

Testimony of Lloyd Harrell

DIRECT EXAMINATION

13

14 BY MR. S. PRESTON DOUGLASS:

15 Q. Please state your name.

16 A. Lloyd Harrell, H-A-R-R-E-L-L.

17 Q. Where do you live?

18 A. I live in Smith County, Texas.

19 Q. And, how are you employed?

20 A. I'm employed by Lloyd Harrell and

21 Associates, Inc., which is a private investigation firm.

22 Q. How long have you had that company?

23 A. Since February of 1989.

24 Q. Prior to February of 1989, how were

25 you employed?

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1 A. I was employed with the Federal Bureau

2 of Investigation as a special agent.

3 Q. Okay. And, how many years were you

4 employed as a special agent by the Federal Bureau of

5 Investigation?

6 A. From 1965 until 1989.

7 Q. And, did have you numerous duties and

8 posts in the course of your duties with the Federal

9 Bureau of Investigation?

10 A. Yes, sir, I did.

11 Q. And can you tell, for the purposes of

12 this Bill, can you set forth what your prior experience

13 was?

14 A. I began my career as a special agent

15 with the FBI in Butte, Montana, and then I moved to

16 Pocatello, Idaho; from there I moved to Wichita Falls,

17 Texas; from there I moved to Dallas, Texas; and then in

18 1980 I moved to Tyler, Texas.

19 During that period of time I

20 investigated general criminal matters, crimes on

21 government reservations, crimes on military reservations,

22 white collar crime, counter-intelligence, terrorism and

23 major white collar crime.

24 Q. And in the course of your duties with

25 the Federal Bureau of Investigation, did you have

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1 opportunities to listen to recorded conversations, or

2 recordings of events and make transcriptions of those

3 events?

4 A. Yes, sir, I did.

5 Q. Okay. And with respect to the State
6 of Texas versus Darlie Routier, have you been employed as
7 an investigator for the defense in that trial?

8 A. Yes, sir, I have.

9 Q. Have you been in the courtroom during
10 the trial and observed various portions of the trial?

11 A. Yes, sir, I have.

12 Q. In the course of the trial, has it
13 come to your attention that the State has introduced a
14 transcription which has been admitted in evidence as
15 State's Exhibit 18-E?

16 A. Yes, sir, it has.

17 Q. And is that a transcription of a laser
18 disk reproduction of the 911 call?

19 A. Yes, sir, it is.

20 Q. I'm going to hand you State's Exhibit
21 18-E, and I'm going to ask you if you had reviewed that
22 transcription in comparison with the 911 laser disk and
23 the call that was put in evidence by the State?

24 A. Yes, sir, I have.

25 Q. Mr. Harrell, the laser disk has been
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1 marked and admitted into evidence as 18-C.

2 Have you and I, over the course of
3 about the last two weeks, spent a number of hours
4 reviewing the sound reproduction on State's Exhibit 18-C,
5 in comparison with the transcript produced to the jury by
6 the State, embodied in the transcription 18-E?

7 A. Yes, sir, we have.

8 Q. And, do you have an opinion -- let me
9 ask you this: How many hours would you say that you and
10 I have reviewed the laser disk 18-C, in comparison with
11 the transcription 18-E?

12 A. Probably about four and a half hours.

13 Q. And has some of that time been spent
14 reviewing with other members of the defense team?

15 A. Yes, sir, it has.

16 Q. All right. And, do you have an
17 opinion as to whether or not the transcription in State's
18 Exhibit 18-E accurately reflects what is on the laser
19 disk as State's Exhibit 18-C?

20 A. No, sir, it does not.

21 Q. Are there material variances between
22 the laser disk and the State's transcription?

23 A. I believe there are.

24 Q. Now, have you produced a transcription
25 based upon our review of the 911 tape?

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1 A. Yes, sir, I have.

2

3 MR. S. PRESTON DOUGLASS: May I

4 approach the witness, your Honor?

5 THE COURT: You may.

6

7 (Whereupon, the following

8 mentioned item was

9 marked for

10 identification only

11 after which time the

12 proceedings were

13 resumed on the record

14 in open court, as

15 follows:)

16

17 BY MR. S. PRESTON DOUGLASS:

18 Q. Mr. Harrell, I'm going to hand you

19 what has been marked as Defendant's Exhibit 96 and

20 Defendant's Exhibit 96-A.

21 A. Yes, sir.

22 Q. I'd ask you to review those exhibits.

23 Are you familiar with them?

24 A. Yes, sir, I am.

25 Q. And, does Defendant's Exhibit 96, is

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1 that the transcription that you made based upon a review

2 of 18-C?

3 A. Yes, sir, it is.

4 Q. Also, would you review Defendant's

5 Exhibit 96-A?

6 A. Yes, sir.

7 Q. Can you tell us what that is?

8 A. This is a transcription in which we

9 have the State's version, and then changed in bold,

10 italic type those sentences in which we believe there

11 should be a correction.

12 Q. Okay. And is it your opinion that

13 some of those changes are material in terms of what they

14 represent from the 911 tape?

15 A. Yes, sir, they are material.

16

17 MR. S. PRESTON DOUGLASS: Your Honor,

18 for purposes of this Bill, I would offer Defendant's

19 Exhibit 96 and 96-A.

20 THE COURT: For the purposes of this
21 Bill, any objections?
22 MR. GREG DAVIS: No, sir.
23 THE COURT: Defendant's Exhibits 96
24 and 96-A are admitted for purposes of the Bill.
25
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1 (Whereupon, the items
2 Heretofore mentioned were
3 Received in evidence as
4 Defendant's Exhibits No. 96
5 and 96-A for record purposes
6 Only, after which time, the
7 Proceedings were resumed
8 As follows:)
9

10 MR. S. PRESTON DOUGLASS: Your Honor,
11 I want to -- for purposes of the record, to make sure
12 it's preserved, state to the Court that it is our
13 intention to produce, and I have available numerous
14 copies of 96 and 96-A. It was our intention to play for
15 the jury the 911 tape on 18-C, and to produce for
16 publication the copies of 96 as well as 96-A, so the jury
17 could listen to the tape, and make their own
18 determination with respect to it.
19 THE COURT: Do you want to introduce
20 them all for record purposes, or as many as you want for
21 record purposes, whatever you want to do?
22 MR. S. PRESTON DOUGLASS: Well, your
23 Honor, if I understand right, I don't feel like for
24 purposes of the Bill I need to put in every copy. But I
25 want the Court to understand, and I'm assuming the ruling
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1 is the same, that those transcriptions are not going to
2 be shown to the jury at this time.
3 THE COURT: They will not be at this
4 time.

5
6 BY MR. S. PRESTON DOUGLASS:
7 Q. All right, Mr. Harrell, let me ask
8 you, in the course of your duties with the Federal Bureau
9 of Investigation, did you have training both into the
10 federal code which embodies all the criminal laws of the
11 United States of America, and have you also had the
12 opportunity to review the State Penal Code for the State
13 of Texas?

14 A. In some instances, yes, sir.

15 Q. Were you aware that in the course of
16 your investigation, that a secret recording was made at
17 the grave side of Devon and Damon Routier?

18 A. Yes, sir, I was.

19 Q. And, are you aware that there was a
20 microphone placed in a bush which is located
21 approximately 10 to 15 feet from the grave side?

22 A. Yes, sir.

23 Q. Based upon your experience and
24 training as a special agent with the Federal Bureau of
25 Investigation, do you have an opinion about whether that
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1 was a lawful act?

2 A. I believe it is an unlawful act. It's
3 against the federal law. I believe it's also against the
4 state law.

5 Q. Have you reviewed the federal and
6 state law that prohibit unlawful interception
7 communications?

8 A. Yes, sir, I have.

9 Q. To your knowledge in court, has the
10 State of Texas produced any lawful warrant, or any lawful
11 authorization by a magistrate or a judge with lawful
12 authority, enabling the State of Texas to produce -- or
13 to enable the State of Texas to place that bug in a bush
14 lawfully?

15 A. We have seen no warrant or document
16 issued by any magistrate, judge, or court which
17 authorizes an interception for surreptitious purposes.

18 Q. And it's your understanding that that
19 microphone was planted, and recorded private
20 communications that was at a prayer service on June 14th
21 of 1996?

22 A. Yes, sir.

23 Q. Also, when I asked you, did you travel
24 on December 30th of 1996, I believe it is, to Oklahoma
25 City to meet with retired captain Tom Bevel in Oklahoma?
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1 A. Yes, sir, we did.

2 Q. Does that date sound right to you?

3 A. Yes, sir, December 30th, 1996.

4 Q. Okay. And, did you meet with Mr.
5 Bevel?

6 A. Yes, sir.

7 Q. And did Mr. Bevel meet with you,

8 Richard Mosty and Doug Mulder?

9 A. Yes, sir, and Curtis Glover.

10 Q. Okay. And the course of that

11 conversation, did Mr. Bevel make statements regarding

12 certain bloodstains found on defendant Darlie Routier's

13 T-shirt?

14 A. Yes, sir, he did.

15 Q. In your opinion, did the State -- did

16 he later make statements in Court in front of the jury

17 about certain bloodstains on the T-shirt?

18 A. Yes, sir, he did.

19 Q. And do you believe that the statements

20 that he made about the T-shirt in court in front of the

21 jury, are materially different from what he told you in

22 the interview in Oklahoma City?

23 A. Yes, sir, they are.

24 Q. Do you recall those conversations?

25 A. Yes, sir. The first part of the

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1 conversation I recall, is when we talked to Mr. Bevel

2 about how he picked the particular stains to be tested.

3 This is, of course, after the conversation occurred for

4 some time.

5 He indicated that the stains that he

6 marked for Mr. Linch to cut out and send to the DNA

7 laboratories, Gene Screen, were picked for a variety of

8 reasons.

9 His first concern was that a stain

10 must have directionality. He explained that

11 directionality means in a bloodstain that one axis of the

12 stain is longer than the other one.

13 From the axis he then can determine

14 the directionality, whether the stain is up or down or

15 sideways.

16 In order to make a proper

17 determination, he indicated he made every effort to

18 sample a single stain as multiple stains may cloud the

19 issue of directionality.

20 Later, when we asked him about this

21 particular issue, pertaining to the individual stain

22 sample, and whose blood they contained, he said the

23 stains contained mixtures of blood of Darlie and her

24 children.

25 Q. Is that what he said in Oklahoma?

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1 A. Yes, sir, it is.

2 Q. Okay. Now, what did he say, to your
3 recollection, in front of this jury during the trial?

4 A. He, subsequent to apparently analyzing
5 all of the DNA and the facts and circumstances of the
6 case, he said the stains could be, or were a result of a
7 two occurrence event, meaning both stains, that each
8 stain sampled, could have had two separate occurrences
9 causing that particular single stain. And therefore, the
10 blood may not be mixed blood.

11 Q. Do you feel that that contradiction in
12 his testimony was material in that it was directly
13 contrary to what he had previously stated?

14 A. Absolutely, for this reason: In
15 Oklahoma City he was asked at least twice, does this mean
16 that each of those stains, the knife tip had to contain
17 the blood of Darlie and the blood of one of her children?
18 His response to that answer was yes.

19 Q. Now, for the purposes of the Bill and
20 purposes of the record, the T-shirt that we have been
21 referring to, is the T-shirt removed from Darlie Routier
22 following the attack, which has been admitted into
23 evidence as State's Exhibit No. 25; is that correct?

24 A. Yes, sir, it is.

25 Q. And were you aware that photographs
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1 were shown to the jury in State's Exhibits 120-A, 120-B,
2 120-C, 120, 121-A and 121, and that he testified to what
3 you believe is a contradiction?

4 A. Yes, sir.

5 Q. From, not only State's Exhibit 25 but
6 also from State's Exhibit 120-A, B, 120-C, 121-A, 121 and
7 120?

8 A. Yes, sir.

9 Q. Just going back to the 911 tape one
10 second. Would you tell us why you believe it is material
11 and important for the jury to hear the differences
12 between the transcription in 18-E and your transcription
13 which is 96 and 96-A?

14 A. Yes, sir. Mr. Douglass, one of the
15 problems in developing a transcript of any taped
16 conversation is that if you once have a transcript which
17 is written and then you hear the tape, people will tend
18 to hear what is written.

19 The way to develop a transcript is to
20 listen line-by-line the words that you can hear, and try
21 to develop a transcript as accurately as possible and
22 then verify it through listening.

23 It is very easy to misconstrue,
24 misstate a transcript if a person reads that transcript
25 and listens to the tape at the same time. And therefore,
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1 a transcript must be exactly accurate or as accurate as
2 it can be in order to keep from suggesting information on
3 the tape which is not there.

4 Q. Okay. You may have responded to this,
5 I was listening to Mr. Mulder, but let me ask you this:
6 Do you believe then that when the State scrolls their
7 version of 18-E up on the screen, that through the power
8 of suggestion the jury hears what is on that screen when
9 it is not on the tape?

10 A. There's two problems with it. First,
11 they read what they hear and they don't hear what the
12 secondary conversation is. So if the secondary
13 conversation, meaning the communications officer, the
14 dispatcher or other people occur, they don't hear that
15 conversation, so the response maybe not in answer or
16 related to that particular piece of the conversation.

17 So the jury -- it's very suggestive to
18 a jury and they can hear and see what they see, when in
19 fact that is not what is being said.

20 Q. Mr. Harrell, the record will show what
21 discrepancies there are. But for the purpose of this
22 Bill, I want you to go to, for instance, what you think
23 is one of the most egregious examples of where the
24 State's Exhibit 18-E is misleading, and explain, just one
25 or two examples of where there is significant
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1 discrepancies between 96-A and 18-E.

2 A. Okay. And starting just briefly on, I
3 will use the second minute and second reference that is
4 in the transcript. At 3520, which is 35 seconds and 20,
5 the female caller in the State's version says, "Though he
6 was dead, oh, my God." I hear, "He's seven years old.
7 He is dead. Oh, my God."

8 On 3929 I hear, "I don't even know."
9 I hear, "I don't even know who did it." The State's
10 transcription says, "I don't even know," unintelligible.

11 On 4315, I hear, "I don't even know
12 who would do it, Darin." The State's transcription is,
13 "I don't even know," unintelligible.

14 At 4928, we have a major discrepancy.
15 I hear, "Who would do this?" The State's transcription
16 is, "Who was breathing?"

17 At 5115, I hear, "Oh, my God, who
18 would do this?" The State's transcription is, "Are they
19 still laying there?"

20 Q. Okay. Let me stop you there.

21 A. Yes, sir.

22 Q. So in effect, if the State is going to
23 say that their transcription which says, "Who was
24 breathing, are they still laying there," is of some
25 significance?

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1 A. I believe it is, yes, sir.

2 Q. Would you agree that if their version
3 is, "Who was breathing, are they still laying there," and
4 the correct version is, "Who would do this? Oh, my God,
5 who would do this?" That is a material difference?

6 A. Yes, sir, I believe it is.

7 Q. Do you believe that it is important
8 that the jury know about this difference?

9 A. Yes, sir.

10 Q. Going on through, without going
11 through every -- I mean, is it fair to say that some of
12 these are adding in extra words?

13 A. Yes, sir.

14 Q. But they may not change the context?

15 A. And sometimes the addition has to do
16 with the fact that in the truncated version which appears
17 on the screen, in order to eliminate the communication's
18 officer, they have truncated out the communication's
19 officers, so a statement made by Darlie appears to be one
20 continuous statement, when in fact, it's interrupted by
21 communication officers making comments.

22

23 MR. S. PRESTON DOUGLAS: May I have
24 one moment, your Honor?

25 THE COURT: Sure.

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1 MR. S. PRESTON DOUGLASS: For the
2 purposes of this Bill, your Honor, I don't have any
3 further questions.

4 THE COURT: All right. Anything, Mr.
5 Davis?

6

7

8 CROSS EXAMINATION

9

10 BY MR. GREG DAVIS:

11 Q. Mr. Harrell, in making this new
12 transcript, how did you process the 911 tape?
13 A. I didn't process the 911 tape. I
14 listened to the laser disk.
15 Q. Oh, so you used your ears just like I
16 used my ears to listen to the tape?
17 A. Yes, sir, I did.
18 Q. So no processing with any software, no
19 processing with any computer, no processing with any sort
20 of equipment whatsoever?
21 A. No, sir.
22 Q. And for the record, you have been in
23 the courtroom the entire length of the trial, have you
24 not?
25 A. Yes, sir, I have.
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1 Q. Okay. With regards to the 911 tape,
2 why didn't you make your own transcript before we started
3 trial?
4 A. We did not have the laser disk before
5 trial.
6 Q. You had a copy of the 911 tape, didn't
7 you?
8 A. We did not have -- we did not have the
9 copy of the laser disk, nor did we have the enhanced copy
10 before trial.
11 Q. Sir, did I ask you that?
12 A. No, sir.
13 Q. Would you please answer my question
14 then. Did you have a copy of the 911 tape?
15 A. Yes, sir, we did.
16 Q. Now, Mr. Harrell, with regards to Tom
17 Bevel, you went to Oklahoma City to talk with him because
18 you knew he would be a witness in this case, didn't you?
19 A. Yes, sir.
20 Q. So the fact that he testified during
21 the course of this trial did not come as any surprise to
22 you, did it?
23 A. No, sir.
24 Q. And during that meeting -- it was
25 about a four-hour meeting with Mr. Bevel?
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1 A. Yes, sir.
2 Q. You didn't attempt to record that
3 meeting, did you?
4 A. No, sir.

5 Q. Ever ask Mr. Bevel whether it would be
6 all right to record the meeting or not?
7 A. No, sir.
8 Q. Okay. So even though that was open to
9 you, you chose not to record the meeting; is that right?
10 A. Yes, sir.

11
12 MR. GREG DAVIS: That's all I have,
13 your Honor.
14 THE COURT: You may step down. Thank
15 you very much. All right.
16 Are we going to have the young lady
17 too?
18 MR. JOHN HAGLER: Your Honor, do you
19 want me to go ahead and make the objection now or wait
20 until the other one?
21 THE COURT: Well, is the young lady
22 going to testify also?
23 MR. S. PRESTON DOUGLASS: No, that's
24 all right, your Honor.
25 THE COURT: Just Mr. Harrell.
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1 MR. JOHN HAGLER: We are going to
2 withdraw the other witness.
3 THE COURT: All right. The other
4 witness is withdrawn. And for the record --
5 MR. DOUGLAS MULDER: No, Judge, we are
6 not going to withdraw the other witness. We're simply --
7 we dictated into the record what the witness,
8 substantially what the witness would testify to, and
9 we're satisfied with that rendition of what the witness
10 will testify to.
11 THE COURT: All right. That's fine.
12 And so now, Mr. Hagler.
13 MR. JOHN HAGLER: Okay, your Honor,
14 let me just kind of back up a second.
15 THE COURT: All right.
16 MR. JOHN HAGLER: I want to try and
17 break this down. And again, your Honor, as the Court
18 knows, Rule 613 is not a per se exclusionary rule. And,
19 the Webb case, which I have already cited for the Court, _____
20 states that this Court conducts a type of balancing test.
21 What the Court does, it looks to see,
22 one, there is obviously a purpose for upholding the Rule,
23 and that has to be balanced against the detriment and
24 cost to the defense and how crucial the excluded
25 testimony is going to be.

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1 Now, furthermore, your Honor, the
2 Court has to look to see what type of witness this is.
3 There really are basically two types: One is an
4 unintended witness. This is going to be a witness who,
5 during the course of the trial may become very important
6 but was unknown, or the importance of that witness'
7 testimony was unknown prior to the trial.
8 The other category, if you want to
9 call it that, would be one where a witness would walk
10 into the courtroom, unbeknownst to the defense, and the
11 defense had no knowledge as to that witness' presence in
12 the courtroom.
13 Now, as to the lady, Arenda, I forget
14 what her last name now is, but in that case, that would
15 be a situation where we had no knowledge of her presence
16 in the courtroom at the time of the testimony during the
17 course of this trial.
18 As far as Mr. Harrell, obviously as
19 being our investigator, we were certainly aware of his
20 presence, but again, that particular type of witness,
21 your Honor, is going to be an unintended witness.
22 In other words, one in which we had no
23 knowledge prior to the trial of the importance and
24 significance of what his testimony may be during the
25 course of this trial.

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1 Now, your Honor, as I understand, I
2 have kind of broken this down into three different areas.
3 One of them is going to be the impeachment of Bevel.
4 Secondly, is going to be the wire intercept. And third
5 is going to be the preparation of the 911 tape.
6 Let's take Bevel first. Your Honor,
7 we went up and interviewed Bevel. And what I want to
8 focus in on, is that we relied on his testimony as to the
9 fact that there was a mixture of blood on the knife tip
10 of the alleged weapon.
11 That evidence is going to be
12 important, and we would submit crucial to the defense in
13 this case, as has already been brought out and is going
14 to be argued to the jury.
15 We had no knowledge, your Honor, that
16 he was going to come down and testify in this trial that
17 the two bloods occurred during separate occasions, as he
18 uses the term, as opposed to one incident, that is the
19 reason why this testimony is crucial. Again, we had no

20 knowledge of that until he testified on the stand at
21 which time Mr. Harrell's testimony now becomes crucial to
22 our defense to impeach his prior testimony. So that is
23 the first one.
24 And certainly we had -- and again, I
25 might add, that we're simply focusing in on this one
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1 particular area.
2 As far as the wire intercept
3 testimony, your Honor, they are the ones who originally
4 injected it into this case the matter about the grave
5 side matter. You know, we certainly have -- never had
6 any intention of ever doing that. That started a
7 combination of testimony and events that ended up
8 resulting in the testimony and the issue about the
9 illegal wire intercept. And again, we never intended to
10 go into this matter until it was injected into the case
11 before the jury by the State.
12 As far as the preparation of the 911 tape,
13 again, we didn't have the disk until during the course of
14 the trial. Furthermore, the preparation of it is a mere
15 ministerial act on the part of Mr. Harrell. Certainly
16 his presence in the courtroom wouldn't have any manner or
17 bearing on the preparation of the tape itself. And he is
18 subject to cross examination like any other witness.
19 Now, again, in all respects, you know,
20 this testimony is going to be crucial, and likewise the
21 testimony of the other lady witness, Arenda.
22 Your Honor, to exclude this testimony
23 would constitute a violation of our rights to compulsory
24 process under Article 1 Section 10 of the Texas
25 Constitution, and the 5th, 6th and 14th Amendments of the
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1 United States Constitution, and would also constitute a
2 violation of 613, in light of the fact that if this
3 Court, and I know this Court will conduct a balancing
4 test, but certainly, the importance and crucial nature of
5 this testimony far outweighs any violation of the Rule,
6 which, again, was unknown and unintended on the part of
7 the defense.
8 And for all of those reasons, we would
9 vigorously urge the Court to allow Mr. Harrell, and the
10 witness, Arenda, to testify before the jury.
11 THE COURT: All right. The Court --
12 there is nothing else from either side?
13 MR. GREG DAVIS: No, sir.

14 THE COURT: All right. The ruling of
15 the Court remains the same. The -- I think that the
16 Court, the Rule of Evidence -- first of all, the defense
17 should have made notice of this prior to these
18 proceedings starting if you wanted somebody in. That was
19 not done.
20 So I feel that the Rule will take
21 precedence in this case. I am holding that the Rule
22 does, and these witnesses will not be permitted to
23 testify, and the Bill has been made, which I think will
24 preserve any error that there may be in this ruling.
25 That having been done, can I see Mr.
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1 Mulder and Mr. Davis quickly, please?
2 MR. GREG DAVIS: Yes, sir.
3 MR. DOUGLAS MULDER: Yes, sir.
4 THE COURT: All right. Ladies and
5 gentlemen, we do have to clear some things out please.
6 We do have to vacate the courtroom.