

IN THE SUPREME COURT

APPEAL FROM THE MICHIGAN COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

MSC No. 159346

COA No: 338733

Lower Case No. 16-010745-01

Wayne County Circuit Court

JACQUES JEAN KABONGO,

Defendant-Appellant.

\_\_\_\_\_  
WAYNE COUNTY PROSECUTING ATTORNEY  
Attorney for Plaintiff-Appellee

SHELDON HALPERN (P14560)  
Attorney for Defendant-Appellant  
\_\_\_\_\_

**APPELLANT'S APPENDIX**

SHELDON HALPERN (P14560)  
SHELDON HALPERN, P.C.  
Attorney for Defendant-Appellant Kabongo  
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Wayne County Register of Actions

Wayne County Register of Actions

**REGISTER OF ACTIONS**

[CASE No. 16-010745-01-FH](#)

PARTY INFORMATION			
<b>Defendant</b>	Kabongo, Jacques Jean	<b>Lead Attorneys</b> Sheldon Halpern <i>Court Appointed</i> (248) 554-0400(W)	
<b>Plaintiff</b>	Posigian, Anna		
<b>Plaintiff</b>	State of Michigan	<b>John A. Seavone</b> (313) 224-5777(W)	
CHARGE INFORMATION			
<b>Charges:</b> Kabongo, Jacques Jean	<b>Statute</b>	<b>Level</b>	<b>Date</b>
1. Weapons - Carrying Concealed	750/227	.	10/15/2016

EVENTS & ORDERS OF THE COURT	
<b>DISPOSITIONS</b>	
10/17/2016	<b>Plea</b> (Judicial Officer: Echartea, Laura A) 1. Weapons - Carrying Concealed Defendant Stand Mute: Plea of Not Guilty Entered by Court
04/04/2017	<b>Disposition</b> (Judicial Officer: Heise, Catherine L.) 1. Weapons - Carrying Concealed Found Guilty by Jury
05/10/2017	<b>Sentence</b> (Judicial Officer: Heise, Catherine L.) 1. Weapons - Carrying Concealed Fee Totals: - Standard FEL Fees \$1,498.00 (SMCF, JCVF) DNA Fees \$60.00 Fee Totals \$ \$1,558.00 SGL Range (Minimum 0 Months, Maximum 6 Months) Community Service - (50 Hours) Probation - ( 1 Yr, Start Date: 05/10/2017, Comment: Non-reporting)
<b>OTHER EVENTS AND HEARINGS</b>	
10/17/2016	<b>Recommendation for Warrant</b>
10/17/2016	<b>Arraignment on Warrant</b> (9:00 AM) (Judicial Officer Echartea, Laura A) Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court
10/17/2016	<b>Warrant Signed</b>
11/14/2016	<b>Arraignment on Warrant</b> (9:00 AM) (Judicial Officer Echartea, Laura A) Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court
11/21/2016	<b>Pre Exam Hearing</b> (9:00 AM) (Judicial Officer Bill, Gregory D.) Result: Held
12/05/2016	<b>Preliminary Examination</b> (9:00 AM) (Judicial Officer Langston, Deborah L) Result: Held
12/15/2016	<b>Preliminary Examination</b> (9:00 AM) (Judicial Officer Langston, Deborah L) Result: Held: Bound Over
12/15/2016	<b>Bound Over</b>
12/15/2016	<b>Interim Condition for Kabongo, Jacques Jean</b> - Personal Bond (Own Recognizance) \$2,000.00
01/12/2017	<b>Arraignment On Information</b> (9:00 AM) (Judicial Officer Chylinski, James R.) <a href="#">Parties Present</a> Result: Held
01/12/2017	<b>Disposition Conference</b> (9:00 AM) (Judicial Officer Chylinski, James R.) <a href="#">Parties Present</a> Result: Held
01/12/2017	<b>AOI Plea</b>
01/25/2017	<b>Calendar Conference</b> (9:00 AM) (Judicial Officer Heise, Catherine L.) <a href="#">Parties Present</a> Result: Defendant Stands Mute; Plea Of Not Guilty Entered By Court
02/16/2017	<b>PE PDF Transcript, filed</b> Vol./Book 1 58 pages
03/01/2017	<b>Witness List, Filed</b>
03/10/2017	<b>Motion</b>

## Wayne County Register of Actions

RECEIVED by MSC 6/30/2020 8:29:42 PM

03/15/2017 **Final Conference** (9:00 AM) (Judicial Officer Heise, Catherine L.)  
[Parties Present](#)  
 Result: Held

03/15/2017 **Motion Hearing** (9:00 AM) (Judicial Officer Heise, Catherine L.)  
[Parties Present](#)  
 Result: Held

03/15/2017 **Heard And Denied - Order Signed and Filed** (Judicial Officer: Heise, Catherine L. )

03/15/2017 **Heard And Denied - Order Signed and Filed** (Judicial Officer: Heise, Catherine L. )

03/15/2017 **Heard And Granted - Order Signed and Filed** (Judicial Officer: Heise, Catherine L. )

03/15/2017 **Motion Hearing** (9:00 AM) (Judicial Officer Heise, Catherine L.)  
[Parties Present](#)  
 Result: Held

03/15/2017 **Præcipe, Filed** (Judicial Officer: Heise, Catherine L. )

03/15/2017 **Motion Hearing** (9:00 AM) (Judicial Officer Heise, Catherine L.)  
[Parties Present](#)  
 Result: Held

03/15/2017 **Præcipe, Filed** (Judicial Officer: Heise, Catherine L. )

03/15/2017 **Witness List, Filed**

03/16/2017 **Witness List, Filed**

03/30/2017 **Jury Trial** (9:00 AM) (Judicial Officer Heise, Catherine L.)  
[Parties Present](#)  
 Result: In Progress

04/03/2017 **Jury Trial in Progress** (9:00 AM) (Judicial Officer Heise, Catherine L.)  
[Parties Present](#)  
 Result: In Progress

04/03/2017 **Motion For A Mistrial**

04/03/2017 **Motion For A Directed Verdict Of Not Guilty**

04/04/2017 **Jury Trial in Progress** (9:00 AM) (Judicial Officer Heise, Catherine L.)  
[Parties Present](#)  
 Result: Held

04/04/2017 **Found Guilty By Jury**

04/04/2017 **Order For DNA Sample - Signed and Filed**

04/04/2017 **Refer to Probation For Pre-Sentence Report**

05/10/2017 **Sentencing** (9:00 AM) (Judicial Officer Heise, Catherine L.)  
[Parties Present](#)  
*04/27/2017 Reset by Court to 05/10/2017*  
 Result: Sentenced

05/10/2017 **Sentenced to Probation - Order Signed and Filed**

05/24/2017 **Order For Production Of Trial And Sentence Transcript**

05/31/2017 **Hosted Solutions - Delinquency Notice**

05/31/2017 **Stenographers Certificate Filed**

06/07/2017 **Motion**

06/09/2017 **Motion Hearing** (9:00 AM) (Judicial Officer Heise, Catherine L.)  
[Parties Present](#)  
 Result: Held

06/09/2017 **Motion**

06/09/2017 **Heard And Granted - Order Signed and Filed** (Judicial Officer: Heise, Catherine L. )

09/11/2017 **Notice of Transcript Filed**  
 Vol./Book 1 8 pages

09/18/2017 **Notice of Transcript Filed**  
 Vol./Book 2 32 pages

09/26/2017 **Notice of Transcript Filed**  
 Vol./Book 1 219 pages

09/29/2017 **Notice of Transcript Filed**  
 Vol./Book 2 299 pages

03/01/2018 **Probation Closure Signed and Filed** (Judicial Officer: Heise, Catherine L. )

02/20/2019 **Denied By The Court Of Appeals**

# Michigan Court of Appeals Docket

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*Case Docket Number Search Results - 159346*

**Appellate Docket Sheet**

**COA Case Number: 338733**

**MSC Case Number: 159346**

PEOPLE OF MI V JACQUES JEAN KABONGO

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1	PEOPLE OF MI Oral Argument: Y Timely: Y	PL-AE	PRS	(49663) <b>BLAIR DEBORAH K</b>
2	KABONGO JACQUES JEAN Oral Argument: Y Timely: Y	DF-AT	RET	(14560) <b>HALPERN SHELDON</b>

---

**COA Status:** Case Concluded; File Open      **MSC Status:** Pending on Application

- 06/08/2017    1 Claim of Appeal - Criminal
  - Proof of Service Date: 06/08/2017
  - Jurisdictional Checklist: Y
  - Register of Actions: Y
  - Fee Code: EPAY
  - Attorney: 14560 - HALPERN SHELDON
  
- 05/10/2017    2 Order Appealed From
  - From: WAYNE CIRCUIT COURT
  - Case Number: 16-010745-01-FH
  - Trial Court Judge: 41614 HEISE CATHERINE L
  - Nature of Case:
    - CCW
  
- 06/08/2017    3 Steno Certificate - Tr Request Received
  - Date: 05/24/2017
  - Timely: Y
  - Reporter: 5964 - JACKSON KEVA M
  - Hearings:
    - 01/25/2017
    - 03/15/2017
    - 03/30/2017
    - 04/03/2017
    - 04/04/2017
    - 05/10/2017
  
- 06/13/2017    4 Defective Holding File Letter
  - Filed By Pro Per
  - Comments: Letter sent to all parties.
  
- 06/15/2017    5 Proof of Service - Generic
  - Date: 06/15/2017
  - For Party: 2 KABONGO JACQUES JEAN DF-AT
  - Attorney: 14560 - HALPERN SHELDON
  - Comments: Re-Efiled Claim, Juris Checklist, Steno Cert, ROS & LC Order to Properly E-Serve the Wayne Cnty Prs
  
- 06/19/2017    6 Correspondence Received
  - Date: 06/15/2017
  - For Party: 2 KABONGO JACQUES JEAN DF-AT
  - Attorney: 14560 - HALPERN SHELDON

# Michigan Court of Appeals Docket

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Comments: Re Service of Claim Via True Filing

08/25/2017 7 Transcript Overdue - Notice to Reporter  
Mail Date: 08/25/2017  
Reporter: 5964 - JACKSON KEVA M  
Comments: 6 hrg dates; Evt 3

09/08/2017 8 Invol Dismissal Warning - No Transcript  
Attorney: 14560 - HALPERN SHELDON  
Due Date: 09/29/2017  
Comments: No NFT for Trans in Ev3

09/18/2017 9 Notice Of Filing Transcript  
Date: 09/15/2017  
Timely: Y  
Reporter: 5964 - JACKSON KEVA M  
Hearings:  
01/25/2017

09/20/2017 10 Notice Of Filing Transcript  
Date: 09/18/2017  
Timely: Y  
Reporter: 5964 - JACKSON KEVA M  
Hearings:  
03/15/2017  
05/10/2017

09/21/2017 11 Correspondence Received  
Date: 09/18/2018  
For Party: 2 KABONGO JACQUES JEAN DF-AT  
Attorney: 14560 - HALPERN SHELDON  
Comments: Cpys of Emails Btw Atty Halpern's Office & Rptr Jackson Re Trans

09/28/2017 12 Notice Of Filing Transcript  
Date: 09/27/2017  
Timely: Y  
Reporter: 5964 - JACKSON KEVA M  
Hearings:  
04/03/2017

10/03/2017 13 Notice Of Filing Transcript  
Date: 09/29/2017  
Timely: Y  
Reporter: 5964 - JACKSON KEVA M  
Hearings:  
03/30/2017  
04/04/2017

11/20/2017 14 Stips: Extend Time - AT Brief  
Extend Until: 12/22/2017  
Filed By Attorney: 14560 - HALPERN SHELDON  
For Party: 2 KABONGO JACQUES JEAN DF-AT

11/21/2017 15 Correspondence Sent  
Date: 11/21/2017  
For Party: 2 KABONGO JACQUES JEAN DF-AT  
Attorney: 14560 - HALPERN SHELDON  
Comments: Confirmation date for stipulation extend time fil appt's brf

12/21/2017 16 Brief: Appellant  
Proof of Service Date: 12/21/2017  
Oral Argument Requested: Y  
Timely Filed: Y

# Michigan Court of Appeals Docket

RECEIVED by MSC 6/30/2020 8:29:42 PM

Filed By Attorney: 14560 - HALPERN SHELDON  
For Party: 2 KABONGO JACQUES JEAN DF-AT

01/17/2018 17 Stips: Extend Time - AE Brief  
Extend Until: 02/22/2018  
Filed By Attorney: 49663 - BLAIR DEBORAH K  
For Party: 1 PEOPLE OF MI PL-AE

02/22/2018 18 Brief: Appellee  
Proof of Service Date: 02/22/2018  
Oral Argument Requested: Y  
Timely Filed: Y  
Filed By Attorney: 49663 - BLAIR DEBORAH K  
For Party: 1 PEOPLE OF MI PL-AE

02/23/2018 19 Noticed  
Record: REQST  
Mail Date: 02/26/2018

03/12/2018 20 Brief: Reply  
Proof of Service Date: 03/12/2018  
Oral Argument Requested:  
Timely Filed:  
Filed By Attorney: 14560 - HALPERN SHELDON  
For Party: 2 KABONGO JACQUES JEAN DF-AT

03/12/2018 21 Other  
Date: 03/12/2018  
For Party: 2 KABONGO JACQUES JEAN DF-AT  
Attorney: 14560 - HALPERN SHELDON  
Comments: Duplicate copy of reply brf in evt 20

03/20/2018 22 Record Request  
Mail Date: 03/20/2018  
Agency: WAYNE CIRCUIT COURT

03/21/2018 23 Record Filed  
File Location:  
Comments: File; Trs(6)

11/07/2018 29 Submitted on Case Call  
District: D  
Item #: 15  
Panel: CMM,PMM,ELG

11/07/2018 39 Oral Argument Audio

12/27/2018 45 Opinion - Per Curiam - Unpublished  
View document in PDF format  
Pages: 11  
Panel: CMM,PMM,ELG  
Result: L/Ct Judgment/Order Affirmed

01/16/2019 46 Motion: Reconsideration of Opinion  
Proof of Service Date: 01/16/2019  
Filed By Attorney: 14560 - HALPERN SHELDON  
For Party: 2 KABONGO JACQUES JEAN DF-AT  
Fee Code: EPAY  
Answer Due: 02/06/2019

02/12/2019 47 Submitted on Reconsideration Docket  
Event: 46 Reconsideration of Opinion  
District: C  
Item #: 1

## Michigan Court of Appeals Docket

RECEIVED by MSC 6/30/2020 8:29:42 PM

- 02/20/2019 48 Order: Reconsideration - Deny - Appeal Remains Closed  
[View document in PDF format](#)  
Event: 46 Reconsideration of Opinion  
Panel: CMM,PMM,ELG  
Attorney: 14560 - HALPERN SHELDON
- 03/26/2019 49 SCt: Application for Leave to SCt  
Supreme Court No: 159346  
Answer Due: 04/23/2019  
Fee: E-Pay  
For Party: 2  
Attorney: 14560 - HALPERN SHELDON
- 04/12/2019 50 Supreme Court - Record Sent To  
File Location:  
Comments: sc#159346 lcf;7 tr
- 04/15/2019 51 SCt: Trial Court Record Received  
7 tr; 1 files
- 04/22/2019 52 SCt: Answer - SCt Application/Complaint  
Filing Date: 04/22/2019  
For Party: 1 PEOPLE OF MI PL-AE  
Filed By Attorney: 49663 - BLAIR DEBORAH K
- 05/17/2019 54 SCt: Reply - SCt Application/Complaint  
Filing Date: 05/17/2019  
For Party: 2 KABONGO JACQUES JEAN DF-AT  
Filed By Attorney: 14560 - HALPERN SHELDON
- 05/17/2019 55 Correspondence Sent  
Proof Of Service Date: 05/17/2019  
Comments: SCt email re late reply; see event 54
- 05/22/2019 56 SCt Motion: Miscellaneous  
Party: 2  
Filed by Attorney: 14560 - HALPERN SHELDON  
Comments: Motion to extend time to 05-17-2019 to file reply
- 05/23/2019 57 Correspondence Sent  
Proof Of Service Date: 05/23/2019  
Comments: SC email re fee for event 56
- 05/24/2019 58 SCt: Miscellaneous Filing  
Filing Date: 05/24/2019  
For Party: 2 KABONGO JACQUES JEAN DF-AT  
Filed By Attorney: 14560 - HALPERN SHELDON  
Comments: Defect correction for payment decline (motion to extend time for late reply, evt 56).
- 03/18/2020 62 SCt Order: Application - Grant  
[View document in PDF format](#)  
Comments: Grant motion for misc relief. 20 minute OA per side. Invited AC=PAAM, CDAM.
- 04/27/2020 63 SCt: Stipulation Filed  
Filing Date: 04/27/2020  
For Party: 2 KABONGO JACQUES JEAN DF-AT  
Filed By Attorney: 14560 - HALPERN SHELDON  
Comments: Stip to ext time 30 days to file AT brief
- 06/25/2020 64 Correspondence Sent  
Proof Of Service Date: 06/25/2020  
Comments: SC email re rejection of AT Brief

Case Listing Complete

Michigan Court of Appeals Opinion

Michigan Court of Appeals Opinion

**STATE OF MICHIGAN**

**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACQUES JEAN KABONGO,

Defendant-Appellant.

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UNPUBLISHED  
December 27, 2018

No. 338733  
Wayne Circuit Court  
LC No. 16-010745-01-FH

Before: MURRAY, C.J., and METER and GLEICHER, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of carrying a concealed weapon, MCL 750.227, for which he was sentenced to one year of probation. We affirm.

The jury convicted defendant of carrying a concealed weapon on October 15, 2016. On that date, defendant was working on a rental home he owned in Detroit. Two police officers observed defendant outside the house as they drove by. One of the officers, Alexander Collrin, saw that defendant had a semiautomatic handgun in a holster. Collrin notified his partner, Royer Hernandez, that defendant was armed. As Hernandez continued driving, he slowed down his vehicle and was able to see defendant in his rearview mirror. According to the officers, defendant walked to his truck, which was parked in the street, and opened the rear passenger door on the driver's side of the vehicle to remove some tools. At that point, both officers saw that defendant had covered the handgun with his shirt, concealing it from view. The officers approached defendant and asked him if he had a concealed-weapons license. Defendant had a license, but it had expired. The officers then placed defendant under arrest for carrying a concealed weapon.

The police allowed one of defendant's coworkers to drive defendant's truck home after defendant was arrested. According to the coworker, there were tools on the floor of the passenger side of the truck. Defendant testified that he knew how to properly openly carry his firearm. According to defendant, when the officers stopped him, he was on his front lawn, not in the street, and he only obtained tools from the curbside, front-passenger area of his truck. Defendant denied that he ever entered the street to walk to the driver's side of the truck. He also denied that he had any reason to cover up his weapon because he knew that he was allowed to openly carry it.

## Michigan Court of Appeals Opinion

## I. CHALLENGES FOR CAUSE

Defendant argues that the trial court erred by refusing to dismiss both Juror No. 5 and Juror No. 14 for cause. Whether to excuse a potential juror for cause is generally left to the trial court's discretion. *People v Eccles*, 260 Mich App 379, 382-383; 677 NW2d 76 (2004). However, to the extent this issue involves the trial court's interpretation or application of a court rule or statute, it is reviewed de novo as a question of law. *Id.* at 382.

## A. JUROR NO. 14

When the jurors were asked about their views of persons who openly carry firearms, Juror No. 14 stated that she had an issue with anyone who openly displayed a gun, regardless of the circumstances or whether it was legal. She agreed, however, that despite her feelings on the subject, she would be able to set aside her personal opinion and follow the law. Defendant argues that the trial court erred by refusing to dismiss Juror No. 14 for cause in light of her views against persons openly carrying firearms.

MCR 6.412(D)(1) provides that “[a] prospective juror is subject to challenge for cause on any ground set forth in MCR 2.511(D) or for any other reason recognized by law.” MCR 2.511(D) provides:

**(D) Challenges for Cause.** The parties may challenge jurors for cause, and the court shall rule on each challenge. A juror challenged for cause may be directed to answer questions pertinent to the inquiry. It is grounds for a challenge for cause that the person:

\* \* \*

(3) shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome should be;

(4) has opinions or conscientious scruples that would improperly influence the person's verdict . . . .

Defendant also relies on MCL 768.10, which provides:

The previous formation or expression of opinion or impression, not positive in its character, in reference to the circumstances upon which any criminal prosecution is based, or in reference to the guilt or innocence of the prisoner, or a present opinion or impression in reference thereto, such opinion or impression not being positive in its character, or not being based on personal knowledge of the facts in the case, shall not be a sufficient ground of challenge for principal cause, to any person who is otherwise legally qualified to serve as a juror upon the trial of such action: Provided, That the person proposed as a juror, who may have formed or expressed, or has such opinion or impression as aforesaid, shall declare on oath, that he verily believes that he can render an impartial verdict according to the evidence submitted to the jury on such trial:

## Michigan Court of Appeals Opinion

Provided further, That the court shall be satisfied that the person so proposed as a juror does not entertain such a present opinion as would influence his verdict as a juror.

The trial court did not abuse its discretion by ruling that Juror No. 14 was not disqualified for cause. Juror No. 14 explained that her personal opinion was that people should not openly carry weapons, but she also stated, “[i]t’s my feeling but I’ll uphold the law so I’ll set it aside.” When asked if she could guarantee that, she responded, “Yeah. I will do my best to set that aside.” She was asked to repeat that statement and said, “Yes, put it aside but they’re still my feelings.”

Despite Juror No. 14’s belief that people should not be allowed to openly carry weapons, because she agreed that she would follow the law and would set aside her opinions and feelings about openly carrying firearms, the trial court was not obligated to dismiss her for cause under MCR 2.511(D)(3) or (4). Further, in light of her assurances that she could render an impartial verdict, the trial court’s denial of defendant’s challenge for cause did not violate MCL 768.10.

## A. JUROR NO. 5

Defendant argues that Juror No. 5 should have been dismissed for cause because she was a convicted felon. During voir dire, Juror No. 5 stated that she had previously been convicted of a felony, but then explained that it involved a matter in Illinois that occurred more than 25 years earlier, when she was a teenager. During further questioning, she admitted that she was uncertain of the status of the matter and did not know whether the conviction may have been expunged or removed from her record because of her youth. Because of the uncertainty, the trial court instructed an officer to conduct a criminal history check of Juror No. 5. The investigation did not reveal any criminal record in Michigan or another state.

Pursuant to MCR 2.511(D)(1), a potential juror may be challenged for cause if the individual “is not qualified to be a juror[.]” MCL 600.1307a(1)(e) provides that a person is qualified to serve as a juror if, along with the other listed requirements, he or she has not “been convicted of a felony.” Although defendant correctly argues that a felony conviction would have disqualified Juror No. 5 from serving as a juror, the record does not establish that Juror No. 5 had a disqualifying felony conviction. Subsequent questioning revealed that Juror No. 5 was uncertain about the status of her prior criminal matter, which she stated occurred many years earlier when she was a teenager. The court observed that Juror No. 5 may have been treated as a juvenile offender, given that she was a teenager when she was in the judicial system in Illinois. MCL 600.1307a(1)(e) requires that one be “convicted” of a “felony” to be disqualified as a juror. The statute does not address juvenile adjudications. Because a juvenile adjudication is different from a conviction, it would not have required dismissal under the plain language of MCL 600.1307a(1)(e). See *People v Valentin*, 457 Mich 1, 5; 577 NW2d 73 (1998) (“If the language used is clear, the Legislature must have intended the meaning it has plainly expressed, and the statute must be enforced as written.”) Similarly, if Juror No. 5’s prior conviction was expunged, she would not have been disqualified from serving on the jury. In general, expunged convictions are not treated as convictions of record. See, generally, *Carr v Midland Co Concealed Weapons Licensing Bd*, 259 Mich App 428, 429-430; 674 NW2d 709 (2003). Because of the uncertainty about Juror No. 5’s criminal status, the trial court instructed an officer to investigate the juror’s

## Michigan Court of Appeals Opinion

criminal record. That investigation did not disclose any record of a felony conviction, in Michigan or another state. Although Juror No. 5 also admitted to having been excused from serving on a previous jury, the reasons for that dismissal were not placed on the record.

In sum, because Juror No. 5 was uncertain about the status of her prior criminal matter, and a criminal record check failed to reveal any record of a disqualifying felony conviction for Juror No. 5, the trial court had a factual basis for concluding that Juror No. 5 was not disqualified from serving as a juror in this case. Accordingly, defendant has not shown that the trial court erred by failing to dismiss Juror No. 5 for cause.

## II. PEREMPTORY CHALLENGES

Defendant next argues that the trial court erred by overruling his objections to the prosecutor's use of peremptory challenges to excuse Juror Nos. 2, 3, and 14, and by disallowing his use of a peremptory challenge to excuse Juror No. 5. Defendant argues that the trial court erred by rejecting his claims that the prosecutor engaged in purposeful discrimination by using peremptory challenges to excuse African-American jurors, and by finding that his use of a peremptory challenge to excuse a Caucasian juror was racially motivated. We disagree.

## A. PROSECUTOR'S USE OF PEREMPTORY CHALLENGES

Defendant first challenges the prosecution's use of peremptory challenges to excuse Juror Nos. 2, 3, and 14, all of whom were African-American, like defendant. At trial, the trial court overruled defendant's objections to the dismissal of these jurors, finding that the record did not support defendant's claim that the prosecutor excused the jurors because of their race.

Pursuant to *Batson v Kentucky*, 476 US 79, 89; 106 S Ct 1712; 90 L Ed 2d 69 (1986), it is a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution for a prosecutor to use a peremptory challenge to remove a prospective juror solely because of the juror's race. *People v Armstrong*, 305 Mich App 230, 237; 851 NW2d 856 (2014); see also MCR 2.511(F)(1) (barring discrimination on various grounds during voir dire).

Under the first step of a *Batson* challenge, a defendant must make a prima facie showing that . . . he or she is a member of a particular racial group, . . . the prosecution used a peremptory challenge to exclude from the jury a member of that racial group, and . . . the circumstances raise an inference that the challenge was race based. *Batson*, 476 US at 96. [*People v Tennille*, 315 Mich App 51, 61; 888 NW2d 278 (2016).]

The prosecutor does not appear to be contesting that the three parts of this initial step of a *Batson* challenge were satisfied. Accordingly, this issue concerns the second and third steps of a *Batson* challenge, which this Court summarized in *Tennille*, 315 Mich App at 61-62, as follows:

An appellate court reviews de novo *Batson's* second step, which centers on whether the prosecutor set forth a race-neutral explanation for the strikes. *People v Knight*, 473 Mich 324, 343; 701 NW2d 715 (2005). The third step in the *Batson* analysis requires the trial court to determine whether the challenger has sustained

## Michigan Court of Appeals Opinion

his or her burden of demonstrating a racial motivation for the challenged peremptory strikes. This constitutes a question of fact reviewed for clear error. *Id.* at 344. This standard of review derives from *Hernandez v New York*, 500 US 352, 364; 111 S Ct 1859; 114 L Ed 2d 395 (1991) (plurality opinion), in which the United States Supreme Court explained that *Batson* treated “intent to discriminate as a pure issue of fact, subject to review under a deferential standard[.]”

The prosecutor explained that she excused Juror No. 2 because it appeared she might have memory issues. The prosecutor’s reasons for excusing Juror No. 2 were unrelated to the juror’s race, and the record, specifically Juror No. 2’s inability to recall the timing and specifics of events, reveals factual support for the prosecutor’s race-neutral concern. The trial court agreed that Juror No. 2 “did indeed have a difficult time with memory [and] she did discuss senior moments.” Because the record contains factual support for the prosecutor’s race-neutral concerns,<sup>1</sup> and giving deference to the trial court’s superior opportunity to observe Juror No. 2’s demeanor at trial, we find no clear error with the trial court’s finding that the prosecutor’s reasons for excusing Juror No. 2 were not racially motivated.

The prosecutor explained that she excused Juror No. 3 because of her demeanor, which indicated that she did not want to be present for this trial. According to the prosecutor, Juror No. 3 refused to interact with the prosecutor and did not appear attentive. The prosecutor also referred to Juror No. 3’s excuses and medical complaints as reasons why she did not want Juror No. 3 on the jury. The trial court agreed that the prosecutor’s reasons were supported by the record. The court commented on Juror No. 3’s demeanor, which included rolling her eyes, crossing her arms, and being one of the first ones to offer reasons for why she could not serve. The court found that the prosecutor provided race-neutral reasons for excusing Juror No. 3, and that the prosecutor was not racially motivated.

In light of the trial court’s observations of Juror No. 3’s demeanor, which we accord deference, defendant has not shown that the trial court’s ruling with regard to Juror No. 3 was erroneous. In addition, the record supports the prosecutor’s explanation that Juror No. 3 was quick to offer excuses for why she did not want to serve as a juror. Even if those excuses did not rise to a level justifying dismissal for cause, it was not improper for the prosecutor to consider them in assessing whether the juror was likely to remain attentive during trial. Defendant has not shown that the trial court clearly erred by finding that the prosecutor’s reasons for excusing Juror No. 3 were not racially motivated.

The prosecutor explained that she excused Juror No. 14 because the juror was obviously quite pregnant and her conduct demonstrated that she was in pain. The prosecutor was concerned that her pain might affect her ability to sit throughout a trial. These reasons are race-neutral and are supported by the record. The trial court agreed that the juror was obviously

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<sup>1</sup> The prosecutor appears to have erred by stating that Juror No. 2 could not remember a question about her occupation, but the gist of the prosecutor’s concern about Juror No. 2 was memory, and the trial court did not clearly err by finding that this concern was supported by the record.

## Michigan Court of Appeals Opinion

pregnant and, although the juror had stated during questioning that she was presently okay, she stated that her pregnancy sometimes caused her pain and she had seen her doctor the day before because of pain, and the trial court had observed her during trial holding her head in her hand. The juror's pregnancy and apparent physical condition were race-neutral reasons for excusing her from the jury. Defendant has not shown that the trial court clearly erred by finding that the prosecutor's use of a peremptory challenge to excuse Juror No. 14 was not racially motivated.

## B. DEFENDANT'S USE OF A PEREMPTORY CHALLENGE TO EXCUSE JUROR NO. 5

Defendant argues that the trial court erred when it did not allow him to remove Juror No. 5 from the jury because of its ruling that defendant's use of a peremptory challenge to excuse Juror No. 5, who was Caucasian, was based on race. See, generally, *People v Bell*, 473 Mich 275, 287-288; 702 NW2d 128, amended on rehearing 474 Mich 1201 (2005) (discussing a defense attorney's use of peremptory challenges to dismiss jurors of a particular race).

The prosecutor objected to defendant's use of a peremptory challenge to excuse Juror No. 5, noting that defendant had previously peremptorily excused two other jurors, both of whom were also Caucasian. Defense counsel offered the following reasons for wanting to excuse Juror No. 5: she came from a family with a background in law enforcement; counsel had "feelings" from the juror's exchange of words, which counsel "felt were unfriendly, somewhat antagonistic;" and the juror "didn't really recall things so maybe she has a real problem remembering." When the trial court questioned the bases for or accuracy of defense counsel's reasons, counsel added that he thought Juror No. 5 was lying because she had stated that she had a prior felony conviction, but no record of a conviction was found when her criminal history was investigated. After analyzing defense counsel's reasons in light of the record, the trial court rejected those reasons and found that the prosecutor "has established purposeful discrimination." Accordingly, it allowed Juror No. 5 to remain on the jury.

Although defense counsel's articulated reasons for excusing Juror No. 5 were race-neutral, the trial court was still required to determine whether those reasons were persuasive and credible. See, generally, *Tennille*, 315 Mich App at 73. This required the court to assess the plausibility of the race-neutral explanation in light of all evidence with a bearing on it. *Id.* With respect to defense counsel's explanation that Juror No. 5 belonged to a family with a background in law enforcement, the court observed that the juror had expressed, during questioning by the court, that her family background would not prevent her from treating a police officer's testimony the same as any other witness, and that defense counsel had not further questioned the juror during voir dire about her relationships with police officers. Given the juror's response and defense counsel's failure to pursue that subject during voir dire, and given the dubious reasoning *as a whole* as offered by defense counsel and as discussed below, the trial court did not clearly err by rejecting the sincerity of this proffered reason.

Regarding defense counsel's claim that Juror No. 5 "didn't really recall things so maybe she has a real problem remembering," counsel did not identify anything specific that the juror had difficulty comprehending or remembering, and the trial court indicated that it did not recall her stating that she could not remember anything. Given the lack of objective support for this concern, the trial court did not clearly err by finding that it was not a credible concern.

## Michigan Court of Appeals Opinion

Defense counsel also referred to general feelings about Juror No. 5, explaining that he thought the exchange of words with the juror was unfriendly and antagonistic. Defense counsel did not identify any specific basis for his unspecified feelings, and the trial court stated that it was required to “probe more deeply when someone just talks about feelings.” The court found that the record lacked “any objective indicia of concern[.]”<sup>2</sup> Indeed, the record discloses that Juror No. 5 stated that she respected the rights of gun owners to openly carry their weapons, and thus she harbored no apparent bias to defendant’s position. She stated, “being a police officer’s daughter it’s not going to concern me unless the gun is raised.” When asked about her ability to serve on a jury composed of African-Americans, Juror No. 5 explained that she works in a diverse environment, meets people of all cultures, and enjoys getting to know them. She indicated that she could be fair. There are no objective indicia that Juror No. 5 harbored any unfriendly views antagonistic to defendant’s case or theory of defense, or against defendant because of his race. In light of the juror’s responses and defense counsel’s failure to articulate any specific basis for his feelings that Juror No. 5 appeared unfriendly or antagonistic, the trial court did not clearly err by rejecting this explanation as unpersuasive or not credible.

Defense counsel also offered the explanation that he thought Juror No. 5 was lying because she had said that she had a prior felony conviction, but a criminal record check did not reveal any criminal history. However, Juror No. 5 also stated that her criminal matter had occurred many years earlier, when she was a teenager, and she acknowledged that she was uncertain about the status of the matter. The trial court found that the juror was trying to be honest with the court about her past. Considering that the record does not indicate that Juror No. 5 was trying to intentionally deceive the court, defendant has not demonstrated that the trial court clearly erred by finding that this explanation was not believable.

In sum, although defense counsel articulated reasons for wanting to excuse Juror No. 5 that were race-neutral, the trial court did not clearly err by finding that counsel’s attempt to excuse Juror No. 5 by peremptory challenge was motivated by race. We acknowledge that a different court might have reached a different result, but we are to give deference to the trial court’s factual findings. We cannot find clear error on the existing record, given the implausibility of so much of defense counsel’s proffered explanations.

## III. MOTION FOR A MISTRIAL

Next, defendant argues that the trial court erred by denying his motion for a mistrial. We review a trial court’s decision whether to grant a mistrial for an abuse of discretion. *People v Waclawski*, 286 Mich App 634, 708; 780 NW2d 321 (2009).

In a pretrial ruling, the court barred both police officers from mentioning at trial that they were part of a special operations unit and were investigating a marijuana-grow operation when they encountered defendant. During Hernandez’s testimony, the prosecutor asked him about his assignment with the Detroit Police Department and he responded that he worked with “30-

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<sup>2</sup> This differs from the situation with Juror No. 3, who rolled her eyes and crossed her arms.

## Michigan Court of Appeals Opinion

Series” at the Second Precinct. The prosecutor asked him “[w]hat is 30-Series” and he explained, “We, basically, we go for known offenders. We deal with drugs, guns, anything that comes with violent crimes.” When Collrin testified, he mentioned that when they observed defendant, they were on their way to “the narcotics location that I had a complaint on.” Defendant moved for a mistrial, arguing that both officers violated the trial court’s pretrial order.

Not every inappropriate comment before a jury warrants a mistrial. *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999), overruled in part on other grounds by *People v Thompson*, 477 Mich 146, 148; 730 NW2d 708 (2007). “A mistrial is warranted only when an error or irregularity in the proceedings prejudices the defendant and impairs his ability to get a fair trial.” *Waclawski*, 286 Mich App at 708 (quotation marks and citation omitted); see also *People v Bauder*, 269 Mich App 174, 195; 712 NW2d 506 (2005), rejected in part on other grounds as discussed in *People v Burns*, 494 Mich 104, 112-113; 832 NW2d 738 (2013).

In this case, although Hernandez stated that he works on cases involving drugs, guns, and violent offenders, it was clear in Hernandez’s explanation of his duties that he was only referring to his job duties, not anything directly related to defendant. Similarly, when Collrin testified that he and Hernandez saw defendant in the course of investigating a narcotics complaint, there was no suggestion that the complaint was linked to defendant. It was clear from the officers’ overall testimony that they essentially stumbled upon defendant while responding to an unrelated matter. There was no suggestion that defendant was a subject of the matter the police were investigating. Indeed, the prosecutor asked Hernandez if there was anything illegal going on with defendant other than the fact that his gun was no longer visible, and Hernandez confirmed that there was no other illegal activity.

To the extent that some of the officers’ testimony may have exceeded the bounds of the trial court’s pretrial order, defendant was not prejudiced by the limited responses because there was no suggestion that defendant was a subject of the matter the officers were investigating and, overall, the jury was informed that the officers were not targeting defendant and that defendant was not involved in any illegal activity other than the concealment of a weapon. Indeed, Collrin testified that he felt bad about having to arrest defendant under the circumstances and that defendant was very cooperative. Because any irregularity did not impair defendant’s ability to receive a fair trial, the trial court did not abuse its discretion by denying defendant’s motion for a mistrial.

## IV. JURY INSTRUCTIONS

During trial, defense counsel referred to Hernandez’s and Collrin’s police reports to impeach portions of their trial testimony. Defendant now argues that the trial court erred when, in response to a jury note asking to view the police reports, it advised the jury that the reports had not been admitted into evidence.

MCR 2.513(N)(1) provides that, “[a]fter jury deliberations begin, the court may give additional instructions that are appropriate.” In *People v Craft*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2018) (Docket No. 337754); slip op at 3, this Court addressed a trial court’s supplemental instructions after a jury begins deliberations, and observed that two different standards of review apply, depending on the substance of the argument raised:

## Michigan Court of Appeals Opinion

We review a claim of instructional error involving a question of law de novo, but we review the trial court's determination that a jury instruction applies to the facts of the case for an abuse of discretion. An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. [Quotation marks and citations omitted.]

In the case at bar, the abuse-of-discretion standard applies to the question whether the trial court properly responded to the jury's request. See *People v Darwell*, 82 Mich App 652, 663; 267 NW2d 472 (1978).

The jury's note requested that the court provide the jury with copies of the police reports. Although the officers were questioned about their police reports, because the reports were never admitted into evidence, it was not appropriate to provide them to the jury. MCR 2.513(O) provides:

The court shall permit the jurors, on retiring to deliberate, to take into the jury room their notes and final instructions. *The court may permit the jurors to take into the jury room the reference document, if one has been prepared, as well as any exhibits and writings admitted into evidence.* [Emphasis added.]

Although MCR 2.513(O) gives a court discretion to provide a deliberating jury with any exhibits or writings *admitted into evidence*, because the police reports were never admitted as evidence, the court did not abuse its discretion by not providing them. The court also did not abuse its discretion by the manner in which it responded to the jury's question. The court simply explained that it was not providing the police reports because they were not admitted into evidence. The instruction directly responded to the jury's request.

Defendant argues that the court's instruction misled the jury into believing that the police reports could not be considered in evaluating the police officers' testimony. However, the court merely instructed that the police reports had not been admitted into evidence. The instruction did not foreclose the jury from relying on the officers' testimony about their reports in evaluating the credibility of their testimony. Accordingly, there was no error.

## V. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the evidence was insufficient to support his conviction. We disagree. We review de novo a challenge to the sufficiency of the evidence. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). An appellate court's review of the sufficiency of the evidence to sustain a conviction should not turn on whether there was any evidence to support the conviction, but whether there was sufficient evidence to justify a rational trier of fact in finding the defendant guilty beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court must view the evidence in the light most favorable to the prosecution. *Id.* at 515. "This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005).

## Michigan Court of Appeals Opinion

Carrying a concealed weapon is a general intent crime and the offense requires, as applied to this case, knowingly carrying a weapon concealed on one's person. *People v Combs*, 160 Mich App 666, 673; 408 NW2d 420 (1987); *People v Davenport*, 89 Mich App 678, 682; 282 NW2d 179 (1979).

Collrin testified that when he initially saw defendant, he could see that defendant was armed with a handgun that was in a holster. He saw the weapon as defendant was walking down a driveway, toward the street. As both officers continued to watch defendant, he went into the street to his four-door truck, opened a door, and took out some tools. Hernandez described seeing defendant cover his weapon with his shirt. Hernandez admitted that if defendant was on the passenger side of the truck, along the curb, he would not have been able to see defendant cover his weapon. At that angle, the truck would have prevented the officers from observing defendant cover the weapon. However, both officers testified that defendant was on the driver's side of the truck, which was in the street, when he covered his weapon. This testimony was sufficient to enable the jury to find beyond a reasonable doubt that defendant knowingly carried a weapon that was concealed on his person. It was undisputed that defendant did not have a valid license to carry a concealed weapon.

Defendant argues that the officers' testimony was inconsistent with their police reports, which suggested that defendant entered his truck from the passenger side, which was along the curb. Defendant also points out that the coworker who drove defendant's truck after defendant was arrested testified that there were tools on the floor of the passenger side of the truck. Defendant similarly testified that the tools were in the front passenger area. It was up to the jury to determine whether this evidence affected the credibility of the officers' testimony. In reviewing a challenge to the sufficiency of the evidence, this Court "will not interfere with the trier of fact's role of determining the . . . credibility of witnesses." *Williams*, 268 Mich App at 419. Rather, "any conflict in the evidence must be resolved in the prosecutor's favor." *People v Jackson*, 292 Mich App 583, 587-588; 808 NW2d 541 (2011) (quotation marks and citation omitted). Therefore, we reject this claim of error.

## VI. PROSECUTOR'S CONDUCT

In his final issue, defendant argues that a new trial is required because the prosecutor misled the jury about the nature of an exhibit and then failed to preserve the exhibit. An unpreserved issue of prosecutorial misconduct is reviewed for plain error affecting substantial rights. *People v Abraham*, 256 Mich App 265, 274; 662 NW2d 836 (2003). An error is plain if it is clear or obvious, and an error affects substantial rights if it is prejudicial, i.e., if it affects the outcome of the proceedings. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003); *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The test for prosecutorial misconduct is whether the defendant was denied a fair trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995). Claims of prosecutorial misconduct are decided case by case and the challenged comments must be read in context. *People v McElhane*y, 215 Mich App 269, 283; 545 NW2d 18 (1996). A prosecutor is afforded great latitude during closing argument; the prosecutor is permitted to argue the evidence and reasonable inferences arising from the evidence in support of her theory of the case. *Bahoda*, 448 Mich at 282.

## Michigan Court of Appeals Opinion

During the testimony of Hernandez and Collrin, defense counsel made drawings on a whiteboard to establish where defendant's truck was parked and where the officers were when they observed defendant cover his handgun. Only a copy of the drawing made during Collrin's testimony was preserved with a photograph, which was admitted as Court Exhibit C without objection. The prosecutor commented on the drawings, including Exhibit C, during closing argument.

Defendant now argues that the prosecutor misled the jury regarding Exhibit C because the prosecutor referred to the whiteboard drawings in her closing argument, but did not clarify that Exhibit C represented only the drawing made during Collrin's testimony. There is no merit to this argument. Although the prosecutor discussed both drawings in her closing arguments, she accurately informed the jury that "you're going to get a copy of at least the drawing after Officer Collrin testified so you can refer to that." Similarly, the trial court accurately informed the jury that Exhibit C "was a [screenshot] of the whiteboard taken after Officer Collrin's testimony." Thus, it was made clear to the jury that it was being provided with a photographic exhibit of only the drawing made when Collrin testified. Accordingly, there was no error, plain or otherwise.

Defendant also asserts that he could not obtain a copy of Exhibit C from the prosecutor, and he accuses the prosecutor of failing to preserve the exhibit. According to the record, however, Exhibit C was admitted as a court exhibit. After the jury returned its verdict, the court stated on the record that "[t]he Court will, of course, retain Court Exhibit A, Court Exhibit B and Court Exhibit C." Defendant is represented on appeal by the same attorney who represented him at trial. Defendant does not indicate that he attempted to obtain a copy of Exhibit C from the trial court, but was unable to do so. Regardless, the content of Exhibit C is not at issue. Defendant is only challenging whether the prosecutor accurately referenced the exhibit in her closing argument. As explained above, there is no merit to defendant's argument that the prosecutor misled the jury regarding what Exhibit C represented.

Affirmed.

/s/ Christopher M. Murray  
/s/ Patrick M. Meter  
/s/ Elizabeth L. Gleicher

Michigan Court of Appeals Order Deny Reconsideration

Michigan Court of Appeals Order Deny Reconsideration

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v Jacques Jean Kabongo

Docket No. 338733

LC No. 16-010745-01-FH

Christopher M. Murray  
Presiding Judge

Patrick M. Meter

Elizabeth L. Gleicher  
Judges

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The Court orders that the motion for reconsideration is DENIED.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

FEB 20 2019

Date

*Jerome W. Zimmer Jr.*  
Chief Clerk

Michigan Supreme Court Order Granting Leave

Michigan Supreme Court Order Granting Leave

# Order

Michigan Supreme Court  
Lansing, Michigan

March 18, 2020

Bridget M. McCormack  
Chief Justice

159346 & (56)

David F. Viviano  
Chief Justice Pro Tem

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

Stephen J. Markman  
Brian K. Zahra

v

SC: 159346  
COA: 338733  
Wayne CC: 16-010745-FH

Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh  
Justice

JACQUES JEAN KABONGO,  
Defendant-Appellant.

On order of the Court, the motion for miscellaneous relief is GRANTED. The application for leave to appeal the December 27, 2018 judgment of the Court of Appeals is considered, and it is GRANTED, limited to the issues: (1) whether the prosecution’s exercise of a peremptory challenge against prospective juror no. 2 violated *Batson v Kentucky*, 476 US 79 (1986); (2) whether the trial court erroneously precluded the defendant from exercising a peremptory challenge against prospective juror no. 5; (3) if so, whether such an error should be subject to automatic reversal or harmless error review, *Rivera v Illinois*, 556 US 148, 162 (2009) (holding that a trial court’s erroneous denial of a defendant’s peremptory challenge, standing alone, is not a structural error under the federal constitution requiring automatic reversal, but that “[s]tates are free to decide, as a matter of state law, that a trial court’s mistaken denial of a peremptory challenge is reversible error *per se*”) and compare, e.g., *People v Bell*, 473 Mich 275, 292-295 (2005) (stating in arguable dictum that harmless error review applies to such errors) with *Hardison v State*, 94 So 3d 1092, 1101 & n 37 (Miss, 2012) (plurality opinion) (citing “[a]t least five states” that have adopted an automatic reversal rule as a matter of state law and following those states); and (4) if so, whether reversal is warranted in this case.

The time allowed for oral argument shall be 20 minutes for each side. MCR 7.314(B)(1). The Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



t0311

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 18, 2020

Clerk

Jury Selection Transcript Excerpts

Jury Selection Transcript Excerpts

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Jury Selection Transcript Excerpts

POTENTIAL JUROR ONE: Program Analyst, single.

And what as the third question?

THE COURT: Your education level.

POTENTIAL JUROR ONE: Bachelors degree.

THE COURT: Thank you, juror number one.

Good morning, juror number two.

POTENTIAL JUROR TWO: Good morning.

THE COURT: I'm going to ask you your occupation, your marital status, and if you are married what your spouse does and your highest level of education?

POTENTIAL JUROR TWO: I'm retired.

THE COURT: And what are you retired from?

POTENTIAL JUROR TWO: Counseling.

THE COURT: Okay.

POTENTIAL JUROR TWO: I was a counselor and I retired a year ago.

THE COURT: Are you enjoying your retirement?

POTENTIAL JUROR TWO: Yeah.

I'm divorced. Level of education Bachelors in Criminal Justice Administration.

THE COURT: Thank you, juror number two.

Good morning, juror number three.

POTENTIAL JUROR THREE: Good morning.

THE COURT: What is your occupation?

Jury Selection Transcript Excerpts

THE COURT: Thank you, juror number twelve.

Good morning juror number thirteen.

POTENTIAL JUROR THIRTEEN: Good morning.

Im a research assistant. I'm single. And a Bachelors in Biology.

THE COURT: What kind of research are you working on?

POTENTIAL JUROR THIRTEEN: Drug invitro models.

THE COURT: Very interesting.

Thank you, juror number thirteen.

THE COURT: Good morning, juror number fourteen.

POTENTIAL JUROR FOURTEEN: Good morning.

Direct care. Single. High school diploma. And I got my CNA certificate.

THE COURT: Thank you, juror number fourteen.

Have any members of the panel ever been on a criminal jury panel before by show of hands?

Okay. Let's start with juror number two. How long ago was that?

POTENTIAL JUROR TWO: Years and years ago but we didn't have to serve because the defendant pled or something and then we left.

Jury Selection Transcript Excerpts

THE COURT: Okay. And that was your only time?

POTENTIAL JUROR TWO: Yeah, just the one time.

THE COURT: Okay. Thank you.

Anybody else in the first row?

How about the second row?

Juror number five, how long ago was that, ma'am?

POTENTIAL JUROR FIVE: I want to say four or five years ago and I was excused or dismissed.

THE COURT: All right. Was that your only time?

POTENTIAL JUROR FIVE: Yes.

THE COURT: Thank you.

Juror number six, how long ago was your last jury service?

POTENTIAL JUROR SIX: It was four years ago and it was a murder trial.

THE COURT: Was it here at Frank Murphy?

POTENTIAL JUROR SIX: It was.

THE COURT: And without telling me what it was, I don't want to know what the verdict was, was your panel able to reach a verdict?

POTENTIAL JUROR SIX: Yes.

THE COURT: Thank you.

Jury Selection Transcript Excerpts

Juror number seven, did I see your hand?

POTENTIAL JUROR SEVEN: Yes. It was about maybe three years ago.

THE COURT: Was it here at Frank Murphy?

POTENTIAL JUROR SEVEN: Yes.

THE COURT: And without telling me what it was your panel able to reach a verdict?

POTENTIAL JUROR SEVEN: Yes.

THE COURT: Thank you. Anybody else in the second row?

How about the third row?

Okay. Do any of our jurors have any close association with persons involved in the legal profession such as attorneys or court personnel? Anybody in the first row?

Juror number four?

POTENTIAL JUROR FOUR: Yeah, I have a question. My brother's is a parole officer so I don't know if that counts or not?

THE COURT: We'll talk about that.

So your brother is a parole officer. Now, the law states that a person in law enforcement, a police officer, that testimony is to be given -- put to the same test of weight and credibility as that of any other witness meaning they don't come in with an advantage,

Jury Selection Transcript Excerpts

they don't come in with a disadvantage, you treat them like any other witness. Would you be able to do that given the fact that your brother is a parole officer?

POTENTIAL JUROR FOUR: Yes.

THE COURT: Okay. Thank you.

Second row?

Juror number five, who might that person be in relationship to you?

POTENTIAL JUROR FIVE: My father, my brother, stepmother all deputy sheriffs, and military police in my family, nephew and brother. My grandfather was an attorney who passed away but I think that's it.

THE COURT: All right. Juror number five, you heard what I said to juror number four which is that the law states that a police officer's testimony is to be weighed the same way you weigh the testimony of any other witness they don't come in with an advantage they don't come in with a disadvantage. Given the extensive law enforcement connections in your family will you be able to that in this case?

POTENTIAL JUROR FIVE: Yes.

THE COURT: Okay. Is there anything about your relationships with your family members who are in law enforcement that you think would affect your ability to be a fair and impartial juror in this case?

Jury Selection Transcript Excerpts

POTENTIAL JUROR NINE: No.

THE COURT: Now, as to your relative who is retired from the Canton Police Department the law states that the testimony of a police officer is put to the same test of weight and credibility as that of any other witness. You look at them -- you treat them like any other witness. They don't come in with an advantage or a disadvantage. If I tell you that's the law will you be able to follow it?

POTENTIAL JUROR NINE: Yes.

THE COURT: Thank you, juror number nine.

Anybody else the in the third row?

Now, has anyone on the panel or a member of your family, or a close friend been the victim of a crime? Anybody in the first row?

I usually get a lot of yes's on this one so I'm going to take my time and make sure I cover everybody.

Yes, juror number two?

POTENTIAL JUROR TWO: Yeah, we have been -- our family has been but it was a long time ago. I can't remember the years and stuff. Senior moment. I'm 64 so --

THE COURT: I'm not so far behind you.

POTENTIAL JUROR TWO: We have had, you know,

Jury Selection Transcript Excerpts

robbery and stuff like that but it was, like, a long time ago nothing recent.

THE COURT: Juror number two, is there anything about that experience, even if it was a long time ago that, would affect your ability to be a fair and impartial juror in this case which is a CCW case?

POTENTIAL JUROR TWO: No, ma'am.

THE COURT: Thank you.

Juror number three?

POTENTIAL JUROR THREE: Yes, my cousin was -- went to jail for armed robbery.

THE COURT: I'm sorry to hear that.

Now, you've heard this is a carrying a concealed weapon case. Is there anything about your cousin's experience that would affect your ability to be a fair and impartial juror in this case?

POTENTIAL JUROR THREE: No.

THE COURT: Thank you, juror number three.

Anybody in the second row?

Yes, juror number seven, who might that be in relationship to you and what kind of crime was it?

POTENTIAL JUROR SEVEN: My sister.

THE COURT: And I don't mean to be intrusive. You know, what kind of crime was it?

POTENTIAL JUROR SEVEN: A robbery.

Jury Selection Transcript Excerpts

Now, juror number five, you said you were excused?

POTENTIAL JUROR FIVE: Yes.

MS. POSIGIAN: Did you sit through the actual trial then you were excused as an alternate or did you not --

POTENTIAL JUROR FIVE: No, I was dismissed from the original panel.

MS. POSIGIAN: Okay. And then so jurors number six and seven were either of you the foreperson on the panel when you sat on the trials?

POTENTIAL JUROR SIX: No.

MS. POSIGIAN: And, juror number seven, you said twice you sat on a jury?

POTENTIAL JUROR SEVEN: Yes.

MS. POSIGIAN: They were both criminal juries?

POTENTIAL JUROR SEVEN: Yes, this one, Frank Murphy.

MS. POSIGIAN: And you had indicated you had some issue with the -- how one of your previous jury experiences went.

POTENTIAL JUROR SEVEN: Correct.

MS. POSIGIAN: Was one better than the one you were telling us about?

POTENTIAL JUROR SEVEN: Yes.

Jury Selection Transcript Excerpts

MS. POSIGIAN: Okay. So you had at least some good jury experience, right?

POTENTIAL JUROR SEVEN: Yes.

MS. POSIGIAN: As good as it can be?

POTENTIAL JUROR SEVEN: As good as it can be.

MS. POSIGIAN: All right. Now, the judge asked you if you knew people in the court system at all but does anyone -- police officers. Has anyone had a bad experience with a police officer? Got pulled over? Only juror number seven out of everybody?

(Whereupon all jurors talking in consort)

POTENTIAL JUROR EIGHT: I've been pulled over.

MS. POSIGIAN: We have to start -- For the court reporter we have to say numbers before we talk.

All right. Juror number four, what were you saying?

POTENTIAL JUROR FOUR: If you do with what the officer says you don't have an issue so.

MS. POSIGIAN: Okay. Juror number two?

POTENTIAL JUROR TWO: I'm sure I have been pulled over and stuff like that before but I don't remember how long ago that was.

MS. POSIGIAN: Okay. Anyone else pulled over by the police?

All right. There we go.

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All right. Juror number eight, you were saying something earlier?

POTENTIAL JUROR EIGHT: I've been pulled over but I haven't -- I mean, the one bad experience I had was related to a traffic ticket I thought was from another state I thought long expired but it was used --

THE COURT REPORTER: Sir, you have to keep your voice up.

POTENTIAL JUROR EIGHT: So I had a ticket that was from 10 years ago and I had -- so I got pulled over for no turn on red and eventually I had to go to court for it.

MS. POSIGIAN: And the fight went up?

POTENTIAL JUROR EIGHT: Yes.

MS. POSIGIAN: Now, was that a bad experience with the police more or with the court themselves, also?

POTENTIAL JUROR EIGHT: I would argue the police themselves, the way he did his approach to it. And it my understanding that after seven or six years it comes off the record.

MS. POSIGIAN: So it was the police officer itself you had a problem with.

What city was that out of?

POTENTIAL JUROR EIGHT: Livonia.

MS. POSIGIAN: So this is a Detroit case?

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MS. POSIGIAN: Are you good with that?

POTENTIAL JUROR NINE: Yes, but I'm confused. I mean, he's got to present something. He's obtained his lawyer, right?

MS. POSIGIAN: Well, you would want him to, of course. Right. It's natural that everybody --

POTENTIAL JUROR NINE: I would expect his lawyer to, yes.

THE COURT: And I'm sure he will.

MS. POSIGIAN: And I'm sure he will, too. But the burden is on me.

POTENTIAL JUROR NINE: Without a doubt.

MS. POSIGIAN: Do you have problem with that or are you all right with that?

POTENTIAL JUROR NINE: No.

MS. POSIGIAN: Juror number three, TV shows; do you watch CSI, Law & Order, NCIS, any of those shows?

POTENTIAL JUROR THREE: No.

MS. POSIGIAN: Any of those shows.

POTENTIAL JUROR THREE: No.

MS. POSIGIAN: What about you, juror number two?

POTENTIAL JUROR TWO: I watch television.

MS. POSIGIAN: Now, you know that those shows where they solve the crime in 37 minutes plus

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commercials that's fantasy, right?

POTENTIAL JUROR TWO: Yes, I do you understand that.

MS. POSIGIAN: Okay. That's not reality.

POTENTIAL JUROR TWO: Yes, I do understand.

MS. POSIGIAN: Okay. We're not going to solve a crime based on DNA from a fly that was found flying around in the room next door are we?

POTENTIAL JUROR TWO: No.

MS. POSIGIAN: All right. Does anyone on the panel have a CPL? Anybody have a CPL?

Okay. Juror number seven you do?

How long have you had that?

POTENTIAL JUROR SEVEN: Four years.

MS. POSIGIAN: All right. Perfect.

And you went through some training to get the CPL?

POTENTIAL JUROR SEVEN: Yes.

MS. POSIGIAN: And you went through the horrible registration process in Wayne County to get that CPL?

POTENTIAL JUROR SEVEN: Yes.

MS. POSIGIAN: And do you carry your weapon -- I mean, not here, obviously, today, but do you carry your weapon with you?

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at the table, and I'm doing this kind of thing sitting at the table, and I turn to you and I say this is -- I'm taking this jury. I'm accepting this jury. And you look up and you see 12, 14, whatever, you see 12 or 14 people and they're all African American the People who are going to sit in judgment of you. Would you be concerned?

POTENTIAL JUROR FIVE: I hope that I'm a person that looks beyond that. I work for the Dearborn School District and there's a lot of different culture.

MR. HALPERN: I hope.

JUROR NUMBER FIVE: I said I work for the Dearborn School District and I enjoy meeting other cultures and working with people getting to know people. I hope I don't look at people's skin color. I don't believe I do. It's their actions.

MR. HALPERN: Is there any person here, Caucasian person here who would say, uh oh, I'm in trouble, or I got a problem with this --

THE COURT: A problem with what, Mr. Halpern?

MR. HALPERN: An all black person jury.

So everybody's okay, right?

Good. Thank you.

Thank you, number six.

THE COURT: Five minutes Mr. Halpern.

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questions. I'm going to ask you your occupation, whether you're married and if so what your spouse does, and your highest level of education.

POTENTIAL JUROR THREE: I'm a manager for an apartment complex. I am married. My husband builds machines. And I graduated high school.

THE COURT: Thank you, juror number three.

How about you juror number 13? Your occupation?

POTENTIAL JUROR THIRTEEN: I'm a retired bus driver. I'm divorced now. And my highest education is 12th grade and some college. Not a lot.

THE COURT: Thank you.

Ladies, have either of you ever been on a criminal jury panel before?

POTENTIAL JUROR THIRTEEN: No.

POTENTIAL JUROR THREE: Yes.

THE COURT: Juror number three, how long ago was that?

POTENTIAL JUROR THREE: Ten plus years ago.

THE COURT: Here at Frank Murphy?

POTENTIAL JUROR THREE: No.

THE COURT: Without telling me what it was, was your panel able to reach a verdict?

POTENTIAL JUROR THREE: I was dismissed. They

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MR. HALPERN: Your Honor, at this time I have a motion.

THE COURT: Yes?

MR. HALPERN: The prosecution has excused four people and I can't -- I can't recall whether or not the fourth person was an African American but three of them were. And I believe that this Court needs to at least attempt to get a definitive answer from the prosecutor about dismissing at least three, and I'm not sure of myself, the four people that she has excused. I'm positive, as I say, about the three but not number four.

THE COURT: The fourth was juror number 13 and that was a Caucasian person.

MR. HALPERN: Yes.

THE COURT: And, currently, our jury panel has one, two, three, African Americans.

MS. POSIGIAN: Would the Court like me to respond?

THE COURT: Hold on just a moment. I just want to check something.

Well, the first I would note is that we are now into, I think, the fifth round of jury selection or the fifth round of selection of jurors. And the People excused juror number two, number three, and number fourteen quite a while ago. So I am unable, at this

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point, to bring these jurors back so that I can determine whether or not there was -- whether or not there was a race neutral ground for the peremptory challenge. The Batson challenges are supposed to be brought up before the jurors actually leave so that there can an articulation of a legitimate and nondiscriminatory for the excuse. As I indicated we're now into the fifth round of jury selection and those jurors are now gone.

But, anyway, Mr. Halpern, let's go ahead and address your Batson challenge.

MS. POSIGIAN: Well --

MR. HALPERN: I did.

MS. POSIGIAN: If I --

MR. HALPERN: I did address it. The fact -- and what the Court just said about doing it at the time that it happens is absolutely -- respectfully, is not a requirement and there's no problem in calling those jurors back if that's the ultimate --

THE COURT: Oh, really, there's no problem in calling these jurors back? Okay. Thank you.

MR. HALPERN: Correct. The information is there and they can readily be recalled. And if you excuse each juror each and every time that something happens we would have the entire panel and everybody

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going back and forth. Also, it shows that there is a pattern and that's what I'm reflecting. Batson doesn't necessarily have to show a pattern the way, you know, Swain versus Alabama, you had show a pattern with other cases, and prior, and other cases to show that the prosecutor was not making a racist decision that would cause the case to have -- to be started a new panel.

THE COURT: I would also note for the record that we still have three African Americans on the jury and we have one Hispanic juror.

MR. HALPERN: Well, we do but we also have three less black people.

THE COURT: All right. I don't remember what's left vernier as fr as African Americans.

Ms. Posigian?

MS. POSIGIAN: Yes, your Honor. I believe that one of the jurors is Asian with a Hispanic name. Also, we have juror eight who is an Arabic male on the panel just so the record is clear.

With regard to the non-based reasons for my dismissal I did dismiss three African American jurors. I can put the reasons on the record if the Court would like?

THE COURT: Sure. Let's start with juror two, Ms. Fulton-Goree.

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MS. POSIGIAN: With regards to juror number two she had what seemed, at least to me, to be a very difficult time with short-term memory. She could not remember the Court's first question when asked what her occupation was and she couldn't remember any of the additional questions after that. She had to ask a few times. Also, she indicated she's having a senior moment here and there. She indicated, when asked about contact with the police, she thought she had been pulled over or she thought she had contact with the police before. She couldn't remember any sort specifics. Same with whether herself or her family were a victim of the crime she thought, yes, maybe robberies or armed robbery or something, I can't remember, I can't remember, I don't remember how long ago, I don't remember anything. So she had a problem with memory and it's the Peoples concern for her that if we're going to hear testimony today and then have a long weekend and come back on Monday. And, so, the likelihood that she would forget testimony seemed fairly probable and the People were concerned about that.

THE COURT: All right. Mr. Halpern?

MR. HALPERN: Yes. There's absolutely no validity to what was just stated. That witness indicated only a difficulty in remembering whether

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something happened 10 years ago. And if the Court wants us to review anything I'm sure the court reporter could do so if the Court wished the exact word back and forth. Just repeating memory, memory, by the prosecutor is not reflective of what that perspective juror indicated. There was no memory problem whatsoever.

THE COURT: All right. Thank you.

The first step in a Batson challenge is whether the facts and circumstances of the voir dire suggests that racial discrimination motivated a strike. Evidence raising merely an inference of discrimination surmounts the first Batson step creating a prima facia case. And I'm reading from the case of People versus Tennille, T-E-N-N-I-L-L-E. I don't have the official sight but it's one of the most recent pronouncements from the Court of Appeals on the issue of Batson. And the Westlaw number is 2016 Westlaw 1547160. So --

MR. HALPERN: What? I didn't hear.

THE COURT: You're not familiar with the Tennille case?

MR. HALPERN: Yes, but I wanted to take that number.

THE COURT: 1547160.

Once a prosecutor has offered a race neutral explanation for the peremptory challenges and the trial

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Court has ruled on the ultimate question of intentional discrimination the preliminary issue of whether the defendant has made a prima facia showing becomes moot. And that's the case of Hernandez which is 500 U.S. at 359. And then the step two of the Batson framework is that the prosecutor must articulate a neutral explanation related to the particular case to be tried. And the second step the Court is only concerned with whether the proffered reasons violates the Equal Protection Clause and that's, again, part of the Batson case.

I'm going to find in this case that the prosecutor as to juror number two has offered a race neutral explanation for the peremptory challenge and further has articulated a neutral explanation for the dismissal. Juror number two did indeed have a difficult time with memory she did discuss senior moments. She had to kind of had to step back and reach back in her memory to recall things such as whether or not she had been the victim of a crime, such as -- there were some other specific ones. But I do remember she did seem to have a problem keeping up with this case.

And Batson's second step does not required articulation of persuasive reason or even a plausible one so long as the reason is not inherently

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discriminatory it suffices. And that's the case of Rice versus Collings, 546 U.S. 333 which is a (2006) case.

So here the prosecutor has provided a race neutral explanation for her peremptory challenges to number two so I'm going to then deny the Batson challenge as to juror number two.

And I'll even go to the third step which requires that the trial Court make a final determination of whether the challenger of the strike, which would be the defense, has established purposeful discrimination. And whether there is purposeful discrimination is the persuasiveness of the prosecutor's justification for the peremptory strike. It comes down to whether the trial Court finds the prosecutor's race neutral explanations to be creditable. And in this case I will find that it was reasonable, her explanation is not improbable, there was a rationale that had some basis in accepted trial strategy. And so I'm going to deny the Batson challenge as to juror number two.

Next juror?

MS. POSIGIAN: As it relates to juror number three who I believe was the first juror that I struck, Ms. Whitford. She clearly did not want to be here. She was refusing to make eye contact with myself asking her questions, she was sitting down rolling her eyes, she

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MS. POSIGIAN: Pass for cause.

THE COURT: Peremptory, Mr. Halpern?

MR. HALPERN: May I consult with my client?

THE COURT: Certainly.

MR. HALPERN: Thank you for the opportunity to consult.

Your Honor, we would thank and excuse juror number five.

THE COURT: Thank you, juror number five.

MS. POSIGIAN: Your Honor, before that juror is excused --

THE COURT: Would you like to take up a matter outside the presence of the Court?

MS. POSIGIAN yes, please.

THE COURT: Outside the presence of the jury?

MS. POSIGIAN: Yes.

THE COURT: Could you, please, all exit the court room, please?

(Jurors exit the courtroom at 2:23 p.m.)

THE COURT: Ms. Posigian?

MS. POSIGIAN: Your Honor, the People are concerned that the defense has excused three jurors, they are all Caucasian, and based on, especially, the third challenge witnesses reasons, the People didn't see any reason the defense would want to excuse her and are

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asking for a race neutral reason for excusing all three of the white jurors?

THE COURT: Well, let's start with juror number five because jurors numbers 11 and 14 were excused a while ago.

MS. POSIGIAN: They were.

THE COURT: So let's talk about juror number five.

Mr. Halpern?

MR. HALPERN: Juror number five's father is or was a police officer. Juror number five indicated that she had a felony conviction, although apparently nothing seemed to showup, but I would think the People know what they have a conviction of. There was real closeness --

THE COURT: I'm sorry, Mr. Halpern, I can't hear you --

MR. HALPERN: Father and brother I think were somehow connected with law enforcement. And there were some personal feelings back and forth that I had when I was questioning her that would seemed to me to be negative.

THE COURT: Such as what?

MR. HALPERN: Just my feelings, my feelings of exchange of words that I felt were unfriendly, somewhat

## Jury Selection Transcript Excerpts

antagonistic I felt. So all of those reasons.

THE COURT: Ms. Posigian?

MS. POSIGIAN: Your Honor, that juror, juror number five, ha been on the panel, I think she was on the initial panel. And there are several people that have friends or family members that are in law enforcement.

With regard to her felony conviction the officer-in-charge did run her name and her date of birth over the break that we had and she had no record.

THE COURT: And that was placed on the record, too, as I recall.

MS. POSIGIAN: Yes. And feelings aren't anything that really had been articulated.

The people are concerned that there's not a race neutral reason for excusing juror number five.

MR. HALPERN: I've used the same reasons in reasoning that the prosecutor used in terms of exchange of feelings, and the looks of somebody, the responses that were made. And number five also didn't really recall things so maybe she has a real problem remembering --

THE COURT: I don't recall that at all, Mr. Halpern. We haven't spoken to juror number five since we had our first round of dismissals. Juror

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number five has been just sitting there.

MR. HALPERN: Right. But my concern --

THE COURT: So I'm confused. I don't remember her saying she couldn't remember anything.

MR. HALPERN: Yeah, she couldn't remember -- First of all, the conviction was out of state so I don't know whether or not the officer was able to check --

THE COURT: Let's swear the officer in.

Madam clerk, could you swear the officer in, please?

THE CLERK: Yes.

Do you solemnly swear or affirm that the testimony you're about to give will be the truth and nothing but the truth?

OFFICER BARNETT: Yes.

THE COURT: Officer, I believe we've already placed this on record but you did, based upon juror number five indicating that she had an old conviction out of Illinois --

OFFICER BARNETT: Yes.

THE COURT: We provided a date of birth and her name. What were you able to find?

OFFICER BARNETT: I was able to find nothing on her record. She did not have a criminal record at all. And when you -- in state or out of state.

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THE COURT: Mr. Halpern?

MR. HALPERN: Yes?

THE COURT: So your objection to her criminal record --

MS. HALPERN: Well, then, my position is that she's lying. If they didn't find it, and according to the officer, then she wasn't telling the truth and I certainly don't want my client to be judged by someone who isn't telling the truth either way.

THE COURT: First of all, again, with Batson the first step is whether the facts and circumstances of the voir dire suggests that racial discrimination motivated a strike. Evidence raising merely an inference of discrimination surmounts the first Batson test creating a prima facia case. I think in this case the prosecution, as to juror number five, has established a prima facia case because this is the third peremptory challenge which the defense has raised. The other two were Mr. Trueblood, juror number 11, and Ms. Lori Monkaba who was juror number 14.

The step two is to articulate a neutral explanation related to the particular case to be tried. And in this particular case Mr. Halpern articulates the fact that she has police officers in her family. But during the voir dire of number five I did not hear any

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additional voir dire directed to her about her relationships with police officers. She testified clearly to me during the voir dire that her relationships would not affect her ability to be a fair and impartial juror and she understood that the testimony of a police officer is to be put to the same challenges of weight and credibility as that of any other witness.

As far as any -- as far as the fact that she didn't have a conviction or couldn't remember a conviction I'd far rather a juror disclose that she thinks that she may have a conviction and we investigate it and find out that she doesn't rather than a juror lie and say I don't have one when in reality they do. I don't feel it's appropriate to kick juror number five because she raised a concern which the Court was able to address.

Finally, when we talk about evaluating the plausibility of a race neutral explanation for a strike in light of all the evidence with a bearing on it this inquiry, according to the Tennielle case necessarily includes careful consideration of relevant, direct, and circumstantial evidence of intent to discriminate. And, also, in this case I have asked the defense very specifically what problems they have with

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juror number five considering the fact she has been seated on this jury since the original 14 jurors were impanelled. What I'm hearing is feelings. There is -- I have to -- I'm charged as the judge -- I'm charged as the judge to probe more deeply when someone just talks about feelings. And there's not sufficient facts here. I'm not hearing about somebody that's sleeping, somebody nervous, preoccupied, angry, disrespectful or agitated. I'm just hearing about feelings. I'm tasked with engaging in a more penetrating analysis focussing on ascertaining whether the proffered race neutral reason is pretext intended to mask a discrimination. Evaluation of the central question requires the Court to permit argument by the opposing counsel who bears the burden of persuading the Court that the -- that there was purposeful discrimination here. This record lacks any objective indicia of concern -- concerning the impartiality of juror number five or that she is otherwise unfit to serve as a juror in this case. So I'm going to find -- I'm sorry, let me just double check. I'm going to find that the reason offered is insufficient and I am going to find that the challenger has established purposeful discrimination. So I'm going to keep juror number five on the jury but --

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MS. POSIGIAN: Thank you, your Honor.

THE COURT: Anything else?

MS. POSIGIAN: I don't -- Not on behalf of the People.

THE COURT: Bring number five back in she's going to remain on the jury.

(Jurors seated in courtroom at 2:33 p.m.)

All right.

MR. HALPERN: Your Honor, may I be excused for less than a minute? I have someone in the hallway regarding this matter I need to advise them that they may leave.

THE COURT: No, Mr. Halpern. We need to pick the jury. You can talk to your person on a break but we need to pick this jury.

Juror number five is going to remain on the jury.

We were at peremptory challenges. I believe that Mr. Halpern had exercised one. Juror number five is going to remain on the jury.

Mr. Halpern, do you have any other peremptory you would like to exercise?

MR. HALPERN: Thank and excuse juror number eight.

THE COURT: Okay. Would you like to exercise

DPD Officer Royer Hernandez, Transcript Excerpts

DPD Officer Royer Hernandez, Transcript Excerpts

you're about to give in the cause now pending before  
this Court will be the truth so help you God?

THE WITNESS: I do.

THE CLERK: Spell your name.

THE WITNESS: First name Royer, R-O-Y-E-R.  
Last name Hernandez, H-E-R-N-A-N-D-E-Z.

DIRECT EXAMINATION

BY MS. POSIGIAN:

Q Good morning.

A Good morning.

Q Could you please state your name again for the record?

A Yes, Royer Hernandez.

Q And how are you employed sir?

A I'm a police officer for the Detroit Police Department.

Q What is your current assignment?

A I'm with the 30-Series at number two the second  
precinct.

Q Second Precinct Detroit Police Department?

A Correct.

Q What is 30-Series?

A We, basically, we go for known offenders. We deal with  
drugs, guns, anything that comes with violent crimes.

MR. HALPERN: May we approach, your Honor?

THE COURT: No. Actually, I'm going to send  
jury out.

DPD Officer Royer Hernandez, Transcript Excerpts

THE COURT: I understand. Mr. Halpern. Your motion to oh dismiss is denied.

Ms. Posigian, I suggest you move right on into the facts of this case, please?

MS. POSIGIAN: Yes, your Honor.

THE COURT: Let's bring the jury back out.

(Jurors seated in jury box at 9:37 a.m.)

Counselors, are our jurors all present?

MS. POSIGIAN: Yes, your Honor.

MR. HALPERN: Yes, your Honor.

THE COURT: Please continue Ms. Posigian.

BY MS. POSIGIAN, CONT'D:

Q Officer Hernandez, are part of your duties patrolling the Second Precinct?

A Correct.

Q And were you working -- were you so employed back on October 15th, 2016?

A Yes, ma'am.

Q And were you working that day?

A Yes.

Q At approximately 4 o'clock p.m. were you working?

A Yes.

Q Were you working alone or with a partner?

A I was working with an Officer Alexander Collrin.

MS. POSIGIAN: C-O-L-L-R-I-N, for the record.

DPD Officer Royer Hernandez, Transcript Excerpts

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BY MS. POSIGIAN, CONT'D:

Q And were the two of you on foot or in a vehicle?

A We were in a vehicle.

Q Who was driving the vehicle?

A I was driving the vehicle that day.

Q Aside from the two of you is anyone else the car?

A No, ma'am.

Q Prior to going on the road do you attempt to see -- Well, was the vehicle you were in that day outfitted with a camera?

A Yes, ma'am.

Q And prior to going on the road that day did you make attempt to see if the camera was working?

A Before we hit the road we do what is a vehicle inspection where we ensure that our video and audio is functioning and synchronized to the vehicle that way if we come in contact -- on a traffic stop when the lights are activated -- when the lights are activated that activates the microphone and turns on the camera.

Q So lights have to be activated?

A Correct.

Q And did it appear that the video was functioning that day?

A That day, yes.

Q So the two of you were on the road together. At some

DPD Officer Royer Hernandez, Transcript Excerpts

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point do you get to the area of Kendall and Monte Vista  
in the City of Detroit?

A Yes.

Q And you said you were driving still?

A Yes, we were driving northbound.

Q On what street?

A On Monte Vista.

Q And did you see anything that draws your attention?

A Yes. At that point when we were driving northbound my  
partner, Officer Collrin, said --

Q Well, let me stop you right there.

We can't say what someone said.

A Correct.

Q But he said something to you?

A My partner drew my attention. He made a statement  
concerning the defendant.

Q Okay. And based on what he said did you look anywhere?

A I did. I looked in the direction that my partner was  
speaking of.

Q And what direction was that?

A I believe it was east on Monte Vista.

Q Okay. Did you -- And you said that the defendant -- You  
observed the defendant?

A Yes.

Q When you say the defendant who are you speaking of?

DPD Officer Royer Hernandez, Transcript Excerpts

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A Mr. Kabongo. He's wearing the suit.

MR. HALPERN: I stipulate that he's looking directly at Mr. Kabongo and identified him.

THE COURT: Thank you.

MS. POSIGIAN: Thank you.

BY MS. POSIGIAN, CONT'D:

Q So you see the defendant?

A Yes, ma'am.

Q And did you make any observations of anything particular with regard to the defendant at that point in time?

A Yes, the defendant was walking toward the street. At that time he had a weapon which was holstered and exposed which is an open carry weapon. I didn't think much of it. Once he -- Well, that's my observation when I first saw him. He has -- May I stand to show?

Q Yes. If that would assist the jury with your testimony?

A He was walking eastbound towards the street of Monte Vista when we first saw him kind of similar to what my weapon is. It's open carry.

MS. POSIGIAN: And, for the record, the witness has an exterior black leather holster on his right hip with a gun holstered this that holster and the sweat shirt he's wearing is tucked behind the gun.

THE WITNESS: Correct. Which would be it's open carry.

DPD Officer Royer Hernandez, Transcript Excerpts

BY MS. POSIGIAN, CONT'D:

Q I should ask you what were you wearing that day?

A I was wearing something similar to this. It was a little warmer so it wasn't a sweater. But it was black shirt, same green pants, black boots.

Q Did it is the DPD logo?

A With a badge on --my badge displayed on the left and my last name and badge on the right side.

Q And what kind of car were you in that day?

A I was in a 2014 black Dodge Charger police interceptor.

Q Does it have police on the sides?

A Correct. It has police on the front and on back with an X plate.

Q And did it have lights and sirens --

A It had lights on the inside. It's not overhead lights but it's on inside. It does come equipped with the lights and siren.

Q You said that you saw the defendant walking eastbound toward the street?

A Correct.

Q And what did you observe next?

A We continued going northbound at a slow speed. Mr. Kabongo proceeded to walk into the street into a pickup truck that was parked in front of the house it was a four door pickup truck.

## DPD Officer Royer Hernandez, Transcript Excerpts

- Q Would you mind going around and pointing for the jury?
- A Yes, ma'am. This house right here.
- Q So, for the record, the second house on the west side of Monte Vista south of Kendall?
- A Correct.
- Q Okay. You said he walked into the street into his -- or a pickup truck?
- A Correct.
- Q And what did you observe next?
- A The vehicle was a four-door pickup truck. He walked to the driver's passenger side which we all know a four-door pickup truck has the rear passenger side. He opened up the passenger. It appeared he was grabbing tools at that time. I continued to make my observation of Mr. Kabongo using the mirror on the vehicle so I turned it that way.
- Q Let me stop you real quick.
- So you said you're traveling northbound. At some point did you pass him?
- A Correct.
- Q Okay. So you're using your mirrors to look southbound Monte Vista?
- A Correct.
- Q At what point did you pass him? Where was he when you passed him?

DPD Officer Royer Hernandez, Transcript Excerpts

A I don't -- I don't pretty much remember at what point but I do remember he was walking towards the street. I had a clear view of him because he was walking towards the street. But we were going at a slow rate of speed.

MR. HALPERN: Your Honor, I object. It has nothing to do with the question. If he doesn't know he doesn't know.

THE COURT: Overruled.

BY MS. POSIGIAN, CONT'D:

Q So at some point you're looking in your mirrors and what do you see next?

A I see Mr. Kabongo he opened up the driver's passenger door. He had a blue shirt on that day. He grabbed his blue shirt and he covered his weapon.

May I demonstrate?

Q Yes, please?

A He was opening up the passenger door. Once he opens it up he's grabbing some tools or something. He looks and with his right hand he completely covers his weapon. That's when I stopped my vehicle.

Q Okay. I'm going to stop you real quick.

MS. POSIGIAN: So, for the record, the witness is taking the sweatshirt from behind the gun, which is on his right hip, and placed it all the way coving down over the bottom the barrel of the gun?

DPD Officer Royer Hernandez, Transcript Excerpts

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BY MS. POSIGIAN, CONT'D:

Q Fully concealing the weapon?

A Correct.

Q And you said, when you were doing your demonstration, he looked back, and you were looking over your right shoulder?

A I was looking through my rear -- the vehicle's mirrors.

Q Did Mr. Kabongo, the defendant, look back?

A I don't know what direction he was looking at but he was looking northbound on Monte Vista, well, his face was facing northbound on Monte Vista.

Q In your direction?

A Correct.

Q You stopped your vehicle?

A I stopped my vehicle.

Q What did you do next?

A I exited out of the vehicle. At that point he had already closed the door. He was walking back towards the house. I asked him if he had a CPL for the weapon. Based on my observations prior I had observed him open carry and then conceal the weapon. I knew that, in fact, what he had on his hip was a weapon. So I asked him if he had a concealed pistol license to carry the weapon concealed.

DPD Officer Royer Hernandez, Transcript Excerpts

year. Just to double check I didn't want to just go off --

MR. HALPERN: Objection to the conversation, your Honor.

THE COURT: Okay. I'll taken the objection.

BY MS. POSIGIAN, CONT'D:

Q What was the purpose for you looking at the CPL?

A Just to verify the expiration date on the CPL.

Q And you said you remember it was over a year but you didn't remember the exact date?

A I believe it had an expiration of 2015. I don't remember the exact date.

Q Did you later ascertain what that date was or did you ascertain on the certificate the date it expired?

A Yes.

Q Did you put that date in your report?

A I believe so.

Q Would seeing your report refresh your recollection as to that date was that it expired?

A Yes. Expiration date was 9-12, 2015?

Q Now, based on the information that the CPL was expired what did you do next?

A I gave it to my partner so he could enter it into LEIN. LEIN is --

Q What is it that you gave your partner?

DPD Officer Royer Hernandez, Transcript Excerpts

A The CPL license. That way he could verify through LEIN.

LEIN is our Law Enforcement Information Network. We use it to aid us when verifying the authenticity or if it was renewed in fact. Once it was put into the LEIN system it came back that it was still expired.

Q And what did you do after you verified the fact that it had expired over a year ago?

A I disarmed Mr. Kabongo and we advised him that he was under arrest for carrying a concealed weapon.

Q Prior to October 15, 2016 had you ever come into contact with the defendant before?

A No.

Q You said you observed the defendant open carrying his gun prior to concealing it?

A Correct.

Q Are you trained or advised regarding open carry laws in the police academy?

A Yes.

Q Is there some sort of ongoing continuing education with regard to open carry?

A Yes.

Q And with regard to concealed pistol licenses are you also educated on people carrying weapons concealed pursuant to a license?

DPD Officer Royer Hernandez, Transcript Excerpts

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A Yes.

MS. POSIGIAN: May I have one moment?

BY MS. POSIGIAN, CONT'D:

Q You said you observed the defendant open carrying his gun as you passed him?

A Yes.

Q Was there anything illegal about what the defendant was doing at that point in time?

A No. He had a second amendment right to open carry the weapon.

Q Is there anything else illegal going on at that location that day that you were aware of that -- with regard to the defendant, his gun, et cetera?

A No.

Q Okay. As part of your training and hiring into the police department do you swear an oath to uphold the law?

A Yes, ma'am.

MS. POSIGIAN: No other questions.

THE COURT: Thank you.

Mr. Halpern?

CROSS EXAMINATION

BY MR. HALPERN:

Q As of that date approximately how long had you been a police officer?

DPD Officer Royer Hernandez, Transcript Excerpts

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Q I was just asking where. I'll try the question a different way.

Do you, in any manner whatsoever in your report, indicate that Mr. Kabongo went into the street; can you answer that yes or no and if you can't I'll try a different question?

A That's a no.

Q When your partner got out he was the passenger, right?

A That's correct.

Q If you know, did he get out the passenger's door or the driver's door?

A He was a passenger so he would get out the passenger door.

Q That's how you would refer to it is the passenger door?

A Correct.

Q In your report, am I correct, you can look at it if you'd like, don't you indicate that Mr. Kabongo opened the passenger's side door to retrieve tools?

A That's correct.

Q Where, if at all, in your report do you indicate that he went to the driver's side of the car?

A I don't indicate the driver or passenger side. I indicate the passenger because that's what I referred it to. But I don't indicate the specific until my testimony.

DPD Officer Royer Hernandez, Transcript Excerpts

Q Back to my question. Where, if at all, do you indicate that he went to the driver's side passenger door?

MS. POSIGIAN: Objection, your Honor, it's been asked and answered.

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

THE WITNESS: I don't.

BY MR. HALPERN, CONT'D:

Q Would you agree that, just an if, if Mr. Kabongo had, in fact -- if, it's an if question. If Mr. Kabongo had indeed gone to the passenger door where I just -- where I've just indicated --

MS. POSIGIAN: I can't see, Mr. Halpern.

Okay. Indicating, for the record, not the door the witness -- he's just simply referring to which is the driver side rear door but now indicating, for the record, the front passenger's side door.

MR. HALPERN: Thank you.

BY MR. HALPERN, CONT'D:

Q If he had gone to that door, if Mr. Kabongo had, in fact, opened the passenger door as you reported it in your arrest report would you say he opened the passenger side door to retrieve tools during which time he covered his shirt over the weapon. Unquote. Am I correct you would have been physically unable to see what you claim

DPD Officer Royer Hernandez, Transcript Excerpts

that you saw on the right side of his hip?

MS. POSIGIAN: I'm going to object to the question. It calls for speculation.

THE COURT: Overruled.

BY MR. HALPERN, CONT'D:

Q This being the door that he would open, this being him right where my pointer is, whether you even possibly saw him from this way would be the door, and if you saw him this way you wouldn't see his right side; am I correct? You would not have been able to see him do what you claim you saw if he did open this door?

A If that would have meant that his right side would have been facing southbound that means I wouldn't have been able to see what you're depicting?

Q So as you've indicated I'm correct?

A Correct.

Q Is that right?

A That's correct.

Q Although you're proceeding slowly down the street from the point that you first see Mr. Kabongo, according to your testimony, did you, in fact, by the time he, according to you, gets around to the driver side rear -- You don't have rear in there do you?

A No, I didn't put rear.

Q By the time he gets from where you first saw him, to the

DPD Officer Royer Hernandez, Transcript Excerpts

Q Getting guns from a person who's open carrying is, would you agree, is like being able to pick the low hanging fruit easy, it's exposed; would you agree?

A I don't get guns from people that open carry.

Q Getting back to my question. Getting open carry guns from people who are doing that is a pretty easy way to get guns off the street isn't it?

A No.

Can you repeat your question?

Q Now, this video that you say you checked and everything was there, when after that did you do anything whatsoever to see if there was a video?

MS. POSIGIAN: Objection. Beyond the scope.

THE COURT: Sustained.

BY MR. HALPERN, CONT'D:

Q In telling -- in saying something to Mr. -- although you don't remember all details, in saying something to Mr. Kabongo, who was upset by his being arrested, did you in anyway whatsoever indicate to him that the video made you do it and you had no choice but to arrest him?

MS. POSIGIAN: Objection. Beyond the scope.

THE COURT: Sustained.

Questions about the video are beyond the scope of the prosecution's redirect.

BY MR. HALPERN, CONT'D:

DPD Officer Robin Rodgers, Transcript Excerpts

DPD Officer Robin Rodgers, Transcript Excerpts

BY MS. POSIGIAN:

Q Good morning.

A Good morning.

Q Can you pull that microphone close to you it's kind of low?

A Sure will.

Q Good morning.

Could you please state your name for the record?

A Police Officer Robin Rogers.

Q And you said police officer; you're employed with the police department?

A That's correct.

Q Which police department is that?

A Detroit Police Department.

Q And what is your current assignment?

A Technical Services Bureau. Right now, particularly, I do the data 911 in-car vary requests.

Q And were you requested by the officer-in-charge, Lashawn Barnett who's sitting next to me, to attempt to locate a vehicle -- I'm sorry, a video from a vehicle from an incident that occurred October 15, 2016 in the City of Detroit?

A Yes, that's correct.

Q And what are your normal policy and procedures for

DPD Officer Robin Rodgers, Transcript Excerpts

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pulling or extracting that video?

A When I usually get the request I try and extract that video as soon as possible.

Q And did you do that in this particular case?

A Wasn't able to extract the video. The video media file was not located so I sent a screen shot to the OIC in regards to the video wasn't located.

Q And when you say the video wasn't located that does that mean it just doesn't exist?

A This particular media filed did not exist for that particular date. Between the hours -- Well, I have a screen shot. Can I read it off?

Q Well, did you -- You attempted to locate the video for that date and time?

A Yes.

Q You said it did not exist for that vehicle; is that right?

A Exactly.

Q And did you further explore what video may be available for this particular vehicle?

A Yes, I did.

Q Okay. And what did you find out when you did that?

A During my investigation what I found was that the vehicle during this particular October, between October the 17th and August 19th, there was no media found for

DPD Officer Robin Rodgers, Transcript Excerpts

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this video.

Q So August 19th, 2016 through October 17, 2016?

A August 19th, 2017 through --

Q Is it 16th?

A Yes. So October 17th, 2016, yes, no media files found.

Q Is that -- And then you said you took a screen shot of your findings?

A Yes.

Q And then did you provide that to the officer-in-charge?

A Yes, I did.

Q As well as the prosecutor's office?

A Yes.

Q How long were you a detective at the services bureau?

A For a good four years.

Q Pulled a lot of scout car videos in your day?

A Oh, many, yes.

Q Have you made attempts to locate videos and similar to this files don't exist?

A Yes.

Q Is that something that's uncommon?

A It's common.

Q All right. Since the date of this offense had --

MS. POSIGIAN: Well, I have no other questions.

THE COURT: Thank you.

DPD Officer Robin Rodgers, Transcript Excerpts

MS. POSIGIAN: Two last dates.

THE COURT: That's correct. She testified to two dates on this so you might want to rephrase your question.

BY MR. HALPERN, CONT'D:

Q You testified to what apparently is two last dates meaning that there were two dates that it was full; what does that mean two last dates?

A What are you asking me?

Q What was the last date or dates that the video on that vehicle recorded incidents and was working? What is the last date or dates?

A Okay. So -- Can you rephrase the question what? Are you really asking? What are --

Q You indicated that on October, 15th according to you're looking at -- you're looking at -- I withdraw that.

What is that you're examining in order to make your determination of whether the video exists?

A I believe what you're trying to say is the last date to the media file recorded prior to October 15th was August the 19th. Media stopped August 19th.

Q So for two months there was no recording?

A Since August, that's right.

Q What happened in September?

A There was no recording here for the month of September.

DPD Officer Alexander Collrin, Transcript Excerpts

DPD Officer Alexander Collrin, Transcript Excerpts

MS. POSIGIAN: Yes, your Honor.

People call Officer Collrin.

THE CLERK: Raise your right hand.

Do you solemnly swear that the testimony  
you're about to give in the cause now pending before the  
Court will be the truth so help you God.

THE WITNESS: A-L-E-X-A-N-D-E-R,  
C-O-L-L-R-I-N.

DIRECT EXAMINATION

By MS. POSIGIAN:

Q Good morning, sir.

A Good morning.

Q Would you please state your name for the record?

A Alexander Collrin.

Q And how are you employed?

A I'm a police officer with the City of Detroit.

Q How long have you been with DPD?

A It will be 10 years in this upcoming September?

Q And what is your current assignment?

A I work 30-Series at that time Second Precinct.

Q And were you working in that capacity back on October  
15, 2016 about 4:00 p.m.?

A Yes, ma'am.

Q Were you working alone or with a partner?

A With a partner.

DPD Officer Alexander Collrin, Transcript Excerpts

- Q And what was that person's name?
- A Royer Hernandez.
- Q Did the two of you were you on foot or in a vehicle?
- A In a vehicle.
- Q Who was driving?
- A My partner, Royer Hernandez.
- Q And where were you seated in that car?
- A The front passenger seat.
- Q And at some point did the two of you come to the area of Monte Vista near Kendall in the City of Detroit?
- A Yes, ma'am.
- Q And what direction were you traveling in that area?
- A My scout car was going -- made a left turn off Schoolcraft and was going northbound on Monte Vista approaching Kendall.
- Q I'm going to hand you what's been admitted as People's Exhibit 1 with the red dot showing Kendall and Monte Vista. Can you -- and I know it's not depicted on that map. But can you explain to ladies and gentlemen of the jury when looking at this map where Schoolcraft is?
- A Schoolcraft is an east and west street. It's just north of the Jeffries. Schoolcraft is a main thoroughfare for east and west traffic and Monte Vista is a residential street.
- Q So looking at Exhibit 1 that's depicted on the screen

## DPD Officer Alexander Collrin, Transcript Excerpts

would that be above the area that we can see the top or below the bottom we can see at the bottom, Schoolcraft?

A Well, you can't see Schoolcraft, it's not marked on the street, but Schoolcraft would be just below on the bottom.

Q So south of that location?

A That's correct.

Q How many blocks south?

A It's just one city block. So from Kendall it's one city block to Schoolcraft.

Q So it's just below the cutoff lane of that map?

A Yes, ma'am.

Q So you're, you said, turned left so you're traveling north on Monte Vista?

A That's correct.

Q And do you make any observations before you got to Kendall?

A Yes, ma'am.

Q And what do you see?

A I observed Mr. Jacques Kabongo he walking down the driveway, the second house between the first and second house and the driveway, he was walking eastbound along the driveway approaching towards Monte Vista.

Q All right. When you said the second house the second from where?

DPD Officer Alexander Collrin, Transcript Excerpts

Q Based on your observation you said you let your partner know. Did you do anything else?

A No. I just advised -- I advised my partner of my observations and then my intention was to the narcotics location that I had a complaint on.

MR. HALPERN: Your Honor, I would ask -- Would you allow me to approach?

THE COURT: We're going to send the jury out.

MR. HALPERN: Thank you.

(Jurors exit to jury room at 11:49 a.m.)

The Court has my objection. I move for -- The Court has my objection to what's just been heard and in violation of the Court's order.

THE COURT: Hold on just a minute, Mr. Halpern.

Officer Collrin, could I ask you to step off the witness and back into the room, please?

Okay. Your objection is to again, Mr. Halpern so the record is clear?

MR. HALPERN: My objection is to the officer's testimony in violation of the Court's order and in violation, apparently, of what the prosecutor reportedly told the officer. And I believe the open ended question even asks or begged for that kind of response but, you know, I can't be certain about that. That's difficult

## DPD Officer Alexander Collrin, Transcript Excerpts

- A When he's approaching the grass I can no longer see the weapon being exposed. So at that time when I made the observations the shirt was draped over the top of the gun and I could no longer see the gun.
- Q So based on that what did you do?
- A My partner -- it was pretty much an information encounter to start with.
- Q Well, did the car keep going or did --
- A No, my partner stopped the scout car. Both myself and my partner exited out the vehicle. We approached Mr. Kabongo.
- Q Now, where did you stop the vehicle you were in?
- A My vehicle was just passed the bumper. There's a white pickup truck right there in the picture.
- Q On Exhibit 2. All right.
- A So just, maybe, our bumper is right about where the bumper or the front end of the pickup truck in the picture. So our vehicle's just past passed the pickup truck beyond the back of the threshold of the pickup truck and it's just pulled up a little further forward.
- Q The stop, you said, was informational, right?
- A That's correct.
- Q Okay. At some point did you approach the defendant?
- A Myself and my partner, yes.
- Q When you approached him were you able to still see the

DPD Officer Alexander Collrin, Transcript Excerpts

weapon you seen earlier?

A No ma'am.

Q Why not?

A The shirt was draped over the top of the gun.

Q Did you have a conversation with the defendant?

A My partner was the only person that made contact with the defendant. Being the jump man I'm the cover officer. My partner's the leads officer and he's making any type of communication with whoever we come in contact with unless a question that is directed toward me and then I would respond to the question.

Q So, in this case, did you observe a conversation between the defendant and your partner?

A Yes, ma'am.

Q How far away from those two people were you when that conversation happened?

A I'd say about seven, eight, feet.

Q Were you able to hear what that conversation was?

A Yes, ma'am.

Q Did the defendant advise that he had a CPL?

A Yes, ma'am.

Q Did you do anything with regard to that information?

A My partner asked Mr. Kabongo if he had a concealed pistol license, he produced a concealed pistol license. Mr. Kabongo also made a statement that his

DPD Officer Alexander Collrin, Transcript Excerpts

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it.

Q Now, when you get out of the car did you get out of you car on the passenger side?

A Yes, sir.

Q Why do you call it the passenger side?

A Because it's the passenger side of the vehicle.

Q Okay. So when you put into your report Mr. Kabongo went to the passenger side of his gray Ford that's accurate, isn't it?

A That would be a misinterpretation of the word, sir. It would be the driver side passenger. And that's -- I take full responsibility for --

Q You want to read that out where it says driver side?

A Sir, I --

Q Read it out. It's okay. Read it out.

MS. POSIGIAN: Read out loud?

MR. HALPERN: Sure.

BY MR. HALPERN, CONT'D:

Q Read out loud where it says driver side?

MS. POSIGIAN: Objection.

THE COURT: I'm going to sustain the objection. You know what you need to ask him.

BY MR. HALPERN, CONT'D:

Q Is there anything in your report about driver side?

A No, sir.

DPD Officer Alexander Collrin, Transcript Excerpts

Q Is there anything in your report about the rear door?  
Anything whatsoever about the rear door on the vehicle  
that he went to?

A No, sir. It says passenger side door.

Q I didn't ask you that.

Is there anything on rear door?

MS. POSIGIAN: Objection. Asked and answered.

THE COURT: I'm not sure it has been answered  
so let's go ahead and take an answer.

BY MR. HALPERN, CONT'D:

Q Anything in your report that he went to the rear door?

A No, sir.

Q Anything in your report that he went into the street?

A No, sir.

MR. HALPERN: I have nothing else.

THE COURT: Redirect, Ms. Posigian?

REDIRECT EXAMINATION

BY MS. POSIGIAN:

Q You were asked a number of questions about the diagram  
that counsel had prepared and you kept trying to explain  
things are wrong, things are wrong, things  
exaggerated --

MR. HALPERN: I object to the form of the  
question.

THE COURT: I'll sustain the objection.

Kurt Hornung Transcript Excerpts

Kurt Hornung Transcript Excerpts

MR. HALPERN: Thank you, your Honor.

We would call Kurt Hornung.

THE CLERK: Do you solemnly swear that the testimony you're about to give in the cause now pending before this Court will be the truth so help you God?

THE WITNESS: Yes.

THE CLERK: Kurt Hornung, K-U-R-T,  
H-O-R-N-U-N-G.

DIRECT EXAMINATION

BY MR. HALPERN:

Q Good afternoon.

Would you please state your name.

A First names Kurt, last name's Hornung.

Q Mr. Hornung, what is your work background? Where do you work?

## Kurt Hornung Transcript Excerpts

- A I work for Vent Craft Heating and Cooling. We install furnaces, air conditioners on rental and commercial.
- Q Is that your business?
- A It's a family owned business by my stepfather.
- Q And, in addition to working as you just described, do you do any side jobs or side work as well?
- A That, I do, yes, on the weekend usually or in the evening.
- Q Did there come a time from the first time, approximately anyway, when -- Tell me when you began to do some work at properties that are owned by Jacques Kabongo?
- A I've done work for Jacques for probably the last couple of years at Monte Vista and at his personal house but those are the only two I can think of that I've ever done.
- Q Can you estimate a number of times you've been to those two homes approximately?
- A Monte Vista, I've probably been down there, including this trip, three at the most.
- Q And the other location is where?
- A His Stansbury house I've probably been there twice.
- Q On this occasion to I'm referring to, October 15th of last year, 2016, were you at the Monte Vista house doing some work?
- A Yes, I was installing a furnace that Jacques had

Kurt Hornung Transcript Excerpts

purchased used because the previous one was stolen.

Q On that occasion were you in anyway armed? Were you personally armed?

A I was not personally armed, no.

THE COURT: At which point, Mr. Halpern? When you said on that occasion which occasion are we talking about?

MR. HALPERN: October 15, 2016.

THE COURT: Okay. I apologize for the interruption.

BY MR. HALPERN CONT'D:

Q Was Mr. Kabongo armed on the occasion of October 15th, 2016?

A Yes, he was.

Q And would you describe the manner in which you observed his being armed?

A Well, he had his gun on his right side and the hand part of it was sticking out of his pants so it was -- I saw it.

Q Is that the first occasion you ever saw Mr. Kabongo having a weapon exposed like that if you remember?

A That day -- Well, that's the first time I've seen him carry, yes, with me being present.

Q With what?

A With me being present.

## Kurt Hornung Transcript Excerpts

Q Oh, sorry.

When you were at the house during that house on Monte Vista working what portion of the house were you mostly at?

A I was, basically, in the basement until later in the day when I went up to the thermostat. So I was strictly in and out the back door.

Q And if you know where -- was the place or places that you observed Mr. Kabongo at that location? Where was he mostly?

A Well, that day he was in and out. The last time I saw him he was in the backyard painting the garage.

Q Do you have any recollection at all of the way he was dressed color-wise or -- if you have a recollection whatever you remember?

A I know he had a T-shirt on. You know, other than that, no, I don't recollect how else he was dressed.

Q Remember the color of the shirt?

A He had a white shirt on and I know he also had a blue shirt at some point in the day.

Q Mr. Hornung, I've drawn, so to speak, streets and cross streets. And this is Kendall here, this is -- Help me. This is Monte Vista. I've drawn two houses towards the end and put an X over here. I made that into the driveway and I'm drawing a vehicle here parked at the

Kurt Hornung Transcript Excerpts

curb. To the best of your recollection am I drawing this part that I've described, at least, accurately? That's a bad word for my drawing but, anyway, accurately that this was the second house from the corner that there's an empty lot next door and that he was at the curb just beyond the entrance to the driveway?

A Yes, that would be Jacque's vehicle that was parked right there.

Q In fact, you were in that vehicle, weren't you, earlier that day?

MS. POSIGIAN: Objection, leading.

MR. HALPERN: Sorry, your Honor.

THE COURT: Sustained. But go ahead just rephrase, it Mr. Halpern.

MR. HALPERN: I'm sorry. I didn't mean to do that.

THE COURT: It's okay.

BY MR. HALPERN, CONT'D:

Q At any point earlier that day, so sorry, were you in that vehicle with him?

A We had run to the supply house to pickup a part for the furnace.

Q And later on that day were you in fact the driver of that vehicle?

A After the cops had cuffed Jacques, Jacques was able to

## Kurt Hornung Transcript Excerpts

hand me his keys and I drove his vehicle back to his Stansbury house.

Q Thanks.

There came a time, am I correct, that while you're at the house you came up at some point, and as you just started say about the cops who were there, did you come up and see cops at some point?

A Yes, I did.

Q At the point in time that you came up did it -- did it appear to you that cops and Jacques had -- were in contact with each other in some way? What did you observe?

A Well, what I observed was Jacques being told to put his arms behind his back at that point. And I stood by my truck which was in the driveway up by the house.

Q Here?

A Yeah, a little further out. The nose of my truck was right to the front of the house. And, so, yeah, I saw him putting his hands behind his back. And Jacques had called me over, and the cops agreed that I could come over, and that's when he was able to give me his keys to take the vehicle back to his house.

Q Did you see a black police car at the point in time that you came out and were in this area?

A The cop car was facing opposite of Jacques's.

Kurt Hornung Transcript Excerpts

Q Opposite meaning that direction?

A Yes.

MS. POSIGIAN: And, for the record, toward Kendall.

THE WITNESS: Towards -- The cop car was facing Kendall, yes.

BY MR. HALPERN, CONT'D:

Q And how -- Whereabouts was that cop car?

A Against the curb of the corner house.

Q This house?

A Yes.

Q Was it straight against the curb or on any angle?

A It might have been on a slight angle but the nose of it was definitely at the curb.

Q It wasn't out in the street in the middle of the street?

A No.

Q It wasn't, like, right next to this car right here?

A No, because my truck would have been able to pull up. If I wanted to pull up I could have pulled up.

Q Did there come a time after the police had left together with Jacques in tow that you were able to then take Jacques's car over to the Stansbury address?

A Yes.

Q When you did that did you see any tools in the vehicle itself?

David Nicholson Transcript Excerpts

David Nicholson Transcript Excerpts

THE CLERK: Raise your right hand.

Do you solemnly swear that the testimony you're about to give in the cause now pending before the Court will be the truth so help you God?

THE WITNESS: Yes, I will.

THE CLERK: Please say and spell your name for the court reporter.

THE WITNESS: David Nicholson,  
N-I-C-H-O-L-S-O-N.

DIRECT EXAMINATION

BY MR. HALPERN:

Q Good afternoon.

Please Say your name?

A David Nicholson.

Q Mr. Nicholson, do you know the gentleman to my left in front of you and if so how do you know Mr. Kabongo?

A We work at Blue Cross Blue Shield of Michigan. I've known him since 2009 when I moved -- we both moved into the same facility out in Southfield. I noticed him before but really didn't know him until he was seated behind my desk and that's how I met him.

Q When you say same facility what are you referring to?

David Nicholson Transcript Excerpts

Q Do you know the streets -- a street or streets that he has locations?

A I don't necessarily no the streets, per say, because I can't remember them but there's one property in particular that I have gone over and met him there a couple of times from a security standpoint. I was always worried about him being in that certain neighborhood. I just know the area but I can never remember the name of the street.

Q Are you a person with a CPL?

A Yes, I am.

Q Do you know at all any past history, if any, of Mr. Kabongo having his CPL?

A Yes, he had his CPL back, maybe, a year or two ago. And a couple of times we've talked about issues with the CPL. I'm an NRA Certified Trainer.

Q You are or he is?

A I am.

MS. POSIGIAN: Objection, your Honor. At this point I think we're going far afield of the purpose for what this witness is proffered for.

MR. HALPERN: Not at all, your Honor.

THE COURT: All right. Send the jury out.

(Jurors exit to jury room at 2:47 p.m.)

THE COURT: All right. Ms. Posigian -- oh, ay

David Nicholson Transcript Excerpts

open carrying.

Q Did you ever help him out working there as well on projects?

A Just basically carrying in stuff for him, or with him, but nothing extensive to -- I'm not a carpenter, or a builder, or whatever. And the other couple of times was just to go over there with him because, you know, to me I see it as a high risk situation him going over there by himself late at night to do repairs. There's an abandoned home right next to him with open doors. There's been a couple of times -- there's one incident where he's actually gone in there and there's already been somebody in the house. Each time he does repairs a lot of times a lot of stuff gets stripped back out. So a couple of times I have gone over there with him for that reason. And just the standpoint of I just didn't like him going over there by himself.

Q On those occasions was he open carrying?

A Yes.

MR. HALPERN: I have no other questions.

Thank you.

CROSS EXAMINATION

BY MS. POSIGIAN:

Q Good afternoon, Mr. Nicholson.

A Good afternoon.

## David Nicholson Transcript Excerpts

A Yes.

Q Okay. So maybe one coffee, one event -- one or two events and one of the houses per year?

A Yeah.

Q Average?

A Yeah, average.

Q The -- Does the -- Well, defendant open carry in Starbucks?

A No.

Q That's okay.

Does he open carry at professional events.

A He doesn't carry at all out at events. Only time he carries is over at that house.

Q Okay. That you've observed?

A That I've observed.

Q Which is two or three times a year aside from the house?

A Right.

Q The defendant his CPL expired in September of 2015; does that sound about right?

A Yeah.

Q Well, at simple point after 2015 you had a conversation with him you're saying?

A Yeah. I'm not sure when he initially told me. But, like I said, when he told me that then we had the conversation and I was not happy with him about not

Jacques Kabongo Transcript Excerpts

Jacques Kabongo Transcript Excerpts

BY MR. HALPERN:

Q Good afternoon.

A Good afternoon.

Q What's your age?

A Forty-six-years-old.

Q And, obviously, you heard Mr. Nicholson's testimony as well so you're employed at Blue Shield Blue Cross?

A Yes.

Q For how many years now?

A In August it will be 20 years.

Q In terms of a job description where did you start at and where are you now?

MS. POSIGIAN: Objection, relevance.

THE COURT: I'll allow it. I think some -- most witnesses are asked about their occupation and I think it's appropriate in this case.

THE WITNESS: I started off at Blue Cross as a customer service representative so I've had several jobs since I started.

BY MR. HALPERN, CONT'D:

Q And now?

A Now I'm account manager marketing Rep.

Q You've heard some testimony here concerning addresses,

Jacques Kabongo Transcript Excerpts

streets and addresses, maybe, in Detroit and Ann Arbor. Could you explain or indicate what your residence is, and what the other property and properties may be, and how they relate to you and you relate to them?

MS. POSIGIAN: Objection, compound question. And it's not very clear in terms of residences, whose residence is this, his residence, someone else's, a rental property, et cetera.

THE COURT: Thank you. Sustained.

Can you break that down, Mr. Halpern, please? We've got several addresses here. Just break it down so we're clear what we're talking about?

BY MR. HALPERN, CONT'D:

Q You've heard the address given, apparently, by the prosecutor an address in Ann Arbor. Do you live in Ann Arbor?

A Yes, I do. 1820 north Maple is my primary residence.

Q How long have you lived there?

A Over 20 years.

Q You heard about streets or addresses in Detroit. What addresses in Detroit are you -- do you have any association with?

A Stansbury address, the 14009 Monte Vista address, also an address on Appoline, 14224 Appoline, and I have an address in Ypsilanti. They're rental properties for the

## Jacques Kabongo Transcript Excerpts

most part but I reserve the Stansbury address as a second home to cutback on my long drive from Ann Arbor to Detroit.

Q Other than what you've just indicated you keep Stansbury as a second address for convenience for traveling the other addresses do you rent them?

A Yes, I rent the 14009 Monte Vista, and 14225 Appoline, as well as the 670 Desoto that's in Ypsilanti.

Q Do you personally service those properties?

A Yes, I do.

Q How long a period of time -- or start it another way. I'm sorry.

When did you first obtain a CPL so that you could carry a weapon, a concealed weapon?

A In 2011.

Q And in order to get that CPL, without a whole lot of detail, what do you have to go through?

A You have to take the CPL course. You have to get clearance with the state, provide fingerprints, they do a background check.

Q Any classes?

A Yes. I vaguely remember the minimum number of hours but there's a minimum number of hours you have to be present for.

Q Part of those classes have to do with what subjects?

Jacques Kabongo Transcript Excerpts

A Safety first and foremost, understanding the law with firearms as it relate to Michigan, in particular, as well as federal laws, and also touching on subjects such as open carry. The strongest is on safety, though.

Q How long was that CPL good for in terms of time?

A I believe four years. It would have expired on my birthday in 2015.

Q During the time period of those four years that you had a CPL did you carry the weapon that you were arrested with or another weapon?

A Can you repeat the question?

Q Sure.

What gun did you carry during the time of the CPL?

A The Glock 19 that I owned that's registered to me.

Q Want to show you what's been marked Defendant's Proposed Exhibit J and ask you if you recognize it and if so what is that?

A This is my pistol sells record and my gun registration.

Q Is that for this weapon we're talking about here?

A Yes, it is.

MR. HALPERN: Move for its admission.

MS. POSIGIAN: Your Honor, I don't know that there's relevance but I don't have any objection to it.

THE COURT: All right. I'm going to go ahead

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and admit Defense Exhibit J.

BY MR. HALPERN, CONT'D:

Q Show you what's been marked for identification purposes as Defendant's Proposed Exhibit B.

THE COURT: It's already been admitted, Mr. Halpern.

MS. POSIGIAN: That one has?

THE COURT: The deed for the property?

MS. POSIGIAN: Yes.

THE COURT: Yes, that was admitted.

BY MR. HALPERN, CONT'D:

Q Exhibit B it's been admitted. I made a mistake.

And would you identify that?

A Yes, this is the deed to the property for my Monte Vista home.

Q Thank you. And what's the date down at bottom?

A April 15, 2003.

Q Take you back to October 15th of 2016. And before I do I know you've indicated that on your birthday in 2015 your CPL expired. Was that a purposeful decision on your part or negligent?

A It was purposeful. My everyday activities are not conducive to carrying a firearm. I drive through multiple counties, I have municipalities as customers, I'm all over the map from Ann Arbor, to Detroit, to

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Saginaw. It's just not conducive. I stop at multiple places. And there are precautions that you have to take with a firearm so it's not practical for me to have one in the first place. The main need was, specifically, for my safety when I'm at the properties that I manage. I've had well over 30 break-ins to my rental properties.

Q Did you report those break-ins to the Second Precinct?

A I call in the Second Precinct a lot.

Q Why?

A Because I want a record that there are break-ins. Most of the time I want an officer to arrive. I've been at the house before where I've had people inside the home so I called the Second Precinct a lot. And sometimes I file a police report. So, you know, I sustain a great deal of larceny, some home invasion and, you know, times of which I just, you know, needed someone there.

Q At the point in time that your CPL expired did you make any kind of determination with respect to open carry?

A Yes. Primarily, I mean, that was my rationale. The thing is, is as long as I'm transporting the firearm safely with the ammunition separate from the firearm in a case, which I'm not inclined to carry the firearm in the first place because it just seems to be more of a hassle than anything, but in times that I would need it I knew I could be open carry.

Jacques Kabongo Transcript Excerpts

Q What, if any, purpose or advantage, however you want to put it, was it to open carry when you were working on the Monte Vista address?

MS. POSIGIAN: I'll object to relevance.

THE COURT: I'll allow it. Overruled.

Go ahead and answer.

THE WITNESS: Well, mainly for protection. As I said -- It's not the safest area. You know, I'm saying that nicely. And that would be the only reason I would need, you know, my firearm on that property.

BY MR. HALPERN, CONT'D:

Q You heard some testimony at least by one of the officers maybe both I'm not sure. But, anyway, you've heard testimony that there was no address on the house; is that true, or accurate, or not?

MS. POSIGIAN: Objection. It's asking the witness to comment on another witness's testimony.

THE COURT: I'll sustain the objection. But, Mr. Halpern, could you just re-ask the question? I think your address is about the address on the house.

BY MR. HALPERN, CONT'D:

Q Did you have an address on the house?

A Yes, I've had an address on that house at least six years.

I'd like --

Jacques Kabongo Transcript Excerpts

approximately, between those -- like, the fourth house.

Q Here?

A Right.

Q You had a clear view of that vehicle?

MS. POSIGIAN: Objection, leading.

THE COURT: Overruled.

BY MR. HALPERN, CONT'D:

Q Was there anything whatsoever blocking where you were to the point that you first observed the police car?

A Nothing until I got closer to my car. You know, the car -- the officers were traveling about 15, 20 miles an hour.

Q They were going northbound or --

A Yes.

Q Did you go to your vehicle?

A Yes. I opened the passenger door.

Q When you went to your vehicle what was your purpose in going to your vehicle at that point?

A Part of my inspection that I was doing along with the furnace that we were repairing I included painting the house and framing in a window. So I grabbed some tools; a hacksaw, a staple gun, a measuring tape, a brush, I think I had a paint tray also.

Q And where were these items in your vehicle before you got there? Where were the items inside your vehicle as

## Jacques Kabongo Transcript Excerpts

you were heading for it?

A On the floor in the front passenger.

Q Do you know in order to be able to testify -- do you know where you -- where the police vehicle was at the point in time point in time when you opened the front passenger door to get your tools? Where, at that point in time, was the police vehicle?

A As I began to reach for the door I lost sight of them and they pulled immediately behind me.

Q Immediately blind you?

A At an angle.

Q Mean /T-G driveway or just passed the driveway?

A The back end of their car was in my driveway. Not completely but it was a sharp turn I remember that because I could hear the car from -- because my car was turned off, of course, so I could hear their engineer and tell they were coming really close to my car so they made a sharp angle -- with their front end touching the curb of the house next door.

Q Did you take the items that you wanted out of the front seat or -- was it on a seat or floor?

A On the floor.

Q Did you take those items out that you've named?

A Yeah, I took the item and proceeded to walk back towards my house.

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Q Did you take those items with one hand or two hands?

A Two hands.

Q Was there any point in time that you went around into the street and into the driver side rear passenger door on that occasion?

A Absolutely not.

Q After you heard and observed, I think you said, the police vehicle pull sharply up just past the driveway entrance with the rear just in the driveway at that point in time what did you do after you got your tools that you wanted and items that you wanted? What did you do? Where did you start to go?

A I just started to go back towards the house. And as he was stepping onto my front lawn I heard the door open. I looked over my shoulder and I saw Officer Hernandez. And at that point I was facing him with the tools in my hands.

Q Okay. I want to show you --

MR. HALPERN: I need your Honor's help because I don't remember what was not objected to and what wasn't --

MS. POSIGIAN: All of the --

MR. HALPERN: D and F.

THE COURT: I don't have one for D but I know E and F are photos of the street and none of those have

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question.

THE WITNESS: I have no reason. I was open carry. I can legally open carry.

BY MR. HALPERN, CONT'D:

Q At any point in time was there any discussion whatsoever between yourself and either or both of those police officers while you were out in front of your home as to open carry; did that subject come up at all or not?

A Only after I realized that they were arresting me and on our ride back to the detention center. I, you know, I was really blind sided by them arresting me. It seemed to be a cordial conversation. He did ask for my CPL. But I told him I was open carry all the way to the detention center and they did not respond at all.

Q No response?

A They only said I seemed like a really nice guy and they felt really bad but because of cameras and everything that's going on, you know, they had to arrest me.

Q There was an indication that the next day Detective Barnett attempted to see -- to come and talk to you and you were gone; how did that happen?

A Attorney Makerson (PH) got me out on a writ approximately 2 o'clock in the morning. He reached out to Officer Barnett several times and he did not get a response is what he told me.

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for certain that you will not be called back to serve as jurors, okay?

And on behalf of the People of the State of Michigan and the People of Wayne County I appreciate your diligent and cheerful service on behalf of this trail. Thank you very much.

(Alternate jurors exit the courtroom)

Counselors, is there anything else we need to take up?

MS. POSIGIAN: No. Thank you.

MR. HALPERN: Yes, I do. May I?

THE COURT: Yes, Mr. Halpern?

MR. HALPERN: I want to please note for the record that juror number five who I excused peremptorily and is still on this jury and my objection remains.

THE COURT: Your objection remains?

MR. HALPERN: My objection remains and my motion to dismiss is renewed.

THE COURT: All right. I'm denying your motion to dismiss.

And as for your objection I think that was adequately covered at the time that the Court did its analysis of the Batson challenge and I overruled your peremptory.

(Off the record at 10:32 a.m.)

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(Back on the record at 10:53 a.m.)

(Back on the record at 11:00 a.m.)

THE CLERK: Back on the record with Mr. Kabongo's case.

16-10745. Jacques Kabongo.

Jury trial.

MS. POSIGIAN: Anna Posigian on behalf of the People.

MR. HALPERN: Sheldon Halperon on behalf of Mr. Kabongo and, respectfully, would waive his presence with respect to this note.

MS. POSIGIAN: No objection.

THE COURT: I received a note from the jury from Corporal Dyer at 10:47 this morning that states can we please see a copy of both police reports. My inclination, counselors, with your concurrence would be to bring the jury back here and advise them that police reports are not part of the evidence in this case.

MS. POSIGIAN: I'm in agreement with that.

MR. HALPERN: Your Honor, I don't believe -- as far as it goes the statement I couldn't possibly object to that statement but I believe, respectfully, that the Court should indicate -- consider indicating it has not been admitted into evidence in this case and was used solely for purposes of

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impeachment.

THE COURT: I'm not going to say that. I will say that the police reports have not been admitted in this case if you prefer it and Ms. Posigian does not object.

MS. POSIGIAN: I'm fine with that.

THE COURT: I will state that the police reports were not admitted into evidence.

MR. HALPERN: I don't believe --  
And the Court, again, doesn't need me to say that and is absolutely correct but all I want to add is that they were in admissible as evidence. I don't believe they could have been admitted as evidence.

THE COURT: That's why they're not admitted into evidence.

Okay. Let's baring the jury out and I'm going to advise them that the police reports were not --

MR. HALPERN: I need my client.

THE COURT: Okay. Yes. We'll wait for Mr. Kabongo.

(Off the record)

(Back on the record)

THE COURT: Okay. Recalling the case of People versus Jacques Kobongo.

Case number 16-010745-01-FG.

Jury Deliberations and Objections Transcript Excerpts

MS. POSIGIAN: Anna Posigian on behalf of the People.

MR. HALPERN: Sheldon Halpern, your Honor for the defendant who is present.

THE COURT: Good morning, counselors, Mr. Kabongo, and detective.

Let's bring the jury back, please.

THE COURT OFFICER: All rise for the jury.

(Jurors seated in jury box at 11:06 a.m.)

THE COURT: Counselors, are our be deliberating jurors all present?

MS. POSIGIAN: Yes, your Honor.

MR. HALPERN: Yes, your Honor.

THE COURT: Ladies and gentlemen, I received a note from you at 10:47 that states can we please see a copy of both police reports. I've had an opportunity to share this note with counsel and I'm going to instruct you that the police reports were not admitted into evidence in this case, all right?

Thank you.

Please return to your oh deliberations.

THE COURT OFFICER: All rise for the jury.

(Jurors exits to jury room at 11:06 a.m.)

MR. HALPERN: Judge, I just want to emphasis that I objected to the Court's instruction or response

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to the jury's question. It would make it appear to the jury by making that statement in response without my request, in addition to it, as if it's something that's in aspect of the case that they should not consider since it wasn't admitted into evidence. And that's the reason I asked the Court to indicate to them that it was admitted solely for the purpose of impeachment. But even if the Court wasn't going to use that word at least say you may consider it for other purposes, otherwise, the Court's instruction appears to tell the jury to essentially demean or disregard this critical aspect of impeachment. And I object --

THE COURT: Thank you. Objection is noted.

(Off the record)

(Back on the record at 12:34 p.m.)

THE CLERK: Case number 16-10745-01-FH.

People versus Jacques Kabongo.

Jury trial verdict.

MS. POSIGIAN: Anna Posigian on behalf of the People.

MR. HALPERN: Sheldon Halpern on behalf of Mr. Kabongo.

THE COURT: Good afternoon counselors, and Mr. Kabongo, and to the officer-in-charge.

I just received a note saying they have

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reached an unanimous verdict. Is there anything that we need to take up before I bring the jury out to read the verdict?

MS. POSIGIAN: No thank you, your Honor.

MR. HALPERN: No, your Honor.

THE COURT: Okay. Thank you.

Let's bring the jury out.

(Jurors seated in jury box at 12:35 p.m.)

Counselors, are our deliberating jurors all present?

MS. POSIGIAN: Yes, your Honor.

MR. HALPERN: Yes, your Honor.

THE COURT: All right, let's have a seat.

THE CLERK: Will the foreperson please stand and state your seat number?

JUROR NUMBER TWO: I am juror number two.

THE CLERK: How do you find the defendant, Jacques Jean Kabongo as to count one carrying concealed weapon?

JUROR NUMBER TWO: The jury finds the defendant guilty of carrying a concealed weapon.

THE CLERK: Will the jury please stand?

Raise your right hand.

Do you say upon your oath, foreperson, all members of the jury that you find the defendant,

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