

1 outside the presence of the jury, or do you want us
2 to go in the back?

3 THE COURT: Let's get the jury to step in the
4 jury room.

5 (JURY NOT PRESENT)

6 THE COURT: Everybody be seated. I don't
7 know how we're going to get -- unless they're
8 really quick. That last witness was about 35 or 40
9 minutes and we can't go until after 6:00 with this
10 jury. I can't keep them that late. So anyway,
11 what's the issue?

12 MS. RICH: I just wanted to proffer to the
13 Court -- not to make a physical proffer, but to let
14 the Court know where we're going at this point.
15 The next witness is Alfred Davis. He is a former
16 Mobile Police Department --

17 THE COURT: Alfred Davis?

18 MS. RICH: Alfred Davis.

19 THE COURT: Alfred Davis, okay.

20 MS. RICH: He is the uncle of Christopher
21 Davis and that second witness that I wanted to get
22 on is Christopher Davis.

23 THE COURT: That's the driver of the other
24 car?

25 MS. RICH: Correct.

1 THE COURT: I got it. I remember that name.

2 MS. RICH: Okay. And so Alfred Davis -- what
3 happened in this case is that Christopher Davis,
4 they found Christopher Davis and they asked him to
5 make a statement to the police. And what
6 Christopher Davis was -- he went to his uncle who's
7 a retired Mobile Police Department officer, Alfred
8 Davis and Alfred Davis brought him in. There
9 was a video of Alfred Davis bringing him in. We do
10 not intend to play the video of Alfred Davis
11 bringing him in, but we intend to question Alfred
12 Davis about what he, Alfred Davis said to nephew
13 about giving a statement to the police department.
14 Because the fact of the matter is, is he told us
15 his nephew you could absolutely make a statement
16 based on my training and experience with the Mobile
17 Police Department and he'd do it in a written
18 version and he's going to give his reason why he
19 told his nephew to do that.

20 THE COURT: Why is that an issue?

21 MS. RICH: Oh, it's going to be an issue
22 because the Defense is going to raise that issue of
23 why he has not been communicative to either side of
24 the parties until he came down here to court.

25 THE COURT: So you're kind of anticipating

1 that?

2 MS. RICH: I am anticipating that. And Mr.
3 Knizley said that's what's going to be part of the
4 testimony. And so --

5 THE COURT: You're going to call the uncle
6 first?

7 MS. RICH: Correct.

8 THE COURT: And then the actual driver of the
9 car?

10 MS. RICH: Yes, correct.

11 THE COURT: Defense position on her
12 disclosure?

13 MR. KNIZLEY: Hearsay.

14 MS. RICH: It's not. I'm sorry, I thought you
15 were finished. Excuse me.

16 MR. KNIZLEY: There were two other people
17 that were talking outside the court and that's
18 outside. They're offering it for the truth of the
19 matter asserted. It's classic hearsay. I don't
20 know the relevance of it at this juncture. It
21 would not be relevant at this time, and it may
22 become relevant later on, but hearsay is --

23 THE COURT: Of course if you get up on
24 cross-examination of the driver Davis, well, you
25 talked to the State for the last six months, but

1 you wouldn't return my phone calls, you wouldn't
2 talk to me, would you. You know, that could render
3 the why, then you wouldn't be offering it for
4 hearsay for the truth of the matter asserted but
5 for a non-hearsay purpose.

6 MR. KNIZLEY: Yes, but this is the -- as I
7 understand her proffer is Mr. Davis is going to
8 talk about why they would not talk to the State --
9 to the police.

10 THE COURT: See, I don't know, okay.

11 MR. KNIZLEY: But anyway, that's irrelevant
12 right now I would think, you know. If there's a
13 bias, then I think Your Honor -- but the example
14 testimony he gave --

15 THE COURT: So did he talk to the Defense but
16 not the State or did I have it reversed? Did he
17 talk to either side?

18 MR. KNIZLEY: No. He refused to talk -- as I
19 understand it, he went to his uncle. He was called
20 by the deputy, but he wouldn't talk to him. He
21 went to his uncle. His uncle brought him to the
22 police station. His uncle told him he wasn't going
23 to give any statement whatsoever. He'd give a
24 written statement to Detective McCullough, then he
25 had a recorded minute conversation.

1 She said I'm not saying anything, I'll give
2 you a written statement, end of story. He gave a
3 written statement and left. Now, we tried to
4 contact him several times and we subpoenaed him.
5 We had the investigator go out there and eventually
6 he finally said I'm not talking to y'all.

7 Now he's been talking to them for two or
8 three days because I'm going to talk about that
9 because he's been up there talking to them. But at
10 the point of Mr. Davis taking the witness stand to
11 say I had a conversation with my nephew and told
12 him to give a written statement, that's, one,
13 hearsay. Two, it has no relevance to the case
14 right now. Now, if there's some time she can call
15 Mr. Davis back, Mr. Davis Sr --

16 THE COURT: Well, really depends on whether
17 driver Davis says, doesn't it, whether the Uncle
18 Davis gets to --

19 MS. RICH: Well, it's offered to show why
20 Christopher Davis did what he did.

21 THE COURT: I understand. I understand. And
22 the thing is you can have driver Davis on the stand
23 and say, now, what did you do next, I went here,
24 what did you do next, I went there. Before you
25 went to next step, did you talk to anybody, that's

1 not hearsay to ask that question. I talked to my
2 Uncle Davis, what does he do for a living, he's a
3 police officer. Then after that, what did you do,
4 I went to the police department.

5 And then on cross, if they open the door
6 depending on what they say, then you call the
7 uncle.

8 MS. RICH: Well, Judge, they've already
9 opened the door because they said in opening
10 statements that Christopher Davis didn't call
11 police, he didn't call 911 and refused to give a
12 statement and cooperate in this investigation. The
13 only thing we know is that the following day, his
14 uncle or someone close to him agreed to bring over
15 a handwritten statement about Christopher Davis the
16 night as he turned into the Comfort Inn in his
17 Lexus.

18 THE COURT: I think the safer and better
19 approach from the rules of evidence is to call the
20 driver Davis first, see what happens, and then we
21 call Uncle Davis. Just call it in the opposite
22 order of what you're talking about, that's all, the
23 same difference at the end of the day.

24 MS. RICH: Amanda, would you call Alfred and
25 Christopher Davis in, please, and Harry Matthews?

1 Bring Harry Matthews in.

2 THE COURT: Bring three people?

3 MS. RICH: Yes, Your Honor. They're all very
4 -- Mr. Davis works offshore and --

5 THE COURT: Which one, driver Davis?

6 MS. RICH: No.

7 THE COURT: Alfred Davis?

8 MS. RICH: Christopher Davis works offshore.
9 I worked with his boss to get him to be here. He's
10 been here every day of this trial, and he's very
11 anxious to go back off --

12 THE COURT: Come on up, guys. Are you
13 Christopher Davis?

14 MR. DAVIS: Yes, sir.

15 THE COURT: And then this is your uncle,
16 Alfred Davis?

17 MR. DAVIS: Yes, sir.

18 THE COURT: And then behind you is who? MR.
19 DAVIS: Harry.

20 MS. RICH: Harry Matthews.

21 THE COURT: Harry Matthews. Who is Harry
22 Matthews?

23 MS. RICH: He was also there that night.

24 THE COURT: Was he in the car with Chris?

25 MS. RICH: No, he was not.

1 THE COURT: Just another driver in the area?

2 MS. RICH: He was not a driver in the area.

3 THE COURT: Okay. So why do I have to have
4 all these witnesses in here?

5 MS. RICH: Your Honor, because I'm not going
6 to be able to get through them tonight, and I
7 wanted to make sure that you told them, for
8 time-consuming reasons, we're going to have to call
9 another witness ahead of them and the order has
10 changed. And so we will not be calling them until
11 first thing in the morning. They will be the first
12 three witnesses in the morning.

13 MR. KNIZLEY: Ms. Rich and I have talked
14 about this and may I add this to that? It's in the
15 subject matter of which you may be addressing them.
16 I have also given a subpoena to Mr. Davis.

17 THE COURT: Christopher Davis or --

18 MR. KNIZLEY: Yes, Christopher Davis. I do
19 not want to interrupt his work if I can help it --

20 THE COURT: Well, I just -- you know --

21 MR. KNIZLEY: He may be back in my case too
22 is what I'm saying.

23 THE COURT: And I will say to Mr. Christopher
24 Davis, to Mr. Alfred -- Mr. Alfred Davis, you're a
25 police officer, right?

1 MR. ALFRED DAVIS: Retired.

2 THE COURT: Retired. Were you with MPD?

3 MR. ALFRED DAVIS: Yes, sir.

4 THE COURT: How many years did you serve?

5 MR. ALFRED DAVIS: 30.

6 THE COURT: Wow. What a career. What did you
7 retire as?

8 MR. ALFRED DAVIS: Lieutenant.

9 THE COURT: Oh, wonderful. And who was the
10 chief when you retired?

11 MR. ALFRED DAVIS: At that time it was
12 Lawrence Batiste when I left.

13 THE COURT: Anyway, well, here's the situation
14 we're in now. My anticipation is right now it's a
15 quarter of 5. You know, I practiced law for 30
16 years before I became a judge. I've now been a
17 judge over 10 years. And just given the nature of
18 the case and the examination that I'm anticipating,
19 I don't see how we could possibly do all three of
20 you even by 6 or 6:30. I'm just shooting straight
21 with you.

22 That's just the reality of where it is. It's
23 nobody's fault. We've all been working -- we've
24 all been here since 8 o'clock this morning and
25 everybody is working like crazy, really. And I

1 apologize for this inconvenience on all three of
2 you. I know you're busy and of course you're
3 retired, Officer.

4 MR. ALFRED DAVIS: Yeah.

5 THE COURT: But the young people are just --
6 but anyway, I do apologize. I mean, but your time
7 is still important. I mean, I know that. The
8 reality is, I don't see how we can do all three of
9 you, and I don't even think that we do Christopher
10 Davis by 5:30 by the time both sides get a chance
11 to ask questions even 5:30 or almost 6. I'm just
12 being straight with you. Things just take time.
13 Our system takes time for justice to work for us to
14 proceed in our mission to seek the truth which is
15 what we're doing. It just takes time.

16 So I do need to just tell you, we just need
17 to have you come back -- we'll call you first
18 thing. That way, you won't get caught up in any
19 other issues that are out there. We'll call the
20 three of you first thing in the morning.

21 Now, I don't know which one will be literally
22 first, one of the three of you would be. But if we
23 could start at 9:00 in the morning with you, first
24 thing in the morning, okay.

25 MR. ALFRED DAVIS: Yes, sir.

1 THE COURT: That's what we just have to do.
2 So I'll give you -- and I mean this in a friendly
3 way, I'll place you under a court order to return
4 in the morning to be available at 9:00. That just
5 puts a certain level of protection on the record,
6 you know. And everything is good. Y'all have done
7 everything right and have been very patient with
8 all of us and I appreciate that. So if you could
9 be here -- and I say this to the military folks,
10 have any of y'all served in the military? Did you,
11 Chris?

12 MR. CHRISTOPHER DAVIS: No.

13 THE COURT: Well, anyway, they have a saying
14 which goes, if you're on time, you're late. And if
15 you're early, you're on time. So we need you to be
16 here early which means get here at 8:45 so we can
17 start at 9. Do you see what I'm saying?

18 MR. CHRISTOPHER DAVIS: Yes, sir.

19 THE COURT: So we're going to start at 9, not
20 at 9:30. So we'll start at 9, so be here at 8:45,
21 all three. Could you? Uncle Davis, if you can get
22 the young people to come in?

23 MR. ALFRED DAVIS: I'll do that.

24 THE COURT: All right, I appreciate that. 9
25 o'clock. Yes, sir.

1 MS. RICH: The State will call our next
2 witness, Your Honor.

3 THE COURT: Bring the jury in.

4 (JURY PRESENT)

5 THE COURT: Be seated, parties, attendees.
6 You got your witness lined up?

7 MS. RICH: He's in the restroom.

8 THE COURT: Okay. No problem.

9 MS. WALSH: Hey, Dennis, on the Comfort Inn
10 videos, we're going to move to admit --

11 THE COURT: What's the exhibit number?

12 MS. WALSH: State's Exhibit 156.

13 THE COURT: 156. So Mr. Knizley and Mr. Mr.
14 Jaffe, they're offering 156 -- what's --

15 MS. WALSH: The Comfort Inn video.

16 THE COURT: Comfort Inn video.

17 MR. KNIZLEY: There's no objection to that.

18 THE COURT: All right. It's in without
19 objection. What's the number again?

20 MS. WALSH: State's Exhibit 156.

21 THE COURT: 156. Are we going to publish it
22 now or later?

23 MS. WALSH: Later, Your Honor.

24 THE COURT: Okay. So it's in. Let's let her
25 mark it.