendant lives. (5:01:50).

- f. Bigelow stated that she was forced to prostitute for the Defendant to raise money to pay for the "adjustment" or murder of the codefendant. (5:00:45); (5:03)
- g. Bigelow stated that there was small gun in the rental car hidden in the stick shift. (5:04:00).
- h. Bigelow stated that Cedric aka "Savage" was arrested while driving the vehicle. (5:04:09).
- i. Bigelow also pointed out that the vehicle had rear end damage but it was in an accident while she was driving it. (5:10:45).

Statements to Investigators Roger Eaton and Dillon Hightower:

- a. Bigelow stated they went to Savannah to make an "adjustment". (6:45:00).
- b. Bigelow stated that Defendant was going to kill a codefendant. (6:47:05).
- c. Bigelow stated that the Defendant talks all the time, that she heard him say "white girl" and heard him say the name "Travis". (6:53:00).
- d. As Bigelow started to say she does not know who Travis is she was cut off by Investigator Eaton. (6:53:51).
- e. Bigelow stated that the Defendant stated he didn't do it. (6:54:20)
- f. Bigelow stated that the Defendant admits being there during the shooting. (6:54:20).
- g. Bigelow stated that the Defendant said that the white girl is trying to connect him to the murder, but he is only connected to the robbery. (6:55:30)
- h. Bigelow stated the Defendant stated he ran during the incident and was shooting behind him without looking. (6:56:10)
- i. The investigator tells Bigelow that the codefendant is named Travis and tells Bigelow information about the case. (6:57:10)
- j. Bigelow asks if Travis is a codefendant. (6:57:30)
- k. Bigelow stated that "Travis may have been the person". (6:57:36)
- l. Bigelow stated she spoke with Savage and that "Savage wasn't going to do anything". (7:00:10)
- m. Bigelow stated that Savage is not a murderer and was not going to do it. (7:01:20).
- n. Bigelow stated that the Defendant talked about buying a train ticket to have an unknown person come to Savannah to commit the murder. (7:06:10).

- o. Bigelow was asked if the gun in the car was going to be used by Savage for the murder and she stated "she was not sure, I think they were going to get another gun". (7:05:25).
- p. Bigelow stated Savage was not going to do any murder and "it was always going to be someone else". (7:06:04).
- q. Investigator tells Bigelow why the Defendant would be going after Travis. (7:10:55); (7:11).
- r. Investigator tells Bigelow "there is a special place in hell for people like Walter Tucker".

Accordingly, a review of the interview of Khiamber Bigelow demonstrates that the representations made to the Court were inaccurate and false. Bigelow never said that the codefendant's name was Travis, never said Savage was going to kill the codefendant, never said Savage was going to use the gun in the vehicle, and never said Savage was arrested while on the way to kill the codefendant.

Therefore, the Court must make its determination on the accurate facts presented herein. Thus, the question before the Court is whether evidence should be admitted where Bigelow stated that Defendant wanted to kill an unknown codefendant, who lives at an unknown address, by an unknown person who has not been hired to do the killing, with an unknown gun, at an unknown time, and has not done any substantial step in the furtherance of doing any act towards the codefendant.

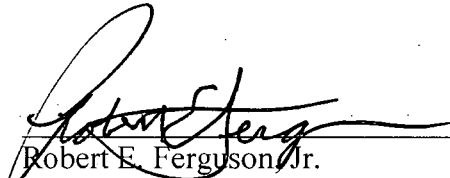
Further, the Court must make a determination whether Khiamber Bigelow has been improperly influenced and told information by investigators of the Solicitor's office such that here testimony is now the product of witness tampering.

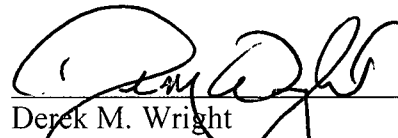
Further, the Court must require the State to show cause as to why the representations made to the Court were wholly inaccurate.

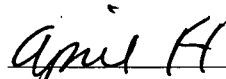
WHEREFORE, DEFENDANT PRAYS:

1. That the Court reconsider its ruling regarding admission of 404(b) evidence of Khiamber Bigelow;
2. That the Court exclude the testimony of Khiamber Bigelow, or in the alternative, restrict the testimony of Khiamber Bigelow consistent with her statements prior to being influenced by the investigator's of the Solicitor's office;
3. That the State be required to show cause as to why the representations made to the Court were wholly inaccurate and had the affect of misleading the Court as to the testimony of a witness;
4. For such other and further relief which this Court deems proper.

Respectfully submitted,


Robert E. Ferguson Jr.
Post Office Box 845
Beaufort, South Carolina 29901


Derek M. Wright
50 Hurt Plaza, Suite 802
Atlanta, Georgia 30303

 , 2015
Beaufort, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS
 Indictment No(s): 2012-GS-07-2246, 2247, 2248

STATE OF SOUTH CAROLINA,)
 Plaintiff,)

VS.)

NOTICE OF MOTION AND MOTION FOR
 NEW TRIAL PURSUANT TO SCRPC 29(A)

WALTER TREVOY TUCKER,)
 Defendant.)

2015 APR 24 PM 4:08
 JUDGE ANN ROSE
 BEAUFORT COURT
 CLERK OF COURT

TO: HONORABLE ISAAC MCDUFFIE STONE, III, AS SOLICITOR:

YOU WILL PLEASE TAKE NOTICE that Defendant Walter Tuckers comes now and files within 10 days of the verdict and sentence of the Court, this Motion for New Trial, and pursuant to South Carolina Rules of Criminal Procedure 29(a), and shows the Court as follows:

1.

A verdict was rendered for the State and against the Defendant on April 16, 2015. Defendant was convicted of Murder and Attempted Armed Robbery and received a sentence of 39 years.

2.

Defendant is dissatisfied with the verdict and sentence of the Court. Defendant contends that:

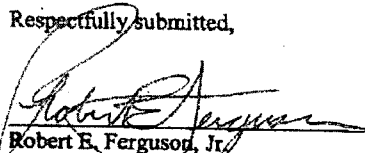
- a. The verdict is contrary to evidence and without evidence to support it.
- b. The verdict is inconsistent and strongly against the weight of the evidence.
- c. The verdict and sentence are contrary to law and the principles of justice and equity.
- d. The introduction of 404(b) evidence by and through the evidence of Ms. Bigelow denied Defendant a fair trial.

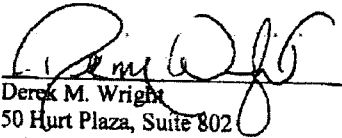
- e. The jury venire was tainted with extraneous evidence which did come in at trial.

WHEREFORE, the Defendant prays:

- a. That the Defendant be given time to obtain a transcript of the proceedings;
- b. That the Defendant is allowed to amend and perfect this Motion for New Trial, and to prepare, present for approval, and file the brief of evidence in said case;
- c. That the Defendant be granted an evidentiary hearing at which time the merits of this motion may be heard;
- d. That the time for the filing of a Notice of Appeal be stayed, unless and until, this motion is denied; and
- e. For such other and further relief that the Court deems fit and proper.

Respectfully submitted,


Robert E. Ferguson, Jr.
Post Office Box 845
Beaufort, South Carolina 29901


Derek M. Wright
50 Hurt Plaza, Suite 802
Atlanta, Georgia 30303

April 24th, 2015
Beaufort, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS
Indictment No(s): 2012-GS-07-2246, 2247, 2248

00018

STATE OF SOUTH CAROLINA,)
Plaintiff,)

VS.)

WALTER TREVOY TUCKER,)
Defendant.)

AMENDED MOTION FOR NEW TRIAL
BASED ON JUROR MISCONDUCT;
MOTION FOR CONTINUANCE; MOTION FOR
HEARING FOR JUROR MISCONDUCT
INQUIRY

COMES NOW WALTER TUCKER, Defendant herein, by and through the undersigned
counsel, and files the above styled motion and shows the Court as follows:

1.

Defendant was convicted by a jury on or about April 12-16, 2015.

2.

During jury selection, all jurors were questioned in voir dire regarding their knowledge of
State Witnesses, including but not limited to Quornisha Jones and Antonio Brewer. During voir
dire no prospective jurors raised their hands or otherwise disclosed that they knew either Ms.
Jones or Mr. Brewer.

3.

During the second day of trial, one of the seated jurors sent a note to the Court that they
realized that knew Ms. Jones from work. The Court excused that juror.

4.

During the trial, there was also a stipulation that the witness "Antonio Brewer was
unavailable to testify at trial". The Court will recall that Antonio Brewer was killed two weeks
prior to the start of this trial.

2015 OCT 12 PM 2:28
JERRI ANN ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

5.

One week after the trial, juror Jessica Monsanto saw witness Quornisha Jones at work. Juror Monsanto asked Ms. Jones "what trouble did you get yourself into girl?". (See attached affidavit of Quornisha Jones). During this conversation, Juror Monsanto further disclosed that that she thought Defendant was responsible for the shooting death of her friend Antonio Brewer. Juror Monsanto is also friends with the girlfriend of Antonio Brewer that was also shot during the shooting which killed Antonio Brewer. AT NO TIME DURING VOIR DIRE OR DURING THE TRIAL DID JUROR MONSANTO EVER INFORM THE COURT OR PARTIES THAT SHE KNEW WITNESSES QUORNISHA JONES OR ANTONIO BREWER OR ANTONIO BREWER'S GIRLFRIEND.

6.

On or about October 2, 2015, during email exchanges between Sean Thornton, Derek M. Wright, and the Court, counsel for the Defendant disclosed that there was information of juror misconduct. On October 6, 2015, Juror Monsanto sent witness Quornisha Jones a message to call her and then defriended Ms. Jones on her Facebook account. Additionally, screenshots provide by Ms. Jones show that Ms. Jones and Quornisha Jones were communicating by social media 36 weeks ago, which establish that they were co-workers and friends prior to jury trial.

7.

The Court will recall, that over the Defendant objection and renewed objection, the State presented evidence of Amber Bigelow who testified that Defendant was trying to arrange for the murder of his codefendant. Accordingly, in addition to Juror Monsanto's willful non-disclosure, there was evidence presented which was similar to Juror Monsanto's predisposed belief that Defendant has Antonio Brewer killed. This is especially telling as this Court sustained Defendant's objection to the State's request to inform the jury that Antonio Brewer has been killed. As such information was not disclosed to the jury at trial, the fact that Juror Monsanto knew that Antonio Brewer had been killed also demonstrates that Juror Monsanto failed to disclose that she knew Antonio Brewer and did not disclose it during voir dire.

Juror Monsanto participated in deliberations and the verdict against Defendant. In and of itself this denied Defendant a fair trial. However, further inquiry may be done to determine if this information was shared by Juror Monsanto during deliberations which further denied Defendant a fair trial.

II.

ARGUMENT AND CITATION

The law applicable to juror misconduct for willful nondisclosure as presented in this motion is set forth in the recent decision of State v. Coaxum, 410 S.C. 320 (S.C. 2014). In Coaxum the Court stated:

"All criminal defendants have the right to a trial by an impartial jury." State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001) (citing U.S. Const. amends. VI and XIV). To that end, the jury must render its verdict free from outside influences of all kinds. Kelly, 331 S.C. at 141, 502 S.E.2d at 105 (quoting State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct.App.1993)): To protect both parties' right to an impartial jury, the trial court must conduct voir dire of the prospective jurors to determinate whether the jurors are aware of any bias or prejudice against a party, as well as to "elicit such facts as will enable [the parties] intelligently to exercise their right of peremptory challenge." Woods, 345 S.C. at 587, 550 S.E.2d at 284.

"[T]rial judges and attorneys cannot fulfill their duty to screen out biased jurors without accurate information." Kelly, 331 S.C. at 145, 502 S.E.2d at 106. Should jurors give false or misleading answers during voir dire, the parties may mistakenly seat a juror who could have been excused by the court, challenged for cause by counsel, or stricken through the exercise of a peremptory challenge. State v. Gullledge, 277 S.C. 368, 371, 287 S.E.2d 488, 490 (1982).

In the event of such juror misconduct, the trial court must inquire into whether the withheld information affects the jury's impartiality. Kelly, 331 S.C. at 141, 502 S.E.2d at 104. However, the court should not grant a mistrial based on a juror's concealment of information "unless absolutely necessary." Id. at 142, 502 S.E.2d at 104. "Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial." Id. (citing State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989)); see also State v. Williams, 321 S.C. 455, 459-60, 469 S.E.2d 49, 52 (1996) (affirming the trial court's decision to seat an alternate juror midtrial after another juror's impartiality came into question); State v. McDaniel, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980) (same).

We have previously held that a new trial is required "only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges." Woods, 345 S.C. at 587, 550 S.E.2d at 284 (emphasis added). *In the face of a juror's intentional nondisclosure of pertinent information during voir dire, "it may be inferred, nothing to the contrary appearing, that the juror is not impartial."* *Id.* at 587-88, 550 S.E.2d at 284. *Thus, should the trial court fail to replace such a juror or grant a mistrial, the party need only demonstrate the error of the trial court's decision by proving the concealment was, in fact, intentional; however, the party need not show prejudice, as the bias against the moving party is inferred, and prejudice from the moving party's inability to strike the juror is apparent.* *Id.* at 589, 550 S.E.2d at 285.

It has long been the law in the State of South Carolina that a juror is expected to give truthful answer in voir dire. In State v. Gulleddge, 277 S.C. 368 (S.C. 1982), the Court held:

"Where the trial judge grants counsel's request that the judge ask a particular question on voir dire, counsel is entitled to a truthful answer to the question. [277 S.C. 371] In the case of Photostat Corporation v. Ball, 338 F.2d 783 (CA 10 1964) it was held reversible error to fail to grant a new trial where jurors did not respond to voir dire questions: "Necessarily, it is expected and required that jurors in their answers shall be completely truthful and that they shall disclose, upon a general question, any matters which might tend to disqualify them from sitting on the case for any reason. It therefore becomes imperative that the answers be truthful and complete. False or misleading answers may result in the seating of a juror who might have been discharged by the Court, challenged for cause by counsel or stricken through the exercise of peremptory challenge. Ball, supra, at 786."

Further, looking at the Ball decision, the Tenth Circuit stated:

"The Constitution does not provide any formula or procedures for the ascertainment of a mental attitude or state of mind from which requisite impartiality is to be determined. See United States v. Wood, 299 U.S. 123, 57 S.Ct. 177, 81 L.Ed. 78; Frazier v. United States, 335 U.S. 497, 69 S.Ct. 201, 93 L.Ed. 187; Dennis v. United States, 339 U.S. 162, 70 S.Ct. 519, 94 L.Ed. 734. The common law and the statutes have, however, laid down definite safeguards for the effectuation of the constitutional guaranty. The common law cautiously excludes from the jury box for implied prejudice persons occupying a certain status or relationship to a litigant. See Cooley's Blackstone, Vol. 2, p. 223. In those

enumerated categories the law conclusively presumes bias or partiality. See United States v. Burr, 25 Fed.Cas. pp. 49, 50, No. 14,692. See also Mr. Justice Frankfurter dissenting in Dennis v. United States, supra, 339 U.S. p. 181, 70 S.Ct. p. 525.

Statutory law has relaxed the rigidity of the common law, and with enumerated exceptions has committed to the trial judge the power to excuse or exclude for good cause any person called as a juror. 28 U.S.C. § 1863. And, all challenges for cause or favor are determined by the court. 28 U.S.C. § 1870. "While impaneling a jury the trial court has a serious duty to determine the question of actual bias, and a broad discretion in its rulings on challenges therefor." Dennis v. United States, supra, p. 168, 70 S.Ct. p. 521.

Then, as if out of an abundance of precaution, the statute preserves the common-law right to peremptorily challenge a prospective juror for suspicion of bias or partiality. The right is a traditional, arbitrary and capricious one and "it must be exercised with full freedom, or it fails of its full purpose." Lewis v. United States, 146 U.S. 370, 378, 13 S.Ct. 136, 139, 36 L.Ed. 1011. Thus, under statutory law, the court is the judge of actual bias, but counsel is the sole and exclusive judge of whom he shall challenge for suspected bias or prejudice against his client's cause. No one will gainsay that the denial or substantial impairment of the statutory right of peremptory challenge is prejudicial to the constitutional right to a fair and impartial jury.

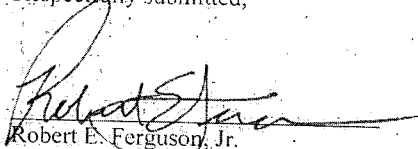
The very purpose of voir dire examination is to develop the whole truth concerning the prospective juror's state of mind, not only to enable the trial judge to determine actual bias, but to enable counsel to exercise his intuitive judgment concerning the prospective jurors' suspected bias or prejudice. "The right of challenge includes the incidental right that the information elicited on the voir dire examination shall be true." Drury v. Franke, 247 Ky. 758, 57 S.W.2d 969, 985, 88 A.L.R. 917, 941. As so well stated by Judge Vogel, while a trial judge, "The answers to questions put by the Court necessarily form the basis for the Court's excusing a juror on its own motion or challenges for cause * * * and the exercise of peremptory challenges by each side. Necessarily, it is expected and required that jurors in their answers shall be completely truthful and that they shall disclose, upon a general question, any matters which might tend to disqualify them from sitting on the case for any reason. *It therefore becomes imperative that the answers be truthful and complete. False or misleading answers may result in the seating of a juror who might have been discharged by the Court, challenged for cause by counsel or stricken through the exercise of peremptory challenge. The seating of such a juror could and probably would result in a miscarriage of justice and therefore courts and attorneys, who are officials of the court, are ever mindful of the importance of jurors' answers to questions regarding their qualifications.*" United States v. Freedlund, D.C., 111 F.Supp. 852, 853.⁴

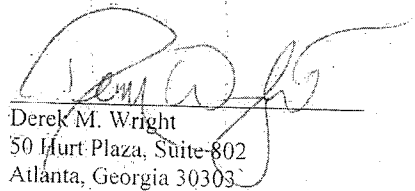
We have said that a "juror's answer to questions touching his state of mind is primary evidence of his competency", and in case of doubt, justice demands that the challenge for cause be allowed. United States v. Chapman, 10 Cir., 158 F.2d 417, 421. In Consolidated Gas and Equipment Company of America v. Carver, 10 Cir., 257 F.2d 111, we recognized the burden on the complaining litigant in a post-verdict hearing to show that failure of a juror to fully and truthfully answer questions propounded to the panel concerning his experience in similar litigation resulted in prejudice to his cause. We embraced the settled rule which moves the court to act only upon a showing of probable bias of the juror with consequent prejudice to the unsuccessful litigant.

WHEREFORE, DEFENDANT PRAYS:

1. That the Court grant Defendant a new trial based on juror misconduct;
2. In the alternative, that the Court continue this matter, compel the attendance of all jurors, and inquire into the juror misconduct and improper extrajudicial information set forth herein;
3. That the Court continue this matter to allow Defendant to obtain the transcript to be able to cite to the record in support of Defendant's motion for new trial, including but not limited to, showing that Juror Monstanto did not answer truthfully in voir dire, and
4. For such other and further relief which this Court deems proper.

Respectfully submitted,


Robert E. Ferguson, Jr.
Post Office Box 845
Beaufort, South Carolina 29901


Derek M. Wright
50 Hurt Plaza, Suite 802
Atlanta, Georgia 30303

October 12, 2015
Beaufort, South Carolina

AFFIDAVIT

0 0024

I, Quornisha Jones, being of sound mind and over 21 years of age, give this affidavit, and swear under oath that the facts set forth herein are true and correct to the best of my knowledge:

1.

I am a resident of South Carolina and was previously a person listed as a witness for the State of South Carolina in the matter of State of South Carolina v. Walter Tucker.

2.

I have known and worked with Jessica for several years. I would describe our relationship as co-worker and friends. We speak at work and have communicated on social media.

3.

About 1 week after Jessica served on the jury, Jessica saw me at work and stopped me. She ask me "what did you get yourself into girl". Jessica then when on to tell me that she had been on the jury. Jessica said that she believed that "Oowee" was responsible for Antonio Brewer being killed 2 weeks before trial. Jessica was friends with Antonio Brewer and his child's mother who was also shot 2 weeks prior to trial. Jessica and I also discussed Brandon in this conversation also.

4.

I have attached screenshots to this affidavit to support of my statement. The first screen shot shows the length of time I have known and communicated with Jessica. Jessica is "m13_yupthatsher". The second screenshot is also Jessica so that you can see what she looks like and that we communicate through social media. Finally, on Tuesday

October 6, 2015, Jessica sent me a message to call her and left me her number.

Immediately after, she took me off of her face book. But I was able to screenshot her request for me to call her. I have been told that this information in my affidavit was disclosed to the court and prosecutor Friday October 2, 2015. I believe that Jessica's message and request to call her was in direct response to her finding out that people know about what she said to me.

5.

I disclosed this information previously to Brandon, but because we were arguing I was unwilling to come forward before. I believe that if you get Jessica's phone records and social media records, you will see that Jessica has known me and Antonio Brewer, aka Loc, long before she served as a juror. If you obtain the video surveillance at our job you will also see that we talked.

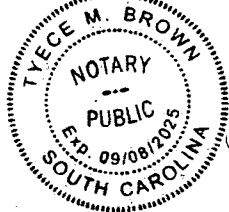
FURTHER AFFIANT SAYETH NOT.

Quornisha S. Jones
Quornisha Jones

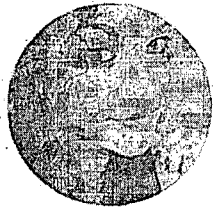
Sworn to and subscribed
Before me this 11th day of October 2015.

Tyce M. Brown (10/11/2015)
NOTARY PUBLIC

Tyce M. Brown



0 0026



987

posts

347

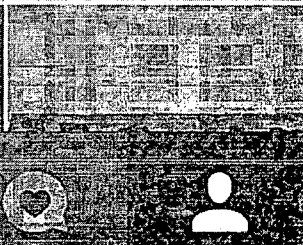
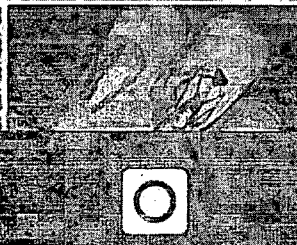
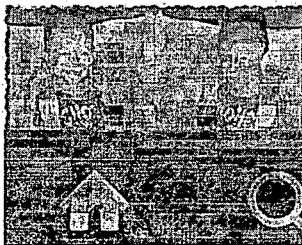
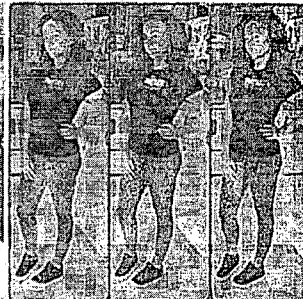
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✓ FOLLOWING

👉 Carolina Gal 👈

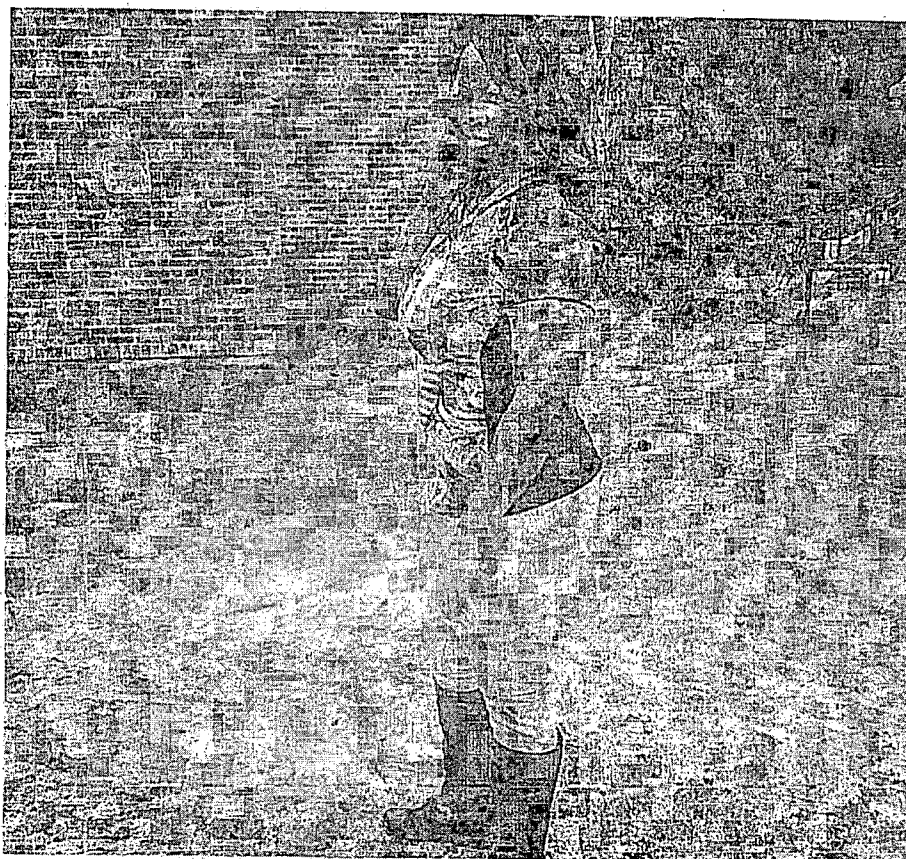




naughtyynisha29

36w

0 0027



♥ 21 likes

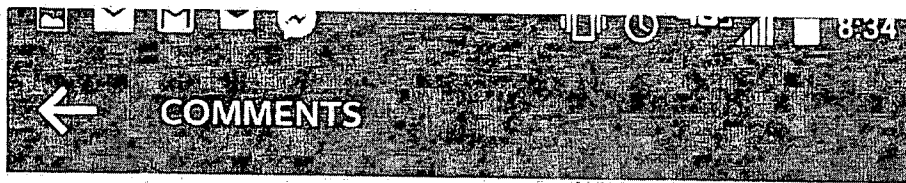
m13_yupthatsher Why I ain't seen u gal?!

naughtyynisha29 I dnt work that floor anymore @843_yupitsme

mr_imbackd Wzup lil moma how ya doing??

Add a comment





0 0028



m13_yupthatsher Why I ain't seen u gal?!
36 weeks ago



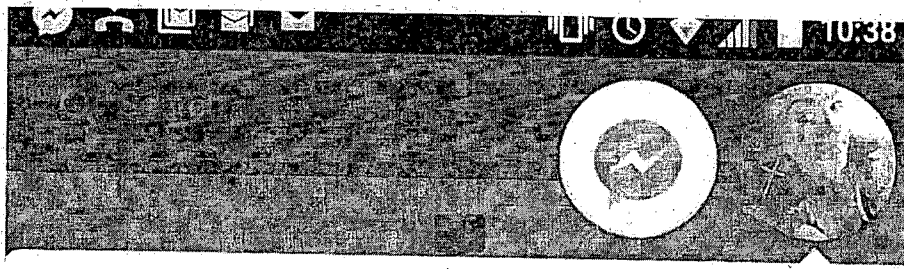
naughtynisha29 I dnt work that floor anymore
@843_yupitsme
36 weeks ago



mr_imbackd Wzup lil moma how ya doing??
33 weeks ago

Add a comment...





0 0023

Facebook User

INVITE



TUE AT 4:22 PM

Call me



304 2026



Aa



Write a message



0 0030

Subject: Re: State of South Carolina v. Robert Ferguson
From: Derek Wright <attorneyderekwright@gmail.com>
Date: 10/2/2015 2:23 PM
To: Sean Thornton <sthornton29414@gmail.com>
CC: Robbie Ferguson <robbie@referguson.com>, Brooks Goldsmith
<bgoldsmithj@sccourts.org>

I will defer to the Court. But I do believe that the transcripts are necessary. Unfortunately, the cost was quoted at \$3700. That's why its been difficult to raise that much money. Nor have I been paid to handle the appeal process.

One reason we need the transcript is that we have information that one of the jurors was friends with Antonio Brewer (the witness who was murdered 2 weeks prior to trial) and that she is friends with Quanisha Jones (another state witness) and the juror failed to advise the court during voir dire of either of these relationships. The Court will recall one juror was excused because she knew Quanisha Jones. And this juror still did not disclose that she knew a state witness. The transcript is needed to show that no response was given by that juror during qualification questions. Also, that juror has be heard telling others after trial that she did believe my client was responsible for her friend's death (antonio brewer). Accordingly, on any date that the Court decides to hear this matter, can we have that juror or jurors subpoenaed to court for inquiry?

On 10/2/2015 2:16 PM, Sean Thornton wrote:

Judge Goldsmith it is the State's position that transcripts are not necessary for post trial motions and we would object to any further delay. Further the Defendant has had ample time to get transcripts.

Respectfully,

Sean P Thornton

On Oct 2, 2015 2:05 PM, "Derek Wright" <attorneyderekwright@gmail.com> wrote:
I will ask Mr. Tucker if he continues to want to waive his presence. I believe he will.

On 10/2/2015 1:52 PM, Sean Thornton wrote:

The State has no conflict with either date, and since Mr. Wright has withdrawn the Motion to withdraw, we would ask to hear the Post trial matters on that date.

Mr. Wright do we need to transport your client, or are you still waiving his presence?

Respectfully,

0 0031

Sean P. Thornton

On Fri, Oct 2, 2015 at 1:47 PM, Goldsmith, Brooks <bgoldsmithj@sccourts.org> wrote:

I will hear the motion at 10:00am on October 12th in Ridgeland. If there are any conflicts I will hear the motion at 9:30am on October 16th in Ridgeland. Please advise as to any such conflicts as soon as possible.

Brooks P. Goldsmith

Circuit Judge Active/Retired

Post Office Box 895

Edisto Island, S.C. 29438

(843) 631-0413

From: Derek Wright [mailto:attorneyderekwright@gmail.com]

Sent: Friday, October 02, 2015 1:43 PM

To: Sean Thornton

Cc: Goldsmith, Brooks; Robert Ferguson

Subject: Re: State of South Carolina v. Robert Ferguson

I will withdraw my request to withdraw. I will appear and see the case through. I would ask that the hearing NOT be set on the following weeks as I have planned leave:

December 1-9, 22-31

Jan 1-4

On 10/2/2015 1:35 PM, Sean Thornton wrote:

0 0032

Judge Goldsmith:

I am sorry for the delayed response, but I have been unsure of how to handle Mr. Wright's continued delay of these post trial motions.

The State would ask that Mr. Wright's motion be denied. On numerous occasions he has asked that the post trial motions be continued and now asks to be relieved from a duty associated with the regular performance of a trial. This should have been handled in April and has now drag on for several months.

Additionally, it has come to my attention that Mr. Wright is representing defendant on charges in Savannah.

I would ask the Court to Order Mr. Wright's presence at a hearing to finish this case so that the Appellate process can begin. In the alternative, I would ask the Court for some direction on how to proceed with completing this trial.

Respectfully,

Sean Thornton

On Thu, Aug 13, 2015 at 8:07 AM, Derek Wright
<attorneyderekwright@gmail.com> wrote:

Please find attached my notice of conflict for today and attached Motion to Withdraw and Request for Continuance.

I apologize for lateness of filing.

0 0033

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

|                         |   |                             |
|-------------------------|---|-----------------------------|
| STATE OF SOUTH CAROLINA | ) | COURT OF GENERAL SESSIONS   |
|                         | ) | FOURTEENTH JUDICIAL CIRCUIT |
| COUNTY OF BERKELEY      | ) |                             |
|                         | ) |                             |
| STATE OF SOUTH CAROLINA | ) | CASE NO. 2012-GS-07-2246    |
|                         | ) | 2012-GS-07-2247             |
|                         | ) | 2012-GS-07-2248             |
| VS.                     | ) |                             |
|                         | ) |                             |
|                         | ) | TRANSCRIPT OF RECORD        |
| WALTER TUCKER,          | ) |                             |
|                         | ) |                             |
| DEFENDANT.              | ) |                             |

April 13 - 16, 2015

Beaufort, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge; and a Jury.

A P P E A R A N C E S:

For the Plaintiff

Sean Thornton, Assistant Solicitor

Hunter Swanson, Assistant Solicitor

For the Defense

Derek Wright, Esquire

Robert E. Ferguson, Jr., Esquire

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

|                           |    |    |
|---------------------------|----|----|
| Jury Voir Dire            | -- | 10 |
| Jury Selection            | -- | 66 |
| Pretrial Matters          | -- | 74 |
| Jackson v. Denno Hearings | -- | 82 |

WITNESSES:(SW) Detective Kevin Fikes (IC):

|                                      |    |    |
|--------------------------------------|----|----|
| Direct Examination by Mr. Thornton   | -- | 82 |
| Cross-Examination by Mr. Wright      | -- | 86 |
| Redirect Examination by Mr. Thornton | -- | 90 |

(SW) Lt. Latasha Robinson - (IC):

|                                    |    |     |
|------------------------------------|----|-----|
| Direct Examination by Mr. Thornton | -- | 105 |
| Pretrial Matters                   | -- | 113 |
| Juror Dismissal                    | -- | 147 |

|                                          |    |     |
|------------------------------------------|----|-----|
| <u>OPENING STATEMENT</u> by Mr. Thornton | -- | 165 |
|------------------------------------------|----|-----|

|                                        |    |     |
|----------------------------------------|----|-----|
| <u>OPENING STATEMENT</u> by Mr. Wright | -- | 170 |
|----------------------------------------|----|-----|

WITNESSES:(SW) Melanie Smith:

|                                      |    |     |
|--------------------------------------|----|-----|
| Direct Examination by Mr. Thornton   | -- | 172 |
| Cross-Examination by Mr. Wright      | -- | 176 |
| Redirect Examination by Mr. Thornton | -- | 177 |

(SW) Daniel Byrne - EMS:

|                                    |    |     |
|------------------------------------|----|-----|
| Direct Examination by Mr. Thornton | -- | 178 |
| Cross-Examination by Mr. Wright    | -- | 183 |

(SW) David Roche:

|                                    |    |     |
|------------------------------------|----|-----|
| Direct Examination by Mr. Thornton | -- | 184 |
| Cross-Examination by Mr. Wright    | -- | 186 |

(SW) Kalin Higgs:

|                                    |    |     |
|------------------------------------|----|-----|
| Direct Examination by Mr. Thornton | -- | 187 |
| Cross-Examination by Mr. Wright    | -- | 191 |

(SW) Brandon Disbrow:

|                                   |    |     |
|-----------------------------------|----|-----|
| Direct Examination by Ms. Swanson | -- | 193 |
| Cross-Examination by Mr. Wright   | -- | 215 |

(SW) Christine Wilson, BCSO:

|                                   |    |     |
|-----------------------------------|----|-----|
| Direct Examination by Ms. Swanson | -- | 228 |
| Cross-Examination by Mr. Wright   | -- | 235 |

(SW) John Kelleher, BCSO:

|                                    |    |     |
|------------------------------------|----|-----|
| Direct Examination by Mr. Thornton | -- | 239 |
| Cross-Examination by Mr. Wright    | -- | 243 |

(SW) Jessica Power:

|                                    |    |     |
|------------------------------------|----|-----|
| Direct Examination by Mr. Thornton | -- | 247 |
|------------------------------------|----|-----|

|                                                   |    |     |
|---------------------------------------------------|----|-----|
| Cross-Examination by Mr. Wright                   | -- | 264 |
| Redirect Examination by Mr. Thornton              | -- | 304 |
| <u>(SW) Jeff Purdy, BCSO:</u>                     |    |     |
| Direct Examination by Mr. Thornton                | -- | 306 |
| <u>(SW) Jennifer Stoner, SLED:</u>                |    |     |
| Direct Examination by Mr. Thornton                | -- | 309 |
| Cross-Examination by Mr. Wright                   | -- | 316 |
| <u>(SW) Katrina Light, BCSO:</u>                  |    |     |
| Direct Examination by Mr. Thornton                | -- | 319 |
| <u>(SW) Suzanne Cromer, SLED:</u>                 |    |     |
| Direct Examination by Mr. Thornton                | -- | 326 |
| Cross-Examination by Mr. Wright                   | -- | 331 |
| <u>(SW) Officer Rebecca Whitney, Beaufort PD:</u> |    |     |
| Direct Examination by Mr. Thornton                | -- | 335 |
| <u>(SW) Tim French, BCSO:</u>                     |    |     |
| Direct Examination by Mr. Thornton                | -- | 338 |
| Cross-Examination by Mr. Wright                   | -- | 356 |
| <u>Defense Motion</u>                             | -- | 359 |
| <u>(SW) John Gobel, BCSO:</u>                     |    |     |
| Direct Examination by Mr. Thornton                | -- | 370 |
| Cross-Examination by Mr. Wright                   | -- | 379 |
| Redirect Examination by Mr. Thornton              | -- | 409 |
| Recross-Examination by Mr. Wright                 | -- | 410 |

(SW) Jasmine Tell:

Direct Examination by Mr. Thornton -- 412

Cross-Examination by Mr. Wright -- 417

(SW) Detective Darrell Maxwell (N. Carolina):

Direct Examination by Mr. Thornton -- 419

Motion For Mistrial by Defense -- 423

(SW) Keamber Bigelow:

Direct Examination by Ms. Swanson -- 449

Cross-Examination by Mr. Wright -- 453

(SW) Dillon Hightower, Solicitor's Office:

Direct Examination by Ms. Swanson -- 460

Cross-Examination by Mr. Wright -- 464

(SW) Dr. Lee Marie Tormos, MUSC:

Direct Examination by Mr. Thornton -- 467

Cross-Examination by Mr. Wright -- 472

State Rests and Motion for Directed Verdict -- 475

Court Addresses Right to Testify -- 483

(DW) Eugene (Chip) Jabar:

Direct Examination by Mr. Wright -- 494

Cross-Examination by Mr. Thornton -- 500

Redirect Examination by Mr. Wright -- 506

Defense Rests -- 508

REPLY WITNESS:(SW) John Gobel, BCSO:

|                                              |    |     |
|----------------------------------------------|----|-----|
| Direct Examination by Mr. Thornton           | -- | 509 |
| Cross-Examination by Mr. Wright              | -- | 510 |
| Discussion of Charges                        | -- | 516 |
| Closing Argument by Defense - Mr. Wright     | -- | 523 |
| Discussion of charges                        | -- | 577 |
| Closing Argument by the State - Mr. Thornton | -- | 578 |
| Jury Charge                                  | -- | 609 |
| Verdict                                      | -- | 638 |
| Defense Renew Request for Directed Verdict   | -- | 641 |
| Sentencing                                   | -- | 645 |

CERTIFICATION OF TRANSCRIPT -- 656

Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

S T A T E ' S   E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u>                      | <u>MARKED</u> | <u>ADMIT</u> |
|------------|-----------------------------------------|---------------|--------------|
| 1          | Detention Cntr. Miranda Form (PreTrial) | 106 *         | 110 *        |
| 2          | Intercepted Letter (PreTrial)           | 110 *         | ---          |
| 3          | CD - 911 Call                           | 173           | 174          |
| 4          | Diagram                                 | 194           | 195          |
| 5          | Aerial Diagram                          | 196           | 197          |
| 6          | Color Photo - Weapon                    | 196           | 200          |
| 7          | Color Photo                             | 199           | 200          |
| 8          | Color Photo                             | 201           | 202          |
| 9          | Color Photo - \$50 Bill                 | 201           | 202          |
| 10         | Plastic Bag w/\$50                      | 203           | 204          |
| 11         | Color Photo                             | 204           | 205          |
| 12         | Plastic Bag                             | 205           | 205          |
| 13         | Color Photo                             | 206           | 206          |
| 14         | Photocopy - Rear of Vehicle             | 206           | 207          |
| 15         | Photocopy - Driver's Side Window        | 207           | 207          |
| 16         | Photocopy                               | 207           | 207          |
| 17         | Photocopy                               | 209           | 210          |
| 18         | Photocopy                               | 209           | 210          |
| 19         | Photocopy                               | 211           | 212          |
| 20         | Photocopy                               | 211           | 212          |
| 21         | Photocopy                               | 213           | 213          |

| <u>S T A T E ' S   E X H I B I T S</u> |                                 |               |              |
|----------------------------------------|---------------------------------|---------------|--------------|
| <u>NO.</u>                             | <u>DESCRIPTION</u>              | <u>MARKED</u> | <u>ADMIT</u> |
| 22                                     | Photocopy                       | 213           | 214          |
| 23                                     | Photocopy - Inside Mobile Home  | 229           | 230          |
| 24                                     | Photocopy - Inside Mobile Home  | 229           | 230          |
| 25                                     | Photocopy - Inside Mobile Home  | 230           | 231          |
| 26                                     | Photocopy - Kitchen Table       | 230           | 230          |
| 27                                     | Lipton Tea Bottle               | 232           | 345          |
| 28                                     | GSR Kit - Brewer                | 241           | 314          |
| 29                                     | GSR Kit - Greer                 | 241           | 314          |
| 30                                     | Jessica Power phone statement   | 304           | 305          |
| 31                                     | GSR Kit - Power                 | 307           | 314          |
| 32                                     | Bag - Clothes                   | 320           | 322          |
| 33                                     | Bag - Shoes, Socks, Etc.        | 320           | 323          |
| 34                                     | Bag w/Projectile                | 321           | 331          |
| 35                                     | Bag - Buccal Swab for Tucker    | 339           | 343          |
| 36                                     | Bag - Buccal Swab for Polite    | 339           | 343          |
| 37                                     | Bag - Buccal Swab for Brewer    | 339           | 343          |
| 38                                     | Bag - Buccal Swab for Singleton | 339           | 343          |
| 39                                     | Bag - Buccal Swab for Power     | 339           | 343          |
| 40                                     | Map                             | 415           | 416          |
| 41                                     | Map                             | 415           | 416          |
| 42                                     | Photograph                      | 460           | 461          |
| 43                                     | Photograph                      | 462           | 463          |

S T A T E ' S   E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>MARKED</u> | <u>ADMIT</u> |
|------------|--------------------|---------------|--------------|
| 44         | Photograph         | 462           | 463          |
| 45         | Photograph - Gun   | 462           | 463          |

D E F E N S E ' S   E X H I B I T S

|   |                       |     |     |
|---|-----------------------|-----|-----|
| 1 | Phone Report          | 399 | --- |
| 2 | Phone Report - Tucker | 401 | --- |

C O U R T ' S   E X H I B I T S

|   |                  |     |  |
|---|------------------|-----|--|
| 1 | Jury Note        | 624 |  |
| 2 | Jury Note        | 625 |  |
| 3 | Five Photographs | 645 |  |

\* For Pretrial Purposes and Not Submitted to Jury.

1 THE COURT: Good morning.

2 JURY PANEL: Good morning (in unison).

3 THE COURT: Please be seated. As you hear, my name is  
4 Brooks Goldsmith. I am what is called a retired but an  
5 active circuit judge.

6 Up until about a year-and-a-half ago I was a resident  
7 judge in the Sixth Circuit which is my home was in Lancaster  
8 County, South Carolina. The mandatory retirement age got  
9 me, and I moved to Edisto Island. I am now working, as I  
10 said, as a part-time active judge which means two to three  
11 weeks a month. It is my pleasure to be with you for this  
12 one-week term of general session's court, sometimes also  
13 referred to as criminal court.

14 Our purpose this morning is to determine your  
15 qualifications and your eligibility to serve as jurors. In  
16 that regard I will be required to ask you some questions.  
17 For the most part most of you won't be required to respond  
18 to the questions, but a few of you may need to stand.

19 If you need to respond to a question I do ask you to  
20 stand and try to speak distinctly so that I can hear you.  
21 Give me your juror number and then tell me why you stood.

22 As to a couple of you, a couple of the questions you  
23 may find to be personal. Once again, my guess is two or  
24 three or maybe four people total might feel one or two of  
25 the questions are personal to them and they might prefer not

1 to answer those questions in the presence of everyone in the  
2 courtroom. If that is the way you feel just all you have to  
3 do is say could I respond later. At the end of all of the  
4 questioning I will let you come down front. We will speak  
5 about this a little more privately. Once again, I suspect  
6 that would be just very few people.

7 For instance, the first question that I need to ask you  
8 is this: Is there any member of the jury panel who is not a  
9 resident and citizen of Beaufort County, South Carolina; if  
10 so please stand.

11 (WHEREUPON, no one stood.)

12 THE COURT: Is there any member of the jury panel who  
13 is unable to read, write, speak or understand the English  
14 language; if so, please stand.

15 (WHEREUPON, no one stood.)

16 Is there any member of the jury panel who has less  
17 than a sixth grade education or its equivalent; if so,  
18 please stand.

19 (WHEREUPON, no one stood.)

20 Is there any member of the jury panel who is unable  
21 because of a mental or physical infirmity to render  
22 efficient jury service this week; for example, does any  
23 member of the jury panel have a medical condition that would  
24 prevent you from serving on jury duty this week? And before  
25 everybody stands let me ask you -- tell you real quick what

1 we try to do is take a break every hour-and-a-half or so and  
2 then of course take a break for lunch. So again, we try to  
3 conclude the business of the court 5:00 or 5:30 just  
4 depending on what is going on.

5 So I think I first noticed a gentleman here on my left.  
6 If you would give us your number, sir.

7 MEMBER OF THE JURY PANEL: Yes, sir, Rodney Bennett,  
8 Juror Number 24.

9 THE COURT: Twenty-four.

10 MEMBER OF THE JURY PANEL: Yes, sir. I am a heart  
11 patient, three heart attacks, nine stints, one stroke. I  
12 just don't have the patience to sit still through all that  
13 is going on for stated times.

14 I have been medically retired since the year 2000. So  
15 my first heart attack was when I was 36. I am now 54. So I  
16 just don't have -- if you know a heart patient they just  
17 don't have the patience. My wife had a heckuva time. I  
18 have been with her 33 years. I ---

19 THE COURT: She sent me a note about you, by the way.  
20 I'm sorry, say it again.

21 MEMBER OF THE JURY PANEL: I want to do my civic duty  
22 and serve in the jury, but I'm being honest with you I just  
23 don't have the patience. My attention ---

24 THE COURT: Are you on medication -- do you take  
25 medication also?

1 MEMBER OF THE JURY PANEL: Yes, sir.

2 THE COURT: And do you think that your condition would  
3 interfere with your ability to actually serve on the jury?

4 MEMBER OF THE JURY PANEL: Yes, sir. My feet go to  
5 sleep sitting a long time. I have to be moving. So I just  
6 don't feel like I can do it.

7 THE COURT: But now if that is the only problem,  
8 meaning your feet go to sleep, we can -- we can solve that.  
9 I mean ---

10 MEMBER OF THE JURY PANEL: Well ---

11 THE COURT: What I'm going to tell -- what I am getting  
12 ready to say now really applies to everybody here. If you  
13 need a break, you or anyone on the jury needs a break at any  
14 time, I ask you to please let me know. You can speak to a  
15 bailiff about it or speak to me. Waive your hand. We will  
16 get your attention.

17 I try to tell people if I need a break all I do is say  
18 we are going to take a break. But, you know, people's needs  
19 for breaks are different. If you need one -- coming back  
20 again to your feet, but if that is your only problem if you  
21 tell me for instance you need a break we will take a break  
22 then if that will make it any easier for you.

23 MEMBER OF THE JURY PANEL: I just -- my attention --  
24 paying attention to it, the lawyers and all of that, is not  
25 that great. My attention ever since I had my minor stroke I

1 just don't -- I don't -- I don't pay attention to stuff that  
2 is going on. So I am being honest with you, Judge. If I  
3 may be excused, I would appreciate it.

4 THE COURT: All right, sir, I will excuse you then.

5 MEMBER OF THE JURY PANEL: Thank you, sir.

6 THE COURT: Thank you, sir. You may leave.

7 MEMBER OF THE JURY PANEL: Have a good week.

8 THE COURT: Yes, sir.

9 And the lady closest to my area, yes, ma'am.

10 MEMBER OF THE JURY PANEL: I was just recently ---

11 THE COURT: I have got to get your number ---

12 MEMBER OF THE JURY PANEL: I'm sorry, Juror 163.

13 THE COURT: One sixty-three. Yes, ma'am.

14 MEMBER OF THE JURY PANEL: I was diagnosed with a  
15 prolactinoma which is a brain tumor, and I am not going to  
16 be here Wednesday.

17 THE COURT: I take it because you have a medical  
18 appointment?

19 MEMBER OF THE JURY PANEL: I do, sir. I have an  
20 appointment with my neurologist at MUSC in Charleston.

21 THE COURT: Okay. Well, it is very possible that if  
22 we -- if this case -- right now we have the case that is  
23 scheduled -- scheduled to pick a jury on today that we think  
24 will last three or four days, which would be a problem I  
25 agree. What if we transfer you to another term?

1 MEMBER OF THE JURY PANEL: That is fine. I spoke to --  
2 when I forgot the appointment I called. Me and Nikki spoke  
3 on the phone so.

4 THE COURT: Okay. All right. If you want to come now  
5 I think we can probably take care of it now.

6 THE CLERK: Yes, sir.

7 THE COURT: We can arrange a time that is more  
8 convenient for you.

9 Yes, sir.

10 MEMBER OF THE JURY PANEL: Yes, Juror Number 132.

11 THE COURT: Say it again. Number what?

12 MEMBER OF THE JURY PANEL: One thirty-two.

13 THE COURT: One thirty-two.

14 MEMBER OF THE JURY PANEL: Yes, sir. I have just  
15 recently was in a car accident. In January I got a C6  
16 fracture. So me sitting up. You know, and I have pain a  
17 lot in my neck and in my back and I'm also taking  
18 medication. And I also have to go see my doctor at MUSC, my  
19 neurosurgeon, Thursday.

20 THE COURT: It is possible we may need you -- if you  
21 were selected on that jury we might need you on Thursday.  
22 What if we transferred you to another term?

23 MEMBER OF THE JURY PANEL: I guess that -- I guess that  
24 would be okay.

25 THE COURT: You say -- okay. You say that would be all

1 right?

2 MEMBER OF THE JURY PANEL: Yes.

3 THE COURT: Okay. I couldn't understand you. All  
4 right. Juror 132 if you would come down we will make  
5 arrangements. Thank you.

6 All right. Ladies and gentlemen, the next question is  
7 this: Has any member of the jury panel been convicted by  
8 way of a guilty plea or trial in a state or federal court of  
9 record of a crime punishable by imprisonment for more than  
10 one year and your civil rights have not been restored by way  
11 of pardon or amnesty?

12 And punishable by more than one year means you could  
13 have received a sentence of more than one year regardless of  
14 what sentence you may have actually received. So if that  
15 applies to you, please stand.

16 (WHEREUPON, no one stood.)

17 THE COURT: Is there any member of the jury panel who  
18 is a clerk or deputy clerk of court, a constable, a sheriff,  
19 or some other commissioned law-enforcement officer, or a  
20 probate judge, a county commissioner, a magistrate, or some  
21 other county officer, or are you employed within the walls  
22 of any courthouse; so if any of those apply to you, please  
23 stand.

24 (WHEREUPON, no one stood.)

25 THE BAILIFF: May I approach, Your Honor?

1 THE COURT: Yes, sir.

2 (WHEREUPON, bench conference was had between bailiff and the  
3 court.)

4 THE COURT: Is there any member of the jury panel who  
5 has previously served on jury duty in circuit court - and  
6 this is circuit court - as opposed to magistrate's court or  
7 city court or a recorder's court, this calendar year; if you  
8 have already served on jury duty in circuit court this year,  
9 please stand.

10 (WHEREUPON, no one stood.)

11 THE COURT: And is there any member of the jury panel  
12 who has recently served over the past several years as a  
13 member of the Beaufort County grand jury; if so, please  
14 stand.

15 (WHEREUPON, no one stood.)

16 Ladies and gentleman, we now move to jury exemptions.  
17 State law provides for several exemptions to jury duty. You  
18 may be qualified but the legislature has determined that for  
19 certain individuals or category of people you simply do not  
20 have to serve and all you have to do is say I prefer not to  
21 serve.

22 For instance, those of you who may be 65 years of age  
23 or older have the right to serve on jury duty but you also  
24 have the right to say I choose not to serve. And it is  
25 totally up to you. So if anyone is 65 or older and prefers

1 not to serve on jury duty, please stand.

2 (WHEREUPON, no one stood.)

3 THE COURT: Another exemption concerns prior jury  
4 service and it is a little bit different than the earlier  
5 question I gave to you though. No person is required to  
6 serve as a juror more often than once every three calendar  
7 years. So if anyone has served, once again in circuit  
8 court, in the prior two calendar years and wishes not to  
9 serve this week please stand.

10 And your number, sir?

11 MEMBER OF THE JURY PANEL: One forty-one.

12 THE COURT: One forty-one. And you served ...?

13 MEMBER OF THE JURY PANEL: In 2014. Right here, yes,  
14 sir.

15 THE COURT: Well, you don't want to stay with us?

16 MEMBER OF THE JURY PANEL: Not really.

17 THE COURT: All right, sir, we will excuse you. Thank  
18 you for coming.

19 THE COURT: A person to have served as members of the  
20 grand jury in the last five calendar years also have the  
21 right to be exempted. So anyone that served on the grand  
22 jury in the last five years and wishes to be exempted,  
23 please stand.

24 (WHEREUPON, no one stood.)

25 THE COURT: The next exemption deals with those who

1 have legal custody of young children. You may be exempted  
2 from jury duty if you have a child under the age of seven  
3 and you have legal custody of the child and you have the  
4 primary responsibility for caring for the child and you are  
5 unable to find anyone to take care of the child while you  
6 are serving on jury duty. So if all of these conditions are  
7 met and you wish to be exempted please stand.

8 Your number, please, ma'am?

9 MEMBER OF THE JURY PANEL: Seventy-two.

10 THE COURT: Seventy-two.

11 MEMBER OF THE JURY PANEL: My only concern is on  
12 Wednesday my husband is a lieutenant with the fire  
13 department and works 24-hour shifts and we have two children  
14 so I would have to be able to leave Beaufort in time to get  
15 to Bluffton to pick them up from their day camp since it is  
16 spring break.

17 THE COURT: Which means you would leave -- would need  
18 to leave at what time?

19 MEMBER OF THE JURY PANEL: I would need to leave by  
20 5:00 at the latest.

21 THE COURT: On Wednesday?

22 MEMBER OF THE JURY PANEL: On Wednesday.

23 THE COURT: I am not ---

24 MEMBER OF THE JURY PANEL: It is just on the line is  
25 all is the only concern. It is just because he will be on

1 shift. So I don't have a backup plan to get there if I  
2 can't make it in time.

3 THE COURT: You say there is no backup plan?

4 MEMBER OF THE JURY PANEL: I don't -- I just don't -- I  
5 mean I can work on it. As of today I don't have someone  
6 that can technically be there prior to picking up. But I  
7 can work on it.

8 THE COURT: Let me tell you my problem, and you will  
9 understand. Let's just suppose that this case that I have  
10 been talking about or some other case concludes -- and I say  
11 concludes, at three o'clock Wednesday afternoon ---

12 MEMBER OF THE JURY PANEL: Right.

13 THE COURT: --- but when I say concludes it means the  
14 jury begins deliberating. And so in the middle of  
15 deliberations you say I have got to leave. We would have to  
16 let -- would it be better for me to transfer you to another  
17 term or do you think there is a real chance you can find  
18 somebody, or it may be of course we will be through by five  
19 o'clock on Wednesday and it won't be an issue.

20 MEMBER OF THE JURY PANEL: I mean you can -- you can  
21 technically transfer me. It is just the same thing. Like  
22 he works 24 on and 48 off. No matter what case if it is a  
23 multiple-day case it is where I get stuck.

24 But I mean I can step outside and make a few calls and  
25 see if I can find a backup plan for Wednesday. I just --

1 that is my only option right now.

2 THE COURT: Let me transfer you.

3 MEMBER OF THE JURY PANEL: Okay.

4 THE COURT: I need to continue asking other questions  
5 and you will need to be here for those questions.

6 MEMBER OF THE JURY PANEL: Okay.

7 THE COURT: So you can sit down. So far I think we  
8 still have enough jurors.

9 If you're the primary caretaker of a person who is 65  
10 years of age or older or caretaker of a person who is  
11 severely disabled and such individual cannot be left alone  
12 and you have no one to take care of the child while you are  
13 on jury duty you may be exempted. So if that applies to you  
14 and you wish to be exempted please stand.

15 And your number, sir?

16 MEMBER OF THE JURY PANEL: Joseph Lee, 237.

17 THE COURT: Say it one more time.

18 MEMBER OF THE JURY PANEL: Two thirty-seven.

19 THE COURT: Two thirty-seven.

20 MEMBER OF THE JURY PANEL: Yes. My father is  
21 handicapped. He has bad back problems, really bad back  
22 problems, and knee problems. He has osteoporosis. He has  
23 emphysema. And he has just got something wrong with his  
24 pancreas. And my mom works, and he is usually -- I usually  
25 have to be taking care of him. He is pretty sick so.

1 THE COURT: I'm sorry, I wasn't here earlier. Are you  
2 employed anywhere?

3 MEMBER OF THE JURY PANEL: Dockside.

4 THE COURT: And your hours at work are normally?

5 MEMBER OF THE JURY PANEL: They are different from my  
6 mom's.

7 THE COURT: So that is the situation?

8 MEMBER OF THE JURY PANEL: Yeah.

9 THE COURT: And he can't be left alone?

10 MEMBER OF THE JURY PANEL: No. He can't drive or  
11 anything.

12 THE COURT: I can arrange to transfer you to another  
13 term. Would that help any?

14 MEMBER OF THE JURY PANEL: I could see if it helps.  
15 Yeah, I could talk to my mom about it. Because I just  
16 transferred.

17 THE COURT: All right. Come on down and we will  
18 transfer you.

19 The next exemption involves those of you who may be  
20 attending school or working in a school in some capacity.  
21 And we can if you wish we can transfer you to another term  
22 that wouldn't interfere with your school responsibilities.  
23 If you are a full-time student or working in a school in  
24 some capacity and wish to be transferred please stand.

25 And your number, sir?

1 MEMBER OF THE JURY PANEL: Two fifty-six, sir. TCL.

2 THE COURT: And I wasn't here when you -- when the roll  
3 call happened.

4 MEMBER OF THE JURY PANEL: Oh, I am sorry. I am  
5 currently a full-time student at TCL, Technical College of  
6 the Lowcountry.

7 THE COURT: Okay. And you wish -- when would be a good  
8 time for you to come back and see us?

9 MEMBER OF THE JURY PANEL: It would be during the  
10 summer.

11 THE COURT: All right. If you will come down we will  
12 arrange for a transfer for you.

13 And, yes, ma'am, your number?

14 MEMBER OF THE JURY PANEL: Two eighty-eight.

15 THE COURT: Two eighty-eight.

16 MEMBER OF THE JURY PANEL: Yes, sir. Not a school, but  
17 I am a director of the Boys' and Girls' Club, Bluffton.  
18 This is spring break, and I am running the largest club in  
19 the Lowcountry with 384 children with the average day's  
20 attendance of 300 and very severely understaffed. So I just  
21 thought -- as I have concern about our activities. We are  
22 open from 7:00 to 6:00 this week. I would be willing to  
23 transfer to another term. This just doesn't fit. It  
24 bothers me. It is not a good time.

25 THE COURT: I think you got the last transfer

1 certificate.

2 Is there any member of the jury panel who is employed  
3 with the Department of Corrections in a penitentiary and  
4 would like to be exempted; if so, please stand.

5 (WHEREUPON, no one stood.)

6 THE COURT: Is there any juror who performs services  
7 for a business, commercial or agricultural enterprise and  
8 you are so essential to the operation of the enterprise that  
9 if you are required to serve on jury duty the business would  
10 be required to close or cease functioning; if so, please  
11 stand.

12 Yes, sir, your juror number?

13 MEMBER OF THE JURY PANEL: Yes, sir, Juror Number 87,  
14 John Dodson.

15 THE COURT: Eighty -- eighty-seven?

16 MEMBER OF THE JURY PANEL: Yes, sir. I have a project  
17 that is being inspected. My project was supposed to be  
18 inspected next week but they moved it to this week. I am  
19 doing a project on Fort Stewart. I am an HVAC  
20 superintendent.

21 And I can be rescheduled for another day. It is just  
22 that dealing with the government and closing of the job --  
23 of the project I just need to be there to make sure that I  
24 am aware of what aspect of my project didn't fail.  
25 Hopefully it didn't. There are things that I need to work

1 on before we turn the building over to the government.

2 THE COURT: In other words, you don't have anyone else  
3 who can take that responsibility in your absence?

4 MEMBER OF THE JURY PANEL: Well, I have had guys that  
5 won't step up to the bat. So I am kind of like one of or  
6 the one -- the one that is in charge really.

7 THE COURT: All right, sir, if you will come around she  
8 will arrange another time for you.

9 Ladies and gentlemen, that actually concludes the  
10 statutory list of qualifications and exemptions from jury  
11 duty. It may be that you are qualified and no specific  
12 exemption applies to you. But nevertheless, as this last  
13 gentleman indicated, this turns out to be a terrible week  
14 for you and under certain circumstances, hardship  
15 circumstances, we could consider transferring you.

16 So if anyone wishes to apply for a hardship question --  
17 transfer, please stand.

18 (WHEREUPON, no one stood.)

19 THE COURT: Thank you. Solicitor, is there anyone I  
20 need to speak to?

21 MR. THORNTON: Yes, sir. May I approach, Judge?

22 THE COURT: Yes, sir.

23 MR. THORNTON: Thank you.

24 (WHEREUPON, bench conference was had out of the presence of  
25 the panel as follows:)

1 MR. THORNTON: Juror Number 156 had a DUI fourth  
2 conviction from 1998 which of course would be -- and I  
3 circled the birth date to make sure they matched up.

4 THE COURT: All right.

5 MR. THORNTON: So I believe would be disqualified.

6 THE COURT: One fifty-six?

7 MR. THORNTON: Yes, sir, Robert Holmes. I believe Mr.  
8 Holmes would be disqualified.

9 (WHEREUPON, the court addressed the panel as follows:)

10 THE COURT: Could I see Juror 156 down front just a  
11 moment.

12 (WHEREUPON, bench conference resumed out of the presence of  
13 the panel as follows:)

14 THE COURT: DUI forth?

15 MR. THORNTON: Yes, sir. 1998

16 (WHEREUPON, Juror 156 joins bench conference.)

17 THE COURT: How are you doing?

18 MR. THORNTON: Excuse me, Judge. I apologize.

19 THE COURT: Something has got your Social Security on  
20 it that makes everybody believe that you had years ago had a  
21 DUI fourth.

22 MEMBER OF THE JURY PANEL: No, I've never had one.

23 THE COURT: You have never had a DUI?

24 THE POTENTIAL JUROR: Not consecutive.

25 THE COURT: Let me see here what I've got here. When

1 were you -- what is your birth date?

2 MEMBER OF THE JURY PANEL: 9/22/58.

3 THE COURT: Well, they have got the right birthday on  
4 here. Let's see what else. Let me just show you that. Can  
5 you read that?

6 MEMBER OF THE JURY PANEL: Uh-huh.

7 THE COURT: That is your social?

8 MEMBER OF THE JURY PANEL: That is my social. I never  
9 had the DUI fourth.

10 THE COURT: Have you ever had a DUI at all?

11 MEMBER OF THE JURY PANEL: Yes, sir.

12 THE COURT: I am looking at your record. Way back I  
13 have got -- did you have a DUI second?

14 MEMBER OF THE JURY PANEL: I have.

15 THE COURT: '96 it looks like a DUI third.

16 MEMBER OF THE JURY PANEL: I never had a DUI third.  
17 That was supposed to be expunged but that -- I had something  
18 expunged but.

19 THE COURT: It is not showing up as expunged.  
20 According to this in '98 you had driving under suspension  
21 and you got ---

22 MR. THORNTON: And it's fourth.

23 THE COURT: Fourth.

24 MR. THORNTON: Convicted.

25 THE COURT: It says you were convicted. And ---

1 MEMBER OF THE JURY PANEL: Well, that's wrong. I never  
2 had a DUI fourth.

3 THE COURT: But you had a DUI third?

4 MEMBER OF THE JURY PANEL: Don't have a DUI third  
5 either.

6 THE COURT: All right.

7 MEMBER OF THE JURY PANEL: The last one I have was the  
8 second.

9 THE COURT: When was that? Do you remember when that  
10 was?

11 MEMBER OF THE JURY PANEL: 2011 or something like that.

12 THE COURT: Two thousand -- I have got a 1999 driving  
13 under suspension. I have got a 2004 I've got domestic  
14 violence.

15 MEMBER OF THE JURY PANEL: All of those were supposed  
16 to be expunged. Most of the driving stuff -- most all of  
17 the driving stuff was expunged.

18 THE COURT: How long ago did you have it expunged? Do  
19 you remember?

20 MEMBER OF THE JURY PANEL: About -- about a year ago.  
21 I have got all of my expungement papers, but I don't have  
22 them with me.

23 THE COURT: All right. Did you get in 2012 did you get  
24 another DUI?

25 MEMBER OF THE JURY PANEL: What is that?

1 THE COURT: 2012 did you get another DUI?

2 MEMBER OF THE JURY PANEL: I don't know -- what was the  
3 date on that?

4 THE COURT: Let's see. Court date August ---

5 MEMBER OF THE JURY PANEL: 21st?

6 THE COURT: --- 23rd, 2012.

7 MEMBER OF THE JURY PANEL: Uh-huh. But that was  
8 expunged.

9 THE COURT: Did you get it done -- did you do it  
10 yourself or did you have an attorney do it for you?

11 MEMBER OF THE JURY PANEL: Attorney.

12 THE COURT: Do you remember who it was?

13 MEMBER OF THE JURY PANEL: What's his name? I have the  
14 public defender -- the one -- the lawyer -- that when -- I  
15 will remember his name in a minute.

16 THE COURT: Okay. Well, go ahead and have a seat.  
17 I'll let you know what we are going to do in a minute.

18 (WHEREUPON, member of the jury panel returns to his seat.)

19 (WHEREUPON, bench conference continues as follows:)

20 THE COURT: All right. Let me hear y'all on it. What  
21 do y'all want to do?

22 MR. THORNTON: Not eligible to be expunged. It can't  
23 be expunged. That clearly is his social, his birth date;  
24 and he admits that he got several DUI's including one in  
25 2012 I didn't even count because I stopped when I got to the

1 DUI fourth in '98. Our position is he is not qualified ---

2 THE COURT: Well, I forgot to ask him about the failure  
3 to stop for a blue light.

4 MR. THORNTON: Yes, sir. Which would in and of  
5 itself -- but anyway the state's position is he has -- he  
6 has acknowledged both the birth date and that he had the  
7 offenses which that they were expunged and you can't expunge  
8 in general sessions court.

9 MR. WRIGHT: Is the State saying that a fourth DUI  
10 constitutes a felony, under the laws of the State a felony?

11 MR. THORNTON: It does. It is anything that carries  
12 over a year.

13 MR. WRIGHT: Okay, because ---

14 MR. THORNTON: The DUI fourth carries over a year.

15 MR. WRIGHT: Okay ---

16 PL ATTY: --- the last time I checked. I can verify it  
17 but ---

18 MR. WRIGHT: In all candidness with the court why -- I  
19 know he denied it. I did see some hesitation even when you  
20 asked about the 2012 conviction which would have at least  
21 been a third so ---

22 MR. THORNTON: Yeah.

23 MR. WRIGHT: --- I will defer to the court.

24 THE COURT: Okay.

25 MR. WRIGHT: It sounds like the safe play may be to let

1 him go.

2 MR. THORNTON: My fear on it as always, Judge -- I mean  
3 he may be a fine juror, but on appellate purpose later if we  
4 put an unqualified juror on there and I just think out of an  
5 abundance of caution we can't take that risk, not over the  
6 one juror.

7 THE COURT: Well, not unless both of y'all want to.  
8 Unless y'all both agree ---

9 MR. THORNTON: No, sir.

10 THE COURT: --- to do it.

11 MR. WRIGHT: I mean I am -- I am happy to see him stay,  
12 but I have a feeling he ain't going to end up on the jury  
13 one way or the other so.

14 THE COURT: All right. I am going to let him -- I am  
15 going to excuse him.

16 MR. WRIGHT: Okay.

17 (WHEREUPON, end of bench conference.)

18 THE COURT: All right. Solicitor, is there a case  
19 ready for us to select a jury?

20 MR. THORNTON: There is, Your Honor. If the court will  
21 allow me one moment.

22 THE COURT: All right, sir.

23 MR. THORNTON: Courts indulgence, Your Honor, one  
24 moment.

25 May it please the court, Your Honor.

1 THE COURT: Yes, sir.

2 MR. THORNTON: Your Honor, the State is ready to go  
3 forward with Indictments 2012-GS-07-2246 charging the State  
4 versus Walter Tucker with murder; 2012-GS-07-2247 the  
5 State versus Walter Tucker charging him with armed robbery;  
6 2012-GS-07-2248 charging Mr. Tucker with kidnapping, Your  
7 Honor. May I pass these up?

8 THE COURT: Please, if you would.

9 (WHEREUPON, documents presented to the court.)

10 THE COURT: Ladies and gentlemen, as you heard a moment  
11 ago we are about to begin the case of the State versus  
12 Walter Tucker who has been indicted for the offense of  
13 murder, for armed robbery, and for kidnapping.

14 The indictments I will explain to you what that is all  
15 about at a later time. But in essence the indictments  
16 allege the events referred to therein occurred on or about  
17 September the 6th, 2012.

18 And the indictment for murder alleges that Walter  
19 Tucker did kill and murder one Quansic Greer shooting him  
20 with a gun and that Mr. Greer did die as a result thereof.

21 And on the same date the allegations are that the  
22 defendant with a deadly weapon or other object robbed one  
23 Jessica Power with the intent of depriving her of possession  
24 of property and that the defendant did also seize, kidnap,  
25 abduct or carry away Jessica Power all in violation of the

1 laws of the State.

2 I tell you all these things because in just a few  
3 moments I'm going to ask you some questions to determine  
4 your knowledge if any about any of these allegations.

5 Before I do that I'm going to ask the attorneys who are  
6 involved in the case if they will stand and identify  
7 themselves to you. And the solicitor I believe by  
8 prearrangement is going to give you the names of potential  
9 witnesses that might be called by either the State or by the  
10 defense.

11 And after all of that is done I'm going to ask you  
12 questions about your relationship if any with any of those  
13 individuals, with any of the attorneys involved in the case,  
14 with the victims, with the defendant, with any of those  
15 individuals. And we will begin with the State.

16 Mr. Thornton.

17 MR. THORNTON: Thank you, Your Honor. Good morning,  
18 ladies and gentlemen. Yes, it is, still morning. My name is  
19 John Thornton. I am deputy solicitor for the 14th Circuit.  
20 We have five counties, Beaufort being one of those counties.  
21 The others ones are Allendale, Colleton, Hampton, and Jasper  
22 counties in South Carolina. I will be trying this case  
23 along with Hunter Swanson also of the 14th Circuit  
24 Solicitor's Office.

25 Your Honor, would you like me to go ahead and do the

1 names now?

2 THE COURT: If you would.

3 MR. THORNTON: Ladies and gentlemen of the jury, these  
4 are potential and only potential witnesses that may be  
5 called in this case: Charles Allen, Beaufort County  
6 Detention Center; Ivery Atkins, Beaufort County Sheriff's  
7 Office; Neil Baxley, Beaufort County Sheriff's Office;  
8 Keamber Bigelow; Antonio Brewer; Tia Brewer, Nija Brown,  
9 Daniel Byrne with Emergency Medical Services; Officer Cave  
10 with the Beaufort County Detention Center; Susan Cromer,  
11 South Carolina Law Enforcement Division also known as SLED;  
12 Billy Crumpton, Beaufort County Sheriff's Office; Brandon  
13 Disbrow, Beaufort County Sheriff's Office; Kevin Fikes,  
14 Savannah/Chatham Metro Police Department; Jeremiah Fraser,  
15 Beaufort County Sheriff's Office; Eyvonne Freeman, Beaufort  
16 County Detention Center; Tim French, Beaufort County  
17 Sheriff's Office; John Gobel who is the one seated right  
18 here, Beaufort County Sheriff's Office; Maria Griffin;  
19 Tiffany Harris; Roger Heaton who is standing in the back,  
20 with the 14th Circuit Solicitor's Office; Kalin Higgs; Dylan  
21 Hightower of the 14th Circuit Solicitor's Office; Forrest  
22 Howard with the U. S. Marshal Service; Chris Jabar; Adrian  
23 Jenkins; Quornisha Jones; John Kelleher, Beaufort County  
24 Sheriff's Office; Katrina Light, Beaufort County Sheriff's  
25 Office; Darrell Maxwell is a detective from North Carolina;

1 Leandra McDonald; Cedrick McDuffie; Carey McKnight; Chris  
2 Norton; Kristen Norton; Charles Oliver is with North  
3 Carolina Law Enforcement; Jessica Power; Jeff Purdy,  
4 Beaufort County Sheriff's Office; Saeed Rehman, Beaufort  
5 Memorial Hospital; Andrew Rice, Beaufort County Sheriff's  
6 Office; Lieutenant Latasha Robinson, Beaufort County  
7 Detention Center; David Roche; Michael Rowan,  
8 Savannah/Chatham Metro Police Department; Chad Seronka,  
9 Beaufort County Sheriff's Office; Joe Schaffer, EMS; Lance  
10 Corporeal Siplin, Beaufort County Detention Center; Melanie  
11 Smith, 911 and EMS; Jennifer Stoner, South Carolina Law  
12 Enforcement Division also known as SLED; William Squires,  
13 Beaufort County Sheriff's Office; John Thompson, EMS; Dr.  
14 Lee Marie Tormos, Medical University of South Carolina;  
15 Jasmin Tell; Lance Corporal Vicuna, Beaufort County  
16 Detention Center; Lattrisha Whetsell; Officer Whitney with  
17 the Beaufort Police Department; Julie Williams with EMS;  
18 Alvin Wilson, EMS; Chris Wilson, Beaufort County Sheriff's  
19 Office; JoJo Woodward, Beaufort County Sheriff's Office;  
20 Byron Young; Mitchell Young; Adam Zsamar, Beaufort County  
21 Sheriff's Office; Gene Rowell; and Walter Tucker.

22 Those would be all of the potential witnesses, Judge.  
23 I do not anticipate all of them being called.

24 THE COURT: Thank you, Mr. Thornton.

25 MR. THORNTON: Yes, sir.

1 THE COURT: Now Mr. Wright.

2 MR. WRIGHT: I'm sorry, Judge.

3 THE COURT: If you would like to introduce yourself.

4 MR. WRIGHT: Good morning. It is still morning. My  
5 name is Derek Wright. I also have Mr. Robert Ferguson. We  
6 have the honor of representing my client Mr. Walter Tucker.

7 THE COURT: Thank you.

8 All right, ladies and gentlemen, has any member of the  
9 jury panel ever been related by blood or related by marriage  
10 to any of the attorneys involved in the case, to any of the  
11 witnesses that have been identified to you, or to the  
12 defendant himself; if you have ever been related by blood or  
13 marriage to any of those individuals please stand.

14 And your number please, ma'am?

15 MEMBER OF THE JURY PANEL: One thirty-five.

16 THE COURT: One -- one thirty-five. And you were  
17 related to?

18 MEMBER OF THE JURY PANEL: I am not sure. I may be  
19 related by marriage to Ms. Swanson.

20 THE COURT: This lady?

21 MEMBER OF THE JURY PANEL: Yes -- no, not -- Arthur  
22 Swanson ---

23 MS. SWANSON: Not -- Arthur Swanson?

24 MEMBER OF THE JURY PANEL: Yes.

25 MS. SWANSON: From Charleston?

1 MEMBER OF THE JURY PANEL: Yes. Oh, yes.

2 MS. SWANSON: I had no idea. Nice to meet you.

3 THE COURT: Well, I do need to ask you some questions  
4 then. Mr. Swanson, Arthur Swanson, how does he fit into the  
5 relationship?

6 MEMBER OF THE JURY PANEL: He and my dad are cousins.  
7 Arthur Senior and my father are cousins, second cousins.

8 THE COURT: And how does that ---

9 MR. THORNTON: I believe, Judge, that would make --  
10 that means her grandfather and he are first cousins, so that  
11 would make them fifth cousins, fourth cousins.

12 THE COURT: Does that sound correct to you?

13 MEMBER OF THE JURY PANEL: Yes.

14 THE COURT: Okay. Well, let me ask you another  
15 question. I am assuming I know the answer to this, but do  
16 you actually know ---

17 MEMBER OF THE JURY PANEL: No.

18 THE COURT: --- this Ms. Swanson?

19 MEMBER OF THE JURY PANEL: No, sir.

20 THE COURT: Okay. Would the fact that you may be a  
21 fourth or fifth cousin ---

22 MEMBER OF THE JURY PANEL: No sir.

23 THE COURT: --- interfere with your ability to be a  
24 fair and impartial juror in this case?

25 MEMBER OF THE JURY PANEL: No.

1 THE COURT: Thank you, ma'am. Has any member of the  
2 jury panel ever had a close personal or social relationship  
3 with any of the attorneys involved in the case, any of the  
4 witnesses that have been identified to you, or the defendant  
5 himself; if you have ever had a close personal or social  
6 relationship with any of those individuals would you please  
7 stand.

8 And give us your number.

9 MEMBER OF THE JURY PANEL: Two thirty-three, Your  
10 Honor.

11 THE COURT: Two thirty-three. And that would be ---

12 MEMBER OF THE JURY PANEL: Michael Murphy. One of  
13 your witnesses has become a good friend of mine. He and his  
14 wife -- I am a bartender on Daufuskie Island. They are  
15 regular customers. And over the last two or three years we  
16 have spent a lot of time together and I know him.

17 THE COURT: All right. Which witness would that be?

18 MEMBER OF THE JURY PANEL: Tim French.

19 THE COURT: Now would that fact interfere with your  
20 ability to be a fair and impartial juror in this case?

21 MEMBER OF THE JURY PANEL: I believe it would.

22 THE COURT: You think so? That your relationship with  
23 that would ---

24 MEMBER OF THE JURY PANEL: Yes, we have come pretty  
25 close.

1 THE COURT: All right. Thank you, sir.

2 And, yes, ma'am, the lady closest to me.

3 MEMBER OF THE JURY PANEL: Number 70.

4 THE COURT: Seventy.

5 MEMBER OF THE JURY PANEL: I am not sure if this  
6 pertains or not, but Andrew Rice is a church family member  
7 of mine.

8 THE COURT: I am not going to ask you how often you see  
9 that individual. But is that the connection at church?

10 MEMBER OF THE JURY PANEL: Yes.

11 THE COURT: Have either of you ever visited in each  
12 other's homes?

13 MEMBER OF THE JURY PANEL: No.

14 THE COURT: Church on an average Sunday would have  
15 approximately how many people in attendance; is it five or  
16 five hundred?

17 MEMBER OF THE JURY PANEL: Maybe 50.

18 THE COURT: Now would that fact interfere with your  
19 ability to be a fair and impartial juror?

20 MEMBER OF THE JURY PANEL: No sir.

21 THE COURT: Okay. Thank you ma'am.

22 And, yes, sir.

23 MEMBER OF THE JURY PANEL: Yes, Juror Number 85.

24 THE COURT: Eighty-five.

25 MEMBER OF THE JURY PANEL: Neil Baxley was the person

1 that I am connected with. I know him. First of all, his  
2 son dated my daughter, took her out once. And so that is  
3 how the connection started. But my wife working with  
4 emergency management and DHEC she runs in that circle, so I  
5 interact with him every now and again.

6 THE COURT: Once a month? Once every four months?

7 MEMBER OF THE JURY PANEL: A couple of months I will  
8 run into him. Every couple of months. I don't believe it  
9 would impact my ability to be fair in general.

10 THE COURT: Thank you, sir.

11 And the gentleman in the dark shirt. Yes, sir.

12 MEMBER OF THE JURY PANEL: Thirty-three.

13 THE COURT: Thirty-three. All right, sir.

14 MEMBER OF THE JURY PANEL: I know Jeff Purdy.

15 THE COURT: And how long have you known him?

16 MEMBER OF THE JURY PANEL: Seven or eight years. Six,  
17 seven years.

18 THE COURT: I am really just trying to figure out how  
19 close how close you know him and how well you know him and  
20 whether that would have anything to do with anything. How  
21 often do you see him?

22 MEMBER OF THE JURY PANEL: Our kids play -- our  
23 youngest boys played baseball together. So I see him at  
24 social events. I might not see him necessarily every single  
25 week now, but we know each other pretty good I guess.

1 THE COURT: Does he visit in your home or has he ever  
2 visited in your home?

3 MEMBER OF THE JURY PANEL: Dropping kids off to get  
4 rides to baseball practice. That's about it.

5 THE COURT: Have you ever visited in his home?

6 MEMBER OF THE JURY PANEL: Same thing. Maybe  
7 trick-or-treating or something like that with the kids  
8 generally.

9 THE COURT: Of course I don't know anything about what  
10 this individual might testify to if he testifies. But would  
11 the fact that you have just described to us, the fact that  
12 you know him, would that interfere with your ability to be a  
13 fair and impartial juror?

14 MEMBER OF THE JURY PANEL: No, Your Honor.

15 THE COURT: Do you think you can listen to the evidence  
16 and be fair to both the State and to the defense?

17 MEMBER OF THE JURY PANEL: Yes.

18 THE COURT: All right. Thank you so much.

19 And, yes, sir; your number?

20 MEMBER OF THE JURY PANEL: How are you, sir? One  
21 seventy-seven.

22 THE COURT: One seventy-seven?

23 MEMBER OF THE JURY PANEL: Yes, sir. On the witness  
24 list Daniel Byrne I went to paramedic school with I believe  
25 that same gentleman if he works up here. We have run into

1 each other occasionally but not a very common occurrence. I  
2 just wanted to make sure that that was understood.

3 THE COURT: Went to school together?

4 MEMBER OF THE JURY PANEL: We went to paramedic school.

5 THE COURT: Paramedic school.

6 MEMBER OF THE JURY PANEL: Yes, sir.

7 THE COURT: Approximately how long ago?

8 MEMBER OF THE JURY PANEL: That has been approximately  
9 2002, so about 12 or 13 years ago we were.

10 THE COURT: Since then it is occasionally y'all run  
11 into each other?

12 MEMBER OF THE JURY PANEL: Yes, sir. We have  
13 corresponded by e-mail occasionally over the past several  
14 years. We are both in the fire department also so we talk  
15 about that. But other than that it is not any common  
16 occurrence that we would run into each other, Your Honor. I  
17 don't see him but maybe once or twice every six months.

18 THE COURT: Has he ever discussed -- of course I don't  
19 know what he knows, but has he ever discussed this case ---

20 MEMBER OF THE JURY PANEL: No, sir. ---

21 THE COURT: --- with you?

22 MEMBER OF THE JURY PANEL: No sir.

23 THE COURT: The facts that you just described to us,  
24 would that interfere with your ability to be a fair and  
25 impartial juror?

1 MEMBER OF THE JURY PANEL: I don't believe so, sir; no.

2 THE COURT: Thank you. Has any member of the jury  
3 panel or a member of your immediate family ever been  
4 represented by any of the attorneys involved in this case;  
5 if so, please stand.

6 (WHEREUPON, no one stood.)

7 THE COURT: Has any member of the jury panel ever  
8 served in the military or the armed forces; if so, please  
9 stand.

10 Let me start on the far left. If you would just give  
11 us your number and which branch and the last time you  
12 served. I will start with the gentleman in the blue. Your  
13 number?

14 MEMBER OF THE JURY PANEL: Number 243. I served. I am  
15 retired military, 23 years. Retired about 1996. Army.

16 THE COURT: Thank you, sir.

17 And, yes, sir?

18 MEMBER OF THE JURY PANEL: Thirty-three, Marine Corps.

19 THE COURT: How long have you been out?

20 MEMBER OF THE JURY PANEL: Hold on a second. It has  
21 been a while.

22 THE COURT: Approximately.

23 MEMBER OF THE JURY PANEL: Fifteen, seventeen years  
24 ago. Something like that.

25 THE COURT: Okay. Thank you.

1 Yes, sir?

2 MEMBER OF THE JURY PANEL: One-oh-three. Marine Corps.  
3 I got out in 2002.

4 THE COURT: Okay. Thank you.

5 MEMBER OF THE JURY PANEL: One seventy-seven.

6 THE COURT: I'm sorry.

7 MEMBER OF THE JURY PANEL: I'm sorry, sir.

8 THE COURT: That is fine. Go ahead.

9 MEMBER OF THE JURY PANEL: One seventy-seven. United  
10 States Air Force. I got out in '98.

11 THE COURT: '98.

12 MEMBER OF THE JURY PANEL: Yes, sir.

13 THE COURT: Yes, ma'am.

14 MEMBER OF THE JURY PANEL: Number 11. I was in the  
15 Tennessee Air National Guard for six years and got out in  
16 '92.

17 THE COURT: Thank you.

18 Yes, sir?

19 MEMBER OF THE JURY PANEL: One twenty-one: Marine  
20 Corps. 2005.

21 THE COURT: Thank you, sir.

22 And, yes, ma'am?

23 MEMBER OF THE JURY PANEL: Seventy-seven, U.S. Army.  
24 '93.

25 THE COURT: Thank you.

1 And, yes, sir?

2 MEMBER OF THE JURY PANEL: One fifty-six. Marine  
3 Corps. '91.

4 THE COURT: Thank you.

5 THE COURT REPORTER: What was his number. I didn't get  
6 his number.

7 THE COURT: One fifty- ---

8 MEMBER OF THE JURY PANEL: One fifty-six.

9 THE COURT: One fifty-six.

10 MEMBER OF THE JURY PANEL: And Number 190. U.S. Navy.  
11 1990.

12 THE COURT: Thank you, sir.

13 Any member of the jury panel in their past or present  
14 employment ever been responsible for conducting  
15 investigations, interviewing witnesses, making findings or  
16 reports based on your conclusions; if so, please stand. And  
17 you have to give us your number and what you did.

18 MEMBER OF THE JURY PANEL: Eighty-five. Human resource  
19 manager. When we have issues at work I do need to conduct  
20 an investigation and come to the conclusion and come up with  
21 a judgment.

22 THE COURT: All right. Thank you, sir.

23 MEMBER OF THE JURY PANEL: One seventy-seven. I am a  
24 fire captain with the City of Savannah, so we have to  
25 investigate fires and things like that and make our

1 recommendation on that.

2 THE COURT: Thank you, sir.

3 THE BAILIFF: One standing, Your Honor.

4 THE COURT: I am sorry.

5 MEMBER OF THE JURY PANEL: Juror 32. I went to law  
6 school in the past, and while I was there I was in the  
7 Student Prosecutor's Office. So I looked into prosecuting  
8 defendants as part of a legal program.

9 THE COURT: And how long ago was that?

10 MEMBER OF THE JURY PANEL: Twenty years ago.

11 THE COURT: Okay. Thank you, sir.

12 THE BAILIFF: One standing again, Your Honor.

13 THE COURT: Yes, sir.

14 MEMBER OF THE JURY PANEL: Juror 224. U.S. Navy. 1957  
15 to '61.

16 THE COURT: Okay. Thank you, sir.

17 I am getting ready to ask this question. But before I  
18 do it I want to paraphrase it by saying this: If you have  
19 already answered this question you don't need to stand.

20 Is there any member of the jury panel who is now or has  
21 in the past been a member of any law enforcement agency; if  
22 so, please stand unless you have already told me that you  
23 work for a law enforcement agency. Anyone?

24 (WHEREUPON, no one stood.)

25 THE COURT: Has anyone -- has any member of the jury

1 panel ever been an employee, an intern, or an investigator,  
2 or worked for a prosecutor's office and not already so  
3 advised me; if so, please stand.

4 (WHEREUPON, no one stood.)

5 THE COURT: Does any member of the jury panel have a  
6 law degree or any legal training of any kind; if so, please  
7 stand.

8 MEMBER OF THE JURY PANEL: Juror 32. I am a JD from  
9 Boston University and I passed the mass bar. My status now  
10 is retired.

11 THE COURT: And you retired ...?

12 MEMBER OF THE JURY PANEL: Basically I think it was  
13 about 10 years ago.

14 THE COURT: What kind of practice do you have?  
15 Somebody is going to want to ask.

16 MEMBER OF THE JURY PANEL: I did not have a practice.  
17 Basically I moved down south to help with my mother's care.  
18 She had health problems.

19 THE COURT: All right. Thank you, sir.

20 MEMBER OF THE JURY PANEL: Number 11. I was a court  
21 reporter for 15 years.

22 THE COURT: Okay. Thank you, ma'am.

23 Based on the indictments that I have been referring to  
24 earlier I conclude that it is possible there may be evidence  
25 in this case that will involve allegations of murder or

1 robbery, kidnapping, and drug use -- or drugs. Excuse me.  
2 Is there any member of the jury panel who based on that  
3 feels that they could not be a fair and impartial juror; if  
4 so, please stand.

5 And get your number.

6 MEMBER OF THE JURY PANEL: Two sixty-nine.

7 THE COURT: I'm sorry?

8 MEMBER OF THE JURY PANEL: Two sixty-nine.

9 THE COURT: Two sixty-nine?

10 MEMBER OF THE JURY PANEL: Yes.

11 THE COURT: And I have forgotten your number, sir.

12 MEMBER OF THE JURY PANEL: One seventy-seven, sir.

13 THE COURT: One seventy-seven.

14 And, yes, ma'am.

15 MEMBER OF THE JURY PANEL: One thirty-five.

16 THE COURT: One thirty-five.

17 THE COURT: Let me see y'all down front one at a time.

18 THE BAILIFF: Juror number 269, Your Honor.

19 (WHEREUPON, bench conference was had as follows:)

20 MEMBER OF THE JURY PANEL: I have never been on a jury  
21 before. The murder one is a little rough, so I don't know  
22 if I would be able to be fair on that. When I was younger  
23 my stepsister was brutally murdered.

24 THE COURT: Okay.

25 MEMBER OF THE JURY PANEL: So I don't know if I would

1 be able to judge properly.

2 THE COURT: That is why we ask that question. Any  
3 additional questions you wish for me to ask this gentleman?

4 MR. THORNTON: No sir.

5 THE COURT: All right. Thank you, sir.

6 (WHEREUPON, juror returned to seat.)

7 THE BAILIFF: Juror Number 177, Your Honor.

8 (WHEREUPON, bench conference resumed.)

9 THE COURT: I will excuse 269.

10 (WHEREUPON, Juror Number 177 joined bench conference.)

11 THE COURT: Yes, sir.

12 MEMBER OF THE JURY PANEL: My cousin overdosed on  
13 heroin when he was 18. And he was close to us. I still --  
14 I confer with his aunt on a regular -- or my aunt. His  
15 mother on a regular basis. And then just having ridden  
16 in the ambulance for several years having to deal with  
17 drug-related issues and things like that it is kind of a hit  
18 or miss subject.

19 THE COURT: Okay.

20 MEMBER OF THE JURY PANEL: I mean I was just letting  
21 you know.

22 THE COURT: In other words you think that that might be  
23 a real problem with you sitting on the jury; is that what  
24 you are saying?

25 MEMBER OF THE JURY PANEL: I can't guarantee it, so;

1 but I want to say no. I want to say it's not going to be an  
2 issue, but it is one of those I want to make sure I put  
3 forward before I .....

4 THE COURT: Well ---

5 MEMBER OF THE JURY PANEL: I mean just because it was  
6 part of my family. You know.

7 THE COURT: No, I know. I know. What I really need to  
8 know is whether you can put that aside, compartmentalize  
9 it ---

10 MEMBER OF THE JURY PANEL: Well, I can try.

11 THE COURT: --- and be able to sit and hear the  
12 evidence in this case and hear the law in this case and be  
13 fair to both the State and the defense, be a fair and  
14 impartial juror despite what you have just described.

15 MEMBER OF THE JURY PANEL: I believe that I can -- I  
16 can, yes, sir.

17 THE COURT: You think you can?

18 MEMBER OF THE JURY PANEL: I think I can. I mean it is  
19 part of my civic duty also; so yes, I think I can -- I can  
20 abide by the ruling or what you are -- just instilled in me  
21 so.

22 THE COURT: And once again, I want to make sure I  
23 understand.

24 MEMBER OF THE JURY PANEL: Yes, sir. I will be a fair  
25 and impartial juror.

1 THE COURT: Well, I want to know if you can put aside  
2 your history ---

3 MEMBER OF THE JURY PANEL: Yes, sir.

4 THE COURT: --- as well as your recent experiences; is  
5 that what you are saying?

6 MEMBER OF THE JURY PANEL: Yes, sir.

7 THE COURT: Okay. All right. Thank you.

8 MEMBER OF THE JURY PANEL: Thank you.

9 THE BAILIFF: Juror Number 135, Your Honor.

10 THE COURT: One thirty-five.

11 Yes, ma'am?

12 MEMBER OF THE JURY PANEL: When I was 18 years old my  
13 friend Sharon Hartness's younger sister, Carlotta Hartness,  
14 14, was tortured and murdered and ---

15 THE COURT: Was that here or ---

16 MEMBER OF THE JURY PANEL: In Columbia.

17 THE COURT: In Columbia. I have very strong feelings  
18 about the death penalty.

19 THE COURT: Well, of course this is not a death penalty  
20 case.

21 MEMBER OF THE JURY PANEL: Yeah.

22 THE COURT: It is not. It is a murder case.

23 MEMBER OF THE JURY PANEL: Yes.

24 THE COURT: Do you think that that is going to cause  
25 you a problem in trying to be a fair and impartial juror?

1 MEMBER OF THE JURY PANEL: Very much so.

2 THE COURT: Okay. That takes care of that, doesn't it?

3 MEMBER OF THE JURY PANEL: Yes.

4 THE COURT: All right. Thank you. If you will just go  
5 have a seat.

6 MEMBER OF THE JURY PANEL: Thank you.

7 THE COURT: One thirty-five is out.

8 THE BAILIFF: Juror Number 13, Your Honor.

9 THE COURT: Juror Number -- what did I say? Let me see  
10 what your number is. I ---

11 MEMBER OF THE JURY PANEL: Thirteen.

12 THE COURT: Thirteen. Yes, sir.

13 MEMBER OF THE JURY PANEL: In 2010 I had a bad  
14 experience. I sat in a psych ward for like a week for  
15 attempted suicide. And the court system tried putting  
16 domestic violence on me. And I am getting very agitated by  
17 the murder thing. Just instantly. And so is there any way  
18 I can get out of it?

19 THE COURT: In other words ---

20 MEMBER OF THE JURY PANEL: I mean it is bringing -- it  
21 is bringing the past back to me.

22 THE COURT: Okay. You are concerned that this will be  
23 a problem ---

24 MEMBER OF THE JURY PANEL: I mean I am getting antsy  
25 right now. I hate -- I hate that feeling.

1 THE COURT: If it was some other kind of case you might  
2 be okay?

3 MEMBER OF THE JURY PANEL: Possibly.

4 THE COURT: All right. I am worried that if you start  
5 to get ---

6 MEMBER OF THE JURY PANEL: I mean I am really like  
7 nervous. And I don't want to have a nervous breakdown.

8 THE COURT: Yeah. Okay. Okay. All right.

9 MEMBER OF THE JURY PANEL: Thanks.

10 THE COURT: Thank you.

11 (WHEREUPON, Juror 13 returns to seat.)

12 THE COURT: Thirteen is out.

13 THE BAILIFF: Juror Number 170.

14 THE COURT: I'm sorry, I missed it. One ...?

15 THE CLERK: One seventy, Jane Janiak; yeah.

16 THE COURT: One, seven, zero.

17 MEMBER OF THE JURY PANEL: I don't know if this  
18 matters, but 25 years ago when we were down in Florida for  
19 my father -- my grandfather's funeral we were -- my family  
20 was mugged by two black kids, and I don't know if I can  
21 honestly be fair about this. We were actually mugged at our  
22 hotel where we were staying right off of 95 the day before  
23 my grandfather's funeral.

24 THE COURT: All right. Do you think this is going to  
25 be a real problem for you to sit and be fair, because that

1 is what you have to do?

2 MEMBER OF THE JURY PANEL: I mean it is something that  
3 I will probably never forget.

4 THE COURT: I understand that. With that ---

5 MEMBER OF THE JURY PANEL: I mean I don't honestly  
6 know, honest -- I mean I can't honestly say if I would or  
7 not.

8 THE COURT: For me to let you sit on the jury you would  
9 have to be able to tell me that you know that you can be a  
10 fair and impartial juror. If you don't know ---

11 MEMBER OF THE JURY PANEL: I don't honestly know. I am  
12 just trying to be really honest with you.

13 THE COURT: That is what I want -- I want you to do  
14 that. All jurors who -- are not going to have any problems  
15 about things that have happened to them in the past, and  
16 that is the reason I ask ---

17 MEMBER OF THE JURY PANEL: And this just kind of just  
18 all came back to me, something I completely forgot about.

19 THE COURT: That is the reason we asked the question  
20 because some people have had things happen in the past that  
21 predispose them to feel a certain way and that they can't  
22 compartmentalize and put away. It sounds like to me ---

23 MEMBER OF THE JURY PANEL: It brings back ---

24 THE COURT: --- that is you.

25 MEMBER OF THE JURY PANEL: --- a lot of things. Yeah,

1 I mean I didn't even think about it until we were just  
2 sitting here and I was just -- but.

3 THE COURT: Okay.

4 MEMBER OF THE JURY PANEL: I just want to be honest so.

5 THE COURT: All right. Thank you.

6 (WHEREUPON, juror returns to seat.)

7 THE COURT: I can't let her sit. One seventy is out.

8 (WHEREUPON, Juror 170 returns to seat.)

9 THE BAILIFF: Juror Number 315, Your Honor.

10 THE COURT: I can't let her sit.

11 THE BAILIFF: Juror Number 315.

12 THE COURT: One seventy is out.

13 (WHEREUPON, Juror 315 joins bench conference.)

14 THE COURT: I wasn't paying attention again -- three  
15 fifteen.

16 MEMBER OF THE JURY PANEL: I'm sorry, Your Honor, I  
17 did not mention my issue before. Nine years ago my second  
18 cousin was murdered in Fairmont, Missouri. And they never  
19 did find out who did it and all that. They found her in a  
20 motel room shot up.

21 And the other thing is I can't hear. I've had two  
22 sets of tubes put in my ears. One tube has fell out, and it  
23 is just a muffled in here. I just can't hear anything  
24 unless -- unless I'm looking right at somebody's lips when  
25 they are talking. And I can prove it if they stick a

1 flashlight in my ear they will see it.

2 I just cannot -- I thought I could hear you with a  
3 microphone. I just can't hear nothing. If I'm looking at  
4 you I can understand.

5 THE COURT: We don't have a hearing devices here do we  
6 for jurors?

7 MR. THORNTON: Not specifically, no, sir. I mean it  
8 would have to be ---

9 THE COURT: Some places have them ---

10 MR. THORNTON: No, sir.

11 THE COURT: --- like some of your churches do.

12 MR. THORNTON: Yes, sir. No, we don't.

13 MEMBER OF THE JURY PANEL: I have got an amplifier on  
14 my phone at work so I can hear better. I work around loud  
15 machinery and everything.

16 THE COURT: Now wait a minute. But you heard all my  
17 questions though, didn't you?

18 MEMBER OF THE JURY PANEL: About half of them. That is  
19 why I had to go up to the bailiff and ask him what the  
20 question was this time. That is when I decided to get in  
21 line. But I needed to explain my hearing also. Especially  
22 on a case this severe I wouldn't want to misinterpret  
23 something.

24 THE COURT: All right. Thank you.

25 MEMBER OF THE JURY PANEL: Thank you.

1 THE COURT: Thank you for coming down.

2 (WHEREUPON, returned to seat.)

3 THE COURT: Three fifteen. I am going to excuse 315.

4 (WHEREUPON, bench conference concluded.)

5 THE COURT: We had a juror step out of the courtroom.

6 We are waiting for that juror to come back in.

7 (WHEREUPON, break awaiting juror.)

8 THE BAILIFF: All jurors are present, Your Honor.

9 THE COURT: This is a similar question than the one I  
10 asked a few moments ago. If you have already advised me  
11 about this next question you don't need to stand.

12 But the next question is this: Is there any member of  
13 the jury panel who has been the victim of a violent crime or  
14 had a family member or very close friend be a victim of a  
15 violent crime; if so, please stand unless you have already  
16 told me about such an event. And we will begin over here on  
17 the right.

18 Yes, sir?

19 MEMBER OF THE JURY PANEL: Yes, have a child that was a  
20 victim of a sexual assault.

21 THE COURT: I need to get your number. I'm sorry.

22 MEMBER OF THE JURY PANEL: Two, five, four.

23 THE COURT: Two, five, four. And you said what?

24 MEMBER OF THE JURY PANEL: I have a child, the victim  
25 of sexual assault.

1 THE COURT: You have a child?

2 MEMBER OF THE JURY PANEL: Yes.

3 THE COURT: I'm not going to ask any details about it  
4 of course. But would that interfere with your ability to be  
5 a fair and impartial juror in this case?

6 MEMBER OF THE JURY PANEL: No, sir.

7 THE COURT: It would not?

8 MEMBER OF THE JURY PANEL: No.

9 THE COURT: Thank you.

10 Yes, ma'am, your number please?

11 MEMBER OF THE JURY PANEL: Three twelve.

12 THE COURT: Three twelve?

13 MEMBER OF THE JURY PANEL: Three twelve.

14 THE COURT: Did you want to tell me now, or do you want  
15 to see me in private?

16 MEMBER OF THE JURY PANEL: Strong armed robbery, purse  
17 snatching.

18 THE COURT: You were -- you were the victim in the  
19 strong arm ---

20 MEMBER OF THE JURY PANEL: Yes.

21 THE COURT: I need to ask you a few questions. The  
22 strong armed robbery occurred approximately how long ago?

23 MEMBER OF THE JURY PANEL: Fifteen years.

24 THE COURT: Fifteen years ago. Would it have been in  
25 the local?

1 MEMBER OF THE JURY PANEL: No, it was in Florida.

2 THE COURT: Were you injured?

3 MEMBER OF THE JURY PANEL: No.

4 THE COURT: Would those facts that you just related to  
5 me interfere with your ability to be a fair and impartial  
6 juror in this case?

7 MEMBER OF THE JURY PANEL: I don't believe so.

8 THE COURT: You don't believe so. So I'm going to ask  
9 you a different question another way. Do you think you  
10 could be a fair and impartial juror?

11 MEMBER OF THE JURY PANEL: Yes.

12 THE COURT: In other words, those facts that you told  
13 me about do you believe you could put them aside and not  
14 have them influence your decision in this case?

15 MEMBER OF THE JURY PANEL: Yes, sir.

16 THE COURT: Thank you, ma'am.

17 Has any member of the jury panel ever been witness to a  
18 violent crime; if so, please stand.

19 (WHEREUPON, no one stood.)

20 THE COURT: Has any member of the jury panel ever been  
21 interviewed by law enforcement and provided a written  
22 statement or recorded statement concerning your witnessing  
23 of an event that caused law enforcement to interview you; if  
24 so, please stand.

25 MEMBER OF THE JURY PANEL: Two, five, four. Yes, same

1 scenario.

2 THE COURT: Same scenario. Okay. You have already  
3 told us about your response. Thank you.

4 Now has any member of the jury panel read, heard or  
5 seen anything about the allegations that have been referred  
6 to or that I referred to in these three indictments; and by  
7 heard, read or seen I am referring to seeing anything on TV  
8 or radio or Internet or newspapers, any kind of  
9 publications, or your next-door neighbor talked to you; if  
10 that applies to you, please stand.

11 THE BAILIFF: I believe from the last question, Your  
12 Honor, one is standing.

13 THE COURT: Yes, sir, your number?

14 MEMBER OF THE JURY PANEL: Number seven.

15 THE COURT: Number seven. And tell me how it is you  
16 heard whatever?

17 MEMBER OF THE JURY PANEL: I found a body in the swamp  
18 behind -- in the marsh behind my house and the police came  
19 and interviewed me. It was on the last question.

20 THE COURT: And they ---

21 THE BAILIFF: Stand up, sir, again, please.

22 MEMBER OF THE JURY PANEL: I'm sorry. Yes.

23 THE COURT: And when they came to you they discussed  
24 this case?

25 MEMBER OF THE JURY PANEL: No, it was your former

1 question. You had asked if ---

2 THE COURT: Oh, I see.

3 MEMBER OF THE JURY PANEL: Police officer.

4 THE COURT: I gotcha. How long ago did that occur?

5 MEMBER OF THE JURY PANEL: About two-and-a-half years.

6 THE COURT: And that was locally?

7 MEMBER OF THE JURY PANEL: Yes, sir.

8 THE COURT: Okay. All right. Thank you, sir.

9 Has any member of the jury panel formed or expressed an  
10 opinion about any issue or any matter involved in this case;  
11 if so, please stand unless you have already told me that you  
12 have formed or expressed an opinion about this case. Has  
13 any member of the jury panel formed or expressed an opinion  
14 about any issue or any matter involved in this case; if so,  
15 please stand.

16 (WHEREUPON, no one stood.)

17 THE COURT: Is any member of the jury panel aware of  
18 any bias or any prejudice that they may have towards either  
19 the State or to the defendant in this case; if so, please  
20 stand unless you have already told me about it. Is any  
21 member aware of any bias or any prejudice they may have  
22 towards the defendant or the State?

23 (WHEREUPON, no one stood.)

24 THE COURT: I believe I have already asked this  
25 question in another manner, but is there any member of the

1 jury panel who was a member of the grand jury that issued  
2 the indictments in this case; if so, please stand.

3 (WHEREUPON, no one stood.)

4 THE COURT: Is there any member of the jury panel who  
5 is a member of or a contributor to any group which has as  
6 its primary concern the promotion of law enforcement or  
7 victim's rights. And these groups would include and would  
8 not be limited to MAD, SAD, CAVE or such similar  
9 organizations; if so, please stand.

10 (WHEREUPON, no one stood.)

11 THE COURT: Does any member of the jury panel know of  
12 any reason whatsoever why he or she should not serve as a  
13 juror in this case with particular emphasis being placed on  
14 your ability to be fair and impartial to both the State and  
15 to the defendant? Please stand unless you have already told  
16 me about the answer to this, otherwise please stand.

17 (WHEREUPON, no one stood.)

18 THE COURT: Additional questions from the State?

19 MR. THORNTON: Nothing from the State, Judge.

20 THE COURT: From the defense, Mr. Wright?

21 MR. WRIGHT: None from the defense, Judge.

22 THE COURT: Ladies and gentlemen, let's take a short  
23 recess. When we come back we are going to pick a jury.

24 THE BAILIFF: Do not leave the courthouse, please.

25 (WHEREUPON, a break was had.)

1 (WHEREUPON, returned from break.)

2 THE BAILIFF: Juror Number 331.

3 THE COURT: Three thirty-one. Yes, ma'am.

4 (WHEREUPON, bench conference was had as follows:)

5 MEMBER OF THE JURY PANEL: I just -- my grandchild was  
6 murdered (crying). I didn't want to say it out loud.

7 THE COURT: This is -- this is your grandchild?

8 MEMBER OF THE JURY PANEL: Yes. And it is very -- you  
9 can see it is really ---

10 THE COURT: Just happened?

11 MEMBER OF THE JURY PANEL: (Nods head.)

12 THE COURT: Okay.

13 MEMBER OF THE JURY PANEL: And they just let him out of  
14 jail a couple of days ago.

15 THE COURT: The defendant just got out of jail?

16 MEMBER OF THE JURY PANEL: Yes.

17 THE COURT: Okay. Well, let me ask you this now. I  
18 understand that that has clearly upset you, right?

19 MEMBER OF THE JURY PANEL: Yes, sir.

20 THE COURT: Would that -- is this going to interfere  
21 with your ability to be a fair and impartial juror in this  
22 case, the one we are talking about here?

23 MEMBER OF THE JURY PANEL: No, sir, I just didn't want  
24 to say this out loud in front of ---

25 THE COURT: Right. Okay. I understand that. Okay.

1 But are you okay with serving on this jury though?

2 MEMBER OF THE JURY PANEL: Yes, sir.

3 THE COURT: Okay. All right. Thank you, ma'am.

4 (WHEREUPON, end of bench conference.)

5 THE COURT: I need to see Juror Number 81.

6 (WHEREUPON, bench conference resumed.)

7 MR. WRIGHT: And Judge, I want to ask you what your  
8 decision was on 177.

9 THE COURT: One seventy seven I didn't strike.

10 MR. WRIGHT: Okay.

11 THE COURT: They told me 81 needed to talk to me.

12 Come on.

13 (WHEREUPON, Juror Number 81 approached.)

14 THE COURT: Yes, ma'am, I couldn't remember why you  
15 needed to see me.

16 MEMBER OF THE JURY PANEL: One of my family members has  
17 been robbed.

18 THE COURT: All right. One of your family members have  
19 been robbed?

20 MEMBER OF THE JURY PANEL: Armed robbery.

21 THE COURT: Armed robbery?

22 MEMBER OF THE JURY PANEL: (Nods.)

23 THE COURT: How long ago was it?

24 MEMBER OF THE JURY PANEL: A month.

25 THE COURT: A month?

1 MEMBER OF THE JURY PANEL: A month or two.

2 THE COURT: Okay. How close a family member; was it  
3 like a cousin ---

4 MEMBER OF THE JURY PANEL: A cousin.

5 THE COURT: It happened here?

6 MEMBER OF THE JURY PANEL: Here.

7 THE COURT: Okay. Has there been an arrest in the  
8 case? Has anybody been arrested for armed robbery?

9 MEMBER OF THE JURY PANEL: I believe so.

10 THE COURT: Is that going to -- would that interfere  
11 with your ability to be a fair juror in this case though?

12 MEMBER OF THE JURY PANEL: I am not sure.

13 THE COURT: You are not sure. Do you mean it might?

14 MEMBER OF THE JURY PANEL: I don't think so.

15 THE COURT: Okay. Here is where we are. I need to  
16 find out whether you can put that aside that your cousin got  
17 robbed and sit on the jury and be fair to the State and to  
18 the defense.

19 MEMBER OF THE JURY PANEL: (Nods head.)

20 THE COURT: So you can?

21 MEMBER OF THE JURY PANEL: Uh-huh. You don't have any  
22 problem doing it; you can be a fair juror?

23 MEMBER OF THE JURY PANEL: Yes.

24 THE COURT: Okay. All right. Thank you. Thank you  
25 for coming.

1 MR. THORNTON: Nothing further from the State, Judge.

2 THE COURT: Is the State ready to select a jury?

3 MR. THORNTON: The State is ready, Your Honor.

4 THE COURT: Is the defense ready to select a jury, Mr.  
5 Wright?

6 MR. WRIGHT: We are, Your Honor.

7 \* \* \* \* \*

8 (WHEREUPON, JURY SELECTION AS FOLLOWS:)

9 THE COURT: Ladies and gentlemen, the clerk is now  
10 asking the computer to randomly select names. The attorneys  
11 each have a certain number of what I call strikes or which  
12 really means opportunity to reject a juror.

13 The attorneys can't select who is going to be on a  
14 jury, they can only decide within a certain limitation who  
15 they prefer not to have on a jury. And you are getting  
16 ready to go through that process in just a few minutes as  
17 soon as the computer cooperates.

18 Before the age of computers and before the law was  
19 changed not too many years ago jurors' names were put in a  
20 cylinder and names were drawn out much like drawing names  
21 out of a hat except the law required them to be drawn by a  
22 young child or a person who was blind. So all the  
23 courthouses around the state had -- seriously had blind  
24 people to help select the jury. And sometimes they would  
25 have a child of someone who worked there to do it. But

1 blind people routinely selected the juries. But we have  
2 progressed beyond that.

3 Madam clerk, would you give us a jury.

4 THE CLERK: Okay. When I call your juror number,  
5 please stand. Juror Number 103.

6 (WHEREUPON, a white male comes forward.)

7 THE COURT: What says the State?

8 MR. THORNTON: Please present this juror.

9 THE CLERK: What says the defense?

10 MR. WRIGHT: The defense would ask to present this  
11 juror.

12 THE CLERK: Juror Number 296.

13 (WHEREUPON, a black male comes forward.)

14 THE COURT: What says the State?

15 MR. THORNTON: Please present this juror.

16 THE CLERK: What says the defense?

17 MR. WRIGHT: Please present this juror.

18 THE CLERK: Juror Number 312.

19 (WHEREUPON, a white female comes forward.)

20 THE COURT: What says the State?

21 MR. THORNTON: Please present this juror.

22 THE CLERK: What says the defense?

23 MR. WRIGHT: Respectfully excuse this juror.

24 THE CLERK: Juror Number 317.

25 (WHEREUPON, a white male comes forward.)

1 THE COURT: What says the State?  
2 MR. THORNTON: Please present this juror.  
3 THE CLERK: What says the defense?  
4 MR. WRIGHT: Please present this juror.  
5 THE CLERK: Juror Number 32.  
6 (WHEREUPON, a white male comes forward.)  
7 THE COURT: What says the State?  
8 MR. THORNTON: Please excuse this juror.  
9 THE CLERK: Juror Number 1.  
10 (WHEREUPON, a white female comes forward.)  
11 THE COURT: What says the State?  
12 MR. THORNTON: Please present this juror.  
13 THE CLERK: What says the defense?  
14 MR. WRIGHT: Please excuse this juror.  
15 THE CLERK: Juror Number 143.  
16 (WHEREUPON, a black female comes forward.)  
17 THE COURT: What says the State?  
18 MR. THORNTON: Please present this juror.  
19 THE CLERK: What says the defense?  
20 MR. WRIGHT: Please present this juror.  
21 THE CLERK: Juror Number 210.  
22 (WHEREUPON, a white female comes forward.)  
23 THE COURT: What says the State?  
24 MR. THORNTON: Please present this juror.  
25 THE CLERK: What says the defense?

1 MR. WRIGHT: Please present this juror.  
2 THE CLERK: Juror Number 243.  
3 (WHEREUPON, a white male comes forward.)  
4 THE COURT: What says the State?  
5 MR. THORNTON: Please present this juror.  
6 THE CLERK: What says the defense?  
7 MR. WRIGHT: With all due respect please excuse this  
8 juror.  
9 THE CLERK: Juror Number 7.  
10 (WHEREUPON, a white male comes forward.)  
11 THE COURT: What says the State?  
12 MR. THORNTON: Please present this juror.  
13 THE CLERK: What says the defense?  
14 MR. WRIGHT: Please excuse this juror.  
15 THE CLERK: Juror Number 224.  
16 (WHEREUPON, a white male comes forward.)  
17 THE COURT: What says the State?  
18 MR. THORNTON: Please present this juror.  
19 THE CLERK: What says the defense?  
20 MR. WRIGHT: Please excuse this juror.  
21 THE CLERK: Juror Number 282.  
22 (WHEREUPON, a black female comes forward.)  
23 THE COURT: What says the State?  
24 MR. THORNTON: Please present this juror.  
25 THE CLERK: What says the defense?

1 MR. WRIGHT: Please present this juror.  
2 THE CLERK: Juror Number 324.  
3 (WHEREUPON, a white female comes forward.)  
4 THE COURT: What says the State?  
5 MR. THORNTON: Please present this juror.  
6 THE CLERK: What says the defense?  
7 MR. WRIGHT: Respectfully please excuse this juror.  
8 THE CLERK: Juror Number 55.  
9 (WHEREUPON, a black female comes forward.)  
10 THE COURT: What says the State?  
11 MR. THORNTON: Please present this juror.  
12 THE CLERK: What says the defense?  
13 MR. WRIGHT: Please present this juror.  
14 THE CLERK: Juror Number 14.  
15 (WHEREUPON, a white female comes forward.)  
16 THE COURT: What says the State?  
17 MR. THORNTON: Please present this juror.  
18 THE CLERK: What says the defense?  
19 MR. WRIGHT: Please present this juror.  
20 THE CLERK: Juror Number 241.  
21 (WHEREUPON, a white male comes forward.)  
22 THE COURT: What says the State?  
23 MR. THORNTON: Please present this juror.  
24 THE CLERK: What says the defense?  
25 MR. WRIGHT: Please present this juror.

1 THE CLERK: Juror Number 43.  
2 (WHEREUPON, a white male comes forward.)  
3 THE COURT: What says the State?  
4 MR. THORNTON: Please excuse this juror.  
5 THE CLERK: Juror Number 331.  
6 (WHEREUPON, a white female comes forward.)  
7 THE COURT: What says the State?  
8 MR. THORNTON: Please present this juror.  
9 THE CLERK: What says the defense?  
10 MR. WRIGHT: Respectfully please excuse this juror.  
11 THE CLERK: Juror Number 89.  
12 (WHEREUPON, a white female comes forward.)  
13 THE COURT: What says the State?  
14 MR. THORNTON: Please present this juror.  
15 THE CLERK: What says the defense?  
16 MR. WRIGHT: Respectfully please excuse this juror.  
17 THE CLERK: Juror Number 347.  
18 (WHEREUPON, a white male comes forward.)  
19 THE COURT: What says the State?  
20 MR. THORNTON: Please present this juror.  
21 THE CLERK: What says the defense?  
22 MR. WRIGHT: Please present this juror.  
23 THE CLERK: Juror Number 204.  
24 (WHEREUPON, a white female comes forward.)  
25 THE COURT: What says the State?

1 MR. THORNTON: Please present this juror.  
2 THE CLERK: What says the defense?  
3 MR. WRIGHT: Please present this juror.  
4 THE CLERK: Juror Number 58.  
5 (WHEREUPON, a white male comes forward.)  
6 THE COURT: What says the State?  
7 MR. THORNTON: Please present the juror.  
8 THE CLERK: What says the defense?  
9 MR. WRIGHT: Respectfully please excuse this juror.  
10 THE CLERK: Juror Number 17.  
11 (WHEREUPON, a white female comes forward.)  
12 THE COURT: What says the State?  
13 MR. THORNTON: Please present this juror.  
14 THE CLERK: What says the defense?  
15 MR. WRIGHT: Please present this juror.  
16 THE CLERK: We will be now striking for the alternates.  
17 Juror Number 106.  
18 (WHEREUPON, a white female comes forward.)  
19 THE COURT: What says the State?  
20 MR. THORNTON: Please present this juror.  
21 THE CLERK: What says the defense?  
22 MR. WRIGHT: Please present this juror.  
23 THE CLERK: Juror Number 309.  
24 (WHEREUPON, a white male comes forward.)  
25 THE COURT: What says the State?

1 MR. THORNTON: Please excuse this juror.

2 THE CLERK: Juror Number 57.

3 (WHEREUPON, a white male comes forward.)

4 THE COURT: What says the State?

5 MR. THORNTON: Please present this juror.

6 THE CLERK: What says the defense?

7 MR. WRIGHT: Respectfully please excuse this juror.

8 THE CLERK: Juror Number 299.

9 (WHEREUPON, a white male comes forward.)

10 THE COURT: What says the State?

11 MR. THORNTON: Please present this juror.

12 THE CLERK: What says the defense?

13 MR. WRIGHT: Please present this juror.

14 THE COURT: Are there any matters of law the court  
15 needs to consider concerning the composition or selection of  
16 the jury; from the State?

17 MR. THORNTON: None from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. WRIGHT: None from the defense, Your Honor.

20 THE COURT: Solicitor, message for the jury?

21 MR. THORNTON: Yes, sir, Judge. I would say tomorrow  
22 after 6:00 is probably safe for the remainder of the panel.

23 THE COURT: Ladies and gentlemen, those of you who are  
24 not sitting over here we are getting ready to excuse you for  
25 today and tomorrow. I am going to ask you to call the

1 number you have at 6:00 p.m. or after 6:00 tomorrow for  
2 instructions on what to do next.

3 The message could be come in the following morning or  
4 afternoon, or it could be call in the next day, or it could  
5 be thank you so much for your jury service. But until you  
6 are excused by way of a message on a machine or in the  
7 courtroom here by me you are still on jury duty.

8 So does anybody have a question about what to do? We  
9 are getting ready to let you go. Does anybody have a  
10 question about what to do? Tomorrow 6:00 p.m. or after call  
11 for the message.

12 Ladies and gentlemen, you are excused. Thank you.

13 \* \* \* \* \*

14 (WHEREUPON, PRETRIAL MATTERS AS FOLLOWS:)

15 THE COURT: Are you ready to proceed with whatever  
16 needs to be done this afternoon?

17 MR. THORNTON: Yes, sir; the State is ready, Judge.

18 THE COURT: And is defense counsel ready?

19 MR. WRIGHT: Yes, Judge.

20 THE COURT: Okay. What have y'all decided we are going  
21 to do first?

22 MR. THORNTON: Well, Your Honor, if -- I have talked to  
23 Mr. Wright; and he said he and I both are going to be here  
24 today so just he would leave it up to me. So unless he  
25 objects we will get started.

1 I think probably the best thing to do, Judge, is cover  
2 a couple of things that we agree on that we talked with you  
3 about in chambers but that we need to put on the record,  
4 both to protect the State frankly and the defendant as well.

5 The first is thing, Judge, both the State and the  
6 defense agree that it would be improper to go into any gang  
7 reference. Mr. Tucker has alleged in several letters that  
8 he has written personally as well as several witnesses that  
9 he is a member of what is known as the BMF or the Black  
10 Mafia Family. And that is well known by many of the  
11 witnesses in this case.

12 I have already instructed all of them that I have here  
13 today and I will continue to do so before testimony begins  
14 in the morning that I will not be asking for any comment  
15 from them about his affiliation with BMF or BMF in general  
16 and that they are not to talk about that.

17 And I have also instructed them that if they feel that  
18 there is a question that is asked on cross that would lead  
19 them to get into that -- unless I would imagine if that  
20 happened, Judge, it would, "A", be accidental and, "B", be  
21 pretty obvious. I told them to pause; I would object; we  
22 would approach, you know, just to make sure that that is  
23 protected. But I do believe that that is a correct  
24 statement of both Mr. Wright and I's feeling.

25 MR. WRIGHT: That is correct, Judge.

1 THE COURT: The court approves that agreement and will  
2 make that the order of the court.

3 MR. THORNTON: Thank you, Judge. Your Honor, another  
4 thing, as you are aware, Judge, you tried Travis Polite the  
5 codefendant in this case. It was the first one to go to  
6 trial, which was back in January. That was defended by Mr.  
7 Hood of the Public Defender's Office.

8 In that case, Judge, one of the eye witnesses who  
9 testified name is Antonio Brewer. Mr. Brewer has since been  
10 killed. And obviously he had testimony in that case, but  
11 you have got two issues with that. One is the Sixth  
12 Amendment issue that the defendant has of a right to  
13 cross-examine his witnesses. And the other issue that  
14 everybody has would be that it is hearsay. And I don't  
15 believe it would fall under any of the exceptions. I  
16 believe both Mr. Wright and I agree at least as to Mr.  
17 Brewer's prior testimony that that would be improper, and we  
18 will obviously not be attempting to introduce any of that  
19 into the record.

20 MR. WRIGHT: Judge, that is correct. But I believe it  
21 is not just his prior testimony but his -- there are  
22 interviews of him being interviewed by the detective ---

23 MR. THORNTON: Yes, sir, any statement made by Mr.  
24 Brewer whatsoever. I'm sorry.

25 MR. WRIGHT: Yes.

1 MR. THORNTON: To be more specific, nothing --  
2 obviously if his testimony isn't going to come in, no prior  
3 statement he made either.

4 MR. WRIGHT: And that's -- that's agreed Judge. That  
5 is what we think is best.

6 THE COURT: And the court agrees.

7 MR. THORNTON: The one issue that we do have, Your  
8 Honor, that I guess -- you know, since -- I think those are  
9 two of the bigger ones that we had been able to work out  
10 was. Something that we do not agree on that I would like to  
11 go ahead and cover briefly since we are on Mr. Brewer as a  
12 topic, Mr. Brewer is, obviously, Judge, going to -- I think  
13 it is going to be impossible to eliminate, in all fairness  
14 to the witnesses, the mention of Mr. Brewer.

15 So I am kind of in a quandary, Judge. I know we talked  
16 this morning. I believe Mr. Wright's proposed solution to  
17 my quandary was that he would not argue to the jury that  
18 they should take any negative inference from Antonio Brewer  
19 not being here. I don't think that goes far enough.  
20 Because the jury by -- you know, just by paying attention to  
21 the case is going to wonder why -- there's only two  
22 eyewitnesses, and one of them is not here to testify.

23 I think that they need to be told that -- my thought  
24 was this, Judge: The State's position would be that I be  
25 allowed to ask Detective Gobel, who is the case officer on

1 this case, that Antonio Brewer was one of the witnesses in  
2 this case, that he was killed in front of his home three  
3 weeks ago and that it is an open investigation and if -- in  
4 order to protect Mr. Tucker's right even to say that at this  
5 time he has no -- no admissible evidence pointing to the  
6 guilt of Mr. Tucker in that offense.

7 But I have got to be able to tell them something  
8 otherwise they are going to be wondering why one of only two  
9 eyewitnesses doesn't show up. That would be my position,  
10 Judge, and how I would like to handle it.

11 MR. WRIGHT: Your Honor, in response, I think what I  
12 articulated in chambers was that we would not in any way try  
13 to make a negative inference or suggestions to the jury that  
14 somehow Mr. Brewer not being here somehow should be a  
15 negative for the State or the State's case as sort of the  
16 curative way. He is simply unavailable. Whether he is in  
17 life or whether he has passed, the manner in which he had  
18 left life has no relevance or bearing whatsoever on the  
19 guilt or innocence of my client and these charges.

20 In fact I would suggest when a jury hears it even if  
21 instructed but there is no evidence that my client was  
22 involved, that is exactly what the eyebrow that raises is  
23 going to start thinking, oh, I wonder if that is somehow is  
24 related to this.

25 So, one, I don't think there is a nexus to make it

1 relevant as to why he is unavailable. I think even if the  
2 State wants to simply say Mr. Brewer is not available for  
3 this trial, that is a neutral statement.

4 Again, I am not going to make a negative of it. But  
5 otherwise I think it is asking to sort of muddy the waters  
6 and possibly introduce to what so far I think by agreement  
7 and how we are proceeding is we are trying to make a very  
8 clean trial and it is ultimately going to murky it up.

9 From a 403 analysis it is not probative of anything on  
10 this case, yet the prejudicial effect that if even one juror  
11 thinks Mr. Brewer's death somehow relates to him I mean that  
12 is absolutely prejudicial. And I shouldn't have to cure it  
13 or undo it. But every time I ring that bell, Judge, it  
14 makes it worse.

15 So I think it is enough to simply say Mr. Brewer's --  
16 one, his testimony is not going to come in. There may be  
17 references to him. But bottom line he is just simply not  
18 available for the purposes of this trial.

19 To go into that he was murdered and gunned down and all  
20 of that is just introducing something that is not probative.  
21 It is highly prejudicial. And once done it won't be  
22 curable, Judge. So I would ask that that not -- the State  
23 not be allowed to introduce that.

24 MR. THORNTON: As a possible compromise, Judge -- I  
25 understand Mr. Wright's position. Respectfully, I don't

1 think me saying that somebody is unavailable is going to cut  
2 it. As a compromise if I could propose if the court gives  
3 the instruction at some point that the -- that Mr. -- they  
4 may hear the name of Mr. Brewer who was -- who was a witness  
5 in this case and that he is deceased and therefore  
6 unavailable.

7 If the court does it then I am fine with that. But  
8 just he is unavailable, that is not going to cut it because  
9 then they are all going to sit here and wonder well what do  
10 you mean he is unavailable, we are all here, I had other  
11 things to do to.

12 And, you know, the State has got the burden in this  
13 case, Judge; so to put us in a position of not being allowed  
14 to explain why a material witness, eye witness to a murder,  
15 isn't available I think is it goes too far the other way.

16 So perhaps just the court indicating to the jury that  
17 he is deceased and therefore unavailable and not going into  
18 any other detail I would be fine with that. But I don't  
19 think unavailable really covers it.

20 MR. WRIGHT: Judge, I would defer to the court. I  
21 would acknowledge that's far less troublesome ---

22 THE COURT: That is what I was ---

23 MR. WRIGHT: Yeah.

24 THE COURT: --- going to do. I wanted to hear  
25 everybody out on it. But here is what I would think. I

1 don't think we refer to Mr. Brewer as a witness. He is --  
2 it is going to be discussed that he was around.

3 MR. THORNTON: Yes, sir.

4 THE COURT: But that doesn't mean he is a witness. A  
5 witness means -- they are going to take a witness as  
6 somebody who has got some information to offer. At any  
7 rate, why can't you ask your witness about Mr. Brewer's  
8 being here and he merely says he is deceased?

9 MR. THORNTON: I am fine with that, Judge. I think  
10 that covers me with them not wondering why -- you know what  
11 does unavailable mean without any negative connotation to  
12 it.

13 MR. WRIGHT: Judge, I concede that ---

14 THE COURT: I understand you want it your way, but if  
15 you've got anything else to argue I will have heard you.

16 MR. WRIGHT: Yeah, I concede without abandoning my full  
17 objection I concede that is not nearly the danger that was  
18 troubling me.

19 THE COURT: All right. He is deceased.

20 MR. THORNTON: And Detective Gobel obviously is here  
21 and he now understands that, Judge. And I will go back over  
22 it with him again. Your Honor, at this time unless Mr.  
23 Wright has an objection I am going to go ahead and go  
24 forward with the two brief Denno hearings.

25 THE COURT: Okay.

1 \* \* \* \* \*

2 (WHEREUPON DENNO HEARING HELD, AS FOLLOWS:)

3 MR. THORNTON: And at this time Detective Fikes, Your  
4 Honor. And I believe it is Kevin Fikes if memory serves is  
5 with the Savannah-Chatham Police Department, Your Honor. I  
6 ask him to come to the stand, please.

7 (WHEREUPON, the witness was duly sworn.)

8 THE CLERK: Please state your full name.

9 THE WITNESS: Detective Kevin Fikes, Savannah Metro  
10 Police Department.

11 **DIRECT EXAMINATION BY MR. THORNTON OF DET. KEVIN FIKES (IC):**

12 Q. Detective, just for -- I knew you would probably take  
13 care of that for me without asking. You said you were a  
14 detective. Obviously for the record purposes where do you  
15 work, sir?

16 A. Savannah Metro Police Department.

17 Q. And did you work for them on or about October -- I  
18 believe it is October the 13th of twenty -- 2014?

19 A. Yes, sir.

20 Q. And did you have an occasion, sir, at that time to come  
21 in contact with a Walter Tucker?

22 A. Yes, sir.

23 Q. And do you see Mr. Tucker present here in the  
24 courtroom, sir?

25 A. I do.

1 Q. And where is he?

2 A. He is right there (motioning.)

3 MR. THORNTON: And, Your Honor, if I might could just  
4 for the court's information and so Mr. Wright and I are both  
5 on the same page, there are obviously things about this  
6 detective's involvement which are not going to come out in  
7 front of the jury dealing with a charge that is in Savannah.  
8 And I will get to that part in a minute. So I am going to  
9 stay away from that unless the court needs more information  
10 on it.

11 BY MR. THORNTON:

12 Q. But Detective, as part of your interaction with Mr.  
13 Tucker did you witness him making any statements in  
14 particular?

15 A. I did.

16 MR. THORNTON: Now, Your Honor, the State is at this  
17 point we are going to concede that he was in custody.

18 Q. Is that fair, Detective?

19 A. Yes, sir.

20 Q. And were there any other people when he was taken into  
21 custody were there any individuals with him?

22 A. Yes.

23 Q. That were either of those female?

24 A. Yes, sir.

25 Q. Were they being interviewed in relation to statements

1 they had made against Mr. Tucker?

2 A. That is correct.

3 Q. And while that was going on did Mr. Tucker have any,  
4 for lack of a better word, did he have any outburst?

5 A. Yes, sir, he did.

6 Q. Now prior to making any outbursts did you threaten Mr.  
7 Tucker in anyway?

8 A. No, sir.

9 Q. Did you promise him any hope of leniency to get him to  
10 make a statement to you?

11 A. No, sir.

12 Q. At the time he made this outburst were you questioning  
13 him in regard to the charges?

14 A. No, sir.

15 Q. Had you asked him any questions whatsoever at the time  
16 he made this outburst?

17 A. No, sir.

18 Q. And what was it that he said?

19 A. He yelled from the hallway these bitches better get a  
20 lawyer and keep their mouth shut.

21 Q. And when he said these bitches did you understand him  
22 to be talking to anybody in particular?

23 A. I thought him to be talking to the -- talking about the  
24 two females that came into custody with him.

25 Q. All right.

1 MR. THORNTON: And, Your Honor, obviously I would not  
2 ask this next question in front of the jury, but just so the  
3 court understands.

4 BY MR. THORNTON:

5 Q. What is he alleged to have done -- what was the  
6 allegation that the girls made in this case?

7 A. Kidnapping.

8 Q. And is one of the girls Keamber Bigelow?

9 A. Yes, sir.

10 Q. And but did he -- when I say he, did Mr. Tucker  
11 reference the girls specifically or just you bitches?

12 A. The second one.

13 Q. And again, did you make him any promises or any  
14 threats?

15 A. No, sir.

16 Q. And did you interview him at the time he made this  
17 outburst; I mean are you asking him any questions or  
18 anything like that?

19 A. No, sir.

20 MR. THORNTON: Your Honor, obviously there is -- I know  
21 there is going to be a separate argument once we get through  
22 with the Denno portion of this as to whether that statement  
23 is admissible as far as in the context of what it stands  
24 for, but as far as the Denno part I don't have any further  
25 questions.

## CROSS-EXAM BY MR. WRIGHT OF DETECTIVE KEVIN FIKES (IC):

1 THE COURT: Mr. Wright.

2 CROSS-EXAM BY MR. WRIGHT OF DETECTIVE KEVIN FIKES (IC):

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. I think you already said and I think the State conceded  
6 at the time the alleged statement was made Mr. Tucker was in  
7 custody, correct?

8 A. That's right.

9 Q. All right. He was in handcuffs?

10 A. Yes, sir.

11 Q. All right. And you said there were two females that  
12 this was being said to by Mr. Tucker, correct?

13 A. That's right.

14 Q. Were they in custody?

15 A. No.

16 Q. Okay. They weren't detained for any purpose or reason?

17 A. For questioning.

18 Q. For questioning?

19 A. Yes.

20 Q. Okay. So they were detained?

21 A. They were detained, yes.

22 Q. Okay. So they weren't free to leave, correct?

23 A. They were witnesses. They were victims.

24 Q. After -- well, strike that. At any point -- I think  
25 you said you didn't ask my client any questions once he was

1 in custody, correct?

2 A. That's correct.

3 Q. All right. Do you know whether any other officers, if  
4 you know, had attempted to interrogate him at the time he  
5 was in custody or at the time you saw him?

6 A. I don't know.

7 Q. Okay. So prior to you seeing him you don't know  
8 whether any officer had questioned him?

9 A. No, I don't.

10 Q. Okay. Do you know whether any other officer had  
11 advised him of his Fifth Amendment Miranda rights?

12 A. No.

13 Q. Okay. So had you had any interaction directly with Mr.  
14 Tucker?

15 A. Not prior to that, no, sir.

16 Q. Okay. So you are just sort of there and made an  
17 observation?

18 A. Yes, sir.

19 Q. Okay. Were you present when he was brought to this  
20 location?

21 A. Yes.

22 Q. Okay. And what location was it?

23 A. Headquarters.

24 Q. Headquarters.

25 A. Yes, sir.

1 Q. Okay. So other -- other than seeing him at that moment  
2 you don't know anything that had been said to him, discuss  
3 with him, asked of him, prior to you just seeing him and him  
4 making this statement; is that a fair statement?

5 A. You have to ask that again.

6 Q. Okay. Well, let me break it into parts. Your first  
7 time you see Mr. Tucker is around this same time you make  
8 this observation of him making a statement; is that correct?

9 A. I saw them bring them in.

10 Q. Okay. Where did they bring them in from; do you know?

11 A. Oglethorpe Street side.

12 Q. Okay. Do you know whether they -- anyone talked to him  
13 or questioned him at the scene?

14 A. I have no idea.

15 Q. Okay. Do you know whether he was talked to or anything  
16 discussed with him while he was being transported?

17 A. I have no idea.

18 Q. Okay. And I think you are saying from the time he  
19 arrived forward he was within your purview?

20 A. No, we went into the office and we were discussing the  
21 events that had -- that had occurred up to that point.

22 Q. Okay, when you say we who was discussing it?

23 A. Myself and another detective.

24 Q. Okay. But he wasn't in that room, correct?

25 A. No, sir.

1 Q. All right. Do you know where he was when you were in  
2 that office having that discussion?

3 A. He was in the hallway directly outside of the door.

4 Q. Okay. Do you know whether or not he could hear you?

5 A. We weren't speaking that loud. But I can't say whether  
6 he did or didn't.

7 Q. Okay. Do you know whether any other officers talked to  
8 him while he was in the hallway?

9 A. I am not sure.

10 Q. Okay. And I think -- so as far as you know no one  
11 spoke to him, advised him, threatened him, anything;  
12 correct?

13 A. That's right.

14 Q. And I think you said these bitches better get a lawyer  
15 and keep their mouth shut?

16 A. Yes, sir.

17 Q. Okay. So you would agree these girls were detained for  
18 questioning at least, correct?

19 A. As far as being victims.

20 Q. Okay. But you don't know -- obviously you don't read  
21 minds, correct?

22 A. I don't.

23 Q. And was that captured on any audio or recording or  
24 anything of that nature?

25 A. You could hear it in the interview room which was

1 around the corner from where Mr. Tucker was sitting.

2 Q. Okay. Was it -- did it happen to be recorded?

3 A. Yes.

4 Q. Okay. So you actually have it on tape?

5 A. Yes, sir.

6 Q. All right. And the interview room at the time was  
7 empty I guess.

8 A. No, the interview rooms were occupied by both  
9 witnesses.

10 Q. Oh, the two females?

11 A. Yes.

12 Q. All right. Did you by chance ask them what they  
13 thought he meant when he said that or whether they even  
14 heard it?

15 A. Afterward I did ask them if they had heard it, and they  
16 said yes. Both of them replied yes they did hear it.

17 They were very apprehensive about his knowledge of them  
18 knowing where -- him knowing where they were in retrospect  
19 to the statements being made.

20 Q. Okay.

21 MR. WRIGHT: That's all I have, Judge.

22 MR. THORNTON: Just a brief follow-up based on that  
23 last question.

24 **REDIRECT EXAMINATION BY MR. THORNTON OF DETECTIVE FIKES(IC):**

25 Q. So would it be fair to say that was a -- if I had a

1 young lawyer that just said that I would object and tell  
2 them that was a lawyer word. So are you saying they were  
3 scared of him?

4 A. Yes, sir.

5 MR. THORNTON: I don't have anything further.

6 THE COURT: Thank you. You may step down.

7 MR. THORNTON: Your Honor, unless you have anything you  
8 might need more detail on then I would ask that Detective  
9 Fikes be allowed to go back to Savannah-Chatham for the day.  
10 He will be back obviously to testify.

11 MR. WRIGHT: Yeah, nothing further for this witness,  
12 Judge.

13 THE COURT: All right. Thank you. You may be excused.

14 MR. THORNTON: Your Honor, as to that statement -- the  
15 Denno portion of that statement I realize we may have other  
16 argument at the moment, but that is all -- that is all the  
17 State has.

18 THE COURT: Okay.

19 MR. WRIGHT: Judge, I really don't have a lot of  
20 argument that I can make as to from a 15th or 14th amendment  
21 analysis from a Denno or Miranda, so that is not really  
22 where I will draw the battle lines. So I will defer to the  
23 court.

24 THE COURT: Not as far as interrogation concerned I  
25 find it to be admissible.

1 MR. THORNTON: Thank you, Your Honor. Your Honor,  
2 would you like to go ahead and -- I know that -- I don't  
3 mean to jump the gun, but Mr. Wright indicated he would have  
4 an objection to the content of the statement as to its --  
5 well, I don't want to speak for him; but I know he had a  
6 motion to suppress the statement one other than Denno  
7 grounds, so we might as well cover that if that is okay with  
8 the court.

9 MR. WRIGHT: Well, Judge, and that is really the thing.  
10 Once they clear that hurdle which they just did the question  
11 then is I guess this is a 404(b) situation. And from a  
12 404(b) standpoint I don't see how it is probative or  
13 relevant.

14 Really what it -- its argument is is propensity saying  
15 well here on another occasion in Savannah he makes a  
16 statement. That statement is I am assuming the State is  
17 going to argue intimidating statement and therefore that  
18 should somehow come in and this jury hear it for this case  
19 in chief.

20 Now for this case we are charged with murder, armed  
21 robbery, kidnapping. We are not charged with influencing  
22 the witness. We are not charged with anything that somehow  
23 showing that on another occasion he made a statement that  
24 could be interpreted as some intimidation or statement.

25 Granted even when we unpack the statement saying that

1 they should get a lawyer and they were clearly detained it  
2 is speculative whether my client even understood whether  
3 they were being charged with something or detained or what.

4 But when he says get a lawyer that isn't necessarily  
5 what you think when you think of an intimidating statement.  
6 Intimidating statements generally are of the species of I  
7 will kill you if you talk, I will do this to you if you  
8 talk; something of that nature.

9 But if that is where they are going the question is how  
10 is this anything other than bad character or propensity that  
11 they are trying to use it here.

12 It is not probative of an issue. Whether or not he is  
13 involved in the killing of the victim, that has nothing to  
14 do with whether or not he made a statement in Savannah.  
15 There is no nexus whatsoever.

16 Whether or not he kidnapped or arm robbed Jessica Power  
17 how does that again create a nexus? So from a 404(b) I  
18 would suggest that this is exactly what you are not supposed  
19 to do which is put something forward for propensity.

20 Even also in part of the 404 analysis is a 403 analysis  
21 that I again suggest to the court respectfully this is  
22 prejudicial and is nothing probative and so clearly  
23 outweighs -- the prejudice clearly outweighs any probative  
24 effect of saying well in Savannah he made a statement such  
25 as these bitches better get a lawyer and keep their mouth

1 shut.

2 How is that somehow probative of the issues in this  
3 case that the State has to prove and this jury has to  
4 determine guilt or innocence? I would respectfully suggest  
5 to the court it is not.

6 So fifth and fourteenth amendment it may be okay, but  
7 from a 404(b) and a 403 I think it still should not be  
8 admitted because there is just no lawful reason,  
9 respectfully, that it should come into this trial.

10 THE COURT: Thank you, Mr. Wright.

11 MR. THORNTON: Thank you, Your Honor. Your Honor,  
12 State versus Edwards the Supreme Court of South Carolina.  
13 I've got a copy for Mr. Wright. I have got a copy for Your  
14 Honor.

15 It is a 2009 case, Judge; 383 South Carolina 66. It  
16 basically, Your Honor, stands for the proposition that  
17 threats against a witness are absolutely admissible or  
18 threats against a codefendant are absolutely admissible.dry  
19 side

20 It shows two things in a 404(b). I agree that is the  
21 proper analysis. It shows consciousness of guilt and it  
22 shows intent. And they follow frankly a long line of 4th  
23 Circuit federal cases that follow under the same, the same  
24 tenant, Judge.

25 And I am getting a little bit ahead of myself. This

1 will probably be another motion that we will have to deal  
2 with shortly.

3 But one of the two -- well, actually both of them, Your  
4 Honor, are on the witness list. But the young ladies that I  
5 expect to testify, if the court allows me to call her,  
6 Keamber Bigelow is one of the two women that is referenced  
7 when he said stop talking to the police bitch and they  
8 better get a lawyer.

9 And one of those witnesses has already given statements  
10 to both Savannah-Chatham that had been provided to defense  
11 obviously as well as investigators with our office also  
12 provided to the defense where Mr. Tucker makes several  
13 admissions.

14 What he does is he says that it was a drug deal gone  
15 bad. And that being the incident that he is charged with  
16 here. That he admits to participating in the robbery. Says  
17 he doesn't know if he killed anybody or not, doesn't think  
18 he did because basically he was running away and shooting as  
19 he left the scene. All of that of course relates to the  
20 case we are here about today.

21 And also, Your Honor, that he was going to come down  
22 here and kill his codefendant, Travy, or Travis Polite. All  
23 of that relates to this case.

24 So when he is telling the two girls who he said all of  
25 this to, you better keep your mouth shut and get a lawyer,

1 the State's position is that he is referencing that.

2 In other words, I have told you all of this stuff and  
3 made these admissions to you which they will be willing to  
4 testify to. That is how it relates to this case, Judge.

5 He said I participated in the armed robbery, don't know  
6 if I did the killing or not, I did some shooting as I was  
7 running away from the scene and I'm coming down here to get  
8 my codefendant.

9 And they also -- and I will get into that more with  
10 her. I know he has another motion about 404(b) with Keamber  
11 Bigalow. But that's how that statement relates back to this  
12 case, Your Honor.

13 And threats against witnesses are absolutely admissible  
14 under 404(b) per Edwards. So that would be how it relates  
15 to this instance.

16 THE COURT: Well, help me put things in perspective.  
17 And I'm not -- perhaps I just didn't understand everything  
18 the officer said.

19 But the ladies were there, Savannah-Chatham, at the  
20 same time the defendant was there; he was under arrest;  
21 they were being detained over the events that we have got  
22 here?

23 MR. THORNTON: No, sir, what they said was what led to  
24 him being arrested in Savannah -- again, I have already  
25 agreed with Mr. Wright none of that is proper in front of

1 the jury -- was that the women had made an allegation of  
2 kidnapping.

3 They were all brought in. The two women who as you  
4 heard the detective say they were being detained as victims  
5 or witnesses. They were being talked to.

6 While they were being talked to they told the  
7 detectives -- or were telling the detectives that Mr. Tucker  
8 was on an ankle monitor out of South Carolina, he didn't  
9 want to come into South Carolina, and he was here as part of  
10 a mur- -- had to come up here for a murder trial and that he  
11 was here to kill a codefendant.

12 At that point Savannah-Chatham then notified our office  
13 and we went down there.

14 But that is -- all of that was told to the  
15 Savannah-Chatham folks during that evening and then  
16 reiterated to investigators in my office which is Dylan  
17 Hightower and Roger Heaton which is why they are on the  
18 witness list.

19 So he has in essence -- it is the State's position he  
20 has two witnesses as to information in this trial, the one  
21 we are currently on.

22 And while they are there talking to the police he says  
23 don't talk to the police, you better get a lawyer.

24 Now I understand Mr. Wright's position is likely that  
25 well he could have been saying that to them as hey you are a

1 fellow codefendant, you shouldn't say anything, get a  
2 lawyer. But I think it is also informative to the court how  
3 what the detective said in response to Mr. Wright's question  
4 how scared of they were of him when he said it. So they  
5 certainly took it as a threat.

6 But that is how it relates to this instance, Judge.  
7 That information was provided to the detectives that evening  
8 as far as what their contention is Mr. Tucker's admissions  
9 were.

10 And I hope I have explained that. And if I need to go  
11 through it again I can.

12 THE COURT: The defendant ---

13 MR. THORNTON: Yes, sir.

14 THE COURT: Are you saying that he overheard the ladies  
15 telling law-enforcement about the admissions concerning  
16 these charges?

17 MR. THORNTON: I am saying that he was in -- he was in  
18 the hallway as they were being talked to in an interview  
19 room.

20 I can't prove whether he heard it or not. But I do  
21 find it fairly enlightening that as they are being  
22 interviewed and providing all of this information that is  
23 when he makes the -- becomes unruly and makes the outburst.

24 THE COURT: But they were being interviewed, the ladies  
25 were being interviewed ---

1 MR. THORNTON: In relation ---

2 THE COURT: --- on the two -- two different events?

3 MR. THORNTON: Yes, sir, in relation -- they were first  
4 being brought in and asked about the allegation of  
5 kidnapping as to why they were in Savannah, and they started  
6 to relate to the detectives the information relevant to this  
7 case.

8 I mean it is impossible for me to prove what was in the  
9 defendant's head, Judge. But I certainly think under the  
10 totality of the circumstances that that is a threat against  
11 a witness.

12 THE COURT: Was it a threat against a witness in this  
13 case or was it a threat against a witness in the other case?

14 MR. THORNTON: This case. Keamber Bigelow will testify  
15 in this case.

16 THE COURT: Wasn't she a witness in the other case?

17 MR. THORNTON: Yes, sir. It could have been either,  
18 Judge. They were down there -- and I probably should have  
19 said this before: According to the young ladies they were  
20 down there to help make money for Mr. Tucker as part of --  
21 as part of the plan or plot to go and kill the codefendant.

22 There is also -- well, I don't want to get into that  
23 right this minute unless you need it for your analysis on  
24 this thing, Judge, because we have got it coming up in  
25 Keamber's -- the motion to suppress Keamber's testimony.

1 But clearly they are both witnesses in both cases.  
2 And he is telling them not to talk to the police. It  
3 certainly -- it certainly would appear to the State that  
4 that is a threat against a witness.

5 Granted I have got some threats that we will talk about  
6 in a minute that are significantly more demonstrative than  
7 that, such as a threat against Travis Polite that he  
8 discussed with Ms. Bigelow. But it is a threat nonetheless,  
9 Judge. At least that is the State's position.

10 So I mean unless I need to go into more detail with  
11 you, Your Honor, about how that came about; but they  
12 basically were discussing both the Savannah charge as well  
13 as this charge with the detectives when that occurred.

14 MR. WRIGHT: Your Honor, I think the court went right  
15 to the point that I was going to point out to the court that  
16 there is no evidence at all that, one, my client could  
17 overhear anything.

18 In fact Detective Fikes said when I asked well could he  
19 hear what you and the other detective were talking about in  
20 the other room he actually said I doubt it because we  
21 weren't talking in such a manner that he would have been  
22 able to hear us.

23 He never said that those two girls were anywhere where  
24 my client could hear or that they were even being talked to  
25 at the time.

1           That is what I would respectfully say is not supported  
2 by evidence. That is an extrapolation but not actual  
3 evidence that we have.

4           The statement is not necessarily being made -- in fact  
5 it has nothing to do with South Carolina. It has to do with  
6 what he has now being charged with in Savannah in Georgia.

7           And to extrapolate and say oh no he must have meant  
8 this case, well that is a speculation. That is not having  
9 to go into my client's mind; that is saying hey he said  
10 something and I want to use it here so we are going to say  
11 it must have been in relation to both.

12           But the context doesn't make sense. Why would my  
13 client, if we break the statement apart, talk about get a  
14 lawyer for something in South Carolina that these girls have  
15 absolutely nothing to do with.

16           And what the detective said is they were being detained  
17 as witnesses, victims, it would only have made sense if  
18 there was something going on in Georgia, it related to  
19 Georgia.

20           Counsel wanting to somehow expand it to bring it in  
21 here, Judge. I think it is just not supported by the  
22 evidence. It is just not there.

23           So, Judge, I would ask that this part on this statement  
24 be excluded because it is simply a bad act, an alleged bad  
25 act; and there is no nexus to say it had anything to do with

1 this case here in South Carolina, Judge.

2 THE COURT: Anything else?

3 MR. THORNTON: No, Your Honor, nothing else.

4 THE COURT: I am going to grant defense motion on this.  
5 I find it is too prejudicial and it outweighs the probative  
6 value.

7 For the defendant to be able to defend against the  
8 intent of that statement the defendant would have to  
9 acknowledge allegations about the Georgia kidnapping. Isn't  
10 that -- wouldn't it?

11 MR. THORNTON: Judge, I understand the court's ruling.  
12 I would respectfully disagree. The way I would handle that  
13 on the stand if the court was going to allow me to use it  
14 would be just to ask the detective kind of the general  
15 questions I asked him about Mr. Tucker, did you have any  
16 conversation -- or did you have a chance to observe him on  
17 such and such a day, were you talking with anyone else at  
18 the time, yes we were interviewing two women, and did Mr.  
19 Tucker make any outbursts.

20 I think it would have been apparent to the jury if Your  
21 Honor allows Keamber Bigelow to testify, which I am sure we  
22 will get into sometime this afternoon regarding the  
23 omissions that he made to her about this case, I think it  
24 would have been fairly clear to the jury why he would have  
25 not wanted her to talk to the police.

1           So I don't think it is necessary that he would have had  
2 to admit the Savannah charges.

3           I would have called the detective after I called  
4 Keamber Bigelow. Without giving away too much of my  
5 strategy, Judge, I would have called him after they had  
6 heard about these admissions if you had allowed them in.

7           But anyway, again, I'm not trying to argue with the  
8 court, Judge. I am just trying to answer your question. I  
9 think I can get around that by calling Keamber first and  
10 discussing limited to just this case and the things he said  
11 about this case.

12          MR. WRIGHT: And, Your Honor, And I think you are  
13 correct; I would have to go into he didn't say it relating  
14 this, he said that relating that.

15          I mean there is just no way that I cannot do that to  
16 try to explain why this statement -- the context of this  
17 statement.

18          I understand counsel's argument. But that is going the  
19 way he wants it to be taken, to couch everything in some  
20 manner all about this case.

21          Because that is what he is saying when he talks about  
22 the alleged admissions area and it is still couching  
23 everything this way.

24          I would have to go into that Savannah arrest and the  
25 whole case. And that is the problem I would have. And that

1 would be absolutely prejudicial, Judge, because -- so I  
2 agree with the ruling and ask the court ---

3 THE COURT: All right, now I have heard arguments even  
4 after my ruling and I haven't changed my mind. So thank  
5 you, gentlemen.

6 MR. THORNTON: Thank you, Your Honor. Your Honor, we  
7 have another statement. I just for the court's indulgence I  
8 want to make sure defense counsel has seen these.  
9 (WHEREUPON, documents presented to defense counsel.)

10 MR. THORNTON: At this time -- and, Your Honor, I'm  
11 going to go ahead on the record and just explain a little  
12 bit about what this is. This is another of a little bit of  
13 a usual situation.

14 I have given everything to Mr. Wright, and I am going  
15 to show the court. Basically, Judge, this is a letter  
16 written by Walter Tucker to Brandon Singleton, one of his  
17 codefendants, which I believe contains relevant information.  
18 So it is a written statement, not a verbal statement.

19 It is he during a, for lack of a better word, hearing  
20 at the detention center when they determine what violations  
21 have been made -- because it is a violation to pass letters  
22 in there.

23 He after Miranda admits to writing the statement. So  
24 that I can show a basis that it is his. And that is what we  
25 are here on today. So if I can I want to go ahead and call

0 0138

1 Lieutenant Robinson to the stand.

2 THE COURT: Okay.

3 (WHEREUPON, the witness was duly sworn.)

4 THE CLERK: State your name for the record.

5 THE WITNESS: Latasha Robinson.

6 MR. THORNTON: Thank you, Your Honor.

7 **DIRECT EXAMINATION BY MR. THORNTON OF LIEUTENANT LATASHA**  
8 **ROBINSON (IC):**

9 Q. You are a lieutenant; is that correct?

10 A. That is correct.

11 Q. Lieutenant Robinson, where do you currently work?

12 A. Beaufort County Detention Center.

13 Q. And have you had any contact at the Beaufort County  
14 Detention Center with the defendant Walter Tucker?

15 A. Yes.

16 Q. And is he present in the courtroom?

17 A. Yes, he is.

18 Q. And could you point him out for me.

19 A. (Motioning.)

20 (WHEREUPON, State's Exhibit Number 1, Detention Center  
21 Miranda rights, was marked for identification.)

22 Q. Lieutenant, I am going to show you what has been marked  
23 just for identification as State's Exhibit Number 1. Is  
24 that a document or a copy of the document you are familiar  
25 with?

0 0139

1 A. Yes, it is.

2 Q. And what is that, ma'am?

3 A. This is rights that we give to them prior to doing an  
4 interview with them.

5 Q. And is that an inmate's rights form that you went over  
6 with anybody in particular?

7 A. Yes.

8 Q. And who did you go over that form with?

9 A. Mr. Tucker.

10 Q. Did he sign indicating he understood his rights?

11 A. Yes, he did.

12 Q. Now Mr. Tucker at the time is in the detention center;  
13 is that correct?

14 A. Yes.

15 MR. THORNTON: Your Honor, again we will concede that  
16 the defendant was in custody at the time the statement was  
17 made.

18 BY MR. THORNTON:

19 Q. Is this part of your usual practice to have inmates --  
20 read them their Miranda rights before you talk to them  
21 about -- what type of hearing -- what would you call this  
22 hearing? Not this one, the one that you did where you read  
23 him his rights.

24 A. Well, basically we go over the rights with them. We  
25 present the charges to them and have them sign and also give

0 0140

1   them a duplicate copy.

2   Q.   What was the charge in this case?

3   A.   Attempting to pass contraband which was a letter.

4   Q.   Okay.  And is that what you read him his rights prior  
5   to your -- and I'm still trying to come up with the word for  
6   it.  And I don't know why it escapes me.  But a punishment  
7   hearing or is that kind of what it is, to determine whether  
8   there should be any punishment or whether there has been a  
9   violation?

10  A.   Well, prior to them going to the disciplinary board we  
11  come and we go over their rights.  We get their side of the  
12  story.

13  Q.   I knew it started with a "D".  It was disciplinary  
14  hearing.  That's what I was looking for.

15  A.   Get their side of the story.

16  Q.   Did you go over his rights with him prior to -- and  
17  when I say him, Walter Tucker, prior to the disciplinary  
18  hearing?

19  A.   Yes.

20  Q.   Did he seem to understand his rights?

21  A.   Yes.

22  Q.   Did he have any trouble understanding you or did he  
23  appear to be under the influence of alcohol or drugs at the  
24  time?

25  A.   No.

0 0141

1 Q. And if you would, would you please go through each of  
2 the rights that you went through and that are printed on the  
3 paper for me and just read them out loud.

4 A. Number one, the right to have a written copy of the  
5 charges against you at least 24 hours prior to appearing at  
6 the disciplinary committee.

7 Two, the right to have a full-time member of staff who  
8 is reasonably available to represent you before the  
9 disciplinary committee.

10 Three, the right to call a witness and present  
11 documentation evidence on your behalf provided facility  
12 safety will not be jeopardized.

13 Four, the right to remain silent. Your silence may be  
14 used to draw an adverse inference against you; however, your  
15 silence alone may not be used to support a finding that you  
16 committed a prohibited act.

17 Five, the right to be present throughout the  
18 disciplinary committee hearing except during committee  
19 deliberation and except where facility safety may be  
20 jeopardized.

21 I am sorry; I am a little nervous.

22 Six, the right to be advised of the disciplinary  
23 committee decision except where that facility safety would  
24 be jeopardized and presented a copy of the committee's  
25 disposition in writing.

0 0142

1       Seven, the right to appeal the decision of the  
2 disciplinary committee in writing by means of grievance  
3 process procedure to the director within 30 days of the  
4 notice of the committee's decision and disposition.

5       The appeal must include everything for the request.  
6 The director's decision is final.

7 Q.   All right. And did you go over all of that with Mr.  
8 Tucker while he was in the detention center?

9 A.   Yes, sir.

10 Q.   All right. And did he agree to talk to y'all about  
11 this disciplinary infraction nonetheless?

12 A.   Yes.

13 Q.   And this is I see is there a signature on there?

14 A.   Yes, it is.

15 Q.   And is that Mr. Tucker's signature?

16 A.   Yes, it is.

17 Q.   And did he sign that in your presence?

18 A.   Yes, he did.

19 Q.   And is that the same form that you read all of the  
20 inmates prior to a disciplinary hearing?

21 A.   Yes, sir.

22 Q.   And are these hearings recorded?

23 A.   The ---

24 Q.   The disciplinary hearings.

25 A.   Yes, it is recorded but not the actual interview that I

0 0143

1 have with them it is not recorded.

2 Q. I understand. And did he seem to understand everything  
3 that you were talking about?

4 A. Yes.

5 Q. All right. And did he voluntarily go in and  
6 participate in this disciplinary hearing?

7 A. Yes.

8 Q. Did you threaten him in any way or promise him  
9 anything?

10 A. No.

11 Q. Is this standard procedure that y'all do in every case?

12 A. Yes, it is.

13 Q. And I am going to ask also has this document been  
14 altered or changed in any way? By this document I mean  
15 State's Exhibit 1 for identification.

16 A. No, it hasn't.

17 MR. THORNTON: Your Honor, at this time I would ask  
18 that State's 1 be moved into evidence for the purpose of  
19 this hearing obviously.

20 MR. WRIGHT: No objection.

21 THE COURT: Admitted without objection.

22 (WHEREUPON, State's Exhibit No. 1, disciplinary rights form,  
23 admitted for Denno hearing.)

24 (WHEREUPON, State's Exhibit No. 2, letter, was marked for  
25 identification.)

0 0144

1 BY MR. THORNTON:

2 Q. I am going to hand you what has been marked as State's  
3 Exhibit Number 2 and ask you if you can identify that  
4 document.

5 A. Yes.

6 Q. And what is that -- what is that document?

7 A. This is the note that was being passed -- attempting to  
8 be passed.

9 Q. And did -- is that -- did Mr. Tucker acknowledge that  
10 he had in fact written that note?

11 A. Yes, he did.

12 Q. Was he charged with any other violation that day that  
13 you are aware of; was he charged with more than one?

14 A. He was charged with an 8-23 violation, which is conduct  
15 that disrupts the orderly running of the facility.

16 Q. Now did he admit that one or did he deny that one?

17 A. I believe at the board he denied it.

18 Q. All right. So he admitted writing the letter but  
19 denied the other charge?

20 A. Correct.

21 Q. Did you have any other interaction as to this letter  
22 with Mr. Tucker other than going through your disciplinary  
23 rights form?

24 A. No.

25 Q. All right. And it -- were you present at the

0 0145

1 disciplinary hearing also after you read him this form that  
2 y'all use?

3 A. No, I was not.

4 Q. Okay. To your knowledge did anybody threaten him in  
5 any way or -- threaten him in any way or make any promises  
6 of leniency to get him to talk about this letter?

7 A. No.

8 Q. Okay.

9 MR. THORNTON: I don't have anything further for this  
10 witness, Judge.

11 THE COURT: Mr. Wright.

12 MR. WRIGHT: I have no question for this witness,  
13 Judge.

14 THE COURT: Thank you, ma'am. You may step down.

15 THE WITNESS: Thank you.

16 MR. THORNTON: Your Honor, the court's indulgence for  
17 just a moment please.

18 I am trying to shortcut it, Judge. If you will allow  
19 me one moment, Mr. Wright to talk to his client.

20 MR. WRIGHT: Judge, we will stipulate that my client is  
21 the author of the letter.

22 MR. THORNTON: Your Honor ---

23 MR. WRIGHT: Not to its admissibility, ---

24 MR. THORNTON: I'm sorry.

25 MR. WRIGHT: --- just that it is ---

0 0146

1 MR. THORNTON: I understand. I am sure he will have an  
2 argument. It will probably be another 404(b) that we would  
3 do in just a second, Judge.

4 But since he is going to stipulate to the authenticity  
5 that I would ask that Lieutenant Robinson -- that was the  
6 only purpose of me putting in that he had admitted the  
7 letter, Judge.

8 I am not planning on playing that in the case in chief  
9 as long as they stipulate it is his letter. So there is no  
10 reason for me to play the audio or anything else.

11 So with that I would ask the court if I could go ahead  
12 and let the major and the lieutenant go.

13 MR. WRIGHT: Yes, Judge.

14 THE COURT: Certainly.

15 MR. THORNTON: Your Honor, at this time then I guess we  
16 might as well move in -- if I can give up Your Honor a copy  
17 of this letter so that you can read it and ....

18 (WHEREUPON, pause for review by the court.)

19 THE COURT: I have reviewed State's Exhibit 2. I can't  
20 say that I read State's Number 2.

21 MR. THORNTON: Understood, Judge.

22 THE COURT: I reviewed it..

23 MR. THORNTON: I will tell you if it is okay with the  
24 court I will go ahead and make the argument. I will tell  
25 you what I think is relevant, and I think it would be a

1 404(b) analysis is the section -- and I'm sure this does not  
2 come as a surprise to Mr. Wright.

3 Don -- and for the court's information, who he is  
4 referring to is his first attorney Don Colongeli who is a  
5 local member of the bar.

6 As so Walter Tucker, it's his letter. He is talking to  
7 a codefendant of his, the one -- the other one I have not  
8 tried yet, Brandon Singleton. Mr. Singleton is represented  
9 by Jerry Newman of the Beaufort County Bar.

10 Mr. Tucker says Don, let me know. Your lawyer is  
11 famous for getting his clients to rollover, so keep that  
12 shit one thousand with me.

13 I think it is very clear from that statement in the  
14 context of it, Your Honor, that he is saying that, you know,  
15 don't rollover on me, don't turn State's evidence against  
16 me.

17 And it is a pretty simply argument on my behalf, Judge.  
18 I think it shows consciousness of guilt. You know, the  
19 Edwards case talks about that. It talks about it obviously  
20 in the context of -- in the context of witness intimidation.

21 But it all goes back to Lyle -- you know, Judge, when  
22 it shows consciousness of guilt just like flight shows  
23 consciousness of guilt, just like threatening witnesses  
24 shows consciousness of guilt, and intent.

25 And that is what the State would be seeking to

1 introduce it under, Your Honor, is the fact that if he has  
2 got nothing to worry about there is no reason he should  
3 worry about a codefendant rolling over on him. And that  
4 would be our position, Judge.

5 MR. WRIGHT: Your Honor, if I could be heard.

6 THE COURT: Certainly. Go ahead.

7 MR. WRIGHT: Judge, when I read this letter -- and I  
8 think we have to read the letter in its entirety to get a  
9 full context.

10 Prior to the statement the counsel says the letter says  
11 in looking starting at the second sentence: I want you to  
12 get on your lawyer and get all of your paperwork, CD's,  
13 DVD's and all of that S-H-I-T, don't let them run you or  
14 hide evidence from you. I go -- I got Don paid, so he will  
15 be here tomorrow. I think he been in trial this week.

16 Then the statement: Don, let me know. Your lawyer is  
17 famous for getting his client to rollover, so keep the shit  
18 one thousand with me bro.

19 Now the State I guess wants that to somehow say he is  
20 either threatening or intimidating. That statement, one,  
21 isn't saying you can't do what is best for you but just be  
22 honest with me, be straight with me.

23 That is, one, how that sentence would be interpreted.

24 But I am trying to leave the DVD with Travis on it in  
25 my property, but until they give -- until they give me an

1 address to shoot this paperwork desist.

2 But then later on at the very bottom he says once we  
3 prove that Jes was lying we are straight.

4 I mean this is enough -- you better not tell on me or I  
5 will do XYZ. This is get with your lawyer, make sure he is  
6 giving you everything and not hiding it from you, my lawyer  
7 should be in play soon and at some point we are going to be  
8 able to prove that Jes is lying.

9 What you then have in here is conversation about  
10 completely unrelated to this about them doing stuff together  
11 later. So that is -- this is not a threat letter by any  
12 means.

13 And from a 404(b) analysis I guess the first question  
14 is consciousness of guilt isn't one of the elements or  
15 authorized purposes 404(b) evidence comes in. Motive,  
16 identity, common scheme, absence of a mistake or intent are  
17 those proper things.

18 This is what it really amounts to is propensity that  
19 they are talking or my client is saying hey when we are done  
20 with this case we can go do some stuff.

21 Now what they actually say about this case, Judge, is  
22 really talking about make sure your lawyer is straight with  
23 you and hey he is known to rollover; if you rollover, you  
24 know, you need to keep it one thousand with me, be straight  
25 with me about it.

1 I don't see how we extract that or extrapolate that  
2 into something else.

3 And then if the jury reads the rest of it as if oh well  
4 when they are out maybe they are going to do some business  
5 together whether in Beaufort, whether in Savannah or any  
6 city.

7 I mean that is clearly prejudicial stuff. So I don't  
8 know if the State is talking about well if they only get the  
9 one sentence in everything else is redacted.

10 But even that one sentence, Judge, it doesn't -- it  
11 doesn't show any motive as to this case in chief. There is  
12 no question of identity that all of a sudden establishes in  
13 this case in chief.

14 What is the common scheme? Make sure you have a lawyer  
15 and you go through your discovery.

16 It is not an absence of mistake. It is not in intent.  
17 This is more propensity evidence to somehow put bad  
18 character propensity at my client, Judge.

19 Again, the second prong is the 403 analysis. How is it  
20 probative of anything that has to do with the murder? How  
21 is it probative of the kidnapping or the armed robbery,  
22 telling an individual make sure your lawyer is straight with  
23 you and hey your lawyer's reputation keep it straight with  
24 me? That doesn't stretch to the point where a letter like  
25 this should come in.

1           Secondly, it by the very nature of getting it in is  
2 going to say oh by the way Mr. Wright's client is in jail;  
3 possibly disciplinary hearing, but at least he is in jail  
4 when it is intercepted.

5           But I just don't see how this is what the State wants  
6 it to be. And for that reason, Judge, I don't see how this  
7 comes in as 404(b) for much of the same reasons.

8           It is not one of the purposes allowed, and from a 403  
9 analysis it is not probative of anything other than him  
10 saying make sure your attorney is right with you and be  
11 straight with me.

12          MR. THORNTON: Thank you, Your Honor. Your Honor, with  
13 all due respect to Mr. Wright now he is the one that is  
14 speculating. And everything he talks about goes to weight  
15 and not admissibility.

16          Since we are going to talk about threats, if -- you  
17 know, I was picking out that one phrase, Judge. If you go  
18 down after he says, you know, your lawyer is getting famous  
19 for his clients to rollover he then will say when Mr.  
20 Wright talks about he is leaving -- I am trying to leave the  
21 DVD with Travy on it in my property, which of course is the  
22 DVD -- the only DVD of Travy in the case is where Travis  
23 Polite says that Oouwee, Walter Tucker, is the one who is  
24 primarily responsible for everything involved here. I am  
25 going to send it to Big Tray through Little - and I won't go

1 through all of the nasty language in it - so people can see  
2 fool, meaning Travy, for the bitch he is.

3 That's not a threat against a codefendant because the  
4 codefendant has already rolled over on him and he is telling  
5 his other codefendant your lawyer is famous for getting  
6 people to rollover so don't -- well, again, Judge, if he  
7 hasn't done anything there is no reason for him to worry  
8 about the codefendant rolling over on him because there  
9 wouldn't be anything to rollover.

10 So my point with -- and if there is some redaction that  
11 Mr. Wright or the court wants me to make, Judge, I can  
12 redact -- you know, letters are easy to redact.

13 And I do agree there is information toward the bottom  
14 that talks about future business. I hadn't really thought  
15 of it that way. I have got no problem redacting some of  
16 that.

17 And the other thing I would point out that Mr. Wright  
18 is absolutely correct about, it also talks about we have to  
19 prove Jes is lying.

20 You know, that is good for him, Judge; but I wasn't  
21 seeking to introduce part and leave that part out. If he  
22 wants that in there obviously I think the jury has got a  
23 right to hear that for whatever inference they want to use  
24 that for.

25 But by the same token I think they need to hear that he

1 is telling his codefendants don't rollover on me.

2 You know if the two of them were in the back of a  
3 patrol car, Judge, on video and one of them said look  
4 whatever you do keep her mouth, don't tell them anything and  
5 don't rollover on me, I think that is admissible. And that  
6 is what this is.

7 It just so happens he is in the detention center  
8 writing it via a letter.

9 So that would be my argument, Judge.

10 MR. WRIGHT: Judge, if I may respond just to the new  
11 part.

12 THE COURT: Yes.

13 MR. WRIGHT: What I think is important for the court to  
14 note that when he refers to Travis to give full disclosure  
15 Travis said in an interview to police that my client shot  
16 Mr. -- he shot Mr. Greer, just lied. And the State knows  
17 that Travis is the one that shot him and lied.

18 So when he talks about exposing Travis as a "B" or  
19 whatever, or, one, I will just say a liar, Travis did lie on  
20 him. He made a statement that wasn't truthful.

21 So saying that in the context of the letter of, you  
22 know, Travis sat there and lied on me - and the State is  
23 aware Travis lied on him - that, again, doesn't make this  
24 letter some harmful piece of evidence of consciousness of  
25 guilt.

1           It actually says consciousness of innocence: Don't be  
2 like a Travis and lie on me but be straight with me.

3           And then so that is why I want to just point out to the  
4 court that part about Travis was absolutely true and the  
5 State knows it.

6           MR. THORNTON: With all due respect, I do -- Mr. Wright  
7 is absolutely correct about one thing, Travis Polite did say  
8 that Walter Tucker is the one that did the A-shot or did the  
9 fatal shot.

10           The State does not believe that, and I have already  
11 told Mr. Wright and told the court, you know, that I am  
12 going to tell the jury that, that Travis Polite it is our  
13 position - and I don't know that I will get to it before  
14 closing - but it is the State's position that Travis Polite  
15 pulled the trigger on the fatal bullet.

16           I can't prove it definitively because I don't have  
17 ballistics. But I don't have ballistics against Mr.  
18 Wright's client either.

19           So in all fairness and candor to the jury that is what  
20 I'm going to tell them.

21           However, Travis Polite also talked about several other  
22 things that Mr. Tucker was involved in, Mr. Tucker being  
23 involved in the drug deal, quote, unquote, gone bad in the  
24 robbery, in the kidnapping and all of those other things,  
25 many of which were true.

1           So just for the court's information, I think he is  
2 absolutely correct Mr. Polite did point the finger at Mr.  
3 Tucker for pulling the trigger and he claimed he didn't do  
4 anything.

5           Of course if I believe that, Judge, I wouldn't have  
6 prosecuted him and he wouldn't be spending 39 years in jail.

7           But the point is that as is usually is the case - and  
8 Your Honor knows this - defendants often tell part of the  
9 truth and part not true and try to distance themselves from  
10 it.

11          So I certainly don't believe everything that Mr. Polite  
12 said wasn't true. I do think that issue was not true, which  
13 is why we prosecute.

14          So I still think that this is -- that what Mr. Wright  
15 is talking about goes to weight and not admissibility. But  
16 I just wanted that clear for the record; he is absolutely  
17 correct, Travis Polite does point the finger at Mr. Tucker  
18 for pulling the trigger.

19          I don't believe that. But I do believe much of the  
20 rest of it and did at the time.

21          THE COURT: All right. Let me think about this. I  
22 want to finish reading Edwards, and I will do that in a  
23 little while. Don't we have some more to do?

24          MR. THORNTON: Yes, sir.

25          THE COURT: Okay.

1 MR. THORNTON: The other issue I know of -- and I know  
2 how the -- we have done fairly well, actually, so far,  
3 Judge; so what I think I will do is unless there's an  
4 objection I will do this the quick way.

5 What I would like to do is unless Mr. Wright objects is  
6 I would like to discuss and go back to what we were talking  
7 about earlier as far as this Savannah-Chatham.

8 I know Mr. Wright has a suppression motion he wants to  
9 do on the testimony or what would be the testimony of  
10 Keamber Bigelow. And I've got a short synopsis that I can  
11 go through of what she would testify to. I think the legal  
12 argument I think is apparent. It is subdivided into two  
13 sections.

14 What we have first of all, Your Honor, is Keamber of  
15 course as we discussed earlier being one of the two women in  
16 Savannah that were interviewed as a result of Mr. Tucker's  
17 arrest on charges in Savannah.

18 And again, I won't go into those. And I have  
19 instructed Ms. Bigelow that she is not to refer to anything  
20 regarding those charges.

21 But that Mr. Tucker made several admissions to her.  
22 And there is really two distinct parts that I would like to  
23 talk about.

24 The first is admissions as to this case specifically  
25 what the charges were -- or the charges are on Mr. Tucker,

1 being that Mr. Tucker admitted to her that he was part of  
2 the robbery, that he did participate in the robbery, and  
3 that he -- the way she phrased it was he didn't think he did  
4 the murder because he was shooting - and she made the motion  
5 like this (motioning) - as he was running away. He wasn't  
6 sure, but he didn't think he killed anybody but that he did  
7 participate in the robbery.

8 And she did not specifically -- he didn't make any  
9 admissions one way or the other as regards to the kidnapping  
10 of Jessica Powers (sic). He just specifically mentioned the  
11 robbery.

12 Also that -- that would be it, Judge, as far as the  
13 admissions. He was there. He participated in the robbery.  
14 It was a drug deal gone bad. And that he was shooting but  
15 he doesn't think he killed anybody, he was shooting as he  
16 ran away.

17 THE COURT: Okay.

18 MR. THORNTON: That is a separate distinct -- those are  
19 just clear admissions that he made in regards to this case  
20 to her. Defense counsel obviously has been made aware of  
21 those and the statements that they gave.

22 The second section of them, Judge, deals with Edwards  
23 material. That is at least what I am going to call it,  
24 threats against witnesses. And this deals with Travis  
25 Polite or Travy.

1           What she would testify if allowed, Your Honor, was that  
2 they were down here, he was trying to make money - he being  
3 Walter Tucker - in an attempt to kill his codefendant.

4           She didn't know his full name. She knew it as Travy or  
5 Travis and that he was a codefendant and that that person  
6 was trying to connect Mr. Tucker to all of the -- all of the  
7 wrongdoing in this case, in essence the shooting which Mr.  
8 Wright already just pointed out that Travis Polite did say  
9 that on his interview. That he was trying -- he being  
10 Travis Polite, or the codefendant, was trying to put all of  
11 this on Walter Tucker.

12          She specifically talks about who he brought with him  
13 into Savannah to come across to South Carolina to do this,  
14 one of those people being a guy named Cedrick and Cedrick's  
15 nickname was Savage. And Savage went across into South  
16 Carolina in a vehicle, and she described it with a vehicle  
17 with a rear-end damage.

18          And I am getting into this for what I believe, Your  
19 Honor, to be information that was corroborated by an  
20 officer, by an investigator with our office.

21          But that there was -- that Cedrick went over into South  
22 Carolina. They were supposed to I guess do some  
23 reconnaissance work, for lack of a better word.

24          She described a car, that the car was -- had some  
25 damage to it and that there was a gun that Mr. Tucker had

1 put inside the car, inside underneath the gear shift of the  
2 vehicle.

3 After getting that information Dylan Hightower with our  
4 office along with Roger Heaton of our office went into South  
5 Carolina - well, obviously they were already here in South  
6 Carolina - but did a run on anybody named Cedrick.

7 They found a person matching that general description  
8 in the Savannah -- in the Hampton County jail. He had  
9 Savage tattooed across his chest. They had a car that  
10 matched the general description. It was a rental car.

11 And I forget; Your Honor, I am sorry it escapes me; but  
12 it was rented by I want to say one of Mr. Tucker's  
13 relatives.

14 But I can't -- I will verify that shortly for you,  
15 Judge. I will have somebody look it up for me.

16 At any rate, the car matched the description. It had  
17 damage consistent with the way she described it. There was  
18 a guy named Cedrick. He was in the Hampton Detention  
19 Center. Had just gotten there. Had just been arrested  
20 within a couple of days of that. His nickname was Savage.  
21 This guy had Savage tattooed across his chest.

22 They went to where she indicated that a black gun with  
23 a silver slide or silver top on it was located inside that  
24 car.

25 And it wasn't something you could just see. You

1 actually had to -- they had to pull the gear shift plate off  
2 of it, and that -- and they found a pistol matching that  
3 description after they pulled off the gear shift knob and  
4 pulled the plate up.

5 Dylan Hightower with our office recovered that pistol.  
6 The photographs of all of that has been turned over to  
7 defense.

8 So what I would seek to introduce from Ms. Bigelow is  
9 two sets of things. One, the admissions made by Mr. Tucker  
10 regarding specifically that he participated. All of that.

11 Two, that he was under Edwards he is making threats  
12 against codefendants. He had a plan to come down and what  
13 he called which he said was make an adjustment.

14 And she was asked what do you mean by that. And she  
15 did this (motioning), was to kill him. And that -- and that  
16 also he was not worried about the -- not worried about the  
17 girl testifying in his case because he had threatened to  
18 kill her family.

19 And the girl of course there was only one girl  
20 involved. That is Jessica Powers.

21 So I think those under Edwards clearly come in. It  
22 would be the State's position. And as to the other -- also  
23 the ancillary gun that was located I think that further  
24 corroborate and I think that's -- because that is a physical  
25 manifestation of the threat to kill Travis Polite along with

1 the -- Cedrick, Savage.

2 I think all of that should come in through Mr.  
3 Hightower obviously who is the one who recovered the gun.

4 So I would seek to introduce both her statements as  
5 well as the testimony of Dylan Hightower with our office  
6 regarding the recovery of that weapon.

7 Because again, my argument is that is the physical  
8 manifestation of the threat against Mr. Polite. So that  
9 would be ---

10 THE COURT: All right.

11 MR. THORNTON: --- the State's position on those,  
12 Judge.

13 MR. WRIGHT: Your Honor, I will try to respond in the  
14 same order, I guess for the two parts.

15 As to a witness claiming to hear something from a  
16 defendant that may constitute an admission, generally I  
17 think the law is that those kind of things can generally  
18 come into evidence. It goes to weight, probably not  
19 admissibility, as it relates to the specific things about  
20 whether or not he was a part of the robbery or shooting. To  
21 that I think I understand the State's argument is well that  
22 should come in.

23 The problem though is to defend and confront that  
24 evidence we come back to the Savannah situation again.  
25 Because of course whenever a witness is going to be assessed

1 by a jury their credibility is at issue. Any bias or reason  
2 they have for testifying comes into play.

3 In this case these statements are not given by this  
4 witness prior to the Savannah case but after, subsequently;  
5 so that now that she has had a falling out of sorts with my  
6 client now all of a sudden she wants to say or provide all  
7 of this information as well as essentially make up what we  
8 think were false charges in Savannah.

9 It becomes problematic for us to attack her credibility  
10 without starting to bring in the issues of the entire  
11 Savannah case, which now is bringing something extrinsic and  
12 completely unrelated to this case, which is what we are  
13 trying - and I think the State has agreed - not to do;  
14 trying to keep the Savannah stuff out.

15 But it becomes troubling and problematic to defend or  
16 attack without being able to give the context of why this  
17 person now has an ax to grind or a motive.

18 But I would say as a general proposition I understand  
19 admissions by a person, a defendant, can generally come in.  
20 If the court allows that in, I will figure out a way;  
21 because certainly I don't want Savannah coming in. Because  
22 then we are not trying just one case, now all of a sudden we  
23 are going to be trying two cases.

24 As to the other part I tried to pull up Edwards and  
25 start looking at it. But I would hazard a guess that

1 Edwards stands for the proposition that when you try to  
2 threaten a witness that is in a case that you have against  
3 you, that could be some form or consciousness of guilt or,  
4 you know, otherwise improper conduct which the courts have  
5 found can come in.

6 The issue we had in the last argument was that  
7 statement seemed to go to the other case; it wasn't going to  
8 this.

9 This the State is saying well it goes to this case but  
10 it was never communicated to quote, unquote, the witness  
11 themselves. That is Travis.

12 Meaning none of this allegations and contentions is  
13 something that was being directed to Travis; say Travis if  
14 you do this, if you say anything, if you testify, I am going  
15 to go get you and I am going to go do this.

16 What it amounts to is the State saying well we think  
17 that Mr. Tucker was planning to do something to Mr. Polite  
18 and because someone told us that hey he is associated with a  
19 person named Savage and he is associated -- and in that car  
20 you might find a gun.

21 That only means that she may have been in that car, she  
22 may be aware there is a gun in the car; but without  
23 something more there is no evidence that I have heard or  
24 seen that somehow Mr. Polite was actually quote, unquote,  
25 actually watched, that that was actually a plan in effect.

1           It could simply be bravado. It -- assuming for the  
2 sake of the argument it even happened in terms of  
3 statements, talking about something as opposed to doing it  
4 are two different things.

5           But saying that somehow she has corroborated because  
6 guess what we did find, there is a person named Savage who  
7 has a car and has a gun and it.

8           Now I don't know why Savage is in jail. I wouldn't be  
9 surprised -- you know, is the gun Savage's? Is the car  
10 Savage's? That necessarily wouldn't be a surprise probably.

11           But now all of a sudden we are going to extrapolate  
12 that and say ah Mr. Tucker is guilty, he is trying to go  
13 knock off a codefendant. I think that is a stretch.

14           The second part of this therefore is more troubling  
15 because part of 404(b) or when we attack the character or  
16 try to put in propensity evidence when we start getting into  
17 too far specific instances or completely different cases  
18 what we are really doing is saying he is a bad guy and he  
19 was up to no good, instead of the jury focusing on is there  
20 evidence in this case.

21           And the jury could well become more saturated with this  
22 conspiracy theory of I am going to go get a codefendant than  
23 just the nuts and bolts of what evidence is there in this  
24 case.

25           So the State's articulated reason to say well we want

1 to bring it in because it shows consciousness of guilt, I  
2 would suggest to the court it is incredibly prejudicial and  
3 it is still really is propensity.

4 We can -- we can artfully try to dress it up as  
5 something else, but it is still a propensity argument for  
6 which other than the girl saying he said "x" there is still  
7 no concrete -- well, for example, he was never charged.

8 I mean you almost would hear when you listen to counsel  
9 recite the evidence you would almost think there is a charge  
10 that is going to flow from this, that my client would have  
11 been arrested for some conspiracy or for some additional  
12 charge. But you don't have any of that because there wasn't  
13 anything.

14 But yet to now put it into this murder trial he is now  
15 being punished for something that there was not enough  
16 evidence to even get probable cause for a warrant to arrest  
17 him for.

18 So I would only respectfully say, Judge, again to focus  
19 this jury on this case and whether there is evidence of  
20 these charges.

21 If the State has its way we are going to be hearing all  
22 of this other stuff on unrelated stuff.

23 And he is ultimately going to be subjected to a trial  
24 on at least two other cases as opposed to this case.

25 So I would ask that you rule and keep it out. And I

1 will just wait for the court to rule.

2 MR. THORNTON: Your Honor, the only thing -- and just  
3 briefly. Yes, Your Honor, there is a lot of evidence that  
4 is prejudicial. Pretty much everything that I want to put  
5 in is prejudicial to the defendant.

6 When a defendant says I did it to someone, that  
7 generally is admissible. And the fact that Mr. Wright is  
8 worried about possibly some other thing coming in because he  
9 can't figure out how to ask the question is not the State's  
10 problem.

11 The fact is I have a witness who is willing to testify  
12 who gave the same story when she was interviewed by  
13 Savannah-Chatham. You know, started it there, reconfirmed  
14 it with our investigators, has reconfirmed it with me, Your  
15 Honor, that he made those admissions, I did it.

16 Granted and some that he didn't; I don't think I killed  
17 the guy because I was shooting with me -- shooting as I ran.  
18 But certainly those come in.

19 And, Your Honor, the entire tenant of Edwards, which I  
20 would ask the court to read, is that this evidence is  
21 absolutely admissible. And the test for reliability that  
22 they talk about is can you tie it to the defendant.

23 I have got a witness who says this is what he said.  
24 And that is frankly why, Judge, I went into all of that  
25 stuff about what Dylan Hightower found as well.

1       It is not just that he-- the bravado argument, which is  
2 weight not admissibility anyway. We are going down here and  
3 I am going to do in my codefendant, these are the people  
4 that are going to do it, I am sending them over with a car.

5       And she saw him put a gun underneath the -- this is not  
6 a gun sitting in the floorboard that she could have seen; it  
7 is literally under the plate of the gearshift.

8       I don't think I even needed to have that, Judge, for  
9 reliability because under Edwards reliability is can you to  
10 tie it to the defendant.

11       But the things that she told our detectives -- or  
12 excuse me, not detectives but our investigators with the  
13 Solicitor's Office, panned out.

14       There was a guy named Cedric. He was in the Hampton  
15 County Detention Center. He is not from here local. He has  
16 Savage, which was supposedly the guy's nickname, tattooed on  
17 his chest. And there is a gun that is black with a silver  
18 slide on it located underneath the gear shift buried in the  
19 car.

20       You can't even see it on the first picture when they  
21 took the plate off. And I think Mr. Wright would have to  
22 agree with this, that first photographic taken with the  
23 plate off I had to have it pointed out to me in the picture.  
24 I couldn't even see it then.

25       So all of that goes to reliability as well, Judge. But

1 under Edwards the test is can you tie it to the defendant.  
2 So in this case I can tie it to the defendant because he  
3 said it.

4 Now the rest of the stuff is weight. If he wants to  
5 cross-examine her about it I've instructed them to stay away  
6 from the Savannah stuff.

7 But to hamstring the State with what amounts to a  
8 confession or a partial confession by the defendant is  
9 ridiculous, Judge.

10 He needs to figure out a way to ask the question. I  
11 have to figure out how to ask the question to eliminate  
12 prejudice all the time.

13 THE COURT: As to the first part that we have been  
14 talking about the State where he allegedly makes admissions  
15 that he was involved and shot and so on and so on, I clearly  
16 agree with the statement and position of the State on that  
17 and find that it is admissible.

18 Now let me ask you something, Mr. Wright. On the  
19 second part you are saying part of your argument is that  
20 because the witness didn't know a threat had been made that  
21 is what does the State in?

22 MR. WRIGHT: Well, I think there is a difference  
23 between a defendant who directly communicates, whether  
24 directly or even but indirectly but gives a communication to  
25 a witness to say don't do it or else. That is one thing.

1       What we have here is a third-party that there is no  
2 evidence there has ever been any contact with Travis Polite  
3 or anything really in South Carolina, period, saying that  
4 hey: When we were in Savannah Mr. Tucker said he wanted to  
5 knock that guy off and to that end he talked to a guy named  
6 Savage, Savage drives a car, and that car will have a gun in  
7 it.

8       Mr. Tucker had never been arrested, stopped in the car,  
9 or anything else; but just based on that one person now all  
10 of a sudden we are facing all of this stuff.

11       THE COURT: Let's suppose that there was a witness who  
12 said that your client told the witness to go do in the  
13 codefendant, to do him in.

14       MR. WRIGHT: Such as Mr. Savage?

15       THE COURT: Just suppose Savage was here. And suppose  
16 he was testifying, and suppose -- suppose, I guess you could  
17 take it further that he went to law enforcement and said,  
18 you know, he gave me a thousand bucks to go and I am not  
19 going to do that but I think you need to know it.

20       MR. WRIGHT: I think that would be more problematic for  
21 us because we would have a witness directly saying I was  
22 hired to go do an act against such and such a person. Here  
23 we have one person removed ---

24       THE COURT: But that goes back to Mr. Thornton's  
25 argument that that goes to weight.

1           MR. WRIGHT: I would -- I understand the argument, but  
2 I would respectfully disagree and say the problem though is  
3 there is a gap in terms of -- for example, if we were going  
4 to prove my client was charged with attempted murder of  
5 Travis Polite by virtue of Mr. Savage, trying to hire Mr.  
6 Savage to go kill him, generally the State would start with  
7 Ms. Bigelow and then put up Mr. Savage to prove up their  
8 case.

9           But when Mr. Savage is devoid, there is no evidence  
10 that he actually tasked Mr. Savage to do it, that paid or  
11 counsel -- that there actually wasn't an agreement between  
12 my client and Mr. Savage to do it, they couldn't just  
13 proceed on Ms. Bigelow saying hey I heard them talk about  
14 it, now I can't say they actually did it, I can tell you  
15 what Mr. Savage looks like, I can tell you what he drives, I  
16 know he has got a gun in the car. But that is as far as Ms.  
17 Bigelow can go.

18           Without Mr. Savage how do you finish the piece to say  
19 it actually was happening as opposed to she simply believes,  
20 which is another way of sometimes speculating that it was  
21 somehow going to happen.

22           But if she gets up there saying it, it is so  
23 prejudicial that once the jury starts hearing he is trying  
24 to kill the codefendant on so many levels that bell rings  
25 and it is terrible. It is hugely prejudicial.

1 But it is -- there is still that leap because we don't  
2 have that middle part -- I don't want to say chain of  
3 custody, but that middle link, to say yes it should go.

4 So that is why I would say it is not just weight. It  
5 shouldn't be admissible because there is an evidentiary gap  
6 to make it admissible and then say do you believe him.

7 THE COURT: Well, the State could probably try the  
8 case, the hypothetical case. They might not win it, but  
9 they could try the hypothetical case, couldn't they?

10 MR. WRIGHT: In -- well, but they could try that kind  
11 of case without Mr. Savage, but I don't think -- one, I  
12 don't think it would succeed. I'm not sure if it would  
13 necessarily get past a directed verdict.

14 Because the question is how do we -- still that is a  
15 speculative leap. But here, Judge, they are not trying to  
16 try the -- well, you could almost say they are not trying to  
17 not have to try it beyond a reasonable doubt; they want to  
18 essentially back door it in as 404(b) bad acts and get him  
19 convicted on this even though -- again, I mean I guess my  
20 thing is I would be -- I would have to sit down if they had  
21 Mr. Savage in something so we are not making the jump to say  
22 yes this was in fact happening.

23 Right now it all is coming from her. It doesn't  
24 corroborate her to say that well there is a Mr. Savage  
25 exists and he has a gun in the car and she happened to know

1 where the gun was. That doesn't make it so. It just means  
2 she knew Mr. Savage at some point and had been in that car.

3 But there is no evidence my client had even been in the  
4 car other than she may try to say it. So for that reason --  
5 and again the prejudice of that is huge.

6 THE COURT: Mr. Thornton.

7 MR. THORNTON: Your Honor, and I don't want to try to  
8 beat a dead horse on this, Judge. But I would point out a  
9 couple of things.

10 I respectfully disagree with Mr. Wright. What he  
11 described is what we would call a circumstantial case. And  
12 I have tried several of them, and I have won a few including  
13 in front of Your Honor.

14 And if I have got a witness that said I overheard  
15 Walter Tucker and Cedrick conspiring to kill Travis Po- --  
16 or Travy who is a codefendant -- now this Ms. Bigelow I'll  
17 point out is from North Carolina. He is down here with  
18 Cedrick to kill his codefendant, I think his name is Travy.  
19 Well, low and behold Mr. Tucker just happens to have a  
20 codefendant named Travis. By the way, the guy he brought  
21 down here to do it who just went over into South Carolina,  
22 he is driving a car with rear-end damage. And lo and  
23 behold, there is a car with rear-end damage. By the way  
24 Cedrick's nickname is Savage. Whow, Cedrick has got a  
25 tattoo of Savage tattooed across his chest.

1        Oh, and by the way, Walter Tucker put a gun in the car  
2 and it is hidden in a place you wouldn't normally see. Lo  
3 and behold there is a pistol underneath that gearshift, and  
4 oh my goodness it is a black pistol with a silver slide.  
5 And lo and behold it is a black pistol with a silver slide.

6        That is enough corroboration.

7        Now would I want to try that case without Cedrick? No,  
8 sir. But what if Cedrick said I am not talking to you; does  
9 that mean we couldn't try it? And I do believe that would  
10 get by a directed verdict.

11       The only other thing I would tell you, Judge, is this:  
12 If you look at the facts of Edwards, as far as the issues  
13 they didn't communicate the threat, it is a CSC case. The  
14 State's witnesses included the victim and her mother.

15       The victim's mother testified that Edwards told her,  
16 quote, to get in touch with the victim and have her not show  
17 up because he had a hit out on her hit -- hit out on her and  
18 that she wouldn't make it through the courtroom doors.

19       And then she also makes -- that he made some other  
20 threat to her. This evidence was admitted over Edward's  
21 objection.

22       Now that was not communicated to her. Now I'm not  
23 saying there wasn't other stuff communicated to the  
24 daughter, but there were threats communicated to another  
25 person that were allowed into evidence because it shows

1 those two things.

2 And again, Judge, I apologize. I don't mean to beat a  
3 dead horse. That is just what I want to go through with the  
4 court.

5 THE COURT: All right. For the reasons argued to the  
6 court by the State I am going to deny defense motion to  
7 suppress.

8 Where are we?

9 MR. THORNTON: Your Honor, next if I may, there is an  
10 agreement. And I apologize, we should have covered this  
11 one. I should have covered this with Mr. Wright.

12 When Mr. Tucker was found by the US marshals he was  
13 actually hiding underneath a sink in North Carolina. There  
14 were three pistols located with him. I am not seeking to  
15 introduce anything about the pistols.

16 I will have a discussion with the detective from North  
17 Carolina who will be here to make sure that he doesn't  
18 reference a pistol.

19 As I have told Mr. Wright, I do intend to introduce the  
20 detective to talk about where they found Mr. Tucker at, that  
21 he was hiding under a sink in a house in North Carolina.

22 He didn't make any statement so there is no worry about  
23 that. But I do think clearly, Judge, flight can be argued  
24 by me.

25 I know you can't charge on it, but I can certainly

1 argue flight as evidence of guilt which I plan to do. But I  
2 did want to make sure that I said that on the record.

3 Mr. Wright and I had already talked about it and agreed  
4 to it that I would not seek to introduce any evidence as to  
5 the guns located in North Carolina, merely that he was found  
6 hiding under a sink.

7 MR. WRIGHT: Your Honor, that is correct.

8 THE COURT: Okay.

9 MR. THORNTON: Your Honor, if I could beg the  
10 court's indulgence for a moment. I want to make sure that  
11 we have -- we have just about I think wrapped everything up.

12 Mr. Wright had argued -- or I think -- and we can  
13 handle this if you want to in a charge conference, Judge.  
14 But he had argued he was going to make an argument as to a  
15 spoliation charge he was going to talk to Your Honor about.

16 And that maybe something that is better taken up at  
17 charge conference. But I will leave that up to the court  
18 and Mr. Wright.

19 MR. WRIGHT: Judge, I think once the evidence that  
20 actually comes into the case then we can see if the charge  
21 is appropriate and conforms to the evidence. So I would ask  
22 to just hold off until that time ---

23 MR. THORNTON: The State has no objection, Judge. I  
24 think that is probably a good idea.

25 Mr. Wright, do you have anything else?

1           MR. WRIGHT: Judge, I am just going over -- I think  
2 just to put on the record I had asked counsel if any of the  
3 other lay witnesses that were present at the time of the  
4 shooting had ever made a pretrial identification of my  
5 client.

6           And it is my understanding the State agrees no such  
7 identifications were ever made. Because I don't want them  
8 coming into court now and saying oh that is him.

9           MR. THORNTON: Other than Jessica Powers, Your Honor,  
10 who he is -- Mr. Wright is well aware of. She is -- and  
11 Your Honor saw testify previously. Jessica Powers is the  
12 only witness on the scene who would -- who I plan to call  
13 who would identify Mr. Tucker at the scene of the crime.

14           Now there are other witnesses that Mr. Wright is aware  
15 of that we actually discussed a couple of them who can put  
16 Mr. Tucker in the general area of Beaufort County, one of  
17 them being a Beaufort police -- Beaufort police officer; but  
18 not at the -- this would have been two days prior just to  
19 establish that Mr. Tucker was in the area in a black car  
20 which of course matches the description of the car fleeing  
21 the scene. But and that was a situation where Mr. Tucker  
22 introduced himself to the officer.

23           And I have talked about that with Mr. Wright. I know  
24 he has seen the report. But no lay witness at the scene  
25 other than Jessica Power is going to get on the stand and

1 say Walter Tucker was there and he is the one that put the  
2 gun to my head and threw me on the ground and robbed me.  
3 That will just be Jessica Power. So I believe that is  
4 correct, Your Honor.

5 MR. WRIGHT: Yes, Judge.

6 THE COURT: All right.

7 MR. WRIGHT: And Judge, other than that I think the  
8 State has given us the witness list, has given us what looks  
9 like one criminal history.

10 MR. THORNTON: I handed several ---

11 MR. WRIGHT: Oh, there might be some more? Okay, we  
12 will -- we can probably figure that off of the records.

13 MR. THORNTON: And obviously, Your Honor, you know, the  
14 rule requires me to turn them over after my witness  
15 testifies; but I like to give it to them ahead of time.

16 So I believe I have done that. If I haven't I would  
17 get on that this afternoon and we will make sure everybody  
18 has got -- they have everybody that would likely testify.

19 THE COURT: Anything else?

20 MR. THORNTON: Nothing from the State that I can think  
21 of, Judge. I hope I haven't forgotten anything. But I  
22 believe that we have covered all of the necessary pretrial  
23 motions.

24 THE COURT: Have we covered all of yours, Mr. Wright?

25 MR. WRIGHT: Judge, we have covered all the motions. I

1 would -- let me go ahead out of an abundance of caution ---

2 THE COURT: Do y'all want to be at ease for a minute?

3 MR. WRIGHT: --- and put on the record we are trying to  
4 get one witness that is on the State's witness list, Chip --  
5 what is his name, Debarr (ph). We -- if the State has  
6 already subpoenaed him I would like to know.

7 MR. THORNTON: I haven't.

8 MR. WRIGHT: Okay.

9 MR. THORNTON: At least let me double check that. I am  
10 pretty sure -- no. I am getting a no shake of the head from  
11 my folks, Judge, so.

12 MR. WRIGHT: After the shooting Jessica Powers, the  
13 State's principal witness, goes to his place afterwards and  
14 has discussions with him.

15 There is a statement that the State has given us. But  
16 I wanted to find out if they have in fact subpoenaed him,  
17 because if so I wanted to piggy back on that subpoena  
18 because we are trying to get him under subpoena. And that  
19 is one of the witnesses we have said we may call.

20 MR. THORNTON: And I will tell the court although he  
21 is on the witness list, out of an abundance of caution I try  
22 to -- you know, Judge, I try to put everybody possible. We  
23 have not subpoenaed him. He is not currently under  
24 subpoena.

25 Mr. -- he was at the time I believe Ms. Power's

1 boyfriend or recently ex-boyfriend. But I believe at the  
2 time he was the boyfriend.

3 He was actually at work if memory serves. And she  
4 called him. She was hiding underneath his trailer and had  
5 called him. And he is actually one of the 911 calls.

6 To be honest I don't know if I am even using his 911  
7 call. I think I am, but I am not positive. But there's  
8 four or five 911 calls.

9 But I had not subpoenaed him because it just wasn't in  
10 my trial strategy, Judge. But I did want to put that on the  
11 record since Mr. Wright has asked. He is not under my  
12 subpoena.

13 MR. WRIGHT: Yes, Judge, that is the last thing I have  
14 for today.

15 THE COURT: Well, let me ask y'all this: Do y'all want  
16 me -- do y'all want to stay here while I read Edwards or do  
17 y'all want me to -- and let y'all know this afternoon, or do  
18 you want me to wait until in the morning?

19 MR. WRIGHT: Regarding the letter, Judge? Yeah, I can  
20 probably get it in the morning. It is not going to change  
21 too much ---

22 MR. THORNTON: I will leave that to you and Mr. Wright,  
23 Judge. I am going to be here all day anyway. I mean I am  
24 not going anywhere any time soon. But I am perfectly fine  
25 with Your Honor making that ruling in the morning if that

1 suits Mr. Wright.

2 MR. WRIGHT: Yeah, that is fine with me, Judge.

3 THE COURT: All right. We will do it that way.

4 MR. THORNTON: Thank you, Judge. Your Honor, it is  
5 3:45. If the court will allow me I will check with Mary  
6 Jordan and see where we are on those pleas.

7 THE COURT: Okay.

8 (WHEREUPON, break was had taken.)

9 THE COURT: Before we all scurry away the bailiff just  
10 handed me a note. Juror 143 has disclosed to the bailiff  
11 that she now realizes that she knows one of the witnesses,  
12 knew one of the witnesses by a different name. I don't know  
13 which one it is. I just thought I would let y'all know.

14 MR. THORNTON: Yes, sir.

15 THE COURT: I guess we need to talk with this witness  
16 in the morning.

17 MR. THORNTON: I would think, Judge, the proper thing  
18 to do would be just to find out who it is and go from there.

19 MR. WRIGHT: I would probably agree, Judge.

20 THE COURT: Do what? I'm sorry.

21 MR. WRIGHT: Yeah, I would agree that I guess if we can  
22 at some point examine who the witness is, what their  
23 relationship is.

24 MR. THORNTON: We should take care of that in the  
25 morning once they get here, Judge, bring them out and do it

1 individually I think would be the appropriate way to do it.

2 MR. WRIGHT: Okay. That's fine.

3 MR. THORNTON: Thank you, Your Honor.

4 THE COURT: All right. On this case, what, 9:15 in the  
5 morning?

6 MR. THORNTON: That suits the State, Judge.

7 MR. WRIGHT: That is fine, Judge.

8 THE COURT: All right.

9 (WHEREUPON, recess for the day, April 13, 2015.)

10 (WHEREUPON, resumed the trial April 14, 2015, approximately  
11 9:10 a.m.)

12 (WHEREUPON, Juror 140 enters the courtroom.)

13 THE COURT: Good morning.

14 JUROR: Hi. Good morning.

15 THE COURT: Number 140?

16 JUROR: Yes.

17 THE COURT: I wanted to make sure I had the right  
18 juror. One of the bailiffs indicated or tells me that you  
19 indicated to one of the bailiffs that you actually know one  
20 of the witnesses that had been identified?

21 JUROR: I know, uh-huh.

22 THE COURT: By a different name perhaps or something  
23 like that?

24 JUROR: Yeah, I think I work with her.

25 THE COURT: Speak up.

1 JUROR: I think I work with her.

2 THE COURT: Which one would it be?

3 JUROR: At the hospital. Quornisha. But we called her  
4 Nisha. But Quornisha.

5 THE COURT: Quornisha? Let's see if I can figure out.  
6 Does anybody know which one that is?

7 MR. THORNTON: Yes, sir, Judge, she was put on there  
8 out of an abundance of caution. I can't imagine she would  
9 testify. I am not planning on calling her. I don't have  
10 her under subpoena currently. Unless the defense is. I  
11 don't think she is going to be called to the stand in this  
12 case.

13 MR. WRIGHT: Judge, I think we actually did subpoena  
14 her. Judge, can we approach outside of the presence of the  
15 juror.

16 THE COURT: Yes.

17 Stay with the bailiff and we will be back with you in  
18 just a minute.

19 (WHEREUPON, juror exited the courtroom.)

20 THE COURT: Do we need to put something on the record  
21 about that?

22 MR. WRIGHT: Oh, yes. Yeah, I just wanted to at  
23 least ---

24 THE COURT: Since she is gone.

25 MR. WRIGHT: Yes. Your Honor, out of an abundance of

1 caution we did subpoena her. I believe she rented a vehicle  
2 that is alleged to have been used by suspects fleeing the  
3 scene of the shooting. She was interviewed by investigators  
4 once or twice actually in relation to it. I'm not sure if  
5 we are going to use her. It sounds like the State was  
6 essentially saying they probably don't plan to use her. I  
7 guess I would simply ask maybe to explore more from the  
8 juror ---

9 THE COURT: I think so.

10 MR. WRIGHT: --- what the connection is.

11 THE COURT: I think so.

12 MR. WRIGHT: And then I guess from there judge we  
13 may -- we may or may not change our position as to whether  
14 we are going to keep her on subpoena or not or if it is even  
15 a moot point.

16 THE COURT: I think I need to interview her some more  
17 since they have worked together to find out whether that  
18 witness has talked to her and told her things about the case  
19 for instance ---

20 MR. WRIGHT: Okay.

21 THE COURT: --- and then have her step back outside and  
22 we will have discuss further with -- with her.

23 MR. WRIGHT: Yes, Judge.

24 THE COURT: Let's bring her back in.

25 THE BAILIFF: Yes sir.

1 (WHEREUPON, juror enters courtroom.)

2 THE COURT: I need to ask you a few more questions.  
3 You indicated that you do now work with that witness?

4 JUROR: Yes, she is food and nutrition; and I am a  
5 nurse on that floor. She is food and nutrition. She brings  
6 the patients their meals, and I am the nurse on that floor.

7 THE COURT: How long have y'all been working together?

8 JUROR: About three years.

9 THE COURT: Three. Along the way has she mentioned at  
10 any time that she might be a witness in this case?

11 JUROR: Yes.

12 THE COURT: She has. Did she tell you why she might be  
13 a witness?

14 JUROR: Yes.

15 THE COURT: About what she knew or might know or ...?

16 JUROR: It was related to her -- she said that she  
17 rented a car.

18 THE COURT: She rented a car?

19 JUROR: Uh-huh.

20 THE COURT: And what about it?

21 JUROR: That is all she said. She said that she rented  
22 a car and that she was just scared to be a witness. And  
23 that was it.

24 THE COURT: And that she was scared to be a witness?

25 JUROR: Uh-huh.

1 THE COURT: All right. A couple more questions. Have  
2 you discussed what you have just told me with anyone in the  
3 jury room, any other jurors?

4 JUROR: No.

5 THE COURT: All right. I am going to talk to the  
6 attorney again outside of your presence. If you will step  
7 back out we will be right back with you.

8 JUROR: Okay.

9 (WHEREUPON, juror exits courtroom.)

10 THE COURT: The State's position on this?

11 MR. THORNTON: Judge, I -- she has got independent  
12 knowledge of the events and she indicated she knew her  
13 friend was scared. I -- you know, I don't -- I would not  
14 want to gamble. We keep talking about this. I don't want  
15 to try this case twice.

16 We have two alternates. I would think -- the State's  
17 position would be that it is not proper to keep her on the  
18 jury. She has outside independent knowledge from a witness.  
19 Whether they are called or not, at this point she has  
20 indicated she knew she rented a car. It was -- it had  
21 something to do with this and she knew she was scared.

22 I would hate after her making that disclosure to the  
23 court for her to remain on the jury. So the State's  
24 position is she should be removed and we should use the  
25 first alternate.

1 MR. WRIGHT: Judge, I tend to think there is nothing I  
2 would say that will probably change what was just said and I  
3 think the court will probably do out of an abundance of  
4 caution. So I understand is probably the best way to say  
5 it. And I do have to concede she does seem privy to outside  
6 information even before the case. So I defer to the court's  
7 judgment.

8 THE COURT: Yeah, I just -- if she had told me that in  
9 voir dire I think we would have probably removed her from  
10 the group. I feel I would guess also -- one -- one side or  
11 the other would have used a strike if the court had not  
12 disqualified her. So I am going to -- now I never can  
13 remember the rule. Is it the first alternate automatically  
14 or is there ---.

15 MR. THORNTON: Judge, I think unless otherwise  
16 specified it is in the order of the draw. I mean the State  
17 won't take a position one way or the other. I just want to  
18 make sure we get it right. I do believe if it is not  
19 otherwise specified it is done in the order they are drawn.

20 THE COURT: The statute -- let me see.

21 MR. THORNTON: Yes, sir.

22 THE COURT: Let me see to be sure.

23 MR. WRIGHT: And Judge, just for the record, I am not  
24 aware of the statutory authority. I know normally in our  
25 home jurisdiction we would just go to the first alternate

1 and we on behalf of the defense we would just ask for the  
2 first alternate.

3 THE COURT: My recollection actually is that -- and I  
4 haven't finished -- I found the statute. I haven't looked  
5 at it. It is actually fairly long. That the rules are  
6 different in general sessions as opposed to common pleas,  
7 but let me look. There are differences. Y'all might want  
8 to look at it. Let me see if it has been amended. It talks  
9 about using a ballot. It is 14-7-1340.

10 (WHEREUPON, pause.)

11 MR. THORNTON: The State concedes, Judge, it appears it  
12 is just by the ballot method. I don't know how the court  
13 would want to do that or just, you know, randomly select  
14 them, draw them out of a hat. I don't know how Your Honor  
15 would like to do it. But the State is satisfied with  
16 whatever method the court deems necessary.

17 THE COURT: I don't see any young children available to  
18 us.

19 MR. THORNTON: No, sir.

20 MR. WRIGHT: Well, and, Judge, we are still looking for  
21 the statute.

22 THE COURT: Go ahead.

23 MR. WRIGHT: But isn't the order they came on as  
24 alternates already get accomplished by essentially a random  
25 draw ballet process? Why would you have to now have an

1 additional process?

2 MR. THORNTON: And Judge, for -- I'm sorry, I didn't  
3 mean to interrupt. I know from past experience - and I have  
4 never had one flipped - as long as the parties agree I think  
5 we can -- so if Mr. Wright is satisfied with the order they  
6 came on, I am certainly satisfied with that.

7 MR. WRIGHT: That is fine, Judge.

8 THE COURT: I am okay with doing that also. Y'all are  
9 both okay with alternate number one?

10 MR. THORNTON: The State is satisfied with that, Your  
11 Honor.

12 MR. WRIGHT: And the defense is satisfied with that,  
13 Judge.

14 THE COURT: All right. If we could bring Juror 143.

15 THE BAILIFF: 143?

16 THE COURT: The one we have been talking to.

17 THE BAILIFF: Oh, you want 143.

18 THE COURT: The same one, yes.

19 (WHEREUPON, Juror 143 enters courtroom.)

20 THE COURT: We have thought long and hard. We are  
21 going to let you off this jury. But you are still in the  
22 jury pool which means what do you have to do at six o'clock?

23 JUROR: Nothing.

24 THE COURT: Yes, you do.

25 JUROR: I have got to call?

1 THE COURT: You have got to call that number. If you  
2 don't have the number you can get it from one of the  
3 bailiffs before you leave. We want to thank you though for  
4 serving and thank you for telling us about this issue. We  
5 just think it is best not to have someone who has ever heard  
6 anything about this case sit on the jury. Six o'clock this  
7 evening. Do you need to go back to get anything?

8 JUROR: No.

9 THE COURT: Y'all will escort her out the door?

10 THE BAILIFF: Yes sir, we are going to take care of  
11 that right now, Judge.

12 THE COURT: Okay. Thank you so much.

13 THE BAILIFF: Do you have a new number for us, Judge?

14 THE COURT: Well, someone else told me who it was and I  
15 thought I had a strike sheet.

16 (WHEREUPON, break to retrieve strike sheet.)

17 THE COURT: 106.

18 THE BAILIFF: 106? 106?

19 THE COURT: Yes. I will explain it to her when she  
20 comes in.

21 THE BAILIFF: Okay.

22 THE COURT: Let me see what else we need to do here  
23 before we bring them in though.

24 All right. Let's go back to the matter I took under  
25 advisement yesterday.

1 (WHEREUPON, break was had to retrieve exhibits.)

2 THE COURT: Since we were here yesterday I actually  
3 read State versus Edwards; and of course it deals with, as  
4 you both know, intimidation of witnesses. And the State --  
5 State's Exhibit 2, being the letter. And Solicitor, the  
6 intimidation in that letter is contained in what portion; is  
7 it ---

8 MR. THORNTON: Your Honor, if I might. And if I was  
9 unclear about that yesterday. I used Edwards obviously in  
10 the other motions that we had dealing specifically with  
11 witness intimidation.

12 What I was more concerned with was the -- in this I  
13 don't think he was trying to intimidate his codefendant --  
14 I'm sorry, his codefendant Brandon Singleton to who he wrote  
15 the letter.

16 I think when one tells a codefendant don't roll over on  
17 me that this is evidence of consciousness of guilt which is  
18 the same sort of evidence that they allowed in in Edwards.  
19 It is the same sort of evidence that I am allowed to argue  
20 with regards to flight.

21 I simply since we were already talking about Edwards I  
22 used Edwards for the theory of the -- you know, that there  
23 is 404(b) is allowed.

24 And I know Mr. Wright is absolutely correct there is  
25 not something specific under Lyle that talks about it. It

1 also talks about intent. But consciousness of a guilt and  
2 intent is a recognized theory.

3 The State is not in any way trying to say that Mr.  
4 Tucker was attempting to intimidate Brandon Singleton or  
5 Blee (ph) is his -- I don't remember which references he is  
6 used in there.

7 But if the court's ruling would be based on whether or  
8 not he intim- -- I will concede that he was not attempting  
9 to intimidate Mr. Singleton.

10 My point in that just was I thought that telling a  
11 codefendant not to roll over on you was evidence of  
12 consciousness of guilt which is the type of thing that they  
13 discussed in Edwards. But, no, sir, I apologize if I was  
14 not clear about that.

15 THE COURT: It was just getting late in the day and I  
16 probably didn't understand fully your argument.

17 MR. WRIGHT: Your Honor, my concern with that is to  
18 defend against that assertion is the State going to then say  
19 that I am allowed to talk about Travis Polite at that time  
20 having lied on my client about him being the shooter?

21 Am I going to be allowed to say well sometimes  
22 defendants take pleas in cases and agreed to be a State  
23 witness notwithstanding a person's relative culpability or  
24 complicity in a case?

25 There are lots of reasons sometimes persons become

1 State witnesses, not all of which mean that when you say  
2 don't roll over on me - which is not what he said; he  
3 actually said just keep it straight with me, be honest,  
4 don't -- if -- when he says keep it one thousand that  
5 statement is just saying be straight with me, don't sit  
6 there and start acting or telling me one thing but you are  
7 doing another, which is essentially Travis Polite.

8 Travis Polite went in there and lied, as the State  
9 acknowledged yesterday, that my client was the shooter. And  
10 the rest of the letter he talks about how Travis  
11 essentially, you know, did that; he lied.

12 But the majority of this letter is just saying get with  
13 your attorney, read your own discovery.

14 How do you extrapolate from that consciousness of  
15 guilt? Do we say that any defendant who wants to defend  
16 himself and encourages his codefendant to have a legal  
17 defense as well, that is consciousness of guilt? Because  
18 that is the danger I think with the State's argument,  
19 because that is what he is saying in this letter.

20 So I just don't see -- and I guess put it this way to  
21 finish the argument, when we go to 403 and say well even if  
22 the State has a valid argument - which I don't concede - but  
23 even if, the prejudice of bringing this letter in and all  
24 the other content not only is it clear my client is in  
25 custody, not only is it clear that they are talking about

1 other stuff, so it is going to impugn his character on  
2 completely unrelated stuff that is contained in that letter  
3 and it essentially is a statement making an argument that  
4 the plain language of the letter just doesn't support. So I  
5 would ask that it be kept out.

6 THE COURT: Do you want to reply? I have heard you  
7 before.

8 MR. THORNTON: No, sir.

9 THE COURT: All right. All right. I found that the  
10 letter, the language in the letter that we are talking  
11 about, is speculative as to what the defendant meant. And  
12 the letter as a whole is too prejudicial. For that reason  
13 I'm going to grant the defense motion to suppress.

14 All right. Anything else we need to take care of  
15 before the jury comes in?

16 MR. THORNTON: Yes, sir. I believe we need to  
17 approach. We will have to put it on the record after. I  
18 just want to give Your Honor a heads up.

19 (WHEREUPON, bench conference was had.)

20 THE COURT: All right. Let the record reflect we just  
21 had a side bar, and I believe that the parties have reached  
22 a temporary agreement relating to the witness Ms. Bigelow,  
23 and that both sides have agreed that that witness would not  
24 be called today, that the testimony of that witness would  
25 not be referred to today in opening or through other

1 witnesses.

2 MR. THORNTON: That is correct, Your Honor.

3 MR. WRIGHT: Yes, Judge.

4 THE COURT: And that the -- I will be given a video to  
5 review before we hear a motion, the defense motion, relating  
6 to Ms. Bigelow's testimony. Tell me is that the essence of  
7 the agreement, Solicitor.

8 MR. THORNTON: It is from the State's perspective,  
9 Judge. I will have those videos burned and available to you  
10 today probably by lunch. And I'm obviously not going to  
11 mention any of that in opening, and I wasn't planning to  
12 anyway. And we will hold off on calling that witness before  
13 tomorrow.

14 MR. WRIGHT: Yes, Judge.

15 THE COURT: That is the agreement?

16 MR. WRIGHT: Yes, Judge.

17 THE COURT: Anything else before we bring in the jury?

18 MR. THORNTON: One thing, Judge. I had to have some  
19 evidence transferred. I have shown these two documents to  
20 Mr. Wright.

21 The clerk has asked that I get Your Honor to sign. So  
22 I drew a line for you, Judge, because there's not one on  
23 there for Judge.

24 And I have shown them to Mr. Wright.

25 MR. WRIGHT: No objection from the defense, Judge.

1 THE COURT: Let me just sign both.

2 MR. THORNTON: Actually, Your Honor, if I may, since I  
3 see the clerk here sitting next to you, Judge.  
4 (WHEREUPON, document presented to the clerk.)

5 THE CLERK: Thank you, Solicitor.

6 MR. THORNTON: With that, Your Honor, the State is  
7 ready to proceed.

8 MR. WRIGHT: Your Honor, on behalf of the defense we  
9 are ready to proceed.

10 THE COURT: All right. Bring the jury.

11 THE COURT: Welcome. Good morning, ladies and  
12 gentlemen.

13 Before we begin I am going to say a few things to you.  
14 The clerk is going to issue -- is going to administer the  
15 oath to you.

16 But I need to tell Juror 106 that she is now eligible  
17 to move to the chair in front of her if you would. You are  
18 now one of the 12 jurors.

19 Juror 299, I really was going to say the same thing to  
20 both of you. As you can see, things can change; so I ask  
21 you both -- well, Juror 299 to pay particular attention to  
22 what goes on because no telling when you may be called to  
23 sit to be one of the 12.

24 At this time I am going to ask the clerk to administer  
25 to you your oath as jurors.

1 (WHEREUPON, the jurors were duly sworn.)

2 THE COURT: Just a few things, ladies and gentlemen.  
3 As you know, the defendant in this case has been charged by  
4 way of indictments; murder, armed robbery, and kidnapping.  
5 The elements of these offenses will be explained to you at a  
6 later date.

7 I will tell you the indictment is simply the vehicle  
8 that brings a case into the courtroom and is not any  
9 evidence of guilt. It contains allegations that must be  
10 proven.

11 The defendant has pled not guilty to each of these  
12 indictments. This therefore puts the burden upon the State  
13 to prove each of the elements to your satisfaction beyond a  
14 reasonable doubt.

15 Your purpose as jurors, ladies and gentlemen, is to  
16 find and to determine the facts. You are the sole judges of  
17 the facts. If at any time I make a comment or do anything  
18 to cause you to believe that I have an opinion about the  
19 facts of the case you must disregard that.

20 The law prohibits me from discussing the facts of the  
21 case in your presence because you decide what the facts are.  
22 You are the sole judges of the facts.

23 I decide what the law is. I preside over the trial and  
24 determine what evidence is admissible and tell you about the  
25 law that applies in the case.

1       And of course you must accept the law as I give it to  
2 you and tell you it is, even if you disagree with it. You  
3 decide the facts and you determine the facts from what  
4 happens here in the courtroom from the testimony you hear  
5 and evidence in the case. And I assume there will be  
6 documents introduced. Other physical evidence will be  
7 introduced.

8       It is up to you to determine the inferences which you  
9 feel may be properly drawn from the evidence. The -- as I  
10 told you yesterday until you begin your deliberations you  
11 don't let anybody talk to you about the case. You don't  
12 talk to anybody about the case. You don't even talk about  
13 the case among yourselves even in the jury room until  
14 everything is over.

15       What is going to happen -- the first thing that will  
16 happen as soon as I quit talking to you is the attorneys  
17 will make opening statements to you where they tell you what  
18 they believe that the evidence is going to show or not show.  
19 And then you typically would have witnesses testify and  
20 evidence presented.

21       After all of that is done the attorneys will make their  
22 closing arguments to you where they try to convince you to  
23 see the case and the facts the way they see them.

24       Then I will tell you about the law that applies to the  
25 case. Then you will begin your deliberations. Once again,

1 up until that time you can't talk about the case even among  
2 yourselves or even in the jury room.

3 Now from time to time you will probably see, highly  
4 likely you will see, the attorneys ask if they can approach  
5 me, if they can come over and whisper and talk to me in such  
6 a manner that you can't hear what we are saying. At least  
7 that is the intention.

8 Normally it is because I am required to discuss with  
9 the attorneys a matter of law. But in doing that it may  
10 require me to discuss the facts of the case.

11 As I have already told you, I am prohibited from  
12 discussing the facts of the case. It may be that we would  
13 even have to ask you to step out of the jury room while we  
14 discuss things outside of your presence.

15 Again, it is not to keep secrets from you; it is  
16 because I am required to rule on matters of law. And in  
17 doing that it requires me to discuss the facts.

18 Once again, ladies and gentlemen, you determine facts  
19 of the case. I am going to ask you to pay close attention.  
20 We will hear now opening statements from the attorneys  
21 beginning with the State.

22 Solicitor.

23 MR. THORNTON: Thank you, Your Honor.

24 **OPENING BY MR. THORNTON:**

25 As you go forward and do a lot of these trials you hear