

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED

February 24, 20 14  
3:45 o'clock P M

*K. Hall*  
Clerk, 11th Division

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,

vs.

CHRISTOPHER DEEDY,

Defendant

) CR. NO. 11-1-1647

) (CT. 1: Murder in the 2nd Degree)

) (CT. 2: Carrying or Use of Firearm in the  
) Commission of a Separate Felony)

) ORDER GRANTING IN PART AND

) DENYING IN PART MOTION TO

) UNSEAL SEALED PORTIONS OF

) TRANSCRIPT OF AUGUST 26,

) 2013 PROCEEDINGS;

) EXHIBIT "A"; NOTICE OF ENTRY

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO UNSEAL  
SEALED PORTIONS OF TRANSCRIPT OF AUGUST 26, 2013 PROCEEDINGS

Third Parties Oahu Publications Inc. and KHNL/KGMB LLC (hereinafter, "Oahu")'s Motion to Unseal Sealed Portions of Transcript of August 26, 2013 Proceedings (hereinafter, "motion"), filed on January 14, 2014, came on for hearing on Monday, February 10, 2014. Present were Jeffrey Portnoy and John Duchemin, representing Oahu; Deputy Prosecuting Attorney Janice Futa, representing the State of Hawai'i; and Thomas Otake and Hayley Cheng, representing the Defendant, whose presence was waived.

The Court has reviewed Oahu's motion and its attachments; the State of Hawaii's Response to the motion; and Oahu's responsive Reply. The Court takes judicial notice of the sealed portions of the transcripts of the August 26, 2013, proceedings. Based thereon, and duly considering written and oral arguments and the representations of all counsel at hearing on February 10, 2014, the Court grants the motion in part and denies it in part.

1. As discussed in this Court's Order Granting in Part and Denying in Part State's Motion for Protective Order, filed herein on May 31, 2012, the Court is well aware that the news media have a qualified right of access to judicial proceedings and records. Whether a qualified right of access exists to a particular hearing may be analyzed under the two-part "experience and logic" test discussed in Phoenix Newspapers, Inc. v. U.S. Dist. Court for Dist. of Arizona, 156 F.3d 940 (9<sup>th</sup> Cir. 1998).

As that court articulated:

The "experience" prong of the test questions "whether the place and process have historically been open to the press and general public" ... while the second element inquires "whether public access plays a significant positive role in the functioning of the particular process in question."

Id. at 948 (citing Press-Enterprise Co. v. Superior Court, 478 U.S. 1, 8 (1986)).

2. A transcript of any proceedings that have been closed pursuant to the "experience and logic" test may be released when the danger of prejudice has passed and the factors militating in favor of closure no longer exist. Id. at 947-48.

3. Here, the Court concluded that a circumstance which arose on August 26, 2013, during on-going jury deliberations and involving deliberating jurors, should be promptly divulged to counsel in the interest of preserving both parties' rights to a fair

trial and verdict. This disclosure led to the proceedings at issue.

4. It is the Court's belief that necessary discussions between the Court and counsel, on one hand, and deliberating jurors, on the other, traditionally and historically have been closed to the public, including family and friends of the defendant and alleged victim, and the news media. During these necessarily narrowly tailored discussions, the Court must avoid intruding upon or inquiring into the jury's deliberations, and must avoid exposing the individual jurors to anything that may in any way improperly influence their continuing decision-making processes. Particularly in a case that has generated substantial public interest, this potentially can include requiring a juror to answer questions in front of family and friends for the defendant and/or the alleged victim, and the news media. Not only might this procedure expose a juror to pressure and matters which are not part of the evidence to be considered, but it also could hamper the Court's search for candid answers from that juror. For all of these reasons, in order to preserve a juror's privacy and security and the integrity of a fair and impartial jury decision based solely upon the trial evidence and the law provided by the Court, and to protect the right of both parties to a fair trial and verdict, public access would not play a significant positive role in the functioning of this process.

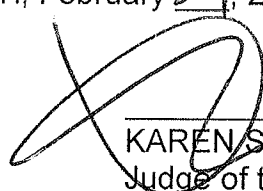
5. Counsel for Oahu stated to the Court that he does not object to the Court's redacting information identifying any juror and has asserted that he does "not seek access to the inner workings of the jury's actual deliberations."

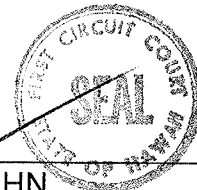
6. Now that the initial jury has been discharged, a substantial part of the Court's and counsel's concerns no longer apply. However, having declared a mistrial, this Court must re-try this case before another jury beginning in June 2014, and the Court always must be mindful of the effect of publicity on a future jury pool.

7. Based upon all of the foregoing and the totality of the relevant circumstances, the Court has redacted some information from the transcript of the August 26, 2013, proceedings but otherwise releases the remainder. A copy of the redacted transcript is attached hereto.

8. The Hawaii supreme court has ordered that Petitioners supplement the record with the complete transcript of the August 26, 2013, proceedings; this unredacted transcript shall be sealed pursuant to the foregoing.

DATED: Honolulu, Hawai'i, February 24, 2014.

  
KAREN S. S. AHN  
Judge of the Above-Entitled Court



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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

COPY

STATE OF HAWAII	)	
	)	CR. NO. 11-1-1647
vs.	)	
	)	
CHRISTOPHER DEEDY,	)	
	)	
Defendant.	)	
	)	

TRANSCRIPT OF SEALED PROCEEDINGS

had before the HONORABLE KAREN AHN, Judge Presiding,  
Eleventh Division, on Monday, August 26, 2013;  
Further Jury Deliberation.

APPEARANCES:

JANICE FUTA, ESQ.	For State of Hawaii
DON FUDO, ESQ.	
CHASID SAPOLU, ESQ.	

BROOK HART, ESQ.	For Christopher Deedy
MAGGIE NAMMAR, ESQ.	

REPORTED BY:

MILANI BALLESTEROS, RMR, CRR, CSR #407  
Official Court Reporter  
Circuit Court of the First Circuit  
State of Hawaii

1 MONDAY, AUGUST 26, 2013 10:33 A.M.

2 --ooOoo--

3 (The following proceedings were held in chambers:)

4 THE CLERK: State of Hawaii versus  
5 Christopher Deedy, case number -- Criminal  
6 No. 11-1-1647 for status.

7 THE COURT: Appearances.

8 MS. FUTA: Good morning, Don Fudo and Janice  
9 Futa for the State.

10 MR. HART: Brook Hart and Maggie Nammar for  
11 Christopher Deedy, and he's present.

12 And, Your Honor, if we're going to go into  
13 any substance, we'd ask that we make a call to our  
14 co-counsel, who's standing by his telephone, if  
15 that's convenient for the Court.

16 THE COURT: Go ahead if you wish. Are you  
17 going to do it by cell?

18 MR. HART: I can do it on my cell phone.

19 (Pause in proceedings.)

20 THE COURT: Okay. Mr. Blanke, can you hear  
21 us?

22 MR. BLANKE: Yes, I can. Can you hear me,  
23 Your Honor?

24 THE COURT: Yes. And so I'm going to assume  
25 if I don't hear from you any further, that you are

1 hearing everything we're saying. If you want to pipe  
2 up, feel free.

3 We're on the record, and the record is going  
4 to be sealed. Let's see, the jury went in around  
5 what time?

6 THE CLERK: 9:05.

7 THE COURT: 9:05. And according to my note  
8 from my law clerk, he says, "As I was taking the jury  
9 into the deliberation room, foreperson  
10 requested to speak with me privately. I took him  
11 down the hallway near Judge Perkins' courtroom. His  
12 question was, 'What do we do if we feel one of the  
13 jurors is a friend of one of the sides?' My answer  
14 to him was any communication must be written on a  
15 form. He thanked me and walked into the jury room  
16 with the rest of the jurors."

17 I called the lawyers, although we hadn't  
18 received a written communication, because I thought  
19 the inquiry was sufficiently important that the  
20 lawyers should know, and they agreed to wait 30  
21 minutes to see if a written communication came in.  
22 None came in. So I talked with the lawyers again,  
23 and we agreed that probably we should put this --  
24 make this a matter of record.

25 What does the State wish to do at this

1 point?

2 MS. FUTA: Well, Your Honor, given the fact  
3 that there has been no further communication, and the  
4 way as we understand it that the first communication  
5 was worded, that is "What do we do if we feel that  
6 one of the jurors is a friend of one of the sides?"  
7 the State's inclination is to just let them continue  
8 deliberation, 'cause apparently they did not feel  
9 that it was something that should be brought to the  
10 Court's attention.

11 THE COURT: And for the defense?

12 MR. HART: From the defense's point of view,  
13 we feel that the communication is sufficiently  
14 significant and important and also somewhat ambiguous  
15 so that it would be appropriate for the Court to  
16 inquire further of and determine whether  
17 or not any inquiry beyond that would be appropriate.

18 THE COURT: All right. Since the defense  
19 has asked for a sort of hearing, that we at least  
20 inquire as to what he was talking about.  
21 Certainly the Court is mindful that it cannot go into  
22 the deliberation process with these jurors, and so  
23 we're going to do our best to ask him what he meant  
24 without going into any of the deliberation process,  
25 and that, I think, is necessary just based on the



1 Defendant's right to 12 impartial jurors.

2 And if nothing comes of this in the sense  
3 that the Court cannot find that there is substantial  
4 prejudice to that right, then they'll just continue  
5 to deliberate. If I find otherwise, then we'll have  
6 to decide -- I'll have to decide what to do next,  
7 okay?

8 So I think that's the best thing for appeal,  
9 if there's going to be an appeal. And does anybody  
10 want to add anything more.

11 MR. FUDO: How do you propose to do it?  
12 What do you propose to us, this individual?

13 THE COURT: I'm going to ask him whether he  
14 said something to Ryan this morning and ask him what  
15 it was that he asked, let him tell us what his  
16 question was, then I'm going to -- I'm going to tell  
17 him I cannot -- I don't want to know about your  
18 deliberation process or where -- what the jury is  
19 thinking about now, or has been thinking about, but  
20 can you tell me what you meant.

21 MR. FUDO: Assuming Ryan accurately  
22 recounted what the foreperson told him and therefore  
23 the foreperson will just recite what he told Ryan,  
24 where do we -- what do we do then?

25 THE COURT: Ask him why he thinks this,

1 without going into detail. It's going to be --  
2 that's the part I don't want to do this hearing, just  
3 because it's going to be very touchy. And I'm hoping  
4 he understands my questions.

5 MR. HART: Your Honor, would candor be  
6 advanced if were asked this question in  
7 chambers rather than in open court?

8 THE COURT: I think this -- I don't know. I  
9 think it's -- might be -- I don't know which is more  
10 intimidating for him, you know?

11 MR. FUDO: I would think chambers is less.  
12 If he pulled Ryan aside and went down the hall to  
13 Perkins, then to me he's -- he wants to be segregated  
14 from the group. I think the -- this is a significant  
15 matter, how he's segregated from the rest of the  
16 jurors. What is the pretext we're going to use?

17 THE COURT: I was going to have them go in  
18 there and tell them to stop deliberating and ask  
19 to come out and then instruct him not to  
20 talk about this matter with his fellow jurors.

21 MR. FUDO: He'll be asked that in front of  
22 all 11 or...

23 THE COURT: No, no, just he -- asked what,  
24 to come out?

25 MR. FUDO: To come out.

1 THE COURT: Yeah, he'll have to be.

2 MR. HART: Well, you know, along with what  
3 Don is saying, it might be -- I'm just projecting  
4 now. made his inquiry of Ryan without  
5 having first discussed this with the other jurors.  
6 Just trying to seek some -- some counsel for how he  
7 should discharge his role as foreman. And I think  
8 that a, quote, "less formal setting in chambers" with  
9 keeping a low profile, because obviously  
10 if they go into the court the media will be highly  
11 excited by this, might be a way to encourage candor  
12 and perhaps reduce any possible embarrassment.

13 THE COURT: I don't care, if you both agree  
14 that this may be a better setting, that's fine with  
15 me. We've already kind of put paper over the main  
16 doors in the courtroom and the courtroom is locked,  
17 and I've contacted public relations with the  
18 judiciary and I think she's going to tell the media  
19 that they can petition for a writ. All right. I  
20 mean, it's that simple.

21 MR. HART: I mean, I could see him just  
22 discussing it with all of us in a way that might not  
23 be as -- as intimidating as all the trappings of the  
24 courtroom and whatever that brings.

25 MR. FUDO: But for close proximity to the

1 Defendant, respectfully, Mr. Deedy, I don't know  
2 about that.

3 MS. FUTA: I agree with Mr. Fudo on that  
4 point. I think that this may be a less intimidating  
5 atmosphere in chambers, yet I don't like the fact  
6 that the Defendant is going to be right 3 feet away  
7 from him.

8 THE COURT: And he's close to all you guys.  
9 I mean, you guys have been --

10 MR. FUDO: Hasn't there already been issue  
11 with the jurors where they felt the Defendant was  
12 moving close to them?

13 MR. HART: One said so, and she was  
14 seated some distance, so, I mean, Chris might be  
15 willing to move to some other place, sit in the back  
16 here.

17 THE COURT: Maybe it's better to do it in  
18 the courtroom, then everybody's in their usual  
19 positions.

20 MS. FUTA: I agree.

21 THE COURT: You know what I mean? And he'll  
22 sit right in the box in his usual chair. And the  
23 whole thing is probably intimidating.

24 MR. FUDO: So enter the courtroom through  
25 this back door, through the hallway doors, so then

1 nobody outside will know?

2 THE COURT: They probably saw you folks  
3 coming in here. But they know that they can --  
4 they're -- you know, their relief is through a  
5 petition.

6 MR. FUDO: Right, right, right, right,  
7 right, yeah. Okay.

8 MR. HART: I agree with your -- your --

9 THE COURT: You folks can just go right in  
10 here. They can't see into the courtroom at this  
11 point.

12 MS. NAMMAR: Can you hear from the  
13 courtroom? When the jurors went in there during the  
14 trial, I remember hearing them all laughing back  
15 there. I just wonder if they're going to be able to  
16 hear us.

17 THE COURT: Not if we keep our voices down.  
18 I think it'll be fine. You know, none of us wants to  
19 go into the deliberative process, right, I don't want  
20 to know where they are, what they're thinking about.  
21 I just want to know why he said that in very --  
22 probably it's going to be in general terms. Okay.  
23 Everybody's nodding. Okay. Are we good?

24 MR. HART: Would there be a way for Ryan  
25 to -- I see we're coming up on the 11:00 hour -- to

1 simply suggest to the jurors that it would be time  
2 for them to take a recess and then approach

3 to come to the courtroom so as to not  
4 impact on any dynamic that maybe developed between  
5 the foreman and the other jurors in light of this  
6 incident or issue?

7 THE COURT: I think they -- they just went  
8 on a smoke break, and they always have to stay  
9 together. They're not happy; nonsmokers have to go  
10 downstairs. Are they eating in?

11 THE BAILIFF: Yeah.

12 THE COURT: So they're going to be together,  
13 whether they deliberate or not, while they're eating.  
14 I have no idea.

15 MR. HART: Okay. Well, it was just a  
16 suggestion.

17 MS. FUTA: And then how is going  
18 to be instructed as to what happens when he goes back  
19 to the deliberation room?

20 THE COURT: Usually I would just tell them,  
21 please, you are instructed you cannot talk about this  
22 with your fellow jurors. And I guess we'll probably  
23 have to ask him the usual questions, you know, is  
24 this going to impact your ability to be fair, you  
25 know.

1 MS. FUTA: I mean, because the way the  
2 question was initially worded to Ryan, it appears  
3 like the "we" seems to encompass the jury.

4 THE COURT: That's why it's pretty important  
5 as to how it's worded, but we'll have to see what he  
6 says.

7 MS. FUTA: Okay.

8 MR. HART: Well, I think that that's an  
9 important point, and I hope the Court will be able to  
10 inquire whether this is a --

11 THE COURT: See, I heard from Ryan when he  
12 first came in here and told me, I, as foreperson,  
13 what should I do if. Ryan says he didn't say that,  
14 so, you know, who knows? But we'll hear soon enough  
15 from him, I think.

16 MR. HART: All right.

17 THE COURT: We'll recess into the courtroom.

18 (Recess taken at 10:48 a.m.)

19 (The following proceedings commenced at 10:49 a.m. in the  
20 courtroom:)

21 THE BAILIFF: Calling Case Criminal  
22 No. 11-1-1647, State of Hawaii v. Christopher Deedy  
23 for further jury deliberations.

24 Appearances, please.

25 MS. FUTA: Don Fudo and Janice Futa for the

1 State.

2 MR. HART: Brook Hart, Maggie Nammar for  
3 Christopher Deedy; he's present, Your Honor. On the  
4 telephone is our co-counsel, Carl Blanke, who is in  
5 Virginia.

6 THE COURT: Okay. Yes, good morning.

7 We've -- this is a continuation of what we  
8 were just discussing in chambers. And I think at  
9 this point I'm going to ask the law clerks to go in  
10 there, tell the jury to stop deliberating, and ask  
11 Mr. to step out here briefly.

12 (Pause in proceedings.)

13 MR. HART: Can you hear us, Carl?

14 MR. BLANKE: I can. I can hear you well.

15 MR. HART: Thank you.

16 THE COURT: And this record is sealed.

17 (Pause in proceedings.)

18 Q. (By the Court) Good morning,

19 A. How's it?

20 Q. You can sit in your regular seat.

21 A. Yeah, I feel so comfortable here.

22 Q. Okay. Yeah. Thank you. Please don't be  
23 nervous. This is not a terribly unusual proceeding,  
24 okay?

25 A. Okay.



1 Q. My law clerk tells me that this morning,  
2 before you folks resumed deliberations, you had a  
3 question for him.

4 A. Yes.

5 Q. What was that question, best you can recall?

6 A. Okay. I just -- I wanted to know if -- like  
7 if we -- like if -- say if I think somebody might be,  
8 like, a friend of a friend of the -- one of the  
9 sides, if, you know, like what am I -- am I supposed  
10 to say something? Am I supposed to bring it up in  
11 there? How -- how --

12 Q. Okay. I'm sorry, go ahead.

13 A. Yeah, that's it.

14 Q. All right. And, you know, your  
15 deliberations, I want you to know, are confidential,  
16 okay, and I do not want to know what you folks have  
17 been deliberating about, where -- what you're  
18 deliberating about now, where you are in your  
19 discussions.

20 A. Mm-hmm.

21 Q. Anything like that.

22 A. Mm-hmm.

23 Q. But I would like to know why you asked that  
24 question, without going into any of your  
25 deliberations.

1           A.    Okay.  So, I mean, and I -- I kinda regret  
2           maybe not bringing this up sooner, but I kinda wanted  
3           to give the guys the benefit of the doubt, you know  
4           what I mean, so... when we were -- you know, we  
5           always line up in the hallways, so one day I seen  
6           somebody shake somebody's hand like they -- they knew  
7           them, you know, like, hey, how's it, blah-blah-blah.  
8           And then -- and then I noticed in the courtroom that  
9           they were sitting on one side.  And then when I went  
10          to lunch --

11          Q.    The person who shook --

12          A.    Yes.

13          Q.    -- the juror's hand?

14          A.    The juror's hand -- was in the courtroom and  
15          on one side, which I thought maybe just the seats are  
16          on that side, they -- you know, whatever, but then I  
17          went to lunch at Restaurant Row and I -- I always --  
18          I always see one side of the family there, and I  
19          noticed that day that that individual was sitting  
20          with that -- with the family, the person that shook  
21          the hand of the juror was -- was eating lunch with  
22          the family.

23                    I mean, I -- and, you know, I kinda just  
24          thought, you know, maybe they know them, maybe it's  
25          by chance, you know, I don't know how they all know

1 each other or whatever, but -- and, you know, I  
2 thought, hey, maybe he -- maybe he knows him and he  
3 doesn't care about who he knows, so, you know, I  
4 wanted to make sure that -- you know, give him the  
5 benefit of the doubt that he can still be a, you  
6 know, impartial juror like the rest of us are, you  
7 know, like we're supposed to be. And, yeah, that --  
8 without saying too much.

9 Q. Is there any other reason why you asked that  
10 question other than what you've told me?

11 A. Only because, I mean... the way that he's  
12 very... you know, like there's -- it's kind of hard  
13 to even -- you know, he's very one-sided almost, you  
14 know what I mean, he -- there's no -- like no doubt  
15 in his mind of one way, you know what I mean, so... I  
16 just -- I just was wondering if that -- if that would  
17 make a difference, you know what I mean, or...

18 Q. Is there -- do -- have you -- why do you --  
19 do you connect his positions in your discussions with  
20 the fact that he shook hands with this person? That  
21 was the one thing that happened, right, he shook  
22 hands with that person?

23 A. Yeah, like, hey, how's it, you know, they  
24 said something like -- I don't remember what -- but I  
25 know he -- you know, he was like, hey, how's it and

1 this and that, and I figured maybe he was with  
2 another case, but then he did sit in with them.

3 Q. But that was -- was there anymore contact  
4 between the juror and that individual that --

5 A. No, not that I seen.

6 MR. FUDO: Excuse me. Then I don't  
7 understand. I thought they ate lunch together.

8 THE FOREPERSON: So --

9 MR. FUDO: Okay. Okay. Sorry.

10 THE FOREPERSON: Yeah, just -- the juror  
11 shook -- shook that person's hand, that person sat  
12 with the family, and I thought maybe there just was,  
13 you know, no seats, but then when I went to lunch,  
14 they were eating together. Not the juror --

15 MR. FUDO: Oh.

16 THE FOREPERSON: -- the person that he shook  
17 hands with --

18 MR. FUDO: Oh.

19 THE FOREPERSON: -- and the -- and the  
20 family.

21 MR. FUDO: I see.

22 THE FOREPERSON: You know, I'm not saying  
23 that he -- he's directly connected to the family.

24 MR. FUDO: I see.

25 THE FOREPERSON: But it was like a friend of

1 a friend, is --

2 MR. FUDO: I see.

3 THE FOREPERSON: -- is that a problem for  
4 us? I just was wondering. I didn't want to -- I  
5 didn't want to, like, single him out or, you know  
6 what I mean, like, that's why I wanted to kinda do it  
7 on side and... yeah.

8 THE COURT: Yes. No, I understand.

9 MR. FUDO: And you didn't mention that  
10 observation of the handshake to any other juror, yes?

11 THE FOREPERSON: I -- I did mention it to  
12 one other just to -- I wanted -- I just kinda said,  
13 you know, hey, if we think someone is, you know, a  
14 friend of a friend, is -- you know, do you think that  
15 would be a problem, and he said yeah. And then I  
16 kinda -- you know, 'cause he's -- he's our -- kind of  
17 our -- not our leader, but he's, you know, the guy  
18 who is, you know, trying to make everything even  
19 and -- our mediator almost.

20 Q. (By the Court) Has anything -- nothing else  
21 has happened though, other than what you told me?

22 A. No. I mean, I didn't see -- I didn't see  
23 the juror himself with the one side --

24 Q. Right.

25 A. -- or anything like that.

1 THE COURT: Are there any questions from  
2 counsel?

3 MR. HART: Well, I do have a couple of  
4 questions, if I might, Your Honor. I'm sorry, would  
5 you like to go first?

6 MS. FUTA: No, go ahead, Mr. Hart. But I'm  
7 going to reserve the right to object.

8 THE COURT: Yes. No, the important thing is  
9 your deliberation process is confidential. That's  
10 very important.

11 THE FOREPERSON: Mm-hmm.

12 THE COURT: Okay. Mr. Hart?

13 MR. HART: May I?

14 Q. (By Mr. Hart) Okay. Here's my concern,  
15 : It seems that what you've described,  
16 and you're pointing at -- you've been pointing to the  
17 side of the room that -- where the family has  
18 been seated, am I understanding your physical  
19 pointing correctly?

20 MS. FUTA: Well, Your Honor, I -- I would  
21 object, because I think this definitely gets --

22 THE COURT: All right. Sustained.

23 MS. FUTA: -- into the process.

24 THE COURT: Sustained.

25 MS. FUTA: I mean --

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1 THE COURT: It doesn't matter which side.

2 MR. HART: Well, whichever way it is, my  
3 concern is that the person who's -- who is serving as  
4 the juror, this might have been information that  
5 would have been or could have been shared during the  
6 selection process. Did -- do you have any sense  
7 about whether the juror disclosed any of these  
8 knowledges of the family or friends of the family?

9 MR. FUDO: Your Honor -- just a minute.  
10 Excuse me, sir. He didn't actually say that he knew  
11 anyone. What he said is he saw a person shake  
12 another person's hand, so I don't know that the  
13 question should impute any knowledge of the family  
14 and all that. It could be a very innocuous  
15 handshake, period.

16 THE COURT: True. And says that  
17 it may be a friend of a friend.

18 THE FOREPERSON: That's how I took it. I  
19 mean, it -- you know what I mean, I -- I didn't --  
20 you know, I didn't see him shake hands with any of  
21 the family of either side or -- you know what I mean,  
22 it was a -- you know, I just noticed that he shook  
23 hands with one person, and it looked like that person  
24 was friends of a family.

25 THE COURT: Okay. Mr. Hart?

1 Q. (By Mr. Hart) Is it your sense that there  
2 is some dynamic that is preventing the juror from  
3 being a fair and impartial juror from your  
4 perspective?

5 MR. FUDO: Your Honor, I'm -- before you  
6 answer, sir, excuse me again. That gets perilously  
7 close to the deliberative process and what's going  
8 through their minds. That's got nothing to do with  
9 anything objective as an observation. To ask how  
10 this observation, and in his sense he's going to  
11 interpret it as -- as it relates to the  
12 deliberations, that's precisely what we shouldn't be  
13 asking.

14 MS. FUTA: And I think we also should not be  
15 arguing this at this point.

16 THE COURT: Yeah. Okay. Any other  
17 questions?

18 Okay. what you've told me,  
19 number one, is it in any way going to influence your  
20 ability to be fair to both sides in this case?

21 THE FOREPERSON: No.

22 THE COURT: Okay. I'm going to instruct you  
23 that everything we've talked about in here you are  
24 not to share with your fellow jurors, okay?

25 THE FOREPERSON: Okay.



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1 THE COURT: All right. Thank you. I'm  
2 going to excuse you for now. Can I ask you to step  
3 into the jury room and you folks just kinda don't  
4 deliberate yet? Okay?

5 THE FOREPERSON: Okay. They think that  
6 I'm -- 'cause I have a trip coming up this weekend,  
7 they think that they're -- that you're talking to me  
8 about that, so, I mean, they kinda don't know.

9 MR. FUDO: Thank you.

10 THE COURT: All right. Sounds good. Thank  
11 you, Mr.

12 THE FOREPERSON: Thank you. You folks are  
13 going to let us know when we start again?

14 THE COURT: Yeah, we will.

15 THE FOREPERSON: Thank you.

16 (The foreperson exited the courtroom.)

17 THE COURT: Well, counsel?

18 MR. FUDO: Well, without more, I think it's  
19 nothing.

20 MR. HART: Well, I -- my friend Don and I  
21 disagree about this. I -- I think it's important. I  
22 think what -- what the juror described was, without  
23 being hypertechnical, an indication that a juror  
24 identified himself as having some close proximity or  
25 allegiance to one of the sides in the -- in the

1 beginning with this handshake, and that the person he  
2 shook -- or who shook his hands sat on a particular  
3 side, and it appears from 's comment that  
4 this particular juror is -- seems not open to  
5 consideration of the other side, whichever that is,  
6 that further inquiry by the Court would be  
7 appropriate. Exactly what that inquiry should be, I  
8 don't know, we're in uncharted territory, but it  
9 would seem to me to be to identify who that juror is  
10 and for the Court to question that juror as to the  
11 juror's impartiality.

12 THE COURT: That's a possibility. It would  
13 clean up the record.

14 MS. FUTA: Your Honor, I agree with Mr. Fudo  
15 that basically what we have heard is so amorphous  
16 that we can't really assign any sort of -- well, we  
17 would be speculating totally to -- to feel that this  
18 is impacting their deliberations.

19 THE COURT: It is. You know, the Court has  
20 to find that, in its discretion, there has been  
21 something that rises to the level of being  
22 substantially prejudicial to Mr. Deedy's right to 12  
23 impartial jurors. We're talking about one handshake  
24 with somebody who is not a member of the family and a  
25 thought that the juror involved seems to have strong

1 beliefs. Now, can you tie that into -- the two  
2 things into each other and say that it is  
3 substantially prejudicial? I don't know.

4 MR. HART: I think said that the  
5 juror has been, quote, "one-sided" from the  
6 beginning. It would certainly be a juror's right to  
7 take that position, but when added to the other  
8 details that disclosed, it causes us to  
9 have concern that one of the jurors started out not  
10 with the commitment or ability to be fair and  
11 impartial, but with something less than that.

12 THE COURT: You know, I think the better  
13 route is to actually identify the juror and have them  
14 come in and tell me whether they can be fair.

15 For the State, you have any authority? You  
16 have any other argument?

17 (Pause in proceedings.)

18 MS. FUTA: We -- Your Honor, we have no  
19 authority per se. We just don't think that what has  
20 been presented rises to that level.

21 MR. HART: You know, Your Honor, one way to  
22 perhaps mitigate any singling out in this situation  
23 would be to bring all the jurors in and ask the  
24 questions of the panel and then allow the -- I mean,  
25 excuse me, to ask of each person separately and then

1 any person who had such feelings would be free to  
2 share them, and if not, no person would be singled  
3 out.

4 MR. FUDO: We're not talking about feelings.  
5 What feel -- there's been no feelings. That was  
6 improperly --

7 MR. HART: Poor choice of words.  
8 Inclination, prejudice, inability to be fair to both  
9 sides, lack of impartiality, I think that's what  
10 we're talking about, and inquiring of each juror  
11 separately on that would be one way to avoid singling  
12 out a particular juror.

13 MS. FUTA: Well, on the other hand, Your  
14 Honor, at this point in time, asking are you  
15 impartial is -- is a little too late. I mean, we've  
16 already -- they've already had the evidence. I mean,  
17 what do you mean when you say impartial? Obviously  
18 some people --

19 THE COURT: Can you be fair to both sides is  
20 what we would -- I'm not going to bring the whole  
21 jury in. It would be one, the one involved.

22 MR. FUDO: So first we're going to  
23 re-interview the foreperson, ask him to identify that  
24 person?

25 THE COURT: I'm just going to ask him for

1 the name.

2 MR. FUDO: And then that person comes out?

3 THE COURT: Yeah.

4 MR. HART: I mean, if the person has started  
5 out with an inclination or proclivity and is  
6 unwilling to move from it and brings to the situation  
7 prior contact with family members, it suggests that a  
8 person made it through the juror process without  
9 identifying the potential for partiality, and that  
10 would be our concern.

11 THE COURT: Well --

12 MR. BLANKE: Your Honor, can you hear me?

13 THE COURT: Yes.

14 MS. NAMMAR: Yes, go ahead, Carl.

15 MR. BLANKE: One other concern that I would  
16 have is even if the juror didn't have contact or a  
17 relationship with a family or a close friend of the  
18 family during the jury selection process, if that  
19 person somehow identified with the family during the  
20 course of the trial and chose to shake, you know, the  
21 hand of a person closely affiliated with the family,  
22 that -- that in and of itself would be a strong  
23 indication that the juror has given up their -- their  
24 impartiality with regard to a position that they're  
25 supposed to have during the course of the trial.

1 THE COURT: Well, I disagree with that. I  
2 think it's really hard to know -- it's really hard to  
3 connect the two. We don't know how -- how close the  
4 relationship was. You said it was a close  
5 relationship. I don't think that's been established,  
6 number one. Number two, whether that has anything to  
7 do with this juror's decisions as a juror, you know,  
8 is -- we just don't know. And I think that's where  
9 the Court is kind of caught, you know, does this rise  
10 to the level of being substantially prejudicial or  
11 close thereto, which would, I think, make me want to  
12 do the safer thing, which is to call the juror in.  
13 So let's call the foreperson in.

14 (Pause in proceedings.)

15 Q. (By the Court) Thanks,

16 A. Yes.

17 Q. I'm wondering if you could tell me who that  
18 juror is.

19 A. I'm not positive on his last name.

20 Q. Oh, , Chair Okay.

21 Again, don't discuss this with your fellow  
22 jurors. And this will not in any way affect your  
23 ability to be fair to both sides; is that correct?

24 A. Correct.

25 Q. And you can continue on doing your job as

1 foreperson?

2 A. Correct.

3 THE COURT: Okay. Thank you.

4 THE FOREPERSON: Thank you.

5 (The foreperson exited the courtroom.)

6 THE COURT: Can we ask to step  
7 in here?

8 MR. BAILIFF: I'm sorry, what did you...

9 THE COURT: Ask to step in here  
10 briefly.

11 (Pause in proceedings.)

12 Q. (By the Court) don't be  
13 nervous.

14 A. (Laughs.) Saying, oh, what did I do?

15 Q. This is not an unusual proceeding. So just  
16 have a seat, and don't --

17 A. Anywhere?

18 Q. Anyplace is fine.

19 A. Okay.

20 Q. Okay. , I just have -- I want  
21 you to know that your deliberation process is  
22 confidential.

23 A. Okay.

24 Q. Okay? And so my only question to you really  
25 is do you -- at this point, do you think you can be

1 fair to both sides?

2 A. Yes.

3 Q. So you can be fair to both the government  
4 and the defense?

5 A. Yes.

6 THE COURT: All right. Counsel, any  
7 questions?

8 Thank you. And I'm going to ask that you  
9 not discuss this with your fellow jurors. My  
10 questioning of you today, is that in any way going to  
11 affect your ability to be fair?

12 THE JUROR: Not at all, ma'am.

13 THE COURT: Can you set it aside?

14 THE JUROR: Yes.

15 THE COURT: All right. Thank you.

16 (The juror exited the courtroom.)

17 THE COURT: Very interesting. Thank you. I  
18 think we're done.

19 MR. FUDO: We'll leave this way?

20 THE COURT: Yes.

21 MR. HART: Your Honor, are you comfortable  
22 ending this session without inquiring whether the  
23 juror has personal knowledge or has some friendship  
24 with anybody associated with one side or the other in  
25 this case? I'm a little concerned about that.



1 THE COURT: He shook somebody's hand. I...

2 MR. HART: And then went to lunch.

3 Somebody --

4 THE COURT: No, no, he didn't go to lunch.

5 MR. HART: Went to lunch afterwards.

6 MS. NAMMAR: The friend went to lunch.

7 THE COURT: saw that person

8 having --

9 MR. HART: Yes.

10 THE COURT: -- lunch with --

11 MR. HART: Yes.

12 THE COURT: -- one side or the -- one family

13 or the other.

14 MR. HART: Yes.

15 THE COURT: But other than that, that's all

16 we have, and after that, , as far as I

17 know, had absolutely no contact with the individual,

18 whoever that was. Okay? Thanks everybody.

19 (Recess taken at 11:11 a.m..)

20 (The following proceedings commenced at 1:05 p.m. in

21 chambers:)

22 THE COURT: We are on the record. Milani's

23 here with my staff. And this telephone conference is

24 at the request of Mr. Hart, and the lawyers are doing

25 it by telephone with their -- with their -- at their

1 request.

2 Okay. Mr. Hart?

3 MR. HART: Thank you, Your Honor.

4 THE COURT: Mr. Hart, is Mr. Deedy there?

5 MR. HART: Yes, he's here.

6 THE COURT: All right. And Ms. Futa's here.

7 Okay. Go ahead.

8 MR. HART: And Ms. Nammar is here.

9 THE COURT: Okay.

10 MR. HART: After our session this morning in  
11 which we addressed , we had a little bit  
12 more time to think about it and determined that we  
13 should have asked a number of additional  
14 questions, and we're asking the Court to reconvene to  
15 do that, because we felt that this incident was not  
16 unlike that which we experienced during the trial  
17 with , when he indicated a possible  
18 awareness of people related to the witness Shane  
19 Medeiros, or something having to do with them.

20 And our perception was that from what  
21 said, that somebody approached  
22 , who apparently, when he was in line as  
23 a juror, shook hands with him, and then later that  
24 somebody was seen having lunch with some members of  
25 one side or the other, it wasn't said precisely which

1 side.

2 Our concern is that had or has  
 3 a relationship with a person who was somehow closely  
 4 related to the side which that person went and had  
 5 lunch with, and we believe that the matter should be  
 6 thoroughly examined into by the Court and the  
 7 question should be asked of who was it  
 8 that shook hands with him, who was it that had lunch  
 9 with whomever it was that he saw, or that  
 10 saw that person having lunch with, and who is the  
 11 person who contacted the jurors during the time of  
 12 their service to shake hands with at least

13

14 There also seems to be another juror with  
 15 whom spoke about the subject of  
 16 's apparent identification to the  
 17 exclusion of the other side with one side of the  
 18 case, and we would also request that the Court  
 19 identify and question that person.

20 And our feeling is that if there, in fact,  
 21 is going to be a deadlock, the Court will have to  
 22 determine whether there is manifest necessity for the  
 23 dismissal of the juror because they're unable to  
 24 reach a verdict. And normally the answer would be  
 25 yes, that would amount to manifest necessity, but if

1           has a particular identification with one  
2           side or the other and has not disclosed it and has,  
3           in fact, been unwilling to negotiate because of that,  
4           it would be important for the Court to know that and  
5           necessary to make an effective evaluation of the  
6           manifest necessity doctrine.

7           THE COURT: The government?

8           MS. FUTA: Well, yes, Your Honor. Just to  
9           clarify one thing, I don't think           ever  
10          said that this person that shook hands with  
11                   went up to him and did so, and in that  
12          respect I think Mr. Hart is trying to inject into  
13          this situation jury tampering, which I don't think  
14          has ever been raised or even hinted at.

15                Another thing that Mr. Hart, I believe,  
16          misstates is the fact that whether or not  
17                   even knew that this person was at  
18          Sunset -- or Restaurant Row eating with one side or  
19          the other, I don't think that that's ever been  
20          established, and I believe that, therefore, the way  
21          Mr. Hart is phrasing this whole situation is it's  
22          clearly biased and the Court -- I just would like the  
23          Court to be aware that none of these has come up  
24          through           's questioning.

25                MR. HART: Well, our understanding was kind

1 of different. Maybe the characterization of the way  
2 I'm reporting it is open to some question, but I  
3 clearly understood to say that a person  
4 later seen to be eating with one side or the other  
5 had come up to and shook his hand, and  
6 of course we don't know whether this is a person who  
7 didn't know, whether it's a person  
8 counts among his friends or associates,  
9 what 's relationship was to that person,  
10 but it strikes me as being a matter for further  
11 inquiry by the Court to answer these very questions,  
12 Your Honor, as to whether , in fact,  
13 although he claims that he could be, and was or is a  
14 fair and impartial juror indeed might not quite be  
15 that. So that's the reason why we should have this  
16 inquiry. It should be full and careful and  
17 thoroughly conducted by the Court.

18 THE COURT: Anything more for the record,  
19 counsel?

20 MR. FUDO: Your Honor, this is Fudo. I'm a  
21 little bit unclear as to how it would relate to a  
22 deadlocked jury.

23 THE COURT: Well, I think Mr. Hart's  
24 thinking maybe it's 11-1 not guilty.

25 MR. HART: That's a possibility, Your Honor.

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1           MR. FUDO:  And if it's 11-1 not guilty and  
2                           is somehow found to be tainted, then  
3           what?

4           MR. HART:  Then we would substitute the next  
5           juror in line of the alternates and the jurors would  
6           be advised to continue deliberating.

7           MR. FUDO:  And that's -- that would be your  
8           understanding too, Your Honor?  That's what you would  
9           feel -- how we would proceed?

10          THE COURT:  No, I think to me it's  
11          sufficient that the juror said --                    said  
12          that he can be a fair and impartial juror to both  
13          sides.

14          MR. FUDO:  Right.

15          MR. HART:  All right.  And to us it's not  
16          sufficient.  A mere declaration doesn't get to the  
17          bottom of the dynamics between the person who shook  
18          the juror's hand and then was seen associated with  
19          one side or the other, and in order to protect the  
20          integrity of the jury and the process itself, both  
21          sides should be able to know the answers to those  
22          questions and determine why it is that  
23          characterized                   's activities as a juror  
24          was, shall we say, set in his ways from the  
25          beginning, although those are my words.

1           MR. FUDO: And the second part of what I  
2           don't understand, Your Honor, is the mere fact that  
3           the only conduct at issue here is just, without more,  
4           an innocuous shaking of the hand. I'm not sure that  
5           it rises to the level of substantial prejudice.

6           MR. HART: I don't think we have an  
7           innocuous --

8           MR. FUDO: If I can just maybe finish.

9           MR. HART: Sorry, Don.

10          MR. FUDO: Because I believe, under the law,  
11          that's the first inquiry that the Court has to make,  
12          and what you've already said kind of made a finding  
13          that doesn't -- runs against that.

14                 And as I know is the case in our culture  
15          with males, it can be that someone approaches -- Male  
16          A approaches Male B, puts his hand out to shake, it's  
17          not of the insistence of the other male, so to read  
18          more into it or to read anything into it other than  
19          two people shaking hands, that's where I'm not seeing  
20          where they've shown that this conduct rises to the  
21          level of being substantially prejudicial.

22                 When I walked into the courtroom,  
23          Mr. Edmunds, he's an attorney, he approached me to  
24          shake my hand, and I initially didn't know who it  
25          was, but as a polite gesture, reciprocating gesture

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1 in our culture, I put my hand out and then he took my  
2 hand. Oh, I'm John Edmunds, okay, a little bit more  
3 and then it came, okay then I know who he is.

4 MR. HART: Okay. Well, our response is,  
5 Don, you might be entirely correct,  
6 might not know the person who shook his hand or he  
7 might know him, and then it turns out the person is a  
8 close associate of one side or the other, and that  
9 would call for further questioning. It's not known  
10 what the answer to those questions would be, and I  
11 believe the Court should get full and complete  
12 answers to them.

13 It's not -- it's not irrelevant that  
14 was seen wearing clothing during the  
15 trial that identified with organizations that  
16 supported one side's position in the case, and  
17 probably not completely irrelevant that during the  
18 jury selection process you folks asked  
19 no questions at all, so we don't know enough about  
20 to have a confident answer to the  
21 question about whether or not he had some undisclosed  
22 contact with people close to one side or the other  
23 that the Court should've known about, much the way it  
24 inquired of when he promptly and  
25 responsibly raised his concern during the trial.



1 THE COURT: Okay. Mr. Hart, this thing  
2 about the clothes and the no questions, I don't know  
3 what you may be referring to. We don't even know if  
4 the person who shook 's hands or hand is  
5 close to the family, who he is in relation to the  
6 family. And I have to agree, if this -- if the  
7 shaking of a hand is enough to open up the entire  
8 jury to question, I -- I just -- I just -- you  
9 know...

10 MR. HART: I'm not taking that position,  
11 Your Honor.

12 THE COURT: Especially considering he said  
13 he can be fair to both you and the State.

14 MR. HART: I'm not taking that position.  
15 I'm taking the position that shaking the hand of a  
16 juror while the juror's waiting in line is not  
17 something we see every day, and further inquiry to  
18 make sure that we have truly a fair and impartial  
19 juror, particularly in light of the timing that the  
20 jurors reported their deadlock, within an hour of the  
21 hearing that we had, suggests the basis for the Court  
22 to inquire further. It may turn out to be completely  
23 innocuous, in which case the record will reflect  
24 that, or it may turn out to be more, in which case  
25 the Court would want to consider replacing

1 with an alternate. That's our position.

2 THE COURT: Okay. If -- is it -- anybody  
3 have anything more to place on the record? If not,  
4 thank you very much, counsel.

5 MR. FUDO: Thank you.

6 THE COURT: Seal it.

7 (Recess taken at 1:18 p.m.)

8 (The following proceedings commenced at 3:30 p.m. in the  
9 courtroom:)

10 THE BAILIFF: Calling Case Criminal  
11 No. 11-1-1647, State of Hawaii v. Christopher Deedy  
12 for further jury deliberation.

13 Appearances, please.

14 MS. FUTA: Good afternoon, Your Honor,  
15 Chasid Sapolu and Janice Futa for the State.

16 MR. HART: Good afternoon, Your Honor, Brook  
17 Hart and Maggie Nammar for Christopher Deedy, and  
18 he's present.

19 THE COURT: Good afternoon to all of you.

20 We've received a communication, No. 5, from  
21 the jury, and as a matter of record, the -- all other  
22 communications were answered with the consent of both  
23 counsel, and that communication reads:

24 We have unanimously voted that the jury does  
25 not have a verdict, and that further deliberations

1 will not resolve our impasse.

2 I propose to bring the jury out, question  
3 them about this briefly. Anything more for the  
4 record?

5 MR. HART: Yes, Your Honor. We'd like to be  
6 heard on this matter, please.

7 THE COURT: Yes.

8 MS. FUTA: Your Honor, if Mr. Hart intends  
9 to put on the record things that we have discussed  
10 which have been sealed, we would request that those  
11 same arguments also be sealed.

12 MR. HART: Well, what I intend to put on the  
13 record, and hereby do, is Mr. Deedy's objection to  
14 taking a verdict of hopelessly deadlocked at this  
15 point, and the reason is that the issues that came up  
16 this morning, both in our meeting here in court and  
17 on our telephone conference on the record at 1:00,  
18 suggests that there is more that the Court can do.

19 THE COURT: All right. Mr. Hart, why don't  
20 you folks approach.

21 MR. HART: All right.

22 (The following proceedings were held at the bench:)

23 THE COURT: Okay. Go ahead.

24 MR. HART: Okay. Thank you. Our position  
25 is that , who was identified as

1 the juror by the foreman, , is a person  
2 who, from what said, seemed to have begun  
3 the deliberations with a -- a static position,  
4 whichever way it was, and was apparently unwilling to  
5 deliberate in a manner that at least caught --

6 THE COURT: That's not quite what he said.

7 MR. HART: Well, I may not be correct in my  
8 report, but my understanding was that was  
9 bringing a matter of concern to the attention of the  
10 Court relating to 's either unwillingness  
11 or inability or some deficiency in 's  
12 (sic) willingness to deliberate with the other  
13 jurors.

14 THE COURT: Well, he didn't say he was  
15 unwilling to deliberate. He said he --

16 MR. HART: What do you think he said, Your  
17 Honor?

18 THE COURT: -- had certain positions that he  
19 seemed to feel strongly about and that -- you know, a  
20 lot of jurors are like that.

21 MR. HART: Well, it may well have been that,  
22 but in any event.

23 THE COURT: And he was talking about one  
24 handshake one day out of the 20, and it's hard to  
25 connect, make any other connections that you would

1 like. And it was not -- there was nothing about  
2 these two, the person and the -- and the  
3 person whose hand he shook, being close.

4 MR. HART: Your Honor, I'd simply like to  
5 make my record, which is the Court having learned  
6 that saw a person identified with one of  
7 the sides, it was never specified, shaking hands with  
8

9 THE COURT: We don't know if  
10 even knows if that person was associated with  
11 anybody.

12 MR. HART: These are all matters that are  
13 for further investigation and should be investigated  
14 by the Court, because indicated a concern  
15 enough to tell the Court about it, and we should  
16 inquire further as to whether should be  
17 disqualified as a juror because of whatever his  
18 relationship is to the person who shook his hand,  
19 whatever relationship there is between that person  
20 and one of the sides.

21 In 's -- 's  
22 presentation to the Court this morning,  
23 pointed at the side where the were seated. I  
24 don't know whether that means that that is so, but  
25 what I'm saying is if started this

1       deliberation with a view towards not deliberating in  
2       good faith with the other jurors because he had a  
3       relationship with somebody close to one of the sides,  
4       the Court should know about that and the parties  
5       should be put in a position where they can fairly  
6       challenge it. There's no other way to say it other  
7       than to ask the Court to inquire further, because the  
8       remedy would be to excuse                    and sit the  
9       juror who's next in line from the alternates and the  
10      jurors to continue to deliberate.

11               Now, we don't know if the jurors are split  
12      11 to 1, which might make a difference. If it was,  
13      you know, some other split, it might make less of a  
14      difference, but we believe that the issue of manifest  
15      necessity has to be addressed, and there's manifest  
16      necessity when there's a mistrial after jurors cannot  
17      agree and there's no manifest necessity when one of  
18      the jurors has some relation to one side or the other  
19      that should have been identified before a verdict was  
20      announced, or the inability to reach a verdict and  
21      the Court has inquired fully on the matter.

22               THE COURT: For the State? You do want to  
23      protect your double jeopardy, your jeopardy.

24               MR. FUDO: And a large part of that should  
25      be, respectfully, that the Court on the record

1 coming -- what Brook is saying is just all  
2 speculation.

3 THE COURT: Okay. Anything more for the  
4 record?

5 MS. FUTA: Your Honor, I think that the  
6 Court made the correct inquiry of the juror, that is  
7 can be you fair and impartial to both sides, and that  
8 is the only inquiry that's relevant at this point.

9 MR. HART: And an inquiry without going  
10 behind the situation, determining just who it was  
11 that shook the juror's hand, even if the juror  
12 doesn't know the person, that would be important for  
13 us to know that and determine whether the person who  
14 shook the juror's hand was associated with one of the  
15 parties or one of the sides, as it was said, in a way  
16 that would suggest a basis for concluding that the  
17 juror, despite his claims, could not be fair and  
18 impartial. That would be an important inquiry for  
19 the Court to make in order to deal with potential  
20 double jeopardy problems of the first order.

21 THE COURT: Anything more? The only thought  
22 I had was possibly I was thinking of polling the jury  
23 to make sure that they agree that they cannot reach a  
24 verdict and maybe asking them did everyone make all  
25 the decisions based only upon the evidence and the

1 Court's -- the law that the Court gave you, and have  
2 them answer that question. Anybody have any thoughts  
3 on that?

4 MR. FUDO: No. Can I speak with Jan a  
5 little bit, separated?

6 (Pause in proceedings.)

7 MR. HART: The jurors' decision --

8 THE COURT: Wait.

9 MR. HART: Oh, I'm sorry.

10 (Pause in proceedings.)

11 MS. FUTA: I'm sorry, Judge. We were just  
12 told that they can hear what we're saying. Can we  
13 have, like, a couple of minutes to discuss --

14 THE COURT: I'm sorry?

15 MS. FUTA: May we have a couple of minutes  
16 to discuss the record?

17 THE COURT: Yeah.

18 MS. FUTA: All right. Thank you.

19 THE COURT: Why don't you folks -- you can  
20 step outside.

21 (Pause in proceedings.)

22 THE COURT: Let's go back on the record.

23 MR. FUDO: Your Honor, are you familiar with  
24 the case called *State versus Furutani*?

25 THE COURT: No. I mean, I know of it, but I



1 don't know what's in it right off the top of my head.

2 MR. FUDO: Not to put you on the spot. It  
3 seems to suggest when there's an allegation of juror  
4 misconduct, before inquiry needs to be made of the  
5 jurors -- or inquiry wouldn't need to be made of the  
6 jurors if the Court found --

7 THE COURT: Yeah, I have the law. This is  
8 the law we're following today, that there has to be a  
9 problem rising to the level of substantial prejudice.

10 MR. FUDO: Yeah, the nature of the conduct.  
11 So then I would say currently, whether the nature of  
12 the conduct we have to testimony -- well, just say  
13 testimony someone shook someone's hand, without more,  
14 i.e. the context of that, can it really -- can a  
15 determination really be made that it doesn't rise to  
16 the level of substantial prejudice?

17 THE COURT: That it doesn't?

18 MR. FUDO: Correct. That it does or  
19 doesn't, without knowing more about the handshake.  
20 Somebody reviewing it, could they say -- oh, yeah.

21 THE COURT: You're the one who's going to  
22 have to defend it when Mr. Hart takes this up before  
23 we can retry it.

24 MR. FUDO: Precisely. So would it not be  
25 maybe more prudent, if not cautious, to have

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1                   come in and give some more --

2                   THE COURT: On the record?

3                   MR. FUDO: Yeah, about what was this  
4 handshake.

5                   THE COURT: That would be the safe way. I  
6 don't think it -- I think you could make a good  
7 argument it doesn't -- it just does not rise to the  
8 level of substantial prejudice.

9                   MR. FUDO: Okay.

10                  THE COURT: But if you wanted a very clean  
11 record, whether it would be really no issue, we can  
12 have that done. I mean, probably years ago that's  
13 how I would have done it; I don't care who says what,  
14 we call the juror in and make a very good record.  
15 I've gotten a bit more                   in my older age,  
16 so... but I have no problem doing that if that's what  
17 the lawyers believe may be in the best interest of  
18 this case.

19                  MR. FUDO: Brook, you want that, right?

20                  MR. HART: Our position is there should be a  
21 full search and fair inquiry that determines who the  
22 person is, who did the handshaking, what  
23                   's relationship is to that person, what  
24 the person's relationship is to one side or the  
25 other, and other issues that relate to                   's

1 identification with one side or the other.

2 MR. FUDO: My concern at this point is Brook  
3 has said so much where we don't address it point,  
4 point, point. I wouldn't want the record to seem  
5 that what he said uncontested was acquiesced and  
6 agreed to as a fact by the State, 'cause I don't  
7 think it is at all.

8 THE COURT: Mr. Hart, I'm sure he's not  
9 going to agree with me, but there's a lot of  
10 speculation here.

11 MR. FUDO: It's rampant speculation.

12 THE COURT: But we can make the record. I  
13 think the important thing is the supposed facts from  
14 's point of view, because it doesn't  
15 matter what the actual facts are, it's what he's  
16 thinking. But if you folks want to do it, we can do  
17 it.

18 MR. HART: Well, I think it matters what the  
19 actual facts are and what he's thinking.

20 THE COURT: No, it's what he's thinking. If  
21 this guy is a close friend of anybody's, but he  
22 thinks he is, it makes a difference. Even if the guy  
23 is a good friend of the ' or whoever it is,  
24 the ', and he think he's not, then there's --

25 MR. HART: It relates to 's

1 relationship or identification with and prior  
2 knowledge of people on the ' side of the case,  
3 which can be elaborated on, if needed.

4 MS. FUTA: Your Honor, I would absolutely --  
5 if Your Honor is considering a further inquiry with  
6 , which I would submit the record does  
7 not support, then it should be very circumscribed as  
8 to --

9 THE COURT: The handshake.

10 MS. FUTA: -- the handshake and whether that  
11 has, in any way, affected his decision in this case,  
12 whatever it may be.

13 MR. HART: Okay. Well, we strongly  
14 disagree. 's relationship to, knowledge  
15 of, and contacts with any person or is close to -- or  
16 family in this matter is what is in issue  
17 here. We think that the inquiry should be full and  
18 careful and thorough. If 's a fair and  
19 impartial juror, these matters should have come out  
20 long ago; they didn't.

21 THE COURT: This is a handshake while they  
22 were in line.

23 MR. HART: We're not sure if that's the only  
24 thing there is, Your Honor, based on our  
25 investigation.

1 MS. FUTA: What investigation?

2 MR. HART: You'll see.

3 MS. FUTA: I'll see? Well, then I will  
4 absolutely --

5 MR. HART: I am absolutely clear that there  
6 are things that the Court needs to investigate here,  
7 and if it had known in the beginning, there might  
8 have been an entirely different approach to  
9 as a juror. And if I'm wrong, fine, but  
10 we should make the inquiry and it should not be  
11 circumscribed or in any way prevented from getting at  
12 the truth.

13 THE COURT: Okay. Look, everybody's in the  
14 courtroom. I guess we could shoo them out, but I  
15 shoo them out and -- I guess we should probably do it  
16 in the courtroom, so we'll have to ask everyone to  
17 leave. Okay?

18 MR. FUDO: Okay. So what is it that's going  
19 to be done?

20 THE COURT: We're going to have  
21 come in here. I'm going to ask him whether he  
22 recalls at any time during this trial shaking the  
23 hand of anyone --

24 MR. FUDO: Right.

25 THE COURT: -- here in the courthouse.

1 MR. HART: Associated with the -- one of the  
2 parties? Because people shake hands all the time.

3 THE COURT: Well, I guess it was right  
4 outside.

5 MR. HART: It was in the line for the jury,  
6 if I understand.

7 MR. FUDO: And if he says no, then it should  
8 end.

9 THE COURT: It would. And I'd probably ask  
10 him a general question did you consider anything  
11 other than the evidence and the Court's instructions  
12 when you made your decisions in this case? I don't  
13 think that really infringes on deliberation  
14 processes. I think that's a good question to ask.

15 MR. HART: Just to make our record, Your  
16 Honor.

17 THE COURT: And maybe I would ask him has he  
18 had any contacts with any member of a family or a  
19 family friend or relation in this -- you know, as to  
20 someone in this case. And it's going to be worded a  
21 little better than that, but those might be the three  
22 areas. That should clear up the record.

23 MR. FUDO: Depending what his answers are.

24 THE COURT: I can kind of anticipate, but  
25 you never know.

1 MR. FUDO: The thing is easy when it's no.  
2 The more challenging is yes.

3 THE COURT: Okay. Who was it?

4 MR. FUDO: Right.

5 THE COURT: Did that have any influence on  
6 your decision making?

7 MR. FUDO: That's almost getting into the  
8 deliberative process.

9 THE COURT: Not decision making on your --

10 MR. FUDO: To me, I'm thinking was it  
11 solicited or unsolicited? If he said the guy came up  
12 and shook my hand thinking I know, it ends it right  
13 there.

14 MR. HART: We need to identify who the  
15 person is and what their relationship is to the  
16 family and the case.

17 THE COURT: Okay.

18 MR. HART: And we shouldn't be afraid to do  
19 it, because we have two jurors -- alternates who are  
20 available to serve, and if this actually is an 11 to  
21 1 situation --

22 THE COURT: Well, you never know.

23 MR. HART: -- then we could replace one and  
24 go on and maybe get a verdict. So I think the Court  
25 is completely correct in making an inquiry, but the

1 inquiry should be broad and intense and try to get at  
2 the truth about what 's relationship is,  
3 if any.

4 THE COURT: Okay. This bench conference  
5 record is sealed.

6 I'm going to ask everyone to leave the  
7 courtroom and we're going to do this, and we'll let  
8 everybody back in. Okay?

9 (End of bench conference.)

10 THE COURT: Ladies and gentlemen, thank you  
11 for your patience. At this time, I'm going to ask  
12 everyone to leave this courtroom, including the  
13 electronic devices. You can wait right outside.  
14 This is not going to take all afternoon, I hope. All  
15 right? Including the lavaliers, et cetera.

16 (Pause in proceedings.)

17 THE COURT: All right. We're back on the  
18 record. Everyone -- I'm going to ask the sheriffs to  
19 step outside also, please, deputy sheriffs. Thank  
20 you. The only persons in here are the lawyers, my  
21 staff, and Mr. Deedy.

22 Let's have come in.

23 (Pause in proceedings.)

24 Q. (By the Court) , my apologies.

25 A. I'm in trouble.



1 Q. No, no, you're not, you're not. And,  
2 please, don't be nervous. Have a seat, please.

3 A. Okay.

4 Q. Actually, this kind of thing happens during  
5 jury trials, so don't worry about it.

6 A. Okay.

7 Q. Okay. do you remember, I  
8 think it was probably outside somewhere where you  
9 folks were lined up or you folks were already a jury.

10 A. Okay.

11 Q. Did you -- do you remember shaking anyone's  
12 hand?

13 A. Yeah, actually, I did.

14 Q. Okay. Who did you think that person --  
15 did --

16 A. He just was one guy that I used to work  
17 with.

18 Q. Did he come up to you or did you see --

19 A. Well, he was walking by, that was it, yeah.

20 Q. And you saw him or he saw you first?

21 A. Geez...

22 Q. If you remember.

23 A. I think -- I guess he was walking past us.

24 Q. Okay. And who did -- he worked with you  
25 before, is that --

1           A.    Yeah, like maybe... I think like almost  
2           seven years ago.

3           Q.    Seven years ago? Do you remember his name?

4           A.    I know his first name.

5           Q.    What's that?

6           A.

7           Q.    Okay. And did -- did that incident in any  
8           way -- did it affect anything you -- how should I put  
9           this? Did that have anything to do with any of your  
10          functions as a jury -- as a juror?

11          A.    Oh, no. It was just hi, you know, like long  
12          time no see.

13          Q.    Okay.

14          A.    No, it didn't do anything to affect the case  
15          or my judgment.

16          Q.    So            had nothing to do -- it did not  
17          affect your judgment?

18          A.    Oh, no.

19          Q.    Okay. In making your decisions, did you  
20          consider anything other than the evidence and the law  
21          that I gave you?

22          A.    No, that's all I based it on, was the  
23          evidence presented with the witnesses' testimony.

24          Q.    Okay. And have you had any -- I just want  
25          to ask this as a general question. Have you had any

1 other contacts or -- that -- with anyone who may  
2 be -- you think may be associated with anybody in  
3 this case or any friends or whatever have you?

4 A. No, that was pretty much the only person  
5 that I've seen, 'cause then from when I leave court  
6 here, I usually go straight to my 's house  
7 and then either pick up from work or go straight  
8 home.

9 Q. Okay.

10 A. So that was pretty much the only time,  
11 besides if we go out eat or something, but besides me  
12 actually talking to anybody or something, that was  
13 the only person.

14 Q. Okay. And after that one incident, did  
15 you -- did you see this again?

16 A. I think he was here one other time, but I  
17 never talked to him.

18 Q. Okay.

19 A. Yeah, I think I -- I -- not one hundred  
20 percent sure that was him, but I thought that was  
21 him, but yeah, it was when we was on the 4th floor  
22 waiting for come downstairs, and I guess I thought it  
23 was him, but he was going downstairs already.

24 Q. Oh, okay. Okay. Did you say anything?

25 A. Oh, no, no.

1 Q. Okay. And so you never saw him in this  
2 courtroom then?

3 A. I never actually noticed if he was in here.

4 Q. I'm sorry?

5 A. I said I never actually noticed if he was  
6 actually in here.

7 Q. Okay. Okay. I want to thank you very much.  
8 And don't talk to your fellow jurors about this.

9 A. Oh, no problem.

10 Q. Okay?

11 A. Yeah. Gotcha.

12 THE COURT: Thanks,

13 (The juror exited the courtroom.)

14 THE COURT: Okay. Anything more for the  
15 record before we bring everyone back in?

16 MR. FUDO: Just that I'm satisfied under the  
17 Furutani standard that the nature of the conduct now,  
18 having been disclosed, it definitely doesn't rise to  
19 the level of substantial prejudice.

20 THE COURT: Mr. Hart?

21 MR. HART: Well, I unfortunately disagree  
22 and take the position that more further -- more  
23 searching and further questioning should have been  
24 pursued and both sides should have had an opportunity  
25 to question in a voir dire manner. I've

1 made my record otherwise before the Court.

2 THE COURT: Let's bring everyone else in.

3 And we'll seal this record. Thank you,  
4 Milani.

5 MR. HART: At the very -- at the very least,  
6 Your Honor, the Court should have identified 's  
7 last name.

8 THE COURT: He doesn't know the last name.

9 MR. HART: Maybe not, but he was a person  
10 who was apparently here for many of the sessions,  
11 according to --

12 THE COURT: Thank you, Mr. --

13 MR. HART: -- some people who've watched the  
14 presence of certain persons in the courtroom.

15 (Pause in proceedings.)

16 THE COURT: Okay. We're back on the record.  
17 And this is a public proceeding and we have everyone  
18 in here. So let's bring our jury in.

19 THE BAILIFF: Yes, Your Honor.

20 (Pause in proceedings.)

21 THE COURT: All right. Please be seated,  
22 ladies and gentlemen. Our jury is present, together  
23 with counsel and Defendant.

24 Will the foreperson of the jury please stand  
25 and state his or her name for the record.

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1 THE FOREPERSON: Justin Odagiri.

2 THE COURT: Mr. Odagiri, has the jury been  
3 able to reach a verdict in this case?

4 THE FOREPERSON: No, we have not.

5 THE COURT: If the Court were to give you  
6 more time to deliberate, can the jury reach a  
7 unanimous verdict?

8 THE FOREPERSON: No.

9 THE COURT: All right. Thank you. You may  
10 be seated.

11 Ladies and gentlemen, just in an abundance  
12 of caution, I'm going to poll the jury just to make  
13 sure that you completely -- you agree with  
14 Mr. Odagiri that more time will not permit you to --  
15 enable you to reach a unanimous verdict in this case.  
16 So when we call your chair number, answer "yes" if  
17 you agree with Mr. Odagiri and answer "no" if you  
18 disagree.

19 Q. (By the clerk) Chair 1?

20 THE COURT: Do you agree with Mr. Odagiri  
21 that more time will not enable the jury to reach a  
22 unanimous verdict or you -- do you disagree with him?

23 A. I agree.

24 Q. Chair 1?

25 THE COURT: Chair 1?

- 1 A. I agree.
- 2 Q. Chair 2?
- 3 A. I agree.
- 4 Q. Chair 3?
- 5 A. I agree.
- 6 Q. Chair 4?
- 7 A. Agree.
- 8 Q. Chair 5?
- 9 A. I agree.
- 10 Q. Chair 6?
- 11 A. Agree.
- 12 Q. Chair 7?
- 13 A. I agree.
- 14 Q. Chair 8?
- 15 A. I agree.
- 16 Q. Chair 9?
- 17 A. I agree.
- 18 Q. Chair 10?
- 19 A. I agree.
- 20 Q. Chair 11?
- 21 A. I agree.
- 22 Q. Chair 12?
- 23 A. I agree.
- 24 THE CLERK: Thank you.
- 25 THE COURT: Ladies and gentlemen, I want to

1       thank you very much. Based on your obviously  
2       unanimous agreement that you cannot reach a unanimous  
3       verdict, I'm going to declare that there is manifest  
4       necessity for the declaration of a mistrial. And I  
5       want to thank you very much for what's been a long  
6       road.

7                So I'm going to excuse you back into the  
8       jury room, where I'd like to step inside just to say  
9       thank you again. And you are now excused.

10               THE BAILIFF: All rise for the jury.

11                       (Pause in proceedings.)

12               THE COURT: Okay. The jury has gone back  
13       into the jury deliberation room. They've deliberated  
14       for, what, five days, five full days, plus a half a  
15       day, and I'm going to obviously not ask them about  
16       the merits in this case, but I will thank them for a  
17       huge contribution that they've made. They've devoted  
18       a lot of time to this.

19               I also will tell them that if anybody wants  
20       to talk with them, it is completely up to them, that  
21       they have a right to say no, and if they do, that's  
22       it, okay? And I would ask that nobody -- I don't  
23       think anybody will -- but I ask that nobody harass  
24       any jurors. And, on the other hand, if they want to  
25       talk to you, they may, it's up to them. But jury



1 deliberations are confidential, and I will tell them  
2 that as well.

3 Okay? So, counsel, do you want time to kind  
4 of gather thoughts and maybe we do a status in a few  
5 days to set a new trial date?

6 MR. HART: Well, I think that would be  
7 helpful, Your Honor. Just for the record though, we  
8 object to the Court's finding of manifest necessity,  
9 as I've previously laid out in my remarks to the  
10 Court today.

11 Yes, I think that would be a good idea.  
12 Mr. Deedy does need to go home and get back to work,  
13 and I think by next week we'd be able to have a  
14 status conference where we could look forward to what  
15 plans might be made.

16 THE COURT: Well, we'll be back in trial  
17 next week. Can we do it this coming Friday?

18 MS. FUTA: The State can do it this week,  
19 Your Honor, and we would request that we do it as  
20 soon as possible.

21 THE COURT: I'm thinking of maybe around end  
22 of June next year. That's just a thought. We could  
23 also maybe do it sometime in May, if that's a better  
24 time for everyone. It's not a huge difference.

25 MR. HART: I don't see availability there

1 for Mr. Blanke or myself, assuming we're both still  
2 involved with the case until July, Your Honor, as we  
3 discussed earlier. But in terms of this Friday,  
4 Friday afternoon, we would be available and waive  
5 Mr. Deedy's presence at the status conference.

6 THE COURT: Okay. 1:30? Good?

7 MS. FUTA: Yes, Your Honor.

8 THE COURT: All right. We'll see you then.

9 And we'll receive Communication No. 5 for  
10 the record, and Ryan will gather up the other  
11 communications, which should be in the room. Yes?

12 MR. HART: And just for the record, may  
13 Mr. Deedy's bail and conditions be continued, please?

14 THE COURT: Any objection?

15 MS. FUTA: No, Your Honor.

16 THE COURT: All right. So ordered.

17 MR. HART: Thank you.

18 THE COURT: Thank you.

19 (Proceedings concluded at 4:08 p.m.)

20 --ooOoo--

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I, MILANI BALLESTEROS, a Certified Shorthand Reporter in the State of Hawai'i, do hereby certify that the foregoing pages 1 - 63, inclusive, comprise a full, true, and correct transcript of the proceedings had on Monday, August 26, 2013 in connection with the above-entitled cause.

DATED: January 15, 2014

*Milani Ballesteros*

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MILANI BALLESTEROS, RMR, CRR,  
 CSR #407  
 Official Court Reporter

NOTICE OF ENTRY

The foregoing Order has been entered and copies thereof delivered via court jacket or mailed to all parties.

DATED: February 24, 2014

  
\_\_\_\_\_  
Clerk

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