

State v. Drljic/Suttles

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

File No. 62-CR-10-1464

State of Minnesota,

and 62-CR-10-1465

Plaintiff,

vs.

JURY TRIAL - DAY 1

Pages 1 - 103

Daniel Drljic and
Tamika Latoi Suttles,

Defendants.

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for Jury Trial before the Honorable Gail Chang Bohr, Judge of said Court, on the 22nd day of November, 2010, at the Ramsey County Courthouse, 15 W. Kellogg Boulevard, St. Paul, Minnesota.

APPEARANCES:

Elizabeth Lamin, Assistant Ramsey County Attorney, appeared on behalf of the Plaintiff;

Jill Clark, Attorney at Law, appeared on behalf of the Defendants; and

Susan D. Montpetit, Court Reporter.

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1 (In Open Court - Morning Session. An off-the-record
2 discussion was had before the following proceedings
3 commenced on the record.)

4 THE CLERK: Do you want me to call the case?

5 THE COURT: Yes. Ms. Clark, have you had a
6 chance to talk to your clients?

7 MS. CLARK: Well, just briefly.

8 THE COURT: Okay.

9 MS. CLARK: And I, obviously, haven't had
10 really a lot of a chance to discuss things. But, I know
11 their feelings on certain things and we could discuss
12 that more. It looks like it is also 11:30 and maybe over
13 the lunch break that we could just kind of have a chance
14 to --

15 THE COURT: Yes, we can put some things on the
16 record now. First, I'm going to have my clerk call the
17 case and then we can go from there.

18 THE CLERK: Page 1, line 1, Daniel Drljic; and
19 Page 4, line 7, Tamika Suttles.

20 THE COURT: Okay. And I am going to do this.
21 First, we will have appearances.

22 MS. LAMIN: Good morning, Your Honor, Elizabeth
23 Lamin, L-A-M-I-N, Assistant Ramsey County Attorney,
24 appearing on behalf of the State.

25 MS. CLARK: Jill Clark, appearing on behalf of

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1 Defendants Tamika Suttles and Daniel Drljic, who are both
2 present in person.

3 THE COURT: And good morning, Counsel; and good
4 morning Mr. Drljic; and good morning Ms. Suttles.

5 DEFENDANT SUTTLES: Good morning, ma'am.

6 THE COURT: All right. I'm going to actually
7 have you both, separately, come forward because there are
8 two questions I want to ask Ms. Suttles with counsel and
9 the prosecutor. So, would you come forward, Ms. Suttles.

10 All right. How are you doing?

11 DEFENDANT SUTTLES: Hanging in there.

12 THE COURT: Hanging in. Okay. So we have
13 touched on this, briefly, at one time, Ms. Suttles; but,
14 I want to be sure you understand because Ms. Clark
15 represents both you and the co-defendant, Daniel Drljic.
16 That this is what they call dual representation. And the
17 fact is that your defense can be different from Mr.
18 Drljic's and we have one lawyer so there are certain
19 things that you need to waive on the record. All right.

20 So, you understand that you might have a
21 different defense than Mr. Drljic and that if you have
22 one lawyer, what she needs to do is to argue vigorously
23 for you. Her other duty is to argue vigorously for the
24 other co-defendant. And if, in the process of that
25 vigorous argument, the defense might contradict each

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1 other, that means she has a conflict. And that also
2 becomes an issue in terms of the vigorous advocacy which
3 a lawyer holds to her client. Do you understand that?

4 DEFENDANT SUTTLES: Yes.

5 THE COURT: You understand what I am talking
6 about?

7 DEFENDANT SUTTLES: A little bit, yes.

8 THE COURT: Okay. So that you understand what
9 the dual representation does; meaning that she is
10 representing two co-defendants for the same crime. All
11 right. And that if you had separate defenses, that may
12 not come up in the same way. Do you understand that?

13 DEFENDANT SUTTLES: A little bit, yeah.

14 THE COURT: Well, tell me what you need to need
15 help with.

16 DEFENDANT SUTTLES: So, basically, you're
17 saying like I can get charged just as much as him, with
18 me being -- or however, I don't know, our crime together.
19 I don't know.

20 THE COURT: In terms of putting on the evidence
21 at trial. That's what I am talking about.

22 DEFENDANT SUTTLES: Okay.

23 THE COURT: We are moving into trial now and
24 evidence has to come in.

25 DEFENDANT SUTTLES: Okay.

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1 THE COURT: And the evidence has to come in
2 against you and evidence comes in against Mr. Drljic.

3 DEFENDANT SUTTLES: Okay.

4 THE COURT: And Ms. Clark has to argue for each
5 of you, vigorously. And if there is a conflict in the
6 way of thinking about the evidence, that may or may not
7 be an issue, You need to know that that is a possibility.
8 I'm not saying that it can be. I'm not saying that it's
9 going to happen. But, for me to allow this to go on with
10 Ms. Clark representing both of you, I need to hear from
11 you, on the record, that you understand what those issues
12 are.

13 DEFENDANT SUTTLES: Okay. Yes, I am
14 understanding.

15 THE COURT: I'm sorry?

16 DEFENDANT SUTTLES: I said, yes, I am
17 understanding that she is representing both of us and
18 both of us is going to be tried together with her as our
19 attorney.

20 THE COURT: You understand, though, that your
21 defenses may not match up, totally. All right?

22 DEFENDANT SUTTLES: Yeah, but --

23 THE COURT: All right. No. I'm just saying
24 that. I'm not saying that it is; but, I'm saying that
25 could be a possibility.

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1 DEFENDANT SUTTLES: Okay.

2 THE COURT: In that case, she still needs to
3 argue.

4 DEFENDANT SUTTLES: Okay.

5 THE COURT: That's what you need to understand.

6 DEFENDANT SUTTLES: Okay.

7 THE COURT: That if she doesn't argue because
8 it could hurt the other person, that's a conflict.

9 DEFENDANT SUTTLES: Okay.

10 THE COURT: It's a loyalty that the attorney
11 has to both clients and if there is a point where one can
12 conflict with the other, the loyalty to one is in
13 conflict with the loyalty to the other. That's the
14 problem with dual representation.

15 DEFENDANT SUTTLES: Okay.

16 THE COURT: You understand the concept?

17 DEFENDANT SUTTLES: I'm understanding.

18 THE COURT: Okay. And so, I want to know from
19 you if you have any questions for the court about that
20 issue?

21 DEFENDANT SUTTLES: Not really. We came in
22 this case together. I don't have no money for another
23 attorney. I prefer to keep it where I am at because I am
24 secure with what's going on and how this whole case has
25 been played out from the jump. So I just got my faith in

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1 God and I am hoping that everybody here will think I
2 am --

3 THE COURT: So, I need to know from you that
4 you have been advised of the right to effective
5 representation.

6 DEFENDANT SUTTLES: Yes, ma'am, I have.

7 THE COURT: Effective representation being full
8 advocacy, vigorous diligence in arguing your case.

9 DEFENDANT SUTTLES: Yes, I understand that.

10 THE COURT: I'm not talking about your
11 co-defendant's case. I'm talking about your case.

12 DEFENDANT SUTTLES: Okay.

13 THE COURT: Is that a yes?

14 DEFENDANT SUTTLES: Yes, ma'am.

15 THE COURT: That you do understand that?

16 DEFENDANT SUTTLES: Yes, I am understanding.

17 Yes.

18 THE COURT: Do you understand what this
19 possible conflict of interest is that I keep talking
20 about? Do you think you get it?

21 DEFENDANT SUTTLES: Basically, what -- between
22 what's happened between me and him can conflict; but, I
23 don't know. Between me and him, something can conflict.
24 Is that what that means? So, I think so.

25 THE COURT: But, it could mean that you have

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1 lesser advocacy. I mean, that would be the outcome of
2 somebody having a conflict.

3 DEFENDANT SUTTLES: Okay.

4 THE COURT: You understand that concept, do you
5 think?

6 DEFENDANT SUTTLES: Yeah.

7 THE COURT: I know you like Ms. Clark. I think
8 I want you to think about this whole thing. And in a
9 sense, if you were advising your sister kind of thing.
10 But, as long as you think you understand it, that's all I
11 need to know.

12 DEFENDANT SUTTLES: Okay.

13 THE COURT: All right. And there is one more
14 thing.

15 DEFENDANT SUTTLES: Okay.

16 THE COURT: And you have discussed this matter
17 with Ms. Clark?

18 DEFENDANT SUTTLES: Yes, ma'am.

19 THE COURT: Okay. About the dual
20 representation?

21 DEFENDANT SUTTLES: Yes, ma'am.

22 THE COURT: And if you wanted to you could talk
23 about it with outside counsel, as well; did you know
24 that? So that you understood fully what this all is
25 about?

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1 DEFENDANT SUTTLES: Okay.

2 THE COURT: And are you going to do that?

3 DEFENDANT SUTTLES: I don't have no money for
4 no other attorney and I trust Jill.

5 THE COURT: All right. I just want to make
6 sure you understand that that's your right. And then,
7 are you waiving your Constitutional Right to have
8 separate counsel?

9 DEFENDANT SUTTLES: Yes. I have no choice,
10 yes.

11 THE COURT: It's voluntary. I mean, I don't
12 know what you mean by no choice, what that is meaning.
13 My purpose in talking with you is to make sure you
14 understand you do have a choice.

15 DEFENDANT SUTTLES: I want to stick with Jill.

16 THE COURT: So, you voluntarily wish to have
17 Ms. Clark represent you? You are giving up your right to
18 have separate counsel?

19 DEFENDANT SUTTLES: Yes.

20 THE COURT: All right. You -- okay. I think I
21 have beaten that one.

22 MS. LAMIN: Your Honor, could I? I'm sorry.

23 THE COURT: No, please, Ms. Lamin.

24 MS. LAMIN: And just if Ms. Suttles is aware
25 that if she can't afford an attorney, a public defender

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1 could be appointed so she doesn't feel that she --

2 THE COURT: Oh, okay. Thank you, Ms. Lamin.

3 You do understand that if you couldn't afford an attorney
4 that one would be appointed for you?

5 DEFENDANT SUTTLES: Yes.

6 THE COURT: Okay. And knowing all of those
7 things, you wish to proceed with Ms. Clark?

8 DEFENDANT SUTTLES: Yes. I started with Jill
9 and I want to finish with Jill. I started with her and I
10 want to continue with her.

11 THE COURT: I understand that. The loyalty
12 works the other way, though. Ms. Clark has to have
13 undivided loyalty to you. Right?

14 DEFENDANT SUTTLES: Uh-huh, yes.

15 THE COURT: All right.

16 DEFENDANT SUTTLES: Thank you, ma'am.

17 THE COURT: Thank you. Now, Mr. Drljic.

18 DEFENDANT DRLJIC: Good morning, Your Honor.

19 THE COURT: Good morning. And we did, at a
20 different time, go over some of these issues with dual
21 representation; but, I don't think we went through it in
22 the same detail that the Rule requires and I want to make
23 sure we make a record and that you and I have had this
24 conversation on the record.

25 You have heard me talk about the potential

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1 danger of Ms. Clark representing both you and Ms.
2 Suttles; is that correct?

3 DEFENDANT DRLJIC: That's correct, Your Honor.

4 THE COURT: Okay. Ms. Suttles being a
5 co-defendant in this crime of Burglary.

6 DEFENDANT DRLJIC: Yes, Your Honor.

7 THE COURT: Okay. Did you have any questions
8 about what dual representation is?

9 DEFENDANT DRLJIC: No, I don't have any
10 questions, Your Honor.

11 THE COURT: Okay. Tell me what you think it
12 is.

13 DEFENDANT DRLJIC: Well, dual representation,
14 by lawyer Jill Clark would represent Tamika Suttles and I
15 in front of the court in separate trials.

16 THE COURT: You are not having a separate trial
17 unless I rule that you will have a separate trial. It is
18 one trial at this point; but, you are raising something
19 that I have been considering. But the trial in front of
20 the court with Ms. Suttles is to continue the way we have
21 been doing it. I believe that you both have been here
22 and it is one trial.

23 DEFENDANT DRLJIC: Okay.

24 THE COURT: So, the evidence that is going to
25 come in even if it is against one of you. And we work

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1 very hard to make sure the jury understands that; because
2 that would be my instruction, is that each person has to
3 be convicted based on the evidence against that person
4 and not against the other person, but against one person.
5 Unless, of course, we have the other issue of aiding and
6 abetting, which becomes -- because you know what aiding
7 and abetting is?

8 DEFENDANT DRLJIC: Yes.

9 THE COURT: Okay. So, everything that the
10 person does is attributed to the person who is aiding and
11 abetting. Right?

12 DEFENDANT DRLJIC: Yes.

13 THE COURT: You understand that?

14 DEFENDANT DRLJIC: Yes, I do understand.

15 THE COURT: Okay. Anyway, I think I
16 interrupted you.

17 DEFENDANT DRLJIC: I think that I know what
18 dual representation means.

19 THE COURT: Okay.

20 DEFENDANT DRLJIC: That that is where --

21 THE COURT: And do you have any questions about
22 it?

23 DEFENDANT DRLJIC: I can't think of any
24 questions right now.

25 THE COURT: And you heard me talk about a duty

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1 of an attorney is to have undivided loyalty to his or her
2 client. And that the danger of a dual representation is
3 that that loyalty may not be undivided to that --

4 DEFENDANT DRLJIC: I understand the --

5 THE COURT: Because there are two clients in
6 one case.

7 DEFENDANT DRLJIC: Yes.

8 THE COURT: Okay. So, what are some of the
9 things that comes to mind for you in that kind of a
10 situation?

11 MS. CLARK: I guess that I think that that's a
12 vague question. I don't want them to just start -- they
13 have a Fifth Amendment Right. I don't want my clients to
14 just start talking, particularly not about things that we
15 have talked about.

16 THE COURT: We are talking about -- no, I'm
17 talking in generalities. I'm not talking about their
18 specific defense. I just want to make sure they
19 understand.

20 DEFENDANT DRLJIC: I have understanding.

21 THE COURT: Okay. And do you understand that
22 the dual -- the court's -- the Rules -- and this is
23 coming from the Rules, concern about dual representation
24 is that Ms. Clark might not have undivided loyalty to
25 you. Might not. Not saying that she doesn't. I'm just

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1 saying that that's the danger.

2 DEFENDANT DRLJIC: Yes, that there is potential
3 danger. I understand, Your Honor.

4 THE COURT: Okay. Do you have any questions
5 about any of the consequences?

6 DEFENDANT DRLJIC: I can't think of any
7 questions right now, Your Honor.

8 THE COURT: Okay. And you have been advised of
9 the fact that you have a right to effective
10 representation?

11 DEFENDANT DRLJIC: Yes.

12 THE COURT: Is that right?

13 DEFENDANT DRLJIC: That's right.

14 THE COURT: Okay. And that if you couldn't
15 afford it, counsel would be appointed for you?

16 DEFENDANT DRLJIC: Yes.

17 THE COURT: So, if you have one lawyer and two
18 clients might seem like a bargain; but maybe it isn't,
19 you each have a right to your own lawyer?

20 DEFENDANT DRLJIC: Yes, I understand that.

21 THE COURT: You understand that. Okay. And
22 have you had a chance to discuss this matter with Ms.
23 Clark?

24 DEFENDANT DRLJIC: Yes, we have talked about
25 dual representation.

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1 THE COURT: Okay.

2 DEFENDANT DRLJIC: And conflict of interest.

3 THE COURT: That's one of the issues that go
4 with it and that confidentiality can be one in the same,
5 but it doesn't necessarily happen. Right?

6 DEFENDANT DRLJIC: Yes.

7 THE COURT: Do you want to discuss this with
8 outside counsel?

9 DEFENDANT DRLJIC: I don't think right now that
10 I would like to.

11 THE COURT: I'm sorry?

12 DEFENDANT DRLJIC: I can't think of anybody to
13 discuss this outside counsel.

14 THE COURT: To discuss this issue?

15 DEFENDANT DRLJIC: Yes.

16 THE COURT: Now, I mean, that would be the idea
17 would be to talk to somebody else, actually, to discuss
18 this whole issue. Right?

19 DEFENDANT DRLJIC: Yes.

20 THE COURT: Okay. Are you saying you don't
21 have anybody or that you don't want to?

22 DEFENDANT DRLJIC: I can't think of anybody and
23 I am not certain if I would like to discuss this issue
24 with anybody.

25 THE COURT: But, if you wanted to, I mean Ms.

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1 Clark can probably give you some names.

2 DEFENDANT DRLJIC: Okay.

3 THE COURT: But --

4 DEFENDANT DRLJIC: I would like Ms. Clark to
5 represent me in this case.

6 THE COURT: Okay. And you understand, then,
7 that what you are waiving by moving ahead with the dual
8 representation is your own right to have separate
9 counsel?

10 DEFENDANT DRLJIC: Thanks. I understand that's
11 my right.

12 THE COURT: And are you voluntarily waiving
13 that right?

14 DEFENDANT DRLJIC: Yes, I am.

15 THE COURT: Okay. All right. That's what I
16 wanted to do on this issue. Anything else that I left
17 off?

18 MS. LAMIN: No, Your Honor.

19 THE COURT: We are close to lunch and we have
20 other things to put on the record. And I think, Ms.
21 Clark and Ms. Suttles, I haven't made a decision about
22 this, but I do want you to know that this is a concern
23 and I will make a ruling later regarding severing the
24 trial. Because you don't have to be tried together and
25 it is -- it is up to the discretion of the court to have

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1 you tried separately.

2 One of the concerns, also, having to do with
3 the fact that Ms. Suttles is almost ready to deliver, I
4 think, and I don't know where we are going to go with
5 that. So I'm putting it out there. I haven't made my
6 decision. And if you want to give me arguments on this
7 when we come back from lunch, but it is something that I
8 have given great concern.

9 MS. CLARK: Your Honor, because it was just
10 raised this morning, first of all, I believe it
11 prejudices the defendants to have it raised this morning
12 for the first time. This is just the kind of thing that
13 I was worried about; that if the state was given an
14 additional week when we came -- showed up in good faith
15 and then something like this would happen. I am very
16 concerned about it. At a minimum, I would like the
17 opportunity over the lunch hour to do some research on
18 it.

19 THE COURT: Yes, we can --

20 MS. CLARK: Before I make argument. And speak
21 with the clients. Thank you.

22 THE COURT: You may certainly do that. But,
23 let me just say that these are the kinds of things that
24 the state has been thinking about and looking at and
25 certainly -- not the state. I'm sorry -- the court. I

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1 should just make that clear. The court, on its own, has
2 been looking at this issue and mostly to make sure that
3 we are not, particularly, since knowing more about the
4 pregnancy situation is really --

5 MS. CLARK: Well, I guess that, you know, Ms.
6 Suttles would never have submitted that letter if she
7 thought it could create a severance in the trial. And I
8 am concerned because if in fact it's her pregnancy that's
9 the issue, then the trial should be, you know, moved to
10 next year. I thought the court didn't really want to
11 think about moving them to the next trial block and so we
12 became ready. We got ourselves ready to go. Now, we are
13 ready to go.

14 These defendants very much want to be tried at
15 the same time. They think their best chance of acquittal
16 is being tried together. And so, if there is -- if the
17 court is concerned about the pregnancy, we will certainly
18 entertain moving all the trials into -- I think the due
19 date is January, isn't it?

20 DEFENDANT DRLJIC: Yes.

21 MS. CLARK: Ms. Suttles?

22 DEFENDANT SUTTLES: January.

23 MS. CLARK: So, we could move all the trials
24 into February, but we would very much -- and
25 particularly, before anybody gets written out, we very

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1 much oppose a severance of the trial.

2 THE COURT: I'll entertain argument after
3 lunch.

4 MS. LAMIN: We'll do it after lunch.

5 THE COURT: Yeah, and we'll deal with the
6 Motions in Limine then. Okay.

7 (Proceedings recessed for lunch at this time.)

8 (In Open Court - Afternoon Session) (An off-the-record
9 discussion was had in Chambers prior to the following
10 proceedings had in open court.)

11 THE COURT: All right. Good afternoon
12 everyone.

13 MS. CLARK: Good afternoon, Your Honor.

14 THE COURT: We are back on this trial, which we
15 need to make some decisions on some other matters, as
16 well. So did you have anything you wanted to add, Ms.
17 Clark, with regard the joinder or severance?

18 MS. CLARK: Yes.

19 THE COURT: Go ahead.

20 MS. CLARK: These cases have traveled together
21 the entire time. They were litigated together at the
22 Omnibus Hearing and the defendants very much oppose a
23 severance at this time. And over lunch, I asked Ms.
24 Suttles whether she was upset just before we went to
25 lunch and she said she was, at the idea of severance.

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1 THE COURT: Okay.

2 MS. CLARK: That she very much believes that
3 her chance for acquittal is to have the cases tried
4 together. There would be extreme prejudice to the
5 defendants to have the cases tried separately. For one
6 thing, the state would learn all of the theories of the
7 defense; and thus, in the second trial, be able to plug
8 all those holes.

9 Ms. Suttles, if the court is thinking of
10 severing her at this time and sending her home, she would
11 be the second defendant to have a trial; therefore, she
12 believes she would be very, very prejudiced by this
13 notion that the state would know all of the theories of
14 the defense even right down to the questions that we
15 would ask the witnesses.

16 It's also possible -- and Your Honor, as we
17 were in chambers this morning, I had asked the
18 prosecution to tell me who the first, second and third
19 witnesses are so that I might prepare. I find this to
20 be, number one, a professional courtesy and that I have
21 had it ordered by a number of courts. And the fact that
22 the state is not telling us who the witnesses are causes
23 us to believe it's possible that they haven't located
24 some of these witnesses and that they don't have them
25 available to testify.

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1 If there was a second trial after the birth of
2 Ms. Suttles' baby, they certainly would have all that
3 time to relocate those witnesses; again, impairing her
4 ability to get herself acquitted.

5 The factors that courts look at, sometimes
6 called the powers factors, are at 17.03 as the court is
7 aware. And they are as follows:

8 The nature of the offense charged; the impact
9 on the victim; potential prejudice to the defendant in
10 the interest of justice.

11 The nature of the offense charged, we believe,
12 is an indication that the cases should be tried together.
13 In particular, there are allegations of aiding and
14 abetting or vicarious liability for crimes of another.
15 And the Minnesota Supreme Court has held that when the
16 allegation is that when the defendants -- excuse me --
17 when the allegation is that the defendants acted in close
18 concert with each other, then that weighs towards
19 joinder. In other words, it's all essentially the same
20 incident. It's not as if Ms. Suttles is charged with
21 what happened on day 1 and Mr. Drljic with what happened
22 on day 2. It's all in a piece. It's all together. The
23 Supreme Court has said that does weigh in favor of
24 joinder.

25 Impact on the victim. I'm not aware of any

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1 particular impacts on the victim. I really don't know if
2 the state intends to call people from the -- all of the
3 different shops or not; but, this isn't a case of rape or
4 you know, a personal beating of someone where the victim
5 would be traumatized by having to come back and tell the
6 story a time and again. My guess is that's what they
7 mean by impact on the victim.

8 Potential prejudice to the defendant I talked
9 about a moment ago. Mr. Drljic joins in that. I mean,
10 it is very much the nature of our defense that we would
11 like to try the case one time and to -- and I understand
12 the nature of what the court was doing earlier with the
13 waiver of the one attorney. But, it is our defense that
14 both of these people are innocent; that they were tricked
15 into coming over and doing something for this Jermaine
16 English; that there was this involvement of this Joe.
17 And we would like to be able to show that all as one
18 defense. In other words, that is, their defense is very
19 much a combined defense, a consolidated defense, and it
20 is not antagonistic; one to the other. That is another
21 factor that weighs in favor of joinder.

22 If these were two defendants, one saying, you
23 know, A saying B did it; and B saying A did it. Those
24 are antagonistic defendants that would weigh in favor of
25 severance. In this case, it's the opposite. They are

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1 both saying, we didn't do it. We were both
2 simultaneously tricked by these other people at the
3 scene.

4 The interest of justice also weighs in favor of
5 joinder. Some of those are repetitive in the sense that
6 the state -- and there is even case law on this -- the
7 state is only entitled to one bite of the apple. They
8 are not entitled to two trials where they already know
9 the defenses on the evidence that the defense would put
10 on. That weighs in favor of justice. And also, this is
11 not a case where all the defendants agree that a crime
12 was committed; but, they are pointing fingers at each
13 other. These are two innocent people that have gone
14 through many trials and tribulations to get here and are
15 insisting on their right to a jury trial and they are
16 insisting on their innocence and justice would be served
17 by allowing them to maintain consolidated; in that,
18 maintain their sense of solidarity and unity and present
19 that case to the jury.

20 THE COURT: All right. Ms. Lamin.

21 MS. LAMIN: Thank you, Your Honor. I guess I
22 want to start, and I don't want to betray any
23 confidences, but I just want the record to reflect that
24 earlier before we broke for lunch, as Mr. Drljic was up
25 speaking with you and you were inquiring regarding his

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1 agreement of personal waiver to representation by Ms.
2 Clark, that Ms. Suttles clearly was in pain; that she was
3 rocking; she seemed to be in incredible physical pain. I
4 was concerned. I gave her a basket. Your court reporter
5 was concerned. And that was very apparent, Your Honor.

6 I, as an attorney for the public, am concerned
7 about the trauma this will put on Ms. Suttles. I do not
8 believe, in good conscience, that she can handle a trial
9 right now. We were informed regarding a medical
10 situation and that she is having complications with her
11 pregnancy, Your Honor. We could have a mistrial if we
12 proceed with Ms. Suttles and both the defense and the
13 state is entitled to a fair trial. And I am concerned
14 that that will not happen. No matter what we do today, I
15 personally am very concerned about Ms. Suttles' ability
16 to proceed to trial right now, given her medical
17 situation.

18 That doesn't necessarily speak to permanent
19 severance; but, today to proceed, given what we have
20 already witnessed in the short time we were on the record
21 and her clearly being in pain, it wouldn't be fair to
22 her. We could be endangering her physical health and
23 then I think very likely we end up having a mistrial
24 given the fact that, more likely than not, this is going
25 to go into next week, as well. We know that trial is

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1 traumatic. This is a very important case for Ms.
2 Suttles. This is going to be hard, emotionally. It's
3 clearly going to be hard, physically. And it's not fair
4 for us and it's definitely not fair to the state to have
5 Ms. Suttles proceed.

6 And In terms of, so where do we go from here?
7 I think the state is prepared. The defense is prepared.
8 Then I would recommend we proceed. We sever Ms. Suttles
9 and we would proceed with Mr. Drljic. Your Honor is
10 prepared. This is a case that has been around for close
11 to a year at this point and all the parties are ready.
12 Everyone has been subpoenaed. Let's continue. We were
13 not aware of the seriousness of Ms. Suttles' condition
14 until, frankly, we got a letter on Sunday night outlining
15 it and witnessing it this morning.

16 The defense is arguing that somehow the state
17 is going to know the defense's defense. Well, that's
18 only because Ms. Clark is representing both defendants.
19 Something that, you know, the state is very concerned
20 about. Clearly, an appealable issue. Definitely one
21 that the defense will be raising on appeal. Your Honor
22 appropriately got a personal waiver; but, nonetheless, it
23 is the defendants who created the situation.

24 In almost any case where there are two
25 defendants, there are two defense lawyers. And I haven't

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1 been practicing for many years; but a number of years,
2 and I have never seen this. And in consulting with my
3 colleagues, no one has seen this. So, in a sense, the
4 defense has created their own situation. Ms. Clark is
5 representing both parties. If there were two attorneys
6 we would not know the defense from one to the other. And
7 so that can't be the basis for keeping them together at
8 this point, when they created the issue.

9 Your Honor, in terms of severance, we hadn't
10 taken a position on severance up until this point. I
11 think, frankly, Your Honor, it can go both ways. I think
12 there are grounds to keep them together; keep them
13 joined. Again, this was something that the defense
14 requested. There was never any motion from the state.
15 And there is a basis to keep them apart. I mean, they
16 did have different roles. They may have a common defense
17 because they have the same defense attorney; but, they
18 don't necessarily have the -- I mean, very different
19 roles. I mean, Mr. Drljic was caught inside the building
20 and Ms. Suttles was outside. And her connection to it is
21 a different connection.

22 So, as you pointed out in your inquiry, they
23 could have different defenses. But, if they're creating
24 the situation where they are not going to have different
25 defenses, does not mean that they are then going to be

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1 prejudiced if they're going to have to do it possibly
2 twice.

3 And Your Honor, I just want to briefly address,
4 I have never been -- I have never provided exact order of
5 witnesses. This is a short week. This is a holiday
6 week. In addition to that, it's not an I don't have to;
7 but, it's also our witnesses' schedules are very tight.
8 We're going to be juggling people to get people here,
9 given that. So, I can't even tell you, a hundred
10 percent, as I stand today, exactly who is going to be
11 first. It just depends how we move and where people are.
12 And that's the nature of trial. It's an organic thing.
13 Things move at a certain pace and we just have to go with
14 it. Thank you.

15 THE COURT: Yes, Ms. Clark.

16 MS. CLARK: Thank you, Your Honor. I know that
17 Ms. Suttles is very sensitive that the state not gain an
18 advantage now from her pregnancy. We were together --
19 and I do not know Ms. Lamin, except for meeting with her
20 today. I'm sure she is a lovely person and none of this
21 is directed at her as a person. But the state changed
22 trial attorneys at the last minute and now we hear
23 arguments like, well, we're just hearing this for the
24 first time today.

25 The court knows that the last time we were here

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1 that the state, represented by a different prosecutor,
2 became aware as the court did of this pregnancy issue. I
3 raised it, myself. But, then we agreed that Ms. Suttles
4 would go obtain a letter from her doctor as to whether
5 she needed -- or whether she was written off the trial.
6 And obviously, she was not written off the trial. And I
7 am very concerned that the state is, with all due
8 respect, attempting to use our transmittal of that letter
9 on Sunday evening as a basis to gain an advantage and
10 force their severance. There should be -- it would be a
11 double prejudice on Ms. Suttles if she lost the right to
12 her consolidated defense, her consolidated trial, because
13 she is pregnant. It would be discrimination against her,
14 in addition to prejudice. So, we are very, very
15 sensitive that that not be allowed to occur.

16 And arguments from the state that they are
17 concerned with her possible trauma. With all due
18 respect, I have to take that with a grain of salt. I
19 think it's an argument for arguments sake. If they were
20 that concerned about trauma, maybe they should listen for
21 a time to Ms. Suttles at how traumatized she is being an
22 innocent person forced into the criminal justice system
23 where no one seems to care about the truth. No one seems
24 to care about her innocence and she seems to be a widget
25 moved down the line and everything seems to be in favor

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1 of her pleading guilty; but, she is innocent. So that is
2 another concerning thing.

3 It is true that trial is traumatic. But, the
4 ongoing case is traumatic to her, as well. And so,
5 consider it this way. I mean, we would much rather that
6 the entire case be moved until after the birth, than that
7 it be severed now. But, should she have to live through
8 the birth of her baby, having it on her conscience that
9 any moment she might have to give the baby to someone and
10 go to prison, that's also traumatic. So, she has, given
11 all of those things, made her choice. If she wanted me
12 to push for a continuance until after the birth, we would
13 have done that. And we have really spent time talking
14 about this and thinking about this. She, of course, is
15 very concerned about her baby. But that should be her
16 concern and not a concern for the court.

17 And with all due respect to the state, it is
18 reprehensible for them to gain an advantage on a legal
19 issue by claiming that they are concerned about trauma to
20 a defendant who has been wrongfully charged by the state.

21 I want to say something else about this notion
22 that now the state has a problem with me representing
23 both defendants. It's not the state's issue to be
24 concerned about. And the notion that of course we would
25 appeal on the issue is quite honestly offensive. I mean,

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1 why would these people sit here and say they want me to
2 represent them and then appeal, saying I didn't have a
3 separate attorney. I mean, that's just absolutely not
4 going to happen.

5 And by the way, I have represented more than
6 one defendant on more than one occasion and been allowed
7 to do it by judges. It is sometimes a cost saving to the
8 system; but, a lot of times it makes a lot of sense when
9 there is one defense. And the one defense does not come
10 from the one attorney; it comes from the truth being the
11 truth. And when both defendants say this is the truth
12 and it matches, that is evidence of innocence and it
13 just -- it boggles my mind that in this system we have
14 gotten to the point where evidence of innocence somehow
15 not to be held against the defendants.

16 So, I, as much as we are ready to go forward,
17 and we are, it sounds like the prosecution would rather
18 have this delayed until after the birth. I think many
19 things have been -- the prosecution has pushed us in that
20 direction. There are numerous issues of prejudice to the
21 defense if we go today that we have already raised in
22 chambers a little; the Complaint being amended today.
23 Things like that. I'm just saying, if the court decides
24 to -- if the court is concerned about Ms. Suttles'
25 pregnancy issues for this trial, then it might make sense

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1 to push both trials, still consolidated, until after the
2 birth. Thank you.

3 THE COURT: Do you want to be heard on that
4 because I know what my decision is going to be, but --

5 MS. LAMIN: That's okay, Your Honor.

6 THE COURT: Okay. All right. Well, as I read
7 this letter from the doctor, it doesn't say that Ms.
8 Suttles is in trauma. I think the pregnancy is pregnancy
9 and that it is not trauma. It does, of course, talk
10 about a history of pre-term birth. And in fact, what
11 might happen is giving birth right here in the courtroom.
12 Hopefully, that's not going to happen because I think
13 there is enough to get us through for her to get to a
14 hospital.

15 I am not going to -- I am going to keep the
16 trials together. I think that the evidence against each
17 person is the same from what I could tell, the same that
18 is going to come through for the other. So, in terms of
19 just the -- just in terms of trial time and court time
20 and prosecutor time, et cetera, they are going to stay
21 together. And that's a decision that I am making based
22 on a number of things; not necessarily because I am
23 concerned about the prejudice to the defense because I
24 don't think there would be; but regardless, I am going to
25 keep them together. And we are going to start today.

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1 And the jury is going to have to be told that they are
2 going to have to come back next week and that will
3 happen. And that's the way we are going to go.

4 And Ms. Suttles, all I can say is, just hold on
5 until this trial is over. I'm only kidding. Obviously,
6 those things happen. Babies come when they want to, but
7 it appears that you still have five or six weeks. We
8 don't intend to go that long. In fact, we should be done
9 by next week.

10 Now, let me just say a few other things. The
11 fact that the Complaint has been amended is not as
12 unusual as it seems to you, Ms. Clark. It is something
13 that does happen. I looked at the facts. The facts are
14 still the same. In fact, the Complaint really does add
15 several counts which will spell out in more detail what
16 the facts are from the probable cause statement. And so,
17 the notice has already been there that counts are going
18 to be added. And if I recall, there was a notice that
19 was sent from Mr. Dusterhoft to Ms. Clark back in May, I
20 think, that did say they were going to be added; that the
21 Complaint was going to be amended.

22 And then, with regard to the witness list
23 issue. I'm denying your request that the prosecutor has
24 to give you any order in which these witnesses are going
25 to be called. I have never had that request and I am not

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1 going to entertain that now.

2 Are you ready to proceed with calling a jury or
3 is there other things we need to --

4 MS. CLARK: When would you like to make a
5 record? We had talked through a number of things in
6 chambers, but had not --

7 THE COURT: Let's do that right now. Yeah.
8 And there are some Motions in Limine.

9 MS. LAMIN: And Your Honor, I apologize. I did
10 reoffer Mr. Dusterhoft's offer from last week and I would
11 keep that open until we impanel a jury.

12 THE COURT: Okay. And for the record, let's
13 say again what that offer was.

14 MS. LAMIN: It is that both Mr. Drljic and Ms.
15 Suttles plead to one Count for Burglary in the Third
16 Degree; stay imposition if there are no prior felonies.
17 Mr. Drljic, our understanding is, does have a felony so
18 he would not be entitled to a stay of imposition. A
19 30-day cap on time and we are in agreement that it could
20 be served by community work service or some sort of
21 alternative sentence.

22 THE COURT: Doesn't actually have to be served
23 in confinement?

24 MS. LAMIN: Yes. And we didn't clarify this,
25 but restitution for the -- joint and several, with Mr.

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1 English. And probation, the statutory requirement, five
2 years. We cannot -- obviously, we never guarantee where
3 a defendant will go in the grid in terms of time hanging
4 over their head. But, we're not seeking any upward
5 departure of any kind. It would be a guideline sentence,
6 a stayed guideline sentence.

7 THE COURT: Okay. All right. You are going to
8 keep that open?

9 MS. LAMIN: Just until the jury is impaneled.

10 THE COURT: Okay.

11 MS. CLARK: At the end of the picking process.

12 THE COURT: Before they are impaneled. So,
13 once the jury is sworn in.

14 MS. CLARK: She just told me these things, so I
15 haven't even had a chance to talk to my clients about it.
16 So that's why I'm trying to just -- it's not with the
17 swearing in of the panel; the swearing in of the Pettit
18 jury?

19 THE COURT: No, it would be before the swearing
20 in of the panel. Because once we swear them in, they are
21 on the panel.

22 MS. CLARK: Like the 13 people that are sitting
23 there; not the entire group. The Pettit jury, after voir
24 dire.

25 THE COURT: Yeah.

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1 MS. CLARK: I should have said it that way
2 earlier.

3 THE COURT: And all right. So with that,
4 should we put on the record some of the things we
5 discussed this morning? And let me go through the
6 Motions in Limine. And let me see, there were seven
7 Motions in Limine. And Ms. Clark, do you want to --

8 MS. CLARK: Thank you. There are seven and
9 then we added one, verbally, this morning. I'll call
10 that No. 8 just for ease of reference. The first is
11 simply that the prosecution be prohibited from inquiring
12 about the criminal history of Mr. Drljic, unless and
13 until the court has considered the Jones factors.

14 THE COURT: Right. And we will take care of
15 that before --

16 MS. CLARK: Before he testifies.

17 THE COURT: He testifies, yes.

18 MS. CLARK: And I believe there is only one
19 conviction at issue.

20 THE COURT: There is one conviction?

21 MS. LAMIN: It is, Your Honor.

22 THE COURT: Okay.

23 MS. CLARK: Two, that the prosecution be
24 prohibited from calling any of the state's witnesses
25 until they have provided their criminal history. I did,

1 after lunch, receive from Ms. Lamin a criminal history
2 for Jermaine English. She and I had started to go
3 through it to see and he's got a lot of convictions and
4 so already I have listed five and I have got many, many
5 more pages to go. So, just so the court is aware of
6 that, that that particular Jones factor session might
7 take some time. It's also possible that she and I may
8 agree on what goes in.

9 THE COURT: Okay.

10 MS. CLARK: We can try to keep discussing it.

11 THE COURT: All right.

12 MS. CLARK: Motion No. 3 is to exclude Spriegl
13 evidence.

14 THE COURT: Exclude Spriegl. Okay.

15 MS. CLARK: Motion No. 4, that police not be
16 able to testify that a crime has been committed. All
17 they can do is testify to the facts; what they saw,
18 heard, you know, observed, felt. But not as to any
19 conclusions that would invade the province of the jury.
20 And you know, this kind of comes in often as -- well, I
21 am very concerned about the investigator, but even the
22 arresting officers sometimes will say, well, I knew that
23 that was a burglary and so therefore I arrested them.
24 That type of evidence we would like to exclude.

25 THE COURT: Well, that certainly may go without

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1 saying, but obviously that's not going to happen unless,
2 you know, a question is asked that elicits that kind of
3 response. That's not going to happen. All right. It's
4 going to get pounced on so fast. But, I don't think --
5 if that were to happen, we can deal with it in the
6 evidentiary -- the evidence part of it. Okay. So make
7 your objections.

8 MS. CLARK: I do find that it just sometimes
9 just comes out in the answer of a police officer. So I
10 guess we would ask that -- I'm not sure if the state is
11 calling any police officers; but, if they are, that they
12 caution them not to say it.

13 THE COURT: Oh, sure. Yeah.

14 MS. CLARK: Okay. Then we don't have to deal
15 with a mistrial or something.

16 No. 5, I believe there is no opposition to
17 that. I don't know of any gang evidence in this case,
18 but we just didn't want a mistrial there, either.

19 THE COURT: Okay. That's not a problem. Okay.

20 MS. CLARK: No. 6, the state has already
21 agreed, in chambers, not to use the word mugshot.

22 THE COURT: Right.

23 MS. CLARK: When showing pictures of
24 defendants.

25 With regard to hearsay, and this would continue

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1 throughout the trial. It's obviously very much an issue
2 for Jermaine English, but we would object to any hearsay
3 testimony; testimonial statements without the ability to
4 cross-examine witnesses against the defendants. And I do
5 not think the state is opposing.

6 And then the No. 8 was that Ms. Suttles had
7 \$16,000 on her when she was arrested. And although it's
8 fine to put in the fact that she had that cash on her, we
9 oppose any commentary on it like, well, we were sure she
10 was out robbing other stores, but we couldn't prove it or
11 something like that. The cash was returned to her. And
12 clearly Sergeant Strickland has already testified that
13 there was no evidence it was from ill gotten gains.

14 THE COURT: Right. And I don't think that's
15 going to happen, so not allowed. Okay. The state's
16 Motions in Limine.

17 MS. LAMIN: Your Honor, the first one is
18 seeking the fleeing police officer from 2004.

19 THE COURT: And those we are dealing with the
20 Jones factor. Okay. We'll argue that later. All right.

21 MS. LAMIN: I'll go to the rest. Three, four,
22 five, six, seven and I am not seeing eight, so nine, ten,
23 eleven, twelve. These are pretty standard.

24 THE COURT: Right.

25 MS. LAMIN: I just essentially want to follow

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1 the Rules in terms of voir dire and addressing the jury.
2 I believe the only controversial one would be No. 2.

3 THE COURT: Right. And so, three, four, five,
4 six, seven. Ms. Clark, those are pretty standard.

5 MS. CLARK: I'm still looking for her motion.

6 THE COURT: For what?

7 MS. CLARK: For the motions made by the state.
8 I just got them this morning. I had too many other
9 things to do, like read the Amended Complaint that I
10 really, truly did not read through all of them. But --
11 oh, here they are. I just couldn't find the paper for a
12 second there. Two, obviously, the court has asked for
13 additional briefing on that. So, it's numbers three, we
14 have no objection to if it goes both ways.

15 Four, no objections, if it goes both ways.

16 Five, we do object to. I pulled this case over
17 the -- oh, no, I'm sorry. Five, we don't object to if it
18 goes both ways.

19 It is six that we do have an issue with. I
20 pulled this case over the lunch hour. I do not read it
21 to say what the state says it says. And in particular,
22 the Supreme Court declined to rule on the issue. They
23 were declining to rule on the issue. And it is very much
24 part of proper voir dire to make sure that we have
25 witnesses who can truly set the clock back to zero. And

1 truly not make any presumptions. And that is a huge,
2 huge part of voir dire for a defendant is talking about,
3 in various different languages, the burden of proof and
4 the presumption of innocence. So we do object to that
5 one.

6 MS. LAMIN: Your Honor, that's fine. I will
7 withdraw it. I don't have that case in front of me.

8 THE COURT: I don't, either, so I'm not going
9 to rule on that without seeing that case.

10 MS. CLARK: With regard to seven, oh, yeah, we
11 wouldn't be commenting on punishment and that should go
12 both ways and the prosecution should also not do that.
13 And nine --

14 THE COURT: So, there is no eight?

15 MS. LAMIN: I can't find it anywhere. I'm
16 sorry, Your Honor, I did --

17 THE COURT: It's okay. It might have just
18 gotten renumbered differently. Is that all?

19 MS. LAMIN: I think it's messed up.

20 THE COURT: Okay. All right.

21 MS. CLARK: I don't know that I understand
22 nine. The prosecution can't comment on the defendant not
23 testifying; can't comment on the defendant choosing not
24 to speak to law enforcement. So I'm not sure how this
25 comes out in this case. It's really not an issue because

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1 my clients talked to law enforcement. I don't know how
2 it would come up, but --

3 THE COURT: Where? Number nine?

4 MS. CLARK: Yes.

5 THE COURT: Not to testify by defense counsel?
6 Now you said law enforcement?

7 MS. CLARK: I was just trying, in my head, to
8 understand it. I don't understand it.

9 THE COURT: Okay. Number nine is for an order
10 prohibiting defense counsel from telling the jury that
11 the defendant was instructed or advised not to testify by
12 defense counsel.

13 MS. LAMIN: It's saying, you didn't hear this
14 person testify because I told him not to, so it's, you
15 know, the state can't comment on it and the defense
16 shouldn't either.

17 THE COURT: Would not be able to comment
18 either, is what you are saying?

19 MS. LAMIN: Well, argue.

20 MS. CLARK: I don't know if it will come up.

21 THE COURT: Yeah, I --

22 MS. CLARK: I don't have any intention of that.

23 THE COURT: Okay.

24 MS. CLARK: Number ten, the case law, as I
25 understand it, says that the prosecution cannot comment

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1 that the defendant didn't call a witness. I don't have
2 intention on commenting if the defense -- excuse me, if
3 the prosecution doesn't call a witness. But, I very much
4 intend to talk about evidence that's missing, evidence
5 that wasn't gathered; you know, the downside of the
6 investigation. And that is fair game in a trial.

7 MS. LAMIN: This is on the commenting of the
8 witnesses. This is not about evidence. I'm sorry, this
9 is not about what evidence was and wasn't gathered. This
10 is, where is this witness?

11 THE COURT: That's what you are saying you
12 don't want a comment on that kind of --

13 MS. CLARK: If it's limited, I'm fine, if it
14 goes both -- you know, both ways.

15 THE COURT: Right. But -- okay. Well,
16 whatever it is, proper foundation has to be laid, anyway,
17 before we get the evidence in. All right. Number 11.
18 Okay. Order prohibiting defense counsel from asserting,
19 in the presence of the jury, personal belief or opinion
20 as to the veracity of a witness.

21 MS. CLARK: I'm fine with that as long as it is
22 applied to both attorneys. Neither should comment.

23 THE COURT: And for an order prohibiting
24 defense counsel from asserting personal belief or opinion
25 as to the defendants' innocence in the presence of the

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1 jury.

2 MS. CLARK: Same thing. Fine if it applies to
3 both counsel.

4 THE COURT: How are you going to distinguish if
5 there is an argument about innocence versus a personal
6 belief of that?

7 MS. LAMIN: That's how I phrased it; I don't
8 believe they did it, you shouldn't believe it.

9 THE COURT: I just want to be clear what we are
10 talking about. Okay.

11 MS. CLARK: And obviously the prosecution can't
12 vouch, either, or testify in closing.

13 Thirteen, for an order prohibiting defense
14 counsel from suggesting the not guilty plea is to prove
15 in testimony --

16 THE COURT: Number 13, for an order prohibiting
17 defense counsel from suggesting that a not guilty plea is
18 the equivalent of testimony to the effect that the
19 defendant did not commit the crimes charged or that the
20 defendant lacked the necessary state of mind. And Ms.
21 Clark, you're okay with that?

22 MS. CLARK: Yes.

23 THE COURT: Okay. All right. Let's look at
24 Number two, because I want to look at this a little more
25 closely. And --

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1 MS. LAMIN: It's two things, Your Honor.
2 First, the defense has listed Joe in quotes as a witness.
3 I would ask that not be read. That's not specific
4 enough. We don't know who that is. I would think it's
5 going to be confusing for the jury. My understanding is
6 there is two ways of pursuing alternative perpetrator
7 evidence.

8 THE COURT: Okay.

9 MS. LAMIN: One is a reverse Spriegel situation.
10 But, another one is, you know, having some sort of
11 defense witness talk about, it was this person. They did
12 this. But, in either one of those, especially the
13 alternative perpetrator evidence, the defendant has to
14 lay some sort of proper foundation and proffer evidence
15 that there is some sort of inherent tendency to commit --
16 and this is, you know, I have this published case with
17 me. I have, unfortunately, just one copy. This is
18 recent law. It's standard law. There -- it can't be
19 continually put out there with no basis. That's the
20 state's only concern.

21 So, there is some mysterious Joe. Your Honor,
22 at the very least, I ask that that be -- I mean, there is
23 nothing to indicate that there is a mysterious Joe, other
24 than the self-serving statements of the defendants. In
25 terms of, again, Thomas Joseph Nolan, there has never

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1 been anything to indicate that he ever had any connection
2 other than being a witness to part of the crime and
3 yelling down to the officer, you know, I saw Ms. Suttles
4 carrying something out of the building. So, there is
5 no -- there is no physical, I mean, for once, my
6 understanding may be Mr. Nolan took some back stairs.
7 But, there is nothing like that. I mean, essentially
8 where he is, it looks physically connected, but almost a
9 completely separate building from where these businesses
10 were located. He would have been going outside. And
11 there is nothing. And they never, at the time, accused
12 him when they gave statements, you know, at the scene.
13 At the time when they spoke to Sergeant Strickland, there
14 was nothing. And it seems like this is something, I
15 think, just to confuse the jury.

16 THE COURT: All right. Ms. Clark.

17 MS. CLARK: Thank you. And my understanding
18 from chambers was that the court wanted us to brief this
19 and I am happy to do that.

20 THE COURT: Well, you know, I have given it
21 further thought and I really thought about this. But,
22 tell me your best guess at this, because I'm going to
23 tell you what my answer is.

24 MS. CLARK: I do want to state, for the record,
25 we did not receive these motions until this morning.

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1 THE COURT: Right.

2 MS. CLARK: And I certainly could have provided
3 the court with some more briefing and case law had we
4 gotten them earlier. Where this comes up a lot is in
5 murder cases. And the -- and I have been through this
6 and had a pretrial Jones hearing to identify alternative
7 perpetrators. And I am very clear on the case that what
8 alternative perpetrator evidence is, is reverse Spriegl.
9 In other words, it's not what I -- say I'm the criminal
10 defendant. It's not what I saw. And no matter what, if
11 I saw Joe shoot Mary, there is nothing in the world to
12 prevent me from saying, I saw Joe shoot Mary. I didn't
13 shoot Mary. I saw Joe shoot Mary. That evidence is
14 always, you know, relevant and it's always -- it can
15 always come in because it is observed by the defendant or
16 whatever witness there is.

17 The reason that you have to lay alternative
18 perpetrator evidence in advance and receive a ruling of
19 alternative perpetrator status prior to trial, under
20 State v. Jones, is so that the court can determine
21 whether or not you can put in other, outside the
22 incident, evidence with regard to that person.

23 And let's just take an example. Say defendant
24 A is accused of shooting Mary. And he wants to put in,
25 hey, look, I didn't see B there. There is no evidence

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1 that B was there. But B threatened Mary a week prior.
2 So the question is not can he put in the shot Mary. I
3 saw B shoot Mary. That's always relevant. That always
4 comes in. The question is, can he put in, I heard him
5 threaten Mary a week ago. That's alternative perpetrator
6 evidence. That's reverse Spriegl. And I feel very clear
7 about that.

8 And there is, in fact, a United States Supreme
9 Court case from, I want to say 2006, Holmes, H-O-L-M-E-S
10 v. South Carolina, in which a state rule was stricken as
11 unconstitutional under the federal due process clause
12 because it too much limited the ability of a criminal
13 defendant to put in alternative perpetrator evidence.
14 And I think, perhaps though, that even before we would
15 have to get to some of those legal issues, I can lay to
16 rest any concerns that the state has because of what
17 evidence there is in this case.

18 I just heard from the prosecutor that there is
19 no evidence of a Joe. That's not accurate. And this has
20 been the consistent story from Ms. Suttles and Mr. Drljic
21 from the get go. That they were called by Jermaine
22 English to come over to the building because Joe needed
23 to get his things moved. In other words, they were to
24 come help Joe move. Joe was on the other end of the
25 phone. They heard him speaking to Jermaine. Doesn't

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1 mean they could see through the phone, but they heard him
2 speaking.

3 And then, that a white man came and put some
4 things in Ms. Suttles' trunk. She said this from the
5 very point that the police got there. That's the guy.
6 That's the guy that put stuff in my trunk. And so, of
7 course, she can testify I saw this guy put things in my
8 trunk and I heard this over the telephone. We were
9 supposed to come over.

10 Now, do we know definitively that Thomas Nolan
11 is Joe? No, because we haven't had a picture of him or
12 Ms. Suttles and Mr. Drljic haven't seen him in a context
13 where he is identified as Joseph Nolan. But, if he gets
14 up on the stand and they see him and they say, that's the
15 white guy that was putting stuff in my trunk, well then,
16 I don't know that we need to go much further.

17 THE COURT: Well, what I was going to say is,
18 in fact, I am going to grant the state's motion on this
19 because I believe we will have -- first of all, I'm not
20 finding out the basis of this -- well, for this Joe. The
21 fact that Thomas Nolan is going to take the stand gives
22 you ample opportunity to cross examine. And you can
23 cross examine Mr. Nolan when he is on the stand. And
24 that's -- I don't have any basis for giving an
25 instruction on the alternative perpetrator, really. I

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1 think you can always bring that in, in the context in
2 which you are raising your defense; but because, is going
3 to be asking for a specific jury instruction and there
4 won't be any.

5 MS. CLARK: Your Honor, I'm confused. We are
6 not asking to have him declared an alternative
7 perpetrator.

8 THE COURT: Okay.

9 MS. CLARK: We never did.

10 THE COURT: Okay. The state's argument is that
11 you not be allowed to argue that.

12 MS. CLARK: Not be allowed to argue -- see, I'm
13 very confused now because, of course, we can argue that
14 Joe was the guy putting things in the trunk.

15 THE COURT: You can argue as long as there is
16 foundation to argue, yes.

17 MS. CLARK: What is the part we can't argue?
18 That Thomas Nolan is Joe?

19 THE COURT: You can argue that, too, I think,
20 if you have your foundation.

21 MS. CLARK: So, it's just a matter of -- see,
22 we never asked to have him identified an alternative
23 perpetrator.

24 THE COURT: Okay.

25 MS. CLARK: But, it's Spriegl. That's maybe

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1 why we're confused. Maybe there isn't really a
2 disagreement.

3 MS. LAMIN: I just want proper foundation, Your
4 Honor. At this point, we haven't seen it. The defense
5 counsel, defense investigator went and interviewed and
6 met with Thomas Nolan. And I read, took pictures. I
7 can't believe that they are taking pictures of Mr. Nolan
8 and then show him to the defendants.

9 MR. CLARK: Well, he didn't -- we didn't even
10 know that could be Joe at the time. And he just did it.
11 And when he called back to make another appointment,
12 apparently --

13 THE COURT: And you are not going to have an
14 alternative perpetrator coming in. I just want to make
15 sure about that.

16 MS. CLARK: Yes. We didn't even ask for that
17 and maybe that's where the confusion is.

18 THE COURT: Oh, that really helps a lot.
19 Because you can argue what you want to argue as long as
20 we have foundation for that.

21 MS. CLARK: Sure.

22 MS. LAMIN: And I would just ask that there is
23 no Joe in the defense witness list.

24 THE COURT: Well, and that's the other thing.
25 You do this. You know, I looked at the witness list

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1 and --

2 MS. CLARK: I never got a witness list from the
3 state.

4 MS. LAMIN: Your Honor, the state sent a formal
5 witness list back in May.

6 THE COURT: The witness list I have are both
7 the defense and prosecutor's witness lists. And I think
8 you had Joe on your list, Ms. Clark. And I'm not
9 allowing anybody named Joe without proper identification.
10 Because Joe whatever, is fine; but, just Joe can't come
11 in.

12 MS. CLARK: Right. I'm fine with no reading of
13 Joe to the jury. I just wanted to indicate, you know,
14 for the court and counsel, that if we figure out who Joe
15 is then --

16 THE COURT: That's the argument. And that
17 Patricia Y, before we get that, It probably won't be
18 until tomorrow.

19 MS. LAMIN: Your Honor, if we have a short
20 break, I'll call. But, I am -- but I believe that is her
21 name. Her last name is Y. I have a -- that's the way it
22 appears in all of our complaints and in all of our police
23 reports. If we have it right, Your Honor --

24 THE COURT: All right. Is there anything else
25 we needed to put on the record before we --

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1 THE CLERK: I just have one thing. I am
2 looking at the jury instructions right now and Ms. Clark
3 proposed that there was a jury instruction to be put in
4 the pretrial instructions. So, I don't know if you want
5 to talk about that. Are we putting a pre --

6 MS. CLARK: It doesn't really need to be put in
7 the pre instructions. It can be read at the time. It's
8 just if we play an audio it talks to them about the
9 transcript isn't the evidence. The evidence is what they
10 hear. You can fill that in at any point or even when it
11 occurs at trial. We don't even know yet if it's going to
12 occur.

13 THE COURT: Okay. All right. There is a jury
14 instruction that I am putting in that will be when we
15 have an impaneled jury and that has to do with an
16 instruction to the jury that they need to make sure that
17 each -- that the evidence is against -- that each of the
18 defendants is considered separately from the evidence
19 that comes in. So, it's just another clarifying piece
20 before -- after we impanel, so we will have the jury that
21 we will deal with and before they get the case.

22 THE CLERK: Just to clarify. The offenses
23 considered separately JIG.

24 MS. CLARK: It's multiple offenses, but you are
25 adding in multiple defendants; right?

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1 THE COURT: Right. Oh, yeah. It is about the
2 multiple defendants as well.

3 THE CLERK: Do you want me to actually read it
4 to you? I have it right here.

5 THE COURT: Yes.

6 THE CLERK: In this case multiple defendants
7 have been charged and each defendant has been charged
8 with multiple offenses. You should consider each offense
9 and the evidence pertaining to it separately. The fact
10 that you may find a defendant guilty or not guilty, if
11 one of the charged offenses should not control the
12 verdict as to any other offenses.

13 That's word for word.

14 THE COURT: That's right. And I just wanted to
15 make sure that that's qualified, for the record. All
16 right. What else?

17 MS. CLARK: I wanted to make a quick record on
18 some of the things we talked about in chambers. The
19 prosecution confirmed they are not intending to offer
20 December 20th as either Spriegl or some evidence in this
21 case. They also confirmed that they are not intending to
22 request to impeach Ms. Suttles with a misdemeanor theft,
23 de novo, conviction that should already have been, you
24 know -- what is the word I'm looking for -- voided
25 because she completed the program. That they are not

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1 attempting to impeach her with that.

2 I also just wanted to make a brief record with
3 regard to the Amended Complaint. The Amended Complaint
4 is not signed by a complainant. And the Complaint that
5 we had earlier was signed by Sergeant Strickland. I
6 would ask that the new Complaint be signed -- if the
7 court is going to allow it, that it be signed by Sergeant
8 Strickland before he testifies.

9 We did argue in chambers that it was highly
10 prejudicial to attempt to amend the complaint the day of
11 trial. I also indicated that I had not even been given
12 any warning that there would be an attempt to amend the
13 complaint. That is, nothing last week, even after we
14 were called up for trial. Nothing Sunday by fax. No
15 e-mail. I did hear the argument this morning that there
16 was a May notice of intent to amend to complaint and I
17 want to clarify what that is. That was, in our view, a
18 threat, an intimidation tactic used by the prosecution to
19 try and get people to plead guilty. And we find that
20 tactic to be unconstitutional. And the term is sometimes
21 called vindictive or retaliatory prosecution. There is a
22 constitutional right to have a jury trial and if there
23 are coercive tactics used, then it impairs the right. So
24 regardless of how often it occurs, it is our argument and
25 will continue to be our argument that amending the

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1 complaint on the day of trial is prejudicial and that
2 threatening to amend a complaint merely because these
3 defendants exercised their constitutional right to a jury
4 trial is in fact improper under a number of theories,
5 including but not limited to, retaliatory prosecution,
6 vindictive prosecution, denial of due process and
7 fundamental fairness.

8 The other thing that I said in chambers this
9 morning is because this was just dropped on me this
10 morning, I have not had time even to review my own file
11 to determine whether or not I received, in May, any type
12 of a notice. So, I can't even make intelligent argument
13 on behalf of my clients, which is kind of the definition
14 of prejudice. And the reason I didn't have time, even
15 though I had about an hour this morning, was because I
16 was also dealing with a lot of other papers that were
17 dropped on me this morning, including 13 Motions in
18 Limine and a number of new discovery pleadings; things of
19 that nature. So, I really worked extremely hard for that
20 hour. I did my very, very best; but, I couldn't possibly
21 get through everything.

22 There is case law that I didn't know to bring
23 with me that indicates that if the complaint is amended
24 on the trial day, it is prejudicial. That is a record we
25 want to make. And we also made the argument that we do

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1 not think that the facts allege probable cause for the
2 new charges. And even if there was notice in May in the
3 form that was showed to me in chambers this morning, it
4 wasn't sufficient for purposes of preparing for a trial.

5 The court will recall that at the Omnibus
6 Hearing we talked about the burglary tools. Sergeant
7 Strickland testified that they were associated with
8 Jermaine English and not these particular defendants.

9 THE COURT: I'm sorry. What was that?

10 MS. CLARK: Sergeant Strickland testified that
11 the burglary tools were associated with Jermaine English.
12 That's consistent with what he said to me when I went
13 over to the property and evidence room. And then he also
14 confirmed that police failed to preserve any fingerprint
15 evidence from those tools. And my argument in chambers
16 this morning, which I want to repeat for the record, is
17 if we had known there had been a Second Degree Burglary
18 charge based on burglary tools -- if we had known it some
19 time ago, we could have had our own fingerprint
20 specialist look over the evidence and either confirm
21 there are no fingerprints of my clients or something of
22 that nature. Because that was not the basis of the
23 charge against my clients, we did not do that and now
24 it's too late to do it.

25 I do hope that the state is not going to

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1 attempt to argue or put on some kind of evidence that
2 there is evidence, some kind of fingerprint or DNA
3 evidence, of my clients on those tools. It seems to me
4 that should have been disclosed, certainly, by now. And
5 maybe the way to say it is, hopefully the state will
6 confirm that there is exculpatory evidence; that is to
7 say, no fingerprint or DNA evidence of these defendants
8 on those tools. And it could be at some point we will
9 make a motion for a judgment of acquittal.

10 One thing I want to say is I am still confused
11 about this; but, my clients were subpoenaed by the
12 prosecutors in this case. I don't know if it was an
13 error.

14 MS. LAMIN: It was an error.

15 THE COURT: What was that?

16 MS. LAMIN: I think because there was, in our
17 computers they are separate, so they just go through
18 the -- you know, like you would subpoena co-defendants.

19 MS. CLARK: All right. Well, that solves that
20 problem. I didn't know if we had to get into some
21 immunity proffer or what.

22 The other thing I asked for in chambers was a
23 copy of all subpoenas issued by the state. I do not have
24 those. I think we are entitled, at a minimum, to know
25 who they purport to have subpoenaed. My experience with

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1 prosecutorial -- large prosecutorial law firms is that
2 they often mail subpoenas. That is bad service. I mean,
3 improper service. My clients were mailed these
4 subpoenas. I mean, I consider my clients not to be
5 served. And so I just don't know if that is going to
6 come up, but we would like to know the method of service
7 and get copies for service that they have subpoenaed. I
8 do think that even if they can't tell me exactly what
9 order they are going to call witnesses in, I do think we
10 are entitled to know; particularly, Your Honor, if my
11 clients are supposed to be considering a settlement
12 offer. If the state has Thomas Nolan and these other
13 people to put on the stand, I think if they haven't been
14 able to locate them or something of that nature, I think
15 we are entitled to know that, too.

16 THE COURT: Okay. So the concern of --

17 MS. LAMIN: Well, Your Honor, I don't know. I
18 guess, do you want me to respond?

19 THE COURT: No, I do want you to.

20 MS. LAMIN: Your Honor, we can start with the
21 subpoenas. I do not -- I've never heard of the state
22 being required to show our subpoenas to defense counsel.
23 I also don't -- issue of service, I guess, the defense
24 can raise with our witness. Again, we have given, back
25 in May, a list of our potential witnesses. It is the

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1 state's duty to present those witnesses. If we fail to
2 meet our burden, the defense is free to argue that and
3 ask for acquittal at any stage at the trial. We don't
4 anticipate, at this point, witness problems. If
5 anything, we have scheduling problems. We don't have
6 witness problems.

7 In terms of the -- and I just really briefly
8 want to talk about the Amended Complaint. Your Honor,
9 the state gave the defense notice of the Amended
10 Complaint back in May, even specifically the burglary
11 tools. These were the tools found in Ms. Suttles'
12 vehicle. I think to say that -- and this is also an aid
13 and abet. And Mr. English is an accomplice. So, clearly
14 the tools would be appropriate for charging with both Ms.
15 Suttles and Mr. Drljic.

16 Your Honor, the defense was on notice and had
17 ample opportunity to prepare in this. I don't believe
18 there is any surprise. If the defense claims prejudice,
19 obviously the defense can seek a continuance if it needs
20 more time to prepare. But, that's not what it's doing.
21 So, the state's position is that it's ready to proceed.

22 In terms of late motions, Your Honor, we
23 received an e-mail from your clerk that we need to come
24 today with motions, jury instructions. Your Honor, the
25 state complied and brought its Motions in Limine, Jury

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1 Instructions and Amended Complaint. But the state
2 selects what charges to charge defendants with. It's not
3 uncommon that we amend at some course during the
4 prosecution of a case and it's not inappropriate, Your
5 Honor. This is within our discretion. No significant
6 facts have changed to the defense or the defense theory.
7 This does not prejudice the defense in any way. It's
8 theory remains there is some mask conspiracy out there
9 against the defendants. And this just clarifies exactly
10 what occurred. Thank you.

11 And I actually have -- oh, in terms of
12 complainant, I don't see anywhere in the Rules that it's
13 required to be a police officer. I'm an officer of the
14 court. I have signed complaints in the past and there is
15 no rule violation for signing a complaint. And I brought
16 them. I haven't filed them; but, I will give them to
17 your clerk, if that's okay, too, to file.

18 I believe that's all.

19 THE COURT: Okay. All right. I am denying the
20 defense request regarding the acceptance of the Amended
21 Complaint. I read through it again, carefully, and it
22 does not assert any new facts. It is the same facts and
23 I guess these counts are always out there waiting to be
24 charged. And apparently, a notice was given back in May
25 that this could happen and the Complaint could or would

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1 be amended. I realize this might seem, from the defense
2 perspective, as vindictive. And I suppose you are
3 certainly entitled to your feelings about that. But it
4 is something that has been accepted by the court in the
5 past so I do intend to accept now. There are no new
6 facts here that were not there before in the Complaint.

7 In addition, if there were any exculpatory
8 evidence, I believe this had been argued before in the
9 Omnibus Hearing which we had, where the Brady allegations
10 were made and that, as you will recall, the court did not
11 find any Brady violation.

12 And with regard to the copies of subpoenas,
13 unless you give me a case that says that the state is
14 required to show, I have never encountered that and I am
15 not requiring the state to show that they have subpoenaed
16 witnesses. It is my intention that once I do call the
17 witness list and put the jury on notice about who these
18 people are, sometimes the state doesn't call everybody on
19 the list, as you well know. And so I don't see what
20 purpose a copy of the subpoena is going to show.

21 And I believe that's it.

22 MS. LAMIN: Your Honor, can I raise one thing?

23 THE COURT: Yes.

24 MS. LAMIN: In the defense Jury Instructions
25 they include a jury instruction for, I believe, fourth

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1 degree burglary. And so, am I -- is the defense seeking
2 some sort of lesser included? I don't know.

3 MS. CLARK: I don't know yet.

4 THE COURT: I'm sorry?

5 MS. LAMIN: Your Honor, the defense, in their
6 jury instructions, I believe on page -- there is a
7 burglary instruction for fourth degree burglary, 17.12
8 and 17.13.

9 THE COURT: Yeah.

10 MS. LAMIN: So, I didn't know if the defense
11 was seeking a lesser included. If that is something you
12 should read, at this point, to the jury.

13 THE COURT: No.

14 MS. LAMIN: Or if it's something for later.

15 THE COURT: No. We would do that before the
16 final instructions. So, if we need to deal with that
17 then, well, we'll have to talk about that.

18 MS. CLARK: I just don't know how the case is
19 going to come in yet, so -- and I didn't have second in
20 there because I didn't know until today that that was
21 added in.

22 THE COURT: Okay. All right. I think we can
23 take a break.

24 THE CLERK: And go get the jury.

25 THE COURT: Start bringing up the jury. And

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1 then, Ms. Lamin, I need that name. Okay.

2 MS. LAMIN: Yes. I'll call right now.

3 (Recess taken) (Prospective Jurors were escorted
4 to the courtroom at this time and the following
5 proceedings were had.)

6 VOIR DIRE EXAMINATION

7 THE COURT: Good afternoon. And you can tell
8 from the time of the day, you probably thought you
9 weren't going to get called, huh? But, this is the best
10 part of the thing. All right. Well, good afternoon,
11 everyone. You have been summoned to the District Court
12 of Ramsey County today for the purpose of selecting a
13 jury to try a criminal case.

14 My name is Judge Bohr. It's important that you
15 be able to see what is happening here and to be able to
16 hear the questions that are being asked. If any of you
17 have difficulty hearing or understanding, let me know
18 now. Would you raise your hand if you can't hear me.

19 (No response)

20 Okay. And raise your hand if you don't
21 understand what I am saying.

22 (No response)

23 All right. So that means everybody can hear
24 and can understand; correct? All right.

25 Does anyone have difficulty hearing or seeing

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1 and need any assistance?

2 (No response)

3 Does anyone have any trouble understanding what
4 I am saying?

5 (No response)

6 And we will swear you in at this time.

7 THE CLERK: Everyone please rise and raise
8 their right hand.

9 (Jurors sworn)

10 THE COURT: Thank you.

11 JUROR: Could I request an affirmation, please.

12 THE COURT: Okay. Well, we will affirm.

13 (Affirmation given to juror)

14 THE COURT: Okay. We will affirm that you will
15 answer the questions that are asked of you truthfully.

16 JUROR: I will.

17 THE COURT: Okay. Thank you. All right. This
18 is a criminal case. A Complaint has been filed with this
19 court which alleges that the defendants committed three
20 counts of Burglary in the Second Degree and three counts
21 of Burglary in the Third Degree. To this Complaint, the
22 defendants have pled not guilty. The plea denies the
23 charge and places upon the State of Minnesota the burden
24 of proving the co-defendant's guilty beyond a reasonable
25 doubt.

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1 The State is represented by Elizabeth Lamin.

2 Please rise.

3 MS. LAMIN: Good afternoon.

4 THE COURT: And the co-defendants are
5 represented by Jill Clark. Please rise, Ms. Clark. The
6 defendants are Daniel Drljic.

7 DEFENDANT DRLJIC: Good afternoon.

8 THE COURT: And Tamika Suttles.

9 Okay. Some general rules of law apply in a
10 criminal case. I will give you those rules now. In the
11 proceeding that will take place in a few minutes, you may
12 be asked whether you will accept and follow the Rules of
13 Law and you should have these instructions in mind when
14 you answer these questions.

15 A Complaint is not evidence. It creates no
16 inference or presumption of guilt. No member of the jury
17 should in any way be prejudiced against the defendants
18 because a complaint has been filed against the defendants
19 or because the defendants may have been arrested or
20 because the defendants are on trial.

21 The defendants are presumed innocent. In order
22 for you to find the defendants guilty, the state must
23 prove guilt. The defendants do not have to prove
24 anything. The presumption of innocence remains with the
25 co-defendants unless and until the defendants have been

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1 proven guilty beyond a reasonable doubt by evidence
2 admitted in this trial.

3 Now I am going to read a list of persons who
4 may be called as witnesses. When I read this list,
5 remember or jot down anybody on the list that you may
6 know or to whom you may be related. If you are called as
7 a perspective juror, you should then inform me of your
8 knowledge of or relationship to these persons.

9 Amber Ray Alvarez; Peter Jacob Brown; Richard
10 Dusterhoft; Jermaine Guy English; Jonathan Glisky; Brady
11 Allen Harrison; Patrick Michael Cain; Robert McDowell;
12 Thomas Ronald Menton; Thomas Joseph Nolan; Daniel Samuel
13 Rose; Tyrone Timothy Strickland; Patricia Y.

14 To insure both the defendants and the state
15 receive a fair trial by an impartial jury, it will be
16 necessary for me and for the counsel for each party to
17 ask you certain questions that you must answer under
18 oath. Please do not take offense at any questions that
19 you are asked. Your contribution to this important and
20 serious matter is best assured by your honest answers to
21 those questions. Some of you who will be called to be
22 questioned will be excused from serving on the jury. If
23 you are excused, it does not mean that anyone doubts that
24 you are a fair person.

25 We will now begin the jury selection process.

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1 When your name is called, please come forward and take
2 your seat as directed. If your name is mispronounced, we
3 apologize and ask that you state the correct
4 pronunciation as you come forward. And we will proceed
5 with the reading of the names.

6 THE CLERK: When I call your name, if you could
7 first start filling in the back row from the very corner
8 and then fill in the second row and then the last row.

9 James Ervasti; Candace Foreman-Coley; Mark
10 Ronayne; Michael Vang; Mary Studnek; James Speckmann;
11 Leslie Petersen; Justine Lee; Darren Bishop; Susan
12 Thomas; Deborah Lein; Lisa Heilman; Andrew Michalski;
13 Sheyenne Haase; Cassandra Olson; Robert Bloomer; Paul
14 Thompson; Amanda Puariea; James Haffely; Derek Gold;
15 Brandon Biljan; and Stephanie Glaser.

16 THE COURT: Your contribution to the important
17 and serious matter at hand is best assured by your full
18 and free answers to the questions asked during this jury
19 selection process. It is critical that your answers be
20 honest and truthful. I will ask you about your
21 qualifications to sit as jurors in this case. When I am
22 done, the attorneys will ask additional questions. I
23 hope that you will not take offense at any question you
24 may be asked. Some of you will be excused on this jury.
25 If you are excused, it does not mean that anyone doubts

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1 that you are a fair person.

2 Those of you not called are asked to listen
3 closely to all the proceedings until a jury is finally
4 impaneled. This is because you might be called upon to
5 replace a potential juror who has been excused. It will
6 save time if we do not have to repeat all the questions
7 and you are prepared to offer your answers.

8 If your answer to any of the questions is yes,
9 please raise your hand. If you would have difficulty
10 responding to a particular question or if your answer to
11 any question by me or the attorneys would be personal or
12 sensitive or have an adverse affect upon another juror,
13 please let me know before answering and you can answer
14 outside the presence of the other jurors.

15 In answering questions, be as candid and
16 truthful as possible. We are not trying to pry
17 unnecessarily into your personal lives; we're merely
18 seeking information to select a fair and impartial jury.
19 We all have attitudes, beliefs and life experiences that
20 may be important.

21 So, would anyone have difficulty accepting or
22 following the Rules of Law that the defendants are
23 presumed to be innocent?

24 (No response)

25 That the state has the burden of proof?

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1 (No response)

2 That the state must prove the charge beyond a
3 reasonable doubt?

4 (No response)

5 That the defendants do not have to prove their
6 innocence?

7 (No response)

8 Do any of you know any of the following people
9 who may be called to testify in this case or whose names
10 may be mentioned in this case? Please listen carefully.
11 Please let me know by raising your hand whether you know
12 any of these people or are related to them. We may then
13 ask you further questions about your knowledge or
14 relationship. And the names are:

15 Amber Ray Alvarez; Peter Jacob Brown; Richard
16 Dusterhoft; Jermaine Guy English; Jonathan Glisky; Brady
17 Allen Harrison; Patrick Michael Cain; Robert McDowell;
18 Thomas Ronald Menton; Thomas Joseph Nolan; Dana Samuel
19 Rhodes; Tyrone Timothy Strickland; Patricia Y.

20 (No response)

21 Do any of you know any of the parties I have
22 introduced, including the prosecuting attorney, Ms.
23 Lamin; the Defendants Daniel Drljic and Tamika Suttles;
24 the defense Attorney Ms. Clark or any of the names I have
25 just read to you?

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1 (No response)

2 Do any of you know any of the other jurors who
3 are here today?

4 (Hand raised)

5 Well, let me just ask you, who do you know?

6 COURT REPORTER: Could I get a name, please.

7 THE COURT: Yes, please state your name.

8 JUROR ERVASTI: James Ervasti.

9 THE COURT: Okay. And you know?

10 JUROR ERVASTI: I don't think she got called
11 over here.

12 THE COURT: She's sitting over there?

13 PROSPECTIVE JUROR: Yes. Germaine Gabriel
14 Guillaume is my married name. We are working in similar
15 professions at the University.

16 THE COURT: Oh, you work in the same
17 department. Okay.

18 JUROR ERVASTI: Neighboring departments.

19 JUROR GUILLAUME: Related departments.

20 THE COURT: And I'm sorry, ma'am, what was your
21 name?

22 JUROR GUILLAUME: Last name is Guillaume,
23 G-U-I-L-L-A-U-M-E.

24 THE COURT: Okay. How do you say it?

25 (Juror pronounced her name)

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1 Okay. And then there were two others. Yes.

2 JUROR GOLD: My name is Derek Gold. And her
3 husband and I are like best friends. We have known each
4 other forever. We're like neighbors, too.

5 THE COURT: And your name, ma'am?

6 JUROR GLASER: I'm Stephanie Glaser.

7 THE COURT: Okay. All right. Are any of you
8 presently involved in any matter where the county
9 attorney's office is also involved?

10 (No response)

11 Have any of you been so involved in the past
12 with the Ramsey County Attorney's Office? Okay. And you
13 are -- I'll go to the last, first.

14 JUROR THOMPSON: Paul Thompson.

15 THE COURT: I'm sorry. I'm going to the back.
16 Okay. I'll come to you in a minute. Yes, sir.

17 JUROR SPECKMANN: James Speckmann.

18 THE COURT: Okay. All right, Mr. Speckmann.

19 JUROR SPECKMANN: Yes.

20 THE COURT: And can you tell me if you're --
21 this was an involvement in the past; is that correct?

22 JUROR SPECKMANN: Yes.

23 THE COURT: Okay. Anything you want to tell me
24 about that?

25 JUROR SPECKMANN: No. I'm a practicing

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1 attorney. I have practicing --

2 THE COURT: You're a practicing attorney. So,
3 you practice --

4 JUROR SPECKMANN: Ramsey County.

5 THE COURT: Ramsey County. All right, Mr.
6 Speckmann. And then Mister?

7 JUROR THOMPSON: Thompson.

8 THE COURT: Mr. Thompson.

9 JUROR THOMPSON: Same thing.

10 THE COURT: You're also an attorney?

11 JUROR THOMPSON: Yes.

12 THE COURT: And Ms. Puariea?

13 JUROR PUARIEA: Amanda Puariea.

14 THE COURT: Yes.

15 JUROR PUARIEA: I was a witness in a case.

16 THE COURT: You were a witness in a case.

17 Okay. And do -- anybody else?

18 (No response)

19 THE COURT: All right. Do any of you have an
20 ongoing relationship with that office? Probably Mr.
21 Thompson?

22 MR. THOMPSON: I do. I have two lawsuits
23 against the City of St. Paul and Ramsey County.

24 THE COURT: Okay. So you have an ongoing
25 relationship. Okay. And Mr. Speckmann.

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1 JUROR SPECKMANN: No, I don't.

2 THE COURT: Not ongoing; just in the past?

3 JUROR SPECKMANN: Not ongoing.

4 THE COURT: Okay. Have any of you heard or
5 read anything regarding the alleged incident that is the
6 subject matter of this trial?

7 (No response)

8 JUROR: I think I remember seeing them on WCCO.

9 THE COURT: You think you remember seeing them
10 on WCCO?

11 JUROR: Or on the news.

12 THE COURT: All right. Anybody else? And are
13 you familiar with the location of the incident? And I'll
14 give you that location in a minute. I'll give a general
15 location of 2397 University Avenue, 2399 University
16 Avenue, 2389 University Avenue, 2397 University Avenue
17 would be numbers that you will be hearing.

18 (Juror's hand raised)

19 THE COURT: Okay. So we had one person here.
20 This trial is expected to last about four to five days,
21 which means we will be going into next week. We're not
22 going to meet the day after Thanksgiving. I will let you
23 out earlier during the day before Thanksgiving; but, it
24 will go into next week. And we will normally begin the
25 trial at 9 in the morning, continue until noon, have a

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1 recess for lunch and reconvene the trial at 1:30,
2 generally. We will recess for the day at 4:30. There
3 will be a 15-minute mid morning and 15-minute mid
4 afternoon break. And I will also mention, the day before
5 Thanksgiving, probably earlier than 4:30, just so nobody
6 has to be too anxious about that. But I do intend to
7 keep things moving. All right.

8 So, does anyone have a physical problem that
9 would prevent or make difficult serving as a juror here
10 today? Physical problem?

11 (No response)

12 Does anyone have a pressing personal or
13 business concern that would make it hard to give this
14 case your full attention?

15 JUROR: Are we talking into next week?

16 THE COURT: Okay. I see a lot of hands going
17 up, so we'll start in the back.

18 JUROR ERVASTI: James Ervasti. I am scheduled
19 to fly out Monday to review Federal grants for the
20 National Institutes of Health. That commitment was made
21 six months ago and it may be difficult for them to
22 replace my expertise on the panel.

23 THE COURT: Okay. Because we pretty much know
24 we will be going into next week. That's your concern.
25 Okay. Somebody else in the back row. Let me just take

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1 it in order. Yes, Mr. Speckmann.

2 JUROR SPECKMANN: Your Honor, I have a
3 sentencing that I am supposed to attend on the 30th of
4 November in Federal Court.

5 THE COURT: November 30th is Tuesday?

6 JUROR SPECKMANN: Yes.

7 THE COURT: Okay. What time of the day is
8 that?

9 JUROR SPECKMANN: Nine o'clock.

10 THE COURT: I'm sorry?

11 JUROR SPECKMANN: Nine o'clock.

12 THE COURT: Nine o'clock. All right. Ms.
13 Petersen.

14 JUROR PETERSEN: I just have --

15 THE COURT: We can't hear you, ma'am.

16 JUROR PETERSEN: I'm sorry. I have three
17 children I am taking care of. I don't have child care
18 for next week; three young children.

19 THE COURT: You're taking your three children
20 and --

21 JUROR PETERSEN: I need to take care of, but my
22 husband took time off this week to take care of the kids.
23 He doesn't have time off next week.

24 THE COURT: Okay. All right. Who else in
25 this -- yes, you are?

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1 JUROR THOMAS: Thomas. Well, I am a special ed
2 teacher and I work with juveniles that are EBD and they
3 really need me next week. And I have an evaluation and
4 two IEPs to write and really no one else can do that but
5 me. And they are really vulnerable kids, so I would
6 rather not be here next week.

7 THE COURT: All right. Who else? Wait. Ms.
8 Heilman?

9 JUROR HEILMAN: I'm the sole staff person for
10 multiple organizations, so --

11 THE COURT: I'm sorry?

12 JUROR HEILMAN: I'm the sole staff person for
13 multiple organizations, so it would be a hardship to the
14 other organizations I work with if I am out next week.

15 THE COURT: Okay. We are down here, mister?

16 JUROR BLOOMER: I work in Madison, Wisconsin,
17 and I have a board presentation that starts at 4:30 on
18 Tuesday afternoon. And so I would need to be leaving
19 Tuesday morning to make it to Madison.

20 THE COURT: To get down there for that?

21 JUROR BLOOMER: Yep.

22 THE COURT: All right. Mr. Thompson, was your
23 hand up?

24 JUROR THOMPSON: No.

25 THE COURT: No. Okay. Anybody else in this

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1 front row here? All right. Mister?

2 JUROR DOMINGUEZ: Luis Dominguez.

3 THE COURT: I'm sorry?

4 JUROR DOMINGUEZ: Luis Dominquez. I'm a
5 personal care assistant and I am the only worker for
6 my --

7 THE COURT: I'm sorry, sir, I can't hear you.

8 JUROR DOMINGUEZ: I'm a personal care
9 assistant.

10 THE COURT: You're a personal care assistant.
11 Okay. All right. Thank you.

12 JUROR: Your Honor?

13 THE COURT: Yes, ma'am.

14 JUROR: I'm a dentist. I'm the only provider
15 in my office. It would be a hardship to go into next
16 week.

17 THE COURT: Well, for next week, if we go into
18 next week is what you're saying. Okay. All right. I'm
19 going to have the attorneys approach for a minute.

20 (Attorneys approached the bench and an
21 off-the-record discussion was held at this time.)

22 THE COURT: Ms. Petersen, I had a question,
23 ma'am. I realize that you were very diligent and got
24 your husband to take care of the kids this week. Is
25 there anybody next week who could take care of your

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1 children?

2 JUROR PETERSEN: Not off hand. He has to
3 travel. And my parents are not in town. They are in
4 Australia.

5 THE COURT: I'm sorry, your parents are?

6 JUROR PETERSEN: Well, they live here, but they
7 are in Australia right now, so I don't have anybody. I
8 have no relatives that I can call to help with my kids
9 next week.

10 THE COURT: But, he's going to be gone next
11 week.

12 JUROR PETERSEN: He has to travel on Tuesday.

13 THE COURT: Okay. And how old are your
14 children?

15 JUROR PETERSEN: Ten, eight and five.

16 THE COURT: All right. I think, at this time,
17 we are going to let Mr. Ervasti go and Ms. Petersen and
18 Ms. Thomas. Now, Ms. Heilman, tell me something more
19 about these non profits.

20 JUROR HEILMAN: Yes. I work for multiple non
21 profits. I work for Blocker's Program (phonetic), a
22 district counsel and two business associations. And I'm
23 the full staffed person for all four of those.

24 THE COURT: Okay. This isn't going to go all
25 of next week. This is just going to go two days into

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1 next week.

2 JUROR HEILMAN: Okay.

3 THE COURT: So, is there somebody who can fill
4 in?

5 JUROR HEILMAN: No, I am the sole staff.

6 THE COURT: I used to run a non profit.

7 JUROR HEILMAN: Yeah, I know how that goes.

8 THE COURT: Well, there are, you know, voice
9 mail and those types of things.

10 JUROR HEILMAN: True, there is voice mail and
11 e-mail; but I wouldn't be able to access that until after
12 we would be done.

13 THE COURT: Right. Right. We're going to keep
14 you for now. Okay. I think we can maybe work something
15 out. And Mr. Bloomer, you have something going on?

16 JUROR BLOOMER: There is a board meeting for
17 the company that I work for next Tuesday at 4:30 and so I
18 need to -- and I am presenting to the board.

19 THE COURT: Right.

20 JUROR BLOOMER: So I need to leave, you know,
21 first thing Tuesday morning to get down there in time.

22 THE COURT: And where is this, in?

23 JUROR BLOOMER: Madison, Wisconsin.

24 THE COURT: Madison, Wisconsin. I was going to
25 say that Tuesday afternoon I have sentencing and we

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1 wouldn't be having -- we would have to break probably by
2 noon, anyway, on Tuesday. But --

3 JUROR BLOOMER: But, I work in Madison, so when
4 I am down there I have the presentation and then I work
5 there the rest of the week.

6 THE COURT: Oh, and then you are there for the
7 rest of the week?

8 JUROR BLOOMER: Yes.

9 THE COURT: Okay. All right. Well, I'll let
10 you go, too. Is there anybody else that I -- Mr.
11 Speckmann.

12 JUROR SPECKMANN: Yes.

13 THE COURT: Um --

14 JUROR SPECKMANN: Your Honor, this is in
15 Federal Court.

16 THE COURT: I understand. And this is state
17 court jury duty and I have friends on the federal bench
18 and I think you would score brownie points for being on
19 this jury.

20 JUROR SPECKMANN: There is one problem with
21 that. I am one of about 27 different defendants.

22 THE COURT: Okay. So you're not the only --

23 JUROR SPECKMANN: No. It's a multi-million
24 dollar case where people are going to be sentenced in
25 this matter.

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1 THE COURT: All at the same time?

2 JUROR SPECKMANN: All at the same time.

3 THE COURT: Okay.

4 JUROR SPECKMANN: And I am -- we have one of
5 the other potential defendants who tried another case, so
6 it's important that I be there.

7 THE COURT: And this sentencing is when on
8 Tuesday morning?

9 JUROR SPECKMANN: Tuesday morning at 9 o'clock
10 set before Judge Schultz in Minneapolis.

11 THE COURT: All right. Okay. You can go. So,
12 we need to have -- you can -- we'll let you leave now and
13 then we need to fill in where the others have left.

14 THE CLERK: When I call your name, again, just
15 kind of fill in in the back and the next there, there,
16 there and there. Kind of the same way everyone else
17 filled in. Thien Huynh; Luis Dominguez; Anthony Cook;
18 Kelly Hanson; Patrick Donnelly; Germaine Guillaume --
19 wait, did I call too many names?

20 THE COURT: Wait. So I think you called too
21 many names.

22 THE CLERK: I called too many names. Okay.
23 Never mind, Ms. Guillaume, you can have a seat. And
24 then, Mr. Donnelly, you're right there. Sorry about
25 that.

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1 THE COURT: All right. And I believe some of
2 you might have raised your hand when I asked about --
3 yes, Mr. Dominguez. Yes, what was it you said you could
4 not --

5 JUROR DOMINGUEZ: I'm a personal care
6 assistant.

7 THE COURT: Personal care assistant.

8 JUROR DOMINGUEZ: And I am the only provider
9 for my client.

10 THE COURT: Okay. Who is taking care of your
11 client this week?

12 JUROR DOMINGUEZ: My mom actually took --

13 THE COURT: I'm sorry?

14 JUROR DOMINGUEZ: My mother.

15 THE COURT: You arranged to have your mother
16 substitute for you?

17 JUROR DOMINGUEZ: Yes, she is working for me.

18 THE COURT: Okay. Now, we are not going the
19 whole of next week. You understand that? All right.
20 Who else raised their hand? Okay. We'll wait. Okay.
21 Thank you. All right, Mr. Dominguez, I'll let you go.
22 Okay. So, call the next one up.

23 THE CLERK: Germaine Guillaume.

24 THE COURT: And Ms. Guillaume, you did not
25 raise your hand. Okay. Thank you. All right. And now

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1 I will ask some questions concerning you, your family and
2 anyone close to you. I remind you that if you would
3 prefer to answer a particular question out of the
4 presence of the other jurors, let me know by raising your
5 hand. Have you, a member of your family or anyone close
6 to you ever testified in any court case? You, your
7 family, anyone close to you ever testified in any case.
8 Keep your hand up. Okay. And anybody in the back row?
9 No. Second row. Okay. And --

10 JUROR PUARIEA: Amanda Puariea.

11 THE COURT: Okay. And what kind of case?

12 JUROR PUARIEA: Domestic case.

13 THE COURT: It was a domestic case?

14 JUROR PUARIEA: Yes.

15 THE COURT: And when was this?

16 JUROR PUARIEA: I believe it was in 2005.

17 THE COURT: Okay. And was there an arrest in
18 that case?

19 JUROR PUARIEA: Yes.

20 THE COURT: And was there a disposition? You
21 don't have to tell me what it was in the case. It came
22 to trial?

23 JUROR PUARIEA: Yeah, it did.

24 THE COURT: Were you satisfied with your
25 outcome?

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1 JUROR PUARIEA: Yes.

2 THE COURT: And who?

3 JUROR PUARIEA: It was my oldest niece.

4 THE COURT: Your oldest niece?

5 JUROR PUARIEA: Yes.

6 THE COURT: Okay. And was that in what county?

7 JUROR PUARIEA: It was actually in this
8 courtroom.

9 THE COURT: In this very same courtroom?

10 JUROR PUARIEA: I believe so.

11 THE COURT: Oh, my. Well, they all look like
12 this.

13 JUROR PUARIEA: I know.

14 THE COURT: All right. Anybody else? Yes, Mr.
15 Thompson.

16 JUROR THOMPSON: I have testified as a witness
17 in legal malpractice claims. I testified as a witness
18 before the Board of Professional Responsibility on legal
19 ethics.

20 THE COURT: And who were the individuals?

21 JUROR THOMPSON: Well, the legal ethics matter
22 was against two lawyers here, locally. Do you need to
23 know their names?

24 THE COURT: Okay. So, they were not
25 acquaintances and not family members.

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1 JUROR THOMPSON: I was called as an expert.

2 THE COURT: I'm sorry?

3 JUROR THOMPSON: I was called as an expert
4 witness.

5 THE COURT: Okay. And then how long ago?

6 JUROR THOMPSON: Two years ago.

7 THE COURT: In both of those cases?

8 JUROR THOMPSON: Yes.

9 THE COURT: All right. And was there a
10 disposition?

11 JUROR THOMPSON: Yes.

12 THE COURT: And were you satisfied with it?

13 JUROR THOMPSON: Yes.

14 THE COURT: Okay. All right. Who else had
15 their hand up? All right. Have you, a member of your
16 family or anyone else close to you ever been accused of a
17 crime other than a minor non alcohol related traffic
18 violation, such as a parking or traffic ticket? And note
19 that a DWI is not a minor traffic violation. Thanks. We
20 will note that. Was there a hand over here? Okay. Keep
21 your hand up. All right. Mr. Vang.

22 JUROR VANG: This is quite a while back.

23 THE COURT: Tell me when? How long ago?

24 JUROR VANG: Nineteen ninety-three.

25 THE COURT: Ninety three. And who was it?

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1 JUROR VANG: It was me.

2 THE COURT: It was you. And where was this?

3 JUROR VANG: In Wisconsin.

4 THE COURT: And what kind of crime was this?

5 JUROR VANG: I was a minor and I was making a
6 lot of trouble, you know, like drinking and like
7 burglaries and stuff like that and I was sentenced to 90
8 days in jail.

9 THE COURT: I am really having a hard time
10 hearing. I'm sorry. What did you say?

11 JUROR VANG: It was me.

12 THE COURT: Okay.

13 JUROR VANG: I was a minor and I got into a lot
14 of trouble.

15 THE COURT: Okay.

16 JUROR VANG: And I was sentenced to 90 days in
17 jail.

18 THE COURT: And you spent --

19 JUROR VANG: Ninety days in jail.

20 THE COURT: Ninety days in jail. Okay. And
21 when you say a long time ago and it was in Wisconsin; is
22 that correct?

23 JUROR VANG: Yes.

24 THE COURT: Okay. Who else had their hands up?
25 All right. Let's see, Ms. Haase.

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1 JUROR HAASE: My husband is currently serving a
2 sentence in Stillwater for his fifth DWI that took place
3 in 2009 in Douglas County, Wisconsin.

4 THE COURT: Okay. So that was in 2009 in
5 Washington County?

6 JUROR HAASE: Douglas County.

7 THE COURT: Douglas County. Okay. Who else
8 had their hand up? Okay. Mr. Michalski.

9 JUROR MICHALSKI: Yes, three years ago I had a
10 DWI, myself.

11 THE COURT: Three years ago?

12 JUROR MICHALSKI: I had a DWI, myself.

13 THE COURT: You had a DWI. And which county?

14 JUROR MICHALSKI: Ramsey.

15 THE COURT: Ramsey. Okay. Um, so you were
16 arrested in that case. There was a disposition. Were
17 you satisfied with the way things worked out?

18 JUROR MICHALSKI: Sure, yes.

19 THE COURT: Okay. Who else had their hand up?
20 All right. Mr. Thompson.

21 JUROR THOMPSON: I also had a DUI in 2005 in
22 Ramsey County.

23 THE COURT: Okay. And were you satisfied with
24 the disposition?

25 JUROR THOMPSON: Yes.

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1 THE COURT: And Ms. Puariea?

2 JUROR PUARIEA: Yes, I also had a DUI in 2006
3 in Ramsey County.

4 THE COURT: Two thousand and six in Ramsey
5 County. Okay. And -- all right. Mr. Haffely.

6 JUROR HAFFELY: DWI in 2001, Washington County.

7 THE COURT: Okay. Mr. Gold?

8 JUROR GOLD: Gold.

9 THE COURT: Gold, yes.

10 JUROR GOLD: Ninety-nine DUI in Polk County,
11 Wisconsin.

12 THE COURT: Polk County. Okay. And Mr.
13 Biljan.

14 JUROR BILJAN: Biljan. And I am currently
15 charged with Fifth Degree Domestic and I have court for
16 that on December 13th.

17 THE COURT: Is it here in Ramsey County?

18 JUROR BILJAN: Yes.

19 THE COURT: So that's coming up for you?

20 JUROR BILJAN: Yes.

21 THE COURT: Okay. And Miss --

22 JUROR GLASER: Glaser. My brother-in-law. I
23 think it's a misdemeanor. I don't really know the
24 details. I just know that something occurred in I think
25 Hudson, Wisconsin. And I believe it was a robbery. I

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1 know he's on probation. I don't know much else.

2 THE COURT: Okay. All right. There was
3 somebody else who had their hand up there. Yes, Mr.
4 Vang.

5 JUROR VANG: I have had two DWIs, too.

6 THE COURT: You had two DWIs.

7 JUROR VANG: One here and one in --

8 THE COURT: How long ago?

9 JUROR VANG: About -- one about 4 or 5 and one
10 about 7 years ago.

11 THE COURT: Four or five years and then seven
12 years ago?

13 JUROR VANG: Yes.

14 THE COURT: I know your hand is up, sir, but we
15 are going to wait on you. Okay. But, thank you.

16 (Counsel approached the bench and an
17 off-the-record discussion was had.)

18 THE COURT: Okay. Anybody else?

19 (No response)

20 All right. And have you, a member of your
21 family or anyone close to you ever been the victim of or
22 witness to a crime? All right. Let's see the hands.
23 Anybody in the back row? All right. Ms. Lee.

24 JUROR LEE: I was -- my apartment was robbed in
25 2002 and I was held at knife point in ninety-eight.

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1 THE COURT: And where?

2 JUROR LEE: Outside of Minnesota in

3 Philadelphia.

4 THE COURT: And Philadelphia. Both of those
5 instances. Okay. And were there arrests in those cases?

6 JUROR LEE: No.

7 THE COURT: No arrests. All right. Who else?
8 Yes -- oh, I'm not going to get it right.

9 JUROR HANSEN: Kelly Hansen.

10 THE COURT: All right. Ms. Hansen.

11 JUROR HANSEN: I was living in Washington DC
12 and had my car parked on the street and it was broken
13 into.

14 THE COURT: All right. And when did that
15 happen?

16 JUROR HANSEN: Ninety-two -- or two thousand.

17 THE COURT: Okay. And was there an arrest?

18 JUROR HANSEN: No.

19 THE COURT: Okay. Now, Ms. Studnek.

20 JUROR STUDNEK: I had someone steal my purse
21 once. It was probably 20 years ago.

22 THE COURT: Your purse was --

23 JUROR STUDNEK: My purse was stolen.

24 THE COURT: And where was it?

25 JUROR STUDNEK: In Minneapolis.

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1 THE COURT: In Minneapolis. And when was this?

2 JUROR STUDNEK: About 20 years ago.

3 THE COURT: Twenty years ago. All right. Was
4 there an arrest in that case?

5 JUROR STUDNEK: I think the police came and
6 chased her down and caught her, but I don't know if they
7 did anything.

8 THE COURT: Okay. So you don't know if there
9 was a disposition in that case?

10 JUROR STUDNEK: I have no idea.

11 THE COURT: Okay. Yes, Ms. Guillaumè.

12 JUROR GUILLAUME: In 1980 my bike was stolen
13 from just outside the apartment building. Two bikes
14 stolen.

15 THE COURT: Okay. Two bikes were stolen from
16 outside your apartment building.

17 JUROR GUILLAUME: And right around the same
18 time somebody tried to attack me for my purse.

19 THE COURT: How long ago was this?

20 JUROR GUILLAUME: Between 76 and 80.

21 THE COURT: And both of those instances, is
22 that correct? And were there arrests in those cases?

23 JUROR GUILLAUME: No.

24 THE COURT: Neither one was an arrest. Okay.
25 All right. The second row, anybody else? All right.

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1 And Ms. Puariea?

2 JUROR PUARIEA: I was a witness of the domestic
3 case.

4 THE COURT: Okay. That's the one that you
5 mentioned.

6 JUROR PUARIEA: Yes.

7 THE COURT: Okay. Anybody else? Okay.

8 Mister --

9 JUROR: My car was broken into?

10 THE COURT: In nineteen --

11 JUROR: Two thousand six.

12 THE COURT: Two thousand and six. I'm sorry.

13 What kind of crime was that?

14 JUROR: Burglary.

15 THE COURT: It was a burglary. And was there a
16 disposition?

17 JUROR: I never heard nothing about it.

18 THE COURT: Okay. And where was this?

19 JUROR: Ramsey County.

20 THE COURT: Okay. Yes, Mr. Thompson.

21 JUROR THOMPSON: I used to prosecute, so there
22 was about a time period of about 7, 8 years where there
23 were a lot of retaliatory crimes; property damage.

24 THE COURT: And where were you?

25 JUROR THOMPSON: Anoka County.

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1 THE COURT: In Anoka County. Okay. And what
2 years were these?

3 JUROR THOMPSON: Nineteen eighty-eight through
4 nineteen ninety-six.

5 THE COURT: Nineteen ninety-six. Okay. So you
6 have seen a lot of that?

7 JUROR THOMPSON: Yes.

8 THE COURT: All right. Anybody else? Have you
9 ever sat on a jury or a grand jury before? Any of you?
10 All right. So, Mr. Huynh, when was that?

11 JUROR HUYNH: About five or six years ago.

12 THE COURT: About 2004. And where was this?

13 JUROR HUYNH: In this very courthouse.

14 THE COURT: In Ramsey County?

15 JUROR HUYNH: Yes.

16 THE COURT: What type of case was it?

17 JUROR HUYNH: Drugs.

18 THE COURT: I'm sorry? What?

19 JUROR HUYNH: Drugs.

20 THE COURT: And did you reach a verdict? You
21 don't have to tell me what it was.

22 JUROR HUYNH: Yes.

23 THE COURT: You did reach a verdict. Okay.
24 Who else? Ms. Foreman-Coley.

25 JUROR FOREMAN-COLEY: It was a domestic abuse

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1 case and it was like in 03 and we did reach a verdict.

2 THE COURT: And where?

3 JUROR FOREMAN-COLEY: It was here in Ramsey.

4 THE COURT: Right here in Ramsey. Okay. And
5 you did reach a verdict?

6 JUROR FOREMAN-COLEY: Yes.

7 THE COURT: Okay. Anybody else in that second
8 row? No hands in the second row. Okay. And Mister --
9 you're going to have to tell me your name, please.

10 JUROR DONNELLY: Donnelly.

11 THE COURT: Okay. Mr. Donnelly.

12 JUROR DONNELLY: I was just on a jury here
13 about 10 years ago and I was on a couple cases. One was
14 robbery and one was a landlord dispute.

15 THE COURT: I guess the one was a civil case?

16 JUROR DONNELLY: Right.

17 THE COURT: Okay. And did you reach a verdict?

18 JUROR DONNELLY: Yes.

19 THE COURT: In both of those cases?

20 JUROR DONNELLY: Yes.

21 THE COURT: Okay. Anybody else? And are you
22 related to, close to, acquainted with anyone who works in
23 the field in criminal justice or law enforcement, such as
24 a police officer, an attorney, correctional officer,
25 probation officer, judge, investigator or similar

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1 occupation. The question is, are you related to, close
2 to, acquainted with any of these people? And I can see
3 the hands. Okay. Who in the back row? All right. And
4 is there somebody in the second row? Okay. All right.
5 I thought I'd see more hands. Okay. Mr. Ronayne.

6 JUROR RONAYNE: Yes, my father-in-law is a
7 retired federal district judge.

8 THE COURT: Your father-in-law is a retired --

9 JUROR RONAYNE: Federal district judge.

10 THE COURT: Oh, okay. You know I'm going to
11 ask who it is.

12 JUROR RONAYNE: Thomas Brennan.

13 THE COURT: Brennan. Okay.

14 JUROR RONAYNE: He's been retired for a while.

15 THE COURT: Okay. Who else?

16 JUROR: My brother-in-law is a judge.

17 THE COURT: Your brother-in-law is a judge.

18 And you are Ms. Lein. Okay.

19 JUROR LEIN: My brother-in-law is a police
20 officer in New York.

21 THE COURT: In where?

22 JUROR LEIN: New York City.

23 THE COURT: So, your brother-in-law is a police
24 officer in New York City. Okay. And tell me your name
25 again.

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1 JUROR MICHALSKI: Andrew Michalski.

2 THE COURT: Okay. Mr. Michalski.

3 JUROR MICHALSKI: I just have a friend that's a
4 criminal defense attorney.

5 THE COURT: Anybody else in that second row?
6 Okay. This row? All right. Let's start down here. Ms.
7 Glaser.

8 JUROR GLASER: Well, I used to work in
9 corrections, so I know quite a few people there. But, my
10 husband is a corrections officer at Lino Lakes.

11 THE COURT: Your husband is a what?

12 JUROR GLASER: Corrections Officer at Lino
13 Lakes.

14 THE COURT: And okay, yeah, Mr. Gold.

15 JUROR GOLD: I have two very close friends that
16 are correction officers; one at Lino Lakes and one at Oak
17 Park Heights. And I also have an in-law that is a St.
18 Paul Police Officer.

19 THE COURT: All right. And who else had their
20 hand up? Okay. Mr. Thompson.

21 JUROR THOMPSON: I know several bailiffs pretty
22 well, as well as the investigators with Anoka County.

23 THE COURT: In Ramsey County?

24 JUROR THOMPSON: Anoka.

25 THE COURT: In Anoka. Okay. And Ms. Olson.

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1 JUROR OLSON: Olson, yes. My uncle is a
2 recently retired police officer from Brooklyn Center.

3 THE COURT: Brooklyn Center. Okay. Retired
4 police officer in Brooklyn Center. Anybody else? Did I
5 miss anybody? Yes, Mr. Michalski.

6 JUROR MICHALSKI: Yeah, I know a lot of the St.
7 Paul Police.

8 THE COURT: And tell me, what do you do, again?

9 JUROR MICHALSKI: I'm a firefighter and we
10 intermingle with each other when we go out socially.

11 THE COURT: Okay. Have any of you received law
12 enforcement training, including training in the military?
13 Any of you? All right. Is that Mr. Haffely?

14 JUROR HAFFELY: Yes.

15 THE COURT: All right. And tell me about that.

16 JUROR HAFFELY: Army for a number of years.
17 And did some MP training, military police training back
18 in Fort Lee.

19 THE COURT: Okay. Anybody else? All right.
20 Have you, yourself, ever had experience as a law
21 enforcement officer?

22 Okay. Now, do any of you feel that you should
23 automatically believe or not believe the testimony of a
24 police officer just because they are a police officer?
25 Does anybody believe that you should automatically

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1 accept, believe or reject, the testimony of a police
2 officer because they are a police officer?

3 (No response)

4 All right. Is there anything about the nature
5 of the charge in this case which causes you to have some
6 doubt as to whether you could give both sides a fair and
7 impartial trial?

8 (No response)

9 And because of the nature of the charges, you
10 may be asked to view photographs or videos -- actually,
11 we don't have such of a graphic nature, but you may be
12 asked to see those. So, would anyone have difficulty
13 viewing photographs or videos?

14 (No response)

15 And do you understand that if you are selected
16 as a juror, each of you must decide this case solely on
17 the evidence produced in court and the law as I give it
18 to you and not on the basis of bias, passion, prejudice
19 or sympathy. Do you understand that?

20 (No response)

21 And do you understand that you must follow the
22 law as I give it to you, even though you think the law is
23 or should be different?

24 (No response)

25 So, members of the jury panel, I now ask each

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1 of you to take a moment and search your mind and
2 conscience to see if there is any reason that you cannot
3 be fair and impartial in this case.

4 (No response)

5 So, after giving the matter some thought, are
6 there any of you who, for whatever reason, feel that you
7 cannot be fair and impartial in this case?

8 (No response)

9 All right. And Mr. Vang.

10 JUROR VANG: Yeah, like I told you before, I
11 was in trouble when I was younger and stuff like that and
12 you know I don't know. My mind doesn't think clearly on
13 that.

14 THE COURT: All right. And you feel like
15 you --

16 JUROR VANG: Yeah, you know, I feel like I was
17 in that place before, you know.

18 THE COURT: So you have some sympathy is that
19 what you said?

20 JUROR VANG: Yeah.

21 THE COURT: Well, here's the question I have.
22 And how long ago did these things happen?

23 JUROR VANG: It happened like 1993 and the DWIs
24 like 2005, 2007, stuff like that. I don't know. I mean,
25 I just feel like it's against me and stuff like that and

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1 makes me feel differently, you know.

2 THE COURT: Okay. Did you get that?

3 COURT REPORTER: Yes.

4 THE COURT: Okay. All right. Will the
5 attorneys approach, please.

6 (Counsel approached the bench and an
7 off-the-record discussion was had at this time.)

8 THE COURT: All right. I guess, Mr. Vang,
9 thank you for your honesty and we think you may be able
10 to stay on. Okay. So, that's good. But, thank you for
11 your honesty.

12 All right. The court has no further questions.
13 I think what we will do at this point is let you go. You
14 come back tomorrow and at that time the attorneys will
15 have questions for you and we will all go from there. Is
16 that okay? So, yes?

17 JUROR: We come back to this courtroom?

18 THE COURT: Right. So, we'll have Ms. Harms
19 give us the answer.

20 THE CLERK: Come back at 9 o'clock tomorrow.
21 I'll have -- I'll actually be gone tomorrow, but there
22 will be someone here in my place. And we'll have the
23 conference room, which when you leave I'll show you
24 exactly where it is. There will be a sign that will say
25 Judge Bohr's Jurors. You can't miss it. Be there right

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1 at 9 a.m. and the clerk will come and take attendance at
2 that time and then you proceed from there. And if there
3 is any more questions, I'll be outside and I can answer
4 questions for you.

5 THE COURT: And the people who are sitting here
6 should also be back. All right. Okay. And so far, I
7 don't have to give you any cautionary instructions,
8 but --

9 THE CLERK: Maybe you should --

10 (Off-the-record discussion)

11 THE COURT: All right. We have not impaneled
12 you at this point, but the same rules apply. You can't
13 talk about this case. Do not talk about these
14 proceedings to anyone. If you are asked about this at
15 home you can say it's a criminal case. That's it. And
16 no discussion. No descriptions of people. No nothing.
17 All right. Don't discuss this case. Don't do any
18 research. This is like you are already impaneled. All
19 right. So, I'll see you back here tomorrow.

20 (Proceedings recessed)

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State v. Drljic/Suttles

1 STATE OF MINNESOTA

2 COUNTY OF RAMSEY

3 I, Susan D. Montpetit, do hereby certify that a jury
4 trial was had in the cause styled in the caption hereto on
5 Page One hereof; that I was authorized to and did attend said
6 trial and reported the proceedings had therein fully and
7 accurately in shorthand and that the foregoing computer-aided
8 transcription numbered 1 through 102, inclusive, constitute a
9 true and correct transcript from my shorthand report of the
10 proceedings taken at said trial.

11 Dated: June 14th, 2011.

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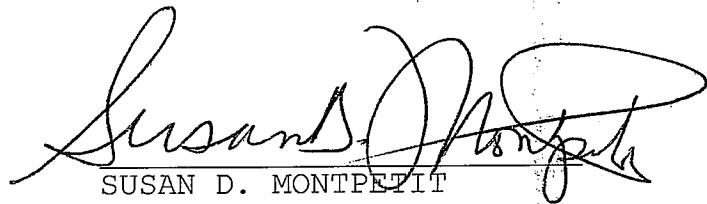
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SUSAN D. MONTPETIT
Official Court Reporter

RAMSEY COUNTY DISTRICT COURT