

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT, IN  
AND FOR LEON COUNTY, FLORIDA

CASE NO.: 2018-CF-001592

STATE OF FLORIDA

VOLUME VI

vs.

(Page 798 - 830)

DENISE WILLIAMS,

Defendant.

-----/

PROCEEDINGS:

JURY TRIAL

BEFORE:

THE HONORABLE JAMES C. HANKINSON

DATE:

December 13, 2018

TIME:

Commencing at 12:48 p.m.  
Concluding at 1:32 p.m.

LOCATION:

Leon County Courthouse  
Tallahassee, Florida

REPORTED BY:

LISA BABCOCK, Official Court Reporter  
Notary Public in and for the  
State of Florida at Large  
Leon County Courthouse, Room 341  
Tallahassee, FL 32301

1 APPEARANCES

2 REPRESENTING THE STATE:

3 JON FUCHS, ASSISTANT STATE ATTORNEY  
 4 JAMES A. ROGERS, ASSISTANT STATE ATTORNEY  
 5 OFFICE OF THE STATE ATTORNEY  
 6 LEON COUNTY COURTHOUSE  
 7 TALLAHASSEE, FLORIDA 32301

8 REPRESENTING THE DEFENDANT:

9 ETHAN WAY, ESQUIRE  
 10 WAY LAW FIRM, P.A.  
 11 1020 EAST LAFAYETTE STREET, SUITE 112  
 12 TALLAHASSEE, FLORIDA 32301-4546

13 PHILIP J. PADOVANO, ESQUIRE  
 14 BRANNOCK & HUMPHRIES  
 15 131 NORTH GADSDEN STREET  
 16 TALLAHASSEE, FLORIDA 32301-1507

17 INDEX

18 DEFENSE EXHIBITS: PAGE:

19 No. 2 800

20

21

22 Certificate of Reporter 830

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PROCEEDINGS

(Proceedings continued from Volume V as follows:)

THE COURT: Are we ready for the jury?

MR. FUCHS: Yes, sir.

THE COURT: Have the jury, please.

(Jury enters.)

THE COURT: Mr. Way, you may call your next witness.

MR. WAY: Your Honor, the State and the defense have come to a stipulation as to what has been marked for identification purposes as Defendant's Exhibit 2. I would like to move that into evidence, please.

THE COURT: Any objection from the State?

MR. FUCHS: No objection from the State, Your Honor.

THE COURT: All right. Defense Exhibit 2 will be admitted.

Further testimony, Mr. Way?

(Defense Exhibit No. 2 received in evidence.)

MR. WAY: Your Honor, at this time the defense rests.

THE COURT: All right. Does State have any rebuttal?

MR. FUCHS: State does not have any rebuttal at this time, Your Honor.

THE COURT: Okay. That means you've heard all the testimony you're going to hear. The next thing I'm going

1 to do is instruct you on the law. As you can imagine,  
2 the instructions on the law are a little bit complicated  
3 in this case, given the three charges that are before the  
4 Court.

5 So while we were working on several other issues  
6 while y'all were at lunch, we have not gotten to the jury  
7 instructions yet. It's going to take us a while. And I  
8 know y'all may be thinking, well, let's just move on, but  
9 it's going to probably take me a couple hours to get  
10 those sorted out, and I don't want y'all sitting back  
11 there in the jury room while we're working on legal  
12 issues.

13 So what we've decided, after discussion with the  
14 attorneys, is we're better to let y'all go home for the  
15 day. We'll start back first thing in the morning with  
16 instructions and closing argument, and you should have  
17 the case for your deliberations by lunch time tomorrow.

18 I know that it may appear we're kind of wasting an  
19 afternoon, but it's not being wasted. It's just being  
20 used in a little different fashion. I just don't want  
21 you sitting back in the jury room while we do that. As  
22 you see, we're still well ahead of the schedule that we  
23 initially outlined so hopefully that works for everybody.

24 Now, we're coming down to the home stretch. Let's  
25 not mess anything up by talking to somebody about the

1 case or reviewing media accounts. You're hearing it all  
2 first hand. We don't need any slip-up at this point in  
3 time.

4 So what I'm going to ask is that you be back  
5 tomorrow morning at 8:45. I apologize the way it worked  
6 but we had something I had to resolve before we could  
7 decide whether you were going to be going home for the  
8 day or not, and I've made that decision. And that's why  
9 we sent you to lunch and brought you back.

10 But anyway, so tomorrow, 8:45. Anybody have  
11 questions about what's expected of you? We have  
12 arranged -- we've got court admin to let you out. I  
13 wasn't even thinking about you were kind of a captive  
14 audience in terms of your parking. We have somebody  
15 ready to get you out of the building, so we'll see y'all  
16 tomorrow morning.

17 (Jury exits.)

18 THE COURT: I need to step out and get my notebook I  
19 left sitting on the table. Y'all just be at ease for  
20 just a moment.

21 MR. FUCHS: Your Honor, can we approach real quick?  
22 It doesn't need to be on the record.

23 (Discussion off the record.)

24 (A pause in the proceeding.)

25 THE COURT: All right. Defense wish to renew their

1 motions for judgment of acquittal?

2 MR. PADOVANO: Yes, sir. Without further argument,  
3 we renew the motions -- the three motions for judgment of  
4 acquittal and also the motion to compel.

5 THE COURT: Motion for what?

6 MR. PADOVANO: To compel an election between two  
7 counts.

8 THE COURT: All right. And my ruling will be the  
9 same. I know we -- I have one that's reserved and we  
10 need to deal with that, and we'll deal with that  
11 momentarily.

12 Mr. Way?

13 MR. WAY: Your Honor, and I would renew all  
14 evidentiary objections made during the course of the  
15 trial.

16 THE COURT: Okay. My rulings will be the same.

17 While it's fresh on my mind since I spent the lunch  
18 hour working on it, let's go back to your special request  
19 for jury instructions, Mr. Padovano, and your related  
20 judgment of acquittal motion on that. I've had a chance  
21 to do my research, and a little more comfortable with  
22 that at this point in time. Do you wish to be heard  
23 further?

24 MR. PADOVANO: No. I think the Court understands --  
25 if you have a question, I'm happy --

1           THE COURT: Mr. Jay, will you get the podium for  
2 him, please? I'm sorry.

3           MR. PADOVANO: No. I think if you had a question,  
4 I'd be happy to try to answer it, but I believe the Court  
5 understands the issue and don't believe that further  
6 argument would be helpful to the Court.

7           THE COURT: Okay. All right. So as I understand  
8 it, the defense has requested that the jury instructions  
9 be modified to delete from the standard jury instruction  
10 the words "or said some word," is my understanding of the  
11 request. Correct, Mr. Padovano?

12          MR. PADOVANO: Well, I think there may also be  
13 something -- I'm sorry, Your Honor.

14          I think there may also be something in there about  
15 encouraging or -- what I did with the one that I prepared  
16 was to simply delete that whole phrase and just put in  
17 that the defendant did some act. I just substituted the  
18 whole phrase for "did some act."

19          THE COURT: Okay. So -- I can see now. I didn't  
20 realize you'd modified it. But the basic distinction is  
21 argument between "word" or "act" is the essence of it.

22          Is the -- is the State objecting to the modification  
23 of the jury instruction?

24          MR. FUCHS: We are, Your Honor. I would cite to  
25 case law. It is Morris v. State, 789 So. 2d 1032. It is

1       also a First District Court of Appeal case out of 2001,  
2       actually authored by Brad Thomas, I believe. Ironically  
3       enough, Mr. Padovano was actually dissenting back then as  
4       well.

5               But what it says in there is, "Statutory reference  
6       to a prohibited act is commonly understood as  
7       encompassing conduct or behavior which involves only  
8       verbal statements or speech." So what it clearly adopts  
9       there and the First DCA in 2001 clearly adopted speech as  
10      being a part of a verbal act that would constitute for  
11      the purposes of principal. Therefore --

12             In fact, when you read the statute, the statute  
13      talks about verbal comments as well. It doesn't actually  
14      say the word "verbal." I forgot the actual language it  
15      actually uses, but it is something that indicates that it  
16      encompasses some sort of communicational aspect between  
17      the parties involved and, therefore, it is allowed by  
18      statute.

19             And the State would propose -- would assert that a  
20      verbal act -- conversations, words themselves, are, in  
21      fact, a verbal act that can constitute for a principal  
22      and ask for the standard jury instruction.

23             THE COURT: Okay. Mr. Padovano?

24             MR. PADOVANO: If I might have a moment, Your Honor?

25             THE COURT: Sure.

1 Give me that cite again, Mr. Fuchs.

2 MR. FUCHS: I gave it to Mr. Padovano, Your Honor.

3 THE COURT: Oh, I'm sorry.

4 MR. PADOVANO: I think this case was in the context  
5 of the -- of a lewd and lascivious -- I'm sorry, in the  
6 context of committing a lewd and lascivious act with a  
7 child. And in that context, the Court said that that can  
8 occur, you can commit that kind of an act with a child  
9 with just words. But generally speaking, I think an act  
10 is not the same thing as a word. It's a different thing.  
11 And I hate to present an argument that is so simple, but  
12 I think it is simple as that.

13 And I don't think that Judge Brad Thomas would have  
14 written that opinion that says you need to commit an act  
15 and actually reverse a conviction for a principal because  
16 there was no evidence of an act if he did not mean that  
17 you have to have an act.

18 THE COURT: Thank you, sir.

19 MR. FUCHS: And, Your Honor, the statute -- the stat  
20 is Morris v. State, 789 So. 2d 1032.

21 THE COURT: All right. The defense has relied on  
22 Staten and Ammons, and I've had opportunity over the  
23 lunch break to read those and see whether they've been  
24 cited previously. Certainly Staten has been cited many  
25 times but not for the proposition presented by the

1 defense. Ammons is a relatively new case so never cited.

2 But the proposition that words alone are  
3 insufficient to sustain a conviction as a principal is  
4 the basic tenant asserted by the defense. Both cases do  
5 state that a conviction as a principal requires that the  
6 aider and abettor, quote, do some act, end quote, towards  
7 the commission of the crime. Therefore, I understand the  
8 defense argument. That language is there.

9 However, the issue raised here of the distinction  
10 between word and act was not the legal issue in either of  
11 those cases. The issue in those cases was a level of  
12 participation, not the form of participation, therefore,  
13 the language cited is dicta. I can find no case that  
14 says the standard jury instruction on principals is wrong  
15 or incorrect even though it's been used, I'm sure,  
16 thousands of times.

17 The Florida Supreme Court has frequently stated  
18 standard jury instructions are presumed to be correct and  
19 are preferred over special instructions. I understand  
20 they also always issue a caveat that the instruction is  
21 not a ruling on the law, but they are presumed to be  
22 correct. And I can find no cases that have found this  
23 particular instruction to be wrong, therefore, I'm going  
24 to deny the request and give the standard jury  
25 instruction.

1 I'm also going to deny defendant's motion for  
2 judgment of acquittal on the charge of first degree  
3 murder that I previously reserved, which raises the same  
4 issue. I think there's sufficient evidence for it to go  
5 to the jury as to whether Ms. Williams' actions were  
6 sufficient to be a principal in the case. So I wanted to  
7 get that issue out of the way.

8 Anything else on that particular issue?

9 MR. FUCHS: Not from the State, Your Honor.

10 MR. PADOVANO: And not from the defense. I don't  
11 know if I'm required procedurally to renew after this  
12 ruling, but if I am, I renew it.

13 THE COURT: I'll let you object after they're  
14 delivered. I think that would --

15 MR. PADOVANO: Well, I was -- I was actually  
16 referring to the judgment of acquittal argument.

17 THE COURT: Certainly. My ruling will be the same.

18 All right. Are y'all ready to discuss the rest of  
19 the jury instructions?

20 MR. FUCHS: Yes, Your Honor.

21 THE COURT: And y'all can remain seated during this  
22 process. Let's just go through them from the start.

23 As to the statement of charge on Count I, conspiracy  
24 for first degree murder, let's take up just the first  
25 page and the top part of the second page, which would be

1 the basic instruction on law. Anybody have an objection  
2 or found some error or even found some typographical  
3 error that needs to be corrected?

4 MR. FUCHS: I have not, Your Honor.

5 MR. WAY: No, Your Honor.

6 THE COURT: What lessers is the defense seeking?

7 MR. WAY: We are not seeking any additional lessers,  
8 Your Honor.

9 THE COURT: Do you not want any lessers?

10 MR. WAY: I do not want any lessers.

11 THE COURT: Mr. Fuchs?

12 MR. FUCHS: Give me one moment, Your Honor.

13 State is not requesting any lessers, Your Honor.

14 THE COURT: It's not?

15 MR. FUCHS: It's not.

16 THE COURT: All right. So we'll strike the  
17 paragraph that says, "When there are lesser included  
18 crimes," and the language about second degree murder,  
19 manslaughter being defined. We're all in agreement?

20 MR. WAY: Yes, Your Honor.

21 THE COURT: Mr. Fuchs?

22 MR. FUCHS: I agree.

23 THE COURT: All right. Now, I think Mr. Padovano  
24 has already indicated he is requesting the renunciation  
25 instruction. I just highlighted that because it's in

1 the -- not always given in all cases. That's why I  
2 highlighted it.

3 was that my understanding, Mr. Padovano? Or who's  
4 responding on that?

5 MR. PADOVANO: Yes, sir, we request that part.

6 THE COURT: Okay. You don't have to stand up for  
7 this.

8 what's the State's position?

9 MR. FUCHS: The aspect that's highlighted? Is that  
10 what we're talking about?

11 THE COURT: Right.

12 MR. FUCHS: Yes, I agree.

13 THE COURT: You do not object?

14 MR. FUCHS: I do not object to it being there.

15 THE COURT: All right. So I'll remove the  
16 highlighting. Anybody found any errors in there? I  
17 think it's just the standard instruction to the extent it  
18 was --

19 MR. FUCHS: Your Honor, I apologize. I would  
20 object. The renunciation -- they are appearing to argue  
21 renunciation. And that second paragraph, renunciation --  
22 where it says "Renunciation is not complete and voluntary  
23 when a crime -- completed by unanticipated" -- I'm sorry,  
24 Madam Reporter -- "unanticipated difficulties, unexpected  
25 resistance, or a decision to postpone the crime," I think

1 is definitely applicable in this situation.

2 THE COURT: All right. I'll overrule the State's  
3 objection. I'll give the instruction.

4 Have you found any errors or mistakes in it?

5 MR. FUCHS: No.

6 THE COURT: All right. That'll take us to Count II,  
7 first degree murder. Introduction to homicide,  
8 justifiable homicide, excusable homicide. Let's take it  
9 through there, which would be halfway through page 4.

10 Anybody found any errors or have any objections?

11 MR. FUCHS: No, sir.

12 MR. WAY: No, Your Honor.

13 THE COURT: The instruction on first degree murder  
14 starts the middle of page 4, goes over to page 5.

15 Anybody found any errors or have any objection?

16 MR. FUCHS: No, sir.

17 MR. WAY: No, Your Honor.

18 THE COURT: Second degree murder. I think it's just  
19 the standard instruction, but anybody found any errors or  
20 have any objection -- well, I guess we -- I guess I need  
21 to go back.

22 Is -- are the lessers being requested on this, on  
23 the Count II, Mr. Way?

24 MR. WAY: We're not requesting the lessers, Your  
25 Honor.

1 THE COURT: What's the State's position?

2 MR. FUCHS: State agrees, Your Honor.

3 THE COURT: So you want to strike -- so we're just  
4 going to go with first degree murder on the Count II.  
5 That's everybody's understanding?

6 MR. FUCHS: Yes, sir.

7 MR. WAY: Yes, Your Honor.

8 THE COURT: So on page four 4 where it says "For any  
9 lesser included crime," I will strike that. And then I  
10 will strike second degree murder, manslaughter.

11 At some point in time, Mr. Way, I think I want to  
12 hear from your client that she's in agreement with this  
13 strategy. We can do that -- if you want to talk to her  
14 first, I don't know.

15 MR. WAY: Sure, Your Honor.

16 THE COURT: On page 6 and 7, we've already talked  
17 about principals. I've overruled the defense request to  
18 modify it, but is there further argument on the principal  
19 instruction?

20 MR. WAY: No, Your Honor.

21 MR. FUCHS: No, Your Honor.

22 THE COURT: Okay. Is the defense -- sometimes we  
23 have -- seem to pair with that an independent act  
24 instruction. Is the defense seeking that?

25 MR. WAY: One moment, Your Honor.

1 THE COURT: Certainly.

2 MR. WAY: Yes, Your Honor. We'd be requesting the  
3 independent act instruction, pursuant to 3.16(1) *[sic]*.

4 THE COURT: State want to be heard on that?

5 MR. FUCHS: No, Your Honor.

6 THE COURT: Okay. So I'll add that -- add that to  
7 it. I think it's a standard instruction. I don't think  
8 there's anything unusual about it. But anyway, we'll  
9 give you a chance to see it before we finalize that.

10 MR. WAY: Yes, sir.

11 THE COURT: Count III, accessory after the fact,  
12 first degree murder. Anybody found any errors or have  
13 any objection as to the instruction on page 7 as to  
14 accessory after the fact?

15 MR. WAY: No, Your Honor.

16 MR. FUCHS: No, sir.

17 THE COURT: What's the defense position on lessers  
18 on this?

19 MR. WAY: We're not requesting any lessers, Your  
20 Honor.

21 THE COURT: State?

22 MR. FUCHS: Not requesting. We concur.

23 THE COURT: Okay. Plea of not guilty, reasonable  
24 doubt is standard instruction on page 8 and 9. Anybody  
25 have objection to that?

1 MR. WAY: No.

2 MR. FUCHS: No.

3 MR. WAY: No, Your Honor.

4 THE COURT: Weighing the evidence. One through five  
5 are given in all cases. Six through ten are optional.  
6 I'll hear first from the defense as to which you want of  
7 six through ten.

8 MR. WAY: Six, Your Honor, eight, nine.

9 THE COURT: Were you done? I'm sorry.

10 MR. WAY: Oh, I'm sorry. I apologize, Your Honor.  
11 No, those were the -- just the --

12 THE COURT: Okay. State?

13 MR. FUCHS: Your Honor, I don't believe that there  
14 was any impeachment with prior statements that were  
15 given, so State would object to the inconsistent  
16 statement aspect.

17 THE COURT: That's up to the jury to decide so I'll  
18 leave that to them. So we'll strike seven and ten, and  
19 renumber the others.

20 All right. We just work through this by paragraph  
21 from there. Next paragraph is given in all cases as the  
22 State's burden of proof. The next is the instruction on  
23 law enforcement witnesses.

24 Does the defense want the instruction on law  
25 enforcement witnesses?

1 MR. WAY: Yes, Your Honor.

2 THE COURT: Expert witness -- the State want to be  
3 heard on that?

4 MR. FUCHS: No, sir. I was coughing, I apologize.

5 THE COURT: Expert witnesses, is that requested?

6 MR. WAY: No, Your Honor.

7 THE COURT: State?

8 MR. FUCHS: I say leave it. We had an expert  
9 witness here. We had Dr. Flannagan.

10 THE COURT: Any legal reason not to give it,  
11 Mr. Way?

12 MR. WAY: No. No, Your Honor. That's fine as to  
13 Dr. Flannagan.

14 THE COURT: All right. The next paragraph is the  
15 cooperating witness or accomplice paragraph. I assume  
16 the State -- the defense is seeking that?

17 MR. WAY: Absolutely, Your Honor.

18 THE COURT: The instruction gives three options in  
19 the disjunctive. I've put them all in there in the  
20 conjunctive. I think they're all arguably applicable but  
21 need to look at that. So that would be the -- what I'm  
22 referring to would be the second full sentence.

23 For example, a witness who claims to have helped the  
24 defendant commit a crime, is one option, who has been  
25 promised immunity from prosecution or who hopes is -- or

1       who hopes to gain more favorable treatment -- I'm sorry,  
2       who has been promised immunity from prosecution is a  
3       second option, or who hopes to gain more favorable  
4       treatment in his or her own case is the third option.

5             The way the jury instructions are set up, I thought  
6       all three were arguably applicable so I just put all  
7       three in there, but that is a slight deviation from the  
8       way the standard is set up.

9             MR. WAY: There would be no objection from the  
10       defense to the proposed modification to the standard  
11       instruction. We would accept it.

12            THE COURT: Mr. Fuchs?

13            MR. FUCHS: No objection, Your Honor.

14            THE COURT: Okay. We did not have a child witness  
15       so -- as I recall so I would strike the next paragraph.  
16       We in agreement?

17            MR. FUCHS: Yes, sir.

18            MR. WAY: Yes, Your Honor.

19            THE COURT: Okay. The defendant did not become a  
20       witness so I'll strike the next option.

21            I like to give the next paragraph. You never know  
22       when a juror has seen you talking to a witness so --  
23       although it's an optional one, I always give it. And  
24       then the last one is given in all cases. Any issues on  
25       any of that?

1 MR. FUCHS: No, sir.

2 MR. WAY: No, Your Honor.

3 THE COURT: Defendant not testifying, is the defense  
4 seeking that instruction?

5 MR. WAY: We are, Your Honor.

6 THE COURT: Both paragraphs?

7 MR. WAY: Both paragraphs, Your Honor.

8 THE COURT: Okay. I don't believe there was any  
9 custodial interrogation of the defendant, so it would be  
10 my intention to strike the next -- defendant's  
11 statements. But you can be heard if you disagree,  
12 Mr. Way.

13 MR. WAY: I do not disagree, Your Honor.

14 MR. FUCHS: The only potential issue is the fact  
15 that whenever Mr. Devaney talked to her at the kidnapping  
16 aspect of it, the only time that -- I mean, the State  
17 does intend to argue, of course, that she didn't tell law  
18 enforcement about Brian's involvement. In fact, she made  
19 affirmative statements to Mr. Devaney that he was not  
20 involved and things along those lines, so I just want to  
21 make sure that's clear. I don't have a problem with --

22 THE COURT: That doesn't have anything to do with  
23 this paragraph.

24 MR. FUCHS: I agree but --

25 THE COURT: This is not --

1           MR. PADOVANO: If I could be heard for a second, I'm  
2 not sure how it's not a comment on her failure to  
3 testify. I mean, he's going to put -- he's going to --

4           THE COURT: Let's table that. Let's get through the  
5 instructions and -- because I wasn't clearly following  
6 what he said. Let's -- remind me to come back to that.  
7 Let's get through the instructions.

8           Rules for deliberation, just the standard  
9 instruction. Anybody have an issue with that or found an  
10 error?

11          MR. WAY: No, Your Honor.

12          THE COURT: I think there were a couple of questions  
13 we did not answer so paragraph 7 would be appropriate.  
14 Sometimes I take that out, but there were a couple of  
15 juror questions that we did not ask.

16          Cautionary instruction is a standard instruction.  
17 Single defendant, multiple counts, only thing I've done,  
18 I've changed the order because I like to do the verdict  
19 last before we break for the closing argument. But it's  
20 just the standard instruction. And the verdict  
21 instruction, standard instruction. Anybody have an issue  
22 with that?

23          MR. FUCHS: No, sir.

24          MR. WAY: No, Your Honor.

25          THE COURT: The submitting case to the jury, there

1 are some different options, and I've changed the wording  
2 just slightly. I don't think it's anything very  
3 significant, but there are some slight deviations from  
4 the standard on submitting case to the jury about how we  
5 deal with cell phones.

6 And I did add in a -- something that I think has  
7 been proposed now but wasn't -- I don't think is in the  
8 standards as of yet, is about if you've voted, do not  
9 disclose the actual vote in the note if they have a  
10 question. I don't think any of that's very  
11 controversial, but does anybody have an issue with any of  
12 that?

13 MR. FUCHS: No, sir.

14 MR. WAY: No, Your Honor.

15 THE COURT: All right. Any additional instructions  
16 either side is seeking?

17 MR. FUCHS: No, sir.

18 MR. WAY: Not that has previously been argued and  
19 ruled on.

20 THE COURT: Okay. All right. So on the verdict,  
21 we'll need to take out all the lessers. Other than that,  
22 anybody found a problem with the verdict form?

23 MR. FUCHS: No, sir.

24 MR. WAY: Your Honor, in light of the fact that the  
25 State of Florida bears the burden of proof and the

1       defendant is presumed guilty under the state and federal  
2       constitution -- presumed innocent, I would respectfully  
3       request the D be moved to A on all three verdict forms.

4               THE COURT: I deny that request.

5               Okay. Anything else on jury instructions?

6               MR. FUCHS: No, sir.

7               THE COURT: All right. Y'all raised an issue, and  
8       I'm sorry, I didn't quite follow what the issue was.  
9       what were you -- come up, if you would, to the podium,  
10      Mr. Fuchs.

11              MR. FUCHS: Your Honor, on the day of the  
12      kidnapping, Ms. Williams was there at Leon County  
13      Sheriff's Department talking to law enforcement. Mike --  
14      or Mr -- Agent Devaney came in and talked to her and  
15      questioned her about Brian's involvement in the missing  
16      Mike Williams at that point.

17              And she said, I do not believe he's involved. In  
18      fact, I would have never married him -- the things that  
19      she said to Mr. Devaney, again, that was there at the  
20      Leon County Sheriff's Department. That's why I was  
21      bringing up the issues of -- and of course that's part of  
22      the aspect that -- I mean, those actions will be brought  
23      up during the course of the closing arguments.

24              THE COURT: All right. well, that's not custodial  
25      interrogation, which is what I was talking about.

1           And you were raising some issue as to that,  
2           Mr. Padovano?

3           MR. PADOVANO: Yes, sir. But actually, in all  
4           candor, Your Honor, I was thinking of something else. I  
5           think that statement is not a comment on silence, and I  
6           think that he can talk about that. But I don't believe  
7           that the instruction is necessary because it's not an  
8           incriminating statement.

9           But what I was just -- just to clear it up, what I  
10          was referring to is during the course of the trial, there  
11          was an incident -- another incident where the State  
12          elicited testimony about how another law enforcement  
13          officer tried to question Denise Williams but that she  
14          refused to talk to him. And I forgot the name of that  
15          law enforcement -- and that's what I was thinking of.

16          THE COURT: Are we talking about during the FSU --

17          MR. PADOVANO: It was somewhere -- it was somewhere  
18          in there. And, I'm sorry, I don't remember the person's  
19          name, but I just think we need to stay away from that. I  
20          mean, that's a comment on silence, you know.

21          THE COURT: Frankly, it was kind of confusing. But  
22          there was something in -- that was elicited after the  
23          attempted bump of -- and that was the term y'all used --  
24          the attempted bump of Ms. Williams that Investigator  
25          Mickler said that she didn't contact him, that he asked

1 to sit down with her and she never responded. Is that  
2 what you're referring to?

3 MR. PADOVANO: I think so, yes, sir.

4 MR. WAY: Yes, Your Honor.

5 THE COURT: Mr. Fuchs?

6 MR. FUCHS: Your Honor, the fact that she refused to  
7 talk to law enforcement goes directly -- let me rephrase  
8 it. I don't mean refused to talk to law enforcement in  
9 violation of her constitutional right to not talk to law  
10 enforcement.

11 What I'm referring to with that is that she was  
12 reaching out in constant communication with the Florida  
13 State University Police Department, as testified by  
14 Sergeant Wooten, about the bump aspect and the things  
15 that surrounded that. When she was then informed that it  
16 was handed off to Florida Department of Law Enforcement  
17 for that investigation, of which she would have been a  
18 victim, at that point she stopped responding to Florida  
19 Department of Law Enforcement contact as a victim, not as  
20 in an interrogational aspect.

21 And I think that goes directly towards the aspect of  
22 the statement that she made to Kathy Thomas where she  
23 said, Please tell him I didn't tell them anything. And  
24 it just goes to show ongoing actions of her in order to  
25 not communicate with Florida Department of Law

1       Enforcement because of the fact they were involved in the  
2       investigation of Mike Williams.

3           THE COURT: I think that the way it came in, it was  
4       legally admissible, but I think it could easily lead to  
5       an improper comment. And, frankly, it's not very -- the  
6       way it came across was not very significant, frankly. I  
7       mean, she was -- the allegation was she screamed and ran  
8       away from law enforcement, and then they wanted to talk  
9       to her about it. I mean, frankly, it was very confusing.

10       What do you wish me to direct, Mr. Padovano?

11       MR. PADOVANO: Not to -- that counsel for the State  
12       not state or imply that Ms. Williams declined or refused  
13       to talk to the law enforcement officer. It's a comment  
14       on her silence.

15       THE COURT: Well, it's a little bit confused because  
16       it relates to an alleged crime she is asserting. I mean,  
17       she's asking to investigate the parking lot incident.

18       But, frankly, Mr. Fuchs, I think it has the  
19       potential to cause a comment on the right to remain  
20       silent, so I'm going to ask that you stay out of that  
21       particular statement by Mickler about that he asked her  
22       to talk to him and she refused to -- or she didn't  
23       refuse. She just never responded, is what I noted the  
24       testimony was. I think that is going to be perilously  
25       close to a comment on the right to remain silent, and I

1 think you just need to stay out of it.

2 MR. FUCHS: Yes, sir. I don't have a problem with  
3 that. The only issue I have then is I would ask the  
4 Court to also put a limitation on the defense then for  
5 making the argument that she was all about cooperating  
6 with law enforcement during the course of that aspect,  
7 because that goes --

8 THE COURT: Rebuttal is a different time. And if  
9 you think they've opened the door to some comment on it  
10 by their argument, just bring it to my attention --

11 MR. FUCHS: Yes, sir.

12 THE COURT: -- and I'll deal with it then.

13 MR. FUCHS: Yes, sir.

14 THE COURT: I think trying to deal with  
15 hypotheticals before they happen is very difficult so --  
16 I'm not as good at the mental gymnastics at doing that.

17 But anyway, so if you think they've raised -- opened  
18 the door to that, then just bring it to my attention.

19 MR. FUCHS: Yes, sir. Thank you.

20 THE COURT: I think the defense should be on fair  
21 warning that broaching that may result in some comment  
22 from the State in rebuttal.

23 MR. WAY: Acknowledged, Your Honor.

24 THE COURT: Okay. All right. What else?

25 MR. FUCHS: That's all the State has, Your Honor.

1           MR. WAY: Your Honor, may I have a few moments with  
2 my client, and then we'll address your earlier concern?

3           THE COURT: Right.

4           (A pause in the proceeding.)

5           THE COURT: Are we ready?

6           MR. WAY: Yes, Your Honor.

7           THE COURT: All right. So you've discussed with  
8 Ms. Williams your request not to give any lesser included  
9 offenses?

10          MR. WAY: I have, Your Honor.

11          THE COURT: And it's your belief she agrees with  
12 that strategy decision?

13          MR. WAY: Yes, Your Honor. Ms. Williams has  
14 discussed the matter with myself, with Mr. Padovano,  
15 Mr. Buchanan, and agrees with our decision to  
16 respectfully exclude lesser includeds as to all three  
17 counts in the indictment.

18          THE COURT: Is that correct, Ms. Williams?

19          THE DEFENDANT: Yes.

20          THE COURT: You feel like you have an understanding  
21 of what's being discussed?

22          THE DEFENDANT: Yes.

23          THE COURT: You've had adequate time to talk about  
24 it?

25          THE DEFENDANT: Yes.

1           THE COURT: This is a strategy decision. It's not  
2 one of those special things that I said that courts have  
3 held defendants have the absolute decision on, but it is  
4 a relatively radical decision that's not made in many  
5 cases. Do you understand it's a little bit out of the  
6 ordinary?

7           THE DEFENDANT: Yes.

8           THE COURT: I guess, for want of a better word, it's  
9 a little bit of a gamble. If convicted as charged on  
10 first degree murder and probably, to some extent, the  
11 other charges, my hands are going to be tied to a large  
12 extent on sentencing. Do you understand that?

13          THE DEFENDANT: Yes.

14          THE COURT: For instance -- and I haven't studied  
15 Count I and Count III, but I know on Count II if you're  
16 convicted as charged, it will be a life sentence. That's  
17 the only legal sentence I can impose. It probably has  
18 significant ramifications on Count I and III, but as I  
19 say, I hadn't really figured that out in great detail at  
20 this point in time. Do you understand that's the result  
21 of it?

22          THE DEFENDANT: Yes.

23          THE COURT: Do you have any questions about what's  
24 going on in terms of waiving the lesser included  
25 offenses?

1 THE DEFENDANT: No.

2 THE COURT: You know you are legally entitled to  
3 those lesser includeds if you want them to be given?  
4 That is, they're legally provided for at your request.  
5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: And you're specifically waiving  
8 that? That means, you know, next year, next month, two  
9 years from now, you're not going to be able to come back  
10 and say, you know, those should have been given. You're  
11 waiving that legal argument.

12 THE DEFENDANT: Right. Correct.

13 THE COURT: Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: You need any more time to talk to  
16 Mr. Way or Mr. Padovano about this?

17 THE DEFENDANT: No.

18 THE COURT: That is your request?

19 THE DEFENDANT: Yes.

20 THE COURT: That you waive the lesser included  
21 offenses?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay. Anything further you think we  
24 should make a record, Mr. Way?

25 MR. WAY: No, Your Honor.

1 THE COURT: Okay. Anything from the State?

2 MR. FUCHS: No, Your Honor.

3 THE COURT: Okay. Y'all can have a seat. Thank  
4 you.

5 All right. I will go get the instructions  
6 finalized. If -- I guess if -- I can't imagine anybody  
7 is going to find anything major since we've gone over it,  
8 but if it was some major problem, I guess I'd like to be  
9 alerted today. Other than that, we'll just be here at  
10 8:30. If you find some simple typo that everybody agrees  
11 on just needs to be fixed, you can just e-mail my  
12 judicial assistant. What I'd like to do is be able to go  
13 ahead and make copies this evening and be ready to start.

14 But anyway, you want me to e-mail the instructions  
15 to you? Is that your request?

16 MR. WAY: Yes, Your Honor.

17 MR. FUCHS: Please.

18 THE COURT: All right. So I'll e-mail those to you.  
19 I don't desire to hear legal argument. As I say, if  
20 there's something that everybody agrees, we just have a  
21 typo, let my judicial assistant know that. We'll fix  
22 that.

23 Other than that, we'll see you all in the morning at  
24 8:30. All right?

25 MR. FUCHS: Thank you, Your Honor.

1 THE COURT: We'll be in recess.

2 (Proceedings adjourned at 1:32 p.m.)

3 (Continued to 12/14/2018, volume VII.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE


STATE OF FLORIDA:

COUNTY OF LEON:

I, LISA A. BABCOCK, Official Court Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED this 17th day of April 2019.

  
\_\_\_\_\_  
LISA A. BABCOCK  
OFFICIAL COURT REPORTER  
LEON COUNTY COURTHOUSE  
TALLAHASSEE, FLORIDA 32301