

STATE OF INDIANA)
COUNTY OF MORGAN)

IN MORGAN SUPERIOR COURT 2
CAUSE NO: 55D02-0604-MR87

STATE OF INDIANA

VS

JOHN R. MYERS II

REPORTER'S CERTIFICATE

I, Pamela Bastin, Reporter of the Morgan Superior Court No. 2, Morgan County, State of Indiana, do hereby certify that I am the Official Court Reporter of said Court, duly appointed and sworn to report the evidence of causes tried herein.

That upon the hearing being held on October 30, 2006, I took down by shorthand, the statements by counsel, the evidence given during the hearing of this cause, and the Court's rulings thereon.

I further certify that the foregoing transcript, as prepared, is full, true, and correct. questioning of all jurors by the Court in the presence of counsel for the State and the defendant.

IN WITNESS THEREOF, I have hereunto set my hand and affixed by Official Seal, this 9th day of November, 2006.

Pamela Bastin

Pamela Bastin
Official Court Reporter
Morgan Superior Court No. 2
Morgan County, Indiana

PUBLIC ACCESS

TRANSCRIPT OF INDIVIDUAL QUESTIONING OF ALL JURORS BY THE
COURT IN THE PRESENCE OF COUNSEL FOR THE STATE AND THE
DEFENDANT, OCTOBER 30, 2006

PREFACE

On October 30, 2006 at 8:30 A.M., the Court, at the request of the Defendant, conducted individual interviews of each juror and alternate juror in the jury room in the presence of counsel for the State of Indiana, Steven Sonnega, counsel for the Defendant, Patrick V. Baker, and the Court Reporter, Pamela Bastin. The Court Reporter used shorthand notes to record the interviews, as no recording equipment was available for use in the jury room.

The Defendant, by counsel, requested that four questions be asked of each juror and alternate juror by the Court. The questions were as follows:

1. Have you received any media reports or other information from any source, including family, other than the evidence presented in Court?
2. Have you accessed any information or used any PDA, computer, or cell phone since you arrived for jury duty on October 15, 2006?
3. Have you ever exceeded the two drinks with evening meal limit at any time? Have you observed any other jurors do so?
4. Have you observed any inappropriate conduct by jurors, security staff, or bailiffs?

The Court then summoned each juror into the jury room in order of their juror number and asked each juror the questions listed. The jurors responses to the questions are noted as follows:

ANSWERS OF JUROR #15 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: No. No.
ANSWER TO QUESTION 4: No.

ANSWERS OF JUROR #20 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: No. No.
ANSWER TO QUESTION 4: No.

ANSWERS OF JUROR #26 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: No. No.
ANSWER TO QUESTION 4: No.

ANSWERS OF JUROR #31 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: No. No.
ANSWER TO QUESTION 4: No.

ANSWERS OF JUROR #40 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: No. No.
ANSWER TO QUESTION 4: No.

ANSWERS OF JUROR #44 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: Yes, but Diana let us call home on her cell phone.
ANSWER TO QUESTION 3: No. No.
ANSWER TO QUESTION 4: No, just because we all did giggly stuff.

ANSWERS OF JUROR #47 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: No. No.
ANSWER TO QUESTION 4: No.

ANSWERS OF JUROR #54 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: No. No.
ANSWER TO QUESTION 4: No.

ANSWERS OF JUROR #57 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: No. I had my two drinks. I don't think so.

QUESTION OF JUROR #57 BY THE COURT

Q. Do you want to elaborate?

A. I really don't think so, I did not see anyone intoxicated.

ANSWER TO QUESTION 4: No.

ANSWERS OF JUROR #64 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No, I have not.
ANSWER TO QUESTION 2: No Sir.
ANSWER TO QUESTION 3: No Sir. No Sir.
ANSWER TO QUESTION 4: No Sir.

ANSWERS OF JUROR #77 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No, I have not.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: No. No, I have not.
ANSWER TO QUESTION 4: No.

ANSWERS OF JUROR #85 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No Sir.
ANSWER TO QUESTION 2: No Sir.
ANSWER TO QUESTION 3: No Sir. No Sir.
ANSWER TO QUESTION 4: No Sir.

ANSWERS OF JUROR #89 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: No.
ANSWER TO QUESTION 2: No, I have not.
ANSWER TO QUESTION 3: No, I have not. No, I have not.
ANSWER TO QUESTION 4: No, I have not.

ANSWERS OF JUROR #94 TO COURT'S QUESTIONS:

ANSWER TO QUESTION 1: Absolutely not.
ANSWER TO QUESTION 2: No.
ANSWER TO QUESTION 3: Never. I really didn't pay attention.

QUESTIONS OF JUROR #94 BY THE COURT:

- Q. Did you ever see any jurors intoxicated?
- A. Pretty close. Do I have to say, I thought [redacted] and [redacted] 1, they drank, they drank 32 ounce beers the night they were throwing pizza at each other. I got upset because [redacted] and [redacted] and Jodie were throwing food at each other. I was asleep, they were running up and down the halls. Everybody was talking about it. The Sheriff took the tape out of the machine. All I know is a group of people took high heel shoes and they went running up and down the halls between 10 and 10:30 p.m. that night. The fourth or fifth night in, that restaurant in town, I think a couple of people got drunk. I really didn't pay attention. After that, I stayed in my room, I said we got a bunch of morons around. [redacted] #85 and [redacted] #54. I think, I think everybody had drinks.

COMMENT BY THE COURT:

I allowed drinks at evening meals.

COMMENT BY JUROR # 94

Some people took advantage of it. Some of the girls had them.

CONTINUED QUESTIONING OF JUROR #94 BY THE COURT

- Q. Which one?
- A. What was her name? [redacted] was one. As far as I know that was the first night she started, her and another girl were doing high fives, they were glad to get away from their kids. [redacted], one or two nights. All I know they had some big drinks. First week everybody was giggly a lot. [redacted] and [redacted] said they never drank but to me it seemed they drank heavy.
- Q. Large beer, by that, what do you mean?
- A. They didn't get beyond two large ones. On the up and up everything was pretty good. Other than the incident running up and down the hallway. Heard a lot of running up and down the corridor.

QUESTIONING OF JUROR #94 BY STEVE SONNEGA:

- Q. You a non-drinker?
- A. Very minor, one drink at a meal. I have high blood pressure, so I don't drink it.

QUESTIONING OF JUROR #94 BY PATRICK BAKER:

- Q. How many nights did the drinking go on?
- A. Every night at the restaurants.
- Q. Never at the hotel?
- A. One time we did, we ordered pizza and someone went and got beer.
- Q. Security officer took a tape?
- A. The first thing in the morning the sheriffs went down, the sheriffs went and took the tapes out of the machines (Hotel Security). I didn't know them at the time (Security Officers).
- Q. What day was this?
- A. The second or third night in, throwing food at each other and I got upset. Jodie was throwing food at me, that was the first night they drank heavy. They were really giggly. Personally, I don't hang around people like that. I don't feel right. Somebody came up and said, "Whatever we do up her stays up here, understand." A couple of jurors, I don't remember which ones. I was told that by a juror, I don't remember. Don't tell anyone.

JUROR #54 RESUMMONSED BY THE COURT FOR FURTHER QUESTIONING

BY THE COURT:

- Q. I want you to tell about something that may have happened the night jurors went to Squealers. Was there an incident involving food thrown?
- A. One piece of food thrown that I recall. Food from another table towards me by a bailiff, Lisa, and it just a little bit, missed me and got over to , #94, and that was all.

- Q. What did you have to drink that evening, beers like this?
- A. Two beers, whatever size they gave them in. I don't believe any way there would be a 32 ounce beer. I don't believe Squealers serves a 32 ounce beer. There was one night at a Mexican Restaurant, their beers were enormous and she stopped us after one. Jodie said those are too big and I said oh and there is no way I could drink two of those. I quickly turned to ; and said I am sorry about this (the food throwing).
- Q. Okay, there was something back at the hotel where people were running up and down the hallway?
- A. We were letting off some steam, some of the jurors and some of the bailiffs. One bailiff had a throw away pair of high heels. She said you guys should have a race with these, just messing around. I put them on and jogged down the hallway. Juror #85 did it too, Jodie gave him the shoes.
- Q. Did one of the jurors complain about it being too noisy?
- A. I jogged down the hallway once and the other juror put them on and jogged halfway down the hall. We had some footballs throwing them around. Never past 9:30 or so. We stayed away from peoples' rooms who we know to be sleeping or wanting to rest as best we could. We were as polite as possible in that situation.
- Q. Was there a time when security staff removed a tape from the camera that was in the hotel?
- A. Of the hotel security camera. I was told that a hotel manager saw the time we were running up the hall with heels on. Jodie mentioned that the hotel manager told her. I said when this was over, I would like to get a copy of the tape.

QUESTIONING OF JUROR #54 BY PATRICK BAKER

- Q. You said the sleeping jurors, some sleep and others not sleep as much?
- A. Some would have gone to bed and others stay up until 10:30 p.m.
- Q. Was there a definitive group that went to bed and a group that stayed awake?

- A. He was the last room on the way down, he liked to get up at 4:30 a.m. We didn't go down past the bailiff's room which was a door or two before his. When you were awake, you put your latch across the door and the door and if you were going to be wanting some time, your door was shut all the way and that was that. In terms of inappropriateness, no damage to anybody. I just thought it was fun things and bonding experience and everyone I was around laughing and having fun trying to take some of the weight off that we were all feeling. Is this going to cause any trouble with me being here for the rest of the day?

BY THE COURT:

- A. I, as the Judge will make a decision.

COMMENT BY JUROR #54

I can only say from my end the integrity is secure and I have taken this very seriously.

JUROR #57 RESUMMONSED BY THE COURT FOR FURTHER QUESTIONING

BY THE COURT:

Mam, there is a couple of things we need to clarify.

QUESTIONING OF JUROR #57 BY THE COURT

- Q. Was there an incident where there was some food throwing going on?
- A. It wasn't food, it was spitballs.
- Q. When I talk about the two drink limit, did you or any other jurors drink Any drinks that were large like that?
- A. Well, they call me Chardonnay. I know there is beers this size and this and Jodie limited them to only one of those.
- Q. Was there an incident at the hotel where jurors were running up and down the hallway with high heels?
- A. Second night, we were there and they were trying to have some fun and

put on some high heels and ran down the hallway.

Q. Was it anyone besides the two male jurors?

A. No.

Q. Did you observe, were they loud?

A. Yeah, they was loud.

Q. Did they do anything outside their rooms?

A. There was football and Frisbee, up and down the hallway.

Q. Was there a time when a security officer took a tape that was being recorded by the hotel camera?

A. I know nothing about that?

Q. Other than the hallways, anything happen in the rooms?

A. Guys painted their toenails that night. I have taken this extremely serious. They have done nothing but joke around that might be how they were letting off steam.

Q. Did it offend you?

A. No.

JUROR #64 RESUMMONSED BY THE COURT FOR FURTHER QUESTIONING

Q. Mam, was there a situation at Squealers the first week where there was food being thrown?

A. We would roll the ends of our straws and throw straws at each other. But I was sitting with /, I don't know their numbers, /, I think was at my table. All Bailiffs and officers at one table. I can tell you if you give me a second to think. I don't know about food. We would roll the ends of straws and throw it. I didn't see any food being thrown.

Q. Back to the two drink limit, where sometimes a beer this big or this big?

- A. When we went to El Camino there were really large drinks and Jodie said you guys can only have one of those. She didn't allow people to have the large drinks. JP had large ones, she limited them to one. At Squealers, no. This is the same, if this and it was actually the same amount. The smaller cup that was round and small served in mugs or glasses.
- Q. Was there an incident where a couple of guy jurors run up and down the halls in heels?
- A. You have to do something to have fun. One instance the couple of the gentlemen, we are going to paint your toenails. Put on heels, when we went back and it wasn't intoxication. They only did it one time. Play balls in the hallway one time it went over the ledge and into the lobby. Make light of a situation that was stressful.
- Q. Were any of the other jurors complaining about noise?
- A. Nobody ever complained to us. Think only one person was when they did search our rooms towards the end of the..to make sure, a couple of DVDs got taken from one of the jurors, once, it was his wife's, because they confiscated his DVD, he complained about the DVDs. ; the part time smoke, moustache, gray hair and glasses #94. He was complaining that our staff took all electronic devices. Whenever we had family visitation, s wife brought the DVD that was still in the package and Jodie took that because they had taken his. She took all of them and the DVD players.

COMMENT BY JUDGE BURNHAM:

I just want to make sure there was nothing inappropriate going on.

COMMENT BY JUROR #64

To be quite honest, Jodie did an excellent job. There was discipline if it needed to be, she did it. She nipped it in the bud. Jurors had had family members bring cameras. had a DVD player.

(Juror released from room)

COMMENT BY PATRICK BAKER:

I want to see the tape.

JUROR #85 RESUMMONSED BY THE COURT FOR FURTHER QUESTIONING

BY THE COURT:

I have just a couple of follow up.

QUESTIONING OF JUROR #85 BY THE COURT

Q. Was there food throwing at Squealers?

A. Brief incident when someone wanted to see if he could catch it in his mouth.

Q. The two drink limit, were they serving beer or alcohol would be larger than normal, 16 ounce?

A. There was a night in El Camino, one drink limit that night. There was a night of pizza in the hotel, tall silver bottles.

Q. Did you ever see anybody get intoxicated?

A. I don't think so. Everybody behaving. I don't remember anyone belligerent or over loud.

Q. The first week, anyone running up and down the hall in high heels?

A. I was one of the two. I don't remember how the discussion started. I believe it was something like lets see you two try to move quickly in these heels. Okay sure. Bring out the heels. Let's do it. Me and
Apparently that is on videotape. Security tape.

Q. Anyone ask staff to take the tape?

A. I just heard front desk seen it and laughed and it was reported back to us.

Q. Do you remember about the high heels?

A. I believe they were Jodie's shoes. If I remember correctly. I don't recall the other bailiff. I don't know who the security officers.

Q. Any other incidents of anyone behaving inappropriately?

A. The cutting up in the hallways.

Q. Anything else besides that kind of stuff?

A. No, I don't think so. I appreciate the fact the bailiffs would try to allow a little leniency, felt they made life as comfortable as could be. I thought they did a good job of that. I don't think they let us get inappropriate or out of bounds.

QUESTIONING OF JODIE LAW, SUPERIOR COURT NO. 2 BAILIFF

Q. We have been talking to some of the jurors. I guess it was the first week, You went to Squealers and I guess Mr. P and Mr. B were running up with high heels in the hallway?

A. It was a joke. They were telling me I don't have a back in them and they were teasing me. I said "If you think you can walk in these any better than I can". They said we could run down the hall back at the hotel. They stuffed their big old feet in my shoes.

Q. Did they throw footballs or Frisbees?

A. Yes, on downtime.

Q. Did you get any complaints from the jurors?

A. Never.

Q. Was there a situation the next morning where the hotel staff had it on tape And tape was taken by one of our security officers?

A. The hotel has a camera and someone observed one of our security officers took a tape. The manager of the hotel was laughing and said that was really funny, other than that I don't know.

Q. Who were the security officers?

A. I would have to look at my schedule.

Q. You could find out if you look at your schedule?

A. Since the first week and it was pretty harmless, I have no clue.

COMMENT BY JUDGE BURNHAM:

We are going to have to get the tape. Who has it and who took it and we need to see it.

COMMENT BY JODIE LAW:

If you let me see the notebook.

COMMENT BY JUDGE BURNHAM:

I just need to see the tape.

THE COURT BAILIFF RETURNS TO THE JURY ROOM WITH HER NOTEBOOK.

COMMENT BY JODIE LAW

The officers did nothing wrong. It was Walt Stuart and Dan Whitley. Since October 18, 2006, I think. They were on the overnight. They were on from four to midnight. That would have taken place after supper. The manager spoke with Ladonna in passing. Ladonna had gone back up to check the rooms and the televisions. She (the Manager) said she saw the race in the hallway and thought it was funny. Gary Long and Brian were on from midnight to eight.

COMMENT BY THE COURT TO COURT BAILIFF

It is going to be a while here. Just have the jurors relax and we will let you know where we are going from here.

(The Court Bailiff is released from the jury room)

COURT QUESTION OF MR. BAKER:

Q. All right, what do you want to do?

A. I would like to see the tape.

COMMENT BY THE COURT :

I have to find these officers. I will get Gary to come in and see who has it.

INDIVIDUAL QUESTIONING OF ALL JURORS ON OCTOBER 30, 2006 IS
CONCLUDED

STATE OF INDIANA)
COUNTY OF MORGAN)

IN MORGAN SUPERIOR COURT 2
CAUSE NO: 55D02-0604-MR87

STATE OF INDIANA

VS

JOHN R. MYERS II

REPORTER'S CERTIFICATE

I, Pamela Bastin, Reporter of the Morgan Superior Court No. 2, Morgan County, State of Indiana, do hereby certify that I am the Official Court Reporter of said Court, duly appointed and sworn to report the evidence of causes tried herein.

That upon the hearing being held on October 30, 2006, I took down by shorthand, the statements by counsel, the evidence given during the hearing of this cause, and the Court's rulings thereon.

I further certify that the foregoing transcript, as prepared, is full, true, and correct. questioning of security officers by the Court in the presence of counsel for the State and the defendant.

IN WITNESS THEREOF, I have hereunto set my hand and affixed by Official Seal, this 9th day of November, 2006.

Pamela Bastin

Pamela Bastin
Official Court Reporter
Morgan Superior Court No. 2
Morgan County, Indiana

PUBLIC ACCESS

TRANSCRIPT OF INDIVIDUAL QUESTIONING OF SECURITY OFFICERS BY
THE COURT IN THE PRESENCE OF COUNSEL FOR THE STATE AND THE
DEFENDANT, OCTOBER 30, 2006

PREFACE

On October 30, 2006, at 10:05 A.M., the Court, at the request of the Defendant, conducted individual interviews of four security officers on duty with the sequestered jurors from 4:00 P.M. on October 18, 2006 to 8:00 A.M. on October 19, 2006 in the presence of counsel for the State of Indiana, Steven Sonnega, counsel for the Defendant, Patrick V. Baker, and the Court Reporter, Pamela Bastin. The interviews were conducted in the Superior Court II jury room on the first floor of the courthouse. The Court Reporter used shorthand notes to record the interviews, as no recording equipment was available for use in the jury room.

QUESTIONS OF DEPUTY WALTER STUART BY THE COURT

Q. On October 18, 2006, the jurors went to Squealers. Was there any food throwing?

A. I think everybody was joking around, a pickle was thrown I think it was Jodie or Lisa and one of the jurors was joking around and she was throwing it.

Q. When you returned to the hotel, two male jurors ran up and down the hallway in high heels?

A. I was downstairs watching the downstairs hallway that is basically where I stayed. One downstairs and one upstairs.

Q. Do you know if there was a tape recording of the hotel?

A. I don't know anything about that.

Q. You were on duty until midnight. Did you see anything else inappropriate that evening?

A. No.

QUESTIONS OF DEPUTY WALTER STUART BY PROSECUTOR, MR.. SONNEGA

Q. What kind of internal security camera do they have?

A. I did not go up to the front desk. I was watching down the hallway that was it. Each time I would go up to the second floor and I didn't see anything.

QUESTIONS OF DEPUTY WALTER STUART BY MR. PATRICK. BAKER

Q. Who was the security personnel on the second level?

A. That was Dan Whitley. I think he came downstairs about 11:00, stayed down there from eleven until he was relieved.

(Court releases Deputy Walter Stuart from the Superior Court II Jury Room)

QUESTIONS OF DAN WHITLEY BY THE COURT:

Q. On duty from four to midnight on October 18, 2006?

A. Yessir, I was.

Q. That evening jurors were taken to Squealers for dinner. Was there an incident of someone throwing food?

A. There was one instance I don't even know what it was that was tossed over to the other table.

Q. When you got back to the hotel there was an incident where male jurors ran down hallway in the bailiff's high heels?

A. I was sitting in the bailiff's room. Everyone was giggling about it. I think they were all giggly and laughing about it.

Q. Were you on duty until midnight?

A. Yessir.

Q. Was there a camera system in the hotel that the hotel manager observed what the jurors were doing and supposedly one of the deputies took the tape. Do you know anything about that?

A. Absolutely not, I never stepped foot behind the counter, don't even know where the tape would have been kept

QUESTIONS OF DEPUTY DAN WHITLEY BY PROSECUTOR STEVE SONNEGA

Q. Do you know if there was any monitoring of the hallway?

A. They did say the manager saw them running down the hallway. Maybe a camera there but I don't know.

Q. But you do not know anything about what they keep or don't keep?

A. Yes sir.

QUESTIONS OF DEPUTY DAN WHITLEY BY PATRICK V. BAKER

Q. You said "I was actually in the bailiff's room?"

A. I was monitoring phone calls for everybody.

Q. Who would be everybody?

A. I didn't see anybody. I just figured everybody was out there watching them. I was monitoring phone calls. I looked out the hallway to see what the clanking was. They were talking about him wearing high heels. I do not know whose high heels they were. They were all giggling and laughing about it.

Q. And nobody said a word about it?

A. No sir not that I have heard.

(Officer Dan Whitley is released from Superior Court II Jury Room)

QUESTIONS OF DEPUTY GARY LONG BY THE COURT

Q. You were working security duty on the 19th of October from midnight to 8:00 a.m. in the morning duty with Brian Gabehart. When you came on duty did you observe any unusual activity?

A. Everybody was in bed. Everybody was in their rooms by the time we got there. That is our security. We don't stay on the second floor. Every half hour or so we walk the floor.

Q. That evening when you did your checks, did you notice anyone out of their rooms?

A. No one was out of their rooms.

Q. Was there any contact with a hotel manager about a videotape recording from the hotel manager?

A. I have spoke with Corrine, hotel manager of Lost Inn and she states that their surveillance system is broken and it is just a closed circuit television system.

Q. Did you ask her if she observed anything?

A. She usually works days, there is a nightshift person.

BY THE COURT TO DEPUTY GARY LONG

Find out who that is and have that person available to us.

COMMENT BY DEPUTY GARY LONG

The tape system wasn't working, there wasn't even a tape in the system. A couple of closed circuit televisions that they can watch the hallways. They haven't had the system working. In reference to this incident, I was approached by Jodie and she was telling him about a bet and she had smoked a cigar, if you guys paint your toenails and walk in my shoes. I believe Corrine would let me know if they had anything. It was broken before the jurors have moved in. Corrine's cell number is 317-

COMMENT BY PATRICK BAKER:

I have no questions.

(Deputy Gary Long is released from Superior Court II Jury Room)

QUESTIONS OF DEPUTY BRIAN GABEHART BY THE COURT

Q. Brian, were you working security on the 19th of October, midnight to eight?

A. Yes.

Q. Were you told of any unusual incidents that had happened that evening?
How did you handle security?

A. Took various trips upstairs covering each hallway. I went various times, probably every hour.

Q. Everything was quiet, no jurors in the hallway? Did you have any discussion with the hotel management about taking a tape that was in the hotel security system?

A. No your Honor. The only thing that I could tell you was in that morning between 7 and 8 o'clock we were upstairs waking up the jurors and the bailiff mentioned the incident the prior night. Somebody in heels and painted toenails. That there were two guys were walking down the hall and had their toes painted and she would try to smoke a cigar.

Q. Was there any mention to a juror by any of the security that security was going to

Take the tape and what goes on here stays here.

A. No.

STEVE SONNEGA HAS NO QUESTIONS OF DEPUTY BRIAN GABEHART

PATRICK BAKER HAS NO QUESTIONS OF DEPUTY BRIAN GABEHART

(Deputy Gabehart is released from the Superior Court II Jury Room)

BY THE COURT:

Where do we go from here?

BY PATRICK BAKER:

Two men with heels on, painting their toenails, it is not a normal activity unless they are intoxicated. To be making bets regarding cigars, I don't believe there should be that kind of contact with the bailiffs, with one or two jurors, or several jurors. We have no way of telling what influence it might have. The questions seemed defensive in nature, all the jurors said no and then we find on the second go around. Over a two week period of time Mr. Myers has a right to a fair trial, and I believe it was over the line. When they come the next day, their perception and concentration level...

BY THE COURT:

Is there anything that you observed, specific observations?

BY PATRICK BAKER:

There is a juror that they have named Chardonnay S.

BY THE COURT:

I don't have any evidence that they violated the Court's two drink limit. Do you?

BY PATRICK BAKER:

If we could bring each of those jurors back in.

BY THE COURT:

That is not appropriate. What are you asking here?

BY PATRICK BAKER:

First of all, I am not so convinced there is not a tape.

BY THE COURT:

If this is indeed accurate, then you can request the tape, speak with Officer Gary Long.

BY HUGH BAKER

I want to.

BY PATRICK BAKER:

It is very concerning. I should be able to make an oral record of some things that have been brought to attention by the jurors. At least on record and make an oral record for Mr. Myers' purposes. Oral record to court there was a television involved, couple of outside phone calls made.

BY THE COURT:

What is the point in doing it in open Court? I get the point is to make a record. I also have to be cognizant of juror privacy and putting out bits and pieces of information not confirmed is significant to the jurors ability, and it is not related outside information which is our primary concern. I am not sure it is in the best interest of the privacy of the jurors. If there is information there was ...

BY HUGH BAKER:

I don't think there is. At this time there is nothing re: sequestered juror improper conduct of this kind and it needs to be put on the record if you have to go up on appeal. Pam will show what she is recording, what has been testified to as to what has happened. I don't think we need to go...with this and have a distraction that drags a lot of people through a lot. Our object is to preserve our client's right to a fair trial.

BY THE COURT:

If you are going to make a motion for a mistrial, the Court Reporter has been recording these comments and she will be happy to tell you what she has written down.

BY PATRICK BAKER:

Calls for a mistrial. As well as this other information and certainly we move for a mistrial based upon the questioning of a juror's allegations of misconduct,... with the juror's television brought in, a cell phone were brought in, a bailiff's cell phone was used to contact one family member. I believe there is illegal use that appears to have been over the..in a specific instance on a ...night two men painted toenails and wore high heels inappropriate.

BY STEVE SONNEGA:

In regard to the Bailiff's one instance of Juror #3, hearing a comment from his girlfriend, and as of Friday he was released.

As far as the...use there is no evidence the two drank over the minimum, I mean maximum of two drinks. The evidence from security guards was that everyone was in bed by midnight, there was no evidence that any of the jurors had the ability to observe or pair was the interaction with the bailiff it happened one time and they were blowing off steam. All the jurors said she took her job seriously. Mountain out of a molehill.

BY THE COURT:

The Court has taken extra steps to insure that the jurors have not received improper outside information about this case. Not to listen, to read or talk to anyone about this case. I have not seen any indications as to the jurors remaining on the panel, any of the remaining 14 jurors have received any outside improper information. I also do not believe, first of all, the court did allow jurors two drinks with evening meal if they wished to pay for them. I don't see at this point any indication that the rule was violated. Furthermore, one large beer was consumed at the Mexican restaurant by a couple of jurors and from my observation each indicated that they had only one beer. There is no indication they were drunk or intoxicated or in any way impaired while they were in court. They are 15 adults who were removed from their families and sequestered together and controlled as to what they could do. I could see, I would expect normal behavior to let off a little steam. One juror did not think that was very funny. I do not have any indication this one incident effected in any way their ability to preserve, process the evidence. Motion for mistrial is denied.

You may inquire of the hotel manager if you find contrary information and if so, call them in. I don't think we are going anywhere with that. And if you wish, after we are done here the Court Reporter can read notes throughout this process and if there is something you believe should be included we will review all of this. I expect to get started at 1:00 p.m.

THAT CONCLUDES THE HEARING CONDUCTED IN THE SUPERIOR COURT II
JURY ROOM ON OCTOBER 30, 2006