

1 (On January 23, 2012, with all counsel present as
2 indicated on the appearances, the following transpired in
3 chambers:)

4 THE COURT: All right. Let's go on the record.
5 Let the record reflect that we appear the 23rd day of
6 January, 2012. We convened in the matter of the State of
7 Oklahoma vs. Charles Allan Dyer. This is Case Number
8 CF-10-17.

9 We are outside the -- we're in chambers outside the
10 presence of any potential jurors and present in Chambers
11 with counsel representing the State of Oklahoma, Mrs. Hixon
12 and James --

13 MR. WALTERS: Walters.

14 THE COURT: -- Walters, very good. And counsel for
15 the Defendant, Mr. Al Hoch; the Defendant is not present.

16 I convened this in *camera* hearing for purposes of ruling
17 on a motion that I had discovered that has not been ruled on
18 and that was a motion filed by the State of Oklahoma on
19 August 12 of last year, the Motion in Limine dealing with
20 two points: One, it asks the Court to limit any reference
21 and prohibits any reference or mention or insinuations
22 regarding a mistrial or previous trial.

23 Is there any objection, Mr. Hoch, to that?

24 MR. HOCH: Judge, I don't object to bringing up --
25 I'm not going to mention the previous trial.

1 THE COURT: I'll sustain the motion in that regard.

2 MR. HOCH: The only thing -- would say on a
3 transcript of previous hearing or proceeding.

4 THE COURT: That's right. That's how we'll refer
5 to.

6 All right. The second point is the State's asked for a
7 Motion in Limine involving current criminal charges pending
8 against the victim's father, Carl Wiley, for pointing a
9 weapon at the Defendant and/or Amanda Monsalve on or about
10 May 4, 2011.

11 State's argument?

12 MS. HIXON: Your Honor, the criminal charges
13 pending against the victim's grandfather arose after the
14 last trial, um, has no relevance to whether or not the
15 Defendant is guilty or innocent of these charges. They're
16 irrelevant.

17 THE COURT: Mr. Hoch?

18 MR. HOCH: Judge, the State's previously indicated
19 they wanted to bring up issues of flight which gets you an
20 instruction that says to the effect that you consider -- you
21 can consider a person's absence or flight as being a
22 consciousness of guilt. If that comes in then we have the
23 obvious right to rebut that and Mr. Dyer's whole issue with
24 leaving is not avoiding trial. He had shown up for every
25 hearing prior to that. His issue is personal safety and

1 what he considers threats to his life because he -- he and
2 his girlfriend, whatever she is, had the gun pointed at them
3 by -- by Valerie's father and then subsequent to that, right
4 before he's gone, his house is burned to the ground in an
5 arson and his testimony will be that when he's out there in
6 shock because his house has been burned that the
7 grandfather -- this same guy that points the firearm at him
8 before -- drives by laughing, looking at him and laughing,
9 and he's afraid that at the time somebody thought -- at the
10 time of the fire somebody thought he was in there and they
11 were trying to kill him and his reason for leaving is he's
12 thinking that people, especially this man, are trying to
13 kill him. And that's his -- his reason for leaving is not
14 to avoid trial. His reason for leaving is to preserve his
15 own life.

16 THE COURT: Ms. Hixon?

17 MS. HIXON: Your Honor, should that be brought up
18 in the State's case that Mr. Dyer fled to avoid prosecution,
19 I think that the defense then would get to introduce
20 whatever evidence to rebut and explain the reason of his
21 flight, so for that one limited purpose I think it would be
22 able to come in.

23 THE COURT: All right. I'll sustain this Motion in
24 Limine to the extent -- I'll sustain it except in the event
25 that the State should offer any evidence of flight, the

1 Defendant will be permitted to bring this up for purposes of
2 rebutting it -- any of that evidence, but the State's going
3 to have to first open that door.

4 MR. HOCH: Okay.

5 THE COURT: All right. Now, the State's filed a
6 new motion this morning. Let me -- I haven't had quite a
7 chance to look at it real quick. Give me just a moment.

8 Well, I will add -- this Mr. James Hekia, is he going to
9 be a witness in this case?

10 MS. HIXON: No.

11 THE COURT: Huh?

12 MS. HIXON: No.

13 THE COURT: What about the Defendant?

14 MR. HOCH: Calling him?

15 MS. HIXON: He's never been listed. I mean, I --

16 THE COURT: That's -- that's going to be another
17 point I'm going to take up is it's unclear to me, I don't
18 see that you've updated any discovery list by identification
19 of any witnesses.

20 MR. HOCH: We just put in the -- our discovery
21 notice was that we intend to call the same witnesses as they
22 had listed before, that --

23 MS. HIXON: I believe he's standing on
24 Mr. Hammond's?

25 MR. HOCH: We're standing on the one Mr. Hammond

1 put in previously.

2 THE COURT: Okay.

3 MS. HIXON: I think he's not listed on there,
4 Your Honor. There has been an amended --

5 THE COURT: All right. Well, while I'm looking --
6 well, before we get to -- let me address that issue first
7 because I think this could very well be dependent on -- you
8 filed a notification of witnesses and exhibit list
9 file-stamped January the fifth indicating you give notice of
10 your right to call any and all of the State's endorsed
11 witnesses and any witnesses that interviewed -- mentioned or
12 interviewed in police reports whose testimony will be in
13 accordance with the information provided in the police
14 reports or discovered by the State.

15 Now, are you telling me -- and it goes on to say, The
16 Defendant gives notice of a right to call any and all
17 witnesses in the event they are required for impeachment or
18 rebuttal. It doesn't say anything about you're reasserting
19 the discovery of the Defendant. It's basically telling me
20 you -- you could very well call anybody you want to and
21 that's not in compliance with the Court's discovery order.

22 MR. HOCH: I understand that part, Judge, but --

23 THE COURT: It doesn't say -- it doesn't say that
24 you're reasserting those witnesses identified by the
25 Defendant in previous discovery.

1 MR. HOCH: Well, Judge, I think that --

2 THE COURT: I need -- I need a discovery order, and
3 I need it -- and I need a list in the next 10 minutes of who
4 you intend to call in your case in chief for the purposes of
5 *voir dire*. If I don't get that you don't call any
6 witnesses. Do you understand me?

7 My discovery order is quite -- it's law.

8 MR. HOCH: You want me to --

9 THE COURT: I need to know how to inform this jury
10 as to potential witnesses that may testify for purposes of
11 inquiring as to acquaintance, familiarity with them or
12 anything, and I've got a list of witnesses that Mr. Hammond
13 has provided, but this -- this is the only discovery
14 notification of any kind that you filed in this case since
15 you've entered an appearance and it doesn't name a single
16 individual or a single shred or document of evidence with
17 any degree of specificity.

18 MR. HOCH: I can have my --

19 THE COURT: Now, it will be inconsistent with
20 previous orders of this Court. Now, at most I'm going to
21 say you're limited since you haven't expanded any previous
22 lists filed by previous counsel. You're going to be limited
23 to his witnesses.

24 MR. HOCH: And that's what I intend to use, his --
25 the ones that he had before.

1 THE COURT: Well, you haven't said that. You don't
2 say this in this order. You're telling me you reserve the
3 right to call anybody you want to.

4 MR. HOCH: Okay. I'll --

5 THE COURT: I'm going to tell you, you're not going
6 to have that privilege. The only exception being rebuttal
7 evidence.

8 MR. HOCH: I'll call my office and have them fax
9 one. Will it suffice to say we're intending to use
10 Mr. Hammond's list, previous list?

11 THE COURT: I've -- I've got a -- and I've got a
12 list and it numbers 35 individuals --

13 MR. HOCH: And, Judge, I --

14 THE COURT: -- 15 of which are listed by -- 15 of
15 which are not listed by the State.

16 MR. HOCH: And, Judge, I -- I actually intend to
17 call five people.

18 THE COURT: Okay. Very good. All right. None of
19 them -- neither one of them -- none of them are this Mr. --

20 MR. HOCH: Hekia?

21 THE COURT: -- Hekia? Okay. All right.

22 MR. HOCH: But, Judge --

23 THE COURT: All right. With that I'll entertain
24 the State's motion --

25 MS. HIXON: Your Honor, I think the --

1 THE COURT: -- and argument at this time.

2 MS. HIXON: Your Honor, the motion I think is
3 self-explanatory. During the last trial Mr. Dyer himself,
4 and I don't remember any other defense witnesses, insinuated
5 that Hayley had been around this James "Hekia," or however
6 you pronounce his name, which is Valerie's uncle. He is a
7 registered sex offender for indecent exposure when he was
8 intoxicated in the park, and he was peeing out in the park
9 where there were children.

10 There is no evidence at all and, in fact, Hayley says
11 she's never been alone with the guy and there is no
12 evidence, the defense presented no evidence last time, that
13 she was ever alone with him, um, and there's no evidence to
14 support he was a potential perpetrator of her and it's
15 against all case law for the defense to be able to just
16 throw that out there without actual evidence to support that
17 he is a possible third-party perpetrator, and we would ask
18 that they be ordered to refrain from mentioning him or the
19 fact that he's a sex offender.

20 THE COURT: Okay.

21 MR. HOCH: And, Judge, what it -- what mention of
22 him goes to -- part of -- part of his goes to the forensic
23 examination that they want to put in because the protocol
24 for forensic examination is that an examiner towards the end
25 or closing of their examination is supposed to ask, Has this

1 happened to you from anyone else or has anyone else done
2 anything like this, something to that effect, and their
3 examiner says, Has your dad done this to anyone else?

4 They don't follow the protocol, and they don't eliminate
5 other potential -- other potential persons which she had
6 access to numerous people -- or numerous people had access
7 to her. And since they're wanting to put on a forensic
8 examination, I think it's well within our rights to see why
9 that person didn't cover all the bases, and I think that
10 we're entitled to cross-examine on that because this
11 forensic examiner in the tape is somewhat leading and
12 suggestive, and I think that when the forensic examiner is
13 targeting one person, we have the right to cross-examine on,
14 Why didn't you look beyond this?

15 MS. HIXON: I know of no protocol that requires
16 that that's been recognized on any national level
17 as Mr. Hoch is suggesting. There is no protocol for
18 forensic interviewing that requires them to exclude all
19 possible perpetrators. The forensic interviewer's job is
20 not to determine if this guy is guilty of what the girl is
21 accusing him of. The forensic interviewer's job is to let
22 the little girl tell her story and get it out.

23 That still doesn't meet the threshold required by law to
24 introduce such evidence which means corroboration.

25 THE COURT: Well, I think -- I think the law, based

1 upon what little I know about it, and hear about what
2 counsel has provided in their Motion in Limine is if you
3 feel like that this act has been perpetrated upon this
4 victim by an individual other than the Defendant, you have
5 to come forward with some sort of showing of that evidence.
6 You can't just produce any window as the case -- the State's
7 cites suggest. There must be some quantum of evidence other
8 than meer suspicion or innuendo.

9 I think the scenario would be if you establish that this
10 individual had access to this child, then I think you would
11 be -- and during the period of time in question, I think
12 then you can bring that witness forward to indicate whether
13 or not he is a registered sex offender, but I don't -- my
14 recollection of the previous trial is there was no evidence
15 to even suggest that.

16 MR. HOCH: And, Judge, that is part of what
17 Mr. Dyer's testimony is going to be, that this all -- a lot
18 of this whole fight with the --

19 THE COURT: Well, that is suspicion and innuendo.
20 What I'm saying is, you have to have a quantum of evidence.
21 That means you have to have a witness to testify from
22 personal knowledge that observed this particular individual
23 in a situation where he could have been around this child --

24 MR. HOCH: (Nodding.)

25 THE COURT: -- before I'm -- before I will even

1 consider it.

2 MR. HOCH: And --

3 THE COURT: And then -- and even then I'm not sure
4 how you're going to prove it. You can't -- how does someone
5 know he's a sexual -- a registered sex offender? You're
6 going to have to provide documentation and records of it.
7 You'll probably have to bring the chief of police in or
8 the -- and I don't know where this individual lives but, I
9 mean, if he is a sex offender pursuant to the Oklahoma Sex
10 Offender Registration Act then he --

11 MR. HOCH: He's presently in DOC custody.

12 THE COURT: Well, then you'll have to establish
13 through the appropriate custodian of records, either a
14 police department or sheriff's department, the fact that he
15 in fact registered with that particular law enforcement
16 agency the location for which he lived during that period of
17 time, and you haven't -- those witnesses aren't endorsed.

18 MR. HOCH: And that's --

19 THE COURT: This isn't -- this isn't by way of an
20 affirmative defense and you haven't listed those witnesses
21 so why even go there, other than you're merely going to
22 suggest it or use the innuendo? You're not prepared to show
23 me that you have an affirmative defense. You're prepared to
24 put on hard, direct evidence to support it. Otherwise the
25 only other conclusion is it's a suspicion, suggestion or

1 innuendo which the case law prohibits.

2 The case law doesn't prohibit you from putting forth
3 that evidence to establish that defense, and I'm not going
4 to preclude you from doing it, but I don't see based upon
5 the witnesses that you endorsed that you're prepared to do
6 that. You're not going to use this forum to put forth a
7 suspicion or an innuendo. You can put forth evidence, not
8 Mr. Dyer's suspicion or belief. You're going to have to
9 establish that evidence, and I think that's what the case
10 law says. I'm not going to -- I wouldn't preclude you from
11 doing it.

12 I think you've had ample opportunity and time to develop
13 that evidence if you think it's correct by interviewing this
14 individual or interviewing other people that may have been
15 around the child and even getting this individual here to
16 testify and/or getting witnesses who could affirmatively
17 testify as to the status of a sex offender for what
18 particular period of time, and I don't see based upon the
19 witness list that's been developed so far, I don't see that
20 you've done that ground work.

21 MR. HOCH: Well, Judge, part of it -- admittedly I
22 can't show that -- there's no way possible to show when he's
23 alone with a child. I mean, admittedly.

24 THE COURT: I'm not saying "alone." I'm saying
25 being around. I didn't go that far. I said, "having an

1 opportunity to be around the child."

2 MR. HOCH: And part of that is, Judge, the
3 people --

4 THE COURT: I don't want to argue about it. I made
5 my ruling, and my ruling is within those parameters. If
6 you're prepared to offer specific evidence to support what
7 would be an affirmative defense, you're permitted to do so
8 and it's not going to come in until you have done so.

9 MR. HOCH: (Nodding.)

10 THE COURT: And I may very well conduct an in
11 camera hearing first before I allow you to do that. My
12 second observation is, is looking at the list of witnesses
13 that have been endorsed, I don't see how you can establish
14 the existence of this individual being a registered sex
15 offender absent him being here to testify and acknowledge it
16 himself, or you have the presence of the necessary city
17 and/or county law enforcement officers who are required to
18 document those facts under the Oklahoma Sex Offender
19 Registration Act. They're required to register with the
20 chief of police, I think, if they live in that municipality
21 or if they live in the county, they're to register with the
22 sheriff.

23 Those things you're going to have to establish. Absent
24 that and absent those individual's names being conspicuously
25 absent from your witness list tells me that you're not

1 prepared to offer that evidence in order to establish that
2 as an affirmative defense. So, absent that, I'm not going
3 to allow you to use it by innuendo or suspicion and that is
4 the Court's ruling.

5 MS. HIXON: And, Your Honor, may I -- should that
6 be developed as part of the defense's continuing duty for
7 disclosure, we would request some sort of discovery
8 statement.

9 THE COURT: I think that is way too late, quite
10 frankly.

11 MS. HIXON: Okay.

12 THE COURT: I think that evidence has been
13 adequately known. It was innuendo that was floating around
14 for the first trial, and I think it's evidence that could
15 have adequately been developed and discovered before the --
16 at least 10 days before trial.

17 MR. HOCH: (Nodding.)

18 THE COURT: Now, unless you've got extenuating
19 circumstances that show otherwise, that's going to be my
20 ruling. If you have extenuating circumstances, I'll listen
21 to them, but based upon the list of witnesses I have in
22 front of me I just don't see that you contemplated putting
23 on evidence of that.

24 MR. HOCH: Well, Judge, I've -- I've looked at it.
25 The problem is -- I think what -- the problem is what you're

1 referring to.

2 THE COURT: You can't prove it. It's innuendo.
3 It's suspicion and that's prohibited.

4 Now, I've got a list of witnesses that the State has
5 provided, and I need to -- for purposes of the Court's *voir*
6 *dire*, I need to know which of these witnesses I need to
7 identify for the jury, and I'll read down through them and
8 if you'll -- let me get a pencil and mark through these
9 rather than -- okay.

10 Valerie Dyer?

11 MS. HIXON: Yes.

12 THE COURT: Hayley Dyer?

13 MS. HIXON: Yes.

14 THE COURT: Jessica Taylor?

15 MS. HIXON: Yes.

16 THE COURT: Dr. Preston Waters?

17 MS. HIXON: Yes.

18 THE COURT: Laura Langley, RN?

19 MS. HIXON: No.

20 THE COURT: Ashleigh Sosebee, OSBI. She's one of
21 the DNA serologist-type people?

22 MS. HIXON: Um, I don't --

23 THE COURT: You called her last time.

24 MS. HIXON: Well, the -- the defense called her
25 last time. Yeah, the defense called her last time so you

1 might leave her on there.

2 MR. HOCH: I don't intend on that one, Judge.

3 THE COURT: Okay.

4 MR. HOCH: I -- I -- I don't see that that's
5 helpful.

6 MS. HIXON: Okay.

7 THE COURT: Sara Ferrero, similar situation.

8 MS. HIXON: No.

9 THE COURT: Donald Rains, OSBI.

10 MS. HIXON: Possibly.

11 THE COURT: I think he's a computer guy?

12 MS. HIXON: Yes.

13 THE COURT: Gene Pool, FBI?

14 MS. HIXON: No.

15 MR. HOCH: No, I'm not going to call him.

16 THE COURT: Gerald Weston, FBI?

17 MS. HIXON: That's Ken Weston.

18 MR. HOCH: That's Ken. I'm not going to call him.

19 THE COURT: Ken Weston.

20 MS. HIXON: No. Actually -- could you leave Weston
21 on just for rebuttal?

22 THE COURT: Sure.

23 Ken Tyus, T-y-u-s?

24 MS. HIXON: No.

25 MR. HOCH: No.

1 THE COURT: Brent Williams?

2 MS. HIXON: No.

3 THE COURT: Richard Grabowsky.

4 MS. HIXON: No.

5 THE COURT: Eric McHouston, Federal Bureau of
6 Prisons. I would list him as U. S. Department of Justice.
7 I wouldn't say the Federal Bureau of Prisons.

8 MS. HIXON: No.

9 THE COURT: Josh Seely, sheriff's office?

10 MS. HIXON: Yes. Leave him on there.

11 THE COURT: Grabowsky you said, no, right?

12 MS. HIXON: Right.

13 THE COURT: Christopher "Chris" Lemons, sheriff's
14 office?

15 MS. HIXON: No.

16 THE COURT: F. L. Estes?

17 MS. HIXON: No.

18 THE COURT: Now, if they say "no" and you intend to
19 call them, speak up.

20 MR. HOCH: I'm -- no.

21 THE COURT: You say Chris Lemons, yes?

22 MS. HIXON: No.

23 THE COURT: It's no.

24 F. L. Estes, no?

25 MS. HIXON: No.

1 THE COURT: Lawson Guthrie?

2 MS. HIXON: Maybe, yes.

3 THE COURT: Lori Crosby?

4 MS. HIXON: Yes.

5 THE COURT: Amanda Monsalve?

6 MS. HIXON: Yes.

7 MR. HOCH: Yes.

8 THE COURT: Micah Simmons. I think that's "Micah"
9 Simmons, M-i-c-a-h, Micah Simmons?

10 MS. HIXON: No. I think that was the gun charge.

11 THE COURT: That relates to the gun.

12 MR. HOCH: Yes, that is the owner of the --

13 THE COURT: Rusty Smith?

14 MR. HOCH: -- rifle.

15 MS. HIXON: No.

16 THE COURT: Mandy Lindstrom?

17 MS. HIXON: No.

18 THE COURT: Jan Dyer?

19 MR. HOCH: Yes.

20 THE COURT: John Robert Davis --

21 MS. HIXON: No.

22 THE COURT: -- Fullerton, California.
23 Mike Hollingsworth, somewhere in Montana?

24 MS. HIXON: No.

25 THE COURT: All right. Let me go through the

1 Defendant's.

2 Jan Dyer --

3 MR. HOCH: Yes.

4 THE COURT: -- you're going to call her?

5 MR. HOCH: Uh-huh.

6 THE COURT: Okay. Amanda Monsalve, they've
7 indicated?

8 MR. HOCH: Yes.

9 THE COURT: Amy Dark?

10 MR. HOCH: Yes.

11 THE COURT: I've got Valerie Dyer, Hayley Dyer,
12 Josh -- Josh Seely. Christopher Lemons, you said no, also?

13 MR. HOCH: Let me go check my list. Can I go grab
14 my list out there?

15 THE COURT: Yes, yes.

16 MR. HOCH: I'll be right back.

17 (There was a short break after which the proceedings
18 resumed with the appearances as previously listed:)

19 MR. HOCH: I might call Lemons. I'm not sure.

20 THE COURT: Okay. Well, I'm going to -- he's on
21 your list -- you're going to -- I'm going to strike Dyer
22 because I've already got her listed over here.

23 MR. HOCH: Uh-huh.

24 THE COURT: Amanda Monsalve also, Amy Dark, Valerie
25 Dyer, Hayley Dyer; Josh Seely, you said yes or no?

1 MS. HIXON: Yes.

2 THE COURT: Okay. Christopher Lemons, you said
3 yes?

4 MS. HIXON: Yes.

5 THE COURT: We've got Dr. Waters already. Jessica
6 Taylor already. Dan Fletcher -- that's a new one.

7 MR. HOCH: Um --

8 THE COURT: -- Duncan Police Department.

9 MR. HOCH: No. I don't think so.

10 THE COURT: And then the two OSBI serology people,
11 Sosebee and Ferrero?

12 MR. HOCH: I'm going to run from that.

13 THE COURT: Lawson Guthrie?

14 MR. WALTERS: He's already on.

15 THE COURT: He's already on there. Ryan Long,
16 sheriff's office?

17 MS. HIXON: I don't think he's around anymore.

18 MR. HOCH: I don't think so.

19 THE COURT: Abigail Wilson, Abby Wilson, DHS child
20 welfare person?

21 MR. HOCH: No, I -- I try to avoid DHS.

22 THE COURT: Justin McCowan?

23 MR. HOCH: Possibly.

24 MS. HIXON: You definitely want him out?

25 MR. HOCH: Yeah, possibly. I'm actually thinking

1 of possibly calling him.

2 THE COURT: Marvin Dutton, your star computer guy.

3 MR. HOCH: Yeah, I know. Leave him on.

4 THE COURT: Okay.

5 MR. HOCH: I'm not -- I wouldn't hold my breath on
6 him.

7 THE COURT: There is a late endorsement by David of
8 Nathan Cario as a character witness. I have no address, no
9 whereabouts.

10 MS. HIXON: Nathan Cario. He's a Duncan police
11 officer or sheriff's deputy, one.

12 MR. HOCH: Yeah, I'm avoiding character because I
13 think it opens the door for a couple of other things.

14 THE COURT: Gene Pool, I think you struck?

15 MR. HOCH: Gene Pool, no way.

16 THE COURT: Sergeant McGuire. That must be having
17 to deal with something -- I think that had to do with his
18 federal charges.

19 MR. HOCH: Yeah, and I don't -- my understanding is
20 they're not going to get into --

21 THE COURT: No, they're not.

22 MR. HOCH: -- any of that

23 THE COURT: All right. They've also told me you're
24 going to use Jessica Taylor. Micah Simmons you said no;
25 Rusty Smith, you said no; Brett Williams you said no; Ken

1 Weston, yes?

2 MR. HOCH: Well, Ken Weston, I --

3 THE COURT: Well, they said --

4 MR. HOCH: They said, yes. I probably wouldn't.

5 MS. HIXON: It would be only for rebuttal.

6 THE COURT: All right. Ken Tyus they said no.

7 MR. HOCH: Yeah, avoid him.

8 THE COURT: Grabowsky?

9 MR. HOCH: He's with the gun.

10 THE COURT: They said "no" on him. John Davis they
11 said no -- no, they didn't list him. You listed John.

12 Yeah, there's John Davis, no.

13 Jim Taylor, Colt Manufacturing?

14 MR. HOCH: That's --

15 THE COURT: That's got to be with having the
16 federal --

17 MR. HOCH: That's with the grenade launcher, no.

18 THE COURT: Abby Wilson?

19 MR. HOCH: No.

20 THE COURT: Justin McCowan -- I listed him twice,
21 didn't I?

22 MR. HOCH: Yeah, I'm not going to.

23 THE COURT: Deidre Hampton, whoever that is,
24 Duncan.

25 MR. HOCH: No, I don't think so.

1 THE COURT: Carl Wiley?

2 MR. HOCH: I doubt it. No, probably not.

3 THE COURT: Very good. All right.

4 MR. HOCH: I tell you what, Judge. You might leave
5 Wiley just in case, but I seriously doubt it.

6 THE COURT: Very good. All right. Anything else?

7 MS. HIXON: Your Honor, only -- it came to our
8 attention maybe late Friday the sheriff called me this
9 morning. I've not had a chance to talk to Al about it. I
10 don't know if Mr. Walters has, but his client has been
11 causing chaos in the jail a little bit, to put it mildly,
12 and has on his recorded jail call claimed that he was going
13 to cause a mistrial during these proceedings.

14 I don't know -- he didn't indicate how he was planning
15 on doing that, but I just think we need to address that.

16 THE COURT: I'm prepared to address that. Here's
17 what I intend to do: I've got to have all three jury panels
18 in this courtroom when we call roll. I'm going to send a
19 third of them to Judge Russell's courtroom -- that's blue
20 panel. That will leave probably close to a hundred jurors.

21 My intent is to place all potential jurors and only
22 potential jurors on one side of the courtroom. Any other
23 spectators or anyone else other than potential jurors are to
24 sit on the opposite side of the courtroom.

25 I will put each of you on notice and the sheriff has

1 already been instructed that if anyone in the spectator's
2 section or in the courtroom stands up and makes any kind of
3 verbal gestures, bodily gestures, or any kind of outburst
4 will be immediately taken into custody, and I -- and the
5 Court -- and they're not to be released until authorized by
6 the Court and the Court reserves the right to initiate
7 direct contempt on those individuals.

8 MR. HOCH: Judge, I can control --

9 THE COURT: I'm just going to tell you what's going
10 to happen.

11 MR. HOCH: I can control the people who I've got
12 here for witnesses. I know for a fact there's some of these
13 militia people --

14 THE COURT: Well --

15 MR. HOCH: -- that are showing up.

16 THE COURT: -- we also know for a fact because I
17 think the sheriff had also alerted me to the same -- the
18 same phone call and it was in relation to conversations as
19 to certain unnamed people being here and not being here in
20 that context. So what I'm going to tell you is if something
21 like that happens and the Defendant asks for a mistrial,
22 you're going to have a long row to hoe to show that it's not
23 something that he's been aware of or contributed or caused.

24 MR. HOCH: Judge, I know that he -- and I have
25 suggested to some of these militia people, Don't come.

1 I've -- I've tried to keep them away and they --

2 THE COURT: Well, I'm not -- I'm not here to
3 preclude anyone from being in the courtroom. This is a
4 public proceeding, but they are spectators. It is not a
5 spectator's sport. They are a spectator from the standpoint
6 they can sit and listen and watch. They don't participate.
7 They don't verbalize. They don't make any comment verbally
8 or make any bodily gestures of any kind, and I'll make that
9 abundantly clear, and I'll do it on a repeated basis during
10 the trial, if necessary, and warn any individuals if they
11 are so inclined it will result in their immediate -- being
12 taken into custody and direct contempt proceedings will be
13 proceeded at -- summarily at that particular point in time.
14 I will recess the proceedings and proceed directly with a
15 direct contempt adjudication at that time.

16 MR. HOCH: The only exception I would ask, Judge,
17 there's one person from my office who is doing an internship
18 for Southern Nazarene, Southern Nazarene University. I've
19 got her keeping track of witnesses for me and trying to make
20 sure --

21 THE COURT: She's a spectator. She's not a member
22 of your staff.

23 MR. HOCH: No.

24 THE COURT: She doesn't get the privilege of the
25 bar.

1 MR. HOCH: And I'm not asking for her to be there
2 but occasionally she may have to hand me a note.

3 THE COURT: That's fine. She will do it from
4 beyond the bar.

5 MR. HOCH: And that -- if she can be back in the
6 first row and I can just reach and get it.

7 THE COURT: Well, the first row behind counsel
8 table -- Defendant's counsel table will be vacant. No
9 family members, no -- there will be no one seated behind
10 that first row behind your -- unless they are staff people,
11 your staff people.

12 MR. HOCH: And she would be the only one I would
13 ask for that exception.

14 THE COURT: She's not a member of your staff.
15 You've already told me --

16 MR. HOCH: She's an intern. She's doing an
17 internship for Southern Nazarene. She's not actually an
18 employee, no.

19 THE COURT: That same rule applies to her. She
20 will be treated as a spectator.

21 MS. HIXON: The only other thing, Your Honor, Jerry
22 Herberger, who is now the Special District Judge, was
23 Hayley's guardian *ad litem*. Obviously, since he's been
24 appointed to the bench, no other guardian *ad litem* has been
25 appointed for her. Um -- and during the last trial he on

1 her behalf made motion for the courtroom to be cleared while
2 she testified. I would reurge that.

3 THE COURT: My recollection is that particular
4 matter the parties declined to pursue that.

5 MS. HIXON: No, we cleared the courtroom.

6 THE COURT: Did you?

7 MS. HIXON: Yes, of all -- of all spectators other
8 than the BACA woman that actually sat with her --

9 THE COURT: Yeah.

10 MS. HIXON: -- and law enforcement that was there
11 for security.

12 THE COURT: Okay.

13 MS. HIXON: I mean, since she doesn't have her own
14 attorney I would reurge that for her because I believe the
15 same circumstances --

16 THE COURT: I'll take that up at that time.

17 MS. HIXON: Okay.

18 THE COURT: Other two matters, I have entered two
19 general orders: One authorizes the sheriff to perform
20 security for this courthouse the purposes of this trial.
21 That order was -- I entered it late Friday. It didn't
22 actually get file stamped until this morning; it was posted.
23 It directs the sheriff to perform public security screening
24 for all individuals entering the courtroom. Now, they're
25 performing that on the main entrance on the west side.

1 Secondly, I've entered what's -- I've entered generally,
2 not only in this case but the other case going on in this
3 courthouse at the same time, a trial media coverage order,
4 and I'll provide copies of that to you. The others, they've
5 been posted as well. It basically precludes giving of any
6 interviews on this floor.

7 It will -- it only authorizes accredited members of the
8 media to have photographic and audio recording equipment on
9 this floor. It only -- it will authorize only taking
10 photographs of the open rear doors of the courtroom while
11 the court is not in session. They have to stay clear -- and
12 clear back from the security perimeter established by the
13 sheriff's department for the entrance of the courtroom.

14 If you want to conduct any interviews, it has to be
15 done -- it can be done in the public area other than this
16 floor outside the presence, either hearing or sight of any
17 potential jurors, not only this trial but any other trial
18 going on.

19 MR. HOCH: Judge, my preference would be to extend
20 it that counsel on either side is not to give interviews.

21 THE COURT: Well, I'm not -- I'm not -- I
22 haven't -- that one amounts to a gag order and I don't see a
23 need for a gag order in this case. Now, there is a gag
24 order in place on the other trial on the other end, but I
25 don't see that need in this case.

1 MS. HIXON: We have no intention of giving
2 interviews while this case is going on.

3 MR. HOCH: Okay.

4 THE COURT: All right. Anything else?

5 MR. HOCH: Along with the media stuff, Judge, just
6 to reurge, and I know it's deferred ruling on my change of
7 venue but just for the record there was another article in
8 the Duncan Banner on Wednesday of last week so four days
9 ago, five days ago, that -- basically a half page and they
10 do a time line on Mr. Dyer and part of it is even factually
11 inaccurate which obviously the paper doesn't necessarily get
12 the facts straight all the time. In this case I think that
13 the prejudicial affect of the way the media is going and,
14 again, today on Channel 7 this morning on their 7:00 news or
15 whatever it was, they had another story showing him being
16 marched around in an orange jumpsuit and handcuffs and
17 talking about his trial today. So I think that -- I still
18 believe that the prejudicial affect of this media is going
19 to make it impossible to seat a fair and impartial jury, and
20 I realize the Court's going --

21 THE COURT: All right. You made your record along
22 those lines. You know, we've covered that ground before.
23 We're going to find out.

24 Okay. Anything else?

25 MS. HIXON: No.

1 MR. HOCH: Which side are we putting jurors on?

2 THE COURT: I haven't decided yet. It depends
3 on -- well, I will probably put them on -- put them on the
4 east side.

5 MS. HIXON: Okay.

6 MR. HOCH: Where the jury box is?

7 THE COURT: Yeah. That's my hope. When I get in
8 there and eyeball them, you know, I may not have enough room
9 but we'll see.

10 MR. HOCH: And just --

11 THE COURT: I am going to seat two alternates. How
12 I intend to do that, if you'll look at your jury impanelment
13 form, there are seven chairs in that back row. I'm going to
14 keep the -- I'm going to keep the first chair closest to the
15 front of the courtroom on the back row open as an alternate
16 and then we'll sit another chair right in front of it in the
17 jury box. And those two --

18 MR. HOCH: After they are picked?

19 THE COURT: After they are picked. Those are the
20 two -- those seats will be the closest to the bench side of
21 the courtroom.

22 MR. HOCH: And then just so -- for clarity, when
23 we're doing challenges and -- say we -- are we going to
24 strike out of the -- out of the jury box and then replace
25 number 13 out there?

1 THE COURT: For your peremptories?

2 MR. HOCH: Yes, sir.

3 THE COURT: Yeah, but we'll do that sidebar.

4 MR. HOCH: Okay.

5 THE COURT: But you'll only operate from the 12 in
6 the box.

7 MR. HOCH: Okay.

8 THE COURT: For example, we've got 12 in the box
9 and we -- and you -- I'll ask you when you exercise your
10 peremptory challenge to tell me the seat number and the
11 juror's last name.

12 MR. HOCH: And then fill in, like, the first one we
13 strike?

14 THE COURT: That's right. I'll move -- it will be
15 in the order in which the other official jurors are seated.
16 It will be drawn out of that order and they'll stay in that
17 order throughout until we've got a jury -- if we've got a
18 jury.

19 MR. HOCH: And then just for other clarity, can I
20 waive and then still exercise my others?

21 THE COURT: As long as it's clear that you're only
22 waiving that particular challenge.

23 MS. HIXON: If both sides waive simultaneously,
24 doesn't that --

25 THE COURT: That's it. It's over.

1 MS. HIXON: So if you waive and then we waive after
2 that it's over?

3 THE COURT: Yeah.

4 MR. HOCH: Even if I tell you it's just for this
5 one challenge?

6 THE COURT: Well, I can -- how I can -- you don't
7 have to tell me that. I construe that as you're waiving
8 that particular challenge, and I can understand why you're
9 doing that. You're wanting to get a -- you're wanting to
10 get a jump to preclude somebody from coming up or moving up,
11 but if I have two waivers back to back, it's over. Okay?

12 MR. HOCH: (Nodding.)

13 THE COURT: All right. Let me go in there and take
14 care of housekeeping.

15 THE BAILIFF: Can I have them start calling the
16 roll.

17 THE COURT: Oh, yes. Please do.

18 (There was a recess in the Motion in Limine hearing.

19 Afterwards the following proceedings occurred in chambers:)

20 THE COURT: All right. Let the record reflect that
21 we convene in the matter of the State of Oklahoma vs.
22 Charles Allan Dyer, Case Number CF-2010-17. We are in
23 chambers outside the presence of potential jurors. The
24 State appears through counsel whose appearance have
25 previously been noted by the Court: Mrs. Hixon and

1 Mr. Walters; Mr. Dyer is present with his counsel, Mr. Hoch.

2 I've convened for the purpose, Mr. Dyer, of advising
3 you -- you've been through this process before so you
4 understand and know what to expect and you understand, I
5 think, that I run a very tight courtroom. I don't put up
6 with any shenanigans.

7 The Court is prepared and there is ample authority to
8 take appropriate action in the event that you become
9 disruptive, and I don't have -- you know, your behavior in
10 the last trial was exemplary. I have no reason to believe
11 that that could occur. However, I know that you've had some
12 frustrations here in the last several days down in the
13 Sheriff's Department, and I'm sorry for that, but I will not
14 tolerate any disruptive behavior in the courtroom.

15 I will warn you once if it occurs. The second time the
16 Court will reserve the right to remove you from the
17 courtroom, and you will forfeit your right to be present
18 during this particular trial. So, if that occurs in those
19 particular circumstances, the Court can remove you from the
20 courtroom and the Court will proceed without you.

21 Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. I don't anticipate and I
24 hope we don't have that particular problem, but I just want
25 everybody to know what the rules are and put the rules on

1 the table.

2 THE DEFENDANT: I'll act professionally and
3 honorably.

4 THE COURT: I know you're capable of it, and you've
5 shown me that you can and I'm going to ask you and hold you
6 to your honor to do that again.

7 All right. Anything else we need to talk about before
8 we get started?

9 MR. HOCH: No, sir. Judge, just for the record,
10 there's also an article -- I brought up the one about
11 Wednesday?

12 THE COURT: There's one this morning.

13 MR. HOCH: There's one this morning also --

14 THE COURT: I understand.

15 MR. HOCH: -- and it is front page.

16 THE COURT: It's below the fold and bottom third of
17 the page. All right.

18 Okay. Let's go to the courtroom.

19 (The following proceedings occurred in open court:)

20 THE COURT: All right. Ladies and gentlemen, let
21 the record reflect that we appear the 23rd day of January,
22 2012. This is the Matter of the State of Oklahoma vs.
23 Charles Allan Dyer. This is Case Number CF-2010-17.

24 Is the State ready?

25 MS. HIXON: Yes, Your Honor.

1 THE COURT: Is the Defendant ready?

2 MR. HOCH: Yes, Your Honor.

3 THE COURT: Ladies and gentlemen, the Court has
4 called the case for trial. Parties have announced ready for
5 trial. The Court is going to -- all right. Sir, I'm going
6 to ask you to have -- I know those seats are a little more
7 comfortable than the chairs out there.

8 UNIDENTIFIED MAN: That's all right.

9 THE COURT: You as well as some other individuals
10 may have an opportunity to confirm that they are a little
11 more comfortable but bear with us for now.

12 All right. Ladies and gentlemen, the Court has called
13 the case for trial. The parties have announced ready for
14 trial. I'm going to ask the Clerk to call from the pool of
15 prospective jurors 12 names.

16 You'll notice that there are 13 chairs in the -- in the
17 jury box. There are seven chairs across the back row. I'm
18 going to ask you to keep the first chair closest to this
19 (indicating) end of the courtroom open. That's going to be
20 the alternate's chair. So the first person whose name is
21 going to be called will have a seat up on the top row the
22 second red chair from the right and then the five
23 individuals after them have a seat in the back row in -- in
24 the order in which they were called and then in a like
25 fashion the next six individuals on the row in front,

1 please.

2 All right. Twelve names, please.

3 **(Voir dire was not requested to be transcribed.)**

4 THE COURT: Ladies and gentlemen, I have initial
5 jury instructions to read to you. As soon as we have an
6 opportunity for those jurors to exit the courtroom, I'm sure
7 that the noise level will come down.

8 Sir, I'm going to ask you to keep that row -- that row
9 open, please. There will be no individuals seated in that
10 row, please. Thank you.

11 UNIDENTIFIED MAN: (Nodding.)

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, you have been selected and sworn as the jury to try
14 the case in the State of Oklahoma against Charles Allan
15 Dyer. The Defendant is charged with the crime of child
16 sexual abuse by an Information filed by the State of
17 Oklahoma.

18 The Information in this case is the formal method of
19 accusing the Defendant of a crime. The Information is not
20 evidence and the law is you should not allow yourselves to
21 be influenced against the Defendant by reason of the filing
22 of the Information.

23 The Defendant has pled not guilty. A plea of not guilty
24 puts into issue each element of the crime with which the
25 Defendant is charged. A plea of not guilty requires the

1 State to prove each element of the crime beyond a reasonable
2 doubt. The Defendant is presumed innocent of the crime and
3 that presumption of innocence continues unless after
4 consideration of all of the evidence you are convinced of
5 his guilt beyond a reasonable doubt.

6 The State has the burden of presenting the evidence that
7 establishes guilt beyond a reasonable doubt. The Defendant
8 must be found not guilty unless the State produces evidence
9 which convince you beyond a reasonable doubt of each element
10 of the crime.

11 Evidence is the testimony received from the witnesses
12 under oath, agreements as to facts made by the attorneys and
13 the exhibits admitted into evidence during the trial. It is
14 your responsibility as jurors to determine the facts from
15 the evidence, to follow the law as stated in the
16 instructions from myself and to reach a verdict of not
17 guilty or guilty based upon the evidence.

18 It is your responsibility as jurors to determine the
19 credibility of each witness and the weight to be given to
20 the testimony of that witness. In order to make this
21 determination you may properly consider the overall reaction
22 of the witness while testifying, his or her frankness or
23 lack of frankness, his or her interest and bias, if any.
24 The means of opportunity -- the means and opportunity the
25 witness had to know the facts about which he or she

1 testifies and the reasonableness or unreasonableness of his
2 or her testimony in light of all the evidence in the case.

3 You are not required to believe the testimony of any
4 witness simply because he or she is under oath. You may
5 believe or disbelieve all or part of the testimony of any
6 witness. It is your duty to determine what testimony is
7 worthy of belief and what testimony is not worthy of belief.

8 It is my responsibility as the judge to ensure that the
9 evidence is presented according to the law, to instruct you
10 as to the law and to rule on objections raised by the
11 attorneys. No statement or ruling by me is intended to
12 indicate any opinion concerning the facts or the evidence.

13 It is the responsibility of the attorneys to present
14 evidence, to examine and cross-examine the witnesses and to
15 argue the evidence. No statement or argument of the
16 attorneys is evidence.

17 From time to time during the trial the attorneys may
18 raise objections. When an objection is made you should not
19 speculate on the reason why it was made. When an objection
20 is approved, or sustained by me, you should not speculate on
21 what might have occurred or what might have been said had
22 the objection not been sustained.

23 Throughout the trial you should remain alert and
24 attentive. Do not form or express an opinion on the case
25 until it is submitted to you for your decision. Do not

1 discuss this case among yourselves until that time. Do not
2 discuss this case with anyone else or permit anyone else to
3 discuss this case in your presence. Do not talk to the
4 lawyers, the Defendant, or the witnesses. If anyone should
5 attempt to discuss this case with you, either in person or
6 an attempt to do so electronically, report the incident to
7 me or to my bailiff immediately.

8 Do not read any newspaper reports or obtain any
9 information from the internet or any other source about this
10 trial or issues, parties or witnesses involved in this case
11 and do not watch or listen to any television or radio
12 reports about this trial. Do not attempt to visit the scene
13 or places described in the evidence of this trial or
14 investigate the case on your own.

15 Now, when you came into the courtroom this morning you
16 were asked not to bring cell phones with you. The Court
17 will relieve you, the individual jurors involved in this
18 case of that requirement. You may bring your cell phones to
19 the courtroom or to the courthouse. In this regard I will
20 tell you, if you do choose to bring a cell phone with you
21 into the courthouse I will tell you that the use of cell
22 phones, computers or other communication or electronic
23 devices, the Court instructs you as follows: In the
24 courtroom the use of cell phones, computers or other
25 communication or electronic devices in the courtroom at any

1 time for any purpose is strictly prohibited.

2 You may not view or send any texts, e-mail or other
3 similar communication nor take photographs or make audio or
4 video recordings or play games on that device. The
5 electronic communication device should either be turned off
6 or turned in a total silent mode while in the courtroom.

7 Now, during recesses and breaks you may use your
8 electronic communication device in a normal manner so long
9 as you are outside the courtroom during recesses or breaks
10 from activities in the courtroom. The reason I'm allowing
11 you, ladies and gentlemen, to have your cell phones is
12 because, you know, some of you do have obligations and
13 family at home and this would be an opportunity for you to
14 communicate with them as to anticipated schedules. It is
15 not to be used to communicate with anyone concerning the
16 issues of this case nor may you use it for any research for
17 any of the issues about this case as I've already told you.

18 I will tell you that at the close of all the evidence
19 when you have retired to the jury room for your
20 deliberations the law prohibits your taking your electronic
21 communication device with you -- into the jury room with you
22 at that time. You'll be required to leave your electronic
23 communication device or cell phone with either the bailiff
24 for safekeeping when you leave the courtroom that last time
25 to begin deliberations until you are released from those

1 deliberations.

2 As an alternative I will try to give you a heads up of
3 when that point may eventually come so that you may leave
4 it -- your cell phones, your electronic device, locked in
5 your vehicle. You may not use any electronic device to
6 research the law or any matter connected with this case.
7 You may not send or publish for viewing by any third party
8 your experiences or observations or any other matters
9 regarding the trial while serving as a juror. You are
10 permitted, however, to communicate matters regarding
11 scheduling, or when you'll be expected to be home, or
12 similar matters in the context in which I've allowed you to
13 use your cell phone in the courthouse.

14 You may not electronically communicate with each other
15 or other fellow jurors during the trial or communicate with
16 anyone associated with the trial. This case must be decided
17 solely upon the evidence presented to you in this court free
18 from any outside influence.

19 I will tell you that during the time that the court is
20 in session and you're hearing and receiving evidence you may
21 take notes during the presentation of the evidence in this
22 case. In this regard I will remind you of the following:
23 One, note-taking is permitted but it's not required; two,
24 take notes sparingly. Do not try to write down all of the
25 testimony. Your notes will only be used for the purpose of

1 refreshing your memory when the time comes. They are
2 helpful when dealing with such things as measurements,
3 times, distances, identities and relationships; three, Be
4 brief in your note-taking. It is for you to determine the
5 credibility of the witnesses and to do so you must observe
6 them. Do not let note-taking distract from you this duty;
7 four, your notes are for your private use only. Do not
8 share your notes with fellow jurors during the presentation
9 of the evidence in this case. You may discuss the contents
10 of your notes only after all sides have rested and you've
11 begun your deliberations.

12 We're going to -- at this particular point in the trial,
13 or shortly after we take an immediate pending break, the
14 attorney for the State will read the Information, the plea
15 of the Defendant and give an opening statement. The
16 attorney for the Defendant may give an opening statement
17 after the attorney for the State or may elect to reserve his
18 opening statement until the conclusion of the evidence by
19 the State.

20 Opening statements are not evidence but serve as guides
21 so that you may better understand and evaluate the evidence
22 when it is presented. Following the opening statements
23 witnesses are called to testify. Witnesses are sworn and
24 then examined and cross-examined by the attorneys. Exhibits
25 may also be introduced into evidence.

1 After the evidence is completed I will instruct you on
2 the law applicable to this case. The attorneys are then
3 permitted closing arguments. Closing arguments are not
4 evidence and are permitted for purposes of persuasion only.

5 When closing arguments are completed, the case will be
6 submitted to you for your decision. You will retire to
7 consider your verdict.

8 All right. Ladies and gentlemen, in a few moments we're
9 going to take the mid-afternoon recess. Typically this
10 court is in session from 9:00 till 12:00 in the morning.
11 We usually take a mid-morning break. The duration is
12 between 20 to 30 minutes. We are generally in session
13 generally from 1:15 to 5:00 p.m. in the afternoon and we
14 generally take a mid-afternoon break as well of duration of
15 20 to 30 minutes.

16 The 14 of you, ladies and gentlemen, are the jurors and
17 the two alternates. I will tell you and ask you that when
18 you come to the courthouse each morning -- I'm going to ask
19 you to come directly to this floor and come and congregate
20 in the jury room. The jury room is a -- a room that's
21 located in the southwest corner of this floor. You access
22 that room by coming down to a door just opposite the three
23 doors on the west side of the entrance of the courtroom off
24 of the lobby.

25 There will be a long corridor that will travel to the --

1 travel to the south and at the end of that corridor to your
2 right is the jury room. It's a fairly large room. It has a
3 set of two separate rest rooms. I am going to instruct and
4 tell you that when you need to use the rest room facilities
5 when you're in the courthouse, I'm going to ask you to use
6 the rest room facility in the jury room suite and I will ask
7 and require you not to use any of the public rest rooms any
8 place else in the courthouse.

9 Typically when we would take our recesses I will recess
10 you to the jury room. At that particular point in time
11 after you've all had a chance to exit the courtroom and go
12 to the jury room, you'll be free to go outside if you
13 choose. I will tell you that if you wish to go outside and
14 get fresh air, I'm going to ask you to limit yourself to the
15 west portion of the courthouse. That's the west parking
16 lot. I'm going to ask you not to exit the east side of the
17 courthouse or use the east side of the courthouse for any
18 exercise.

19 I'm also going to tell you, ladies and gentlemen, when
20 you come back to the courthouse tomorrow morning there is a
21 parking lot immediately south of the courthouse. It will be
22 manned by deputies and it will be barricaded and that
23 parking lot is reserved only for jurors during jury trials.
24 We'll ask you to park in that parking lot only.

25 Before you take the evening recess I'll make

1 arrangements to give you a little card that you can place on
2 your dashboard just inside the front windshield in the lower
3 left-hand corner so that you're -- you're driving a vehicle
4 that is identified as a -- that has access to that
5 particular parking lot. We'll ask that you park in that
6 particular parking lot at all times.

7 All right. Each time we take a recess I will remind you
8 of what we call admonitions; that is, Do not form or express
9 an opinion about the case. Do not discuss it among
10 yourselves. Do not permit anyone to discuss it with you.

11 I will tell you, ladies and gentlemen, when we -- when I
12 ask you to come back into the courtroom from the jury room
13 you will find in your chairs blue notebooks. Those
14 notebooks contain blank notebook paper and pencils and pens.
15 If you -- if you choose to take notes I'm going to ask you
16 to use those notebooks and that notebook paper only for
17 taking notes.

18 Each time we take a recess place those notes back in the
19 three-ring binder, close the notebook and leave it in your
20 chair here in the jury room. No one will have access to
21 those notes during recesses. As you recall the
22 instructions, you're not to share those notes with one
23 another.

24 You will leave -- we'll ask you to leave those notebooks
25 with your notes secured in your chairs each recess. This

1 courtroom will be secure each day and time we take recesses
2 and the evening breaks and they will be back in your
3 chairs -- you'll find them back in your chairs where you had
4 left them the evening before.

5 With that, ladies and gentlemen, we're going to take the
6 first mid-morning -- mid-afternoon recess. I'm going to --
7 if you'll accompany the bailiff she will take you to the
8 jury room at this time, show you where it is, get acclimated
9 there.

10 Generally in the morning you'll -- I will make sure that
11 there is a pot of coffee in there. If you -- generally
12 we'll try to have a fresh pot of coffee in there about the
13 time of mid-morning break. If there are any of you that
14 need coffee in the afternoon, let us know and we can make
15 those arrangements, as well.

16 There are no -- there is no snack bar in the courtroom
17 (sic) if you need snacks or soft drinks during the -- during
18 the day, but there are vending machines down on the ground
19 floor. I will ask that you -- the rule precludes you and
20 prohibits you from bringing any food or soft drinks or any
21 drinks into the courtroom and the only exception, you may
22 bring bottled water.

23 All right. With that -- this is Mrs. Diana Ketchum;
24 she's the court's bailiff. She will show you where the jury
25 room is and after you all have congregated there she will

1 show you how to access it.

2 (The jury exited the courtroom at this point.)

3 THE COURT: All right. I'll ask all spectators to
4 remain in the courtroom for a few moments until the jury has
5 had an opportunity to exit the courtroom.

6 (At this point there was a short break after which the
7 following proceedings occurred:)

8 THE COURT: Take your seats, ladies and gentlemen.
9 All right. Before we bring the jury in the Court has
10 discovered that the Clerk administered -- during the
11 beginning of the *voir dire* process those jurors that were
12 called, the 12 that were placed in the box originally as
13 well as the 15 in the first two-and-a-half rows as well as
14 all other jurors, the Clerk inadvertently administered the
15 wrong oath with respect to those potential jurors.

16 I believe the Clerk administered the oath to those
17 selected to try the case. Now, personally, it's not a
18 problem because essentially the same oath was given to these
19 jurors at the time of their original qualification, and I
20 think that -- if there is an issue I think it can be -- it's
21 not insurmountable and it can be dealt with.

22 The Court will bring these jurors in and administer the
23 oath that should have been administered this morning which
24 is essentially the same oath that they were given Monday
25 when they first checked in as well as those newest jurors

1 who appeared for the first time today and make inquiry of
2 them as to if they were asked the same questions now with
3 the appropriate oath given today if their answers would
4 essentially be the same.

5 The only downside of this is if any juror has been
6 excused already had not been administered that right oath I
7 don't believe it could form the basis of a perjury
8 prosecution with respect to their answering the questions
9 for jury qualifications.

10 What says the State?

11 MR. WALTERS: Your Honor, we concur with the
12 Court's ruling, have no objection to the process the Court
13 has suggested.

14 THE COURT: Mr. Hoch?

15 MR. HOCH: Judge, on behalf of the Defendant, he
16 has to object because it could have changed some of the
17 statements from -- conceivably could have changed some of
18 the statements from some of those that were excused
19 peremptorily instead of being something that would have
20 excused them for cause and would have left other peremptory
21 challenges for other persons that we would have chosen to
22 get off, too.

23 THE COURT: All right. Very well. Approach.

24 Off the record, Susan.

25 (There was a short bench conference off the record after

1 which the following proceedings occurred in the presence of
2 the jury:)

3 THE COURT: All right. Ladies and gentlemen, it's
4 approximately 20 till 4:00. There is a matter that I need
5 the attention of the attorneys. We're not going to be in a
6 position to begin hearing evidence this evening.

7 I'm prepared to take the evening recess at this time.
8 I'm going to ask you to return to the courthouse and be in
9 the jury room at 9:00 a.m.

10 Now, I had given you some instructions earlier. I'm
11 going to ask that when you return tomorrow to make sure you
12 park in the jury parking lot. I am going to -- Mrs. Ketchum
13 will distribute among you an index card that will be your
14 pass to that particular parking lot.

15 I will change my instructions to you. I'm going to ask
16 that you do not display that card or parking pass on your
17 dash or in your window but keep it in your vehicle. When
18 you pull into that particular lot, you'll present it to the
19 deputy that's manning that lot, and he will initial, date it
20 and sign it and return it to you. We're going to ask you to
21 keep it in your vehicle and make sure it is in any vehicle
22 in which you come to the courthouse tomorrow.

23 Wear your juror buttons home. When you leave home in
24 the morning make sure you put them on. Obviously, the
25 question's going to arise at home or if you're out and about

1 between now and the time you get home, someone knows you're
2 on jury duty, knows you came to the courthouse, they're
3 going to see the juror buttons, and they're going to ask you
4 to tell us about the case that you're on. It's this type of
5 situation that you need to remember your admonitions.

6 You cannot discuss the case, you cannot talk to anybody
7 about it. You do not allow anybody to talk to you about it.
8 Just explain to them you cannot talk to them about it. You
9 can't discuss anything about it and please don't ask me any
10 questions about it. There will be a point in time when this
11 is over that you're free to talk to anybody you want to and
12 at whatever length you want to.

13 All right. I'm going to ask you to accompany -- and
14 remember your admonitions: Do not form or express an
15 opinion about the case. Do not discuss it among yourselves
16 nor permit anyone to discuss it with you.

17 I'm going to ask you at this time to accompany
18 Mrs. Ketchum to the jury room, and she will distribute your
19 parking passes to you. If you call the jury call-in number
20 tonight, any message on there does not apply to you. I need
21 to see the 14 of you here in the morning.

22 All right. See you in the morning.

23 (The jury exited the courtroom after which the following
24 proceedings occurred:)

25 THE COURT: All right. Ladies and gentlemen,

1 please have a seat.

2 All right. With respect to the issue we spoke about
3 before we took the last recess, I -- I want to see counsel
4 in the morning at 8:00. Be prepared to submit your
5 authority with respect to your respective positions on that
6 particular issue.

7 I'm going to ask all spectators and persons in the
8 courtroom to remain in the courtroom for a moment or two
9 until the jury has had an opportunity to exit the
10 courthouse, please.

11 All right. We'll stand in recess until 9:00 a.m. in the
12 morning. Again, I'll see counsel at 8:00 a.m. in the
13 morning. 8:00 a.m. We'll stand in recess.

14 (Proceedings recessed for the evening.)

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C E R T I F I C A T E

STATE OF OKLAHOMA)
) SS:
COUNTY OF STEPHENS)

I, SUSAN L. GRIGGS, CSR, RPR, Official Court Reporter within and for the State of Oklahoma, do hereby certify that on the 23rd day of January, 2012, before the HONORABLE JOSEPH H. ENOS, in the District Court of Stephens County, State of Oklahoma, I reported in machine shorthand the proceedings had and the evidence given, and the above and foregoing is a full, true, correct and complete transcript of the proceedings had and the testimony given, together with the objections of counsel and the rulings of the Court thereto, taken at said time and place.

WITNESS my hand and seal this ____ day of _____, 2012.

SUSAN L. GRIGGS, CSR, RPR