

COURT OF APPEALS
DIVISION II
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ATTORNEY

NO: 40341-2-II

In The Court of Appeals of the State of Washington
Division Two

State of Washington
Respondent
V.
Antwaun Owens
Appellate

On Appeal from the Superior Court of the State of Washington
For Clark County

The Honorable Judge Barbara Johnson

Statement of Additional Grounds

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Antwaun Owens Pro Se,
869900

CERTIFICATE OF SERVICE
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ISSUE 1

Did the Trial Court Erred When it fail to properly strike bias Juror's and allowed the Prosecutor to strike the only African American during voir deir thus denying Mr. Owens a Fair Trial?

The **Sixth Amendment** commands that “**In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury.**”... U.S.Const.Amend.VI; In investigating charges of juror bias or misconduct, the trial court “Will necessarily be directed by the contents of the allegation including the seriousness of the alledged misconduct or bias, and the credibility of the source.” **United States v. Hendrix, 549 F.2d 1225, 1227-28 (9th cir.1977)**. If the allegations are found to be true the court must decide whether the defendant was denied his **Sixth Amendment Constitutional Right** to an impartial jury. “The test is whether or not the misconduct has prejudiced the defendant to the extent that he has not received a Fair Trial.” **United States v. Klee, 494 F.2d 394,396(9th cir.1974)**. Even if “only one juror is unduly biased or prejudiced,” the defendant is denied his **Constitutional Right** to an impartial jury. **United States v. Hendrix, 549 F.2d 1225, 1227(9th cir.1977)**. The allegations of juror bias are extremely serious and the facts upon which they were founded are not open to dispute. Bias may be presumed from the “Potential for Substantial emotional involvement” inherent in certain relationships. **United States v. Allsup, 566 F.2d 68, 71-72(9th cir.1977)**. It is within the trial courts discretion that’s reviewed **De Novo** to determine whether to hold an evidentiary hearing on allegations of juror bias or misconduct. This discretion is not unbounded and other circuits have imposed stringent requirements for its exercise. **United States v. Doe, 513 F.2d 709(1st cir.1975)**.

Where prejudice is manifest, a trial courts findings of juror’s impartiality should be set aside. “Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the **Constitution** lays down no particular tests and procedure is not chained to any ancient and artificial formula.” **Irvin v. Dowd, 366 U.S. 717, 723-724, 81 s.ct. 1639 6 L.Ed.2d 751(1961); United States v. Wood, 299 U.S. 123, 145-146 57 s.ct. 177, 81 L.Ed.78 (1936)**. A Judges conclusion that a juror’s impartiality has not been affected “May not rest entirely upon the testimony of juror’s*** because that alone is too uncertain a basis for resolving the issue of prejudice.” **Duncan v. United States, 182 Tenn. 577, 188 s.w.2d 555,160 A.L.R.746 (1945)**.

In the present case Mr. Owens was denied his Sixth Amendment Right to a Fair Trial and Impartial jury when the trial court fail to dismiss certain jurors who could not be fair and unbais for cause. **United States ex rel. DeVita v. McCorkle, 248 F.2d 1(3rd cir.1957)**; Also see **Durham v. State, 182 Tenn. 577(1945)**; **Haigh v. Wisconsin, 232 Wis. 2d 555; 608(1999)**. By the trial court failing to strike jurors that had been victims or had family members that were victims of assault it severely prejudiced and crippled Mr. Owens right to a Fair Trial and also denying him his right to **Due Process**. In each case a

broad discretion and duty reside in the court to see that the jury as finally selected is subject to no solid basis of objection on the score of impartiality. Accordingly, the presiding Trial Judge has the Authority and Responsibility either **sua sponte** or upon counsel's motion to dismiss, prospective jurors for cause is limited, such challenges permit rejection of jurors on narrowly specified, provable, and legally Cognizable bases of partiality. Usually jurors are dismissed from venire "For Cause" precisely because they are unwilling or unable to follow the applicable law. **Challenges for cause are divided into three categories:** (1) Those based on actual bias, (2) Those grounded in implied bias and (3) Those based on inferable bias. **Actual Bias** is "Bias in Fact"- the existence of state of mind that leads to an inference that the person will not act with entire impartiality. **Implied or Presumed Bias** is Bias conclusively presumed as a matter of law. The doctrine of implied bias is reserved for "Exceptional Situations" in which objective circumstances cast concrete doubt on the impartiality of a juror. Bias may be inferred when a juror discloses a fact that bespeaks a risk of partiality sufficiently to warrant granting the trial judge discretion to excuse the juror for cause, but not so great to make mandatory a presumption of bias. The Trial court is allowed to dismiss a juror on the ground of inferable bias after having received responses from the juror that permit an inference that the juror in question would not be able to decide the matter objectively. Once facts are elicited that permit a finding of inferable bias, the juror's statements as to his or her ability to be impartial becomes irrelevant. In cases in which a juror has engaged in activities that are closely approximate to those of the defendant on trial, the exercise of the Trial Judge's Discretion to grant challenges for cause on the basis of inferred bias is especially appropriate.

In the present case four jurors should have been struck for cause because of the closely related experiences that they have had dealing with some kind of Assault. Because of their past experiences with being Assaulted or having knowledge of such it cannot be said that they could be fair and impartial beyond a reasonable doubt. Mr. Owens had a **Constitutional Right** to a fair trial and if a jury is not fair and impartial then he is denied that right which in turns also Denys' him his **Fourteenth Amendment Right to Due Process**. The Four jurors' that had "Personal Bad Experiences" with Assaults should have been struck for **Implied bias or Actual Bias** (See Exhibits of Voir Dire). The category of challenges for cause is limited. 4 such challenges "Permit rejection of jurors on...narrowly specified, provable, and legally cognizable bases of partiality." **Swain v. Alabama, 380 U.S. 202, 13 L.Ed.2d 759, 85 s.ct.824 (1965)**. Usually "jurors are dismissed from the venire for cause precisely because they are unwilling or unable to follow the applicable law." **Untied States v. Thomas, 116 F.3d 606, 616(2nd cir.1997)**. In essence, the right to a jury trial guarantees to the criminally accused a fair trial by a panel of impartial "**Indifferent**" jurors. The failure to accord an accused a fair hearing violates even the minimal standards of **Due Process. Re Oliver, 333 us. 257, 92 L.Ed. 682, 68 s.ct. 499; Tumey v. Ohio, 273 U.S. 510, 71 L.Ed. 749, 47 s.ct. 437**. "A fair trial in a fair tribunal is a basic requirement of Due Process." **Re Murchison, 349 us 133, 136, 99 L.ed 942, 946, 75 s.ct. 623**. In the ultimate analysis only a jury can strip a man of his liberty or his life. The Equal Protection Clause forbids a prosecutor from challenging potential jurors solely on the basis of their race. The court have applied a familiar three-part test when evaluating a defendant's equal protection challenge to a prosecutor's use

of peremptory strikes when dealing with race. **Kesser v. Cambra, 465 F.3d 351, 359(9th cir.2006)**; in the language of Lord Coke, a juror must be as “Indifferent as he stands unsworne.” **Co Litt 155b**. His verdict must be based upon the evidence developed at the trial. **Thompson v. Louisville, 362 us. 199, 4 L.Ed.2d 654, 80 sect. 624**. “The theory of the law is that a juror who has formed an opinion cannot be impartial.” **Reynolds v. United States, 98 U.S. 145, 155, 25 L.Ed. 244,246**. In the present case the state took it upon itself to strike the only African-American on the jury because it was decided by the state that the African-American may not be persuaded by the evidence to render a guilty verdict, also because the African-American was impartial and unbiased and did not allow what happen to her family member (sister) affect her and her state of mind. The State felt that she was not sentimental to the issue of domestic violence. Mr. Owen had a **Constitutional Right** to a fair trial by a jury of his peers. “Impartiality is not a technical conception. It is a state of Mind. For the ascertainment of this mental attitude of appropriate indifference, the **Constitution** lays down no particular tests and procedure is not chained to any ancient and artificial formulas.” **United States v. Wood, 299 U.S. 123, 145, 146, 81 L.ed 78, 87-89 57 s.ct.177**. The Federal Constitution forbids the intentional exclusion from juries of any identifiable group in the community which may be the subject of prejudice, whether or not the group is composed of diversity. The exclusion of all persons of the African race from a jury in which an African-American is on trial in a state court, when they are excluded solely because of their race or color denies him the equal protection of the laws in violation of the **Fourteenth Amendment**. The presumption that a prosecutor used the states peremptory challenges to obtain a fair and impartial jury is not overcome by allegations that in the case at hand all African-Americans were removed from the jury or that they were removed because they were African-Americans. In the present case there was no foreseeable reason as to why the only African-American juror was stricken from the jury pool especially after during voir dire she said that she could be fair, impartial, and unbiased. (See Exhibits of Voir Dire) There were quite a few jurors that admitted they had bad experiences with knowledge or directly being assaulted that was kept on the jury, it cannot be said beyond a reasonable doubt that the state did not strike her because of race. “[I]f a review of the record undermines the prosecutor’s stated reasons, or many of the proffered reasons, the reasons may be deemed a pretext for racial discrimination.” **United States v. Chinchilla, 874 F.2d 695, 699(9th cir.1989)** Mr. Owen’ was entitled to a trial by a Fair and Impartial Jury which is guaranteed through the Constitution, however the state took it upon themselves to take that right from Mr. Owen’ thus violating his **Sixth And Fourteenth Amendment Rights** to a **Fair Trial and Due Process**. Mr Owen’ conviction should be Reversed and Remanded.

ISSUE 2

Was Mr. Owens Deprived of his Sixth and Fourteenth Amendment Rights to Effective Assistance of Counsel when Counsel fail to properly Question and strike bias juror's during Voir Dire?

The **Sixth Amendment** provides that “[I]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense.” **U.S. Const. Amend. VI**. This provision is applicable to the states through the **Fourteenth Amendment**. **U.S. Const. Amend. XIV**; **Gideon v. Wainwright**, 372 U.S. 335,342, 83 s.ct. 792, 0 L.Ed.2d 799(1963). Likewise, **Article 1 section 22** of the **Washington Constitution** provides, “In Criminal Prosecutions, the accused shall have the right to appear and defend in person or by counsel...” **WA. Const. Art.1 sec.22**. The right to counsel is “one of the most fundamental and cherished rights guaranteed by the Constitution.” **United States v. Salemo**, 61 F.3d 214, 221-222(3rd Cir. 1995).

An Ineffective Assistance claim presents a mixed question of law and fact, requiring **De Novo** review. **In Re Fleming**, 142 wn.2d 853, 865, 16 p.3d 610(2001). An appellate claiming Ineffective Assistance must show (1) That defense counsel's conduct was deficient, meaning that it fell below an objective standard of reasonableness; and (2) That the deficient performance resulted in prejudice, meaning “A Reasonable possibility that but for the deficient conduct, the outcome of the proceeding would have differed.” **Strickland v. Washington**, 466 U.S. 668, 104 s.ct.2052 80 L.Ed.2d 674(1984). There is a strong presumption of adequate performance; however this presumption is over come when “There is no conceivable legitimate tactic explaining counsel's performance.” Ant trial strategy “Must be based on reasoned decision-making...” **In Re Hubert**, 138 wn.App 924, 929, 158 p.3d 1282(2007). Furthermore there must be some indication in the record that counsel was actually pursuing the alleged strategy. Prejudice occurs where there is a reasonable probability that but for the deficient performance; the outcome of the proceedings would have been different.

In the present case the performance of Mr. Owens trial Attorney fell below an objective standard of reasonableness and “There is reasonable probability that but for [His] Counsel's error's the outcome of the trial would have been different.” **Warmack v. Delpapa**, 497 F.3d 998, 1002 (9th Cir.2007); **Smith v. Robbins**, 528 U.S. 259, 285, 120 s.ct. 746, 145 L.Ed.2d 756(2000). Mr. Owen' Trial Attorney fail to properly question perspective juror's during Voir Dire to uncover possible prejudice's and bias opinions of those who have had negative experiences with Assaults (See Exhibits of Voir Dire). The **Sixth Amendment Right** to counsel attaches at a critical stage of a criminal Proceeding

which occurs after the formal initiation of criminal proceedings involving an actual Confrontation between a representative of the state and the Defendant. The United States Supreme Court has determined that all identification procedures are critical stages requiring the presence of counsel, which in a criminal prosecution may deprive the defendant of a Fair Trial. **U.S. Const. Amend. VI. Moore v. Illinois, 434 U.S. 220, 98 s.ct. 458, 54 L.Ed.2d 424(1977).** It is the duty of counsel to provide non-prejudicial and non-bias Effective Assistance.

The **Fourteenth Amendment** prohibits any state from depriving any person of Life, Liberty, or Property, without the **Due Process** of Law. **U.S. Const. Amend. XIV.** The Due Process Clause guarantees the accused the Right to a Fair Trial, Mr. Owen' was deprived of that Right not only by the Prosecutor and Trial Court but also by [His] Trial Attorney which is a clear violation and denial of his **Sixth and Fourteenth Amendment Constitutional Rights.** The **Sixth Amendment** provides the Right of the accused to have Effective Assistance of Counsel in all criminal proceedings (I.E. Jury Selection, Hearings, Voir Dire, ETC.). **U.S. Const. Amend.VI; XIV.** Mr. Owen' had a Constitutional Right to a Trial by a Fair and Impartial jury between the actions of the State and his Trial Counsel that right was severely tarnished, so much so that his counsel allowed Four juror's who's passions and prejudices towards the crime of Assault could not be hidden or swayed during Voir Dire thus leaving Mr. Owens stripped of his Constitutional Right to a Fair Trial by an Impartial jury. With those four jurors having had some type of bad personal dealings with Assault it cannot be said beyond a reasonable doubt that those passions and prejudices did not affect the outcome of the Trial. For the Foregoing Reasons Mr. Owens conviction should be Reversed and Remanded.

THE CUMULATIVE EFFECT

A Criminal conviction may be reversed on the basis of **Cumulative Trail** errors if none of the individual instances of error warrants reversal and it is reasonably probable that the **Cumulative Effect** of several errors materially affected the outcome of the case. Thomas v. Hubbard, 273 F.3d 1164, 1170(9th Cir.2004) In the present case it cannot be said beyond a reasonable doubt that a rational trier of facts could have found Mr. Owens guilty if the error had not occurred.

Conclusion

For the Foregoing Reasons Mr. Owens is Respectfully Requesting this Honorable Court to take in consideration his Statement of Additional Grounds along with his Opening and Reply Brief by his Appellate Counsel and Reverse and Remand.

I Antwaun Owens^S declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge being executed on this 28 day of OCT, 2010. At Coyote Ridge Correction Center in the county of Connell, WA. 99326.



Antwaun Owens Pro Se,
869900

Subscribed and Sworn to before me this 28th day of October, 2010.





Notary Public in and for the
State of Washington.
Residing in Connell, WA.
My Commission Ex. 10-10-2012

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1 even have a microphone back there. So, if I could ask
2 you to repeat that a little louder?

3 JUROR: My daughter-in-law is a defense attorney for
4 the State of Oregon. And, I also volunteer for CASA for
5 Clark County.

6 MS. BANFIELD: Okay. And, do you think that would
7 stop you from being impartial?

8 JUROR: (Inaudible).

9 MS. BANFIELD: What about the fact that you are a
10 Beaver? Do you think that may stop you from --?

11 JUROR: Yes.

12 (Laughter throughout the courtroom.)

13 MS. BANFIELD: Yes. Okay. I might still strike you
14 but -- let's see. Mr. Allshouse, you said you had a
15 connection to law enforcement.

16 JUROR: I'm engaged to an attorney.

17 MS. BANFIELD: And, attorney? That works for the
18 Department of Justice? I saw that.

19 JUROR: Yes.

20 MS. BANFIELD: Okay.

21 JUROR: Works in the family courts. She is a trial
22 attorney. Works with domestic issues.

23 MS. BANFIELD: Okay. So, you probably have heard
24
25

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1 several war stories.

2 JUROR: Yes, every day.

3 MS. BANFIELD: Do you -- that probably makes you have
4 a stronger stomach for this type of thing.

5 JUROR: (Inaudible) she doesn't fill me in on a lot
6 of details but --

7 MS. BANFIELD: Okay. Do you think you could be
8 impartial today?

9 JUROR: Yes.

10 MS. BANFIELD: Okay. I should go directly to Mr.
11 Cummings. You said that you don't think you could make
12 it through Wednesday?

13 JUROR: I'm an outside sales person. And, therefore,
14 I work on a partial commission and I have got some
15 deadlines this week that would be challenging for me to
16 meet.

17 MS. BANFIELD: Okay. So, due to work, you -- you
18 don't think that you would be able to sit today for the
19 full three days?

20 JUROR: I think it would be a challenge. Yes.

21 MS. BANFIELD: Okay. Thank you. Mr. Johnson, you
22 had said that you might have a problem being impartial,
23 just due to the subject matter? I think we kind of
24
25

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1 missing? Now, who here has themselves, family members,
2 close personal friends, been -- been a victim of a crime?
3 Okay. Let's just start right here. Number 1. Mr.
4 Allshouse?

5 JUROR: Yes, my step-son was murdered in California
6 about ten years ago. I sat through the trial.

7 MR. VUKANOVICH: That had to be very painful.

8 JUROR: Yes.

9 MR. VUKANOVICH: Watching that, do you think that is
10 going to affect your ability to be fair and impartial
11 today?
12

13 JUROR: No.

14 MR. VUKANOVICH: No. The next one in the back row, I
15 can't remember all the numbers. Number -- is it Ms.
16 Golden? No. Robinson?

17 JUROR: Yes.

18 MR. VUKANOVICH: Okay. Ms. Robinson, was -- what
19 was the -- was it to you personally?

20 JUROR: Yes. I have had my car broken in to and my
21 sister had all of her personal belongings stolen out of a
22 U-Haul in San Diego years ago.

23 MR. VUKANOVICH: So, years ago?

24 JUROR: Yes.
25

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1 MR. VUKANOVICH: No personal -- no domestic violence?

2 JUROR: (Inaudible).

3 MR. VUKANOVICH: Number -- Ms. Armstrong?

4 JUROR: Yes.

5 MR. VUKANOVICH: And, was it to you personally?

6 JUROR: No. It was a good friend of mine that I
7 have known for a few years. She was arrested for
8 domestic violence and spent a weekend in jail and I have
9 had my house broken into but that was many, many years
10 ago.

11
12 MR. VUKANOVICH: And then, your friend got out of
13 jail after the --

14 JUROR: Oh, for -- yes, after the weekend. I think
15 that's why she had to spend it in jail. I believe it was
16 something about bail on the weekend and (inaudible) had
17 her court date (inaudible).

18 MR. VUKANOVICH: Thank you. Ms. Thompson?

19 JUROR: My sister was a victim of domestic violence.

20 MR. VUKANOVICH: Your sister was?

21 JUROR: Uh-huh.

22 MR. VUKANOVICH: A victim of domestic violence from a
23 -- from her husband? Boyfriend? Boyfriend. And, did
24 you witness this?
25

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1 JUROR: No.

2 MR. VUKANOVICH: Did the boyfriend go to jail?

3 JUROR: Several restraining orders, the police
4 trying to get him, him running. I mean, they finally did
5 catch him but he didn't do a lot of time and she really
6 didn't want to press charges.

7 MR. VUKANOVICH: How did that make you feel?

8 JUROR: Well, she's my sister and I love her but I
9 mean, that was her choice. And, she told me what was
10 happening and all I could do was support her either way.
11 Whatever she wanted to do. It wasn't for me to judge why
12 she stayed or allowed things to continue on.

13 MR. VUKANOVICH: Do you think that experience will
14 affect your ability to be fair and impartial today?

15 JUROR: No. I don't believe it will be.

16 MR. VUKANOVICH: Thank you.

17 JUROR: Everyone has a -- everyone has their own
18 reasons for doing the things that they do. If I'm not a
19 part of it and I don't -- I'm just looking in, everybody
20 can look in and make their own judgments. But, I mean I
21 didn't know the facts -- the actual facts of why things
22 occurred the way they did. So, it wasn't for me to
23 judge.
24
25

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1 MR. VUKANOVICH: Thank you. Number 10. Ms. Taylor?

2 JUROR: My brother was convicted for domestic
3 violence entrapment involved (inaudible) and I was also
4 raped most of my life.

5 MR. VUKANOVICH: Was -- well, let's start with your
6 brother first. Did that occur here in Clark County or
7 was that in --?

8 JUROR: Longview.

9 MR. VUKANOVICH: It was Longview. And, how long ago
10 was your personal experiences?

11 JUROR: From age five to seventeen.

12 MR. VUKANOVICH: Knowing those two events or events
13 over time, those two occurrences, do you think that will
14 affect your ability to be fair and impartial today?

15 JUROR: Absolutely not.

16 MR. VUKANOVICH: Was there another number? There
17 must have been -- there were a couple of more numbers.
18 Let's see. Number 15. Ms. Chan?

19 JUROR: Another friend of mine was (inaudible).

20 MR. VUKANOVICH: How long ago was this?

21 JUROR: (Inaudible) years now.

22 MR. VUKANOVICH: And, was the person convicted?

23 JUROR: He was not. She did not press charges.
24
25

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1 JUDGE JOHNSON: I cannot hear the answer.

2 JUROR: She did not press charges.

3 MR. VUKANOVICH: You have to speak up, everyone in
4 the back back there. No microphones back there. How did
5 that make you feel?

6 JUROR: I wanted her to press charges but I
7 understand that it was her personal choice and she wasn't
8 ready to talk about it and maybe she will do it in her
9 own time -- time frame.

10 MR. VUKANOVICH: Having that happen to a close and
11 personal friend, will that affect your ability to be fair
12 and impartial today?

13 JUROR: No.

14 MR. VUKANOVICH: Number -- Ms. Milburn?

15 JUROR: I was a victim of assault --

16 MR. VUKANOVICH: Some years ago? Was that an assault
17 by a boyfriend or a husband?

18 JUROR: Yes. A boyfriend.

19 MR. VUKANOVICH: And, after the assault, what
20 occurred? Did he go to jail?

21 JUROR: Yes.

22 MR. VUKANOVICH: How did that experience make you
23 feel generally with regards to domestic violence?
24
25

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1 JUROR: It made me understand why people don't
2 necessarily get out of the situation.

3 MR. VUKANOVICH: Okay. Do you feel you can be fair
4 and impartial today?

5 JUROR: Yes.

6 MR. VUKANOVICH: Was there any other numbers? Now,
7 who here feels that -- well, let me back up. We're going
8 to have -- you are going to hear some testimony with
9 regards -- from some officers. Who here believes that an
10 officer is more credible than a lay person? Is there
11 anybody here who believes that simply because they are a
12 police officer, that makes them more credible? Mr.
13 Austin? You feel that a police officer is more credible
14 than a lay person?
15

16 JUROR: Well, they have some training in handling
17 evidence and observing.

18 MR. VUKANOVICH: With -- that's true. But, if you
19 hear two stories, one from a lay person and one from a
20 police officer, as to a set of events -- well, let me
21 back that up even some more. The officer comes to a
22 scene -- to the scene and gathers some evidence. Now, he
23 has his story as to what happens and a lay person has
24 their story as to what happens. Just because the police
25

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1 is presumed innocent on all of those charges? (Silence.)

2 Who here would feel that -- well, would come to the
3 conclusion -- to the greater conclusion that Mr. Owens
4 was guilty if he didn't put on any testimony or any
5 witnesses at all? But, rather just relied on the cross-
6 examination of the State's -- the State's witnesses? Is
7 there anybody here who would feel that they -- that Mr.
8 Owens had something to hide if he didn't put on any
9 witnesses of his own? (Silence.) I like this crowd.

10
11 Now, y'all got to be a little truthful here, this is
12 going to be a tough one. At the end of the day you go
13 back to the jury room. There is going to be twelve of
14 you. Eleven of you may decide leaning one way. One of
15 you may decide not to. Who here, if they were the lone
16 juror, would change their mind so that they were with the
17 majority? No numbers. (Silence.) So, as everyone sits
18 here, I know that if you are the lone juror you are going
19 to stand up for your position and not change your mind
20 simply because you are the minority. (Silence.)

21 So, Ms. Armstrong, if you were to vote guilty or
22 innocent right now, how would you vote?

23 JUROR: I can't at this point. I have no idea what
24 has gone on.
25

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1 MR. VUKANOVICH: That is exactly my point because
2 there is the presumption of innocence. So, if you don't
3 know anything right now, he has to be innocent.

4 JUROR: He could be innocent or he could be guilty.
5 I honestly do not know.

6 MR. VUKANOVICH: But, if you had to vote on just what
7 you know right now? And, you had to vote either guilty
8 or innocent?

9 JUROR: I'd be angry that someone expected me to vote
10 either way without any (inaudible) and I wouldn't do it.
11 (Loud laughter throughout the courtroom.)
12

13 MR. VUKANOVICH: That's a good one. I like that. I
14 have no further questions. Thank you.

15 JUDGE JOHNSON: And, did you have any follow up
16 questions?

17 MS. BANFIELD: I do, Your Honor. Defense counsel
18 asked the question of if you have two different stories
19 from a witness. Let's say the witness gives one account
20 of what happened at the scene and then gives another
21 account of what happened in court under oath. And, he
22 said, would you be more likely to believe the one that is
23 under oath? I think that's what he was asking and most
24 people said, -- well, then the question got flipped a
25

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1 are in the thick of it, you are more apt to know -- the
2 story is going to be somewhat consistent as opposed to
3 them getting, you know, to court and it's something
4 completely different. You know, first it was like a
5 Buick and the next thing you know, it's a Range Rover,
6 you know.

7
8 MS. BANFIELD: Right. When at the time when you are
9 closer to it, you might -- you think you would know.

10 JUROR: Those types of things you might remember a
11 little bit more clearly. The little small things, you
12 know, as far as maybe what someone might have been
13 wearing at the time, that might kind of get a little
14 foggy but I mean, the main point pretty much stays there;
15 that's pretty much consistent to a certain degree.

16 MS. BANFIELD: Okay. Thank you. And, Ms. Thompson,
17 I wanted to ask you, you said your sister was a victim of
18 domestic violence, correct?

19 JUROR: Uh-huh.

20 MS. BANFIELD: And, it took -- is she still in that
21 same relationship?

22 JUROR: No.

23 MS. BANFIELD: No. She finally left the
24 relationship.
25

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1 JUROR: She left the relationship but she still talks
2 with him because it happened in Virginia and I'm a twin.
3 So, then she told me -- I was more hurt that she was hurt
4 --

5 MS. BANFIELD: Right.

6 JUROR: -- emotionally. Not so much physically
7 because it wasn't -- he hit her but it wasn't like he was
8 beating her.

9 MS. BANFIELD: Right.

10 JUROR: But, he did hit her. And, she loved him so I
11 was kind of more hurt that she was hurt because she cared
12 for him.

13 MS. BANFIELD: Right.

14 JUROR: Because he abused her.

15 MS. BANFIELD: Right. And, did they break up because
16 of the domestic violence finally or --?

17 JUROR: Well, because he eventually made her
18 homeless.

19 MS. BANFIELD: Okay.

20 JUROR: And, I said, you know, I can't have you
21 living out on the street. I had already taken in her
22 children --

23 MS. BANFIELD: Right.

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1 JUROR: You know, and I was constantly worried about
2 her safety was well as her living out on the street.

3 MS. BANFIELD: Right.

4 JUROR: And, I just finally drove down there and got
5 her.

6 MS. BANFIELD: Okay. Were the police ever called in
7 that incident?

8 JUROR: They were called. What actually got her out
9 of the situation, she wound up bringing him to my house.
10 She basically wanted him to move into my house so that
11 they can get a place, which I wasn't -- I didn't condone
12 it but that is something that she wanted to do. And, I
13 had no problem with it but I was under the impression
14 that everything was --

15 MS. BANFIELD: Better.

16 JUROR: Better. But, it wasn't better. Once she
17 got out there and got her own place and they started
18 going through their thing again, she wound up being
19 homeless again. And, by then, I had moved up here. And,
20 I wound up having to go to California and get her.

21 MS. BANFIELD: Okay.

22 JUROR: And, at that point, she just, you know, they
23 talk for the children's sake because they have twins.
24
25

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1 MS. BANFIELD: Okay. Just like you. Very good. Ms.
2 Taylor, you said your brother was convicted of domestic
3 violence?

4 JUROR: Yes.

5 MS. BANFIELD: And, how long was that relationship he
6 was in, that domestic violence relationship?

7 JUROR: It was a short relationship.

8 MS. BANFIELD: Uh-huh.

9
10 JUROR: Not very long. And, she -- he was living
11 with her in Longview in a house and she tried to leave
12 and he held her against her will behind the door to not
13 let her leave and he was convicted and spent time in jail
14 for it.

15 MS. BANFIELD: Okay. Okay. And, Ms. Milburn, you
16 said that you understood now why people might stay in a
17 relationship. Or, why they don't get out. Can you
18 explain that to us?

19 JUROR: It -- even after I was assaulted it took me a
20 while to get out of it.

21 MS. BANFIELD: Okay. Did the police -- were the
22 police called when you were assaulted?

23 JUROR: Yes.

24 MS. BANFIELD: And, I'm sorry, I think that you --
25

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1 was he convicted of assaulting you?

2 JUROR: Yes.

3 MS. BANFIELD: And, did you go to court for that or
4 did he just plead guilty?

5 JUROR: He pled.

6 MS. BANFIELD: Okay. If a victim calls the police
7 and asks for help in a domestic violence crime and then
8 later comes into court and says nothing happened, is --
9 isn't that sort of like the State taking on the case when
10 the victim has left off? When the victim doesn't want
11 the State to take the case? Is that confusing?
12

13 JUROR: A little bit.

14 MS. BANFIELD: Ms. Robinson, let's say that Mr. Mann
15 calls the police because he is being assaulted by his
16 wife and he just wants the assault to stop so he wants
17 help at that time. And, then later he says okay, thank
18 you for the help. I don't want to press charges. I want
19 to move on. This is our own personal matter. We are
20 done. We don't need your help any more and the State
21 goes ahead and decides to maintain the case. And, I
22 think everyone here would agree that that is something
23 that the State should do. But, the witness, Mr. Mann, he
24 is still a witness, he is still a victim, he comes in and
25

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1 he says, "Yes, I told the police that on this day but now
2 I'm saying it didn't happen." What do you do in a
3 situation like that?

4 JUROR: I think I would probably believe the first
5 story.

6 MS. BANFIELD: Okay. And, does anyone disagree with
7 that or agree with that or have something to say about
8 that? (Silence.) Nothing? All right. That's all. Thank
9 you.

10 JUDGE JOHNSON: And, Mr. Vukanovich, did you have any
11 follow up?
12

13 MR. VUKANOVICH: No follow up -- no follow up
14 questions, Your Honor.

15 JUDGE JOHNSON: All right. Very well. Members of
16 the jury panel, we have come to the point that I referred
17 to earlier where the attorneys can exercise some
18 challenges. It will take us a few minutes to do that.
19 If you want to stand up and kind of stretch and so on,
20 you may do that. And, I will ask the attorneys to come
21 up first here to sidebar, right in front of me here.

22 (Both attorneys approach the sidebar.)

23 (Sidebar; not recorded.)

24 JUDGE JOHNSON: And, I will ask counsel then, when
25

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1 raising the issue. I had it brought up at a later point
2 in a trial and didn't feel it was timely at that point
3 but wished to avoid that circumstance, if it isn't
4 brought up in a timely manner to deal with.

5 So, in light of that then, the State would need to
6 place on the record the reasons for that challenge.

7 MS. BANFIELD: Correct, Your Honor. We have some
8 concern regarding to her prior history with domestic
9 violence and her -- her continuing to say that she felt
10 like it was her sister's choice to stay in that
11 relationship and that she had to just accept what her
12 sister wanted to have happen. So, those were our
13 concerns in that regard since we imagine our victim will
14 be recanting in this case.

15 JUDGE JOHNSON: And, Mr. Vukanovich, anything you
16 wish to add to that?

17 MR. VUKANOVICH: No, just that our take on it is she
18 would still be fair and impartial based on additional
19 statements she made.

20 JUDGE JOHNSON: Well, it isn't up to the court to
21 evaluate the -- necessarily the choice of counsel to make
22 that decision but to determine whether there do appear to
23 be reasons stated that are neutral reasons and I would
24
25

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1 find in this case that there do appear to be neutral
2 reasons for that challenge. And, therefore, would allow
3 it.

4 Frankly, I don't know if any of the other jurors are
5 minority persons. I -- I don't recall now in viewing the
6 jury. We do have some perhaps are from other
7 backgrounds. Rather a diverse group here but the next
8 challenge was Mr. Francisco.

9 MS. BANFIELD: He did appear to be a minority.

10 JUDGE JOHNSON: Who appeared to be perhaps a minority
11 as well and so perhaps we should also establish a record
12 with respect to that. Mr. Vukanovich?

13 MR. VUKANOVICH: With regard to Mr. Francisco, Your
14 Honor --

15 JUDGE JOHNSON: I'm sorry. I should have asked if
16 Ms. Banfield has any concerns in that regard.

17 MS. BANFIELD: Yes. I would -- I would like to at
18 least make a record in that regard.

19 JUDGE JOHNSON: Very well.

20 MR. VUKANOVICH: It was -- well, Mr. Francisco
21 obviously didn't have any direct comments to make to us,
22 Your Honor. It was more of a -- how can I put it? It
23 was more of an appearance when I was watching the jury
24
25

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1 JUDGE JOHNSON: And, what I will do is bring them in
2 in our -- with our new panel to be seated. I will have
3 all the rest come into the courtroom and then I will ask
4 if you each accept the jury as constituted in that
5 sometimes we make a mistake that we need to correct but
6 before I excuse everybody, I will have them all come into
7 the courtroom.

8 So, we have our new panel up here and then the rest
9 all in the courtroom.

10 DEFENDANT: One quick question, Your Honor, may --

11 (Defense counsel interrupts defendant and confers
12 with the defendant.)

13 JUDGE JOHNSON: What was the question, Mr.
14 Vukanovich?

15 MR. VUKANOVICH: The question, Your Honor, was is he
16 didn't understand and was asking to see if the Court
17 would give him clarification as the one African-American
18 who was on the jury was removed. He's African-American.
19 He felt that that wasn't a jury of his peers and wanted
20 to ask the Court why she could be removed. That was his
21 question.
22

23 JUDGE JOHNSON: And, it is a legal issue but if there
24 are -- just because a person is African-American does not
25 mean they can't be removed. There have to be reasons

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1 given for it other than simply a race related reason.

2 So, I found that reasons were given that satisfied
3 the standard for exercising a preemptory challenge.

4 That's basically --

5 DEFENDANT: What were the reasons again, Your Honor?
6 I couldn't quite hear. What was the reasons again?

7 JUDGE JOHNSON: I'll ask Ms. Banfield to repeat them.

8 MS. BANFIELD: Yes, Your Honor. We had some concerns
9 regarding Ms. Thompson's connection with domestic
10 violence. The fact that her sister was in a domestic
11 violence relationship and that she felt that she just
12 needed to stand by and support her sister in that
13 relationship and not pass judgment. And, allowed it to
14 go on.
15

16 JUDGE JOHNSON: And, I'll note that that is an
17 objection that your attorney made on your behalf and that
18 is preserved for the record.

19 MR. VUKANOVICH: Thank you, Your Honor.

20 JUDGE JOHNSON: All right. Let's bring in the
21 jurors.

22 MR. VUKANOVICH: Your Honor, I know they were talking
23 about dismissing the witness. Do you want her to come
24 into the courtroom before the jury comes in?
25