

Arenda Langford (not permitted to testify)

THE COURT: All right. Are both sides
19 ready?

20 MR. GREG DAVIS: Yes, sir, the State
21 is ready.

22 MR. RICHARD MOSTY: Yes, your Honor,
23 we are ready.

24 THE COURT: Bring the jury in.
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1 (Whereupon, the jury
2 Was returned to the
3 Courtroom, and the
4 Proceedings were
5 Resumed on the record,
6 In open court, in the
7 Presence and hearing
8 Of the defendant,
9 As follows:)

10
11 THE COURT: All right. Good morning,
12 ladies and gentlemen, be seated. Let the record reflect
13 that all parties in the trial are present and the jury is
14 seated.

15 The defense may call its next witness.
16 MR. S. PRESTON DOUGLASS: Arenda
17 Langford.

18 THE COURT: Would you raise your right
19 hand?

20
21 (Whereupon, the witness
22 Was duly sworn by the
23 Court, to speak the truth,
24 The whole truth and
25 Nothing but the truth,

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1 After which, the
2 Proceedings were
3 Resumed as follows:)

4
5 THE COURT: Do you solemnly swear or
6 affirm that the testimony you are about to give will be
7 the truth, the whole truth, and nothing but the truth, so
8 help you God?

9 THE WITNESS: I do.

10 MR. GREG DAVIS: May we approach?

11 THE COURT: All right.

12

13 (Whereupon, a short

14 discussion was held

15 at the side of the

16 bench, between the Court,

17 and the attorneys for

18 both sides in the case,

19 off the record, and outside

20 of the hearing of the

21 Jury, after which time,

22 the proceedings were

23 resumed on the record,

24 outside the hearing of

25 the jury as follows:)

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2 MR. DOUGLAS MULDER: Judge, we need to

3 go into a matter.

4 THE COURT: Well, if the jury will

5 step back into the jury room briefly, please.

6

7 (Whereupon, the jury

8 Was excused from the

9 Courtroom, and the

10 Proceedings were held

11 In the presence of the

12 Defendant, with her

13 Attorney, but outside

14 The presence of jury

15 As follows:).

16

17 THE COURT: Let the record reflect

18 that all parties in the trial are present. These

19 proceedings are being held outside the presence of the

20 jury.

21 Mr. Mulder.

22 MR. S. PRESTON DOUGLASS: Your Honor,

23 if I might --

24 THE COURT: Oh, excuse me. Mr.

25 Douglass.

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1 MR. S. PRESTON DOUGLASS: If I may go

2 into the issue regarding Arenda. Arenda Langford was

3 called inadvertently. She had sat in the courtroom

4 during what, I believe, was Tom Bevel's testimony. It
5 was inadvertently not recognized by us.
6 Her testimony does not go to any issue
7 that Tom Bevel testified to. She gained no knowledge
8 with respect to her testimony, with respect to issues
9 that she saw when she was in the courtroom.
10 The Witness Sequestration Rule, and
11 the Rule against a witness being in court is
12 discretionary with the Court. And if it does not affect
13 their testimony, it's purely discretionary, and the Court
14 can allow that witness to testify if those issues do not
15 go to issues that she saw or witnessed in the courtroom.
16 And for that reason, we would submit
17 that she is capable to testify and not exempt under the
18 rule, and if she should not be allowed to testify, we
19 need to do a Bill.
20 THE COURT: Well, do a Bill then,
21 because I'm not going to let -- anybody who has been in
22 the courtroom is not going to testify. That is
23 discretionary, and so I'm going to exercise my discretion
24 and not let her testify.
25 MR. PRESTON DOUGLASS, JR.: Your
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1 Honor, while we're on that issue then, the next witness
2 we're going to call is Lloyd Harrell, who, of course is
3 our investigator.
4 His testimony would not go to any
5 factual issue in the case at all. His testimony will be
6 a summary and a review of the 911 tape which has been
7 entered into evidence, and does not go to any factual
8 issue regarding the case, but only the evidence which has
9 been entered by the State, and his review of the
10 evidence.
11 THE COURT: All right. Same ruling.
12 So let's get on with making your Bill, whatever you want
13 to do.
14 MR. DOUGLAS MULDER: Well, I guess,
15 Judge, we can do it the easy way, or we can do it the
16 hard way, and I am equally adept at doing it either way.
17 In fact, I kind of like the hard way.
18 THE COURT: Very well, Mr. Mulder,
19 what I wish to know is, do you wish to make a Bill?
20 MR. DOUGLAS MULDER: Well, we can
21 bring their witness back and put in our version through
22 him, or we can do it the easy way.
23 Now, whichever way the Court would
24 prefer.
25 THE COURT: Well, I think we had

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1 better do it the proper way, which would be to exclude
2 all witnesses who have been in the courtroom, and any
3 other witness you wish to call, please feel free to do
4 so.

5 MR. DOUGLAS MULDER: Well, now, I told
6 you at the time that Bevel testified that he was -- well,
7 that his memory was less than accurate as to what I had
8 asked him in Oklahoma City, and I told you at that time I
9 intended to testify, if the Court will recall.

10 THE COURT: Well, I know, Mr. Mulder,
11 but things often said in the heat of battle, I don't take
12 them too seriously. So, let's get on with your next
13 witness who has not been in the courtroom, please, or who
14 has already testified under the Rule and you wish to
15 bring him back.

16 Do you wish to call a witness from the
17 State, bring the State's witness in.

18 MR. DOUGLAS MULDER: Judge, let us
19 just put it on the record.

20 THE COURT: Go ahead.

21 MR. JOHN HAGLER: Okay. Your Honor,
22 at this time, what we want to do is, we want to state to
23 the Court what these two witnesses would testify to.

24 THE COURT: That will be fine.

25 MR. JOHN HAGLER: And then what our
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1 position is in this. Of course the Rule, it's found
2 under Rule 613, under the rules of Criminal Evidence.

3 THE COURT: Yes.

4 MR. JOHN HAGLER: The Court knows it's
5 not a per se exclusionary rule. This Court has
6 discretion depending on the type of witness, the type of
7 testimony and the circumstances under which the witness
8 is called.

9 There is also a distinction between an
10 intentional act on the part of the defense to violate the
11 Rule, and whether or not the Rule was violated
12 unintentionally by the defense.

13 In both of these instances, your
14 Honor, as far as Lloyd Harrell's testimony, we had no
15 idea what Bevel was going to testify to, and we intend to
16 make an offer here, as to what we would show through
17 Lloyd Harrell -- a requirement that he testify now, is to
18 rebut and impeach the testimony of Bevel, which we would
19 further submit is crucial to our defense.

20 Now, I know the Court has read, and I
21 know the Court is aware of the Webb case, 766 Southwest

22 2nd, 236, 766 Southwest 2nd, 236, Tex. Crim. Ap. 1989.

23 Your Honor, this Court conducts a

24 balancing test as opposed to a per se exclusionary test.

25 And again, the issues are: One, the circumstances under
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1 which the Rule was violated.

2 Again, as far as Lloyd Harrell, the

3 necessity for his testimony is required only because of

4 the fact that through the testimony of Bevel, we had no

5 idea what he was going to testify to. As far as this

6 other witness, we had no idea she was going to be in the

7 courtroom at the time.

8 Secondly, this Court must look to see

9 what type of testimony we're talking about. You know, is

10 it the type of testimony that they would have been

11 influenced by what they heard in the courtroom?

12 And furthermore, how crucial this

13 testimony is to the defense. And again, your Honor, we

14 plan to make a proffer of testimony here, but again, this

15 testimony, we would urge the Court, is going to be

16 crucial to our defense, and it would be highly

17 detrimental unless the jury is allowed to hear it.

18 THE COURT: Fine.

19 MR. S. PRESTON DOUGLASS: Your Honor,

20 with respect to Mr. Harrell, under the Court's ruling,

21 what that would mean is, when you go up to interview an

22 expert witness, you have to take, under the Court's

23 ruling, you would have to take, in effect, take a dummy

24 person along, to verify what the expert is going to say,

25 then leave that person outside throughout the whole

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1 trial, just in case this expert told you something

2 different.

3 Now, you can't anticipate that an

4 expert, who is a police officer, is going to come in and

5 say something different from the interviews. The only

6 way you can respond to it then is to have a witness come

7 up and say that is directly contrary to what he told us

8 in Oklahoma. You can't anticipate it, and you certainly

9 wouldn't expect it. And so for that reason, it's an

10 adequate waiver of the Rule, because we have to have some

11 way to respond to it.

12 Second, with respect to the 911

13 recording, Mr. Harrell is not adding any fact other than
14 his transcription of the recording after a number of
15 hours of listening to it. And so, for those reasons, it
16 does not interject any fact relating to his presence in
17 Court, and for that reason, the Rule should be waived for
18 him for that reason.

19 THE COURT: All right. The Court's
20 ruling remains the same. If you want to make a Bill,
21 let's make it.