

APPENDIX
TABLE OF CONTENTS

Appendix A

Arkansas Supreme Court opinion affirming petitioner's convictions. *Mitchell v. State*, 2023 Ark. 101, 668 S.W.3d 483 (June 8, 2023).....App. 1

Appendix B

Arkansas Court of Appeals opinion affirming petitioner's convictions. *Mitchell v. State*, 2022 Ark. App. 424, 653 S.W.3d 550 (October 26, 2022).....App. 18

Appendix C

Order denying Mitchell's petition for rehearing. Arkansas Supreme Court. (September 14, 2023).....App. 32

Appendix D

Excerpts of trial transcript. Case No. 04CR-19-368. Benton County Circuit Court.....App. 34

APPENDIX A

Arkansas Supreme Court opinion affirming petitioner's convictions. Mitchell v. State, 2023 Ark. 101, 668 S.W.3d 483 (June 8, 2023).

SUPREME COURT OF ARKANSAS

No. CR-22-21

STACY ANTHONY MITCHELL

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: June 8, 2023

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. 04CR-19-368]

HONORABLE BRAD KARREN,
JUDGE

AFFIRMED; COURT OF APPEALS'
OPINION VACATED.

SHAWN A. WOMACK, Associate Justice

On February 2, 2019, Stacy Mitchell stabbed Mark McCoy at JJ's Grill in Rogers. Mitchell was arrested the same day, and a jury convicted him on May 20, 2021, nearly two-and-a-half years later, of first-degree battery and failure to appear on a felony. Mitchell was sentenced to twenty-one years' imprisonment as an habitual offender. Mitchell appealed his conviction and sentence to the court of appeals, arguing there was insufficient evidence to support his conviction for first-degree battery and that the circuit court abused its discretion by denying his motion to substitute counsel. The court of appeals affirmed, and we granted Mitchell's petition for review. Because the circuit court did not abuse its discretion by denying Mitchell's motion to substitute counsel, and there was substantial evidence to support his conviction for first-degree battery, we affirm the circuit court's order and vacate the court of appeals' opinion.

I. *Facts*

On May 20, 2021, a Benton County jury convicted Stacy Mitchell of first-degree battery and failure to appear.¹ This conviction followed Mitchell's request to substitute counsel, seeking to replace his appointed public defender with a private attorney from the James Law Firm. Mitchell's effort to substitute counsel began on March 21, 2021, when the James Law Firm filed a motion to "authorize the withdrawal of Sam Hall[,] Mitchell's public defender, and permit the substitution of William O. "Bill" James, Jr. as attorney of record. At that time, Mitchell's jury trial was scheduled for May 4, 2021.

The circuit court first considered Mitchell's motion to substitute counsel during a virtual, pre-trial status hearing on April 15, 2021—just 19 days before the scheduled jury trial. Alex Morphis, an associate attorney at the James Law Firm, attended the hearing. After Hall raised the issue of the James Law Firm's motion to substitute counsel, the circuit court announced "I have a jury trial set for May the 4th[,] and I'm not going to change counsel at this late in the game Defense motion to substitute counsel is denied." A colloquy between the circuit court and Morphis followed, and Morphis informed the court "we can be prepared to move forward on May 4th."

The circuit court immediately noted a problem with Morphis's assertion and stated, "If I change counsel right now and there's some issue, it's an automatic Rule 37 problem." The circuit court again denied Mitchell's request to substitute counsel. Dissatisfied with the denial, Mitchell himself pled for the circuit court to grant his motion. But before Mitchell

¹The jury acquitted Mitchell on a separate second-degree battery charge.

could make any substantive argument in support of his motion, the circuit court demanded he stop and threatened: “If you interrupt me one more time, Mr. Mitchell, you’ll be incarcerated[,] and you can try your case on May the 4th while you’re sitting in the Benton County jail. Don’t interrupt me again.” As the discussion continued, Hall raised the prospect of the James Law Firm serving as co-counsel on the case. Even though the circuit court noted that it was possible, the court nevertheless explained that no such motion was presently pending before the court.

Although Mitchell’s jury trial was originally scheduled for May 4th, the circuit court granted a joint motion for a continuance and rescheduled the trial for May 18, 2021. At a pre-trial status hearing on May 4, Mitchell’s motion to substitute counsel was again a topic of discussion. There, the circuit court clarified the denial with the following announcement:

Now, Mr. Hall, last time I believe Bill James’[s] office had filed a motion to substitute counsel, which I denied because we were too close to the jury trial date. I did not prohibit—and I want it to be clear—I did not prohibit either Bill James’[s] firm or another firm if they want to be as co-counsel. If they want to file their motion, I certainly will entertain that. But I just want to make clear on the record I wasn’t prohibiting co-counsel, what I didn’t want to do is change counsel this close to trial and create an issue.

Public defender Hall then informed the court that the James Law Firm had rejected an offer to serve as co-counsel for Mitchell. Speaking to Mitchell directly, the circuit court then offered:

[I]f you want co-counsel or you either want a change of counsel, I’ll consider it, but the problem was at that late date I didn’t want to change counsel so close to the trial date. So if you still want to do that, I just want to make sure you understand I’m not prohibiting that. If you want that done, then please contact additional counsel to find out what you want to do. Okay?

Mitchell responded, “Yes, sir, I will.”

At another pre-trial hearing on May 10, the issue of substitution of counsel arose again, and the following colloquy between Mitchell and the circuit court ensued:

MR. MITCHELL: Your Honor, may I say a word real quick?

THE COURT: Mr. Mitchell, you've got an attorney and once you've been appointed that attorney you've waived your right to represent yourself. And I don't want you to say anything that might be used against you so I'm not going to allow you to.

MR. MITCHELL: I'm not going to testify or anything. With all due respect to the court, me and my family we have been talking. My wife talked the Sam Hall several times, on several occasions and she believed in her heart that he's not the attorney for me, and I also believe in my heart that he's not the attorney for me. And the last time we talked you said you would take this on consideration. I'm humbly asking you to take this on consideration right now.

THE COURT: Well, Mr. Mitchell, there's been no motion filed by any other law firm asking to join as co-counsel or substitution of counsel. We've got trial here in eight days. So I'm not going to change—I'm not going to change counsel at this point, Mr. Mitchell. I'm not going to do that. Mr. Hall has been in this court for years, eight years if I'm not mistaken. He's tried several jury trials in this court. He's conducted himself very competent.

MR. MITCHELL: I have (unintelligible simultaneous speech) –

MR. HALL: Mr. Mitchell –

MR. MITCHELL: I'm sorry, I don't mean to cut you off, Your Honor. I do understand where you're coming from. I truly do. But in conversation me and Mr. Hall had with me and my family is that I'm going to lose this jury trial. He's one hundred percent sure of that. So he's going in there with doubt in his mind. I can have my wife to testify to that. He told her that.

THE COURT: All right. Well, there's no motion –

MR. MITCHELL: So if he's going in there with doubt in his mind, why would I even have an attorney to defend me? There's no one to defend me.

THE COURT: There's no motion pending, Mr. Mitchell. I'm going to go ahead and keep this trial on May the 18th. Mr. Hall is going to be your attorney of record on the case.

Just before the hearing concluded, the State noted that it would object to “further interference by other attorneys,” asserting that Hall knew the case well and had been “extremely diligent in his participation.” The court thanked the State and advised Mitchell that he would need to appear in person on May 18. Mitchell said that he would and then added, “I’ll go hire me an attorney.”² He did not, however, hire another attorney, and the jury trial proceeded with Hall representing him.

After a three-day trial, the jury convicted Mitchell of first-degree battery and failure to appear but acquitted him of second-degree battery. The James Law Firm then filed a motion to declare Mitchell indigent and sought appointment as his appellate counsel, which the circuit court granted. The court of appeals affirmed Mitchell’s conviction and the circuit court’s denial of Mitchell’s motion to substitute counsel, but this court granted Mitchell’s petition for review. On appeal, Mitchell presents two theories for reversal: first, the circuit court abused its discretion by denying Mitchell’s motion to substitute counsel; and second, there was insufficient evidence to support his conviction for first-degree battery.

²The record transcript erroneously attributes this quote to Hall.

II. Discussion

When this court grants a petition for review, it considers the appeal as though it had originally been filed with this court. *In re Estate of Haverstick*, 2021 Ark. 233, at 3, 635 S.W.3d 482, 484.

A. Motion to Substitute Counsel

Mitchell first argues he is entitled to a new trial because the circuit court denied his right to counsel. This court reviews the denial of a motion to substitute counsel for an abuse of discretion. *Bullock v. State*, 353 Ark. 577, 581, 111 S.W.3d 380, 383 (2003). An abuse of discretion is a high threshold that does not simply require error in the circuit court's decision but requires that the circuit court acted improvidently, thoughtlessly, or without due consideration. *Collins v. State*, 2019 Ark. 110, at 5, 571 S.W.3d 469, 472.

Although a criminal defendant is generally entitled to the counsel of his choice, this right “does not extend to defendants who require counsel to be appointed for them.” *United States v. Gonzalez-Lopez*, 548 U.S. 140, 151 (2006). Once a criminal defendant has obtained competent counsel, “any request for a change in counsel must be balanced against the public's interest in the prompt dispensation of justice.” *Arroyo v. State*, 2013 Ark. 244, at 6, 428 S.W.3d 464, 469. However, “[i]n each situation[,] the court must look at the particular circumstances of the case at bar, and the issue must be decided on a case-by-case basis.” *Id.* at 6–7, 428 S.W.3d at 469. Relevant factors for the circuit court to consider include:

[W]hether other continuances have been requested and granted; the length of the requested delay; whether the requested delay is for legitimate reasons; whether the motion for a continuance was timely filed; whether the defendant contributed to the circumstances giving rise to the request for a continuance; whether the reason for the discharge of existing counsel was solely for the

purpose of obtaining a continuance; and whether the request was consistent with the fair, efficient and effective administration of justice.

Id., at 7, 428 S.W.3d at 469. If these factors weigh in favor of denial, there is no “[e]rroneous deprivation of the right to counsel of choice[]” that “qualifies as ‘structural error.’” *Gonzalez-Lopez*, 548 U.S. at 149 (quoting *Sullivan v. Louisiana*, 508 U.S. 275, 282 (1993))

As noted above, the circuit court (over the course of multiple hearings) considered many of the relevant factors articulated in *Arroyo* when denying Mitchell’s motion to substitute counsel. *Arroyo*, 2013 Ark. 244, at 7, 428 S.W.3d at 469. Taking the factors in order, the circuit court found that imminently scheduled jury trial weighed against granting Mitchell’s request to change counsel, especially considering the number of continuances already granted at both Mitchell’s requests and because of the response to COVID-19.

Relatedly, the circuit court was concerned about the timeliness of the request. Mitchell submitted an affidavit of indigency on July 10, 2019, and the circuit court appointed a public defender the same day. The public defender’s office continued to represent Mitchell without issue for the next twenty months until the James Law Firm filed its initial motion to substitute counsel less than six weeks before Mitchell’s scheduled jury trial. Although Mitchell’s request did not come on the eve of trial, *see Tyler v. State*, 265 Ark. 822, 827, 581 S.W.2d 328, 330 (1979), it was nevertheless belated, considering how long the prosecution had been pending and seemingly imminent disposition of the case; the circuit court did not consider the motion until nineteen days before the originally scheduled jury trial. *See Arroyo*, at 7, 428 S.W.3d at 469. Unlike this court’s recent opinion in *Stanton*

v. State, the denial of Mitchell’s motion to substitute counsel came at the end of the pre-trial preparation, not the beginning. 2023 Ark. 81, at 6–7, ___ S.W.3d ___, ___.

The circuit court thoughtfully and repeatedly considered “whether the request was consistent with the fair, efficient and effective administration of justice.” *Id.* Even though the circuit court did not explicitly articulate these factors one by one, the circuit court noted several additional problems with Mitchell’s request to change counsel. First, the circuit court was concerned about a potential ineffective assistance-of-counsel claim arising from the James Law Firm having only six weeks to prepare for a jury trial without any continuances. The circuit court did not reach this conclusion thoughtlessly, improvidently, or without due consideration; a criminal defendant *may* have ineffective counsel when there was “actual prejudice that arose from the alleged failure to investigate and prepare for trial and demonstrate a reasonable probability that additional preparation and the information that would have been uncovered with further investigation could have changed the outcome of the trial.” *Mason v. State*, 2013 Ark. 492, at 8, 430 S.W.3d 759, 764–65. The circuit court’s concern that an ineffective assistance-of-counsel claim *could* (but likely would not) lie was sufficiently grounded in law and was not an abuse of discretion. *See id.*

Finally, Mitchell remained formally indigent throughout the entirety of the prosecution, and he remains indigent on appeal. Although Hall told the circuit court that Mitchell “has hired the Bill James Law Firm[,]” nothing in the record supports such a claim, including any statement by Mitchell or a James Law Firm representative that Mitchell had formally hired the James Law Firm. In fact, Mitchell’s announcement to the circuit court at the May 10 pre-trial hearing that “[he]’ll go hire . . . an attorney” suggests he had not

hired anyone to represent him, and that Hall remained Mitchell's counsel, both formally and in Mitchell's eyes. As noted above, one's right to choose his counsel "does not extend to defendants who require counsel to be appointed for them." *Gonzalez-Lopez*, 548 U.S. at 151. Mitchell never offered any evidence that he was no longer indigent, and the James Law Firm rejected an offer to serve as co-counsel Hall's co-counsel. Because Mitchell was (and remains) indigent, he was not entitled to the counsel of his choice, *id.*, and the circuit court's denial of his motion to substitute counsel was not an abuse of discretion. *Bullock*, 353 Ark. at 581, 111 S.W.3d at 383.

B. Sufficiency of the Evidence

When reviewing a challenge to the sufficiency of the evidence, this court considers whether there is substantial evidence to support the verdict and "evaluate[s] the facts of the record in the light most favorable to the State." *Brown v. State*, 2021 Ark. 16, at 2, 614 S.W.3d 820, 822. "Substantial evidence is evidence that would compel a conclusion one way or the other beyond suspicion or conjecture." *Id.* It is the jury's prerogative to resolve inconsistent testimony and accept or reject any alternative theories. *Norris v. State*, 2010 Ark. 174, at 2, 368 S.W.3d 52, 54.

A person commits first-degree battery if, with the purpose of causing serious physical injury to another person, he causes serious physical injury to any person by means of a deadly weapon or causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life. Ark. Code Ann. § 5-13-201(a)(1) & (3) (Supp. 2019). A "deadly weapon" includes "anything that in the manner of its use or intended use is capable of causing death or serious physical injury." Ark. Code Ann. § 5-

1-102(4)(B) (Repl. 2013). “Serious physical injury” means “physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.” Ark. Code Ann. § 5-1-102(21).

Mitchell first argues that McCoy failed to specifically testify about what object he had been stabbed with and, therefore, there was no evidence that Mitchell stabbed him with a deadly weapon. But several witnesses testified they witnessed Mitchell pull a knife from his pocket, flip it open, and swing it toward McCoy. McCoy also testified that Mitchell “bumped” him from behind and that his “arm gets nailed, just hit by an object I’ll say for now . . . [and] when I looked at my arm, it was just open.” Considering this testimony, the jury rejected any alternative theory about what kind of object Mitchell may have stabbed McCoy with. *Norris*, 2010 Ark. 174, at 2, 368 S.W.3d at 54. Thus, there was substantial evidence that Mitchell stabbed McCoy with a knife, i.e., a deadly weapon. See Ark. Code Ann. § 5-1-102(4)(B).

Mitchell also argues McCoy did not sustain a “serious physical injury.” Citing the medical evidence introduced at trial, Mitchell points out that the injury was a four-centimeter-long laceration that “only needed sutures to repair.” Mitchell further argues that McCoy did not testify about the type of medical treatment he received, did not testify that he sustained any injury to any part of his body other than his wrist, and complained only of pain and numbness around the wound. But whether a victim has sustained serious physical injury, and the question of temporary or protracted impairment, are issues for the jury to decide. *Bangs v. State*, 338 Ark. 515, 521, 998 S.W.2d 738, 743 (1999).

As explained above, “[s]erious physical injury” means “physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.” Ark. Code Ann. § 5-1-102(21). This court has before held that a five-centimeter laceration that required closure with staples constituted a serious physical injury. *Banks*, 338 Ark. at 521, 998 S.W.2d at 743. Relatedly, a victim’s recovery from such an injury does not change the degree of injury. *Brown v. State*, 347 Ark. 308, 316, 65 S.W.3d 394, 399 (2001). Here, the State introduced evidence—including photographs of the wound—that McCoy suffered a four-centimeter-long laceration to his arm, which was deep enough to require multiple sutures to close. The laceration also caused scarring and resulted in McCoy experiencing numbness in the area two years later. The physician assistant who treated McCoy also testified that the stab wound extended to McCoy’s fascia, which is the layer of tissue that separates a person’s skin from his muscles and tendons. Considering this, the State introduced substantial evidence that McCoy suffered a serious physical injury from the stabbing, which is sufficient to support Mitchell’s conviction for first-degree battery. See *Banks*, 338 Ark. at 521, 998 S.W.2d at 743.

Affirmed; court of appeals’ opinion vacated.

KEMP, C.J., concurs without opinion.

BAKER, HUDSON, and WYNNE, JJ., dissent.

SUPREME COURT OF ARKANSAS

No. CR-22-21

STACY ANTHONY MITCHELL
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered: June 8, 2023

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. 04CR-19-368]

HONORABLE BRAD KARREN,
JUDGE

DISSENTING OPINION.

KAREN R. BAKER, Associate Justice

Because the circuit court abused its discretion in denying Mitchell's motion for substitution of counsel, I dissent. The majority's opinion is patently flawed for three reasons.

First, the majority asserts that "[t]he circuit court (*over the course of multiple hearings*) considered many of the relevant factors articulated in *Arroyo* when denying Mitchell's motion to substitute counsel." (Emphasis added.) However, this court has long held that deprivation of the right to be assisted by counsel of one's choice is complete "when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received." *Arroyo v. State*, 2013 Ark. 244, at 5, 428 S.W.3d 464, 468 (citing *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006)). Therefore, any analysis of whether Mitchell's Sixth Amendment rights were violated necessarily cannot extend beyond the moment that the circuit court entered an order denying his motion to substitute counsel. Any offers by the circuit court to accommodate

Mitchell's request to substitute counsel at subsequent pre-trial hearings, as well as any belated attempts by the circuit court to fix its earlier denial of Mitchell's motion, were ineffectual to remedy the harm because the constitutional violation had already occurred.

Second, the majority fails to recognize that our holding in *Arroyo*, 2013 Ark. 244, 428 S.W.3d 464, is instructive. The majority maintains that, because the circuit court expressed "[concern] about a potential ineffective assistance-of-counsel claim arising from the James Law Firm having only six weeks to prepare for a jury trial without any continuances" and "[concern] about the timeliness of the request," it properly considered the factors set forth in *Arroyo*. A review of the record demonstrates that, during the April 15 hearing at which Mitchell's motion was considered, the extent of the circuit court's concerns was that "[w]e've got a jury trial set for May the 4th . . . I'm not going to allow the change of counsel this late. I'm not going to have a built-in Rule 37." As the majority points out, "before Mitchell could make any substantive argument in support of his motion, the circuit court demanded he stop and threatened: 'If you interrupt me one more time, Mr. Mitchell, you'll be incarcerated[,] and you can try your case on May the 4th while you're sitting in the Benton County jail. Don't interrupt me again.'" In *Arroyo*, we reversed and remanded for a new trial on similar grounds, holding that the circuit court failed to consider Arroyo's interests because there was "no evidence that the circuit court gave any consideration to [Arroyo's] right to choice of counsel. Rather, the circuit court declined to hear from [Arroyo's new counsel] about why a continuance was necessary and failed to conduct any inquiry into [Arroyo's] request for new counsel." *Id.* at 8–9, 428 S.W.3d at 470. The same is true in the present case, except Mitchell did not request a continuance as

was done in *Arroyo*. Here, Mitchell sought to substitute an attorney that he had already privately retained. Although it was made clear that the James Law Firm could be ready for Mitchell's trial without delay, the circuit court denied the motion to substitute counsel and failed to conduct any inquiry into the basis for Mitchell's request, citing vague concerns about creating "an automatic Rule 37 problem." As we observed in *Arroyo*, the record before us plainly demonstrates that there is no evidence that the circuit court balanced Mitchell's right to choice of counsel against the needs of fairness and the demands of its calendar. *See Arroyo*, 2013 Ark. 244, at 7, 428 S.W.3d at 470 (citing *Gonzalez-Lopez*, 548 U.S. at 152).

Third, the majority's decision is an abrupt about-face from our recent decision in *Stanton v. State*, 2023 Ark. 81, ___ S.W.3d ___, a case in which we upheld one's right to counsel of choice under circumstances far more complex than the present case. In *Stanton*, Stanton's privately retained criminal defense attorney, Patrick Benca, declared himself to be a necessary witness during Stanton's second trial, successfully sought a mistrial, and was ultimately disqualified from further representing Stanton in the case. *Id.* at 2, ___ S.W.3d at ___. Ahead of Stanton's fourth trial, Stanton again retained Benca to represent him, and Benca was disqualified once more based on the circuit court's prior disqualification order. *Id.* at 4, ___ S.W.3d at ___. After recognizing that violations of the right to counsel of choice constitute structural error, we reversed Benca's second disqualification, concluding that "we believe little chance exists of [Benca] being called [as a witness] in the fourth [trial]." *Id.* at 5–7, ___ S.W.3d at ___. The United States Supreme Court has explained that structural errors "defy analysis by 'harmless-error' standards" because they "affec[t] the

framework within which the trial proceeds,” and are not “simply an error in the trial process itself.” *Reams v. State*, 2018 Ark. 324, at 16–17, 560 S.W.3d 441, 452 (citing *Gonzalez-Lopez*, 548 U.S. at 148). Therefore, structural errors require automatic reversal on appeal. *See Neder v. United States*, 527 U.S. 1, at 7-8 (1999).

The majority attempts to distinguish *Stanton* from the present case by pointing out that “the denial of Mitchell[’s] motion to substitute counsel came at the end of the pre-trial preparation, not the beginning.” However, this distinction is meaningless. A close review of the record demonstrates that there is only one marked difference to explain the majority’s sharp departure from the holding in *Stanton*—the financial means of the criminal defendants. This distinction is underscored by the majority’s conclusion that “[b]ecause Mitchell was (and remains) indigent, he was not entitled to the counsel of his choice.” As the majority points out, we have observed that “the right to counsel of choice does not extend to defendants who require counsel to be appointed for them.” *Arroyo*, 2013 Ark. 244, at 5, 428 S.W.3d at 469 (citing *Gonzalez-Lopez*, 548 U.S. 140); *see also Luis v. United States*, 578 U.S. 5 (2016) (holding that an indigent defendant, while entitled to adequate representation, has no right to have the Government pay for his preferred representational choice).

While I agree that an indigent defendant has no right to choose his *appointed* counsel, the majority misconstrues both the law and Mitchell’s request. The record demonstrates that Mitchell had *retained* the James Law Firm. The majority inexplicably rationalizes its view that Mitchell was not entitled to counsel of his choice by pointing out that, “[a]lthough Hall told the circuit court that Mitchell ‘has hired the Bill James Law

Firm[,]’ nothing in the record supports such a claim[,]”¹” and “Mitchell never offered any evidence that he was no longer indigent[.]” The majority’s holding yields the untenable position that, once declared indigent, a criminal defendant may not retain private counsel unless and until *his own* indigency status changes regardless of the source of funds from which the representation is obtained. The majority cites no authority in support of this position, as no such law exists. On the contrary, the fact that Mitchell remained indigent throughout the course of his trial is immaterial to our analysis. This position overlooks the reality that, in many instances, third parties provide funding for the legal defense of indigent defendants. Accordingly, the majority’s holding haphazardly diminishes the constitutional right to counsel of choice for indigent defendants.

For these reasons, I would reverse and remand for a new trial.

HUDSON and WYNNE, JJ., join.

¹I disagree with the majority’s assertion that there is nothing in the record to support the claim that Mitchell had hired the James Law Firm. On the contrary, the record demonstrates that the James Law Firm filed a motion for substitution of counsel and several pre-trial motions, and an attorney from the James Law Firm appeared on Mitchell’s behalf at the April 15 pre-trial hearing, notably not requesting a continuance.

APPENDIX B

Mitchell v. State, 2022 Ark. App. 424, 653 S.W.3d 550, Arkansas Court of Appeals decision affirming Mitchell's conviction.

ARKANSAS COURT OF APPEALS

DIVISION I
No. CR-22-21

STACY ANTHONY MITCHELL
APPELLANT

Opinion Delivered October 26, 2022

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. 04CR-19-368]

V.

HONORABLE BRADLEY LEWIS
KARREN, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

PHILLIP T. WHITEAKER, Judge

Appellant Stacy Mitchell was convicted by a Benton County jury of one count of first-degree battery¹ and sentenced to a total of twenty-one years in the Arkansas Department of Correction as a habitual offender. On appeal, Mitchell argues that the circuit court erred when it denied his motion for substitution of counsel. In addition, he argues that there was insufficient evidence to support his conviction for first-degree battery. We affirm.

I. *Sufficiency of the Evidence*

Although Mitchell challenges the sufficiency of the evidence in his second point on appeal, double-jeopardy considerations require this court to consider it first. *See Keys v. State*, 2021 Ark. App. 469, at 6, 636 S.W.3d 835, 839 (citing *Taffner v. State*, 2018 Ark. 99,

¹Mitchell was also charged with one count of second-degree battery and one count of failure to appear. The jury convicted him on the failure-to-appear charge but acquitted him of second-degree battery.

541 S.W.3d 430). When we consider a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict and consider only the evidence supporting it. *Adkins v. State*, 371 Ark. 159, 264 S.W.3d 523 (2007). We will affirm if the finding of guilt is supported by substantial evidence. *King v. State*, 2021 Ark. App. 339. Substantial evidence is evidence of such sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other without resorting to speculation or conjecture. *Fernandez v. State*, 2010 Ark. 148, 362 S.W.3d 905. In reviewing a challenge to the sufficiency of the evidence, we do not reweigh the evidence or assess the credibility of the witnesses. *Turner v. State*, 2019 Ark. App. 476, at 5, 588 S.W.3d 375, 378. It is the jury's role as the finder of fact to resolve questions of inconsistent evidence and conflicting testimony, and the jury is free to believe the State's version of the facts over the defendant's account. *Id.*

Mitchell was convicted of first-degree battery. A person commits first-degree battery if, with the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon or causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life. Ark. Code Ann. § 5-13-201(a)(1) & (3) (Supp. 2019). A "deadly weapon" includes "anything that in the manner of its use or intended use is capable of causing death or serious physical injury." Ark. Code Ann. § 5-1-102(4)(B) (Repl. 2013). "Serious physical injury" means "physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ." Ark. Code Ann. § 5-1-102(21). We now turn

our attention to the facts introduced at trial, viewing this evidence in the light most favorable to the State.

On the evening of February 2, 2019, Chelsea Roberts and some friends, including Lauren Patanus, Kent Fisher, and Christian McKinnis, were socializing on the back patio of JJ's Bar and Grill in Rogers. They were approached by appellant Mitchell, who started making vulgar comments to Roberts. Fisher intervened and asked Mitchell to stop, which led to an exchange of words between Fisher and Mitchell, and the exchange of words led to a fight between them. A JJ's employee removed Mitchell from the patio and escorted him out through the front of the building.

After Mitchell had been escorted through the front of the building, Roberts and her friends decided to exit through a side door to avoid him. This was unsuccessful. Outside the building, Mitchell once again approached them. Fisher saw Mitchell pull a knife out of his pocket, flip it open, and "[take] off at a dead sprint" toward the group. Fisher alerted the others and told them to run. They attempted to reenter the building but could not because the door would not open from the outside.

Mark McCoy, another JJ's patron, heard Fisher and McKinnis screaming at him to open the patio gate. He opened the door, and McKinnis held the door open while Fisher ran inside and told the bouncer to call 911. As he was holding the door, McKinnis attempted to calm Mitchell down, and McCoy went outside to assist. McCoy tried to calm Mitchell

down and asked him to leave. During this exchange, Mitchell cut McCoy's wrist with the knife.²

Concerning the nature and extent of McCoy's injury, the jury heard evidence that the cut on McCoy's arm wrapped around his left wrist from the middle to the right and caused a "significant amount" of bleeding. He was taken to the emergency room for treatment, where Tyler McGinty, a physician's assistant, treated McCoy for a four-centimeter-long laceration to his skin and another laceration to the underlying fascia. McGinty put two sutures into the fascia and a separate row of sutures into his skin. McCoy did not sustain any long-term indication of nerve or vascular injury, but he did complain of numbness and joint pain in the area. As a result of the wound, McCoy has scarring on his left arm. He testified that as a golf professional, he had to relearn the feel of his grip. He experienced numbness in his pinky, which impacted everything from typing on a keyboard to getting dressed.

On appeal, Mitchell argues that this evidence was insufficient to sustain his conviction for first-degree battery. He first notes that McCoy did not testify what sort of object hit him. The jury, however, heard evidence that Mitchell pulled a knife from his pocket and flipped it open. Moreover, McCoy testified that he felt himself "bumped from the back, [and] my arm gets just nailed, just hit by an object."

Next, Mitchell argues that McCoy did not sustain a "serious physical injury" as defined by section 5-13-201. Citing the medical evidence, Mitchell points out that the

²McKinnis's jacket and shirt were also cut during the altercation, and he sustained a "nick" to his stomach. This injury was the crux of the State's second-degree-battery charge against Mitchell; however, as noted above, the jury acquitted him on this count.

injury was a four-centimeter-long laceration that “only needed sutures to repair.” He contends that McCoy did not testify about the type of medical treatment he received, did not testify that he sustained any injury to any part of his body other than his wrist, and complained only of pain and numbness around the wound.

Mitchell’s argument is not well taken. Whether a victim has sustained serious physical injury as well as the question of temporary or protracted impairment are issues for the jury to decide. *Bangs v. State*, 338 Ark 515, 998 S.W.2d 738 (1999). In determining whether a physical injury exists, a jury may consider the severity of the attack and may rely on its common knowledge, experiences, and observations in life to make this determination. *Chambers v. State*, 2020 Ark. App. 54, 595 S.W.3d 371; *Linn v. State*, 84 Ark. App. 141, 133 S.W.3d 407 (2003). It is not necessary that the impairment be permanent, but only protracted, *Bell v. State*, 99 Ark. App. 300, 259 S.W.3d 472 (2007), and the fact that the victim ultimately recovers has no bearing on whether the injury sustained is serious. *Brown v. State*, 347 Ark. 308, 65 S.W.3d 394 (2001). Moreover, expert medical testimony is not required to prove serious physical injury. *Johnson v. State*, 2017 Ark. App. 71, 510 S.W.3d 298.

Here, the jury heard evidence as set forth above that supports its finding that Mitchell committed the offense of first-degree battery. McCoy suffered a cutting wound to his arm deep enough to require multiple sutures to close and that resulted in a scar and caused McCoy to continue to experience numbness in the area two years later. In *Bangs, supra*, the supreme court affirmed a first-degree-battery conviction when the victim sustained five-centimeter lacerations to her skull that required staples to close. In *Huggins v. State*, 2021

Ark. App. 74, 618 S.W.3d 187, this court affirmed a first-degree-battery conviction when the defendant hit the victim with a glass bottle that shattered; the victim required multiple stitches to close the wound, and was left with a scar that ran from her elbow down her forearm. The jury, sitting as trier of fact and using its common knowledge, was able to see McCoy's injuries and determined that he sustained a serious physical injury when Mitchell cut his wrist with a knife. We therefore hold that there was substantial evidence of serious physical injury and affirm Mitchell's conviction for first-degree battery.

II. *Motion for Substitution of Counsel*

In what is actually his first point on appeal, Mitchell argues that it was erroneous for the circuit court to deny his motion for substitution of counsel. A circuit court's ruling on a defendant's request for substitution of counsel is reviewed for an abuse of discretion. *See, e.g., Conic v. State*, 2021 Ark. App. 185, 624 S.W.3d 322. Abuse of discretion is a high threshold that does not simply require error in the circuit court's decision but requires that the circuit court act improvidently, thoughtlessly, or without due consideration. *Hopkins v. State*, 2017 Ark. App. 273, 522 S.W.3d 142. In addressing this argument, we will make a careful examination of the proceedings and hearings that occurred before Mitchell's jury trial.

Shortly after the incident involving McCoy, Mitchell was arrested but released from custody. He appeared pro se in the Benton County Circuit Court on March 11, 2019, and asked if there was any way he could get a public defender. The court agreed and directed him to have either a private attorney or a public defender at his next hearing as a condition

of release. On July 8,³ Mitchell was arraigned and filled out an affidavit of indigency. The court found him to be partially indigent and appointed a public defender, Sam Hall. Mitchell then pled not guilty, and the court set an omnibus hearing for August 12. Hall represented Mitchell at the August 12 omnibus hearing and at numerous other pretrial status hearings. Eventually, the court set a May 4, 2021,⁴ trial date with a pretrial hearing on April 15. Throughout the entire pretrial process, the court frequently directed Mitchell to keep in touch with his attorney, and Mitchell never expressed any concerns about Hall's representation of him.

On March 18, 2021, before the April 15 pretrial hearing, Alex Morphis of the James Law Firm filed a motion for discovery and disclosure on Mitchell's behalf. Bill James then filed a motion for substitution of counsel on March 24, asking the court to authorize the withdrawal of Sam Hall and substitute James as Mitchell's attorney of record.⁵

The court conducted the pretrial status hearing on April 15. At this hearing, Hall, as the court-appointed public defender, appeared and represented Mitchell. Morphis also appeared and asserted that he was representing Mitchell. Cognizant of the looming jury trial scheduled for May 4, the following colloquy then ensued between the court and both counsel:

³Mitchell failed to appear at arraignments scheduled for April 22 and June 10.

⁴Primarily because of scheduling complications brought on by the coronavirus pandemic, the court postponed and rescheduled jury-trial settings multiple times.

⁵James filed multiple other motions with the court throughout April, although the court had not yet acted on the motion for substitution of counsel.

HALL: Your Honor, I would be—I would be ready for that [the May 4 trial date]. However, [Mitchell] has hired the Bill James Law Firm and they've filed—

COURT: Well, that's fine.

HALL: —several motions.

COURT: He can hire—he can hire whoever he wants. I don't see an order in the file anywhere that granted the motion to substitute counsel. Am I mistaken, Mr. Hall?

HALL: There was no order, Your Honor, filed.

COURT: Thank you. He can file a motion asking the Court to change counsel. The problem is I have a jury trial set for May the fourth and I'm not going to change counsel at this late in the game. So defense motion—

HALL: Yes, Your Honor.

COURT: Defense motion to substitute counsel is denied.

At this point, Morphis addressed the court about the May 4 trial date as follows:

MORPHIS: Your Honor, we can be prepared to move forward on May 4.

COURT: No, sir. Here's the problem with that. . . . If I change counsel right now and there's some issue, it's an automatic Rule 37 problem. So I'm not changing counsel. We've got . . . a jury set for May the fourth. Motion to substitute counsel is denied.

Hall asked whether the James Law Firm would be considered “on board as . . . co-counsel on the trial date,” as that might “build in some issues with appeal.” The court agreed there might be issues, but no one had moved to serve as co-counsel. Hall then asked the court to have Mitchell contact him and let him know what he wanted to do and represented that he was prepared to go forward with the trial on May 4.

On the morning of May 4, Hall appeared to represent Mitchell at the scheduled jury trial, which was once more postponed. Although the trial did not occur, the court re-addressed the substitution-of-counsel issue in the following exchange:

COURT: Now, Mr. Hall, last time I believe Bill James's office had filed a motion to substitute counsel, which I denied because we were too close to the jury trial date. I did not prohibit—and I want it to be clear—I did not prohibit either Bill James's firm or another firm if they want to be as co-counsel. If they want to file their motion, I certainly will entertain that. But I just want to make clear on the record I wasn't prohibiting co-counsel, what I didn't want to do is change counsel this close to trial and create an issue.

HALL: Yes, Your Honor. And so I know there was subsequent conversations with the James Law Firm. I did speak with Mr. Morphis at the James Law Firm and he indicated to me that they weren't going to be co-counsel.

COURT: All right, Mr. Mitchell, I'm confident you heard that but what Mr. Hall had stated to the Court was that he had talked to Mr. Morphis with the James Law Firm and the James Law Firm is not wanting to be co-counsel or even take over the case. But I do want you to understand I'm not prohibiting you, Mr. Mitchell, if you want co-counsel or you either want a change of counsel, I'll consider it, but the problem was at that late date I didn't want to change counsel so close to the trial date. So if you still want to do that, I just want to make sure you understand I'm not prohibiting that. If you want that done, then please contact additional counsel to find out what you want to do. Okay?

MITCHELL: Yes, sir, I will.

The court then scheduled another pretrial status hearing for May 10 and set a new jury-trial date of May 18.

At the May 10 status hearing, Hall once again appeared for the defense. After some evidentiary issues were discussed, Mitchell asked to address the court. He explained that his

wife had talked to Hall on several occasions, and she believed he was “not the attorney for” him. Mitchell asked the court to reconsider the matter, and the court replied as follows:

COURT: Well, Mr. Mitchell, there’s been no motion filed by any other law firm asking to join as co-counsel or substitution of counsel. We’ve got trial here in eight days. So I’m not going to change—I’m not going to change counsel at this point, Mr. Mitchell. I’m not going to do that. Mr. Hall has been in this court for years, eight years if I’m not mistaken. He’s tried several jury trials in this court. He’s conducted himself very competent.

MITCHELL: I have [unintelligible simultaneous speech]—

HALL: Mr. Mitchell—

MITCHELL: I’m sorry, I don’t mean to cut you off, Your Honor. I do understand where you’re coming from. I truly do. But in conversation me and Mr. Hall had with me and my family is that I’m going to lose this jury trial. He’s one hundred percent sure of that. So he’s going in there with doubt in his mind. I can have my wife to testify to that. He told her that.

COURT: All right. Well, there’s no motion—

MITCHELL: So if he’s going in there with doubt in his mind, why would I even have an attorney to defend me? There’s no one to defend me.

COURT: There’s no motion pending, Mr. Mitchell. I’m going to go ahead and keep this trial on May the 18th. Mr. Hall is going to be your attorney of record on the case.

Just before the hearing concluded, the State noted that it would object to “further interference by other attorneys,” asserting that Hall knew the case well and had been “extremely diligent in his participation.” The court thanked the State and advised Mitchell that he would need to appear in person on May 18. Mitchell said that he would and then added, “I’ll go hire me an attorney.” He did not, however, hire another attorney, and the jury trial proceeded with Hall representing him.

On appeal, Mitchell argues that when the circuit court denied his motion for substitution of counsel, he was denied his Sixth Amendment right to counsel of his choice. Mitchell has a right to counsel of choice grounded in the Sixth Amendment to the United States Constitution and guaranteed by article 2, section 10 of the Arkansas Constitution. While constitutionally guaranteed, however, Mitchell does not have an absolute right to counsel of his choosing and may not exercise his right to frustrate the inherent power of the court to command an orderly, efficient, and effective administration of justice. *Bullock v. State*, 353 Ark. 577, 111 S.W.3d 380 (2003). The purpose of the right is to “guarantee an effective advocate for each criminal defendant, rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers.” *Wheat v. United States*, 486 U.S. 153, 159 (1988). Once competent counsel is obtained, any request for a change in counsel must be considered in the context of the public’s interest in the prompt dispensation of justice. *Thomas v. State*, 2014 Ark. App. 492, 441 S.W.3d 918.

In support of his argument that he was denied his Sixth Amendment right to counsel, Mitchell relies solely on *Arroyo v. State*, 2013 Ark. 244, 428 S.W.3d 464. Citing *Arroyo*, Mitchell argues that the circuit court summarily denied his motion to substitute counsel without allowing him an opportunity to be heard on the matter. He thus contends that the court abused its discretion by failing to engage in the proper balancing of his constitutional right to counsel of his choice against any countervailing governmental interest. We disagree.

In *Arroyo*, the defendant and his wife were charged with multiple drug offenses and were both represented by the same private counsel, Hensley. At a pretrial hearing, a new attorney, Adcock, entered a conditional appearance and asserted he had been retained by

Mr. Arroyo, but his representation was contingent on his being able to obtain a continuance because he could not be ready for the jury trial that was set to begin the next day. The court denied the continuance and proceeded to trial with the original attorney the next day. Arroyo was convicted at a jury trial, and we affirmed his conviction on direct appeal.

Arroyo subsequently petitioned for postconviction relief, which the circuit court also denied, finding that the outcome of Arroyo's trial would not have been any different if the motion for substitution of counsel had been granted. Arroyo then appealed the denial of his postconviction relief to the supreme court.

The supreme court reversed the denial of postconviction relief because the circuit court "applied the wrong test to Appellant's choice-of-counsel argument when it determined that Appellant was not entitled to postconviction relief because he had failed to demonstrate that the outcome of his trial would have been different had his new attorney acted as trial counsel and a continuance had been granted." *Id.* at 4, 428 S.W.3d at 468. This was so because when the "right to be assisted by counsel of one's choice is wrongly denied . . . it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation." *Id.* (quoting *United States v. Gonzalez-Lopez*, 548 U.S. 140, 148 (2006)). Instead, the circuit court should have engaged in a balancing test, considering the defendant's "right to choice of counsel against the needs of fairness and the demands of [the court's] calendar." *Id.* at 7, 428 S.W.3d at 470. The court reasoned that

[a] circuit court "certainly may consider how last minute continuances . . . tread upon the rights of parties and the demands of a court's calendar." [*United States v. Sellers*, 645 F.3d 830, 838 (7th Cir. 2011).] The key, however, is that these legitimate considerations must be balanced against the reasons in support of the motion for a continuance to accommodate new counsel." *Id.* at 838–39.

Id. at 9, 428 S.W.3d at 470.

Mitchell puts the entire focus of his argument solely on the April 15 hearing at which the circuit court refused to allow him to change counsel. Admittedly, if we were to view this hearing in a vacuum, we might agree that the court refused to substitute counsel without balancing Mitchell's desire for different counsel against the "needs of fairness and the demands of the court's calendar." *See King v. State*, 2019 Ark. App. 531, at 5, 589 S.W.3d 420, 423. The April 15 hearing, however, was not an isolated incident nor the only proceeding at which the matter was addressed.

When considering the context of the entire pretrial proceedings, it is apparent that the circuit court did more than summarily decide the motion. As demonstrated by the colloquies set forth above, the court was gravely concerned with the fact that the case had been pending on its docket for over two years. The trial had been continued multiple times (largely because of the COVID pandemic but also frequently at Mitchell's request). The court repeatedly stated that it was amenable to considering the option of having the James Law Firm work as co-counsel with the public defender (an offer James rejected). Stated another way, there was no "unreasoning and arbitrary 'insistence upon expeditiousness in the face of a justifiable request for delay'" that violated Mitchell's right to assistance of counsel. *Morris v. Slappy*, 461 U.S. 1, 11–12 (1983). On the whole, we are unable to conclude that the circuit court abused its considerable discretion in denying Mitchell's motion for substitution of counsel.

Affirmed.

ABRAMSON and BROWN, JJ., agree.

APPENDIX C

Arkansas Supreme Court, denial of rehearing. September 14, 2023.

OFFICE OF THE CLERK
ARKANSAS SUPREME COURT
625 MARSHALL STREET
LITTLE ROCK, AR 72201

SEPTEMBER 14, 2023

RE: SUPREME COURT CASE NO. CR-22-21
STACY ANTHONY MITCHELL V. STATE OF ARKANSAS

THE ARKANSAS SUPREME COURT ISSUED THE FOLLOWING ORDER TODAY IN THE
ABOVE STYLED CASE:

"APPELLANT'S PETITION FOR REHEARING IS DENIED. BAKER AND HUDSON, JJ.,
WOULD GRANT."

SINCERELY,

A handwritten signature in black ink, appearing to read "Kyle Burton", with a stylized flourish at the end.

KYLE E. BURTON, CLERK

CC: WILLIAM O. "BILL" JAMES, JR. AND DREW CURTIS
MICHAEL ZANGARI, ASSISTANT ATTORNEY GENERAL
BENTON COUNTY CIRCUIT COURT
(CASE NO. 04CR-19-368)

APPENDIX D

State v. Mitchell, 04CR-19-368. Excerpts of trial transcript. April 15, 2021;
May 4, 2021; May 10, 2021.

STATE OF ARKANSAS,)
PLAINTIFF)
)
V. NO. 04C4-19-368)
)
STACY ANTHONY MITCHELL,)
DEFENDANT)

Proceedings before the Honorable Bradley Lewis
Karren, Judge of the Circuit Court, Division II, 19th Judicial
District West, on the 15th day of April, 2021.

APPEARANCES

For the State:

Mr. Phillip Bryan Sexton
Deputy Prosecuting Attorney
102 NE A Street
Bentonville, Arkansas 72712
Via GoToMeeting, audio and video

Mr. Stacy Anthony Mitchell, Defendant
Via GoToMeeting, audio and video

For the Defense:

Mr. Samuel Laban Hall
Deputy Public Defender
1204 SE 14th Street, Suite 4
Bentonville, Arkansas 72712
Via GoToMeeting, audio and video

Also present:

Mr. Alex Anthony Morphis
James Law Firm
1001 La Harpe Boulevard
Little Rock, Arkansas 72201

1 THE COURT: Stacy Mitchell.
2 MR. MORPHIS: Good morning, Your Honor. This is
3 Alex Morphis with the James Law Firm for Mr.
4 Mitchell.
5 MR. MITCHELL: Yes, Your Honor, I'm here.
6 THE COURT: Hold on. Hold on.
7 MR. MITCHELL: With all do respect, Your
8 Honor --
9 THE COURT: Hold on. Is Mr. Mitchell present?
10 MR. MORPHIS: Yes, Your Honor.
11 MR. MITCHELL: Yes, Your Honor, I am.
12 THE COURT: You need to share your video.
13 MR. MORPHIS: You need to turn your video on,
14 Mr. Mitchell.
15 MR. MITCHELL: With all due respect, Your Honor,
16 to the Court, I am in the bathroom, indisposed. I
17 was just waiting to get on line. If you'll give me
18 just a few minutes, I will be done.
19 THE COURT: You got to be kidding me, Mr. Hall.
20 We'll call the case back up.
21 MR. MORPHIS: I -- I apologize, Your Honor.
22 (Whereupon, other matters on the docket were
23 addressed, after which the following occurred:)
24 THE COURT: All right, let's see if Mr. Mitchell
25 is out of the bathroom already. Let's call that case

1 back up.

2 Mr. Hall.

3 MR. MITCHELL: Yes, sir, I am out of the
4 bathroom.

5 THE COURT: You need to share your video.

6 MR. MITCHELL: Uh -- work now.

7 THE COURT: All right, this is case 2019-368.
8 That's set for jury trial on May the 14th. All
9 right, how are we doing on that -- I'm sorry, May the
10 4th. May the 4th, 2021.

11 All right, Mr. Hall, we're here for -- how are
12 we -- how are we progressing on this jury trial?

13 MR. HALL: Well, Your Honor, it would be the --
14 at least the third one out on that date for me, but
15 it's my understanding that if it was, you know,
16 somehow Mr. Shelby and Mr. Dill settle that Mr.
17 Mitchell would want a jury trial.

18 THE COURT: Okay.

19 MR. HALL: Your Honor, I would be -- I would be
20 ready for that. However, he has hired the Bill James
21 Law Firm and they've filed --

22 THE COURT: Well, that's fine.

23 MR. HALL: -- several motions.

24 THE COURT: He can hire -- he can hire whoever
25 he wants. I don't see an order in the file anywhere

1 that granted the motion to substitute counsel. Am I
2 mistaken, Mr. Hall?

3 MR. HALL: There was no order, Your Honor,
4 filed.

5 THE COURT: Thank you. He can file a motion
6 asking the Court to change counsel. The problem is I
7 have a jury trial set for May the 4th and I'm not
8 going to change counsel at this late in the game. So
9 defense motion --

10 MR. HALL: Yes, Your Honor.

11 THE COURT: Defense motion to substitute counsel
12 is denied.

13 MR. MORPHIS: Your Honor, we can be prepared to
14 move forward on May 4th.

15 THE COURT: No, sir. Here's the problem with
16 that.

17 MR. SEXTON: Your Honor, if I may.

18 THE COURT: Here's the problem with that. If I
19 change counsel right now and there's some issue, it's
20 an automatic Rule 37 problem. So I'm not changing
21 counsel. We've got --

22 MR. MITCHELL: Your Honor --

23 THE COURT: We've got a jury set for May the
24 4th. Motion to substitute counsel is denied.
25 Subsequently --

1 MR. MITCHELL: Your Honor, may I --

2 THE COURT: Stop. Stop. Motion to substitute
3 counsel is denied. We've got a jury trial set for
4 May the 4th. If those other two cases go away, Mr.
5 Mitchell is going to be called. I'm not going to
6 allow the change of counsel this late. I'm not going
7 to have a built-in Rule 37.

8 That also causes a problem. You filed some
9 motions to suppress in a case that you're not even
10 the attorney of record for. No order was granted
11 granting your motion to substitute counsel, but you
12 filed a motion in a case and had it filed anyway.

13 MR. MITCHELL: Your Honor, may I have a moment
14 of the Court's time, please, sir?

15 THE COURT: Stop. If you interrupt me one more
16 time, Mr. Mitchell, you'll be incarcerated and you
17 can try your case on May the 4th while you're sitting
18 in the Benton County jail. Don't interrupt me again.

19 I'm going to order that the motion to suppress
20 that was filed on April 7th, 2021, be stricken. The
21 motion to suppress statement filed on April 7th,
22 2021, is stricken from the record. He wasn't the
23 attorney of record when he filed the motion. The
24 request for disclosure of statements and hearing on
25 the admissibility of statements filed on April 7th is

1 struck. The defendant's request for discovery of
2 Rule 404(b) evidence filed on April 7th, 2021, is
3 struck from the record. The defendant's request for
4 disclosure of criminal history of potential jurors
5 filed April 7th, '21, is struck from the record. The
6 motion for production of criminal history and
7 disclosure of plea agreements or preferential
8 treatment of witnesses filed on April 7th, 2021, is
9 struck from the record. The motion for disclosure of
10 expert witness information filed on April 7th, 2021,
11 is struck from the record. The motion for
12 preservation of evidence filed April on 7th, 2021, is
13 struck from the record. These motions were all filed
14 by an attorney that was not an attorney of record in
15 this case. No order was entered allowing Mr. James
16 or his firm to appear in this case and I've got jury
17 trial set for May the 4th.

18 Have witnesses been exchanged, Mr. Hall?

19 MR. HALL: Yes, Your Honor.

20 THE COURT: All right, May the 4th, Mr.
21 Mitchell, you are to be here in person on that date.

22 MR. MITCHELL: Yes, sir.

23 MR. SEXTON: Your Honor, if I may.

24 THE COURT: Yes, sir.

25 MR. SEXTON: Your Honor, this is no strike

1 against the Court's bench orders. They're relatively
2 clear to me because I have terrible handwriting as
3 well. However, I would like a formal order for
4 today's date be drafted together. I don't mind
5 volunteering to do that, just to make the record
6 clear.

7 THE COURT: Mr. Sexton, I will -- I will gladly
8 accept your help on that. I appreciate you stepping
9 forward and doing that. I would like an order to
10 make it very clear that I'm striking those motions
11 filed because Mr. James' firm was not an attorney of
12 record on this case, was not allowed by this court to
13 enter that -- to enter those pleadings in this
14 matter. His motion --

15 MR. SEXTON: Understood. Your Honor, one other
16 thing.

17 THE COURT: Yeah, go ahead.

18 MR. SEXTON: My apologies, Your Honor, for
19 interrupting. One other thing. Mr. Hall is
20 incorrect to the extent that we do have a superseding
21 case between Mr. Mitchell's case and the second out
22 case. I believe that's the case we heard yesterday
23 with *Bowerman*, Rex Earl Starr's case is technically
24 the third out. But the Court is correct if that case
25 -- if the first two solve itself and the third solves

1 itself, this will be the live one.

2 THE COURT: Well, my recollection on *Bowerman*
3 was that he couldn't seem to conduct the hearing
4 because he couldn't get his audio going so I issued a
5 warrant for his arrest. I don't know whether he's
6 showing up on May the 4th or not.

7 MR. SEXTON: I don't remember us striking the
8 trial date, though, Judge.

9 THE COURT: No, we didn't because if he does
10 show up we're going to have a trial. But I -- but my
11 point is I don't know that he's going to show up so I
12 wouldn't count on him showing up because he's got an
13 outstanding warrant.

14 MR. SEXTON: Understood, Your Honor. I just
15 don't want to necessarily -- if he does show up, I
16 want to have that one ready to go and be assured that
17 that one will be up and rolling. If he doesn't show
18 up, I mean that's going to complicate life. But at
19 the very least, Mr. Starr has told me he's in good
20 contact so I assume that's still the case.

21 THE COURT: All right, that sounds good.

22 All right, what about speedy trial time, Mr.
23 Hall? What about time from now to May the 4th? Will
24 you take the time?

25 MR. HALL: Your Honor, I can take the time. But

1 I would like to address a few more things.

2 THE COURT: All right. So time to May the --
3 hold on. Time to May the 4th is charged to the
4 defendant.

5 And, Mr. Sexton, if you'll also -- the reason
6 why I denied the motion to substitute counsel is it
7 was filed here -- and I've got a jury trial of May
8 the 4th and I'm not going to have a built-in Rule 37
9 issue.

10 MR. SEXTON: Understood.

11 THE COURT: All right, Mr. Hall, go ahead.

12 MR. HALL: Yes, Your Honor. So I understand the
13 Court has denied the substitution of counsel. But --
14 and I don't know what the James Law Firm would like
15 or what Mr. Mitchell would like, but it would be my
16 guess that if what Mr. Mitchell's position is that he
17 would like the James Law Firm on board as even
18 co-counsel on the trial date I think that builds in
19 some issues with appeal. I think if the Court denies
20 Mr. Mitchell to allow Bill James to be co-counsel on
21 the trial, that might bring up some issues.

22 THE COURT: That's an excellent problem. That's
23 an excellent point, Mr. Hall, but that isn't before
24 the court right now. There's been no motion asking
25 to be co-counsel, there's only been a motion to

1 substitute counsel, not co-counsel and that isn't
2 pending before the Court.

3 MR. HALL: I understand that, Your Honor. So
4 then -- then one last thing. What I would like the
5 Court to do is ask Mr. Mitchell to contact me and let
6 me know what he wants because I don't know that. I'm
7 prepared to go for a trial, I'm good with that, Your
8 Honor, but I do need Mr. Mitchell to contact me to --

9 THE COURT: Well --

10 MR. HALL: -- let me know what he wants as far
11 as representation going forward.

12 THE COURT: That's between you and Mr. Mitchell.
13 If he doesn't want to cooperate with counsel -- look,
14 it's the State's burden to prove this case. The
15 State has the burden to prove this case. Mr.
16 Mitchell, as you know, Mr. Hall, doesn't have to do
17 anything. He can sit stone cold silent in the
18 defense chair and not raise one evidence, not ask one
19 question, not do anything. He's not required to do
20 anything. It's the State's burden to do it. If Mr.
21 Mitchell doesn't want to cooperate with you and
22 doesn't want to assist you with his counsel, I can't
23 require him to do that. That's his choice how he
24 wants to proceed. So I'm not going to tell him to do
25 anything. He has an absolute constitutional right to

1 sit right there as a stone and not do anything if he
2 chooses to do that.

3 MR. HALL: Yes, Your Honor. I'll -- I'll try to
4 get with Mr. Mitchell later today and talk this over
5 with him.

6 THE COURT: Okay. All right, let's address
7 these other matters. On 2019-1061, I'll set that for
8 a pretrial on May the 4th, 2021, at 8:30.

9 Mr. Mitchell, you are to be here in person on
10 that court date. Do you understand?

11 MR. MITCHELL: Yes. Sorry, can you give me the
12 court date one more time, sir?

13 THE COURT: Your trial date hasn't changed.
14 Your trial date is still the same date, May the 4th,
15 2021, at 8:30.

16 Will you take the time to May the 4th, Mr. Hall?

17 MR. MITCHELL: Thank you, sir.

18 MR. HALL: Yes, Your Honor, in the other matter.

19 THE COURT: Thank you. All right, that's
20 everything.

21 Mr. Sexton, if you'll go ahead and prepare an
22 order, sir. Thank you.

23 MR. SEXTON: Yes, Your Honor. And I feel like I
24 need to put on record the State did file habitual
25 offender status in the current case set for trial.

1 After further review, the State does not believe that
2 he is eligible for habitual offender status. I will
3 be filing an amended information that will probably
4 match the first information that we filed in this
5 case word for word just to clear that particular
6 issue up. Mr. Hall and I discussed that in the past
7 that I have now doubts of his habitual offender
8 status and I'm going to remove that, and we will not
9 be asking for that at trial.

10 THE COURT: All right, Mr. Hall, do you
11 understand?

12 MR. HALL: I understand that, Your Honor.

13 THE COURT: All right, and, folks, I don't know
14 if we've stated this on the record, but we have
15 microphones for six jurors to be in the box and in
16 the courtroom. Folks, I know you hate this and I --
17 look, I'm wearing them. But the Supreme Court per
18 curiam order, the last one that's come down, is very
19 clear, we are to have face coverings, face masks on,
20 six feet apart during the course of this trial. That
21 requires me because of the size of my courtroom to
22 turn the courtroom itself into a jury room. So I'm
23 going to have jurors spread out six feet apart. I'm
24 going to have the twelve jurors and an alternate in
25 the courtroom. That means the vestibule area will be

1 the area for participant -- for court observers to
2 watch. We'll have a big-screen TV out there that
3 they can watch that on.

4 Voir dire will be conducted with all parties,
5 all attorneys wearing face masks. The only person
6 that won't be wearing a face mask during the course
7 of the trial will be the witness who's in the witness
8 box. I have a plexi glass witness box that we'll
9 spray down, we'll sanitize. We'll have hand
10 sanitizer. That witness in the box will not have a
11 face mask on while they're talking and while they're
12 discussing. The defendant, the attorneys, the
13 prosecutor, the judge, the court reporter, the
14 bailiff, everybody that's in this courtroom will be
15 wearing a face covering. I don't know if you-all
16 have seen the recent per curiam but that's what I'm
17 going to do, I'm going to follow that order. Okay?

18 MR. SEXTON: Understood, Your Honor. I expected
19 the Court was going to follow previous procedure.

20 THE COURT: Yes, sir. Thank you.

21 MR. HALL: Thank you, Your Honor.

22 THE COURT: Thank you.

23 MS. CAMERON: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (Whereupon, proceedings were concluded.)

IN THE CIRCUIT COURT OF BENTON COUNTY, ARKANSAS

| | |
|-------------------------|---|
| STATE OF ARKANSAS, |) |
| PLAINTIFF |) |
| |) |
| V. NO. 04C4-19-368 |) |
| |) |
| STACY ANTHONY MITCHELL, |) |
| DEFENDANT |) |

JURY TRIAL

Proceedings before the Honorable Bradley Lewis
Karren, Judge of the Circuit Court, Division II, 19th Judicial
District West, on the 4th day of May, 2021, via GoToMeeting.

APPEARANCES

For the State:

Mr. Phillip Bryan Sexton
Deputy Prosecuting Attorney
102 NE A Street
Bentonville, Arkansas 72712
Via GoToMeeting, audio and video

Mr. Stacy Anthony Mitchell, Defendant
Via GoToMeeting, audio and video

For the Defense:

Mr. Samuel Laban Hall
Deputy Public Defender
1204 SE 14th Street, Suite 4
Bentonville, Arkansas 72712
Via GoToMeeting, audio and video

1 THE COURT: All right, Stacy Mitchell. Mr.
2 Mitchell, are you present?
3 (No response.)
4 THE COURT: Mr. Sexton, good morning.
5 MR. SEXTON: Good morning, Your Honor.
6 THE COURT: Stacy Mitchell, are you present?
7 MR. MITCHELL: Yes, sir, I am.
8 THE COURT: Good morning, Mr. Mitchell.
9 This is Case 2019--
10 MR. MITCHELL: Good morning.
11 THE COURT: -- 368. I'll go ahead and vacate
12 the May 4th, 2021, jury trial. I think we will set
13 this for the first out on May the 18th. Jury trial
14 set first out May the 18th, 2021, at 8:30. Do we
15 need a pretrial before then?
16 MR. HALL: I don't believe --
17 MR. SEXTON: Your Honor, the State would -- the
18 State would suggest one, mostly -- unless the Court
19 wants the defendant to appear early for arraignment
20 purposes. The State did further research on its
21 incorrect position on whether he is qualified for
22 habitual offender status. I discussed that with
23 defense counsel. I believe defense counsel is in
24 agreement with me that the state of the law was
25 incorrect according to the State and the State has

1 filed an amended information this week to cover
2 habitual offender status.

3 THE COURT: All right, I'll go ahead and set
4 this for a pretrial status hearing May the 10th,
5 2021, at 8:30. No contact order shall remain in
6 effect.

7 Mr. Mitchell, I'm going to order that you appear
8 here in person on May the 10th. I know you're very
9 good about appearing on line, and I appreciate that,
10 but I'm going to ask you to be here in person on May
11 the 10th so we can go over a few things with this
12 jury trial that may occur on May the 18th. Okay?

13 MR. MITCHELL: Yes, sir.

14 THE COURT: All right, time to May the 18th, Mr.
15 Hall?

16 MR. HALL: We'll take the time.

17 THE COURT: Thank you. Time to May the 18th
18 charged to the defendant.

19 Now, that was on Case 368. Do we need to --
20 we've already selected that jury trial, right? Am I
21 on the right one?

22 MR. SEXTON: That's correct, Your Honor, that's
23 what the intent -- the State intends to try that one.
24 We have reissued subpoenas for the next court date,
25 but we also told our witnesses that this was a reset

1 and, therefore, even though we'd be sending out
2 subpoenas, they were still under subpoena to appear.
3 For record, Your Honor, I personally texted every one
4 of the private individuals in this case to inform
5 them not to appear at court. I don't expect anybody
6 to show up. If they do, please let me know.

7 THE COURT: We sure will, Mr. Sexton. Thank
8 you.

9 All right, so on Case 19-1061, pretrial will be
10 May the 10th, 2021. Mr. Mitchell, I'm going to order
11 you to be here in person on May the 10th, 2021.

12 Now, Mr. Hall, last time I believe Bill James'
13 office had filed a motion to substitute counsel,
14 which I denied because we were too close to the jury
15 trial date. I did not prohibit -- and I want it to
16 be clear -- I did not prohibit either Bill James'
17 firm or another firm if they want to be as
18 co-counsel. If they want to file their motion, I
19 certainly will entertain that. But I just want to
20 make clear on the record I wasn't prohibiting
21 co-counsel, what I didn't want to do is change
22 counsel this close to trial and create an issue.

23 MR. HALL: Yes, Your Honor. And so I know there
24 was subsequent conversations with the James Law Firm.
25 I did speak with Mr. Morphis at the James Law Firm

1 and he indicated to me that they weren't going to be
2 co-counsel.

3 THE COURT: All right, Mr. Mitchell, I'm
4 confident you heard that but what Mr. Hall had stated
5 to the Court was that he had talked to Mr. Morphis
6 with the James Law Firm and the James Law Firm is not
7 wanting to be co-counsel or even take over the case.
8 But I do want you to understand I'm not prohibiting
9 you, Mr. Mitchell, if you want co-counsel or you
10 either want a change of counsel, I'll consider it,
11 but the problem was at that late date I didn't want
12 to change counsel so close to the trial date. So if
13 you still want to do that, I just want to make sure
14 you understand I'm not prohibiting that. If you want
15 that done, then please contact additional counsel to
16 find out what you want to do. Okay?

17 MR. MITCHELL: Yes, sir, I will.

18 THE COURT: All right, what about speedy trial
19 time to May the 10th?

20 MR. HALL: I'm fine taking it, Your Honor.

21 THE COURT: All right, time to May the 10th
22 charged to the defendant. Mr. Mitchell, on this case
23 as well you need to be here in person on that date.
24 Okay?

25 MR. MITCHELL: May the 10th?

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THE COURT: May the 10th, sir, at 8:30, in
person.

MR. MITCHELL: Yes, sir.

THE COURT: Thank you, sir.

(Whereupon, proceedings were concluded.)

STATE OF ARKANSAS,)
PLAINTIFF)
V. NO. 04C4-19-368)
STACY ANTHONY MITCHELL,)
DEFENDANT)

Proceedings before the Honorable Bradley Lewis
Karren, Judge of the Circuit Court, Division II, 19th Judicial
District West, on the 10th day of May, 2021.

APPEARANCES

For the State:

Mr. Phillip Bryan Sexton
Deputy Prosecuting Attorney
102 NE A Street
Bentonville, Arkansas 72712

Mr. Stacy Anthony Mitchell, Defendant

For the Defense:

Mr. Samuel Laban Hall
Deputy Public Defender
1204 SE 14th Street, Suite 4
Bentonville, Arkansas 72712

1 BAILIFF TREVATHAN: Stacy Mitchell.
2 THE COURT: All right, Stacy Mitchell, good
3 morning.
4 MR. MITCHELL: Good morning.
5 THE COURT: All right, this is State of Arkansas
6 v. Stacy Mitchell, 19-368. I know we're here for a
7 pretrial but there was several motions that were
8 filed. I've had an opportunity to review those
9 motions.
10 Let's address the motion first that Mr. Hall --
11 Mr. Hall, your motion about the photographs. Do you
12 want to be heard?
13 MR. HALL: Yes, Your Honor. It's my
14 understanding -- and the State can correct me if I'm
15 wrong -- that they're more less wanting to use this
16 photograph to do two things: 1) identify Mr.
17 Mitchell, and 2) indicate that he wasn't injured
18 basically. Your Honor, my response to that is that
19 he's in custody in this photo. And I understand that
20 the State has done everything it can to make the
21 photo look like he was not in custody but there is
22 some issues with prejudice that come with basically
23 this presenting my client in custody, Your Honor. I
24 think the State can get this evidence in in other
25 ways through witness testimony. The police officer

1 can testify to his condition. I think a police
2 officer can testify to his identity.

3 And additionally, it's my understanding that the
4 reason they arrested Mr. Mitchell that day is because
5 there was a -- the manager of JJ's did a drive-by
6 identification and said, "That's the guy." And so
7 that's basically why he was arrested, Your Honor.
8 And so I think there are other reasons and other ways
9 that this evidence could come in without showing this
10 picture and for those reasons I would ask that it be
11 excluded.

12 THE COURT: Mr. Sexton.

13 MR. SEXTON: Judge, the State will stand on its
14 arg-- or its -- will stand on its response to the
15 motion. In short, Judge, the State believes a
16 cumulative argument right now is not moot. This
17 court has not had an opportunity to review the width
18 and breadth of evidence that's going to be presented
19 and the State believes that any arg-- objection as to
20 cumulative nature ought to be either dismissed or --
21 and heard at a later time or held under advisement
22 till the Court sees the folding out of the evidence.

23 Your Honor, I believe the best evidence
24 argument, as I understand it from defense counsel's
25 argument, is, in essence, we have video, but the

1 problem with the video the State believes the nature
2 of the evidence as it comes in. The State will be
3 providing the video of the defendant in the -- in the
4 bar itself. However, the State does believe that
5 there will be some questions. And Mr. Hall brings up
6 a pretty good point the State feels like it's going
7 to have to deal with at some point. I tend to
8 believe Mr. Hall will be arguing that the
9 identification provided by the -- provided by the
10 manager at JJ's is going to be highly suspect
11 considering the fact the defendant was already in
12 custody. Therefore, the State is going to have to
13 build up an identification separate and apart from
14 that. Part of that identification is going to be not
15 only witness identification of Mr. Mitchell but also
16 the testimony of officers who were out scouting for a
17 suspect based on the clothing represented by the --
18 by the defendant.

19 The State believes the cropped version of this
20 case -- of this photo is a good representation that
21 shows the actual -- the actual clothing worn by the
22 defendant at the time of -- at the time of his
23 arrest. Again, it has been cropped in such a way to
24 ensure that the -- that Mr. Hall's concerns, which I
25 -- granted, I believe there is a concern because we

1 brought this to Mr. Hall's attention before we got to
2 trial are lessened by removing the two officers and
3 making sure that we've done everything that we can to
4 ensure that on first review of that photo you cannot
5 necessarily tell whether he is in custody, not in
6 custody, or something else.

7 Your Honor, regarding unfair prejudice regarding
8 the original photo, the State, I believe, has dealt
9 with that in this previous argument and the State
10 does not understand why Mr. Hall believes the State
11 is going to argue that Mr. Mitchell does not have
12 injury. The State believes that at least one of its
13 witnesses, Jordan Jones, is going to testify that
14 when he was in JJ's he at least was bleeding from the
15 mouth, indicating some level of injury. The State
16 does believe that there are other photos of injury.
17 I -- I don't believe the State is going to be able to
18 argue that night that the defendant had zero injuries
19 on himself. The State believes that there is going
20 to be some testimony as to that. And if that's an
21 objection to this photo, the State does not believe
22 that that's going to be a valid objection when the
23 evidence comes in.

24 THE COURT: Okay. Mr. Hall, last word.

25 MR. HALL: I have nothing to add, Your Honor.

1 THE COURT: I want to see how this evidence
2 comes in as the trial is going. The reason why I
3 want to do that is because it sounds to me like there
4 could be witness testimony about his injuries, could
5 be witness testimony about his identification. Don't
6 know what that may or may not be at this point. So
7 I'm going to go ahead and allow. For right now I'm
8 not going to exclude it, Mr. Hall, but I do want to
9 see how the evidence comes in. I would like you to
10 renew your motion should the State wish to introduce
11 this photo, the cropped photo only. I am going to
12 grant the defense motion on having the police excised
13 out. But if the State moves to admit this cropped
14 photo, Mr. Hall, I would like you to be able to renew
15 your motion as I see how evidence has come in during
16 the course of the trial concerning witness testi-- or
17 witness iden-- Defendant identification and injuries.
18 Okay?

19 MR. HALL: Yes, Your Honor.

20 THE COURT: All right, let's --

21 MR. SEXTON: Your Honor, if I may.

22 THE COURT: Go ahead.

23 MR. SEXTON: Your Honor, the State's habit in
24 introducing photographs is to -- is to approach
25 defense counsel's table, allow them to review them

1 prior to the State introducing those photos in order
2 to raise objection. I will ask that -- I will
3 continue doing that and ask that Ms. Cameron, my
4 co-counsel in the case, do that. That should allow
5 Mr. Hall enough time to flag the photo, ask for an
6 approach, and reiterate this particular issue at that
7 time.

8 THE COURT: Mr. Hall.

9 MR. HALL: Yes, Your Honor. I like that
10 procedure. I should be able to make an objection if
11 I need one at the proper time.

12 THE COURT: Thank you. Okay, that's how we'll
13 proceed.

14 Did you want to hear your motion, Mr. Sexton, on
15 the removal of masks inside the courtroom?

16 MR. SEXTON: Your Honor, yes, if the Court
17 wishes to take that up at this time. I think it
18 speaks for itself as far as being abundantly clear.
19 And when I filed this, again, Your Honor, the State
20 led off its motion with the note -- with reiterating
21 the State's understanding that the Court has control
22 over a jury trial, and I am not in any way trying to
23 step on the Court's toes. However, the State -- the
24 State after review of both the current -- the current
25 per curiam of the Supreme Court noting that the court

1 should follow Arkansas Department of Health
2 guidelines and my review of the last set of
3 guidelines provided April 1st which note that fully
4 vaccinated individuals defined as more than equal to
5 two weeks after they receive the second does of a
6 Pfizer, Moderna shot may visit with other fully
7 vaccinated people indoors without wearing masks.

8 Your Honor, in this particular case both myself
9 and Ms. Cameron have had full vaccination. Ms.
10 Cameron received hers as part of the county's -- the
11 county-offering of vaccinations a couple of months
12 ago. I received mine through Mercy and through my
13 doctor. We both have completed cards if the Court
14 wishes to review them. The State believes that both
15 of us now fall under that guidance and we would ask
16 for a limited -- for a limited variance on the
17 current court rules based on that recommendation from
18 the Department of Health.

19 THE COURT: Mr. Hall.

20 MR. HALL: Your Honor, excuse me, Your Honor, I
21 have no issue with the prosecutors not wearing masks
22 when they're at tables, and, in fact, I don't really
23 have an issue with them not wearing masks at all.
24 Your Honor, I'm unaware of Mr. Mitchell's status as
25 far as his vaccinated status so I can't really talk

1 on that until I figure that out, but I have no
2 problem with Mr. Sexton's motion.

3 THE COURT: All right, well, Justice Kemp had
4 addressed a group of judges one time on -- in an
5 online conference and he -- he told us that the
6 reason why he did this or that the reason why the
7 Supreme Court did this order this way is because at
8 jury trials and on hearings witnesses and jurors are
9 compelled to be here by subpoena or by summons to be
10 here and just because somebody had the vaccination
11 doesn't mean they're not still a carrier. And
12 because of the -- the fact that the Supreme Court has
13 not vacated the mask mandate and that people are
14 required to be here under penalty of law that his
15 suggestion was to go ahead and require the mask
16 mandate for those reasons.

17 I'm going to follow his suggestion and deny the
18 State's motion to modify this court's mask mandate
19 and that will be denied. I will allow, though,
20 however, that as far as the six-foot rule or, you
21 know, maybe three-foot rule the CDC says, you-all are
22 going to be at the counsel table together already.
23 You'll have your masks on. If you-all want to
24 convene quietly so the jury doesn't hear you, I have
25 no objections to you-all, you know, temporarily,

1 whatever, while you're doing the conference to remove
2 and talk so that the jury doesn't hear you or the
3 court doesn't hear you. So I have no objection to
4 you-all getting that social distancing out of the way
5 just for the moment to speak in low tones while
6 you're at counsel table or at any other time during
7 the trial. All right, so that's on Case 368 jury
8 trial is set for May the 18th, 2021, at 8:30.

9 Mr. Mitchell, of course, thank you for being
10 here in person today. I know you're very good on the
11 technology side of things but the fact that you're
12 here, I appreciate you following the court's order.
13 I'm also going to order you, of course, to be here in
14 person on May the 18th.

15 MR. MITCHELL: Your Honor, may I say a word real
16 quick?

17 THE COURT: Mr. Mitchell, you've got an attorney
18 and once you've been appointed that attorney you've
19 waived your right to represent yourself. And I don't
20 want you to say anything that might be used against
21 you so I'm not going to allow you to.

22 MR. MITCHELL: I'm not going to testify or
23 anything. With all due respect to the court, me and
24 my family we have been talking. My wife talked the
25 Sam Hall several times, on several occasions and she

1 believed in her heart that he's not the attorney for
2 me, and I also believe in my heart that he's not the
3 attorney for me. And the last time we talked you
4 said you would take this on consideration. I'm
5 humbly asking you to take this on consideration right
6 now.

7 THE COURT: Well, Mr. Mitchell, there's been no
8 motion filed by any other law firm asking to join as
9 co-counsel or substitution of counsel. We've got
10 trial here in eight days. So I'm not going to change
11 -- I'm not going to change counsel at this point, Mr.
12 Mitchell. I'm not going to do that. Mr. Hall has
13 been in this court for years, eight years if I'm not
14 mistaken. He's tried several jury trials in this
15 court. He's conducted himself very competent.

16 MR. MITCHELL: I have (unintelligible
17 simultaneous speech) --

18 MR. HALL: Mr. Mitchell --

19 MR. MITCHELL: I'm sorry, I don't mean to cut
20 you off, Your Honor. I do understand where you're
21 coming from. I truly do. But in conversation me and
22 Mr. Hall had with me and my family is that I'm going
23 to lose this jury trial. He's one hundred percent
24 sure of that. So he's going in there with doubt in
25 his mind. I can have my wife to testify to that. He

1 told her that.

2 THE COURT: All right. Well, there's no motion
3 --

4 MR. MITCHELL: So if he's going in there with
5 doubt in his mind, why would I even have an attorney
6 to defend me? There's no one to defend me.

7 THE COURT: There's no motion pending, Mr.
8 Mitchell. I'm going to go ahead and keep this trial
9 on May the 18th. Mr. Hall is going to be your
10 attorney of record on the case.

11 All right, now, let's track on 2000--

12 MR. MITCHELL: (Unintelligible simultaneous
13 speech) --

14 MR. SEXTON: Your Honor --

15 THE COURT: Yes.

16 MR. SEXTON: My apologies. Before we leave this
17 case, the State does need to point out we have an
18 amended information filed in this case the defendant
19 needs to be arraigned on. For the record, at one of
20 the previous pretrials the State indicated to the
21 judge that he had questions about habitual offender
22 application in this case. Mr. -- a wiser attorney
23 than I, Josh Robinson, told me to go do my work
24 again. I found additional case files that I have
25 shared with Mr. Hall, and I believe habitual offender

1 status does apply to this case. I do believe we now
2 need to arraign him on that amended information.

3 THE COURT: Mr. Hall, what have you advised?

4 MR. HALL: Yes, Your Honor. And if the current
5 information -- the most recent amended information,
6 Your Honor, I've gone over that with Mr. Mitchell.
7 He -- he's aware of what's in the criminal
8 information, the charges. He's aware of his
9 constitutional rights, Your Honor. At this time we'd
10 like to waive a formal read -- reading of the most
11 recently amended information and enter a plea of not
12 guilty.

13 THE COURT: Is that what you'd like to do, Mr.
14 Mitchell, is plead not guilty?

15 (No response.)

16 THE COURT: Mr. Mitchell.

17 MR. MITCHELL: Yes, sir.

18 THE COURT: Would you like to plead not guilty?

19 MR. MITCHELL: Yes, sir.

20 THE COURT: All right, I'll go ahead and accept
21 a not guilty plea to the amended information. All
22 right, folks, that will be on Case 19-368. Let's --
23 what about speedy trial time, Mr. Hall?

24 MR. HALL: Your Honor, I -- I think that I've
25 been taking it, but if I haven't I'm willing to do

1 so.

2 THE COURT: All right, time to May the 18th

3 charged to the defendant. The no contact order shall

4 remain in effect.

5 Then on Case 19-1061, we'll keep this pretrial

6 tracking so on May the 18th of 2021. Time to May the

7 18th will be charged to the defendant to keep the

8 cases tracking together.

9 All right, thank you, folks.

10 MR. SEXTON: Thank you, Your Honor. One other

11 thing for record. The State wanted to make sure the

12 Court understood Mr. Hall has been -- has kept the

13 lines of communication open with me. He was the one

14 who has been active in filing the motion to suppress

15 regarding the photograph. The State -- to be

16 completely honest with the Court this is going to be

17 the fourth trial setting in this particular matter.

18 We are a week from tomorrow out. The State will be

19 objecting to further interference by other attorneys.

20 I believe Mr. Hall knows these cases very well. I

21 believe Mr. Hall has been extremely diligent in his

22 participation and honestly Mr. Hall is objecting to

23 most of the things that I want to do, which is a

24 pretty good sign he's doing his job as the defense

25 attorney.

1 THE COURT: Thank you, Mr. Sexton.
2 Okay, folks, we'll see you back on May the 18th,
3 2021. Mr. Mitchell, you need to be here in person on
4 that date, sir. Thank you.
5 MR. MITCHELL: Yes, sir, I will.
6 THE COURT: Thank you.
7 MR. HALL: Yes, Your Honor.
8 THE COURT: Thank you.
9 MR. HALL: I'll go hire me an attorney.
10 (Whereupon, proceedings were concluded.)
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