

1 IN THE DISTRICT COURT IN AND FOR OKLAHOMA COUNTY,
2 STATE OF OKLAHOMA

COPY

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4 STATE OF OKLAHOMA,)
5 Plaintiff,)
6 vs.) CASE NO.: CF-2014-5869
7 DANIEL K. HOLTZCLAW,)
8 Defendant.)

9 FILED IN DISTRICT COURT
OKLAHOMA COUNTY

10 APR - 5 2016

11 TIM RHODES
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14 TRANSCRIPT OF THE JURY TRIAL

15 HAD ON THE 12TH DAY OF NOVEMBER, 2015,

16 BEFORE THE HONORABLE TIMOTHY R. HENDERSON,

17 DISTRICT JUDGE IN AND FOR OKLAHOMA COUNTY,

18 OKLAHOMA CITY, OKLAHOMA

19 * * * * *

20 VOLUME VII OF XVIII

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25 REPORTED BY: Kristin L. Taylor, RPR

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A P P E A R A N C E S

ON BEHALF OF THE STATE:

GAYLAND GIEGER
LORI McCONNELL
Assistant District Attorney
320 Robert S. Kerr, Suite 505
Oklahoma City, Oklahoma 73102

ON BEHALF OF THE DEFENDANT:

SCOTT ADAMS
ROBERT GRAY
Adams & Associates
Attorneys at Law
401 North Hudson Avenue, Suite 100
Oklahoma City, Oklahoma 73102

1 Call your next witness.

2 MR. GIEGER: State calls Tabitha Barnes.

3 THE COURT: Step right before me.

4 (Tabitha Barnes was sworn.)

5 THE COURT: All right. If you'll have a seat over
6 here in this chair. Once you get situated, pull that
7 microphone right around in front of you. If you would state
8 your name and spell it for us, please.

9 THE WITNESS: Tabitha, T-A-B-I-T-H-A.

10 THE COURT: And your last name?

11 THE WITNESS: Barnes, B-A-R-N-E-S.

12 THE COURT: All right. Thank you.

13 Mr. Gieger, you may proceed.

14 MR. GIEGER: Judge may I have just one second,
15 please?

16 THE COURT: Yes.

17 (Counsel confer.)

18 TABITHA BARNES,

19 was called as a witness, after having been first duly sworn,
20 and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. GIEGER:

23 Q Ms. Barnes, do you recall how you were initially
24 contacted in this case?

25 A I was contacted -- yes.

1 Okay. So far in the car it's just you and him
2 right now; am I understanding that correctly?

3 A Yes.

4 Q All right. Ma'am, so you exposed your breasts. What
5 happened next?

6 A He asked me did I have anything underneath my breasts.

7 Q Okay. And what did you say?

8 A I said, no.

9 Q And then what happened?

10 A I had began to -- I didn't want him to touch me so I
11 had got ready -- he's like, no, let me check. He lift my
12 breast up.

13 Q So he actually -- I want to make sure I understand.
14 You said you had begun to do it. Had you begun to lift your
15 breasts up, ma'am?

16 A I was gonna do it because he was like, is anything
17 under there and all that. They hang or whatever.

18 Q And I neglected to ask you this, ma'am, but where were
19 you when all this was going on and where was he?

20 A He was out of his car and I was in the back seat of his
21 car with the door open.

22 Q Okay. Which side of the car were you on, the driver's
23 side or the passenger side?

24 A The driver's side.

25 Q You were on the driver's side.

1 A Yes.

2 Q So he had stepped out after he ran you and got the
3 warrant information. Was he in the front seat whenever he
4 did that or do you know?

5 A Yes.

6 Q Okay. So at this time he stepped out. You were
7 sitting in the driver's seat on the back side, passenger
8 driver's side. Okay. Are you all the way in the car with
9 your feet in the car or are your feet outside the car?

10 A At that time my feet was outside the car.

11 Q Okay. And he was standing there?

12 A In front of me.

13 Q The door's open?

14 A Yes.

15 Q And I apologize, I should've asked you that before I
16 went through that. And it's when that is happening then --
17 does he actually touch your breasts, ma'am?

18 A Yes.

19 Q With his hand?

20 A With both of his hands.

21 Q Skin to skin?

22 A Skin to skin.

23 Q Okay.

24 A And not like with it -- didn't seem like it lasted two
25 seconds, three seconds.

1 Q There was some discussion more in the car?

2 A Yeah, I can't remember what it was.

3 Q All right.

4 A But it took longer. I mean, you know, it was longer
5 before he proceeded to do what he did.

6 Q And what happened?

7 A After a minute he -- I'm sitting in the back seat. And
8 he was like, I ain't gonna take you to jail. And he axed me
9 once again, did I have drugs on me.

10 Q Was it dark outside?

11 A Yes.

12 Q Okay. What'd you say?

13 A I said, no, I do not.

14 Q What happened then?

15 A He got out the passenger -- he got out the driver seat
16 of his car, came to the back seat. Opened the door, had his
17 hand over the door. And he said, you got anything under
18 your shirt? I said, no. Said, you gonna let me see?

19 Q He said, you gonna let me see?

20 A Yes.

21 Q Okay. What'd you do?

22 A I let him see.

23 Q You pull your shirt up again?

24 A Yes.

25 Q Essentially the same way it happened before or is there

1 anything different about it that's specifically different?

2 A I raised my shirt up and let him see what he --

3 Q Did he touch you this time?

4 A No.

5 Q He did not touch you this time?

6 A No.

7 Q After you raised your shirt what happened?

8 A He pointed to my pants.

9 Q Tell me about what kind of pants you had on. Before
10 you told me you were wearing kind of pajama pants. What
11 were you wearing on this day? Same type of shirt or
12 different kind of shirt?

13 A I always wear white T -- white T-shirts.

14 Q I'm not trying to embarrass you, ma'am, but I want to
15 be real specific. Were you also not wearing a bra that day?

16 A I can't remember.

17 Q Let me ask this: Whenever you pulled your -- do you
18 remember now?

19 A Yes, I did have on a bra the second time. Yes, I did.

20 Q You had a bra on the second time.

21 A (No audible response.)

22 Q Whenever you moved your shirt up the second time did
23 you actually expose your breasts? Did you move your bra as
24 well? Was your bra still covering your breast?

25 A I moved everything.

1 Q Why'd you just go ahead and move everything?

2 A I know they --

3 Q Do you understand my question? Like, why didn't you
4 just pull your shirt up and leave your bra on is what I'm
5 asking.

6 A I just did it like we did it last time.

7 Q Is that what you thought he wanted?

8 A No -- yeah, I mean, I just -- I just followed suit
9 basically.

10 Q Okay. What kind of pants were you wearing if you
11 recall the second time?

12 A Leggings. Tights.

13 Q Stretch pants?

14 A Black.

15 Q He says what -- you said he -- did he motion? You
16 motioned whenever you were testifying a moment ago. Did he
17 point at --

18 A He pointed at them.

19 Q And he said what?

20 A What's down there? And I was -- I just looked at him.
21 He was like: You gonna let me see? I just pulled them
22 back, he looked down, pulled them up. I mean they flap --
23 they flap back.

24 Q You motioned -- you motioned again, ma'am. You're
25 sitting in the car.

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TRANSCRIPT OF THE JURY TRIAL

HAD ON THE 13TH DAY OF NOVEMBER, 2015,
BEFORE THE HONORABLE TIMOTHY R. HENDERSON,
DISTRICT JUDGE IN AND FOR OKLAHOMA COUNTY,
OKLAHOMA CITY, OKLAHOMA

* * * * *

VOLUME VIII OF XVIII

REPORTED BY: Kristin L. Taylor, RPR

1 (With all parties present, the following
2 proceedings were had in camera.)

3 THE COURT: All right. Let the record reflect
4 that we're out of the of the presence of the jury. Counsel
5 for the State is present, counsel for the defendant is
6 present. Defendant is not present with us right now.

7 MR. ADAMS: And he waives his appearance, your
8 Honor.

9 THE COURT: And Ms. Tabitha Barnes is present.

10 Ms. Barnes was a witness that began her testimony
11 yesterday and then we broke for -- we broke for our evening
12 recess. We were to begin court today, November 13th, at
13 9:00 when the District Attorney, Mr. Gieger, came in and
14 said that his witnesses were running late and then had some
15 information of some problems that Ms. Barnes apparently
16 lives out of state now and was staying at a hotel last night
17 and that there was some issue at the hotel.

18 Why don't you, Mr. Gieger, just briefly put it on
19 the record so that --

20 MR. GIEGER: Judge, until Ms. Barnes got here I
21 was getting different information which I didn't know was
22 accurate or not. There was some indication that Ms. Barnes
23 had left the hotel. Once the entire family arrived I
24 understand that Ms. Barnes, as to what she's told me, was
25 that she went down to the front desk, engaged in

1 money which delayed them leaving the hotel. And it also
2 caused a lot of, I think, in her family, problems as well
3 between her sister who is allowing Ms. Barnes to live with
4 her in Dallas right now.

5 So those issues seem to have been somewhat at
6 least put on hold at this point trying to get them resolved
7 and our office has contacted the hotel because we have a
8 contract with that hotel as I understand it. And these
9 types of things shouldn't happen.

10 With all that being said I think there's some
11 concerns because it was initially suspected as Ms. Barnes
12 left the hotel that maybe she had --

13 TABITHA BARNES: We did leave the hotel. Me, my
14 mother, my --

15 MR. GIEGER: Hang on. Hang on. Hang on.

16 In any event, there was -- I think there were some
17 concerns about just making sure that Ms. Barnes hasn't come
18 under the influence of anything. She has assured me that
19 the only thing she's taken is prescription medication that
20 she takes regularly.

21 TABITHA BARNES: By my psychiatrist.

22 MR. GIEGER: But with that being said that was the
23 issue this morning which caused the delay, your Honor.

24 THE COURT: Ms. Barnes, did you sleep last night?

25 TABITHA BARNES: After I took my medication, yes,

1 I did.

2 THE COURT: Been taking anything other than your
3 medications?

4 TABITHA BARNES: No, I take Celexa. The Celexa is
5 to control my angry.

6 THE COURT: Your what?

7 TABITHA BARNES: Angry.

8 THE COURT: Angry.

9 TABITHA BARNES: Are you familiar with -- my
10 psychiatrist give -- gives it to me. My Seroquel is 300
11 milligram. And it all depends on what time that -- that you
12 take it. It all depends on what times you take it. That
13 medication controls your moods but it also puts you in -- in
14 a deep sleep. I have a prescription.

15 THE COURT: When did you take it?

16 TABITHA BARNES: Last night.

17 THE COURT: Okay. Do you feel like it's having
18 any influence over your speech or your coordination or your
19 thoughts?

20 TABITHA BARNES: No. No, I do not. When my -- my
21 sister -- my sister is my best friend, my everything. And
22 my -- I'm very emotional, but --

23 THE COURT: Sure.

24 TABITHA BARNES: -- when she came in this morning,
25 on my head.

1 THE COURT: On your what?

2 TABITHA BARNES: On my head.

3 THE COURT: She came in on your head?

4 TABITHA BARNES: Let me rephrase that -- rephrase
5 that, please. Getting on my A double S.

6 MR. GIEGER: I think she's using slang, your
7 Honor.

8 TABITHA BARNES: Well, she came in --

9 MR. GIEGER: She got on my ass is what she -- she
10 was -- was she upset?

11 TABITHA BARNES: Yeah.

12 MR. GIEGER: Is that what you're trying to say?

13 TABITHA BARNES: Yeah, about the motel, you know.

14 THE COURT: Okay.

15 TABITHA BARNES: So I am the baby and I cry a lot
16 --

17 THE COURT: Okay.

18 TABITHA BARNES: -- when it comes to my family.

19 THE COURT: And you know that you're under a
20 subpoena which is an order to be here and testify; correct?

21 TABITHA BARNES: Yeah.

22 THE COURT: And you understand that that's --
23 that's a requirement; right?

24 TABITHA BARNES: Yes, sir.

25 THE COURT: Okay. And so you haven't taken

1 anything other than your prescribed medications?

2 TABITHA BARNES: I haven't.

3 THE COURT: Okay. You have not?

4 TABITHA BARNES: I have the medication.

5 THE COURT: But are you telling me you have not
6 taken anything other than your prescribed medications?

7 TABITHA BARNES: No, the -- the -- I just said the
8 medicine.

9 THE COURT: Okay. Well --

10 TABITHA BARNES: The Seroquel, yes. If you don't
11 get all your sleep out, you -- you know, it -- it still be,
12 you know --

13 THE COURT: Well, let me ask you this then: You
14 wouldn't mind then going and having a urine test, would you?

15 TABITHA BARNES: No.

16 THE COURT: Okay. All right. Well, let's get
17 another witness lined up --

18 MR. GIEGER: Okay.

19 THE COURT: -- because -- have you got somebody
20 that can escort her to --

21 MR. ADAMS: They'll actually come over here,
22 Judge.

23 THE COURT: Will they?

24 MR. GIEGER: I can do it either way. One of the
25 detectives is -- there's a third detective here that's not a

1 case agent. And I'm sure she doesn't mind taking her over
2 if the Court wants to do it that way, or we can come over
3 here, whichever. Doesn't matter to me.

4 THE COURT: Are you talking about Conditional
5 Bond?

6 MR. ADAMS: Yes, Conditional Bond. It's 713-1152.
7 They'll actually come here and they can do it right in
8 there.

9 THE COURT: Mr. Gray, would you mind calling them
10 and saying the Judge asked if somebody can come over and do
11 this?

12 MR. GRAY: I'll step out.

13 THE COURT: Sure. Thanks.

14 MR. GIEGER: Judge, what we may do, if it's all
15 right, we'll try to put on -- we may just put [REDACTED] on
16 first; we'll get her done, that way we can get this done.

17 TABITHA BARNES: My thing is who said I used
18 drugs?

19 THE COURT: Well, no one is saying that but we
20 just want to make sure everything's okay.

21 MR. GIEGER: And her confusion is, your Honor, I
22 told her that through the chain of being informed --

23 TABITHA BARNES: They ain't gonna take my blood.

24 MR. GIEGER: No, it's a urine test. You just pee.
25 It's a pee test.

1 TABITHA BARNES: I got a kidney infection and so
2 it's not like I'm peeing, like -- I pee probably one a damn
3 -- dang day.

4 THE COURT: Okay. Well, that'll be all right.
5 They'll come over here and you can go right in there and
6 we'll close -- everybody will leave and that way -- other
7 than the drug people.

8 MR. GIEGER: And, your Honor, her concern is
9 because I asked her that same question. Whenever the
10 assumption was made that she left the hotel.

11 TABITHA BARNES: I'm -- I'm -- I'm -- this is the
12 judge and before I came out here I smoked marijuana.

13 MR. GIEGER: When was that?

14 TABITHA BARNES: About three weeks ago.

15 MR. GIEGER: Okay. Okay.

16 TABITHA BARNES: So I'm gonna test positive for
17 THC.

18 THE COURT: Okay.

19 MR. GIEGER: Anything else?

20 TABITHA BARNES: No, just --

21 MR. GIEGER: Okay. In any event, Judge, she was
22 upset when I told her that there was some concerns of that
23 this morning because of the assumption we were making.

24 TABITHA BARNES: And I have prescriptions for my
25 Xanaxes.

1 MR. GIEGER: So she's -- she's assured me that
2 she's -- didn't do anything else.

3 MR. GRAY: They'll need a detective to take her
4 over there.

5 MR. GIEGER: Is that okay with you? It's just
6 across the street. Is that okay with you?

7 TABITHA BARNES: Yeah.

8 THE COURT: Somebody will walk you over there.

9 MR. GIEGER: Okay. Are we done?

10 MR. ADAMS: Yeah, I'm done with her.

11 THE COURT: Okay.

12 (The in-camera hearing was concluded
13 after which the following occurred in
14 open court with all parties and jurors
15 present.)

16 THE COURT: Good morning, ladies and gentlemen,
17 almost afternoon. Let the record reflect that all members
18 of the jury are present. Counsel for the State, counsel for
19 the defendant, the defendant is present as well.

20 I think in voir dire probably one of the attorneys
21 said something about this isn't quite like TV. We deal in
22 the real world. The attorneys and myself, we've been having
23 to deal with some issues. I apologize for the delay. I
24 hate that it happens. But at this time we're going to be
25 calling a witness out of order; is that -- is that correct?

1 staff immediately.

2 With that, Mr. Holtzclaw, you'll be excused until
3 1:30.

4 (The defendant exits the courtroom.)

5 THE COURT: All right. The jury will be in recess
6 until 1:30.

7 (The jurors exit the courtroom.)

8 THE COURT: All right. Thank you. We'll be in
9 recess.

10 (A recess was taken.)

11 (After the recess, the following
12 occurred in camera with all parties
13 present.)

14 THE COURT: Let the record reflect that we're out
15 of the presence of the jury. Counsel for the State is
16 present, counsel for the defendant, the defendant is not
17 present.

18 MR. ADAMS: And I've just talked to him and he's
19 waived his appearance.

20 THE COURT: Okay. When we broke for lunch the
21 Court had asked that the attorneys investigate/research a
22 little bit about this issue concerning Ms. Barnes -- Tabitha
23 Barnes, who in the Court's opinion was obviously intoxicated
24 as she appeared for court today.

25 Mr. Gieger, any thoughts, comments?

1 MR. GIEGER: Judge, here's kind of where we stand
2 at this point. I will tell the Court -- and I've talked to
3 Mr. Rowland a little bit who has far more experience in
4 dealing with drug cases than I do, and the influence that
5 people -- the way they act. What I have witnessed from
6 Ms. Barnes are moments like whenever she was talking to the
7 Court where I would agree, she clearly appeared to be
8 suffering from under the influence of something, to moments
9 of just a few minutes ago she seems much more coherent and
10 cooperative. I asked Mr. Rowland about that and he said his
11 experience with the effects of PCP is you continue to act
12 that way for about 24 hours. He said the high lasts for
13 about six to 12 hours. But then it kind of comes in waves
14 where there's moments of incoherence and then there's
15 moments where they're more coherent but clearly still under
16 the influence off and on the drugs. And that seems to be
17 consistent with her behaviors. When I spoke to her alone
18 this morning the first time I talked with her I honestly
19 didn't think she'd taken any drugs because she seemed to be
20 fine and understanding. I think Detective Gregory was with
21 me in the room at the time, but I do not disagree with the
22 Court's assessment or Mr. Adams' assessment that whenever
23 the Court was making inquiry of her she was -- slurred
24 speech, having trouble I think focusing on the questions.

25 THE COURT: And let me -- I don't know if this is

1 on the record or not, but I think we all agreed that she
2 would take a drug test and she agreed to it.

3 MR. GIEGER: She did acknowledge that she would
4 take a drug test.

5 THE COURT: And went over and it came back
6 positive for benzodiazepine I think, maybe some kind of drug
7 that she was taking that was a prescribed medication, maybe
8 Seroquel or something like that, along with PCP.

9 MR. GIEGER: Yes, sir.

10 THE COURT: And we're going to mark that as a
11 Court's Exhibit Number 11.

12 MR. GIEGER: So the Court knows, through the
13 moments of more coherency Ms. Barnes has acknowledged that
14 within the last week she was at a party somewhere in Texas
15 and was exposed to PCP. Whether or not that's accurate, I
16 don't know. But that's what she's told me now when I said
17 you need to tell me the truth and let's deal with this.

18 In any event, also so that the Court understands
19 and the record's clear, at one point over the lunch hour,
20 consistent with her mood swings, she refused to testify and
21 tried to leave. And Oklahoma City police detained her I
22 believe, and I don't want to speak out of turn, they haven't
23 staffed it with me, but basically for disorderly conduct and
24 public intoxication because she was not being coherent and
25 she was making somewhat of a scene as I understand it in the

1 hallway. I did not witness it. So she is still in the
2 building but she's detained. They've not processed her in
3 on a misdemeanor charge or anything at this point yet.

4 In regards to the legal position that the State
5 finds itself in we attempted to do what -- acknowledge
6 admittedly it's going to be a cursory research project over
7 the lunch hour and not to mention all the other things that
8 were going on with Ms. Barnes upstairs, but for a witness to
9 be unavailable under 2804 in Title 12, subsection A defines
10 when a witness is unavailable. And I think the closest
11 analogy that I can draw to the situation we have in front of
12 us is subparagraph (a)4, and that is that the witness is
13 unable to be present or to testify. Clearly she's present,
14 but she's unable to testify at the hearing because of death
15 or a then existing physical or mental illness or infirmity.

16 I thought under the statute that was going to be
17 the closest subsection to be analogous to our situation. We
18 did a nationwide search -- I should say Mr. Rowland did a
19 nationwide search on Lexis to try to see if there were any
20 cases that elaborate on that within the context of
21 intoxication, and he was unable to find anything.

22 The only thing that I think that's even close to
23 being somewhat helpful is *Howell v. State*. It's 882 P.2d
24 1086. And, again, it doesn't really address directly the
25 issue. It essentially restates I think what the statute is

1 saying, and that is in determining in this case whether or
2 not a co-defendant was unable to testify it just says it's
3 generally recognized that the availability of a witness
4 depends on much of the production of his testimony as it
5 does his presence in the courtroom.

6 And so clearly she's present but are we as we
7 stand here at this moment able to produce her as a competent
8 witness. And I think that determination has been made by
9 the Court based upon the drug test as well as the Court's
10 observations that right now she appears to be under the
11 influence. I haven't found any case law that says if you're
12 under the influence you're not a competent witness. But I'm
13 not sure that would be a hotly contested issue. I don't
14 know anyone -- any of us want to put on a witness who's
15 under the influence of something.

16 So in that regard because the statute does not
17 elaborate and I haven't found any law to draw a distinction
18 between if someone is under a physical or mental illness or
19 infirmity at their own hand or despite their own actions, I
20 don't see that the statute draws a distinction and I haven't
21 found any authority to indicate if the Court can draw a
22 distinction in that. So it's the State's position that as
23 we sit here today she is unavailable under 2404(a)4. Not
24 trying to minimize the confrontation rights; clearly there's
25 a transcript, clearly she was subject to cross-examination

1 at the preliminary hearing.

2 But as a practical matter I'm going to speculate
3 that one of the reasons we don't have case law analogous to
4 this situation is it seems to me a practical remedy is to
5 detain the person who's come to Court either for public
6 intoxic and/or I think there's arguably a contempt of court
7 issue to come to court intoxicated as a witness under a
8 subpoena. But in any event, she's detained at this moment.
9 Give her an opportunity -- based upon what Mr. Rowland has
10 told me, the effects of PCP lasts over the weekend. It is
11 right now almost 2:00. It's 1:45 on Friday afternoon. The
12 State's ready to go forward with another of the alleged
13 victims.

14 I understand that it's somewhat disadvantage --
15 well, I understand that we started the direct testimony. We
16 have not concluded the direct testimony of Ms. Barnes. I
17 anticipate that I have about 45 minutes probably to go with
18 her before I would pass the witness for cross-examination.
19 Clearly by Monday morning absent her exposure to something
20 unforeseen in the County Jail, if she is detained over the
21 weekend, certainly the effects of whatever she took whenever
22 she took it that resulted in a positive drug test today
23 would likely have been worn off. And since this trial by no
24 one's estimation could be finished today or next week for
25 that matter, I don't know of any legal reason or any

1 precedent that would say it would be unfair to the defendant
2 to move forward with -- with more of our case-in-chief where
3 we haven't rested and give her an opportunity to see on
4 Monday if she is, number one, sober and/or refusing to
5 testify.

6 THE COURT: Let me just put -- before I have you
7 respond, Mr. Adams -- what the Court has looked up and found
8 under 2601. The general rule of competency, every person is
9 competent to be a witness except as otherwise provided in
10 this code.

11 Now the question arises, does the Trial Court have
12 the authority to exclude somebody as a witness? And I think
13 the case of Gilson versus State, it's 8 P.3d 883, is talking
14 about dealing mainly with child witnesses, whether they're
15 competent, whether the Trial Court believes that they have
16 an understanding. But in some of these comments under the
17 Courtroom Guide to Oklahoma Evidence, Whinery, 2012 edition,
18 it states that the judge -- the question is whether a judge
19 has any discretion to exclude a witness from the stand on
20 the ground that the witness does not understand the
21 proceeding, is inebriated at the time he is called to
22 testify or is too young to appreciate the responsibilities
23 of being a witness.

24 I think that the Court does have some discretion
25 in that and, you know, I don't know that it does anybody

1 THE COURT: Well, I don't know -- to be honest
2 with you, I don't know the effects of PCP as long as, you
3 know, someone can be intoxicated on it, if they come and go.
4 I guess you talked to Mr. Rowland who worked with the Bureau
5 of Narcotics before. But I just never had that much dealing
6 with people actually on PCP. I don't know if Detective
7 Gregory has or not, or anybody else has any thoughts or --

8 MR. GIEGER: One of my -- one of my reasons for
9 that, your Honor, is this: Even Ms. Barnes, whenever --
10 over the lunch hour she said -- when I explained to her she
11 tested hot and that's why we're in this position, she
12 said -- that's when she said, okay, it was within the last
13 week she did this at this party. And then she tried to
14 argue with me -- and I think Detective Gregory was in the
15 room -- there's a difference between testing hot and being
16 under the influence. So she's at least coherent enough to
17 make the logical analogy. And I think that might be -- I
18 don't know if it was on the record before we took our lunch
19 break or not, but one of my issues is because it's not
20 quantified, I don't know whether or not -- obviously she's
21 testing hot. Obviously it's in her system. But clearly
22 there's a difference between having it in your system and
23 being actually under the influence. But I do not take issue
24 with the Court's determination whenever you were asking
25 questions. To a layperson she clearly appeared to be under

1 may not respond like some of us would on a question and
2 answer. I was just -- only thing I had to compare it was
3 from yesterday.

4 DETECTIVE GREGORY: I've spent a lot of time with
5 her and she's -- you're right, she does -- she's got kind of
6 a fried brain.

7 MR. GIEGER: And that would relate to my earlier
8 comments that again, I don't remember if they were on the
9 record or not. My dealings with her is that her hesitancy
10 in answering questions sometimes and, again, my experience
11 is limited, it's only three or four times I've talked with
12 her, but I'm not sure that my opinion is worth all that much
13 other than she seemed to answer questions relatively
14 consistently except when the Court was asking her. When the
15 Court was asking her she was clearly slurring her speech.

16 MR. ADAMS: Let's go try.

17 THE COURT: All right.

18 (The in-camera hearing was concluded
19 after which the following occurred in
20 open court with all parties and jurors
21 present.)

22 THE COURT: All right. Let the record reflect
23 that all members of the jury are present. Counsel, for the
24 State, counsel for the defendant, the defendant is present.

25 Mr. Gieger, if you would re-call Ms. Barnes.

1 MR. GIEGER: Thank you, your Honor.

2 THE COURT: All right. Ms. Tabitha Barnes, let me
3 remind you that you're still under oath. If you'd just have
4 a seat over here in our witness chair. Pull the microphone
5 right around in front of you.

6 Mr. Gieger, you may resume.

7 DIRECT EXAMINATION CONTINUED

8 Q (By Mr. Gieger) Ms. Barnes, it's been a tough morning
9 for you, would you agree?

10 A Yes.

11 Q Ma'am, when's the last time that you used drugs?

12 A I used drugs three -- about four days before we came to
13 Oklahoma City.

14 Q Okay. Do you have a drug problem?

15 A I don't consider I have a drug problem. I feel that
16 I'm a groupie.

17 Q What do you mean when you say you're a groupie?

18 A It's like if I'm around --

19 Q If you're around it, do you do it?

20 A Yeah.

21 Q Okay. That's been -- has that been true of your
22 lifestyle for quite a while? If you're around it, you kind
23 of do it?

24 A Yes, I mean, like, if I'm around somebody I do it but
25 as far as going to purchase drugs, I don't. I -- do I keep

1 talking?

2 Q Well, if you're going to tell me more about your drug
3 problem, yeah, tell me about it.

4 A Well, actually I -- I take pain pills.

5 Q And those are prescription; correct?

6 A I have a bottle -- a prescription. I have 17 split
7 disks in my back. I have scoliosis. I also see a mental
8 doctor, which is what I took last night. It's called
9 Seroquel 300. It alters your mind to keep thinking at
10 night. Celexa is a alter mind -- mind -- supplements to
11 keep you from getting angry, which I did not take this
12 morning. Maybe I should have, but I didn't.

13 Q Ma'am, and those medications are prescribed by a
14 doctor?

15 A Yes, my doctor name is Dr. [REDACTED]. He's my psychic
16 doctor.

17 Q And that's -- that's -- if we need to know more about
18 it we'll ask you about it, okay?

19 A Yes, sir.

20 Q But you've been having issues this morning about that
21 stuff; fair enough?

22 A About what?

23 Q About the medications and things like that?

24 A Yes, I did take a Seroquel last night.

25 Q It's been a tough morning for you.

1 A Just the good work that y'all have put out to pursue
2 this case.

3 Q And I'm not saying that's what Mr. Adams was
4 insinuating, I just want the jury to understand, nobody's
5 paid you to be here.

6 A No one's paid me a dime to be here.

7 Q And I'm not saying he was saying anything different,
8 okay.

9 Let me ask this question: He asked you about a
10 lot of things that happened last night; do you remember
11 that?

12 A Yes.

13 Q There is no doubt -- is there any doubt you tested
14 positive for PCP today?

15 A I'm not gonna lie. I know I was gonna test positive
16 for PCP because I --

17 Q Let me ask you about that. Do you remember him saying
18 who did you tell and who did you not tell; do you remember
19 that?

20 A Who did I tell what?

21 Q About testing positive for PCP today. Do you remember
22 him asking you those questions?

23 A I told --

24 Q Listen -- listen to my question.

25 A -- a officer.

1 Q Just listen to my question. Do you remember him asking
2 you that?

3 A No.

4 Q When he was asking you questions he said: Who did you
5 tell about testing positive for PCP? Do you remember Mr.
6 Adams talking to you about that?

7 A Yes.

8 Q Okay. Do you see that police officer sitting right
9 back there with the blonde hair?

10 A Yes.

11 Q Is that who you told?

12 A Yes.

13 Q And when did you tell her?

14 A Going up to take the pee test.

15 Q After you talked to the Judge?

16 A Yes.

17 Q On the way to take the test?

18 A I said I have a confession.

19 Q Okay. That's who you told?

20 A Yes.

21 Q But you would agree you didn't tell the Judge, you told
22 her.

23 A Yes.

24 Q All right. The events that happened last night at the
25 hotel, do you remember him asking you about getting another