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IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

- - -

STATE OF OHIO,)
)
Plaintiff,)
) CASE NO: B-1503961
vs.)
)
RAYMOND M. TENSING,)
)
Defendant.)

- - -

TRANSCRIPT OF SIDEBAR CONFERENCES
HELD DURING THE RAYMOND TENSING TRIAL

- - -

1 June 7, 2017

2
3 (The following was held at
4 sidebar.)

5 THE COURT: Go ahead.

6 MR. TIEGER: Judge, I mean, if
7 the record could reflect he's excused an
8 African-American male juror. And I know
9 with Batson, you know, we've got to show
10 a pattern, but I would ask the Court to
11 ask the Defense team what the
12 race-neutral reason was for excusing
13 him.

14 THE COURT: I don't think they
15 need one at this point.

16 But if you would like one, you
17 certainly can.

18 MR. MATHEWS: I will. And I
19 would argue that Batson does not apply
20 to the case the way I read it, number
21 one. But race-neutral reason is the
22 response to the questions about his DUI
23 conviction, and he mentioned that he was
24 stopped by law enforcement for speeding
25 and got into an argument, a verbal

1 altercation, with him that resulted in
2 some racial epithets being thrown. And
3 he had what I considered a very negative
4 opinion of law enforcement.

5 THE COURT: Thank you.

6 He's excused.

7 MR. TIEGER: And I think Batson
8 does apply to the Defense. And he did
9 say he could be a fair juror, so if you
10 could just note my objection.

11 THE COURT: Well, he's excused.
12 Okay.

13 (Sidebar concludes.)

14
15 (The following was held at
16 sidebar.)

17 THE COURT: Go ahead.

18 MR. TIEGER: Judge, I think this
19 is getting to be a pattern now of
20 excusing minorities.

21 And she was an extremely fair
22 juror. She was funny, she had banter
23 back with Mr. Mathews, laughing and
24 joking about different things. She
25 absolutely said that she can be fair.

1 she could sign all the verdict forms,
2 and I just don't see any race-neutral
3 reason that he would have to bump her.

4 THE COURT: Mr. Mathews, your
5 response.

6 MR. MATHEWS: My first response
7 is, number one, I don't think that we're
8 required to state a reason. Number two,
9 I didn't like her answers on the
10 questionnaire. I'm sure Mr. Tieger did,
11 but I'll get specific and say that she
12 indicated she watched the video, she had
13 formed an opinion, but she could set
14 that aside. She indicated she felt the
15 shooting was not justified from what she
16 saw on the video. She said she -- after
17 having watched the trial, she has an
18 opinion in reference to guilt or not
19 guilty. And I don't like the rest of
20 her responses.

21 THE COURT: Okay. She'll be
22 excused.

23 I'm noting your objection.

24 MR. TIEGER: Judge, and I think
25 there are a number of people that are on

1 the jury that have had same or similar
2 answers; that they've seen the video and
3 had formed opinions that they can set
4 aside.

5 THE COURT: I know, but we're
6 dealing with a very unique group of
7 people, and very few of them have not
8 heard about this. I think we have maybe
9 three people who haven't heard about it,
10 so --

11 MR. TIEGER: Judge, if he tries
12 to excuse another African-American
13 juror, I would hope that the Court would
14 question that pretty severely.

15 THE COURT: Okay. All right.

16 MR. TIEGER: Thank you.

17 (Sidebar concludes.)

18
19 (The following was held at
20 sidebar.)

21 THE COURT: Okay. Go ahead.

22 MR. TIEGER: What's your feeling?

23 THE COURT: Same thing one, one;
24 two, two; three, three. You have
25 already done these guys for cause. If

1 we get somebody up for cause, then we'll
2 stop.

3 MR. TIEGER: Are you saying if we
4 do, let's say, take one, we can take any
5 one of the first four, take any one of
6 these first four?

7 THE COURT: Yes. Any of the
8 four.

9 MR. TIEGER: Then the fifth one
10 would take their spot?

11 THE COURT: I don't have an
12 objection to that. Or do you want to
13 start with the first one?

14 MR. TIEGER: I don't think you
15 have to limit yourself to the first one.
16 I just want to make sure that we're
17 good. We're talking about our bumps
18 just with regard to these first four.
19 So I get a bump. Let's say we take one.
20 The fifth alternate would take -- I
21 think everybody would move up one.

22 THE COURT: Right.

23 MR. TIEGER: If we bumped
24 Number 1, that person wouldn't take
25 Number 1's spot.

1 THE COURT: Right; just move this
2 way.

3 THE BAILIFF: Everybody would
4 slide up.

5 MR. TIEGER: Is that right?

6 MR. MATHEWS: Yes, yes.

7 THE COURT: That way we know we
8 are going to get the ones who are in
9 line next.

10 MR. TIEGER: Right.

11 THE COURT: Okay.

12 (Sidebar concludes.)

13

14 June 9, 2017

15

16 (The following was held at
17 sidebar.)

18 THE COURT: We're here back on
19 the record with the Prosecution's next
20 witness. What is her name?

21 MR. TIEGER: Alicia Napier.

22 THE COURT: Alicia Napier.

23 Ms. Napier, it's my understanding
24 you do not want to be photographed. Is
25 that right?

1 ALICIA NAPIER: Right.

2 THE COURT: State your reason for
3 the record for that.

4 ALICIA NAPIER: Just don't want
5 to be noticed outside in the public
6 because I have been -- I have been in
7 incidents where I've been seen at the
8 gas station when I was pumping gas with
9 my son and I've had looks and stuff.
10 You know, on TV and stuff. I just
11 didn't want to be noticed, or whatever.

12 THE COURT: Okay. Are you in
13 fear for your safety? Is that your --

14 ALICIA NAPIER: That's the main
15 reason why I didn't want to be.

16 THE COURT: Counsel, any
17 questions?

18 MR. TIEGER: No, Your Honor.

19 THE COURT: I'll instruct them
20 not to film you for your testimony,
21 okay?

22 Okay, thank you.

23 ALICIA NAPIER: Thank you very
24 much.

25 (Sidebar concludes.)

1 (The following was held at
2 sidebar.)

3 THE COURT: Your response to
4 that?

5 MR. MATHEWS: Well, I was just
6 summarizing what I thought I just heard
7 her say, that based on her experience,
8 she thought it was justified.

9 THE COURT: In my opinion, that
10 can be brought in because she had an
11 opinion, and they typically will provide
12 the opinion to the Prosecutor's Office,
13 and she did say she gives input to the
14 Prosecutor's Office.

15 MR. TIEGER: Judge, I mean, I --
16 I would be -- it would be extremely
17 improper of me ever to ask in a murder
18 case of a homicide detective, Do you
19 think he did it? You can never --

20 THE COURT: But that's what she's
21 saying. You're asking -- she said what
22 her input was to the prosecutor.

23 MR. TIEGER: No; that wasn't the
24 question.

25 THE COURT: I thought that was

1 the question.

2 MR. MATHEWS: I summarized what
3 she said.

4 MR. TIEGER: Judge, we can have
5 Colleen read back the question.

6 (The court reporter read back the
7 pending question.)

8 MR. TIEGER: I mean, I can never
9 ask anybody what your feelings are
10 whether or not he did it. I could never
11 ask that internally. I mean, that's her
12 opinion as to whether something -- it's
13 a legal opinion.

14 MR. MATHEWS: I'll withdraw it.

15 MR. TIEGER: Thank you.

16 THE COURT: Okay.

17 (Sidebar concludes.)

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1 June 12, 2017

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3 (The following was held at
4 sidebar.)

5 THE COURT: Go ahead,
6 Mr. Mathews. I didn't want you to say
7 this in front of the jury. Go ahead.

8 MR. MATHEWS: Right. My
9 objection to 2-A and -B are that I
10 believe Officer Pham is going to say
11 that that depicts the location of where
12 the car ended up at Rice and Valencia.
13 They also have the body of Sam DuBose
14 laying in the street, and I don't think
15 that they need the body of Sam DuBose
16 laying in the street to show where the
17 car ended up.

18 THE COURT: They have a
19 face photo too.

20 MR. MATHEWS: I'm going to get to
21 -E; I think is highly prejudicial and
22 inflammatory, as I think -A and -B are,
23 with reference to the body laying in the
24 street.

25 THE COURT: Mr. Tieger, what is

1 the point of him -- what is the point of
2 questioning with regard to these photos
3 for this witness?

4 MR. TIEGER: Judge, I think it
5 would assist the jury in understanding
6 the crime scene as it unfolded that
7 evening and what he saw and what he did.
8 So I think it's definitely important to
9 help him explain his testimony and
10 assist them in understanding it.

11 I know that -- I know in the last
12 trial --

13 THE COURT: Explain to me the
14 understanding of his body being covered
15 laying outside the car and his face
16 being all bloodied, I mean, what does
17 that show with regard to that testimony?

18 MR. TIEGER: I mean, it
19 identifies him as being the one that was
20 at the crime scene.

21 MR. MATHEWS: I will stipulate
22 that.

23 THE COURT: Okay.

24 MR. TIEGER: And I know at the
25 last trial, the Court -- not that you're

1 bound by this at all -- excluded -E but
2 allowed -A and -B.

3 THE COURT: I'm going to exclude
4 all three for the time being. I mean,
5 they may come in at another point, but
6 not right now.

7 MR. MATHEWS: Thank you.

8 (Sidebar concludes.)

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June 14, 2017

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(The following was held at
14 sidebar.)

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THE COURT: Okay, why are you
17 objecting? What is your objection?

18

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MS. DEGRAFFENREID: Because he's
18 trying to show that he would be charged
19 with a felony, or something, to make
20 some insinuation.

21

22

THE COURT: Is this guy a police
22 officer? I couldn't tell.

23

24

MS. DEGRAFFENREID: No; he's a
24 lab technician.

25

THE COURT: So he wouldn't know.

1 MR. MATHEWS: But he testified he
2 must know the weight. He said, I only
3 tested enough to get up to the maximum
4 charge we could get, which is over
5 200 grams. So I want to know what he's
6 talking about, the maximum charge.

7 THE COURT: So I guess you have
8 to explain this to me a little more.
9 The analysts are the ones who -- they
10 weigh it, they figure out what's going
11 on, and then they give it to the police
12 department for the police department to
13 give the charges?

14 MR. MATHEWS: Yes. If something
15 is submitted to them, they take it in,
16 they weigh it, and in this case the
17 difference from one degree of felony to
18 the next is -- if it's over 200 grams,
19 it's a felony, but it's a lesser degree
20 unless it's over 1,000 grams. Well, he
21 knows there wasn't 1,000 grams, but he
22 knows -- he weighed more than 200
23 because that's what would result in a
24 felony.

25 THE COURT: Ms. DeGraffenreid?

1 MS. DEGRAFFENREID: He wanted to
2 insinuate that there was some felony
3 charge. Tensing didn't even know the
4 marijuana was in the car when this all
5 occurred, so whether it would be a
6 felony or a misdemeanor charge doesn't
7 matter.

8 THE COURT: Let's stick to why
9 can't he answer that? He's not saying
10 he would have been charged with it. It
11 sounds to me like he's simply giving the
12 levels.

13 MR. MATHEWS: That's exactly
14 right.

15 THE COURT: I'm going to overrule
16 the objection.

17 (Sidebar concludes.)

18
19 (The following was held at
20 sidebar.)

21 THE COURT: We're on the record
22 outside the presence of the jury.

23 Dr. Looman is here to testify
24 from -- she works for the Coroner's
25 office. She does not wish to be

1 photographed or videoed at this time.

2 Any questions --

3 Is that correct?

4 DR. LOOMAN: That's correct.

5 THE COURT: And your reasoning
6 for that, Dr. Looman?

7 DR. LOOMAN: I'd rather not end
8 up on YouTube, which happened the first
9 time.

10 THE COURT: I see.

11 Do you have a fear of your
12 safety? Any concerns for your safety?

13 DR. LOOMAN: No.

14 MR. MATHEWS: Judge, I have no
15 objection to her not being photographed.

16 THE COURT: I just have to have a
17 valid reason. That's what I'm looking
18 for.

19 Mr. Tieger?

20 MR. TIEGER: I mean, I think she
21 was honest with the Court, Judge. She
22 just doesn't want to be --

23 THE COURT: I have no objection
24 to Counsel, so hopefully that will
25 suffice.

1 You will not be photographed.

2 DR. LOOMAN: Okay. Thank you.

3 (Sidebar concluded.)

4

5 (The following was held at

6 sidebar.)

7 MR. TIEGER: Judge, these are

8 photos, if you want to see them.

9 THE COURT: So what's your

10 objection?

11 MR. MATHEWS: Judge, my objection

12 is that the photos are highly

13 prejudicial, inflammatory, and serve no

14 useful purpose. She's already testified

15 he died as a result of the gunshot, and

16 I don't see where they add anything of

17 probative value to her testimony.

18 MR. TIEGER: Judge, and I think

19 they assist Dr. Looman in explaining her

20 testimony and also assist the jury in

21 understanding --

22 THE COURT: Do they really have

23 to show that? Come on now.

24 MR. TIEGER: Judge, these were

25 all admitted in the last trial, so I'm

1 just bringing you what was admitted last
2 time.

3 MR. MATHEWS: Over objection.

4 MR. TIEGER: I understand that.

5 THE COURT: I don't know. What
6 does this tell me? Seriously.

7 MR. TIEGER: It will just show
8 the gunshot wounds, Judge, and how they
9 affected the skull and the brain.

10 THE COURT: We already know he
11 died. I mean, I don't mean to be flip,
12 but she already said he died
13 instantaneously. Do we really have to
14 add insult to injury?

15 MR. TIEGER: This is evidence to
16 show what people testified to.

17 THE COURT: They're admitted.
18 Don't keep it up there long.

19 MR. MATHEWS: Please note my
20 objections.

21 THE COURT: Yes.

22 (Sidebar concluded.)

23

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1 (The following was held at
2 sidebar.)

3 THE COURT: I'm really torn about
4 these last couple pictures. You need to
5 warn them, and they better be up there
6 for a second.

7 MR. TIEGER: Sure, Judge.

8 THE COURT: Make sure they're
9 prepared for that, because I don't see
10 those being -- I can't -- I just -- I'm
11 struggling to allow those in, so you
12 better make sure they're up for a
13 limited time and they're ready for it.

14 MR. MATHEWS: Again, I'll take
15 one more opportunity to object.

16 THE COURT: Why does she need to
17 have those? They're -- come on.

18 MR. TIEGER: Judge, again, the
19 bullets went through the head and
20 through the brain.

21 THE COURT: She can show that
22 with the other picture of the head.

23 You know what? I'm going to
24 exclude those. I don't want those up.

25 (Sidebar concluded.)

1 (The following was held at
2 sidebar.)

3 THE COURT: Okay, go ahead,
4 Mr. Tieger.

5 MR. TIEGER: Judge, I think we're
6 getting very close to what the Court had
7 already ruled, and I know that there's a
8 couple of drugs in his system. One is
9 like an antifungal and the other is like
10 an antibiotic. There were two drugs,
11 and I think there was some marijuana
12 found.

13 THE COURT: Okay.

14 MR. TIEGER: I think there was a
15 hearing last time that was actually on
16 the record with Mr. Topmiller that was
17 at least describing the marijuana, and I
18 would ask that maybe after court today,
19 the Court could look at that, because I
20 don't know where Mr. Mathews is going
21 with this, but --

22 THE COURT: well, if he had drugs
23 in his system, that's admissible.

24 MR. TIEGER: well, what
25 Mr. Topmiller would say is --

1 THE COURT: Who is Mr. Topmiller?

2 MR. TIEGER: He's actually the
3 one that did the tests.

4 THE COURT: Oh; got it, got it.

5 MR. TIEGER: But he said, Judge,
6 with the marijuana, that there was
7 marijuana in his system, but when
8 somebody dies and they didn't take the
9 blood for, like, 20 hours after he died,
10 that even if you had smoked days and
11 days before, when you die, the blood
12 changes, and that could give a false
13 positive for what was actually in the
14 blood.

15 THE COURT: Can she answer that
16 question if you ask her that on
17 redirect?

18 MR. TIEGER: I don't think she
19 can because that's not her area of
20 expertise. And they had a hearing last
21 time in front of Judge Shanahan, and I
22 know you're not bound by her rulings,
23 but Judge Shanahan excluded it, the
24 marijuana in his system, and I would ask
25 that go also for the antibiotic and

1 antifungal, because we're getting into
2 what the Court had ordered.

3 THE COURT: Well, they don't know
4 what it's for unless she says what it's
5 for.

6 MR. TIEGER: Still.

7 MR. MATHEWS: Number one, I don't
8 think there's been a ruling made in this
9 case, in this trial.

10 THE COURT: No, it hasn't.

11 And I get his argument, but what
12 is your reasoning for this?

13 MR. MATHEWS: Well, again, he --
14 if the toxicology report shows that he
15 had marijuana in his system -- and I
16 agree Dr. Topmiller testified last time
17 that --

18 MR. TIEGER: In limine.

19 MR. MATHEWS: In limine. -- that
20 upon death, the metabolites get
21 redistributed from the fat into the
22 blood, and there's no way to know
23 accurately what the level is, but it
24 still shows it's in his system.

25 THE COURT: Could you clarify

1 that through her? Can you clarify?

2 MR. TIEGER: Judge, I would ask
3 that -- basically, he -- there can be no
4 scientific opinion as to whether there
5 was any kind of impairment. Maybe he
6 smoked a week before and it's totally
7 out of his -- it's in his metabolite.

8 MR. MATHEWS: I'm not trying to
9 prove that there was impairment, I'm
10 just trying to prove there was marijuana
11 in his system.

12 MR. TIEGER: I don't see the
13 relevance of that, Judge.

14 THE COURT: well, it could affect
15 his judgment.

16 MR. TIEGER: well, no, because it
17 wouldn't, because nobody could say that
18 it would have had an effect because the
19 blood was taken too long after his
20 death.

21 And I also ask to exclude the
22 antibiotic and antifungal medication.

23 THE COURT: Oh I don't care about
24 that. No one knows what that's for. I
25 wouldn't have known unless you guys

1 would have told me.

2 Okay. All right. Is what he's
3 saying true about this guy and what this
4 guy said without me reading it?

5 MR. MATHEWS: It's not that long
6 to read, but Megan --

7 THE COURT: I'm not talking about
8 Megan's ruling; I'm talking about that
9 doctor, or whoever he is.

10 MR. MATHEWS: I have subpoenaed
11 Dr. Topmiller and he's supposed to be
12 here tomorrow.

13 THE COURT: You can ask him these
14 questions.

15 MR. MATHEWS: You can read that
16 tonight, and we can do it tomorrow.

17 THE COURT: That's easy, if he's
18 going to be here. That's much easier.

19 The objection will be held in
20 abeyance, for the record.

21 (Sidebar concluded.)

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1 June 15, 2017

2
3 (The following was held at
4 sidebar.)

5 THE COURT: Hi, sir.

6 NATHAN ASBURY: Hello, Judge.

7 THE COURT: We're on the record
8 at sidebar, prior to starting the
9 jury-in-progress again.

10 Mr. Mathews has brought on
11 Sergeant --

12 NATHAN ASBURY: Nathan Asbury.

13 THE COURT: -- Nathan Asbury.
14 And he wishes not to be filmed.

15 What is the reason for this, so
16 we can put it on the record.

17 NATHAN ASBURY: I'm currently in
18 a plainclothes assignment. We operate a
19 lot of undercover and use a lot of CIs,
20 and we have current investigations that
21 if I got put on TV would probably
22 jeopardize some of the safety of the
23 officers.

24 THE COURT: That's good.

25 Any objection from either party?

1 MR. TIEGER: No, Judge.

2 MR. MATHEWS: No objection.

3 THE COURT: Okay, good.

4 We'll keep you unfiled. You'll
5 be heard, though, you know.

6 NATHAN ASBURY: Yes, ma'am.

7 THE COURT: Okay.

8 (Sidebar concluded.)

9

10 June 16, 2017

11

12 (The following was held at
13 sidebar.)

14 THE COURT: Let's stop this.
15 Please. This is too much for the --
16 this jury doesn't need to hear this.

17 MR. MATHEWS: I understand,
18 Judge.

19 THE COURT: It's not going to
20 make anybody feel better about anybody's
21 side, all right? All it does is make me
22 upset.

23 And you guys are doing a great
24 job. Just keep it where it is.

25 And they can see what you think

1 you're seeing, okay?

2 MR. TIEGER: That's fine. Thank
3 you, Judge.

4 (Sidebar concludes.)

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1 CERTIFICATE

2 I, COLLEEN R. O'CONNELL, the
3 undersigned, a Registered Diplomate Reporter for
4 the Hamilton County Court of Common Pleas, do
5 hereby certify that at the same time and place
6 stated herein, I recorded in stenotype and
7 thereafter transcribed the within 27 pages and
8 that the foregoing Transcript of Proceedings is
9 a true, complete, and accurate transcript of my
10 said stenotype notes.

11 IN WITNESS WHEREOF, I hereunto set my
12 hand this 25th day of July, 2017.

13
14 

15 Colleen R. O'Connell
16 Colleen R. O'Connell
17 Registered Diplomate Reporter
18 Court of Common Pleas
19 Hamilton County, Ohio
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