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IN THE DISTRICT COURT IN AND FOR STEPHENS COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) Case No. CF-2010-17
CHARLES ALLAN DYER,)
Defendant.)

* * * * *
TRANSCRIPT OF JURY TRIAL

(DAY 2 - VOLUME 2)

Proceedings Taken on
JANUARY 24, 2012
HONORABLE JOSEPH H. ENOS
District Judge

A P P E A R A N C E S

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I N D E X

FOR THE STATE:

VALERIE RENEE DYER

Direct Examination by Mr. Walters 20

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1 (On January 24, 2012, with all counsel present as
2 indicated on the appearances, the following transpired in
3 open court outside the presence of the jury:)

4 BAILIFF KETCHUM: All rise.

5 THE COURT: All right. Take your seats, ladies and
6 gentlemen.

7 All right. Yesterday evening when we took the evening
8 recess I asked counsel if they wanted to submit some
9 authority. The Court had an idea of the position you were
10 in but gave some additional time if parties wished to submit
11 some authority.

12 What says the State?

13 MS. HIXON: Your Honor, I believe we've presented
14 case law, *Salazar vs. State*, which cites that the only oath
15 required to give the jury is the one that qualifies them as
16 a juror which this Court did administer. There is no
17 requirement to give the oath that was omitted. *Salazar vs.*
18 *State* is directly on point, and I believe that -- my
19 understanding that defense found the exact same case law.
20 We believe that this jury has been properly empaneled.

21 MR. HOCH: Judge, that's correct. My office did
22 the research last night, or right after court, and we found
23 the exact same thing but for the record we still move for
24 the mistrial. I think I have to just for the record.

25 THE COURT: Certainly. All right. I believe the

1 chronology of the facts were that when this Court began jury
2 selection process we had jurors in the courtroom and the
3 Court instructed the Clerk to administer the oath to -- an
4 oath to the jurors with respect to answering their questions
5 concerning qualifications. Inadvertently the Clerk
6 administered the oath with respect to the seating of a jury.

7 Now, counsel is correct in pointing out that this is not
8 an error, it's not a particular problem and that is based
9 upon the case on point of *Salazar vs. State* found at 582 P.
10 2d 729 in which the Court of Criminal Appeals ruled that
11 failure to administer an oath to prospective jurors that
12 they would truthfully answer all questions before they
13 answered *voir dire* questions was not error. It points out
14 the only legal requirements were that members of a general
15 jury panel subscribe to oath regarding their qualifications
16 to sit as jurors and that jurors empaneled in the case swear
17 that they will render a true verdict according to the
18 evidence.

19 As the Court had determined yesterday evening and shared
20 with counsel, I felt initially there was not a problem
21 because these jurors had been administered that general oath
22 with respect to their qualifications previously, and I'll
23 speak to that in a moment with respect to the proof of that
24 that I'll include in the record before I leave the record in
25 this particular matter.

1 In reviewing the statute there are only two statutes
2 that deal with the requirement of an administration of an
3 oath. The first is as the administration of the oath with
4 respect to the jurors' qualifications when they initially
5 report for duty under what they refer to as the general
6 panel. That's when all the jurors having been -- been
7 summoned, that's considered the general panel, and they're
8 required to submit to an oath as prescribed by statute as to
9 their qualifications.

10 The only other requirement for the administration of an
11 oath is once that jury is seated they take an oath as a
12 juror. In this particular instance -- now, typically as a
13 matter of course, it has become routine matter in many
14 courts -- this Court typically over the years -- to
15 administer an additional oath between those two events which
16 basically is essentially the same oath as that administered
17 to the general panel with the addition of the words "for the
18 case on trial."

19 The only -- that oath is not required by statute. It's
20 not mandated by statute or by case law. The only reason
21 such an oath probably would be administered is based upon
22 the fact that I suspect typically somewhere, and I've had
23 that happen, we've had jurors misstate facts concerning
24 questions put to them directly with respect to their --
25 issues involving the case on trial.

1 It would -- such an act would have no sanctions from the
2 standpoint of criminal responsibility unless they are
3 specifically administered an oath to tell the truth with
4 respect to those questions. So the only basis for giving
5 such an oath would be in the event such a juror materially
6 misstated, intentionally misstated, a response to those
7 questions. Without the oath they could not be -- with that
8 oath they could be prosecuted for that omission and that
9 intentional act for perjury. Without the oath they could
10 not. That would appear to be the only logical reason why,
11 as a matter of course and habit, it has evolved over the
12 years that many courts administer that second oath. But
13 that is not -- as the Court of Criminal Appeals points out,
14 that oath is not required in the empanelment process with
15 respect to a jury.

16 Now, the question comes up, Were the -- all of these
17 jurors that were questioned with respect to their being
18 seated in this case, did they subscribe the required oath?
19 The subscribed oath is set forth by Oklahoma Statute Section
20 38, Section 20.1, and the legislature specifically sets
21 forth the language which those jurors must subscribe to.

22 The Court has ascertained and obtained from the Clerk
23 each of the oaths that -- each of the -- in fact, all the
24 jurors that responded to the summons for jury duty signed
25 and they signed that when they first check in with the Court

1 Clerk's office and the Court will include in the record the
2 oath subscribed by each of the jurors whose names were
3 called during the jury selection process in this particular
4 case -- not only the 12 jurors sworn and empaneled as the
5 jury and the two alternate jurors, but all the jurors, all
6 the jurors who were called by name, some of them were
7 excused for cause, some of them were excused based upon
8 peremptory challenges.

9 And the Court has -- the Court Clerk has provided the
10 Court copies of the oath that each of those jurors
11 subscribed at the time of -- they reported for jury duty and
12 those oaths are verbatim the oath as required by statute.
13 So I think we'll -- the Court, as soon as the Clerk
14 certifies those particular oaths, she provides me copies of
15 them at this time and I verify that each of the jurors whose
16 name was called during the jury selection process has
17 subscribed the statutory mandated oath and for purposes of
18 the record once the Clerk affixes her certificate --
19 certification saying that those are true and accurate
20 documents presently on file and maintained by the Clerk's
21 office pursuant to statute, they will be included in the
22 record on this matter to establish that the first oath that
23 is required and spoken to by the Court of Criminal Appeals
24 in *Salazar*, in fact, was administered and I've -- and I have
25 checked the record, as well, at the time this jury was

1 empaneled and the appropriate oath with respect to them
2 taking their oath as a juror was also administered and as a
3 sidebar the Court notes that -- that even if the Court were
4 to have neglected to administer the oath to the jurors
5 empaneled, the statement they make with respect to the
6 rendering of the verdict covers that particular requirement
7 as well, but I think it is more than adequate to cover this
8 particular matter.

9 For that reason the Court finds that the failure to
10 administer the oath that as a matter of practice courts
11 generally use is not mandated by statute. Failure to do so
12 is not error. Defendant's objection is overruled, motion
13 for mistrial is overruled.

14 All right. Anything else?

15 MR. HOCH: No, sir. Not at this time.

16 THE COURT: All right. If you'll return the jury
17 to the courtroom, please.

18 BAILIFF KETCHUM: (Complies.)

19 (The following proceedings occurred in the presence of
20 the jury and the Defendant:)

21 THE COURT: All right. Take your seats, ladies
22 and gentlemen.

23 State may read the Information to the jury and make an
24 opening statement.

25 MS. HIXON: Okay. In the District Court of the

1 Fifth Judicial District of the State of Oklahoma sitting in
2 and for Stephens County. State of Oklahoma, Plaintiff, vs.
3 Charles Allan Dyer, Defendant, Case No. CF-2010-17. Trial
4 information for Count 1, child sexual abuse, contrary to
5 Title 21 of the Oklahoma Statutes, Section 843.5e, a felony.

6 State of Oklahoma, County of Stephens. I, Brett T.
7 Burns, the undersigned district attorney of said county, in
8 the name and by the authority and on behalf of the State of
9 Oklahoma, give information that in said county of Stephens
10 and in the state of Oklahoma, Charles Allan Dyer did then
11 and there willfully, maliciously, knowingly and feloniously
12 commit the crimes of Count 1, Child Sexual Abuse. The
13 Defendant raped and committed other lewd and indecent sexual
14 acts upon his seven-year-old daughter, initials H. D., while
15 she was in his care and custody between July 2009 and
16 January 4th, 2010. Signed Brett T. Burns, District
17 Attorney.

18 To this charge the Defendant has entered his plea of not
19 guilty which places the burden on the State of Oklahoma to
20 prove his guilt beyond a reasonable doubt.

21 What do you think a child is thinking about before she
22 goes to bed at night? The things she did that day, the
23 games she played, the friends she met at school?

24 THE COURT: Approach.

25 (The following bench conference occurred outside the

1 hearing of the jury:)

2 THE COURT: I want to remind you this is opening
3 statement and not opening arguments.

4 MS. HIXON: I -- I made no argument, Your Honor.
5 I'll -- I'll continue --

6 THE COURT: No.

7 MR. HOCH: I was --

8 THE COURT: You're -- you're laying out a -- what
9 better can be construed as a closing argument.

10 MR. HOCH: I was just getting ready to --

11 (The bench conference concluded and the following
12 proceedings occurred in open court:)

13 MS. HIXON: Ladies and gentlemen, the evidence will
14 show that Hayley Dyer may have been thinking about those
15 things or she may have been thinking about the things that
16 the Defendant did to her. The things that the evidence will
17 show, the things that you will hear her talk about on a
18 video recorded forensic interview.

19 You'll hear her tell you about how the Defendant kissed
20 her bo-bo. "Bo-bo" is the word that Hayley used when she
21 was seven to describe her vagina. She'll tell you about how
22 the Defendant would put his wiener inside her bo-bo and push
23 really hard and how it would hurt as he would push up
24 against her, about how the Defendant would make her put her
25 mouth on his wiener, and she describes how she would have to

1 swirl her tongue around it.

2 You'll hear her say how the Defendant would tell her
3 that he's almost done and then tell her, "I'm done," and
4 then the yellow yucky stuff would squirt into her mouth and
5 she would have to go spit it out into the toilet.

6 She'll tell you about the Defendant's wiener and how it
7 would be soft until he would wet it with the spit that he
8 would put on his hand and rub on himself. The evidence will
9 show that things like this happened to Hayley many different
10 times before she told her secret.

11 THE COURT: I'm sorry. Excuse me, one moment.

12 (The following bench conference occurred outside the
13 hearing of the jury:)

14 THE COURT: I'm sorry to interrupt. You had made a
15 statement yesterday that you were going to ask for something
16 before we begin?

17 MS. HIXON: Are you talking about the Rule of
18 Sequestration? I thought that was already invoked
19 yesterday.

20 THE COURT: No.

21 MS. HIXON: Okay.

22 THE COURT: Not on the record.

23 MS. HIXON: Then we'd request that the Rule of
24 Sequestration be invoked.

25 (The bench conference concluded and the following

1 proceedings occurred in open court:)

2 THE COURT: All right. The State's asked that the
3 Rule of Sequestration be invoked with respect to potential
4 witnesses. If you need I can admonish the witnesses, but
5 I'll rely upon counsel to ensure that there are no witnesses
6 present in the courtroom during the testimony and/or opening
7 statements or testimony of any of the witnesses.

8 No witnesses may discuss their question -- the
9 questioning and answer, nor may they do so in the presence
10 of other witnesses in the event that they're being visited
11 with by counsel. Best rule of thumb is the witness is not
12 to even discuss this matter or talk about the case.

13 I'll rely upon counsel to see that any witnesses are
14 properly admonished and are marshalled in appropriate
15 places. With that I'm sorry to interrupt you.

16 MS. HIXON: Hayley's mom, Valerie, had been married
17 to the Defendant since she was 16 years old. She got
18 pregnant with Hayley when she was 18 and despite the
19 Defendant's opinion that Hayley was nothing more than a
20 cancer growing inside Valerie that he wanted aborted,
21 Valerie kept her baby and gave birth to this beautiful
22 little girl in November of 2002.

23 Hayley lived in California with her mother and the
24 Defendant from 2005 until September of 2008. That was when
25 the Defendant sent Hayley and her mom to Oklahoma to live.

1 Valerie was told that she was being sent to Oklahoma in
2 order to save money. And Valerie was obedient to her
3 husband because if she wasn't she was punished, like when he
4 would ground her from her cell phone.

5 They had been married eight years but not long after
6 Valerie and Hayley returned to Oklahoma Valerie learned that
7 the Defendant wanted to end the marriage. And then he began
8 dating Valerie's best friend, Amanda. I anticipate Amanda's
9 going to be here to testify.

10 The Defendant moved to Oklahoma sometime around January,
11 2009, and began taking Hayley to his house for visitation,
12 on the weekends, certain holidays, just like you would
13 expect from a couple who have separated.

14 A divorce was pending between the Defendant and Valerie,
15 but the evidence will show that Valerie began moving on with
16 her life. There wasn't a big ugly divorce that they were
17 fighting over things.

18 The evidence will show that they pretty much had an
19 agreement over the divorce, had an agreement over custody of
20 Hayley and visitation and that they didn't have any property
21 to fight over. Of course, Valerie was not happy that the
22 Defendant had started dating her best friend but as long as
23 Amanda was being good to Hayley she was coping with it.

24 Then one day in January, 2010, Hayley told her mom what
25 the Defendant had been doing to her. The secret Hayley was

1 hiding was out.

2 Hayley broke down in tears one night in the bathroom of
3 her apartment on the night that she had just returned home
4 from seeing the Defendant over Christmas. Valerie was
5 getting Hayley ready for her bath when Hayley told her that
6 her bo-bo was hurting. Valerie looked at Hayley, how she
7 was getting into the bathtub, and she could see that her
8 vagina was red and swollen, and she'll describe it that it
9 just looked kind of open.

10 All Valerie could do was hold Hayley like a mom would
11 and tell her everything was going to be okay. Hayley was
12 taken to the Mary Abbott House for a forensic interview and
13 that interview was conducted by a trained forensic
14 interviewer by the name of Jessica Taylor.

15 The interview lasted for about an hour and it was
16 recorded, and I anticipate showing you that interview during
17 the trial. You'll be able to see Hayley and how
18 uncomfortable she is as she tells a stranger what happened
19 to her. You will see her use anatomical dolls to describe
20 and explain to her what had happened to her at the hands of
21 this Defendant. She'll use the dolls to show her how she
22 was positioned, how the Defendant was positioned and what he
23 would do.

24 You'll see her facial expressions and her gagging
25 expression as she describes how the Defendant would

1 ejaculate inside of her mouth. She uses descriptive words
2 of a child to try to explain to this interviewer what had
3 happened to her.

4 Hayley was also taken to Dr. Preston Waters here in
5 Duncan, a male doctor she had never met before, where she
6 had to remove her clothing and let him examine her.
7 Dr. Waters will testify about that sexual abuse examination.
8 He will tell you that the examination indicates that Hayley
9 was sexually abused and that a child's hymen does not look
10 the way that Hayley's does without some type of forceful
11 penetration and that those injuries would not have occurred
12 from a childhood accident.

13 At the close of the evidence, after you hear Hayley's
14 disclosure, after you hear Dr. Waters' medical evidence,
15 I'll stand here before you and I'll ask you to find the
16 Defendant guilty of child sexual abuse.

17 Thank you.

18 THE COURT: Does the Defendant wish to make an
19 opening statement or reserve it to the conclusion of the
20 State's evidence?

21 MR. HOCH: I'll make it now, Your Honor.

22 THE COURT: Very good.

23 MR. HOCH: Ladies and gentlemen, the reason there's
24 trials is there's another side to the story and it's like
25 the Paul Harvey thing, Here's the rest of the story.

1 Valerie is upset because Charles wants a divorce. It's not
2 that Charles sent her back and then said, "Hey, I want a
3 divorce." The evidence is going to be that he wants a
4 divorce because of her adultery, because of her drug use,
5 because of the guys she's got hanging out in her house with
6 his daughter there, and he tells her he wants his daughter
7 away from that and he's going to try to get his daughter.

8 And Valerie says, "I don't care what it takes. I'll
9 commit perjury. I'll lie. I'll say anything and I will do
10 anything to have my daughter." That is what her testimony
11 is going to be because that's what she said.

12 She is a woman who will do whatever it takes. That's
13 what the evidence is going to be.

14 The other evidence is going to be that for a big part of
15 Hayley's life Charles was the primary caregiver. He goes
16 to the Marine Corps. She doesn't like that when you're in
17 the Marine Corps everybody in the Marine Corps ends up after
18 a while in Third Marine Division in Okinawa on an
19 unaccompanied tour, meaning you go without your family. The
20 Marine Corps tells you where they want you. You don't tell
21 the Marine Corps where you want to be.

22 So he gets out trying to make a life for his family. He
23 decides to go back. He goes to Iraq. He comes back. He's
24 going to get sent back to Iraq, partly because he's
25 volunteering to go back but then his orders are changed

1 because of Valerie, because of her mental condition and
2 partway because of the drugs she's using, and he has to have
3 a talk with his commander. And it's not lightly that the
4 Marine Corps says, "You stay here with your family," but
5 they say, "You're staying here."

6 So Charles goes along and he gets accepted to a
7 helicopter school. Valerie will tell you that, too, that he
8 was going to get into helicopter school to learn to fly
9 helicopters. Well, in the Marine Corps to do that you have
10 to be at least a chief warrant officer.

11 He's getting ready to get to be an officer in the
12 United States Marine Corps and has to leave because of
13 worries about his daughter. His worries are Valerie's drug
14 use and the guys that are around, and they have arguments
15 about that, and she'll tell you -- she denied it. She lied
16 to him at the start about adultery. He confronted her about
17 it and she's like "no."

18 Finally, she admits to that. She finally admits to the
19 drug use, and she'll have to admit that he tells her, "All I
20 want you to do is quit lying and straighten out your life.
21 Get off the dope." So they get an agreement worked out,
22 basically a joint custody agreement. They do it on their
23 own without lawyers.

24 Well, he comes back and he tells her, "I'm moving back
25 from California and I'm bringing somebody with me." Well,

1 during the time that he's filed for divorce, Mandy has
2 divorced her husband, and they were all friends before.
3 Well, that turns into more than a friendship so he brings
4 Mandy and her daughter to Oklahoma which sets Valerie off.

5 She's mad already. She's filing to vacate their
6 agreement, her waiver, her agreement to the divorce -- to
7 the custody issue, but what really sets her off is December
8 20th they show up at a church Christmas play and Charles has
9 the audacity to bring Mandy. Well, not only does he have
10 the audacity to do that, the evidence is going to be
11 Valerie's there with her -- she had one guy in May or June,
12 another guy that she has in December named "Troy" is there.

13 Charles goes up and shakes hands, says, "Hi, how you
14 doing?" but he has to open his mouth and tell Troy, "Yeah,
15 I'm gone from her because of the adultery and the drugs."

16 That starts Valerie on a tear. It's, "F-You, F-You,"
17 screaming at him, yelling at him, right in front of her kid.

18 THE COURT: Counsel approach. May I see counsel,
19 please.

20 (The following bench conference occurred outside the
21 hearing of the jury:)

22 THE COURT: You need to identify what witnesses are
23 going to be saying --

24 MR. HOCH: Okay.

25 THE COURT: -- because I don't --

1 MR. HOCH: All right.

2 (The bench conference concluded and the following
3 proceedings occurred in open court:)

4 MR. HOCH: Charles and Mandy will tell you what
5 happened there after the church play, after what should have
6 been a family time. Charles will tell you about, Yeah, I
7 shouldn't have done it but something about the way she was
8 acting he was -- and she had already said she was going to
9 try to get the kid back or keep him from seeing the child no
10 matter what it takes.

11 Well, these two are like throwing fire on gasoline.
12 He's going to tell you what he said to him and the guy's
13 reaction, how shocked that guy was. And a week and a half
14 later here's the charges. A week and a half later.

15 He's going to tell you what she did to get her way and,
16 ladies and gentlemen, at the end of it we're going to ask
17 you to look at all the evidence, to look at everybody's
18 motives and truly look at what happened, if anything, and
19 who did it because it certainly wasn't Mr. Dyer. And at the
20 end of that we're going to ask you to follow your oaths and
21 do what the instructions tell you and they say when the
22 State fails to prove each and every single element, you must
23 find him not guilty.

24 Thank you.

25 THE COURT: Thank you, Mr. Hoch.

1 State may call its first witness.

2 MR. WALTERS: Thank you, Your Honor. State calls
3 Valerie Dyer.

4 THE COURT: Do you solemnly swear that the
5 testimony you're about to give in this matter will be the
6 truth, the whole truth and nothing but the truth, so help
7 you God?

8 THE WITNESS: Yes, sir.

9 THE COURT: Pull that chair out and please have a
10 seat.

11 THE WITNESS: (Complies.)

12 THE COURT: Swing that microphone over in front of
13 you. That will amplify you. Before we proceed --

14 BAILIFF KETCHUM: (Passing notebooks out to
15 jurors.)

16 THE COURT: All right. You may proceed.

17 MR. WALTERS: Thank you, Your Honor.

18 VALERIE RENEE DYER,
19 after having been first duly sworn to testify to the truth,
20 the whole truth, and nothing but the truth, testified under
21 oath as follows:

22 DIRECT EXAMINATION

23 BY MR. WALTERS:

24 **Q** Will you state your name for the record, please.

25 **A** Valerie Renee Dyer.

1 Q And will you spell your first name?

2 A V-a-l-e-r-i-e.

3 Q Your middle name?

4 A R-e-n-e-e.

5 Q And your last name?

6 A D-y-e-r.

7 Q Thank you. Ma'am, do you know Charles Allan Dyer?

8 A Yes.

9 Q How do you know him?

10 A He's my husband.

11 Q And when were you married to Mr. Dyer?

12 A June 3rd, 2000.

13 Q Do you recall where you were married?

14 A Marlow, Hope Church.

15 Q And how old were you at that time?

16 A I was 16.

17 Q And how old was the Defendant, Mr. Dyer?

18 A 19.

19 Q How long at the time of your marriage had you been
20 dating or seeing Mr. Dyer?

21 A Since I was 13.

22 Q Is it okay if I refer to you as "Valerie"?

23 A Yes.

24 Q Valerie, at the time that you were married to the
25 Defendant where did you live -- immediately after your

1 marriage?

2 **A** We lived with his parents for a little bit.

3 **Q** Where was that?

4 **A** That was, um, on the Hope Road right next to the
5 church, down a little ways.

6 **Q** Still in the Marlow area?

7 **A** Yes, Marlow.

8 **Q** And about how long did you live there with his parents?

9 **A** Not very long because we moved to California.

10 **Q** Could you describe for us what your relationship was
11 with Mr. Dyer at that time?

12 **A** It was great. We just got married, good.

13 **Q** And from the time you had been dating him since you
14 were 13, I believe you stated?

15 **A** Yes.

16 **Q** Up until the time of marriage, things pretty good
17 between you?

18 **A** Very good.

19 **Q** Now, you just testified that shortly after marriage you
20 moved to California; is that correct?

21 **A** Yes.

22 **Q** And would that still have been during the year 2000?

23 **A** Yes.

24 **Q** Why did you move to California?

25 **A** He was already enlisted into the Marine Corps when we

1 got married and so I just moved out there with him.

2 Q That was a duty station for him?

3 A Yes.

4 Q Was that for boot camp for him or had he already been
5 through boot camp?

6 A He was already through boot camp.

7 Q So that was actually his first duty location?

8 A Yes.

9 Q What was your relationship, your marital relationship,
10 between yourself and Mr. Dyer at the time that you moved to
11 California?

12 A It was really good.

13 Q And what about the relationship between you and his
14 parents at that time?

15 A We got along. I had known them for a while.

16 Q I'm sorry?

17 A We got along. I had known them for a while.

18 Q Knew them throughout the course of time that you were
19 dating Mr. Dyer?

20 A Yes.

21 Q What about the relationship between you and your
22 parents at that time?

23 A Um, it was good. I mean, a little rocky, but we were
24 good.

25 Q When you say "a little rocky," could you describe for

1 us what was going on between you and your parents at that
2 time?

3 **A** I was young and got married and they were sad and so
4 they didn't want me to go to California, but they still
5 loved me and talked to me.

6 **Q** Did you communicate a lot with them for that few months
7 that you were still in Oklahoma right after marriage?

8 **A** For a few months, yes.

9 **Q** Did you see them during that time period?

10 **A** No.

11 **Q** Why -- why wouldn't you see them during that time
12 period?

13 **A** It was just too far away, cost money and Charles didn't
14 really want me to.

15 **Q** Now while you're still in Oklahoma, before you leave
16 for California --

17 **A** While we're still in Oklahoma?

18 **Q** -- did you see your parents during that time before you
19 left for California?

20 **A** Yes.

21 **Q** So then once you get to California after just a couple
22 of months of marriage, what kind of contact did you have at
23 that time with family back in Oklahoma?

24 **A** Very little, just phone calls here and there.

25 **Q** And what was your marital relationship once you got to

1 California? Did it continue to be a good relationship?

2 **A** Yes.

3 **Q** At some point in time did you leave California?

4 **A** Yes, yes. He got out of the Marine Corps.

5 **Q** He -- I'm sorry. He got out of the Marine Corps?

6 **A** Yes. He did his four years; his duty was over.

7 **Q** So just discharged at that time?

8 **A** Yes.

9 **Q** And how long was he in from the time that you guys
10 moved out there until he discharged?

11 **A** Right from the time I moved out there -- well, we were
12 probably out there for a year and a half, two years, I want
13 to say.

14 **Q** Did he spend his entire term of service at that time
15 stationed in California?

16 **A** Yes.

17 **Q** So you lived with him as husband and wife in California
18 for his Marine Corps stint at that time?

19 **A** Yes.

20 **Q** And do you recall, was it a two-year, four-year?

21 **A** He did four years.

22 **Q** Did you have children with Mr. Dyer?

23 **A** Yes.

24 **Q** And when -- how many children do you have?

25 **A** One.

1 Q And when was that child born?

2 A November 25th, 2002.

3 Q Where was she born?

4 A She was born in Duncan, Oklahoma.

5 Q Now, at the time that she was born had you already
6 returned to live full time in Oklahoma?

7 A Yes.

8 Q And so at that time Mr. Dyer was out of the Marine
9 Corps?

10 A Yes.

11 Q Do you recall the time in your marriage when you became
12 pregnant?

13 A Yes.

14 Q Now, up to that point prior to you finding out you were
15 pregnant, describe for the Court, for the jury, your
16 relationship with Mr. Dyer.

17 A It was a good relationship. We loved each other. We
18 went out a lot. Um, we were just young and having fun being
19 married.

20 Q Had you talked about having children prior to becoming
21 pregnant?

22 A A little bit. He didn't want kids.

23 Q And how did he express to you that he did not want
24 children?

25 A Um, he told me that if I ever did get pregnant he would

1 want me to get an abortion.

2 **Q** Had you discussed children prior to marriage?

3 **A** Oh, yes. I told him I've -- I've always wanted kids.

4 **Q** And what was his response or his thoughts as to you
5 guys having children prior to your marriage?

6 **A** He never brought up an abortion or anything. He was --
7 he was just indifferent about it.

8 **Q** And then after you got married you continued to discuss
9 children?

10 **A** Yes.

11 **Q** And at what point in time in your marriage did he let
12 you know that he didn't want children?

13 **A** Um, made it known very much so right when I found out.
14 I mean, it was a big surprise.

15 **Q** And that would have been the early part of 2002?

16 **A** Yes.

17 **Q** What is your child's name?

18 **A** Hayley Michelle Dyer.

19 **Q** And when you found out that you were pregnant with
20 Hayley, how did you inform Charles Dyer of that pregnancy?

21 **A** We both went to the doctor. We thought we both were
22 sick, and they came back and told me I was pregnant. He was
23 outside waiting and I was crying, and I was happy, and the
24 doctor came out and told him. He was angry. He didn't want
25 to talk to me.

1 Q He didn't want to talk to you?

2 A Huh-uh.

3 Q Once you got away from the doctor's office did you have
4 a discussion with him about that pregnancy?

5 A Yes.

6 Q What was that discussion?

7 A That I wanted to keep the baby and I was excited. I
8 was six or seven weeks pregnant. There was already a
9 heartbeat. I wanted to keep the baby; he didn't.

10 Q I'm sorry. I didn't hear your last --

11 A He didn't. He didn't want...

12 Q Now, I believe you testified just previously up to that
13 point your marriage was pretty good, young and in love,
14 correct?

15 A Very much.

16 Q Did something change at that point in time?

17 A Yes.

18 Q And how did it change?

19 A The way Charles treated me and talked to me and it just
20 wasn't good after I found out I was pregnant.

21 Q What types of things, specifically, that you recall
22 changed? What did he say that was different to you from
23 before?

24 A He would call me names. Um, he would call me "fat."
25 He would call the baby "cancer in my stomach" and wanted me

1 to get an abortion three or four times. I called, but I
2 never went through it. I couldn't do it, and he would
3 always get angry with me.

4 **Q** And at that point in time was there a bit of a strain
5 on your marital relationship?

6 **A** Very much so.

7 **Q** And where are you living at this time?

8 **A** Twenty-nine Palms, California.

9 **Q** That's where you were when you found out you were
10 pregnant?

11 **A** Yes.

12 **Q** How far along were you when the Defendant discharged
13 and you moved back to Oklahoma?

14 **A** I want to say I was seven, seven-and-a-half months
15 pregnant.

16 **Q** And so for seven months -- seven-and-a-half months of
17 your pregnancy, you lived alone with the Defendant in
18 California?

19 **A** Yes.

20 **Q** And over that course of time, those seven-and-a-half
21 months, as you've just described your relationship, did it
22 continue throughout that time?

23 **A** Yes.

24 **Q** Any improvement at all during that time period?

25 **A** No.

1 Q And why is it that you moved back to Oklahoma when you
2 did?

3 A He was discharged from the Marine Corps.

4 Q Did you guys discuss -- when I say "you guys," you and
5 the Defendant, Mr. Dyer, did you discuss coming back to
6 Oklahoma after he discharged?

7 A Yes.

8 Q And that was your understanding as what was going to
9 happen when he got out of the Marines?

10 A Yes.

11 Q And that plan was followed through, you did return to
12 Oklahoma?

13 A Yes, I did.

14 Q And when you returned to Oklahoma in 2002, where do you
15 live?

16 A We moved in with his parents on, um -- I just know the
17 route box number. Route box 216, Marlow.

18 Q Now, is that the same address that they lived when you
19 were first married?

20 A Yes.

21 Q And why did you -- why did you move in with them when
22 you came back?

23 A We had nothing. We didn't have a house. We just left
24 the Marine Corps, didn't have anything, so we moved in there
25 to get up on our feet.

1 Q And where were you residing when you actually gave
2 birth?

3 A That was at his parents' house.

4 Q That same location?

5 A Yes.

6 Q During the time when you first moved back to Oklahoma
7 and were residing with the Defendant's parents, what was
8 your marital relationship like?

9 A Well, it was pretty much the same, still didn't want
10 the baby or anything.

11 Q Did he portray that image in front of others?

12 A No.

13 Q How was it different in front of other people?

14 A He would hold the baby, and I would just look at him
15 because I knew how he really was whenever it was just me and
16 him.

17 Q Prior to the birth of Hayley, how was his attitude in
18 front of others about your pregnancy?

19 A In front of his family, I mean -- I'm pretty sure his
20 family knew that Charles didn't really want to have kids but
21 not to that extent of being mean to me and wanting an
22 abortion.

23 Q So those types of things, the being mean to you and
24 discussions about wanting to have an abortion, that didn't
25 happen in front of his parents or any other people?

1 **A** No.

2 **Q** Were you seeing your own family during that time
3 period?

4 **A** Yes. A little bit.

5 **Q** I'm sorry. A little bit?

6 **A** A little bit.

7 **Q** Was the Defendant with you at times when you would see
8 your own family?

9 **A** He would always be there.

10 **Q** And how did he react towards you and your pregnancy in
11 front of your family?

12 **A** He would be mean in front of my family. My family
13 wouldn't say anything because I wouldn't let them say
14 anything. I didn't want to have conflict.

15 **Q** Now, Valerie, even though during this time period while
16 you're pregnant -- even though things have changed in your
17 marital relationship and even though he's described to you
18 how much he doesn't want this child, what are your feelings
19 toward Charles Dyer at that time?

20 **A** I still loved him.

21 **Q** Were there any plans or thoughts on your part at
22 leaving him or divorcing him at that time?

23 **A** No. I just figured he would come around.

24 **Q** And Hayley then is born November 25th, 2002. I believe
25 that's what you stated earlier?

1 **A** (Nodding.)

2 **Q** In Duncan?

3 **A** Yes.

4 **Q** Was it a normal childbirth?

5 **A** Yes.

6 **Q** Any complications or issues at all?

7 **A** No.

8 MR. WALTERS: May I approach, Your Honor, for a
9 tissue?

10 THE COURT: Yes.

11 **Q** (BY MR. WALTERS) No complications or any issues with
12 childbirth?

13 **A** No, it was good.

14 **Q** Natural birth?

15 **A** No. I had an epidural.

16 **Q** Was the Defendant present during that birth?

17 **A** Yes, he was.

18 **Q** And do you recall what his reaction to -- well, strike
19 that. Was he present to actually see Hayley born --

20 **A** Yes.

21 **Q** -- in the room with you?

22 **A** Yes, he was.

23 **Q** If you recall or if you know, what was his reaction to
24 seeing his daughter born?

25 **A** He was smiling. He was the first one to hold her. Um,

1 I just figured he came around. Seeing the baby, I guess, is
2 different.

3 Q And how long were you in the hospital after giving
4 birth?

5 A Three days.

6 Q Was the Defendant present with you during that time?

7 A Only a day and a half of it. Maybe two days, and I
8 don't know where he went.

9 Q So for a day or a day and a half you didn't see him?

10 A No.

11 Q When you and the baby were discharged, who picked you
12 up?

13 A Charles.

14 Q Was that the first time you had seen him since he left
15 at whatever time he left?

16 A Yes.

17 Q Anybody with you or with him when he picked you up?

18 A He wouldn't let anybody in there.

19 Q I'm sorry?

20 A He wouldn't let anybody in the delivery room, none of
21 my family. So he was the only one that came and picked me
22 up.

23 Q Did he tell you why that was?

24 A Said he just didn't like my family and he didn't want
25 them around his kid. So I couldn't have my family. My --

1 my mom never got to hold Hayley when she was little --

2 Q So your --

3 A -- because he wouldn't let her.

4 Q So your family wasn't allowed to come visit you and
5 Hayley while you were in the hospital after birth?

6 A No.

7 Q Where did you go once the Defendant picked you up from
8 the hospital? Where did you go home to?

9 A We went to Charles' parents' house.

10 Q And about how long did you live with his parents in
11 that home after Hayley's birth?

12 A Only a month, month and a half.

13 Q And where did you go from there?

14 A To Tennessee.

15 Q Why did you go to Tennessee?

16 A Charles didn't want to be in Oklahoma anymore around
17 family -- or my family. He just wanted to just up and go,
18 spur of the moment. He didn't really talk to me about it.

19 Q How much notice did you have before you left for
20 Tennessee?

21 A Maybe two days to get our stuff packed up and go.

22 Q So at this point in time you would have been living
23 with his parents for four months or so?

24 A (Nodding.)

25 Q You got there when you were about seven-and-a-half

1 months pregnant; is that right?

2 **A** Yes.

3 **Q** And left a couple months after birth?

4 **A** Yes.

5 **Q** So first part of 2003 is when you leave there and go to
6 Tennessee?

7 **A** Yes.

8 **Q** Did he talk to you or did you have any discussions with
9 the Defendant about what you were going to do in Tennessee,
10 where you were going to live, how you were going to survive?

11 **A** He just said we were going to move into his sister's
12 house because his sister really wanted us to move out there
13 and Charles said, Okay, and we were just going to live with
14 her.

15 **Q** And who is the sister?

16 **A** Amy Dark.

17 **Q** Did you know Amy prior to moving out there in 2003?

18 **A** Oh, yes.

19 **Q** When was the first time that you recall meeting
20 Amy Dark?

21 **A** Oh, goodness. I want to -- I was young. 14, 15.

22 **Q** So you knew her over the course of time that you were
23 dating the Defendant?

24 **A** Yes.

25 **Q** How was your relationship with Mrs. Dark?

1 **A** She was like a mother figure. You know, she was older
2 and I was younger, and I liked her.

3 **Q** You guys got along pretty good?

4 **A** Yeah, we got along really good.

5 **Q** Was she present for Hayley's birth?

6 **A** No. She was in Tennessee.

7 **Q** And was she married at that time?

8 **A** Amy?

9 **Q** Yes.

10 **A** Yes.

11 **Q** Do you know her husband?

12 **A** Yes.

13 **Q** What's his name?

14 **A** Larry Dark.

15 **Q** So when you and Hayley moved to Tennessee with Charles
16 Dyer is that in fact where you move in with Amy and her
17 husband?

18 **A** Yes.

19 **Q** And do you recall where in Tennessee that was?

20 **A** I want to say Jonesboro, Tennessee, but it's been so
21 long, but I think -- I believe it's Jonesboro.

22 **Q** What was it like when you first moved out there? What
23 was your relationship between you and the Defendant at that
24 time?

25 **A** Not a lot of communication. I mean, he just wanted

1 to -- to go there and get a job and do his thing. I mean,
2 he was still angry with me.

3 **Q** About the baby?

4 **A** Yes.

5 **Q** Did you discuss moving to Tennessee with your parents
6 or any of your family before going?

7 **A** He wouldn't let me talk to them.

8 **Q** You're how old at the time that you gave birth to
9 Hayley?

10 **A** I was 18.

11 **Q** So an adult woman, young adult woman, but adult
12 nonetheless?

13 **A** Yes.

14 **Q** And how is it that the Defendant kept you from
15 contacting your family?

16 **A** Usually -- I mean, when he told -- wanted me to do
17 something I just did it. I mean, it was just -- well, he
18 scared me, controlling. I just did what he told me to do.

19 **Q** And so did you have specific conversations about
20 contact with your family at that time?

21 **A** Yeah, I wanted to see them. They had never seen
22 Hayley. Um, they never got to see Hayley until she was
23 probably about a year and a half, two.

24 **Q** So even during the time frame right after birth prior
25 to you leaving for Tennessee, the Defendant wouldn't allow

1 you to see your family? Wouldn't allow them to come visit
2 the baby.

3 **A** My sister probably -- let me backtrack. My sister
4 probably held my daughter one time and so did my brother,
5 but my mom -- my dad probably one time, just one time, and
6 then we left, but he wouldn't -- I'd ask -- I would ask but
7 it would just start an argument.

8 **Q** And you followed the instructions that your husband
9 gave you at that time and to do as he said and not contact
10 them?

11 **A** That's correct.

12 MR. HOCH: Judge, can we approach?

13 THE COURT: Yes, sir.

14 (The following bench conference occurred outside the
15 hearing of the jury:)

16 MR. HOCH: Judge, I don't see where any of this is
17 getting anywhere towards what's charged, other than to try
18 to prejudice the jury to say he's a bad guy.

19 MR. WALTERS: His history and relationship with the
20 family and with the child is absolutely important, Your
21 Honor, and it's going to establish his attitude of
22 manipulation toward Valerie Dyer which absolutely goes to
23 rebut the Defendant's position of her hatred and when -- how
24 it all started throughout the divorce. It's important to
25 establish the relationship that he had with the child over

1 this course of time.

2 THE COURT: Anything else?

3 MR. HOCH: No.

4 THE COURT: Objection's overruled. Let me caution
5 you to avoid leading questions.

6 MR. WALTERS: Yes, sir. My apologies.

7 (The bench conference concluded and the following
8 proceedings occurred in open court:)

9 **Q** (BY MR. WALTERS) Valerie, describe for us how the
10 Defendant didn't allow the communication with your family
11 while you were in Oklahoma around Hayley's birth. What was
12 that relationship, your contact with your family in
13 California, prior to moving back in 2002?

14 **A** He wouldn't let me call. Um, I called one time and it
15 ran the phone bill up to about a hundred dollars, and he got
16 mad, and he grounded me for two weeks.

17 **Q** When you say "grounded" you, what do you mean?

18 **A** He grounded me. I couldn't use the phone for two
19 weeks.

20 **Q** And you followed that -- I mean, he -- strike that.
21 When you say "grounded," and I'm sorry to belabor, but what
22 specifically do you recall -- does he tell you about the use
23 of the phone?

24 **A** He tells me, you know, the phone bill is too high.
25 You're not allowed to use the phone for two weeks to call

1 out.

2 **Q** And you followed that instruction?

3 **A** Yes.

4 **Q** Now, when you initially moved to Tennessee, once you
5 got out there and you're set up in his sister's home, what
6 are the two of you -- you and the Defendant -- doing to
7 survive?

8 **A** I stayed home with Hayley and he was working security
9 at an apartment complex.

10 **Q** And during this time period what is his interaction or
11 relationship with your daughter?

12 **A** None. I mean, he didn't interact with her. I mean,
13 he -- he would sometimes but you could just tell it was just
14 fake because he was in front of his family.

15 **Q** Did he behave different around Hayley at this time when
16 she was an infant when others were around?

17 **A** Yes.

18 **Q** How was he different?

19 **A** He would pick her up and hold her but when they weren't
20 around he -- I mean, I don't think he even changed a diaper
21 or -- or held her when she started crying or fed her.

22 **Q** What kind of hours did he work, if you remember, in the
23 security position?

24 **A** Um, he -- I want to say he worked night shift, but I'm
25 not -- I'm not sure, but I want to say he worked night shift

1 as a security guard.

2 **Q** And if he's working night shift, during the day what's
3 he doing?

4 **A** He'll usually sleep for a little bit and then he'll get
5 up and then, um, just lay around the house and get ready to
6 go to work again.

7 **Q** At that point in time while you were living with his
8 sister and her husband, do you recall what they were doing
9 at that time?

10 **A** Yes. Um, Larry Dark had a -- um, he got alligator
11 leather and he made purses and belts, et cetera, and she
12 worked out of the home, I want to say out at John Deere,
13 working on insurance or medical papers.

14 **Q** So who all would be at home during the day when
15 Mr. Dyer is off work?

16 **A** It would have been me, Larry and Hayley.

17 **Q** How much interaction did you guys have with Larry at
18 that time?

19 **A** Larry is a good man. Um, we would have a lot of
20 interaction. Hayley would go down there in the shop with
21 them, or he would come up and play with Hayley, or he'll go
22 take her to get breakfast. We had a lot of interaction with
23 him.

24 **Q** So even -- Hayley is an infant at this time, right?

25 **A** Yes.

1 Q Just a few months old. Would -- strike that.

2 Did the Defendant's actions change around Hayley when
3 Larry was around?

4 A Yes.

5 Q How?

6 A He would be happy holding her, playing with her.

7 Q How long did the three of you, you and the Defendant
8 and Hayley, live with Larry and Amy Dark?

9 A I want to say about seven, seven-and-a-half months.
10 No, sorry. She had her first birthday in her house so, um,
11 I got out there when she was two months; we left when she
12 was probably 14, 13 months.

13 Q So 11 or 12 months?

14 A Somewhere around in there.

15 Q And that entire time you lived with Larry and Amy Dark?

16 A Yes.

17 Q Was the working situation the same during that course
18 of time?

19 A Yes.

20 Q Defendant working at this -- for the security company
21 or being a security guard, whatever he was doing?

22 A Yes.

23 Q Were you working at all during that time?

24 A No. I stayed home with Hayley.

25 Q And when you left Larry and Amy Dark's residence when

1 Hayley was a year or shortly thereafter a year old, where
2 did you go?

3 **A** We, um, found an apartment and we moved out. It was a
4 one-bedroom apartment.

5 **Q** In that same area?

6 **A** Um, it was probably 30 to 45 minutes away, not really
7 sure.

8 **Q** When the three of you -- strike that.
9 Was it just the three of you?

10 **A** Yes.

11 **Q** When the three of you lived in this apartment in --
12 still in Tennessee?

13 **A** Yes.

14 **Q** What was the job situation at that time? What did the
15 Defendant do?

16 **A** About that time I got a job working at Wal-Mart, and he
17 quit his and was going to school.

18 **Q** Do you recall what type of school he was going to?

19 **A** Um, one of the Tennessee colleges -- college. I'm not
20 really sure what the name of it is.

21 **Q** Did you guys -- you and the Defendant -- did you talk
22 about what you were going to do once you got in that
23 apartment as far as who was going to be working, what the
24 two of you were going to be doing?

25 **A** Not really. He just said he was going to go to college

1 and that I needed to get a job.

2 **Q** And how long after the three of you moved into this
3 apartment on your own did this change take place?

4 **A** Not very long. I mean, I want to say a month or two.
5 Not very long at all. I got a job fairly quickly.

6 **Q** And what was the Defendant's course schedule at that
7 time?

8 **A** He never went over the -- he never -- I didn't even
9 really know if he was going to college or not. He just told
10 me he was. He never talked to me about it.

11 **Q** And Hayley's roughly a year old at this time?

12 **A** A little over -- a little over a year.

13 **Q** What shift would you work at Wal-Mart?

14 **A** I would work from 2:00 to 11:00 at night just about
15 every day.

16 **Q** 2:00 in the afternoon until 11:00 at night?

17 **A** Uh-huh.

18 **Q** Who cared for Hayley during that time?

19 **A** Well, I would have her during the day and then before I
20 went to work I would drop her off at the day care or the
21 sitter, or Charles would, and I would go to work and then he
22 would go pick her up after he got done with his classes.
23 I'm not really sure what time he picked her up or anything.
24 I was at work.

25 **Q** How frequently, if you recall, would the Defendant take

1 Hayley to day care or to the sitters?

2 **A** Not very much. It was normally me.

3 **Q** And during this time period when you're leaving for
4 work and taking Hayley to the sitter --

5 **A** Yes.

6 **Q** -- where is the Defendant?

7 **A** I don't know. I mean, he would be in class or he would
8 be in -- I guess he would be in class.

9 **Q** But he would already be gone from the -- from the
10 apartment?

11 **A** Most of the time he would be gone from the apartment,
12 or he would just stay at the apartment and didn't want to
13 take her.

14 **Q** How long did you live in that apartment?

15 **A** Um, year and a half, two years.

16 **Q** Where did you go from there?

17 **A** I believe we came back to Oklahoma.

18 **Q** During this course of time that you live in the
19 apartment in Tennessee, what is the Defendant's relationship
20 with his daughter, Hayley?

21 **A** The same. I mean, I went to work and he had to go pick
22 her up. Of course, he had to take care of her. There was
23 nobody else to and I don't know what went on. I was at work
24 and I would come home and ask how the day went and he
25 would -- wouldn't say much.

1 Q Well, what about after you got home? What would you
2 see or what kind of activities would be going on?

3 A Sometimes he would have dinner ready and sometimes he
4 would be on the computer and the kid would be -- Hayley
5 would be running around, and I would have to change her most
6 of the time when I got home. Most of the time. He had her
7 clean, but he was always doing something and not interacting
8 with her every time I would come home.

9 Q So, Valerie, up to this point, just prior to you
10 leaving Tennessee to come back to Oklahoma, has anything
11 changed with your marital relationship?

12 A It was rocky, yeah. I mean, because I didn't like the
13 way he treated Hayley and I was getting mad, and I was
14 starting to say something to him.

15 Q So was there any other changes or anything that
16 happened that affected your marital relationship other than
17 your pregnancy and the birth of your daughter?

18 A Everything was good until I found out I was pregnant.

19 Q So no new turmoil when you're in Tennessee, the
20 relationship is just strained and has stayed like that since
21 the pregnancy?

22 A Pretty much, yes.

23 Q So when you leave Tennessee, you come back to Oklahoma,
24 where do you go?

25 A Um, we -- we got our own apartment on Plato, those

1 apartments on Plato with the pool, and lived there.

2 Q And how old is Hayley at this time?

3 A I want to say two, two and a half, roughly. I'm trying
4 to remember.

5 Q Do you remember what year approximately it was when you
6 left Tennessee?

7 A That I don't.

8 Q Do you believe that Hayley was two and a half roughly
9 at that time?

10 A Yes, about two and a half.

11 Q And why did you come back to Oklahoma at that time?

12 A He had quit school, had quit college, and so we moved
13 to Oklahoma.

14 Q And did you guys have any discussion about that?

15 A I said we couldn't make it on my -- my paycheck alone,
16 you know, and he was going to college, and we were
17 struggling financially and so we just moved back here.

18 Q Do either of you or both of you get a job once you come
19 back to Oklahoma?

20 A I don't. He does.

21 Q And what's he doing at that time?

22 A Oh, he was working at -- he was working in the
23 sheriff's department as a jailer.

24 Q And actually, Valerie, I apologize. Let me back up
25 just a little bit. When you were living in the apartment in

1 Tennessee, how much interaction did you have with Larry and
2 Amy Dark during that time?

3 **A** We would hang out. Um, Amy always wanted to see Hayley
4 so she was always coming around wanting her or I'd take her
5 to her or...

6 **Q** And if you're working on the night shift, I guess at
7 Wal-Mart, do you have -- is she over at that time, do you
8 know, to see Hayley?

9 **A** When I'm at work I don't know what went on when Hayley
10 was with her father.

11 **Q** So you're back in Oklahoma and what -- and Defendant
12 has a job at this time --

13 **A** Yes.

14 **Q** -- and what are you doing?

15 **A** I am, again, staying at home with Hayley, being with
16 her.

17 **Q** And what is the Defendant's relationship with Hayley at
18 that time?

19 **A** It was just the same thing. His face was more on the
20 computer than Hayley.

21 **Q** Do you leave Oklahoma at any time again after that?

22 **A** Yes.

23 **Q** Where do you go?

24 **A** He joined back into the Marine Corps for another four
25 years and so we moved to Camp Pendleton, California.

1 Q And do you recall how long you were in Oklahoma after
2 leaving Tennessee before you went back to California?

3 A I don't. Maybe -- maybe a year, maybe.

4 Q Do you have an idea of how old Hayley is when you move
5 to Camp Pendleton?

6 A She was probably -- it was so long ago. Um, about
7 three, three and a half, around there.

8 Q And if she's born in November of 2002, you're looking
9 at towards the end of 2005, first or middle part of 2006?

10 A Yes, somewhere around there. I'm not very good with
11 dates.

12 Q And once he rejoins the Marines and you get back to
13 California, how's your marital relationship at that time?

14 A Wasn't like what we were used to when we first got
15 married, but I guess it never really is that way when you
16 first get married, but he was still controlling and mean and
17 not really interacting with Hayley.

18 Q And how long did you spend back in California at
19 Camp Pendleton?

20 A Four years.

21 Q And when -- after that four years where do you go?

22 A Back to Oklahoma.

23 Q Now, for this four-year period at Camp Pendleton, does
24 anything change with your marital relationship?

25 A A lot.

1 Q How does it change?

2 A Um, we just didn't talk. Like I say, he was always out
3 with his guy friends shooting somewhere, or his face would
4 be on the computer all day long playing games and just no
5 interaction whatsoever. I felt like we were just roommates.

6 Q Now, would that be the same whether others were around
7 or not?

8 A With his friends around we played it -- we played it
9 off but from -- they didn't really suspect anything. I
10 suppose they did because he would always go off and talk to
11 them about our relationship.

12 Q How do you know that?

13 A He would tell me sometimes that he would talk to his
14 friends about our relationship, our sex life, things like
15 that, trying to -- I guess, guy talk.

16 Q What about the Defendant's relationship with Hayley?
17 Did it change any over that four years that you're at
18 Camp Pendleton?

19 A Yes.

20 Q How does it change?

21 A When she was four it changed.

22 Q How?

23 A He wanted to be around her more. He wanted to take her
24 places more, just him and her, which I thought was good. I
25 didn't think anything of it. I was pretty ecstatic about it

1 because, you know, I'm a big daddy's girl. I always think a
2 daughter always needs her father, a daddy, so I was really
3 excited.

4 **Q** And was that substantially different from the first
5 three plus years of her birth -- of her life?

6 **A** Most definitely.

7 **Q** While the Defendant is in the Marine Corps and
8 stationed at Camp Pendleton, this is his second tour?

9 **A** Yes, his second tour.

10 **Q** What -- what were you doing at that time period? Were
11 you working outside the home?

12 **A** No, I wasn't working. I would baby-sit Amanda's baby
13 every now and then for extra cash, but I wasn't working.

14 **Q** Amanda who?

15 **A** Amanda Monsalve.

16 **Q** How would you describe for us the changes that you saw
17 between the Defendant and Hayley when she was about four
18 years of age?

19 **A** Describe how they were around each other?

20 **Q** Yes.

21 **A** Oh, they would -- he went and bought model airplanes
22 together and they were playing. They would sit and play
23 video games together, and he was finally acting like a
24 father.

25 **Q** Seeing this change in the relationship between

1 Defendant and Hayley, how did that make you feel?

2 **A** It was so great because I knew Hayley loved him, but
3 she wasn't getting the love back.

4 **Q** And that changed at that point in time?

5 **A** Yes.

6 **Q** Did that have any kind of an affect on your marital
7 relationship?

8 **A** Yeah, a little bit better. I mean, it was good. We
9 got along because I -- he wasn't so angry with me but --
10 about Hayley, and I wasn't so angry because of the way he
11 was treating her. So it was -- it got -- it got -- along
12 with Hayley it got good but with just me and him it was
13 still so-so, but --

14 **Q** At some point in time, Valerie, do you leave California
15 and come back to Oklahoma?

16 **A** Yes.

17 **Q** Do you remember when that was?

18 **A** September 26, 2008.

19 **Q** Did your entire family return to Oklahoma at that time?

20 **A** Hayley and I.

21 **Q** Why is that?

22 **A** We got a -- he bought us a plane ticket and, um, he
23 said that -- initially he first told me that -- because he
24 had a year left in the Marine Corps -- and he said that he
25 wanted us to go back to Oklahoma so he could save money for

1 us so we could get a house. I agreed, but I thought a year
2 was a long time without seeing each other, but I -- I did it
3 anyway, and he gave us \$126 and sent us on our way on a
4 plane.

5 **Q** And how would you describe at that point in time when
6 you're being sent back to Oklahoma, how is your marital
7 relationship at that point in time?

8 **A** Not good, but I -- I trusted and believed that that's
9 what he wanted to do was just to save money but when he -- I
10 knew it was something weird because when we were at the
11 airport he -- I said, "I don't have any money," you know,
12 and I had Hayley and he was, "Well, here's -- take the money
13 out of my pocket," and he had \$126, and he gave it to me,
14 and he didn't even kiss us goodbye. He just -- he literally
15 ran and left the other way and we went back to Oklahoma.

16 **Q** Up to that point in time his relationship with Hayley
17 still seemed improved and going in a good direction?

18 **A** Yeah, it was -- it was good.

19 **Q** I want to back up just a little bit, Valerie. There
20 were -- how many different times over the course of your
21 marriage did the Defendant serve in the Marine Corps?

22 **A** He served twice in the Marine Corps, four years each.

23 **Q** And over the course of those eight years of service,
24 was he ever stationed overseas?

25 **A** Twice that I know of.

1 Q When was the first that you recall?

2 A Once when we were dating. Um, dating or married, I
3 can't remember, but he went to Okinawa, Japan, for six or
4 seven months and then while we were in Camp Pendleton,
5 California, Hayley was little, he went to Iraq for six
6 months.

7 Q So he went to Japan prior to Hayley's birth?

8 A Yes.

9 Q How did that affect your relationship with him being in
10 Japan?

11 A It was hard but we always wrote and we talked. He got
12 to write me or -- he got to talk to me about every day from
13 Japan.

14 Q And at that point in time how would you describe your
15 relationship?

16 A It was good. Very good.

17 Q And I believe you stated, testified, that some time
18 after Hayley's birth when she was small, he went to Iraq?

19 A Yes.

20 Q Do you recall how long he served in Iraq?

21 A Um, usually it's six months but they always delay it so
22 it's usually about seven months.

23 Q Is that your recollection he spent about seven months
24 over there?

25 A Uh-huh.

1 Q And where were you and Hayley living at that time?

2 A Camp Pendleton, on base.

3 Q And was there ever a point in time where Defendant was
4 at least scheduled to go back to Iraq?

5 A Yes. He was scheduled to go back for a second tour.

6 Q For a second tour?

7 A Yes.

8 Q And do you recall about when that was?

9 A It's usually -- if I recall, they go for six months and
10 then they are out for six or seven months, maybe to a year,
11 and then they head them back out.

12 Q And, again, this is while you're still living at
13 Camp Pendleton?

14 A Yes.

15 Q And this would be his second time through the
16 Marine Corps; is that correct?

17 A Yes.

18 Q What prevented him, the Defendant, from returning to
19 Iraq that second time?

20 A I was sick.

21 Q How were you sick?

22 A Um, we didn't know -- we didn't know or understand why,
23 but I was having seizures, and I was afraid to be there by
24 myself with Hayley, and I -- I didn't want him -- to have a
25 seizure and then my daughter didn't know what to do and

1 nobody was around so I asked him if he could try -- you
2 know, stay with me and take care of us, help us.

3 **Q** And what was his response to that?

4 **A** He was all for it. He didn't want to go back. He
5 didn't want to go back to Iraq.

6 **Q** And at some point in time did you receive word that he
7 was going to be allowed to stay?

8 **A** Yes.

9 **Q** Do you remember those events, how that came about?

10 **A** I want to say that he talked to his commanding officer
11 and let him know what was going on, and I was going to many
12 doctors, and couldn't figure out what was wrong and -- and
13 so the -- I guess the commanding officer, or whoever is
14 higher rank, said that he could stay and take care of his
15 wife.

16 **Q** Do you recall at any time you being engaged in
17 conversations with his commanding officer or anyone with any
18 authority?

19 **A** While in Camp Pendleton?

20 **Q** Yes. Specifically regarding his returning to Iraq for
21 a second tour?

22 **A** I don't remember talking to anybody but, I mean -- I
23 don't remember talking to anybody about it. I might have.

24 **Q** The basis of that was your medical condition?

25 **A** Yeah, it was just letting them know about my medical

1 condition and, um, I think he handled it pretty much --
2 pretty much all of it.

3 **Q** Now, let's jump back to where I left off before I went
4 back to his overseas tour. In September of 2008 you
5 returned to Oklahoma just you and Hayley, correct?

6 **A** Yes.

7 **Q** And where do you -- you and Hayley live when you first
8 get back?

9 **A** With his parents for a little bit.

10 **Q** And why was that?

11 **A** I didn't have anywhere else to go.

12 **Q** What about your family?

13 **A** My family really didn't have enough room, and they
14 didn't have enough money. I didn't want to burden them. I
15 didn't have anything, just what Charles gave me and my
16 suitcases. I left everything there with him, pictures,
17 everything, and so I knew his family had -- had money and
18 they would -- they said I could live with them.

19 **Q** They said you could live with them?

20 **A** Until I got a job and up on my feet.

21 **Q** Were they ready and expecting you when you came back?

22 **A** Yes. If I'm not mistaken they're the ones that picked
23 me up from the airport.

24 **Q** Did you have conversations with them prior to you
25 getting on that plane and you and Hayley returning?

1 **A** I just told them that -- you know, I told them what
2 Charles told me about wanting to save money and that we were
3 going to come home. They were excited about seeing Hayley.

4 **Q** Did you have an occasion prior to coming back to
5 contact your family?

6 **A** I didn't -- you mean contact them before I left
7 California?

8 **Q** Yes.

9 **A** No.

10 **Q** Do you recall why you didn't contact them?

11 **A** No, I just ceased not calling them. I just didn't let
12 him know.

13 **Q** How long are you and Hayley back in Oklahoma before the
14 Defendant comes to Oklahoma?

15 **A** Nine months to a year.

16 **Q** Do you recall -- do you recall when Defendant came back
17 from Camp Pendleton?

18 **A** I want to say he got discharged from the Marine Corps
19 in July or August.

20 **Q** Of the following year?

21 **A** Yes. I want to say that, um, about that time, July or
22 August.

23 **Q** So July or August of 2009, Defendant is discharged from
24 the Marine Corps; is that correct?

25 **A** Yes.

1 Q And moves back to Oklahoma?

2 A Yes.

3 Q During that time were you still living with his
4 parents?

5 A No.

6 Q Where were you living?

7 A I -- I got a job, got me a car, and I got a house for
8 Hayley and I.

9 Q And about when did you do that?

10 A It took me about three months to find a job so about
11 three months and then I finally got a job and then finally
12 got a house. So I want to say about four or five months
13 because I had to save money up for a house.

14 Q After having returned?

15 A Yes.

16 Q So February, March of 2009, roughly?

17 A Roughly.

18 Q During that time that you come back to Oklahoma in
19 September of 2008 until you move out on your own sometime in
20 the early part of 2009, how much communication did you and
21 Hayley have with the Defendant?

22 A A call here and there and normally I would have to
23 initiate it, and I would talk to him. And normally I would
24 have to put Hayley on the phone because he wouldn't ask
25 sometimes. Sometimes he would, but we would get a call

1 every now and then.

2 Are you talking about -- are you also talking about
3 when we were at the house, while I got the house?

4 **Q** No, just while you're still living with his parents.

5 **A** Oh, yeah. He would call the parents' house all the
6 time.

7 **Q** So from September of '08 to roughly March of '09 there
8 was communication there?

9 **A** Yes.

10 **Q** And how did the communication go between you and
11 Charles Dyer at that time?

12 **A** Um, it was good. I only lived with his parents for a
13 little bit.

14 **Q** Did he talk and communicate with Hayley at that time?

15 **A** Uh-huh -- yes.

16 **Q** Did he have an occasion to see either of you in person
17 during that time?

18 **A** No.

19 **Q** Did you communicate in any form other than through
20 telephone at that time?

21 **A** Not at that time.

22 **Q** And does any of that -- well, strike that.

23 What is your -- other than being separated by a great
24 distance, what is your marital relationship after you
25 returned to Oklahoma?

1 **A** Not good. I knew it was not good.

2 **Q** And once you moved out, you and Hayley on your own the
3 early part of 2009, how did the Defendant communicate with
4 you?

5 **A** Um, when we were over on B Street, or moved to B Street
6 to a house, and -- he called and after a little bit he
7 finally sent a computer so we could get on and see each
8 other.

9 **Q** Over the computer?

10 **A** Yes.

11 **Q** How would you do that?

12 **A** Um, normally through Skype or any kind of web chat
13 online.

14 **Q** And this was -- you got this computer after you moved
15 out on your own?

16 **A** Yes.

17 **Q** Did you discuss with the Defendant you and Hayley
18 moving out of his parents' home?

19 **A** Yes.

20 **Q** How did that discussion go?

21 **A** I left his parents' house because at the time I was out
22 every day looking for a job and I would ask them if they
23 could watch Hayley while I did it and, um, one night they
24 wanted me to go somewhere and I didn't want to because I was
25 tired from looking for a job, and he accused me of stealing

1 and being rude and screaming and hollering at me and so I
2 said, "I'm not going to take this." So I just took Hayley
3 and I left, and I told Charles that I left and Charles did
4 not want me to leave his parents' house.

5 **Q** So how would you describe the conversation that you had
6 with Charles Dyer about that?

7 **A** He was -- he was angry because he said he wanted me to
8 stay there so they could watch me, you know, like -- I'm not
9 really sure why he said that but just to watch me to see
10 what I was doing and -- but I couldn't live there anymore.

11 **Q** Did your relationship, marital relationship, with
12 Charles Dyer then -- well, strike that.

13 How would you describe it from the time that you moved
14 out until he came back in July or August of 2009?

15 **A** There wasn't -- it was bad because then I found out why
16 I moved.

17 **Q** You found out why you moved?

18 **A** Why he sent Hayley and me to Oklahoma.

19 **Q** And why was that?

20 **A** He told me that, um, he was done with me, done with
21 Hayley, and that we were in his way of what he really wanted
22 to do in life.

23 **Q** And did he elaborate on that? What it was he wanted to
24 do in life?

25 **A** Apparently he was going to helicopter school and when I

1 left he was doing the helicopter school while in the Marine
2 Corps and, um, he just said that we were in the way and
3 that's why he sent us off.

4 **Q** And when did this conversation take place? When is he
5 saying that you and Hayley were in his way?

6 **A** About four or five months. I know it was when we were
7 on B Street because he -- I want to say he told me on the
8 web cam.

9 **Q** Sometime after you left his parents' home?

10 **A** Yes.

11 **Q** And prior to him arriving back in Oklahoma in July or
12 August?

13 **A** Yes.

14 **Q** How did you react to the Defendant telling you that you
15 and Hayley were in his way?

16 **A** Hurt. I mean, I've been with him since I was 13. He
17 was my best friend and just to say that to somebody that
18 you've been through all those years with, that was hurtful,
19 and I just figured he just had somebody else or was just
20 being Charles.

21 **Q** Did anything legally change in your marriage at that
22 time?

23 **A** He wanted a divorce.

24 **Q** So in that conversation you guys discussed divorce?

25 **A** He did.

1 Q And what were your discussions at that time?

2 A That he wanted a divorce from me because I was with
3 somebody else but at the time he was on the phone with me
4 and he said he didn't want me anymore, usually means they
5 don't want you anymore, so I just figured we were done, but
6 he said he wanted a divorce on the grounds of adultery.

7 Q Okay. When -- when did the conversation regarding
8 divorce on the grounds of adultery, when did that take
9 place?

10 A That was on the web cam when he -- when he -- when I
11 had told him about it, and he wanted the divorce. And then
12 when he got to Oklahoma that's when he started filing the
13 paperwork.

14 Q Okay. Well let's back up a little bit. Do you recall
15 roughly -- do you recall roughly what month it was that you
16 had the discussion about the divorce because of the
17 adultery?

18 A March, April, somewhere around in there. I can't say
19 specifically.

20 Q Sometime shortly after you moved into your own home?

21 A Oh, yeah. It was -- it was definitely when I was in my
22 house.

23 Q And prior to him coming back in the summer of 2009?

24 A (Nodding.)

25 Q Now, you mentioned adultery and you testified, if I

1 understood you correctly, that you told him about that?

2 **A** Yeah, I told him that I was with somebody.

3 **Q** And do you recall when that conversation took place?

4 **A** It was a month or two before he came to Oklahoma.

5 **Q** And this would have been between the time that he told
6 you that he was through with you and Hayley that you were in
7 his way and before he comes back?

8 **A** Yes.

9 MR. WALTERS: May I approach, Your Honor?

10 THE COURT: Yes, sir.

11 (The following bench conference occurred outside the
12 hearing of the jury:)

13 MR. WALTERS: Judge, I just noticed between your
14 reporter and the jury they seem -- they seem to be tired.
15 It would be a good time for a break.

16 THE COURT: That's one of the reasons I sent the
17 bailiff out to make sure we have coffee in the jury room.

18 MR. WALTERS: Okay. This is probably a good point
19 for that.

20 MR. HOCH: (Nodding.)

21 (The bench conference concluded and the following
22 proceedings occurred in open court:)

23 THE COURT: All right. Ladies and gentlemen, I
24 think this is a good time to take the mid-morning break. I
25 will remind you of your admonitions: Do not form or express

1 an opinion about the case, do not discuss it among
2 yourselves, do not permit anyone to discuss it with you. If
3 you've taken notes, if you'll put them in your notebooks,
4 close your notebooks and leave them in your chairs, I will
5 ask you to be back in the jury room at the top of the hour
6 and that will be 11:00.

7 At this time if you'll accompany the bailiff to the jury
8 room you can begin your break.

9 (The jury exited the courtroom and there was a short
10 break after which the following proceedings occurred in open
11 court:)

12 THE COURT: Ladies and gentlemen of the jury, we
13 had a little longer recess than sometimes happens. I'm
14 going to have to probably extend this recess. A matter has
15 come to the attention of the Court that I'm going to need to
16 deal with outside of your presence so we're going to take an
17 early lunch recess for you.

18 I'll remind you of your admonitions: Do not form or
19 express an opinion about the case, do not discuss it among
20 yourselves nor permit anyone to discuss it with you.

21 If you go home and if you find any mail from the
22 courthouse, other than what appears to be from the Court
23 Clerk's office, don't open it. Bring it with you after
24 lunch.

25 I'm going to ask you to be back in the jury room at 2:00

1 p.m. If you'll leave your notebooks in your jury chairs
2 they'll be secure.

3 We'll see you at 2:00 p.m.

4 (At this point the jury exited the courtroom.)

5 THE COURT: Pull this door to if you would.

6 THE DEPUTY: (Complies.)

7 THE COURT: Thank you, sir.

8 All right. Take your seats, ladies and gentlemen.

9 All right. Let the record reflect that during the
10 mid-morning recess it was brought to the attention of the
11 Court that through inadvertence or oversight, the District
12 Attorney has sent questionnaires to jurors who served on
13 cases last week. Generally that's a practice that's
14 usually -- that's reserved until after the completion of the
15 term.

16 I have a copy of that survey and the Court's concern is
17 that the timing of such mailing out of those notices -- the
18 Court has concern that that is an inappropriate attempt to
19 contact or communicate with jurors subject to being served.
20 I've asked the District Attorney, one, to provide me with a
21 written list to those whom this jury survey was sent.

22 I know for a fact that at least one of the sitting
23 jurors presently in this case sat as a juror in one of the
24 cases last week and I believe at least one of the alternates
25 did, as well. Between now and 1:30 when I will reconvene

1 for purposes of taking up this issue, if you wish to provide
2 the Court with some authority or matters that would assist
3 the Court in this particular dilemma that would be the time
4 to undertake that, but I'm very much concerned about whether
5 or not that was inappropriate contact with potential jurors
6 and whether or not this matter should proceed or not.

7 We'll stand in recess with respect to the jury matter
8 until 2:00 p.m. I need to see counsel here at 1:30.

9 We'll stand in recess.

10 MR. HOCH: Judge, may I go ahead and leave
11 everything in here?

12 THE COURT: You certainly may. This -- this
13 courtroom will be secure.

14 MR. HOCH: Thank you.

15 (Court recessed for lunch after which the following
16 proceedings occurred in open court outside the presence of
17 the jury:)

18 THE COURT: All right. Let the record reflect
19 we've reconvened in the matter. We're outside the presence
20 of jurors. Counsel is present with me as is the Defendant.

21 At the time we took the noon recess, and I recessed
22 early, a matter was brought to the attention of the Court
23 shortly there -- prior to that by the District Attorney's
24 office that unbeknownst to the assistants involved in this
25 case a staff member in their office last week at the

1 conclusion of the three jury trials that were conducted --
2 last week a staff member sent a uniform letter and a
3 questionnaire to all the jurors that actually sat on the
4 three cases that were tried last week.

5 And the Court has a copy of that cover letter and it's
6 dated January the 20th. And it's -- attached to that is a
7 two-page juror questionnaire, and I think counsel each have
8 a copy of that.

9 The District Attorney's office and the District Attorney
10 has provided the Court with a list of all the jurors by name
11 who that questionnaire went to last week. I think that --
12 it numbered 37, I believe, numbers 39. A comparison of that
13 list with the jurors seated and the alternates in this case,
14 there is correspondence -- there are two sitting jurors and
15 one alternate that are on that list that the District
16 Attorney sent that questionnaire to.

17 All right. The issue before the Court is at this time
18 having brought that matter to the attention of the Court
19 I've shared that information with counsel before the noon
20 hour. The issue is, is whether or not that amounts to an
21 inappropriate communication or inappropriate contact with
22 potential jurors. That in and of itself, I don't believe,
23 based upon the law that I've reviewed so far is sufficient
24 to be an issue.

25 The underlying issue is whether or not that contact, if

1 any, is prejudicial to the Defendant, and I think before we
2 can even address that we have to actually ascertain whether
3 or not those potential jurors themselves actually received
4 the letter and if they received it whether they opened it
5 and read it and if they received it, opened it and read it
6 what affect did it have on them, and I can't make that
7 determination without an individual inquiry of those
8 individual jurors.

9 It's no different than a situation being brought to the
10 attention of the Court during the trial where someone brings
11 it to the attention of the Court or concluding a juror --
12 that a juror may have had a conversation with someone that
13 raises a question as to whether or not that conversation was
14 appropriate or not.

15 Now, we're dealing with a situation where the status of
16 this trial is ongoing. This matter has not been yet
17 submitted to a jury yet for deliberations. I think there's
18 a -- different burdens and different measures with respect
19 to which the Court must look at depending upon what stage we
20 are at.

21 So before I even hear argument from counsel I think it
22 is first appropriate of the Court to inquire of the three
23 jurors in question as to whether or not they have had any
24 contact and, if so, to what extent. I don't think we're in
25 a position nor the Court in a position to make any

1 determination of what should happen until we answer those
2 fact questions.

3 What says the State?

4 MS. HIXON: Your Honor, we agree with your
5 analysis. All the case law that we've come up with supports
6 that.

7 THE COURT: Mr. Hoch, what says the Defendant?

8 MR. HOCH: Judge, you want me to reserve my -- I'll
9 reserve my record until after you do it; however, obviously
10 we object and request a mistrial.

11 THE COURT: Well, I understand your position, but I
12 don't think you know what you're asking for a mistrial for.
13 You don't know the basis, and I think the case law that
14 we've looked at -- at least from a preliminary standpoint --
15 without there being a finding as to the circumstances, I
16 think that's going to drive that particular train there as
17 to whether or not we can. I don't think we know enough yet,
18 other than the fact that a letter was sent, but until we get
19 there I don't think we know exactly what -- what the basis
20 is or on what grounds you're going to ask for a mistrial.

21 MR. HOCH: And, Judge, part of it's going to be
22 based on *Wimber vs. US 347* -- *US 227* which indicates that --
23 that any contact with -- in any criminal case, any
24 communication, contact or tampering directly or indirectly
25 with a juror during trial about the matter pending before it

1 is for obvious reasons deemed presumptively prejudicial.

2 THE COURT: Well, but in reading that decision it
3 is prefaced with the status that if communication -- contact
4 has to be about the matter pending before that jury. That's
5 the language of that Supreme Court decision.

6 MR. HOCH: And, Judge, after interviews with the
7 jurors then I'll make a further record. We do want to make
8 the three-page document that the State sent out part of the
9 record.

10 THE COURT: I will as well as the list of jurors to
11 which the District Attorney sent that questionnaire and the
12 Court is going to include in the record at this time the
13 three-page document which is the cover letter, the two-page
14 questionnaire as Court's Exhibit No. 2 and the list of
15 witnesses to whom it was sent is Court's Exhibit No. 3.

16 Now, I'm reserving Court's Exhibit No. 1 for the
17 affidavits which I spoke to and spoke of earlier this
18 morning, and I have those, and I'm prepared at this time to
19 put those in the record as Court's Exhibit No. 1.

20 (Court's Exhibit No. 1 was marked.)

21 THE COURT: All right. What will be -- the Court's
22 going to mark and include in the record as Court's Exhibit
23 No. 2 are the written oaths subscribed by the -- all the --
24 all of the jurors who were subject to *voir dire* in this case
25 yesterday and there were 29 of those jurors. They include

1 not only the jurors seated, the alternate seated, the jurors
2 excused for cause and the jurors who were excused based upon
3 peremptory challenges and all reflect each of those jurors
4 subscribed to the oath as mandated by Title 36, Section
5 20.1, I believe, and that will be Court's Exhibit No. 1.

6 All right. I think it's appropriate at this time for
7 the Court in the presence of counsel *in camera* to visit with
8 the three jurors in question. We'll stand in recess and do
9 that and counsel will join me in the conference room.

10 (There was a short break for the following *in camera*
11 hearing outside the presence of the Defendant:)

12 THE COURT: All right. Let the record reflect that
13 we are in chambers. I'm present with counsel and with the
14 second alternate, Mr. Wendell Chapman.

15 Mr. Chapman, a matter has come to the Court's attention
16 that is going to necessitate me asking you a few questions.

17 ALTERNATE JUROR CHAPMAN: All right.

18 THE COURT: It's nothing that you've done. I want
19 to ask you -- I think you served on a jury last week?

20 ALTERNATE JUROR CHAPMAN: Yes, sir.

21 THE COURT: Do you remember which case it was?

22 ALTERNATE JUROR CHAPMAN: Casein Couch.

23 THE COURT: All right. That was a juvenile case?

24 ALTERNATE JUROR CHAPMAN: Yes, sir.

25 THE COURT: In front of Judge Russell?

1 ALTERNATE JUROR CHAPMAN: Yes, sir.

2 THE COURT: All right. Since you have served on
3 that case up through today, have you received anything in
4 the mail from the District Attorney's office?

5 ALTERNATE JUROR CHAPMAN: Well, I asked the wife
6 that at dinner. I haven't been home today --

7 THE COURT: Okay.

8 ALTERNATE JUROR CHAPMAN: -- since I left this
9 morning. She said there was something there, but I -- I
10 didn't look at it or she didn't either.

11 THE COURT: Had you determined whether or not she
12 had opened it?

13 ALTERNATE JUROR CHAPMAN: Well, she may have. I
14 don't know.

15 THE COURT: But she didn't share it with you?

16 ALTERNATE JUROR CHAPMAN: She wouldn't have
17 understood it, sir.

18 THE COURT: Okay. Would she have even asked you
19 about it or just share the contents?

20 ALTERNATE JUROR CHAPMAN: No. She just said there
21 was something from the courthouse --

22 THE COURT: Okay.

23 ALTERNATE JUROR CHAPMAN: -- I think, is what she
24 told me.

25 THE COURT: And that -- do you remember when it was

1 that she said that y'all received that?

2 ALTERNATE JUROR CHAPMAN: Well, it may have been
3 last week. She said -- sometimes she just sets that mail
4 aside --

5 THE COURT: Okay.

6 ALTERNATE JUROR CHAPMAN: -- and I don't pick it up
7 right away.

8 THE COURT: Okay.

9 ALTERNATE JUROR CHAPMAN: But I didn't look at it
10 last night.

11 THE COURT: Okay. The fact that she brought it to
12 your attention that you may have received some mail -- this
13 is -- this is mail you received from the courthouse since
14 you got your juror summons, right? That's different --
15 different mail.

16 ALTERNATE JUROR CHAPMAN: I think so.

17 THE COURT: She didn't -- since she's brought it
18 to your attention, you didn't look for it and look at it?
19 Did -- did you look for it and look at it?

20 ALTERNATE JUROR CHAPMAN: No. I didn't even know
21 it was there until --

22 THE COURT: Okay.

23 ALTERNATE JUROR CHAPMAN: -- she told me at dinner.

24 THE COURT: Okay. Dinner last night?

25 ALTERNATE JUROR CHAPMAN: No, today.

1 THE COURT: Dinner -- lunch today?

2 ALTERNATE JUROR CHAPMAN: Lunch today, I'm sorry.

3 THE COURT: All right. But you didn't look at it?

4 ALTERNATE JUROR CHAPMAN: No, sir.

5 THE COURT: Very good.

6 ALTERNATE JUROR: I haven't looked at it. It may
7 be opened now; she opens it sometimes.

8 THE COURT: I understand that.

9 MS. HIXON: We would just ask the Court to direct
10 him not to review that or --

11 THE COURT: Okay.

12 MR. HOCH: Sir, has anybody contacted you about
13 your jury service last week?

14 ALTERNATE JUROR CHAPMAN: No, sir.

15 MR. HOCH: Anybody talk to you or your family or
16 anything about it?

17 ALTERNATE JUROR CHAPMAN: No, sir.

18 MR. HOCH: Okay.

19 THE COURT: Anything else?

20 MR. HOCH: Not right now, no.

21 THE COURT: What I'm going to do is, for now when
22 you get home this evening, ask your wife to take that mail,
23 put -- put it back in the envelope and for you not to open
24 it after that or look at it, okay?

25 ALTERNATE JUROR CHAPMAN: Okay. Can you give me a

1 hint what we're looking for?

2 (LAUGHTER.)

3 ALTERNATE JUROR CHAPMAN: I don't know what I've
4 done.

5 THE COURT: You haven't done anything. I will just
6 tell you if there's a piece of mail that you've received,
7 say, since Friday that has the return address, printed
8 return address of the District Attorney's office on it --

9 ALTERNATE JUROR CHAPMAN: Oh, okay.

10 THE COURT: Okay.

11 ALTERNATE JUROR CHAPMAN: Bring it to you?

12 THE COURT: Yes, sir. But just tell her -- tell
13 her if she opened it and if she removed the contents, tell
14 her to put it back in the envelope and Scotch tape it up so
15 you -- and not look at it.

16 ALTERNATE JUROR CHAPMAN: And bring it to you?

17 THE COURT: Yes. Okay. Thank you, sir.

18 Appreciate it.

19 ALTERNATE JUROR CHAPMAN: Uh-huh. No licks today.
20 Felt like I was going to the office.

21 THE COURT: Yeah, sorry.

22 MS. HIXON: Well, we have two alternates so even if
23 the other two are bad we can seat an alternate.

24 MR. HOCH: Judge, I just want to make sure for the
25 record that we got down as he went down he said he felt like

1 he was going to the office, meaning like a principal's
2 office is how I took it.

3 THE COURT: Well, you're the heavy here, Al.

4 MR. HOCH: It seems I always am.

5 (There was a short pause for the bailiff to bring in
6 another juror.)

7 THE COURT: Okay. Again, let the record reflect
8 that I'm in Chambers in my conference room with counsel and
9 with Juror Douglas Smith, No. 6.

10 Mr. Smith, I want to ask you if you've received any mail
11 since -- well, let me first ask you: You served on a jury
12 last week?

13 JUROR SMITH: Yes.

14 THE COURT: Do you remember what case it was? It
15 was --

16 JUROR SMITH: It was a juvenile case.

17 THE COURT: -- juvenile case.

18 Since you served in that case have you received any mail
19 based upon a return address that came from the courthouse or
20 one of the offices here in the courthouse?

21 JUROR SMITH: I received something from Jason
22 Hicks, something --

23 THE COURT: Okay. District Attorney's office?

24 JUROR SMITH: Yes. Something to do with a survey.
25 I haven't filled it out.

1 THE COURT: You opened the letter obviously?

2 JUROR SMITH: Well, actually my wife opened it,
3 told me what it was, but I haven't gone over it.

4 THE COURT: Did you look at it?

5 JUROR SMITH: No, I don't think so. No, sir. She
6 just told me about it. I put it on my desk.

7 THE COURT: What did she tell you about it?

8 JUROR SMITH: She just said it was something from
9 the District Attorney's office about some kind of survey.

10 THE COURT: Okay.

11 JUROR SMITH: I think she said something to the
12 effect if -- maybe they were wanting to know about, you
13 know, if I had been treated fairly or something. I can't
14 even remember. She said something about it.

15 THE COURT: Do you know if she said when it was
16 that she received -- y'all received it? Did you-all receive
17 it Saturday? Yesterday?

18 JUROR SMITH: No, it wasn't yesterday. Of course,
19 the mail doesn't run on -- yesterday was Sunday? I don't
20 know what today is.

21 THE COURT: Today is Tuesday.

22 JUROR SMITH: Today is Tuesday. No, it would have
23 been last week, I'm pretty sure, when it came.

24 THE COURT: You -- sir, your case went to trial
25 Tuesday and Wednesday of last week?

1 JUROR SMITH: Right. I was released by ten o'clock
2 Wednesday more or less.

3 THE COURT: Do you recall if your wife said when
4 you got it?

5 JUROR SMITH: No. I mean, I have my own business.
6 I'm just in my office working, and she brought the mail in
7 and said, Hey, there's something here from the district
8 attorney for you.

9 THE COURT: Do you know whether or not your wife
10 brought that to your attention before this trial began
11 yesterday?

12 JUROR SMITH: Yes, she did because I got it last
13 week. I mean, it was last week sometime, I'm pretty sure,
14 she told me.

15 THE COURT: Based upon what she has told you, is
16 there anything that she has told you that would cause you to
17 have any predeterminations of what the outcome of this
18 particular case that you're sitting on today should be?

19 JUROR SMITH: No.

20 THE COURT: Do you feel like that the fact that it
21 was brought to your attention that it came from the District
22 Attorney's office, do you have any reason to believe that's
23 going to cause you to be more in favor of, less in favor of,
24 the district attorney and their presentation of this case?

25 JUROR SMITH: No, sir.

1 THE COURT: Or do you have any reason to believe
2 that it would cause you to have any prejudice against
3 Mr. Hoch and his client, Mr. Dyer, in any way?

4 JUROR SMITH: No, sir.

5 THE COURT: Okay. But your recollection is you
6 didn't actually look at it yet?

7 JUROR SMITH: I haven't looked at it yet. It's
8 still sitting on my desk.

9 THE COURT: All right. Did you -- did you look at
10 the cover letter, if there was a cover letter, with it?

11 JUROR SMITH: No.

12 THE COURT: Very good.

13 Any inquiry?

14 MS. HIXON: Based on what you know, either by what
15 you saw or what your wife told you with regards to this
16 communication, um, do you believe that that communication
17 had anything at all to do with this particular trial?

18 JUROR SMITH: No, I just -- when she said something
19 to me about it I thought, well, you know, I had already been
20 on one and maybe they were wanting to know, you know, how I
21 felt the proceedings went or how I was treated or what. I
22 don't -- I really didn't pay any attention to it.

23 I have so many bills that I pay, and I just put it on in
24 the pile with the rest of my bills and when I get a chance
25 I'll get to it.

1 MS. HIXON: So is it your understanding that
2 communication or letter probably pertained to the trial you
3 served on last week?

4 JUROR SMITH: Yes.

5 MS. HIXON: Did that -- did receiving that letter
6 from the DA's office have any affect on you and how you
7 answered your questions during the jury selection process?
8 Either questions that I asked you or that Mr. Hoch asked
9 you?

10 JUROR SMITH: That letter never crossed my mind. I
11 haven't even thought about it.

12 MS. HIXON: Okay.

13 JUROR SMITH: I didn't even think about it. You
14 know, I know you said if we had got a letter to bring it
15 back. I never even thought about bringing that back until I
16 got here after lunch. You know, I wonder if that's
17 something they wanted. I checked my mail when I got home
18 looking for something, but --

19 MS. HIXON: Thank you.

20 THE COURT: Mr. Hoch?

21 MR. HOCH: Sir, do you get mail on Saturdays or
22 just Mondays through Friday?

23 JUROR SMITH: No, I think the mail runs on
24 Saturday, too.

25 MR. HOCH: Did you get this before Saturday,

1 though?

2 JUROR SMITH: I could not tell you actually, but
3 I -- I'm pretty sure it was -- well, it would have to have
4 been after Wednesday, I would assume, because I was in that
5 proceeding Wednesday. So, I mean, it could have been
6 Thursday or Friday. It could have been Saturday. She can
7 probably answer that question better than I can.

8 MR. HOCH: What did you think of the D. A. sending
9 you a letter --

10 JUROR SMITH: I just --

11 MR. HOCH: -- or a survey?

12 JUROR SMITH: I just figure it's something that
13 they do trying to, you know, maybe make their -- change
14 something if they're not doing something to make it easier
15 for us to get in and out of here. I really didn't think
16 that much about it or I would have filled it out. I mean,
17 that's just something I throw on the back burner. I didn't
18 really put much thought into it.

19 MR. HOCH: And did your wife talk to you any about
20 the types of questions they had in there or did you glance
21 at it?

22 JUROR SMITH: No. I don't even know -- I don't
23 even know that she looked at it. She just opened it up,
24 said, It's a letter from the district attorney. I think
25 it's some kind of a survey, and she handed it to me. We

1 have two desks. She puts our personal stuff on one desk and
2 my business stuff goes on another desk.

3 MR. HOCH: Did you get this at your -- do you
4 office out of your home?

5 JUROR SMITH: Yes.

6 MR. HOCH: And has anybody else, though, tried to
7 contact you besides DAs about your prior jury service?

8 JUROR SMITH: Well, nobody's tried to contact me.
9 I mean, they sent a letter but to answer your question, no,
10 nobody else has tried.

11 MR. HOCH: What was your understanding about the
12 juvenile case? It was a juvenile you were in, right?

13 JUROR SMITH: Right.

14 MR. HOCH: What was your understanding about
15 contact after a juvenile case?

16 JUROR SMITH: Well, I wasn't supposed to talk to
17 anybody about it.

18 MR. HOCH: So did it seem unusual to you about
19 getting a letter from them?

20 JUROR SMITH: Well, no, I -- you know, that's the
21 District Attorney's office. I don't think that it's
22 anything unusual.

23 THE COURT: Let me clarify and bring to both
24 counsels' attention, Judge Russell has told me that he
25 admonished all jurors upon being excused that given the

1 nature of the case they were not to discuss it --

2 JUROR SMITH: That's exactly why I answered your
3 question the way I did.

4 THE COURT: -- outside the circumstances of that
5 trial itself.

6 JUROR SMITH: Yeah, I wasn't trying to be smart
7 aleck when you were questioning me during jury selection, I
8 was just trying to tell you I was told not to answer any
9 questions.

10 MR. HOCH: Okay. I understand that, but you
11 thought even though you were told not to talk about it, it's
12 okay for the DAs to send a letter about it?

13 JUROR SMITH: I really didn't think that much about
14 it.

15 MR. HOCH: Okay. Do you think with all that's
16 going on and you being brought in here individually, you can
17 be fair?

18 JUROR SMITH: Sure. I wouldn't be here in the
19 first place if I didn't think I could be fair. I would have
20 said so during jury selection.

21 MR. HOCH: Because, obviously, you understand
22 there's -- there is going to be competing testimonies that
23 are diametrically opposed?

24 JUROR SMITH: (Nodding.)

25 MR. HOCH: Can you do me a favor? She types down

1 everything, so can you --

2 JUROR SMITH: Yes, I understand. Yes.

3 MR. HOCH: Okay.

4 MS. HIXON: Your Honor, I'm going to object that
5 these questions are going to anything other than what we --

6 THE COURT: Sustained.

7 MR. HOCH: So you think even though you got this
8 letter you're still okay with this?

9 JUROR SMITH: Sure. I have not even thought about
10 the letter to tell you the truth.

11 MR. HOCH: Okay. And even though you got brought
12 in here --

13 JUROR SMITH: Yeah, absolutely.

14 MR. HOCH: -- you understand nobody is saying that
15 you did something inappropriate?

16 JUROR SMITH: No. I mean, I'm here to do -- the
17 way I look at it, I'm here to do a job and if I can't do
18 that then I'll tell you so, would have told you so during
19 jury selection.

20 MR. HOCH: Do you have any questions for anybody?

21 JUROR SMITH: (Shaking head.)

22 MR. HOCH: You need to say "no" because she
23 can't --

24 JUROR SMITH: No, sorry.

25 THE COURT: Anything else?

1 MR. HOCH: No, sir.

2 THE COURT: Until I give you instructions
3 otherwise, when you get home this evening ask your wife to
4 take that letter and put it back in the envelope, put some
5 Scotch tape over it and seal it.

6 JUROR SMITH: Okay.

7 THE COURT: Do you understand that?

8 JUROR SMITH: It's still in the envelope. We will
9 seal it.

10 THE COURT: Let me ask you not to discuss with your
11 fellow jurors the conversations we had in here.

12 JUROR SMITH: Do I need to bring in the letter in
13 the morning?

14 THE COURT: I may very well have some additional
15 instructions for you on that. Thank you, sir.

16 JUROR SMITH: Thank you.

17 THE COURT: You bet.

18 (There was a short break for the bailiff to bring in the
19 next juror.)

20 THE COURT: Mr. Keiper?

21 JUROR KEIPER: Yes, sir.

22 THE COURT: I need to ask you some -- right here,
23 Mr. Keiper.

24 THE COURT: Let the record again reflect I'm in
25 Chambers with counsel; Defendant is not present, and I've

1 asked Juror David Keiper who is seat No. 1 to step in here
2 and I need to ask you a few questions.

3 You haven't done anything wrong. There is just an issue
4 that has come up that I need to inquire as to what has
5 happened. You were -- you testified -- or you told us
6 yesterday that you were on a juvenile case, I believe --

7 JUROR KEIPER: Uh-huh.

8 THE COURT: -- last week.

9 JUROR KEIPER: (Nodding.)

10 THE COURT: Since you've been on that juvenile case
11 have you received any correspondence from any office from
12 the courthouse?

13 JUROR KEIPER: Yes.

14 THE COURT: Did you receive a letter from the
15 District Attorney's office?

16 JUROR KEIPER: Yes.

17 THE COURT: Did you open it?

18 JUROR KEIPER: Yes.

19 THE COURT: Did you look at it?

20 JUROR KEIPER: Briefly. It's similar to what the
21 hospital sends out.

22 THE COURT: Okay.

23 JUROR KEIPER: Are you satisfied? Is there
24 anything --

25 THE COURT: Okay. What did you think about it when

1 you saw that?

2 JUROR KEIPER: That --

3 THE COURT: What was your response when you saw
4 that?

5 JUROR KEIPER: I remember it -- it was just like
6 the hospital. The way they send out when you're a patient
7 there. So I read the first two lines and I knew what it was
8 because I wasn't sure -- I opened it to make sure it wasn't
9 a summons or something, you know, so when I saw what it was
10 I just stuffed it back in and set it back down because --

11 THE COURT: Did you read through it in its entirety
12 or --

13 JUROR KEIPER: No. I think I read the first couple
14 of questions and I knew what it was.

15 THE COURT: Okay. When did you open it and look at
16 it?

17 JUROR KEIPER: Thursday of last week I think it
18 was. Thursday or Friday.

19 THE COURT: Very good. Is there anything about the
20 fact that you received that that you feel would affect your
21 ability to sit as a fair and impartial juror in this case?

22 JUROR KEIPER: No, not at all.

23 THE COURT: The fact that you know that it came
24 from the District Attorney's office, should the District
25 Attorney have any reason to believe that you wouldn't be

1 anything other than fair in this particular case as a juror?

2 JUROR KEIPER: No.

3 THE COURT: Is there anything that Mr. Hoch should
4 have to be concerned about as the fact that you received
5 this letter and the circumstances that you've described it
6 that he would have any reason to believe that you wouldn't
7 be fair with respect to his case in this particular matter?

8 JUROR KEIPER: Not at all.

9 THE COURT: The fact that I've had to visit with
10 you about it, do you attach any significance to that?

11 JUROR KEIPER: No, no.

12 THE COURT: All right. (Indicating.)

13 MS. HIXON: When you received that letter, what did
14 you believe it had to do with?

15 JUROR KEIPER: I didn't know. I thought, Well,
16 what could this be? Because anything you get from the
17 courthouse could be anything.

18 MS. HIXON: After you saw the first couple lines of
19 it --

20 JUROR KEIPER: Yeah, then I knew exactly because we
21 send out the same thing at the hospital when you're a
22 patient.

23 MS. HIXON: So what do you believe that that had to
24 do with?

25 JUROR KEIPER: Oh, they want a survey. How was

1 your service, anything we can do better, all that stuff.

2 MS. HIXON: Relating to what trial?

3 JUROR KEIPER: It was a juvenile.

4 MS. HIXON: Okay. So you didn't believe that that
5 communication had anything to do with this trial that you're
6 sitting on today?

7 JUROR KEIPER: No. Because I didn't even know I
8 would be on this trial when I got it.

9 MS. HIXON: Okay. Thank you.

10 THE COURT: Mr. Hoch?

11 MS. HIXON: Can I ask you this: Did the fact that
12 you received that letter, did that affect you in any way
13 when you were answering your questions during the jury
14 selection process?

15 JUROR KEIPER: No. I wasn't even thinking about
16 it. I didn't --

17 MS. HIXON: Thank you.

18 THE COURT: Mr. Hoch?

19 MR. HOCH: What did you think when you got a letter
20 asking you about a case you weren't supposed to talk about?

21 JUROR KEIPER: I didn't think it was about the
22 case. I -- the first couple questions was more or less what
23 was your experience as a juror and I knew -- like I said, I
24 knew exactly what it was, because we send them out to
25 patients -- every patient at the hospital, you know, How was

1 your experience? How can we do better?

2 So as soon as I realized it, I knew -- I wasn't going to
3 go through it all because I knew what all the questions
4 would be, you know, how could we do better and --

5 MR. HOCH: What is it you do at the hospital?

6 JUROR KEIPER: I'm a nurse.

7 MR. HOCH: What's the purpose of those letters from
8 the hospital?

9 JUROR KEIPER: To try to improve -- is there
10 anything we can do to improve your stay? You know, was --
11 were the meals good? Was -- was the physical therapy, you
12 know, was it too much or too little? Was -- you know,
13 just -- it's just a general asking of what we can do to make
14 your stay better.

15 MR. HOCH: Any general significance you attach to
16 that --

17 JUROR KEIPER: No.

18 MR. HOCH: -- getting it? Or anything about your
19 work as a juror that you did good, did bad, indifferent,
20 whatever?

21 JUROR KEIPER: No. I didn't take it that way. I
22 think it was more or less how can we improve the jury
23 experience, you know. No matter what trial you're in can
24 the jury experience be better is how I took it. That's how
25 we do it with patients, you know. As a patient what can we

1 do to make your stay better, you know.

2 MR. HOCH: Okay. And you're sure you opened it,
3 like, Wednesday or Thursday or something?

4 JUROR KEIPER: Uh-huh.

5 MR. HOCH: Okay. And do me a favor because she
6 types everything down, can you say "yes" or "no"?

7 JUROR KEIPER: Oh, yes, yes.

8 MR. HOCH: And has anybody else contacted you about
9 anything here?

10 JUROR KEIPER: No.

11 MR. HOCH: Any problem with the fact that we had to
12 have you come in to ask about this?

13 JUROR KEIPER: No, huh-uh. Not at all.

14 MR. HOCH: Okay. So no significance to it?

15 JUROR KEIPER: No, not at all.

16 MR. HOCH: Not going to affect either side?

17 JUROR KEIPER: No.

18 MR. HOCH: Do you have any questions about why
19 you're here or anything?

20 JUROR KEIPER: No. I'll leave that to the legal
21 minds, you know.

22 MR. HOCH: All right. I don't have anything
23 further right now, Judge.

24 THE COURT: One thing, until I give you any further
25 instructions, are you -- do you live at home?

1 JUROR KEIPER: Yes.

2 THE COURT: Alone?

3 JUROR KEIPER: Yes.

4 THE COURT: Is that letter that -- did you stick it
5 back in the envelope?

6 JUROR KEIPER: Yes, I did.

7 THE COURT: When you get home take some Scotch tape
8 or something and seal the top and I'll ask you not to read
9 it. I'll ask you not to share the questions and the subject
10 with your fellow jurors, what we've visited in here, all
11 right?

12 JUROR KEIPER: Okay.

13 THE COURT: Thank you.

14 (Juror Keiper exited Chambers and the following
15 proceedings ensued:)

16 MS. HIXON: Are we off the record or on the record?

17 THE COURT: You want to be on the record or off the
18 record?

19 MS. HIXON: Off for now.

20 THE COURT: Let's go off the record.

21 (There was a short off-the-record discussion after which
22 the following proceedings resumed in Chambers:)

23 THE COURT: All right. Let's go back on the
24 record.

25 All right. Any argument the State wishes to make?

1 MS. HIXON: Your Honor, I think it's clear that the
2 first two jurors that we spoke with did not even receive a
3 communication, they didn't read that so there was no --
4 nothing conveyed to them other than the fact that they had
5 received a letter. The third juror did indicate he began
6 reading the first couple lines of it but understood that it
7 was just a juror questionnaire in form of what our office
8 could do to improve which is exactly what it was.

9 All indicated -- none indicated that they believed it
10 had any -- that the communication was anything to do with
11 this particular case, um, and therefore I don't -- first of
12 all, I don't think that it is an improper communication
13 about the facts of this case but, regardless, I think it's
14 pretty clear that there's no prejudice done to the Defendant
15 as a result of that questionnaire.

16 THE COURT: Mr. Hoch?

17 MR. HOCH: Well, Judge, I think in view of 21 O. S.
18 388 along with the other cases, the *Perez* case, that it's --
19 I believe it's presumptively prejudicial, that the letter is
20 sent in the first place. It shouldn't have been sent.
21 it's -- granted, these two -- the two attorneys didn't have
22 anything to do with it, but they're still responsible what
23 their office staff does and the fact that --

24 THE COURT: Well, let me ask you this: Would it
25 have made a difference if you had known about this

1 yesterday?

2 MR. HOCH: I would have asked about it during *voir*
3 *dire*?

4 THE COURT: Would it have affected your exercise of
5 peremptory challenges?

6 MR. HOCH: I don't know. It might have. I --

7 THE COURT: Okay.

8 MR. HOCH: I had other people I wanted to kick,
9 too, but I had to use all of mine and there was still
10 some -- still what I think are some bad choices I was left
11 with even though I ran through five of them.

12 THE COURT: Well, let me ask you this: Had you
13 known this information before we began *voir dire* of this
14 jury yesterday morning would that have been areas that you
15 would have made inquiry about?

16 MR. HOCH: I might have with Smith.

17 THE COURT: Well, my question is: Would this be
18 information you would have wanted to have known yesterday
19 morning before we -- in -- in the *voir dire* process with
20 respect to what jurors received such a communication?

21 MR. HOCH: It is definitely something I would have
22 wanted -- I would have wanted to know.

23 THE COURT: And would that have entered into your
24 evaluation of jurors with respect to the determination of
25 how and/or what peremptory challenges you may or may not

1 have exercised?

2 MR. HOCH: It may have changed some for -- I
3 probably would have asked for cause simply because of the
4 letters going to them if I would have known and it probably
5 would have changed some of my ones for -- although the one
6 here says he wasn't trying to be evasive, I had issues about
7 why he was.

8 THE COURT: Okay.

9 MR. HOCH: And the Court had -- had to clear that
10 up at the bench so it would have led to a lot of additional
11 questions for the people who were here.

12 THE COURT: Okay. Anything else?

13 MS. HIXON: Well, Your Honor, I mean, I don't feel
14 it's appropriate for me to question Al but based on your
15 line of questioning now he has those answers that he would
16 have asked during *voir dire* and --

17 THE COURT: It would have made a difference
18 possibly of how he would -- of -- of the choices and
19 requests he would have made as to possibly get a jury. I
20 think this is information that should have been brought to
21 his attention beforehand. Whether or not it would or would
22 not have, it could have been.

23 I'm inclined probably to -- I'm inclined to believe that
24 there is a problem with this.

25 MR. HOCH: And, Judge, just --

1 THE COURT: And I'm not -- I'm not making this
2 determination on the issue of prejudice. I think it would
3 have had a bearing on what challenges were made for cause
4 and/or perempt -- it's information that I think he probably
5 should have been given. Had it been known it would have
6 made a difference.

7 MR. HOCH: And especially since some of them got
8 their mail on Thursday, at least by Thursday.

9 MR. WALTERS: Your Honor, I understand what the
10 Court is saying. I'll certainly not argue with that. I
11 just would like for the record to reflect, as I'm sure
12 Mr. Hoch realizes, that neither Ms. Hixon nor myself were
13 aware that went out --

14 THE COURT: I understand.

15 MR. WALTERS: -- and had I had knowledge --

16 THE COURT: I will make sure --

17 MR. WALTERS: -- I absolutely would have presented
18 that prior to *voir dire*.

19 THE COURT: I'll make a more than adequate record
20 on that and absolve the two of you of any particular
21 problems.

22 MR. HOCH: And, Judge, just so it's totally clear
23 that it was done off the record, but Mr. Walters is the one
24 that brought it to us during a break.

25 THE COURT: Right. And it happened right before --

1 it was brought to our attention at the end of the
2 mid-morning break.

3 MR. HOCH: Right.

4 THE COURT: And I had no reason to believe that
5 they had not just found out that information.

6 MR. HOCH: Right, and that's why I say before I had
7 no reason to think that either one of them were involved in
8 any way, and I would --

9 THE COURT: You want a mistrial?

10 MR. HOCH: Yes, sir. And I wouldn't have known
11 unless -- I would have never known unless they brought it to
12 our attention.

13 THE COURT: All right. Very good. Let's go back
14 in the courtroom.

15 (The following proceedings occurred in open court:)

16 THE COURT: All right. Take your seats please,
17 ladies and gentlemen.

18 Ladies and gentlemen, I understand you realize we've had
19 some starts and stops and it's kind of erratic, but I will
20 tell you, ladies and gentlemen, that at the end of the
21 mid-morning break information came to the attention of the
22 Court that may very well have had an impact on the parties'
23 ability to participate in jury selection and jury selection
24 process.

25 I will tell you specifically that there were cases -- we

1 were busy last week trying cases. Some of you were involved
2 in trying those cases last week. In fact, I'll tell you
3 there were two felony cases tried last week and one or maybe
4 two juvenile cases tried last week.

5 I will tell you that at the conclusion of the trials
6 last week a staff member -- not either of the Assistant
7 District Attorneys that are before the Court today nor any
8 of the Assistant District Attorneys -- caused to be sent to
9 jurors serving on those cases last week a letter with a
10 questionnaire. It shouldn't have happened. That's a
11 routine matter that typically occurs, but it generally
12 occurs at some time after the jury term is over.

13 Whether or not that particular fact would have a bearing
14 on each of your individual decisions as a juror in this case
15 we don't know because at the time during the jury selection
16 process that information was not known to either of the
17 attorneys in this case nor myself. That could very well
18 have had an impact on the nature of the questions that may
19 have been asked by the attorneys during the jury selection
20 process and it could have had an import on whether someone
21 might have been excused for any particular reason during the
22 jury selection process or whether or not that may have been
23 a reason that one of the parties may have wanted to exercise
24 what we call "peremptory challenges," just dismiss someone
25 for their own -- for no reason.

1 It's not a reflection of anything anyone in this jury
2 has done improperly. Unfortunately three of you were
3 subjected to that particular letter and survey which
4 shouldn't have happened. It was unbeknownst to the two
5 District Attorneys that are before the Court today. In
6 fact, I have no reason to believe that that information and
7 that it had occurred -- or the fact that that had occurred
8 was unbeknownst to the District Attorneys before this Court
9 today until it was brought to their attention sometime about
10 10:45 or 11:00 a.m. this morning, but because of the
11 potential impact that that would have had concerning three
12 choices of the attorneys, both indeed to have the full realm
13 of information that would be available to them, it could
14 very well have impacted the makeup of this particular jury
15 and that is each of the parties' rights to participate and
16 have information in making that decision.

17 Because that has happened, the Court has been asked to
18 declare a mistrial and that request comes from the
19 Defendant, and I am prepared and I will declare a mistrial
20 because of that particular circumstance.

21 I know each of you have taken your responsibility as
22 jurors in this case very seriously, you've taken an oath,
23 you realize and understand the significance of what you're
24 doing today. You understand the seriousness of the
25 allegations made, not only in this case but any case that

1 necessitates a need for a jury and it is an unfortunate
2 circumstance that has happened.

3 We had a little -- we had a little speed bump yesterday,
4 but the Court resolved that but this one is one that I don't
5 believe that we can overcome to correct a potential
6 situation the results of which are unknown based upon the
7 fact that facts were unknown to each of the parties that
8 would have had an impact on the jury selection process.

9 I am going to -- I will tell you that that letter was
10 sent to 39 jurors. I will tell you that of the jurors in
11 this case there are three of you that got that letter. I
12 will also tell you that there were three jurors in the jury
13 in the case going on down at the other end of the hall that
14 got that letter and Judge Russell and I have wrestled with
15 the same issue and the results will be the same with respect
16 to both cases.

17 There are other cases left to be tried on this term. It
18 goes without saying that those 39 jurors who got that letter
19 will be excused from further service in the balance of this
20 term, and we will attempt to try the balance of those cases
21 with the jurors remaining.

22 I am -- will also ask you that if you've taken notes,
23 make sure they're in your notebooks. Leave them in your
24 chairs.

25 I'm going to ask you to accompany the bailiff to the

1 jury room right now. She will collect your juror buttons
2 from you there. If you'll take your notebooks with you to
3 the jury room, as well. I'll ask you to remain in the jury
4 room until I've had an opportunity to excuse individuals in
5 the courtroom, and I'll also make myself available for any
6 questions you might have just about the fact that we were
7 here today or yesterday. That's generally my practice.
8 That will just take a few moments.

9 So I'm going to ask you at this time -- I will relieve
10 you of your admonitions. I will relieve you subject to you
11 having an opportunity to ask me questions and I'll see you
12 in the jury room in a few moments.

13 (The jury exited the courtroom and the following
14 proceedings occurred in open court:)

15 THE COURT: All right. Court having declared a
16 mistrial in this matter, the Court will place this back on
17 this docket for trial on the April 16th, 2012, jury term.
18 If there are any matters that the court wishes -- counsel
19 wishes to address the Court, other than that I'll be
20 available in about an hour.

21 MR. HOCH: Judge, when is the call docket for that?

22 THE COURT: Call docket on that will be April the
23 fourth. I'll give you -- I'll give you the docketing
24 scheduling order right now, but we'll stand in recess until
25 then.

1 I am going to -- I'm going to go ahead and ask those
2 present in the courtroom, you're free to go at this time.
3 Thank you for your attendance.

4 All right. We'll stand in recess.

5 (End of proceedings.)

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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 24th 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