

CL505RT
6/12/09

HISTORY LISTING FOR CASE NO. 15A01- 405-CR-00213
HOLBROOK, ROGER -V- STATE OF INDIANA
Lower Cause Number: 15C010211MR1

PAGE 1

HOLBROOK, ROGER #142554
INDIANA STATE PRISON
P.O. BOX 41
MICHIGAN CITY, IN 46361-0041

HOLBROOK, ROGER #142554
A

SUSAN CARPENTER
SUITE 800
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INDIANAPOLIS, IN 46204
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HOLBROOK, ROGER #142554
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HILARY RICKS
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SUITE 715
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HOLBROOK, ROGER #142554
A

CAROLINE BRIGGS
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HOLBROOK, ROGER #142554
A

LAFAYETTE, IN 47901
765-742-8122

LEANNA WEISSMANN
P.O. BOX 3704

HOLBROOK, ROGER #142554
A

LAWRENCEBURG, IN 47025
812-926-2097

STEPHEN CARTER
OFFICE OF ATTORNEY GEN.
IGCS, 5TH FLOOR
INDIANAPOLIS, IN 46204-2770
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STATE OF INDIANA
E

STEPHEN TESMER
OFFICE OF ATTORNEY GENERA
IGCS 5TH FLOOR
INDIANAPOLIS, IN 46204-0277
317-233-3975

STATE OF INDIANA
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JAMES HUMPHREY
215 WEST HIGH STREET

OTHER
O

LAWRENCEBURG, IN 47025
812-537-2522

STEVEN LANCASTER
115 W. WASHINGTON STREET
SUITE 1270 SOUTH TOWER
INDIANAPOLIS, IN 46204-3419
317-232-4196

OTHER
O

File Date

4/28/04	✓ "NOTICE OF APPEAL FILED"	
5/14/04	✓ APPELLANT'S CASE SUMMARY BY LEANNA WEISSMANN, ATTY. FOR THE APPELLANT (2) CERTIFICATE OF SERVICE (2) MAIL	LB
5/14/04	****RECEIVED: PROOF OF APPOINTMENT (1)	LB
5/24/04	✓ NOTICE OF COMPLETION OF CLERK'S RECORD (1) *TRANSCRIPT NOT YET COMPLETED*	RD
7/09/04	✓ COURT REPORTER'S MOTION FOR EXTENSION OF TIME TO FILE THE TRANSCRIPT (2) PROOF OF SERVICE (2) MAIL	LB
7/14/04	✓ COURT REPORTER'S MOTION FOR EXTENSION OF TIME TO FILE TRANSCRIPT GRANTED TO AND INCLUDING OCTOBER 25, 2004. **NO FURTHER EXTENSIONS** JAMES S. KIRSCH, CHIEF JUDGE	SH
7/14/04	***** ABOVE ENTRY MAILED *****	
10/12/04	✓ COURT REPORTER'S MOTION FOR EXTENSION OF TIME TO FILE THE TRANSCRIPT (2) PROOF OF SERVICE (2) MAIL	LS
10/19/04	✓ COURT REPORTER'S MOTION FOR EXTENSION OF TIME TO FILE TRANSCRIPT GRANTED TO AND INCLUDING NOVEMBER 24, 2004. ** NO FURTHER EXTENSIONS WILL BE GRANTED. ** JAMES S. KIRSCH, CHIEF JUDGE	MS
10/19/04	***** ABOVE ENTRY MAILED *****	
12/01/04	✓ NOTICE OF COMPLETION OF TRANSCRIPT (1)	RC
12/03/04	✓ APPELLANT'S VERIFIED MOTION FOR EXTENSION OF TIME IN WHICH TO FILE BRIEF (2) CERTIFICATE OF SERVICE (2) MAIL	LB
12/10/04	✓ APPELLANT'S PETITION FOR EXTENSION OF TIME TO FILE BRIEF GRANTED TO AND INCLUDING JANUARY 27, 2005. JAMES S. KIRSCH, CHIEF JUDGE	KM
12/13/04	***** ABOVE ENTRY MAILED *****	
1/12/05	✓ APPELLANT'S VERIFIED MOTION FOR EXTENSION OF TIME IN WHICH TO FILE BRIEF (2) CERTIFICATE OF SERVICE (2) MAIL	LB
1/19/05	✓ APPELLANT'S PETITION FOR EXTENSION OF TIME TO FILE BRIEF GRANTED	

File Date

TO AND INCLUDING FEBRUARY 10, 2005.
JOHN G. BAKER, ACTING CHIEF JUDGE MS

1/20/05 ***** ABOVE ENTRY MAILED *****

2/08/05 / APPELLANT'S BRIEF (9) AND FOUR (4) VOLUME APPENDIX FILED
PROOF OF SERVICE (2) MAIL LS

2/10/05 TRIAL COURT CLERK NOTIFIED TO TRANSMIT TRANSCRIPT. LS

2/15/05 / NOTICE OF APPEARANCE BY STEVEN TESMER, DAG
(2) CERTIFICATE OF SERVICE (2) MAIL JS

2/15/05 4 VOL. APPENDIX RELEASED TO DAG TESMER. JS

2/15/05 ****NOTE: CARD IN BOX FOR RELEASE OF TRANS. WHEN IT ARRIVES. JS

2/16/05 / RECEIVED: FIVE (5) VOLUME TRANSCRIPT AND TWO (2) VOLUME EXHIBIT
PLUS T/C & WITNESS LIST FROM TRIAL COURT CLERK GP

2/18/05 5 VOL. TRANSCRIPT, 2 VOL. EXHIBIT, T/C & WITNESS LIST
RELEASED TO DAG TESMER. GP

3/14/05 / APPELLEE'S BRIEF (9) PROOF OF SERVICE (2) MAIL LB

3/15/05 5 VOLUME TRANSCRIPT, 2 VOLUME EXHIBIT, T/C & WITNESS LIST
RETURNED. LB

3/23/05 / REPLY BRIEF (9) PROOF OF SERVICE (2) MAIL RC

3/30/05 4. VOLUME APPENDIX RETURNED. JS

3/31/05 FULLY BRIEFED INFORMATION:
FILED 05/14/04
F.B. 03/31/05
O.A. NONE RS

3/31/05 TRANSMITTED APPEALS *****03/31/05***** RS

8/09/05 / ISSUED THE ENCLOSED OPINION:

8/09/05 2005 TERM
AFFIRMED/REVERSED/REMANDED ----- DARDEN, J.,
MATHIAS, J., AND CRONE, J., CONCUR
MEMORANDUM DECISION/NOT FOR PUBLICATION
14 PAGES EF

8/09/05 ***** ABOVE ENTRY MAILED *****

8/30/05 / APPELLANT'S PETITION FOR TRANSFER (9)
PROOF OF SERVICE (2) MAIL RC

9/29/05 *****TRANSMITTED ON TRANSFER 09/29/05***** RS

File Date

10/13/05 THIS MATTER HAS COME BEFORE THE INDIANA SUPREME COURT ON A PETITION TO TRANSFER JURISDICTION FOLLOWING THE ISSUANCE OF A DECISION BY THE COURT OF APPEALS. THE PETITION WAS FILED PURSUANT TO APPELLATE RULE 57. THE COURT HAS REVIEWED THE DECISION OF THE COURT OF APPEALS. ANY RECORD ON APPEAL THAT WAS SUBMITTED HAS BEEN MADE AVAILABLE TO THE COURT FOR REVIEW, ALONG WITH ANY AND ALL BRIEFS THAT MAY HAVE BEEN FILED IN THE COURT OF APPEALS AND ALL THE MATERIALS FILED IN CONNECTION WITH THE REQUEST TO TRANSFER JURISDICTION. EACH PARTICIPATING MEMBER OF THE COURT HAS VOTED ON THE PETITION. EACH PARTICIPATING MEMBER HAS HAD THE OPPORTUNITY TO VOICE THAT JUSTICE'S VIEWS ON THE CASE IN CONFERENCE WITH THE OTHER JUSTICES.
BEING DULY ADVISED, THE COURT NOW DENIES THE APPELLANT'S PETITION TO TRANSFER OF JURISDICTION.
RANDALL T. SHEPARD, CHIEF JUSTICE
ALL JUSTICES CONCUR. KM

10/13/05 ***** ABOVE ENTRY MAILED *****

10/13/05 *****OPINION CERTIFIED*****

10/24/05 *****RECEIPT RETURNED***** RS

1/11/06 APPELLANT'S PETITION TO WITHDRAW RECORD OF PROCEEDINGS (2) NO CERTIFICATE OF SERVICE ATTACHED LT

1/23/06 ISSUED THE ENCLOSED ORDER:

1/23/06 ORDER: AND THE COURT, HAVING EXAMINED SAID PETITION AND BEING DULY ADVISED, NOW FINDS AND ORDERS THAT PERMISSION SHOULD BE GRANTED FOR THE TRANSCRIPT TO BE WITHDRAWN BY THE OFFICE OF THE PUBLIC DEFENDER OF INDIANA OR BY ONE OF HER DEPUTIES WHO IS LICENSED TO PRACTICE LAW IN THE STATE OF INDIANA FOR A PERIOD OF NINETY (90) DAYS, FOR THE PURPOSE OF COPYING THE SAME. AFTER THE RECORD HAS BEEN COPIED, THE PUBLIC DEFENDER MAY THEN CAUSE THE COPY TO BE TRANSMITTED TO THE APPELLANT BY THE PUBLIC DEFENDER FOR EXAMINATION BY THE APPELLANT AT #142554, INDIANA STATE PRISON, P.O. BOX 41, MICHIGAN CITY, IN, PROVIDED HOWEVER, THAT IF THE PUBLIC DEFENDER HAS AGREED TO SERVE AS COUNSEL FOR THE APPELLANT AND THE APPELLANT WISHES TO CONTINUE TO BE REPRESENTED BY THE PUBLIC DEFENDER, THEN THE APPELLANT IS NOT ENTITLED TO A COPY OF THE RECORD OF PROCEEDINGS AT PUBLIC EXPENSE AND THE PUBLIC DEFENDER IS RELIEVED OF THE OBLIGATION TO MAKE A COPY OF THE RECORD, ANY CONTRARY LANGUAGE IN THIS ORDER NOTWITHSTANDING.
JAMES S. KIRSCH, CHIEF JUDGE MS

1/23/06 ***** ABOVE ENTRY MAILED *****

3/15/06 CASE BUNDLE RELEASED TO STATE PD PER COPYLIST KLM

3/23/06 NOTICE OF APPEARANCE BY CAROLINE B. BRIGGS, ATTY. FOR THE APPELLANT (2) CERTIFICATE OF SERVICE (2) MAIL LT

File Date

3/23/06 / APPELLANT'S PETITION FOR RELEASE OF TRANSCRIPT (2) PROOF OF SERVICE (2) MAIL LT

3/30/06 CASE BUNDLE RETURNED KLM

4/04/06 / ISSUED THE ENCLOSED ORDER:

4/04/06 / HAVING REVIEWED THE MATTER, THE COURT FINDS AND ORDERS AS FOLLOWS:
1. THE PETITION FOR RELEASE OF TRANSCRIPT IS GRANTED.
2. THE CLERK OF THE COURT IS AUTHORIZED TO RELEASE THE RECORD FOR THIS APPEAL, CONSISTING OF A FIVE (5) VOLUME TRANSCRIPT, TWO (2) VOLUMES OF EXHIBITS AND WITNESS LISTS, AND A FOUR (4) VOLUME APPENDIX, TO CAROLINE B. BRIGGS, COUNSEL FOR THE APPELLANT.
3. AT THE CONCLUSION OF THE RE-SENTENCING IN THE TRIAL COURT, CAROLINE B. BRIGGS IS ORDERED TO RETURN THE ORIGINAL RECORD, INTACT, TO THE OFFICE OF THE CLERK OF THE COURT OF APPEALS OF INDIANA.
JAMES S. KIRSCH, CHIEF JUDGE MS

4/04/06 ***** ABOVE ENTRY MAILED *****

4/07/06 5 VOL TRANS, 2 VOL EXHIBIT & 4 VOL APPENDIX RELEASED TO CAROLINE BRIGGS KLM

7/06/07 5 VOL TRANS, 2 VOL EXHIBIT & 4 VOL APPENDIX RETURNED KLM

7/18/07 / APPELLANT'S PETITION TO WITHDRAW RECORD OF PROCEEDINGS (2) CERTIFICATE OF SERVICE (2) LH

8/10/07 / ISSUED THE ENCLOSED ORDER:

8/10/07 / HAVING REVIEWED THE MATTER, THE COURT FINDS AND ORDERS AS FOLLOWS:
1. THE PETITION TO WITHDRAW RECORD OF PROCEEDINGS FROM THE VAULT IS GRANTED, AND THE CLERK OF THIS COURT IS AUTHORIZED TO RELEASE THE ORIGINAL RECORD, CONSISTING OF A FIVE (5) VOLUME TRANSCRIPT, TWO (2) VOLUMES OF EXHIBITS, AND A FOUR (4) VOLUME APPENDIX, TO HILARY BOWE RICKS.
2. AT THE CONCLUSION OF THE POST-CONVICTION PROCEEDINGS IN THE TRIAL COURT, HILARY BOWE RICKS IS ORDERED TO RETURN THE ORIGINAL RECORD, INTACT, TO THE OFFICE OF THE CLERK OF THE COURT OF APPEALS OF INDIANA.
JOHN G. BAKER, CHIEF JUDGE MS

8/10/07 ***** ABOVE ENTRY MAILED *****

8/13/07 5 VOL TRANS, 2 VOL EXHIBIT, 2 T/C & 4 VOL APPENDIX RELEASD TO ATTY RICKS PER ORDER KLM

11/06/08 5 VOLUME TRANSCRIPT, 2 VOLUME EXHIBIT, 2 T/C & 4 VOLUME APPENDIX

File Date

RETURNED.

HS/EF

11/13/08 / ISSUED THE ENCLOSED ORDER:

11/13/08

THE COURT FINDS AND ORDERS THAT THE APPELLANT'S REQUEST FOR TRANSMISSION OF PRIOR RECORD OF PROCEEDINGS UNDER 15A01-0405-CR-213 IS GRANTED, AND THE CLERK OF THIS COURT IS DIRECTED TO TRANSFER THE RECORD, CONSISTING OF A FIVE (5) VOLUME TRANSCRIPT, TWO (2) VOLUMES OF EXHIBITS, TWO (2) TABLE OF CONTENTS, AND A FOUR (4) VOLUME APPENDIX, FROM THE APPELLANT'S PRIOR DIRECT APPEAL, DOCKETED UNDER CAUSE NO. 15A01-0405-CR-213, TO THIS CAUSE, TO BE INCLUDED AS PART OF THE RECORD FOR THIS APPEAL.

THE CLERK OF THE COURT OF APPEALS IS DIRECTED TO FILE A COPY OF THIS ORDER UNDER CAUSE NOS. 15A01-0810-PC-480 AND 15A01-0405-CR-213, AND CAUSE THE SAME TO BE SPREAD OF RECORD.

JOHN G. BAKER, CHIEF JUDGE

KM

11/14/08

***** ABOVE ENTRY MAILED *****

11/14/08

5 VOL. TRANSCRIPT, 2 VOLS. EXHIBITS, 2 T/C, AND 4 VOL. APPENDIX TRANSFERRED TO 15A01-0810-PC-480 PER COURT'S ORDER DATED 11/13/08.

KM

6/09/09

5 VOL TRANS, 2 VOL EXHIBIT, 2 T/C & 4 VOL APPENDIX
RETURNED TO THIS CAUSE

**** END OF REPORT ****

KLM

15A01-0810-PC-480

INDIANA COURT OF APPEALS

APPELLATE NO.: 15A01-0405-CR-2132

ROGER HOLBROOK
APPELLANT/PARTY BELOW

VS

STATE OF INDIANA
APPELLEE/PARTY BELOW

APPEAL FROM THE DEARBORN
CIRCUIT COURT

TRIAL COURT CAUSE NO.:
15C01-0211-MR-001

BEFORE THE HONORABLE
JAMES D. HUMPHREY, JUDGE

TRANSCRIPT OF EVIDENCE

VOLUME I OF V

PAGES 1 TO 250

FILED

NOV 24 2004

Steph G. G...
CLERK, DEARBORN CIRCUIT CLERK

ATTORNEY FOR APPELLEE:

ATTORNEY GENERAL OF INDIANA
INDIANA GOVERNMENT CENTER SOUTH
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ATTORNEY FOR APPELLANT:

LEANNA RECTOR WEISSMANN
PUBLIC DEFENDER
POST OFFICE BOX 3704
LAWRENCEBURG, INDIANA 47025
PHONE: (812) 926-2097

PAMELIA SUE ASHLEY
OFFICIAL COURT REPORTER
DEARBORN CIRCUIT COURT

RECEIVED
STATE OF INDIANA
CLERK OF COURTS

FEB 18 2005



**BEST
COPIES
AVAILABLE
DUE TO
ORIGINAL**

1 STATE OF INDIANA)
2 COUNTY OF DEARBORN)

3
4 IN THE DEARBORN CIRCUIT COURT
5 CAUSE NO. 15C01-0211-MR-001
6

7 STATE OF INDIANA)
8 VS)
9 ROGER HOLBROOK)

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11
12 TRANSCRIPT OF INITIAL HEARING

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14 BEFORE THE HONORABLE JAMES D. HUMPHREY
15 JUDGE OF THE DEARBORN CIRCUIT COURT

16 DATE: MAY 27, 2003
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24 PAMELIA SUE ASHLEY
25 OFFICIAL COURT REPORTER
DEARBORN CIRCUIT COURT

1 **APPEARANCES**

2

3 **ON BEHALF OF THE STATE**

4 **SALLY A. BLANKENSHIP**
5 **F. AARON NEGANGARD**
6 **215 WEST HIGH STREET**
7 **LAWRENCEBURG, INDIANA 47025**

8

9

10

11 **ON BEHALF OF THE DEFENDANT**

12 **GARY W. SORGE**
13 **17 MARY STREET**
14 **LAWRENCEBURG, INDIANA 47025**

15 **ROBERT J. EWBank**
16 **DAVID KING**
17 **114 WEST HIGH STREET**
18 **LAWRENCEBURG, INDIANA 47025**

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COURT: Let the record reflect that this is Cause No. 15C01-0211-MR-001, and this is in the matter of State of Indiana versus Roger Holbrook. Show for the record that appearing here today on behalf of the State of Indiana, is Prosecuting Attorney, Ms. Blankenship. Mr. Holbrook appears in person. We are scheduled today for an Initial Hearing. Mr. Holbrook, I need you to state your full name, please.

DEFENDANT: Roger Dale Holbrook.

COURT: Mr. Holbrook, do you read and understand the English language?

DEFENDANT: Correct. Yes.

COURT: What is your age?

DEFENDANT: Fifty-seven.

COURT: Your date of birth?

DEFENDANT: 2-1-46.

COURT: And, Mr. Holbrook, your social security number?

DEFENDANT: 234-70-7065.

COURT: Mr. Holbrook, where did you live at the time of your arrest?

DEFENDANT: I forget the address, it's East Liverpool, Ohio. Actually, it was Rogers, Ohio, was the address...R-O-G-E-R-S.

COURT: And, what is the last year of school you completed?

DEFENDANT: Sorry?

COURT: Your last year of school, please?

DEFENDANT: I suppose it's like sixteen years.

COURT: Do you have a college education, sir?

1 DEFENDANT: Yes, sir.
2 COURT: Graduate of college?
3 DEFENDANT: No.
4 COURT: And, at this time are you under the influence of alcohol or any
5 drugs?
6 DEFENDANT: No, sir.
7 COURT: During these proceedings today, Mr. Holbrook, if you don't
8 understand any of the questions I ask or the words I use, let
9 me know and I'll try to help explain it for you more fully.
10 DEFENDANT: Okay.
11 COURT: I have been advised of your arrest on certain charges which
12 have been filed in this Court. Have you received a copy of
13 those charges?
14 DEFENDANT: Just now.
15 COURT: Okay.
16 DEFENDANT: I assume that's what these are, I don't have my glasses with
17 me though.
18 COURT: I'm going to review this with you at this time.
19 DEFENDANT: Okay.
20 COURT: This is an Amended Information, and it is in three Counts.
21 DEFENDANT: What does that mean "amended?"
22 COURT: It means the charges were initially filed, and a subsequent
23 filing has been made...it appears to me to be adding two
24 Counts. Is that correct, Ms. Blankenship?
25 BLANKENSHIP: Adding one Count, Your Honor.

1 COURT: One Count has been added to the Information from the time
2 it was originally filed. I'm going to be going over those
3 charges with you here today.

4 DEFENDANT: Okay.

5 COURT: Count I, is for the offense of Murder, a Felony, and that is
6 under Indiana Code 35-42-1-1, and Count I reads as follows:
7 It says "Jon Vance and Kip Main being duly sworn upon their
8 oaths state that on or about November 5th, 2002, in Dearborn
9 County, State of Indiana, Roger Holbrook did knowingly kill
10 another human being, to-wit: did discharge a firearm
11 knowingly striking the body of Barbara Holbrook resulting in
12 the death of Barbara Holbrook. All of which is contrary to
13 the form of the statute in such cases made and provided, to-
14 wit: Indiana Code 35-42-1-1, and against the peace and
15 dignity of the State of Indiana." Count II is for the offense of
16 Stalking, a Class C Felony. And, that Count reads as follows:
17 "Jon Vance and Kip Main being duly sworn upon their oaths
18 state that on or about between October 8, 2002, and
19 November 5, 2002, in Dearborn County, State of Indiana,
20 Roger Holbrook did stalk Barbara Holbrook, to-wit: did
21 knowingly harass Barbara Holbrook causing Barbara
22 Holbrook to feel threatened or frightened when in violation of
23 a Protective Order from the Dearborn Superior Court, Cause
24 No. 15D01-0210-PO-080 of which Roger Holbrook had
25 actual notice and did terrorize Barbara Holbrook by

1 discharging a firearm through a screen door to the residence.
2 All of which is contrary to the form of the statute in such
3 cases made and provided, Indiana Code 35-45-10-5(a)(2), and
4 against the peace and dignity of the State of Indiana." In
5 Count III, is for the offense of Invasion of Privacy, a Class A
6 Misdemeanor under Indiana Code 35-46-1-15.1, and Count III
7 reads as follows: "Jon Vance and Kip Main being duly sworn
8 upon their oaths state that on or about November 5, 2002, in
9 Dearborn County, State of Indiana, Roger Holbrook did
10 knowingly violate an Ex Parte Protective Order issued under
11 Indiana Code 34-26-5 a Temporary Protective Order from the
12 Dearborn Superior Court, Cause No. 15D01-0210-PO-080,
13 to-wit: did enter upon the curtilage of the rental property of
14 Barbara Holbrook after said Protection Order was issued. All
15 of which is contrary to the form of the statute in such cases
16 and made and provided, to-wit: Indiana Code 35-46-1-15.1,
17 and against the peace and dignity of the State of Indiana."
18 These charges are signed by Jon Vance and Kip Main, and
19 subscribed and sworn before a Notary and approved by the
20 Prosecuting Attorney's office. Do you understand the nature
21 of the charges brought against you, sir?

22 DEFENDANT: Well, I'm assuming that...
23 COURT: I'm just asking if you understand what I...
24 DEFENDANT: Yes.
25 COURT: ...read you here today?

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DEFENDANT: Yes.

COURT: You understand that, sir?

DEFENDANT: Yes.

COURT: Ms. Blankenship, would you review the statutes under which these charges are brought?

BLANKENSHIP: Count I is brought under Indiana Code 35-42-1-1 which is Murder, which reads: "A person who knowingly or intentionally kills another human being, commits Murder, a Felony." Count II is brought under Indiana Code 35-45-10-5(b)(2) which is Stalking and states: "A person who stalks another person, commits Stalking, a Class D Felony; however the offense is a Class C Felony if a Protective Order to prevent domestic or family violence, a No Contact Order or other judicial Order under any of the following statutes has been issued by the Court to protect the same victim or victims from the person and the person has been given actual notice of the Order and those include Orders under Indiana Code 31 through 15, Indiana Code 34 through 26-5 or Indiana Code 31-1-11.5." And, Count III is under Indiana Code 35-46-1-15.1, Invasion of Privacy, which states: "A person who knowingly or intentionally violates an Ex Parte Protective Order issued under Indiana Code 34-26-5 or an emergency Order issued under Indiana Code 35-26-2 or 34-4-5.1, commits Invasion of Privacy, a Class A Misdemeanor."

COURT: Thank you, Ms. Blankenship. Any questions about the

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statutes or laws under which these charges are brought, sir?

DEFENDANT: No, sir.

COURT: At this time, Mr. Holbrook, I'm going to review the possible penalties with you for these offenses. Count I, the offense of Murder, is punishable by a presumptive jail sentence of fifty-five years. Up to ten years can be added for aggravating circumstances, up to ten years subtracted for mitigating circumstances. In other words, a basic maximum jail sentence of sixty-five years, a basic minimum jail sentence of forty-five years, and a possible fine of up to Ten Thousand Dollars. Under Count II, you're charged with a Class C Felony. A Class C Felony is punishable by a presumptive jail sentence of four years. Up to four years can be added for aggravating circumstances, up to two years subtracted for mitigating circumstances. In other words, a basic maximum jail sentence of eight years, a basic minimum jail sentence of two years, and possible fine of up to Ten Thousand Dollars. You're also charged in Count III with a Class A Misdemeanor which is punishable by a presumptive jail sentence of up to one year, a fine of up to Five Thousand Dollars. Do you understand the possible penalties that could be imposed?

DEFENDANT: Yes, sir.

COURT: Mr. Holbrook, in these proceedings here today, I need to know if you have an attorney who is going to be representing you?

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DEFENDANT: No, not yet.

COURT: Sir, you have the right to retain and be represented by an attorney. You also have the right to proceed without an attorney if you would so desire. Do you understand that?

DEFENDANT: Yes.

COURT: Now, you need to further understand that you must retain Counsel within twenty days because there are certain deadlines for filing Motions and raising defenses. If those deadlines are missed, the legal issues and defenses that could have been raised, will be waived or given up. Do you understand that?

DEFENDANT: Yes.

COURT: If you don't have the money, means or property with which to employ your own attorney, the Court would appoint an attorney to represent you. Do you understand that?

DEFENDANT: Yes.

COURT: Now, are you intending to hire your own Counsel in this matter, sir?

DEFENDANT: No, sir, I don't have the money, I need the Court to appoint me an attorney.

COURT: I'm going to need to ask you some questions about your financial circumstances, sir.

DEFENDANT: Certainly.

COURT: Please raise your right hand. Do you solemnly swear or affirm under penalties for perjury that the testimony you give

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in this matter will be the truth, the whole truth and nothing but the truth so help you God?

DEFENDANT: I do.

COURT: State your name again, please.

DEFENDANT: Roger Dale Holbrook.

COURT: Mr. Holbrook, are you employed?

DEFENDANT: No, sir.

COURT: When were you last employed?

DEFENDANT: January of 2003 or January of 2000...no, it was July or September of 2002.

COURT: And, where was that, sir?

DEFENDANT: Mountaineer Park Race Track in Chester, West Virginia.

COURT: Okay. What was the nature of your employment there?

DEFENDANT: I was a jockey agent at the time.

COURT: Do you have any source of income at this time?

DEFENDANT: No, sir.

COURT: How have you been supporting yourself?

DEFENDANT: Just by doing odd jobs...painting, mowing --INAUDIBLE--.

COURT: Do you have any type of investments?

DEFENDANT: No, sir.

COURT: Any type of retirement plans?

DEFENDANT: No, sir.

COURT: Do you have a checking account?

DEFENDANT: No, sir.

COURT: Do you have a savings account?

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DEFENDANT: No, sir.

COURT: Do you own any motor vehicles?

DEFENDANT: No, sir.

COURT: Do you own any items of personal property of a value over One Hundred Dollars?

DEFENDANT: Maybe some tools, but it would be very minimal, a little over One Hundred Dollars, or less then Five Hundred Dollars.

COURT: Has any family member been in contact with you indicating a willingness to assist you obtaining Counsel?

DEFENDANT: We've talked about it somewhat, I've talked to my sister a little bit about it yesterday, but we can't get the money, she contacted a couple of attorneys and it was just too much money.

COURT: Do you have any cash money/

DEFENDANT: Pardon me?

COURT: Do you have any cash?

DEFENDANT: No, sir.

COURT: Do you have any other money, means or property whatsoever which could be used to employ an attorney?

DEFENDANT: No, sir.

COURT: At this time I'm going to find you qualify for appointment of Counsel. I can make a later determination that you're obligated to repay all or part of the fees involved, but at this time I'm going to appoint the Public Defender to represent you. Mr. Holbrook, as a defendant charged in a criminal

1 prosecution, you have certain legal and constitutional rights
2 which are guaranteed to you. You have the right to a speedy
3 public trial by jury in the county in which the offense was
4 allegedly committed. You'll be presumed innocent unless or
5 until the State proves you guilty beyond a reasonable doubt.
6 You have the right to face all witnesses against you, to see,
7 hear, question and to cross examine those witnesses. You
8 also have the right to require witnesses to be present at any
9 hearing to testify on your behalf, and at your request,
10 subpoenas will be issued by the Court requiring witnesses to
11 appear on your behalf. You have the right to remain silent,
12 and you cannot be required to give any testimony or make any
13 statement against yourself to anyone. You have a right to be
14 heard in your own defense at any hearing or trial concerning
15 these charges against you, anything you say, however, may be
16 used against you. Any question about any of these rights I've
17 advised you of here today?

18 **DEFENDANT:** No questions, sir.

19 **COURT:** Ms. Blankenship, the charge involved here, is that of murder.
20 There is presumptively no bond to be set, and that is my intent
21 at this time. No bond will be set as the charge is one of
22 murder. At this time, I'm going to schedule this case for an
23 omnibus date and a Pre-Trial Hearing for July 21, 2003, at
24 8:30 A.M. Ms. Blankenship...Mr. Holbrook, I'm going to go
25 ahead and schedule this case for trial at this time as well given

1 the schedule that we have coming up for the rest of the year,
2 and the date I'm looking at is September the 2nd, 2003, and
3 that would begin at 9:00 A.M. As far as the place setting on
4 that date, I'm going to check the calendar before I determine
5 a place setting, but it will be September the 2nd, 2003, at 9:00
6 A.M. Is there anything else?

7 **BLANKENSHIP:** No, Your Honor.

8 **COURT:** Mr. Holbrook is remanded to the custody of the Sheriff at this
9 time as no bond may be set. That's all for today.

10 **CONCLUSION OF PROCEEDINGS**

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1 STATE OF INDIANA)
2 COUNTY OF DEARBORN)

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IN THE DEARBORN CIRCUIT COURT
CAUSE NO. 15C01-0211-MR-001

7 STATE OF INDIANA)
8 VS)
9 ROGER HOLBROOK)

TRANSCRIPT OF JURY TRIAL

**BEFORE THE HONORABLE JAMES D. HUMPHREY
JUDGE OF THE DEARBORN CIRCUIT COURT**

DATE: MARCH 1 - 11, 2004

**PAMELIA SUE ASHLEY
OFFICIAL COURT REPORTER
DEARBORN CIRCUIT COURT**

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COURT: Show that this is Cause No. 15C01-0211-MR-001, and this is in the matter of State of Indiana versus Roger Holbrook. Show for the record that appearing today on behalf of the State of Indiana is Prosecuting Attorney, Ms. Blankenship; Deputy Prosecutor, Mr. Negangard. Mr. Holbrook appears today in person, appearing with him is Counsel. Mr. King, Mr. Sorge and Mr. Ewbank. We are scheduled today for trial by jury. We're meeting at this time outside the presence of prospective jurors in the Juvenile Court Room. Counsel, there are some preliminary matters that we need to attend to at this time. First of all, on issues of jurors here for today. Counsel, I have just provided you with a letter regarding juror number one, Mr. Bildner, regarding a problem at work in creating a hardship. Is there any objection to me releasing him, Ms. Blankenship?

BLANKENSHIP: No, Your Honor.

COURT: Mr. Ewbank, Mr. King, Mr. Sorge?

KING: No, Your Honor.

COURT: I'll show that juror number one will be released. Juror number forty-six, Mr. Curran, we're advised this morning is now residing in the State of Ohio. Any objection to me releasing him, Ms. Blankenship?

BLANKENSHIP: No, Your Honor.

COURT: Mr. King?

KING: No, Your Honor.

1 COURT: And, finally juror number forty-three a Mr. Disch indicated to
2 have been off sick all day yesterday, and sick this morning, he
3 is requesting to be released for that purpose. Any objection,
4 Mr. Blankenship?

5 BLANKENSHIP: No, Your Honor.

6 COURT: Mr. King?

7 KING: No, Your Honor.

8 COURT: Show them released. The other matters I want to attend to
9 this morning are relating to a State's Motion in Limine. Any
10 argument you wish to make on that at this time, Mr. King?

11 KING: Yes, Your Honor. As far as the State's Motion in Limine as
12 far as the first portion of that in regards to the alibi defense,
13 we would object to that. We believe that at this point there
14 may be some testimony relating to Mr. Holbrook's
15 whereabouts on the morning in question. Due to excusable
16 neglect of the defense, we were not able to get this testimony
17 pre-trial. One circumstance, we got a call this morning about
18 ten minutes ago from a potential witness as far as Mr.
19 Holbrook's whereabouts from the time period of 7:30 to 8:00.
20 We would ask that we would be allowed to present that alibi
21 defense once we're able to take potential witness' deposition,
22 I understand that the State would want to take his deposition
23 before he be allowed to testify, and we have no objection to
24 that. The other witnesses that potentially could come into
25 play in the alibi defense, I believe their depositions were taken

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recently as Wednesday of last week, and, again, this is information...witnesses that we were not aware of until...until recently, we would ask that the Court allow us to still present evidence as to Mr. Holbrook's whereabouts on the date in question. Just to further...as a further reason for the lack of the alibi defense being filed, at this point we've not seen any evidence from the State as far as the time of death. We took a deposition of the Coroner in this matter, the Coroner was unable to place a time of death which would be necessary before we could evaluate whether or not an alibi defense is appropriate. As far as section two of the State's Motion in Limine, opinions regarding guilt or innocence of the defendant, we would not object to that portion as much as it's limited to opinions on the ultimate issue...obviously we would ask that the witnesses be allowed to state the basis of their opinion if it's within their personal knowledge, that would be if they have personal knowledge of a reason why they believe that Mr. Holbrook is innocent, they'd be allowed to state that basis. As far as the character of the victim. The State argues that the defense of self-defense has not been presented here...and it is not, Judge, but the character of the victim is still relevant to the matter, and the character of the victim goes to more than just self-defense, it goes to lesser charges...it goes to sudden heat doctrine. There's a number of other defenses and issues at the trial that the character of the

1 victim can be relevant to them and we would ask the Court
2 not grant the State's Motion in Limine and evaluate those on
3 a instance by instance basis depending on what evidence is
4 being presented.

5 **COURT:** Thank you, Mr. King. Ms. Blankenship?

6 **BLANKENSHIP:** Just briefly. The State I think is out layed its argument in the
7 Memo. As to the alibi defense, there has been none filed by
8 the defense at this time, and we...the State would believe at
9 least as to voir dire, that the Motion in Limine should be
10 granted. As to the belief of witnesses whether the defendant
11 is guilty or innocent, I believe that goes to the fact of the
12 issues and it is clear from the rules of evidence that that
13 specific question is for the province of the jury. As to the
14 character of the victim. There has been no self-defense
15 raised, there would be no reason to bring in any characteristics
16 of the victim other then for prejudicial reasons, and for those
17 reasons and since there would be no relevance to delve into
18 the character of the victim, the State would ask that a Motion
19 in Limine be granted as to that also.

20 **KING:** Did you file a Memorandum in support of this Motion...cause
21 I have not seen that.

22 **BLANKENSHIP:** No.

23 **KING:** Okay. I just wanted to make sure of it.

24 **SORGE:** Your Honor, if I may, in regard to part two where they're
25 asking that the defense attorneys not be allowed to even imply

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guilt or innocence of our client during opening statement or closing statement, I don't think that is at all appropriate.

COURT: Counsel, I'll be giving instructions to the jury that what the attorneys say is not evidence, it is their characterization of the evidence.

SORGE: And, we were also...

COURT: I don't think that the Motion...I don't read the Motion to limit argument by Counsel in opening or closing statements. Is that correct, Ms. Blankenship?

BLANKENSHIP: That's correct, we're just speaking of specific questions towards witnesses or witnesses' specific belief as to guilt or innocence, not attorneys.

COURT: The way I'm going to handle it, is this. At this point there has been no alibi defense filed. There has been...frankly from what you've told me, Mr. King, I don't know that you know that you have an alibi defense or not at this point.

KING: At this point we're not certain what testimony the State is going to present as far as time of death.

COURT: As to...I'm going to grant the Motion in Limine in all respects, I believe based upon what's been presented here today as to whether or not there is an alibi defense at this point, I'm going to grant the Motion. As to opinions of witnesses regarding guilt or innocence, that's...that Motion is granted as well, I think that's appropriate. Character of the victim. I'm going to grant that also at this time. Now, by

1 granting a Motion in Limine, folks, what this means, is before
2 I would consider allowing any testimony on any of these three
3 categories, you have to approach the bench, make an offer to
4 prove, and allow me to make a decision. I'll make that
5 decision based upon the evidence that's being presented and
6 any further arguments I'm hearing. I have a distinct feeling
7 that as to the issue of alibi defense, if, in fact, this comes to
8 pass, Mr. King, we'll be having a separate hearing outside the
9 presence of the jury for me to hear further and make a later
10 determination.

11 **KING:** Judge, we would ask that we be able to make mention of the
12 potential witnesses that may testify as to an alibi defense
13 during voir dire.

14 **COURT:** Well, you're not mentioning an alibi defense, you're just
15 merely asking folks if they know these witnesses' names?

16 **KING:** That's correct, Judge.

17 **COURT:** Unless there is a specific reason, Ms. Blankenship, I can't see
18 any harm in naming the witnesses, I think that's a benefit to
19 both sides here.

20 **EWBANK:** Your Honor, to supplement a witness list, we have four
21 witnesses at this time...the two Grubbs...James and Jamie
22 Grubbs, a witness that cannot be found at this time, James
23 Vincent, and a new witness that just called us this morning,
24 and that would be a Gail Elkinson. The State was aware of
25 three, not aware of Elkinson. I was not aware of Elkinson.

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KING: They've actually taken the deposition of the two Grubbs'.
COURT: I understand all you're doing during voir dire, is naming potential witnesses to make sure that...to determine what knowledge, if any, the jurors have of these persons. Counsel, a couple of other preliminary things. All are aware that you have ten pre-emptory strikes. I am planning on us selecting three alternate jurors. During my presentation which I'm required to give...Counsel, correct me if I am wrong, am I to give the jurors some estimation of how long this is going to take...I've heard anywhere from two to three weeks, I was going to basically split the difference and say approximately two and a half weeks. Does that sound like a fair way to handle this?

BLANKENSHIP: Yes, Your Honor.

KING: That would be fine, Judge.

COURT: Anything else before we begin? The jurors...I want to note for the record, are watching the Supreme Court's approved jury orientation video I believe at this time, and when I last spoke with the Bailiff, we had one juror who was missing. Anything else before we begin?

NEGANGARD: No, Your Honor.

COURT: We will recess. What we're going to do logistically here...we will do this both today and tomorrow, is we're going to have your client, Mr. King, brought in here to the Juvenile Court Room before potential jurors are allowed in the Court House.

1 After they finish watching the video, the Bailiff will ask the
2 jurors to step out of the Court Room...take a bathroom break
3 before we get started. During that time we'll close the doors
4 here in my office, and we'll take Mr. Holbrook through there
5 where he cannot be seen by anyone, into the empty Court
6 Room to be seated, and then prospective jurors will be let
7 back in. So, it's my understanding he has a leg brace on
8 underneath his pants which is not visible by anyone at this
9 time. Is that a satisfactory procedure for everyone here?

10 KING: Judge, if I can clarify. As far as the beginning of the trial, is
11 that at this point a minimum of tomorrow as the start I
12 assume?

13 COURT: If by some strange act we would have a jury by noon today...
14 which I don't think is going to happen...

15 KING: I don't think so either.

16 COURT: ...we would start this afternoon. I don't expect that's going to
17 happen, I would be thrilled and elated if we could get a jury
18 selected today.

19 KING: But, if we have jurors that are selected, they will be instructed
20 to come back tomorrow. Is that correct?

21 COURT: I'm going to have them come back tomorrow, I think that's
22 the best way to handle this, folks, that way if we get a jury by
23 say noon tomorrow, then we are ready to proceed.

24 KING: Okay.

25 COURT: Again, I'm not expecting to delay us beginning presentation

1 of evidence, opening statements and so forth, I want us to
2 start as soon as we're able to do so, and I know, Ms.
3 Blankenship, that puts you in a little bit of an awkward
4 position, but we're just going to need to be prepared as best
5 we can...and I'll work with you all as best I can, within the
6 bounds of keeping this trial moving. Anything else before we
7 begin...any questions?

8 **EWBANK:** Judge, during recesses he will be in here and we'll be free to
9 talk to our client...that's always been a logistical problem.

10 **COURT:** We're also going to have to figure out a way to...

11 **EWBANK:** Or if we could have that room?

12 **COURT:** We'll get you a room available, but the awkward thing we
13 have to deal with right now, Mr. Ewbank, obviously is having
14 prospective jurors outside the presence while we have your
15 client coming out of the Court Room and walking cause he
16 has his brace on. Ms. Shepherd, how did we handle that in
17 the last trial during the breaks?

18 **SHEPHERD:** We went through the Clerk's office door, come around, put
19 him on the elevator, and we took him downstairs, but with
20 him here, then you used to let us use your bathroom.

21 **COURT:** If we have to do that, we'll do it, but, again, we just need to
22 insulate Mr. Holbrook from potential jurors. Mr. Ewbank, I
23 don't know if we have any proceedings going on in here, but
24 if you need a room, we will make that available...I'm not sure
25 we'll be able to do it very well during breaks, you're probably

1 just going to have to sit at Counsel table and speak to him
2 during breaks cause there's really no way we can logistically
3 do all this to protect your client as well. Once we get the jury
4 selected, we'll have a lot more flexibility to do that. Let's
5 take a short recess.

6 RECESS CALLED

7 COURT RECONVENED FOLLOWING RECESS

8 COURT: Show that we're back on the record outside the presence of
9 prospective jurors, and that Counsel for the State and defense
10 are present as well as Mr. Holbrook, and this is Cause No.
11 15C01-0211-MR-001. Counsel, I want to make sure we've
12 gone over all the jurors who have been excused here today by
13 agreement, and that would be this morning jurors number one,
14 Mr. Bildner; number forty-six...Mr. Bildner had a problem
15 with work; Mr. Curran does not live in the State of Indiana,
16 number forty-six; number forty-three, Mr. Disch, who is
17 sick...and then the rest of the names are ones that we reviewed
18 last week and there was an agreement that they be excused,
19 number thirty, Ms. Nicolaci; thirty-two, Mr. Bond; number
20 forty-seven, Mr. Surber, and I believe we've reviewed all
21 those...the reasons for them I do have deferrals that have been
22 presented, and I believe, Counsel, that both sides agreed that
23 these persons be released. Correct, Ms. Blankenship?

24 BLANKENSHIP: Yes, Your Honor.

25 COURT: Mr. Ewbank?

1 between October 8, 2002, and November 5, 2002, in
2 Dearborn County, State of Indiana, Roger Holbrook did stalk
3 Barbara Holbrook, to-wit: did knowingly harass Barbara
4 Holbrook causing Barbara Holbrook to feel threatened or
5 frightened when in violation of a Protective Order from the
6 Dearborn Superior Court, Cause No. 15D01-0210-PO-080 of
7 which Roger Holbrook had actual notice. And three, invasion
8 of privacy alleging that on or about November 5, 2002, in
9 Dearborn County, State of Indiana, Roger Holbrook did
10 knowingly violate an Ex Parte Protective Order issued under
11 Indiana Code 34-26-5 a temporary Protective Order from
12 Dearborn Superior Court, Cause No. 15D01-0210-PO-080,
13 to-wit: did enter upon the curtilage of the rental property of
14 Barbara Holbrook after said Protective Order was issued. The
15 law presumes Mr. Holbrook is innocent of these charges, this
16 presumption remains with the defendant throughout the entire
17 proceedings unless or until the State of Indiana proves the
18 defendant guilty beyond a reasonable doubt. Each of you has
19 been asked to be here today as prospective jurors for this case.
20 During this process all of you will be asked to take an oath or
21 an affirmation that your answers to questions will be truthful.
22 I'll be asking a few questions of you as a group, and after I
23 have finished, the attorneys will ask questions. These
24 questions are not intended to be offensive, personal or
25 embarrassing, but are to ensure that a fair and impartial jury

1 is selected. If during this jury selection process any questions
2 are asked that you feel are personal and you would prefer to
3 answer them at the bench in private, please request to do so.
4 You should also not be offended if you are excluded for
5 serving as a juror for no apparent reason. In the jury selection
6 process, both the Prosecution and the defense have the
7 opportunity to strike potential jurors under what are known as
8 pre-emptory challenges. Also, jurors may be excluded from
9 service by challenges for cause such as when a person has
10 personal knowledge of a particular case. As prospective
11 jurors, it is your duty to answer questions truthfully. If
12 selected as jurors, it is your duty to listen attentively to the
13 evidence, follow the instructions of the Court, and base a
14 decision solely upon what you hear and see in this Court.
15 Also, be advised that you should not discuss this case among
16 yourselves or with anyone. Do not form or express any
17 opinion on the guilt or innocence of the defendant until this
18 case would be submitted to you if selected as a juror. If you
19 need statements to verify your service as jurors for your
20 employer, the Clerk will be happy to furnish these for you.
21 Please be advised that the Court House is now a smoke-free
22 facility. As you've now found out, restrooms are located on
23 the first floor behind the staircase. There is no eating or
24 drinking in the Court Room. Normally, we will take breaks
25 at 10:30 and 2:30...we're going to be a little later this morning

1 because we are starting a little bit late. There
2 will also be a recess for lunch from approximately
3 noon until 1 p.m. It's expected we'll begin each
4 day at approximately 9 a.m. and recess at
5 approximately 4:30. This trial is expected to last
6 approximately two and a half weeks. All of us
7 understand the significant inconveniences that can
8 arise due to the nature of the case; however, our
9 system of self-government is not easy and one of
10 the highest duties we have as citizens is to serve
11 as jurors. We are all aware of the hardship that
12 jury service can cause. We appreciate all of your
13 efforts in preparing to fulfill your civic duty as
14 jurors. At this time, I want to call a roll of
15 prospective jurors, and when I call your name, if
16 you would please indicate your presence.

17 **ROLL CALL OF PROSPECTIVE JURORS**

18 **OATH ADMINISTERED TO PROSPECTIVE JURORS**

19 **COURT:** Show that the panel is sworn. And ladies
20 and gentlemen, I'm going to be asking
21 some general questions of you as a group
22 before we begin questioning by the
23 attorneys. And those of you standing, be
24 patient, we're going to be getting you a
25 seat here in just a minute. Is there anyone

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who is not a resident of Dearborn County or at least eighteen years of age? (No response) Is there anyone unable to read, speak or understand the English language sufficiently to complete a juror questionnaire form? (No response) Anyone who believes they have a physical or mental disability that would interfere with rendering good service as a juror? (No response) Anyone who has a guardian appointed over their person? (No response) Anyone who is currently under a sentence imposed for an offense or had rights previously revoked by reason of a felony conviction, and those rights have not been restored? (No response) Anyone who has served as a juror in the county during the last three hundred and sixty-five days? (No response) Anyone over the age of sixty-five who wishes to be excused for that reason? (No response) Prospective jurors may also be excused upon request if you're one of the following: Policeman, fireman, dentist, veterinarian, active duty armed services,

1 active duty armed forces of the United
2 States, National Guard, Indiana State
3 Guard, member of the Indiana General
4 Assembly, elected or appointed official of
5 the executive, legislative, or judicial
6 branches of the federal, state, or local
7 government and is actively engaged in the
8 performance of that person's duties. Is
9 there anyone who fits into any of these
10 categories?

11 A. Volunteer fireman.

12 COURT: Sir, would you step forward? Counsel,
13 approach the bench, please. Conference
14 at the bench, outside the hearing of the
15 jury. Good morning, sir. Your name?

16 A. Kevin Gick.

17 COURT: Mr. Gick, are you requesting to be excused
18 for that reason?

19 A. Yes.

20 COURT: Counsel, my understanding is that this is
21 not an exclusion (indiscernible) allow Mr.
22 Gick to request to be relieved and we do
23 so. Any objections to raise at this time,
24 Ms. Blankenship?

25 MS. BLANKENSHIP: No, Your Honor.

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COURT:

Mr. King?

MR. KING:

No, Your Honor.

COURT:

Okay, sir, you can go ahead and take your seat. Thank you. I am going to find, there being no positive responses, for the record that this prospective panel of jurors meets the general qualifications to serve as jurors in accordance with Indiana Law. I do want to admonish each of you that you are not to discuss anything that you may have read, heard or know with other potential jurors in this case. Counsel, approach the bench again, please.

Conference at the bench, outside the hearing of the jury. The, uh - - anything before we begin voir dire, counsel? Anything regarding general qualifications at this time?

MR. EWBANK:

No.

COURT:

Ms. Blankenship, Mr. Negangard?

MR. NEGANGARD:

No.

COURT:

Ms. Blankenship, are you ready to proceed?

MS. BLANKENSHIP:

Yes.

1 **VOIR DIRE QUESTIONS BY STATE**

2 **COURT:**

3 At this time, I am going to call the first
4 twelve jurors to be seated and begin
5 questioning by the attorneys, and the way
6 we'll work this is, seat number one is in
7 the front row of the jury box, to my left,
8 and it will be one through six in the front
9 row. We'll start, then, in the back row,
10 behind seat number one will be seat
11 number seven, and the continue on through
12 twelve. For seat number one, I'll call
13 Brittney Anderson. For seat number two,
14 Roberta Barnes. Seat number three,
15 James Sedler. Seat number four, Bernie
16 Roberts. Seat number five, Linda
17 Brandenburg. Seat number six, Gary
18 Wafford. Seat number seven, Endea
19 Sizemore. Seat number eight, Timothy
20 Burkhardt. Seat number nine, Philip
21 Ketron. Seat number ten, Robert
22 Wegman. Seat number eleven, Dwight
23 Moody. And seat number twelve, Linda
24 Mattox. Good morning to each of you.
25 And Ms. Blankenship, you may proceed
on behalf of the State.

1 **VOIR DIRE QUESTIONS BY STATE**

2 **VOIR DIRE**

3 **QUESTIONS BY MS. BLANKENSHIP:**

4 Q. Good morning. I'll start by thanking you for your service, and
5 also for your patience, and you'll realize that as the day
6 progresses. This is a process that is going to require a bit of
7 your patience. Jury selection is one of the most important part
8 of our judicial system in that we will be asking you some
9 questions to determine if there is any reasons that you would not
10 be able to be a fair and impartial juror because of some
11 circumstance that has come up in your own life or knowledge of
12 the events, knowledge of certain witnesses. So if you can bear
13 with us, we're going to be asking you a multitude of questions.
14 If at any time we ask you a question that you would prefer to
15 answer in confidence, just let us know and we will ask the judge
16 to approach the bench so that you can answer the question there.
17 My name is Sally Blankenship. I'm the prosecuting attorney.
18 I've been the elected prosecutor since 1995. Before that, I
19 served as a deputy prosecutor and had a private law practice.
20 Before that, I was a registered nurse and worked in that capacity.
21 Seated here at the table with me is Deputy Prosecutor Aaron
22 Negangard, and also Detective from the Dearborn County
23 Sheriff's Department, John Vance. I'll start with just briefly
24 seeing if you know any of the participants. The attorneys seated
25 here at the counsel table, do any of you know either myself, Mr.

1 **VOIR DIRE QUESTIONS BY STATE**

2 **Negangard or Detective Vance? Yes, Mr. Wegman?**

3 **A. Detective Vance.**

4 **Q. Okay. How do you know Detective Vance?**

5 **A. We worked as jail officers together at the Sheriff's Department.**

6 **Q. Okay. Is there anything about that that would prevent you from**
7 **just listening to the facts of this case and making a decision on**
8 **that basis?**

9 **A. No.**

10 **Q. Okay. Anyone else? Yes, Mr. Sedler?**

11 **A. I'm familiar with yourself through Mr. Dierking.**

12 **Q. Yes.**

13 **COURT:**

14 **Ms. Blankenship, just a moment,**
15 **please. Ladies and gentlemen, this**
16 **will be our first discussion. As**
17 **you're going to find very soon, this**
18 **is a very difficult room to hear in.**
19 **We need to pick up your responses**
20 **on the microphone here in front of**
21 **you. If you would, please, just**
22 **speak us as best you can for us and,**
23 **be prepared, I will interject as we**
24 **go along if we need to speak up.**
25 **Thank you, Ms. Blankenship.**

Q. Okay, Mr. Sedler, is there anything about your prior knowledge

1 VOIR DIRE QUESTIONS BY STATE

2 of me that would prevent you from just listening to the facts of
3 this case?

4 A. No.

5 Q. Okay. Anyone else? Okay. I'm just going to go through
6 again on the defense attorneys. Do any of you know on a
7 personal or professional basis any of the attorneys involved, Mr.
8 Ewbank, Mr. King, Mr. Sorge? Yes, sir?

9 A. Actually, I know Mr. Ewbank from about ten years ago.
10 (Indiscernible)

11 Q. Okay. And, uh, do you feel like you could listen to the facts of
12 the case and - -

13 A. Yes.

14 Q. Okay. Anyone else? Yes, Ms. Brandenburg?

15 A. Yes.

16 Q. Okay.

17 A. Yes, I know Mr. Ewbank. He gave me some advice about
18 twelve years ago. (Indiscernible) He was not my attorney, but
19 he gave me some advice.

20 Q Okay.

21 A. That was it.

22 Q. Okay. Anyone else? Does anyone know Roger Holbrook, the
23 defendant, seated at the table? (No response) Anyone know
24 Barbara Holbrook, the deceased? (No response) I'm just
25 going to go through and ask you a few questions about each of

1 **VOIR DIRE QUESTIONS BY STATE**

2 your's opinions and experiences with the court system, and
3 again, my intention is not to put any of you on the spot, but just
4 to get a little bit better understanding of you to evaluate your
5 ability and your background for service in this type of trial. I
6 believe I'll just start with you, Ms. Sizemore. Have you ever
7 served on any type of jury before?

8 A. No.

9 Q. Okay. And, what is your general opinion of our court system?

10 A. My general opinion is that it is very good, (indiscernible)

11 Q. Okay. There's so much publicity now days on TV about
12 different court cases and different things. What's your general
13 opinion of what you tune in on the TV everyday and how they
14 depict the court system?

15 A. I try not to watch TV, actually (indiscernible)

16 Q. Okay. Do you ever watch the show, CSI?

17 A. I do.

18 Q. Okay. And, now, that's a show I don't watch, because I
19 understand that it depicts things in not necessarily a real basis of
20 how real evidence is collected. Do you understand that our
21 system here is reality, dealing with real facts and real issues, and
22 things that you may see on CSI may not be the reality of what
23 can actually be done with evidence?

24 A. Yes.

25 Q. Okay. Is there any general reason that you would not be able

1 **VOIR DIRE QUESTIONS BY STATE**

2 to serve as a juror for this trial?

3 A. Nothing in particular. (Indiscernible)

4 Q. Okay. Is that anything that's going to come up in the next two
5 to two and a half weeks?

6 A. It could.

7 MS. BLANKENSHIP: Okay. Your Honor, may we
8 approach the bench?

9 COURT: Ma'am, would you step up, please?
10 Conference at the bench, outside
11 the hearing of the jury. Good
12 morning. Show that Ms. Sizemore
13 is present at this time. Ms.
14 Sizemore, you indicated that you
15 may have some type of medical
16 problem that may be (indiscernible)

17 MS. SIZEMORE: I have a mass that they found that
18 they're currently evaluating on
19 whether it decreases or grows as to
20 whether or not it will need to be
21 removed.

22 COURT: Is this something that you're
23 actively involved with your doctors
24 with as we speak?

25 MS. SIZEMORE: Correct.

1 **VOIR DIRE QUESTIONS BY STATE**

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COURT:

And in dealing with this issue, if something would come up within the next two weeks to two and a half weeks?

MS. SIZEMORE:

I'm scheduled for some testing on March 22nd, which is about three weeks away, two weeks away. At that point, they're going to make a final decision as to what needs to be done.

COURT:

Is this condition something that's going to affect your concentration if you would be selected as a juror in these proceedings?

MS. SIZEMORE:

I don't believe so.

COURT:

Ms. Blankenship, any questions?

MS. BLANKENSHIP:

I just want to -- we're expecting that the trial would be completed prior to March 22nd, so if I'm understanding correctly, you're saying that this condition is not something that would interfere with you serving?

MS. SIZEMORE:

No.

1 **VOIR DIRE QUESTIONS BY STATE**

2 **COURT:** Ma'am, just one thing I want to
3 clarify - - and you can answer this
4 better than any of us - - given the
5 circumstances, do you feel that if
6 selected that you could serve?

7 **MS. SIZEMORE:** I believe so, yes.

8 **COURT:** Okay, go ahead and take your seat.
9 Thank you. Ms. Blankenship, you
10 may continue.

11 **Q.** Ms. Mattox?

12 **A.** Yes.

13 **Q.** Okay. As far as yourself, have you ever served on any type of
14 jury before?

15 **A.** No.

16 **Q.** What was your first reaction when you found out you were
17 being called to jury duty today?

18 **A.** Oh, no.

19 **Q.** Okay. What is your general opinion of our court system, just
20 from your knowledge from your everyday life?

21 **A.** I feel like they're fair and just.

22 **Q.** Okay. Do you watch much of the shows on TV?

23 **A.** Sometimes I do, yes.

24 **Q.** Okay. Do you - - what do you feel about all the publicity that
25 you see on different trials and different issues on the news

1 **VOIR DIRE QUESTIONS BY STATE**

2 today?

3 A. I think mostly it's sensationalism.

4 Q. Okay. And have you ever watched the show CSI?

5 A. Yes, I have.

6 Q. Okay. What do you like best about it?

7 A. Zoom in on things and make big productions out of nothing
8 (indiscernible)

9 Q. Okay. And, uh, just briefly, you understand that some of that is
10 not real?

11 A. Yes.

12 Q. Okay. And, uh, some of the types of ways you see evidence on
13 TV won't be how you see it presented in the courtroom?

14 A. Yes.

15 Q. Is there anything of a general nature that would prevent you
16 from serving on the jury?

17 A. I have a planned vacation starting Monday in Hawaii.

18 Q. This coming Monday?

19 A. Yes.

20 **MS. BLANKENSHIP:** May we approach the bench, Your
21 Honor?

22 **COURT:** Ms. Mattox, approach the bench,
23 please. Conference at the bench,
24 outside the hearing of the jury.
25 Show that we're joined, outside the

1 VOIR DIRE QUESTIONS BY STATE

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presence of the other jurors, by Ms. Mattox. Ms. Mattox, you say you have a vacation scheduled next week, a week from today?

MS. MATTOX:

Yes, to Hawaii. We've had it planned since October or September.

COURT:

Are you saying that you would rather go on that vacation than be here with us?

MS. MATTOX:

I would like to. It's a trip of a lifetime.

COURT:

You know, I thought you were going to say that.

MS. MATTOX:

I'm sorry.

COURT:

Ms. Blankenship, any questions?

MS. BLANKENSHIP:

No.

COURT:

Mr. King?

MR. KING:

No.

COURT:

Ma'am, under those circumstances, I believe it would create an undue hardship for you, and I'm going to release you at this time. Have a good time for us.

1 **VOIR DIRE QUESTIONS BY STATE**

2 **MS. MATTOX:** Thank you.

3 **COURT:** Ms. Blankenship, I'm going to go
4 ahead and fill seat number twelve.
5 I'd like to call Thomas Wagner for
6 seat number twelve, and Ms.
7 Mattox, you're excused.

8 **MS. MATTOX:** I can go?

9 **COURT:** Yes.

10 **Q.** Good morning, Mr. Wagner. Just to start off with the
11 questions, do you know any of the individuals I named as
12 representing the state or the defense?

13 **A.** No, I don't.

14 **Q.** Okay. Do you know the defendant or the victim in this case?

15 **A.** No.

16 **Q.** Okay. What was your first reaction when you were - - found
17 out you were coming to jury duty today?

18 **A.** I've been eligible quite a few months over the last two years,
19 and it is like they never picked me.

20 **Q.** Okay. Do you have any particularly strong opinions about our
21 criminal justice system?

22 **A.** No, not in particular.

23 **Q.** Okay. Have you had any past experience with any law
24 enforcement officers?

25 **A.** An occasional speeding ticket.

1 VOIR DIRE QUESTIONS BY STATE

2 Q. Okay. And in general, do you have any, you know, strong
3 opinions one way or the other about police or the jobs they do?

4 A. I think it's a hard job.

5 Q. Okay.

6 A. A very hard job.

7 Q. Do you watch much TV?

8 A. Sports.

9 Q. Okay. Do you pay much attention to any of the shows we have
10 on today that depict trials or court scenes or evidence?

11 A. Other than the commercials where they advertise for them, I've
12 never seen CSI, for example.

13 Q. Okay. Do you have any opinions about all the publicity that
14 seems to go on today about what's going on in the court system
15 and trials?

16 A. I don't have much of an opinion of it, because I think it's all
17 media.

18 Q. Okay. And, uh, do you have any general reason why you would
19 be unable to serve on this jury, if called?

20 A. No.

21 Q. Okay. I'm going to go next to you, Mr. Wafford. What is
22 your general opinion of the legal system?

23 A. It works.

24 Q. Okay. And have you had any prior experience actually serving
25 on a jury?